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AN OVERVIEW OF SELECTED ENVIRONMENTAL AND RESOURCE MANAGEMENT ISSUES IN TE ROHE POTAE INQUIRY DISTRICT, WITH A FOCUS ON THE PERIOD SINCE 1970

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There are silent partners in the environment that cannot speak to us with words that we understand. As kaitiaki we the Hapu, Iwi, Tangata Whenua must speak on behalf of Papatuanuku and Ranginui. Who else should speak for them and their children, but their mokopuna?

When hazardous waste products are entering our whenua and our air and our waterways, they create a major problem for our silent partners. The best thing that we can do is to do our part for the benefit of the whole of humanity and for the benefit of our silent partners. For currently their needs are not being provided for in a way that will adequately safeguard them for the future.

We must look after the interests of those who have no voice. They are what really matter if we intend to go forward into the future with a healthy, wealthy and abundant environment.

> Kowhai Consulting Ltd and Ministry for the Environment, *Te Purongo: Maniapoto State of the Environment Report: a tribal perspective*, 2002, page 42.

Explanatory Note

In March 2012 the Chief Historian's rapid appraisal of the research casebook for Te Rohe Potae district inquiry recommended that a district overview report on selected post-1970 environmental and resource management issues be commissioned. It also suggested that targeted research was required on four environmental case-studies: Whaingaroa Harbour, the Mokau River mouth, the Waipa River, and Pirongia Forest Park[1]. Three researchers were commissioned to undertake this project: David Alexander, Martin Fisher and Matthew Cunningham[2].

At an early stage in the research, the requirement that coverage of the issues be confined to the post-1970 period was discussed. It was agreed, particularly with respect to the four case-studies, that the research would include pre-1970 environmental matters relevant to the Tribunal's commission, and these matters would be reported on where they were not already adequately covered in the research casebook. However, the focus of the report and the case-studies would continue to be the period since 1970. The title of the report reflects this slight change of emphasis.

The environmental overview and the four case-studies were originally intended to form a single combined report. However, it became clear as the commission progressed that the subject material for the four case-studies was substantial enough to warrant being covered in separate documents. In addition, three specific topic-studies emerged from the overview project: the establishment of the Waikato Valley Authority, hydro-electric power generation in the Mokau catchment, and ironsand mining at Taharoa.

It was consequently decided to file the environmental overview and the four case-studies separately on the record of inquiry for Te Rohe Potae. As a result, this research commission is comprised of five documents instead of one: an environmental overview (together with the three topic-studies), and separate case studies on Whaingaroa Harbour, the Mokau River mouth, the Waipa River, and Pirongia Forest Park. Whilst each operates as a discrete, standalone report, some minor cross-

[1] Wai 898 #6.2.43, p 32
[2] Wai 898 #2.3.87

referencing has been noted to avoid unnecessary overlaps, and the reports should still be read in the context of the original commission. The author of each report is noted in the prefaces: David Alexander for the environmental overview (and the three topic-studies), Martin Fisher for the Whaingaroa Harbour and Pirongia Forest Park case-studies, and Matthew Cunningham for the Mokau River mouth and Waipa River case-studies.

The reports are supported by eight document banks: the environmental overview, each of the three topic-studies, and the four case-studies. This has been done to allow for ease of use and distribution. The volume numbers for the document banks are as follows:

Volume 1: Environmental overview
Volume 2: Topic-study – Waikato Valley Authority
Volume 3: Topic-study – hydro-electric power generation in the Mokau catchment
Volume 4: Topic-study – ironsand mining at Taharoa
Volume 5: Case-study – Whaingaroa Harbour
Volume 6: Case-study – Mokau River mouth
Volume 7: Case-study – Waipa River
Volume 8: Case-study – Pirongia Forest Park

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The Author

My name is DAVID JAMES ALEXANDER. I am an environmental and planning consultant, and historical researcher, of Auckland. I hold a BA (Honours) degree in Geography, and an MSc degree in Conservation. Between 1979 and 2006 I was a full Member of the New Zealand Planning Institute.

From 1975 to 1987 I was a planner in the Department of Lands and Survey. This enabled me to gain a thorough understanding of land status matters. In 1987, after a short period working for the Department of Conservation, I established my own consultancy. The following year, I prepared his first brief of evidence for the Waitangi Tribunal, which was hearing the Ngai Tahu claim. Since then I have prepared a number of other reports for claim hearings. I have prepared reports (and presented them as evidence in most cases) on the Ngati Rangiteaorere, Pouakani, Te Roroa, Ngati Awa, Ika Whenua, Turangi Township, Ngati Pahauwera, Hauraki, Muriwhenua, Southern Kaipara, Turanga, Te Tau Ihu, Tuhoe, Central North Island, Tauranga, Northland, East Coast, Whanganui and Taihape claims. I am the author of a report on Public Works and other takings in Te Rohe Potae[3], which was presented to the Waitangi Tribunal during hearing week nine in December 2013. In 2006 I prepared a report on environmental issues in Northland for Te Paparahi o Te Raki District Inquiry[4].

Disclosure: I worked in the New Plymouth district office of the Department of Lands and Survey from 1981 to 1984. This district office was responsible for the Department's administration in the Taranaki Land District, which overlaps with Te Rohe Potae inquiry district generally south of the Mokau River and Benneydale.

[3] David Alexander, *Public Works and other takings in Te Rohe Potae District*, Wai 898 document A63, December 2009.
[4] David Alexander, *Land-based resources, waterways and environmental impacts*, Wai 1040 document A7, November 2006.

1. Introduction

This report has been prepared as a late addition to the commissioned research forming the casebook for the Wai 898 inquiry. A number of other commissioned research reports completed earlier cover the subject matter of this report[5]. However, in an appraisal of that earlier research, the Tribunal's Chief Historian identified the need for an overview assessment of certain non-land and environmental issues, which would both bring together material from existing research and undertake further research on a number of discrete topics[6].

The Tribunal's direction commissioning this research was issued in December 2012[7]. It specifies that this district overview should concentrate on the modern era from the 1970s to the present day, and is to include the following topics:

a) The provision and implementation of harbour management regimes, in particular their impact on kaimoana, and Maori access to and kaitiaki responsibilities for customary marine resources
b) The provision and implementation of local government zoning schemes and their impact in particular on Maori communities adjacent to towns and on coastal land
c) The provision and implementation of management regimes for forest parks and other conservation estate areas
d) The provision and implementation of management regimes for the control and prevention of environmental degradation of coastal areas, harbours and natural waterways, and associated resources. The coverage should include:

[5] The previous research reports on environmental matters specifically referred to by the Chief Historian in his review are:

- Philip Cleaver and Jonathan Sarich, *Turongo: the North Island Main Trunk Railway and the Rohe Potae, 1870-2008*, November 2009, Wai 898 document #A20.
- Philip Cleaver, *Maori and the forestry, mining, fishing and tourism industries of the Rohe Potae inquiry district, 1880-2000*, February 2011, Wai 898 document #A25.
- Michael Belgrave at al (Massey University), *Te Rohe Potae harbours and coast, inland waterways, indigenous flora and fauna, sites of significance, and environmental management and environmental impacts scoping report*, March 2010, Wai 898 document #A64.
- Michael Belgrave et al (Massey University), *Te Rohe Potae environmental and wahi tapu report*, August 2011, Wai 898 document #A76.

Other reports filed with the Waitangi Tribunal for Te Rohe Potae inquiry district will also contain material relevant to the matters discussed in this overview report.

[6] Wai 898 document #6.2.43.

[7] Wai 898 document #2.3.87.

- industrial pollution and gravel and sand extraction, and their impacts on customary Maori usage and guardianship; and
- mahinga kai, kaimoana and customary management of inland waterways and estuaries

e) The provision and implementation of environmental management regimes for introduced species in waterways, and the consequences for Te Rohe Potae Maori in respect of customary freshwater fisheries, including tuna
f) The implementation, insofar as they affect Te Rohe Potae inquiry district, of statutory provisions and regimes for the protection of wahi tapu from damage, and of portable taonga from damage, desecration and removal
g) The adequacy of Crown-established environmental and resource management regimes implemented in this district, including those with powers and responsibilities delegated to local authorities, for enabling consultation with and the participation of Maori, including for decision-making and the exercise of kaitiakitanga, and focusing in particular on the operation of the Resource Management Act 1991; and
h) The adequacy of the Crown's monitoring of delegated powers for environmental and resource management in Te Rohe Potae district

The commission sought more in-depth coverage of these issues by closer examination of a number of specific localities in Te Rohe Potae, using a case study approach. Four of these localities, and the matters to be examined in each locality, were identified in the Tribunal's commission:

a) Whaingaroa Harbour and surrounding area. This case study should include coverage of
    - environmental management provisions and implementation
    - local authority powers and zoning
    - introduced and native species protection and control
    - management powers for water rights
    - powers for the protection of wahi tapu and cultural heritage items

    together with consideration of the impacts of these five matters in areas such as the continued exercise of kaitiakitanga, participation in environmental decision making, water pollution and loss of water quality, losses or

reductions in customary fishery resources, and loss or damage to wahi tapu and cultural heritage items.

b) Mokau River mouth. This case study should include coverage of the cultural and environmental impact of the resource management and statutory regimes for protecting wahi tapu at the Mokau River mouth, including the status of wahi tapu not thus protected.

c) Waipa River and its tributaries. The coverage of this case study should include the environmental management regime provided for the Waipa River and its tributaries, in particular downstream of Te Kuiti, and its impacts on the exercise of kaitiakitanga over the waterways and their resources, the maintenance of water quality, the maintenance and protection of customary river resources, including fisheries, and the protection of wahi tapu and cultural heritage items.

d) Pirongia Forest Park. The coverage of this case study should include the establishment of Pirongia Forest Park, the management regime provided and implemented, and its impacts on continued Maori kaitiakitanga over park resources, customary uses and interests in the park, and the adequacy of the Department of Conservation's engagement with tangata whenua over the administration and decision-making for the park.

The Whaingaroa Harbour and Pirongia Forest Park case studies have been prepared by Martin Fisher. The Mokau rivermouth and Waipa River case studies have been prepared by Matthew Cunningham. For convenience of preparation, and in recognition of the different authorships, each case study has been treated as a standalone report, separate from this overview.

Choosing these localities as being worthy of further more detailed study was based on identified gaps in the research casebook, rather than with any intention that the four localities might be representative of the inquiry district as a whole, or might serve as the most appropriate examples of the manner in which the Crown operated in Te Rohe Potae. The information researched and reported on in the four case studies is referred to in the overview, allowing readers to gain a more detailed understanding by turning to the particular case study.

There is a national context to the matters covered in this report. Parts of this national context have been reported on by the Waitangi Tribunal in previous reports. In particular the *Ko Aotearoa Tenei* report has examined the Resource Management Act, the conservation estate, and wahi tapu protection matters[8]. Part of the purpose of this overview is to establish the extent to which the national findings are applicable to the particular regional situation of Te Rohe Potae, and whether there is scope for additional findings to be made arising from a Te Rohe Potae experience. Rather than replicate the work already included in already-completed Tribunal reports, the research effort for the overview report has sought to add some regional "flesh" to the national "skeleton". In a similar vein, the Waitangi Tribunal is inquiring into a national water claim, and it is not the role of this report's discussion of the Crown water management regimes to address matters more properly covered by that inquiry, although some explanatory overlap is unavoidable.

During the research undertaken for this overview report, it became apparent that there were a number of topics where the information available was so voluminous, and the impacts were so significant for particular Te Rohe Potae hapu or for environmental management in Te Rohe Potae, that it was preferable to separate them out from the main overview report and treat them as topic studies. This has then allowed the topics to be studied in greater detail than if the information was addressed only in an overview fashion in the main body of the report. The topic studies are:

- The establishment of the Waikato Valley Authority
- Hydro-electric power generation in the Mokau catchment
- Ironsand mining at Taharoa

As with the case studies, there is cross-referencing in the overview report to further detail available in the topic studies. In each instance pre-1970 Crown involvement is covered as well as post-1970 Crown and local authority involvement, in an effort to present a more comprehensive picture of the impact of identified Crown actions on Maori. The three topic studies are presented as accompaniments following this overview report.

[8] Waitangi Tribunal, *Ko Aotearoa Tenei: a report into claims concerning New Zealand law and policy affecting Maori culture and identity*, Wai 262, 2011.

A key theme identified in claims to the Tribunal by Te Rohe Potae Maori is their concern that the Crown's exercise of its kawanatanga authority with respect to the management of the natural environment has become so all-encompassing that rangatiratanga authority, including tribal exercise of kaitiakitanga (customary guardianship or stewardship), has become overshadowed and effectively displaced by the authority exercised by the Crown and its local agencies. As the role that Maori could play in environmental management was denied by the Crown's domination of control mechanisms, so the skills and expertise of hapu in kaitiakitanga have become invisible to the wider community, and in some respects have become withered by neglect and lack of practice.

Other Tribunals have made findings about the Crown's actions in passing environmental legislation. It is not the role of this report to itemise these previous findings. However, the main theme of the findings has been that the Crown had and continues to have an active duty to protect tino rangatiratanga held by hapu in 1840, unless any part of that authority was voluntarily relinquished by Maori. Those parts of rangatiratanga concerned with water, wildlife, and kaitiakitanga for the natural world have never been overtly or voluntarily relinquished by Maori. A finding of the Whanganui River Tribunal on the Resource Management Act 1991 sums up this viewpoint. It is probably equally applicable to the Water and Soil Conservation Act 1967, a predecessor of the Resource Management Act that is explicitly linked to the current legislation by Section 354(1)(b) of the 1991 Act.

> To the extent that the Resource Management Act 1991 vests authority or control in respect of the river in other than Atihaunui, without Atihaunui consent, that Act too is inconsistent with Treaty principles. The Act in fact vests control of rivers in regional authorities, with certain rights of hearing and appeal being given to the public, including Atihaunui. 'Management' is the word used for the powers exercised in relation to the Act, but on our analysis of the statute, the powers given to regional authorities in respect of rivers are more akin to ownership. However viewed, and no matter how often it is said that the Resource Management Act concerns management and not ownership, in reality the authority or rangatiratanga that was guaranteed to Atihaunui has been taken away.[9]

The southern part of Te Rohe Potae inquiry district is within the Whanganui catchment.

[9] Waitangi Tribunal, *The Whanganui River Report*, 1999, page 339.

In preparing the overview and the topic studies, I have drawn on knowledge gained during my employment as a public servant between 1975 and 1987, on experience gained as a consultant and writer of evidence for different Waitangi Tribunal inquiries since 1987, and on research undertaken specifically for this report.

In placing the focus of this report on the last forty or so years, since 1970, the events described are within the lifetime of many claimants, and are referred to in the briefs of evidence they and their representatives have filed with and presented to the Tribunal. A number of claimants have had considerable personal experience of dealing with the Crown and its delegated agencies about Resource Management Act matters, and have drawn their own conclusions about the ability for Maori tikanga to apply with respect to resource management statutory regimes, and vice versa. In preparing this report I have not sought to edit or dilute what claimants have told the Tribunal about their personal experiences, nor to put into my own words what claimants have told the Tribunal about their customs and traditions. Rather, the purpose of the report is to concentrate on what the Crown and its associated organisations have been doing. Where examination of Crown and local authority records has discovered instances where Maori historically made representations in writing to the Crown or to local authorities, those representations are included to provide a crossover link to statements made by claimants today.

2. Environmental change and Crown responses prior to the 1970s

2.1 Introduction

The pre 1970s period, covering 130 years (1840-1970), involved massive environmental change in Te Rohe Potae, as well as extensive development of Crown legislative responses, the consequences of which have still been felt during the last 40 years. This chapter provides a background introduction to the period that the Tribunal has instructed this report to be focussed upon. As a background chapter, it is necessarily a summarised coverage of matters covered more extensively in other reports. Where there are conflicting viewpoints, those more extensive other reports should be regarded as more authoritative.

From a largely forested environment in 1840, the landscape of Te Rohe Potae has been transformed to become dominated by grassland on the flat valley floors and most of the middle valley slopes, with forest surviving only on upper slopes and in more isolated locations. That forest has become diminished in ecological quality by being cutover and by the depredations of noxious pests. The clearing of the bush has led to soil erosion that has clogged the waterways and harbours with silts and sediments, fundamentally altering their ecological characteristics.

This change is not unique to Te Rohe Potae. It can be seen in every other district of New Zealand. While the European era transformation in Te Rohe Potae started later than in some other districts, not getting underway to any significant degree until after the construction of the Main Trunk Railway in the 1880s and the Crown land purchasing and land settlement programme in the 1890s, it has been just as dramatic in its impact as in other parts of New Zealand.

The national nature of the changes, and of the environmental consequences, has dictated that there should be national responses by the Crown. Legislative intervention has become more widespread and more complex, building up over time a web of rules and requirements as the Crown has tended to assume (and then sometimes delegate) more and more responsibilities. This expansion of a Crown role

has at times overlapped the role traditionally occupied by Maori in their exercise of kaitiakitanga.

2.2 Te Rohe Potae environment in 1840

Over the years there have been a number of studies aiming to map the vegetation cover of New Zealand in 1840[10]. Each of these studies relies on informed conjecture, and it would probably be unwise to treat any one of them as more or less valid than the others. The other caution is that the mapping has usually been done at a national scale. This has two consequences. First, only a broad pattern can be demonstrated, and finer detail is not plotted. As Holloway remarked:

> The main problem in compiling a vegetation map is the limitation on the selection of data imposed by the scale. A wealth of vegetation types calls for separate recognition. Where, however, the scale is small, only a few can be chosen. Nowhere is this more so than in New Zealand where the instability of the vegetative pattern, the extreme topographical diversity of the country, and an extraordinarily wide range of regional and local climates are revealed in a marked vegetative variation over very short distances…. In brief, there is rarely a measure of uniformity over any considerable extent of land. Pockets of forest, scrub land, or swamp occur scattered throughout the grasslands; pockets of beech forest occur within the podocarp forests, and vice versa.
>
> In view of this complexity, it is clearly impossible on a small map to do more than outline the regions characterised by the predominance of one vegetative type or set of types.[11]

Second, to enlarge any printed maps in order to focus on any particular region of New Zealand would magnify any inaccuracies of position of the boundaries between vegetation types, and draw inappropriate attention to the selected boundaries between vegetation categories.

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[10] Examples are:
JT Holloway, 'Pre-European vegetation of New Zealand', in AH McLintock, *A descriptive atlas of New Zealand*, Government Printer, Wellington, 1960, pages 23-24 and map plates 14 and 15.
AG Anderson (ed), *New Zealand in maps*, Hodder and Stoughton, Auckland, 1977.
G Stevens, M McGlone and B McCulloch, *Prehistoric New Zealand*, Reed Books, Auckland, 1995, page 119.
M McKinnon (ed), *New Zealand Historical Atlas: Ko Papatuanuku e takoto nei*, David Bateman and Department of Internal Affairs, 1997, map plate 12. This map relies on MS McGlone, 'Polynesian deforestation of New Zealand: a preliminary synthesis', in *Archaeology in Oceania*, Volume 18 No. 1, 1983, pages 11-25, and MS McGlone, 'The Polynesian settlement of New Zealand in relation to environmental and biotic changes', in *New Zealand Journal of Ecology*, Volume 12, 1989, pages 115-129.

[11] JT Holloway, 'Pre-European vegetation of New Zealand', in AH McLintock, *A descriptive atlas of New Zealand*, Government Printer, Wellington, 1960, pages 23-24.

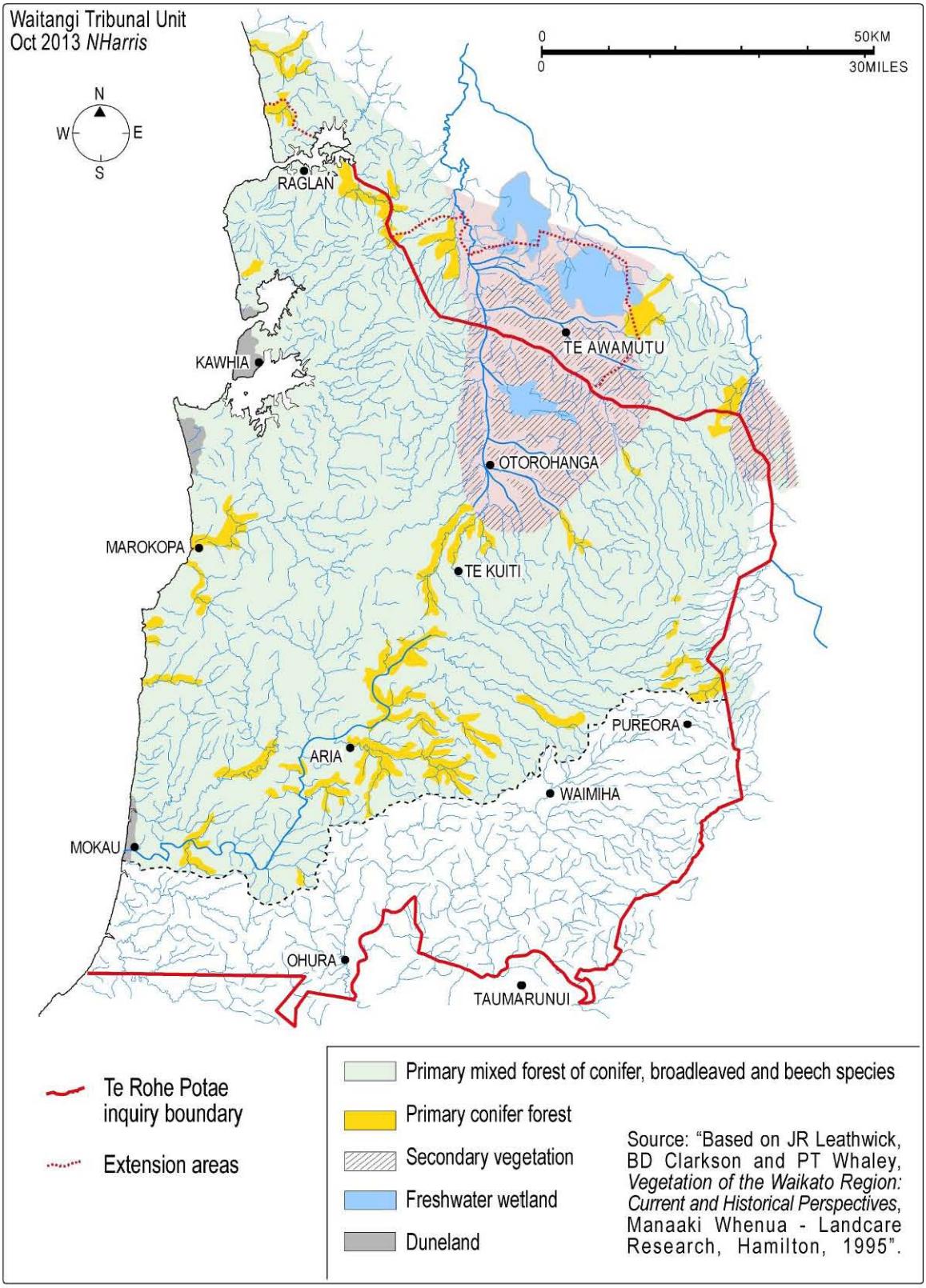
Fortunately for Te Rohe Potae district, in 1995 Waikato Regional Council commissioned a study by Landcare Research of 1840 vegetation and current vegetation in Waikato region[12]. This mapping covers the majority of the Tribunal's inquiry district, although not the southern part in the Whanganui catchment that is outside the Waikato region.

The principal pattern is one of forest clothing the land, a pattern broken only where there were sand dunes or wetland swamps. The forest was principally a mix of conifers (such as the podocarps rimu, miro and totara) and broadleaved species (such as tawa), though with some localised variation. There was a beech component to the conifer / broadleaved forest in the southern parts of the district, and an upland tree species component on the higher slopes of Pirongia and Karioi mountains. Where broad valley floors extended into the hill country (such as the valleys of the Mangaokewa, Mangapu and Waipa Rivers, or the rivers draining into the west coast harbours), conifers such as kahikatea and totara predominated and broadleaved species were a less significant component of the forest cover. There was also a conifer-dominant forest on Taupo ash deposits in the Taupo basin and in the Pureora locality.

The other local variation was in the Waipa valley downstream of present-day Otorohanga. There the forest cover was a secondary vegetation as a result of centuries of occasional fires. These fires were human-induced, with subsequent human and natural causes. Once the primary forest cover had been broken down by initial firing, the drier and less complete cover was more prone to further fires. The secondary forest vegetation had different components depending on whether it was on hill country or on alluvial flats. On the flat lands, the forest cover gave way to shrublands in the wetter places, which in turn gave way to open water wetlands.

[12] JR Leathwick, BD Clarkson and PT Whaley, *Vegetation of the Waikato region: current and historical perspectives*, Landcare Research Contract Report LC9596/022, Manaaki Whenua - Landcare Research, Hamilton, September 1995. Supporting Papers #2330-2388.

Map 1 Te Rohe Potae vegetation cover at 1840



The accompanying Map 1, based on the Landcare Research report, distinguishes five different categories of vegetation cover. Each of these is an amalgamation or representation of the following Landcare Research vegetation units:

Table 1 Vegetation categories shown in Map 1

Map 1 Vegetation Category	Landcare Research Vegetation Units[13]
Primary mixed forest of conifer, broadleaved and beech species	Conifer-broadleaved forest Mixed conifer-broadleaved / conifer-broadleaved-beech forest Conifer-broadleaved-beech forest Montane conifer-broadleaved forest
Primary conifer forest	Conifer forest
Secondary vegetation	Secondary vegetation on alluvial – lower Waikato Secondary vegetation on hill country – lower Waikato
Freshwater wetland	Freshwater wetland
Duneland	Duneland

For Maori, the resources of all the different types of vegetation cover, whether unmodified forest, secondary forest or open wetlands, were relied upon as a sustainer of their lifestyle. Primary forest provided areas for hunting forest birds and kiore, and for gathering food plants and medicinal plants; they also provided the tall trees for the building of waka. Secondary forest could be cleared for cultivations and habitations. Wetlands and waterways were rich sources of birds and fish.

The pattern of forest and swamps in existence in 1840 did not remain unchanged through to the 1880s. This period was a time of expansion for Maori gardening, with the swelling European population in other parts of the North Island providing a market for Maori produce. It would have been the secondary forest areas that attracted the bulk of the interest, and would have seen the greatest change. However, this change is unlikely to have been at the expense of the swamp vegetation and the open water wetlands, which remained of particular importance to Maori.

[13] JR Leathwick, BD Clarkson and PT Whaley, *Vegetation of the Waikato region: current and historical perspectives*, Landcare Research Contract Report LC9596/022, Manaaki Whenua - Landcare Research, Hamilton, September 1995. Supporting Papers #2330-2388.

The limited disturbance of the forest cover in the years prior to the 1880s would have meant little change to the waterways and harbours. These too continued to sustain the lifestyle of Te Rohe Potae Maori. The various resources of the forests, the waterways and the harbours allowed seasonal patterns of migration between settlements and the forests, and between inland areas and the coast. They also sustained the influx of population caused by conflict and raupatu to the north.

2.3 Changes to the environment up to 1970

The large-scale environmental changes to Te Rohe Potae started with the breakdown of the aukati line, and the agreement to allow construction of the Main Trunk Railway. While the railway itself was a narrow strip of cleared land with little impact in terms of numbers of acres affected, its presence was to have huge consequences. The railway, and the agreements with Maori associated with its arrival, opened up access to the surrounding land in two great waves. The first commenced with Crown land purchasing activities to acquire a substantial acreage of Maori-owned land. Once acquired, this land was surveyed by the Crown into farm sections connected by bridle tracks and wagon roads. All these tracks and roads led to the larger settlements established along the railway line, such as Otorohanga and Te Kuiti. Europeans who settled on the farm sections were primarily interested in grazing stock on grassland. To them the forest cover was an impediment to their aspirations, and the sooner it was removed, the quicker they could establish a farming livelihood. Farm sections closest to the railway were logged, then burned and grass-seed sown in the fertilising ashes. On farm sections further away from the railway, logging was not such a practical proposition, so the bush was cut down, left to dry out and then burned.

> The railway, held up for several years at Te Awamutu, reached Te Kuiti in 1887, but did not reach Taumarunui until 1903. European settlement was slow in gathering momentum, and it was not until about 1906 that Europeans outnumbered Maoris. Logging and mixed farming spread outwards from the railway.
>
> Clearance of bush for timber and farm land did not develop rapidly until after 1900, but thereafter the area of land farmed, livestock numbers, and the volume of indigenous timber milled grew very rapidly until the 1920s when growth tapered off in the case of farming, partly because of problems of erosion and reversion of marginal farm land. The most rapid growth of

> population was from about 1906 until about 1916, making the King Country one of the last districts in New Zealand to be developed.[14]

The second great wave of forest disturbance was by the timber companies. With the resources to build bush tramways connecting to large-scale sawmills located beside the railway, they were in a position to exploit the forests further away from the railway that had not already been converted to grass by the farming community. Their legacy was vast areas of cutover forest that often still retained a canopy cover (albeit in a depleted state), and was left to slowly regenerate after the millable logs had been extracted. The timber companies relied on Crown-owned land, and private land owned by both Europeans and Maori. The reason logged forest was left in a cutover state rather than a cleared state was because the interest of the timber companies was focused predominantly on the conifer component of the conifer / broadleaved forest; enough unlogged woody vegetation was left in the forests to allow regeneration. The consequence of the logging of the forests was that by 1970 very little forest in Te Rohe Potae was left in its virgin state, by comparison with the great extent that had existed in 1840. Only particularly isolated forest areas, forest on the steepest slopes, or the last remaining frontier for logging at Pureora remained uncut.

European settlers were not only interested in the forested land. The flat but poorly-draining swamplands were equally if not more attractive, especially if they could be drained. These swamplands had always been attractive for Maori, being rich sources of food, in particular tuna. For instance, Te Kawa swamp was the scene of a large annual gathering, as Maori from the wider district were hosted there by the local iwi during the tuna migration. Once the swamplands were acquired by Europeans, considerable effort was put into their drainage. The European farming community, with the Crown, established drainage boards as communal agencies to implement large-scale schemes that were beyond the means of individual settlers. The Waipa River case study illustrates the widespread coverage of drainage boards in the lowlands of the Waipa valley. The drainage works were at the expense of the traditional use made of the swamplands and open wetlands by Maori, and transformed the wetland landscape in a short time period.

[14] Town and Country Planning Division, Ministry of Works, *National resources survey: Part VIII, Waikato, Coromandel King Country region*, 1973, page 20.

Both the drainage of the swamplands and the removal of the forest cover had consequences for the waterways of Te Rohe Potae district. Flow patterns were altered, and water channels were filled with sediments washed off the hillsides. It is hard to visualise today what the rivers must have been like before European settlement when, for instance, the Mangapu River was a waka route with a portage in its headwaters (along the line of present-day Troopers Road) through to the Mokau River[15]. Writing in 1944 in a Government-commissioned publication, Kenneth Cumberland noted that:

> In the King Country, bush felling and surface sowing of grasses are still pushing into regions with a topography on which soil stability seems impossible under anything but the dense indigenous cover of forest.[16]

Forest clearance has magnified the peaks and troughs of water flow. While flooding of the banks of the rivers did happen before European settlement, it was never to the same degree as has occurred since. In making use of the waterways for waka transportation and as sources of food, Maori had gravitated towards the river banks as sites for their kainga. Their lives would have been badly disrupted by any floods. Europeans were not immune, with settlements such as Te Kuiti and Otorohanga having a history of flooding. At the other extreme, summer dry periods resulted in lower flows than when the valley sides were forested, higher water temperatures, and more stressed fish life.

The concentration of settlement on the river flats increased the danger of pollution and caused a reduction in water quality. The rise of fertiliser application in the 1950s and 1960s encouraged more intensive use of the land, higher stocking rates, and a greater risk of phosphorus and nitrogen nutrients washing off the land into the waterways. Dairy factories had a large quantity of liquid waste to dispose of and treated the rivers as drains. All these are features noted in the Waipa River case study.

[15] B Morgan, *Historic Maori place names from the Waipa River to Mokau*, 1976, page 13.
[16] KB Cumberland, *Soil erosion in New Zealand, a geographic reconnaissance*, Soil Conservation and Rivers Control Council, Wellington, 1944, page 164.

The changes to the land and the waterways had a downstream effect on the harbours, with silting so rapid that the environment was unable to slowly evolve and adapt to the new conditions. The settling on the bed of the harbours of so much relatively inert material over such a short period of time impoverished biological activity, reducing the productivity of an ecosystem on which Te Rohe Potae Maori had traditionally relied as a source of food.

The changes to the environment that have resulted in the landscape that exists today have been progressive and ongoing. The late 1960s and early 1970s, which are the start of the period focussed on in this report, were not remarkable in terms of the type or speed of that change, or in terms of the economics of land use that guided what change occurred. When change is continuous and incremental, it is hard to reflect on what stage that change had achieved at any point in time. For this report, reliance is placed on the work of Cumberland and Fox, two geographers who wrote about the rural environment of Te Rohe Potae in 1963[17]; their book is extensively quoted from in an effort to present a word-picture of the state of the land at that particular time.

> [T]owards the south [of the South Auckland region], the population becomes smaller and more scattered as the hill country is approached. Inland from … Te Kuiti extends different country – country characterised by rugged hills or high plateaus, forest and scrub, a harsher climate, extensive sheep farms, a more open network of roads, and a dispersed pattern of settlement. Here South Auckland ends, and … the Volcanic Plateau and the Taranaki Uplands begin.
>
> But in the very heart of South Auckland, in the valleys of the Waikato, Waipa …, less extensive empty lands also appear. These are the great swamps, wet and dismal and often flooded in winter, but brown and parched in summer, and sometimes covered with smoke from burning peat. These great swamps are relics of past geological history when the river which is now the Waikato brought down vast quantities of material and spread it over the lower lands. From time to time the river changed its course, and the shallow lakes left behind became filled with peat, or were later covered by a swamp vegetation. To reclaim this land has never been easy.
>
> Contrasting with these desolate lowland areas are the populous rolling hills and plains…. Here are small farms, mostly dairy farms, each with its house and milking shed. Consequently the density of the rural population is great. Together with the towns that serve them, these farmlands create a distinctive landscape which is often known as a 'Waikato' landscape even though it is not

[17] KB Cumberland and JW Fox, *New Zealand, a regional view*, Whitcombe and Tombs, 1963 (Second Edition).

> limited to the valleys of the Waikato River and its tributaries. It extends [more widely], and is beginning to extend southwards into the higher hill country as farming techniques improve.[18]

Expanding on their description of the rolling hill country, Cumberland and Fox explained that in the early 1960s not all the landscape had been fully developed by the settlers:

> South of Manukau – Franklin extends the valley of the Waikato, where the Jersey cow is supreme. Hamilton, Te Awamutu, Cambridge and Otorohanga are focal points of a dairy country that extends [to] Otorohanga, and even beyond. Fat-lamb rearing is here part of the farm economy, for sheep are essential to keep down ragwort on the highly-productive holdings which range in size from 150 to 400 acres. Topdressing, rotational grazing, hay and silage, and good stock show that pastures are utilised efficiently, although deep peat swamps have not yet been fully reclaimed, nor is all farmland used to the fullest extent. Forty years of progress have made their mark, but further expansion is possible. Meanwhile trim farms with neat houses, milking sheds and woolsheds, tar-sealed roads over which pass tankers and lorries, and towns and townships with dairy factories all point to a prosperity which is characteristic.[19]

In the hill country in the south of the district, forming part of a region they described as the 'Taranaki Uplands', farming was a tougher proposition:

> Slips are still prevalent when abnormal weather occurs or farm management is poor. Large holdings mean that land need not be overstocked, and with improvement of pastures, especially by aerial topdressing if enough flat land can be found or made for an airstrip, more and better stock are being raised….
>
> Problems remain, however. Farms cannot be managed properly in many areas because fencing is costly in this difficult country, winter feed is difficult to produce and must often be brought in from the lowlands, and labour is scarce because there are no amenities in these backblock areas. The isolation means that schools, stores, hospitals, and other necessary services are located many miles away in the lowland towns or in urban centres like Taumarunui…. Because of this, much of inland Taranaki-Wanganui will continue to be shunned by farmers. Development will take place on the better land that lies in pockets along the main rivers, and is served by road or railway – in other words, in the areas which are more prosperous at the present time.
>
> The more prosperous areas stand out on a map of types of farming, for, as a result of better physical conditions and better farm management, more intensive production is possible. In the north, on the hill country bordering

[18] KB Cumberland and JW Fox, *New Zealand, a regional view*, Whitcombe and Tombs, 1963 (Second Edition), page 76.
[19] KB Cumberland and JW Fox, *New Zealand, a regional view*, Whitcombe and Tombs, 1963 (Second Edition), page 83.

> South Auckland, fat-lamb farms are intermingled with larger holdings on which store stock are raised…. The isolated pockets at Ohura, Taumarunui [and other centres further south] are dairy-farming areas too, as are the coastal strips near Kawhia, Mokau and Tongaporutu. Seven dairy factories serve these dispersed pockets, but the total output of butter is small – less than 2000 tons in 1959, or the equivalent of one small factory in the Waikato.[20]

Logging of the indigenous forests was still a significant part of the local economy:

> Sawmilling is characteristic and is a relic of days when settlements were first established in bush clearings. Today the logs come down from the high country to the east on the edge of the Volcanic Plateau. Taumarunui, Manunui, Ongarue, Ohakune and Mangapehi are typical centres. They are part of the Taranaki Uplands even though they depend on the Volcanic Plateau for much of the timber that they process and ship out by rail. Coal mining occurs near Ohura, and was once important at Benneydale, and small deposits are scattered elsewhere throughout the uplands. Output is small, however – only five per dent of the Dominion total in 1960 – and the coal is used mainly by dairy factories and the railway, for Taumarunui and Ohakune are locomotive depots on the main trunk line.
>
> The railway has brought great changes to Upland Taranaki. With the completion of the main trunk line and the beginning of regular services in 1909, agricultural produce and timber began to move freely north or south, and fertiliser was brought in. The bush-clearing settlements grew as farming improved and industry increased, so that today Taumarunui ([population] 4961) [and other towns further south are] market and route centres in a region that has a small rural population.[21]

In the area they described as the Volcanic Plateau region:

> [N]ative timber has been milled for many years, and still is, but the sawmills are fewer and the overall output is tending to decrease. The old bush camp with its sawmill and untidy collection of huts is a thing of the past, and the old milling centres … have passed their heyday. Nevertheless the exploitation of native forest continues, and newer, tidier milling settlements dot the edge of the bush, all serving to distinguish the western hill-country margin of the Volcanic Plateau from the remainder of the region, where sawmilling is concerned with exotic timbers. National Park, Taumarunui, Mangapehi and Mamaku are the railway stations through which most of the native timber is shipped, and these, together with Okahukura, Ohakune and Te Kuiti, in 1960-61 loaded more than 75 million superficial feet. Large quantities also moved out of the region by road.[22]

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[20] KB Cumberland and JW Fox, *New Zealand, a regional view*, Whitcombe and Tombs, 1963 (Second Edition), pages 103 and 105.
[21] KB Cumberland and JW Fox, *New Zealand, a regional view*, Whitcombe and Tombs, 1963 (Second Edition), page 105.
[22] KB Cumberland and JW Fox, *New Zealand, a regional view*, Whitcombe and Tombs, 1963 (Second Edition), page 119.

Besides the picture painted by Cumberland and Fox, some sense of the state of the waterways prior to 1957 can be gained from the descriptions given by the District Commissioner of Works in Hamilton during the period of negotiations prior to the passing of the Waikato Valley Authority Act in 1956. These descriptions are quoted in the topic study on the establishment of the Authority.

The transitional phase that Cumberland and Fox wrote about in the early 1960s, after forest was cleared and before farming became as intensive as it is today, had been ongoing over many years. This can be appreciated from a report by an Auckland Acclimatisation Society ranger written in 1951 and reminiscing about the previous twenty years:

> Looking back over a period of years to 1932 when I first started work with the Society, I am struck by the progress of the farming world, particularly in the cultivation and grassing of areas once considered the natural habitat of game [i.e. introduced game birds and animals]. The time when birds could be liberated on handy areas, so the cyclist licence holder could get shooting within easy reach, has gone. Crawler tractors continue to make inroads on game cover as can only be expected, and in time to come the effect will be accentuated. Eventually – unless vermin are eliminated – marginal back country with natural habitat and bush areas on private holdings will alone remain.[23]

The ranger was writing at a time when the acclimatisation movement's game bird focus was on pheasant rather than mallard duck, when aerial topdressing was in its infancy, and when there was still another 30 years to run while Government support favoured farming over other land uses.

The point to be made is that the landscape had been substantially altered by 1970, though not to as great an extent as it has been today. Fewer areas were affected by the sharply defined differences visible today, where improved pasture gives way at a fenceline to regenerating forest or open wetland. Instead regenerating forest had a more ragged appearance, because the length of time since logging was shorter, and because of the effects of goats on the native vegetation. Fences along bush edges were not as common, and pasture was less improved and had experienced fewer years of fertiliser application. While the major modifications of clearing or logging or draining had mostly been completed, the steady accumulation of a series of minor

[23] Auckland Acclimatisation Society, Annual Report for year ended March 31 1951, page 6. Supporting Papers #1222-1224.

modifications, or agricultural improvements from a farmer's perspective, was still ongoing

All the changes in the river catchments had an impact on the waterways. Two fisheries scientists prepared a report on fish passage in the Mokau catchment in 2000, which included a description of the effects of environmental modification:

> The great majority of the upper Mokau catchment is in pasture. An agriculturally developed catchment results in marked changes to stream ecology. Water temperatures are more variable, summer temperatures in particular may reach much higher levels. Although sunken logs left from the original native forest may persist for a century or more, masses of introduced water plants and undercut, unstable banks eventually provide most of the fish cover. Fluctuations in flow become marked. Winter floods become devastating while in summer things tend to dry up, both stressful conditions for aquatic life. Trampling and bank collapse by stock forces topsoil downslope and into the water. Once small, clear 'kokopu' forest streams become reduced to 'eel bogs', lying along the bottoms of gullies.
>
> Accelerated erosion, nitrate leaching and other forms of nutrient loss from farmed soils results in a great increase in water fertility and dominance by fast-growing filamentous green algae. Temperature extremes plus night-time respiration and daily high photosynthesis rates by masses of aquatic plants and algae result in diel [within twenty-four hours] swings between low oxygen levels and then oxygen supersaturation. These conditions are a further stress for fish.
>
> An important impact of agricultural development is accelerated and ongoing losses of soil into the water. Even small streams carry a heavy load of silt, particularly during floods, when over 90% of the annual sediment transport can occur. It all goes down the Mokau.[24]

In the context of these environmental changes in waterways, they explained that eels were the most adaptable species.

> Of all the native fishes, the three eel species are best adapted to cope with the changes resulting from agricultural development of the upper river catchment. None of the exotic fish present in the Mokau can compete with eels in farm streams. Their trump card is mucus. Eel mucus is very efficient at precipitating silt particles. This allows the gills to function in turbidities that would suffocate most other fish. Eels can thus live in mud. Their smooth lubricated bodies allow them to slide through masses of cover and even within the substrate, where they wait for darkness and ambush passing food. Eels will eat anything. Unlike the specialised native trout, which may have once

[24] CP Mitchell and IA Kusabs, *Fish passage and issues at the Wairere Falls and Mokauiti hydroelectric facilities*, May 2000, page 12. Copy on Waikato Regional Council file 60.61.36A. Supporting Papers #857-880 at 871.

been abundant in the upper Mokau, snails and worms easily replace aquatic insects as the primary food of eels.

Even episodes of flooding are just exploited by eels for feeding. At these times they will range onto flooded pastures to glut on earthworms, porina caterpillars, grass grubs and other pasture invertebrates…. Eels even profit from the remains of dead stock.

Eels tolerate low oxygen levels and water pollution that would kill lesser fishes. As they are really tropical fishes, eels also have the highest thermal tolerance of any native fish, with an upper thermal limit around 33°C…. Eel growth will only accelerate in open pasture streams in summer, where trout would simply die.

Eels are also nocturnal fishes, primarily hunting by smell and vibrations in the water. Therefore they avoid the day and, unlike native trout, yet another consequence of removing overhead trees, increased bird predation. In addition, high water turbidity does not greatly interfere with feeding behaviour, apart from allowing it to extend into the day.[25]

2.4 The Crown response up to 1970

Development by the Crown of an environmental attitude towards the dramatic changes to the landscape of Te Rohe Potae, and of New Zealand generally, was slow. In part this was because, to the European mind, many of the environmental changes, such as forest clearance, swamp drainage and the ability to harvest native timbers, were considered to be beneficial. Disposal of waste into waterways and reliance on a dilution effect was regarded as an acceptable activity. It was also partly because there was no strong constituency in the European population advocating for the ecological health of the waterways and harbours, on which Maori were more reliant than Europeans. Response tended to be to the symptoms of the environmental change rather than the causes of change. In the case of flooding, the effort went into preventing a similar event in the future, such as the building of stopbanks and the straightening, widening and clearing of river channels, rather than into modifying the way in which the upstream catchment was used. In the case of water pollution, a milky-coloured contaminant or the dumping of sawdust into a waterway would attract attention (and legislative sanction), while the more insidious but not clearly visible contamination by nutrients and chemicals washing off farmland was ignored.

[25] CP Mitchell and IA Kusabs, *Fish passage and issues at the Wairere Falls and Mokauiti hydroelectric facilities*, May 2000, page 13. Copy on Waikato Regional Council file 60.61.36A. Supporting Papers #857-880 at 872.

A quote from a 1980 publication is indicative of widely-held attitudes towards land development in the Pakeha community. It is taken from a history of the Waikato Valley Authority written by a former Ministry of Works official who became the Secretary of the Authority for its first 12 years.

> The rich dairying areas of the Waikato as we see them now are fine tributes to the ingenuity and toughness of the pioneers. The wide, mainly flat land of the Waikato Valley, ringed by hills, in their day was a vast lush panorama of useless virgin land burdened with ti tree, swamp weed, blackberry, pussy willow and all kinds of natural undergrowth and overgrowth sodden with swamps on which stagnant water lay, alive with wild life.
>
> The potential of the land was challenge of achievement to the pioneers, and so those hardy men tackled the daunting task of bringing it all into usefulness.
>
> Local government became an important matter especially for this. It was an essential factor for the progress of the nation. Special purpose authorities were set up to deal with particular problems, so that those with experience and wisdom could use their knowledge and expertise for the benefit of all their fellow countrymen.
>
> Probably the most important of these special purpose authorities were the land drainage and river boards. These were especially charged and empowered by legislation to maintain and gradually improve the internal drainage channels, so that more and more land could be brought into productive use.[26]

The Crown in its approach was reflecting these entrenched community attitudes that saw the undeveloped natural environment in a negative light.

One of the biggest features of the Crown's response to environmental change has been its belated though progressively wider-reaching coverage of the topic by legislation. This legislation has varied in its impact. Some statutes, such as the Land Drainage Act 1908 and the Swamp Drainage Act 1915, have actively promoted change. Some have been empty shells, as with the Native Plants Protection Act 1934, which was rendered generally toothless when case law determined that a tree was not a plant covered by the statute[27]. Other pieces of legislation, however, such as the Soil Conservation and Rivers Control Act 1941, the Town and Country Planning Acts of 1953 and 1977, the Wildlife Act 1953, the Water and Soil Conservation Act 1967,

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[26] Jim McKenzie, *The men and the river: the Waikato Valley Authority, an historical review of the first 21 years*, 1980, page 10. Wai 898 document #A76(a), Part D, pages 939-967, at page 944.

[27] Robert McLean and Trecia Smith, *The Crown and fauna and flora, legislation, policies and practices, 1983-98*, Waitangi Tribunal, 2001, pages 283-284. Posted on www.justice.govt.nz/tribunals/waitangi-tribunal

and the Resource Management Act 1991, have been hugely influential in regulating environmental change, albeit while operating within wider development-oriented parameters; the last mentioned Act occupies a central position in managing the physical environment today.

Prior to the Resource Management Act, the result of Crown intervention was that over time a progressively more dense and tangled web of statute was developed, each individual piece of legislation a response to a particular issue, and often overlapping with other legislation, such that more than one consent might be required for any activity. This web of statute was still in development as at 1970, and was being added to in subsequent years, up until the environmental law reform programme of the late 1980s that produced the Resource Management Act 1991. In discussing events and Crown involvement in this report, it should be appreciated that additional statutory provisions that were enacted after 1970 were part of a longer-term trend.

When legislation is passed it imposes duties on the Crown or on delegated authorities. The Crown also has an older set of duties towards Maori derived from having entered into Te Tiriti o Waitangi. In theory all the duties that the Crown assumes should be capable of co-existing alongside one another. Previous reports of the Waitangi Tribunal have shown that in practice this has not always been the case. Whether or not various statutory provisions for environmental management breach the Crown's obligations under Te Tiriti is a matter for legal argument. The point to be made here is that the Crown has, over time, built up a suite of statutes concerned with environmental matters, even while the guarantee provided to Maori by Article 2 for tino rangatiratanga of their lands (o ratou whenua), their settlements (o ratou kainga) and all their treasures (o ratou taonga katoa)[28], remained unchanged. Explanation of these terms in the Maori version is supplemented by the wording of the English version of the Treaty, which refers to full exclusive and undisturbed possession of their lands and estates, their forests, their fisheries, and their other properties. The Crown has acted in exercise of its right of kawanatanga, as guaranteed by Article 1,

[28] English translations of the Maori version of Te Tiriti o Waitangi, which have received some form of official recognition, are:

- *Appendices to the Journals of the Legislative Council (AJLC)*, 1869, No. 7, pages 70-71. Not included in Supporting Papers.
- Translation by Sir Hugh Kawharu, referred to in *NZ Maori Council v Attorney General* (1987), 1 NZLR [NZ Law Reports] 641, at page 664. Not included in Supporting Papers.

and it is the interaction of the two concepts, exercise of Crown kawanatanga and active protection of Maori tino rangatiratanga, that lies at the root of this report.

The Crown has never of its own accord sought out the views of Maori on what constitutes a taonga. Nor has it specified in legislation that any particular physical resource is a taonga. Taonga has been left as a nebulous and undefined concept in the world of government officialdom, which in turn has meant that the Crown has not had any means of measuring its performance against its duty to actively protect Maori authority for taonga.

What constitutes a taonga is for Maori to determine. The difficulty has been that, in the face of Crown indifference about the concept of taonga, and the Crown's historical focus on individualism that has hampered the development of authoritative institutions at an iwi and hapu level, there have been few statements by Maoridom directed at wider New Zealand about what are taonga. It has only been with the emergence of the Waitangi Tribunal that Maori have started talking again to Pakeha about taonga and what is needed from the Crown to enable them to protect their taonga. However, even that discussion has been in a void, resulting in the Tribunal itself becoming a leading determiner of what is a taonga. In 1993 it declared that Ngawha geothermal field was a taonga. In 1995 it decided that Te Whanganui-a-Orotu (Napier Inner Harbour) was a taonga. In 2001 it stated that the Whanganui River was a taonga. In making these determinations, it has given prominence to large natural features, taking an ecological-type approach. In 2011, it made some overarching remarks about taonga in the context of the natural environment:

> [W]e do not consider the environment as a whole to be a taonga, in the sense that the term is used in the Treaty. Such an all-encompassing interpretation devalues the status of taonga and the rights and obligations that flow from them. In matauranga Maori, the environment is the manifestation of the atua themselves – Rangi-nui, Papa-tu-a-nuku, Tane-mahuta, Haumia-tiketike, and so on – who transcend and have dominion over taonga. Thus, taonga are the particular iconic mountains or rivers, for example, or specific species of flora and fauna. Whether a resource or a place is a taonga can be tested, as it can for taonga species…. Taonga have matauranga Maori relating to them, and whakapapa that can be recited by tohunga. Certain iwi or hapu will say that they are kaitiaki. Their tohunga will be able to say what events in the history of the community led to that kaitiaki status, and what obligations this creates for them. In sum, a taonga will have korero tuku iho (a body of inherited

> knowledge) associated them, the existence and credibility of which can be tested.[29]

Whether the Tribunal's findings have skewed the debate about what is a taonga, or whether there are other approaches that could be taken in deciding what is a taonga, is a matter for Maori to decide.

One of the most recent determinations of what is a taonga has come from a non-Maori institution. In April 2013 the Parliamentary Commissioner for the Environment produced a report on the status and management of the longfinned eel. In this report it was stated (without any referencing to Maori sources, despite extensive scientific referencing elsewhere in the report) that "for Maori, tuna (eels) are a taonga"[30]. While that may well be a statement agreed upon by Maori, and particularly by Maori in Te Rohe Potae for whom tuna play an important role in defining their identity, it is unfortunate that it did not originate from, and was not driven into the consciousness of the executive arm of the Crown by a Maori institution. Indeed, whether it is possible for any species to be defined as a taonga for all of Maoridom, rather than something for determination by individual iwi or hapu, is questionable.

The absence of Crown recognition for taonga prior to the Waitangi Tribunal era meant that there was a predisposition for there to be a clash between kawanatanga and tino rangatiratanga with respect to non-land physical resources, rather than an accommodation between the two concepts. Long before 1970 the Crown had developed an institutional culture that placed no value on consultation with Maoridom prior to the passing of legislation, and that emphasised the sole authority of the Crown to regulate and administer the use of the physical environment. Almost the sole exception to this pattern was Section 77(2) Fisheries Act 1908:

> Nothing in this Part of this Act [concerning sea fisheries] shall affect any existing Maori fishing rights.

Unfortunately, what those existing sea fishing rights were did not get defined. Nor was there a similar statement of principle about freshwater fisheries in the 1908 legislation.

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[29] Waitangi Tribunal, *Ko Aotearoa Tenei: a report into claims concerning New Zealand law and policy affecting Maori culture and identity, Te Taumata Tuarua*, Wai 262, 2011, page 269.

[30] Parliamentary Commissioner for the Environment, *On a pathway to extinction? An investigation into the status and management of the longfin eel*, April 2013, page 19. Copy filed as Wai 898 document #A122.

As tribal rangatiratanga diminished, so the authority of the Crown expanded. Government in New Zealand started with the Governor and a few officials. Even in the late 1800s all the Government officials in Wellington could be accommodated in the one building, albeit the largest wooden building in the southern hemisphere. Certain government departments, such as Internal Affairs and Lands, spawned other departments, which in turn developed their own sense of status. There was little in the way of a countervailing pressure on the authority of the Crown. At its height, this engendered an element of arrogance, perhaps best exemplified by the Marine Department's firm belief that the Crown owned the foreshore[31], a belief that has been found wanting in recent years.

2.5 The Maori response up to 1970

As more Europeans settled in Te Rohe Potae, and established local governing organisations in the form of County Councils and Borough Councils, Maori found their own local authority mechanisms undermined. They had their own rules and protocols governing how natural resources would be used, and within their own communities their leaders had the moral suasion to enforce their authority. This moral suasion had a heavy influence on the first settlers, when those settlers were few and far between among a majority Maori community, but the influence of Maori leaders over European residents declined fairly quickly. The settlers looked to the Government to define how the natural environment would be used and managed, and the Government did so, in a way that benefited and met the needs of the settlers.

Maori leadership was put under pressure on a broad range of fronts, not just with respect to the exercise of kaitiakitanga and the care and management of the natural environment. The Crown's policy of individualisation of title, the dominance of the

[31] "Subject to certain rights of public users, and with one or two insignificant exceptions, the Crown is the owner of all land lying below high-water mark." ER Martin, *Marine Department Centennial History, 1866-1966*, Marine Department, Wellington, 1969, page 100.
"Under the present laws of New Zealand I cannot accept that foreshores and harbour beds are other than Crown Land." Minister of Transport to Secretary Tainui Maori Trust Board, 8 February 1983. Transport Head Office file 54/44/643. Supporting Papers #334-335.
"Almost all of the foreshore around the country is in Crown ownership, as is the majority of the sea, lake and riverbed, and all this area is covered by the requirements of the Harbours Act." Submissions of the Ministry of Transport, undated. Submissions presented to the Waitangi Tribunal Manukau Harbour inquiry during the week 20-24 August 1984 (Wai 8 Submission B17), page 2. Supporting Papers #2259-2271 at 2263.

Native Land Court in land matters, and the suppression of tohunga, are all examples of the Crown's former absence of support for Maori leadership. The increase in the Crown's own authority effectively undermined and forcibly reduced the effectiveness of Maori leadership insofar as it could be asserted cross-culturally. In this wider context, many Maori rangatira largely gave up engaging with the European Government and institutions, or placed their trust in other Maori leaders such as James Carroll, Maui Pomare and Apirana Ngata who were still engaged, and instead devoted their energies to concentrating on looking after the local needs of their own communities.

The disengagement of and absence of institutional support for Maori leadership is apparent in the absence of Maori tribal organisations generally, and of organisations putting forward Maori views about the use and management of natural resources in particular. While the Kingitanga remained a strong cohesive force, it did not encroach on the kaitiakitanga responsibilities of the hapu, so that when hapu leaders in Te Rohe Potae did not speak up about the natural environment, there was no one else to do so.

The 1960s were perhaps the lowest point of Crown recognition of Maori leadership, when a Maori voice was least likely to be heard by wider New Zealand. No submissions were made to Parliament by Maori or by Maori organisations on the Water and Soil Conservation Bill in 1967, which vested all rights to the use of natural water in the Crown[32]. To accuse Maori of being indifferent, however, would be unfair. Not only had Maori leadership been weakened by many years of Crown neglect, but Maori were having to grapple with other challenges to their tino rangatiratanga – for instance, the Maori Affairs Amendment Bill was passing through Parliament at the same time. It would have been difficult for Maori to respond to every new initiative the Crown was developing.

This chapter has provided a broad-brush background to environmental events prior to 1970. It demonstrates how 1970, from the perspective of Crown involvement in

[32] David Alexander, *Some aspects of Crown involvement with waterways in the Whanganui Inquiry District*, Wai 903 document A158, August 2008, page 25.
David Alexander, Brief of evidence to National Freshwater and Geothermal Resources Claim Tribunal, Wai 2358 document A69, July 2012, pages 7-8.

environmental management, is an arbitrary starting point for this overview, being largely a matter of convenience for the ordering of the mass of information that has to be researched. However, while arbitrary, it can be used to advantage; for instance it divides the time period covered by the overview equally between a pre-Resource Management Act period and a post-Resource Management Act period, and almost equally between a pre-Department of Conservation period and a Department of Conservation period.

The following chapters examine each of the eight subjects referred to in the Tribunal's commission.

3. Crown environmental management regimes for harbours

3.1 Introduction

Prior to 1972 the regulation of harbours, including the natural harbours on the west coast of the North Island (Whaingaroa (Raglan), Aotea and Kawhia), was administered by the Crown's Marine Department. This meant that, in general, all matters concerned with the area below mean high water mark were handled by the one Crown agency. From 1972, fisheries matters were transferred to the Ministry of Agriculture and Fisheries, while the other functions and other staff of the Marine Department became established as a new Marine Division of the Ministry of Transport. In 1991 responsibility for structures, spatial licensing and navigation regulation in harbours was passed to regional councils under the Resource Management Act 1991. The remaining functions of the Marine Division, primarily concerned with shipping and boating safety, were placed in the Maritime Services Agency in 1993 (renamed Maritime New Zealand two years later).

This chapter examines all aspects of harbour management, including fisheries management in harbours, but excludes water quality and water use matters. These matters have had a different legislative history (with the passing of the Water and Soil Conservation Act 1967), and are discussed in another chapter.

The harbours were important means of communication in the pre-European and early European settlement days, before roads became so ubiquitous. Wharves and jetties were centres of activity for each locality around each harbour, providing easy and convenient access to the main town on each harbour. The importance of the harbours in this regard declined over time, and boating activity became largely confined to recreational boating. Other uses of harbours, such as for marine farming, developed. Throughout these changes, the three west coast harbours have remained supremely important for Te Rohe Potae Maori, for the food they could supply, and also as historical and cultural emblems of Maoridom. While rangatiratanga authority for the harbours may have been lost in many regards, it has never been completely displaced, and its revival remains one of the priorities for Te Rohe Potae Maori.

3.2 Administration before 1972

The principal Government department responsible for harbour matters was the Marine Department. The division between this department and other departments with a responsibility for land-based matters was mean high water mark. That was a definition of the land's edge that derived from common law to do with land, and was (and still is) held to rigorously in Crown legal thinking[33]. Everything below mean high water mark is subject to codes of law that are different to the codes that apply above that mark.

The principal legislation was the Harbours Act. The first Harbours Act was passed in 1878, following the abolition of provincial government in 1876. The 1878 Act was replaced in 1923, and the 1923 legislation was in turn replaced in 1950. The reach of the Marine Department was expressed in its departmental history:

> As well as being responsible for the overall administration of the Harbours Act, in respect of which it maintains close liaison with harbour boards, the Department is the administering authority under the Act for all harbours (including navigable waterways) where there is no harbour board, and structures may not be erected below high-water mark unless the Minister of Marine approves, and sand and other material may not be removed from foreshores without the permission of the Crown or the local body in which they are vested.
>
> Subject to certain rights of public users, and with one or two insignificant exceptions, the Crown is the owner of all land lying below high-water mark. Certain areas of foreshore have been vested in harbour boards or local authorities, and control of parts of the foreshore has also been granted to local authorities, trustees, domain boards, etc. Apart from these areas the Department directly administers the foreshore.
>
> It has already been pointed out that other functions of the Department under the Act are broadly to exercise a general control over the administration and development of harbours in New Zealand, and to safeguard navigation by controlling and publishing the existence of lights in harbours.[34]

Structures below high water mark included wharves, jetties, boatsheds, piles and moorings. Not mentioned in the list of functions quoted from above were fisheries, and pollution spills from shipping and port operations. However, water quality in harbours, coastal waters and navigable waterways was not a direct concern of the

[33] There have been slight statutory differences in the definition of mean high water mark between land legislation and marine legislation. These are not examined in this report.
[34] ER Martin, *Marine Department Centennial History, 1866-1966*, Marine Department, Wellington, 1969, pages 99-100.

Marine Department, so that it did not take a totally holistic view of the environment below high water mark.

The Marine Department was primarily a Wellington-based organisation focused on administration rather than on activity in the districts. It regulated the operation of Harbour Boards, once each board had been established by its own legislation. In Te Rohe Potae district, Harbour Boards operated at Raglan, Kawhia and Mokau. The activities of the Raglan and Mokau Harbour Boards are examined in the Whaingaroa harbour and Mokau river mouth case studies respectively. Like the Raglan Harbour Board, the Kawhia Harbour Board was an administrative arm of Kawhia County Council, with the Council authorised in September 1906 to exercise the powers of a harbour board[35]. The three Harbour Boards were generally low-key organisations that operated public wharves[36], and maintained facilities for coastal shipping visiting each port and for launches and steamers using the harbours. In terms of their functions, they were not all-purpose agencies with total responsibility for their respective harbour. However, in having a presence at a local level, a Harbour Board was the closest thing to a local government body for a harbour. While the three Harbour Boards in Te Rohe Potae were there to benefit their local communities, and had rating powers that included the ability to rate Maori Land, there was little involvement with local Maori.

As roading increased, the harbours declined in significance as a means of communication, and the Harbour Boards became absorbed in County Council administrations, or eventually ceased to have a separate identity altogether[37].

[35] *New Zealand Gazette* 1906 page 2325. Supporting Papers #744.
[36] Management of Kawhia town wharf, originally constructed by the Crown, was vested in Kawhia Harbour Board in November 1906. *New Zealand Gazette* 1906 pages 3059-3061. Supporting Papers #756-757.
[37] Kawhia Harbour Board was dissolved in 1956, resulting in the functions of the Board reverting back to Crown control. *New Zealand Gazette* 1956 pages 421-423. Supporting Papers #770-772.
Mokau Harbour Board was abolished and its functions became the responsibility of Waitomo County Council in 1972. Waitomo County Council Harbour Board (Mokau Harbour Board) Order 1972, issued 20 March 1972. Statutory Regulations 1972/55. Supporting Papers #735.
Raglan Harbour Board was always administered by Raglan County Council, and ceased to have a separate identity in 1989 when there was a reorganisation of local government and Waikato District Council was established. *New Zealand Gazette* 1989 pages 2469-2472. Supporting Papers #820-823.

In other parts of the country, the Marine Department's view that the Crown owned the foreshore and had sole authority to the area below high water mark clashed with Maori views. For Maori, high water mark has never been such a line of distinction. They drew up their waka on the beach below their settlements, and they treated the sea, harbours and estuaries as one of their sources of food. They crossed the high water mark on a regular basis in their day-to-day activities, and tribal authority extended across the line likewise. It was possible to have customary rights to particular parts of harbours that were as jealously guarded as rights to particular lands. Nationally there is a long history of claims to the foreshore, and of Maori asserting fishing rights. However, the case-study examinations of Crown involvement with Whaingaroa Harbour and Mokau River mouth, and a keyword check of Crown archival records for Kawhia Harbour, do not show any substantive assertion by Maori of rights to the foreshore in the period before 1970. This can probably be attributed to the limited nature of each Harbour Board's activities, and the general absence of other activities on the foreshore, such as reclamations or sand extraction, that might have drawn attention to Crown authority over the foreshore and challenged a local 'live-and-let-live' acceptance of the foreshore being available for all in a non-extractive manner.

The Marine Department's regulation of fishing activity was generally light-handed. While this was because what was believed to be an unlimited supply of fish did not need much in the way of protective controls, it was also in part a matter of departmental resources, with just a few fisheries officials employed prior to the 1960s, although the permanent departmental staff was supplemented by local policemen who could be appointed as Inspectors of Fisheries. The types of fishing carried out in the harbours of Te Rohe Potae prompted only occasional visits by officials. One departmental file records visits to Kawhia and Raglan in 1928, to Kawhia, Aotea and Raglan in 1929, to Kawhia and Raglan in 1931, to Kawhia in 1934, and to Kawhia and Aotea in 1935. These visits, and related correspondence from Maori, which provide an insight into fishing activity in the three harbours at that time, are examined in the next section of this report. It is not known if there were other visits recorded on other files during this period, though this is unlikely. The same departmental file records that there had been no visits by Inspectors of Fisheries to the three harbours

prior to 1928[38], and continues with some correspondence from 1939, so there do not appear to have been any further visits between 1935 and then. It seems likely that the early 1930s was a short period of greater attention than normal being shown by the Marine Department.

The Marine Department's Fisheries Branch slowly expanded over time. In 1964 it was split into a Fisheries Management Division and a Fisheries Research Division. In 1972, both divisions (i.e. the Fisheries Act functions) came under the auspices of the newly constituted Ministry of Agriculture and Fisheries[39]. Meanwhile the other functions of the Marine Department (i.e. the Harbours Act functions) came under the auspices of a newly created Marine Division in the Ministry of Transport[40].

A key focus of the Marine Department's activities was boating navigation and safety. This was manifested with respect to small boats in the introduction of General Harbour Motor Launch Bylaws in 1934[41]. Perhaps the main feature of the bylaws was that the speed of boats could not exceed 5 knots, a prohibition that was continued in the successor Motor Launch Regulations 1958, Motor Launch Regulations 1962 and Water Recreation Regulations 1979. Such a prohibition met the needs of the time, but became inadequate with the introduction of jet boats.

The absence of a central government on-ground presence encouraged the concept of delegation to local authorities. The Harbours Amendment Act 1961 allowed for grants of control of waters and foreshore to be issued to local authorities. In Kawhia Harbour the Otorohanga County Council was granted control of the foreshore fronting its county area in February 1963[42]. This was the length of foreshore from Tauratahi Point (the north head of Kawhia Harbour) to Waiharakeke Stream. The grant was for a term of 21 years. In recommending the grant to the Minister of Marine, the Secretary for Marine explained:

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[38] This corroborates an assertion made by the Tainui Maori Trust Board in 1982 that Crown authority over Kawhia Harbour had only effectively applied for the previous 50 years. Submissions to Minister of Fisheries by Tainui Maori Trust Board, September 1982, attached to Secretary Tainui Maori Trust Board to Minister of Transport, 14 October 1982. Transport Head Office file 54/44/643. Supporting Papers #279-320 at 283-284.
[39] Ministry of Agriculture and Fisheries Amendment Act 1972.
[40] Ministry of Transport Amendment Act 1972.
[41] *New Zealand Gazette* 1934 page 2744. Not included in Supporting Papers.
[42] *New Zealand Gazette* 1963 page 234. Supporting Papers #779.

> If control is granted, it will enable the Council to make bylaws, to control such things as dogs, horses and vehicles on the beach, and the depositing of rubbish. The Council will also be empowered to erect and licence the erection of boatsheds and jetties.[43]

Bylaws were approved in 1971[44]. So far as is known this was the only grant of local control issued by the Marine Department in Te Rohe Potae district prior to 1970.

3.2.1 Fishing regulation and Maori at Kawhia and Aotea, 1928 to 1935

This section examines the role of the Crown when seeking for the first time to exercise its authority (that it had held statutorily for many years) at a local level in Te Rohe Potae. The departmental file relied upon was identified during research for the Whaingaroa Harbour case study, and is illuminating in that it contains some commentary about the Crown's Treaty of Waitangi responsibilities with respect to Maori fishing. The information is presented in this report, notwithstanding that it precedes 1970, in the spirit of filling a perceived gap in the Tribunal's Te Rohe Potae casebook. Departmental attitudes and Maori reactions to the Crown's assertion of authority are extensively quoted from as they clearly demonstrate a clash of cultures.

The period of Crown activity covered in this section starts with a visit to Kawhia by an Inspector of Fisheries from Auckland in 1928, the primary purpose of which was to inspect the commercial fishing activities being carried out there by European fishers. In a subsequent report one year later, the Inspector noted that his visit in 1928 was likely to have been the first made to Kawhia by an Inspector of Fisheries[45]. He found three commercial boats working full-time, and two others that fished occasionally:

> Inside the harbour, which is large with extensive mud banks and islands, netting is done, but only on a very small scale. Flounder and dabs and mullet are the principal fish taken inside, but trevalli, schnapper, kahawai, pioke [dogfish], eels are also taken in small quantities.[46]

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[43] Secretary for Marine to Minister of Marine, 7 February 1963. Transport Head Office file 54/14/36. Supporting Papers #212.
[44] *New Zealand Gazette* 1971 page 961. Supporting Papers #783.
[45] Inspector of Fisheries Auckland to Superintendent of Mercantile Marine Auckland, 17 October 1929, attached to Superintendent of Mercantile Marine Auckland to Secretary for Marine, 19 October 1929. Marine Head Office file 2/12/429. Supporting Papers #167-171.
[46] Inspector of Fisheries Auckland to Chief Inspector of Fisheries, 1 September 1928, attached to Chief Inspector of Fisheries to Secretary for Marine, 7 September 1928. Marine Head Office file 2/12/429. Supporting Papers #143-147.

While there, the Inspector came across some Maori fishing in an illegal manner, having fashioned a net from wire netting:

> During my stay here, I had heard from three different sources that Maoris, who are locally supposed to have no restrictions whatever on their fishing, were in the habit of blocking up, and stalling, and with wire netting. I contradicted this supposition, and right enough at about 9.30pm, while Henery [local policeman] and I were chatting at the Hotel, a fisherman informed me that he had heard that afternoon a native had been seen carrying large rolls of wire netting up the Harbour.
>
> Acting on this, the Constable and I set out to locate it, but as the tide was high at 7pm, it was 11pm before we set out. However, we did not locate the wire before the natives were heard in the distance, so that we waited, and at about 2am on the 29th inst we got four natives leaving the mud flats, each with a bundle of fish. I took each bundle in turn, and they ranged from 12 to 13 inches in length, mostly flats but 4 schnapper were included in the undersized ones, and weigh about 3 or 4 ozs each.
>
> I took18 or 20 of these small fish and went out to where the natives had come from, and found a wire net about 200 yards long staked, and stopped top and bottom, across a small gutter, in a crescent shape, some 200 yards above low water mark, the mesh was 2½ mesh.
>
> Constable Henery and I wrecked this net, and I gave him (Henery) 5/- to get a boy with a horse to haul the netting ashore in daylight, as we could not manage it by hand in the mud.[47]

The reference to Maori at Kawhia having no restrictions on their fishing is an indication that, up to 1928, there was a local understanding held by both Maori and Pakeha that Maori could exercise a fishing authority in the harbour unimpeded by Government regulation.

The names of the four fishers were obtained by the local policeman and recorded in a separate report by the Inspector of Fisheries[48].

Marae Edwards of Kawhia immediately wrote to Maui Pomare MP:

> Our nets, designed for all kinds of fish, have been seized. These nets were designed for netting sharks, flounders, schnappers and other kinds of fish. It has been the custom, as you know, to net fish in the summer as food supply for the winter, as sharks are dried and schnappers are cured. You have seen them

[47] Inspector of Fisheries Auckland to Chief Inspector of Fisheries, 1 September 1928, attached to Chief Inspector of Fisheries to Secretary for Marine, 7 September 1928. Marine Head Office file 2/12/429. Supporting Papers #143-147.

[48] Inspector of Fisheries to Superintendent of Mercantile Marine Auckland, 4 September 1928. Marine Head Office file 2/12/429. Supporting Papers #148-149.

> at meetings called by the King. Netting for fish has now been prohibited. I am asking you why this has been done.
>
> Netting for fish was the custom indulged in by our ancestors, and even by us their descendants. I have been doing this every year, but today I find myself prohibited from doing this…. For many years previously, no prohibition was made. I had thought that this part of the Treaty was still in existence….
>
> Friend, we consider this prohibition as an imposition and an infliction of hardship upon us. As you will know this is our only means of obtaining maintenance and livelihood during hard times, and that it is the source from which we obtain food supplies for our huis and tangis….
>
> This matter has been brought about by the Constable and the Inspector. I asked them for their authority in doing this. They replied that they were acting in the provisions of the law. I asked them whether the provisions of the Treaty prevailed in this case. They replied that they did not know about the Treaty, and that they were enforcing the law to prevent nets which might catch small fishes from being set. I informed them that I was only doing that which had been done from the days of my ancestors.[49]

Pomare also telegraphed the Prime Minister on the subject[50].

The Minister of Marine made inquiries, and replied:

> It is not the intention of the Department to take proceedings against the Natives in this case, but warnings have been issued that prosecutions will follow future breaches of the law. The confiscated nets were made from wire netting, and as it is illegal to use same they cannot be returned to the owners. In addition to breaking of the law in this respect, some of the Natives were in the habit of stretching this type of net across tidal flats, and the fish became stranded at low water. Furthermore there was no one in attendance to return undersized fish to the open waters, with the result that they died.[51]

In a separate action, which may have been triggered by the Inspector's visit to Kawhia, a petition to the Government signed by 59 Maori asked that Aotea Harbour should be reserved as a fishing and birding ground solely for Maori[52]. In apparent explanation of this petition, Dick Te Huia of Moerangi stated:

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[49] Marae Edwards, Kawhia, to M Pomare MHR, 4 September 1928, forwarded to Native Minister, 20 September 1928. Marine Head Office file 2/12/429. Supporting Papers #150-151.

[50] M Pomare MHR to Prime Minister, 27 September 1928. Marine Head Office file 2/12/429. Supporting Papers #152.

[51] Minister of Marine to Private Secretary to Native Minister (and Prime Minister), 28 September 1928, on M Pomare MHR to Prime Minister, 27 September 1928. Marine Head Office file 2/12/429. Supporting Papers #152.

[52] Petition signed by 59 Maori, attached to M Pomare MHR to Native Minister, 18 December 1928. Marine Head Office file 2/12/429. Supporting Papers #153-157.

1. We desire that the fishing rights and grounds in Aotea Harbour be reserved to us. These fishing grounds are being exploited by fishermen who are selling the fish.
2. We strongly object to fishermen selling fish from these waters.
3. The whole of these waters are surrounded by native lands which form the foreshore. Only three Europeans own land which touch these waters.
4. The owners of these waters earnestly desire that this matter should receive your serious consideration.[53]

There is no record of any reply being given to the petition or the letter of explanation. However, the response internally within the Marine Department was:

> Aotea is a small and comparatively shallow harbour; really a channel bounded by sand flats, and it appears to me it would be impossible for trawlers to operate there.
>
> As regards the request that it should be reserved for native fishing only, there appears to me no reason why this should be allowed. If, as stated by the petitioners, there are only three European landowners abutting the Harbour, the rest of the land being native owned, I should say they have nothing to fear in the matter of food supplies. They do not deserve much consideration, for it is our experience that they are generally breaking the Fisheries Regulations.[54]

In July 1929 Marae Edwards wrote again, this time to the Native Minister (Apirana Ngata), asking that "our fishing grounds should be reserved", and that they should not be stopped by the law from setting their nets where they had always been set[55]. One month later the Native Minister reported that he had met Edwards and obtained further information. Ngata wrote:

> The bulk of the Maori population of the Waikato district live in villages along the banks of the Waipa and Waikato Rivers. Owing principally to confiscation of their lands after the Waikato war, also to a natural reluctance and now a general inefficiency in keeping pace with the economic conditions of today, to the lack of the rough pioneering work in which they were formerly occupied, and the length of time that must elapse before many of them can be disciplined to and assisted in the farming of such Native lands as are available, there is great distress among the Waikato Natives. They have been enabled to subsist largely by their dependence on sea food supplies, which abound in the harbours mentioned above [Kawhia and Aotea]. You are of course aware that the Maori gatherings which are held on tribal occasions could not be fed without indigenous fish supplies, salt and fresh, and the Waikatos from time immemorial have drawn their supplies from these harbours.

[53] Dick Te Huia, Moerangi, to Maui Pomare MHR, 15 November 1928, attached to M Pomare MHR to Native Minister, 18 December 1928. Marine Head Office file 2/12/429. Supporting Papers #158-161.
[54] Unknown official to Secretary for Marine, 15 January 1929, on cover sheet to file 2/12/440. Marine Head Office file 2/12/429. Supporting Papers #162.
[55] Marae Edwards to Native Minister, 24 July 1929. Marine Head Office file 2/12/429. Supporting Papers #163.

Ngata also referred to provisions made elsewhere in the country to allow Maori to gather food supplies. He continued:

> Beneath all these runs the impression that at least a moral responsibility, entitled in special circumstances to tip the balance in favour of sympathetic treatment, was laid upon the Crown by the specific reservation in the Treaty of Waitangi of fishing rights and rights to mud-flats, shell-fish beds and so forth. But for the common law right of the Crown to territory below high water mark and out to sea, Maori communities might now be successfully claiming recognition and extinction with compensation of these rights.
>
> Mr Edwards and his people are asking:
>
> 1) That the fishing regulations be amended in favour of their using a smaller mesh net. The Department no doubt has a record of a breach of regulations by these people some time ago, and of the confiscation of their nets. They say they had always used a small mesh until the breach in question was discovered.
> 2) That portions of the two harbours mentioned and of the mudflats be reserved for their use for food supplies.
> 3) That the regulations demanding a licence for the shooting of kuaka or godwit came as a surprise to them, as they have shot or caught this bird on the sands or mudflats without licence and without interference.
>
> Whatever your Department may say to these claims, there remains the prime consideration of some provision for enabling the Waikato people to draw their sea-food supplies with as little disturbance of ancient custom as is consonant with the policy of the Department.[56]

The Inspector of Fisheries was instructed to return to Kawhia and report on the matter. He held a meeting with Kawhia Maori in October 1929. In his subsequent report of the meeting[57], he named 13 people who had attended, for whom Marae Edwards acted as spokesperson. He explained to them that mesh size of nets in the regulations had been arrived at after "thorough investigation" to ensure juvenile fish were not caught. They had not been prevented from fishing when their net had been confiscated the previous year, only their manner of fishing was being targeted; the net had been "a couple of rolls of foul-house [sic] wire" which "never did and which never will" constitute a fishing net. He added that he considered that fishing with

[56] Native Minister to Minister of Marine, 14 August 1929. Marine Head Office file 2/12/429. Supporting Papers #164-165.

[57] Inspector of Fisheries Auckland to Superintendent of Mercantile Marine Auckland, 17 October 1929, attached to Superintendent of Mercantile Marine to Secretary for Marine, 19 October 1929. Marine Head Office file 2/12/429. Supporting Papers #167-171.
Following the meeting there was a newspaper report of it in *Auckland Star*, 11 October 1929. Copy on Marine Head Office file 2/12/429. Supporting Papers #166.

wire netting was "an ugly unskilled method of fishing … as detrimental and destructive as explosives".

> Mr Marae Edwards, speaking for the natives, said that they had been deprived since last year of fishing in the places that they had been accustomed to ever since they could remember, and their ancestors before them. When asked who prevented them, he said that Constable Henry [sic] refused to hand over their nets that were confiscated in August last, and had told them that until such time as he was instructed to hand over this wire he would not do so. Mr Edwards spoke at great length on various items of ancient history, and could not be convinced that the Fisheries Regulations were not some new Pakeha idea to deprive the natives of their food, that this was the very first occasion in his life that he had ever heard of such things as fisheries regulations.
>
> I told Mr Edwards that there was nothing new about the Regulations, that the only thing new was the visits of the Inspector of Fisheries to out-ports, that as far as I knew I was the only Fisheries Inspector that had ever visited Kawhia, and that while I remained Inspector of Fisheries, though I regarded the Treaty of Waitangi with respect, as an obligation between the Pakeha and Maori, it was not a one-sided affair as Natives seemed to think. I would carry out the duties that I was paid for when or wherever I saw them, be it pakeha or native. Mr Edwards went on to say that many years ago the people of Waikato and Kawhia were very much greater in numbers than today, and said that thousands of natives were continually fishing there, that they never bothered about small mesh, stopping up, dry-setting or any of these things, and whatever fish they caught, three feet long or three inches long, was all the same to them as they ate everything, and he said that right up until last August they had not been interfered with or stopped…. I then told him that in the face of what he stated that it was little wonder that Kawhia harbour is in such a depleted state as it is at present, after three generations of natives continually fishing and disregarding every rule that might be expected naturally to preserve the fish supply.

Marae Edwards asked that the whole or portions of both Kawhia and Aotea harbours should be reserved for the use of Maori only. The Inspector argued that this would be "impossible", one of the European fishers having fished at Kawhia fulltime for 18 years, and another having fished there each winter for 25 years.

> Eventually, after a lot of discussion on both sides, the best and only feasible proposition that is, if it is decided to grant any area for the exclusive use of natives as a fishing reserve and exclude all (European fishermen who sell), is Aotea Harbour.
>
> Whare Moko spoke on behalf of the Aotea natives, stating that he thought that there would be ample fish at Aotea for the use of the natives of Kawhia and Aotea. That they did not object to any Pakeha taking fish at Aotea, particularly those settled on the harbour, the natives objected to the European fishermen who caught fish for sale, and so long as these fishermen were stopped from taking fish at Aotea Harbour the natives would be satisfied

> everywhere, as there would then be fish for all, and that, speaking for the Aotea Natives, they would welcome the natives from Kawhia and elsewhere to their fishing grounds if Aotea could be reserved to them.

The Inspector promised to report this proposal to his superiors, reiterating that all fishing, whether in a reserved area or not, had to be in accordance with the Fishing Regulations. After the meeting finished, he visited Aotea Harbour, discovering that one licensed fisher and one unlicensed fisher (Billy Toko) operated commercially (i.e. selling their catch) on the harbour.

> In my opinion [the harbour] ought to be a splendid spot for flounder and mullet, and probably schnapper in the lower reaches, and it must be remembered that it has never been fished properly yet, and nobody knows quite how good it may be. In the past the road out has been the trouble, but that is not going to be the stumbling block for long now. The road is formed and, though we had to use chains on the car after we got off the metal at about half way out, we had a fair trip and rain was falling.

He concluded his report by advising that he had spoken to European fishers at Raglan and Kawhia:

> There were quite a few comments at Kawhia, but the Raglan men did not seem to worry, so that if it is decided to concede any area to Natives as a fishing reserve, in my opinion Aotea is the only place possible, though I cannot see since the natives have the same privileges as Europeans in fishing why they should have the native reserves, and I am afraid that this request, if granted, might easily be the thin end of the wedge.
>
> However I think if the request is granted, these Natives will be satisfied, and they ought to be as Aotea has never been fished extensively at any time, and if fished according to regulations and professional fishermen excluded from its waters, the natives should have a source of food for many years to come.[58]

The report of the Inspector of Fisheries has been quoted from extensively, in order to present the flavour of his remarks, and provide some understanding of the Departmental attitude towards fishing by Maori and towards the reserving of fishing grounds for exclusive use by Maori. It is clear that he looked upon the licensed European fishers as holding certain rights that should not be lightly repudiated. Exclusive fishing reserves for Maori should be provided sparingly, and then generally

[58] Inspector of Fisheries Auckland to Superintendent of Mercantile Marine Auckland, 17 October 1929, attached to Superintendent of Mercantile Marine to Secretary for Marine, 19 October 1929. Marine Head Office file 2/12/429. Supporting Papers #167-171.
The Inspector reported separately on his inspection of licensed European fishers at Kawhia, Raglan and Aotea during his visit to the three harbours. Inspector of Fisheries Auckland to Chief Inspector of Fisheries, 25 October 1929. Marine Head Office file 2/12/429. Supporting Papers #179-182.

only where there would be no conflict with the ability of Pakeha fishers to continue fishing and earning a livelihood.

By the time the Inspector's report reached Wellington, the Marine Department had also received letters and petitions of protest from affected Pakeha fishers and local Pakeha settlers. The licensed fisher at Aotea engaged a solicitor who sought the "protection of his interests in the fishing rights already acquired and exercised by him" during the past three years, as he was dependent on the continuation of his right and it was his sole means of livelihood.

> All the thirty regular customers of Mr Copeland feel very keenly the possibility of their being deprived of their fish supply, and are arranging to put in a petition in support of his rights.
>
> There are only about thirty Maoris living on the shores of Aotea Harbour, who very rarely fish, and many of whom purchase fish from Mr Copeland.
>
> Mr Copeland's three years' experience with the Harbour has given him excellent knowledge of the fishing grounds in which a limitless supply of fish may be obtained, and which should prove a main source of supply for the Waikato district when completion of the metalling of the road is made[59].

The petition from the Aotea settlers was received later in the month[60].

The Minister of Marine also had forwarded to him a letter sent by Marae Edwards to the Native Minister. Edwards wrote:

> Re Fishing. The Inspector of Fishery came to Kawhia this month to inquire into that matter. According to the remarks he made during his address, he is averse to the reservation of the Kawhia Harbour, as there has never been any such reservation made in New Zealand in regard to fishing, and that he does not know of any such reservation, and because of that he does not see how any such reservation can be made in regard to Kawhia.
>
> Re Fixed Net Fishing Places. That European will not agree to fixed net-fishing places because of the fear of small fish being caught, and since it would contravene the by-laws in regard to fishing under the Act.
>
> Re Reservation of Aotea Harbour. With regard to this harbour, he said perhaps this harbour can be reserved, i.e. persons may be prohibited from catching fish for sale or from operating in that harbour except to catch fish for

[59] JC Orr, Solicitor, Hamilton, to Minister of Marine, 17 October 1929. Marine Head Office file 2/12/429. Supporting Papers #172-173.

[60] Petition dated 17 October 1929 by 31 Aotea district residents, handed to Minister of Marine, 22 October 1929, and Minister of Marine to W Lee Martin MHR, 22 October 1929. Marine Head Office file 2/12/429. Supporting Papers #174-175 and 176.

> their own personal use as food. He said he would send in his report in regard to this to the Minister of Marine.
>
> Our real desire is that this matter should be adjusted by yourself and the Minister of Marine, so that it will accord with our wishes, since the Maori people here depend mostly on fish for their sustenance.[61]

That the Inspector of Fisheries' remarks in his report were consistent with the Departmental attitude towards Maori fishing were borne out by the reaction of the Secretary for Marine to the proposed reserve at Aotea:

> As regards [a smaller mesh size, the Inspector] does not recommend any reduction in the regulation mesh, and I quite agree with him.
>
> As regards [Native fishing reservations], his recommendation is practically no reservation should be made at Kawhia, but that Aotea should be reserved, if anything is to be given to the natives….
>
> On the general question of the rights of the natives, and of the reservation of areas for their use, Section 77 of the Fisheries Act provides that nothing in Part I of the Act shall affect any existing Maori fishing rights, but there does not appear to be any power under the Act to reserve areas of fishing waters for their sole use. Special legislation would therefore be necessary, but the passing of this would, I think, result in countless applications from natives throughout the country for reservations, and we would never be finished with them, and I do not think that it is advisable to take the power.
>
> As regards Aotea, there is apparently only one pakeha fishing for sale, and if there is good fishing there it would appear to me that the natives should be able to obtain all they require if they care to go and fish, and that the reservation is not in the public interest.[62]

The Chief Inspector of Fisheries, whose advice the Secretary had sought, replied:

> I concur with your view on these points. I do not think there is ground for making any modification of existing regulations. But something should be done to stop indiscriminate and wasteful netting by amateurs who come down in motor cars. I would like to see all net fishing licensed.[63]

There the matter rested, with no further action taken.

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[61] Marae Edwards, Kawhia, to Native Minister, 21 October 1929. Marine Head Office file 2/12/429. Supporting Papers #177.

[62] Secretary for Marine to Chief Inspector of Fisheries, 30 October 1929. Marine Head Office file 2/12/429. Supporting Papers #178.

[63] Chief Inspector of Fisheries to Secretary for Marine, 15 November 1929, on Secretary for Marine to Chief Inspector of Fisheries, 30 October 1929. Marine Head Office file 2/12/429. Supporting Papers #178.

About one year later, in September 1930, the Native Minister wrote again to the Minister of Marine, because Marae Edwards had proposed three fishing reservations over parts of Kawhia Harbour:

1. Kawhia North Fishing Reserve. From Whare-o-Ngahue to low water mark on mudflat, thence along mudflat to point opposite Motutara, thence across and along mudflat of Rangiora Stream, thence along low water mark to the Kawaroa Stream, thence along low water mark to a point opposite Takakaroro, thence to Matakirikiri.

2. Rakaunui Fishing Reserve. Starting from Tutaerere to Owiwiku Island to outside Kaitaea, thence to Koutukowhai.

3. Parawai Fishing Reserve. Commencing at Parawai Cemetery to the Totara Point, thence to Koutukowhai.

> The Kawhia Natives are dependent entirely on sea food supplies, and if the reserves asked for can be set aside for them, they will be able to exist, especially during a lean year like this one.[64]

A plan was obtained marking the location of the places referred to in the boundary descriptions[65]. The Secretary for Marine then briefed his Minister:

> There is no power under the Fisheries Act to grant sole rights of fishing in such a case as this, and even if there were I think it would be altogether unreasonable to do so.
>
> The request is based on the Treaty of Waitangi. Article II affirms and guarantees to the Chiefs and Tribes the full exclusive and undisturbed possession of their lands, forests, fisheries and other properties which they may collectively and individually possess.
>
> The fact is, however, that there never could have been any exclusive right to fisheries, and in any case the land which they want set aside is mostly tidal land.
>
> These tidal flats are Crown property in its common law right, and Sir Apirana Ngata admits that this is so.
>
> The position is that there are plenty of fish for natives and settlers and, apart from the legal inability to do so, it would be quite unreasonable to exclude European settlers from their common law right to take fish off tidal flats.
>
> I recommend, therefore, that the application be not granted.[66]

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[64] Native Minister to Minister of Marine, 25 September 1930. Marine Head Office file 2/12/429. Supporting Papers #183.

[65] Under Secretary for Lands to Secretary for Marine, 15 October 1930. Marine Head Office file 2/12/429. Not included in Supporting Papers.

Marine Department plan MD 6980. Marine Head Office file 2/12/429. Supporting Papers #195.

The Minister accepted this advice[67], and replied to Ngata along the lines of the Secretary's briefing[68]. In response to a similar request in July 1931[69], the Minister gave a similar reply, remarking that it did not appear to him that there had been "any change in the position which would justify any departure from the decision then reached"[70].

In August 1931 the Chief Inspector of Fisheries was told of rumours that commercial fishermen intended to carry out Danish seining on Kawhia Harbour. He was opposed to this, and recommended that this type of fishing be prohibited on Kawhia, Aotea and Raglan Harbours[71]. The Minister agreed[72], and an Order in Council was proclaimed the following month[73]. This was rather a straw prohibition, as the Inspector of Fisheries in Auckland had been told by the fishers fitting out their boat at Raglan that they only intended to Danish seine in the open sea rather than in the harbours, and the Inspector considered such fishing would in fact be "almost impracticable" in Raglan Harbour[74]. The Inspector visited Kawhia and Raglan in November 1931 on an annual inspection and to alert the local fishers to the new regulation; at Kawhia he discovered that the only two locations on the harbour where a seine net could be used contained old ballast heaps on the bed of the harbour left by ships arriving in the early days of European settlement to load timber, and these heaps would foul the nets[75].

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[66] Secretary for Marine to Minister of Marine, 31 October 1930. Marine Head Office file 2/12/429. Supporting Papers #184.
[67] Approval of Minister of Marine, 4 November 1930, on Secretary for Marine to Minister of Marine, 31 October 1930. Marine Head Office file 2/12/429. Supporting Papers #184.
[68] Minister of Marine to Native Minister, 12 November 1930. Marine Head Office file 2/12/429. Supporting Papers #185.
[69] Native Minister to Minister of Marine, 14 July 1931, on Whareiaia Moke and Henare J Poroata, Kawhia, to Native Minister, 7 July 1931. Marine Head Office file 2/12/429. Supporting Papers #186-187.
[70] Minister of Marine to Native Minister, 21 July 1931. Marine Head Office file 2/12/429. Supporting Papers #188.
[71] Chief Inspector of Fisheries to Secretary for Marine, 10 August 1931 and 12 August 1931. Marine Head Office file 2/12/429. Supporting Papers #189-192 and 193.
[72] Approval of Minister of Marine, 8 September 1931, on Secretary for Marine to Minister of Marine, 1 September 1931. Marine Head Office file 2/12/429. Supporting Papers #194.
[73] *New Zealand Gazette* 1931 page 2815. Supporting Papers #767.
Marine Department plans MD 6980 and MD 6981. Marine Head Office file 2/12/429. Supporting Papers #195 and 196.
[74] Chief Inspector of Fisheries to Secretary for Marine, 12 August 1931. Marine Head Office file 2/12/429. Supporting Papers #193.
[75] Inspector of Fisheries Auckland to Superintendent of Mercantile Marine Auckland, 13 November 1931. Marine Head Office file 2/12/429. Supporting Papers #197-198.

Local Maori had not given up their quest to have the harbour divided up so part could be kept free from commercial fishing, and the Acting Native Minister was approached about this by Marae Edwards when he visited Kawhia in May 1935.

> He said that their food supplies in the harbour were being depleted in consequence of [commercial] operations. As much as five tons per week were being taken and transported to New Plymouth. The preservation of their food supplies was a matter of vital importance to the Maoris of Kawhia, as their future general welfare was dependent to a very large extent on this source of food supply, as it has been in the past. He said that five years ago they had made representations for the reservation of certain foreshores exclusively for the use of the Maoris, but their request was not granted. The fishing operations on a wholesale scale at present being carried on has made it difficult for the Maoris to draw their accustomed food supplies from the harbour. Even their pipi beds came under the activities of these fishmongers.[76]

Edwards suggested that the harbour be divided into "two spheres for fishing operations, by striking a straight line from Matatua Point, to the south of the Maketu Pa at Kawhia, to Okura Point on the southern side of the harbour". To the west of this line would be available for commercial fishing, while to the east of the line would be available for Maori and for local Europeans fishing for their own needs.

> Mr Marae Edwards also suggested that if the pipi bed called Tanewhango in the Kawhia Harbour, from which the Maoris always drew their pipi supplies, did not come within the area asked for as a reservation for the local Maoris and Pakehas, then he would ask that this pipi bed should be reserved and not subjected as at present to denudation by the extreme wholesale methods now being adopted.

The Acting Native Minister added:

> I may say that the Natives at Kawhia draw their food requirements largely from the harbour, as owing to the fact that there are very few European employers of labour in the district most of the Maoris are without the means for the purchase of meat etc for their maintenance.[77]

While the Chief Inspector of Fisheries was sceptical about the claims of an increased amount of commercial fishing undertaken at Kawhia, he was concerned enough about the statements about the pipi bed to be willing to see some "limitation by regulation" imposed. He asked for reports by the Inspector of Fisheries in Auckland and by the

[76] Acting Native Minister to Minister of Marine, 30 May 1935. Marine Head Office file 2/12/429. Supporting Papers #199-200.
[77] Acting Native Minister to Minister of Marine, 30 May 1935, and Acting Under Secretary Native Department to Secretary for Marine, 5 June 1935. Marine Head Office file 2/12/429. Supporting Papers #199-200 and 202.

local policeman[78]. The Inspector in his report was not sympathetic. He doubted that all five tons of fish sent to New Plymouth came from within the harbour heads, and gave as his opinion that excluding commercial fishers from two-thirds of the harbour would put them out of business.

> The European fisherman, as a rule, does not own land, cannot raise crops, or interest himself in farming activities, which most natives could do if they wished, and moreover the European fisherman generally adheres to the Fishery Regulations, while such regulations do not exist to the natives.
>
> To the best of my knowledge, the natives of Kawhia do not own such a boat as would be fit to cross the Bar in the very finest weather, have no nets of any sort or description, excepting perhaps of the "fowl-house" kind, and apparently depend for their fishing on a hand line or "stopping up", always wholly within the harbour….
>
> Personally I do not favour any area in Kawhia Harbour being closed against commercial fishermen in favour of natives or other Europeans for their food supply, on the grounds that there is no power fishing in this Harbour, and with handgear no fisherman works in a big way. Two set nets are the biggest, but usually one net only, and any native can work that if he wishes.

He added that the pipi bed was only fished in sugar-bag lots to meet orders from the hotel at Te Awamutu[79].

The local policeman confirmed that the majority of the Kawhia catch was being harvested outside the bar; on average over a five-week period, two tons per week had been sent to New Plymouth. He considered that excluding commercial fishers from part of the harbour would have a "very detrimental impact", particularly if the excluded area was as described by Edwards, as it was two-thirds of the harbour and "includes all the best fishing grounds and a great majority of the flounder sets". He commented that if some restriction on fishing in the harbour was to be imposed, it would be better if it was by increasing the commercial fishers' net mesh size, rather than by having a prohibited area. This would restrict commercial fishers to catching the bigger fish, while those who fished for their own needs would still be able to use nets with the existing minimum mesh size. With respect to reservation of the pipi

[78] Chief Inspector of Fisheries to Secretary for Marine, 5 June 1935. Marine Head Office file 2/12/429. Supporting Papers #201.
[79] Senior Inspector of Fisheries Auckland to Superintendent of Mercantile Marine Auckland, 11 June 1935, attached to Superintendent of Mercantile Marine Auckland to Secretary of Marine, 18 June 1935. Marine Head Office file 2/12/429. Supporting Papers #203-207 at 204-205.

beds, he supported this as "at the present rate of denudation the supply will soon be exhausted"[80].

The Chief Inspector commented to the Secretary for Marine:

> I agree with Constable Carran's recommendations, viz no closure of an area for fishing by Pakeha, but:
>
> 1) Closure of pipi beds to commercial exploitation – pipis to be taken for own use only.
> 2) New regulation prescribing that no person shall use a set net for taking flounders which has a mesh less than 4¾" (the mesh of the new untanned [unused] net should be 5") in Kawhia Harbour if the net when strung has a greater length than 80 fathoms or 160 yards. (This allows the fisherman who does not operate on a large scale to use a single set net – not a series joined together – of the ordinary regulation mesh of 4".)
> 3) A similar provision for mullet nets of over 80 fathoms, raising minimum mesh to 3¾" (4" when new).
>
> The regulations should not come into force till, say, June 1st 1936, allowing old nets to be worn out.[81]

This advice was accepted and the Acting Minister of Native Affairs was advised:

> In September 1931 the use of Danish seine nets in Kawhia Harbour was prohibited, and consequently all snapper fishing, which constitutes the bulk of the fish exported from Kawhia, is taken outside the harbour. Flounder and mullet, which average about one-sixth of the quantity exported, are the fish taken within the harbour, and it is mostly when the fishermen are prevented by rough bar conditions from working outside that fishing is done in the harbour.
>
> At present there are nine fishing boats engaged in whole and part time fishing, and they provide employment for twenty men, and as it is not advisable to prohibit commercial fishing within the harbour, it is proposed to make regulations imposing restrictions in regard to the size of mesh in set nets over 80 fathoms in length which are used in taking flounder and mullet. So that the owner of the present-sized nets will not be unduly penalised, it is proposed that the regulations will not come into operation until the 1st June 1936, by which time the nets at present in use will be worn out. This will also allow fishermen who do not operate on a large scale, and those who fish for their own food, to use ordinary sized nets with the regulated size mesh at present in force.

[80] Inspector of Fisheries Carran, Kawhia, to Superintendent of Mercantile Marine Auckland, 17 June 1935, attached to Superintendent of Mercantile Marine Auckland to Secretary of Marine, 18 June 1935. Marine Head Office file 2/12/429. Supporting Papers #203-207 at 206-207.

[81] Chief Inspector of Fisheries to Secretary for Marine, 26 June 1935, on Superintendent of Mercantile Marine Auckland to Secretary of Marine, 18 June 1935. Marine Head Office file 2/12/429. Supporting Papers #203-207.

> In regard to the pipi beds, it has been the practice of some people to occasionally take them in sugar bags for disposal by sale in Te Awamutu and, to conserve all the pipi beds in the harbour, it is deemed advisable to close them to commercial exploitation and to allow pipis to be taken by persons for their own use.[82]

In July 1935 Orders in Council were issued increasing the mesh size of long-length flounder and mullet nets in Kawhia Harbour[83], and prohibiting commercial harvesting of pipi beds in Kawhia Harbour[84].

There is one further exchange of correspondence on the Marine Department file, dated February 1939. A petition by 26 Aotea Maori complained that commercial netting of fish was taking place on Aotea Harbour despite an Act of Parliament reserving the harbour for private fishing only[85]. They were told in reply that they were misinformed. While Danish seining had been banned in 1931, "there has been no general prohibition placed on commercial fishing by other methods within the harbour"[86].

This miniature topic study illustrates the survival of certain aspects of Maori authority for Kawhia Harbour into the 1920s, long after the Crown in Wellington had legislated for its own authority and thought that it had asserted its control. The absence of enforcement of its authority by the Crown meant that traditional Maori authority still prevailed. Both Maori and Europeans at Kawhia accepted the status quo prior to the visit by the Inspector of Fisheries. When the Inspector explained to local Maori what he considered to be the nature of the Crown's authority, they complained to Apirana Ngata, the Native Minister, about the Inspector's action in confiscating one of their fishing nets. The Inspector was supported in his interpretation of the Crown's authority by his head office. There was then an uneasy period where Kawhia Maori were obliged to adapt to a new situation where the Crown was far more active in administering its statutory responsibilities than it had previously been. As part of a

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[82] Minister of Marine to Acting Minister of Native Affairs, 28 June 1935. Marine Head Office file 2/12/249. Supporting Papers #208.
[83] *New Zealand Gazette* 1935 page 1938. Supporting Papers #768.
[84] *New Zealand Gazette* 1935 page 1940. Supporting Papers #769.
[85] HT Reti and 25 others, Kawhia, to Minister of Marine, 17 February 1939. Marine Head Office file 2/12/429. Supporting Papers #209-210.
[86] Secretary for Marine to HT Reti, Kawhia, 28 February 1939. Marine Head Office file 2/12/429. Supporting Papers #211.

new accommodation with the Crown, they gained a ban on commercial fishing of their pipi beds in the harbour, probably without being aware that this happened over the opposition of the Inspector of Fisheries, who showed strong support for the European commercial fishers of the harbours throughout the period (1928-1935) covered by the departmental file. In modern parlance, the commercial fishers were seen as stakeholders with whom the Marine Department had entered into an ongoing relationship once it had started licensing their activities. Maori fishers, on the other hand, were not regarded in the same light, even though their sea fishing rights were protected in the Fisheries Act.

3.3 Reclamation before and since 1970

No approved reclamations are referred to in the case studies for Whaingaroa Harbour or Mokau River mouth. That is not to say that there were no reclamations, just that any that did occur would have been small in scale and did not come to the attention of the authorities. Reclamations had been allowed for in Section 42 Harbours Amendment Act 1910, while vestings of foreshore in local authorities could be permitted under Section 145 Harbours Act 1908.

There was some reclamation activity at Kawhia. In 1914 Kawhia County Council applied to be allowed to reclaim an area not exceeding five acres on the foreshore fronting the town of Kawhia[87]. This area, today the site of the old County Council office and a community hall on Jervois Street, is located north of the wharf. When the Marine Engineer was asked if the reclamation would have an injurious effect on navigation in the harbour[88], he replied with his own question:

> I would like to know whether an interpretation has ever been given as to what constitutes navigable waters…. As a portion of the area proposed to be reclaimed by the Kawhia County Council has 12ft of water on it at high tide, ranging from that down to nothing, it would appear that some of it at least must be classed as navigable.[89]

The Secretary for Marine replied:

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[87] County Clerk Kawhia County Council to Minister of Marine, 2 June 1914. Transport Head Office file 54/16/1. Supporting Papers #239.

[88] Secretary for Marine to Marine Engineer, 29 August 1914, on Secretary for Marine to County Clerk Kawhia County Council, 20 August 1914. Transport Head Office file 54/16/1. Supporting Papers #240.

[89] Acting Marine Engineer to Secretary for Marine, 14 September 1914. Transport Head Office file 54/16/1. Supporting Papers #241.

> The rise and fall of tides at springs at Kawhia is 12 feet, and at neaps 9 feet, and therefore I think that any tidal area at this place where there is 7 feet of water at ordinary high water spring tides may fairly be considered to be navigable.[90]

In consequence of this interpretation, the Marine Engineer had no objection to reclamation of the portion "lying between the present high water mark and a line indicating where there is 7 feet of water at ordinary spring tides"[91]. Once a plan was prepared[92], the Marine Engineer approved the proposed reclamation, "subject to the construction of a permanent and substantial protective facing so as to prevent any of the material used in the reclamation being washed into the navigable channel"[93]. An authorisation was then issued to Kawhia County Council[94]. The Order in Council refers to the area of the reclamation being five acres, the maximum allowed by the legislation, and to the Crown having satisfied itself that "the said reclamation will not affect navigation and is for the benefit of the public".

Only part of the five-acre site seems to have been actively reclaimed, with three-quarters of an acre of completed reclamation vested in Otorohanga County Council in 1962[95]. Reclamation of the remainder of the site was referred to in a letter from the Marine Division in 1978, which also provides information on the Crown policy towards reclamations in the late 1970s:

> With respect to the obtaining of approvals for the completion of the reclamation as authorised in 1915, it is necessary that you comply with Section 178 of the Harbours Act 1950, and for this to forward plans of the proposed works for consideration pursuant to the provisions of that Section. These plans should show in detail the area yet to be reclaimed, and include a number of cross section diagrams showing the material which is to be used in

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[90] Secretary for Marine to Marine Engineer, 18 September 1914. Transport Head Office file 54/16/1. Supporting Papers #241.

[91] Acting Marine Engineer to Secretary for Marine, 25 September 1914. Transport Head Office file 54/16/1. Supporting Papers #241.

[92] Marine Department plan MD 4323. Transport Head Office file 54/16/1. Supporting Papers #242.

[93] Certificate of Marine Engineer, 9 April 1915. Transport Head Office file 54/16/1. Supporting Papers #243.

[94] Secretary for Marine to Minister of Marine, 9 April 1915, approved by Minister 10 April 1915. Transport Head Office file 54/16/1. Supporting Papers #244.
New Zealand Gazette 1915 page 1634. Supporting Papers #759.

[95] Gibbs and Mackay, Surveyors, Te Awamutu, to Secretary for Marine, 24 July 1962, and Secretary for Marine to Minister of Marine, 23 October 1962, approved by Minister 25 October 1962. Transport Head Office file 54/16/1. Supporting Papers #245-246 and 247.
New Zealand Gazette 1962 page 1933. Supporting Papers #778.
The vested land has since been subdivided on South Auckland plan DPS 8469, approved for deposit in the Land Registry in November 1963.

> the protective facing of the seaward side of the reclamation, and also the material which is to be used in filling the area.
>
> It will be necessary for your Council to comply with the Government's environmental enhancement procedures, and to this effect I enclose a copy of the pamphlet recently prepared by the Harbours and Foreshores Section of this Ministry dealing with the reclamation procedures. In respect of the environmental impact assessment which we would require from you, a sketch outline of such assessment is provided at page 30 of the booklet. While it may not be applicable to include all the information which is requested at that page, it is recommended that you give a general description of all points taking those which are more applicable to the circumstances in greater detail.[96]

This letter indicates the greater complexity required in applications by the late 1970s. This is because reclamation was seen by the Crown as a permanent private use, and disposal into private ownership, of a public space. It meant that the Crown was keen to keep reclamations to a minimum, and wanted to be satisfied that there was no other viable alternative. In line with the Crown view that it held exclusive authority for the foreshore, no provision was made for consultation with Maori, nor was there any awareness that specifically Maori values existed on the foreshore or needed to be recognised or taken into account. When Otorohanga District Council complied with these more exacting requirements in 1984[97], in order to expand the public recreation area along the harbour edge, plans for the reclamation of a further portion of the five acres approved in principle in 1915 were approved[98]. However, Otorohanga District Council was not immediately advised, while the Ministry of Transport waited to see if a Waitangi Tribunal inquiry with respect to Manukau Harbour might affect the Ministry's ability to grant approvals under the Harbours Act 1950[99]. The Council was not notified until May 1985[100].

Conversely, claims to accretion were actively monitored. Accretion, the opposite of erosion, is the natural process whereby a gradual and imperceptible build-up of

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[96] Secretary for Transport to County Clerk Otorohanga County Council, 11 September 1978. Transport Head Office file 54/16/1. Supporting Papers #255-257.
[97] Chief Engineer Otorohanga District Council to Secretary for Transport, 19 July 1984 and 6 September 1984. Transport Head Office file 54/16/1. Supporting Papers #258-260261-262.
[98] Marine Works Engineer to Secretary for Transport, 16 October 1984, on District Commissioner of Works Hamilton to Commissioner of Works, 8 October 1984, Nautical Adviser to Secretary for Transport, 19 October 1984, and approval on behalf of Secretary for Transport, 24 October 1984. Transport Head Office file 54/16/1. Supporting Papers #263, 264 and 265.
[99] Secretary for Transport to Chief Engineer Otorohanga District Council, 13 November 1984. Transport Head Office file 54/16/1. Supporting Papers #266.
[100] Secretary for Transport to Chief Engineer Otorohanga District Council, 16 May 1985. Transport Head Office file 54/16/1. Supporting Papers #267.

sediment on the foreshore above high water level culminates in dry land being created on what could be considered a permanent basis, which could be included in a land title. When the Maori incorporation responsible for Te Kopua 2B2B2B, on the shore of Ocean Beach at Raglan[101], sought to include accretion lands in its land title, the Ministry of Works investigated and found that half the so-called accretion had since been eroded away, and further erosion was continuing[102]. The Secretary for Marine objected to accretion title being granted to the foreshore land because of the apparent erosion[103] and, following an inspection, the District Land Registrar declined to issue a title for the accretion[104].

3.4 Grants of control after 1970

As mentioned earlier in this report, the Crown was given power under the Harbours Amendment Act 1961 to issue grants of control of the foreshore (pursuant to Section 165 Harbours Act 1950) and waters (under Section 8A Harbours Act 1950). A grant of control was effectively a delegation to another body of an authority the Crown already held. The grant of control of foreshore was clearly in line with the Crown's thinking that the foreshore was a part of New Zealand where it had exclusive authority over use and management. The grants of control did not cover approvals to remove sand or shingle, or approvals for reclamations or harbour works, which remained the direct responsibility of the Crown.

The power set out in both sections of the Act was invoked in the Waitomo District Council Foreshore, Riverbed and Waters Control Order 1983[105]. This Order granted to Waitomo District Council control of the following waters:

- The sea out to 200 metres from the shore, between the southern head of Kawhia Harbour and the southern head of Mokau River, but excluding that part which had been declared to be within the Taharoa Harbour limits (see the topic study on ironsands mining at Taharoa)

[101] District Land Registrar Hamilton to Secretary for Marine, 30 June 1965. Transport Head Office file 54/16/1. Supporting Papers #248.
[102] District Commissioner of Works Hamilton to Commissioner of Works, 29 July 1965. Transport Head Office file 54/16/1. Supporting Papers #249-250.
[103] Secretary for Marine to District Land Registrar Hamilton, 3 August 1965. Transport Head Office file 54/16/1. Supporting Papers #251-252.
[104] District Land Registrar Hamilton to Houston and Corbett, Solicitors, Hamilton, 13 August 1965. Transport Head Office file 54/16/1. Supporting Papers #253-254.
[105] *New Zealand Gazette* 1983 page 1372. Supporting Papers #809.

- The Awakino and Marokopa Rivers from their source to the sea
- The Mokau River from a point one kilometre upstream of the Wairere Dam, to the sea

In addition to control of waters, the Order also granted control of the foreshore and riverbeds over the same extent of the coastline and the rivers. Bylaws were approved the following year[106].

The description of the rivers including stretches so far upstream, even to their source, is slightly misleading as the primary legislation, the Harbours Act 1950, makes clear that references to rivers are to navigable rivers. However, the Marine Department and the Ministry of Transport took the view that a river capable of being used by jet boats was a navigable river. This interpretation, which parallels the interpretation that a river used by waka is a navigable river (see the Waipa River case study), is explicable when one of the functions of these agencies was control of boating safety and navigation.

Waitomo District Council had inquired about being issued with the grant of control in 1981[107]. The Secretary for Transport had replied enclosing a booklet about the procedures for grants of control, adding:

> Sections 8A and 165 provide that control can be granted to a public body for a term not exceeding 21 years. A condition of the grant would be to the effect that the Minister could resume control of the area, without compensation and upon giving notice in writing. Such a condition would only be actioned should circumstances be extenuating. The policy of the Ministry is to encourage local control where possible, and it would only be under unusual circumstances that control would be resumed by the Ministry.[108]

The grant of control was applied for by the District Council the following year[109]. Upon receipt of the application, it was the Ministry of Transport that encouraged the inclusion of the rivers in the form that was finally used in the Order:

> It is seen that your Council would control the waters of the Mokau River (see paragraph below) and perhaps the bed and waters of other rivers such as the

[106] *New Zealand Gazette* 1984 pages 423-424. Supporting Papers #810-811.
[107] Chief Executive Officer Waitomo District Council to Regional Secretary for Transport Auckland, 7 October 1981. Transport Head Office file 54/14/101. Supporting Papers #213.
[108] Secretary for Transport to Chief Executive Officer Waitomo District Council, 2 November 1981. Transport Head Office file 54/14/101. Supporting Papers #214-215.
[109] District Clerk Waitomo District Council to Secretary for Transport, 1 April 1982. Transport Head Office file 54/14/101. Supporting Papers #216-217.

> Awakino, Marokopa. It would be appreciated if you would consider control of these waters, and also the extent of that control (distances upstream). This Ministry would suggest that a suitable description for the control of these rivers might be:
>
> > "all the foreshore and waters of the Awakino River and Marokopa River from their source to the sea."
>
> Concerning the Mokau River, you have drawn the area for which you desire to obtain control. We would suggest that the area of control be taken upstream to the confluence of the river with a particular stream, such as the Paraheka Stream, or alternatively to a point upstream of the Wairere bridge. The latter alternative would seem to be more appropriate as recently the Ministry uplifted the speed restriction up to the Wairere Dam, and for some years the restriction has been uplifted upstream of the dam. It would seem appropriate that the control of the waters of the Mokau over all navigable areas be obtained. The New Zealand Jet Boat Association guide shows that the Mokau is navigable to approximately 1 kilometre upstream of the Wairere bridge.[110]

This advice was accepted by the District Council[111]. Separately Clifton County Council advised that it agreed that Waitomo District Council should have sole responsibility for the whole of the Mokau River and its estuary[112].

The application was publicly notified in the *Waitomo News* and the *New Zealand Herald* at the end of July 1982, and attracted two submissions, from Waitomo Electric Power Board and an environmental group called Save the River (Taranaki Branch). Tangata whenua were not approached for their views, and nor did they respond to the public notice. Both submissions sought further information as to why a grant of control of the rivers was necessary, perhaps fearing that the granting of control would give the District Council the opportunity to carry out developments on the rivers that would frustrate their respective interests in the rivers. The replies from the Secretary for Transport provide an insight into Crown thinking about the role of grants of control.

The Power Board wrote in its submission:

> This Board owns the Wairere Falls dam and power station, and is likely to be further investigating development of identified hydro electric potential downstream of the existing station. We are also likely to be further

[110] Secretary for Transport to District Clerk Waitomo District Council, 19 April 1982. Transport Head Office file 54/14/101. Supporting Papers #218-220.
[111] District Clerk Waitomo District Council to Secretary for Transport, 16 June 1982. Transport Head Office file 54/14/101. Supporting Papers #222-223.
[112] County Clerk Clifton County Council to Secretary for Transport, 26 April 1982. Transport Head Office file 54/14/101. Supporting Papers #221.

> investigating the identified potential on the Marokopa River and its tributary the Tawarau. We are involved in some power line crossings of these rivers, most of which currently require the approval of the Marine Division of your Ministry where navigable water ways are involved.
>
> These rivers are currently under the control of the Waikato Valley Authority, an organisation set up specifically for that purpose. My concern is that to place them also under the control of the Waitomo District Council may be unduly restrictive on any plans this board may develop to harness hydro electric potential. We could then have to deal with two organisations both having control over the same stretch of river. It would appear that the District Council is mainly concerned with control of harbours and foreshores, and that as far as the rivers are concerned this should be restricted on the Marokopa to no further upstream than Te Anga, and on the Mokau to no further upstream than Totoro Road.[113]

The Secretary for Transport responded to the Power Board with an explanation of the purposes of grants of control:

> The application of the control is implemented by the use of bylaws which are approved in terms of the Harbours Act 1950. The Ministry has prepared a draft set of bylaws which can be adapted by the local controlling authority to take into account the local conditions. These bylaws of authorities with control of the foreshore under Section 165 of the Act cover such matters as appointment of officers (Wardens etc), and the general administration of those areas. The bylaws under Section 8A of the Act control the use of the waterway by powered craft etc….
>
> In respect of your Board's activities or those of the Waikato Valley Authority, the proposed grant of control should not conflict. Concerning any proposals that your Board may have to develop the rivers to harness the hydro electric potential, it is assumed that any such proposals would be the subject of discussions between your Board and the Council….
>
> As a comment at this stage, this Ministry sees advantages in the foreshore and waters being administered by that same body in terms of the Harbours Act 1950. The Ministry supports the principle of local authorities obtaining a grant of control as the system allows for discussion to take place at a local level.[114]

This explanation, and discussions it had with Waitomo District Council, apparently satisfied the Power Board, as it withdrew its objections[115].

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[113] Chief Engineer Waitomo Electric Power Board to Secretary for Transport, 30 July 1982. Transport Head Office file 54/14/101. Supporting Papers #224.
[114] Secretary for Transport to Chief Engineer Waitomo Electric Power Board, 9 August 1982. Transport Head Office file 54/14/101. Supporting Papers #225-226.
[115] Chief Engineer Waitomo Electric Power Board to Secretary for Transport, 26 January 1983. Transport Head Office file 54/14/101. Supporting Papers #229.

The Save the River organisation, "formed of such interests as Rod and Gun Club, Kayak and Canoe Club, Jet Boat Association, freshwater fishers, Forest and Bird Society, etc", and as such not articulating any Maori viewpoint, objected pro forma "until the reason for change is disclosed"[116]. The Secretary for Transport responded:

> The purpose of a grant of control in terms of the Harbours Act 1950 is to provide a means whereby the development of facilities on the banks of a waterway, and also the control of activities on the foreshore and riverbed can be controlled by bylaw at a local level. The grant of control provides the means where the grant of control authority can control such matters as the number of structures that can be erected in a particular area. This would avoid such conditions as dilapidated structures becoming an eyesore and a danger to navigation.
>
> The grant of control is not a method whereby the controlling authority would be able to proceed with a development without obtaining the necessary statutory approvals under Town and Country Planning Act, Water and Soil Act, or Harbours Act or other statute.
>
> The grant of control is a method whereby a local body can control the development and use of the foreshore and water, and take into consideration such matters as are known to it. You will appreciate that Central Government is unable to take local conditions and the wishes of local persons into account when legislating for an area, whereas a local controlling authority can do so.[117]

There was no further correspondence from Save the River and, with the two submissions apparently satisfied, the way was clear to issue the grant of control in April 1983[118]. Upon the Crown's authority being delegated to Waitomo District Council, the Council took over responsibility for the administration of foreshore structures that had been licensed by the Crown. These were the public wharf and ramp in the Mokau rivermouth (see case study on the Mokau River mouth), some groynes at Mokau, and three private jetties on the Marokopa River[119].

The notification of the Waitomo District Council Foreshore, Riverbed and Waters Control Order 1983 was the second specific order for the Mokau and Awakino Rivers.

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[116] Secretary/Treasurer Save the River (Taranaki Branch) to Secretary for Transport, 27 August 1982. Transport Head Office file 54/14/101. Supporting Papers #227.

[117] Secretary for Transport to Secretary/Treasurer, Save the River (Taranaki Branch), 7 September 1982. Transport Head Office file 54/14/101. Supporting Papers #228.

[118] Secretary for Transport to Minister of Transport, 23 March 1983. Transport Head Office file 54/14/101. Supporting Papers #230-231.
New Zealand Gazette 1983 page 1372. Supporting Papers #809.
Plan MD 16142. Copy on Transport Auckland file 54/20/87. Supporting Papers #459.

[119] Regional Secretary for Transport to District Clerk Waitomo District Council, 14 May 1984 and 4 September 1985. Transport Auckland file 54/20/87. Supporting Papers #460-461 and 462.

In 1981 a water recreation notice exempted these two rivers from the 5 knot speed limit set out in the Water Recreation Regulations 1979[120]. This was so they could be used by jet boats. When speed limits on the Mokau and Awakino Rivers became covered by the Waitomo District Council bylaws prepared to implement its grant of control, it was possible to revoke the water recreation notice that had been instituted in 1981[121].

The grant of control of the foreshore, riverbed and waters of the Mokau River might be described as a poisoned chalice for Waitomo District Council. Although never mentioned as a concern in any correspondence in Crown records leading up to the issue of the grant of control, the most contentious matter that emerged in later years was management of the whitebait stands in the lower river. Indeed, it was considered so contentious that the grant of control was revoked in October 1987 at the request of the District Council[122]. This is discussed in the Mokau River mouth case study. It brought the foreshore, riverbed and waters back under the direct control of central government. As a result of the environmental restructuring implemented in April 1987, foreshore and riverbed structures such as whitebait stands became the responsibility of the Department of Conservation, while matters of boating safety and navigation were the responsibility of the Ministry of Transport. The Ministry of Trnaport then re-exempted the Mokau and Awakino Rivers from the 5 knot maximum boating speed restriction[123].

The grant of control of waters and foreshore issued to Waitomo District Council had excluded the District Council's frontage on to Kawhia Harbour, between Te Maika and Waiharakeke Stream. This was because of an alternative arrangement being discussed for that harbour. Shortly before Otorohanga District Council's term of its grant of control of foreshore (see a previous section) was due to expire in 1984, consideration was given to issuing a joint grant to both Otorohanga and Waitomo District Councils of the whole of the foreshore and the whole of the waters of Kawhia

[120] *New Zealand Gazette* 1981 page 2333. Supporting Papers #807.
[121] *New Zealand Gazette* 1985 page 546. Supporting Papers #813.
[122] *New Zealand Gazette* 1987 page 5073. Supporting Papers #817.
[123] *New Zealand Gazette* 1988 pages 1892-1893. Supporting Papers #818-819.

Harbour[124]. Early discussions between the two Councils reached agreement on some preliminary matters:

> Otorohanga District Council have agreed to provide administrative services to what will probably be termed the "Kawhia Harbour Management Committee". Each Council will have three members on the Committee and it is envisaged that the Ministry draft Bylaws (amended as necessary) will be adopted. Obviously there is still quite a lot of work to be done at a local level to sort out administrative details, but both Councils would like to see some fairly early action in lodging the Grant of Control application.[125]

A formal application for a joint grant of control of foreshore and waters was made in April 1984[126]. In this application the points agreed to the previous year were confirmed. There was no mention of any Maori participation in the "Management Committee". However, no processing of the application occurred, because of so-called Treaty of Waitangi matters[127]. This was a reference to the claim to the Waitangi Tribunal that had been lodged with respect to the Manukau Harbour, which had challenged the Crown's right to ownership and control of that harbour, and in doing so had called into question all grants of control of harbours around the country. When the Manukau Tribunal's report, published in July 1985, did not include any findings about the Ministry of Transport's administration of its power to issue grants of control[128], processing of the application was able to continue[129]. However, there is no record of the processing being completed before responsibility for the task passed to the Department of Conservation in 1987.

The harbours and foreshores functions of the Ministry of Transport were a small part of the brief of the new Department of Conservation. The Ministry's regional office had been in Auckland while the new Department's regional office was in Hamilton. There was no continuity of staff with the changeover, and therefore no continuity of institutional memory. So far as can be determined, the joint Councils' application

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[124] Secretary for Transport to District Clerk Waitomo District Council, 14 September 1982. Transport Head Office file 54/14/114. Supporting Papers #232.
[125] District Clerk Waitomo District Council to Regional Secretary for Transport Auckland, 8 March 1983. Transport Head Office file 54/14/114. Supporting Papers #233.
[126] District Clerk Otorohanga District Council to Secretary for Transport, 4 April 1984. Transport Head Office file 54/14/114. Supporting Papers #234-235.
[127] District Clerk Otorohanga District Council to Secretary for Transport, 26 November 1984, and Secretary for Transport to District Clerk Otorohanga District Council, 4 June 1985. Transport Head Office file 54/14/114. Supporting Papers #236 and 237.
[128] Waitangi Tribunal, *Report of the Waitangi Tribunal on the Manukau claim (Wai 8)*, July 1985, Sections 9.2.3 and 9.2.4.
[129] Secretary for Transport to District Clerk Otorohanga District Council, 21 July 1986. Transport Head Office file 54/14/114. Supporting Papers #238.

was not picked up and processed by the new Department, before the relevant sections of the Harbours Act were repealed by the Resource Management Act 1991, and the harbours and foreshores functions became a part of the coastal marine area function of Waikato Regional Council.

When the concept of a joint grant of control of Kawhia Harbour was being discussed between the two Councils in 1982, the Tainui Maori Trust Board expressed its opposition, and advanced its own control proposal (see a later section of this chapter). The Trust Board wrote to the Minister of Transport in October 1982:

> Recently the Waitomo District Council and the Otorohanga District Council stated that they intend to make a joint application to you under the Harbours Act 1950 for a Grant of Control for Kawhia Harbour…. The Tainui Maori Trust Board considers that such a Grant of Control would be inappropriate for Kawhia. We wish to place our alternative, community development proposals before you for your consideration and for discussion with your colleagues in government.[130]

However, the Minister had quickly rejected the Trust Board's proposal, with the result that when the two Councils lodged their application in April 1984 the Trust Board's proposal was regarded as a nullity, and was never mentioned on the file concerned with the Councils' application. Because the joint application was never publicly notified, the Tainui Maori Trust Board did not get another opportunity to comment on it.

3.5 Marine farming

The Marine Farming Act 1971 authorised the Crown to lease or licence the foreshore or seabed, and the waters above, for aquaculture purposes. This Act remained in force until it was repealed and replaced by the Aquaculture Reform (Repeals and Transitional Provisions) Act 2004.

Two applications for marine farming ventures in Kawhia Harbour were made in 1981-82. The first was by NB and SA Ussher in December 1981, and the second by AE and AJ Rutherford and W Watts in February 1982. These two applications are examined below. Other marine farming activity in Te Rohe Potae is referred to in the Whaingaroa Harbour case study.

[130] Secretary Tainui Maori Trust Board to Minister of Transport, 14 October 1982. Transport Head Office file 54/44/643. Supporting Papers #279-320 at 279-280.

The Ussher application was for a Pacific oyster farm on the eastern side of Motutarakatua Point; it was for an area of not more than three hectares[131]. While made in December 1981, it was not publicly notified until May 1982, with a two-month period allowed for the lodging of objections. A submission was made by Otorohanga District Council, which stated:

a) The application is not a true indication of what areas will be finally used as part of the farming operations. That is, if spat are caught successfully within the Kawhia Harbour, how many hectares will be required for a catching area and where?
b) It is known that Kawhia Harbour is used for the recreation of gathering shellfish and perhaps this has been traditional with the Maori people. It is not known to Council whether the proposed site is within the area used or such purposes, and it is requested that this matter be clarified at the time of considering the application.
c) The Council objects to any waste (namely the shells) being washed into the Harbour.
d) That the shoreline of the Harbour should not be disturbed in any way so as to ruin the natural landscape of that area and which will not disturb and threaten other areas in that locality.
e) Council are concerned that the traditional fishing for flounder could be affected by the proposal to farm pacific oysters.[132]

For the Council to suggest that "perhaps" shellfish gathering was traditional with Maori people indicates how little awareness it had of the activities and lifestyle of some of its ratepayers. While flounder fishing was also traditional for Maori, it would have been practised by European residents of the district as well, and the Council's use of the term 'traditional' was probably in a post-European context to cover both Maori and Europeans. However, any vagueness exhibited by Otorohanga District Council about traditional fishing on Kawhia Harbour would have been dispelled by the submissions of the Tainui Maori Trust Board dated two days after the Council's submission, and referred to below.

One of the applicants, who farmed the land immediately adjacent to the proposed site, explained, in response to the Otorohanga District Council submission, that traditional fishing and shellfish gathering would not be affected, shells would not be disposed of

[131] Application for marine farming lease or licence, 1 December 1981. Transport Head Office file 54/44/696. Supporting Papers #347-351.
[132] Chief Engineer Otorohanga District Council to Director General of Agriculture and Fisheries, 21 July 1982, attached to Chief Engineer Otorohanga District Council to Secretary for Transport, 29 September 1982. Transport Head Office file 54/44/696. Supporting Papers #355-359 at 356.

in the harbour, and there would be no physical alterations to the shoreline or foreshore. He added:

> I have never seen anyone, inclusive of Maoris, picking shellfish in or near the area applied for, and the only shellfish present are a few very small pupu's and cockles. Night spearing of flounders is popular in summer months along the foreshore and because of this the area applied for in the lease application is set out some 100 metres from the foreshore, thereby allowing scope for the netting or spearing of flounders and ample room for small boats on the high tide.[133]

On the basis of this explanation, the District Council decided that it was "generally satisfied", although it queried whether the proposed distance of 100 metres from the foreshore was adequate[134].

There was also a submission in opposition to the Ussher application made by the Department of Lands and Survey. This was a pro-forma submission made within the time period for comments, and was followed up later by a more detailed explanation of the Department's objection:

> The Director General of Lands has objected on the grounds that the proposed use of the subject area would provide a significant visual detraction from the amenities of the Kawhia Harbour environment, particularly as appreciated from the main Kawhia Road looking across the [Motutara Scenic Reserve], and from the water approaching the reserve; and would thereby be contrary to the public interest. Furthermore, the proposed use of the subject area could adversely affect the use of the reserve in restricting recreational boating and other use of the shoreline.[135]

The Rutherford and Watts application was for a mussel farm covering ten hectares of the harbour, upstream of Kawhia wharf and in the channel at low tide[136]. Three objections were received within the prescribed time period when it was publicly notified, all of them concerned that the use of the low water channel for farming

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[133] NB Ussher, Kawhia, to Otorohanga District Council, 18 August 1982, attached to Chief Engineer Otorohanga District Council to Secretary for Transport, 29 September 1982. Transport Head Office file 54/44/696. Supporting Papers #355-359 at 357-358.

[134] Chief Engineer Otorohanga District Council to Ministry of Agriculture and Fisheries Hamilton, 16 September 1982, attached to Chief Engineer Otorohanga District Council to Secretary for Transport, 29 September 1982. Transport Head Office file 54/44/696. Supporting Papers #355-359 at 359.

[135] Commissioner of Crown Lands Hamilton to Regional Executive Officer Ministry of Agriculture and Fisheries Hamilton, 5 November 1982. Transport Head Office file 54/44/696. Supporting Papers #360-363.

[136] Application for marine farming licence, 13 February 1982, attached to Regional Executive Officer Agriculture and Fisheries Hamilton to Secretary for Transport, 22 February 1982. Transport Head Office file 54/44/643. Supporting Papers #268-270.

would restrict boating and recreation activity[137]. The applicants in response argued that they had taken great care to ensure that only half the width of the navigable channel was within the proposed farming area. They considered their proposed area the only suitable site in the harbour based on depth of water and movement of the currents[138].

More substantive objections were made to both marine farming applications by the Tainui Maori Trust Board[139]. However, both objections, which were made on the same day, were received outside the two-month statutory period for receipt of public comment. The Trust Board's principal objection was that the Minister of Fisheries had no jurisdiction to grant any marine farming applications in Kawhia Harbour:

> This objection is based on the wording of Article Two of the English version of the Treaty of Waitangi, which was signed at the Waikato Heads and the Manukau by the ancestors of some of the Tribes still resident in Kawhia Harbour….
>
> The application for a marine farming lease in respect of this objection will affect the traditional Maori fishing resources on Kawhia Harbour….
>
> For the Minister to accept jurisdiction to entertain and decide on applications in respect of such an area is to dishonour and ignore the provisions embodied in Article Two of the Treaty of Waitangi.[140]

With respect to the Ussher application, the Trust Board's objection stated:

> The site of the proposed lease is in the middle of a traditional flounder netting and spearing ground which today is still the major supplier of flounder in the Kawhia Harbour.

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[137] Regional Executive Officer Agriculture and Fisheries Hamilton to Secretary for Transport, 4 May 1982. Transport Head Office file 54/44/643. Supporting Papers #271-277.

[138] AE Rutherford, Kawhia, to Regional Executive Officer Agriculture and Fisheries Hamilton, 15 April 1982, attached to Regional Executive Officer Agriculture and Fisheries Hamilton to Secretary for Transport, 4 May 1982. Transport Head Office file 54/44/643. Supporting Papers #271-277 at 272.

[139] P Harris and EMK Douglas on behalf of Chairman Tainui Maori Trust Board, representing Kawhia Maori Committee "and the Tainui people generally", to Ministry of Agriculture and Fisheries Hamilton, 23 July 1982, being Part 2 (re Ussher) and Part 3 (re Rutherford and Watts) of Submissions to Minister of Fisheries by Tainui Maori Trust Board, September 1982, attached to Secretary Tainui Maori Trust Board to Minister of Transport, 14 October 1982. Transport Head Office file 54/44/643. Supporting Papers #279-320 at 285-291 and 292-297.

[140] P Harris and EMK Douglas on behalf of Chairman Tainui Maori Trust Board, representing Kawhia Maori Committee "and the Tainui people generally", to Ministry of Agriculture and Fisheries Hamilton, 23 July 1982, being Part 2 (re Ussher) and Part 3 (re Rutherford and Watts) of Submissions to Minister of Fisheries by Tainui Maori Trust Board, September 1982, attached to Secretary Tainui Maori Trust Board to Minister of Transport, 14 October 1982. Transport Head Office file 54/44/643. Supporting Papers #279-320 at 285-291 and 292-297.

> The site of the proposed lease is close to beds of mussels, pupu, pipi, crayfish and kina. These beds are still used today to supply these traditional food sources….
>
> In the case of flounder, the area in which they can be caught will be reduced by the size of the farm, i.e. 3 hectares. This will represent a substantial reduction in the availability of and access to flounder. The fact that this application is in respect of a lease will considerably exacerbate this problem. In addition to effects in terms of the area available and access to the flounder, pacific oysters which drop off the racks and seed in the mud will make netting no longer a viable method of catching flounder. The nets will suffer extensive damage, as well as making the environment unsuitable for the continued presence of flounder….
>
> In respect of the other shellfish…, as the pacific oyster is a dominant and prolific species, it will have effects both in terms of competition for food and competition for the available sites. The pacific oyster is capable of growing on mussels and it is feared that this will result in the reduction of that shellfish. In respect of the pipi, mussel and pupu it is also feared that the pacific oyster, in competing for the same food supply, will have detrimental effects on those shellfish.[141]

With respect to the Rutherford and Watts application, the Trust Board's objection stated:

> The site of the proposed mussel farm is adjacent to a traditional pipi bed and will affect this bed both in terms of access to the bed, and also in terms of competition for the same food supply.[142]

Both objections by the Trust Board argued, in the alternative to the principal objection, that the applications had failed to comply with the public notification requirements of the legislation, because adjoining landowners with riparian rights to the harbour (including the trustees of Maketu and Waipapa maraes and the Mangaora Incorporation) had not been notified, and that granting the applications would:

(a) Interfere unduly with an existing usage for recreational purposes of the foreshore and sea
(b) Adversely affect unduly the use by the proprietor thereof of any land adjoining or in the vicinity of the area

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[141] P Harris and EMK Douglas on behalf of Chairman Tainui Maori Trust Board, representing Kawhia Maori Committee "and the Tainui people generally", to Ministry of Agriculture and Fisheries Hamilton, 23 July 1982, being Part 2 of Submissions to Minister of Fisheries by Tainui Maori Trust Board, September 1982, attached to Secretary Tainui Maori Trust Board to Minister of Transport, 14 October 1982. Transport Head Office file 54/44/643. Supporting Papers #279-320 at 285-291.

[142] P Harris and EMK Douglas on behalf of Chairman Tainui Maori Trust Board, representing Kawhia Maori Committee "and the Tainui people generally", to Ministry of Agriculture and Fisheries Hamilton, 23 July 1982, being Part 3 of Submissions to Minister of Fisheries by Tainui Maori Trust Board, September 1982, attached to Secretary Tainui Maori Trust Board to Minister of Transport, 14 October 1982. Transport Head Office file 54/44/643. Supporting Papers #279-320 at 292-297.

(c) Be contrary to the public interest

In addition, the Rutherford and Watts proposal would "interfere unduly with an existing right of navigation", because it would obstruct the course for the annual whaleboat regatta, and because of its proximity to the traditional pipi bed:

> [This] has been depleted over past years, due mainly to the effects of 245-T spraying on surrounding farms. However, this bed has begun to return recently, and it is hoped that it will once again become the main pipi bed. Traditionally access to this bed has been from Maketu marae to the west of the proposed farm, and from Waipapa marae to the east of the proposed farm. If this application was granted, access from Waipapa marae would be directly affected, and the traditional and current route to this pipi bed would be obstructed.[143]

The effect on the harbour's surrounding population, most of whom were Maori, was explained in both objections by the Trust Board:

> Approximately 80% of the foreshore of Kawhia Harbour is either Maori land or general land held by Maoris. The use of the Harbour by this substantial proportion of the foreshore land-owners is extensive both in terms of those who actually occupy the land and also the Tainui Tribe as a whole as descendants from the Tainui canoe.
>
> Shellfish traditionally and today is vitally important to these people in terms of:
>
> - provision of seafood associated with the Tainui people
> - hui hospitality and mana
> - learning opportunities for the young in their ancestral water environment, eg conservation, values and attitudes
>
> The use of Kawhia Harbour becomes all the more important when it is considered that it is the major seafood supply of the whole of the Tainui people….
>
> Kawhia is not only the resting place of the Tainui canoe, one of the several great ancestral canoes of the Maori, but it is also the birthplace of the Tainui Tribes which reckon their descent from Hoturoa and other crew members of this canoe.
>
> Many aspects of the Kawhia harbour and its immediately surrounding area are held sacred by the Maori people who live there today. There are a myriad of historical sites which recall births, alliances, battles, deaths and other events in the long history of the Tainui people. Yet it is not only the local residents who

[143] P Harris and EMK Douglas on behalf of Chairman Tainui Maori Trust Board, representing Kawhia Maori Committee "and the Tainui people generally", to Ministry of Agriculture and Fisheries Hamilton, 23 July 1982, being Part 3 of Submissions to Minister of Fisheries by Tainui Maori Trust Board, September 1982, attached to Secretary Tainui Maori Trust Board to Minister of Transport, 14 October 1982. Transport Head Office file 54/44/643. Supporting Papers #279-320 at 292-297.

hold these places as sacred, because over the centuries since the beaching of the canoe, the Tainui people increased and expanded from Kawhia to occupy the land bounded in the north by Auckland and Coromandel, in the south-east by Tokoroa and Mangakino, and in the west by Mokau. Kawhia has a special historical and spiritual significance for all of these tribes, and indeed even for Ngatitoa who migrated from Kawhia to Horowhenua and Raukawa-moana last century.

In addition, the economic importance of Kawhia as the seafood basket of Tainui cannot be minimised. As in the Tribal saying:

> "Kawhia moana, Kawhia kai, Kawhia tangata"
> "Kawhia is the sea, Kawhia is the food source, Kawhia is the essence of the people"

Under Tainui tribal lore, the ancestral rights entrusted to the Tainui people as a whole carries with it specific obligations, expectations and responsibilities towards the Kawhia harbour as the birthplace and food basket of their peoplehood. Such obligations and responsibilities can best be expressed through the Tainui peoples' own tribal institutions.

Therefore it is submitted that:

i The Tainui people have had more than 600 years of continuous occupation and management of the Kawhia harbour, its food supplies and the surrounding lands, and
ii As the vast majority of the Harbour foreshore still remains in the hands of the Tainui Maori people, it is not in the public interest that this occupation and management be eroded by the granting of this licence, and
iii It is in the public interest that the future management of the Kawhia Harbour's seafood resources be through the tribal and sub-tribal institutions maintained by the Tainui people as a whole.

The Trust Board's objections with respect to each of the applications concluded:

> [I] respectfully request the Minister to decline this application for a Marine licence under the Marine Farming Act 1971 in view of the submissions above, and the long established relationship of Maori with land and water that is owned and or used by the descendants, and which continues to meet their traditional, cultural and spiritual well-being.[144]

The Trust Board was advised in reply to its objection on the Rutherford and Watts application that it would be treated as "a submission to the application, and record any

[144] P Harris and EMK Douglas on behalf of Chairman Tainui Maori Trust Board, representing Kawhia Maori Committee "and the Tainui people generally", to Ministry of Agriculture and Fisheries Hamilton, 23 July 1982, being Part 2 (re the Ussher application) and Part 3 (re the Rutherford and Watts application) of Submissions to Minister of Fisheries by Tainui Maori Trust Board, September 1982, attached to Secretary Tainui Maori Trust Board to Minister of Transport, 14 October 1982. Transport Head Office file 54/44/643. Supporting Papers #279-320 at 285-291 and 292-297.

relevant points when writing the [appraisal] report"[145]. The Usshers were given the opportunity to comment, and responded in September 1982[146].

In early 1983 there was an exchange of correspondence between the Ministries of Transport and Agriculture and Fisheries about the Ussher application. On the suggestion of its Nautical Adviser, Ministry of Transport asked if the applicants would agree to shifting the site to 100 metres below low water mark rather than 100 metres below high water mark[147]. Ministry of Agriculture and Fisheries replied that the applicants were "reluctant to move it as [they] would then be obstructing the main navigational channel to the Puti Estuary". The Ministry added that fisheries officers familiar with the harbour had the following comments (which are relevant also to some of the claims made in the Trust Board Chairman's objection):

> The current situation allows ample room for spear fishing for flounder, which is undertaken mainly on the top of the incoming tide among the rocks along the shoreline. The extremely deep mud further out confines this activity to the more firm footing nearer the shore. Net fishing, because of the depth of the mud, is usually undertaken from a boat and the area of channel in front of the present application site is occasionally used for this purpose. The suggested [repositioning] would place the farm partially in the main channel, which would be detrimental to fishing and a navigational hazard to those vessels wishing access to the Puti Estuary.[148]

Having received this response, the Minister of Transport concurred, pursuant to Section 3(5) of the Marine Farming Act 1971, with the granting of a lease to the Usshers[149]. The Minister of Fisheries approved the lease in November 1983, subject to preparation of a certified plan[150]. Two months later, the Director of the Fisheries Management Division wrote to the Tainui Maori Trust Board in response to the Trust Board's objection to the granting of a licence to the Usshers.

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[145] Regional Executive Officer Agriculture and Fisheries Hamilton to Chairman Tainui Maori Trust Board, 25 August 1982, being Part 4 of Submissions to Minister of Fisheries by Tainui Maori Trust Board, September 1982, attached to Secretary Tainui Maori Trust Board to Minister of Transport, 14 October 1982. Transport Head Office file 54/44/643. Supporting Papers #279-320 at 298.

[146] NB and SA Ussher, Kawhia, to Director General of Agriculture and Fisheries, 14 September 1982. Transport Head Office file 54/44/696. Supporting Papers #352-354.

[147] Secretary for Transport to Regional Executive Officer Agriculture and Fisheries Hamilton, 9 March 1983. Transport Head Office file 54/44/696. Supporting Papers #364.

[148] Regional Executive Officer Agriculture and Fisheries Hamilton to Secretary for Transport, 7 April 1983. Transport Head Office file 54/44/696. Supporting Papers #365.

[149] Certificate of concurrence, 24 May 1983, attached to Secretary for Transport to Regional Executive Officer Agriculture and Fisheries Hamilton, 25 May 1983. Transport Head Office file 54/44/696. Supporting Papers #366-367.

[150] Director Fisheries Management Division to Secretary for Transport, 17 May 1984. Transport Head Office file 54/44/696. Supporting Papers #368.

> I advise that the Minister of Agriculture and Fisheries has decided not to uphold your objection, having taken cognizance that pursuant to the Marine Farming Act 1971 the Minister of Agriculture and Fisheries is the controlling authority in respect of marine farming applications.
>
> Any debate on this point is beyond the scope of both the Minister and his Ministry. Until such time as another ruling is handed down, present legislation and all its authority takes precedence.

The response continued that fishing access would not be impaired by the licence, commercial fishermen had not stated any objection to the licence, and the applicant had complied with the notification requirements of the legislation. In connection with impact on Maori fishing activities, the Trust Board was told:

> There is a large Maori population settled in the area and it is acknowledged that the harbour is a major food source for them. However, it is not considered that a farm of 2.8 hectares situated on mud flats away from main channels and areas of residence will unduly interfere with the activities or heritage of the harbour.
>
> Mr Ussher has no intention of disposing of waste shells in the Kawhia harbour. He has established a market for fresh oysters in their shell. Ministry Fisheries officers will be monitoring this aspect of marine farming closely.
>
> There are many shellfish beds scattered throughout the harbour, and a Fishery Officer carried out a brief survey of shellfish in the vicinity of the proposed farm and found a population of very small cockles approximately 10mm in diameter. The nearest bed of pipis of edible size is just below Puti bridge approximately 800m away, mussels are no longer present in the Puti channel, and kina and crayfish are not present in Kawhia harbour in significant numbers as the area is not suited to them. It is not considered that the proposed lease area of 2.8 hectares will interfere with the collection of shellfish in the Puti estuary.
>
> A Fisheries Scientist has stated that both oysters and mussels are dominant species and normally cannot be farmed together using the same methods. However, oysters are intertidal and mussels subtidal. The area applied for is very small compared to the potential of the harbour, so it is unlikely that the mussel population will be affected.
>
> The oyster has been growing prolifically in Kawhia Harbour for the last three years. It has been suggested that establishing an oyster farm is one way of managing a potentially valuable resource. The oysters do not appear to have had a detrimental effect on other existing shellfish life.[151]

[151] Director Fisheries Management Division to Secretary Tainui Maori Trust Board, 20 January 1984. Submissions presented to the Waitangi Tribunal Manukau Harbour inquiry during the week 20-24 August 1984 (Wai 8 submission B16). Supporting Papers #2255-2258.

Once the survey plan of the licence area was approved[152], the lease to the Usshers was issued in October 1985[153]. As provided for in the legislation, the lease had a term of 14 years.

In December 1982 a decision was made on whether or not the Minister of Transport concurred with the granting of Rutherford and Watts' application. In this instance concurrence was declined[154], the primary reason being obstruction of the navigable channel at low tide[155], with a further factor taken into account being the representations made to the Minister by the Tainui Maori Trust Board (see next section)[156].

The applicants then revised their proposal, reducing the proposed area to about four hectares from the ten hectares originally applied for, and reducing the width of the channel at low tide that would be affected[157]. At first the Secretary for Transport asked that the application be readvertised[158], but the view in the Ministry of Agriculture and Fisheries was that, because the revised area was smaller than originally applied for, it still came within the parameters of the original application and readvertising was not required[159]. The Minister of Transport then gave his concurrence to the granting of a licence, because the Ministry's Nautical Adviser considered that "the reduced area applied for will not seriously affect navigation"[160]. However, in June 1986 the Minister of Fisheries "declined the application on the grounds of economic viability of marine farming in the Kawhia area", pursuant to

[152] South Auckland plan SO 53605. Supporting Papers #844.
[153] Marine Farm Lease No. 125. Transport Head Office file 54/44/696. Supporting Papers #369-375.
[154] Certificate declining to concur, 3 December 1982, attached to Secretary for Transport to Regional Executive Officer Agriculture and Fisheries Hamilton, 6 December 1982. Transport Head Office file 54/44/643. Supporting Papers #326-327.
[155] Regional Secretary for Transport Auckland to Secretary for Transport, 30 June 1982, and file note, 27 October 1982. Transport Head Office file 54/44/643. Supporting Papers #278 and 321.
[156] Secretary for Transport to Regional Executive Officer Agriculture and Fisheries Hamilton, 27 June 1984. Transport Head Office file 54/44/643. Supporting Papers #342.
[157] AE Rutherford, Kawhia, to Nautical Advisor, 9 May 1983. Transport Head Office file 54/44/643. Supporting Papers #336-341.
[158] Secretary for Transport to Regional Executive Officer Agriculture and Fisheries Hamilton, 27 June 1984. Transport Head Office file 54/44/643. Supporting Papers #342.
[159] Regional Executive Officer Agriculture and Fisheries Hamilton to Secretary for Transport, 1 August 1984. Transport Head Office file 54/44/643. Supporting Papers #343.
[160] Secretary for Transport to Minister of Transport, 4 September 1984, and Certificate of concurrence, 11 September 1984. Transport Head Office file 54/44/643. Supporting Papers #344 and 345.

Section 8(3) Marine Farming Act 1971[161]. Further background on the Minister's decision is not known.

The Tainui Maori Trust Board's opposition to the two marine farming applications was expressed two to three months before it presented major submissions to the Crown that argued that Maori should have the control of Kawhia and other West Coast harbours. These submissions are dealt with in the next section of this chapter. The marine farming objections arose out of the research that was underway in support of the subsequent control submissions. However, the Trust Board's intervention failed to prevent the granting of the Ussher consent, while the Rutherford and Watts application was declined on different grounds to those argued by the Trust Board. It is unfortunate that this matter is discussed only on the evidence obtained from a Ministry of Transport file, and that the more directly relevant Ministry of Agriculture and Fisheries files were not located during the research for this report. The only evidence identified as to the general thinking of the Ministry of Agriculture and Fisheries is a submission by a Ministry official to the Waitangi Tribunal's Manukau Harbour inquiry in 1984. This submission explained that the Ministry viewed the applications as experimental because of "extreme tidal conditions" in Kawhia Harbour. To grant some licences would allow for an evaluation of the physical feasibility of marine farming. In addition the Trust Board was seeking an extensive planning exercise, which would normally follow rather than precede the practical experimental work that the licences applied for would allow[162].

3.6 Control of West Coast Harbours – Crown or Maori

In 1982 an issue arose that goes directly to the heart of the matters under consideration by the Waitangi Tribunal. The Tainui Maori Trust Board sought to have control of the three West Coast harbours revert to Maori communal control and authority. The Board's opposition to the two marine farming applications discussed in the previous section arose out of this desire to exercise Maori authority. However, the Crown declined to agree to the proposal. Because the issue is so pertinent to the

[161] Regional Executive Officer Agriculture and Fisheries Hamilton to Secretary for Transport, 19 June 1986. Transport Head Office file 54/44/643. Supporting Papers #346.
[162] Submission by R Little, Ministry of Agriculture and Fisheries, undated. Submissions presented to the Waitangi Tribunal Manukau Harbour inquiry during the week 20-24 August 1984 (Wai 8 submission B13). Supporting Papers #2253-2254.

Tribunal's inquiry, the contemporary documents from 1982 are quoted from extensively[163].

In September 1982 a delegation from the Tainui Maori Trust Board met with the Minister of Fisheries, and handed him a written proposal to recognise the Trust Board as the managing and controlling authority for the three harbours, Kawhia, Aotea and Whaingaroa. The proposal explained that the Ussher, and the Rutherford and Watts, marine farming applications had been the trigger for the Maori initiative. While much of the reasoning used in the proposal had been developed during the preparation of objections to the marine farming applications, and to that extent is repetitive of the objections quoted in the previous section of this chapter, the Trust Board's proposal deserves to be treated as a separate issue and set out fully.

> The Tainui Maori Trust Board, in waiting upon the Minister of Fisheries, wishes to express its deepest concern at the commercialisation of these harbours which they have always viewed as the Tainui tribes' main sources of kaimoana (seafoods). The Board respectfully requests that the Minister:
>
> (a) Not allow the applications for marine farming licences and leases by Messrs Rutherford and Watts and Mr and Mrs Ussher
> (b) Allow the Kawhia, Aotea and, if possible, Whaingaroa harbours to revert to Maori communal control, as they have been for all but 50 years of the past 600 years (in the case of Whaingaroa harbour – 90 years)
> (c) Allow the Tainui Maori Trust Board to exercise its authority over these waters as the duly constituted and recognised authority
> (d) To encourage the Tainui Maori Trust Board to manage, conserve and develop the fish, shellfish and other marine resources of these harbours on a tribal basis, rather than on an individual basis
>
> In support of these requests, the Board wishes to point out that:
>
> 1. The majority of the foreshore of Kawhia, Aotea and Whaingaroa harbours are in Maori lands, both in Maori title or in European title. At Aotea this represents 80% of the foreshore; likewise at Kawhia this represents more than 80% of the foreshore. At Whaingaroa, Maori lands represent almost half of all the foreshore, but together with Crown land in

[163] Considering the relevance of the matter to Crown kawanatanga, it was surprising to find the papers about the Trust Board's proposal in a former Ministry of Transport file that passed to the Department of Conservation with environmental agency restructuring in 1987, and then passed to Waikato Regional Council when responsibility for the coastal marine area was given to regional councils under the Resource Management Act 1991. The location of the file today (in Waikato Regional Council archives) is a reflection of the delegation of Crown authority for harbours that came about with the passing of the 1991 legislation. Other papers on the subject may be in Maori Affairs Department and Ministry of Agriculture and Fisheries files, but time constraints have prevented them being researched for this report.

reserves and harbour board leases, this comprises over half of the foreshore.

2. There are innumerable historic and sacred sites on and around the harbours whose protection has not been secured under present legislative arrangements. Examples include Muriwhenua at the entrance to Kawhia harbour, Raoraokauere on the western shore of Aotea, and the lair of the taniwha Te Atai-o-rongo where sewerage ponds were built in the mid 1970s for Raglan township.
3. In the Turton deeds of sale and other documents transferring land to the Crown or to Europeans, land below high water mark was specifically excluded. It is argued that the beds of the harbours still belong to the descendants of the aboriginal inhabitants of Waikato, never having been alienated.
4. The Tainui Maori Trust Board is actively seeking ways of maintaining the integrity of the tribes' resources, including their land and sea resources. The Board is anxious to ensure that future generations of Tainui people will be provided for, and that the relentless individualisation of land titles and their alienation be halted. It is the Board's view that tangible and viable alternatives to individualisation need to be offered to their beneficiaries in order to stop further alienations. The board believes that communal control and development of communal resources, including the west coast harbours, is a major component in their tribal development programme.
5. The Tainui Maori Trust Board does not consider that present legal arrangements for the control, management and protection of the harbour environments is adequate or efficient. Neither do these arrangements take sufficient cognisance of Maori interests in and around the harbours. Indeed, in respect of the Kawhia and Aotea harbours, the present Harbour Authority is unrepresentative of the community at large. This is also true, but to a lesser extent, for Whaingaroa. Authority under the Harbours Act, vested in the Otorohanga District Council, expires in 1984 in respect of Kawhia harbour. The Tainui Maori Trust Board respectfully urges the Minister to reconsider this authority and vest it in themselves as the representatives of the Tainui people at large.[164]

In addressing its request to the Minister of Fisheries, the Tainui Maori Trust Board was speaking to the right Minister with respect to marine farming, but to the wrong Minister in connection with Harbours Act matters. It remedied this the following month when it wrote to the Minister of Transport in October 1982, attaching the same background material it had provided to the Minister of Fisheries the previous

[164] Submissions to Minister of Fisheries by Tainui Maori Trust Board, September 1982, attached to Secretary Tainui Maori Trust Board to Minister of Transport, 14 October 1982. Transport Head Office file 54/44/643. Supporting Papers #279-320 at 283-284.

month[165]. The Board also wrote to the Minister of Maori Affairs to keep him informed[166].

The Minister of Maori Affairs was the first to reply to the Trust Board:

> I am aware that officials from my department have been involved in the discussions, and that the Minister for Fisheries is considering the further action he will take. I am firmly of the opinion that the Tainui Trust Board, as representative of the Tainui people, should be consulted and involved in the planning of the future use of these harbours, and you can be assured of my support in this matter.
>
> I have written to the Minister of Transport asking that your submissions be taken into account, but there are of course many other issues, and the rights of other users of the harbour must be considered. Even so, I believe that the claim of the Tainui people is a strong one and you can be assured that I will continue to support it.[167]

In a separate letter to the Minister of Transport, the Minister of Maori Affairs wrote:

> While I do not agree that the Maori people should exercise sole control over these harbours, I would very much like to see the Tainui Trust Board as the representative of the Tainui people being consulted in any future substantial decisions concerning these waters. It would be highly desirable in fact that the Trust Board was accorded membership of bodies charged with administering these harbours.[168]

However, the Minister of Transport, when he replied to the Tainui Maori Trust Board, was far less supportive than his colleague the Minister of Maori Affairs:

> I have carefully considered your proposals that these three harbours be placed under Maori communal control with your Board being the duly constituted and recognised authority, and having the role to manage, conserve and develop the fish, shellfish and other marine resources of these harbours on a tribal basis, rather than on an individual basis.
>
> In this connection I note that you are aware that not all activities on foreshores and coastal waters are covered by the provisions of the Harbours Act 1950. For example the management of the fish and seafood resources is the

[165] Secretary Tainui Maori Trust Board to Minister of Transport, 14 October 1982. Transport Head Office file 54/44/643. Supporting Papers #279-320.
[166] Secretary Tainui Maori Trust Board to Minister of Maori Affairs, 12 October 1982 and 26 October 1982, referred to in Minister of Maori Affairs to Secretary Tainui Maori Trust Board, 11 November 1982, attached to Minister of Maori Affairs to Minister of Transport, 11 November 1982. Transport Head Office file 54/44/643. Supporting Papers #322-323.
[167] Minister of Maori Affairs to Secretary Tainui Maori Trust Board, 11 November 1982, attached to Minister of Maori Affairs to Minister of Transport, 11 November 1982. Transport Head Office file 54/44/643. Supporting Papers #322-323.
[168] Minister of Maori Affairs to Minister of Transport, 11 November 1982. Transport Head Office file 54/44/643. Supporting Papers #322-323.

responsibility of my colleague the Minister of Agriculture and Fisheries under the Fisheries Act 1908.

I appreciate the reasons for your proposals. However, the current policy is based on the approach that in Crown ownership all foreshores and coastal waters, including as appropriate harbours, should be preserved and developed for the benefit and enjoyment of all New Zealanders and, therefore, the management of foreshore and coastal waters should be undertaken by a representative local or regional body which can respond to all local conditions. This includes the local or regional body taking into account the views of all community interests and the users of the particular area. Overall the system of a grant of control to a local or regional body has proved to be successful with all sectors of the community involved in development proposals.

On this basis I prefer to continue the present policy for management of foreshores and coastal waters, rather than change to give effect to your proposals, which would mean control by one section of the community.

In so far as the Kawhia Harbour is concerned, my Ministry is at present processing an application by the Waitomo District Council for a grant of control of foreshore, riverbeds and waters within and adjacent to the District. The Kawhia Harbour is excluded from this proposed grant of control, but I understand that discussions are at present being held between the Waitomo District Council and the Otorohanga District Council with a view to a joint application being made under the Harbours Act 1950 for control of all the waters, foreshore and seabed of Kawhia Harbour. While the Otorohanga District Council already has a grant of control over some areas of foreshore in Kawhia Harbour, a joint application for the whole of the harbour would remove the confusion over who controls particular areas.

In the event of appropriate proposals being finalised, they will be advertised and interested parties will have the opportunity to forward their written comments and objections for my consideration.

In connection with the Whaingaroa Harbour (Raglan Harbour), the situation is that on 19 November 1979 the Raglan Harbour Board was granted control of all the Harbour's foreshore pursuant to Section 165 of the Harbours Act 1950. The Order-in-Council granting control for a period of 21 years was published in the New Zealand Gazette of 29 November 1979 page 3700.[169]

The Minister of Transport also replied to the Minister of Maori Affairs:

> Insofar as a proposed Grant of Control is concerned, the procedure is that a notice of intention to make a grant to a specific representative body is advertised in local newspapers, with an invitation to interested individuals or parties to supply comments to the Ministry of Transport for consideration before the final decision.

[169] Minister of Transport to Secretary Tainui Maori Trust Board, 25 November 1982. Transport Head Office file 54/44/643. Supporting Papers #324-325.

> Accordingly a procedure exists for the Tainui Trust Board, as the representative of the Tainui Maori people, to make full representations on any proposed Grant of Control. The board's views would be conveyed to me for consideration and decision before seeking the Governor-General's approval for the Grant of Control.
>
> Whilst I appreciate your view that it would be highly desirable for the Trust Board to be accorded membership of the body or bodies granted the control of the three harbours, this is not possible in terms of the Harbours Act. In the circumstances I think that the Board should directly pursue arrangements being made for the Board to be consulted by the controlling body in respect of any substantial decision affecting the harbours.[170]

The response of the third Minister, the Minister of Fisheries, is not known. The relevant Ministry of Agriculture and Fisheries file was not located during the research for this report.

The Tainui Maori Trust Board was not deterred by the Minister of Transport's rebuff, and replied to him in December 1982:

> The Tainui tribes have not accepted as a fait accompli that the foreshore and beds of these three harbours are Crown land. Indeed, as you will note from our objections to the granting of marine farming leases and licences, we contest the authority of the Ministry of Fisheries in this matter. Likewise, if, as we believe, these harbours are still the unalienated domain of the Tainui people, then we contest your authority to approve grants of control under the relevant sections of the Harbours Act 1950.
>
> The Tainui Trust Board recognises, as you do, that not all activities on foreshores and coastal waters are covered by provisions the Harbours Act. At the same time, the Board recognises that one ministry granting control over West Coast harbours in respect of certain legislation for which it is responsible, ought not to do so without taking into account the responsibilities of other ministries in respect of their legislation. Both the Minister of Fisheries and the Minister of Maori Affairs have direct responsibilities for the care and ordered development of these harbours; the first under the Fisheries Act 1908 and the Marine Farming Act 1971, and the second under the Maori Trusts Act 1955 and the Maori Affairs Act 1953.
>
> The Board wishes to reiterate its concern about the fragmented nature of control. The present situation gives some measure of control to three different statutory authorities, viz the Raglan County Council, the Otorohanga District Council, and the Marine Division of your own Ministry. Should the grant of control sought jointly by Otorohanga and Waitomo District Councils for

[170] Minister of Transport to Minister of Maori Affairs, 9 December 1982. Transport Head Office file 54/44/643. Supporting Papers #328.

Kawhia be acceded to, the situation in respect of these harbours and the nearby open coast will be no better. While Kawhia Harbour could be under joint control, Aotea Harbour which is partly in Otorohanga District and partly in Raglan County, will likely remain under the Ministry's control, although provision could be made for it to be jointly controlled by the Otorohanga and Raglan Councils, or conceivably it could be placed under the full control of the Raglan County Council if its jurisdiction were extended to include Aotea Harbour. Besides all this, there is the Taharoa Harbour Board with control over the open coast immediately south of the Kawhia harbour.

We wish to point out to you that eighty percent or more of the land adjoining the Aotea and Kawhia Harbours is Maori owned, and approximately fifty percent of the land adjoining Whaingaroa is Maori land or general land owned by Maori. Almost all of these landowners still have intact their traditional riparian rights to the foreshore and harbours. We accept that the policy stated in your recent letter might bear consideration in respect of Crown land, but there is very little such land involved. We have sent a map of these harbours to you under separate cover which will illustrate this[171].

We differ from you in your belief that the Otorohanga and Waitomo District Councils are suitable representative bodies in which to grant control of these harbours. In respect of both of these districts, less than ten percent of their total populations live in ridings adjacent to the harbours, yet a grant of control to them will mean that the ninety percent or more who live inland and far from the harbours have effective control over a marine resource with which they have little or no community of interest, and to which they have neither historical nor special spiritual entitlement. Effectively this gives control to one section of the community at the expense of the majority of Maori who have such important and longstanding interest in and concern for these harbours. The situation is hardly better for Whaingaroa. Between fifteen and twenty percent of the county's population live near the harbour, the greater part being inland near the coalfields and the Waikato River.

This Board does not consider that all sections of the community are well served under the present arrangements, neither will they be better served under the joint control that is proposed. With respect, we do not think that Maori involvement in maritime development planning to date has been significant. What Maori participation that has occurred so far has been that Maori interests are notified of what the controlling authority intends to do. Until recently Maori cultural values were not required to be taken into account in the formulation of district and regional schemes, but even under the present Town Planning Act few district or regional authorities actively use Maori expertise in the preparation of their scheme reviews. Not only is there no maritime plan for these harbours, but neither your Ministry nor the local authorities have taken account of the Tainui people's 600 year stewardship of these harbours.

[171] This map is attached to EMK Douglas, Hamilton, to Minister of Transport, 15 December 1982. Transport Head Office file 54/44/643. Supporting Papers #332-333.

The Harbours Act does give the Minister of Transport authority to delegate management of foreshore and control of waters to a representative local or regional body. This Board is not convinced that the bodies that have been granted control to date can respond to all local conditions. The Board is surprised that you should imply that the Tainui Trust Board would not or could not take into account the views of all community interests and the other users of these harbours. We suggest that such an implication is unfounded and prejudicial to us, when we have not been given the opportunity to prove otherwise. During the nineteenth and early part of the twentieth century, the Tainui people at Kawhia successfully managed the port and harbour there, trans-shipping cargoes to and from Australia and beyond, this was for the benefit of all harbour users, not just the Tainui people.

We firmly believe that our alternative development plan for these harbours is viable, and should not be lightly dismissed by your ministry merely because it proposes arrangements that are different from those which your officers are familiar with and used to. Neither do we see our proposals as being highly innovative either, but rather as a different cultural response to the management, conservation and development of our natural resources, compared to the usual Anglo-Celtic response, with which you and your officers are more familiar. As New Zealanders with a minority culture, we value cultural diversity very highly, and we value the expression of this diversity in alternative ways of solving problems, attaining goals and managing resources.

The Board respectfully requests:

- That you do not proceed to grant control jointly over Kawhia Harbour to the District Councils of Otorohanga and Waitomo.
- In respect of the grant of control over Whaingaroa which was gazetted in November 1979, we would like that to be revoked.
- As well, we request that the interests of the Tainui people in all three of these harbours be more carefully considered by you in consultation with your Cabinet colleagues the Minister of Fisheries and the Minister of Maori Affairs.
- The Board has lodged a formal application for grant of control over these three harbours, and does so without prejudice to its view that the harbour foreshores and beds are unalienated Maori lands over which the rights of the Tainui people have never been extinguished.

We believe most firmly that the interests of the country as a whole would be better served if control of all three harbours were to be vested in the Tainui Maori Trust Board, as the duly constituted Harbour authority, not just for the benefit of the Tainui people but for everyone else in the wider community.[172]

The Crown response was provided by the Minister of Transport in February 1983:

[172] Secretary Tainui Maori Trust Board to Minister of Transport, 15 December 1982. Transport Head Office file 54/44/643. Supporting Papers #329-331.

Your detailed arguments in support of your proposals have been very carefully considered.

The first point which I must make is that under the present laws of New Zealand I cannot accept that foreshores and harbour beds are other than Crown Land. Accordingly the Harbours Act 1950 applies in respect of these areas, and therefore the provisions of that act must be applied fully in respect of all Grants of Control which, of course, are granted by the Governor-General on my advice rather than by myself.

Basically you are arguing that the Grant of Control should be vested in a body representing the Maori tribe who are the majority of the people living on the land they own which is adjacent to or near to the harbours. Your proposals mean no direct representation by others living in the area.

As you will appreciate, harbours serve not only coastal dwellers but also the inland population. It is on this basis that Section 165 of the Harbours Act defines a "public body" for the purposes of a Grant of Control. Part of the definition refers to "any persons acting as trustees for the inhabitants of any locality". In line with the democracy of New Zealand, both majority and minority groups must be represented. However, your Trust Board represents only Tainui tribal members, and under your proposal the pakeha population and any non-Tainui Maori would not be represented.

Accordingly in terms of the Harbours Act, the Tainui Maori Trust Board cannot be accepted as a public body to which a Grant of Control can be made. In this connection I am in no way implying that the Board would not or could not take into account the views of all community interests and users of the harbours. It is simply a legal situation where I am advised that the Board cannot be regarded as a public body for the purposes of the Act.

On the other hand the grant of control over Whaingaroa Harbour is made to a public body where there are elected members acting as the trustees for all the inhabitants of the locality. I have noted your comments about Maori involvement in maritime development to date, and your views about response to all local conditions. Here I think it is a matter for your Board ensuring that all issues of concern are brought to the attention of the Raglan Harbour Board for consideration and involvement of the Maori people.

Similarly the District Councils of Waitomo and Otorohanga are public bodies to which a Grant of Control can be given, and my comments in the previous paragraph about securing Maori involvement also apply.

Another point I think that I should cover is that a Grant of Control is a delegation of powers to manage the waters of an area and/or the foreshore and seabed. A Grant of Control authority exercises its powers through bylaws. Such bylaws must be submitted to me for approval through the Ministry of Transport, and have no force until such approval is given. A Grant of Control is not a total ceding of powers for the authority to do as it pleases, but is a delegation of powers which continue to be supervised by the Ministry of

> Transport. Accordingly, with the requirements for approval of bylaws and the continuing supervision by the Ministry of Transport, the effect of a Grant of Control is limited.
>
> In conclusion, your proposals are not being lightly dismissed, but in the overall circumstances I cannot agree to any of your requests. As I stated in my previous letter, when appropriate proposals are finalised for a Grant of Control, they will be advertised and interested parties will have the opportunity to forward their written comments and objections for my consideration. In this way other Government Departments can make their concerns and interests known. Naturally in appropriate cases I confer with my colleagues the Minister of Fisheries and the Minister of Maori Affairs to decide issues before making a recommendation to the Governor-General.[173]

The Tainui Maori Trust Board's proposal for Maori control of the West Coast harbours was a major step by Maoridom, as it was one of the few demonstrations at that time of the development of an intellectual capacity to prepare and present detailed professional documents on resource use matters. It had been developed in a research institute (the Centre for Maori Studies and Research) at the University of Waikato. However, in proposing that Maori be granted authority, it ran counter to deeply ingrained attitudes among Crown officials that administration of what was seen as part of the public estate should not be put into the hands of any one sectoral interest. The support shown for the issue of grants of control to local authorities, on the grounds that they could represent the whole of any local community, ignored the poor reputation that local government generally had acquired in terms of its ability to meet local Maori needs. The Trust Board even had thrown back at it as a reason for no change that a grant of control would not be a revival of tribal rangatiratanga but a delegation of Crown kawanatanga, the inference being that it would not achieve Maori ambitions that Te Tiriti be honoured. The extent to which the Crown's rejection of the Trust Board's proposal disillusioned Te Rohe Potae Maori, and discouraged them from further attempts to engage with the Crown, is not known.

3.7 Maritime Planning

The Town and Country Planning Act 1977 introduced a new means of exercising Crown authority over harbours, when it included a part of the Act (Part V) about maritime planning. This management tool never really gained much traction

[173] Minister of Transport to Secretary Tainui Maori Trust Board, 8 February 1983. Transport Head Office file 54/44/643. Supporting Papers #334-335.

nationally. It was applied in certain parts of the country, such as Waitemata Harbour, Manukau Harbour and the Marlborough Sounds, with existing harbour boards appointed as maritime planning authorities in each of those three cases, but was never applied in any part of Te Rohe Potae district. It has not been researched for this report, and is mentioned only for the sake of completeness.

3.8 Resource Management Act 1991 and the Coastal Marine Area

The environmental law reform exercise of 1991 took the functions and powers for foreshore, seabed, and saltwater that had been administered by the former Marine Department, the former Ministry of Works and Development, the Ministry of Transport, the Department of Conservation and local authorities, and consolidated them in the Resource Management Act, in so doing creating a new category of New Zealand territorial space, the coastal marine area. Responsibility for administration of the coastal marine area was delegated to regional councils in the first instance, working where necessary in association with the Department of Conservation. The circumstances in which the Department of Conservation became involved were set out in the Resource Management Act 1991 and in a Coastal Policy Statement with national applicability.

The coastal marine area has a complicated definition so far as harbours and estuaries are concerned. The general seaward extent is 12 nautical miles offshore (being the outer limit of the territorial sea), and the general landward extent is mean high water mark at spring tide. At river mouths it is necessary to identify a cut-off point where the river and riverbed ends and the coastal marine area begins, so that there is certainty about which set of resource management rules applies. The legislation provides that the cut-off point shall be:

> Whichever is the lesser of
>
> (i) One kilometre upstream from the mouth of the river; or
>
> (ii) The point upstream that is calculated by multiplying the width of the river mouth by 5.[174]

Regional councils had to define, for each river mouth, where the coastal marine area boundary lay. From their perspective, while working within the legislative

[174] Definition of "coastal marine area" in Section 2 Resource Management Act 1991.

requirement, they were also seeking a pragmatic boundary that was readily recognisable.

The Resource Management Act 1991 establishes a hierarchy of planning documents affecting the coastal marine area with, in descending order:

- The Act itself
- New Zealand Coastal Policy Statement
- Regional Policy Statement
- Regional Coastal Plan

The lowest-order planning document is supposed to be a synthesis of the planning direction identified in the higher-order planning documents, together with any regional rules applicable to the coastal marine area. However, it is not to be relied upon exclusively, as all the planning documents are relevant when considering proposals for use of the coastal marine area[175].

The Waikato Regional Coastal Plan, excluding sections on marine farming and marinas, was approved in July 2004[176]. The marine farming and marinas sections were approved in September 2005 and June 2007 respectively. It addresses the occupation of the coastal marine area space; that is, structures on the seabed, disturbance of the foreshore or seabed (eg sand and gravel removal), structures in and on the water (including moorings), and reclamations. It also applies the national and regional policies to do with preservation of natural character, and protection of vegetation, so far as the coastal marine area is concerned.

The objectives of the plan are to establish a constructive partnership with Maori, and to recognise the special relationship that Maori have with the coast. The plan states that a constructive partnership is one where Waikato Regional Council consults with Maori, and where tangata whenua are treated as having a special status rather than being regarded as just one type of interest group. However, the Council is still primarily the body that makes the decisions. While one of the implementation

[175] The various planning documents produced by Waikato Regional Council are discussed in more detail in the chapter on environmental management regimes for land.
[176] Waikato Regional Council, *Waikato regional coastal plan*, operative 2004. Posted on www.waikatoregion.govt.nz

methods identified is the transfer or delegation of authority and functions for areas or characteristics of the coastal marine area of special value to tangata whenua, the plan is cautious about when this might happen. It states that the Regional Council will work with tangata whenua "over time" to identify the areas or characteristics of special value. More broadly, the Council expects resource consent applicants to consult with tangata whenua, and will itself consult with Maori, at marae-based meetings, to develop an understanding of the meaning of kaitiakitanga, and how kaitiakitanga can be practically expressed.

Because the Waikato Regional Coastal Plan was developed in the early 2000s, and approved in the mid 2000s, it has recognised a Waikato Tainui iwi management plan that had been prepared by Huakina Development Trust for the Tainui Maori Trust Board, but has been unable to recognise the Ngati Maniapoto iwi management plan of 2007 and the Ngati Hikairo heritage management plan of 2010. These latter two management plans are discussed in the chapter on iwi participation in Crown management regimes, including regimes governing Crown-legislated functions, established by regional and district councils.

The Department of Conservation has maintained a strong interest in protecting the ecological characteristics of the three west coast harbours, which is reflected more in an advocacy role for conservation than in active involvement in practical conservation measures. Its most recent Waikato Conservation Management Strategy lists the three harbours in a section on marine ecosystems[177].

[177] Department of Conservation, *Waikato Conservation Management Strategy, 2014-2024, (draft)*, December 2012, Appendix 9, pages 217-218.
The ecological values and threats for the three West Coast harbours are unchanged in the September 2013 revision following public submissions. Department of Conservation, *Waikato Conservation Management Strategy, 2014-2024, (draft)*, revised September 2013, Appendix 9, pages 239-240. Posted on www.doc.govt.nz

Table 2 West Coast harbours' ecological values and threats

Harbour	Significant ecological values	Pressures / threats
Whaingaroa	Abundant bivalve fauna, including sub-tidal hururoa / horse mussel (*Atrina zealandica*) beds. Important wading and shorebird habitat (Site of Special Wildlife Interest). Estuarine and diadromous fish habitat. Kera wera / killer whale foraging habitat. Commercial, recreational and customary fisheries.	Infilling due to catchment clearance. Diffuse discharges of nutrients, pathogens and other contaminants. Coastal development. Invasive species (saltwater paspalum, spartina). Overfishing.
Aotea	High natural character. Relatively healthy estuarine assemblages that are characterised by large inter-tidal flats supporting large karepo / seagrass beds and high bivalve densities. Nationally important wading and shorebird habitat. Estuarine and diadromous fish habitat. Customary and recreational fisheries.	Infilling due to catchment clearance. Coastal development. Invasive species (spartina, saltwater paspalum).
Kawhia	High natural character. Relatively healthy estuarine assemblies that are characterised by large inter-tidal flats supporting extensive karepo / seagrass meadows and high bivalve densities. Nationally important wading and shorebird habitat. Tiritirimatangi peninsula wetland, wetlands in the upper reaches of the peninsula's eastern arm and the Awaroa arm. Estuarine and diadromous fish habitat. Customary and recreational fisheries.	Infilling due to catchment clearance. Coastal development. Invasive species (spartina, saltwater paspalum).

3.9 Maori customary fisheries since 1970

The Resource Management Act excludes management and administration of the fisheries of the west coast harbours. This is governed by the various Fisheries Acts, with most fisheries management administered by the Crown, although some delegations to iwi are possible.

The Fisheries Act in force at 1970 was the Fisheries Act 1908. This was replaced by a rewrite in 1983, and the Fisheries Act 1983 was in turn replaced by a revised statute of the same title in 1996. As explained in the pre-1970 section of this chapter, the Fisheries Act 1908 recognised the rights of Maori under the Treaty of Waitangi to their customary sea fisheries in general terms, although it was silent on how this could be put into effect in the wider context of exploitation of fish resources by commercial industry and European recreational fishers, which the legislation also recognised (and in large part promoted). The 1908 Act's provision was repeated in Section 88(2) Fisheries Act 1983.

Changes brought in by the Fisheries Act 1983 have not been researched. However, the Minister of Fisheries during the second reading of the Fisheries Bill explained:

> I now want to turn to some of the other major matters raised in relation to the Bill. The first is the matter of Maori fishing rights. The Lands and Agriculture Committee was hearing submissions on the Fisheries Bill at the time the Waitangi Tribunal reported on the Waitara petition. The New Zealand Maori Council and a group of Maori law students from Victoria University presented submissions on the Bill, which were eloquent in their arguments that Maori fishing rights should be provided for under the Act. Accordingly the select committee has made several changes to the Bill. To my mind these effectively grant most, if not all, the changes recommended by those making submissions on behalf of the Maori people. It would be fair to say that the one request not included is that the Treaty of Waitangi should be specifically mentioned or ratified in the Fisheries Bill. The Government believes it would be most appropriate for the treaty to be considered in the context of the revised Maori Affairs legislation that my colleague the Minister of Maori Affairs proposes to introduce.
>
> Several provisions that will be of assistance to Maori people and Maori fisheries have, however, been included in the Bill. One is the requirement that the Director-General of Agriculture and Fisheries must include the New Zealand Maori Council as one of the public authorities to be consulted in the development of fishery management plans. It is clear that this consultation must also have due regard to the views expressed by those bodies. The Fisheries Authority, an important body that will consider fisheries

> management plans, controlled fisheries, and other matters, is now to have one member appointed after consultation with the New Zealand Maori Council, although the authority already has one member of the Maori race appointed by me.
>
> Clause 83(2), which originally provided that "Nothing in this Act … shall affect any Maori fishing rights given under any other enactment", has been amended to read "Nothing in this Act shall affect any other Maori fishing rights". It therefore clarifies the fact that Maori fishing rights gained by any other means shall not be affected by the Bill. Clause 84(2)(b) provides that regulations may be made to "apply special conditions or confer special rights in relation to fishing by specified communities". It is clear that this provision will continue to allow Maori people to take extra shellfish for tangi and hui as they already do under the present regulation 106K(5A) of the Fisheries (General) Regulations 1950. I stress that this regulation-making power will also allow special conditions to apply to Maori communities in the way that special oyster fisheries are provided for in the far north under the Oyster Fishing Regulations. This regulation-making power will now allow for regulations to be made to provide for Maori fishing rights in certain areas or at certain times. I believe it is up to organisations such as the New Zealand Maori Council to make representations to the Government for such regulations.[178]

A summary statement about the state of the fisheries of the Raglan, Kawhia and Aotea Harbours was presented to the Waitangi Tribunal's Manukau Harbour inquiry in 1984.

> All three are typical of the harbours on the west coast. They contain large expanses of shallow tidal flats broken by narrow channels leading into the arms and bays of each harbour. As in the Manukau, the main fin fisheries are netting for flounder and mullet. Dogfish and schoolshark are caught commercially in small quantities in all three harbours. Kahawai is caught in reasonable quantities in and near Raglan Harbour. Some amateur fishing for snapper also occurs. Generally the commercial fisheries in all three harbours appear to be stable, although dogfish and schoolshark may be under pressure since they are thought to be of a common stock occurring along the west coast of the North Island.
>
> Shellfish: all three harbours are popular areas for amateur shellfish gathering. No commercial gathering has been permitted for the last few years. Prior to 1976, the mussel beds in the harbours were generally small and scattered. In about 1976, a very heavy mussel spatfall caused a number of large beds to develop in each harbour. The beds attracted large numbers of people over the next few years, particularly over the summer holiday period. The mussel beds

[178] Minister of Fisheries, 7 September 1983. *New Zealand Parliamentary Debates*, 7 September 1983, Volume 452, pages 2258-2259. Copy attached to submissions of Office Solicitor, Ministry of Agriculture and Fisheries, undated. Submissions presented to the Waitangi Tribunal Manukau Harbour inquiry during the week 20-24 August 1984 (Wai 8 submission B3). Supporting Papers #2232-2239 at 2235-2236.

> in Raglan Harbour in particular became a major attraction for holidaymakers. By about 1980, the majority of the easily accessible beds had disappeared due to overpicking by both visitors and locals. Currently, there are several small mussel beds in both Raglan and Aotea Harbours, while Kawhia Harbour still contains a few beds of reasonable size. However, Fisheries Officers report that the condition of the mussels in all west coast harbours has generally been poor for the last two years and there have been few problems with people taking excess numbers because of their poor condition.
>
> As in the Manukau Harbour, there has been a dramatic increase in the abundance of pacific oysters in these harbours since about 1980, and this shellfish may now be gathered by amateurs throughout the year. Fisheries Officers report that cockles and pipis are not particularly abundant in the three harbours, although extensive cockle beds were present in Aotea Harbour prior to 1976. Hot summer weather coinciding with spring tides is thought to have caused massive natural mortality amongst the cockles, leading to the disappearance of the beds.
>
> With perhaps the exception of mussels, the changes which have occurred in the shellfish beds of the Raglan, Aotea and Kawhia Harbours appear to be due to natural causes. Most species of shellfish are characterised by large natural fluctuations in abundance and changes in the distribution of the shellfish beds. However, as in the case of the mussel beds, it is clear that these fluctuations may be enhanced by high levels of exploitation of the shellfish.[179]

The role played by the Ministry of Agriculture and Fisheries while the mussel beds were being over-exploited was not discussed in the statement presented to the Tribunal.

Following the passing of the Fisheries Act 1983, two events changed the landscape for fisheries administration and management. The first was the *Te Weehi* case in 1986, when the High Court on appeal held that an individual Maori fisher, while acting with the approval of tribal elders, was exercising his rights under the Treaty guaranteed by Section 88(2) Fisheries Act 1983, and in so doing was not bound by the fisheries regulations[180]. The second was the Maori fisheries settlement agreed in 1992 between the Crown and Maori representatives gathered together by the New Zealand Maori Council, following the Waitangi Tribunal's Muriwhenua and Ngai Tahu sea fisheries reports. As part of this settlement the Waitangi Tribunal was barred from

[179] Submission of C Handford, Scientist, Ministry of Agriculture and Fisheries Auckland, undated. Submissions presented to the Waitangi Tribunal Manukau Harbour inquiry during the week 20-24 August 1984 (Wai 8 Submission B5). Supporting Papers #2240-2252.
[180] *Te Weehi v Regional Fisheries Officer* (1986) 1NZLR 680.

further considering, and making findings or recommendations about, the Crown's management of commercial fishing or commercial fisheries[181].

Despite this statutory limitation on the scope of the Tribunal's inquiry role, there remain aspects of fisheries management and administration that still come within the Tribunal's purview. These include the impact of customary and recreational fishing, and the manner in which the Crown's actions or inactions affect Maori. Crown management of fish stocks generally recognises the tripartite nature of fishing activity (commercial, customary and recreational), and the Crown's management regimes seek to find a point along a spectrum of possible responses that allow each of these activities to make use of the available fish resource, while ensuring sustainability of the resource.

Finding this point is not without its difficulties. The Maori Land Court, when assessing a taiapure application for the west coast harbours in 1998 (discussed more fully below), remarked:

> While the quota management system aims at managing the resource at a sustainable rate, it is a system of general application rather than one which can be aimed at protecting the resource in specific areas. This application illustrates how the system can have its failings when measured against the requirements of traditional and recreational fishermen in certain areas. Subject to zoning and to compliance with any regulatory controls, holders of quota can catch their entitlement where they like. If commercial fishermen concentrate their fishing in a certain area, then this is going to impact on the availability of fish in that area for local fishermen.
>
> It appears by virtue of the circumstances this is what happens in the area of this taiapure. The importance of the coastal area has been emphasised by or on behalf of four major fishing firms. The prevalence of south westerly swells means that Albatross Point offers the only protection to trawlers over a vast area of coastline, and that for safety reasons the trawl fleet prefers to pick up its nets in the area north of Albatross Point in adverse conditions. That area is where both the Kawhia and Aotea Harbours are situated….
>
> The evidence suggests that there is a pattern of commercial fishing dictated largely by the weather, whereby a large number of west coast trawlers fish the area of the taiapure and concentrate in the protected waters north of Albatross Point to lift their nets. The concentration of commercial fishing in this area impacts on customary and recreational users. Notwithstanding that in general

[181] Section 6(7) Treaty of Waitangi Act 1975, as inserted by Section 40 Treaty of Waitangi (Fisheries Claims) Act 1992.

> terms the quota management system may be seen to be improving fishstocks, in the area of this taiapure no tangible improvement has been noted.[182]

It can therefore be seen that the Crown's choice of fishstock management areas has a consequence for customary and recreational fishers.

Some of the other provisions of the Fisheries Act may mitigate the impact of these fishstock management decisions on customary and recreational fishing. These other provisions include opportunities to give priority in management to customary fishing in certain locations, through the establishment of taiapure and mataitai. Taiapure-local reserves were first provided for as a fishery management status in 1989[183], and are currently administered under Part IX Fisheries Act 1996. They were designed to "make better provision for recognition of rangatiratanga and of the right secured in relation to fisheries by Article II of the Treaty of Waitangi", by providing for management of areas that had "customarily been of special significance to any iwi or hapu" either as a source of food or for spiritual or cultural reasons.

Mataitai reserves were provided for by the Treaty of Waitangi (Fishery Claims) Act 1992, which allowed regulations for such reserves to be passed. The current regulations are the Fisheries (Kaimoana Customary Fishing) Regulations 1998. They allow for mataitai reserves to be established in places that are identified traditional fishing grounds. The key automatic features of mataitai are that commercial fishing is excluded, fishing is subject to the amateur fishing regulations, and tangata kaitiaki / tiaki are appointed to make specific decisions appropriate in the circumstances. These can include allowing customary fishing (which do not come under the amateur fishing regulations with respect to fish size or numbers), and promoting bylaws which can have the effect of introducing additional regulation over and above the generally-applicable amateur fishing regulations.

In addition to taiapure and mataitai reserves, there is provision in the 1998 regulations for Maori management of general customary food gathering. Tangata kaitiaki / tiaki can be appointed under the regulations to administer customary fishing in areas outside the reserves. Taking for customary purposes consistent with local tikanga has

[182] *New Zealand Gazette* 1999 pages 2239-2246 at 2243. Supporting Papers #828-835 at 832.
[183] Section 74 Maori Fisheries Act 1989, introducing a new Part IIIA concerning taiapure-local fisheries into the Fisheries Act 1983.

to be authorised by these kaitiaki, a paper record of the authorisation issued (which can be shown to a Fishery Officer), and a report received from the customary fisher about the fishing activity and results. Details of the authorisations issued and fish caught have to be provided by the issuing tangata kaitiaki / tiaki to the Crown's fisheries administrators (currently the Ministry of Primary Industries) quarterly.

Thus it is apparent that a three-tier regime for customary fisheries management has been established, with taiapure for areas of special significance, mataitai for areas of identified traditional significance, and general regulation for all other areas.

Te Rohe Potae Maori have successfully promoted and had established one taiapure reserve (for Kawhia and Aotea Harbours) and two mataitai reserves (at Aotea and Marokopa).

The taiapure reserve is for:

- Kawhia and Aotea Harbours
- coastal waters extending one nautical mile offshore between Taranaki Point and Albatross Point, together with two nautical mile "bubbles" outside the two harbour entrances
- the waters within one nautical mile surrounding Karewa (Gannet) Island

The area of the reserve outside the harbours, as approved, is smaller than the area originally applied for. The area applied for was for a longer length of coastline (from Tirua Point to Taranaki Point), and was for a greater width of waters (between two and four nautical miles offshore).

The taiapure was proposed by Rohe Tautoko Takiari of Ngati Te Waho, endorsed by the Tainui Maori Trust Board, the Maniapoto Maori Trust Board and the Ngati Raukawa Trust Board, and agreed to in principle by the Minister of Fisheries in June 1996[184]. The Minister's agreement in principle triggered a full consideration of the proposal, involving public notification, receipt of submissions and objections, consideration by the Maori Land Court, and the preparation by the Court of a report and recommendation to the Minister.

[184] *New Zealand Gazette* 1996 pages 1581-1582. Supporting Papers #826-827.

The Maori Land Court's report and recommendation on the proposal was completed in September 1998[185]. The Judge remarked how, "unlike some other taiapure proposals", the Kawhia / Aotea proposal was widely supported by the local community, both Maori and European, with opposition coming in the main from the commercial fishing industry. There were also two objections from Maori submitters:

> Eva Rickard maintained that the nature of the legislation still left the effective control of the taiapure with the Ministry of Fisheries, in that the appointment of the committee of management and the implementation of regulations was ultimately directed through that source. This was implementation of law through kawanatanga and not proper recognition of tino rangatiratanga.
>
> James Rickard referred to historical links between the Whaingaroa, Aotea and Kawhia Harbours, and complained that application tended to sever these links. Mr Rickard also objected to recreational fishermen supporting the application so as to further their own interests. He claimed that there was no link between traditional fishing and recreational use, and that one use should not be penalised to advantage others. In his view, if there were to be prohibitions of fishing, that should apply to all users.

In assessing these two objections, the Judge felt that they were "outweighed by the considerable amount of local support" for the taiapure proposal.

Of the local support, the Judge commented:

> There has been ample evidence that an order of taiapure would be widely accepted or even welcomed by the local community, as a means towards improving fisheries in the area of the taiapure. Such is the dissatisfaction with the general state of the local fishery that any initiative to improve the fishery would be acceptable. There is no apprehension over the establishment of the taiapure, and no evidence that the general welfare of the local community would be adversely affected….
>
> During the course of the hearing and in the Proposal, submissions and objections there has been much emphasis on the scarcity of fish stocks within the Kawhia and Aotea Harbours and the outer areas of the Taiapure. The Tribunal has had before it an abundance of evidence as to the rapid decline in fish stocks over the last 30 to 40 years. Surveys of fishing catches conducted in the west coast harbours since 1990 show that Kawhia Harbour has the lowest catch rate of all the harbours.

The Judge remarked that scarcity of fish was not a prime factor in assessing the merits of a taiapure, although he accepted that this had been the catalyst for the application and was behind the local support that the application had received. He was unable to

[185] *New Zealand Gazette* 1999 pages 2239-2246 at 2239-2245. Supporting Papers #828-835 at 828-834.

determine on the evidence before him whether the decline in fish stocks was due to "over-fishing or through environmental reasons, and it is possible that both have a part to play".

The Court found that most of the taiapure area applied for, in particular the two harbours and the Karewa Island waters, was an area of special significance to hapu and iwi as required by the legislation. He interpreted "special significance" as being of "exceptional or of extreme importance compared with the rest of the customary fishery". On this interpretation he declined to recommend the establishment of the taiapure reservation over the coastal waters from Tirua Point to Albatross Point. Between Albatross Point and Taranaki Point, he was required to weigh up the special significance of the area to hapu and iwi against the adverse impact a taiapure would have on the use made of the coastal waters by commercial fishing interests.

> In this regard I have to make some judgement and I take into account that the areas likely to have been of most importance to hapu or iwi would have been close to shore or immediately outside the harbours. I also must take into account the impact that any extension of the existing fishing restrictions might have on the commercial sector.
>
> It is my view that the part of Area 2 [the coastal waters between Albatross Point and Taranaki Point) to be included in the taiapure can be best defined by adopting the existing area which contains restrictions applying principally to commercial fishing, that is, the one nautical mile coastal area and the two nautical mile harbour bubbles. This also avoids the need to define an area that is not already subject of existing definition.[186]

The Minister accepted the Court's recommendation in July 1999:

> In making the decision … I am satisfied, after having carefully considered the matter in terms of Section 181(9) of the Act, with the major finding of the tribunal that the coastal area of the taiapure, as proposed, would cover an important section of the existing trawl fishery, and that the establishment of a taiapure in this area could have an adverse impact on that sector. However, I am further satisfied that the amended boundaries of the taiapure, as recommended by the tribunal, are appropriate in terms of Section 176(2) of the Act. I would also like to record that the advice of the committee of management and affected parties will be sought regarding any outstanding management issues that are associated with, but are outside the boundaries of, the taiapure.[187]

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[186] *New Zealand Gazette* 1999 pages 2239-2246 at 2239-2245. Supporting Papers #828-835.
[187] *New Zealand Gazette* 1999 pages 2239-2246 at 2245-2246. Supporting Papers #828-835 at 834-835.

The Kawhia Aotea Taiapure was established by Order in Council in June 2000[188].

So far as is known, no bylaws have ever been introduced by the taiapure committee of management. This is consistent with what has occurred in other parts of the country, according to the Wairarapa ki Tararua Tribunal:

> While a number of taiapure have been established around the country since 1989, very few, if any, have reached the stage of having had regulations implemented to manage their customary fisheries. Taiapure provisions have been in place for 20 years, so it is clear that a serious rethink is required….[189]

> Taiapure have proven very difficult for Maori to establish and administer. As of our hearings, only seven had been established around the country, with no regulations recommended to the Minister, even though this legislation has been in force for over 15 years. The difficulty is partly the time-consuming and costly nature of the process required for establishing a taiapure and forming a management committee. But equally problematical is that taiapure are often viewed as 'toothless' by Maori. Establishing them requires tangata whenua to negotiate with other groups with interests in the relevant fishery, and at the moment the claimants feel that they are forced to concede so much in the accommodations they must make that what emerges is a hopeless compromise.[190]

The Aotea mataitai reserve was declared in May 2008[191]. Aotea Harbour has been subject to all three tiers of management, with a taiapure in 2000, tangata kaitiaki / tiaki appointed in 2001[192], and a mataitai in 2008. The reasons for this, the effects the different mechanisms have had, and the potential for overlap, have not been researched.

The Marokopa mataitai reserve was declared in January 2011[193]. This was in many respects an alternative to the taiapure status that had been sought in 1996 and had been recommended against by the Maori Land Court in 1998 (discussed above). It extended along the coast between Tirua Point and Harihari Beach, covering the traditional fishing ground in the coastal waters within three kilometres of the mean

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[188] Fisheries (Kawhia Aotea Taiapure) Order 2000. Statutory Regulation 2000/69. Supporting Papers #740-743.
[189] Waitangi Tribunal, *Wairarapa ki Tararua Report*, Volume III, 2010, pages 1008-1009.
[190] Waitangi Tribunal, *Wairarapa ki Tararua Report*, Volume III, 2010, page 1019.
[191] *New Zealand Gazette* 2008 page 1970 (with a correction notice at *New Zealand Gazette* 2008 page 2427). Supporting Papers #838 and 839.
A plan showing the boundaries of the mataitai reserve is posted on www.fish.govt.nz
[192] *New Zealand Gazette* 2001 pages 575-576. Supporting Papers #836-837.
[193] *New Zealand Gazette* 2010 pages 4253-4254. Supporting Papers #840-841.
A plan showing the boundaries of the mataitai reserve is posted on www.fish.govt.nz

high water mark. Commercial fishing in these waters was prohibited. On its establishment, two persons were appointed as tangata kaitiaki for the mataitai reserve.

3.10 Marine reserves

For the sake of completeness, it needs to be recorded that, besides regional councils and the Ministry of Fisheries, there is one other Crown department with a management interest in harbour and marine space. This is the Department of Conservation, which administers the Marine Reserves Act 1971. A small part of one marine reserve, the Parininihi marine reserve in the Pukearuhe / Whitecliffs area, is included in Te Rohe Potae inquiry district. This reserve was established in October 2006[194] and is managed by the Department in consultation with Ngati Tama. Due to time constraints the Parininihi reserve, and marine reserves generally, have not been researched for this report.

3.11 Concluding Remarks

Crown dominance of harbour management was established early in the era of European settlement. This commenced at the statutory level, and was then progressively applied around the country in practical terms as circumstances dictated. At Kawhia and Whaingaroa there was a limited application of Crown authority with the establishment of a Harbour Board at the turn of the twentieth century, but the full effect of this authority was not felt until the late 1920s. When the extent of Crown authority became apparent to Maori at Kawhia and Aotea at this time, they resisted in strongly-expressed terms, though to no avail. There was then a fifty-year period when the Crown's authority for the west coast harbours was barely challenged, before the Tainui Maori Trust Board in 1982 sought to be granted customary control. This attempt failed when the Crown relied upon some statutory detail to avoid considering the merits of the Trust Board's application.

The Tainui Maori Trust Board's application was made during an era when the Crown was actively promoting delegation of aspects of its authority over harbours to local authorities. Delegation to a local Maori organisation was therefore not beyond the realms of possibility, if there had been the will to do so. However, it needs to be

[194] Marine Reserve (Parininihi) Order 2006, issued 11 September 2006. Statutory Regulations 2006/282. Supporting Papers #744-746.

acknowledged that, having regard to the circumstances of the overall Crown – Maori relationship at that time, if the Crown had acceded to the Trust Board's wishes it would have been a truly ground-breaking event.

Delegation of Crown authority for harbours was made far more comprehensive shortly after with the passing of the Resource Management Act 1991. Now all matters to do with harbours, apart from fisheries, have been delegated to regional government. The Waikato Regional Coastal Plan demonstrates how a harbour authority could operate. The Resource Management Act contains provisions that could allow for iwi to exercise far greater control over harbours than they currently do. In the fisheries realm, taiapure and mataitai reservation statuses have granted a limited authority to Maori over fisheries in Aotea and Kawhia Harbours. Restoration of Maori authority for the west coast harbours is therefore more of a possibility today than it was previously.

4. Crown environmental management regimes for land

4.1 Introduction

This section is concerned with efforts by the Crown, or by local authorities acting under legislative delegations, to influence and control how land is used. The main tools in this regard have been the Town and Country Planning Act 1953, its successor the Town and Country Planning Act 1977, and the still-current rewrite of environmental legislation the Resource Management Act 1991. Each of these management regimes have split the land in Te Rohe Potae into a series of zones, each zone having a different set of rules about what activities are acceptable or not, and how any approved activities shall be established and operated.

As an introductory remark, land use planning schemes do not make economic development happen, they can only guide development in appropriate directions and regulate activity once a particular activity has been decided upon. That therefore assumes that there is some development taking place. Yet the context of Te Rohe Potae since the 1950s has generally been one of an absence of major development, with many industrial activities (sawmilling, coal-mining, small dairy factories) in decline, accompanied by significant rural depopulation. There have been few growth pressures on land use. That has had a major influence on the shape of land use planning schemes, which have sought to avoid placing impediments in the way of what economic activity does exist. Planning schemes have tended to be permissive rather than directional. An exception to this in Te Rohe Potae has been an effort to prevent forestry development being at the expense of farming activity.

4.2 Planning before 1970

The Town and Country Planning Act 1953 imposed an obligation on all local authorities to have a district planning scheme. Section 18 defined the purpose of such schemes:

> Every district scheme shall have for its general purpose the development of the area to which it relates … in such a way as will most effectively tend to promote and safeguard the health, safety and convenience, and the economic and general welfare of its inhabitants, and the amenities of every part of the area.

The responsibility for ensuring that the local authorities met the requirement to produce a scheme (and to keep it up to date by reviewing it every five years) lay with the Ministry of Works (in 1973 renamed the Ministry of Works and Development). In the early days of the 1953 Act the Ministry produced model examples of district planning schemes that met the requirements of the legislation, and that local authorities could adopt, with slight modifications to recognise local circumstances. The result was a great deal of similarity in planning schemes around the country.

The Town and Country Planning Act 1953 had evolved out of the Town Planning Act 1926 which, as its name implies, was directed at the control of development of urban areas. Planning schemes under the 1953 Act therefore tended to be primarily concerned with the layout and provision of activities in towns. This led to the development of zoning, whereby residential, industrial and commercial uses in towns and cities could be separated to avoid and reduce the impacts that each had on the others.

The first district planning schemes under the 1953 Act took a relaxed approach to land use activities in rural areas outside the towns. Typically there would be one Rural Zone, and the permitted uses (known as predominant uses in the terminology of the Act) would be "farming of any kind", "forestry", and associated dwelling places. Rural industrial operations tended to be conditional uses, permitted provided that certain conditions about how they were developed and operated were met. Such rules meant few if any restrictions on how the majority of Te Rohe Potae was being used. This is, of course, consistent with the interests of the local authorities, and particularly the majority of Council elected members who were drawn from the farming community. It was also consistent with the views of the Crown, which generally encouraged the development of farming and forestry uses of the land, frowned on noxious weeds, and disliked the concept of land not being used for productive activity. As a high proportion of Maori-owned land was in this latter category, it might be thought that planning schemes would have a direct effect on Maori. However, the planning schemes contained no power to force unused or underused land to be used, and their impact on the use of Maori-owned land in Te Rohe Potae was probably neutral.

Land use planning in Te Rohe Potae needs to be understood in the context of a declining population in the district and, in particular, in the rural parts of the district. A report written in 1977 (but including only a limited range of preliminary results from the 1976 five-yearly census) noted:

> Since about the time of the 1961 census the region's population has fallen. Only the West Coast region [of the South Island] has had a declining population over a longer part of the post-war period. The King Country's population fell most heavily during the late 1960's when New Zealand's growth rate fell sharply and five other regional development priority regions also experienced absolute decreases in population. In the 1971-76 period the region's rate of population decrease slowed in comparison with the 1966-71 period, but nevertheless still decreased by well over 1,000 persons at a time when New Zealand as a whole experienced more population growth than ever before in a five-year period….[195]
>
> Since the mid-fifties the rate of net migration from the King Country has been extremely high in comparison with all other regional development areas, except for the East Coast and the West Coast in the late 1950's, and that the King Country's migration rate has considerably exceeded the migration rates of the other ten regions during the 1960's….[196]
>
> The King Country thus ranks very high in loss of population and in migration levels even amongst regions specially designated for development assistance on account of population loss and high levels of outward migration. More detailed analysis indicates that, not only is the migration level high, but it falls unequally on different sections of the regional community.[197]

The remark about unequal impact on different sections of the community was a comment on the high level of out-migration by young adults, which the report put down to an absence of employment opportunities in the region, and on the higher level of out-migration from the rural districts than from the towns. The report did not examine the ethnic make-up of the population it was studying. However, it would be a reasonable assumption to make that Te Rohe Potae Maori would have been heavily represented in the out-migration from the rural districts, an out-migration that was twofold, into the towns of Te Rohe Potae and away from Te Rohe Potae altogether.

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[195] Department of Lands and Survey, *King Country land use study, Report of Economic Working Party*, July 1977, page 7. Supporting Papers #1457-1639 at 1472.
The data relied on was for the combined area of Otorohanga, Waitomo and Taumarunui Counties, plus Otorohanga, Te Kuiti and Taumarunui Boroughs.

[196] Department of Lands and Survey, *King Country land use study, Report of Economic Working Party*, July 1977, page 7. Supporting Papers #1457-1639 at 1472.

[197] Department of Lands and Survey, *King Country land use study, Report of Economic Working Party*, July 1977, page 12. Supporting Papers #1457-1639 at 1478.

Any loss of Maori population would have been reflected in an increase in underused Maori-owned land and buildings.

Where district planning schemes could have some impact on Maori was in controlling the development of housing in rural areas. There was a general concern that housing development should not be haphazardly placed around the countryside, because there was a cost to the community of providing services to each household, and it was better to concentrate housing in residential subdivisions, preferably near already-existing urban areas. Such residential areas required the subdivision of land into residential sections. The management tools provided in planning schemes to achieve this outcome were controls on subdivision, so that in rural areas the size of each subdivision lot was related to the purpose for which the land was used, and then to restrict housing to one house per title or per economic unit. While this approach was oriented towards the title system in use by the European settler community and the Crown, it was not particularly friendly towards the titles situation applying to Maori-owned land. Whanau might not have partitioned their land, and might want to have a collection of houses on the one title, adopting a papakainga concept. However, it would be unwise to regard this as too much of a difficulty for Te Rohe Potae Maori in the pre 1970s period, because this was an era of rural depopulation, so the need for additional new housing was limited.

The connections between Maori Land, the wider community and district planning schemes became more intertwined during the 1960s. In 1965 the Maori Affairs Act 1953 (the legislation governing the activities of the Maori Land Court) was amended to allow the Court to lay off reserves and vest those reserves in the Crown or local authorities[198]. This was a discretionary power, where the Court "thinks it proper so to do". Two years later the power to set aside land for reserve was made compulsory with respect to esplanade reserves along the coast, lakes and rivers, when the Court was required to follow the subdivision provisions of the Counties Amendment Act 1961[199]. This brought Maori Land into line with the provisions applying to privately-owned General Land, making it necessary that a partition ordered by the Maori Land

[198] Section 3 Maori Purposes Act 1965.
[199] Section 23 Maori Affairs Amendment Act 1967.

Court also had the subdivision consent of the local authority. A plan of partition was made analogous to a scheme plan of subdivision.

No examples of taking of Maori-owned land for reserves in Te Rohe Potae district in the manner described above, or of Te Rohe Potae Maori being prevented by district planning schemes from using their land as they wanted to, have been identified in the pre-1970 period.

Although not strictly an example of land use planning, but rather a direct Crown impact in terms of land use, were the activities of the Department of Lands and Survey as a farm developer. In 1963 the Commissioner of Crown Lands gave evidence to a Commission of Inquiry into the financing of the Lower Waikato and Waipa Rivers Control Scheme. He explained that there were two properties then being developed as farmland in the Waipa River catchment "from the raw state", one in Waitomo County and the other in Waipa County. The Waitomo County property was 4,600 acres in size, and when fully developed was expected to be divided into six sheep farms. Up to that time the Department had developed the following farms in the Waipa catchment:

Table 3 Land development by Department of Lands and Survey, 1963

County	Area Settled (acres)	Number of Sheep Units	Number of Dairy Units
Waitomo	6,806	7	17
Otorohanga	11,400	27	10
Waipa	1,465	-	15
Raglan	1,850	-	12
Total	21,521	34	54

The Commissioner sought to play down the impact of the development on flood flows in the Waipa River:

> It is doubtful whether the Department's impact on the "run-off" in this Catchment would match the efforts of private farmers' development, and consequently this would have little influence on the flow of the Waipa River or its allied flood control problems.

He added:

> While it is conceded that the land development operations of the Department have contributed to increased "run-off" problems to a small degree, it should not be lost sight of that this major activity of the Department, wherein nearly 600 new farms have been created in the Waikato Valley Catchment in post-war years, represents an immense benefit to the National Economy. Relatively incidental resulting factors such as "run-off" problems should be weighed carefully against this major achievement.[200]

As at 1977 the Department of Lands and Survey's Te Kuiti land development branch office was still responsible for nearly 60,000 acres, although this covered a wider area than just Te Rohe Potae, stretching from the Coromandel peninsula to National Park. However, "the King Country remains the main area of the branch's activities"[201].

The Department of Maori Affairs was also active in developing Maori-owned land in Te Rohe Potae prior to and after 1970. It too would have been converting underused land to higher producing farmland, with associated impacts on the environment. Local authority land use planning would have placed few if any impediments in the way of the Department's operations.

4.3 Town and Country Planning Amendment Act 1973

An amending Act in 1973 added a layer of complexity to what had until then been the relatively simple district planning schemes of rural local authorities. Three "matters of national importance" were introduced, which had to be recognised and provided for by councils in their District Schemes[202]. They were:

a) The preservation of the natural character of the coastal environment, and of the margins of lakes and rivers, and the protection of them from unnecessary subdivision and development
b) The avoidance of encroachment of urban development on, and the protection of, land having a high actual or potential value for the production of food
c) The prevention of sporadic urban subdivision and development in rural areas

[200] Submission on behalf of the Department of Lands and Survey, July 1963, attached to Commissioner of Crown Lands Hamilton to Director General of Lands, 26 July 1963. Lands and Survey Head Office file 13/288. Supporting Papers #52-57.
[201] Department of Lands and Survey, *King Country land use study, Report of Economic Working Party*, July 1977, page 34. Supporting Papers #1457-1639 at 1502.
[202] Section 2B, inserted by Town and Country Planning Amendment Act 1973.

At about this time, the first of these matters of national importance was particularly significant for Maori owning coastal land in Waitomo County. In 1971 Waitomo County Council gave the Crown a chance to view a draft version of its district planning scheme[203]. The Ministry of Works circulated Government departments asking them about works they intended to carry out in the county over the following twenty years[204], and a number of departments replied. Maori Affairs had no comments[205], while Lands and Survey drew attention to its work on a West Coast coastal survey looking at the adequacy of public reserves provision along the coast; it intended to meet with the Council to promote the survey's recommendations and persuade the Council to incorporate them in its district planning scheme[206]. When the scheme was publicly notified in May 1973, it included provision for some coastal reserves, presumably as a result of the discussions between the Department of Lands and Survey and the County Council. The provision made in the scheme was a designation for a proposed public work, being a proposed reserve.

Objections to a proposed reserve at Waikawau and a proposed reserve at Kiritehere were lodged by Section 438 trustees of the respective lands, acting on behalf of the beneficial Maori owners[207]. In addition, the Crown objected that a proposed reserve at Waikawau was insufficient, and wanted further land designated as proposed reserve[208]. The Crown then lodged cross-objections against the objections of the Maori trustees[209].

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[203] This was an opportunity statutorily provided for by Section 21(5) Town and Country Planning Act 1953, and Regulation 17 Town and Country Planning Regulations 1960, which referred to the scheme being provided to the Crown "for consideration in conjunction with proposed public works".

[204] Circular letter from District Commissioner of Works Hamilton, 2 August 1971. Works and Development Hamilton file 60/43. Supporting Papers #463-464.

[205] Deputy Registrar Maori Land Court Hamilton to District Commissioner of Works Hamilton, 8 October 1971. Works and Development Hamilton file 60/43. Supporting Papers #468.

[206] Commissioner of Crown Lands Hamilton to District Commissioner of Works Hamilton, 1 October 1971. Works and Development Hamilton file 60/43. Supporting Papers #465-467

[207] Objection numbers 17 (Waikawau) and 19 (Kiritehere) in Summary of Objections, 19 September 1973. Works and Development Hamilton file 60/43. Supporting Papers #469-472.

[208] Statement of objection by Minister of Works and Development, undated, attached to Minister of Works and Development to County Clerk Waitomo County Council, undated (received 5 September 1973). Works and Development Hamilton file 60/43. Supporting Papers #473-480.

[209] Notice of opposition to objections by Minister of Works and Development, 12 October 1973, attached to Minister of Works and Development to County Clerk Waitomo County Council, 12 October 1973. Works and Development Hamilton file 60/43. Supporting Papers #481-484.

The trustees for the Waikawau Maori land objected at a hearing of their objections because one of the terms of the trust defined by the Maori Land Court was that the trustees should investigate the residential subdivision potential of the land. They had consulted with a surveyor, who had identified that a subdivision of 72 holiday house lots was possible, and would soon be in a position to present the County Council with a scheme plan of subdivision for its approval. The designation for proposed reserve would frustrate their development intentions. However, if residential subdivision was approved, there would be an esplanade / recreation reserve laid off along the coastline, which would allow for public access, camping and vehicle parking that was not legally possible at that time while the land was in Maori ownership. They sought a Coastal zoning which would allow for holiday home subdivision development and associated provision of an esplanade reserve[210].

The Crown's cross objection was presented at the hearing by an official from the Department of Lands and Survey. He argued that the existing beach access at Waikawau to the north of the river mouth (through a tunnel) was insufficient, car parking was inadequate, and the opportunity should be taken to safeguard future public access to the coast to the south of the river mouth. He maintained that residential subdivision was inappropriate, because housing would be highly visible on a skyline, and because of the potential for erosion and movement of the sand dunes[211]. With respect to the Crown's own objection seeking a further area to be designated as proposed reserve, this additional area was beside the road and would be suitable as a vehicle parking area, from which there could be pedestrian access to the coastal reserve land[212].

The trustees for the coastal land were also the trustees for the additional land sought by the Department of Lands and Survey. In their statement of objection they argued that the car parking was unnecessary while there was no public access to the coast to

[210] Submission by objectors in support of Objection number 17, 30 October 1973. Works and Development Hamilton file 60/43. Supporting Papers #486-488.
[211] Submission on behalf of Minister of Works and Development in support of cross-objection to Objection number 17, undated. Works and Development Hamilton file 60/43. Supporting Papers #491-493.
[212] Submission on behalf of Minister of Works and Development in support of Objection number 46, undated. Works and Development Hamilton file 60/43. Supporting Papers #497-499.

the south of the river mouth, and that their proposed scheme of subdivision would provide for public use and access[213].

In its decision, the Council sided with the Crown, believing that "the said lands are ideally suited for public use and recreation for the future, and not suitable for the purposes of subdivision"[214]. The Maori trustees then lodged an appeal with the Town and Country Planning Appeal Board, on the basis that the proposed reserve was suitable for residential purposes and a residential development could be carried out without detracting from the scenic value of the area or the natural character of the coastal environment[215]. In its reply the County Council refuted these claims[216].

The Town and Country Planning Appeal Board heard the appeal in May 1974. Evidence was given by the surveyor planner who prepared the district planning scheme, by the same official of the Department of Lands and Survey who had spoken at the Council hearing, and by one of the Section 438 trustees[217]. The trustee, Pukekohatu Joseph, explained that development of the Maori-owned land on the south side of the river was the ambition of the trustees, though was held back by the absence of a bridge across the stream.

> That the Maori beneficial owners of the land have not been able to make much use of their land because they were obliged during the 1930 era to move from their ancestral homes in the locality to places where employment could be obtained, and could not afford the constant travelling to and from or to provide themselves with boats and other gear.
>
> That I believe that with the steadily improving educational standards of our people, and the better employment opportunities open to them, that many will have the means and the leisure to enjoy their property.
>
> That because of this I and the other trustees wish to provide access, to subdivide our land, to set aside as reserves on the actual beach area, and, after

[213] Submission by objectors in support of Objection number 17, 30 October 1973. Works and Development Hamilton file 60/43. Supporting Papers #486-488.
[214] Decision of Waitomo County Council on Objection number 17, 13 December 1973. Works and Development Hamilton file 60/43. Supporting Papers #503.
[215] Notice of appeal, 11 February 1974. Works and Development Hamilton file 60/43/1. Supporting Papers #513-517.
[216] Reply by Waitomo County Council, 5 March 1974. Works and Development Hamilton file 60/43/1. Supporting Papers #518-519.
[217] Statements of evidence of Thomas Aylmer Kenny, Russell Gordon McQuoid and Pukekohatu Joseph, and legal submissions on behalf of respondent council and appellants, undated (May 1974). Lands and Survey Hamilton file 8/5/254/45. Supporting Papers #413, 414-418, 419-422, 423-424 and 425-428.

> selling sufficient sites to cover these costs, to award house sites to individual owners or to family groups.
>
> That I believe that because of the cost involved, this is the only practicable way of enabling our people to secure house sites on their land, and will also have the advantage of creating a settlement for both Maori and Pakeha.
>
> That at one time people owned as ancestral land all of the sea frontage for some twenty or thirty miles north of Waikawau, but most was sold many years ago, and the land the subject of this application is the only area of ancestral lands suitable for residential use remaining in the ownership of Maoris.[218]

The Crown viewpoint, as expressed by the Lands and Survey official, was that residential development would detract from the natural qualities of the locality.

> Development of the subject land for residential use would generally be a detraction from the amenities of the area, in that the existing qualities and conditions of landscape harmony and remote coastal character would be extensively altered and modified by the introduction of man-made elements. Present topography and land cover would be disturbed through the construction of roads and the development of house sites, and problems of erosion and sand drift could very readily occur. Buildings would become placed on the sand dune crest creating undesirable and obtrusive silhouettes breaking the 'skyline', and thereby detracting from the natural character of the views obtained while driving towards the beach and of the foreshore in general, and to a lesser extent from the sea….
>
> The fact that the owners believe this area is eminently suitable for residential purposes, and that they were in the process of preparing a subdivisional scheme at the time the district scheme was publicly notified, is indicative of the pressures that will be brought to bear by either the owners or the general public for development here in the near future…. Remote beaches like Waikawau can provide places of solitude and somewhat 'wilderness' type experiences and appreciation, and such attributes are important considerations in assessing its future development. If residential development is justified in this locality, it should be in such a place that the natural and existing qualities and conditions are not jeopardised or destroyed.

In conclusion he argued that the designation of the Maori-owned land for proposed reserve was "justified as a measure of wise land use planning"[219].

The Appeal Board dismissed the appeal of the trustees, and supported the approach the County Council had taken:

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[218] Statement of evidence of Pukekohatu Joseph, undated (May 1974). Lands and Survey Hamilton file 8/5/254/45. Supporting Papers #419-422.

[219] Statement of evidence of Russell Gordon McQuoid, undated (May 1974). Lands and Survey Hamilton file 8/5/254/45. Supporting Papers #414-418.

> Having considered the evidence and submissions, we have concluded that it would not be good planning to zone the subject land Coastal, and that its zoning as Rural is correct…. Development of that land in a manner permitted by Coastal zoning would be to urbanise half the beach and substantially rob it of its openness and natural character, qualities which make it attractive in the first place. Present topography and land cover would be disturbed and altered, and we find that problems of erosion and sand-drift would become likely.

On the matter of the proposed reserve, the Appeal Board stated:

> Having considered the evidence and submissions, we hold that [Waitomo County Council] has adequate justification for requiring the subject land to be designated as a proposed reserve. In coming to this conclusion we have taken into account the particular character and quality of the land and its significance in relation to the beach and the coastline….
>
> We also hold that the designation is reasonably required to give notice of the proposed work to the public, and that it is just that the statutory provisions and the ordinances placing a limitation on private works pending the acquisition of the subject land for its intended purpose should be made to apply.[220]

Returning to the other objection to Waitomo County Council's district planning scheme from Section 438 trustees, in connection with a the proposed reserve at Kiritehere, the trustees explained to the Council at the hearing of objections that the terms of the trust they were administering required them to set aside half an acre as a recreation and camping ground for the owners, then subdivide the remaining 9½ acres as a residential subdivision. They opposed any compulsory acquisition for public purposes as it would be against the interests of the beneficial Maori owners, and supported a Coastal zoning[221].

The Department of Lands and Survey representatives at the hearing argued that Kiritehere Beach was more attractive than the beach at Marokopa, was already used informally for recreation, and was a potential boat launching site. In response to the residential ambitions of the owners, they suggested that the area of the reserve could be reduced, with a coastal frontage set apart as reserve, and approximately four acres

[220] Decision of Number One Town and Country Planning Appeal Board on Appeal 172/74, 19 June 1974. Copy on Lands and Survey Hamilton file 8/5/254/45. Supporting Papers #429-433.
[221] Submission by objectors in support of Objection number 19, 30 October 1973. Works and Development Hamilton file 60/43. Supporting Papers #489-490.

close to the road developed as a village. They were opposed to the whole of the land being developed for residential purposes[222].

Because of the willingness of the Department of Lands and Survey to consider a smaller-sized reserve area, the Council's hearing was adjourned to allow the Crown and the Maori trustees to discuss the matter between them. Agreement was reached between the parties, which was recorded in a letter from the District Commissioner of Works to the County Council:

> As far as the Kiritehere Beach reserve is concerned, the designation has been reduced to cover an area generally lying between the centre of the sand dune ridge and mean high water mark. The reason for this is that the owners consider they can use the land behind the dunes and at the same time the land behind the dunes is not necessary for effective public utilisation of the beach, which is the object of having the reserve. Further, and in order to protect the dunes from erosion, it has been agreed that they will be suitably planted and fenced off from public access for approximately half a chain (10 metres) when they achieve reserve status.
>
> The amount of beach shown on the accompanying plan might appear to be rather narrow. This is because the mean high water mark adopted for the plan is that taken from the title boundary determined in 1904. Obviously today this line is further seaward due to beach accretion, and therefore the actual width and area of 'reserve' would be greater than is shown on the plan.[223]

The District Commissioner concluded his letter by remarking that, notwithstanding the agreement between the Crown and the owners, what decision was made on the objection and cross-objection, and what was included in the district planning scheme, was a matter for the County Council alone. This is consistent with the history of this proposed reserve. While the Department of Lands and Survey had identified the proposed reserve in the first instance, it had only recommended it to the County Council, and it was the Council that had resolved to include the proposal in the district planning scheme.

Waitomo County Council's decision was in favour of the Department of Lands and Survey's submission. It allowed the objection of the Maori trustees with respect to the portion of the land the Department of Lands and Survey no longer sought for a

[222] Submission on behalf of Minister of Works and Development in support of cross-objection to Objection number 19, undated. Works and Development Hamilton file 60/43. Supporting Papers #494-496.
[223] District Commissioner of Works Hamilton to County Clerk Waitomo County Council, 19 November 1973. Works and Development Hamilton file 60/43. Supporting Papers #500-502.

reserve, giving this area a Coastal zoning, and disallowed it with respect to the land "from mean high water mark to generally the centre of the sand dune". The purpose of the reduced-area proposed reserve would be public access, recreation, and prevention of erosion and disturbance to the sand dunes[224].

There was an unfortunate consequence of the agreement that had been reached. The solicitor for the Maori trustees wrote to the Ministry of Works and Development in November 1974 that the proposed reserve was being used as a public reserve even though it was still Maori land:

> The Maori owners complain that although the parties have negotiated a settlement of the objection, no action has been taken to complete the taking, which means in fact that the whole of the land is still Maori land to the mean high water mark, subject to the proposal designation so far as it remains.
>
> However, the public seems to have been given to understand that it is entitled to use the area of the sand dune, and in fact is trespassing on to the grassed portion of the block. The Maori owners are not prepared to tolerate this position, and propose to take steps to exclude the public from the whole area down to mean high water mark unless and until the taking is properly completed and the areas which are in fact to become public areas are properly defined.
>
> Apparently interference with the Maori land has assumed serious dimensions only recently, but is likely to become aggravated over the summer. Consequently our clients are determined to take some preventive action unless and until the County, the Crown, the Ministry of Works, or whoever is responsible, completes its part of the work involved in the taking and definition of areas within three weeks of this date.[225]

There was no response from the Ministry of Works and Development, and whether this problem was resolved is not known.

4.4 Forestry versus farming – the King Country Land Use Study

During the 1970's the most significant land use debate in Te Rohe Potae was whether land should be put to farming or to plantation forestry use. This was triggered by a proposal developed by New Zealand Forest Products Limited to undertake large-scale exotic forest planting in the south-eastern portion of Te Rohe Potae, essentially the

[224] Decision of Waitomo County Council on Objection number 19, 13 December 1973. Works and Development Hamilton file 60/43. Supporting Papers #504.
[225] Phillips and Powell, Barristers and Solicitors, Otorohanga, to District Commissioner of Works Hamilton, 29 November 1974. Works and Development Hamilton file 60/43. Supporting Papers #506-507.

area south of Te Kuiti and north of Taumarunui, and to the east of the Main Trunk Railway. The company made its ambitions public in the form of an environmental impact report in 1975[226], which was audited by the Commission for the Environment[227].

By the 1970s, past land use had left a legacy of underutilised land. Where farmers had cleared and burned steep hillsides and then been unable to retain them in grass, there was reversion to scrub. Where forest had been logged for its timber trees, there was cutover bush dominated by second tier trees. Such areas were infested with goats, possums and other noxious animals. Te Rohe Potae had a large proportion of this type of country, especially in its southern and eastern areas. NZ Forest Products eyed this under-developed land as an opportunity that it could benefit from. The model it had in mind was the Kinleith pulp and paper mill at Tokoroa; by creating a sufficiently large plantation forestry estate, an industrial-sized processing plant could be established in the district. This entailed forestry becoming the dominant land use of the district.

The proposal needed the support of both the Crown and the local farming community, as it would require the use of State Forest and Crown Land, as well as a large extent of undeveloped land in private ownership, including Maori-owned land. The extent of the change, and the impact on the local community, was apparent in both a preliminary assessment produced by the company in 1973 and the environmental impact report the company produced in 1975. The 1973 assessment[228] was a confidential document (at the time), and was to form the basis for an abbreviated paper on the proposals that was circulated to potentially interested parties in September 1974 for their comments. In the 1973 assessment NZ Forest Products proposed planting pines on 150,000 acres of land. It summed up the advantages in its report:

[226] New Zealand Forest Products Limited, *Environmental Impact Report: Re-afforestation proposals in the King Country*, March 1975. Supporting Papers #1253-1399A.
[227] Commission for the Environment, *NZ Forest Products Limited: Reafforestation proposals in the King Country, Environmental Impact Audit*, 27 June 1975. Supporting Papers #1410-1456.
[228] New Zealand Forest Products Limited, *Proposal for Afforestation and Forest Products Industry in the King Country*, August 1973. Supporting Papers #1225-1252.

> The area has not developed, in fact it once had a number of thriving sawmill towns, but there are now only a few small native timber sawmills that are still functioning.
>
> The areas that have been developed and farmed are prosperous where they are on easy topography, but there are many steep areas that have been grassed and are now being heavily eroded. This is being accelerated by the grazing and trampling of heavy cattle and goats. The Company suggests that the undeveloped, reverting and eroding areas are ideal for the establishment of exotic forest which it is prepared to undertake.
>
> The whole of the area is in headwaters of important river catchments where it would be desirable to keep a large percentage of the area under forest cover.
>
> The project would give the economy a boost and provide good employment for the population, many of whom are now unemployed.[229]

Both Maori-owned land and Crown State Forests would be involved in the proposal; indeed, they would be integral to the project's success:

> Of the 161,690 acres suitable for conversion to exotic forests, 25.9% is State Forest or Crown Land, 20.3% is Maori land, 34.3% is freehold, and 19.5% is small ownerships that have not yet been examined in detail….
>
> Already the Company has made arrangements with the Maori owners to lease for 99 years the Maraeroa "C" block of 14,000 acres within the zone being considered.
>
> Negotiations are in hand with the owners to lease a further 20,000 acres located adjacent to the Maraeroa "C" Block mentioned above.
>
> The lease of additional areas of Maori Land within the zone of our interest will be sought as more details are obtained with respect to ownership and the control of these lands….
>
> Some 37,829 acres of State Forest lands are located within the zone in State Forests No. 59 [Mangaokewa], 97 [Hurakia], 166 [Raepahu] and 184 [sic – should be 174, Mangapehi]. It is only those areas in these State Forests that have been cutover that are being considered.
>
> As the State Forest areas constitute a substantial proportion of the area as a whole, the Company would be hopeful of making suitable arrangements with Government to obtain a 99-year lease for conversion to exotic forest.
>
> Within the overall area there are some small sections of Crown Land totalling approximately 3976 acres. We would hope the Government would either sell or lease these areas to the Company.[230]

[229] New Zealand Forest Products Limited, *Proposal for Afforestation and Forest Products Industry in the King Country*, August 1973, page 5. Supporting Papers #1225-1252 at 1231.

Further detail on the land requirements was provided in the 1975 environmental impact report. All figures in the table below, taken from a table in the report, are in hectares[231].

Table 4 Land requirements for NZ Forest Products forestry proposal

	Grassland	Scrub	Cutover bush	Virgin bush	Total
State Forest	53	16203	12747	3075	32078
Crown Land	540	1820	983	-	3343
Maori Land	6393	9653	4571	26	20643
Freehold[232]	24348	10596	12618	-	47562
Undetermined	455	2463	1708	-	14626
Total	31789	40735	32627	3101	108252
Not to be planted in pines[233]	20777	18940	-	3101	42818
To be planted in pines[234]	11012	21795	32627	-	65434

When the company produced its environmental impact report, it had not sought or obtained the support of the Crown or private owners for the large-scale conversion of cutover forest and reverting grassland and shrubland to pines. It envisaged that land purchase or the obtaining of long-term leases would follow after obtaining a semi-official go-ahead from the Commission's audit. Consultation with Maori landowners was even more limited than the minimal consultation the company had engaged in with local bodies and the European farming community. The only known record of consultation was a letter sent to the Taumarunui office of the Department of Maori Affairs, probably in about September 1974, which asked:

[230] New Zealand Forest Products Limited, *Proposal for Afforestation and Forest Products Industry in the King Country*, August 1973, pages 6-8. Supporting Papers #1225-1252 at 1232-1235.
[231] New Zealand Forest Products Limited, *Environmental Impact Report: Re-Afforestation Proposals in the King Country*, March 1975, page 7. Supporting Papers #1253-1399A at 1264.
[232] This freehold category was acknowledged as including lands of some Maori incorporations.
[233] This was described in the report as "Assigned to: Retained grassland and reserves".
[234] This was described in the report as "Assigned to: Considered for afforestation".

> Could you comment on the impact of the proposals on sites of historical and cultural importance to the Maori community in this area, and the effect on the Maori landowners and the district in general?[235]

The environmental impact report does not record that any response was received. In fact, none of the responses, as recorded in the report, referred to any contemporary views of Maori on the company's proposals.

When the environmental impact report was publicly notified in March 1975[236], a submission was made by the head office of the Department of Maori Affairs, which is quoted here in its entirety, and clearly reflects a Maori welfare perspective rather than addressing the impact of the proposal on the use of Maori Land in Te Rohe Potae:

> The proposals outlined in the report, if implemented, could mean an increase in the demand for home ownership in the smaller servicing towns, and this in turn would reflect in a corresponding increase for housing finance from Maori and Island families. Any such increase is estimated to be within the capabilities of this department.
>
> No indication is given in the report of the location of processing plant or plants. If plants are established with new housing for the workers, inevitably the demand for the department's welfare services will grow. Further the drift of Maori workers from town to city could be somewhat reduced or diverted from other areas. The welfare servicing resulting from such moves could be handled within our existing organisation with minor staff additions.
>
> Generally no immediate difficulties are foreseen in coping with increases for this department's special services if the afforestation proposals proceed as planned.[237]

No other submissions on the environmental impact report commented on the plantation proposals from a Maori perspective.

Of the three legs upon which the afforestation proposal was grounded (land of the Crown, land owned by the European farming community, and Maori-owned land), it was the first two legs upon which it stumbled. Whether it would have also stumbled on the third leg is not known, as the proposal was never advanced to the stage of the company actively seeking out and negotiating with Maori landowners, apart from the

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[235] New Zealand Forest Products Limited, *Environmental Impact Report: Re-Afforestation Proposals in the King Country*, March 1975, page 41. Supporting Papers #1253-1399A at 1302.
[236] *New Zealand Gazette* 1975 page 570. Supporting Papers #795.
[237] Secretary for Maori and Island Affairs to Commissioner for the Environment, 18 April 1975. Submissions to Commissioner for the Environment on NZ Forest Products Limited Reafforestation Proposals in the King Country. Supporting Papers #1402.

leases entered into on the Maraeroa block[238]. The Maraeroa C lease for 99 years (effectively three planting and harvesting cycles) would have provided a template if there had been negotiations with other Maori landowners.

With respect to use of Crown-owned land, the New Zealand Forest Service did not support the conversion of cutover State Forest land to pines, as it had recently adopted an Indigenous Forests Policy that aimed to retain an indigenous forest cover in the first instance. Key to the new approach, and particularly relevant to NZ Forest Products' expectations that cutover forest could be converted to pine plantation, was the following statement from the Policy:

> State indigenous forests should be clear-felled and converted to farm land or exotic forests only when other land in the region is either unavailable or unsuited for further development to meet Government's social and economic goals, regionally or nationally.[239]

Working to this new policy, the Forest Service had then undertaken its own provisional zoning of the State Forests that had been identified by NZ Forest Products, and come up with the following areas:

A.	Reserved Indigenous Forest		
	Protection Forest	8346 ha	
	Biological Areas	6893 ha	
	Amenity Areas	1569 ha	
	Water Supply Areas	200 ha	17,008 ha
B.	Indigenous Production Forest		
	Long-term timber reserves	1999 ha	
	Partial Logging Areas	4119 ha	6,118 ha
C.	Under Review for Other Forms of Management		
	Including possible exotic Afforestation	7894 ha	7,894 ha
			31,020 ha[240]

[238] The section of this report on the South Mapara wildlife management reserve (in the chapter about the conservation estate) indicates that New Zealand Forest Products also entered into a lease arrangement with the three owners of a block of Maori Land (Part Rangitoto Tuhua 68I2B6B).

[239] Indigenous Forests Policy, 1974 (as amended by the Working Party on Indigenous Forest Policy for the Forestry Development Conference, 1975), quoted in Commission for the Environment, *NZ Forest Products Ltd Reafforestation Proposals in the King Country, Environmental Impact Audit*, 27 June 1975, page 9. Supporting Papers #1410-1456 at 1430-1448.

[240] Director General of Forests to Commissioner for the Environment, 23 April 1975. Submissions to Commissioner for the Environment on NZ Forest Products Limited Reafforestation Proposals in the King Country. Supporting Papers #1403-1409.

Thus only a quarter of the State Forest lands were potentially available for pine planting. This was substantially less than the company would have been expecting.

Secondly, the local farming community, who owned most of the privately-owned land that would be required for afforestation, were antagonistic towards the social change that would be involved, and were generally unwilling to sell land to a forestry company. The audit highlighted both these issues, and recommended further study into what would be the best land use for the district. A history of New Zealand forestry has commented:

> The impact report sought to defuse farmer concern by stressing that:
>
> > The company will not actively pursue the acquisition of farmlands, but will stand behind the area as buyers of land suitable for afforestation should they be unable to find farm buyers for their property.
>
> The term 'stand behind' had dual connotations: that of Forest Products being prepared to step in and purchase land not marketable for farming purposes – the company view – and, in unintended fashion, that of a large cash-ready corporation waiting in the wings and by its very proximity undermining local land values.[241]

The result of the negative reaction was that the company "suddenly found itself involved in a land use dispute much worse than anything that the Forest Service had ever been caught in", as the proposals "generated a storm of protest, both locally and from some environmental groups"[242].

The Commission for the Environment's audit found that land in Te Rohe Potae was technically suited to plantation forestry, though it was also suited to other land uses, and was concerned that those other uses might be precluded by what would amount to a pre-emptive strike on behalf of one particular land use. It stated:

> [I]t does not resolve the basic issue of whether forestry is a preferable use to farming, or indigenous forest management in particular areas. This issue may not be significant in areas of well-established farmland or managed indigenous forest, where the future land use is relatively fixed. It is critical, however, in

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These figures were quoted verbatim in Commission for the Environment, *NZ Forest Products Ltd Reafforestation Proposals in the King Country. Environmental Impact Audit*, 27 June 1975, page 10. Supporting Papers #1410-1456 at 1422.
A provisional zoning had been prepared in September 1974. Acting Director General of Forests to Director General of Lands, 26 September 1974. Lands and Survey Head Office file 22/4320/20. Supporting Papers #58-62.

[241] Michael Roche, *History of Forestry*, New Zealand Forestry Corporation Ltd and GP Books, 1990, pages 357-358.

[242] Michael Roche, *History of Forestry*, New Zealand Forestry Corporation Ltd and GP Books, 1990, page 357.

> the "grey areas" of marginal farmland, scrubland and cutover forest on which the company has focussed its attentions. On such land, options are open for alternative land uses, and this land is therefore of considerable importance in deciding the future balance of land use in the regional interest…. The [company's intended] future land use balance has considerable implications not only for economic development but also for the existing rural population, for farming, for indigenous forest management, and for other environmental values, e.g. landscape protection and wildlife habitat.[243]

The Commission was concerned that the company was taking an overly economic approach to deciding best land use. It endorsed a statement by the Land Use Advisory Council that "farmland should not be converted to forestry use unless a detailed study of the physical, social and economic factors shows this to be a desirable course of action", adding:

> The Commission … at the same time recognises that insufficient land capability and recommended land use data and <u>detailed</u> statements of community objectives in the form of district and regional planning schemes are available to the company. In striking a good balance between farming and forestry uses on a regional basis, such information will be most helpful to the company in its proposal.[244]
> [Underlining in original]

The Crown picked up the further study recommendation, and in 1976 committed itself to a multi-disciplinary programme of land suitability inventory work, known as the King Country Land Use Study[245]. This was a whole-of-Government exercise, coordinated by the Department of Lands and Survey, whereby different Government departments would provide in map form (with accompanying text reports) raw data about geology, soils, existing land use, existing forest types and existing land tenure, plus assessments of the significance of the land for agriculture, forestry, wildlife

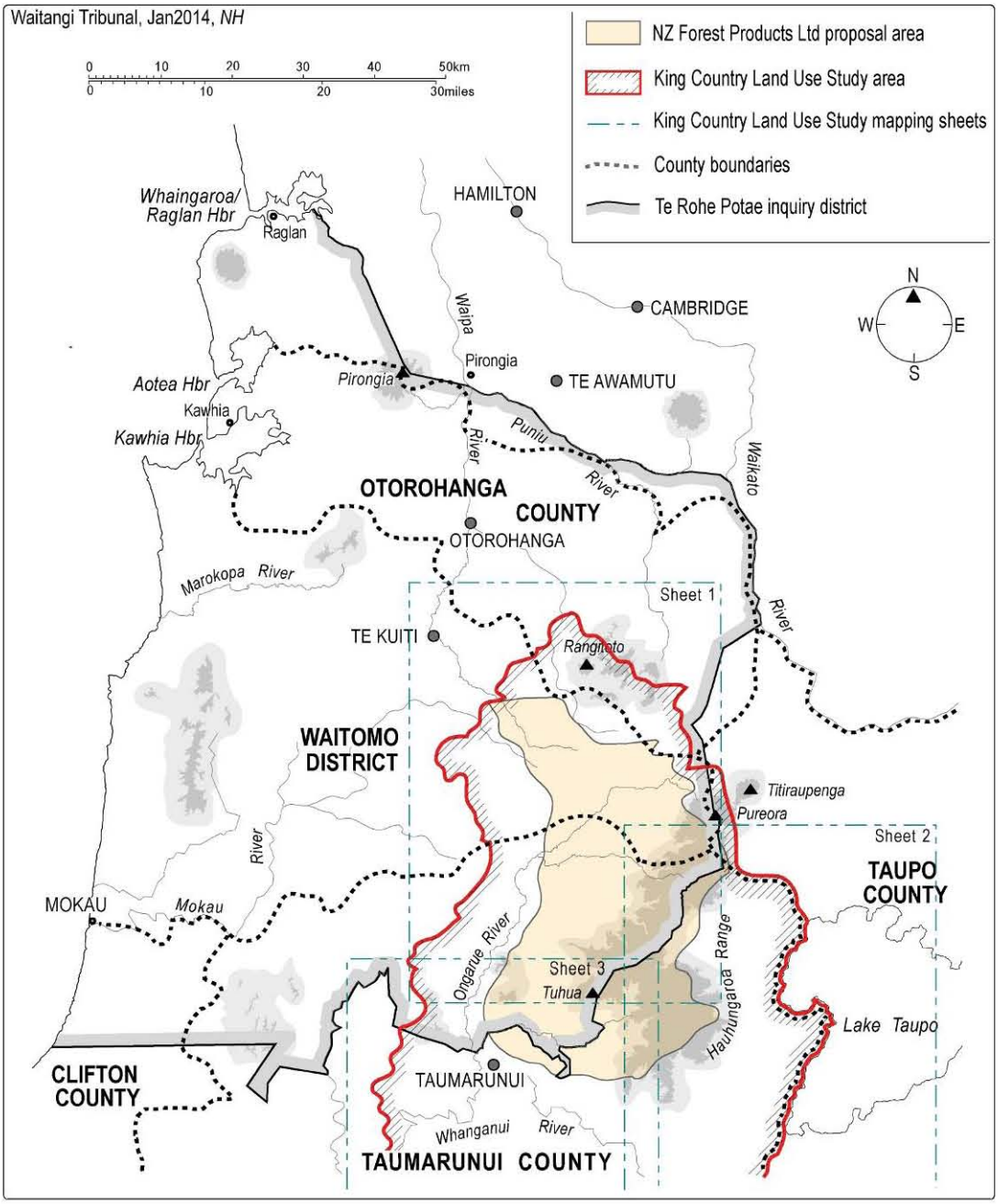
[243] Commission for the Environment, *NZ Forest Products Ltd Reafforestation Proposals in the King Country, Environmental Impact Audit*, 27 June 1975, page 7. Supporting Papers #1410-1456 at 1419.
[244] Commission for the Environment, *NZ Forest Products Ltd Reafforestation Proposals in the King Country, Environmental Impact Audit*, 27 June 1975, page 8. Supporting Papers #1410-1456 at 1420.
[245] The proposal for a coordinated investigation was presented to the Minister of Lands (Director General of Lands to Minister of Lands, 14 April 1976 – Supporting Papers #63-66), who sought the comments of his colleagues (Minister of Lands to Minister of Works and Development, 21 April 1976, and Minister of Lands to Minister of Agriculture and Fisheries, 21 April 1976 – Supporting Papers #67-68 and 69-70). Following an interdepartmental meeting of officials (Minutes of interdepartmental committee, 26 May 1976 – not included in Supporting Papers), the Acting Minister of Lands was advised that officials were supportive (Director General of Lands to Acting Minister of Lands, 1 June 1976 – Supporting Papers #71-72), and issued a press release announcing the undertaking of the Land Use Study (Press release by Acting Minister of Lands, 1 June 1976 – Supporting Papers #73-75). A public meeting was then held in Taumarunui (Minutes of public meeting at Taumarunui, 14 July 1976 – Supporting Papers #76-81). All on Lands and Survey Head Office file 22/4320/20.

protection and recreation[246]. From this planning exercise an idealised pattern of land use, optimising the best uses that could be made of the land, could be developed. The Study had a tight timeframe, so the natural resource appraisals were done rapidly. A Stage 1 report was completed in August 1977 (and printed for distribution in October 1977)[247], and a final report was completed in July 1978[248]. The Stage 1 report covered the land in Te Rohe Potae inquiry district, while the final report also covered additional land south of Taumarunui.

The main thrust of the integrative overall reports was to identify lands of high wildlife protection, recreation or soil conservation significance, and exclude them from consideration for productive land use purposes. After also defining lands of high productive significance for agriculture, it was shown that the amount of land then available for forestry development was not large enough to support a forest industry that would process its raw material in the region, as had already occurred in the South Waikato around the Kinleith pulp and paper mill at Tokoroa.

[246] There were 10 technical reports covering soils, forest and shrub type vegetation, wildlife, land tenure, existing land use, nature resource conservation, recreation, farming, forestry, and energy implications. These were all published together in one document. Department of Lands and Survey, *King Country land use study: Technical reports*, 1978. Supporting Papers #1896-2089.
There was also one further written report prepared by an Economic Working Party, which examined farming and forestry economics. Department of Lands and Survey, *King Country land use study: Report of Economic Working Party*, July 1977. Supporting Papers #1457-1639.
In addition to the written reports, there were 6 maps (each requiring three sheets to cover the whole study area) plotting forest and scrub types, provisional soils, wildlife, rock types and surface deposits, land tenure and land use. There were also five suitability overlays (each requiring three sheets to cover the whole study area) plotting suitability for indigenous forestry, exotic forestry, agriculture, conservation and recreation. Department of Lands and Survey, *King Country land use study: Land inventory and physical suitability evaluation for land use*, 1977. Not included in Supporting Papers.
[247] Department of Lands and Survey, *King Country land use study: Stage 1 report*, September 1977. Supporting Papers #1803-1895.
New Zealand Herald, 3 August 1977. Copy on Lands and Survey Head Office file 22/4320/20. Supporting Papers #86.
[248] Department of Lands and Survey, *King Country land use study: Final report*, July 1978. Supporting Papers #2090-2193.

Map 2 King Country Land Use Study



Parallel with the natural resource assessments, the Study established a King Country Land Use Advisory Committee, which produced its own report[249]. This committee provided a forum for the existing inhabitants of the region, largely farming-oriented, to provide their views and perspectives on land development. Representation on the committee was six persons from local authorities, four persons nominated by King Country Regional Development Council, and four nominees of Federated Farmers. Unsurprisingly, the committee's report favoured the status quo of a farming-dominated economy. However, it did not contain any particularly Maori perspective. Maori were not specifically represented on the Advisory Committee, although two of the Regional Development Council nominees, Brian Jones and Gordon Forbes, were of Maori descent, and a third Regional Development Council nominee, Finlay (Fin) Phillips, was a local solicitor who had worked extensively with the Maori community. Brian Jones, who was also chairman of Taumarunui County Council, was elected to be chairman of the Land Use Advisory Committee.

The Department of Maori Affairs was not initially thought to be one of the affected departments. Departments such as Lands and Survey, Forest Service, Works and Development, Scientific and Industrial Research, Agriculture and Fisheries, and Wildlife Service, were involved in the planning of the Land Use Study[250]. Maori Affairs was involved almost as an after-thought, when the Secretary of Maori Affairs was advised, after the decision to proceed with the Land Use Study had been made, and after a public meeting had been held in Taumarunui to alert landowners to what was proposed, that:

> Field teams may be moving throughout the region quite rapidly, because of the short time available in which the investigation is to be completed. This being the case, it may not always be practical for the teams to gain consent from individual farmers for access to their properties.
>
> It has occurred to me that there may well be areas of Maori land within the study area. This being the case I would appreciate guidance from you as to the most appropriate method of obtaining general agreement to field teams

[249] Department of Lands and Survey, *King Country land use study: Report of King Country Land Use Advisory Committee*, July 1977. Supporting Papers #1640-1802.
[250] Attendees recorded in minutes of interdepartmental committee, 26 May 1976. Lands and Survey Head Office file 22/4320/20. Not included in Supporting Papers.

> entering this land, bearing in mind that wherever practical individual land owners will be approached at the time access is required.[251]

Any response to this request is not known. However, separately at about the same time, a Maori land agent in Taumarunui expressed concern that "Maori freehold land owners have not been invited" to any meetings about the Land Use Study[252]. The Minister of Lands replied:

> The Department of Lands and Survey as the Coordinating Agency for this interdepartmental investigation has been mindful of the need to keep all land owners informed about the investigation wherever this is possible. In respect of Maori land owners, the department did approach the Department of Maori Affairs top seek comment on how best individual land owners could be kept informed of developments. My department is currently awaiting further advice from the Department of Maori Affairs as that department has had to consult its district offices in Hamilton, Rotorua and Wanganui, as parts of the study area are included in each of these three Maori Land Districts.
>
> I can assure you that the Department of Lands and Survey will make every effort to involve Maori freehold land owners in the investigation. However I am sure you will appreciate that before the department can make any specific approach it must await advice from the Department of Maori Affairs.[253]

The main finding of the Study was that 60,000 hectares of land suitable for exotic forestry could be identified without encroaching on lands of high suitability for agriculture or high suitability for a wide range of protection needs such as soil and water, wildlife and recreation. However, this 60,000 hectares was not just in the area of Te Rohe Potae originally identified by NZ Forest Products, and was instead distributed throughout a large area both north and south of Taumarunui. The land suitable for forestry was in a greater number of fragmented blocks spread over a wider area, making the economics of afforestation different from those identified in the NZ Forest Products studies, and different from those examined in the Economic Working Party's report published as part of the Land Use Study one year earlier. A more likely scenario than large-scale afforestation was a continuation of agricultural intensification together with the development of complementary small-scale forestry.

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[251] Director General of Lands to Secretary for Maori Affairs, 21 July 1976. Lands and Survey Head Office file 22/4320/20. Supporting Papers #82.

[252] Aotea Maori Agency, Taumarunui, to Parliamentary Under Secretary for Maori Affairs, 5 July 1976, attached to Parliamentary Under Secretary for Maori Affairs to Minister of Lands, 6 August 1976. Lands and Survey Head Office file 22/4320/20. Supporting Papers #83-84.

[253] Minister of Lands to Aotea Maori Agency, Taumarunui, 10 August 1976. Lands and Survey Head Office file 22/4320/20. Supporting Papers #85.

Following completion of the Land Use Study in July 1978, the Minister of Maori Affairs was asked for his comments on the results[254]. He replied in general terms only:

> The report and its supporting data bring together a very comprehensive amount of information relating to national land use planning, and will obviously form the basis of that planning.
>
> The recommendation in the report to set up a King Country Regional Land Use Advisory Committee is noted, and the suggestion is made that with 97,370 ha of Maori land in the total study area of 437,600 ha, consideration is given to the inclusion of representatives of the Tainui Maori Land Committee and my department on that committee should it be formed.
>
> Other recommendations relating to Maori land and Maori affairs are also noted and are being considered.
>
> While much will depend on the future action taken by the local authorities in implementing their land use plans, the report does show that there is considerable scope for the increase in production from both farming and forestry in the area, and this must be encouraged.[255]

Once the reports had been produced, attention turned to how to implement the proposals. The main method envisaged was the use of district schemes under the Town and Country Planning Act. These could include policy statements about the direction the local authorities would like land use to take, although, as previously mentioned, district planning schemes could not force particular land uses on unwilling landowners. Taumarunui County Council chose to adopt an activist stance when, following on from the Study, it split the rural area into four zones. In one of the zones covering about one-third of the county (Rural 2), which was based on the Study results having identified it as being of high productivity for farming, the Council made farming a predominant use (i.e. permitted as of right with no conditions), while making pine plantation forestry a conditional use (i.e. generally permitted but not necessarily throughout all of a zone, and therefore requiring prior Council approval). This approach was not supported by forestry organisations or by the Minister of Works and Development (acting at the request of New Zealand Forest Service); they objected to the proposal, and took the Council's rejection of their objections to the

[254] Minister of Lands to Minister of Maori Affairs, 4 September 1978. Lands and Survey Head Office file 22/4320/20. Supporting Papers #87.
[255] Minister of Maori Affairs to Minister of Lands, 26 September 1978. Lands and Survey Head Office file 22/4320/20. Supporting Papers #88.

Planning Tribunal on appeal. The Tribunal found in favour of the County Council[256], in doing so opening the way for other farmer-dominated local authorities around the country to act in a similar fashion and introduce restrictions on forestry in their district schemes, provided there was an adequate factual foundation for this.

Roche, the forestry historian, saw this and similar planning decisions elsewhere in New Zealand in political terms. He considered that the farming community's attacks on the socio-economic impacts of forestry were not based on solid social research, and instead revealed "that they were interested in preserving local structures of power and privilege"[257].

Having seen the success of the Taumarunui County approach, Waitomo District Council applied it in a similar fashion in its district planning scheme review; this is discussed in a later section of this chapter.

The biggest impediment that the two local authorities identified when using the Land Use Study data was that the area of the Study had been chosen in the initial stages of the Study for a purpose other than local authority district scheme planning, even though the final report identified such planning as the means by which its results could best be utilised and implemented. In having been developed from a starting point of analysing NZ Forest Products' proposed afforestation development, it had been centred on the eastern parts of Otorohanga District, Waitomo District and Taumarunui County, and had not covered the whole of these three local authorities' districts. Instead the coverage was defined by the size of the Study's three map sheets, effectively three rectangular portions of the region. Having insufficient data to cover the whole of each local authority's area meant that there were difficulties in applying the results in a robust and defendable manner across the whole authority area. The local authorities overcame this difficulty by also relying on another land classification system that had been developed by the National Water and Soil

[256] *Fletcher Forests Ltd and others v Taumarunui County Council*, decision of the Planning Tribunal, 8 December 1981 (decision A113/81). 11 NZTPA (New Zealand Town Planning Appeals) 225.
Copy of decision on Lands and Survey Head Office file 22/4320/20. Supporting Papers #96-108.
The Planning Tribunal decision was upheld on appeal to the High Court in November 1983. 11 NZTPA (New Zealand Town Planning Appeals) 233.
[257] Michael Roche, *History of Forestry*, New Zealand Forestry Corporation Ltd and GP Books, 1990, page 351.

Conservation Organisation and catchment authorities. This was the land use capability classification system adopted for Land Resource Inventory mapping, which was focussed on soil and geology type, vegetation cover, steepness of terrain, and the risk of erosion as a limitation on land use. This system had achieved national coverage, and so provided a common basis for each local authority area that could be enhanced by the data and insights of the inventory approach of the King Country Land Use Study where that data was available. The pre-review statement for the Waitomo District Council's district planning scheme review, produced in 1981, discussed the two systems:

> The King Country Land Use Study produced various maps showing the land and its cover over a limited area in the east. Concurrently the Water and Soil sector of the Ministry of Works and Development, in conjunction with the Waikato Valley Authority, produced the Land Resource Inventory Worksheets, based on the familiar 1 mile to an inch topographic maps, and a complete coverage of the Waitomo District is now available.
>
> These maps are essentially a planning tool, and will be used to identify and analyse the land resources of the district….
>
> The Land Resource Inventory Worksheets clearly provide a wealth of data on which to base land use decisions….
>
> The King Country Land Use Study has produced more detail over a limited area to the east, and has perhaps more clearly identified lands appropriate to certain uses. Various scenarios have been established assuming different development proposals. Those appearing most favourable are wholesale exotic forestry with its attendant pulp mill within the district, or pastoral expansion with supplementary forestry. However the district's terrain is so broken, and social and transportation factors so variable, that no clear cut recommendation is available within a democracy as we now know it. Thus the somewhat broader approach of the Land Resource Inventory Worksheets, with its total coverage, is more than adequate for the rural planning needed within the District Scheme Review.[258]

Another consequence of the Study besides its data's use in district scheme planning was the establishment of a King Country Regional Land Use Advisory Committee, not to be confused with the King Country Land Use Advisory Committee that prepared a report as part of the Study in 1977. The Regional Land Use Advisory

[258] Waitomo District Council, *Waitomo District Council district planning scheme review: statement of objectives and policy*, June 1981, pages 68 and 70. Copy attached to District Clerk Waitomo District Council to District Commissioner of Works Hamilton, 8 July 1981. Works and Development Hamilton file 60/43/4. Supporting Papers #696-729 at 721 and 722.

Committee was appointed by the Minister of Lands in 1979[259], with secretarial servicing provided by the King Country Regional Development Council. The key feature of the new Committee, so far as Maori landowners were concerned, was that one of the members appointed to the Advisory Committee was there to represent Maori land interests. This had been one of the conclusions of the Study's final report[260], and had been recommended to the Minister by a meeting of Government officials and local authority members in Te Kuiti in November 1978[261]. The Department of Maori Affairs was asked to recommend a suitable person to be the Maori representative[262]. In its reply, the Department identified a generic problem that held back Maori involvement in wider community discussions when it stated:

> As you will be aware, there is no recognised body truly representative of all Maori land interests in the King Country Land Use Study area, from which to call nominations. Also the Study area embraces two Maori Land Advisory Committee areas, they being the Waikato- Maniapoto and Aotea districts.

It further commented on the absence of Maori Affairs as one of the Government departments to have representatives attending the Advisory Committee's meetings:

> It is also noted that the list of Government Departments who are to supply co-opted members does not include Maori Affairs. I consider that with Maori land comprising 22% of the total land in the region, that officers of this department would have the necessary expertise to assist the Committee in regard to Maori land. For this reason it is suggested that you add Department of Maori Affairs to your departmental list supplying co-opted members.

The Department recommended that Gordon Horace (Hori) Forbes, who had been on the earlier committee as a Regional Development Council representative, should be the Maori land representative[263]. This was accepted[264], as was the request for a Maori Affairs departmental representative[265], with the Department's District Field Officer

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[259] Director General of Lands to Minister of Lands, 1 February 1979, approved by Minister 22 February 1979. Lands and Survey Head Office file 48/4/4/1. Supporting Papers #113-116.
[260] Department of Lands and Survey, *King Country land use study: final report*, July 1978, page 112. Supporting Papers #2090-2193 at 2186.
[261] Minutes of meeting of interim group, 22 November 1978. Lands and Survey Head Office file 48/4/4/1. Supporting Papers #109-112.
[262] Director General of Lands to Secretary for Maori Affairs, 13 March 1979. Lands and Survey Head Office file 48/4/4/1. Supporting Papers #117.
[263] Secretary for Maori Affairs to Director General of Lands, 11 April 1979. Lands and Survey Head Office file 48/4/4/1. Supporting Papers #118.
[264] Director General of Lands to GH Forbes, Te Kuiti, 7 May 1979, Director General of Lands to Minister of Lands, 30 May 1979, approved by the Minister 31 May 1979, Minister of Lands to GH Forbes, Te Kuiti, 31 May 1979, and press release by JB Bolger, MP for King Country, undated. Lands and Survey Head Office file 48/4/4/1. Supporting Papers #119-120, 121-123, 124-125 and 128-129.
[265] Director General of Lands to Minister of Lands, 30 May 1979, approved by the Minister 31 May 1979, and Director General of Lands to Secretary for Maori Affairs, 7 June 1979. Lands and Survey Head Office file 48/4/4/1. Supporting Papers #121-123 and 130.

based in Taumarunui being appointed[266]. These appointments constituted a small step forward by the Crown with respect to a recognition of Maori interests, as there had been no specific Maori representative on the earlier King Country Land Use Advisory Committee. Besides the Maori representatives, Brian Jones continued to be involved, representing the Regional Development Council[267].

The Regional Land Use Advisory Committee was a short-lived body, however. It held only a few meetings during 1979 and 1980, and was wound up when the Waikato and Tongariro United Councils started operating (see a later section of this chapter) and it was considered that these new regional authorities were better placed than an advisory body of central government to take the Land Use Study's recommendations forward[268]. This was probably naïve thinking on the part of central Government, given that the King Country was split between two different United Councils.

The production of the King Country Land Use Study was a major investment of time and resources by the Crown, perhaps the most intensive specific attention that the Crown devoted to Te Rohe Potae during the 40-year period covered by this overview. If the data it assembled had justified a major forestry development of a comparable size to the South Waikato plantation resource around Tokoroa, then the Study would have been hailed as a comprehensive basis for a major new regional development. However, when it failed to provide such a justification, and instead recommended a continuation of the farming-dominated status quo, its significance shrank markedly, and it became virtually ignored. Despite the wealth of resource information collected, its impact on land use decisions by Maori landowners has probably been negligible.

[266] Secretary for Maori Affairs to Executive Officer King Country Regional Development Council, 14 June 1979. Lands and Survey Head Office file 48/4/4/1. Supporting Papers #131.
[267] Minister of Lands to BH Jones, 31 May 1979, and press release by JB Bolger, MP for King Country, undated. Lands and Survey Head Office file 48/4/4/1. Supporting Papers #126-127.
[268] The decision to wind up the Committee was made by officials in December 1981 (Director General of Lands to Commissioner of Crown Lands Hamilton, 11 December 1981, and Commissioner of Crown Lands Hamilton to Secretary King Country Land Use Advisory Committee, 21 January 1982 – Supporting Papers #132 and 133-134), and approved by the Minister of Lands in August 1983 (Director General of Lands to Minister of Lands, 8 April 1983 and 27 April 1983, approved by the Minister 10 August 1983 – Supporting Papers #135-136 and 137), though the final meeting was not held until June 1984 (Minutes of meeting, 27 June 1984 – Supporting Papers #138-142). All Lands and Survey Head Office file 48/4/4/1.

Although not relevant to this overview, it should be noted that both land utilisation data systems (the Land Use Study's inventory approach, and the catchment organisation-based Land Resource Inventory Worksheets' capability classification approach) had their respective champions among officials in central Government departments, the Waikato Valley Authority, and the Rangitikei-Wanganui Catchment Board, and a lot of energy was directed towards 'turf protection'. Such attitudes, combined with Forest Service's loss of confidence in the inventory approach when the Study failed to support a large-scale forestry future for the King Country and was used to construct planning barriers to forestry in Taumarunui County[269], blunted and reduced the perceived worth of the Study and its methodology once it had been completed.

4.5 Town and Country Planning Act 1977

The rewrite of the town and country planning legislation in 1977 expanded the purposes of planning beyond the purely physical planning of the 1953 Act, adding in social and cultural factors as well. Regional planning and 'wise use' of land were also given a greater role to play. The matters of national importance were expanded from three to seven. The most directly relevant "matter" for Maori was "the relationship of the Maori people and their culture and traditions with their ancestral land". The term 'ancestral land' was not defined in the legislation. At first the Planning Tribunal tightly defined the term as land always owned and still owned by Maori[270], perhaps the most obvious example being Maori-owned burial grounds. However, if burial grounds were the most obvious examples of ancestral land, there were many such wahi tapu on lands that had passed out of Maori ownership. Therefore the approach taken by the Tribunal was being overly restrictive. Of course, to Maori, ancestral land had always been regarded as a term that could include land of all statuses, and that also included waters. It was only when the High Court in 1987 (and the Court of

[269] While a critical analysis of the King Country Land Use Study exists that was prepared by a Forest Service official who had been identified for advancement in that Department and sponsored to complete a Masterate in Public Policy, time constraints have prevented it being studied for this overview. TG Simeonidis, *The King Country land use study: its contribution to the development of land use policy*, February 1982, Research paper for Master of Public Policy, Victoria University, Wellington. Not included in Supporting Papers.

[270] *Knuckey v Taranaki County* (1978), 6 NZTPA (NZ Town Planning Appeals) 609.
The Planning Tribunal also ruled that Manukau Harbour could not be considered as ancestral land, because it was a bed of a harbour vested in the Crown, a decision that would have applied also to the harbours in Te Rohe Potae district. *Auckland District Maori Council v Manukau Harbour Maritime Planning Authority* (1983). 9 NZTPA (New Zealand Town Planning Appeals) 167.

Appeal in 1989) decided that ancestral land was any land with which Maori had an ancestral connection[271], that this matter of national importance started to have some substance. By then, however, the Town and Country Planning Act was about to be overtaken by resource management legislation with a new focus. Therefore, while the court decisions were of little practical application in terms of further activity under the 1977 Act, they did establish the legal environment within which the new legislation was developed during the environmental law reform programme of the late 1980s, so their legacy does live on. In this context, it is worth noting that "the relationship of the Maori people and their culture and traditions with their ancestral land" introduced in the Town and Country Planning Act 1977 survives unchanged (though amplified) in the wording of Section 6 of the Resource Management Act 1991.

Each local authority was responsible for producing a district planning scheme. For Te Rohe Potae inquiry district, this meant planning schemes for Waikato County, Waipa District, Otorohanga District, Waitomo District, Taumarunui County, and Clifton County. There was insufficient time during the research for this report to examine all district planning schemes. For this report, the Waitomo District planning scheme has been concentrated upon.

4.5.1 Waitomo District Planning Scheme

Planning schemes prepared under the old Town and Country Planning Act 1953 continued to have effect after the passing of the 1977 Act, until they became due for review. Thus the Waitomo County and Te Kuiti Borough district planning schemes, approved in 1974, became due for review in 1979. However, it was not until June 1981 that the Waitomo District Council embarked on a review of the former schemes, with the publication of a pre-review "Statement of Objectives and Policies" document, on which public comment was invited. The legislation described the function of this Statement as:

> [s]etting out the planning objectives that the Council responsible for the scheme proposes at the time to incorporate in the review of the scheme, and

[271] *Royal Forest and Bird Protection Society v Habgood* (1987), 12 NZTPA (NZ Town Planning Appeals) 76.
Environmental Defence Society v Mangonui County Council (1989), 3 NZLR (NZ Law Reports) 257.

the policy to be pursued to achieve those objectives, and such plans as may be necessary or desirable to illustrate those objectives and that policy.[272]

The District Council's document, 114 pages long, made only passing reference to tangata whenua and their relevance to the district. One of five proposed objectives was "to recognise the special needs of the Maori community"[273]. However, this was translated into just one proposal, the provision of marae zones.

> Marae zones will cover Marae areas and their environs, and will be established in consultation with members of the Maori community. The Marae zone will eventuate where:
>
> (a) the Maori community establishes trustees, advisers or a management committee responsible for the ownership, operation and maintenance of the Marae,
>
> (b) the committee so appointed prepares a development plan for the area showing the overall development, stages of development, provision of services, access, parking, amenity planting, and the location and layout of buildings,
>
> (c) Council is satisfied as to the committee's status and that the resulting development plan is feasible and does not infringe planning principles and objectives applicable to the area.
>
> Generally it would be expected that the development plan would provide for community halls, churches, sports grounds, recreation buildings, residential accommodation, and cultural and ethnic uses associated with the Marae and its Urupa. A specimen plan is shown as Fig. 6.1.
>
> Objectives – Marae Zones
>
> - To provide a specific zone where the traditional Maori Marae lifestyle may flourish.
> - To ensue that any Marae Zone is established only in accordance with a development plan prepared by acknowledged representatives and approved by Council
> - To promote the elements of Maori tradition, craft, respect and family within and about the Marae.[274]

Candidates identified as suitable for Marae zoning were Maniaroa pa near Awakino and Oparure.

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[272] Section 60 Town and Country Planning Act 1977.

[273] Waitomo District Council, *Waitomo District Council district planning scheme review: statement of objectives and policy*, June 1981, page 14. Copy attached to District Clerk Waitomo District Council to District Commissioner of Works Hamilton, 8 July 1981. Works and Development Hamilton file 60/43/4. Supporting Papers #696-729 at 703.
These objectives were repeated in the subsequent district planning scheme. Waitomo District Council, *District planning scheme*, approved October 1986, page 59. Supporting Papers #2295-2321 at 2319.

[274] Waitomo District Council, *Waitomo District Council district planning scheme review: statement of objectives and policy*, June 1981, page 83. Copy attached to District Clerk Waitomo District Council to District Commissioner of Works Hamilton, 8 July 1981. Works and Development Hamilton file 60/43/4. Supporting Papers #696-729 at 728.

The pre-review Statement identified Oparure as the only centre of population in the district where the marae predominated over European foci of activity such as schools, stores and workplaces. In connection with Oparure and smaller Maori settlements it stated:

> Oparure is not a township in an accepted sense, but does have a community focus in a marae, school and hall. There is a significant local population, predominantly Maori, settled on typical small holdings as previously partitioned through the Maori Land Court.
>
> Council recognises the special attachment the Maori community has with its land and marae. There are clearly problems with the urban and city drift of many young people. There is presently a trend to encourage these people back to the traditions and disciplines of the marae. Council supports this trend and proposes appropriate measures within this planning review.
>
> Oparure is the largest such community in the district. Many smaller areas exist together with their Maraes. It is desirable that all Maraes be appropriately zoned with the help of the Maori community….
>
> Objectives – Oparure
>
> - To recognise the importance of the Marae to the Maori community, and to provide appropriate zoning.
> - To involve the Maori community in promoting appropriate land usage.[275]

Besides a Marae zoning, the Council also recognised that a Rural Residential zoning might be appropriate at Oparure.

> This type of zoning could be associated to the established Maori communities about their central Marae, thus allowing the traditional father to son transfer of land interests. It may be particularly appropriate to such places as Oparure, where there is an established Maori community on very small rural holdings.[276]

The only other specific mentions of Maori in the pre-review Statement were in connection with Taharoa, and with the people of the district. The Council's concern at Taharoa was with the dependence of that community on a single industry and

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[275] Waitomo District Council, *Waitomo District Council district planning scheme review: statement of objectives and policy*, June 1981, pages 29-30. Copy attached to District Clerk Waitomo District Council to District Commissioner of Works Hamilton, 8 July 1981. Works and Development Hamilton file 60/43/4. Supporting Papers #696-729 at 704-705.
The Statement's description was repeated in the subsequent district planning scheme. Waitomo District Council, *District planning scheme*, approved October 1986, pages 18-19. Supporting Papers #2295-2321 at 2302-2303.

[276] Waitomo District Council, *Waitomo District Council district planning scheme review: statement of objectives and policy*, June 1981, page 77. Copy attached to District Clerk Waitomo District Council to District Commissioner of Works Hamilton, 8 July 1981. Works and Development Hamilton file 60/43/4. Supporting Papers #696-729 at 727.

employer, the ironsand mine, with few alternative employment opportunities available for women or youth. It remarked:

> It is especially in the interests of the Maori community, with their special ties to their land, to investigate ways and means of investing the ironsand wealth back into local long term projects of benefit to their younger people.[277]

The Statement added that "provision should be made in the planning scheme review for a wider range of community and recreational facilities, including appropriate provision for the Aroka marae, and other areas of significance to the Maori community"[278]. With respect to the people of the district, the Council's interest was in increasing population and employment generally, together with an objective to "recognise the special needs of the Maori community"[279].

While not a reference to Maori, the pre-review Statement discussed the decline of native timber logging, a matter that would have been of interest to tangata whenua because of the timber resource on Maori-owned land. After setting out the recently-announced Government policy on logging on State Forest land at Pureora, which would reduce the cut from 60,000 cubic metres to 6000 cubic metres of timber a year (as discussed in the next chapter of this report in connection with the establishment of Pureora Forest Park), it commented:

> While the final decisions regarding indigenous forestry have been postponed to 1981, the intent of Government is plain. Large scale indigenous forestry is viewed as a remnant industry faced with inevitable extinction. The effect of the moratorium [for three years from 1978] will be to accelerate the transition to a much smaller scale of operation; a scale suited to producing limited quantities of high quality and costly timber. Furthermore, Government appears resolved to extend the principles of selective logging to private indigenous forests, but this proposal conflicts with local opinion where the land and its forest are seen as a resource to be either developed in the best productive interest of the district, region and nation, or to be preserved only

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[277] Waitomo District Council, *Waitomo District Council district planning scheme review: statement of objectives and policy*, June 1981, pages 32-33. Copy attached to District Clerk Waitomo District Council to District Commissioner of Works Hamilton, 8 July 1981. Works and Development Hamilton file 60/43/4. Supporting Papers #696-729 at 706-707.
This was repeated in the subsequent district planning scheme. Waitomo District Council, *District planning scheme*, approved October 1986, page 22. Supporting Papers #2295-2321 at 2305.

[278] Waitomo District Council, *Waitomo District Council district planning scheme review: statement of objectives and policy*, June 1981, page 34. Copy attached to District Clerk Waitomo District Council to District Commissioner of Works Hamilton, 8 July 1981. Works and Development Hamilton file 60/43/4. Supporting Papers #696-729 at 708.

[279] Waitomo District Council, *Waitomo District Council district planning scheme review: statement of objectives and policy*, June 1981, page 71. Copy attached to District Clerk Waitomo District Council to District Commissioner of Works Hamilton, 8 July 1981. Works and Development Hamilton file 60/43/4. Supporting Papers #696-729 at 723.

> when some specific feature (or combination of features) occurs. The wholesale preservation of remnant areas of forest, often not regenerating, and with no supportive features, is seen as grossly wasteful of a vital land resource.[280]

Such a utilitarian viewpoint was of long standing, having justified the continuation of the timber industry in Te Rohe Potae for the previous 80 years, and it was clearly something ingrained in the European landowning community that dominated local body politics and elected representation. Whether it was an opinion shared by Maori landowners at this time (1981) is not known.

As briefly mentioned earlier in this chapter, Waitomo District Council sought in its district scheme review to control conflicts between farming and exotic forestry use of land, once the King Country Land Use Study had been completed. In its pre-review Statement it proposed seven objectives for the rural areas of the district, around which rural zoning would be developed. These were:

- To protect as far as is reasonably possible, the developed grassland farming pattern, as the basic productive unit within the district.
- To encourage intensification and diversification of farming styles while still protecting the basic pattern.
- To protect lands where adverse development practices have caused, or are likely to cause, erosion.
- To encourage appropriate development of suitable undeveloped lands.
- To recognise and protect areas of high agricultural and pastoral production.
- To recognise and define areas of low potential pastoral production where forestry or other alternative land uses may well offer a better return to the district, region or nation.
- To recognise and define intermediate areas of medium potential production, and to promote appropriate land usage.[281]

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[280] Waitomo District Council, *Waitomo District Council district planning scheme review: statement of objectives and policy*, June 1981, page 59. Copy attached to District Clerk Waitomo District Council to District Commissioner of Works Hamilton, 8 July 1981. Works and Development Hamilton file 60/43/4. Supporting Papers #696-729 at 716.

[281] Waitomo District Council, *Waitomo District Council district planning scheme review: statement of objectives and policy*, June 1981, pages 48-50. Copy attached to District Clerk Waitomo District Council to District Commissioner of Works Hamilton, 8 July 1981. Works and Development Hamilton file 60/43/4. Supporting Papers #696-729 at 713-715.
These objectives were repeated (with some amendment to the second objective) in the subsequent district planning scheme. Waitomo District Council, *District planning scheme*, approved October 1986, page 37. Supporting Papers #2295-2321 at 2313.

The District Council expanded on these general rural area objectives in a set of objectives for farm production, for exotic forests, and for land set out elsewhere in the Statement. The objectives for farm production were:

- To recognise pastoral farm production as the basic predominant productive land use of the district.
- To protect the basic traditional farming pattern from the pressures of wholesale acquisition for other purposes, unless good reason can be established.
- To encourage manufacture toward end use within the district of the district's farm produce.
- To encourage manufacture within the district of farm requirements.[282]

The objectives for exotic forests were:

- To recognise and promote exotic forestry as an appropriate alternative land use in many parts of the district.
- To limit exotic forestry as far as possible to areas not already predominantly in established pasture.
- To encourage two-tier farming to a degree appropriate to the land use capability within any holding.
- To recognise the social impact of large areas of exotic forest.
- To promote associated manufacturing uses within the district.
- To encourage the establishment of farmer cooperatives to promote exotic forestry management, silvicultural and marketing skills.
- To investigate fair and equitable funding of roading improvements and maintenance directly attributable to exotic forestry cartage.[283]

The objectives for land were:

- To recognise land as the basic resource of the rural district.
- To recognise the vulnerability of that land to abusive management practices, and the long term effects of those practices.

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[282] Waitomo District Council, *Waitomo District Council district planning scheme review: statement of objectives and policy*, June 1981, pages 67-68. Copy attached to District Clerk Waitomo District Council to District Commissioner of Works Hamilton, 8 July 1981. Works and Development Hamilton file 60/43/4. Supporting Papers #696-729 at 720-721.
These objectives were repeated in the subsequent district planning scheme. Waitomo District Council, *District planning scheme*, approved October 1986, pages 55-56. Supporting Papers #2295-2321 at 2316-2317.

[283] Waitomo District Council, *Waitomo District Council district planning scheme review: statement of objectives and policy*, June 1981, pages 60-61. Copy attached to District Clerk Waitomo District Council to District Commissioner of Works Hamilton, 8 July 1981. Works and Development Hamilton file 60/43/4. Supporting Papers #696-729 at 717-718.
The first objective was substantially altered, while the remaining objectives were repeated (with some amendments), in the subsequent district planning scheme. The first objective in the approved scheme read:

> To recognise and promote exotic forests as a wise alternative land use on Class V, VI, VII and VIII of the New Zealand land resource inventory survey, where soil conservation and protection measures are required, or where pastoral development is limited, isolated or marginally economic under accepted farming practices.

Waitomo District Council, *District planning scheme*, approved October 1986, page 49. Supporting Papers #2295-2321 at 2314.

- To classify land in accordance with its physical attributes.
- To devise zonings and desirable land uses appropriate to the identified land.
- To protect high productive potential agricultural or pastoral land as far as it is possible for that purpose.
- To promote land improvement drainage schemes.
- To recognise lands of suspect stability, especially where those lands have an apparent potential for urban development, and to promote measures appropriate to the drainage, planting, erosion control and development of these critical lands.[284]

Distilling all these objectives, the pre-review Statement proposed three general rural zones, as follows:

- A Rural A zone on Class I, II and III lands under the Land Resource Inventory Worksheets classification, to "protect high potential productive agricultural and pastoral farmland for that purpose"
- A Rural B zone on Class IV and V lands, and some Class VI lands, to "protect medium productive potential pastoral farmland for that purpose", and allow large-scale exotic forestry as a conditional use, in recognition of its "increasing importance … as a management and productive practice appropriate to much of this land".
- A Rural C zone on some Class VI lands, and Class VII and VIII lands, for "areas of land of low productive potential where forestry may well provide the best protection of productive use.[285]

These various objectives clearly demonstrate Waitomo District Council's preference for continued development of farming, with plantation forestry seen as very much a subordinate and less favoured land use.

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[284] Waitomo District Council, *Waitomo District Council district planning scheme review: statement of objectives and policy*, June 1981, pages 70-71. Copy attached to District Clerk Waitomo District Council to District Commissioner of Works Hamilton, 8 July 1981. Works and Development Hamilton file 60/43/4. Supporting Papers #696-729 at 722-723.
These objectives were repeated in the subsequent district planning scheme. Waitomo District Council, *District planning scheme*, approved October 1986, page 58. Supporting Papers #2295-2321 at 2318.

[285] Waitomo District Council, *Waitomo District Council district planning scheme review: statement of objectives and policy*, June 1981, pages 74-77. Copy attached to District Clerk Waitomo District Council to District Commissioner of Works Hamilton, 8 July 1981. Works and Development Hamilton file 60/43/4. Supporting Papers #696-729 at 724-727.
Three rural zones for high, medium and lower quality land, were repeated in the subsequent district planning scheme. Waitomo District Council, *District planning scheme*, approved October 1986, page 60. Supporting Papers #2295-2321 at 2320.

Besides indigenous and exotic forestry, the Statement also referred to "other forests".

> There is a third category of 'forest' which has a resource potential in the district. This resource lies in the land presently covered in cut over bush, scrub, fern and the like, and which is often 'locked up' in State Forests or in multiple Maori ownerships. For much of this land there appears to be no development policy which could return some benefit to the district, the region or the nation, in the foreseeable future. Council advocates the productive use of such land, as does the King Country Land Use Advisory Committee.
>
> Objectives – Other Forests
>
> - To recognise areas of cut over bush, scrub and fern, and assess their land use potential.
> - To ensure these unproductive lands become available for a wise productive purpose.
> - To preserve critical areas as protection forest.
> - To encourage cooperatives, trusts and incorporations of owners to enable the productive use of idle land.[286]

The quotes above from Waitomo District Council's Statement of Objectives and Policy are indicative of the limited ability of district planning schemes to drive change. A planning scheme can be supportive of economic development, can advocate for certain development outcomes, and can set limits on development once development is proposed, but it cannot make development happen. This has also been the case with the planning provision for a coastal settlement at Te Maika, discussed in the next section.

The Ministry of Works and Development coordinated the responses of various government departments to the Council's pre-review Statement, and prepared a single central government submission[287]. The nature of the Ministry's response suggests that the Department of Maori Affairs did not provide any comments, as there is only one comment about Maori matters. This came from the Department of Social Welfare

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[286] Waitomo District Council, *Waitomo District Council district planning scheme review: statement of objectives and policy*, June 1981, pages 61-62. Copy attached to District Clerk Waitomo District Council to District Commissioner of Works Hamilton, 8 July 1981. Works and Development Hamilton file 60/43/4. Supporting Papers #696-729 at 718-719.
These objectives were repeated, though with amendments to acknowledge that these other forests could have soil and water conservation, regeneration, wildlife, botanical, recreation and amenity values, in the subsequent district planning scheme. Waitomo District Council, *District planning scheme*, approved October 1986, page 50. Supporting Papers #2295-2321 at 2315.

[287] District Commissioner of Works Hamilton to District Clerk Waitomo District Council, 11 November 1981, attached to District Commissioner of Works Hamilton to Commissioner of Works, 12 November 1981. Works and Development Head Office file 149/261. Supporting Papers #376-397.

rather than from Maori Affairs, and was concerned with the authority and autonomy of marae committees, in the context of the objectives and policy for Marae zones.

> In providing a marae zoning, Council states that it must be satisfied as to the status of a Marae Committee. Council should be careful not to be seen as trying to determine the membership of marae committees with such a statement as this. A marae committee is a group made up of tangitawhenua [sic] who have been duly elected by members of a community who are concerned with the marae. The community are the only ones who can determine who should and can appropriately be a member of this committee.[288]

Whether Maori organisations or individuals made submissions is not known.

Following the receipt of submissions on the pre-review Statement, Waitomo District Council produced a draft district planning scheme in May 1983. This too attracted submissions (which have not been examined for this report because of time limitations), and the district planning scheme was approved and became operative in October 1986.

4.5.2 Te Maika Planning Change

While the legislation required a local authority to undertake a total review of their district planning schemes every five years, there was also provision for them to make changes to their schemes at any time[289]. These changes had to be publicly notified, with provision for objection and cross-objection to the same extent as applied to a whole scheme or scheme review. The settlement of Te Maika, on the southern head of Kawhia Harbour, was the subject of a Change in 1979.

Some of the matters leading up to the Change, and the Change itself, have been briefly examined by Belgrave et al[290]. Those authors relied solely on the file records of the Nature Conservation Council, one of the objectors to the Change. In this report the Change is examined in more detail, relying particularly on the file records of the

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[288] District Commissioner of Works Hamilton to District Clerk Waitomo District Council, 11 November 1981, page 14, attached to District Commissioner of Works Hamilton to Commissioner of Works, 12 November 1981. Works and Development Head Office file 149/261. Supporting Papers #376-397 at 390.

[289] They could introduce a Variation where a scheme or scheme review had been publicly notified and was still being developed, but had not yet been approved. Or they could introduce a Change to an approved scheme.

[290] Michael Belgrave et al, *Te Rohe Potae environmental and wahi tapu report*, Wai 898 document #A76, August 2011, pages 121-124.

Ministry of Works and Development, the principal Government department responsible for the Crown's involvement with town and country planning legislation. In so doing, the Te Maika Change illustrates the direct involvement that the Crown continued to have in local planning during the 1970s, even though the primary administrative responsibility had been passed to local authorities.

Te Maika is a block owned by the Maori Queen and occupied by a number of leasehold baches[291]. Dame Te Atairangikaahu and her advisors were keen to arrange the occupation of the block on a more secure footing, and in 1973, when the Waitomo County Council district planning scheme was notified, sought to have the Council's intended Rural zoning changed to a less restrictive Coastal zoning (which would allow for subdivisional development)[292]. The Crown opposed the change of zoning:

> [The Minister opposes] Objection No. 22 in part on the grounds that to re-zone the land as Coastal would permit development of the land following the existing pattern of subdivision, and this is undesirable and contrary to accepted principles of town and country planning and the public interests, for the reasons set out in Part 3(B)(14) of the Scheme Statement.[293]

In essence the Crown was arguing that a zone allowing subdivision would contravene the land use policy of the County Council as set out in the district planning scheme's Scheme Statement section.

A copy of the Crown's cross-objection was sent to the solicitors for the Maori Queen, noting:

> As you are aware, the Waitomo County Council states in its district scheme that it is not prepared to construct roads or provide services for development in accordance with the existing pattern of subdivision [at Te Maika], and has zoned the land Rural to prevent the erection of houses that could not and would not be provided with roads and services.

[291] It had previously been part of Parawai Native Township. Heather Bassett and Richard Kay, *The impact of the Native Townships Act in Te Rohe Potae: Te Kuiti, Otorohanga, Karewa, Te Puru and Parawai Native Townships*, Wai 898 document #A62, April 2010.
[292] Objection No. 22 in Summary of Objections, 19 September 1973. Works and Development Hamilton file 60/43. Supporting Papers #469-472.
[293] Notice of Opposition to Objections by Associate Minister of Works and Development, 12 October 1973, attached to Associate Minister of Works and Development to County Clerk Waitomo County Council, 12 October 1973. Works and Development Hamilton file 60/43. Supporting Papers #481-484.

> The Council's view is supported, but if the owners of the land put forward acceptable proposals to re-subdivide and develop the area, then residential development would not be opposed.[294]

After a hearing in October 1973, at which both the Maori Queen's solicitors and her trustees for the land, and officials from the Ministry spoke, Waitomo County Council issued its decision:

> Objection disallowed. The Council is of the opinion that whilst it is not against development at Te Maika, as described in the Scheme Statement to its District Scheme it considers that control until such time as the owners present a plan of development can only be exercised under a Rural zoning.
>
> The objectors have advised that within a period of twelve months a plan of proposed development for Te Maika should be available. At that time Council will entertain a Change to its District Scheme under Section 29 of the Town and Country Planning Act 1953, to give effect to approved proposals.[295]

Developing a plan of proposed development was apparently not without some difficulties. In October 1974, one of the trustees, Gordon Forbes, together with a consultant engaged to advise on a subdivision, met the Minister of Maori Affairs:

> Mr Forbes outlined the difficulties faced by the owners of the land, a block of 110 acres.
>
> 1) The land was gifted to the Kingitanga; has no access except by boat;
> 2) In 1900 a subdivision survey was legalised;
> 3) In 1959 the Waitomo County Council permitted some "leaseholders" (with leases written by a lawyer (Mr O'Shea?)) to lease road reserve land – the leases being with both the county and King Koroki;
> 4) With new rating system, income from these leases now insufficient to meet rate demand, and Mr Forbes was given power-of-attorney to investigate the whole situation;
> 5) Waitomo County has zoned area "Rural" until such time a subdivision scheme which meets modern requirements as to water and sewerage and protection of the environment is presented and included in the County's District Scheme;
> 6) There [have] been reactions from archaeological and conservation groups to any such plan, and their reactions have been supported by several lessees. This has caused some anxiety and embarrassment to Queen Te Ata;
> 7) The need to safeguard the peninsula, archaeological sites and the environment was stressed. But there was the need to ensure also that the rates were met by the income;
> 8) The Minister's advice was sought.

[294] Commissioner of Works to O'Shea and O'Shea, Barristers and Solicitors, Ngaruawahia, 19 October 1973. Works and Development Hamilton file 60/43. Supporting Papers #485.
[295] Decision of Waitomo County Council on Objection No. 22, 13 December 1973. Works and Development Hamilton file 60/43. Supporting Papers #505.

The Minister outlined that:

1) Any subdivision plan may be affected by the chain esplanade requirement, and would result in most of the peninsula land being allocated;
2) It may be better for the owner/s to consider leasing the land as a "special" reserve (Crown, Historic, Archaeological, Maori, etc) to the Crown, who will defray rates, pay leasehold, guarantee that land will return to owners if purpose of lease is altered. The Crown would also negotiate with existing sub-lessees and leaseholders with a view to termination of leaseholds and vacating area;
3) Right of access of the owners will be guaranteed;
4) Messrs Forbes and Tressider agreed to discuss the technical and machinery aspects of such a proposal with Mr Lucas, Head Office of the Department of Lands and Survey – the meeting to be arranged.[296]

The two representatives, with Koro Wetere (Member of Parliament for Western Maori), then met with Mr Lucas, Director of National Parks and Reserves in the Department of Lands and Survey, the following day. They explained that, her father having been gifted the area, the Maori Queen was "very conscious of the fact that she holds the land not as an individual but by virtue of her office, and that she is therefore responsible to manage it against that background and in the best interests of both the land and her people". The Kawhia County Council had leased portions of the road reserve, and there had later been a joint agreement between Waitomo County Council and the Maori Queen in an endeavour to move the baches off the road reserve and on to adjoining sections. However, this move had not happened.

> The trustees were concerned that while a great deal of use, most of it unplanned, was being made of the area, little or no revenue was forthcoming, and accordingly decided to commission investigations into possible development of the area….
>
> Mr Forbes indicated that he personally had sympathy with the concept of protecting the area because of its high environmental quality, its ecological fragility, and its great historical and spiritual significance to the Maori people, and he felt there was merit in the Minister's proposal [that it be leased by the Crown as a quasi reserve]. He would see it as essential that the Maori Queen should always have the right to build a house on the land, that she should be assured of a reasonable rental from the Crown, and it would be desirable to consider some of the land being used for afforestation in association with the Taharoa land. He said that there would be many seasonal occupation sites on the Peninsula but he questioned the great significance, from a unique

[296] Notes of meeting, 23 October 1974, attached to Director General of Lands to Commissioner of Crown Lands Hamilton, 30 October 1974. Works and Development Hamilton file 60/43. Supporting Papers #508-512 at 511-512.

> viewpoint, of the Peninsula's archaeology, but he did emphasise the prime importance of the area in Maori history because of the close association it had in prehistoric days with Ngatoroirangi and in more historic times with Te Rauparaha and, of course, the area is closely associated with the landing place of the Tainui canoe. Mr Forbes mentioned that he would like to see the area cleared of existing buildings.
>
> Mr Wetere said that this concept appealed to him, and it was generally agreed that if it were carried through it would be desirable to build in special conditions and safeguards into special legislation which would validate a lease as was done with [Lake] Waikaremoana.
>
> The Director of National Parks and Reserves stressed the problems involved in the Crown inheriting the present situation, but said that if the area were investigated and found to be of key importance as a possible public reserve, then there would be justification for a case to be made for Government which would clear the way for negotiations with Queen Te Ata.

It was agreed that a site investigation by local Crown officials and the trustees, "carried out as discretely as possible", would be undertaken[297]. While a report by a Department of Lands and Survey official was prepared in March 1975[298], there was little further progress made. According to evidence presented to Waitomo District Council in 1979:

> The Attorneys [trustees with power of attorney] made an approach to Government about 1974 with the view to the Crown taking a lease of the area to enable the area being some type of public reserve. The Crown turned this down for reasons which we were never given.[299]

Although not researched for this report, it is believed that the Crown's change of attitude followed the change of Government at the General Election in 1975.

By the end of 1976 the trustees for the land were continuing with their earlier proposal of drawing up a development plan for the block, which they presented to

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[297] Director General of Lands to Commissioner of Crown Lands Hamilton, 30 October 1974. Works and Development Hamilton file 60/43. Supporting Papers #508-512.
The idea of a reserve at Te Maika had originated with two Europeans, Ron Locker and James McNeish, who had formed a Kawhia Protection Society to promote it. They had met with Crown officials in Wellington in August 1974 (Director General of Lands to Commissioner of Works, 21 August 1974. Works and Development Hamilton file 60/43/3. Supporting Papers #520-522). It is likely their actions had seeded the idea of a reserve in the minds of the Maori Queen's trustees.

[298] "Te Maika Peninsula, Kawhia Harbour: Report on proposed reservation", prepared by Senior Planning Surveyor Hamilton, March 1975. Works and Development Hamilton file 60/43/3/1. Supporting Papers #536-547.

[299] Statement of Evidence of Brian Hauauru Jones, undated (presented 19-20 September 1979). Works and Development Hamilton file 60/43/3/1. Supporting Papers #635-636.

Waitomo District Council[300]. The Council accepted it as a district planning scheme Change that it was prepared to publicly notify for comment. Public notification occurred in February 1977, the description of the change being:

> All the land described hereunder and shown on Planning Map No. 9 Te Maika as Residential to be changed to Esplanade Reserve, and land shown on Te Maika Development Plan No. 10, outlined in green, produced for the owners by Bruce Henderson and Associates, to be zoned Residential.
>
> Schedule of Areas:
>
> | | |
> |---|---|
> | Residential | 5.8405 hectares |
> | Accessways | 0.0766 hectares |
> | Road | 5.4964 hectares |
> | Esplanade Reserve | 4.8128 hectares |
> | Recreation Reserve | 9.8799 hectares |
> | Commercial | 0.2200 hectares |
> | Total Area | 26.3260 hectares[301] |

However, one month later, it was reported:

> The Waitomo District Council is intending to cancel its current notification of this change, and readvertise. This has come about as a result of certain facts coming to light which were not made clear by the applicants in their original proposal. It is now clear that the developers' intentions are different from the Council's understanding of their scheme.[302]

During the one-month period before withdrawal of the proposed Change, three Government agencies, the Department of Health[303], the Water and Soil Division of Ministry of Works and Development[304], and the Nature Conservation Council[305], expressed their concerns about the proposed development. These concerns are not

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[300] It had also been presented to bachholder lessees. O'Shea and O'Shea, Barristers and Solicitors, Ngaruawahia, to Lessees at Te Maika, 15 November 1976. Nature Conservation Council file 14/4/77. Supporting Papers to Wai 898 document #A76, pages B51-B57.

[301] Public notification of Change No. 3 to Waitomo County District Scheme, 1 February 1977. Works and Development Hamilton file 60/43/3/1. Supporting Papers #535.

[302] Resident Engineer Te Kuiti to District Commissioner of Works Hamilton, 16 March 1977. Works and Development Hamilton file 60/43/3/1. Supporting Papers #550.
This was confirmed five days later. Secretary Waitomo District Council to District Commissioner of Works Hamilton, 22 March 1977. Works and Development Hamilton file 60/43/3/1. Supporting Papers #552.

[303] Medical Officer of Health Hamilton to District Commissioner of Works Hamilton, 15 March 1977, and Director of Public Health to District Commissioner of Works Hamilton, 17 March 1977. Works and Development Hamilton file 60/43/3/1. Supporting Papers #548 and 549.

[304] Director of Water and Soil Conservation to Mrs Robertson, 18 March 1977. Works and Development Hamilton file 60/43/3/1. Supporting Papers #551.

[305] Secretary Nature Conservation Council to Chief Executive Officer Waitomo District Council, 29 March 1977, attached to Secretary Nature Conservation Council to District Commissioner of Works Hamilton, 29 March 1977. Works and Development Hamilton file 60/43/3/1. Supporting Papers #553-555.
A copy of the objection is in Supporting Papers to Wai 898 document #A76, page B62.

discussed in this report, as they were overtaken by the intended withdrawal of the Change.

The revised development proposals were publicly notified as Change No. 4 in May 1979.

> The Change provides for a small coastal residential zone, extensive reserves, and the rationalisation of existing development. This Change replaces Scheme Change Number 3 covering the same locality, which has now been withdrawn.[306]

While said to be a "small" coastal residential zone, the proposal provided for 93 sections. To put that in perspective, there were at that time 63 current leases to bachholders.

The Change was notified to Government departments by the Ministry of Works and Development[307]. Responses came from the following departments:

- Wildlife Service noted that the main swampy area had been shown on the development plan as a recreation reserve; it wanted any development to be orientated toward maintaining the wetland as a wildlife habitat[308]
- Water and Soil Division in Head Office of Ministry of Works and Development were concerned that "the natural character of the coastal environment seems to be at stake"; together with being a sporadic subdivision in a rural area, the proposal was against the spirit and intent of the Town and Country Planning Act. The effect of small lot sizes plus drainage problems on septic tank disposal needed to be addressed[309]
- Department of Health was concerned about a lack of adequate detail about drainage and sewage disposal[310]

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[306] Waitomo District Council Scheme Change No. 4, April 1979. Copy on Works and Development Hamilton file 60/43/3/1 (later handwritten amendments on this document should be ignored). Supporting Papers #601-607.
Public notice of District Scheme Change No. 4 – Te Maika, 4 May 1979, attached to circular letter from District Clerk Waitomo District Council, 4 May 1979. Works and Development Hamilton file 60/43/3/1. Supporting Papers #556-557.

[307] District Commissioner of Works Hamilton to Government Departments, 8 May 1979. Works and Development Hamilton file 60/43/3/1. Supporting Papers #558.

[308] Director Wildlife Service to District Commissioner of Works Hamilton, 16 May 1979. Works and Development Hamilton file 60/43/3/1. Supporting Papers #559.

[309] Commissioner of Works to District Commissioner of Works Hamilton, 17 May 1979. Works and Development Hamilton file 60/43/3/1. Supporting Papers #560-561.

[310] Director of Public Health to District Commissioner of Works Hamilton, 30 May 1979. Works and Development Hamilton file 60/43/3/1. Supporting Papers #564.

In summarising the comments from Government Departments, and undertaking their own assessment on town and country planning grounds, the planning officials in the Ministry of Works and Development in Hamilton concluded that while the proposal appeared to be professionally executed, there were three important aspects that had been "either completely overlooked or else merely glossed over". These were:

i Sewerage reticulation disposal, water supply and stormwater disposal
ii Impact of road construction and building on extremely steep slopes
iii Impact on historic sites

They recommended an objection, noting:

> Our approach to this proposal is that, if this development was proposed from scratch, total opposition would be justified under Section 3(c) of the Act. In view of the fact that there is a settlement already in existence, the approach should be to consolidate on what is there and try to minimise the impacts as discussed above.[311]

The recommendation was adopted, and the Crown lodged an objection in June 1979[312].

In addition, the Nature Conservation Council objected that the proposed Change was not in the public interest, because of effect on the landscape, presence of archaeological sites, impact of road construction and waste disposal, and modification to swamp areas that were native flora and fauna habitats and a source of food for the local Maori population[313].

There were other objections lodged by lessees, and also an objection from the Maori Queen, who was seeking a series of improvements to the Scheme Statement and the deletion of an Ordinance setting out different subdivision standards to those that would apply to other areas zoned Coastal. A further objection from a Taharoa resident sought "consultation with Maori people of Taharoa"[314]. When the objections

[311] District Commissioner of Works Hamilton to Commissioner of Works, 31 May 1979. Works and Development Hamilton file 60/43/3/1. Supporting Papers #565-568.
[312] Statement of objection by Minister of Works and Development, 11 June 1979, attached to Minister of Works and Development to Chief Executive Waitomo District Council, 11 June 1979. Works and Development Hamilton file 60/43/3/1. Supporting Papers #598-600.
[313] Secretary Nature Conservation Council to Waitomo District Council, undated, attached to Secretary Nature Conservation Council to District Commissioner of Works Hamilton, 25 May 1979. Works and Development Hamilton file 60/43/3/1. Supporting Papers #562-563.
[314] Summary of requests for alterations, undated. Works and Development Hamilton file 60/43/3/1. Supporting Papers #608-611.

were publicly notified, a number of people, principally lessees but also including the Taharoa Maori Council, took the opportunity to lodge cross-objections.

In preparation for the hearing of the objections, the Ministry of Works and Development obtained a report from a geologist on the geology and erosion susceptibility of Te Maika[315].

At the hearing of objections before the Waitomo District Council over two days in September 1979, the Crown's planning witness argued that the remoteness, wildness and scenic beauty of the peninsula would be harmed by the sheer number of buildings that would be allowed by the Change. It would allow 94 dwelling units spread over 13 hectares.

> There is no way, in my opinion, that development could proceed on such a density without modification of the natural features of this area, with resultant detrimental effect on the environment.

He felt that the swamp areas, depressions and steep slopes were unsuitable for housing, because of flooding and erosion risks. Dwellings on the tops of hills and ridges would be visually prominent and not in keeping with the remote character of the location. Applying these criteria, the number of suitable house sites was reduced to 56, which he regarded as a maximum. The reduction in density would allow more scope to take account of sewage disposal needs and protection of historic sites[316].

Two soil conservators working for the Waikato Valley Authority presented a submission on behalf of the Authority. Their concern was that there had been inadequate consideration of the impact of sewage disposal on soil and water values, and of the risk of land instability. The risks of instability were related to wind erosion of the surface sands, slope failure caused by earthworks during development, and slope failure caused by interfering with subsurface drainage patterns[317].

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[315] J Gibb, Report on Te Maika Peninsula, August 1979, attached to Commissioner of Works to District Commissioner of Works Hamilton, 24 August 1979. Works and Development Hamilton file 60/43/3/1. Supporting Papers #612-617.

[316] Statement of Evidence of James Andrew Paul, undated. Works and Development Hamilton file 60/43/3/1. Supporting Papers #618-626.

[317] Statement of Evidence of Timothy Wallace Marshall and Robert Bruce Gardner, 19 September 1979. Works and Development Hamilton file 60/43/3/1. Supporting Papers #627-630.

Presenting the objections of the Maori Queen, a solicitor argued that the decision made by the Council in 1974 sought better utilisation of the peninsula to enable the particular environment or character of Te Maika to be protected. The Coastal zoning and the proposed Change was "an endeavour to protect and enhance the special environment of Te Maika". However, there were some matters of detail where amendments to the Scheme Statement and to a clause in the Ordinances were required, to emphasise the area's isolation, to recognise grazing as a means of minimising the fire risk, and to clearly separate the role of Council from the direct relationship between lessor and lessee[318].

One of the three trustees for the Maori Queen referred to the Crown withdrawing from the proposal to declare Te Maika a public reserve in 1975:

> I can therefore only assume that the Government did not consider that the area had much interest to them. This in turn infers that there is little there in the way of archaeological, historical or geological interest to the public. The Government obviously felt after receiving reports, and we know they received at least one report from the Lands and Survey Department, that the attitude expressed in the Waitomo County's Town Plan coupled with the fact that Te Maika was privately owned would serve the interests of Te Maika best.

He continued with an analysis of the historical, archaeological and geological features. The historical interest was that Te Maika had a traditional role as a fishing camp, though in his opinion this was of no great significance as thousands of other sites around the New Zealand coast were also used as fishing camps. Discussions with Historic Places Trust had not identified any archaeological sites at Te Maika (in the area to be zoned Coastal) of such importance or so unusual as to require noting as such in the Scheme Statement. He said the trustees would continue to cooperate with the Historic Places Trust and the Geological Society. He acknowledged that some Maori-owned land would be lost to public reserves when any subdivision plan was approved[319].

Evidence was also given on behalf of the Maori Queen by a consultant engineer and a consultant architect. The engineer explained that the 1979 proposal differed from the earlier 1976 proposal in having a layout that reduced the number of house sites on the

[318] Statement of Evidence of Dermot Bryan O'Shea, undated. Works and Development Hamilton file 60/43/3/1. Supporting Papers #631-634.
[319] Statement of Evidence of Brian Hauauru Jones, undated. Works and Development Hamilton file 60/43/3/1. Supporting Papers #635-636.

skyline as viewed from the Kawhia Harbour foreshore. He acknowledged that only limited assessments of water supply and sewage disposal facilities had been carried out, but assured the Council that the tests carried out had showed that it was feasible to provide both[320]. The architect's evidence concerned geological matters; he argued that the features of geological interest were in the coastal reserve areas outside the proposed settlement[321].

The District Council gave its decision in November 1979, supporting the Change with some amendments. While it did not agree that the proposed subdivision and development would be "unnecessary"[322], the Council decided that 95 sections was too many, especially when some were on steep slopes, and limited the total number of building sites to no more than 80, with none to be sited on a slope greater than 1 in 4. It required further detail on water supply, sewerage, waste water and stormwater at the time of subdivisional scheme plan approval. The swampy lake was to be designated a Recreation Reserve, which under the Reserves Act 1977 would require preservation of the swamp's natural characteristics[323].

Upon receipt of the decision, the Crown decided not to appeal[324]. However, there were appeals to the Planning Tribunal by the Maori Queen, and by bach-holders. Just before the appeals were due to be heard, the parties reached agreement among themselves, and the Planning Tribunal issued a consent order in August 1981[325]. The main change was that the maximum number of house sites was reduced from 80 to 60. The Scheme Change as approved by the Planning Tribunal became operative in September 1981[326].

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[320] Statement of Evidence of Bruce Henderson, undated. Works and Development Hamilton file 60/43/3/1. Supporting Papers #637-642.
[321] Statement of Evidence of Douglas McClure Tresseder, undated. Works and Development Hamilton file 60/43/3/1. Supporting Papers #643-644.
[322] It was one of the matters of national importance that the natural character of the coastal environmental be protected from unnecessary subdivision and development (Section 3(1)(c) Town and Country Planning Act 1977).
[323] Report and Recommendations of Town Planning Committee, 22 November 1979. Works and Development Hamilton file 60/43/3/1. Supporting Papers #645-681.
[324] File note by District Planner, 20 December 1979, on Senior Planner to District Planner, 17 December 1979. Works and Development Hamilton file 60/43/3/1. Supporting Papers #682.
[325] *T & VD Berghan and Others v Waitomo District Council*, consent order of the Planning Tribunal (Number One Division), 13 August 1981. Copy on Works and Development Hamilton file 60/43/3/1. Supporting Papers #683-695.
[326] District Clerk Waitomo District Council to District Commissioner of Works Hamilton, 22 September 1981. Works and Development Hamilton file 60/43/3. Supporting Papers #523-534.

Resolution of the scheme change proposal overlapped with the publication of the District Council's statement of objectives and policy in June 1981 as a preliminary to its district planning scheme review. The Statement explained the scheme change and proposed six objectives for Te Maika:

- To promote the elements of isolation and open space and the protection of the environment.
- To provide a limited residential area.
- To provide ordinances recognising the control available through the single ownership.
- To recognise historic sites.
- To resist conventional formed roading to or within the area.
- To recognise that the limited occupation may allow lesser development standards than would be usual.[327]

When the draft district scheme review was published in May 1983, it contained the policy and ordinances for Te Maika unchanged from the Scheme Change approved two years earlier. The district scheme review became operative in October 1986[328].

4.6 Regional planning

A feature of the Town and Country Planning Act 1977 was the encouragement it gave to planning at a regional scale. Ad hoc Regional Planning Authorities had been established in the main centres (Auckland, Wellington, Christchurch), and provision had been made for the establishment of regional United Councils in the Local Government Act 1974.

The Waikato United Council was established in August 1980[329]. It covered the Raglan County, Otorohanga District and Waitomo District, plus other local authority areas in the Waikato. Taumarunui County was included in the Tongariro United Council area, which had been established in November the previous year[330].

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[327] Waitomo District Council, *Waitomo District Council district planning scheme review: statement of objectives and policy*, June 1981, pages 36-39. Copy attached to District Clerk Waitomo District Council to District Commissioner of Works Hamilton, 8 July 1981. Works and Development Hamilton file 60/43/4. Supporting Papers #696-729 at 709-712.
These objectives were repeated in the subsequent district planning scheme. Waitomo District Council, *District planning scheme*, approved October 1986, page 29. Supporting Papers #2295-2321 at 2312.

[328] Waitomo District Council, *District planning scheme*, approved October 1986, pages 26-29. Supporting Papers #2295-2321 at 2309-2312.

[329] *New Zealand Gazette* 1980 pages 2903-2904. Supporting Papers #803-804.

[330] *New Zealand Gazette* 1979 page 3229. Supporting Papers #802.

Section 6 of the 1977 Act required united councils to establish regional planning committees. Section 6(3) stated:

> Where in the opinion of the united or regional council there are significant Maori land holdings within its region, the Council may request such District Maori Council as it considers most appropriate to nominate a representative of the Maori people of the region as a member of the regional planning committee.

It is not known whether or not the Waikato or Tongariro United Councils invoked this discretionary provision to appoint a Maori member of their respective regional planning committees.

The regional planning activities of the two United Councils in Te Rohe Potae inquiry district have not been researched for this report. The Waikato United Council started producing a regional planning scheme, with a "Section One Objectives and Policies" proposed scheme published in 1986. It also worked on a "Section Two Settlements" scheme. The Tongariro United Council produced a "Section One Objectives and Policies" regional planning scheme, which became operative in 1985. What significance the planning activities of the United Councils had for Maori land and Maori communities in Te Rohe Potae is not known. The key feature was that Te Rohe Potae was split between two United Councils, which would have restricted the ability to undertake regional planning in the King Country. As with district planning, Town and Country Planning Act mechanisms were more geared to coping with growth scenarios and channelling economic development than with addressing rural depopulation scenarios.

4.7 Other Crown actions affecting land use

In choosing to examine planning schemes under the Town and Country Planning Act, it would be unwise to ignore other measures the Crown could adopt that affected how land was used. Perhaps the most significant of these measures during the 1970s and early 1980s was farm subsidies. One of the bigger farm subsidies was the Land Development Encouragement Loans scheme, introduced in 1978 and administered by the Rural Banking and Finance Corporation. These were loans, capable of being written off, to encourage farmers to make better use of undeveloped land. The hill country of the North Island had plenty of undeveloped land, and while the loans

scheme was in operation there was an increase in scrub cutting, fencing and fertiliser application. Running parallel with the Land Development Encouragement Loan scheme was a Livestock Incentive Scheme, introduced in 1976.

Little is known about the take-up of the Livestock Incentive Scheme and Land Development Encouragement Loans in Te Rohe Potae. A letter from the District Appraiser of the Rural Bank in Te Kuiti in March 1977 has been located, which provides a snapshot view of the Government support that was being channelled through the Bank at that time:

> To date we have had in this office 139 applications for a total of 119,300 additional stock units. In at least eight cases it is considered another one farm-house will be necessary to handle the increased stock. In addition there is another one definite and one tentative group farm labour house being erected.
>
> There are other benefits on a district basis from the above, which while they exist are difficult to determine accurately, e.g. in sheep alone 119,300 stock units would produce about 100,000 additional lambs in the district which have to be shorn, transported, etc, and the bulk of the additional $800,000 from them in revenue is spent on further work in the area with manure, fencing, etc.
>
> In my opinion it is areas such as the King Country where there is a large potential on individual units (up to 30%) that nationally we have to look to for the required increased agricultural production.[331]

A newspaper report in September 1979 suggested that one-quarter of all farmers in "the King Country" had taken out loans under the Land Development Encouragement Loans scheme[332], and the Rural Bank itself reported at this time that its Te Kuiti office had approved 171 Encouragement Loans for a total amount of $3.6 million[333]. It would be fair to conclude that farm subsidies resulted in significant changes to the natural environment on privately-owned land in Te Rohe Potae, though this was at a time when the Indigenous Forest Policy was reducing environmental change on State Forest land, and there was little new land development by the Department of Lands and Survey and the Department of Maori Affairs, so that the overall change to the

[331] District Appraiser Rural Banking and Finance Corporation Te Kuiti to Secretary King Country Land Use Committee, 7 March 1977. Department of Lands and Survey, *King Country land use study: Report of King Country Land Use Advisory Committee*, July 1977, Appendix I. Supporting Papers #1640-1802 at 1725-1726.

[332] *Waitomo News*, date unknown (September 1979), attached to Editor Waitomo News to V Young MP and J Bolger MP, 26 December 1979. Copy on Lands and Survey Head Office file 22/4320/20. Supporting Papers #90-95.

[333] General Manager Rural Banking and Finance Corporation to Director General of Lands, 4 October 1979. Lands and Survey Head Office file 22/4320/20. Supporting Papers #89.

natural environment may not have been much more substantial than had been occurring in earlier years.

Government policy on land use is not necessarily consistent, as illustrated by the two policies mentioned above. The Indigenous Forest Policy limited the felling of native forest cover on State Forest land to circumstances where social need made it imperative, while the Land Development Encouragement Loans encouraged felling of the native forest cover on privately-owned land. To add to the apparent inconsistencies, the Crown in 1977 established the Queen Elizabeth the Second National Trust, an organisation whose purpose was to encourage landowners to protect and conserve native vegetation on privately-owned land.

Forestry was also given some Crown support, with Forestry Encouragement Grants available in the late 1970s. The Department of Maori Affairs advised Maori landowners on afforestation leases, producing an advisory pamphlet in 1978[334].

The inconsistencies in the different policies of different Government departments is apparent in a clash between the Department of Maori Affairs and departments with an environmental protection function, which was discussed by McLean and Smith as a miniature case study in their evidence to the *Ko Aotearoa Tenei* (the flora and fauna) inquiry. It concerned the Rangitoto A49B1 block in the Rangitoto Range to the east of the upper Waipa River.

> In February 1972 the Rotary Club of Otorohanga proposed that a forest park should be established in order to protect the Rangitoto forest. A meeting of interested parties (excluding the Maori owners of the land) was held, and it was resolved that the Crown should acquire all Rangitoto lands not already under Crown control. An offer of purchase was made to the Maori owners, but the Department of Maori Affairs opposed the sale for conservation as the land was 'earmarked' for development as part of the Owawenga Development Scheme. The land remained under Maori ownership, and logging continued during the 1970s until the only major remaining stand of forest was restricted to Rangitoto A49. In 1981 the logging was limited by the provisions of the Waikato Valley Authority [catchment] Control Scheme. This scheme designated Rangitoto A49 as being 'only suitable for watershed protection and protection planting'. In 1983 the Otorohanga Zoological Society made fresh moves to acquire the land (Rangitoto A49B1, 326 hectares), but the offer of

[334] Department of Maori Affairs, *Afforestation on Maori land*, July 1978. Supporting Papers #2194-2201.

> purchase was rejected by a shareholders' meeting in October 1983. The Zoological Society considered the land to be of ecological significance due to the presence of kaka, kiwi and blue duck in the Rangitoto forest. The NZ Native Forests Restoration Trust and QEII Trust made another attempt to acquire the land for conservation at a Maori Land Court hearing in July 1984. Again this proposed purchase was defeated by the Department of Maori Affairs and a minority group of owners. During this time, the Department of Maori Affairs had managed to gain the approval from the Waikato Valley Authority for the 'clearing of indigenous cover for the purposes of pastoral development'. In 1985 the issue remained unresolved and the Minister of Maori Affairs urged recognition of the land as private land and that the owners had the right to determine its use. The QEII Trust and Native Forests Restoration Trust gave up attempts to purchase the land and explored other options which would ensure the land be protected and Maori ownership is retained.[335]

Further detail on this particular instance has not been researched for this report.

4.8 Resource Management Act 1991

The Town and Country Planning Act 1977 was replaced by the Resource Management Act in 1991, when environmental legislation was recast. The Preamble to the 1977 Act and its matters of national importance were replaced by the provisions of Part II of the 1991 Act, which covered the purpose of the Act (Section 5), matters of national importance to be recognised and provided for (Section 6), other matters for which particular regard is to be had (Section 7), and a requirement to take into account the principles of the Treaty of Waitangi (Section 8). 'Provided for', 'particular regard to', and 'take into account' are phrases with particular legal meanings that fit within a hierarchy of degree of obligation placed on administering bodies, in the event of any of the matters listed in these sections conflicting with one another.

Included in Part II are the following matters specifically referring to Maori interests that are to be covered while achieving sustainable management:

- Section 6(e) "the relationship of Maori and their culture and traditions with their ancestral land, water, sites, waahi tapu and other taonga"

[335] Robert McLean and Trecia Smith, *The Crown and fauna and flora, legislation, policies and practices, 1983-98*, Waitangi Tribunal, 2001, page 122. Posted on www.justice.govt.nz/tribunals/waitangi-tribunal

- Section 6(f) “the protection of historic heritage from inappropriate subdivision, use and development” (which includes sites of significance to Maori, including wahi tapu)
- Section 6(g) “the protection of protected customary rights” (these being any rights protected under the Marine and Coastal Area (Takutai Moana) Act 2011)
- Section 7(a) “kaitiakitanga” (which is defined in the legislation 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”)

A key feature of land use planning after 1991 was a change of philosophical approach. Under the Town and Country Planning Acts, all uses were covered in one way or another; they could either be permitted by ordinances (as of right or subject to conditions), or not allowed by not being included in ordinances. Under the Resource Management Act, all land uses are assumed to be allowed as of right unless made subject to a provision of a district plan in order to comply with the legislation’s sustainable management purpose. Rather than focus on land use (such as farming), the Resource Management Act examines the impact of activities (such as earthworks, forest clearance or erection of buildings). A district plan could either require a resource consent, or could declare a use to be a prohibited activity. This has amounted to a greater freedom for landowners, including Maori, although the sustainable management purpose now places a greater emphasis on how an activity is carried out; it is the effects on the environment that are now assessed, rather than the type of use itself. A consequence of this is greater consideration given to the mitigation of environmental effects – how an activity is to be put into effect or carried out can influence whether that activity is allowed or not.

Responsibility for administering the Resource Management Act 1991 on a day-to-day basis is placed in the hands of district and regional local authorities. Land use matters are the responsibility of district local authorities, whose rulebook is known as the district plan. For those land use matters that a district plan wants to control by

requiring that prior approval be obtained for them, land use consents or subdivision consents are required.

Water management regimes and coastal marine area management regimes under the Resource Management Act are discussed in other chapters of this report. The treatment of heritage protection in district plans is also covered in another chapter. This chapter examines land use and subdivision matters.

Regional Councils drew up a Transitional Regional Plan immediately following the passing of the 1991 Act. This was made up of relevant rules that had been put in place before the Act was passed, and were allowed to run on. It was drawn up without public consultation, and was a machinery matter only. The Transitional Regional Plan, and similar Transitional District Plans drawn up by territorial local authorities, governed activities affecting natural resources until the planning objectives, policies and rules envisaged by the Resource Management Act were in place.

The Resource Management Act provides for a sequence of planning documents, in the following hierarchical order:

- National Policy Statements – a New Zealand Coastal Policy Statement is required by statute, while the provision of other National Policy Statements is discretionary[336]
- National Environmental Standards – these standards, provision for which was introduced by legislative amendment in 2003, are minimum technical levels of resource quality that have been set to ensure national consistency; their provision is discretionary[337]
- Regional Policy Statement – setting out objectives and policies for natural resource management in a region; each regional council is required to produce a Statement and review it every ten years

[336] Besides a New Zealand Coastal Policy Statement (which became operative in 1994, with a review becoming operative in 2010), National Policy Statements have been prepared on electricity transmission (2008), renewable electricity generation (2011), and freshwater management (2011).
[337] National Environmental Standards have been introduced for air quality (2004), sources of human drinking water (2008), telecommunications facilities (2008), electricity transmission (2010), and assessing and managing contaminants in soil to protect human health (2012).

- Regional Plans – setting out rules and other implementation methods by which natural resource management and the purposes of the Act can be achieved by regional councils; a Regional Coastal Plan is required to be produced, while the production and scope of coverage of any other Regional Plan is discretionary (although without a Plan no rules will exist); any Plan has to be reviewed every ten years
- District Plans - setting out rules and other implementation methods by which natural resource management and the purposes of the Act can be achieved by territorial local councils; each council has to have a Plan, though the scope of coverage is discretionary (and without a Plan no rules will exist); any Plan has to be reviewed every ten years

Iwi management plans, if produced and recognised by an iwi authority, sit in the hierarchy immediately above a Regional Policy Statement, because such plans have to be "taken into account" in preparing a Regional Policy Statement ("to the extent that their content has a bearing on the resource management issues of the region")[338]. They also have to be taken into account ("to the extent that their content has a bearing on the resource management issues" of the region or district) in preparing regional and district plans[339].

The Regional Policy Statement for the Waikato Region became operative in 2000, nine years after the Act was passed. It incorporated an approach that is discussed further in the chapters on water management and on Maori consultation and participation, where resource management matters of concern to Maori were largely isolated out in their own separate section of the Statement, rather than being integrated throughout the document.

The Regional Policy Statement approved in 2000 became due for review in 2010. A proposed review Statement was produced in November 2010, with public submissions invited over the following three-month period. Four of the total of 200 submissions were made by Te Rohe Potae iwi organisations[340]. In a second consultation round

[338] Section 61(2A) Resource Management Act 1991.
[339] Sections 66(2A) and 75(2A) Resource Management Act 1991, for regional plans and district plans respectively.
[340] Te Tokanganui-a-noho Regional Management Committee (submission number 46), Te Whakaoranga o Karioi Incorporated Society (108), Maniapoto Maori Trust Board (174), and Raukawa

inviting further submissions, one of the 68 further submissions received was from a Te Rohe Potae iwi organisation[341]. A revised proposed review Statement, incorporating decisions on the public submissions, was notified in November 2012. 37 appeals to the Environment Court have since been lodged, and are yet to be decided upon; none of the appeals are from Te Rohe Potae iwi organisations (although three are from Waikato Tainui iwi entities).

The reviewed Regional Policy Statement in its post-submission-decisions form[342] better integrates Maori perspectives throughout the document, rather than silo-ing them in their own section as the 2000 Statement had largely done. The relationship of tangata whenua with the environment is one of six broad issues that the Statement addresses:

> **Issue 1.5 Relationship of tangata whenua with the environment (te taiao)**
> The relationship tangata whenua have with the domains of Ranginui and Papatuanuku is of paramount importance, and this relationship is being damaged through:
>
> a. Activities which degrade the mauri of the environment, including through cumulative effects;
> b. Loss of access to, and use and enjoyment of, resources and places;
> c. Loss or diminishment of the ability of tangata whenua to be involved in or influence management decisions; and
> d. Loss of ability to exercise and provide for kaitiakitanga.[343]

Each of the six broad issues is addressed by a number of objectives (twenty of them in the case of the tangata whenua relationship issue), and each objective is in turn to be achieved by a multiple number of policies. Time constraints have prevented a more detailed assessment of the document. However, the objectives and policies demonstrate an intention on the part of Waikato Regional Council to provide a place for Maori in decision-making, which suggests an opportunity for some fundamental changes in Council practice. While the reference to decision-making was probably included in recognition of the joint management of the Waikato and Waipa Rivers

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Charitable Trust Environmental Group (181). Waikato Regional Council, *Proposed Waikato Regional Policy Statement - summary of submissions*, 3 volumes, June 2011. Posted on www.waikatoregion.govt.nz

[341] Raukawa Charitable Trust. Submission posted on www.waikatoregion.govt.nz

[342] The current working version of the proposed Regional Policy Statement is Waikato Regional Council, *Proposed Waikato Regional Policy Statement decisions, November 2012, 'clean' version, annotated with Environment Court appeals (1 February 2013)*, February 2013. Posted on www.waikatoregion.govt.nz

[343] Waikato Regional Council, *Proposed Waikato Regional Policy Statement decisions, November 2012, 'clean' version, annotated with Environment Court appeals (1 February 2013)*, page 1-5, February 2013. Posted on www.waikatoregion.govt.nz

incorporated in recent legislation, the Regional Policy Statement suggests that there is scope for the approach to be adopted more widely throughout other parts of the region.

A proposed Waikato Regional Plan was publicly notified in 1998. However, it was not until nine years later, in September 2007, that all steps in the process of plan preparation were completed and the Waikato Regional Plan became operative[344]. The delays in plan preparation are not untypical; although the Resource Management Act is now over 20 years old, local authorities are still in the midst of producing second-generation planning documents. Only when appeals on the Regional Policy Statement have been decided upon, and the review Statement has become operative, will it be possible for Waikato Regional Council to formally enter into a review of its Regional Plan.

Waitomo District Council, like all other district councils, continued to operate its District Planning Scheme under the Town and Country Planning Act 1977 after 1991, renamed the Transitional Waitomo District Plan. A proposed Waitomo District Plan was prepared to meet the requirements of the 1991 Act in 1999, and became operative in March 2009[345]. Otorohanga District Council's first District Plan became operative in 1999. More recently it has produced a reviewed District Plan, and in March 2012 announced its decisions on public submissions[346]. Waikato District Council has completed its reviewed District plan, which became fully operative in April 2013[347]. Ruapehu District Council produced its first operative District Plan in 2000, and a reviewed operative District Plan (apart from two issues still the subject of appeals) in October 2013[348].

Few barriers to development by Maori of their own land as a result of the operation of the Resource Management Act 1991 have been identified during the research for this

[344] Waikato Regional Council, *Waikato Regional Plan*, operative September 2007. Posted on www.waikatoregion.govt.nz
[345] Waitomo District Council, *Waitomo District Plan*, March 2009. Posted on www.waitomo.govt.nz
[346] Otorohanga District Council, *Otorohanga Proposed District Plan: decisions version*, 6 March 2012. Posted on www.otodc.govt.nz
[347] Waikato District Council, *Waikato District Plan*, April 2013. Posted on www.waikatodistrict.govt.nz
[348] Ruapehu District Council, *Ruapehu District Plan*, October 2013. Posted on www.ruapehudc.govt.nz

report. That is not to say that barriers do not exist. Perhaps one of the biggest difficulties concerns the administrative cost of complying with the legislation. One instance where a problem did arise for Maori was when a Maori landowner wanted to build a house on Maori land on the coast at Whaanga (Raglan). He was refused resource consent by the Waikato District Council, and was obliged to appeal to the Environment Court before the decision was overturned and consent was granted[349]. The iwi at Whaanga, Tainui Awhiro, had supported his entitlement to build on his whanau land.

The Environment Court has been quite clear that Maori participation and consultation does not amount to a right for Maori to impose their point of view on others. While they are entitled to be heard and to express themselves forcefully, their views will not necessarily prevail. There is a wide range of matters to be considered under Part II (the purposes and principles) of the Resource Management Act, and it is the weighing of these matters against each other that will prevail in determining what decision is made. This is discussed in connection with an Environment Court decision concerning land at Motutara in the chapter on heritage protection. However, at the other extreme of this weighing-up process, as the Waitangi Tribunal has pointed out, "the balancing of Maori interests must be done in a manner consistent with the Treaty, and Maori rights cannot be balanced out of existence"[350].

4.9 Cave and karst management

A particular feature of environmental management in Te Rohe Potae is the management of the karst (limestone) resource. This introduces a third dimension – the vertical plane, with issues both on and below the surface – to land management.

The special character of karst country was recognised by Waitomo District Council in a discussion paper in 1994:

> Tawarau Forest located near Waitomo Village contains significant Karst and Cave features. It contains numerous 'clean' caves as a result of the forest cover. It includes what is probably the largest continuous tract of virgin forest remaining on karst topography in the North Island. The forest is in both

[349] *Hemi v Waikato District Council*, decision of the Environment Court, (Decision [2010] NZEnvC 216), 24 June 2010. Posted on www.justice.govt.nz/courts/environment-court
[350] Waitangi Tribunal, *He Maunga Rongo, the report on Central North Island claims, stage 1*, Part V, page 1673, Wai 1200, 2008.

> private and public ownership, and contains excellent examples of the dense rimu-miro forest type which once occurred throughout the region. Much of this private forest is subject to covenants under the Queen Elizabeth II Trust, a valuable contribution to the preservation of the forest in this area. Those Trust lands remain privately owned. It may be appropriate for the District Council or Regional Council to give recognition of the commitment of these land owners….
>
> In the Waitomo District the caves and in particular the main glow worm caves are international tourist attractions. The cave and karst features fall under both private and public ownership. The Department of Conservation (DOC) owns many reserves in the area which are intensively used…. Many other caves and karst features are located on either private farmland or Maori land. There are 28 significant cave systems in the Waitomo area, as well as other karst features of natural, scientific, educational and recreational interest including cliffs, natural tunnels and bridges, and fossil sites. Threats to these features result from overuse or misuse, vandalism by visitors, and siltation as a result of soil erosion from surrounding farmed catchments.[351]

The karst country is seen by Ngati Maniapoto as a special resource with its own unique set of problems. In its *Te Purongo* report in 2002, the Trust Board stated:

> Caving activities have damaged and destroyed centuries old formations for the sake of exploration activities. Farming activities have seen tomo and caves used as rubbish dumps. Land excavation and quarrying have seen caves destroyed or damaged. Water pollution and silting has seen the cave life deteriorate.
>
> Caves are a significant feature of tribal custom. They were used as dwelling places, burial places, and corridors for travel.
>
> The iwi and hapu of Hauauru ki Uta RMC [Regional Management Committee] have had to remove ancestral remains and taonga from caves as a result of the threat posed to these places from tourism and developers.
>
> Hauauru RMC considers all caves to be worthy of protection, and tourism should only be undertaken where protective measures are in place to ensure that the cave and karst are not adversely affected. The amount of underground traffic is high and increasing in the Hauauru region. Protective measures are hard to implement in areas where activities are hidden. Hauauru RMC would like to have an active role in monitoring the protection of karst related activities.[352]

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[351] Waitomo District Council, *District plan discussion paper: tourism issues*, March 1994, pages 12-13. Supporting Papers #2322-2327 at 2323-2324.

[352] Kowhai Consulting Ltd and Ministry for the Environment, *Te Purongo: Ngati Maniapoto state of the environment report: a tribal perspective*, 2002, pages 24-25. Supporting Papers #2400-2454 at 2423-2424.

Damage to Te Anaureure cave by quarrying is covered in the Waipa River case study, while the wahi tapu status of Ruakuri cave is covered in the historic heritage chapter of this overview.

Silting of caves at Waitomo has been an issue addressed by Waikato Regional Council. In its Waikato state of the environment report in 1998, the Council reported:

> During the 1970s and 1980s, rapid siltation and damage to the internationally renowned Waitomo glow worm caves threatened tourism and the aquatic ecology of the cave system. Runoff from the upper catchment, which helps to feed the underground water system, was collecting and depositing sediment and contamination from farmland and major road works into the cave system. A soil and water conservation programme was initiated to address it, but ceased when Government grants were withdrawn. The catchment was then selected as a testing ground for the Landcare concept.
>
> Between 1993 and 1996 the Waitomo Landcare Group worked through the issues with the whole community, identified the problems, and considered possible solutions. A catchment management plan to reduce sedimentation and to encourage sustainable land management practices in the catchment was then developed. This work was funded by farmers and local businesses reliant on the caves as a tourist attraction, the Waitomo District Council and Environment Waikato.
>
> A total of 500 ha of bush is now protected. Three hundred hectares of pasture is retired from grazing and planted in production trees. A further 45 ha of pasture is protected from erosion by pole planting, and 50 km of fences have been constructed to keep stock away from sensitive areas. As a result, there has been a reduction in the average sediment load in the Waitomo Stream of approximately 60 percent from the period prior to 1993 and the period following 1995.
>
> These actions have enhanced water quality, improved the appearance of the cave system, prevented erosion loss, increased stock shelter and shade, reduced stock losses, and promoted forestry returns. Local community infrastructure is protected and people in the Waitomo township, who rely on the stream for their domestic water, are at less risk from long term exposure to contaminants. An Asset Management Plan prepared by all participants now maintains the protection works to ensure this valuable resource is not jeopardised again.[353]

[353] Waikato Regional Council, *Waikato state of the environment report*, 1998, page 68. Supporting Papers #2389-2399 at 2399.

A feature of this summary is that the Crown, whose land development policies had encouraged the sediment runoff problem in the first place[354], was providing subsidies for remedial works through its soil and water conservation funding up until the mid 1980s. Crown support then ceased, and a continuation of the works in the 1990s was left to regional and local bodies to finance. Funding responsibility had in effect been delegated. A Ministry for the Environment publication in 2001 has provided some additional information about this:

> In 1974 a report suggested that the remaining life of the Glow-worm Grotto (a major tourist attraction in the caves) could be less than 50 years because of the sediment build-up. In response to this a multidisciplinary Waitomo Caves Research Group was set up that year. Catchment management was a key need recognised by the Group….
>
> The first catchment scheme for the valley commenced in 1980 with central government agreeing to pay two-thirds of the cost. However only $64,000 was ever spent of the estimated $200,0000 cost for the programme, partly because of local landowners' lack of interest in the tourist cave business, which they felt contributed little to the community.
>
> The catchment scheme was rekindled in 1992 by the new cave owners, the Ruapuha Uekaha Hapu Trust, and by Environment Waikato which was keen to introduce the landcare concept to the Waitomo situation…. A public meeting was called, which was well attended, and a selection of community representatives were elected to the Waitomo Catchment Trust….
>
> Funding support was offered by Environment Waikato to the extent of providing 35 percent of the cost of the scheme over three years. The Waitomo Catchment Trust Board, representing the local community, had the task of raising the other 65 percent. This was about $200,000 originally, but eventually came to around $340,000 with expansion. Annual or regular contributions have come from the owners of the cave, the operators of the cave, two of the main adventure cave operators, the Waitomo District Council, and the Department of Conservation.[355]

4.10 Concluding Remarks

Because of a reluctance on the part of administering bodies to fetter the activities of rural landowners, much of the environmental land planning in Te Rohe Potae has been relatively benign for Maori landowners. They have been beneficiaries of the administering bodies' approach as much as European landowners. However, there

[354] In addition to sediment runoff from farmland, there had also been a major issue with sediment sourced from earthworks and uncompacted road fill during upgrading of the Caves – Lemon Point Road in 1974.

[355] Ministry for the Environment, *Managing waterways on farms: a guide to sustainable water and riparian management in rural New Zealand*, May 2001, pages 181-183. Posted on www.mfe.govt.nz

have been occasions where Maori landowners have been affected by land use planning. The nationally-imposed requirement to protect the coastline from unnecessary subdivision and development has affected Maori landowners disproportionately, because of the extent of Maori-owned coastal land, and because of timing issues. Thus a residential development of coastal land by the Crown at Mokau in the 1950s was deemed acceptable (see the Mokau river mouth case study), while similar moves by the Maori Land Court in the late 1960s to seek better utilisation of Maori land by encouraging coastal subdivision were caught out by the change of national policy legislated for in the Town and Country Planning Amendment Act 1973.

Likewise, the possibility that Maori-owned land might be developed for forestry in the 1970s became stillborn when other forces at play, including the Crown's application of a new Indigenous Forest Policy, and European farmer opposition (which the Crown condoned), intervened. There was, therefore, never the opportunity to see how Te Rohe Potae Maori might have reacted to proposals that would have seen their indigenous-forested lands, for which they presumably had a kaitiaki responsibility, converted to pine plantations.

Environmental legislation and Crown policies and practices have often proved ineffective. This report has noted that as at 1970 much rural land was not used as intensively as it is today. Even before that date, however, warnings had been sounded about the dangers for soil conservation of developing the land further. Yet Crown support for farming through loans and subsidies continued, regenerating scrublands were cleared, and more wetlands were drained.

One possible consequence for the future is that the widespread extent of change to the environment that has already occurred on European-owned lands, will place a pressure on Maori landowners to forego development of their lands. This is because the protection of outstanding natural landscapes is a matter to be considered under the Resource Management Act, and less developed lands are more likely to be in natural landscapes that are rated as outstanding. Sometimes that will be acceptable to Maori, for whom the health of the natural environment is an important consideration; covenanting of Maori-owned lands through the Nga Whenua Rahui scheme is an

expression of a feeling that land development is not always necessary or desirable. However, that will not always be the case, as demonstrated by the support that Maori Affairs land development schemes attracted in the past from Maori landowners (notwithstanding the criticisms of how the schemes were implemented).

5. Crown conservation estate management regimes

5.1 Introduction

A significant Crown interest today, and one of the few where the Crown has actively maintained an on-ground presence throughout the country, is what is known as the conservation estate. These are the lands of the Crown administered and managed by the Department of Conservation. The Department's principle legislation is the Conservation Act 1987, which has written into it a requirement that the Department shall take into account the principles of the Treaty of Waitangi. Thus, since 1987, there has been considerable interaction between the Department and Maori, to ensure that this relationship obligation is abided by.

Before 1987 the lands of the Department of Conservation were administered by a number of other Government departments that ceased to exist when Crown environmental management was restructured that year. The former land-holding agencies were:

- Department of Lands and Survey – public reserves, unallocated Crown Land, marginal strips
- New Zealand Forest Service – State Forest Parks, State Forests with an indigenous forest cover (as distinguished from pine and other exotic species plantations)
- Wildlife Service of Department of Internal Affairs – wildlife refuges, wildlife management reserves

The most significant Waitangi Tribunal commentaries on the Crown regimes for management of the conservation estate are in the reports on the fauna and flora claim[356], the National Park inquiry district[357], and the Urewera inquiry district[358].

[356] Waitangi Tribunal, *Ko Aotearoa Tenei: a report into claims concerning New Zealand law and policy affecting Maori culture and identity*, Wai 262, 2011.
[357] Waitangi Tribunal, *Te Kahui Maunga: the National Park District Inquiry report*, Chapters 11 and 12, Wai 1130, 2013.
[358] Waitangi Tribunal, *Te Urewera* (pre-publication), Chapter 16, Wai 894, 2012.

5.2 Administration before 1970

The Crown was a major purchaser of Maori-owned land in Te Rohe Potae district in the 1890s and 1900s. These early purchases had cast a dragnet over Maori lands, netting in an indiscriminate manner lands of varying quality and usefulness for the primary purpose at that time of European settlement. When the purchased lands were surveyed for settlement, and distributed to settler families, there remained a residue of Crown-owned land that was not immediately suitable for settlement. This had the status of unallocated Crown Land, and was managed by the Department of Lands and Survey.

From these unallocated lands, certain utilitarian uses were identified over subsequent years in a number of cases. Much unallocated land was relied upon by the sawmilling industry during the first half of the twentieth century; in many cases responsibility for this land was passed to the State Forest Service and became known as State Forest. Other land became reserves. As the roading network improved, previously isolated areas which had initially been ignored could be opened up for farm settlement. The category of unallocated Crown Land therefore dwindled in size until it became a very small proportion of the region.

Reserves were initially for purposes associated with European settlement of the land, such as schools and quarries. However, the timing of settlement broadly coincided with a rise in landscape appreciation and the setting aside of scenic reserves. Unless an area had a particularly significant landscape feature, the needs of settlement predominated, and scenic reserves set aside from the Crown's lands tended to be small or inaccessible areas that had been passed over in the rush to develop farmland. The most significant landscape feature in Te Rohe Potae where reserves were provided was the Waitomo Caves locality, but even here the reserved areas were subordinated to the first demands of settlement. The relationship between farm settlement and scenic reserves has been touched on in other evidence for this inquiry, which has also analysed the extent to which Maori-owned land was taken under the Public Works Act by the Crown specifically for scenic preservation purposes[359].

[359] David Alexander, *Public Works and other takings in Te Rohe Potae District*, Wai 898 document #A63, December 2009, pages 429-575.

Public reserves were managed under the Reserves and Domains Act 1953 between 1953 and 1978. This legislation had only minimal reference to Maori interests, and no requirement for consultation with Maori, which is consistent with an attitude that the reserved land was land of the Crown, and that any Maori interest in the land had generally ceased when it had been acquired from Maori. Section 60 allowed the Minister of Lands to grant to Maori the right to take birds in a scenic reserve, provided such taking did not contravene the Wildlife Act 1953, and the right to bury deceased Maori in a scenic reserve. In other respects, however, Maori interests were invisible in the legislation. The rights that could be granted under Section 60 were applied sparingly, and it is not known if they were ever granted in Te Rohe Potae.

Marginal strips were formerly "lands reserved from sale" along riverbanks, lake edges and the sea shore at the time that the land was cut up into sections for settlement. Generally these were of a one chain (20 metres) width. The provision setting the strips aside from settlement had first been enacted in the Land Act 1892, and as at 1970 they were provided for in Section 58 Land Act 1948.

Most State Forest areas had been cutover for their merchantable timber by 1970. While little was being done with them at that time (apart from at Pureora, where logging was continuing), some State Forests were being examined for their suitability for further forestry uses. This examination was following two separate paths. State Forests on Pirongia mountain were being looked at for their potential as a State Forest Park, while forests in the south-east area of Te Rohe Potae were being looked at for their ability to provide further native timber, or to be converted to pine plantations. Both these matters are discussed in the next section of this chapter.

While timber production had been a predominant purpose in the management of Crown-owned forests administered by the New Zealand Forest Service, more widely-ranging multiple use objectives were also being considered. In the 1920s the concept of multiple use had included deer hunting, possum trapping, and stock grazing (to remove flammable undergrowth). By the 1960s, these objectives had been broadened to recreation, watershed protection, wildlife preservation, and protection of historic, scientific and aesthetic values. This approach was given statutory recognition with the creation of a legal status of State Forest Park, as a sub-category of State Forest,

provided for in the Forests Amendment Act 1965[360]. This legislation is discussed in the Pirongia Forest Park case study.

Wildlife Service functions also passed to the Department of Conservation in 1987. The Wildlife Branch of the Department of Internal Affairs had been responsible for administering the Animals and Game Protection Act 1921-22, and its successor the Wildlife Act 1953. Both Acts gave it a legislative authority to administer and manage land. In the 1953 Act these lands were known as wildlife sanctuaries and wildlife refuges[361]. Both these categories were an additional status layer overlying the status conferred by title; wildlife sanctuaries and wildlife refuges could therefore be established over both privately-owned and Crown-owned land. The establishment of wildlife sanctuaries and wildlife refuges in Te Rohe Potae prior to 1970 has not been comprehensively researched for this report, although two wildlife refuges have been identified. One was a farm property in the Ohura River catchment known in Wildlife Service records as Restalnig Farm; it was declared a wildlife refuge in 1961[362], and revoked in 1967[363]. The second covered the bed of Mangaokewa Stream where it passed through Te Kuiti Borough. This had been declared a sanctuary in 1931 under the 1921-22 legislation[364], and then a wildlife refuge in 1958 under the 1953 legislation[365]. However the character of Mangaokewa Stream through the town was changed radically by flood control works in the 1960s, such that all bank cover was removed, the streambed was widened, and rock rip-rap was placed along the new banks. These works were carried out by the Waikato Valley Authority, which advised a Wildlife Service officer after the event that it was "not aware that the area was a

[360] Michael Roche, *History of New Zealand Forestry*, New Zealand Forestry Corporation in association with GP Books, 1990, pages 416-417.
[361] With the passing of the Wildlife Act 1953, the term 'sanctuary' (as defined by the Animals and Game Protection Act 1921-22) ceased to exist, and was replaced by the term 'wildlife refuge', with all sanctuaries established before the passing of the 1953 Act automatically becoming wildlife refuges (Section 14(5) Wildlife Act 1953). In addition, the 1953 Act introduced a new category of wildlife protection, a 'wildlife sanctuary', under which there was a greater ability to impose restrictions and prohibitions on use of the protected land than was provided for wildlife refuges. A wildlife sanctuary under the 1953 Act therefore conferred a higher order of wildlife protection than a sanctuary under the 1921-22 Act.
[362] *New Zealand Gazette* 1961 page 732. Supporting Papers #776.
[363] *New Zealand Gazette* 1967 page 1513. Supporting Papers #782.
[364] *New Zealand Gazette* 1931 page 2180. Supporting Papers #766.
[365] *New Zealand Gazette* 1958 page 492. Supporting Papers #775.
Plan of wildlife refuge attached to Commissioner of Crown Lands Hamilton to Secretary for Internal Affairs, 1 September 1971. Internal Affairs Head Office file WIL 34/3/10. Supporting Papers #7-8.

Wildlife Refuge"[366]. In 1971 the officer recommended revocation of the wildlife refuge status, and this action was supported by the Auckland Acclimatisation Society[367], Te Kuiti Borough Council[368], and the Minister of Lands[369]. The wildlife refuge was revoked in August 1972[370].

5.3 Reserves and Crown Land 1970-1987

With the exception of Waitomo Caves, which was a major tourist attraction and therefore a protected area that attracted a disproportionately greater degree of attention from reserves administrators, the scenic and other reserves of Te Rohe Potae were largely left to fend for themselves. They were viewed as areas of bush that had existed for thousands of years, continued to do so during the era of European settlement, and could therefore be considered to be self-perpetuating. Resources for active management were minimal, with a ranger service only being developed for the first time during the 1970s. Before then, the Department of Lands and Survey was reliant on its farming-oriented field officers for any management of the reserves. From this had developed a pattern, continued by ranger staff, of addressing reserve boundary issues, such as provision of fencing to prevent encroachment into the bush by stock from neighbouring farms. Paying for the half-share of such fencing was often all that a meagre reserves budget would allow.

Beneath the forest canopy, however, all was not satisfactory. Deer, goats and possums were all eating away at the native vegetation. Goats in particular were a highly visible animal pest in Te Rohe Potae district, as they formed groups and stripped the vegetation within their reach. They were more numerous than could be kept in check by recreational hunters, while ranger staff numbers were insufficient to

[366] Assistant Game Management Officer Auckland to Controller Wildlife Service, 24 August 1971. Internal Affairs Head Office file WIL 34/3/10. Supporting Papers #1-6.
[367] Secretary Auckland Acclimatisation Society to Secretary for Internal Affairs, 11 November 1971. Internal Affairs Head Office file WIL 34/3/10. Supporting Papers #9.
[368] Town Clerk Te Kuiti Borough Council to Secretary Auckland Acclimatisation Society, 26 June 1972, attached to Secretary Auckland Acclimatisation Society to Secretary for Internal Affairs, 28 June 1972. Internal Affairs Head Office file WIL 34/3/10. Supporting Papers #10-11.
[369] Director General of Lands to Secretary for Internal Affairs, 6 July 1972, Secretary for Internal Affairs to Minister of Internal Affairs, 4 August 1972, and ministerial advice sheet, 9 August 1972. Internal Affairs Head Office file WIL 34/3/10. Supporting Papers #12, 13 and 14.
The advice of officials to the Minister of Lands and the Minister of Internal Affairs was that the streambed was Crown Land. The Minister of Lands signed the advice sheet addressed to the Governor-General in his capacity as "the Minister charged with the administration of the department of State having the control of the land of the Crown affected by the attached Proclamation".
[370] *New Zealand Gazette* 1972 page 1739. Supporting Papers #790.

make much of a difference. Possums were still spreading through the district from original release sites. As late as 1980 the Forest Service reported:

> In the forests of the Rangitoto and Hauhungaroa, opossums are still actively colonising, and peak populations have yet to climax behind the front of the spread.[371]

One release site had been at Ongarue, where it is known that possums were liberated in 1951.

Waitomo Caves were an exception to the general pattern of reserves management in Te Rohe Potae. The responsibility for day-to-day administration of the reserves that comprised the public land surrounding the caves at Waitomo had been held by the Department of Tourist and Health Resorts virtually since their initial reservation. They were managed in conjunction with the hotel. When restructuring passed the hotel into the hands of the Government-owned Tourist Hotel Corporation in 1955, the responsibility for the reserves also passed to the Corporation shortly after[372]. The Corporation ran guided tours of the Glow-worm and Ruakuri Caves.

The Reserves and Domains Act 1953 was replaced by the Reserves Act 1977, with effect from 1 April 1978. While retaining the protective and community-use nature of reserves, it introduced two new measures. The first was classification, whereby it was intended that a stocktake of the country's public reserves would be undertaken, with each one examined and a decision made as to what its reserved purpose would be. Reserves could be classified for seven different purposes: nature, scientific, scenic, historic, recreation, Government purpose and local purpose. This did not change the administering agency for each reserve, so that reserves managed by the Crown continued to be so managed.

The second new measure was a requirement that management plans be prepared for reserves. This, like the provision of a ranger service, was an extension into the reserves field of the practice that had already been developed for national parks. To guide the content of management plans, a general policy for reserves was developed which had national application. Management plans were to be prepared with public

[371] New Zealand Forest Service, *Draft King Country regional management plan; 1980 to 1990*, 1980, page 33. Supporting Papers #2202-2214 at 2210.
[372] *New Zealand Gazette* 1957 pages 1641-1642. Supporting Papers #773-774.

input, with a draft version publicly notified and submissions invited. This opportunity to comment was aimed at the public generally, rather than at tangata whenua in particular.

Lack of resourcing within the Department of Lands and Survey hindered progress in the implementation of these two new requirements. Few management plans were prepared, and classification was only partially completed, before the Department of Lands and Survey was disestablished in 1987 and the Department of Conservation took over management and administration of the reserves.

Prior to provision in the Reserves Act 1977 for the public notification of management plans, and associated invitation for the public to make submissions, there was little opportunity for public input into reserve management. There was a further, albeit limited, change with the rewriting of the National Parks Act in 1980. This abolished National Park Boards, which had been established for each national park, and introduced National Parks and Reserves Boards, organised on a regional basis. Nationally, the New Zealand National Parks and Reserves Authority replaced the National Parks Authority. For most of Te Rohe Potae, the relevant Board was the Waikato / Rotorua National Parks and Reserves Board, with the Taranaki National Parks and Reserves Board responsible for the Taranaki Land District area south of the Mokau River. While the Taranaki Board had Egmont (Taranaki) National Park as a focus for its energies, the Waikato / Rotorua Board was one of three Boards (with Northland and Wellington) that had no national parks within its district. An additional limitation was that the functions of the new Board with respect to reserves was only those matters relating to particular reserves "as may be notified by the Minister of Lands from time to time under Section 9 Reserves Act 1977"[373]. The Minister instructed all Boards to look at the following matters:

> (a) Considering and recommending to the [National Parks] Authority or the Director General of Lands, as appropriate, approval to and reviews of management plans for National Reserves, scenic reserves of national significance, and nature and scientific reserves, where there is disagreement between the Board and the Department.
> (b) Reviewing and reporting to the Commissioner of Crown Lands or the Authority, as appropriate, on the effectiveness of the general

[373] Section 30(e) National Parks Act 1980.

policies for National Reserves, scenic reserves, and nature and scientific reserves.

(c) Reviewing progress in identifying potential reserves of national or international significance (i.e. National Reserves).

(d) Advising the Commissioner of Crown lands or the Authority on any other matter relating to National Reserves, scenic reserves, and nature and scientific reserves.[374]

The limiting of a Board's interest to national reserves, scenic reserves of national significance, nature reserves and scientific reserves meant that, upon its initial appointment, the Waikato / Rotorua Board had only three named reserves over which its authority extended. These were Aotea Head Scientific Reserve, Moanatuatua Scientific Reserve and Shewell's Bush Nature Reserve, of which only Aotea Head Scientific Reserve is located in Te Rohe Potae inquiry district. The remaining extent of its authority, scenic reserves of national significance, had not at that stage been defined.

The new Boards were appointed in July 1981. None of the members of the Waikato / Rotorua Board[375] were identifiably Maori, and only one, James (Max) Somerville, resided in Te Rohe Potae; he was a former chairman of Waitomo District Council. In a press release announcing the appointment of the Board members, the Minister of Lands said that one of the major tasks of the new Board would be to "identify gaps in the protected areas system in the region, and put forward proposals for the creation of new parks and reserves in addition to existing ones"[376].

In developing a role for itself, the Board had to grapple with the concept of what were scenic reserves of national significance. No criteria had yet been developed, though this was a task that the National Parks and Reserves Authority was working on. National significance was to be compared with regional significance and local significance, although there was no structure in place, and no history of management, for scenic reserves to be administered and made the financial responsibility of regional or local authorities. Scenic reserves had traditionally been a central

[374] Department of Lands and Survey Administration Manual, Section G19. Copy on Lands and Survey Hamilton file NPR/1. Supporting Papers #448-449.
[375] *New Zealand Gazette* 1981 page 2032. Supporting Papers #806.
[376] Press release issued by Minister of Lands, 5 June 1981. Lands and Survey Hamilton file NPR/1. Supporting Papers #434-435.

government matter, with only a few administered by local authorities. The regional tier of local government was in its infancy, and was more planning and strategy oriented, with little or no capacity to assume active day-to-day management responsibilities. The only guidance offered at the Board's inaugural meeting, when some draft criteria for determining national significance were tabled, was a remark in the minutes of a National Parks Authority meeting that perhaps 70-80% of scenic reserves could be nationally significant[377].

The official appointed as the Secretary of the Waikato / Rotorua Board was scathing about how effective it could be, when writing an internal memorandum after the Board's second meeting in November 1981:

> There are three reserves in the land district in which the Board has an interest in terms of management planning and general oversight…. Effectively, until draft management plans are prepared, the Board has no input to make into these reserves. At the draft stage, the Board will be able to comment, and even make decisions, and then upon publication of the plan, monitor events to ensure the Department is complying with the plan….
>
> It is apparent from the foregoing that this particular Board, and any other … lacking a national park, should not be convened until such time as draft management plans are prepared – several years. It would have been better had the Board not been appointed at this stage, because now it exists competent and keen personnel want it to be achieving something but, draft this and that apart, it has no function to perform….
>
> The Department is faced with the following choices:
> - Continue as is wasting what are meant to be short funds
> - Explain all this to the Board, apologise for the illusion created that it would be a functional entity, and suggest that meetings be convened as the need arises
> - Because there is no national park at stake, widen the Board's powers in a way which would create for it a more meaningful role, e.g. publicity of reserves as they now exist….
>
> As Secretary I find myself being put in the position of magician – conjuring up agendas, sending papers, soon possibly pulling rabbits out of hats – to create the illusion that the Waikato / Rotorua National Parks and Reserves Board is a necessary and functional body.[378]

[377] Minutes of inaugural meeting of Waikato / Rotorua National Parks and Reserves Board, Hamilton, 11 September 1981. Lands and Survey Hamilton file NPR/1. Supporting Papers #437-439.
[378] File note by Secretary Waikato / Rotorua National Parks and Reserves Board, undated (approximately December 1981). Lands and Survey Hamilton file NPR/1. Supporting Papers #440-441.

Needless to say, the legislation and the Minister's delegations precluded any alternative; once created, the Board had to carry on.

For its fourth meeting in May 1982, the Board met at Te Kuiti, visiting Waitomo before the meeting, and conducting a field inspection of King Country scenic reserves on the day after. To make up for the absence of significant items on the agenda, the Secretary resorted to humour when writing up a report of the field trip:

> Members walked the short but interesting distance into Mangapohue Natural Bridge, and repeated the exercise at Marokopa Falls, having first viewed the falls from a new platform beside the road. It became clear to members that the possibilities in the region extended beyond the Glow Worm Cave.
>
> From Marokopa the party turned south, passing through Kiritehere and Moeatoa with the western range of Whareorino State Forest on the left. Lunch was taken at the roadside, and it was here that a combination of circumstances led to what some might describe as the highlight of the trip. The main ingredients in this drama were firstly the fact that two members had travelled this far in a vehicle which continued on at lunchtime, necessitating the moving of the two members into other cars. The second factor was the decision of one of the two to answer a call of nature downwind of the rest of the party. A third factor was the maturing tastes of the local sandflies, which finally and prematurely brought luncheon to a close, and saw the rapid dispersal of the party into cars and away.
>
> The Board continued its travels south with a detour to the tunnel and beach at Waikawau, and then drove along Mangatoa Road to Awakino. Just south of Awakino lies a small reserve called Tainui, tainui being a shrub which is restricted in its natural state to the locality, thus giving credence to the story that it sprang from discarded interior fittings of the canoe Tainui. Because of this element, Tainui had been tentatively identified as a reserve of national significance, and the merits of this were being debated when attention was drawn to the fact that one of the party was missing.
>
> Two hours or more had elapsed since lunch, and unbeknown to the rest of his group the deserted Board member had been walking doggedly in their tracks, covering eight or more miles. It was perhaps fortunate that he is a representative of FMC, and so well equipped both physically and mentally to survive the rigours of his ordeal. A rescue party eventually picked him up and the tour was completed.[379]

During the meeting at Te Kuiti, a list of scenic reserves of national significance in the Board's district was tabled. This list had been prepared by local departmental staff in

[379] Report on inspection of scenic reserves in Waitomo region, undated (May 1982). Lands and Survey Hamilton file NPR/1. Supporting Papers #444.

advance of the finalisation of the criteria still under discussion by the National Parks and Reserves Authority, and was therefore described as "tentative only"[380]. There were approximately 170 scenic reserves in the Board's district, and the list contained 103 reserves considered to be of national significance. At the Board meeting there was some discussion about whether the Waitomo group of scenic reserves were suitable to be declared to be national reserves, a higher-order category of reserve under the Reserves Act 1977[381].

In August 1982, a conference in Wellington of the Authority, Board chairpersons and Commissioners of Crown Lands agreed that "until their significance has been rated, all scenic reserves controlled by the Department may be regarded as coming under the general oversight of the Authority and Boards"[382]. That same month the Authority confirmed the criteria for determining significance of scenic reserves, and associated policy for control[383].

During 1982 two draft management plans, one for a group of twelve scenic reserves in the Waitomo Caves locality, and a second for a group of six scenic reserves in the Piopio locality, were publicly notified and comment invited. Time has not permitted examination in this report of these plans, the public submissions made on the draft versions, and the process by which they were finalised and approved. Nor has it been possible to assess the extent to which Te Rohe Potae Maori were involved in the production and approval of the plans.

The Waikato / Rotorua National Parks and Reserves Board had been appointed for a three-year term. The new Board appointed in 1984 included many of the members appointed in 1981[384]. However, it still did not include any recognisably Maori members.

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[380] Tentative list of scenic reserves of national significance, undated (May 1982). Lands and Survey Hamilton file NPR/1. Supporting Papers #442-443.
[381] Minutes of fourth meeting of Waikato / Rotorua National Parks and Reserves Board, Te Kuiti, 6 May 1982. Lands and Survey Hamilton file NPR/1. Supporting Papers #445-447.
[382] Report on meeting, 5-6 August 1982, by Chairman Waikato / Rotorua National Parks and Reserves Board, undated. Lands and Survey Hamilton file NPR/1. Supporting Papers #450-452.
[383] Secretary New Zealand National Parks and Reserves Authority to All National Parks and Reserves Board Secretaries, 20 August 1982. Lands and Survey Hamilton file NPR/1. Supporting Papers #453-458.
[384] *New Zealand Gazette* 1984 page 1680. Supporting Papers #812.

It is worth recording that the National Parks and Reserves Authority, operating nationally, had Brian Jones as one of its members. In 1981 the Minister of Lands appointed him "after consultation with the Minister of Tourism and the Minister of Local Government" (Section 17(2)(d) National Parks Act 1980)[385]. Mr Jones, of Maori descent, was at the time the chairman of Taumarunui County Council. He was reappointed in 1984 for a further three-year term, at which time he was classed as a person "having special knowledge of or interest in matters connected with the policy for and management of national parks and reserves, or having special knowledge of or interest in matters connected with wildlife" (Section 17(2)(e) National Parks Act 1980)[386].

5.4 State Forests 1970-1987

The future use of State Forests in the south east part of Te Rohe Potae was the subject of investigation in the early 1970s. New Zealand Forest Service examined the quality of the forests to see if there was still merchantable timber that could be extracted. If there was not, then it examined whether the native forest cover could be converted to exotic plantations. This involved an assessment of whether there were alternatives to conversion, such as maintaining the indigenous cover for soil conservation, recreation, or wildlife protection.

The analysis undertaken by New Zealand Forest Service was drawn on by New Zealand Forest Products Limited, when it proposed in 1974 establishing some 60,000 hectares of pine plantation on State Forest and privately-owned (including Maori-owned) land. The proposal received a setback in 1975 when the Crown adopted an Indigenous Forests Policy for Crown-owned native forests. Application of the Policy reduced the area of State Forest that could become part of the Forest Products proposal. Together with an absence of support from the farming community, unwilling to contribute enough privately-owned land, the conversion proposal was ultimately withdrawn. Management of this indigenous forest estate was carried out by an Environmental Division of New Zealand Forest Service, which was less satisfactorily resourced than the Production Division responsible for the exotic forest

[385] *New Zealand Gazette* 1981 page 710. Not included in Supporting Papers.
[386] *New Zealand Gazette* 1984 page 1227. Not included in Supporting Papers.

estate. Much of the State Forest land scheduled during the early 1970s for conversion eventually went into the Department of Conservation's estate, because it was still State Forest with a native forest cover in 1987.

A number of State Forests in Te Rohe Potae, other than those declared to be forest parks (see below), were declared to be open indigenous forests in 1978[387]. This meant, under the terms of Section 63D Forests Act 1949, that the public had freedom of entry and access for public recreation purposes, and it was no longer necessary to obtain a permit to enter them (although hunters still required a hunting permit). There was also one ecological reserve set apart, outside Pureora forest (see below), at Taumatatawhero in Tawarau State Forest[388].

Following the environmental controversy at Pureora in 1976-78, discussed in a later section of this chapter describing the establishment of Pureora Forest Park, and other similar controversies elsewhere in New Zealand during the 1970s, the Forest Service recognised that there needed to be an opportunity for the public to have a say on how State Forest lands would be managed. Regional Management Plans were prepared in draft form and public submissions invited. One of these Regional Management Plans was for the King Country State Forests. The draft King Country Regional Management Plan, setting out management proposals for the 1980-1990 decade, was published in 1980, and attracted some 1400 submissions. How to allow production of indigenous timber from the minority of State forests still open for native logging was the key feature of the Plan, and this would undoubtedly have been the focus of the majority of submissions. However, the Plan was more broadly-based than solely focussing on native logging, and covered all the other State Forests in the region with an indigenous forest cover where logging was not being contemplated. For these protection forests, the Plan addressed management issues such as soil and water protection, water supply, cave and karst protection, pest and weed control, public use, archaeological site protection, and ecological and scientific protection[389]. It is not

[387] Kakara, Kara, Panirau, Waitewhena, Whitecliffs, Mount Roa, Wharepuhunga, Hauturu, Waitomo, Huikomako, Raepahu, Taumatatoara, Mahoe and Moeatoa State Forests. *New Zealand Gazette* 1978 pages 3288-3289. Supporting Papers #798-799.
[388] *New Zealand Gazette* 1977 page 631. Supporting Papers #796.
[389] New Zealand Forest Service, *Draft King Country regional management plan; 1980 to 1990*, 1980, pages 26-33 and 67-70. Supporting Papers #2202-2214 at 2203-2210 and 2211-2214.

known whether Maori organisations or individuals were among the submitters and, if so, what their concerns with the Plan were.

While the plan was solely concerned with State Forests being managed by New Zealand Forest Service, there was one aspect of the Forest Service's management that could affect neighbours such as Maori landowners.

> The control of feral goats in the region is a major problem in some forest and scrublands, as recreational and commercial hunting pressures on these animals is not intensive enough to have significant effect on reducing the populations. Many freehold properties adjoining State Forests harbour herds of feral goats which because of inadequate or lack of suitable fences pose a constant source of rei-infestation. The Wild Animal Control Act 1977 makes specific provision for allowing Forest Service entry on to private lands for the purpose of eradicating feral goats where they are being harboured. The Act will be used as a last resort to effect entry onto land when all other negotiations have failed.[390]

The Wild Animal Control Act 1977 remains on the statute book today.

5.4.1 Pirongia Forest Park

The legislative provisions for the establishment of State Forest Parks saw the establishment of Pirongia Forest Park in 1971. Over time, this Park expanded in area to take in other State Forests at Karioi mountain (in 1976) and Tapuwaeohounuku (in 1984), as discussed in more detail in the Pirongia Forest Park case study. Management was aimed at expanding the recreational opportunities the Forest Park could provide. Walking tracks, a handbook and a visitor centre in Pirongia township, were provided. An advisory committee of citizens with an interest in the Forest Park was established; as the case study shows, this had Maori representation on it.

5.4.2 Pureora Forest Park

The last vestiges of native timber logging on State Forest land were still continuing into the 1970s at Pureora[391], at a rate faster than the sustainable production objectives

[390] New Zealand Forest Service, *Draft King Country regional management plan; 1980 to 1990*, 1980, page 32.2202-2214 at 2209.

[391] The continuation of logging at Pureora, and its ending in 1978, is mentioned only in passing in Philip Cleaver, *Maori and the Forestry, Mining, Fishing and Tourism Industries of the Rohe Potae Inquiry District, 1880-2000*, February 2011, Wai 898 Document #A25, pages 24 and 152, quoting from Michael Roche, *History of Forestry*, New Zealand Forestry Corporation and GP Books, Wellington, 1990, pages 417-430.

of the new Indigenous Forests Policy would allow. In large part this was because of contractual commitments to supply timber to two local sawmills:

> Two 15-year contracts for wood from Pureora State Forest made in 1968 and 1970 with Ellis and Burnand and Pureora Sawmills respectively – the latter owned jointly by Carter Holt and Odlins – were now jeopardised. Both of the mills were cutting four to five times the newly set annual output of 4,000 cubic metres.[392]

In the early 1970s a campaign was launched by environmental activists to seek preservation of the remaining tall podocarp forests in the central North Island.

> This initially focused on Pureora and Waihaha State Forests. Local concern for the Waihaha Forest had manifested itself in the formation of a Waihaha Forest Preservation Committee comprising a wide range of regional organisations, plus the Native Forests Action Council, in 1974. This group urged forest park status for the Hauhungaroa Range, and preservation of Waihaha, at a meeting in Taupo at which Forest Service staff present outlined the new indigenous forest policy to no avail. The Taupo electorate National Party candidate promised in 1975 that milling would end in Waihaha State forest. An immediate decision was postponed pending a study of management options for all the West Taupo indigenous forests. The Native Forests Action Council meanwhile urged the Minister of Forests to create a wildlife sanctuary in order to protect the kokako, a rare native bird, and for the preservation of 100 ha of totara forest from logging at nearby Pureora State Forest. The Minister indicated that long-term sales contracts had to be honoured, and that selective logging would take place. Having failed to persuade Venn Young [the Minister of Forests] to change his mind, a group of Native Forests Action Council supporters from Auckland and Waikato visited Pureora, planting native seedlings as a protest. In January 1978, some adopted a more activist stance and led by Stephen King, Chairperson of the Auckland Branch of the Native Forest Action Council, climbed mature totara in the area where logging was to take place, and remained there for two days until the Director-General of Forests announced that for safety reasons logging operations would cease. In the meantime a group of Native Forests Action Council supporters and local forestry workers had clashed. Cabinet decided to halt operations until a planned consultative exercise: the Taupo Forestry Seminar in March 1978.[393]

The Waitangi Tribunal's Pouakani report took up the story:

> In March 1978 the Forest Service convened a seminar at Taupo, titled *Management Proposals for State Forests of the Rangitoto and Hauhungaroa Ranges, Central North Island*. A management regime was proposed which included no logging in areas to be set aside as ecological reserves, or in protected forest which was to be preserved for soil and water conservation purposes. Outside these areas it was proposed that selective logging should

[392] Michael Roche, *History of Forestry*, New Zealand Forestry Corporation and GP Books, Wellington, 1990, page 423.
[393] Michael Roche, *History of Forestry*, New Zealand Forestry Corporation and GP Books, Wellington, 1990, pages 425-426.

> continue in order to meet demands for high quality timber such as rimu for furniture making and totara for Maori carvers, and to meet obligations under existing logging contracts with timber companies in Barryville, Pureora, Tihoi and Te Kuiti. Replanting with native species was part of this policy, which was intended to maintain long-term sustainability of the indigenous timber resource. Public debate continued on the issue of logging and conservation, loss of employment, the future of Barryville, Pureora, and indigenous logging generally. A total of 1735 submissions were made to the Minister of Forests following the March seminar. The Native Forests Action Council and the Royal Forest and Bird Society also organised a number of public meetings which focussed on the future of West Taupo and other indigenous forests. The central issue was whether there should be some selective logging, or no logging at all. A strong body of opinion expressed the view that logging should be stopped, that what little was left of the original forest cover should be preserved.
>
> In August 1978 the Minister of Forests announced a halt to all logging of indigenous forests. In 1975 the Forest Service had indicated its intention, reiterated in the 1978 seminar, to create a Pureora State Forest Park by proclamation under s63A of the Forests Act 1949. The Forest Service was developing a policy for multiple uses of state forests, which would allow recreational and other public uses of the forest along with some selective logging and replanting. The Minister's announcement stated that the Wharepuhunga, Pureora, Tihoi, Hurakia, Taringamutu and Waituhi State Forests, a total of 71,870 hectares, would be immediately incorporated into Pureora State Forest Park.[394]

Many of the local forestry workers affected by this campaign, and concerned for their jobs, were Maori. Their interests were ultimately regarded by the Crown as subordinate to the interests being promoted by the environmental activists, and logging ceased, initially under a temporary moratorium, and then (in 1982) permanently.

> The closure of Pureora Sawmills virtually extinguished Barryville with a population of only 130. Compensation payments of $3.75 million were made by the Government in 1978 to both companies for breach of contract.[395]

In place of the native timber logging operations, a State Forest Park was established at Pureora in September 1978[396]. Ecological areas were set aside at Pikiariki and Waipapa[397], and on the slopes of Pureora mountain[398], and a recreational hunting area

[394] Waitangi Tribunal, *Pouakani Report 1993 (Wai 33)*, Brooker and Friend, Wellington, Section 15.3, pages 278-279.
[395] Michael Roche, *History of Forestry*, New Zealand Forestry Corporation and GP Books, Wellington, 1990, page 423.
[396] *New Zealand Gazette* 1978 page 2463. Supporting Papers #797.
[397] *New Zealand Gazette* 1979 page 2096. Supporting Papers #801.

was declared within the northern block of the Park[399]. The early management planning for Pureora Forest Park has been described in the Pouakani Report:

> During 1979 a draft King Country Regional Management Plan was prepared by the Auckland Conservancy of the New Zealand Forest service. In May 1982, following public response to the draft and further study of forest bird life, the Minister of Forests confirmed that the ban on logging in Pureora State Forest Park would remain. The King Country Regional Management Plan was finally approved in 1984. Meanwhile the Forest Service also prepared a management plan for Pureora State Forest Park.[400]

The plan described soil and water conservation as the primary management objective, with preservation of areas of scientific interest, scenic values and historical values as secondary objectives. Subject to meeting the requirements of these priorities, educational and recreational use would be encouraged. The idea of timber production had not been abandoned with the ban on logging, and the plan provided for native forest production areas to be managed so they could be harvested in the future. Exotic afforestation would be encouraged on lands purchased for that purpose. Protected areas included locations of "cultural interest such as Maori pa sites"[401].

The management of Pureora State Forest Park during the Forest Service days, and the involvement that Maori had with the Forest Park, has not been researched to the same extent as with respect to Pirongia Forest Park. There was, however, a similar pattern of representation on the Pureora State Forest Park Advisory Committee. There was a public call for nominations in August 1978[402]. Of the 64 nominations received, none were persons identifying as Maori, and none of the bodies making nominations were Maori organisations.

The consideration given to the nominations was a highly political matter conducted exclusively by officials, although subject to the approval of the Minister of Forests and Cabinet at the final stage. The officials were keen to have "a good balanced advisory committee which will work in the best interests of the park". To this end,

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[398] *New Zealand Gazette* 1986 page 317. Supporting Papers #816.
[399] *New Zealand Gazette* 1981 page 1826. Supporting Papers #805.
[400] Waitangi Tribunal, *Pouakani Report 1993 (Wai 33)*, Brooker and Friend, Wellington, Section 15.4, page 279.
[401] Waitangi Tribunal, *Pouakani Report 1993 (Wai 33)*, Brooker and Friend, Wellington, Section 15.4, pages 279-280.
[402] *New Zealand Herald*, 23 August 1978. Copy on Forest Service Auckland file 32/2/96/1. Supporting Papers #404.

some guidelines were developed; that these guidelines only appear in the file records of New Zealand Forest Service in connection with the forwarding of recommendations to the Service's head office suggests that they were developed retrospectively after the nominations had been received:

> (a) The need to select members who have a good balance of interests has precluded the selection of nominees who hold or represent extreme viewpoints.
> (b) It is necessary to have a balance between those with strong preservation and conservation views, against those with more balanced viewpoints on the development of the forests as a forest park.
> (c) Regional representation is required to adequately balance interests from outside the immediate region.
> (d) An adequate regional distribution of members is desirable to ensure that the local region's views and the views of local communities are adequately represented on the committee.
> (e) Representation by the Maori people or a person closely associated with the Maori people would be desirable.
> (f) Public servants were not considered.

Excluding those with "extreme viewpoints" meant that all Native Forests Action Council nominees were dismissed from consideration. Organisations deemed to have a particular interest in the Forest Park included the Deerstalkers Association and Federated Mountain Clubs (as recreation user groups), Forest and Bird Society and South Auckland Conservation Society (as environmental groups), Waitomo District Council and Taumarunui County Council (as local authorities), and the Institute of Foresters. Nominees from all these organisations were recommended as members of the Advisory Committee. To fill the gap caused by an absence of Maori nominees, the officials relied on the nomination of Finlay (Finn) Phillips by Otorohanga Rotary Club:

> F.L. Phillips. Has close associations with the Maori people, is a trustee on several Maori land trust boards, and is held in considerable regard by the Maori people. His appointment would represent their interests as well as the local people of Otorohanga. In addition, F Phillips has a good knowledge of this area and was an early supporter of the Forest Park proposal for the Hauhungaroa and Rangitoto Ranges. He was responsible for the first public meeting by the Otorohanga Rotary Club to discuss the Forest Park proposal….
>
> Phillips, as well as having strong local contacts and a good knowledge of the region, is associated with the Maori people. He has also had Forest Park Advisory Committee experience on Pirongia Forest Park Advisory Committee, which would be valuable in establishing a new committee.

The recommended committee was all male:

> A woman representative on the committee would have been desirable, but it was not possible to choose a suitable woman member and still maintain the desired regional representation.[403]

Nine persons were recommended by local Forest Service officials to be on the Advisory Committee. The consideration given in Wellington has not been researched. Seven of the recommendations were appointed, while the other two recommendations, a local farmer from Mangakino and a nominee of Taumarunui County Council, were not accepted. In their place were appointed a local farmer from Pureora and a past member of Waitomo County Council[404]. The appointments, for a three-year term, were approved by Cabinet in March 1979[405], and notified later that month[406].

Finn Phillips was reappointed to the Advisory Committee in both 1982[407] and 1985[408]. While there was no one of Maori descent appointed in 1982, Bert Te Tuhi was appointed in 1985.

While it is possible that there was a Maori dimension to the Forest Service's management of Pureora Forest Park between 1979 and 1987, nothing of significance has been identified during research for this report. The Pouakani Tribunal was not particularly complimentary about the Forest Service's intended management as described in the management plan for Pureora State Forest Park. It described an introductory paragraph on pre-European history as "short, inadequate, and for some terms inaccurate". It noted that the Maori dimension in the plan was "confined to statements about archaeological sites and obligations under the Historic Places Act",

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[403] Conservator of Forests Auckland to Head Office, 13 October 1978. Forest Service Auckland file 32/2/96/1. Supporting Papers #405-409.
[404] *New Zealand Herald*, 23 April 1979. Copy on Forest Service Auckland file 32/2/96/1. Supporting Papers #412.
[405] Secretary of the Cabinet to Minister of Forests, 5 March 1979, attached to Director General of Forests to Conservator of Forests Auckland, 20 March 1979. Forest Service Auckland file 32/2/96/1. Supporting Papers #410-411.
[406] *New Zealand Gazette* 1979 page 977. Supporting Papers #800.
[407] *New Zealand Gazette* 1982 page 1089. Supporting Papers #808.
[408] *New Zealand Gazette* 1985 page 3253. Supporting Papers #815.

remarking further that "it is not sufficient to rely on archaeological surveys by the New Zealand Historic Places Trust or Department of Conservation staff"[409].

5.5 Wildlife Service activities 1970-1987

Wildlife Service of Department of Internal Affairs was also stretched thinly across its functions. During the period, the numbers of staff distributed around the country increased, although unlike Department of Lands and Survey and New Zealand Forest Service where reserves and protection forest rangers were part of larger organisations, these staff were often sole operators in each region. Te Rohe Potae was served by regionally-based officers in Hamilton and New Plymouth. To make up for their small numbers, there was a policy of temporarily transferring staff from their regional duties and assembling them in teams to undertake specific projects that had been prioritised nationally. While this ensured that priority projects were carried out, it did disrupt the Service's activities in the regions.

Two particular Wildlife Service initiatives during the 1970s and early 1980s, the declaration of Karewa Island as a wildlife sanctuary, and the acquisition of land on South Mapara Road for a wildlife management reserve for kokako, are discussed in the following sub-sections.

5.5.1 Karewa Island Wildlife Sanctuary

It was during the 1970s that Karewa Island was declared a wildlife sanctuary. Karewa is Maori Freehold land, and to become a wildlife sanctuary required the consent of the owners. Wildlife sanctuary is an additional status layer (setting out the management priority for the land) overlying the land's ownership status.

The title to Karewa was investigated by the Native Land Court in February 1889, when it was awarded to three persons, Wahanui Te Huatere, Hone Te One and Wirihana Te Aoterangi[410]. It is not known if those three persons were the only owners, or whether their names were put forward by the tribal owners of the island to act as trustees on behalf of all the beneficial owners. However, the Court records

[409] Waitangi Tribunal, *Pouakani Report 1993 (Wai 33)*, Brooker and Friend, Wellington, Section 15.4, pages 285-286.
[410] Maori Land Court minute book 5 OTR 272. Supporting Papers #842.

suggest that the successors to two of the three persons regarded them as absolute owners, as each person's one share in the block has been succeeded to, and split among succeeding generations. Only the shareholding of one of the three persons, Wahanui Te Huatere, had not been succeeded to as at 1971. At that date there were a total of 25 owners, according to Maori Land Court records, one of whom was the Maori Queen, Dame Te Atairangikaahu.

The impetus for a wildlife sanctuary arose from an approach to the Wildlife Branch of Internal Affairs Department in January 1972. This approach was made by the Chief Surveyor in the Hamilton office of the Department of Lands and Survey, who had been in touch with a private citizen who had recently visited the island, observed many gannets, and counted 48 seals there[411].

The Controller of the Wildlife Branch agreed that a wildlife sanctuary was the most desirable and suitable form of protection for the wildlife on the island, and asked the Department of Lands and Survey to negotiate with the owners for either gifting of the island to the Crown, or consent to the island being declared a wildlife sanctuary[412].

It was more than two years later, in May 1973, before the Director General of Lands provided an interim reply:

> The Commissioner of Crown Lands Hamilton advises that while most of the owners so far consulted are co-operative towards the Island being created a sanctuary with control vested in your Department, he is experiencing some difficulty in obtaining individual agreement to support any such proclamation. Meantime he is persevering with this course of action, but may eventually have to request Board of Maori Affairs' approval to a meeting of assembled owners.[413]

Six months later he provided a further reply:

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[411] Chief Surveyor Hamilton to Conservator of Wildlife Rotorua, 22 December 1971, and SH Boyes, Hamilton, to Conservator of Wildlife Rotorua, 22 December 1971, attached to Conservator of Wildlife Rotorua to Controller Wildlife Branch, 6 January 1972. Internal Affairs Head Office file 35/2/15. Supporting Papers #31-33.

[412] Secretary for Internal Affairs to Director General of Lands, 26 January 1972. Internal Affairs Head Office file 35/2/15. Supporting Papers #34.

[413] Director General of Lands to Secretary for Internal Affairs, 16 May 1973. Internal Affairs Head Office file 35/2/15. Supporting Papers #35.

> [W]e now have the consents of 15 owners out of a total of 25 owners, and covering 1.2334 shares of a total of three shares. The consents obtained to date are forwarded herewith.
>
> The owners in this block are very widely scattered and a considerable amount of time and travelling has been involved in obtaining the consents we already have. However, I think that these consents would be more than sufficient to form a quorum at any meeting of assembled owners, and assume that you will now call such a meeting to explain to the owners in full your proposals for Gannet Island.[414]

The Wildlife Branch file contains six consent forms. The most significant consent is that of Dame Te Atairangikaahu. She was the first person to sign, in December 1972. The other five consents were from Buddy Searancke, Elsie Searancke, Matirewhaia Turnbull, Te Ataiorewa Winiata Kirkwood, and Molly Kata Wilson. Molly Wilson explained that she was authorised to consent for nine others (Ani Rotana, Billy Rotana, Evaline Rotana, Katie Rotana, Kerapa Rotana II, Mrs Ngarama Alma Hiku, Mrs Nini Kiriwehi Takiaho, Pihana Patrick Rotana, and Rawa Rotana). The consent form included space for those signing it to specify certain conditions upon which consent was being given. However, none of the forms specified any conditions of consent.

Wildlife Branch took up the suggestion that a meeting of owners be called, and wrote to the District Officer of the Department of Maori Affairs in Hamilton, asking him to arrange a meeting, so that the wildlife protection proposals could be explained to them:

> We do not wish to acquire the island unless the owners prefer it that way, but, as I have mentioned, we would like to have some degree of reservation status attached to it, and would be grateful if you would obtain from the Maori owners formal consent to this.[415]

The Deputy Registrar replied, apparently after some discussion with the Chief Surveyor, that:

> [U]nder the circumstances, it appears to me that you have sufficient consents to have the Island set aside as a Bird Sanctuary. I doubt whether you would get as many consents if a meeting of owners was called to consider the matter.[416]

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[414] Director General of Lands to Secretary of Internal Affairs, 15 November 1973. Internal Affairs Head Office file 35/2/15. Supporting Papers #36-42.
[415] Secretary for Internal Affairs to District Officer Maori Affairs Hamilton, 22 January 1974. Internal Affairs Head Office file 35/2/15. Supporting Papers #43-44.
[416] Deputy Registrar Maori Land Court Hamilton to Secretary for Internal Affairs, 31 January 1974. Internal Affairs Head Office file 35/2/15. Supporting Papers #45.

The Chief Surveyor also wrote:

> The only type of meeting of owners which can give any legal effect to the title to Maori Land is set out under Part XXIII Maori Affairs Act 1953, and there is no provision for the action you desire since the owners do not wish to part with the land. Any informal meeting would have less effect than the Consents already obtained (that is to say any such meeting arranged to provide some sort of written consent as those we already have and would be signed by far fewer owners because of their scattered location). In fact, some of those consents we have were obtained by informal meetings of family groups….
>
> You will note that the Consent of Dame Te Atairangikaahu, the Maori Queen, is among those you hold. All aspects were discussed with her in the first instance, and the Consent form was drawn up to suit her wishes, and accepted by all other owners available.
>
> I am therefore of the opinion that the Consent forms you now hold are the most satisfactory evidence available to support a proclamation now to declare the land in accordance with those Consents.[417]

This advice was accepted[418]. In order to be proclaimed, the area to be declared a sanctuary had to be defined on a survey plan. No plan was available for Karewa[419], and to produce one would require that the island be included in an aerial photograph run, from which a photogrammetric plot could be prepared. Arranging this for an isolated island was not a straightforward task, and it took until 1979 before the survey plan was completed and approved by the Chief Surveyor and the Judge of the Maori Land Court[420].

In December 1979 the Minister of Internal Affairs was told that "all necessary discussions have been held and consent to proclaim the sanctuary has been obtained from all the parties involved". He approved the drawing up of the Proclamation[421].

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[417] Chief Surveyor Hamilton to Secretary for Internal Affairs, 31 January 1974. Internal Affairs Head Office file 35/2/15. Supporting Papers #46.
[418] File note by BD Bell to Mr Luke, 18 February 1974. Internal Affairs Head Office file 35/2/15. Supporting Papers #47.
[419] The location of Karewa had been plotted as part of the King Country triangulation in 1888 (South Auckland plan SO 3902/A – not included in Supporting Papers), but this was by measurement of bearings only from trig stations on the mainland. Its location had also been plotted on hydrographic charts. Neither of these had surveyed the shape (i.e. the line of mean high water mark) of the island or its offshore stacks.
[420] South Auckland plan ML 21136. Supporting Papers #843.
[421] Secretary for Internal Affairs to Minister of Internal Affairs, 5 December 1979, approved 6 December 1979. Internal Affairs Head Office file 35/2/15. Supporting Papers #48.

What the Minister was told was not strictly correct, as was pointed out in a file note addressed to the Director of Wildlife Service the following month:

> The submission [to the Minister] makes no mention of the Maori ownership of the land, and does not inform the Minister of the nature of the consents obtained (which is a minority shareholding). One of the owners is the Maori Queen – she has consented. These consents were obtained in 1972 and early 1973.
>
> Since that time there has been a rather radical change in Maori attitudes to Crown involvement in their lands, particularly in the Raglan area in which Gannet Island lies.
>
> This matter is drawn to your attention, as you may wish to remedy the oversight of the submission and inform the Minister of these circumstances, or adopt other measures to ratify the consents obtained.[422]

However, the Director decided that "we should proceed; the Maori owners have effectively agreed and are provided for adequately in terms of the provisions of the order"[423].

The Wildlife Sanctuary (Gannet Island) Order 1980 was drawn up and proclaimed by the Governor General in April 1980[424]. The Order used the Gannet Island naming notwithstanding that the Schedule to the Order identifies that it applies to the Karewa block. This was apparently to avoid confusion with another Karewa Island in the Bay of Plenty, which had also been declared to be a wildlife sanctuary.

With the issuing of the Order, an era of partnership between the Maori owners and the Crown's wildlife protectors could theoretically begin. However, it was not a close partnership. Wildlife Service staff never once set foot on Karewa, or made contact with the owners, between 1980 and 1987, when Wildlife Service was incorporated

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[422] File note to Director, 15 January 1980. Internal Affairs Head Office file 35/2/15. Supporting Papers #49.
The reference to "a rather radical change in Maori attitudes" at Raglan is presumably a reference to the Raglan Golf Course controversy, discussed in David Alexander, *Public Works and Other Takings in Te Rohe Potae District*, December 2009, Wai 898 document #A63, chapter 16.

[423] File note by Director, 8 February 1980, on File note to Director, 15 January 1980. Internal Affairs Head Office file 35/2/15. Supporting Papers #49.

[424] Secretary for Internal Affairs to Minister of Internal Affairs, 10 April 1980, and Minister of Internal Affairs to Governor General, 15 April 1980. Internal Affairs Head Office file 35/2/15. Supporting Papers #50 and 51.
Wildlife Sanctuary (Gannet Island) Order 1980. Statutory Regulations 1980/90. Supporting Papers #736-739.

into the new Department of Conservation. Nor is there any record that the owners contacted the Wildlife Service during that time.

5.5.2 South Mapara Wildlife Management Reserve

Another action taken by Wildlife Service arose unexpectedly out of the King Country Land Use Study. The wildlife survey undertaken for the Study found a larger-than-expected population of kokako in a State Forest block on South Mapara Road. This was a surprise to Wildlife Service staff as the block was cutover forest, and was infested with goats; kokako were thought to need a range of canopy and sub-canopy vegetation in a healthy state to provide food and allow them to hop around the forest (as they are poor fliers).

> In October 1976, the Wildlife Service made a survey of Mapara SF and adjacent private forest in the southern block as part of investigations for the King Country Land Use Study. An average of 1.8 kokako for every survey station was recorded with birds occurring at 21 out of 26 sample points. This is the highest concentration of kokako ever recorded.
>
> Eleven months later, in November 1977, a further survey was made of the remaining area of private forest in the north. This revealed an average of 0.6 kokako per survey station, with birds occurring at 17 out of 45 sample points.[425]

Having made the discovery, Wildlife Service sought to capitalise on the healthy population, by expanding the area of protected forest, and by wild animal control.

> Following the King Country Land Use Study, the Wildlife Service has introduced a system of habitat rating using three value classes – outstanding, high and moderate. In order to rate as outstanding, an area must have the "presence of an endangered species listed in the Red Data Book of the International Union for the Conservation of Nature and Natural Resources", or "presence of an isolated viable population of an endemic species with restricted distribution and of limited abundance", or a "largely unmodified habitat type not represented elsewhere in the country to the same extent and large enough to support self-sustaining populations of all plant and animal species which are part of this community" (Imboden, 1978). On the basis of the first two of these criteria, Mapara has to be classified as an area of outstanding wildlife value, and it is highly desirable and important that this forest receives the status of a reserve such as an Ecological Reserve or a Wildlife Management Reserve.[426]

[425] PM Coker, Status of the kokako in Mapara SF and adjacent forest, 15 March 1978. Copy on Internal Affairs Head Office file WIL 34/3/32. Supporting Papers #15-19.
[426] PM Coker, Status of the kokako in Mapara SF and adjacent forest, 15 March 1978. Copy on Internal Affairs Head Office file WIL 34/3/32. Supporting Papers #15-19.

A case was put to the Minister of Internal Affairs in July 1978 for the purchase of similar forest on privately-owned land adjacent to Mapara State Forest. Of the four properties identified, two were Maori-owned, one being Maori freehold (subject to a lease to New Zealand Forest Products)[427], and the other being General Land[428]. The proposal, which would have the effect of expanding the initial block of Crown-owned land from 221 hectares (the State Forest) to a block of about 1300 hectares, was approved by the Minister[429], and became the blueprint for a land purchase programme over the next seven years.

Intensive goat control was carried out by Forest Service hunters in 1981-83; after over 5000 animals were destroyed, there was a marked recovery in lower understorey vegetation. However, hunting pressure on the goat population was not maintained in subsequent years, allowing numbers to rise; in addition, possums and domestic stock were not removed at the time.

As at the 1989-1991 period, there were about 50 kokako at Mapara. During the 1990s there was intensive pest control:

> After 8 years of pest control at Mapara, the total population trebled, the number of breeding pairs increased eight-fold, and the composition of the population changed from predominantly old males to young birds with a near equal gender ratio.[430]

One consequence of that degree of success has been that the population has been assumed to be capable of looking after itself, and the intensity of management effort at South Mapara has been reduced in recent years.

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[427] Part Rangitoto Tuhua 68I2B6B of 549 hectares was purchased by the Crown in February 1981, with the sale confirmed by the Maori Land Court on 10 April 1981. The leasehold interest held by New Zealand Forest Products had been purchased by the Crown in 1979, making the Crown responsible for making lease rental payments during the 1979-81 period. Secretary for Internal Affairs to Minister of Internal Affairs, 7 August 1979 (approved 8 August 1979), 29 September 1980 (approved 1 October 1980), and 8 April 1981 (approved 8 April 1981), and Commissioner of Crown Lands New Plymouth to Director Wildlife Service, 13 April 1981. Internal Affairs Head Office file WIL 34/3/32. Supporting Papers #22-23, 24-25, 26-27 and 28.

[428] Part Rangitoto Tuhua 68I2A2B4 and Part Lot 2 DP 7844 (now Lot 4 DP 15015) of 367 hectares was purchased by the Crown in 1983. Secretary for Internal Affairs to Parliamentary Under-Secretary to the Minister of Internal Affairs, 17 March 1983. Internal Affairs Head Office file WIL 34/3/32. Supporting Papers #29-30.

[429] Secretary for Internal Affairs to Minister of Internal Affairs, 3 July 1978, approved 5 July 1978. Internal Affairs Head Office file WIL 34/3/32. Supporting Papers #20-21.

[430] Department of Conservation, *North Island Kokako Recovery Plan 1999-2009*, 1999, Threatened Species Recovery Plan 30, page 10. Posted on www.doc.govt.nz

5.6 Administration by Department of Conservation since 1987

The Crown's environmental restructuring was planned during the period 1985-1987, and implemented in 1987. According to McLean and Smith, there was little consideration of Maori interests in the conservation estate during the restructuring process itself, as it was thought the Treaty of Waitangi was not particularly applicable to conservation administration[431]. However, surrounding events in public policy development, such as expansion of the role of the Waitangi Tribunal in 1985, and recognition of the Treaty of Waitangi in the State-Owned Enterprises Act 1986, did have some bearing on the final shape of the Conservation Act 1987. It included a requirement that the new Department of Conservation was to conduct itself having due regard for the principles of the Treaty of Waitangi. Section 4 of the Department's primary statute, the Conservation Act 1987, states:

> This Act shall be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi.

In a hierarchy of legislative requirements, 'give effect to' counts as one of the strongest statements, having greater force than 'recognise', or 'have regard for', or 'take into account'. This has been discussed in the Tribunal's *Ko Aotearoa Tenei* report[432].

The Department of Conservation came into existence in April 1987. Until September 2013 it was organised around a series of regional units known as conservancies. The Waikato Conservancy was responsible for most of Te Rohe Potae inquiry district, with the Wanganui Conservancy responsible for most of the Whanganui catchment and the coastal area south of Mokau River. Along the Mokau River itself, the scenic reserves on both banks of the lower river were the responsibility of the Wanganui Conservancy. In the Whanganui catchment, the boundary between the two Conservancies within Te Rohe Potae district ran approximately along the Okahukura - Stratford railway line and the Taringamotu River. With effect from September 2013, a national reorganisation of the department has replaced eleven conservancies with six regions. Staff in the six regions work for either a conservation services group or a

[431] Robert McLean and Trecia Smith, *The Crown and fauna and flora, legislation, policies and practices, 1983-98*, Waitangi Tribunal, 2001, page 362. Posted on www.justice.govt.nz/tribunals/waitangi-tribunal

[432] Waitangi Tribunal, *Ko Aotearoa Tenei: a report into claims concerning New Zealand law and policy affecting Maori culture and identity*, Wai 262, 2011.

conservation partnerships group. The boundary between the Northern North Island and Central North Island regions now bisects Te Rohe Potae inquiry district. However, boundaries for management planning and for conservation board citizen involvement are unchanged, and still conform to the old conservancy boundaries. At this early stage in the reorganisation, the new departmental structure appears confusing (to an outsider), and is not commented on further in this report, which focuses rather on the conservancy-oriented conservation boards and management planning aspects of the Crown's administration of the conservation estate.

Following the establishment of the Department of Conservation in 1987, more change was to come with the Conservation Law Reform Act 1990. This reduced the emphasis on individual parts or particular land status categories of the conservation estate, and adopted a more regional approach. This change in priorities was most apparent with citizen participation, and with management planning.

With respect to citizen participation, the State Forest Park Advisory Committees were abolished (Section 36(f)). So too were the National Parks and Reserves Boards, and other Boards concerned with parts of the conservation estate (with only a few exceptions)[433]. In their place were to be a series of regional conservation boards, to provide citizen advice to the Department of Conservation on policy (rather than day-to-day management) matters to do with the management of all areas of the conservation estate in a region. For most of Te Rohe Potae district, the regional board was the Waikato Conservation Board; a small portion of the southern part of the district was in the Taranaki/Wanganui Conservation Board's district. Each Board would consist of not more than 12 members, each appointed for three-year terms, who would be appointed having regard for:

a) The particular features of land administered by the Department in the area of the Board's jurisdiction; and
b) The interests of nature conservation, natural earth and marine sciences, recreation, tourism, and the local community including the tangata whenua of the area.[434]

[433] This occurred during a period of a wider Government review of the worth of boards, colloquially referred to at the time as a "quango hunt"; the review was not confined to the Department of Conservation.
[434] Section 6P(2) Conservation Act 1987, as inserted by Section 5 Conservation Law Reform Act 1990.

Tangata whenua representatives were to be appointed after consultation between the Minister of Conservation and the Minister of Maori Affairs. Maori appointees to the inaugural Waikato Conservation Board were Walter Anderson of Waitomo, Margaret Howland of Coromandel, Carmen Kirkwood of Whatapaka, Toko Te Aho of Thames, and George Tutaki of Benneydale[435]. However, appointees were not identified by their representation, so which of these people was appointed to represent tangata whenua interests after consultation with the Minister of Maori Affairs is not known. Maori appointees to the inaugural Taranaki/Wanganui Board included Te Atawhai Archie Taiaroa of Taumarunui[436].

A secondary change was to prepare regional conservation management strategies, which were intended to be a substitute for the gap left when management plans for reserves and State Forests had not been prepared. There was to be a three-tier public consultation process in the preparation of conservation management strategies; each strategy would be publicly notified in draft form and comments invited, the Conservation Board heard the comments and provided advice to the Department, and the completed strategy, as revised by the Department, was considered by the national-level New Zealand Conservation Authority (another level of citizen participation) before being approved by the Authority.

A Conservation Management Strategy for the Waikato Conservancy was approved in September 1996[437]. This set up as a management vision:

> An effective partnership between the department and tangata whenua with shared goals for protecting and managing natural and historic resources on land administered by the department.[438]

In a section devoted to giving effect to the Treaty of Waitangi, the implementation methods were said to be:

- Commit resources to develop an effective partnership between tangata whenua and the department in the protection and management of natural and historic resources on land administered by the department.

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[435] *New Zealand Gazette* 1990 page 3727. Supporting Papers #824.
[436] *New Zealand Gazette* 1990 page 3728. Supporting Papers #825.
[437] Department of Conservation, *Waikato Conservation Management Strategy, 1996-2006*, 2 Volumes, 1996.
This document has been included in the Waitangi Tribunal's Hauraki district inquiry record of documents. Wai 686 document Q6.
[438] Department of Conservation, *Waikato Conservation Management Strategy, 1996-2006*, 2 Volumes, 1996, Volume 1, page 26. Wai 686 document Q6.

- Seek resources to support tangata whenua with conservation initiatives and the protection of taonga in areas administered by the department.
- Provide information and advice to tangata whenua to whom responsibility for protection of taonga in areas administered by the department has been delegated.
- Support and include in conservancy literature and interpretation material the effective use of Maori place names and names of flora and fauna.
- Pursue opportunities to participate in hui, attend poukai, and adopt appropriate protocols in the implementation of bicultural communication.
- Implement effective consultation processes on issues, activities and proposals that are likely to affect cultural values.
- Work towards achieving greater understanding of the principles of the Treaty of Waitangi and joint conservation objectives in partnership with local hapu and iwi.
- Provide ongoing cultural programmes which cultivate an awareness and understanding of tikanga Maori at different levels to meet the needs of staff.

Explanation
Local hapu and iwi authorities will be consulted about projects that are proposed for conservation lands within their areas of territorial concern. They shall be provided with information and with reasonable time to respond. They shall be made aware of the business planning cycle and invited to signal ahead of time issues which could be of concern to them.

Resources permitting, assistance will be provided under Tikanga Atawhai for local hapu and iwi to undertake conservation projects.[439]

The area of Te Rohe Potae district inquiry was split between three sub-regions, Waikato West, Raukawa-Rereahu and Mokau-Tuhua. A common feature of the forested areas of all three sub-regions, in terms of threats to conservation and use of the estate that had to be managed, was the presence of introduced animals, especially goats, possums and deer, but also roaming farm stock. Other threats in the three sub-regions included siltation and pollution in the three west coast harbours and in limestone cave systems, spread of weeds, damage to dune habitats, inadequate recreation facilities, and illegal activities such as logging, grazing and release of deer. However, its response to these widespread threats was to identify strategic management clusters of particular conservation importance, the long-term

[439] Department of Conservation, *Waikato Conservation Management Strategy, 1996-2006*, 2 Volumes, 1996, Volume 1, page 128. Wai 686 document Q6.

conservation of which requires active and ongoing management intervention, as follows:

- West Waikato — Aotea and Kawhia Harbours
- Raukawa-Rereahu — Pureora Conservation Park
- Mokau-Tuhua — Waitomo Caves and western King Country forests
  Mapara Wildlife Reserve

This approach was a response to having insufficient resources to tackle all the problem issues facing the conservation estate. However, it was also a response that seemed designed to fail, in that while addressing the problems in some locations they would be growing larger in other locations. The risks were recognised:

> Identification of these strategic clusters DOES NOT mean that all other areas administered by the department are unimportant. Virtually all remaining conservation areas are important because they contain or support natural or historic resources that are important, perhaps essential, for the long term physical, spiritual and cultural welfare of the people of the region. They provide water and soil protection, homes for native and introduced plants and animals (hence an essential storehouse of biodiversity), local recreation opportunities and scenic beauty….
>
> However, while the department has a responsibility to manage all areas that it administers, the degree of management can vary from "leave as is" through to intensive, highly resourced programmes such as species recovery or recreation development. The department does not have the resources to do everything it wishes to achieve good conservation. It must focus where it can be most strategically effective on a national scale, and assist local and regional communities to protect resources of local and regional importance.[440] [capitalisation in original]

Thus the Strategy was clear that national needs decided priorities. Even if Te Rohe Potae Maori had been in an advantaged position to be able to influence the decisions, and there is no evidence of that (apart from representation on the Waikato Conservation Board), their perspective would not necessarily have carried the day.

Pirongia Conservation Park was not among the strategic management clusters that the Strategy was favouring. It would not receive any special attention of the kind it had attracted when it had been a Forest Park under New Zealand Forest Service control.

[440] Department of Conservation, *Waikato Conservation Management Strategy, 1996-2006*, 2 Volumes, 1996, Volume 1, pages 35-36. Wai 686 document Q6.

At Pureora, the portions of the Forest Park planted in exotic pines were transferred to Forestry Corporation State-Owned Enterprise in the 1987 restructuring, leaving only the parts with an indigenous vegetation cover to become part of the conservation estate. As a result of the Conservation Act 1987, the Forest Park was renamed Pureora Conservation Park. The changes in administration of the conservation estate brought about three years later by the Conservation Law Reform Act 1990 meant that some of the recommendations of the Pouakani Tribunal with respect to Pureora Conservation Park were stillborn. The Tribunal found that "this forest is also the taonga of local tribes", and it therefore followed that "Maori should actively participate in managing this taonga in the national interest". It recommended that:

> In its administration of Pureora Forest Park, the Department of Conservation should be guided by a trust made up of nominees from the Maniapoto Maori Trust Board, Tuwharetoa Maori Trust Board and Ngati Raukawa Trust Board. The trustees' role should include participation in preparation of a management plan for the Pureora Forest Park, as well as ongoing advice on Maori cultural, spiritual and other relevant matters. These may include use of Pureora Forest Park for Maori purposes such as the felling of totara or other timber for use in carvings for meeting houses or other appropriate structures, and the taking of fibre plants such as kiekie for weaving, or other plant material required for Maori purposes. The taking of such resources is to be allowed by the Department of Conservation only with the permission and at the discretion of the trustees, guided by any relevant scientific information available….
>
> In the preservation of indigenous forest resources and wildlife habitats, a valued taonga, the Crown has an obligation not only to preserve the remaining forest but also actively to seek to replant suitable adjacent lands in indigenous species, and incorporate these in Pureora Forest Park in due course.[441]

However, no stand-alone management plan for Pureora was prepared, and no trust was established to manage Pureora jointly with the Department of Conservation. In fact, little seems to have changed immediately, as the 1996 Waikato Conservation Management Strategy, when listing "involvement of tangata wheua in management of Pureora Conservation Park" as one of nine Pureora conservation issues, remarked:

> As recorded by the Waitangi Tribunal in its report to the Pouakani claim, … the mountains Pureora and Titiraupenga are tribal land marks, maunga tapu, for Maori who identify with Tainui and Tuwharetoa, and the Forest is taonga of local tribes. The Tribunal has made a series of recommendations, which

[441] Waitangi Tribunal, *Pouakani Report 1993 (Wai 33)*, Brooker and Friend, Wellington, Section 15.4, pages 287-288.

need to be resolved in a process of negotiation between tangata whenua and the Crown.[442]

The Conservation Management Strategy committed the Department of Conservation to work with tangata whenua "to achieve mutually beneficial management of the Park", and to work with the Rereahu Regional Management Committee (one of seven regional environmental committees of Ngati Maniapoto) to allow the controlled taking of cultural materials[443].

After the 1996 Waikato Conservation Management Strategy had been in existence for ten years, it became statutorily due for review. A draft review of the Strategy, to cover the period 2008 to 2018, was prepared and publicly notified in 2008[444]. However, it was not progressed through to approval by the New Zealand Conservation Authority while a number of national issues to do with the content and formatting of conservation management strategies generally were being addressed. Once these national-level issues were resolved, the way was clear for the draft review to be revised, and then notified for public comment. This public notification occurred in December 2012[445]. The references below to the content of the draft review have to be read on the understanding that the review is a work-in-progress.

The reviewed Conservation Management Strategies probably have a stronger national consistency than the initial Strategies published in the 1990s. This is in part because of the development of a Conservation General Policy, approved in 2005[446], which has established nationally standardised policies for the management of the conservation estate, and in part because the conservation legislation (and associated delegations) requires many discretionary approvals to be exercised at the national level by the Minister of Conservation or the Director General of Conservation. Having national

[442] Department of Conservation, *Waikato Conservation Management Strategy, 1996-2006*, 2 Volumes, 1996, Volume 1, page 85. Wai 686 document Q6.
[443] Department of Conservation, *Waikato Conservation Management Strategy, 1996-2006*, 2 Volumes, 1996, Volume 1, page 87. Wai 686 document Q6.
[444] Department of Conservation, *Waikato Conservancy Draft Conservation Management Strategy, 2008-2018*, 2008. Not included in Supporting Papers.
[445] Department of Conservation, *Conservation Management Strategy, Waikato Conservancy 2014-2024, Volume 1 (draft)*, December 2012. Posted on www.doc.govt.nz
[446] The Waitangi Tribunal has identified a fundamental flaw (and Treaty breach) in the Conservation General Policy, because it allows explicit provisions of conservation estate legislation to override and have priority over the principles of the Treaty (to be given effect to under Section 4 Conservation Act 1987). Waitangi Tribunal, *Te Kahui Maunga: the National Park District Inquiry report*, Section 12.5.2, Wai 1130, 2013.

consistency is a two-edged concept, however – there is a risk that a national (and potentially Treaty non-compliant) perspective predominates, and local initiatives (including recognition of and provision for hapu rangatiratanga) become subordinated.

The draft 2012 Strategy has nine objectives for the Department's interaction with Maori in the Waikato Conservancy, which have the appearance of having been developed nationally and capable of application anywhere in New Zealand:

- Maintain and strengthen relationships with tangata whenua to enhance conservation and recognise mana. These relationships should be based on mutual good faith, cooperation and respect.
- Formalise relationships, where appropriate, through agreements with tangata whenua to enhance and support those relationships.
- Actively consult and work with tangata whenua, ensuring consultation is early, ongoing, informed and effective.
- Consider customary practices and the customary use of traditional materials and indigenous species by tangata whenua, consistent with kaitiakitanga, the relevant legislation, regulations, general policies and the purposes for which the land is held.
- Encourage tangata whenua involvement and participation in conservation management on public conservation lands and waters.
- Promote integrated conservation management for areas adjoining public conservation lands or waters that have been returned to tangata wheua through Treaty of Waitangi settlements.
- Work with tangata whenua to advocate for the protection of mahinga kai, wahi tapu and other cultural resources located outside public conservation lands in accordance with Treaty settlement outcomes. *[Replace whole bullet point with "Work with tangata whenua, where the Department has a common interest, to protect on public conservation land and waters and advocate for off public conservation lands mahinga kai, wahi tapu and other cultural resources in accordance with Treaty settlement outcomes."]*
- Work with tangata whenua to establish formal protocols to:
    a) Enable the customary use of traditional materials and indigenous species *[consistent with objective 1.4.4]*; and
    b) Guide the management of marine mammal strandings.
- Contribute to the process of considering Treaty of Waitangi claims relevant to the Department of Conservation's functions, and implement any future Treaty of Waitangi settlements that affect the management of public conservation lands and waters. *[Replace whole bullet point with "Implement relevant Treaty of Waitangi settlements consistent with the Department's statutory role."]*[447]

[447] Department of Conservation, *Conservation Management Strategy, Waikato Conservancy 2014-2024, Volume 1 (draft),* December 2012, page 21.

[Matters in italics represent changes to the text following public submissions]

The Strategy identifies the role that the conservation estate in Te Rohe Potae can play in protecting the ecological biodiversity of New Zealand. At a national level 941 ecosystem management units on public conservation estate lands and waters have been identified in a natural heritage management system as priority sites for ecosystem management. The twelve units in Te Rohe Potae district are:

- Aotea Harbour sand dunes Scientific Reserve
- Lake Koraha Conservation Area
- Pirongia Conservation Park
- Pureora Conservation Park ecological areas (Ratanunui, Upper Maramataha, Waihaha, Waipapa)
- Pureora Conservation Park other areas (Pikiariki, Pureora mountain, Whangaui Stream)
- Te Kauri Park Scenic Reserve
- Whareorino Conservation Area[448]

It is not clear whether the fact that seven of the twelve units are in Pureora Conservation Park is truly representative of the national ecological importance of Pureora (or conversely whether the rest of Te Rohe Potae is so lacking in national-scale ecological importance), or whether this number of units is a reflection of the ecological categorisation effort put into Pureora from an earlier starting point (during the New Zealand Forest Service days). The Strategy notes that the national list could change, with new sites added and others removed[449].

The Strategy proposes that the Department of Conservation's efforts be concentrated on a series of eight 'places' within Waikato. 'Place' is perhaps a misnomer, as the

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Three of the objectives have been amended following public submissions. Department of Conservation, *Revised draft Waikato conservation management strategy*, September 2013, pages 25-26. Posted on www.doc.govt.nz

[448] Department of Conservation, *Conservation Management Strategy, Waikato Conservancy 2014-2024, Volume 1 (draft)*, December 2012, Appendix 5, pages 190-193.
The eleven units in Te Rohe Potae district are unchanged following public submissions. Department of Conservation, *Revised draft Waikato conservation management strategy*, September 2013, pages 212-215. Posted on www.doc.govt.nz

[449] The potential for the nationally significant units to change has been added following public submissions. Department of Conservation, *Revised draft Waikato conservation management strategy*, September 2013, page 212. Posted on www.doc.govt.nz

'places' are more realistically districts within the region. Thus the 'place' named Pureora covers a large proportion of the eastern lands of Te Rohe Potae. The other two 'places' in Te Rohe Potae are Karioi to Whareorino Place and Waitomo Place.

The Karioi to Whareorino Place is the large though fragmented stretch of forested land between Raglan and Awakino, commencing at Karioi mountain, and passing through Pirongia mountain and Tawarau to Whareorino. Animal pest and wild animal control is perhaps the biggest challenge to be addressed, while illegal release of wild animals, illegal logging and unauthorised stock grazing are other identified threats.

> The place has a diverse heritage and many significant cultural and historical sites, reflecting a long history of Maori occupation and subsequent colonial settlement. It crosses the rohe of both Waikato-Tainui and Ngati Maniapoto, who hold strong cultural associations with the area. Archaeological associations include numerous pa, middens, urupa (burial sites), food pits and battle sites. The Department intends to build on positive working relationships with Waikato-Tainui and Ngati Maniapoto to enhance cultural heritage management and conservation….
>
> Integrated catchment management is important for maintaining ecosystem health and associated ecosystem services, such as providing drinking water *[and minimising erosion. Possum and goat control delivered, initiated or supported by the Department, local authorities, Iwi, other land managers and communities is conducted through most tracts of forest within the Karioi to Whareorino Place. Although the driver for the Department's work is primarily biodiversity related, the benefits extend to an improvement or maintenance of ecosystem services these forests provide.]* Iwi, local authorities, other land managers, communities and other organisations all contribute to this alongside the Department *[this sentence deleted]*. Coordinated management efforts include animal pest *[and wild animal]* control programmes, tree and riparian planting, species monitoring and survey, and advocacy. Seeking the involvement of new parties, particularly in animal pest *[and wild animal]* control, will build on these collaborations.[450]
> [Matters in italics represent changes to the text following public submissions]

The Waitomo Place covers the karst limestone landscapes around Waitomo Caves.

> Cave features, such as speleotherms and sediment layers, are ancient and fragile, and damage is cumulative and usually irreversible. They are also sensitive to catchment-based changes, such as increased sedimentation and changes in water quality. Impacts can include:
>
> - Damage to vegetation, and surface and sub-surface karst features

[450] Department of Conservation, *Conservation Management Strategy, Waikato Conservancy 2014-2024, Volume 1 (draft)*, December 2012, page 96.
The text was changed following public submissions. Department of Conservation, *Revised draft Waikato conservation management strategy*, September 2013, page 110. Posted on www.doc.govt.nz

- Changes to cave microclimates, hydrology and biochemical processes
- Disturbance to fauna, and cultural and geological artefacts

> … the Department's [national] Karst Management Guidelines will guide the management of karst values within this Place.
>
> Partnership with iwi groups is important in the Waitomo Place. The caves and the lands of the Waitomo area have a special value to Ngati Maniapoto and hapu of Hauauru ki Uta. Caves embrace the concept of Te Kopu o Te Whenua (the womb of the Earth Mother, Papatuanuku). The karst landscape includes urupa (burial sites), pa and battle sites, and preserved Maori artefacts. Opapaka Pa and Ruakuri Caves and Bush Scenic Reserve are examples of sites managed by the Department that are important to local iwi.[451]

The Pureora Place extends from near Otorohanga, along the Rangitoto Range, Pureora mountain and the Hauhungaroa Range to as far south as the Taumarunui – Turangi state highway. Pureora Conservation Park is at the centre of the Place, though it includes other conservation lands besides. The Strategy proposes that these other conservation lands be incorporated into the Conservation Park, so that the Place has a consistent land status for management purposes. The forests of Pureora are among the last remnants of the extensive podocarp forests that once covered much of the central North Island. The Place has abundant native birdlife, and outstanding natural features and landscapes. Animal pest control relies on poisoning programmes, commercial wild animal recovery and recreational hunting.

> Pureora provides a range of ecolosystem services that benefit local and regional communities. The large areas of threat-managed forest act as a carbon sink, and also provide clean water, landscape stability and soil conservation, and reduce flooding and sediment generation. Pureora supports significant *[changed to "important"]* populations of seed-dispersing indigenous bird species that facilitate the long term survival of local and regional forest ecosystems….
>
> Pureora has special significance to a number of local iwi interests, including Ngati Maniapoto, Rereahu (affiliated to Ngati Maniapoto), Raukawa, Pouakani and Ngati Tuwharetoa. Ngati Maniapoto and Raukawa have interests in the Upper Waipa River catchment in the Rangitoto Range. The peaks of Pureora (Pureora o Kahu), Titiraupenga and Wharepuhunga are tribal landmarks, recognised as maunga tapu by several iwi. The cultural significance and management of Titiraupenga has been acknowledged as a specific component of Treaty settlements with Pouakani and Raukawa.

[451] Department of Conservation, *Conservation Management Strategy, Waikato Conservancy 2014-2024, Volume 1 (draft)*, December 2012, pages 107-108.
This text was unchanged following public submissions. Department of Conservation, *Revised draft Waikato conservation management strategy*, September 2013, page 110. Posted on www.doc.govt.nz

> Pureora o Kahu is a culturally significant landmark to Raukawa and Rereahu, and is also included as an overlay site in Treaty settlements with these iwi, with Wharepuhunga also having status as an overlay site for Raukawa.
>
> Many of the waterways, such as the Waimiha, are also significant to iwi and Maori in the area, who have stories to complement their claim to mana whenua. Ngati Maniapoto has reached a Treaty settlement for the Waipa River, the upper reaches of which are in northern sections of this Place. The health of the Waipa River catchment contributes to the restoration and maintenance of both the Waipa and Waikato Rivers, including the care and protection of the mana tuku iho o waiwaia (the essence and well-being of the Waipa River) and the health and well-being of the Waikato River. It is anticipated that other Maniapoto iwi groups will resolve Treaty claims within this Place during the life of this CMS.[452]
> [Matters in italics represent changes to the text following public submissions]

It needs to be emphasised that the discussion of the latest Strategy largely relies on the draft document produced prior to public notification and input from the public in the form of submissions. The draft versions of the Strategy (pre and post public submissions) do not explain the extent to which Maori have been involved in preparing the proposals. Maori members of the Waikato Conservation Board will have had some involvement, though whether that was at the level of discussing the concepts involved, or at the level of discussing the details of the text, is not known. Some favoured "partners" with a closer relationship to the Department than other Maori, such as the Ruapuha - Uekaha Hapu Trust at Waitomo Caves (see next section of this chapter), may have been able to have a correspondingly greater influence on the content of the Strategy. However, the impression gained from presenting the public in December 2012 with a 163-page document (plus 80 pages of appendices), and inviting its reaction, especially after an extended preparation period, is that many of the proposals are close to being fully-formed before being opened up to comment and criticism, and are unlikely to be substantially altered as a result of public submissions. The degree to which there has been prior "buy-in" by Te Rohe Potae hapu, as could be anticipated if the partnership concept between the Department and Maori was given full expression, is not known.

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[452] Department of Conservation, *Conservation Management Strategy, Waikato Conservancy 2014-2024, Volume 1 (draft),* December 2012, pages 115-116.
The text was changed following public submissions. Department of Conservation, *Revised draft Waikato conservation management strategy*, September 2013, pages 129-130. Posted on www.doc.govt.nz

A point to note is that the Strategy has not adopted the language of the Waitangi Tribunal's *Ko Aotearoa Tenei* report, with its references to taonga places and taonga species. Indeed the existence of indigenous species of special significance to iwi and hapu is not referred to at all. This may be one consequence of the national consistency imperative adopted by the Department.

Following its public notification in December 2012, the draft Waikato Conservation Management Strategy attracted 168 public submissions. Of these, only three were from recognisably Maori organisations in Te Rohe Potae inquiry district – "descendant of Maniapoto paramount chiefs Taonui Hikaka I and II", Raukawa Charitable Trust, and Te Ngaru Roa a Maui[453]. The three submissions, and the departmental responses to each of them, have not been analysed for this report. The general absence of Te Rohe Potae iwi submissions can be interpreted in two possible ways. Either the Department of Conservation has got alongside Te Rohe Potae Maori prior to preparing the draft strategy, and been able to incorporate their concerns in a comprehensive fashion. Or the Department of Conservation has failed to engage fully with Te Rohe Potae iwi and encourage their involvement in the planning process for the future management of the conservation estate in Te Rohe Potae.

5.7 Involvement with Treaty Settlements

Four settlements in Te Rohe Potae district which affect the Department of Conservation's functions and activities have been reached. These are at Waitomo Caves, at Pureora (on Maraeroa block), for the Waipa River, and with Raukawa iwi. Each is discussed below.

5.7.1 Waitomo Caves

When the Department of Conservation was established, it became responsible for the scenic reserves in the Waitomo Caves locality that the Department of Lands and Survey had directly managed. It was also the ultimate administering body, pursuant to the Reserves Act 1977, for the scenic reserves on which the caves were located, although this responsibility was one stage removed from day-to-day responsibility, as

[453] Department of Conservation, *Summary of submissions by submitter and freedom camping supplementary report: Waikato conservation management strategy*, September 2013, pages 300-301, 316-319, and 410. Posted on www.doc.govt.nz

the cave reserves were vested in Tourist Hotel Corporation. In 1988 a claim was lodged on behalf of the hapu of Ruapuha, seeking return of the cave reserves and the hotel site, all of which had been compulsorily taken by the Crown. Settlement of the claim was given urgency when the Government proposed selling the Tourist Hotel Corporation to private enterprise. The claim was mediated by Judge Peter Trapski, and a settlement with the Crown was reached[454]. The Tourist Hotel Corporation was removed from the administrative equation, and a three-quarter share in the Glow-worm Cave entrance, plus a full share in the hotel site (excluding land actually occupied by the hotel) and other lands, was transferred to the Ruapuha – Uekaha Hapu Trust[455]. The other one-quarter share of the Glow-worm Cave entrance remained with the Crown. The Department of Conservation became responsible for the administration of the Crown's one-quarter share, and thereby became the Crown partner in the ongoing management with the Hapu Trust of the Glow-worm Cave and the land at its entrance. A long-term lease was entered into with South Pacific Hotel Corporation (which had purchased the Tourist Hotel Corporation interest in the hotel and the guiding operation). South Pacific Hotel Corporation subsequently transferred its whole operation at Waitomo Caves to Tourism Holdings. Tourism Holdings has retained the guiding operation and associated souvenir shop, but has on-sold the hotel (to the whanau of the former Maori owner of the hotel site).

The co-management arrangement between Department of Conservation and Ruapuha – Uekaha Hapu Trust is organised through a joint management committee. The departmental representatives on the joint management committee, which has quarterly formal meetings, are all Waikato-based. Despite the unequal ownership, the committee operates on the basis that both parties are equals, have equal representation on the committee, and share a common objective of preserving ecological and Maori interests[456]. No dissatisfaction with the operation of the co-management arrangement has been identified during the research for this report.

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[454] The Wai 51 settlement has also been covered in David Alexander, *Public Works and other takings in Te Rohe Potae District*, Wai 898 document #A63, December 2009, pages 337-348.

[455] The Trust represents the interests of four whanau: Tanetinorau, Te Whatakaraka, Te Ao Haami Haereiti and Te Riutotu.

[456] Department of Conservation, *Waikato Conservancy Conservation Management Strategy (draft), 2014-2024*, December 2012, page 19.
The section on Ruapuha Uekaha Hapu Trust is unchanged in the Strategy following public submissions. Department of Conservation, *Revised draft Waikato conservation management strategy*, September 2013, page 23. Posted on www.doc.govt.nz

5.7.2 Pureora (on Maraeroa block)

Te Maru o Rereahu Trust represents the owners of Maraeroa A and Maraeroa B blocks. Their settlement has been legislated for in Maraeroa A and B Blocks Incorporation Act 2012 and Maraeroa A and B Blocks Settlement Act 2012. The Deed of Settlement provides for a Partnership Agreement between Te Maru o Rereahu Trust (or its post-settlement successor) and the Department of Conservation for a partnership in the management of public conservation land located on Maraeroa A and B blocks. There is statutory acknowledgement, setting out particular protection principles, for twelve wahi tapu sites and for the overlay site at Pureora o Kahu (Mount Pureora). The Deed of Settlement also provides for a conservation corridor on Maori-owned land that will retain an indigenous forest link between two large forest areas in Pureora Conservation Park. Both Te Maru o Rereahu and the Department of Conservation will contribute to the restoration of this corridor[457].

5.7.3 Nga Wai o Maniapoto

The Nga Wai o Maniapoto (Waipa River) Act 2012 formalises a wide-ranging relationship between the Crown and Ngati Maniapoto. Aspects of it relevant to the Waipa River are discussed in the Waipa River case study. The Department of Conservation is one of the Crown agencies involved. Its Minister has entered into a Conservation Portfolio Accord (and an associated Conservation Implementation Strategy) with Ngati Maniapoto with respect to the Waipa River and its catchment. The Department will be involved in the preparation of an Upper Waipa River Integrated Management Plan (the conservation components of which have to be approved by the Minister of Conservation), and it is obligated to have regard for the Ngati Maniapoto Iwi Environmental Management Plan (discussed in the chapter of this report on consultation with Maori) [458].

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[457] Department of Conservation, *Waikato Conservancy Conservation Management Strategy (draft), 2014-2024*, December 2012, page 19.
The section on Te Maru o Rereahu Trust is unchanged in the Strategy following public submissions. Department of Conservation, *Revised draft Waikato conservation management strategy*, September 2013, page 23. Posted on www.doc.govt.nz

[458] Department of Conservation, *Waikato Conservancy Conservation Management Strategy (draft), 2014-2024*, December 2012, page 18.
Reference to Nga Wai o Maniapoto is unchanged in the Strategy following public submissions. Department of Conservation, *Revised draft Waikato conservation management strategy*, September 2013, page 22. Posted on www.doc.govt.nz

5.7.4 Raukawa iwi

A deed of settlement between the Crown and Ngati Raukawa was signed in June 2012, though this has not yet been ratified in legislation. The deed of settlement was followed up with a Conservation Portfolio Accord signed in December 2012. Under this Accord the Crown and the iwi have agreed on objectives for management of freshwater fisheries, sites of significance, cultural materials, species and habitat protection, and the Waikato River. Places of significance that are recognised include Titiraupenga, Pureora o Kahu, Wharepuhunga, parts of Pureora Forest Park, and the Waipa and Waikato Rivers and their catchments[459].

5.8 Concluding Remarks

The period covered by this overview report demonstrates the growth of Maori participation in the management of the conservation estate. During the 1970s and early 1980s official Maori participation grew from virtually nothing to representation almost as a matter of course on the citizen advisory bodies. This became entrenched policy with the passing of the Conservation Act 1987 and the Conservation Law Reform Act 1990, though only with respect to the citizen bodies. Representation in Te Rohe Potae was token, however, with usually one Maori representative who was heavily outnumbered by non-Maori representatives. With the passing of the Conservation Act in 1987, and in particular the enactment of Section 4, the Department has had to embark on a new and expanded level of engagement with Maori. At the district level, initiating and continuing successful engagement will often rely on the efforts of individuals, both among departmental staff and hapu members.

While representation on citizen bodies has become accepted, Maori involvement in management decision-making has remained a more elusive ideal. This is perhaps best demonstrated with respect to the relocation of species. Maori participation in capture and release of species, via kaumatua attendance and the offering of karakia, is

[459] Department of Conservation, *Waikato Conservancy Conservation Management Strategy (draft), 2014-2024*, December 2012, page 19.
Reference to the Conservation Portfolio Accord was added following the submission made by the Raukawa Charitable Trust. Department of Conservation, *Revised draft Waikato conservation management strategy*, September 2013, pages 23-24. Posted on www.doc.govt.nz

encouraged as a matter of course. However, the decision to relocate remains a departmental one based on scientific considerations, rather than one aimed at furthering Maori kaitiakitanga.

The Department of Conservation has to deal on a daily basis with a large number of stakeholders. Recreational trampers and hunters, commercial operators, conservation groups and the scientific community all provide the Department with their points of view about management of the conservation estate and management of individual species. The decision-making arena is a crowded one. When the Department is lobbied from all directions, there can be a tendency for officials to see iwi and hapu as just another interest group whose needs have to be reconciled with the needs of others. It can be hard for Maori to be able to carve out a space where a special relationship, as perhaps envisaged in Section 4 Conservation Act 1987, can flourish. This is the experience that many iwi and hapu around the country have faced in their dealings with the Department of Conservation.

Despite this, new developments in partnership and co-governance are arising through individual Treaty settlements. The concept of co-governance has arisen because of a reluctance on the part of the Crown to return parts of the conservation estate to iwi and hapu for them to then manage on their own. Given this background, it remains an open question whether co-governance will be a partnership of equals, or whether the Department of Conservation will seek to persuade its partners to adopt a departmental viewpoint on how a land unit should be managed. With a completed and nearly-approved conservation management strategy for the Waikato Conservancy, the departmental viewpoint is already well-formed, so that creating space for any alternative iwi or hapu viewpoint is likely to be difficult. Co-governance arrangements are still too new to be able to form any conclusions about how successful they are or could be.

6. Crown environmental management regimes for water and waterways

6.1 Introduction

The ability to use water was essential to all who settled New Zealand, whether Maori or Pakeha. Water was, and remains, central to Maori wellbeing. They had well-established patterns of use, and customary protocols governing use, in existence when Europeans first arrived. The European settlers brought with them, and relied upon, the common law of England regarding access to and the use of water. While this served the European-based needs of the nation reasonably well for over a century, there were still instances where the Crown considered that it needed to intervene. Preventing pollution was one matter that was regulated, others included the ability to use water for electricity generation, and to use geothermal steam (superheated water), both of which were nationalised by legislation vesting rights of use in the Crown. A further intervention was the vesting of the beds of navigable rivers in the Crown, thereby replacing the common law rights of riparian owners to the beds of those rivers.

In 1967 all rights to use water (with three small-scale exceptions) were vested in the Crown. The time period covered by the focus of this report is therefore the time when the Crown had acquired the right to decide how water was to be used, and had delegated this responsibility first to regional water boards and, subsequently (in 1991), to regional councils. There was no provision in the 1967 legislation for the rights of Maori to water to be recognised or provided for, so that a Maori interest in water was squeezed out of consideration. Since 1991 the Resource Management Act has provided limited opportunities for a Maori voice on water to be heard, although strictly within the kawanatanga context set out in that Act.

Freshwater fisheries are an integral part of the waterways for Te Rohe Potae Maori. To them the fish life of the rivers, and the food supplies that the rivers offer, cannot be separated from the waters or the character of the waterways. The mauri or life-force covers the whole. However, the Crown in its exercise of its authority has always separated fisheries management from waterways management, even when matters such as water quality cross over into both functions. As this report is concerned with

Crown actions, freshwater fisheries management is dealt with in the next chapter, rather than being covered in this chapter.

Not examined in this chapter are discussions taking place at a national level to improve New Zealand's freshwater management. These are known as the Fresh Start for Fresh Water reform programme. The consensus-building discussions by a Land and Water Forum have been taking place amid a general understanding that the freshwater resource is already under pressure in many districts, and will be the subject of increasing demands that will continue into the future as a result of further economic development proposals. The discussions, which have involved some iwi (and in particular a national Iwi Leaders Group), have not yet resulted in any legislative change or imposed direction by central government. Amendments to the national policy statement on freshwater management (which is only two years old) are promised but have not yet been approved. Because the Waitangi Tribunal is considering a separate national water claim, it was not considered appropriate that a report for a district inquiry address these matters.

6.2 Administration before 1970

The common law of England tied the right to use water with the right of access to water. The Maori customary tradition (or aboriginal law) probably had elements of this linkage as well, though it was never tested in New Zealand courts. Instead it was the common law that prevailed, given that the lands most frequently occupied by European settlers were those where the freehold had been purchased out of Maori ownership. Where Europeans leased Maori-owned land, the lease would have been found in a court of law to confer an unwritten right of access to water on or bordering the leased property. The consequence was that most European settlement requirements for water from rivers and streams could be met through reliance on the English common law.

With European settlers having little difficulty accessing water, the Crown did not need to intervene too frequently. During the nineteenth century it adopted some varying utilitarian stances, on the one hand regulating against the tipping of sawdust into watercourses, and on the other hand assisting the mining industry by allowing certain watercourses to be declared sludge channels, into which the arsenic and

mercury residues of separating metals out of crushed rock ore could be discharged (Mining Act 1891)[460]. The need for Crown involvement tended to arise when two factions among the European settlers sought different outcomes. When this happened, Maori were often affected by the solution decided upon by the Crown.

When a coal company wanted to extract coal from seams under the bed of the lower Waikato River, the Crown passed legislation (Coal-mines Amendment Act 1903) declaring that the beds of navigable rivers (and therefore the rights to minerals on and below such beds) were vested in the Crown. What constitutes a navigable river was not conclusively defined in the 1903 legislation, and has not been substantively addressed by the courts until very recently[461]. However, the Waipa River case study demonstrates that the Marine Department took the view that the Waipa River between Ngaruawahia and Otorohanga, and the Mangaokewa River as far upstream as Te Kuiti, were navigable rivers. So legislation passed in 1903 to address one relatively narrow issue had wider consequences elsewhere in the country, in the process affecting the rights that Te Rohe Potae Maori possessed to rivers in their district.

When private enterprise wanted to develop hydro-electric power schemes, the Crown stepped in to ensure that sites capable of hydro-electric generation were used to their full capacity and in the interests of the nation. The legislation to effect this (Water-power Act 1903) vested in the Crown the sole right to use water for hydro-electric generation purposes. Having acquired this right, the legislation then allowed the Crown to licence the use of the water for this purpose by others. The Wairere Falls and Mokauiti power schemes, examined in the topic study on hydro-electric power development in the Mokau catchment, relied on licences issued by the Crown. Although there was a nod in the statute towards other rights to water, which could include rights held by Maori at power generation sites, there was no investigation into whether such rights existed, thereby avoiding the need to consult, obtain agreement,

[460] This utilitarian willingness to countenance extreme water pollution continued into the mid twentieth century. The Tasman Pulp and Paper Company Enabling Act 1954 allowed the pulp and paper mill at Kawerau to discharge untreated industrial effluent into the Tarawera River without regard for quantity or quality.

[461] *Paki and others v Attorney General of New Zealand*, decision of the Supreme Court, 27 June 2012 (Decision SC 7/2010, [2012] NZSC 50). This decision, concerning ownership of the bed of the Waikato River where it adjoins the Pouakani block, has not been assessed for its relevance to Te Rohe Potae rivers, as that is more appropriately a matter for legal counsel.

and where necessary compensate, if those other rights were affected. Both Wairere Falls and the rapids on the Mokauiti River were pa tuna (eel fishing) sites.

When there was a flood, as became more prevalent once the forest cover was removed from hillsides, enabling legislation made it possible for the Crown and local authorities to make changes to the waterways such as stopbanks, dredging and channel straightening. For these works, any private rights (including Maori land property rights) that got in the way of implementing a river control scheme could be removed by use of the Public Works Act.

The Waipa River case study also identifies the strong influence on the environment of drainage boards, established to drain the large swamps of the valley floor. Often when these boards were established, the land title pattern in the drainage district was one of a mix of partly European-owned and partly Maori-owned swampland. However, drainage of the swamps became the dominant feature, whether the Maori landowners wanted that or not.

The rights that Maori had to water and to waterways became almost invisible, so far as the Crown was concerned. Maori use of the waterways as a source of food was severely affected, with changing environmental conditions upsetting populations of food species. Because these changes to waterway environments were either wanted by European settlers (as with river control works or swamp drainage), or were seen as a consequence of a desired environmental change (as with conversion of vegetation from forest to grass), there was little ability for Maori to have their interests recognised.

Where Maori retained riverbank land, they also, in English common law, retained rights to the centreline of the bed of the river (known as the ad medium filum aquae presumption). However, this right only applied to non-navigable rivers, and the Marine Department's view that the Waipa and Mangaokewa Rivers were navigable to Te Kuiti, meant those riverbeds became regarded as being vested in the Crown. This had a bearing on rights to sand and gravel in the riverbeds. Maori could assert rights to the sand and gravel in non-navigable rivers, and charge a royalty for extraction, while the Crown could claim ownership of sand and gravel on the bed of a navigable

river. The Waipa River case study shows that Maori rights to sand and gravel in the bed of the Puniu River were recognised, but were denied in the bed of the Waipa River asserted to be navigable.

In 1941 the Crown passed the Soil Conservation and Rivers Control Act. This made the connection between what happened in a catchment upstream and what happened to waterways lower down the catchment. It encouraged a whole-of-catchment outlook to resolving flooding and soil erosion problems, and promoted the establishment of catchment boards. Establishing the boards ran up against entrenched views of local body politicians that catchment boards would be an unnecessary extra agency that would add to the rates burden faced by ratepayers. This viewpoint was particularly prevalent in the Waikato region. As the Waikato Valley Authority topic study shows, it took 11 years of persuasion by the Crown (from 1945 to 1956) to get the local authorities to accept the worth of having a catchment board, and then only by the passing of special legislation (Waikato Valley Authority Act 1956) making concessions that reinforced rather than challenged the central role of the existing local authorities. Research for the topic study has found no evidence that Maori were consulted, or Maori voices raised, during the extended discussion that took place before the Authority was created.

During the initial operating period of the Waikato Valley Authority, between 1956 and 1970, it made large strides in developing flood control schemes. Its initial focus was on the Waikato River downstream of Ngaruawahia (the confluence of the Waikato and Waipa Rivers). However, the major flood of 1958, when Otorohanga township was severely affected and Te Kuiti township was also badly affected, shifted attention upstream to the Waipa River. Relying on Crown subsidy money, the Authority worked with the territorial local authorities during the period 1961 to 1966 to develop stopbanks around the towns, and clear willows and other potential impediments to flood flows from the Waipa and Mangaokewa river channels in rural areas. The changes around Otorohanga, and their impact on Maori Land, have been discussed in other technical reports[462].

[462] David Alexander, *Public Works and other takings in Te Rohe Potae District*, Wai 898 document #A63, December 2009, pages 261-278.

The initial antagonism towards the Waikato Valley Authority from local political figures was such that the Government chose to tread softly when considering expansion of the Authority's district. When created in 1956, the Authority was responsible for the Waikato River and its tributaries, including the Waipa River and tributaries. This meant that the catchments in the western part of Te Rohe Potae district flowing directly into the Tasman Sea were not included. It was not until 1973 that these catchments, extending southwards to include the Mokau catchment, were added to the Waikato Valley Authority's district.

In the absence of the establishment of catchment boards, responsibility for administration of the Soil Conservation and Rivers Control Act at a regional level rested with the Ministry of Works. It was the Ministry that processed applications for grant subsidies under the Act, and forwarded them to the Soil Conservation and Rivers Control Council in Wellington for approval. In Wellington, it was the Ministry that serviced the Council. While the engineering focus of Ministry staff tended to support engineering solutions, this was not just a matter of structures; maintaining the water flow capacity of river channels by clearing willows was also important. The needs of the fish life of the river for shade and to be able to avoid high stress-inducing water temperatures were not recognised and became subordinated to a rivers control ethos.

By the early 1960s the piecemeal approach taken up to then by Crown intervention was judged to be insufficient. There were competing demands for water, and sometimes there was not enough water to meet all envisaged needs. A new approach was considered to be necessary. An interdepartmental committee on water reported in 1963 with recommendations for the appointment of water boards at a regional level to allocate water fairly among users. The recommendations were accepted and were put into effect in the Water and Soil Conservation Act 1967. To be able to legally exercise the control that was thought to be necessary, the legislation vested in the Crown the sole right to the use of water, and required that permission was obtained from regional water boards, to whom the Crown's vested right had been delegated, for

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Michael Belgrave et al, *Te Rohe Potae environmental and wahi tapu report*, Wai 898 document #A76, August 2011, pages 198-218.

any use of water. The only exceptions to the need for permission was water for domestic consumption, for stock watering and for fire fighting.

Under the 1967 Act the Waikato Valley Authority was appointed a regional water board for the district it administered (i.e. the Waikato catchment, including the Waipa catchment). Where no catchment board existed, the organisation that issued water rights was the Water Allocation Council, based in Wellington and serviced by the Ministry of Works. That is why it was the Water Allocation Council that issued the first water rights at Taharoa, as discussed in the ironsands mining topic study. Already-established users of water prior to 1968 were excused from obtaining water rights, provided they registered their use with the appropriate regional water board (or the Water Allocation Council). When Waitomo Electric Power Board failed to register its existing use of water at Wairere Falls and at Mokauiti, it was obliged to apply for water rights to the Waikato Valley Authority. It obtained its rights in 1976; between 1969 and 1976, because the legislation governing its earlier licences to use water for hydro-electric generation had been repealed, it had been operating without any rights to use water.

Neither the Soil Conservation and Rivers Control Act 1941, nor the Water and Soil Conservation Act 1967, had mentioned a Maori interest in water, or required any consultation with Maori. In this statutory silence the catchment boards and regional water boards, and the Ministry of Works, were inactive with respect to dealing with Maori.

6.3 Regional water board activities 1970 to 1991

The topic study on the establishment of the Waikato Valley Authority has shown how the region administered by the organisation was initially only the catchment of the Waikato River (including the Waipa River catchment). Outside this catchment, the remainder of the inquiry district was administered by a Crown organisation, the Water Allocation Council, which was directly serviced by the Ministry of Works. This changed in 1973, when the district administered by the Waikato Valley Authority was extended to include the coastal catchments, including the Mokau River catchment[463].

[463] *New Zealand Gazette* 1973 pages 726-728. Supporting Papers #791-793.

The extension of the Authority's district is discussed in the Waikato Valley Authority topic study. In a parallel move, the whole of the Wanganui River catchment (including the Ongarue, Waimiha and Ohura River catchments) was added to the region administered by the Rangitikei Catchment Board, which was renamed the Rangitikei - Wanganui Catchment Board[464].

The Water and Soil Conservation Act 1967 envisaged that natural water[465] could be used for a variety of purposes, and could also be of variable quality depending on local circumstances. It specifically allowed for water rights to be issued for the discharge of waste into water, and its preamble referred to "ensuring that adequate account is taken of the needs of primary and secondary industry". Thus the dilution and dispersion effect achieved by discharging liquid waste (including sewage) was a recognised use of rivers and streams under the legislation. Regional water boards saw their role as finding a balance between exploitative uses of water, such as abstraction and waste discharge, and human and non-human uses that relied on retention of water in its natural state, such as fisheries, wildlife habitat and recreation. They were environmental bodies, but only up to a point, and it was the role of the board members to determine where that point was on the spectrum. These board members were either directly elected by local ratepayers or, as in the case of the Waikato Valley Authority, were appointed representatives of territorial local authorities who had initially been elected by ratepayers to those local authorities.

The wide and often competing variety of values with respect to water that regional water boards had to recognise and provide for was added to by a legislative amendment in 1981 that added aesthetic values such as wilderness and scenic appreciation to the mix (see next section of this chapter), and allowed the imposition of minimum flows in waterways. It was from about this time that the boards realised that they could not respond in an ad hoc manner to each water right application as it was received, but needed to develop water quantity and quality standards relevant to local circumstances against which each application could be measured. Although not required to by legislation, they began to produce documents that looked at the water

[464] *New Zealand Gazette* 1972 pages 668-672. Supporting Papers #784-788.
[465] 'Natural water' was a term used to indicate that the water uses being regulated by the 1967 Act did not include water once it had become contained within pipes and tanks.

resources of a catchment in a holistic manner, and management plans to provide some criteria that would be followed in exercising their regulatory responsibilities.

In a scenario of multiple competing values, the absence of any statutory reference to Maori cultural and spiritual values of water meant that they did not get considered. The Town and Country Planning Appeal Board and its successor (from 1978) the Planning Tribunal, the body established to allow the exercise of appeal rights against decisions of regional water boards, took the view that Maori values were not a relevant consideration[466]. It was only when the High Court in 1987 ruled that Maori spiritual values were a relevant consideration and could be taken into account in the process of finding a balance between competing values[467], that the door was opened for Maori to have an influence on how water in rivers and streams was managed. However, there was little opportunity to see what change this decision would make[468], before the Resource Management Act replaced the Water and Soil Conservation Act in 1991.

There was a minor recognition of Maori interests in 1983 when an amendment to the Water and Soil Conservation Act 1967 provided for the appointment of one person on the 15-member National Water and Soil Conservation Authority "to represent the interests of the Maori people in relation to natural water". The appointment was to be made by the Minister of Works and Development after consultation with the Minister of Maori Affairs. The first appointee was Brian Hauauru Jones.

The topic studies examining ironsands mining at Taharoa and hydro-electric power generation in the Mokau River catchment demonstrate the paucity of consideration given generally by the relevant authorities when water rights were first issued for these activities in the 1970s. Whether there was a sufficient quantity of water for the proposed activities appeared to be the principal concern. This paucity of consideration was across the board, especially where already established works were

[466] *Minhinnick v Auckland Regional Authority and Waikato Valley Authority and NZ Steel Ltd* (1981). Decision A116/81. Not included in Supporting Papers.
[467] *Huakina Development Trust v Waikato Valley Authority* [1987], 2 NZLR (NZ Law Reports) 188.
[468] One of the few opportunities for Maori spiritual values to receive consideration came with the minimum flow application in the Whanganui River headwaters, which was heard by the regional water board in 1988, and by the Planning Tribunal on appeal in 1990. This is discussed in Waitangi Tribunal, *Te Kahui Maunga: the National Park District Inquiry report*, section 14.13.2, Wai 1130, 2013.

being considered for renewal of water rights. The topic studies also demonstrate that the consideration process became more sophisticated and complex over time with each succeeding renewal of water rights under the Water and Soil Conservation Act. However, recognition of Maori values remained muted to non-existent; for instance, the fishery on Lake Taharoa was referred to when considering the first use of waters for ironsands mining, but not that it was a traditional Maori fishery.

6.4 Water pollution and water quality classification

This matter has not been researched in depth for this report because of time constraints, and also because to do so would duplicate coverage of the subject in the Waipa River case study. The discussion in that case study makes it apparent that a number of substantial industrial discharges to the Waipa River and its tributaries influenced the outcome of the classification exercise.

At the start of the period covered by the report, a published list of local authority sewage disposal systems in operation in 1971 shows how dependant the urban areas were on discharging to rivers for disposal of their effluent[469]:

Table 5 Local authority sewage disposal, 1971

Urban area	Type of effluent treatment	Receiving waters
Te Awamutu	Municipal tank / Imhoff	Mangapiko Stream
Raglan	None (individual septic tanks)	
Otorohanga	Municipal tank	Waipa River
Te Kuiti	Municipal tank	Mangaokewa Stream
Benneydale	Municipal septic tank / bio filter	Mangapehi Stream

A further indication of water pollution in the early 1970s is to be found in a catalogue of discharges into the Mangaokewa Stream as it passed through Te Kuiti, which was compiled by a Wildlife Service ranger in 1971. He noted the following pollution sources and point-source discharges, starting from the downstream end of the town and working upstream:

[469] Town and Country Planning Division, Ministry of Works, *National resources survey: Part VIII, Waikato, Coromandel King Country region*, 1973, page 58.

- Mill waste (sawdust, chips, bark etc) from RH Tregoweth Ltd sawmill pushed over the streambank, and yard runoff directed via a wooden shute through this waste-pile
- Nightsoil can wash rack adjacent to Tregoweth's mill drained into an open drain
- Pigsty placed next to the can rack
- Plastic bag liners from weedicide drums on steep streambank behind Waitomo County Council depot; disintegrating sodium chlorate drums along the wall of the Council garage
- Tip with timber, concrete, rubble, and vehicle components behind County depot and Transport Department vehicle testing station; vehicle wash pad drained over the bank into the stream
- Waste oil from County depot drained into an open drain; spill from bitumen installation had flowed down the streambank
- Copper napthanate contamination of a small side stream from Te Kuiti Timber Preservation Ltd plant; drainage from treated timber stacks had left the surrounding ground a dark green, with rainwater runoff to the stream[470]

All these discharges were into a watercourse through the town that had been channelised to pass flood flows through as fast and as smoothly as possible. The natural environment of the waterway was therefore doubly affected by flood control works and by pollution. Maori kaitiakitanga for the Waipa River had not been a relevant statutory consideration before this time, nor were Maori consulted as a matter of course about waterway and water management; a Maori interest in waterways was effectively ignored.

Water pollution was tackled by the imposition of water quality classifications. However, the classification standards that were settled on did not prejudice the rights of existing dischargers. Instead they seemed to be designed to stop water quality getting worse rather than endeavouring to see an improvement in water quality. The Waikato Valley Authority also had an opportunity to improve water quality with the consents it granted for discharges into waterways. These consents could be made

[470] Assistant Game Management Officer Auckland to Controller Wildlife Service, 24 August 1971. Internal Affairs Head Office file WIL 34/3/10. Supporting Papers #1-6.

subject to conditions that imposed quality standards on the discharges. During the 1970s and 1980s the Authority, and other regional water boards around the country, became more adept at setting conditions that improved the quality of point source discharges. There was however, a general pattern where urban and industrial discharges tended to show greater improvements over this period than rural discharges from farms. This was in part due to established mindsets – milking sheds were not thought of as industrial premises.

6.5 Water and Soil Conservation Amendment Act 1981

In 1981 the preamble to the Water and Soil Conservation Act was amended. In the late 1970s there had been a campaign by European recreation and conservation organisations to gain recognition for the retention of rivers in their natural state. The 1967 Act was predicated around changes to rivers (either in water quantity or water quality terms), with applications for water rights considered on a first come - first served basis, so there was no protection against a gradual creep of change to rivers over time. The recreation and conservation organisations argued that amenity and landscape protection should be recognised and managed for, as well as the more traditional uses of water. The preamble to the Act was changed to add "the preservation and protection of the wild, scenic and other natural characteristics of rivers, streams and lakes". These matters, together with recreation, fisheries and wildlife aspects of water, are often referred to as in-stream uses. An additional part to the 1967 Act was inserted, allowing the granting of national water conservation orders and local water conservation notices; the conditions attached to these orders and notices would direct the regional water boards in their work of issuing water rights. While a number of these orders and notices were granted around the country, none applied to waterways in Te Rohe Potae. As a result the provisions of the 1981 amendment are not examined in any greater detail than the outline set out above.

In proposing an amendment to the preamble to the 1967 Act, the 1981 amendment opened up the possibility that other changes to the preamble could also be considered. It prompted the Member of Parliament for Western Maori, Koro Wetere, to draw attention in Parliament to the fact that the 1967 Act paid no attention to Maori values. He said:

> Did the Government take Maori values into account? No account of that was taken anywhere in the Bill…. The submission of the Wanganui Scenic Board asked for the same recognition [of Maori values]. The Government was not concerned that such values should be put into this legislation.[471]

The Minister of Works and Development missed the point in his response:

> The simple fact is that the Government has provided a mechanism for protecting the in-stream uses and values of rivers for a section of the community which, until now, has not had them protected…. Are the Maori people not part of our community? The member nods his head. If he did not agree, I should tell him that for the first time in New Zealand's history, the Government has included in the Town and Country Planning Act matters of national importance – the relationship of the Maori people with their customs and traditions in their ancestral land, and that, of course, obviously includes rivers and waters that are on that land.[472]

The 1981 debate was one of the few occasions where Maori spoke out about the 1967 Act.

During the early 1980s, there was a recognition among officials that the Water and Soil Conservation Act 1967 needed to be reviewed. In a submission on behalf of the Ministry of Works and Development to the Waitangi Tribunal's Manukau Harbour inquiry in 1984, counsel for the Ministry stated:

> When it was passed in 1967, it was pioneering legislation in its field. It has been amended many times. It is now ripe for a revision and consolidation – a "rewrite". The rewrite is underway. The new bill would be discussed with many interested parties in keeping with recent practice on most major legislation. I am unable to say what priority the bill will have or when the new [Labour] Government will introduce it.
>
> At this stage it would be presumptuous of me to anticipate all the contents of the new bill.
>
> However, the department has already had one submission from one person with considerable knowledge of the Act recommending that no discharge be granted where the discharge would affect designated Maori fishing grounds. Such a provision could in my submission provide better protection of spiritual and cultural values. In the light of comments of the Planning Tribunal and this Tribunal in the Taylor Recommendation [the Motunui-Waitara Wai 6 report], such a submission will be carefully studied by the draftsmen.

[471] *New Zealand Parliamentary Debates*, 21 October 1981, Volume 442, page 4277. Supporting Papers #747.
[472] *New Zealand Parliamentary Debates*, 21 October 1981, Volume 442, page 4281. Supporting Papers #748.

> I am further instructed that my ministry will also recommend that before the grant of any water right the relationship of the Maori people and their culture and traditions to the natural water concerned be considered.[473]

However, despite these encouraging words, there was to be no substantive amendment to the 1967 Act, so far as recognition for Maori values was concerned, for a further seven years.

6.6 Resource Management Act 1991

When the Resource Management Act was passed in 1991, the core requirement that users of water had to obtain permission to do so remained. The Crown retained the power by which the use of water was vested in it[474], and continued with the delegation of that power, henceforth to regional councils rather than to the disestablished regional water boards. Water rights under the 1967 Act became water permits, a category of resource consent, under the 1991 Act.

The Resource Management Act has strengthened the purposive structure against which applications for resource consents are assessed and tested. Prior to 1991 the main tests were compatibility with a limited suite of statutory purposes set out in the Water and Soil Conservation Act 1967. Since 1991 applications are assessed against the purpose of the Resource Management Act (Section 5, achieving sustainable management), matters of national importance (section 6), other matters to have regard for (Section 7), particular statutory tests to be applied to resource consents (Section 104), any national policy statements, the provisions of a Regional Policy Statement, and the provisions of a Regional Plan. This requires a far more rigorous assessment, and in turn has required more thorough application documentation, including an assessment of environmental effects.

Maori have benefited from the more thorough analysis of water use proposals. There is a greater emphasis on consultation with affected parties, which extends beyond the opportunity to respond to a public notice that an application has been received, and the opportunity to attend and speak at a hearing of the application. There are statutory

[473] Submission of counsel for the Ministry of Works and Development, undated. Submission presented to the Waitangi Tribunal Manukau Harbour inquiry during the week 20-24 August 1984 (Wai 8 Submission B18), pages 17-18. Supporting Papers #2272-2294.
[474] Section 354(2) Resource Management Act 1991.

requirements relating to consideration of the relationship of Maori and their culture and traditions with their water, wahi tapu and taonga (Section 6(e)), the exercise of kaitiakitanga (Section 7(a)), and the principles of the Treaty of Waitangi (Section 8), which were not present in the pre-1991 legislation.

While the addition of these matters has sometimes favoured Maori in the decisions that are made, there are as many or more decisions on resource consents where Maori feel that generally they have made little difference to the outcome. What waterways are taonga often remains an undefined matter in the planning documents of regional councils, while the statutory reference to the relationship of Maori with their water has not seen much recognition that water contains a mauri that should be respected, protected and nurtured. In large part this is because of the structure of the 1991 Act, where these matters of relevance to Maori are bundled in with many other matters of relevance to the wider community that also have to be considered. These include socio-economic objectives that can work in a counter-balancing manner against the achievement of environmental improvements.

The Waikato Regional Policy Statement that became operative in 2000 does mention the mauri of water, though in a limited and limiting manner. Mauri is defined as:

> The special power possessed by Io which makes it possible for everything to move and live in accordance with the conditions and limits of its existence. Everything has mauri, including people, fish, animals, birds, forests, land, seas and rivers; the mauri is the characteristic which permits these living things to exists within their own realm and sphere. Each iwi group has their own concept of mauri, however it is generally referred to in English as life-force, life-essence or life-principle (essentially having spiritual qualities).[475]

Section 3.4.10 identifies the following issue, objective, policy and implementation methods under the section heading "mauri":

> Issue: Maori consider that the disposal of contaminants to water has the potential to diminish the mauri of that water[476].
>
> Objective: Tangata whenua concerns relating to the mauri of the water recognised and provided for….

[475] Waikato Regional Council, *Regional Policy Statement*, operative 2000, page 60. Posted on www.waikatoregion.govt.nz
The definition is repeated in the glossary to the Regional Plan. Waikato Regional Council, *Waikato Regional Plan*, page G-13, September 2007. Posted on www.waikatoregion.govt.nz

[476] The issue is discussed further in a different section of the Statement. Waikato Regional Council, *Regional Policy Statement*, operative 2000, pages 60-61. Posted on www.waikatoregion.govt.nz

Policy One: Effects of contaminants. Ensure that decisions about the discharge of contaminants associated with the use, development and protection of natural and physical resources are made in a way that recognises and provides for the mauri of water.

Implementation methods:

1) Ensure, in conjunction with territorial authorities and through consultation with tangata whenua, that resource use and development practices recognise and provide for the mauri of water.
2) Provide recognition in regional plans and resource consents, through appropriate rules, criteria, conditions, guidelines and information, of Maori interests in the potential adverse effects of the discharge of contaminants on the mauri of water.
3) Through regional plans, in consultation with interested parties, investigate the establishment of water quality classes for water bodies which recognise the mauri of water.
4) Liaise with tangata whenua of the Region to ascertain appropriate mechanisms, as part of the Regional Information Gathering Action Plan, to determine whether mauri is being affected by the effects of use, development and protection of water.
5) Provide information and practical guidance to resource users on the significance of the mauri of water to tangata whenua, and encourage applicants to consult with the appropriate tangata whenua groups prior to submitting applications for resource consents.[477]

This section of the Regional Policy Statement sees mauri primarily in the context of the contamination of water; in doing so it takes a monochrome rather than a multi-faceted view of the term. "Recognising" and "providing for" the mauri of water is not as substantial a commitment as "protecting" or "nurturing" or "enhancing". Nor is action that directly deals with the state of the mauri of water quite the same as action by Waikato Regional Council that deals with tangata whenua concerns about the state of the mauri of water. The other feature of the Regional Policy Statement is that the objective referring to mauri is only one of six objectives concerned with the use and management of water, and the policy is only one of ten policies for water. Some of these other objectives and policies use terms such as "improve", "increase", "enhance", and "protect"[478], and are therefore more directive and insistent than the objective and policy for mauri.

[477] Waikato Regional Council, *Regional Policy Statement*, operative 2000, section 3.4.10, pages 72-73. Posted on www.waikatoregion.govt.nz

[478] Waikato Regional Council, *Regional Policy Statement*, operative 2000, sections 3.4.5 to 3.4.9, pages 62-72. Posted on www.waikatoregion.govt.nz

Within the Waikato Regional Plan, the subordinate planning document to the Waikato Regional Policy Statement, the mauri of water receives occasional standardised mentions, though these mentions can become obscured by the sheer number and extent of other matters that the Regional Council also has to take into consideration. Thus, for example, the policy on establishing allocable flows and minimum flows in waterways requires the Council to have

> particular regard to … maintenance and enhancement of tangata whenua uses and values of water, including the ability to exercise kaitiakitanga and measures to protect and enhance the mauri of water bodies.[479]

However, this particular provision is arrayed alongside a policy obligation to have particular regard to thirteen other matters when weighing up whether sustainable management would be achieved. Similarly, when specifying criteria against which applications for use of surface water will be assessed, one of the criteria is "whether tangata whenua uses and values, including the mauri of water, are maintained or enhanced"[480]; however, this is just one of 28 criteria.

On the basis of this treatment of the mauri of water in the Waikato Regional Policy Statement and the Waikato Regional Plan, it would appear that the manner of the treatment of Maori interests in water is a systemic issue caused by the structure of the legislation, which could only be properly addressed by a change in the legislation to require that a higher priority is given to protection, nurturing and enhancement of mauri. That, however, is probably a matter for consideration by the Tribunal inquiring into the national water claim.

Besides providing for an extensive suite of matters to be considered when assessing applications for resource consent, the Resource Management Act made a change to the consents that are granted. They can be granted for terms of up to 35 years. This extended length of time is qualified by the ability to review particular conditions of consent after shorter periods, provided this is spelled out at the time of issuing the consent. It is a specialised skill to draw up conditions that are robust and certain while specifying what matters can be reviewed and for what purposes, all while

[479] Waikato Regional Council, *Waikato Regional Plan*, page 3-35, September 2007. Posted on www.waikatoregion.govt.nz
[480] Waikato Regional Council, *Waikato Regional Plan*, page 3-35, September 2007. Posted on www.waikatoregion.govt.nz

insulating a regional council from legal challenge. Yet this is an essential matter, as conditions often specify empirical standards of water quality such as allowable bacterial contamination or maximum nutrient levels, or allowable turbidity. For such standards to remain unchanged for up to 35 years, even as technology changes and best practice could achieve better water quality standards, means that water quality would become stuck on a plateau, rather than exhibit continuing improvement over time.

Discussed below are a number of particular resource consents for the use of water, most of which have been covered elsewhere as parts of topic studies or case studies. The consents discussed are:

- For ironsands mining at Taharoa
- For hydro-electric power generation at Wairere Falls and on the Mokauiti River, both in the Mokau catchment
- For discharge of Raglan township's treated sewage
- For discharge of Otorohanga's treated sewage
- For discharge of Te Kuiti's treated sewage
- For discharge of Piopio's treated sewage

These represent examples of resource consents for water where Maori have intervened to seek better outcomes.

6.6.1 Resource consents for ironsands mining at Taharoa

The history of resource consenting at Taharoa is covered in the ironsand mining topic study. Water rights under the Water and Soil Conservation Act 1967 already existed for the mining operation when the resource management regime was introduced in 1991; these rights had been granted in 1970 and renewed in 1983 and 1988, with the 1988 rights due to expire in 1998. While these rights covered the actual mining and exporting operations satisfactorily, with few apparent problems, they had already created a major off-site effect with the collapse of the traditional eel and mullet fisheries in Lake Taharoa, caused by the damming of the lake's outlet stream and interruption of the migratory movements of these species. This was recognised as a problem needing resolution before 1991; there had been an upgrade to the fish pass around the dam in 1985-86, though this had not solved the problems. The challenge

for the Waikato Regional Council under the 1991 resource management regime was to find a solution that worked, and that met the expectations of the Taharoa Lakes Trustees, the Maori body responsible for Lake Taharoa and four other coastal lakes (which are all in a single Maori title).

What the Regional Council did was to allow a deferral of the renewal of the water rights (replacing them with water permits) from 1998 to 2006; during this time the old water rights were allowed to run on. In 2006 it allowed the damming of the outlet stream and the water storage capacity of the lake (the operational maximum and minimum lake levels) to remain unaltered, while demanding improvements to the fish pass. These improvements have been made, but so far with rather meagre improvements in the numbers of fish using the pass. The Taharoa mining operation is a significant social and economic feature of the local Maori-dominant community, and its continuation rates as an important matter for consideration under the 'sustainable management' definition of the 1991 Act, to the extent that the impacts on fish life and the environment generally seem to be matters to be mitigated or reduced in effect rather than remedied or avoided altogether.

Maori involvement under the Resource Management Act has reflected the twin perspectives in the community. There is strong support for the jobs and income that mining brings into the community; this support tends to be reflected through the Taharoa C Incorporation, the organisation that leases the land to the mining company and receives the royalty income on behalf of the Maori owners. When the mining company applies for resource consents, it obtains a letter of support from the Incorporation, which then precludes the Incorporation from further involvement under the 1991 Act. There is also concern for the loss of the lake fishery and the damage to the associated whitebait fishery along the outlet stream; this community concern tends to be reflected through the Taharoa Lakes Trustees. It is the Lakes Trustees who lodge submissions in opposition, who know and are known to Regional Council staff, and who are most active in the consultation undertaken by the mining company. They are the people who have consistently sought improvements that restore fish passage around the dam.

For all their efforts, the Lakes Trustees have received limited support from Waikato Regional Council in its administration of the Resource Management Act. They have been categorised as submitters to resource consent applications, which determines that they have a specific role and specific opportunities to have a say. Once they become submitters they also become affected parties with whom the applicant (not the Regional Council) is expected to consult. Regional Council efforts are therefore aimed at confining them to these roles, and to limiting any wider involvement. They are certainly not seen as having any role to play alongside or in conjunction with the Regional Council in achieving sustainable management. Nor have they been encouraged to imagine that they could have a greater say if they prepared their own planning documents.

While the consents granted at Taharoa included provisions for review of conditions, so far as is known the Waikato Regional Council did not make use of those provisions and notify the mining company that it would be conducting a review. If used, this might have allowed revised standards for the fish pass to be set.

6.6.2 Resource consents for hydro-electric power generation in the Mokau catchment

The history of resource consenting for the two hydro-electric power schemes on the Mokau and Mokauiti Rivers is covered in a topic study. These two schemes were originally consented by the Crown, in 1925 and 1963 respectively. Water rights expiring in 1997 were issued as a matter of course once the Water and Soil Conservation Act 1967 replaced the earlier consents. Maori had not had any opportunity to have a say on any of the pre-1991 consents that had been issued by the Crown or the Waikato Valley Authority.

In 1996, when an opportunity for Maori involvement did open up under the Resource Management Act 1991, local Maori became actively involved. They took advantage of every consultation opportunity provided by the generating company to press their viewpoint that the absence of fish passage provision around the dams had seriously affected fish life generally upstream, and the populations of tuna (eels) in particular. When the company was receptive to their concerns about eels, they continued to argue for similar measures to assist lamprey migration.

The two power stations are small-scale, seasonal in their operating pattern, and rely on old equipment. They cannot be particularly large contributors to the income or profits of the generating company. Yet that has not prevented some substantial benefits to fish populations developing out of a try-it-and-see low cost approach that brought together the company, fisheries scientists, and local Maori. It was the Resource Management Act, its requirement for consultation with affected parties, and its expectation that resource consent applicants would seek to avoid, remedy or mitigate undesirable environmental effects, that was the trigger for this positive outcome.

That does not mean to say there is not room for further improvement with the provision of additional measures to benefit fish life in the rivers. Nor was the relationship between the parties mentioned above (plus the Waikato Regional Council) always harmonious. Local Maori, under-resourced, under-skilled, and involved only in their spare time, were often a frustration for fulltime professionally-skilled company and Regional Council employees; that, however, is real life that has to be worked with, or better still worked around (by up-skilling and provision of resources). Maori for their part became suspicious of the motives of the generating company when it proposed a large dam and power station on the Mokau River below Wairere Falls, and of the Regional Council when it granted consent for this new development, in the face of opposition expressed by tangata whenua.

6.6.3 Resource consents for Raglan, Otorohanga and Te Kuiti sewage treatment plant discharges

These three discharges have been discussed in the Whaingaroa Harbour case study (the Raglan discharge) and the Waipa River case study (the Otorohanga and Te Kuiti discharges). Each had their genesis in inadequate and poorly-performing septic tank disposal systems that were causing bad pollution of waterways, and started off as methods to reduce pollution. However the community disgust that prompted the development of sewage treatment facilities also created expectations that the improvements would not give rise to their own pollution problems.

The three proposals share some common features. While each was promoted by a different local authority, all three authorities were anxious to avoid paying the up-front cost of large-scale land purchase. They therefore opted for minimal treatment before discharge into oxidation ponds, with water from the ponds discharged to natural water rather than to land. The ponds were too small, or became overloaded over time as the towns expanded, so that the discharges to natural water contained substantial bacterial and nutrient pollution. The local authorities have had to play catch-up ever since, and it could be argued that their desire to minimise costs at the outset has forced them to incur much heavier costs overall.

Maori have consistently sought higher water quality standards than the local authorities have been prepared to provide, and the Waikato Regional Council has been prepared to insist upon. At Raglan tangata whenua have felt more aggrieved because a wetland of spiritual significance was chosen as the first site for oxidation ponds over their objections. Even when the ponds were subsequently moved the discharge of treated effluent to the sea continued. Opposition by Maori went as far as the Environment Court before their concerns were rejected. The Raglan sewage treatment plant became an issue that loomed so large that it soured the totality of the relationship between Raglan Maori and Waipa District Council, and continues to do so.

At Otorohanga, local Maori and Otorohanga District Council have had a better relationship. This was because the sewage treatment facilities, about which Maori were consulted, initially fulfilled expectations, and were accepted as a substantial improvement. However, the facilities have since become overloaded and the quality of the effluent discharged into natural water has deteriorated. What tangata whenua feel about this deterioration is not recorded on Waikato Regional Council files, because the Regional Council has no ongoing relationship with them on this matter. This is an instance where the on again / off again nature of Maori involvement, when Maori are defined by a role as resource consent submitters, works against the development of lasting relationships.

The relationship between tangata whenua at Te Kuiti and Waitomo District Council probably lies somewhere between that at Raglan and that at Otorohanga. There was

general community enthusiasm for capturing and further treating the effluent from local meatworks and for removing the communal septic tanks on the banks of the Mangaokewa Stream. There was less support from Maori for the treated effluent to be discharged into the same stream, albeit downstream of the town. While a recent upgrade adds additional treatment prior to discharge into the oxidation ponds, and disposal out of the oxidation ponds into an artificial wetland, the resulting higher-quality effluent will still end up in Mangaokewa Stream. This upgrade was apparently presented to Maori on a 'take it or else' basis.

The consultation that has occurred with all three discharges has been better for Maori than occurred prior to 1991, and the Resource Management Act is the cause of that improvement. Conditions of consent under the 1991 Act have probably been of a better quality than were insisted upon under the 1967 Act, though whether they are at 'best practice' level today is not known. Less satisfactory has been the performance of the Waikato Regional Council in enforcing the conditions of consent. The case studies for all three treated sewage discharges show regular annual assessments of significant non-compliance, with minimal follow-up enforcement. This appears to be a problem with the Waikato Regional Council's administrative performance rather than a systemic problem with the Resource Management Act, though the ease with which the Regional Council can ignore the statutory enforcement expectations may point to weaknesses in the drafting of the legislation.

6.6.4 Piopio treated sewage discharge into the Mokau River

This sewage discharge has not been covered in a separate topic study or a case study. It is discussed here as a miniature topic study.

The township of Piopio traditionally relied on individual septic tanks with soakage into the ground for disposal of its sewage. This was not particularly effective because of a high water table in the winter months and clay soils of a low permeability, sometimes resulting in inadequate soakage, groundwater contamination, effluent ponding, and effluent flowing into local waterways. Besides the public health dangers, the contamination of waterways affected their cultural and ecological values, with reduction in eel numbers, inability to gather watercress, and a general loss of mana.

The solution identified to overcome these problems was reticulation of sewage to a treatment plant located to the west of the township, and then discharge of the treated sewage into the Mokau River. This was agreed upon by the local authority, Waitomo District Council, in 2002. The following year an application for resource consent to allow discharge of treated effluent was lodged with Waikato Regional Council[481]. Ultimately this application was not proceeded with[482], and is therefore not discussed in this report.

A fresh application to discharge treated effluent into the Mokau River was lodged in September 2007[483]. By then Waitomo District Council had received approval for a Health Department subsidy under its Sanitary Works Subsidy Scheme; the high level of subsidy that had been agreed to was a reflection of both need and the degree of improvement a reticulated treatment sewage scheme would provide. The lodging of the application had been preceded by a period of consultation with parties likely to be affected, specifically:

- Mokau ki Runga Regional Management Committee (RMC)
- Auckland / Waikato Fish and Game Council
- Department of Conservation
- Tainui Whitebaiters Association
- Nga Hapu o Poutama
- Muiora Barry on behalf of "whanau of Piopio"

The Fish and Game Council, the Department of Conservation, and the Whitebaiters Association had provided written approval. Mokau ki Runga RMC had declined to provide approval, while Muiora Barry had signified dissent in an informal objection in June 2007[484].

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[481] MWH New Zealand Limited to Environment Waikato, 5 November 2003. Waikato Regional Council file 61.18.75A. Supporting Papers #881.

[482] It was formally withdrawn after a fresh application had been accepted. Duffill Watts Consulting Group, Palmerston North, to General Manager Environment Waikato, 27 September 2007. Waikato Regional Council file 61.18.75A. Supporting Papers #961.

[483] Waitomo District Council, Piopio Wastewater Treatment Plant discharge permit: resource consent application and assessment of environmental effects, undated (received 24 September 2007). Waikato Regional Council file 61.18.75A. Supporting Papers #886-960.

[484] Muiora Barry, Piopio, to Chief Executive Officer Waitomo District Council, 29 June 2007. Waikato Regional Council file 61.18.75A. Supporting Papers #882-885.
This objection was lodged with respect to a land use resource consent application for the wastewater treatment plant site, to be considered by Waitomo District Council.

The lodging of the application set the stage for a clash of cultures. Waikato Regional Council staff were of the view that the discharge into the Mokau River would not have a significant adverse environmental affect on the ecology of the river or on water quality parameters like BOD (biochemical oxygen demand), phosphorus, nitrogen and suspended solids, while the bypassing of local streams in Piopio as a result of reticulation would improve the quality of those streams. They considered the application could be processed on a limited notification basis (i.e. inviting only affected parties to make submissions) rather than on a wider public notification basis[485].

When submissions were invited from those parties who had been involved in the pre-notification consultation, the Department of Conservation advised that it would not be making a submission[486]. Mokau ki Runga RMC lodged a "total objection", because the proposal to discharge human wastes into the Mokau River was considered to be "culturally offensive", adding:

> Be advised that there are at least four Treaty claims that have been lodged with the Waitangi Tribunal with regard to the Mokau River….[487]

Nga Hapu o Poutama and Muiora Barry also opposed the application[488].

A hearing of the application before a hearing committee of Waikato Regional Council was held in April 2008. This was a joint hearing which also considered a land use consent application for the use of the treatment plant site; the hearing was before three members of a Regional Council hearing committee for the water discharge

[485] Limited notification assessment, 4 October 2007, approved 9 October 2007. Waikato Regional Council file 61.18.75A. Supporting Papers #962-965.

[486] Maniapoto Area Manager to Environment Waikato, 8 November 2007. Waikato Regional Council file 61.18.75A. Supporting Papers #966.

[487] Submission in opposition by Mokau ki Runga Resource Management Committee, 5 December 2007, attached to Waitomo District Council consultant planner's report, 12 March 2008, and Waikato Regional Council staff report, 14 March 2008. Waikato Regional Council file 61.18.75A. Supporting Papers #971-1012 at 1010-1012, and 1013-1065 at 1061-1063.
The submission was the same to both the District Council and the Regional Council.

[488] Re Application to Regional Council - Submissions in opposition by Nga Hapu o Poutama, 4 December 2007, and Muiora Barry and others, 30 November 2007, attached to Waikato Regional Council staff report, 14 March 2008. Waikato Regional Council file 61.18.75A. Supporting Papers #1013-1065 at 1064-1065.
Re Application to District Council - Submission in opposition by Muiora Barry, 30 November 2007, attached to Waitomo District Council consultant planner's report, 12 March 2008. Waikato Regional Council file 61.18.75A. Supporting Papers #971-1012 at 1008-1009.

application, and a hearings commissioner appointed by Waitomo District Council for the land use application. Separate technical reports and separate decisions were provided for each application; the land use consent report and decision is provided in supporting papers for the sake of completeness[489], but is not referred to in this overview report, as it was generally not controversial.

The staff technical report on the water discharge application[490] noted that the treatment plant processed sewage through settling tanks, multiple passes through a filter, and ultraviolet disinfection. The package plant that would be used had a reputation for consistently producing a high quality effluent. From the treatment plant, the effluent would be pumped approximately 500 metres to a discharge site beside the Mokau River. The pre-notification consultation with the Crown and non-Maori groups had satisfied them and they had not offered any objection, but the three Maori groups had all objected. The staff report summarised their submissions:

- That the discharge is culturally offensive
- That the discharge will disturb the mauri of the Mokau River, which is waahi tapu
- That Treaty claims are lodged with regard to the Mokau River
- That the discharge will have a detrimental effect on waterways and land from the point of discharge to the sea
- That important traditional fisheries are at risk[491]

For the Regional Council staff, the Mokau River was already a degraded environment:

> The environment here is that of the Mokau River. Environment Waikato data from a site downstream of Piopio, examined between 1998 and 2002, and also represented graphically on the EW website …, indicates that the river is high in turbidity, nitrogen and phosphorus. In addition, over 60% of the time, the Mokau River is estimated to be unsuitable for contact recreation, in part due to *E. coli* levels. This is considered typical of catchments with a high percentage of pastoral farming…. In addition, it is generally accepted that water quality within the Piopio and Kuratahi Streams is decreased by the discharge of poorly treated wastewater from failing septic tank systems. These streams flow into the Mokau River at Piopio. The water quality within the Mokau

[489] Report on application for land use consent by consultant planner for Waitomo District Council, 12 March 2008, and Decision of hearings commissioner, 18 April 2008. Waikato Regional Council file 61.18.75A. Supporting Papers #971-1012 and

[490] Waikato Regional Council staff report, 14 March 2008. Waikato Regional Council file 61.18.75A. Supporting Papers #1013-1065.

[491] Waikato Regional Council staff report, 14 March 2008, page 5. Waikato Regional Council file 61.18.75A. Supporting Papers #1013-1065 at 1021.

> River is not expected to notably improve or decline without significant changes within the catchment.[492]

This represented the environmental baseline against which the application was to be considered.

A water quality scientist for the Regional Council considered that discharge of contaminants into the Mokau River was preferable to discharge into the Piopio Stream, "simply because the greater flows there would mean the contaminants would be diluted to a much greater extent"[493]. Looking at individual contaminants, he reported:

> These calculations show that contaminant concentrations downstream of the discharge point are likely to change as follows:
>
> - Concentration of suspended solids, biochemical oxygen demand and faecal coliform bacteria are likely to increase by only a small amount (about 2 per cent or less)
> - Concentrations of total Kjeldahl nitrogen are likely to increase by a moderate amount (about 24 per cent)
> - Concentrations of total phosphorus and ammonia are likely to approximately double[494]

How far downstream he was referring to is not clear, though the implication is that his calculations were based on concentrations immediately downstream of the discharge point. The water quality scientist went on to assess the total additional amounts of nitrogen and phosphorus contributed by the Piopio sewage, in relation to the total amount already in the river, and found that the additional loads were relatively small, "so that the adverse effects of them are also likely to be relatively small". His overall conclusion was:

> Even under the combination of (1) high end wastewater loads, and (2) low flow in the Mokau River, the effects of the discharge on the water quality of the Mokau River are likely to be relatively small.[495]

[492] Waikato Regional Council staff report, 14 March 2008, page 6. Waikato Regional Council file 61.18.75A. Supporting Papers #1013-1065 at 1022.
[493] Waikato Regional Council staff report, 14 March 2008, Appendix A, page 3. Waikato Regional Council file 61.18.75A. Supporting Papers #1013-1065 at 1045.
[494] Waikato Regional Council staff report, 14 March 2008, Appendix A, page 2. Waikato Regional Council file 61.18.75A. Supporting Papers #1013-1065 at 1044.
[495] Waikato Regional Council staff report, 14 March 2008, Appendix A, page 1. Waikato Regional Council file 61.18.75A. Supporting Papers #1013-1065 at 1043.

Against the scientifically-measurable effects of individual water contaminants was the cultural effect, which formed the basis for the objections from Maori groups. The staff report said of cultural effects:

> Mauri is considered to be the essence or life force that provides life to all living things, and water also has mauri. When mauri is completely extinguished, death is associated. Three submitters have raised that the discharge of human waste, treated or not, is culturally offensive to Maori. One submitter (Poutama Hapu) states that the discharge "disturbs the mauri of the river. The mauri being the energy that gives the river life and allows things to exist in and out of the river". Environment Waikato acknowledges in its policy documents that the discharge of human-based sewage effluent directly into water causes cultural offence ([Regional Policy Statement] section 2.3.4.19 …). The applicant also notes in the application documents … that the discharge of wastewater is considered to affect the mauri of the Mokau River, and that "the Mauri of the Mokau River, in this instance, is considered to be degraded and offended by the very act of discharging human waste into it, irrespective of amounts or concentrations".
>
> It is my understanding that there is a general acceptance that land-based disposal of wastewater allows the removal of contaminants through contact with the earth (Papatuanuku – Earth Mother) prior to entering any groundwater or stream flows. The applicant has outlined that consideration of land-based disposal of the wastewater has been investigated at Piopio, but has been deemed to be unviable given present resources…. In some instances elsewhere in the Waikato region, iwi have deemed it adequate that treated wastewater flow through a constructed wetland or other earth contact media prior to discharge to a natural waterway, in order to remedy any potential effect on the mauri of the receiving waterway. I am unable to comment on the acceptability of such practice to the hapu of Piopio, except to acknowledge they have continued to express their opposition to the discharge of wastewater to the Mokau River.
>
> The applicant has proposed to discharge treated wastewater into a subsurface flow wetland prior to discharge to the Mokau River through a rock outfall.[496]

It was noted that the proposal was "clearly inconsistent with the Maniapoto Iwi Environmental Plan", because it was discharging treated sewage into the Mokau River[497]. The Iwi Management Plan is discussed in a later section of this report concerning the participation of Maori in Resource Management Act processes.

Section 2.3.4.19 of the Waikato Regional Policy Statement states:

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[496] Waikato Regional Council staff report, 14 March 2008, page 8. Waikato Regional Council file 61.18.75A. Supporting Papers #1013-1065 at 1024.

[497] Waikato Regional Council staff report, 14 March 2008, page 12. Waikato Regional Council file 61.18.75A. Supporting Papers #1013-1065 at 1028.

> Environment Waikato recognises the cultural offence of discharge of human-based sewage effluent directly into water, and will require the investigation and assessment of land disposal options against other alternatives. If such investigation and assessment establishes that land-disposal is not practical and/or affordable, Environment Waikato will encourage options involving a land-based treatment component.

The wetland and rock outfall prior to discharge to the Mokau River constituted the "land-based treatment component" of the proposed Piopio discharge, in terms of the regional policy.

After assessing the application against the requirements of the legislation and the Waikato Regional Council's planning documents, the conclusion reached was that the proposal met all water quality and aquatic ecosystem objectives, and would also meet the social and economic wellbeing needs of the Piopio community, but would not satisfy the cultural objectives of tangata whenua and their kaitiaki responsibilities. Overall the proposal was acceptable and granting consent for a term of 20 years and subject to conditions was recommended[498].

At the hearing in April 2008, the three Maori submitters all presented evidence, two (Mokau ki Runga RMC and Muiora Barry) in written form, and one (Nga Hapu o Poutama) verbally. The verbal submissions of Nga Hapu o Poutama were summarised in the hearing decision:

- Issues related to law and the Treaty of Waitangi.
- That the hapu considered the consultation process undertaken by the applicant was flawed.
- Concern about the flooding potential of the wastewater treatment tanks given they have open breather vents.
- Concern that the hapu were not provided all information to see the process of all decisions made regarding the proposal.
- Concern that the hapu were not given an opportunity to be included for the scoping of all possible solutions, e.g. composting toilets.
- A suggestion that cleaning out of septic tanks in Piopio on a more regular basis may be solution to problem.
- Concern about ongoing discharges to the Awa (River) creating a poisoning effect.
- Expression of opinion that the level of funding required for alternative schemes in Piopio for wastewater disposal was insufficient, simply because the applicant did not apply for a high enough level of subsidy.

[498] Waikato Regional Council staff report, 14 March 2008, page 18. Waikato Regional Council file 61.18.75A. Supporting Papers #1013-1065 at 1034.

- An outline that Part II matters from the RMA states a requirement to consider the social *and* economic *and* cultural, rather than allowing one area to be dismissed.
- An opinion that if the proposal is inconsistent with any part of EW planning documents, that this cannot be disregarded, but instead a change to plan process should occur.
- Criticism of the evidence by the applicant on cultural matters when no person had the expertise to comment.
- A statement that a tender process was not the appropriate means to determine the future of wastewater in Piopio.
- A statement that the hapu see the Mokau River as waahi tapu and tupuna.
- An opinion that EW views the River as a resource, a receptacle for waste to fill up.
- A wish to see a partnership set up to choose a practical option for the wastewater, and a criticism that the applicant has not been willing to develop that relationship.
- An outline that hapu consider that any effect on the river that links to the health and wellbeing of the hapu is a physical effect, not just intrinsic or intangible.
- A call for EW to clean up the status quo in the Mokau River.
- A concern that the proposed liaison group does not take into account Section 8 of the RMA, as the liaison group will have no power.[499]

The written evidence of Mokau ki Runga RMC[500] was summarised in the hearing committee's decision in the following fashion:

- Introduction of the whanau hapu represented by Mokau ki Runga RMC.
- A summary of concerns with the applicant's proposal.
- A summary of the Wai 788 claim to the Waitangi Tribunal.
- A description of Mokau ki Runga's special relationship with the Mokau River.
- The effect on this special relationship as a result of the proposal.
- An outline of the consultation with Mokau ki Runga, and an expression of their understanding that that consultation is incomplete and flawed.
- A discussion on river water quality.
- A summary of statutory matters, including the RMA, Regional Policy Statement, and Waikato Regional Plan.
- A summary that Mokau ki Runga opposes all resource consents sought by the applicant, and statement that should consent be granted Mokau ki Runga will appeal the decision.[501]

[499] Decision of Waikato Regional Council Hearing Committee, 2 May 2008. Waikato Regional Council file 61.18.75A. Supporting Papers #1105-1127.
[500] Statement of evidence of Mokau ki Runga Regional Management Committee, undated (April 2008). Waikato Regional Council file 61.18.75A. Supporting Papers #1066-1080.
[501] Decision of Waikato Regional Council Hearing Committee, 2 May 2008. Waikato Regional Council file 61.18.75A. Supporting Papers #1105-1127.

In addition to written evidence, two witnesses for Mokau ki Runga RMC provided verbal evidence.

> Mr [T] Raupatu elaborated on the effect of the discharge of human waste to water had on hapu. This related to the implications of having the sewage ("tiko") touch the food supply ("kai"), and the physical, mental and spiritual implications of that on hapu. Mr Raupatu stated that for tiko to be in the waters at all times meant that hapu would not gather food from the Mokau River, and that this would have implications on the hapu to supply kai for both themselves and their guests….
>
> Mr [E] Emery outlined his personal experience with the cultural aspects of wastewater systems. Mr Emery also discussed the effect of wastewater discharges to water on the mauri of the Mokau River. [502]

Muiora Barry also presented written submissions, which were summarised in the decision report:

- A support for concerns outlined by Mokau ki Runga RMC.
- An outline of the relevant sections of the RMA.
- A clarification that the irrigation of wastewater over land was culturally offensive where it was irrigated over food.
- An opinion after the investigation of evidence presented that there was a lack of consideration of alternatives, and a lack of technical evidence to support a proper consideration. This included a statement that Environment Waikato had failed to consider the alternatives to the current proposal.
- An opinion that the feasibility study provided with the application was an "after thought".
- An explanation that the mauri was not limited to intangible effects, but also physical effects. A similarity to "entropy" as a comparison to scientific terms was presented.
- A concern that technical witnesses have provided an opinion on Mauri, although they lack expertise to do so.
- A discussion of the current overflows from septic tanks being intermittent, and therefore allowing for a rahui to be imposed, as opposed to the constant discharge proposed.
- A concern that the petition gave the appearance of a division between the community and iwi.[503]

After hearing all the evidence, the hearing committee was provided with a supplementary staff report, in which it was stated, among other things:

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[502] Decision of Waikato Regional Council Hearing Committee, 2 May 2008. Waikato Regional Council file 61.18.75A. Supporting Papers #1105-1127.

[503] Decision of Waikato Regional Council Hearing Committee, 2 May 2008. Waikato Regional Council file 61.18.75A. Supporting Papers #1105-1127.

However, while important, cultural effects of the discharge are not the only factors to be considered when assessing this application. The Regional Policy Statement and the Waikato Regional Plan both contain objectives and policies relating to environmental, social and economic factors. These include policies relating to the net improvement of water quality across the region, that people are able to take and use water for their social economic and cultural wellbeing, the avoidance of significant adverse effects on aquatic ecosystems, that the range of reasonably foreseeable uses of surface water is protected, and that the specific values of the Mokau River, being an identified indigenous fishery waterway, are protected.

Consideration of these policies must be in light of Part II matters within the RMA….

It is my view that in order to achieve the purpose of the Resource Management Act in the context of this application, it will be important to ensure that:

- Water quality within the Mokau River is maintained so as to provide for future generations and to safeguard its life supporting capacity;
- The Piopio community has adequate infrastructure to provide for their social and economic wellbeing;
- The Piopio community has adequate infrastructure to ensure their health and safety;
- The impact on water resources is minimised;
- Any potential cultural effects are avoided, minimised or mitigated.

My conclusions outlined within the staff report have not altered as a result of applicant's evidence and submissions presented at the hearing. In summary:

- The adverse effects on the physical environment from the proposed discharge are expected to be less than minor.
- The proposed conditions are considered adequate to ensure that no significant adverse effects occur on water and ecosystems.
- I consider on the basis of the evidence provided that the current failing wastewater systems in Piopio presents a significant risk to the health and safety of the Piopio community.
- I consider that the provision of adequate means of wastewater disposal is fundamental to providing for the needs of the Piopio community to provide for their social and economic wellbeing.
- The cultural effects of the discharge remain the outstanding issue with regards to the proposal.

The supplementary report recommended that the application be granted, although with some slight alterations to the conditions to be attached to the consent[504].

In coming to its decision the hearing committee made findings of fact that the existing method of sewage disposal in Piopio was failing, an assessment of alternatives had

[504] Supplementary staff report, undated (April 2008). Waikato Regional Council file 61.18.75A. Supporting Papers #1134-1141.

concluded that discharge of treated wastewater to the Mokau River was the only feasible option, that the discharge would have a relatively small effect on overall water quality in the Mokau River, and that tangata whenua opposed discharge to the Mokau River. The committee understood that the discharge would "have a deep impact on the hapu's relationship with the Mokau River". It was, however, also concerned for the health and safety of Piopio residents, and considered that the applicant council had "undertaken a sound evaluation of the alternatives", and "made an informed and reasoned decision on the most feasible and appropriate option to pursue". It granted consent for a term of 20 years[505]. It included in the conditions of consent a condition, which had been offered by Waitomo District Council at the hearing, that a community liaison group be established and hold annual meetings[506].

As it had warned the hearing committee, Mokau ki Runga RMC lodged an appeal to the Environment Court against both the Regional Council's water-based and the District Council's land-based decision. Its seventeen-point list of reasons against the twin decisions included the adverse and negative effects on the mauri and the mana of the river, and the impact on the health and wellbeing of tangata whenua. The Committee asked that the consent be declined[507]. There was an attempt at mediation of the appeal in September 2008, which was unsuccessful[508].

An application by Waitomo District Council to strike out the appeal was declined by the Environment Court in May 2009, although the scope of the appeal against the land-based consent was narrowed to "the flow-on effects of the discharge into the Mokau River", and there was a requirement that Mokau ki Runga RMC was to file

[505] Decision of Waikato Regional Council Hearing Committee, 2 May 2008. Waikato Regional Council file 61.18.75A. Supporting Papers #1105-1127.
[506] Decision of Waikato Regional Council Hearing Committee, 2 May 2008. Waikato Regional Council file 61.18.75A. Supporting Papers #1105-1127.
In a separate document, it gave a written decision on procedural matters it had been required to consider. Procedural decisions and directions of Hearing Commissioners, 8 April 2008. Waikato Regional Council file 61.18.75A. Supporting Papers #1142-1145.
[507] Notice of appeal by Mokau ki Runga Regional Management Committee, 23 May 2008. Waikato Regional Council file 61.18.75A. Supporting Papers #1128-1133.
[508] File note about mediation meeting on 16 September 2008, 12 December 2008. Waikato Regional Council file 61.18.75A. Supporting Papers #1146-1147.

further particulars of the effect of discharging treated sewage into the Mokau River[509].

Responding to this requirement, Mokau ki Runga RMC advised:

> Be advised that a number of us from the Mokau ki Runga Regional Management Committee are also claimants before the Waitangi Tribunal Te Rohe Potae Enquiry, and we make this submission as those who have mana whenua interests in lands [and] waterways adjoining the Wai 788 Mokau Mohakatino and other Block Claims.
>
> The rights of our whanau and hapu are a part of our tino rangatiratanga and our responsibilities are a part of our role in kaitiakitanga. These rights and responsibilities are inherent to who were are, and inherited from our tupuna….
>
> The discharge of human waste in any shape or form into the Mokau River shall have a major impact on all our whanau and hapu who gather traditional and seasonal freshwater fish throughout the year.
>
> Currently our traditional and cultural practices are still very much alive. Sustenance of freshwater fish (i.e. koura/crayfish and kakahi/kairo freshwater mussels, tuna/eels, piharau/lamprey). If the sewage discharge was to be allowed or consented to, would totally inhibit the tangata whenua of the Mokau ki Runga rohe below the discharge point to collect or consume (or offer for consumption) kai currently collected from, in and along the Mokau River.
>
> It would be the height of bad etiquette to serve polluted food to one's visitors at our tribal gatherings. It would also be totally dis-respective [sic] of us consenting to our whanau downstream to be subjected to having to consume polluted human waste regardless of what level of filtering has been undertaken to justify its discharge.
>
> We the Mokau ki Runga Regional Management Committee hereby advise that in earlier days, pre-European, the Mokau River was steeped in history and was the natural access and highway for tangata whenua who traversed from Motu Karamu Flats situated off the Roto Potaka road and down the end of the Waiomio no-exit road.
>
> Two thousand Maoris lived with the missionaries at Motu Karamu. There were other settlements as well along the banks of the Mokau. Our whanau and hapu collectively still own land in and along the Mokau right to the river mouth south of the Mokau township. The Mokau mussel reef at Mohakatino lies to the south of the puaha of the river, where whanau come to gather kaimoana, go white baiting, and generally fish for the day. The proposed Piopio sewage discharge into the Mokau River above this point, for us as Maori who are culturally sensitive of consuming human waste, would see all food inedible.

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[509] *Mokau ki Runga Regional Management Committee v Waitomo District Council and Waikato Regional Council*, decision of the Environment Court, 4 May 2009 (Decision A037/2009, [2009] NZEnvC 97). Copy on Waikato Regional Council file 61.18.75A. Supporting Papers #1148-1153. This decision is also posted on www.justice.govt.nz/courts/environment-court

> Written evidence made reference to how Maori caught their eels in their pa tuna or eel weirs, resources were plentiful.
>
> Currently our traditional practices of customary fishing, along with the kaitiakitanga role and responsibility, are staunchly adhered to here in Pio Pio, Tupaka, Taheke, Wairere, Panirau, Te Matai, Paraheka, and all other pa tuna above and below the Wairere Dam.[510]

The appeal by Mokau ki Runga RMC was heard in September 2010. By this time the proposal had been modified slightly at the discharge point, "passing the treated wastewater down a hill and over a planted wetland area to the river through a discharge structure comprising a series of perforated timber baffles"[511]. This proposal to incorporate a more substantial wetland than had been envisaged in 2008 was said to have "been developed after consultation with iwi to provide for a final land passage and contact with Papatuanuku (the Earth Mother), prior to mixing with the river water"[512]. However, the Environment Court recorded that it was "still unacceptable to the appellant"[513].

Witnesses for Mokau ki Runga RMC were Raumoana White, Peter Stockman and Barbara Marsh. All three explained how discharge of human waste into the river was culturally inappropriate, and was contrary to their heritage, culture and beliefs. Mokau ki Runga RMC also presented a partially developed proposal for land-based disposal as an alternative to discharge to the river. Other evidence to the Court from Waitomo District Council witnesses argued that the soils and watertable at Piopio, plus additional costs, did not allow for land-based disposal. After hearing the evidence the Court decided that the evidence in support of land-based disposal was

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[510] Secretary Mokau ki Runga Regional Management Committee to Environment Court, 28 August 2009. Waikato Regional Council file 61.18.75A. Supporting Papers #1154-1156.

[511] *Mokau ki Runga Regional Management Committee v Waitomo District Council and Waikato Regional Council*, decision of the Environment Court, 22 December 2010, (Decision [2010] NZEnvC 437), page 3. Supporting Papers #1157-1190 at 1159.
This decision is also posted on www.justice.govt.nz/courts/environment-court
A land use consent for this amended discharge structure had been issued by Waitomo District Council in February 2009.

[512] *Mokau ki Runga Regional Management Committee v Waitomo District Council and Waikato Regional Council*, decision of the Environment Court, 22 December 2010, (Decision [2010] NZEnvC 437), page 11. Supporting Papers #1157-1190 at 1167.

[513] *Mokau ki Runga Regional Management Committee v Waitomo District Council and Waikato Regional Council*, decision of the Environment Court, 22 December 2010, (Decision [2010] NZEnvC 437), page 3. Supporting Papers #1157-1190 at 1159.

not compelling enough to justify the appeal being held over while the partially-developed proposal was investigated further[514].

In its remarks on the appeal, the Court noted:

> We acknowledge the important relationship the appellant has with the river, which is partly, but not only, recognised in its role as kaitiaki of it. The ideal situation would be for there to be a solution which did not require the treated wastewater to be discharged into the river. We are satisfied, however, that such an option is not available at this time, and that the discharge of treated wastewater to the river is the only practical and affordable alternative available at this time….
>
> In light of this, we are satisfied that the discharge structure goes a reasonable way to meeting concerns of iwi by ensuring some overland passage of the treated wastewater before discharge into the river. In addition, the proposal to establish a Community Liaison Group will ensure that dialogue with iwi continues, and if a suitable alternative is able to be found then we are satisfied that there is an openness on behalf of WDC to seriously consider it….
>
> This case requires us to weigh the health and safety needs of the Piopio community against the cultural value of the appellant that any discharge of treated wastewater to the river is unacceptable, even if it results in little actual effect on the water quality. We agree with the Court in *Tainui Hapu* [Raglan treated sewage discharge appeal in 2004] where it had to address a similar issue and held:
>
> > The health and wellbeing of the whole community would benefit if tangata whenua are able to experience fully their cultural and traditional relationship with their ancestral water, and to exercise their kaitiakitanga. But the health and wellbeing of the whole community is at risk if the District Council is not able to provide for sanitary disposal of treated wastewater.
>
> As in *Tainui Hapu*, we are satisfied that the evidence does not reveal a feasible and affordable alternative to the discharge to the river at this time.[515]

The appeal was dismissed, subject to an amendment to the conditions to include reference to the overland discharge structure in the discharge permit. The amended consent conditions were approved by the Court in February 2011[516].

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[514] *Mokau ki Runga Regional Management Committee v Waitomo District Council and Waikato Regional Council*, decision of the Environment Court, 22 December 2010, (Decision [2010] NZEnvC 437), pages 20-21. Supporting Papers #1157-1190 at 1176-1177.

[515] *Mokau ki Runga Regional Management Committee v Waitomo District Council and Waikato Regional Council*, decision of the Environment Court, 22 December 2010, (Decision [2010] NZEnvC 437), pages 31-33. Supporting Papers #1157-1190 at 1187-1189.

[516] *Mokau ki Runga Regional Management Committee v Waitomo District Council and Waikato Regional Council*, decision of the Environment Court, 17 February 2011, (Decision [2011] NZEnvC 42). Copy on Waikato Regional Council file 61.18.75A. Supporting Papers #1191-1202.
This decision is also posted on www.justice.govt.nz/courts/environment-court

Since the consents were finalised, Waitomo District Council has convened at least three meetings of the Community Liaison Group, in August 2011, August 2012 and August 2013. The meeting in 2011 was held before the sewerage scheme was completed, and was dominated by discussion about further construction work[517]. Minutes of the meetings on 23 August 2012 and 22 August 2013 have not been sighted during research for this report. The scheme has since become operational, and a compliance audit after the first full year of operation showed that it was performing above expectations in terms of the biological water quality standards included in the consent. The only known problem was three occasions where the discharge volume exceeded the daily maximum, believed to be due to stormwater infiltrating into the sewerage system[518].

The experience of tangata whenua with the Piopio wastewater discharge shows how 'sustainable management', as applied under the Resource Management Act, does not necessarily produce a result consistent with Maori expectations. To Maori, discharge of human waste into natural water, instead of returning it to the realm of Papatuanuku, demonstrates a lack of respect for the mauri of the water, and is inherently an unsustainable practice. However, the Environment Court decided that the poor receiving quality of the soils at Piopio, and the cost to the community, were other factors relevant to sustainable management that should be weighted more heavily and should prevail. The weighting these other factors were given meant that the Court could see no alternative to allowing discharge to the river.

The Piopio case also raises questions about the wastewater being trickled over stones and through an artificial wetland before discharge to the river, with it being argued that this amounts to the water actually being discharged into the realm of Papatuanuku. Tangata whenua at Piopio declared this type of treatment to be an unacceptable practice, while the Council evidence was that it had been accepted elsewhere. Putting aside whether it is a form of tokenism, it does point to the decision

[517] Minutes of meeting of Community Liaison Group, 11 August 2011. Waikato Regional Council file 61.18.75A. Supporting Papers #1203-1208.
[518] Consent compliance audit report for Consent 117290, 26 June 2013. Waikato Regional Council file 61.18.75A. Supporting Papers #1209-1218.

on what is or is not acceptable being a matter to be decided at the hapu level, rather than there being a 'one size fits all' approach for Maoridom as a whole.

6.7 Auditor General's audit of Waikato Regional Council performance, 2011

In 2011 the Auditor General published a performance audit of the work of regional councils in protecting and improving freshwater quality[519]. In reviewing the work of regional councils, she relied on an assessment of four councils as being representative of councils nationally. Three of the four councils examined were Waikato Regional Council, Taranaki Regional Council and Manawatu – Wanganui (Horizons) Regional Council, which between them are responsible for the whole of Te Rohe Potae district. In an appendix to her audit, she summarised her findings for Waikato and Manawatu – Wanganui Regional Councils as follows[520]:

[519] Controller and Auditor General, *Managing freshwater quality: challenges for regional councils*, September 2011. Posted on www.oag.govt.nz
The Auditor General commissioned a report from NIWA to assist her in her audit. NIWA, *Freshwater quality monitoring by Environment Southland, Taranaki Regional Council, Horizons Regional Council and Environment Waikato*, November 2010, NIWA Client Report CHC2010-141. Posted on www.oag.govt.nz

[520] Taranaki Regional Council is not included in the following table for formatting and space reasons, because the principal focus of its activities is outside Te Rohe Potae inquiry district, and because its proportion of Te Rohe Potae inquiry district is so small.

Table 6 Findings of Auditor General on performance of regional councils

Findings	Waikato Regional Council	Manawatu – Wanganui (Horizons) Regional Council
Water quality state and trends	Freshwater quality in the Waikato region mostly fails to meet WRC's standards and accepted trigger values. Trends also indicate that there is cause for concern over deteriorating conditions, which far outweighs results that show some signs of improvement.	Water quality in the region does not meet a number of trigger values or the One Plan water quality targets. For most water quality indicators, there is no significant improvement or decline, meaning water quality is remaining steady. For some sites and indicators, this means that adverse water quality is persisting.
Reporting to the community	WRC has effective systems to report freshwater quality information to the Council and community. There is some room to improve how information is reported to the community – for example, by providing clearer links between the results and the causes of any declining conditions.	Freshwater quality information is appropriately provided to Council, communities and the public. HRC last produced a State of the Environment report in 2005, and now provides up-to-date water quality information online. The information provided online could be further summarised to make the messages more accessible for the public. HRC is not currently meeting the RMA requirement to compile and make available to the public a review of its monitoring of the effective and efficiency of policies, rules or other methods in its policy statement or its plan at least every five years.

Findings	Waikato Regional Council	Manawatu – Wanganui (Horizons) Regional Council
Making a timely response to freshwater quality issues	WRC's monitoring systems identify risks to freshwater quality in the region and inform policy and planning analysis. WRC has changed its plans and policies over time to improve how it manages freshwater quality. These changes align to some of the known risks in the region. We cannot provide assurance that WRC's operational response systems address potential and known risks to freshwater quality in a timely or effective manner. WRC needs to improve its performance measures and targets for responding to complaints and pollution incidents.	HRC is using the information arising from its monitoring programme to amend policy and investigate issues as they emerge. The time frames of 4 hours for responding to urgent pollution incidents, and 2 days for non-urgent incidents, are not always met because of staff availability.
Effectiveness of regulatory and non-regulatory programmes	WRC's regulatory and non-regulatory methods target the known risks to freshwater quality from land use, but there is no evidence that these provisions have been effective in maintaining or enhancing freshwater quality in the region. Given the rates of non-compliance and the state of freshwater quality, it may be time for WRC to consider more stringent regulatory methods.	Regulatory and non-regulatory programmes are appropriately targeted at reducing the known risks to freshwater quality in the region. Regulation for freshwater quality means that any proposed activity must ensure that targets are met. Intensive land use is regulated with specific policies to manage nutrients and dairy cows' access to water bodies. Non-regulatory programmes involve HRC working closely with stakeholders to bring about improvements in water quality.

Findings	Waikato Regional Council	Manawatu – Wanganui (Horizons) Regional Council
Compliance monitoring and enforcement action	WRC does not appear to currently have effective strategies or management systems to address risks associated with significant non-compliance and/or repeat non-compliance. Analysis of WRC's enforcement trends shows high rates of formal warnings versus formal enforcement action. We question whether WRC's enforcement strategies are consistent and strong enough to be effective in changing non-compliance in the region.	HRC has a strong framework for implanting compliance monitoring – this includes regular dairy farm resource consent compliance inspections, and financial incentives for compliance. HRC operates robust procedures for carrying out inspections, which have resulted in it taking more enforcement action. HRC's approach to compliance is fair and consistent for resource users across the region.

Findings	Waikato Regional Council	Manawatu – Wanganui (Horizons) Regional Council
Overall findings	Freshwater quality is not maintained or enhanced in the Waikato region. The current package of regulatory and non-regulatory methods, and how they are implemented, is not sufficient to manage threats to freshwater quality. WRC is beginning to take steps to address the notable challenges in managing non-point source pollution in its region. Its regional plan review provides an opportunity to improve its planning framework and better target programmes to manage the main risks to freshwater quality in the region.	HRC has planned a well-designed suite of regulatory and non-regulatory programmes that are appropriately targeted at reducing the known risks to freshwater quality. Emerging trends show water quality may be improving and indicate that HRC interventions may be helping. Overall, HRC is maintaining and enhancing freshwater quality in the Whanganui and Rangitikei Rivers, but not in the Manawatu River. We expect to see improvements as point source discharges and land use practices for managing contaminants are improved. HRC made a significant and positive response to the findings of our 2005 performance audit of its freshwater management. Its new policy framework and its implementation represent significant improvements since our earlier audit.

Findings	Waikato Regional Council	Manawatu – Wanganui (Horizons) Regional Council
Recommendations	We recommend that WRC: • Change the permissive framework of its regional plan to increase the level of influence its planning regime has over non-point source pollution; • Review the targets and measures it uses at all levels of RMA and LGA plans and policies to identify more specific measurable, time-bound measures, including targets for freshwater quality standards; • Review the complaints, compliance monitoring and enforcement information systems, and develop consistent specific policies and procedures for staff to respond to repeat non-compliance and follow up on complaints and pollution incidents; and • Publish an annual compliance and enforcement monitoring report.	We recommend that HRC: • Compile a report on the results of its monitoring of the effectiveness and efficiency of its policies, rules or methods in its policy statements and plans, and make this report available to the public. • Provide more context to online scientific information on water quality so that it is more accessible to the community; and • Look at options for improving the timeliness of its response to pollution incidents.

The table is not encouraging for the overall trend of water quality in the Waikato region, reporting continuing deterioration and a failure to meet environmental standards set by the Waikato Regional Council. This combination meant that the Regional Council had been incapable of achieving its goal of improving water quality. In effect, while it may have made headway with improving the quality of particular discharges that were the subject of resource consents, underlying water quality standards were declining as a result of nutrient and chemical runoff from land generally, the so-called non-point discharges. As a result the Council needed to review and improve both its day-to-day performance and the measures it chose to adopt to achieve its goals.

The table also demonstrates that Waikato Regional Council was performing less satisfactorily than its Manawatu - Wanganui counterpart in its enforcement of resource consent conditions. The poor performance of Waikato Regional Council, as assessed by the Auditor General, is confirmed by the analysis in the case studies covering the resource consents for treated sewage discharges at Raglan, Te Kuiti and Otorohanga. Based on the experience of enforcement of these consents, local authorities in the Waikato region seem to lead a charmed existence that insulates them from Regional Council criticism and enforcement direction. The Council's sub-standard performance generally with respect to water quality management does not augur well for increased demands likely to be placed on it by the Government's Fresh Start for Fresh Water reform programme.

The Auditor General's report does not address any Maori perspective on water quality. Whether that was by accident or by design is not known. The direction taken by her conclusions and recommendations will, as a result of their quality-improvement nature, benefit Maori as well as the rest of the community. However, there is probably room for any review by the Regional Councils to consider afresh the appropriateness of rules and methods in meeting Maori-based objectives concerning water quality. Iwi and hapu organisations should be alive to the possibilities that their involvement in any review would allow them to influence the outcome.

6.8 Nga Wai o Maniapoto (Waipa River) Act 2012

In 2010 the Crown signed an accord with Ngati Maniapoto providing for the co-management of the Waipa River upstream of its confluence with the Puniu River. This deed of management, known as the Waiwaia Accord, was legislated for in the Nga Wai o Maniapoto (Waipa River) Act 2012. It is a companion to similar co-management agreements for the Waikato River (and the Waipa River downstream of the confluence with the Puniu River), which have been legislated for in the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010, and the Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010. How inclusive these statutory arrangements are for all Te Rohe Potae hapu with a customary interest in the Waipa and Waikato Rivers is not known.

The agreement is directly concerned with the Waipa River waterway and management of its upper catchment, coordinated through a freshly-appointed Waikato River Authority, and is examined in the Waipa River case study. It is too early to draw any conclusions about the effectiveness or otherwise of the new organisational structure for the river's management. There is potential for the new approach to be applied by agreement to other waterways, but also risks that attention and improvements in water quality and management will be drawn away from those other waterways by a focus on the Waipa and Waikato Rivers.

6.9 Concluding Remarks

The Water and Soil Conservation Act 1967 made it possible to continue the then-current practice of treating freshwater as a means of diluting and dispersing pollutants, including human wastes. It did not treat all potential uses of water (including intrinsic uses prior to 1981) equally, with damaging results for freshwater fisheries at hydro-electric power stations in the Mokau catchment, and in connection with the ironsands mining operation at Taharoa, among others.

On the above two grounds alone, the 1967 Act, and the procedures set up to administer it, could never satisfactorily substitute for the exercising of kaitiakitanga responsibilities by rangatira. The Act's successor, the Resource Management Act 1991, suffers from the same problems. In the name of sustainable management, the uses to which water can be put have not been altered, although their effects are more

able to be mitigated or ameliorated. When "the relationship of Maori and their culture and traditions with … water" is one of a number of matters to be recognised and provided for, and there are other matters capable of being given equal or even greater weight, there is room for decisions to be made that are at odds with a Maori viewpoint about human interaction with the natural world.

The intensification of land use in the last forty years has increased the burden placed on freshwater and waterways. Despite all the effort made to clean up point source discharges into waterways, the more general runoff of pollutants and nutrients from the land (known as non-point source discharges) has increased. The quality of freshwater has improved in some respects and deteriorated in others. Intensification of land use has also increased the demand for water, so that flows have been affected.

A key feature of both the Water and Soil Conservation Act 1967 and the Resource Management Act 1991 has been that rights to water are issued on a first come / first served basis. There have been no specific water rights or resource consents issued in Te Rohe Potae for a particular water quantity to remain in a waterway; this is an approach provided for in water conservation orders. Where there has been over-allocation of water, retrieving the situation is a substantial political and administrative exercise. The needs of Maori and their customary fisheries become subject to a need for compromise, as in-stream requirements with respect to quantity and quality (sometimes also called environmental bottom lines) are subject to pressure from those seeking abstraction or discharge allocations.

Maori have shown a willingness to engage in the resource management process as submitters when they feel that resource consent applications will affect their interests. However, that has generally been as close as they have been allowed to get to decision-making about water management. As submitters, their role is strictly confined by the legislation, and there is little opportunity for an ongoing relationship to be developed with regional councils. This may change in the future with respect to the Waipa River as a result of the Nga Wai o Maniapoto (Waipa River) Act 2012. That still leaves other rivers in Te Rohe Potae district where the situation may not change.

The Auditor General's report shows that there is scope for varying performance on the part of regional councils in their administration of freshwater management under the 1991 Act, and that Waikato Regional Council's performance is not as good as that of either Manawatu - Wanganui Regional Council or Taranaki Regional Council. Regrettably the recommendations make no mention of the participation of Maori, and there is therefore a danger that there will be little change for Maori arising from the report.

7. Crown management regimes for freshwater fisheries

7.1 Introduction

Maori have a strong interest in fish and other species that inhabit freshwater. Tuna (eel), kanae (mullet), inanga (whitebait) and kakahi (freshwater mussel) are among species that have traditionally been harvested. The environmental changes to the character of the waterways have had a significant effect, almost always for the worse. And yet, in the English translation of the Treaty of Waitangi, Maori authority over their fisheries was guaranteed.

It has not just been the character of the waterways that has had an impact on the populations of indigenous fish. Non-native species, such as trout, have been introduced to many rivers and lakes, in direct competition with the indigenous fish species for a place in the ecology of the waterways.

The Crown has been actively involved. It sanctioned many of the environmental changes to waterways that were occurring. And it played a part in the introduction and subsequent management of non-native species.

Throughout most of the last 170 years freshwater fishing has largely been non-commercial. From the 1960s, however, some eel fishing was carried out on a commercial basis. The Crown's response in the 1980s was to direct this commercial aspect into its quota management system, developed to govern sustainable harvesting of commercial fisheries.

A brochure produced by the Auckland / Waikato Fish and Game Council describes the trout fishery in the Waipa catchment:

> The Waipa is an extensive river system with superb fishing not only in the mainstem, but also in the many streams that contribute to its flow. Both rainbow and brown trout are present in approximately equal numbers. The rainbows are resident fish that spend their entire lives in a short stretch of river. In contrast, the brown trout are migratory, spending the winter months in the Waikato River and then moving up into the Waipa headwaters during early December. This seasonal migration allows the brown trout to feed on the abundance of small fish that are present in the Waikato River, and

> consequently the brown trout found in the Waipa headwaters over the summer months are often huge.[521]

Most fishing is carried out in the Waipa River upstream from Otorohanga, and in the Mangaokewa River upstream from Te Kuiti (downstream from Te Kuiti is described by the Fish and Game Council as "sluggish, turbid and generally uninspiring for angling"). The Marokopa, Awakino and Mokau Rivers are all trout fisheries. In the Whanganui catchment the Waimiha and Ongarue Rivers are noted trout rivers[522].

7.2 Administration before 1970

As early as 1867 a Salmon and Trout Act was passed, in recognition of the desire of European settlers to bring into New Zealand species of fish that they had hunted in their country of birth, and wished to continue to hunt in their new homeland. It was designed to put regulations in place before the impending arrival in the country of salmon and trout ova.

It was at about the same time that an Acclimatisation Society was formed in Auckland to champion the cause of introduced species, and to actually undertake the work of establishing populations in what was then the Auckland Province. Its initial membership was confined to Auckland itself, though it subsequently expanded to attract members from throughout its district. The Auckland Acclimatisation Society's district covered virtually all of Te Rohe Potae inquiry district, with the exception of the coastal area south of the Mokau River[523]. The Society's early efforts were directed towards game animal species, and it was not until the late 1870s that it turned its attention to the introduction of trout.

Acclimatisation societies, while private organisations, have had a close relationship with the Crown throughout their history, in the nature of being a 'most-favoured' body that is referred to in legislation. The Protection of Animals Act 1867 had as one of its purposes "the encouragement of acclimatisation societies in New Zealand". It was designed to provide Government support to the societies, so long as their rules

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[521] Auckland / Waikato Fish and Game Council, *The mighty Waipa; trout fishing*, publication date not known. Posted on www.auckland.fishandgame.org.nz

[522] Auckland / Waikato Fish and Game Council, *Whanganui headwaters trout fishing*, publication date not known. Posted on www.auckland.fishandgame.org.nz
Auckland / Waikato fishing locations and access. Posted on www.auckland.fishandgame.org.nz

[523] *New Zealand Gazette* 1925 pages 749-754, at page 749. Supporting Papers #760-765 at 760.

did not contravene the overarching rules that the Crown had set down in legislation. Support for acclimatisation societies can be tracked through successive statutes; Animals Protection Act 1880, Animals Protection Act 1907, Animals Protection Act 1908, Animals Protection and Game Act 1921-22, and Wildlife Act 1953.

The Salmon and Trout Act 1867 was incorporated into the Fisheries Act 1908. By then it had become established that the trout fishery was a seasonal fishery, with a closed season when fishing was not allowed, and an open season when fishing was allowed by fishers who had paid for and held a licence. The legislation made it an offence to fish for trout without a licence.

The first recorded release of brown trout into the Waipa River was in 1874[524]; this was said to be in the "upper reaches" of the river, though it may only have been in the upper reaches of the confiscated land along the river (i.e. below the Puniu River). Rainbow trout were first released in the Waikato River system in 1883[525].

Both species of trout were well established in the whole Waikato system by the turn of the century[526]. Introduction of fish into Te Rohe Potae was closely correlated with the railway, because the railway was the only reliable means of transporting trout fry in tanks that had to be kept chilled and oxygenated. Streams as far south as Taumarunui were populated in this fashion[527]. The Tourist and Health Resorts Department of the Crown was also involved in trout liberations at Waitomo:

> A request from Mr Donne [General Manager, Department of Tourist and Health Resorts] in Wellington that the [Auckland Acclimatisation] Society release rainbow trout into the Waitomo Stream was answered by Secretary Cheeseman to the effect that the stream already carried a full stock as the Society had liberated fish into it from time to time.
>
> The Tourist Department in January 1908, without notifying the Society, liberated 25,000 fry into the stream. Very little comment came from the Society about this, possibly because of the ova supply situation. But there was

[524] CR Ashby, *The centenary history of the Auckland Acclimatisation Society, 1867-1967*, 1967, page 110.
[525] CR Ashby, *The centenary history of the Auckland Acclimatisation Society, 1867-1967*, 1967, pages 112-113.
[526] Ashby refers to there being "few virgin waters in its territory still unstocked" by 1906. CR Ashby, *The centenary history of the Auckland Acclimatisation Society, 1867-1967*, 1967, page 117.
[527] WA Sullivan, *Changing the face of Eden: a history of the Auckland Acclimatisation Societies, 1861-1990*, Auckland / Waikato Fish and Game Council, 1997, page 105.

> no argument that as the steam flowed through the glow-worm cave it was an added attraction for the department to have angling at this developing tourist resort advertised overseas.[528]

How widely spread releases of salmon in Te Rohe Potae were is not known. There were releases into the Waikato River (including at Ngaruawahia and Mercer)[529], and fish would have travelled up the Waipa River. In October 1877, the President of the Auckland Acclimatisation Society (Josiah Firth) reported to a meeting of the Society:

> The Chairman said he had received an invitation from Rewi Maniapoto, the paramount chief of the district in which he resided, asking him to look over the rivers in the King Country to see whether they were suitable for salmon. As the invitation was entirely unsolicited, he was much pleased, and he went. He selected one, the Puniu, as being suitable, and Rewi promised, in the event of it being decided to place fish there, to render all the assistance in his power for their protection, and to provide the services of as many natives as might be required for their proper disposal. He believed they were mutually pleased with the result of the interview, and he proposed taking part of the ova which would be received next mail to this destination. The invitation of Rewi showed that the natives were taking an interest in these affairs, and he was quite sure every care would be taken of the ova and young fish, and that they would be strictly preserved.[530]

In January 1878 Firth advised that he had released 40,000 salmon ova into the Puniu River, "the chief Rewi Maniapoto co-operating with me and assisting me"[531]. Whether Rewi was attracted by the novelty value or by the prospect of an additional food supply is not known, although his involvement is a demonstration of his rangatiratanga authority at that time. The reports of his involvement demonstrate that it would be unwise to regard Maori as being opposed to introductions of exotic fish species during the nineteenth century.

The Auckland Acclimatisation Society developed clubs or sub-societies (often confusingly having 'acclimatisation society' in their club names) of members in many country towns, including Taumarunui, Piopio, Te Kuiti, Otorohanga and Te

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[528] WA Sullivan, *Changing the face of Eden: a history of the Auckland Acclimatisation Societies, 1861-1990*, Auckland / Waikato Fish and Game Council, 1997, page 105.
This release is referred to in the Tourist and Health Resorts Department's annual report, though a figure of 40,000 fry is quoted. *Appendices to the Journals of the House of Representatives*, 1908, H-2, pages 29-30. Supporting Papers #751-752.

[529] WA Sullivan, *Changing the face of Eden: a history of the Auckland Acclimatisation Societies, 1861-1990*, Auckland / Waikato Fish and Game Council, 1997, page 110.

[530] *New Zealand Herald*, 9 October 1877, page 3. Supporting Papers #1219-1221.

[531] President Auckland Acclimatisation Society to Under Secretary for Internal Affairs, 21 January 1878. *Appendices to the Journals of the House of Representatives*, 1878, H-11, pages 4-5. Supporting Papers #749-750.

Awamutu. Many of these sub-societies bred their own trout, with small local hatcheries at Taumarunui, Ongarue, Waimiha, Piopio, Otorohanga, Te Kuiti and Te Awamutu[532].

In the early 1930s, the Society recorded the trout fishing status of the main rivers in the inquiry district:

> Waipa: The largest tributary of the Waikato, entering on its left bank at Ngaruawahia. The lower reaches of this river up to Otorohanga are not attractive to anglers, being mostly overgrown with willows, but it carries some fine rainbow up to nine pounds. Above Otorohanga the fishing is good, the water being faster and more broken, with a gravel bottom for 25 miles. Mostly wadeable, it yields an average fish of 1¾ pounds.
>
> Puniu: A right bank tributary of the Waipa with about 16 miles long, it has good fishing water to the east of the main South Road at Kihikihi, 105 miles south of Auckland. Wadeable, with a gravel bottom, its average fish is around 1½ pounds.
>
> Makaroa: A tributary of the Waipa River with about 16 miles of good fishing. Easily accessible from Te Awamutu and Otorohanga, it carries a fine stock of rainbow averaging 1¼ pounds. Mostly wadeable on a gravel bottom.
>
> Marokopo [sic]: Runs westwards, total length of good fishing water about 18 miles. Carries good rainbow ranging up to 4½ pounds, with average weight 1½ pounds.
>
> Awakino: Runs westward, with 20 miles of splendid angling water well stocked with rainbow averaging a pound and a half. Gravel and rock bottomed, it is mostly wadeable….
>
> Ongarue: This is a right bank tributary of the Wanganui, joining it at Taumarunui. It is well stocked with rainbow, providing good fishing for 35 miles. Accessible all its length by good road, and along its lower twenty miles by parallel railway, it carries fish up to five pounds, with the average around 1¾ lbs. Gravel and rock bottomed, its upper 15 miles are wadeable.
>
> Waimiha: A tributary of the Ongarue, which offers splendid fishing for 15 miles. Average fish weight 1½ lbs, ranging up to five pounds. Wadeable for most of its length.[533]

[532] RM McDowall, *Gamekeepers for the nation: the story of New Zealand's acclimatisation societies, 1861-1990*, Canterbury University Press, 1994, page 103.
[533] Auckland Acclimatisation Society, Annual Report for the year ended 31 March 1932, quoted in CR Ashby, *The centenary history of the Auckland Acclimatisation Society, 1867-1967*, 1967, pages 128-129.

Once released, it was one of the tasks of the Auckland Acclimatisation Society to maintain the trout population in a state suitable for continued fishing. This included action to stop the population being preyed upon by other species. Elsewhere in New Zealand, bounties were placed on the feet of dead shags, and efforts were made to catch eels, because both longfin and shortfin species were considered to prey on trout. Eels were also regarded as predators of game birds such as ducklings; the acclimatisation society movement introduced additional species of ducks to supplement the populations of indigenous duck species. How much of a concern this predation by eels should have been is debateable; for instance, in 1930 the Chief Inspector of Fisheries noted that "big trout feed on small eels, just as big eels feed on small trout"[534].

The Auckland Acclimatisation Society never offered a bounty to hunters for shooting river shags, although it did support their destruction, because, as it said with some hyperbole in 1926, "it has been determined that shags eat more than three times their own weight of fish every day", such that "the damage done by these birds on our rivers cannot be over-estimated" [535]. The 1931 annual report of the Society explained that:

> Funds do not allow of the Council [of the Society] offering a reward for the destruction of the black or river shag, but parties organised by the rangers have done good service in clearing out shaggeries on the [lower Waikato River and its tributaries].[536]

In other annual reports, it noted that the Pio Pio Rod and Gun Club had destroyed four shaggeries in 1993-34, such that "a marked decrease in the numbers of these birds is now evident"[537], while the Te Awamutu Sub-Society in 1950-51 conducted a shag shoot on the Waipa River where over 200 shags were destroyed[538].

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[534] Chief Inspector of Fisheries, quoted in RM McDowall, *Gamekeepers for the nation: the story of New Zealand's acclimatisation societies, 1861-1990*, Canterbury University Press, 1994, page 120.
[535] Auckland Acclimatisation Society, Annual Report for the year ended 31 March 1926, quoted in CR Ashby, *The centenary history of the Auckland Acclimatisation Society, 1867-1967*, 1967, pages 97-98.
[536] Auckland Acclimatisation Society, Annual Report for the year ended 31 March 1931, page 8. Not included in Supporting Papers.
[537] Auckland Acclimatisation Society, Annual Report for the year ended 31 March 1934, page 18. Not included in Supporting Papers.
[538] Auckland Acclimatisation Society, Annual Report for the year ended 31 March 1951, page 14. Supporting Papers #1222-1224 at 1224.

Eels seem to have been regarded by the Acclimatisation Society as particularly verminous, as demonstrated by the following excerpts from annual reports between 1929 and 1947:

> [1929] Te Awamutu Acclimatisation Club … has formed an Eel Club and their activities have been responsible for the removal of a number of eels from the rivers.[539]
>
> [1939] Some of the residents in the Waimihia [sic] River have been conducting an eel competition with beneficial results, and the Council considered encouragement should be given to this work, and made a donation of £2/2/- toward the prize fund.[540]
>
> [1940] One of the greatest enemies of trout is the eel, and the building up of better fishing depends largely on the energy with which this menace is tackled. Once a stream has been cleared of eels, some time elapses before the population increases again. All Sub-societies with small trout streams can, with comparatively little effort, make the waters safe for the annual fingerling liberations, and so ensure better fishing so long as this particular vermin is controlled.[541]
>
> [1945] Convinced that one of the deadliest enemies trout faced is the eel, the Council … have had a number of wire netting eel traps made…. Many of our rivers are infested with eels and their destruction would probably mean a much larger number of fish available to anglers than can be provided by artificial stocking, no matter how heavy a programme is in operation. The clearance of eels for a river is of cardinal importance if good fishing is to be built up.[542]
>
> [1947] Last year the Society has continued its active war on eels, in order to conserve both trout and young ducklings.[543]
>
> [1947] Pio Pio and Aria Rod and Gun Club…. During the year two eel drives were conducted, and some large eels destroyed. It is proposed to hold these drives monthly. A competition is in progress for the largest eel caught, also the greatest number.[544]

[539] Auckland Acclimatisation Society, Annual Report for the year ended 31 March 1929, page 11. Not included in Supporting Papers.
[540] Auckland Acclimatisation Society, Annual Report for the year ended 31 March 1939, page 7. Not included in Supporting Papers.
[541] Auckland Acclimatisation Society, Annual Report for the year ended 31 March 1940, page 10. Not included in Supporting Papers.
[542] Auckland Acclimatisation Society, Annual Report for the year ended 31 March 1945, page 11. Not included in Supporting Papers.
[543] Auckland Acclimatisation Society, Annual Report for the year ended 31 March 1947, page 5. Not included in Supporting Papers.
[544] Auckland Acclimatisation Society, Annual Report for the year ended 31 March 1947, page 9. Not included in Supporting Papers.

The topic study on hydro-electric power development in the Mokau catchment has a report of an eel drive at Wairere Falls in 1948 by the Piopio Sub-Society of the Auckland Acclimatisation Society.

The actions of the acclimatisation societies in killing other species that were preying on trout and ducks were supported by the Crown Departments, without any apparent consultation with Maori. Eventually the drives died out, after Government research showed that if eels were removed from rivers, the number of trout would increase, but the size (and growth rate) of the trout would be smaller, making them less attractive to anglers seeking trophy fish[545].

It is known that Maori in other parts of the country were prosecuted for fishing for trout without a licence. Whether this happened in Te Rohe Potae is not known. The annual reports of the Auckland Acclimatisation Society record a number of prosecutions each year, though without mentioning the race of the offenders. In the 1946 annual report it was noted, in connection with the Waitomo Acclimatisation and Game Conservation Club (believed to be Te Kuiti-based), that "considerable ranging has been done with very bad reports of illicit fishing and dynamiting from some localities"[546].

Crown monitoring of the activities of acclimatisation societies was carried out by the Colonial Secretary up to 1907, and from 1907 by the Department of Internal Affairs. Freshwater fisheries management was a responsibility of the Marine Department.

While commercial eel fishing had been tried with variable results in earlier years, it developed in a more substantial manner in the 1960s as a market for eel flesh was discovered in the Netherlands and Germany. It is not the purpose of this report to examine the commercial fishery itself, though it is appropriate to assess the impact of commercial fishing on the overall eel stocks and the customary eel fisheries of Te Rohe Potae.

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[545] RM McDowall, *Gamekeepers for the nation: the story of New Zealand's acclimatisation societies, 1861-1990*, Canterbury University Press, 1994, page 123.
[546] Auckland Acclimatisation Society, Annual Report for the year ended 31 March 1946, page 23. Not included in Supporting Papers.

Two fisheries scientists have remarked on the impact of commercial eel fishing in the Mokau catchment:

> In addition to the impacts of [the hydroelectric dams on the Mokau and Mokauiti Rivers], the Mokau River system receives year-round attention from a series of commercial eel fishermen. This has effects on eel populations which could be incorrectly [attributed] to the operation of the dams. The more obvious impacts of commercial fishing can be summarised as follows:
>
> 1. Overall numbers of eels will decrease. The commercial catch-per-unit-effort will decline, and complaints can be expected from cultural and recreational fishers.
> 2. Large longfinned eels will be the first fish removed from the stock. These animals are top predators and move around a lot. Thus they are quickly reduced in numbers when heavy commercial fishing begins. Unfortunately longfinned eels grow particularly slowly and so cannot be quickly replaced.
> 3. The size of eels, both longfinned and shortfinned, will decrease. In the first instance this is due to the probability of being caught, which obviously becomes greater for older individuals. Basically, all the big old ones have already been caught by now. But there may be something more to it…. MAF studies over many years in Lake Ellesmere … have shown that there is little evidence for a subsequent increase in growth of the remaining eels. Increased (or compensatory) growth would be expected if fishing simply thinned eel numbers and so allowed more food for the survivors. Instead, they seem to grow little better and perhaps even worse.
>
> One explanation could be that eels function as both predators and prey in our species-poor freshwater ecosystems. Small eels harvest midge larvae and other abundant but minute food. In turn they are preyed upon by larger eels and their density is thus controlled. Bullies and other competitors of small eels are also cropped.
>
> If these predators are harvested, excessive competition may stunt the regrowth of small eels. It takes time, perhaps 30-40 years or more, to grow a large longfinned eel. Growing small eels back up to the size where they can be effective top predators, against stiff competition from large numbers of other small eels, bullies, mosquito fish and other competitors for the available food, is a slow process. Clearly, even if commercial fishing was totally stopped, restoration of a natural population regulation processes and size structure may take a long time.[547]

7.3 Fisheries administration since 1970

From 1972, with the reorganisation of the Marine Department, freshwater fisheries became the responsibility of the Ministry of Agriculture and Fisheries. For much of

[547] CP Mitchell and IA Kusabs, *Fish passage and issues at the Wairere Falls and Mokauiti hydroelectric facilities*, May 2000, page 17. Copy on Waikato Regional Council file 60.61.36A. Supporting Papers #857-880 at 876.

the time before and after 1970, the Crown interest in freshwater fisheries was primarily directed towards those species of interest to European fishers, most particularly introduced trout and salmon. Species of interest to Maori, such as freshwater crayfish, freshwater mussels, lamprey and mullet received little or no attention. Accordingly they also received no active measures for their protection.

Indigenous species at a crossover between Europeans and Maori, such as eels and whitebait (galaxids), received a small amount of attention. The whitebait fishery became the responsibility of the Department of Conservation after 1990, while responsibility for the eel fishery remained with the Ministry of Agriculture and Fisheries (and its successors the Ministry of Fisheries and the Ministry of Primary Industries) because it was subject to the total allowable catch and the quota management system regimes.

There are therefore some fundamental divisions of responsibility within the freshwater fisheries sphere. The Ministry of Primary Industries administers eel fishing, the Department of Conservation administers whitebait fishing, and Fish and Game Councils administer fishing for introduced fish. The activities of the Fish and Game Councils are monitored by the Department of Conservation. Regional councils administer the environment for freshwater fishing, that is water quantity and quality.

When the King Country Land Use Study investigated the freshwater fisheries of the study area in 1976-78, the investigation was carried out by staff from the Wildlife Service of the Department of Internal Affairs and the Fisheries Management Division of the Ministry of Agriculture and Fisheries. Their report provides a snapshot of the species present in the different rivers and streams of the study area at that time. It also catalogues the changes in the rivers that can result from human use of a waterway's catchment, grouping these changes under headings of reduced flow, poisons, suspended solids, de-oxygenation, enrichment, and water temperature increases[548].

[548] Department of Lands and Survey, *King Country land use study: Technical reports*, 1978, Technical Report C: Wildlife, Part C Freshwater Fisheries, pages 53-61. Supporting Papers #1896-2089 at 1941-1949.

7.4 Acclimatisation Society activities 1970 to 1990

The rise of environmentalism in the 1970s saw the acclimatisation society movement become more concerned about the quality of the waterways it fished. The rise in interest in wild and scenic rivers in the late 1970s was led by a coalition of recreation and environmental groups, which included the acclimatisation society movement. Even before then, however, anglers were one of the few European groupings speaking out against pollution and physical changes to the waterways.

McDowall, the historian of the acclimatisation society movement, sees the environmental activism of the societies during this period as their greatest achievement:

> Without any doubt at all, the most favourable thing that can be said about the society movement as a whole is that during the 1960s and later, they recognised that to maintain their fish and game resources, they had to preserve the habitats that fish and game lived in; and it can fairly be said that many societies pursued this issue with intensity, vigour and effectiveness. Properties owned by either individual societies or by the Government's Wildlife Service / Department of Conservation, but paid for in part or in whole by the societies, remain a living legacy of which the societies justifiably could be proud. National and local conservation orders, granted by the Government after being lodged, argued and funded by the societies, are similarly a testament to society vigilance and commitment.[549]

It was the Auckland Acclimatisation Society that eventually won a court case that recognised intrinsic interests in water as having equal standing with development interests. The case concerned a proposal to stopbank and develop for farmland a part of Whangamarino Swamp. The Planning Tribunal had initially concluded that the Water and Soil Conservation Act 1967 "promoted" soil use, while only requiring that wildlife and fisheries needs be "considered" or "taken into account", thereby making land drainage generally more important than protection for wildlife or fisheries. The High Court had supported this interpretation, but the Court of Appeal in 1985 ruled that the Act gave no inbuilt preference for farming interests over conservation interests or vice versa. On the facts, when not weighted in any direction, the stopbanking proposal was turned down[550].

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[549] RM McDowall, *Gamekeepers for the nation: the story of New Zealand's acclimatisation societies, 1861-1990*, Canterbury University Press, 1994, page 468.

[550] Planning Tribunal decision, 18 July 1983. 9 NZTPA (New Zealand Town Planning Appeals) 299. High Court decision, 25 September 1984. 10 NZTPA (New Zealand Town Planning Appeals) 225.

However, while anglers and Maori might be allies with respect to protection of the natural environmental qualities of waterways, their different viewpoints about introduced and indigenous fish have meant that neither side has seen themselves as such. Because there was also no natural crossover between Maori and acclimatisation society members, with Maori always having a utilitarian approach to fishing and shooting while acclimatisation society members have had a more recreational approach, there was little or no contact and a general suspicion of one another.

The Crown relationship with acclimatisation societies passed from the Department of Internal Affairs to the Department of Conservation in 1987 when Wildlife Service became part of the new Department. This then included the acclimatisation movement in the conservation law reform changes of 1990. Under the Conservation Law Reform Act of that year, acclimatisation societies were abolished and replaced by a total of 12 regional fish and game councils[551], plus a National Fish and Game Council[552]. The Auckland Acclimatisation Society was replaced by the Auckland / Waikato Fish and Game Council.

The Fish and Game Councils retained their recognition in statute, their management by a Council elected by their members, their ability to collect hunting and angling licence fees, and their ability to expend the fee revenue. They have therefore continued their independent existence while enjoying a range of legal powers. There was, however, some narrowing of the statutory responsibilities of the Councils. Where acclimatisation societies had responsibilities for the preservation and protection of all absolutely protected wildlife (Section 30(a) Wildlife Act 1953), this

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Court of Appeal decision, 23 August 1985. *Auckland Acclimatisation Society (Inc) v Commissioner of Crown Lands*, 1985, 11 NZTPA (New Zealand Town Planning Appeals) 33.
Planning Tribunal decision on referral from Court of Appeal, 14 November 1985. 11 NZTPA (New Zealand Town Planning Appeals) 168.
The background to this case is discussed in:
- WA Sullivan, *Changing the face of Eden: a history of the Auckland Acclimatisation Societies, 1861-1990*, Auckland / Waikato Fish and Game Council, 1997, pages 301-302.
- RM McDowall, *Gamekeepers for the nation: the story of New Zealand's acclimatisation societies, 1861-1990*, Canterbury University Press, 1994, pages 179-180.

[551] This was a reduction from 22 acclimatisation societies plus two Government-run conservancy districts.

[552] The transition to Fish and Game Councils under the Conservation Law Reform Act 1990 is covered in some detail in RM McDowall, *Gamekeepers for the nation: the story of New Zealand's acclimatisation societies, 1861-1990*, Canterbury University Press, 1994, pages 453-461.

general responsibility has been removed and the Fish and Game Councils are concerned solely with the management of and advocacy for sports fish and game (Section 26Q Conservation Act 1987, as inserted by Section 17 Conservation Law Reform Act 1990). This is in keeping with the understanding that the Department of Conservation is responsible for protected wildlife. Each Fish and Game Council has to produce an annual operational plan, and may draw up sports fish and game management plans. Sports fish and game management plans require Ministerial approval, as do operational plans if there is no sports fish and game management plan.

Describing the new administrative structure, McDowall has said:

> The new Councils were given quite explicit executive powers, to decide on the policies and regulations to apply to the game hunters and anglers in their districts.
>
> However, the Councils did not have the unfettered opportunity to do as they wish, to the extent that the societies had. The Regional Fish and Game Councils were required to develop management plans to govern their activities, plans over which the Minister of Conservation was given considerable power under the Act. So the management of recreational game shooting and freshwater angling entered a new era of cooperation and coordination between Government and the hunter and angler, which required communication and goodwill on all sides.[553]

As with the previous acclimatisation societies, no evidence has been identified of the Fish and Game Councils operating in Te Rohe Potae having any dealings with Maori, over and above the obtaining of licences from the Councils. While many Maori may be fishing and shooting sportspeople, they probably do not see any necessity to take an active part in the work of the Fish and Game Councils.

7.5 Fish and Game Council activities since 1990

One advantage that Fish and Game Councils have over their predecessor acclimatisation societies is some additional statutory support for their activities. Section 7(h) Resource Management Act 1991 makes "the protection of the habitat of trout and salmon" a matter that administrators of the Act have to have a particular regard to. This imposes an obligation on regional and district councils that can only be properly discharged by involving Fish and Game Councils in policy preparation

[553] RM McDowall, *Gamekeepers for the nation: the story of New Zealand's acclimatisation societies, 1861-1990*, Canterbury University Press, 1994, page 463.

and in processing of resource consents applications. Protecting the habitat in rivers and streams for trout and salmon can have some spin-off benefits for indigenous freshwater fisheries, because of similar habitat requirements for shade, avoidance of high water temperatures, suitable water quality, and maintenance of flows. As an example, the 2012 annual report of the Auckland / Waikato Fish and Game Council remarked:

> The discharge of poorly treated wastewater from sewage treatment plants continues to be a major issue impacting on trout streams. Many of the plants have a long history of non-compliance due to inadequate infrastructure and poor maintenance. Although there are proposals to update these facilities, it will be a major cost for ratepayers, and in some cases proposed upgrades look suspiciously like routine maintenance.[554]

However, the statutory reference to trout and salmon gives those species some priority over indigenous fish species, if the two matters came in conflict with one another, in decision-making under the Resource Management Act 1991.

7.6 Crown freshwater fisheries management activities

The Crown's involvement in freshwater fisheries management is split between the Department of Conservation and the Ministry of Primary Industries. This appears to be for historical reasons rather than with any scientific or policy rationale. Two species of indigenous freshwater fish, whitebait and eels, tend to be targeted by non-Maori; their management is discussed below. This results in both fisheries having an impact on customary fishing by Maori.

7.6.1 Whitebait fishery management

The management of the whitebait fishery on the Mokau River is covered in the Mokau River mouth case study. The Department of Conservation is responsible for administering the whitebait regulations, and for the licensing of whitebaiters' structures on land forming part of the conservation estate (including Mokau River Scenic Reserve and marginal strips), while Waitomo District Council is responsible for licensing structures on the riverbed (upstream of the coastal marine area boundary).

[554] Annual report of Auckland / Waikato Fish and Game Council for the year ended 31 August 2012. Papers presented to Parliament, 2012, C.21B, page 11. Supporting Papers #753-754.

7.6.2 Eel fishery management

The commercial eel fishery in Te Rohe Potae (along with the rest of the North Island) has been administered under the quota management system since October 2004. This means that a total allowable catch has been determined, which is split between commercial, recreational and customary components, so that a total allowable commercial catch can be defined. The eel fishery is divided into catches of longfinned eels and shortfinned eels.

Te Rohe Potae district (apart from the Whanganui catchment) comes within the LFE21 / SFE21 quota management area. Besides Te Rohe Potae district, this area also covers the Waikato River catchment, the Bay of Plenty and the East Coast region. The Whanganui catchment comes within LFE23 / SFE23 quota management area, which also covers the Taranaki and Rangitikei regions.

There are few localities where commercial eel fishing cannot occur. For waterways passing through the conservation estate, the permission of the Department of Conservation is required. So far as is known, only one location in Te Rohe Potae has been singled out for special treatment. Commercial eel fishing in the Taharoa lakes was prohibited by the Minister of Fisheries in January 2005, in order to protect the customary fishery. However, as the ironsands mining topic study shows, by then the environmental damage had been done and eel populations of the Taharoa lakes were seriously degraded.

Records of eel fishing in each quota management area are set out in the following tables[555]:

[555] Ministry of Fisheries, *Freshwater eels (SFE, LFE, ANG)*, chapter 25 in unspecified publication (believed to be annual report of a Ministry fisheries assessment Working Group), pages 254-269, 2010. Chapter posted separately on www.fish.govt.nz
In the tables:
TAC = Total Allowable Catch
TACC = Total Allowable Commercial Catch
'Other' is for "fishing-related mortality"
TACC + Other + Recreational + Customary = TAC

Table 7 Longfinned eel fishery in area LFE21 (tons)

Year	TAC	Customary Allowance	Recreational Allowance	Other	TACC	Actual Commercial
2003-4	92	16	10	2	-	-
2004-5	92	16	10	2	64	54
2005-6	92	16	10	2	64	41
2006-7	92	16	10	2	64	30
2007-8	60	16	10	2	32	31
2008-9	60	16	10	2	32	23

Table 8 Shortfinned eel fishery in area SFE21 (tons)

Year	TAC	Customary Allowance	Recreational Allowance	Other	TACC	Actual Commercial
2003-4	210	24	19	4	-	-
2004-5	210	24	19	4	163	123
2005-6	210	24	19	4	163	144
2006-7	210	24	19	4	163	114
2007-8	181	24	19	4	134	125
2008-9	181	24	19	4	134	110

Table 9 Longfinned eel fishery in area LFE23 (tons)

Year	TAC	Customary Allowance	Recreational Allowance	Other	TACC	Actual Commercial
2003-4	66	14	9	2	-	-
2004-5	66	14	9	2	41	25
2005-6	66	14	9	2	41	24
2006-7	66	14	9	2	41	15
2007-8	34	14	9	2	9	7
2008-9	34	14	9	2	9	3

Table 10 Shortfinned eel fishery in area SFE23 (tons)

Year	TAC	Customary Allowance	Recreational Allowance	Other	TACC	Actual Commercial
2003-4	50	6	5	2	-	-
2004-5	50	6	5	2	37	15
2005-6	50	6	5	2	37	31
2006-7	50	6	5	2	37	30
2007-8	36	6	5	2	23	16
2008-9	36	6	5	2	23	10

The key feature of these published statistics is that the health (or otherwise) of the eel fishery is being measured by tonnage captured. It is therefore as much or more a reflection of fishing effort. More relevant parameters concerning the health of the two species, such as population structure, size and age of the eels that are captured, numbers taking part in the tuna heke (adult migration to the sea), and habitat availability and quality, become subordinated to total size of the catch. These other parameters are not recorded by the Ministry of Primary Industries. The 2010 report did, however, note that "there is evidence that glass eel runs are now smaller in the Waikato River than in the 1970's"[556].

7.7 Concluding Remarks

The time period covered by this overview report is a period when introduced fish were already well established, and when the expansion of commercial eel fishing in the late 1960s had already occurred. It is also a period when many dams and other barriers to fish passage were already in place, examples being Wairere Falls dam in 1925, Arapuni dam in 1929, Waipapa dam in 1961, and Mokauiti dam in 1963. The opportunity for Maori to influence these events and their impacts had been and gone.

Up until 1983 the Crown's statutory obligation to recognise the fishing rights of Maori (Section 77(2) Fisheries Act 1908) only applied to sea fisheries, and did not apply to freshwater fisheries. The obligation was expanded to cover freshwater fisheries with the restating of the 1908 provision in Section 88(2) Fisheries Act 1983.

[556] Ministry of Fisheries, *Freshwater eels (SFE, LFE, ANG)*, chapter 25 in unspecified publication (believed to be annual report of a Ministry fisheries assessment Working Group), pages 254-269 at page 267, 2010. Chapter posted separately on www.fish.govt.nz

To what extent this statutory change affected thinking in the Ministry of Agriculture and Fisheries (the administrator of the Act) is not known.

More substantial influences on Crown thinking have been the introduction of the quota management system, starting in the mid 1980s, and the Maori fisheries settlement at the end of the 1980s. Both of these, however, were primarily directed at sea fisheries, and their impact on freshwater fisheries has been slower to appear. The quota management system for commercial eel fishing in the North Island only applied from October 2004. When first set, the commercial allowance was unreasonably high, so that the actual catch did not exceed the quota, and a review in 2007 identified declining populations of both longfinned and shortfinned eels. The Parliamentary Commissioner for the Environment has highlighted that the population decline has continued since then, to the extent that the longfinned eel population is now in an endangered state. It is the total population that determines how successful customary fishing for hui and other marae gatherings, and recreational fishing for whanau to put food on their table, will be. The signs are that the Crown's management of the eel fishery since the introduction of commercial fishing in the 1960s has resulted in a decline that has severely impacted on Maori. Statistics and commentary have not been discovered during research for this report that can indicate whether the picture in Te Rohe Potae district is better or worse than the national state of affairs.

The privileged position for trout and salmon recognised in Section 7 of the Resource Management Act 1991 means that those species tend to become the indicators of the fisheries health of waterways. That is not necessarily a negative matter for Maori customary fisheries, as it can lead to water quality and quantity standards that can benefit other fish species. However, it is a one-dimensional approach, in the same way that recreational bathing was used as the standard for all human instream uses of water under earlier water quality classifications. It has allowed administering bodies to concentrate on the needs of trout and salmon to the exclusion of the needs of fish species of traditional importance to Maori.

Focussing on the needs of fish species sitting at the top of the food chain, such as trout and salmon, can distort objectives aimed at the health of waterways for the benefit of all aquatic species. That is why some aquatic biologists prefer to look at the health of

the food species, such as caddis fly larvae, that the large fish rely on as a more useful indicator of the environmental state of waterways. The Taharoa topic study has identified the failure to address the interrelationships between species which has seen population collapses of both eels and mullet, and similar situations may also be present in other freshwater fisheries.

8. Crown management regimes for protection of wahi tapu

8.1 Introduction

The protection of wahi tapu (sacred sites) has been relatively straightforward where those sites are on land owned by Maori. The Crown had largely left it to Maori to exercise their own rangatiratanga over such sites, subject of course to the extra difficulties that individualisation of land title, among other things, has imposed on the ability to exercise iwi and hapu rangatiratanga. Where a site has passed out of Maori ownership, however, the ability for Maori rangatiratanga to apply has generally been lost. In these circumstances the Crown has stepped in with its own protection mechanisms, sometimes in active association with Maori and sometimes not.

The protection provided by the Crown has not been all-encompassing. While Maori cemeteries from the Christian era have invariably been recognised, the same cannot be said for burial caves or for wai tupapaku (waters where human bones were cleansed).

What constitute wahi tapu is for Maori to define, notwithstanding that it has a statutorily-defined meaning in current legislation[557]. Many Maori features of everyday life have both a tapu and a noa element. In this chapter the use of the term has been deliberately kept broad, so as not to leave anything out. Therefore there is discussion of protection of defensive pa sites and canoe haul-out sites, as well as sites of a more sacred nature.

The Tribunal's commission for this report called for coverage of protection provided to portable taonga[558]. This was a pertinent matter of concern to Te Rohe Potae Maori in the nineteenth century, when Andreas Reischek stole human remains from burial caves in Te Rohe Potae[559]. However, for the period since 1970 covered by this overview report, no issues relating to portable taonga were brought to the attention of

[557] "Wahi tapu means a place sacred to Maori in the traditional, spiritual, religious, ritual or mythological sense" (Section 2 Historic Places Act 1993).
[558] Relevant legislation is Maori Antiquities Act 1901, Maori Antiquities Act 1908, Historic Articles Act 1962, and Antiquities Act 1975 (renamed in 2006 the Protected Objects Act 1975).
[559] This has been covered in Michael Belgrave et al, *Te Rohe Potae harbours and coast, inland waterways, indigenous flora and fauna, sites of significance, and environmental management and environmental impacts scoping report*, March 2010, Wai 898 document #A64, pages 316-324.

the author by claimants, or identified by the author in an examination of claimant documents. There are no statutory connections between the current legislation concerning portable taonga (Protected Objects Act 1975), and the Resource Management Act and other environmental legislation. A decision was therefore taken not to devote research time to this topic.

8.2 Administration before 1970

When the Crown purchased land from Maori, it believed that it acquired all the rights associated with that land, and that it had a clean canvas on which to fashion its own patterns of usage. In pursuit of that goal, it was resistant to purchases being conditional on the continuation of any residual Maori interest in the land. While some early purchases prior to the 1870s included provisions to set aside reserves for Maori, the land purchases in Te Rohe Potae were generally not encumbered by any specific conditions the Crown had agreed to abide by on an ongoing basis. European purchasers of land direct from Maori tended to adopt a less exclusionary approach than the Crown, especially during the first generation period of European ownership and if the land remained thereafter in the same family ownership, although as time went on the attitude adopted by the Crown became more widespread and dominant among the European landowning community.

The result was that the Crown (and Europeans) acquired lands that had been occupied to varying degrees prior to purchase, and contained physical evidence of that earlier occupation. The acquired land could also have particular cultural and traditional associations. The Crown did not consider that it had to consult with the sellers (or with any wider iwi or hapu grouping of local Maori) about how those physical features or cultural associations should be dealt with from that point on. Nor did it feel any obligation to understand a Maori perspective of what the land contained. While Maori may have wanted physical features of their traditional occupation protected – that is not something that has been researched for this report – it was not a matter taken into consideration by the Crown.

As already described in earlier chapters, the Crown's focus was on cutting up the land into sections for family farming. Maori features of the landscape were treated as relics from a bygone era whose usefulness (and therefore significance) had expired.

The result was a transfer from the Crown into private ownership of a multitude of sites with which Maori had an association. This could include pa and kainga sites, cultivation sites, hunting sites (bird snaring trees, pa tuna), burial sites, and spiritual sites (tuahu, whare wananga). Only the most physically significant sites were kept in Crown ownership as reserves for the protection of their historic features.

Once out of Crown ownership, the Crown was initially reluctant to intervene to protect Maori heritage features. The term used is 'the sanctity of private property rights'. Destruction of physical features of former Maori occupation was seen as an unfortunate by-product of developing the land for farming, rather than something to be actively opposed. A consequence of the neglect of Maori heritage has been the loss not just of many sites, but also of the knowledge about those sites. Physical obliteration makes the memory of the past harder to maintain, and reduces the ability to pass knowledge from one generation to the next. A booklet on Maori place names in Maniapoto territory has remarked:

> Over the years the memories of the older generation have dimmed, names have been dropped from general usage or have been deleted from new map editions, until numerous place names and their meanings have disappeared and been forgotten. A good many of the old names were those of fortified pa or small settlements, and where possible this has been noted in the narrative. It has, however, been found impossible in most cases to discover the size of innumerable villages as their sites have been obliterated by the ploughs and bulldozers of modern man.[560]

Maori Land Court minute books and similar records provide only a partial repository of information about a land's past.

It was not until 1954 that legislation recognising the worth of places of historic interest was enacted. The Historic Places Act of that year established the Historic Places Trust to develop a public interest in heritage protection. With respect to particular sites, it encouraged their identification, and marking where that was appropriate, while recognising private property rights by requiring the Trust to acquire any site it wanted to actively protect, or obtain appropriate agreement from the landowner.

[560] B Morgan, *Historic Maori place names from the Waipa River to Mokau*, 1976, page 4.

While the legislation establishing the Historic Places Trust spoke of heritage protection in a manner that could include Maori heritage, that tended not to be a focus of the Trust's early years. Because it opted to direct most of its local activity through a series of regional committees, and those committees tended to be dominated by enthusiastic European amateurs who were interested in the European history of New Zealand, it was that aspect of New Zealand's heritage that often dominated the Trust's thinking. By comparison with European heritage, Maori heritage protection got off to a slower start.

The unease felt by the Crown about pursuing protection on privately-owned land is one of the reasons why there have been a number of legislative rewrites of the historic places legislation since 1954. There were a series of amendments in the 1960s and 1970s, replacement acts in 1980 and 1993, and a Heritage New Zealand Pouhere Taonga Bill is currently before Parliament.

On Maori-owned land, the main statutory provision for protection of features of significance to Maori was the Native Reservation concept. Features such as urupa and cemeteries had always been treated with respect by the Native Land Court when drawn to its attention. It allowed separate partitions for urupa, with named owners who were recognised as being trustees on behalf of a wider group. It condoned an absence of succession orders to these named owners, which had the effect of making it harder for the sites to be purchased by Europeans or the Crown. The introduction of reservations came in 1909 (Section 232 Native Land Act 1909), and was designed to protect areas of communal interest in Maori communities. Reservations were made inalienable, by contrast to the repeal in the same Act of all previous inalienable provisions for Native land generally. The purposes for which Native Reservations could be created included "burial-ground, fishing-ground, … landing-place, place of historical or scenic interest, … or for the common use of the owners thereof in any other manner". The provision for Native Reservations was repeated in 1931 (Section 298 Native Land Act 1931), and was then expanded upon in 1937 (Section 5 Native

Purposes Act 1937). The 1937 provisions were repeated in Section 439 Maori Affairs Act 1953, by then referring to the reservations as Maori Reservations[561].

Time constraints have not allowed the use by Te Rohe Potae Maori of the Native / Maori Reservation opportunity to be researched. Elsewhere in the country it could generally be said that the 1909 and 1931 provisions were used only infrequently, while greater use has been made of the opportunity provided in the 1953 Act.

8.3 Register of historic sites

Independently of the Crown and the Historic Places Trust, the New Zealand Archaeological Association instituted a site recording scheme for archaeological sites in 1958. Because of its comprehensive coverage, both the Historic Places Trust and the Department of Conservation have endorsed it, while the Parliamentary Commissioner for the Environment has referred to it as being "a database of major national significance"[562]. It currently has over 60,000 records of both Maori and European archaeological remains throughout New Zealand. The geographic locations of its recorded sites are searchable for free on a GIS mapping base on the internet, while the site records themselves are available on a payments basis[563].

Listing in the Archaeological Association's site records does not confer any statutory protection per se. However, the Association's records came into their own after the passing of the Historic Places Amendment Act 1975. This legislation (inserting Sections 9F to 9N into the 1954 Act) required the Historic Places Trust to set up a register of archaeological sites, and established a link between the register and local authority town and country planning schemes. All archaeological sites[564], whether registered or not, received a passive form of protection, whereby it was not lawful "to destroy, damage or modify, or cause to be destroyed, damaged or modified, the whole or any part of any archaeological site, knowing or having reasonable cause to suspect

[561] A general change from "Native" to "Maori" in legislation was instituted in 1947 (Part I Maori Purposes Act 1947).
[562] Parliamentary Commissioner for the Environment, *Historic and cultural heritage management in New Zealand*, June 1996, page A45. Posted on www.pce.govt.nz
[563] www.archsite.org.nz
[564] Archaeological site was defined as "any place associated with human activity that was more than 100 years old, and that could provide evidence as to the exploration, occupation, settlement or development of New Zealand" (Section 2 Historic Places Amendment Act 1975).

that it is an archaeological site". The only exception was where the permission of the Trust had first been obtained for the destruction, damage or modification. Offenders could be fined up to $5000. If requested to do so by the Trust, a local authority had to record in its district planning scheme any registered archaeological site; this had the effect of bringing the site to the attention of the local authority and including it in its consideration of effects of any developments requiring planning approval. It did not, however, impose any further obligations on a local authority, upon receipt of a list of archaeological sites.

An example of the response of local authorities during this post-1975 era is the protection for historic sites referred to in Waitomo District Council's pre-review Statement of Objectives and Policy prepared during 1979-1981 and published in June 1981.

> The district is rich in history and there are many places where protection of historic sites is justified. Examples of such sites are (i) various mission sites, (ii) early Maori settlements and areas of particular significance to the Maori community.
>
> Objectives – Historic sites
>
> - To identify and protect historic sites of the district, including appropriate steps in the district scheme such that authentic historic sites become reserved from development as and when they are verified. [565]

The Historic Places Act 1980 continued the passive protection and registration measures introduced in 1975. It also introduced a new category of heritage site, a traditional site[566]. For these sites, the Trust was required to notify the Minister of Maori Affairs as well as the local authority. The Minister of Maori Affairs could then decide if a site should be declared to be a Maori Reservation. The local authority was required to "take into account the desirability" of protecting the site, without specifying what this protection might be.

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[565] Waitomo District Council, *Waitomo District Council district planning scheme review: statement of objectives and policy*, June 1981, page 88. Copy attached to District Clerk Waitomo District Council to District Commissioner of Works Hamilton, 8 July 1981. Works and Development Hamilton file 60/43/4. Supporting Papers #696-729 at 729.
This objective was repeated in the subsequent district planning scheme. Waitomo District Council, *District planning scheme*, approved October 1986, page 73. Supporting Papers #2295-2321 at 2321.

[566] Defined as "a place or site that is important by reason of its historical significance or spiritual or emotional association with the Maori people" (Section 2 Historic Places Act 1980).

Following the passing of the 1980 Act, the Historic Places Trust distinguished between inventorying all archaeological sites and its register of important sites. With respect to inventorying, it relied almost wholly on the Archaeological Association's site records. The Association's records were the basis for the Trust's public information efforts in the 1980s that saw a series of historic places inventories published for each local authority area in the country.

Table 11 Historic Places Inventories

County	First Edition Year of Publication	Number of Sites	Second Edition Year of Publication	Number of Sites
Raglan County	1983	N/A	1988	N/A
Otorohanga County	1983	338	1989	366
Waitomo District	1983	171	1989	423
Taumarunui County	1984	N/A	1989	N/A
Clifton County	1982	N/A	-	-

N/A: Not assessed, because only a small part of the County area is within Te Rohe Potae inquiry district.

In each of the historic places inventories published during 1982-84, there was a standardised introduction:

> New Zealand's historic places receive the statutory protection of the Historic Places Act 1980, but for them to be truly protected for the appreciation and increased understanding of future generations they must first be made known to the local community….
>
> Recognition is a continuous process. The information reported here can only be the state of knowledge or recognition at the time of writing….
>
> The purpose of [the listing of archaeological sites] is to allow planners and users of land to be aware of areas in which they are likely to encounter archaeological sites.
>
> This is a record of all known sites; not of those registered under Section 43 of the Act. These sites will not therefore have to be recorded in the district planning scheme under Section 47 of the Act….
>
> All archaeological sites in New Zealand are protected under the Historic Places Act 1980, but it is not the Trust's intention to attempt to preserve every one.

> If work is planned that might affect an area near any of these locations, or if any other archaeological site is suspected in the immediate area, the Trust should be contacted for advice….
>
> The information used in this report is mainly derived from the records of the NZ Archaeological Association (NZAA). IT SHOULD NOT BE REGARDED AS THE TRUST'S REGISTER OF ARCHAEOLOGICAL SITES….
>
> The main limitations to the accuracy of the information are as follows:
>
> 1. No attempt has been made to remove references to sites that may have been destroyed since they were originally recorded.
> 2. Some records will have used early edition maps, resulting in grid references slightly different from those of later editions.
> 3. Available maps may have contained insufficient landscape detail to enable accurate reference to location.
> 4. A grid reference indicates a point on a site, not its extent on the ground.
> 5. Metric map details have been calculated by computer.
>
> N.B. This report includes only sites that have been recorded. Other sites may exist but have not been recorded, either because they were not identified by the fieldworkers, or because fieldwork did not extend to all parts of the county. There is a tendency on initial surveys to record larger, more obvious sites, but the less obvious sites are no less important. Larger sites such as pa should thus be treated as indicators of the likely presence of other sites in the vicinity.[567]
> [Capitalisation and underlining in original]

Each local authority inventory consisted of a map showing the location of recorded archaeological sites, a list of sites providing details of site location and type of archaeological feature, and an indication of which sites had received statutory protection from the Trust under the Historic Places Act 1980. The map and lists were preceded by a short description of the sites. This description drew attention to the difference between those sites that had been recorded as part of a general accumulation of individual efforts by enthusiastic members of the Archaeological Association, and those sites that had been recorded as a result of systematic attention devoted to particular areas by professional archaeologists. Examples of the latter were detailed work carried out in the following locations:

- Kawhia in 1978, by New Zealand Forest Service preparatory to pine planting on the sand dune country of the Tainui Kawhia block

[567] Standardised introductory notes taken from New Zealand Historic Places Trust, *Historic places inventory: Waitomo District*, April 1983. Supporting Papers #2224-2231 at 2225-2227.

- Lower Puniu River in 1980, carried out by Historic Places Trust
- Te Maika in 1974, when a residential subdivision was being proposed[568]
- Taharoa in 1978, carried out by Historic Places Trust on Taharoa C block in advance of ironsands mining and subsequent pine-planting[569]
- Along the route of the Kapuni and Maui natural gas pipelines, with a rapid salvage archaeology survey conducted in 1969, and a more extensive survey south of the Mokau River in 1975

The maps show a concentration of recorded sites where these systematic surveys have been carried out, indicating how many archaeological sites remain unrecorded elsewhere in the inquiry district.

With respect to Raglan County, the commentary in the published inventory stated:

> The distribution and density of the sites already recorded is sufficient to indicate that the area was attractive to Maori settlement in pre-European times, and a general outline of archaeological site distribution can be given as follows:
>
> (a) Pa, pit and midden sites are found along the length of the coast where large defendable peaks are frequently located on headlands and promontories. They are also to be found clustered about the Aotea and Raglan harbours…. The population seems to have been concentrated around the harbours where extensive cockle and pipi beds are to be found. Tuatua from the exposed sandy beaches, and green mussels from the west coast rocky shore were also exploited.
>
> (b) The Waikato and Waipa Rivers run the length of the county's eastern boundary, and sites are to be found in the vicinity of these waterways…. Some of the Maori gardening activity which took place in the Waikato is known to be late, but it is likely that some of the evidence is also pre-European. It should also be noted that the Waikato and Waipa Rivers functioned as the main long distance transport routes.
>
> (c) The results of detailed study carried out on sites located on or around a number of lakes in swampy areas of neighbouring Waikato County have shown that these micro-environments were foci for settlement. Found in close proximity to the lakes are other

[568] G Johnston and J Coster, *Te Maika: a preliminary archaeological survey*, July 1974. Copy on Works and Development Hamilton file 60/43/3/1. Supporting Papers #569-597.
This report is the basis for a published article, J Coster and G Johnston, 'The Te Maika site survey', in *New Zealand Archaeological Association Newsletter*, January 1975, Volume 18(1), pages 43-47.

[569] S Bulmer, *Archaeological site survey at Taharoa C Block, January 1978*, April 1978, Anthropology Department, University of Auckland. Copy on Waikato Regional Council file 60.40.32A. Supporting Papers #846-854.
While the text of the report indicates that a map formed part of the report, there was no map attached to the copy located during the research for this topic study. A map (Figure 3) labelled "after Bulmer 1978" is included in O Wilkes, *Report on archaeological survey of King Country coastline, 1992-1994*, September 1994. Excerpts on Waikato Regional Council file 60.40.32A. Supporting Papers #855-856.

resource areas such as fernland and forest. It is likely, therefore, that a similar situation existed in Raglan County. Additionally, swamps are often found to contain and preserve wooden artefacts….

(d) Little is known about rhe stone sources used by the pre-European inhabitants of Raglan County….

It should be clear from the preceding summary that the boundaries of Raglan County encompass an area of considerable archaeological potential, not only in terms of the body of archaeological information which already exists, but also in terms of the sites which still remain unrecorded.[570]

The published inventory for Otorohanga County stated:

The Otorohanga County boundaries define an area of varied micro-environments. For the pre-European Maori inhabitants the west coast rocky shore and the Kawhia Harbour would have offered a variety of fish and shellfish. Further inland some soils would have been used for the purposes of kumara horticulture, and on the higher ground the fernland and forest would have provided additional foods such as fern root and forest birds and berries.

The area under discussion has a complex topography. To the west lies an enclosed harbour, and rocky and sandy beaches. To the east, south of the Puniu River, drained river flats rise steeply to flat plateaus which are broken by isolated ridges. Wherever systematic site surveys have been carried out, in both inland and coastal locations, the density of settlement recorded is indicative of a substantial pre-European population. A general outline of archaeological site distribution can be given as follows:

(a) Coastal settlement in Otorohanga County is represented by the sites which have been recorded on the peninsula which separates the Aotea and Kawhia harbours. The majority of the sites recorded in the lowland/coastal part of the peninsula are eroding shell middens containing a wide variety of shellfish species from harbour, open coast and rocky shore environments. Pa, pit and terrace sites are to be found situated on the stable high ground to the east. Further inland, in the area immediately south of the Puniu River, the site distribution appears to be one dominated by small, compact pa located mainly on the ridges which rise out of the plateau.

(b) Although the cultivation of kumara was a prominent feature of pre-European Maori settlement in the Waikato/Waipa river area to the north of Otorohanga County, no large areas of early, artificially modified horticultural soils have been recorded south of latitude 38°S in the inland Waikato. However, the larger number of storage pits that have been recorded in Otorohanga County demonstrate that kumara cultivation was not insignificant in the area. It is likely that the fern root readily available would also have been used.

[570] New Zealand Historic Places Trust, *Historic places inventory: Raglan County*, April 1983, Section 1.2. Supporting Papers #2220-2223.

(c) The Waikato and Waipa Rivers would have functioned as major transport routes and the inhabitants of Otorohanga County would have had access to these waterways via the Puniu River which would also have been navigable by canoe.

The area encompassed by the Otorohanga County boundaries remains, as yet, incompletely recorded archaeologically. However, the information gathered so far is sufficient to indicate that the sites already on record are probably only a small proportion of those which actually exist.[571]

The description of Waitomo District in the published inventory stated:

> The area encompassed by the Waitomo District boundaries has a varied topography which would have offered a number of different settlement opportunities to the pre-European Maori inhabitants. To the north-west lies the south head of the Kawhia Harbour with its sandy shore shellfish species such as pipi, cockle and mudsnail. Tuatua and mussels are found in relatively small quantities on the open coast. Evidence of early horticultural practices have been recorded in the Taharoa/Te Maika area, and the lakes and swamps in the vicinity would have been a source of commodities such as flax and raupo. The inland part of the district with its hilly topography offers the resources of bush and river, and high ground locations for the building of defended settlements. The inland rivers such as the Mokau and its tributaries would have provided transport routes and consequently have been a focus for settlement.
>
> Although only a small amount of systematic site recording has so far been carried out in Waitomo District, the wealth of early material at Taharoa, for example, and the association of inland pa sites such as Orongokoekoea [near Mapiu] with ancient Ngati Maniapoto tradition, strongly indicate an important area of Maori settlement. A general outline of archaeological site distribution can be given as follows:
>
> (a) As can be seen in Figure 1, there is a focus of settlement around the harbour and along the coastline. In the Te Maika area, thick deposits of pipi and cockle shell midden are common features and evidence of settlement are found in locations which range from terraces on the harbour foreshore to inland ridgetops. A number of large and important pa are known to be located in the rough, broken country of the upper Mokau near Aramatai. According to traditional knowledge, these pa were used as stopping places for inland Waikato Maori travelling along well-known tracks to the coast.
>
> (b) An unusual geological feature of Waitomo District is the ironsands area at Taharoa. These sands are currently being quarried by the New Zealand Steel Company. The area was one of dense pre-European Maori settlement with some sites apparently of considerable antiquity.

[571] New Zealand Historic Places Trust, *Historic places inventory: Otorohanga County*, April 1983, Section 1.2. Supporting Papers #2215-2219.

> As already emphasised, Waitomo District is a large area in which only a small amount of site recording has been carried out. However, it is obvious that where sites have been systematically recorded, site density has been high. This pattern of high site density is to be expected not only along the coast but also further inland in the areas surrounding Te Kuiti.[572]

Nationally, thirty traditional sites[573] were registered by the Trust under the Historic Places Act 1980 (and before this category was repealed in 1993[574]). Of these, four sites were in Te Rohe Potae inquiry district:

Table 12 Registered Traditional Sites, 1980-1993

Traditional Site	HPT No.	NZAA No.	Local Authority	Description
Uekaha	6713		Waitomo	Of spiritual significance to Ngati Uekaha Maori Reservation[575]
Ruakuri	6721	S16/280	Waitomo	Burial cave at Waitomo Caves
Te Anaureure	6722	S16/220	Waitomo	Cave dwelling of the eponymous ancestor Maniapoto Maori Reservation[576]
Tokanui	6723	S15/217 S15/319	Otorohanga	Covers 3 pa sites (Tokanui, Whiti Te Marama, and Pukerimu)

Although not researched for this report, Te Aue Davis, the celebrated Ngati Uekaha weaver, may have been instrumental in arranging for registration of these four traditional sites. She was a member of the Maori Heritage Committee (later reconstituted as the Maori Heritage Council) of the Historic Places Trust from 1987 to 2009, and was on the national board of the Historic Places Trust from 1990 to 2009.

Under the Historic Places Act 1993, which is the current statute in force today[577], the provisions relating to the register have been revised. The purpose of the register is

[572] New Zealand Historic Places Trust, *Historic places inventory: Waitomo District*, April 1983, Section 1.2. Supporting Papers #2224-2231 at 2228-2230.
[573] This number of registered traditional sites under the 1980 Act is based on information held in the historic sites register currently (as posted on www.historic.org.nz at August 2013).
[574] By Section 114(5) Historic Places Act 1993, all traditional areas under the Historic Places Act 1980 were deemed to be wahi tapu under the Historic Places Act 1993, subject to a reassessment of that status within one year of the 1993 Act coming into force.
[575] *New Zealand Gazette* 1985 page 1167. Supporting Papers #814.
[576] *New Zealand Gazette* 1972 page 1342. Supporting Papers #789.

defined as being to inform members of the public, to notify owners of historic sites, and "to assist historic [sites] to be protected under the Resource Management Act 1991". The register contains five categories of historic site:

- Historic Place Category 1, for "places of special or outstanding historical or cultural heritage significance or value"
- Historic Place Category 2, for "places of historical or cultural heritage significance or value"
- Historic Area
- Wahi Tapu
- Wahi Tapu Area

Registration of historic places and historic areas is the responsibility of the Historic Places Trust, while registration of wahi tapu and wahi tapu areas is the responsibility of the Maori Heritage Council (given statutory recognition under the Historic Places Act 1993). Historic areas and wahi tapu areas can broadly be distinguished from historic places and wahi tapu respectively by containing a grouping of multiple features of historical and cultural significance.

The numbers of registered sites in each category nationally and in Te Rohe Potae inquiry district, as at August 2013[578], are:

Table 13 Number of Registered Sites (August 2013)

Register Category	New Zealand	Te Rohe Potae Inquiry District All (Maori)[579]
Historic Place Category 1	991	2 (1)
Historic Place Category 2	4412	28 (7)
Historic Area	120	2 (1)
Wahi Tapu	94	6 (6)
Wahi Tapu Area	58	3 (3)
Total All Categories	5675	41 (18)

[577] There is further legislation before Parliament at present (2013), which when passed will repeal and replace the Historic Places Act 1993.
[578] Personal communication, Rebecca O'Brien, Registrar New Zealand Historic Places Trust Pouhere Taonga, 15 August 2013.
[579] The first figure records all sites of both Maori and European heritage interest. The figure in brackets records the number of sites of Maori heritage interest.

Many of the registered sites are buildings or features of significance to the European heritage of New Zealand. The proportion of known archaeological sites or Maori heritage sites that have been registered is therefore small. And the proportion of all archaeological sites that are known about to the Archaeological Association is itself small, perhaps two unknown sites for every known site according to the Association's website[580]. In a less well-populated rural part of the country like Te Rohe Potae, the proportion of known sites may be smaller.

The 18 registered sites of Maori heritage interest in Te Rohe Potae inquiry district, as at August 2013, are as follows:

Table 14 Registered Sites in Te Rohe Potae district, August 2013

Site	Category	HPT No.	NZAA No.	Local Authority	Description
Midden	Historic Place 2	6109	R15/210	Otorohanga	In Tainui-Kawhia Block
Midden	Historic Place 2	6110	R15/217	Otorohanga	In Tainui-Kawhia Block
Midden	Historic Place 2	6111	R15/219	Otorohanga	In Tainui-Kawhia Block
Midden	Historic Place 2	6112	R15/242	Otorohanga	In Tainui-Kawhia Block
Pa	Historic Place 2	6113	R16/211	Waitomo	Puketutu Pa, in Tawarau State Forest
Pa	Historic Place 2	6210	S16/263	Otorohanga	In Tawarau State Forest
Uekaha	Historic Place 2	6713		Waitomo	Of spiritual significance to Ngati Uekaha Maori Reservation[581]
Ruakuri	Wahi Tapu	6721	S16/280	Waitomo	Burial cave at Waitomo Caves
Te Anaureure	Historic Place 1	6722	S16/220	Waitomo	Cave dwelling of the eponymous ancestor Maniapoto Maori Reservation[582]

[580] www.archsite.org.nz
[581] *New Zealand Gazette* 1985 page 1167. Supporting Papers #814.
[582] *New Zealand Gazette* 1972 page 1342. Supporting Papers #789.

Site	Category	HPT No.	NZAA No.	Local Authority	Description
Tokanui	Historic Area	6723	S15/217 S15/319	Otorohanga	Covers 3 pa sites (Tokanui, Whiti Te Marama, and Pukerimu)
Pehitawa	Wahi Tapu	7332		Waitomo	Burial cave
Huiputea	Wahi Tapu	7558		Otorohanga	Tapu kahikatea tree in Otorohanga town Historic reserve[583]
Te Waihoanga	Wahi Tapu	7562		Otorohanga	At Kawhia
Rangiahua	Wahi Tapu Area	7563	R15/175	Otorohanga	At Kawhia. Includes pa, tuahu, battle site and pathways[584]
Te Rua o Te Atua	Wahi Tapu	7606		Waitomo	Puna wai on Mangaokewa Stream
Motutara	Wahi Tapu Area	7721		Otorohanga	Peninsula on north-west shore of Kawhia Harbour[585]
Te Papa o Karewa	Wahi Tapu Area	9425	R15/415 R15/467	Otorohanga	Two pohutukawa groves in Kawhia town[586]
Rangiatea	Wahi Tapu	9586	S16/32	Otorohanga	Pa in Ngahape / Korakonui district

Three of these sites (Motutara, Rangiahua and Te Papa o Karewa) were registered on the application of the Resource Management Committee of Te Runanganui o Ngati Hikairo. In its Heritage Management Plan, it commented on the application process:

> It must be noted here that the Historic Places Trust process requires a big investment of iwi resources and time. It can take up to three years to have a heritage area / site placed on the National Register of Historic Places Trust. Therefore Ngati Hikairo consider the National Registration process is a long-term option for managing heritage areas that meet the NZHPT criteria, and

[583] Vested in Otorohanga District Council as historic reserve on approval of subdivision plan DPS 62786 in March 1992.
[584] For a more detailed description, see P Barton and F Thorne, *Te Tahuanui: Ngati Hikairo heritage management plan*, Te Runanganui-o-Ngati Hikairo, 2010, pages 44-45. Wai 898 document #N39(a).
[585] For a more detailed description, see P Barton and F Thorne, *Te Tahuanui: Ngati Hikairo heritage management plan*, Te Runanganui-o-Ngati Hikairo, 2010, pages 46-47. Wai 898 document #N39(a).
[586] For a more detailed description, see P Barton and F Thorne, *Te Tahuanui: Ngati Hikairo heritage management plan*, Te Runanganui-o-Ngati Hikairo, 2010, page 47. Wai 898 document #N39(a).
The extent of the groves in 1902 is plotted on South Auckland plan ML 12756. Not included in Supporting Papers.

> from our perspective is not a process that can be utilised in response to immediate land use issues and resource consents.
>
> The decision to apply to have these sites registered was a very considered one, much of our concern being based on the need to identify and protect the sites. At the time there were significant concerns for the future of these historically significant places, and genuine concerns about inadequate and inconsistent council processes; Ngati Hikairo identified that the risk was too great. Registering the sites was seen as a means to raise awareness of and ensure advocacy for the sites, as a way to guarantee consultation by territorial authorities with Ngati Hikairo. Ngati Hikairo continues to have ongoing concerns for the future of these areas.[587]

The key limitation of the registration process is the absence of systematic coverage or assessment. There has been no attempt made by the Historic Places Trust, as part of its registration process, to consider all the recorded sites in Te Rohe Potae, or in any part of Te Rohe Potae, in a holistic fashion, and from that consideration identify those sites of high enough significance to justify registration in the first instance, and specific recognition under the Resource Management Act subsequently (see a later section concerning protection under the Resource Management Act).

In Te Rohe Potae, this is despite some systematic work having been undertaken. The archaeological surveys at Te Maika in 1973 and Taharoa in 1978, referred to earlier in this chapter, have since been supplemented by an assessment of the coastline between the Awakino River and Kawhia Harbour carried out in 1994[588]. Yet there is no evidence that this latter report has influenced the nomination of sites to be registered.

8.4 Wahi tapu protection under the Resource Management Act

The Resource Management Act 1991 makes provision for some protection of heritage sites. Section 6 makes the relationship of Maori with their sites, wahi tapu and other taonga, and the protection of historic heritage generally from inappropriate subdivision, use and development, matters of national importance that have to be recognised and provided for in regional and district planning documents and their

[587] P Barton and F Thorne, *Te Tahuanui: Ngati Hikairo heritage management plan*, Te Runanganui-o-Ngati Hikairo, 2010, pages 34-35. Wai 898 document #N39(a).
[588] O Wilkes, *Report on archaeological survey of King Country coastline, 1992-1994*, September 1994. Excerpts on Waikato Regional Council file 60.40.32A. Supporting Papers #855-856.
This report is the basis for a published article: O Wilkes, 'Archaeological survey of sites between the Awakino River and Kawhia Harbour' in *Archaeology in New Zealand*, Volume 38(4), December 1995, pages 235-256.

administration. Notwithstanding this statutory requirement, the regional planning documents for Waikato region are virtually devoid of measures to support heritage protection[589].

District planning documents are more forthcoming, perhaps because local authorities had a history under the Town and Country Planning Act of referring to recorded archaeological sites. While the provision for matters of national importance is the guiding statutory instruction, local authorities are also required to have regard for any specific recommendations about registered historic areas and wahi tapu areas made by the Historic Places Trust (Section 32D(3) Historic Places Act 1993). For this report, the district plans of two local authorities in Te Rohe Potae, Otorohanga District Council and Waitomo District Council, have been examined. Time constraints have not made it possible to examine the plans of other local authorities.

The Otorohanga District Plan contains a record of registered sites, a record of identified archaeological sites, and a register of sites of significance to tangata whenua. The latter register is discussed in the next section of this chapter. The registered sites are those that have been registered with the Historic Places Trust, and have been notified to the District Council by the Trust that they are of national or district significance. There are 20 registered sites, of which eight are European heritage; the Maori heritage registered sites are those discussed in the section of this chapter on the Historic Places Trust's register. The record of known archaeological sites has been drawn from the Archaeological Association's site records. It contains 345 sites where the location is well defined, and 432 sites where the location is less well defined.

The Waitomo District Plan contains a record of historic places of national and district significance, which are sites registered on the historic sites register of the Historic Places Trust, and notified to the District Council by the Trust. There is one site of national significance, and 15 sites of district significance. The single national site and nine of the district sites are European heritage sites.

[589] P Barton and F Thorne, *Te Tahuanui: Ngati Hikairo heritage management plan*, Te Runanganui-o-Ngati Hikairo, 2010, page 32. Wai 898 document #N39(a).

It is clear from the analysis of these two district plans that there is a filtering process at work. Archaeological sites and sites of Maori heritage interest have to be known and recorded. Only some are recognised, by being registered by the Crown-established body responsible for heritage protection. Protection of recognised sites is in the hands of another body again, the local authorities. There is therefore ample opportunity for many wahi tapu to receive no active protection at all from the mechanisms established by the Crown.

8.5 Non-disclosure of wahi tapu

For the Crown or local authorities to be capable of actively protecting wahi tapu, they need to be aware of their existence. Passive protection, such as making it unlawful to disturb any archaeological site, is limited in its effect, especially where it contains the qualification that the disturber has to be aware a site is an archaeological site before they can be deemed to have committed an offence.

Maori have an aversion to revealing the location of and the stories encapsulating the traditional and cultural significance of wahi tapu. Since the time of the grave-robber Andreas Reischek, they have been very aware that revealing too much to outsiders can have serious and permanent consequences. The Tainui Maori Trust Board has been particularly vocal on the subject, including opposing any wahi tapu register in submissions on the proposed Waikato Regional Plan in 1998[590]. Yet not revealing the location of wahi tapu to outsiders can lead to them being disturbed by accident, and some other Maori organisations have supported the availability of registers of wahi tapu[591].

There have been some attempts to bridge these differences. One is for Maori to refer to the location of a wahi tapu in general terms, for instance by mapping a wahi tapu in a way that the marked location includes a substantial area of land around it such that

[590] L Whangapirita, S Awatere and L Nikora, *Maori perspectives of the environment: a review of policy submissions made by iwi to Environment Waikato*, page 5, October 2003, Waikato Regional Council Internal Series report 2004/01, Technical Report No. 3. Posted on www.researchcommons.waikato.ac.nz

[591] L Whangapirita, S Awatere and L Nikora, *Maori perspectives of the environment: a review of policy submissions made by iwi to Environment Waikato*, page 5, October 2003, Waikato Regional Council Internal Series report 2004/01, Technical Report No. 3. Posted on www.researchcommons.waikato.ac.nz

its precise location is not revealed. This is sometimes known as the 'secret file' approach. Another is to establish an intermediary in the Maori community, who can make inquiries within the community and alert outsiders if a particular proposal might affect a wahi tapu.

The latter approach has been adopted by Waitomo District Council. It has a policy of advising the Maniapoto Maori Trust Board and the seven Regional Management Committees of the Trust Board (which are marae-based and made up of marae representatives) of resource consent applications. It is not known how effective this policy is. It has the risk that the person acting as intermediary may not know the right person in the Maori community to contact. The locations of some wahi tapu are tightly held even within the Maori community, with responsibility for them resting with certain whanau. The disruptions to Maori life over the last several generations may mean that only one or two individuals within a whanau hold the knowledge about a wahi tapu. How widely the knowledge is held is not a guide to the significance of the wahi tapu, as sometimes the more sacred is the site the more the knowledge about it needs to be a closely-held secret.

Otorohanga District Council has taken advantage of the heritage planning work undertaken by Ngati Hikairo, by incorporating material from *Te Tahuanui*, the iwi heritage management plan produced in 2010[592]. It lists in an appendix 92 sites identified by Te Runanganui o Ngati Hikairo. These 92 sites are additional to the registered sites and the recorded sites also listed in the district plan, and referred to in the previous section of this chapter. Only a general location for these sites has been revealed to the Council, the appendix listing the sites stating in its introduction:

> The process used to record and collate the information pertaining to these sites have been independently audited and lodged with Council. An area is defined for each site [on the planning maps], but no precise details are provided as to the location and extent of sites.[593]

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[592] P Barton and F Thorne, *Te Tahuanui: Ngati Hikairo heritage management plan*, Te Runanganui-o-Ngati Hikairo, 2010. Wai 898 document #N39(a).
Section 74(2A) Resource Management Act 1991 requires territorial local authorities to take into account provisions in iwi management plans that are relevant to an authority's responsibilities under that Act.

[593] Otorohanga District Council, *Otorohanga District Plan, decisions version 6 March 2012*, Appendix 8A, page 168. Posted on www.otodc.govt.nz

While the appendix is headed "Sites of significance identified in iwi management plans", only Ngati Hikairo sites are listed at this stage; the structure of the district plan makes it possible for other iwi to have their sites of significance included in the appendix when they are ready to notify the District Council of them.

8.6 Particular heritage sites

The loss and desecration ('te hapurutanga') in recent times of some important heritage sites has been a source of great sadness for Maori in Te Rohe Potae. Ngati Maniapoto catalogued some of the more significant losses in the iwi's state of the environment report in 2002:

> **Tumutumu** – The chief Maniapoto's Pa site – located at the Mangaokewa reserve, the pa site was BULLDOZED, destroying trenches that had existed for some 400 years, to be replaced with pine plantings.
>
> **The Waipa River** itself, home to Ngati Maniapoto's tribal taniwha, Waiwaia. Tradition describes Waiwaia as a beneficent taniwha, with a hundred lairs or hiding places along the course of the Waipa River. Altering the levels or course of the river, and discharging into the river, has an adverse impact on the home of this tribal kaitiaki. The river is now SILTED and SHALLOW, the banks are bare.
>
> **Te Waiwhakaata** – a stone altar in the shape of a pillar and basin, with a natural spring that kept the basin full with clear spring water, used over hundreds of years for divination, prayer and cleansing, said to be the washbowl of the patupaiarehe, BULLDOZED in recent years for farming.
>
> **Pukerimui, Whiti Te Marama, Tokaanui Pa** – (also known as the three sistenrs) favourite places of many Maniapoto tupuna. EXTENSIVE EXCAVATION FOR QUARRYING.
>
> **Whakapirimata Pa** – built by Whaita, later occupied by Hore, father of Peehi Tukorehu. BULLDOZED.
>
> **Kakamutu Pa** – DESTROYED FOR HOUSING DEVELOPMENT.
>
> **Otawhao Pa** – DESTROYED FOR HOUSING DEVELOPMENT.
>
> **Te Ana Uriuri o Maniapoto** – Maniapoto's Cave, where our ancestor Maniapoto spent much time in contemplation – EXCAVATED FOR QUARRYING – protests managed to save the cave from complete destruction.

> **Orongokoekoea** – birthplace of King Tawhiao. BULLDOZED.[594]
> [Capitalisation in original]

The case studies have covered heritage protection matters, in particular:

- Te Anaureure cave, in Waipa River case study
- The home of the taniwha Te Atai o Rongo, in Whaingaroa Harbour case study
- Te Naunau burial area, in Mokau River mouth case study

Heritage protection in the Taharoa sand dune country is covered in the ironsand mining topic study. This overview also covers below a small number of additional examples of sites of heritage interest:

- Ruakuri cave
- Motutara peninsula
- Wahi tapu at Tongaporutu
- Te Rongomai o Te Karaka

8.6.1 Ruakuri Cave

Ruakuri Cave at Waitomo was opened to tourists at about the start of the twentieth century[595]. However, the entrance to Ruakuri is a wahi tapu, as a burial place. Its significance was described in a paper prepared for the Maori Heritage Council of the New Zealand Historic Places Trust organisation in 1994:

> The entrance was used as a living area from ancient times. High above the main entrance is a smaller cave used for burials, and also as a repository for taonga of the Maniapoto people. Access to the cave was made possible by a large karaka tree growing up against the cave entrance way.
>
> Archaeological deposits have been identified at the cave entrance. The caves and immediate area in front of the entrance way is an archaeological site assigned the site number S16/280.[596]

The longstanding tourist use seemed to generate a sense of inertia with respect to recognising and responding to its tapu status. It was only when the cave was closed in about 1988 that the state of inertia was overcome, and its tapu status could be looked

[594] Kowhai Consulting Ltd and Ministry for the Environment, *Te Purongo: Ngati Maniapoto state of the environment report: a tribal perspective*, 2002, page 13. Supporting Papers #2400-2454 at 2412.
[595] The establishment of the public reserve where the entrance is located is referred to in David Alexander, *Public Works and other takings in Te Rohe Potae District*, Wai 898 document #A63, December 2009, pages 440-443.
[596] Paper MHC 1994/6/16 for meeting 1-2 June 1994, prepared by Maori Sites Officer. NZ Historic Places Trust Maori Heritage Council agenda papers. Supporting Papers #2328-2329.

at more dispassionately. The closure of the cave was brought about by a legal argument between the Crown, the tourism operator (Tourist Hotel Corporation) and the owners of adjoining private land, when the private landowners argued that, while the cave entrance was on public reserve, the cave itself went underground beneath their private land.

The attention given to Ruakuri by the Maori Heritage Council in 1994 was a consequence of the passing of the Historic Places Act 1993, which required a review of its historic place protection status. Ruakuri had been registered in 1991 by the Historic Places Trust as a traditional area under the Historic Places Act 1980, at the request of Ngati Uekaha and Ngati Ruapuha. The 1993 statute required that traditional areas were to be provisionally declared to be wahi tapu, subject to a review of that new status within twelve months. The paper to the Maori Heritage Council recommended that Ruakuri should continue to have the registered status of wahi tapu, "as it was a site where tupapaku were placed"[597]. The Council agreed.

Since then those interested in reopening Ruakuri to visitors have accepted that the history of the site and the wahi tapu registration prevent public use of the natural entrance. To overcome this a shaft has been dug down elsewhere on the public reserve. By a spiral walking ramp down this shaft, and a short connecting tunnel, alternative access to Ruakuri Cave has been provided for guided tours. The new entrance was opened in 2005.

8.6.2 Motutara

Motutara is a peninsula jutting into Kawhia Harbour on its north-western side with a significant assemblage of Maori heritage sites. As referred to earlier it is a registered wahi tapu area in the New Zealand Historic Places Trust site register[598]. It was registered in June 2007 on the application of the Resource Management Committee of Te Runanganui o Ngati Hikairo.

[597] Paper MHC 1994/6/16 for meeting 1-2 June 1994, prepared by Maori Sites Officer. NZ Historic Places Trust Maori Heritage Council agenda papers. Supporting Papers #2328-2329.
[598] New Zealand Historic Places Trust register number 7721.

Seeking to register the peninsula was prompted, in part at least, by a resource consent application by the owner of a property on one part of the peninsula to subdivide their land into five residential sites plus a balance area. The subdivision application had been declined by Otorohanga District Council, and when the landowners appealed to the Environment Court, Te Runanganui o Ngati Hikairo participated in the appeal hearing as a Section 274 party. Evidence of the spiritual, historic and cultural significance of the application site was presented by Te Runanganui, and archaeological evidence was presented on behalf of the applicants in October 2006. The conclusion the Environment Court came to in April the following year on the evidence presented to it was that:

> Ngati Hikairo's evidence … leave us in no doubt tapu is associated with the area.
>
> We conclude the applicant's proposal has the potential to irretrievably damage Ngati Hikairo's relationship with this land, but whether this gives the Court enough evidence to stop the proposal altogether in this case is an issue to consider further in the light of the plan provisions and Part 2 RMA, together with the applicant's mitigation of their perception of the adverse effects of the proposal.[599]

Thus the damage to Maori heritage still had to be weighed up against other factors required to be assessed by the Resource Management Act, and might be outweighed by those other factors. In this case the mitigation measures offered by the applicant were looked on favourably by the Court, and it decided that if the proposal was trimmed back to just three residential sites plus a balance area, it would meet the sustainable management tests of the Act. Of the relationship between the mitigation measures and the customary relationship of Ngati Hikairo with the site, the Court said:

> While all these matters might seem somewhat insignificant to Ngati Hikairo, we consider that turning down the whole development would not provide the Iwi with the advantages the applicants propose. The site would continue to degrade and the Iwi would not be able to access the site. On balance, we consider that the relationship of Ngati Hikairo and their culture is recognised and provided for, even if the strength of this relationship was not known until this case came to hearing. Thus we do not feel that Ngati Hikairo should feel overwhelmed to the extent they will be carried away by the flood of development and carried into the sea….[600]

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[599] *MacPherson v Otorohanga District Council*, Environment Court decision no. W25/2007, [2007] NZ EnvC 94, page 36. Posted on www.justice.govt.nz/courts/environment-court

[600] *MacPherson v Otorohanga District Council*, Environment Court decision no. W25/2007, [2007] NZ EnvC 94, pages 67-68. Posted on www.justice.govt.nz/courts/environment-court

> We conclude, in the exercise of our discretion, that proper recognition must be afforded the applicants' honest and practical offers at mitigation, which we considered were sincerely made, and which may form a solid basis for ongoing relationships with Ngati Hikairo and better understandings in the future.[601]

8.6.3 Wahi Tapu at Tongaporutu

The route of State Highway 3 at Tongaporutu, on the northern side of the river and estuary, is constrained by both its topography of steep hills falling to the water's edge, and the presence of a number of wahi tapu. As each successive improvement to the highway is required, there has been a need to address the impact of the road on the wahi tapu. This section goes into considerable detail about the provision made for the wahi tapu over the years, and is in the nature of a miniature topic study.

The original bridge across the river was built in 1902, but by the 1940s and 1950s had come to the end of its useful life and required replacement. A new bridge on a new alignment was designed, which required a realignment of the road approaches.

In one respect the Public Works Department was unhindered, as the legal road width along the north bank of the river was greater than normal, so no additional land (with one slight exception) was required. However, located on the legal road was a pa site, at which burials were known to have taken place.

Two alternative realignments for the northern approach to the bridge were designed. One passed between the pa and the river, entailing some encroachment on the riverbed as well as cutting into the hill on which the pa was located. The other passed around the pa on its inland side, involving a cutting through a narrow ridge that separated the pa site from the bluffs that otherwise formed the northern side of the river valley, and was the location of two defensive ditches (which would have also had defensive fortifications when the pa was occupied).

The use of the language of a flood of development carrying an iwi's interests into the sea is a reference to a Planning Tribunal decision, *Environmental Defence Society Inc v Mangonui County Council*, [1989] 3 NZLR 262, 257.

[601] *MacPherson v Otorohanga District Council*, Environment Court decision no. W25/2007, [2007] NZ EnvC 94, page 76. Posted on www.justice.govt.nz/courts/environment-court

The Acting Resident Engineer at Stratford reported on the matter in October 1946:

> [T]here appears to have been a pah on the elevated area, and native burials in or near the old pah site. The Tribe concerned is apparently the Ngati Tama tribe, and Mr Jack Kapinga McClutchie, of mixed Maori and Scotch ancestry, has so far been the leading spokesman. I understand his father and grandparents are buried at this site, and possibly many others.
>
> I have made an inspection of the site with this Mr McClutchie after the red line as indicated on the Chairman's plan had been staked out and better lines indicated. Mr McClutchie, whilst not wishing to commit his tribe, was very helpful and clearly realised the need for progress in our roading. At the same time, however, he strongly desired the respect due to his departed relations and other members of the tribe who may be buried there. I forward a print of the locality showing the Chairman's red line, and to this, after having seen the general nature of the country which is sandstone formation and so not likely to slip, Mr McClutchie expressed the opinion that it should be acceptable to his people.
>
> He was also sounded in regard to the probable reaction of his people to a line running approximately where shown in green, which is roughly the original proposal, being a line with very much better alignment. He could not say that bodies had definitely been buried there, but his deduction from tribal custom led him to suppose that bodies may have been buried between the known graves and the existing road.
>
> It was suggested to him that if the road were permitted to go there, and the remains of bodies were found, then they might be removed and reinterred on a portion of the burial ground which would be outside the road limits.
>
> He seemed to feel that this might be acceptable, but that he could not commit his tribe.
>
> I would therefore ask the authority of the Main Highways Board for me to negotiate with Mr McClutchie or the elders of his tribe on the lines of excavating say a foot of the top of the cutting over the full width between the top of the batters, to prove or disprove the presence of remains of bodies, such excavation to be done in the presence or direct supervision of an appointee of the tribe who would safeguard the interests and feelings of the members of the interested tribe.
>
> This would mean paying the wages of a Maori representative for say a couple of months as a workman, but who would do little useful work….
>
> I suggest that the views and wishes of the Department of Internal Affairs be obtained in regard to any reinterment of remains from this unrecorded old native burial ground, should any remains be found.
>
> A request stipulated by Mr McClutchie was that a group of 4 known graves which have been desecrated by intruders be concreted over by the Government, constructing a concrete slab which would ultimately form the

> base for a memorial to be erected by the Maoris. This concrete work would cost about £60.[602]

These proposals were not immediately followed up, the file disclosing that the issue uppermost in the minds of Public Works Department officials was the relative costs of the two alternative alignments. The costings turned out to be very similar, while the inland route cutting through the ridge was regarded as the preferred one because it offered a better approach alignment to the proposed new bridge. It was the route that was eventually chosen.

The realignment work was carried out in mid 1947. The local Ministry of Works overseer later reported:

> The excavation in the vicinity of the old Maori Pah north of Tongaporutu Bridge was not started until the work set out in memo … of 21/5/47 [believed to be concrete-capping of the graves] was completed.
>
> The excavation shown on attached print 109/8 was turned over by hand and later levelled with a dozer.
>
> The work was done on daywork by P.W. Dept Surfacemen and the Maori representative Mr E. R. Batley of Mokau[603]. Mr Batley was paid Labourer's rates of pay. I personally carried out an inspection of the work every second day, and left instructions with Surfacemen Adams and Stanton to cease work and advise me if any Maori relics were found.
>
> No Maori remains were discovered. Three old cooking pits about 3 feet deep containing burnt stone and sea shells were unearthed between 44m 13.58 & 13.85 chs.
>
> Sealing of the known Maori graves was started on the 26/4/47 and completed on the 6/6/47. Excavation by hand was started on the 9/6/47 and completed on the 20/6/47.
>
> All spoil between 44m 13.43 & 14.00 ch was excavated as per attached print. Between 44m 14.00 & 14.29 the sandstone rose to within one foot of the surface. All spoil above the sandstone was turned by hand.[604]

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[602] Acting Resident Engineer Stratford to Board Representative No 7 District Highways Council, Wanganui, 16 October 1946. Works and Development Wanganui file 7/9/11. Supporting Papers #730-732.

[603] In the Mokau River case study, it is recorded that Ernest Batley was a Pakeha resident of Mokau since 1905 who had married a Maori woman.

[604] Overseer Ahititi to Resident Engineer Stratford, 29 January 1948. Copy on Lands and Survey New Plymouth file 13/163 (now renumbered Conservation New Plymouth file LAN 2408). Supporting Papers #398.

Once this report was provided, the route for the road cutting through the ridge was approved[605].

More recent archaeological examination has disclosed that there are signs of outer defensive works of the pa on the uphill inland side of the highway, so that the highway was constructed through the pa site, rather than nicking a corner of it.

During the 1960s the pa site became a scenic and historic reserve. First it was separately defined on a survey plan prepared for the taking of land in association with the realignment of the northern approaches to Tongaporutu Bridge[606]. It was then excluded from the legal road (by being declared to be closed road) in August 1961[607]. This status made it Crown Land. It was reserved for historic purposes, as the Pou Tehia Scenic and Historic Reserve, in November 1965[608], with the New Plymouth Scenic Reserves Board appointed to control and manage the reserve[609]. The reserve is named in memory of William Teoki Pitt Pou Tehia, a Ngati Tama chief.

The stimulus for the reservation of the pa site had come from an approach to the Taranaki Regional Committee of the New Zealand Historic Places Trust, apparently by a local historian, in 1957[610]; this approach contained the first reference to the name of the site as Pou Tehia. The Regional Committee recommended reservation to the New Plymouth Scenic Reserves Board[611], and it was arranged that the site would be surveyed as part of the road realignment survey. Jack Kapinga McClutchie was written to in October 1961, after the road had been closed, and told what was being proposed. He was asked to consult other elders of Ngati Tama and advise whether there was general tribal agreement to the reservation. He replied the following month:

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[605] Resident Engineer Stratford to Main Highways Board Representative Wanganui, 30 January 1948, and Chairman Main Highways Board to Main Highways Board Representative Wanganui, 3 June 1948. Works and Development Wanganui file 7/9/11. Supporting Papers #733 and 734.
[606] Taranaki plan SO 9115. Supporting Papers #845.
[607] *New Zealand Gazette* 1961 page 1253. Supporting Papers #777.
[608] *New Zealand Gazette* 1965 page 2011. Supporting Papers #781.
[609] *New Zealand Gazette* 1965 page 2009. Supporting Papers #780.
[610] Report submitted by Rigby Allan to NZ Historic Places Trust Taranaki Regional Committee, received 13 September 1957. Lands and Survey New Plymouth file 13/163 (now renumbered Conservation New Plymouth file LAN 2408). Supporting Papers #399.
[611] Honorary Secretary NZ Historic Places Trust Taranaki Regional Committee to Secretary New Plymouth Scenic Board, 22 September 1957. Lands and Survey New Plymouth file 13/163 (now renumbered Conservation New Plymouth file LAN 2408). Supporting Papers #400.

> I am sorry I haven't replied to your letter of 2nd October re Pou-Tehia Burial Ground, as I had to get in touch with other members of the family and elders of Ngati-Tama. All of us are very happy that you proposed to reserve it as a scenic and historic reserve, and to adopt the correct name Poutehia, and the New Plymouth Scenic Reserve Board to have control of the reserve, as we are very anxious that this Burial Ground is looked after. However, since our discussion some years back (1946), I have with regret to mention that Mr ER Batley, Mr WR Skinner, Mrs Temaroa McClutchie and Irapati McCluthie have deceased us. But we are rewarded with their wishes, and those who are alive, that it become a scenic reserve. And I trust that an access to the knoll and an erection of a notice at road level are not too far distant. Thanking you on behalf of Ngati-Tama.[612]

There was further confirmation of the name of the reserve in August 1965**[613]**, just before the site was reserved.

North of Pou Tehia Historic Reserve, after emerging from the cutting, the State Highway follows the edge of the Tongaporutu River or Estuary, traversing a steep face. In recent years there has been erosion and undercutting of the bank between the road formation and the riverbank, and the New Zealand Transport Agency has identified a need for some reinforcement of the bank, in order to combat land erosion (due to surface water drainage off the road and down the slope), and sea erosion eating away at the riverbank at times of high tide. In October 2011 it sought resource consent from Taranaki Regional Council for the building of a seawall. The river at this point is part of the coastal marine area, and the consent was to allow the toe of the seawall to be constructed, and armoured against further erosion, in the coastal marine area. One of the most significant issues was that the riverbank at the foot of the slope below the road, at the end closest to the Pou Tehia pa, was thought to be a tauranga waka (canoe landing site).

Three interested parties were identified, all of whom were consulted prior to the application being made[614]. They were:

- Department of Conservation

[612] JK McClutchie, Pukearuhe, to Mr Bluett, 14 November 1961. Lands and Survey New Plymouth file 13/163 (now renumbered Conservation New Plymouth file LAN 2408). Supporting Papers #401-402.
[613] G Kaea, New Plymouth, to Commissioner of Crown Lands New Plymouth, 8 August 1965. Lands and Survey New Plymouth file 13/163 (now renumbered Conservation New Plymouth file LAN 2408). Supporting Papers #403.
[614] Tongaporutu seawall extension, North Taranaki, coastal permit application and assessment of environmental effects, October 2011, pages 28-30, and Appendix D. Supporting Papers #2455-2480 at 2460-2462 and 2465-2468.

- Nga Hapu o Poutama
- Ngati Tama

The Department of Conservation accepted the need to construct the seawall, and favoured it over a more gradually sloping boulder wall as it would encroach less on the estuary. The Department believed the small beach area at the foot of the slope might provide a habitat for rare and endangered native species. It shared concerns of iwi that the mauri of the Tongaporutu Estuary should be protected, and that there should be no impact from the works on the tauranga waka or on the pa and urupa. It was prepared to provide a written consent to the seawall being built.

Nga Hapu o Poutama were consulted on a number of occasions between November 2010 and October 2011. In March 2011 Poutama provided a six-page Kaitiaki Report[615], in which it was stated that "the Tongaporutu River is of fundamental importance to the very existence of Poutama", and that the river and its watershed was "completely contained in the rohe of Poutama". The main purpose of this report was to draw attention to the inadequate maintenance of existing drainage measures for the road, for a small wetland adjacent to the road, and for the slope between the road and the river, which was believed to have brought on the problems the seawall was proposing to address. In the report's conclusion, it was stated:

> It is clear that the need for works is caused by lack of maintenance, and not from unforeseen events such as floods or earthquakes. From our discussion with MWH, Poutama understand that this is due to NZTA's internal funding regime, whereby the consultants find it easier to access funding for emergency works than for preventative maintenance. From the perspective of Poutama as Tangata Whenua, the effect and damage of preventative maintenance is much less than major and/or emergency works. Uninformed decisions result in works creating the need for more works, together with associated damage. Further, damage to Tangata Whenua is rarely quantified or mitigated. Emergency works, especially in conjunction with "national interest", can also be used to avoid robust Resource Management Act requirements.[616]

In subsequent meetings, according to the application documentation:

> Protection of the urupa south of the underslip was raised as a matter of concern. The reserve containing the urupa was substantially modified when

[615] Tongaporutu seawall extension, North Taranaki, coastal permit application and assessment of environmental effects, October 2011, Appendix E. Supporting Papers #2455-2480 at 2469-2480.
[616] Tongaporutu seawall extension, North Taranaki, coastal permit application and assessment of environmental effects, October 2011, Appendix E. Supporting Papers #2455-2480 at 2469-2480.

> the highway was realigned in the 1950s. Poutama sought an assurance that construction of the seawall and any longer term end effects of the seawall would not impact on the urupa. This assurance was provided.
>
> Poutama advised that the sandy beach area located between the end of the proposed seawall and the urupa was an historic waka landing site, and should not be disturbed or modified during seawall construction or any future maintenance of the wall. Poutama was advised that during construction of the proposed seawall, all access to the site would be provided via a benched track cut into the slip face and that this access would be progressively removed as the seawall was constructed and the highway embankment reinstated. Poutama was further advised that the waka landing site would not be modified in any manner, and nor would it be used to provide access to the estuary for any machinery.[617]

Ngati Tama had signed a consent allowing the application to be considered as a non-notified application. A member of Ngati Tama, the son of Jack McClutchie who had been consulted by the Public Works Department in 1946, advised that Ngati Tama had no objection, and provided some historical information. Davis Rawiri McClutchie wrote:

> I have discussed the proposed sea wall extension with my fellow board members of Ngati Tama, and we have no objection provided that there is no interference with the redoubt site or anything contained within it.
>
> I will also outline a brief history of this site. Thomas or Tamati McClutchie was the son of Pauatu from Ngati Mutunga (Urenui) and William Gardner McClutchie, an Irish sea captain from the Chatham Islands. The above two people came together when local Maori went to the Chatham Islands in early to mid 1800s. When Tamati returned to Pukearuhe in his adult life, he became a Maori scout for the Government at the time. When he died, he was carried by Government soldiers from the stockade at Pukearuhe up the beach to Potehia, where he was buried. Tamati is my great-grandfather.

He advised that the site of the seawall "may or may not be waka landing site"[618].

The application was notified on a limited basis in January 2012. Nga Hapu o Poutama were the only party notified, as they were the only one of the three parties identified as an interested party that had not provided written approval.

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[617] Tongaporutu seawall extension, North Taranaki, coastal permit application and assessment of environmental effects, October 2011, Appendix E. Supporting Papers #2455-2480 at 2469-2480.

[618] David Rawiri McClutchie, Urenui, to Jeff Mitchell-Anyon, 21 September 2011. Tongaporutu seawall extension, North Taranaki, coastal permit application and assessment of environmental effects, October 2011, Appendix D. Supporting Papers #2455-2480 at 2467-2468.

Nga Hapu o Poutama objected to the granting of the consent in a submission in February 2012[619]. Among their concerns was a belief that the proposed seawall would intrude upon and cause damage to the tauranga waka. Although the seawall would not be constructed on the beach area immediately below the pa site, there was concern with respect to an end-wall effect, where risk of natural erosion by the tidal waters becomes transferred from the location of the wall to the beach below the pa site, being a point beyond the end of the wall. They considered that, coming on top of the cutting of the road through a burial site and the shifting of graves in the 1940s-50s, this was an additional desecration of a wahi tapu site (or a locality of multiple wahi tapu if the pa, urupa and tauranga waka were considered individually). They also believed that a shell midden lay buried beneath the road.

The evidence of Nga Hapu o Poutama was at odds with the technical assessment in the Taranaki Regional Council officer's report to the Hearing Committee, which argued that the seawall would not encroach on the beach area, and any impact on the beach area would be less than minor. It was also at odds with the earlier advice of Ngati Tama that it supported the proposed seawall works.

The Hearing Committee acknowledged that one of the principal issues in contention was "the effects on wahi tapu". It decided:

> The application achieves sustainable management of natural and physical resources and, subject to the consent conditions included in this decision, any adverse effects associated with the proposed activity, including any damage to waahi tapu, can be appropriately avoided, remedied or mitigated. Therefore the application is to be granted.

The Committee added:

> The area is of significance to Poutama and it is likely the tauranga waka was once larger than it is at present, and has already been significantly compromised by past roading work.
>
> Appropriate consent conditions will ensure that any further impact on the wahi tapu will be avoided as far as practicable, and consequently the proposal will not have significant effects on the relationship of Maori and their culture and

[619] Submission on resource consent application by Nga Hapu o Poutama, 3 February 2012. Supporting Papers #2481-2482.

> traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.[620]

The applicant had offered as one of the conditions of consent that:

> No plant or machinery will gain access to the estuary via the waka landing site immediately to the south of the work site. The same area will not be interfered with or modified in any manner during the work.[621]

The Hearing Committee chose to express this in more general terms in condition 9 of the consent it granted:

> No machinery shall gain access to the work site through the estuary. Any excavation of the estuary shall only occur from within the footprint of the structure.[622]

Nga Hapu o Poutama appealed the decision to the Environment Court, on the grounds that the Council was incorrect to conclude that damage to the wahi tapu could be avoided, remedied or mitigated, and that conditions could avoid adverse effects on the wahi tapu[623]. The appeal was heard in August 2013, and a decision dismissing the appeal and confirming the granting of consent was issued in October 2013[624]. The Court heard evidence from Poutama representatives that the wahi tapu included the pa site, the waka landing site and the Tongaporutu estuary. It decided on the facts placed before it that the pa site would not be affected, and that the roadworks would not encroach onto the tauranga waka, though it required as a condition of consent that the Transport Agency certify that the sea wall would not have any consequential effects beyond the end of the wall. Its concern therefore concentrated on the effect of the sea wall on the Tongaporutu estuary. This part of the shoreline was already affected by the existing inadequate retaining wall, and the Court decided that a new wall about 200 metres long and encroaching about seven metres further into the estuary would have a limited impact on the estuary as a whole. Such a minor environmental change could be justified when assessed in the context of ensuring a secure and reliable

[620] Hearing Committee Report and Decision on a resource consent application by the New Zealand Transport Agency to install erosion protection works for State Highway 3 in the Tongaporutu Estuary, 4 February 2013. Supporting Papers #2483-2495.
[621] Tongaporutu seawall extension, North Taranaki, coastal permit application and assessment of environmental effects, October 2011, page 31. Supporting Papers #2455-2480 at 2463.
[622] Hearing Committee Report and Decision on a resource consent application by the New Zealand Transport Agency to install erosion protection works for State Highway 3 in the Tongaporutu Estuary, 4 February 2013, page 9. Supporting Papers #2483-2495 at 2493.
[623] Notice of Appeal, 25 February 2013. Supporting Papers #2496-2498.
[624] *Nga Hapu o Poutama v Taranaki Regional Council*, decision of the Environment Court, 25 October 2013 (Decision [2013] NZEnvC 254). Supporting Papers # 2499-2527.
This decision is posted on www.justice.govt.nz/courts/environment-court

nationally-important highway. It commented further on the Poutama case that had been presented:

> Insofar as the issue of metaphysical damage is concerned, we accept that effects on intangibles, such as advanced by Poutama in this instance, constitute effects for the purposes of RMA. We note, for example, that the concept of amenity values requires consideration of factors such as pleasantness, aesthetic coherence and cultural and recreational attributes, and that s6(e) refers to the relationship of Maori and their culture and traditions with their ancestral lands etc. All of these matters require consideration of factors beyond just physical effects. We accept that Poutama are the people best placed to assess the metaphysical effects of the works on them, however we consider that at least to some extent their concerns are based on their assessment of the physical effects, and we disagree with their views as to the adverse nature of those physical effects. We also consider that NZTA has done all that it reasonably can to assuage Poutama's cultural concerns.[625]

The Court concluded:

> We have endeavoured to identify and address the effects on Poutama which will eventuate should the proposal proceed. We recognise that in weighing adverse effects on Poutama against the beneficial effects of approving the proposal, the relationship of Poutama with their ancestral lands, water, sites, waahi tapu and other taonga is to be considered as a matter of national importance.
>
> Ultimately we are satisfied that granting consent will best enable the regional community to provide for its economic wellbeing and for its health and safety, and that such adverse effects as there might be on Poutama are adequately avoided, remedied or mitigated by the imposition of the conditions which we have proposed.[626]

The Pou Tehia Historic Reserve is one of the sites of significance for Ngati Tama for which the Crown has provided a statutory acknowledgment in the Ngati Tama Claims Settlement Act 2003. Schedule 8 of the Act acknowledges the cultural, spiritual, historical and traditional association of Ngati Tama with Pou Tehia, as one of two Ngati Tama fighting pa on the banks of the Tongaporutu. This acknowledgement is non-exclusive, and does not preclude the Crown offering a further acknowledgement to another party over the same site. Ngati Tama's Deed of Settlement also contains a "Deed of Recognition for the Pou Tehia Historic Reserve". Apparently consideration was being given to return of the reserve to Ngati Tama, until a counter-claim from another iwi group was made. The statutory acknowledgement and deed of

[625] *Nga Hapu o Poutama v Taranaki Regional Council*, decision of the Environment Court, 25 October 2013 (Decision [2013] NZEnvC 254), pages 25-26. Supporting Papers #2499-2527 at 2523-2524.
[626] *Nga Hapu o Poutama v Taranaki Regional Council*, decision of the Environment Court, 25 October 2013 (Decision [2013] NZEnvC 254), page 29. Supporting Papers #2499-2527 at 2527.

recognition was then the alternative that was offered to Ngati Tama in place of vesting of the fee simple.

8.6.4 Te Rongomai o Te Karaka

This is a rock outcrop with sacred associations in the Marokopa valley, which was damaged by blasting in March 2010. The blasting was carried out by Clearwater Hydro Limited, a subsidiary of The Lines Company (a Tauranga-based electricity network operator), as part of road making in association with an investigation into the possibilities of hydro-electric power generation on the Marokopa River. The work had apparently been consented. Maori from Marokopa marae appealed against the granting of consent, but this was rejected by the Environment Court, which found that the application had been processed by Waikato Regional Council on a non-notified basis. This meant that the marae's submission was not valid and could not form the basis for an appeal, so the appeal was struck out[627]. Local Maori then set up a vigil at Te Rongomai, but were removed by Police immediately before the blasting[628].

8.7 Concluding Remarks

The Crown has addressed the protection of sites of cultural and historic heritage, although not in a manner that provides comprehensive protection. While there is passive protection of all archaeological sites that predate 1900, this depends upon landowners and lessees having fore-knowledge that a site contains archaeological heritage. A registration process organised by the Historic Places Trust, which allows the Trust to promote protection under the Resource Management Act, recognises only a very small proportion of the more significant Maori heritage sites. This registration process has to be considered a work-in-progress. However, it is a slow and measured (some might say cumbersome) process that appears to be designed to maintain a degree of specialness where emphasis is given to the elite and most highly valued sites only. While the evaluation of the sites is undertaken by a Maori Heritage Council, the registration process appears to incorporate European academic and scientific notions of heritage value as well as Maori notions of taonga value.

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[627] *Marokopa Marae v Waikato Regional Council*, decision of the Environment Court, 5 March 2010 (Decision [2010] NZEnvC 065). Posted on www.justice.govt.nz/courts/environment-court

[628] www.bowalleyroad.blogspot.nz/2010/03/brief-item-of-news.html

Current regulatory regimes for Maori heritage protection are predicated on Maori handing over cultural knowledge to a non-Maori agency (Historic Places Trust, regional council or district council), in many cases thereby allowing that knowledge to become public information. The Maori guardians of that knowledge then have little say in how it is used thereafter, how its worth is assessed when measured up against other considerations, and whether or not a wahi tapu receives protection or not. All these are matters that have passed out of the hands of the Maori guardians, on the basis of a possibility that revealing that knowledge to non-Maori will make a difference. It is unsurprising that Maori consider that the current regimes present them with significant, almost insurmountable, problems.

There can be no substitute for an active and visible iwi and hapu presence if Maori heritage sites are to be protected. Only when participation by Maori becomes the norm will heritage sites be recognised by the wider community, and a need for protection acknowledged. Recognition in Resource Management Act planning documents is a start, albeit a form of recognition that has little impact on the community at large. A concentration on elite sites also sends only a partial message about what heritage protection could be about. The historical footprints of Maori cover all the land, rather than just a few particularised sites, and there is scope to make this notion better understood and more relevant.

The Crown has chosen to concentrate on developing statutory processes, with registration under the Historic Places Act and formalised avenues for protection under the Resource Management Act. It has been less successful in promoting a wider atmosphere of public recognition and support for heritage protection, which allows Maori heritage to be celebrated. That can best be achieved in partnership with Maori. That in turn offers scope for the Crown to offer improved support for iwi and hapu to develop their resources and expertise to better reach out to the wider community.

Maori may always consider that the Crown's approach to heritage protection falls short of their expectations. Maori see heritage as a living connection with the tupuna and with the whenua that is imbued with its own sense of spirituality. Recognition and protection regimes established by the Crown that work within statutory confines cannot match the sense of connection that Maori enjoy with their heritage. To alter

the modus operandi of the Crown agencies, and place their work within a Maori framework, would require significant and fundamental shifts of attitude, all requiring Maori input, effort and resources. All these are reasons for leadership on Maori heritage protection to arise out of hapu and iwi initiatives, rather than be instituted in a top-down fashion by the Crown. Yet for Maori, resources of time, people and finance are in short supply or face the calls of other commitments. That is why the production of the Ngati Hikairo Heritage Management Plan represents such a powerful ray of hope.

9. Maori consultation and participation under the Resource Management Act

9.1 Introduction

A recurring theme in this report has been the lack of consultation with Maori about environmental management regimes, and the limited involvement of Maori in participation processes that were available. This changed with the passing of the Resource Management Act 1991, which specifies a general obligation on all authorities administering the Act to take into account the principles of the Treaty of Waitangi. The Act also specifies particular matters of Maori interest, and provides some opportunities for Maori to become involved. However, the Act does not impose a requirement to consult.

What constitutes consultation, in any meaningful sense of the term, has been examined in case law[629]. Both parties have to be equally informed and equally resourced to participate, and have to regard each other with mutual respect. Consultation has to commence at an early enough stage that the initiator of a proposal is willing to alter its proposal or start afresh if that course of action emerges from the consultation. In most instances, consultation should not be a one-time event, but a continuing process through to the reaching of a decision. The Waitangi Tribunal has also commented on consultation standards in the context of the Treaty of Waitangi[630].

Not discussed in this chapter (with one exception), or in this report, is political representation by Maori on regional or district councils; this topic is considered to be outside the report's brief.

9.2 Consultation with Maori

Regional and District Councils are unable to carry out their responsibilities under the Resource Management Act without obtaining input from tangata whenua[631]. At a

[629] e.g. *Wellington International Airport Ltd v Air New Zealand*, [1993] 1 NZLR (New Zealand Law Reports] 671.
[630] Waitangi Tribunal, *Te Arawa settlement process report*, pages 70-71, Wai 1353, 2007, referred to in Waitangi Tribunal, *Te Kahui Maunga: the National Park District Inquiry report*, paragraph 14.6.1, Wai 1130, 2013.
[631] Clause 3(1)(d) of the First Schedule to the Resource Management Act 1991 requires local authorities, in the preparation of regional policy statements, and regional and district plans, to consult with "the tangata whenua of the area who may be so affected, through iwi authorities". Iwi authorities

basic level they need to have contact with Maori so that they can incorporate in their planning documents a series of policies and rules that cover those matters in Part II of the Act that are particularly Maori-focused, so that they can prepare a statement of Maori values about the land, waterways and coastal area that their documents cover, and so that they know who to speak to about planning applications they receive. Any consultation that has occurred has usually been driven by the local authorities' needs.

To assist them in their task of engaging with tangata whenua, local authorities have recruited individuals from the local Maori communities to act as liaison persons. While such individuals cannot have a similar depth of whakapapa links and personal contacts into all the hapu across a region or district, they are nevertheless better placed than non-Maori local authority staff members to establish contact with Maori communities. They also have a role to play in educating local authority staff to the new responsibilities towards tangata whenua that the 1991 Act introduced. This was and is probably an easy exercise in some local authorities, and a more difficult one in others.

Maori communities were under-prepared for the workload they would face once the Resource Management Act was passed. They have had to understand the language and the processes set out in the legislation, develop new skills, and respond within deadlines that are not friendly towards the community discussion and marae meeting approach of Maori. In 1998, when the Waikato Regional Plan was publicly notified and submissions were invited, only 17 formal submissions came from Maori organisations from throughout the Waikato region; of these only three came from Te Rohe Potae organisations (Raukawa Trust Board, Tainui-a-Whiro Ngunguru Te Ao Ngunguru, and Rereahu Regional Management Committee)[632].

The Maniapoto Maori Trust Board was established by statute in 1988, with the intention of taking advantage of the Crown's devolution of some social and economic

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to be consulted are those authorities recorded with the council in accordance with Section 35A of the Act, which was inserted in the Act by a 2005 amendment. Standards of consultation are set out in Clause 3B to the First Schedule, which was inserted in the Act by a 2005 amendment.

[632] L Whangapirita, S Awatere and L Nikora, *Maori perspectives of the environment: a review of policy submissions made by iwi to Environment Waikato*, Appendix 2, October 2003, Waikato Regional Council Internal Series report 2004/01, Technical Report No. 3. Posted on www.researchcommons.waikato.ac.nz

programmes to iwi using the Runanga Iwi Act 1990. However, that statute was repealed in 1991, just as the Resource Management Act with its expectations of a greater Maori input was passed. As an example of its lack of preparedness for the Resource Management Act at that time, the Maniapoto Maori Trust Board was one of 26 trust boards, runanga and incorporated societies out of 54 around the country that did not respond to the Parliamentary Commissioner for the Environment's request for comment on draft consultation guidelines in 1992[633].

Since then the Maniapoto Maori Trust Board has developed its resources so as to be able to be treated as the first point of contact for regional and district authorities with respect to consultation with its constituent hapu and marae. It has established seven locality-based Regional Management Committees, to which it has delegated a right to speak and make submissions. The Committees are made up of representatives of local marae.

Local authorities can also be said to have been under-prepared for the participation of Maori in resource management. As late as 1998, Waikato Regional Council, when providing a "Maori perspective on the environment" chapter in its State of the Environment report, explained that this chapter was "an invited contribution"[634]. Apparently the Council had not developed its own in-house expertise on the subject at that time. This chapter in the State of the Environment report exhibits a disturbing feature of the Regional Council's approach, that of confining the Maori interest in the environment to its own chapter separate from a discussion on aspects of the natural environment dealt with in a European or scientific manner in other chapters. This compartmentalisation has been repeated in other resource management documents produced by Waikato Regional Council, such as the Regional Policy Statement, the Regional Plan, and the Regional Coastal Plan. In the first-generation planning documents, there was little effort made to integrate the Maori perspective (or even place it side-by-side) with other perspectives on aspects of the environment.

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[633] Parliamentary Commissioner for the Environment, *Proposed guidelines for local authority consultation with tangata whenua*, June 1992, page 12. Posted on www.pce.govt.nz

[634] Waikato Regional Council, *Waikato state of the environment report*, 1998, Chapter 2.3, pages 21-29. Supporting Papers # 2389-2399 at 2390-2398.

In 2003 the Waikato Regional Council commissioned research from the Maori and Psychology Research Unit at the University of Waikato on Maori perspectives of the Waikato regional environment. The Unit produced the results of its research in a series of seven reports:

- A review of technical sources
- A review of iwi management plans
- A review of policy submissions made by iwi organisations
- A review of resource use consent submissions by iwi
- A review of spatial databases
- Overview report
- Action plan[635]

The study was more about the Regional Council response to Maori perspectives than it was about the Maori perspectives themselves. It found that the Council did not have information systems that could identify and build up a store of particularised knowledge about Maori concerns. While over 330 instances where Maori organisations had made submissions on resource consents were sampled for the study, and each had been scanned into the Council's electronic filing system, the filing system itself failed to record the content of each submission. Meanwhile the original paper copy of each submission was placed in a file solely concerned with the particular resource consent application. This was consistent with an attitude that submissions to a resource consent application were to be treated as specific to that

[635] L Whangapirita, S Awatere and L Nikora, *Maori perspectives of the environment: a review of Environment Waikato information sources*, May 2003, Waikato Regional Council Internal Series report 2004/01, Technical Report No. 1.
L Whangapirita, S Awatere and L Nikora, *Maori perspectives of the environment: a review of Environment Waikato iwi environmental management plans*, September 2003, Waikato Regional Council Internal Series report 2004/01, Technical Report No. 2.
L Whangapirita, S Awatere and L Nikora, *Maori perspectives of the environment: a review of policy submissions made by iwi to Environment Waikato*, October 2003, Waikato Regional Council Internal Series report 2004/01, Technical Report No. 3.
L Whangapirita, S Awatere and L Nikora, *Maori perspectives of the environment: a review of resource use consent submissions made by iwi to Environment Waikato*, November 2003, Waikato Regional Council Internal Series report 2004/01, Technical Report No. 4.
L Whangapirita, S Awatere and L Nikora, *Maori perspectives of the environment: a review of spatial databases*, November 2003, Waikato Regional Council Internal Series report 2004/01, Technical Report No. 5.
L Whangapirita, S Awatere and L Nikora, *Maori perspectives of the environment: summary document*, December 2003, Waikato Regional Council Internal Series report 2004/01, Technical Report No. 6.
L Whangapirita, S Awatere and L Nikora, *Maori perspectives of the environment: proposed action strategies*, December 2003, Waikato Regional Council Internal Series report 2004/01, Technical Report No. 7.
All posted on www.researchcommons.waikato.ac.nz

application, and had no wider relevance to resource management generally in the locality of the application. Therefore, while much knowledge was held by the Regional Council about Maori viewpoints, it was not accessible or acknowledged as being relevant other than with respect to the particular application. The opportunity for Council staff (in particular non-Maori staff) to accumulate and absorb into their day-to-day thinking a rich vein of in-depth understanding of Maori tikanga for the environment was not being taken advantage of. The study commented:

> In our examination of information provided by iwi, we noted a number of issues worth documenting.
>
> In many cases, Maori information held by Environment Waikato is old, and in most cases were relevant 5-10 years ago. We could not determine [from the Council's records] the extent to which iwi environmental issues and concerns had or had not been addressed.
>
> There is no central storage or management facility for iwi information. Storage of iwi information is currently fragmented and difficult to access outside of PowerDocs. Iwi information is not stored according to EW internal guidelines, and can be found in diverse locations throughout EW. This leads to an inadequate use of information, and can cause problems when determining the extent to which Tangata Whenua participate in EW processes. It is pertinent that EW recognise the importance of gathering, developing or modifying storage systems that are able to "tag" iwi specific information.[636]

The study found that the Council's absence of an in-depth understanding of Maori perspectives showed up in resource policy documents. The study adopted what it termed a "Maori valued framework" for the analysing of Maori viewpoints, which involved the extent to which the submissions were articulating the following concepts or values: taonga, mauri, tikanga, waahi tapu, kaitiakitanga and rangatiratanga[637].

Besides a failure to make the most of the internal information available to it, the study found:

- Many submissions by tangata whenua on resource consents were critical of an absence of or insufficient consultation by applicants with hapu before an

[636] L Whangapirita, S Awatere and L Nikora, *Maori perspectives of the environment: a review of Environment Waikato iwi environmental management plans*, September 2003, Waikato Regional Council Internal Series report 2004/01, Technical Report No. 2, pages 9-10. Posted on www.researchcommons.waikato.ac.nz

[637] L Whangapirita, S Awatere and L Nikora, *Maori perspectives of the environment: a review of resource use consent submissions made by iwi to Environment Waikato*, Appendix 1, pages 10-12, November 2003, Waikato Regional Council Internal Series report 2004/01, Technical Report No. 4. Posted on www.researchcommons.waikato.ac.nz

application was lodged or heard; this pointed to the Waikato Regional Council policy not being stringent enough in its consultation requirements

- While Waikato Regional Council had formal memoranda of understanding with the large iwi authorities in the region, it had not negotiated similar levels of understanding with other iwi groups, nor had it developed relationships at the hapu level (where the Treaty relationship resides)
- Limited resources and time constraints had consistently prevented tangata whenua from participating to the extent that they would like to
- Waikato Regional Council appeared to have adopted a "need to know" relationship with tangata whenua, only consulting with them where it suited the Council's needs, and exhibiting little sharing of information
- Waikato Regional Council produced little or no information specifically aimed at tangata whenua as a target audience[638]

The 2003 study by Waikato University provides a marker against which claimant evidence presented directly to the Waitangi Tribunal about the relationship with the Regional Council can be compared, to determine whether there has been an improvement in the relationship in the last ten years.

The clear conclusions to be drawn from the various resource consent applications for water permits discussed in this overview, the case studies and the topic studies, are that the Waikato Regional Council looks upon hapu within Te Rohe Potae as submitters rather than as kaitiaki/stewardship partners. The decision maker / submitter relationship can never be one of partnership or of equality. Submitters have a defined place within a process where their voice is listened to at certain points in the process, and not at other points. Most certainly submitters cannot be given the opportunity to share in the decision making, as that would be considered to give rise to concerns about pre-determination and conflict of interest. Once a resource consent application has been decided upon, a submitter ceases to have any relationship with the Regional Council. The Council does make an effort to overcome some of these problems by promoting the concept that hapu should have a relationship with the applicant, rather than with the Council. It tells applicants that as part of the

[638] L Whangapirita, S Awatere and L Nikora, *Maori perspectives of the environment: summary document*, pages 2-13, December 2003, Waikato Regional Council Internal Series report 2004/01, Technical Report No. 6. Posted on www.researchcommons.waikato.ac.nz

application it needs to know the nature and extent of the consultation that the applicant has had with tangata whenua, and sometimes conditions of consent include ongoing liaison with a community forum on which tangata whenua are to be represented. It is willing to include conditions of consent that provide for the continuing involvement of tangata whenua with the applicants through ongoing liaison groups. It logs complaints from Maori (and non-Maori) about non-compliance with consent conditions, though again the role of complainant is different to a role of being a participant in the addressing of complaints. However none of the roles identified for hapu by the Regional Council, as a submitter, as a party to be consulted by an applicant or consent holder, or as a complainant, could be considered to equate to the status of being an exerciser of tino rangatiratanga. Monitoring of consent compliance is viewed solely as a Regional Council responsibility, without any place provided in the monitoring process for hapu.

It has not been possible due to time constraints to research and assess the relationship between the Manawatu - Wanganui (Horizons) Regional Council and hapu of the southern portion of Te Rohe Potae district. The distance between Te Rohe Potae and the Regional Council's offices in Palmerston North, together with the limited community-of-interest links between the two locations, must make the maintenance of any relationships a continuous uphill struggle for both parties.

Looking to the relationship between hapu and territorial local authorities, the Waitomo District Council's District Plan discusses consultation with Maori thus:

> Council therefore proposes to set up ongoing liaison with the Maori community. It is understood that for Maori to participate fully in the resource management process, they need to be properly informed of activities that may have cultural implications. Where an issue may have some effect on cultural issues, an approach will be made firstly to the Maniapoto Maori Trust Board as the umbrella organisation relating to local Maori. Council will seek further advice from local Regional Management Committees where a proposal lies within the scope of the Marae under their structures. In turn Council will seek guidance as to spokesmen for particular hapu as they become identified. Current Regional Management Committees and their marae responsibility are listed in Appendix 1.
>
> Council recognises that the protection of the environment, particularly forests, water and fisheries, is of significant concern to Maori. The Act requires provision for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga as a matter of

> national importance. The Act also requires particular regard to be had for kaitiakitanga, the ethic of stewardship, and to the recognition and protection of heritage values of sites, buildings, places or areas. The principles of the Treaty of Waitangi must be taken into account in the administration of this Plan. Iwi Management Plans, and taiapure or fisheries plans, may be prepared by Maori. Within these structures responsible dialogue should be established to reflect the needs of both the Maori and European communities, and of Council in its administrative role. In particular Council will consult the relevant iwi authority, or Regional Management Committee, to provide input to significant resource management decisions when issues related to s6, s7 and s8 of the Act are to be addressed.[639]

The Otorohanga District Council's District Plan is more particularised:

> The Otorohanga District Council recognises the role of tangata whenua as Kaitiaki within their respective rohe. Council is committed to developing relationships and working with Iwi Authorities mandated to represent tangata whenua of the district. Council recognises the principles of the Treaty of Waitangi and intends for these principles to guide Council in further developing relationships with tangata whenua of the District. This guidance is provided through the Iwi/Maori Relationship Framework which has been adopted by Council.

This Framework states that "taking account of the principles of the Treaty of Waitangi" requires three different approaches:

- Partnership. A two-way relationship where consultation is undertaken early in any process, and involvement in decision-making processes is clearly understood by all parties, whereby opportunities for mutual benefits can be realised for Council and Iwi/Maori. A relationship which accepts that at times parties may have differing stances on issues, but understanding and respect is displayed.
- Active Protection. A relationship that respects and protects Iwi/Maori interests and values such as the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga and Kaitiakitanga. This is attained through early consultation where actitivies may affect Iwi/Maori interests and values, and respect being expressed by both Council and Iwi/Maori.
- Tribal Rangatiratanga. A relationship where Council works with the tribal structures of Iwi/Maori, respecting their authority, who they represent, and values Iwi/Maori input and knowledge. A relationship where Iwi/Maori works with Council respecting their authority, who they represent, and values Council's input and knowledge.

The Plan recognises that there will be two types of consultation with iwi, by Council and by consent applicants. With respect to consultation by the Council:

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[639] Waitomo District Council, *District Plan*, operative 1 March 2009, page 11. Posted on www.waitomo.govt.nz

> Council values Iwi/Maori participation in resource management, and will consult on all matters [in] which Iwi/Maori have an interest. Where Iwi Authorities have identified they have an interest or a concern with a matter, Council will provide opportunities for meaningful consultation within statutory timeframes.

With respect to consent applicants consulting with tangata whenua, the Otorohanga District Plan states:

> Applicants can access information from Council to assist in identifying relevant Iwi Authorities and obtain the contact information for those Authorities. Planning staff can advise applicants of the appropriate Iwi Authority with which to consult, if they are provided with details of the application….
>
> To assist with communicating with Iwi Authorities, Council recommends consent applicants undertake the following steps:
> 1. Identify whether the proposed activity is located within:
>   a) Close proximity of any cultural site identified on an Iwi Heritage Management Plan map held by Council; and/or
>   b) The required setback distances from any archaeological, historic or cultural sites identified on the Planning Maps.
> 2. If the above applies, Council recommends that the applicant:
>   a) Consults directly with the Iwi Authority to understand possible implications; and if requested either (i) engage the services of an Iwi Authority to provide a Cultural Impact Assessment; or (ii) engage a suitably qualified or experienced person to undertake an archaeological assessment of the site or sites involved, and potential impacts of the proposal; and
>   b) Submits the report to Council as part of any consent application.
> 3. Upon receiving a consent application, Council will provide a copy to the relevant Iwi Authorities.[640]

9.3 Participation by Maori

Waikato Regional Council, according to planning document statements, has been keen to encourage participation by Maori in Resource Management Act processes. Its operative Regional Policy Statement has a policy to encourage "active participation of tangata whenua in the development of resource management policies and plans, and the resource consent process". It proposes three methods by which this policy could be implemented:

> 1) Encourage and support iwi authorities to develop planning documents including environmental policies.

[640] Otorohanga District Council, *Otorohanga District Plan: decisions version*, 6 March 2012, pages 5-6. Posted on www.otodc.govt.nz

2) Negotiate with iwi authorities and provide assistance such as advice, information, support services or funding when resource management information and advice is sought by Regional Council.
3) Encourage resource use applicants and other relevant parties to initiate consultation with tangata whenua early in the project and policy phase, and maintain close liaison throughout this process.[641]

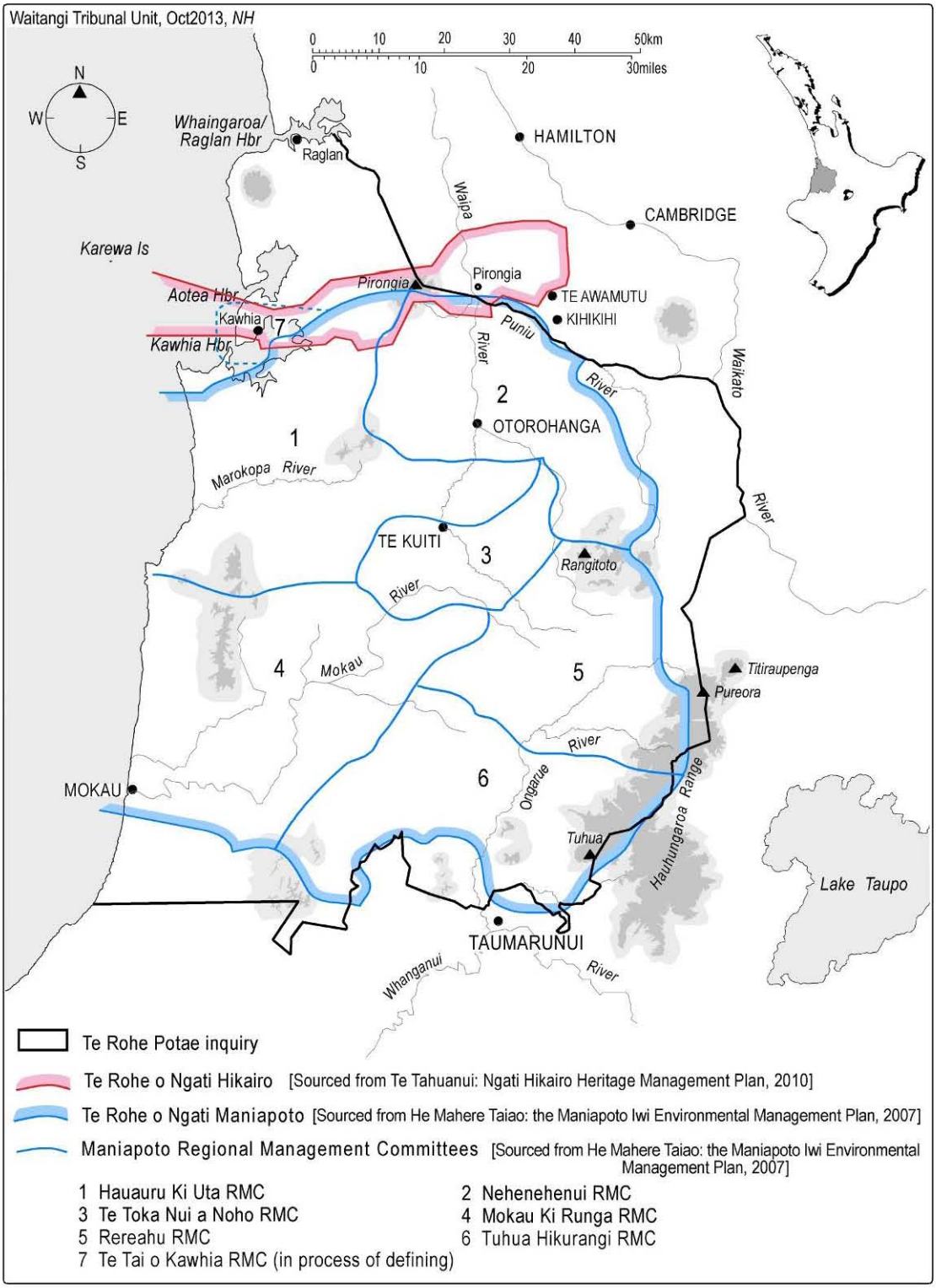
Of these three methods, the latter two in effect impose participation on tangata whenua, as they are required to react to approaches made to them by either Council or consent applicants. The reactive work of responding to approaches from Councils and consent applicants is perhaps the most time-consuming way in which iwi participate in Resource Management Act processes.

Voluntary participation by tangata whenua comes with the first method, and by choosing whether or not to object to consent applications once they have been lodged and accepted by a local authority.

With respect to the first method, environmental policy documents have been prepared by Maniapoto Iwi and by Ngati Hikairo. The Ngati Hikairo Heritage Management Plan[642] has been discussed in the historic heritage chapter. A necessary function of these documents is to define, for the information of non-Maori, the rohe boundaries of iwi, in order to indicate the parts of the country to which they are referring. The boundaries identified in the two policy documents are displayed in the accompanying map. It needs to be appreciated that they are boundaries for the purposes of resource management planning only, and should not be treated as necessarily having any wider application. It is also relevant that it is not necessary that boundaries be of districts where iwi claim an exclusive interest; overlapping boundaries and sharing of interests, while adding some extra complexity for non-Maori, are perfectly acceptable in the Maori world.

[641] Waikato Regional Council, *Regional Policy Statement*, operative 2000, page 19. Posted on www.waikatoregion.govt.nz
[642] P Barton and F Thorne, *Te Tahuanui: Ngati Hikairo heritage management plan*, Te Runanganui-o-Ngati Hikairo, 2010. Wai 898 document #N39(a).

Map 3 Iwi rohe for Resource Management Act purposes



The Maniapoto tribal viewpoint on environmental management has been set out in two documents, a state of the environment report published in 2002[643], and an iwi management plan published in 2007[644]. The introduction to the state of the environment report summed up the changes to the environment that today's generation have to contend with:

> Looking at the Waipa River today, it is hard to believe that our tupuna spoke of a time not so long ago when the waters of the Waipa were clear, deep and blue. Within the clear, clean waters of the Waipa were fat eels, large crayfish, and a variety of fish, a plentiful source of food. Children in the vicinity of the Waipa made regular trips to the river for swimming , eeling and fishing.
>
> For most of us today, this is a dim memory or a legend of times past.
>
> The waters of the Waipa now run muddy brown, polluted with farm run-off, industry discharges, sewerage spills and stormwater drainage. Many food species have disappeared from the river, and the remaining tuna / eels within the river may not be safe for eating.[645]

The focus on Maniapoto's most significant waterway as an indicator of the state of the wider environment demonstrates the importance of water, its mauri and its quality, in the Maori world.

> The streams and rivers are the lifeblood of our environment, and they tell us about the state of our environment, the forests, lakes, oceans and seashore. As with the human body, if the blood of the environment is poisoned, the rest of the body will also suffer….[646]
>
> There are many activities within the Maniapoto territory that give cause for concern about the welfare of the environment. The waterways, forests, coastline, air and lands of the region have suffered greatly in favour of agriculture, tourism, forestry, industry and urban settlement. While not being opposed to development, the historic cost to the environment is unacceptable. It is time to restore some balance.[647]

The Maniapoto state of the environment report had some "recommendations for Government and non-Maori organisations":

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[643] Kowhai Consulting Ltd and Ministry for the Environment, *Te Purongo: Ngati Maniapoto state of the environment report: a tribal perspective*, 2002. Supporting Papers #2400-2454.
[644] Kowhai Consulting Ltd, *He Mahere Taiao: the Maniapoto Iwi environmental management plan*, Maniapoto Maori Trust Board, 2007. Posted on www.maniapoto.iwi.nz
[645] Kowhai Consulting Ltd and Ministry for the Environment, *Te Purongo: Ngati Maniapoto state of the environment report: a tribal perspective*, 2002, page 7. Supporting Papers #2400-2454 at 2406.
[646] Kowhai Consulting Ltd and Ministry for the Environment, *Te Purongo: Ngati Maniapoto state of the environment report: a tribal perspective*, 2002, page 7. Supporting Papers #2400-2454 at 2406.
[647] Kowhai Consulting Ltd and Ministry for the Environment, *Te Purongo: Ngati Maniapoto state of the environment report: a tribal perspective*, 2002, page 11. Supporting Papers #2400-2454 at 2410.

> Ngati Maniapoto has an interest and a stake in the environment along with a number of other private and public sector stakeholders. However, Ngati Maniapoto's tribal interest and stakeholding has its roots in a different history.
>
> While our respective interests may converge with those of other stakeholders on many occasions, there will also be times when our cultural imperatives lead us to respond in a manner that is different to other stakeholders.
>
> We respectfully recommend that Government and other non-Maori organisations:
>
> - Undertake training on the unique position of tangata whenua as Treaty partners, and the implications of this in a modern context;
> - Learn about the environmental concerns of Ngati Maniapoto in respect of the Maniapoto tribal territory;
> - Encourage all who live in the region to support environmentally responsible practices;
> - Aim to become leaders in the field of environmental practice;
> - Encourage environmental practices within businesses by implementing green business awards;
> - Incorporate environmental leadership in corporate vision statements and strategic intent;
> - Actively support and acknowledge environmental efforts within the region.[648]

The Maniapoto iwi environmental management plan of 2007 to a certain extent repeats the matters covered in the 2002 state of the environment report. It explains in one of its sections what Ngati Maniapoto consider to be the problems with the management regimes under which local government operate. It addresses these under three categories - the Treaty responsibilities of local government, representation, and procedures and process. Some of the problems it identifies might more properly be regarded as a Ngati Maniapoto commentary on the matters addressed by the local government report to the Tribunal[649]. Because they were not included in that report, which is primarily focussed on historical development of local government in Te Rohe Potae rather than the present-day situation, they are included in this environmental overview report as a gap-filling measure.

With respect to Treaty responsibilities, the Maniapoto iwi environmental management plan states:

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[648] Kowhai Consulting Ltd and Ministry for the Environment, *Te Purongo: Ngati Maniapoto state of the environment report: a tribal perspective*, 2002, page 39. Supporting Papers #2400-2454 at 2438.
[649] Jane Luiten, *Local government in Te Rohe Potae*, January 2011, Wai 898 document #A24.

> The main barrier to the effective participation of Maniapoto in local government is the lack of recognition of the rights and status of iwi and hapu as Treaty partners, and a lack of knowledge of, and provision for, the Treaty relationship within local government.
>
> The Crown has devolved responsibility for certain matters to local authorities by statute. The provisions of those statutes, and the inherited responsibility not to place the Crown at risk, govern the extent to which local authorities are required to consider the principles of the Treaty.
>
> Local government implicitly has a responsibility to have due regard for the articles and principles of the Treaty of Waitangi in the conduct of its business, in particular Article II rights of self-government by tangata whenua and citizenship needs of Maori under Article III.

With respect to representation, the Maniapoto plan states:

> The current systems of local government representation do not recognise and provide for the representation of the iwi/hapu Treaty partner as of right, nor does it provide for representation that will ensure that Article II and III Treaty responsibilities will be upheld by local authorities….
>
> We consider that tangata whenua should have representation as of right on local and regional authorities. Article II of the Treaty of Waitangi intends that tangata whenua have full authority over their territories. In practical terms today, given our historical developments, this would at the very least require a co-management approach by local and iwi authorities. A practical way of giving effect to co-management is to have tangata whenua representation within local government.
>
> Such representation should reflect a comprehensive coverage of hapu interests. For example, in the Maniapoto territory this would involve the six regional management committees of Maniapoto being represented on council. In addition to the elected members of the seven wards of the Waitomo District council, there would be a further six seats on council for the elected members of the six regions of Maniapoto. This would be an appropriate reflection of the co-management approach and a fair representation of the hapu of Maniapoto.

The Maniapoto plan also addresses the procedures and processes that local government has adopted:

> Flowing from these inadequate systems are a myriad of problems including:
>
> - Processes and time frames that do not take account of iwi/hapu consultation processes.
> - Actions by local authorities that impinge on iwi/hapu rights, e.g. lands subject to Treaty claims, developments that desecrate wahi tapu, loss of access to Maori sites, and under-resourcing of Maori facilities.

- Disproportionately high contributions by iwi/hapu to the common good. Maniapoto has contributed thousands of acres of the tribal estate to the public good for roads, reserves, schools, etc. We are furthermore levied for use of the water from our own streams, the upgrade of those roads etc. These contributions are far in excess of any non-Maori counterpart.
- Disproportionately low benefits from local government – despite the excessive contributions made by Maniapoto we continue to receive less than the non-Maori sector of our community. Local government fund the upkeep and upgrades on non-Maori community facilities such as halls, parks, reserves and cemeteries, but fails to contribute to the upkeep of Maori community facilities such as marae, reserves, wahi tapu, urupa.
- A lack of knowledge of Maniapoto issues at all levels of local government.
- A lack of Maori representation at all levels of local government.
- A lack of knowledge of tangata whenua resulting in inadequate consultation or consultation with the wrong parties.
- Urban/rural policies that do not take account of Maori ways of living. Maori living in urban areas are paying urban rates but their facilities – marae facilities – are in rural areas and are not serviced.
- Maniapoto representatives are discussing the same issues over and over with successive councils, and their views are still not being taken account of.
- Offensive pollution practices have been and continue to be approved by local authorities with little or no regard to tangata whenua concerns….

In terms of guidelines for consultation – local government must consult the right people on the right issues. They have a responsibility to ensure that they are dealing with mandated representatives of hapu.[650]

The Ngati Maniapoto iwi environmental management plan continues with an assessment of the environmental issues that have had to be addressed by six of the Regional Management Committees. Each Committee's issues are summarised below; they were originally developed as part of the Maniapoto state of the environment report in 2002, which in turn relied on interviews in 1998, and are therefore fifteen years old, so a list of issues developed today might contain some differences[651]:

[650] Kowhai Consulting Ltd, *He Mahere Taiao: the Maniapoto Iwi environmental management plan*, Maniapoto Maori Trust Board, 2007, pages 12-14. Posted on www.maniapoto.iwi.nz

[651] Kowhai Consulting Ltd, *He Mahere Taiao: the Maniapoto Iwi environmental management plan*, Maniapoto Maori Trust Board, 2007, pages 50-61. Posted on www.maniapoto.iwi.nz
Kowhai Consulting Ltd and Ministry for the Environment, *Te Purongo: Ngati Maniapoto state of the environment report: a tribal perspective*, 2002, pages 16-33. Supporting Papers #2400-2454 at 2415-2432.

Table 15 Maniapoto Regional Management Committee environmental issues

RMC	Issues
Rereahu	• Health of waterways, pollution and depleted aquatic life • Clearance of forestry land, absence of restoration • Damage to and desecration of wahi tapu • Pest animals (goats, deer, possum, rats), farm livestock in non-grassed areas, wilding pines
Tuhua Hikurangi	• Truck wash wastewater leaching into groundwater • Dead sheep buried below groundwater • Metal extraction from riverbeds • Loss of forest along riverbanks increasing silt and farm runoff, depleting kaio (freshwater mussels) stocks in Ongarue River • Water levels in rivers affected by power generation • Septic tank pollution into Ohura River • Ti kouka (cabbage tree) disease • Animal pests (goats, pigs, possums, rats, stoats, deer); 1080 knockback drops not followed up with controlled maintenance • Cutting of manuka stands reducing weta populations • Suspected poaching of kereru, decline or absence of kiwi, kaka, ruru, kawau • Erection of telecommunication towers on maunga • Drainage of wetlands • Avoiding pollution which could affect tuna; planting harakeke to filter pollutants from the land
Hauauru ki Uta	• Damage to caves through tourism, wild caving and so-called ‘conservation’ • Use of tomo as rubbish dumps; land excavation and quarrying • Decline in cave life due to water pollution and silting • Need to remove koiwi from caves due to tourism and development • Soil erosion, flooding, siltation and landslips

RMC	Issues
Mokau ki Runga	• Water pollution from effluent and sewage discharges • Dams on Mokau River creating artificial barriers to eels and elvers • Inadequate supervision of whitebaiting; unsatisfactory relationship between whitebait run and whitebaiting season • Quarrying impact on water and air quality • Rubbish dump sites at Aria Piopio and Mokau located too close to waterways • Pollution from dropping of 1080 poison • Roading addressing needs of non-Maori and disadvantaging Maori landowners • Loss of wetlands; loss of habitat for eels and kokopu • Lack of protection for wahi tapu
Te Nehenehenui	• Need for riparian strips and riparian planting to stop erosion • More active monitoring of river condition • Return of river health; return of eels, freshwater crayfish and other aquatic life • Siltation raising bed of river; need retirement of farmland • Address loss of land to river erosion in rates valuations • Better monitoring of farms that have not fenced off their riverbanks
Te Tokanganui a Noho	• Improvements to water quality; Mangaokewa unfit for swimming or eel harvesting • Improved water quality monitoring • Pollution from Te Kuiti sewage pond • Forestry clearance on riverbanks; protective strip required • Quarrying close to waterways • Rubbish dump in old quarry • Desecration of wahi tapu • Farming to the water's edge pollutes the coastline; protective strip required

This summarised assessment of issues shows how the Regional Management Committees are able to particularise their concerns. However, this is to a greater degree of detail than the planning documents of the regional and district councils and the Department of Conservation aspire to, resulting in a mismatch which may affect the manner in which these organisations exercising Crown authority respond to Maori concerns. The issues raised by Maori are not packaged and pitched at the same level as the thinking and responses of the planning documents of the various authorities, so

that an additional tier of response and interaction is required. That does not necessarily mean that Maori should adjust to fit the approach of the organisations; perhaps the organisations need to alter their approach.

In 2003 the Resource Management Act was amended to elevate the importance of iwi management plans. Where before regional and district councils had to "have regard for" the plans, since 2003 they have had to "take into account" the plans. That has put more pressure on iwi organisations to produce iwi management plans. However, that does not change the obligation on iwi to produce plans that are relevant to resource management matters under consideration by the councils.

The environmental management plans of the iwi authorities provide a ready-reference for both iwi members and developers, allowing proposals to be measured against desired outcomes, and pointing the way towards how proposals could be modified or mitigated in a way that would allow them to then meet or satisfy the needs of Maori. Trying to head off unsuitable or poorly thought-through proposals before they become firmed up in the minds of Councils or consent applicants has the potential to save time and energy in the longer term.

Choosing whether or not to formally object is a less-frequent though more deeply-involving call on the time and skills of tangata whenua. They are faced with having to reveal more of their culture and traditions to the wider world (some of which has survived better because it has been unknown or secret), and having to grapple with the technical language and legal complexities that govern Resource Management Act processes. Objecting to a Council planning document, or to a consent application, is not a decision to be made lightly. When an objection is lodged, it is an expression of the strength of feeling against the particular proposal.

Taking an unsatisfactory decision to the Environment Court is even less for the faint-hearted, as there is always the risk that an unsuccessful appellant can have costs awarded against them. One Maori group in Te Rohe Potae in particular does not appear to have been put off by the risks.

Mokau ki Runga Regional Management Committee (RMC) has been the most active of the Regional Management Committees in taking cases to the Environment Court. Its appeal on the Wairere and Mokauiti hydro-electric power station resource consents has been covered in the topic report on hydro-electric power development in the Mokau catchment. Its appeal on the discharge of treated sewage into the Mokau River at Piopio has been covered in the chapter on water management. There have been other appeals that Mokau ki Runga RMC has taken to the Environment Court:

- Tatu mine – the appeal was against decisions of Manawatu - Wanganui Regional Council and Ruapehu District Council granting consents (discharge permit and land use consent respectively) to the reopening of the mine. A waiver of the time limits set for the lodging of appeals was granted in 1998[652]. An Appeal against Regional Council consent was found to be invalid as no submission had been made on the original application[653]. The appeal against land use consent was held to be valid, though the outcome of that appeal is not known (it may have been resolved by consent)
- Kuwhaatahi archaeological site – a site exposed during State Highway 3 road excavations, for which the Historic Places Trust provided an authority to modify, damage or destroy the site. At a hearing seeking that the appeal against the Trust's decision be struck out, it was found to have been lodged invalidly by the Secretary of the Committee without the authority of the Committee[654]

Other instances where Maori groups in Te Rohe Potae have lodged appeals to the Environment Court are:

- Tainui Hapu and associated tangata whenua groups – An appeal against the discharge of treated sewage from the Raglan sewage treatment plant[655]; this is discussed in the Whaingaroa Harbour case study

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[652] *Mokau ki Runga Regional Management Committee v Manawatu Wanganui Regional Council*, decision of the Environment Court, 21 December 1998 (Decision W114/98). Posted on www.justice.govt.nz/courts/environment-court

[653] *Mokau ki Runga Regional Management Committee v Manawatu Wanganui Regional Council*, decision of the Environment Court, 30 July 1999 (Decision W77/99). Posted on www.justice.govt.nz/courts/environment-court

[654] *Mokau ki Runga RMC v Historic Places Trust*, decision of the Environment Court, 15 June 2000 (Decision W32/2000, [2000] NZEnvC 216). Posted on www.justice.govt.nz/courts/environment-court

[655] *Tainui Hapu v Waikato Regional Council*, decision of the Environment Court, 10 May 2004 (Decision A63/2004). Posted on www.justice.govt.nz/courts/environment-court

- Marokopa Marae – An appeal against a proposed hydroelectric power development on the Mangahae Stream at Te Anga in the Marokopa valley, which was struck out[656]; this is discussed in connection with Te Rongomai-o-Te Karaka wahi tapu in the previous chapter of this report

The listing of appeals above is not necessarily complete and comprehensive; there may have been other appeals by Te Rohe Potae Maori that the research for this overview has not identified.

Participation in statutory resource management regimes requires a lot of time and effort, which invariably comes down to a matter of money and experienced personnel. One of the biggest concerns of Maori organisations (and of voluntary citizen groups generally) is the lack of resourcing for these groups' involvement in achieving outcomes of value to the community. The University of Waikato study for the Waikato Regional Council in 2002 commented on the concerns expressed by Maori groups in their submissions to the Regional Council:

> Iwi contributions reviewed often mentioned that limited resourcing and time constraints had impacted on their ability to conduct consultation throughout their tribal territory. Furthermore, limited resourcing was highlighted as a factor for the presentation of limited information relevant to current iwi environmental issues. Working with iwi and hapu to produce iwi contributions and Iwi Environmental Management Plans might also minimise various barriers to producing documentation of Maori environmental perspectives. EW seems to have established a "need to know" relationship with iwi. Therefore, developing relationships where information is shared with iwi rather than taken would prove beneficial to both parties.[657]

The Maniapoto iwi environmental management plan also commented on resourcing:

> We also consider that local authorities should resource iwi participation as was intended with the development of the Resource Management Act. The Runanga a Iwi Act, which was drafted and approved at the same time as the Resource Management Act, but was later repealed, intended that tangata whenua would be resourced for the overwhelming level of participation in local government activities that the Acts and the Treaty require. Local

[656] *Marokopa Marae v Waikato Regional Council*, decision of the Environment Court, 5 March 2010 (Decision [2010] NZEnvC 065). Posted on www.justice.govt.nz/courts/environment-court

[657] L Whangapirita, S Awatere and L Nikora, *Maori perspectives of the environment: a review of Environment Waikato iwi environmental management plans*, September 2003, Waikato Regional Council Internal Series report 2004/01, Technical Report No. 2, pages 9-10. Posted on www.researchcommons.waikato.ac.nz

> authorities should also support tertiary training for Maori into local government related fields.[658]

Some financing of iwi initiatives has been provided. The Ministry for the Environment contributed to the production of the Maniapoto state of the environment report in 2002. However, the financial assistance on offer has had its limitations. Te Runanganui-o-Ngati Hikairo was not able to obtain funding for the production of a wide-ranging iwi management plan, and instead had to confine its efforts to production of a heritage management plan, which would normally amount to just one part of an iwi management plan.

9.4 Concluding Remarks

From a state of under-preparedness when the Resource Management Act 1991 was introduced, iwi and hapu in Te Rohe Potae have been expected to develop their skills and expertise at such a pace as to be ahead of the progress being made by regional and district councils. The legislation provides for iwi management plans and other iwi planning documents to be taken into account by administering bodies, which pre-supposes that such plans have been prepared and are in place before the councils undertake reviews of their planning documents. Developing an iwi management plan is not a straightforward task for iwi and hapu, who not only need to consult within their community about its contents, but also gain the expertise and skills necessary to be able to make statements that are relevant to Resource Management Act processes. The Maniapoto iwi environmental management plan is strong on general statements, though not so strong on more specific measurable standards that could be advocated for inclusion in regional and district plans. In short, iwi and hapu in Te Rohe Potae have not yet reached a stage of being able to advocate for objectives, policies, rules and standards from a position of strength.

It was impossible for iwi and hapu in Te Rohe Potae to be in a position to influence through iwi management plans the first generation of resource management planning documents produced in the early 1990s. At that time iwi and hapu lacked the financial resources to be able to do so. The situation was not much better when it

[658] Kowhai Consulting Ltd, *He Mahere Taiao: the Maniapoto Iwi environmental management plan*, Maniapoto Maori Trust Board, 2007, page 14. Posted on www.maniapoto.iwi.nz

came time to review the planning documents ten years later, and produce the second generation of resource management planning documents. Those documents are now largely in place and will run through to the mid to late 2010s. That will represent between 25 and 30 years (which can be thought of as one generation) when the voice of Te Rohe Potae Maori will not have been heard to the extent envisaged by framers of the legislation when it was passed.

The day-to-day pressures on iwi and hapu since 1991 have, however, provided them with more on-the-job training about how to respond to specific resource consent applications. While this is analogous to fighting fires as they flare up, it has resulted in a number of successes (although perhaps also an equal or greater number of failures). In Te Rohe Potae, fish passage at Wairere, Mokauiti and Taharoa has been improved as a result of Maori intervention, and an opportunity for Maori to have ongoing involvement through advisory groups has been achieved in some instances.

So far, none of these responses by hapu in Te Rohe Potae to the opportunities and pressures of the Resource Management Act have satisfactorily addressed how they can exercise tino rangatiratanga for their lands, their settlements and their taonga, for so long as they wish to hold on to those lands, settlements and taonga, in the context of that legislation. In upholding and maintaining the spiritual bonds they have with Papatuanuku and Tangaroa, Maori have spoken of a need to be kaitiaki (guardians or stewards) for the natural environment, and of seeking to exercise kaitiakitanga. A fundamental intellectual difficulty for present-day natural resource management in New Zealand, however, is that kaitiakitanga is specifically mentioned in the Resource Management Act 1991, and by being so placed is regarded as just a part, or a sub-set, of the sustainable management of resources covered by the Act. Reference to it in Section 7(a) of the Act subordinates kaitiakitanga to other matters referred to in Sections 5 and 6. This is an instance where the indigenisation of the legislation limits rather than liberates. Section 6(e) refers to “the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu and other taonga”, which is close to but nevertheless different from the wording in Article 2 of Te Tiriti. The point to be made is that the Resource Management Act, in the way it has been drafted, may be incapable of allowing the Treaty guarantees to Maori to be fully

honoured in the natural resource management sphere. That, however, is a matter beyond the scope of this report.

Also beyond the scope of this report is the compatibility or otherwise of the two concepts of exercising tino rangatiratanga over hapu lands, settlements and taonga (to paraphrase Te Tiriti), and promoting the sustainable management of natural and physical resources (to paraphrase Section 5 Resource Management Act 1991). Even if a Maori authority was responsible for administering the Resource Management Act, could its promotion of sustainable management (as defined in the legislation) result in it exercising the type of tino rangatiratanga contemplated in Te Tiriti? The difficulties that both Maori and regional and local authorities, not just in Te Rohe Potae but nationally, have had to reach an accommodation between the two concepts have been longstanding. The Environment Court has also weighed in with its admonition that the Resource Management Act does not give tangata whenua a right of veto over resource use proposals it does not support.

What can be said is that Section 33 Resource Management 1991, which allows a regional or territorial local authority to transfer any of its functions, powers or duties to an iwi authority, represents a transfer of a delegated Crown authority that is still subject to review by a court of law. If any powers, functions or duties are handed over in part only, there is an implication that the local authority will be retaining an oversight of the iwi authority's administration of the transferred responsibility, in order to ensure that it is properly exercising the totality of the delegated Crown authority it has been entrusted with by the legislation. That a transfer to an iwi authority can be withdrawn also implies that the local authority is exercising a continuing oversight of the effectiveness or otherwise of the administration of the transferred responsibility. Therefore, while the handing over of responsibilities to an iwi authority may be superficially attractive, it may create as many problems as it solves for hapu. However, the Tribunal's *Ko Aotearoa Tenei* report indicates that Section 33 has not been used, notwithstanding 22 years of opportunity[659]. The same report notes that an alternative provision that allows for joint management by both a

[659] Waitangi Tribunal, *Ko Aotearoa Tenei, Te taumata tuarua*, 2011, page 258.

local authority and an iwi authority (Section 36B), has been used so rarely that there is insufficient experience of its use for hapu to gauge its worth[660].

[660] Waitangi Tribunal, *Ko Aotearoa Tenei, Te taumata tuarua*, 2011, page 259.

10. Crown monitoring of delegated powers

10.1 Introduction

There has been a progressive transfer away from direct control by Crown Ministers and Government departments of the powers for environmental management that were assumed by the Crown under its kawanatanga obligation. Many powers have been delegated to local authorities or other Crown-authorised entities. This has been a process that has been underway throughout the last forty years that is the focus of this report, and occurred in its most dramatic form with the passing of the Resource Management Act 1991. Today the conservation estate, being most of the last remnants of Crown-owned land, is virtually the only environmental resource being directly managed by a Crown Minister and department. Most other Crown environmental powers have been delegated to local authorities at the regional or district level.

In delegating its powers, the Crown is placing its faith in those other bodies that they will do as good a job of honouring the obligations of the Crown under the Treaty of Waitangi as the Crown would if it was still directly responsible. Whether that is the case can only be assured if the Crown monitors the performance of those other bodies. The risk is that in delegating to a multitude of locally-based bodies, performance will be patchy, with some demonstrating best practice, and the majority falling below that standard to a greater or lesser degree. The amount of time and effort required to monitor the performance of a large number of local bodies should not be under-estimated.

The introduction of the Resource Management Act in 1991 produced such a change in circumstances that it is appropriate to separately assess the monitoring regime before the Act and after the Act.

10.2 Before the Resource Management Act

The main functions delegated to local authorities before 1991 were the town and country planning and the water management functions. Both these functions were

administered in the Ministry of Works (renamed the Ministry of Works and Development in 1973).

With respect to town and country planning, both the Ministry of Works and the local authorities were novices in preparing district planning schemes when the requirement to produce the schemes was introduced in 1953. The Ministry took a lead in promoting the preparation of model schemes, and the consistency of schemes across the country was assisted by there being only a few consultant planning practitioners (some of whom were former Ministry of Works staff) that the local authorities could call upon for technical advice in scheme preparation. In any event, the early district planning schemes were not the complex documents that they later became.

In the early 1960s Government policy established that the Ministry of Works would coordinate the responses of all Government departments to district planning schemes. The Ministry would notify each department that the public participation procedures for each planning scheme had been triggered. These procedures allowed for input into what matters should be included in planning schemes, before the writing process had commenced, and for input into a published draft version of a scheme. There was also an ongoing opportunity to require that a district planning scheme include provisions for actual or intended public uses of land in the form of designations of land for particular purposes. Once notified, each department would provide its comments to the Ministry, which would assemble them into a single Government submission to be made to the local authority. The process meant that the Ministry of Works staff were generally able to monitor the quality of district planning schemes to a common standard, and promote amendments that would maintain a common standard for schemes.

When matters of national importance were introduced in 1972, and added to in 1977, the coordination role of the Ministry of Works and Development ensured consistency by local authorities in the incorporation of those national standards. By this time, each district office of the Ministry had staff engaged fulltime in administering the town and country planning function. These staff maintained personal contact with each local authority, and with the planning consultants writing the district planning schemes for the local authorities, thereby providing another level of monitoring.

As an indication of the extent of involvement of central government with local government district scheme planning during the Town and Country Planning Act 1977 era, when Waitomo District Council prepared a statement of objectives and policy in 1981 as a prelude to its district scheme review, the Ministry of Works and Development provided a comprehensive 21-page submission[661]. This submission had pulled together into a single document the comments received from various government departments. Promotion of Maori values, however, was generally non-existent, with the only comment being in connection with the structure and membership of marae committees in the context of a Council proposal for marae zones.

This pattern of consultation established by the Ministry of Works and Development continued until the Ministry was disestablished in 1988. The town and country planning staff of the Ministry moved to Works Corporation Limited, a State-Owned Enterprise, and administration of the legislation moved to the Ministry for the Environment. The State-Owned Enterprise undertook town and country planning work for government departments on a fee-for-service basis. The new Ministry was more of a policy-focussed department, and was more lightly staffed, with only three small regional offices (each with staff numbers in single figures) to cover the country. The day-to-day interaction at a detailed level that had previously been maintained between the Ministry of Works and Development and the local authorities was unable to continue.

There was also considerable Crown monitoring of the work of catchment boards and regional water boards, though in a different manner. Much of the work of catchment boards was the preparation and implementation of particular works that would benefit soil conservation or river control. These could include planting on erosion-prone hillsides, straightening river channels, building stopbanks or cutting down willows on riverbanks. Only a proportion of these works were funded from locally-collected rates, with the remainder being financed by central government on a subsidy basis

[661] District Commissioner of Works Hamilton to District Clerk Waitomo District Council, 11 November 1981, attached to District Commissioner of Works Hamilton to Commissioner of Works, 12 November 1981. Works and Development Head Office file 149/261. Supporting Papers #376-397.

(say $3 for every $1 raised locally). Catchment boards had to apply to the Ministry of Works in Wellington, via regionally-based Ministry of Works water and soil staff, for subsidy approval. The regional water board function introduced by the Water and Soil Conservation Act 1967 was grafted on to the existing catchment boards, so that the one local authority carried out both functions.

There was a dedicated Water and Soil Division in the Ministry's head office to oversee this work. In addition, the Crown was represented on the catchment boards themselves, with central government members appointed by the Minister of Works. These were usually the regional heads of Government departments such as Ministry of Works, New Zealand Forest Service, Department of Agriculture and Department of Lands and Survey. The Waikato Valley Authority was slightly different to other catchment boards, with just two appointed Government representatives, the regional heads of the Ministry of Works and the Electricity Department, the latter appointment being in recognition of the major influence of the hydro-electric power stations on the Waikato River.

As with town and country planning, the responsibility for administration of water management under the Soil Conservation and Rivers Control Act 1941 and the Water and Soil Conservation Act 1967 passed to the Ministry for the Environment when the Ministry of Works and Development was disestablished in 1988. Central government subsidy money was also severely reduced at this time, becoming confined to payments for projects already approved. There was then three years of minimal monitoring by the new Ministry. These three years saw the reform of local government in 1989, the resource management law reform programme that culminated in the passing of the Resource Management 1991, and a change of government in 1990 (which had an influence on the final shape of the 1991 Act).

In delegating powers under the Harbours Act, the Crown had a variable approach to monitoring. Harbour Boards were largely left to their own devices, provided the annual reports they sent to the Marine Department / Ministry of Transport showed they were operating within the legal requirements. The granting of powers to control waters and foreshores was of those powers that the Marine Department / Ministry of Transport regarded as peripheral to its core activities. It insisted that local authorities

develop bylaws for the administration of their grants of control, produced a model set of bylaws to promote consistency, and it diligently checked that the bylaws submitted by local authorities complied with the legislative extent of the grant of control before advising the Minister to approve them. Once the bylaws were approved, the local authorities were largely left to administer the grants of control on their own.

The grants of control did not include the approval of reclamations or harbour works. This power affecting a permanent modification of the foreshore or seabed still remained with the Marine Department / Ministry of Transport.

10.3 Since the Resource Management Act

The 1991 Act provided the opportunity for the production of national policy statements. Only one statement, the New Zealand Coastal Policy Statement, was required by statute; it was produced in 1994. No other national policy statements were produced during the 1990s, because the Government of the day had an aversion to the concept of national planning and to providing any more direction to local authorities than the Resource Management Act itself already specified.

The Ministry for the Environment offered guidance to local authorities in the form of commissioned studies and manuals. A guide on consultation with tangata whenua was published in 1991, a review of case law on consultation with tangata whenua was published in 1994, and a manual on good practice in iwi and local government interaction was published in 2000. The Ministry also commissioned or funded reports from Maori in order to provide local authorities with a Maori viewpoint on environmental management matters, an example being *Te Purongo; Maniapoto state of the environment report: a tribal perspective*, published in 2002 and referred to in the previous chapter of this report. In 1998 it published reports on Maori environmental monitoring, and on environmental performance indicators of significance to Maori.

In 2003 the Ministry oversaw an amendment to the provision in the legislation concerning a regional or territorial local authority's consideration of iwi management

plans. There was a slight legal upgrade from a council having to 'have regard for' an iwi plan, to it having to 'take into account' an iwi plan[662].

What the Ministry for the Environment was not able to do was maintain the same degree of contact with regional and local authorities that the Ministry of Works and Development had been tasked and resourced to do. It therefore adopted a 'hands-off' or 'one-stage-removed' stance to the efforts made by regional councils to prepare Regional Policy Statements and Regional Plans, and the efforts made by District Councils to prepare District Plans. While guidelines and good practice manuals were prepared, directions in the form of national policy statements were not, and there was no coordination of a whole-of-government submission at the public participation stages of preparation of the regional and district planning documents. There was an assumption that the direction provided in Part II of the Act itself, plus the ability for case law to develop through Environment Court and High Court decisions, would be sufficient to ensure consistency of planning practice across the country. This was despite the potentially-clashing multiple objectives of Part II, which introduced a far greater complexity to policy development than had been specified in the legislation that the Resource Management Act had replaced.

A perception developed during the 1990s that the reduced involvement of central government represented an absence of leadership. It was an approach that central government could not easily recover from. Having reduced its resources and capability to assist regional and local government, at a time that regional and district councils had been obliged by the circumstances of day-to-day resource management administration to expand and develop their own expertise, central government was poorly positioned to contribute to improving resource management practice. As a result of its past inaction, it lacked the capacity to provide leadership at a national level to regional and local governments.

There was a change of approach during the early 2000s. There was a political dimension to this change of approach, with a Labour-led government coming to power in 1999. However, there was also a technical dimension, where the absence of

[662] Section 31 Resource Management Amendment Act 2003, repealing Section 74(2)(b) and inserting Section 74(2A) Resource Management Act 1991.

central government involvement was viewed as creating a gap in the provision of a suite of direction-setting statements, the need for which had been carefully crafted in the Resource Management Act when it was passed in 1991 to enable efficient and effective pursuit of the legislation's purpose and priorities. At this time (the turn of the century) the Ministry was referring to its relationship with regional councils as a "partnership" with "stakeholders", via "a regional council liaison group to exchange information and agree on priorities for action"[663]. In its annual report for 2000-2001, it could point to the existence of a Treaty unit within the organisation, a Treaty strategy guiding its own actions, a Treaty checklist for programme and project planning, an iwi consultation strategy, commencement of work on the development of indicators of Maori environmental values, and provision of best practice guidance to local authorities on use of iwi management plans[664]. It added that it "met Treaty settlement obligations by monitoring how councils in the Ngai Tahu rohe met their Treaty responsibilities under the RMA", and held two report-back hui[665]. However, it did not refer to any monitoring of Te Rohe Potae regional or district councils for Treaty compliance; apparently such monitoring would only be undertaken following a settlement.

In a briefing for the incoming Minister for the Environment in 2002, there was no mention of Maori interaction with environmental management provisions established by the Crown. With respect to the Resource Management Act, the Ministry stated:

> We may need to re-orient our environmental management systems so that we can better anticipate and manage development rather than respond to effects. This will need Ministry leadership. While central to New Zealand's foundations for environmental management, the Resource Management Act needs to be kept under review. We need to ensure that it enables rather than impedes environmentally responsible innovation in the economy.
>
> The Resource Management Act has attracted criticism that has proved to be more about the way the Act is implemented than its substance. However, recent reviews show that the potential for best practice in processes under the Act has not yet been fully realised. The Ministry will continue working with local government and other government agencies to improve the Act's

[663] Ministry for the Environment, Annual report for 2000-2001, page 67. Papers presented to Parliament, 2001, C.11. Posted on www.mfe.govt.nz
[664] Ministry for the Environment, Annual report for 2000-2001, pages 70-71. Papers presented to Parliament, 2001, C.11. Posted on www.mfe.govt.nz
[665] Ministry for the Environment, Annual report for 2000-2001, pages 8 and 71. Papers presented to Parliament, 2001, C.11. Posted on www.mfe.govt.nz

> delivery of environmental results and lower the barriers of process and compliance costs.
>
> Increasingly, the interaction between the new Local Government Act and the Resource Management Act will be the centre of attention. The two laws need to work together so that decisions are made locally where people close to the issue are able to do a better job.
>
> At the same time, national instruments and national guidance will be necessary in some cases. We need to make sure that artificial barriers (such as a cumbersome process for developing national policy statements) do not impede the delivery of effective national guidance.[666]

In its statement of intent published in 2003, the Ministry for the Environment stated:

> Following considerable consultation with stakeholders during the past year, the Ministry has embarked on a new direction. We heard a clear message that stakeholders wanted us to show leadership on the environment, to work in partnership with other sectors and organisations, and to fix problems.[667]

The result during the following decade has been greater attention given to the provision of nationwide policy directives. Commencing in 2008, three national policy statements have been produced on electricity transmission, renewable electricity generation, and freshwater management. An amendment to the Act in 2003 provided for the preparation of national environmental standards (referred to in the earlier chapter in this report on land management), and five sets of standards have been produced since then on air quality, sources of human drinking water, telecommunications facilities, electricity transmission, and assessing and managing contaminants in soil to protect human health. There have also been attempts to forge closer relations between protagonists debating the future use of freshwater.

Since the mid 1990s the Ministry for the Environment has also surveyed regional and district councils about their resource management work. These surveys were initially carried out annually, but since 2002 have been carried out every two years. Among the matters surveyed each time are the degree to which iwi are consulted and have participated in Resource Management Act processes. While a comprehensive sequence of results has been built up from the repetitive survey work, the published

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[666] Ministry for the Environment, *Healthy environment – healthy economy: briefing for the incoming Minister for the Environment*, 26 July 2002, pages 15-16. Posted on www.mfe.govt.nz

[667] Ministry for the Environment, *Statement of intent, 2003-2006*, 2003, page 5. Posted on www.mfe.govt.nz

results of the surveys report on the local authority sector as a whole, without isolating out the results from each individual local authority. Thus, for instance, the most recent survey records that 24% of the 78 local authorities in New Zealand had a policy requiring a cultural impact assessment as part of a resource consent application which was of concern to iwi or hapu, but the published results do not identify whether any Te Rohe Potae local authorities were among the 76% that did not have such a policy. Other results from the most recent survey (for 2010-2011) were:

- 92% of local authorities keep and maintain records of each iwi and hapu group in their region or district
- 72% keep records of the documents that iwi or hapu lodge with them
- 100% provide advice to applicants about known interests or concerns of iwi or hapu, 68% of them before applications are lodged and 32% of them after they are lodged
- 51% have written criteria, or a set policy for staff to follow, when determining whether iwi or hapu are to be considered an affected party to a resource consent application and should be notified about the proposal
- 97% have standard conditions for resource consents to cover the discovery of sites or items of significance to iwi or hapu
- 15% involve iwi or hapu in resource consent monitoring
- 72% have formal agreements (e.g. memoranda of understanding, protocols, management agreements, service-level agreements) with iwi or hapu, while 57% had informal agreements
- 54% make budgetary provision for funding of iwi or hapu participation in plan preparation or plan change processes, or in resource consent processes[668]

The percentages sometimes decline from one survey to the next. The survey, which was conducted online, relies on the volunteered responses provided by each local authority, and different staff members may apply different standards in different surveys. In addition, every question may not be answered in each survey. The published results do not indicate whether any of the questions posed by the Ministry in its survey represent a Crown viewpoint on best practice for Maori participation in Resource Management Act processes, nor do they indicate whether a local authority

[668] Ministry for the Environment, *Resource Management Act: survey of local authorities 2010/2011*, pages 64-68, 2011. Posted on www.mfe.govt.nz

that answers a question in the negative suffers any sanction or adverse finding from the Crown as a result. The Ministry for the Environment's 2013 annual report records:

> The Ministry is investigating options for a National Monitoring System, which may replace the surveys of local authorities and the EPA [Environmental Protection Authority]. This system will improve the consistency and timeliness of information provided by the local councils on the implementation of the Resource Management Act (RMA). It would include metrics on the costs, time, levels of engagement and good practices across a number of key RMA processes and national tools.[669]

With reference to the Treaty of Waitangi, any nationally set policies or standards could run counter to working in partnership with individual hapu. The dis-join can, however, be ameliorated if the national policies and standards are thought of as setting a minimum quality level, with the expectation that there will be an additional layer of partnership developed at the local level where regional and district councils are at liberty to work with hapu to set higher standards where this more appropriately meets local conditions and tikanga. The worst outcome would be that the national environmental standards become levels of environmental quality to which the natural environment is allowed to deteriorate, and the desire of hapu for higher standards within their rohe becomes excluded from consideration because of the existence of the national standards.

With respect to the resourcing of central government to undertake any monitoring of regional and district councils, it may be relevant to note that the Resource Management Act 1991 has become somewhat of a 'political football' at the national political level, as governments with different philosophies seek to incorporate in legislation their beliefs on the interplay between market forces, community expressions of environmental limits, and the need for governmental intervention. Resource management legislation, like employment law, has been at the forefront of these philosophical political debates, and the enthusiasm for government involvement has fluctuated accordingly. This has also affected the extent to which central government departments have been resourced to carry out any monitoring of environmental management delegations.

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[669] Ministry for the Environment, *Report of the Ministry for the Environment for the year ended 30 June 2013*, pages 31-32. Papers presented to Parliament, 2013, C.11. Posted on www.mfe.govt.nz

10.4 Concluding Remarks

The extent of central government monitoring of the activities of regional and local government in the environmental management field suffered a major downgrade when the Ministry of Works and Development was disestablished in 1988. This, however, was merely a symptom of a more fundamental change to the public service generally, which became more focussed on providing policy advice, and less involved in directly providing services to the community, as those services became corporatised, transferred to stand-alone agencies, or delegated to local government. Monitoring was not regarded as a core activity, while direct intervention, as has recently occurred as the ultimate sanction in the case of Canterbury Regional Council, would have been inconceivable in the political atmosphere prevailing in the 1990s.

Over the past decade there has been a reaction by professional practitioners and participants in the resource management process to the absence of monitoring during the 1990s, seeing it as a vacuum in central government leadership. The Crown response has taken only a partial form, with an emphasis on producing national policy statements to fill a perceived gap in direction-setting for local government. The Ministry for the Environment has not really undertaken reviews of the performance of regional and district councils in, for instance, their responsiveness to the environmental needs of the Maori communities in their areas of responsibility. That type of monitoring appears to have been left to parliamentary agencies such as the Parliamentary Commissioner for the Environment and the Auditor General.

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Note: This is a composite list of references for both the overview and the three topic studies. Separate lists of references for each of the three topic studies (repeating relevant references included in this composite list) are provided at the end of each topic study.

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AN OVERVIEW OF SELECTED ENVIRONMENTAL AND RESOURCE MANAGEMENT ISSUES IN TE ROHE POTAE INQUIRY DISTRICT, WITH A FOCUS ON THE PERIOD SINCE 1970

TOPIC STUDY A:

THE ESTABLISHMENT OF THE WAIKATO VALLEY AUTHORITY

March 2014

A.1 Introduction

This topic study examines the actions of the Crown during the establishment of the Waikato Valley Authority. While the Authority was brought into existence by legislation in 1956, this was the culmination of much public debate over the previous ten years.

Previous research by Jane Luiten on local government institutions in Te Rohe Potae specifically excluded discussion of the Waikato Valley Authority, on the basis that this would be more appropriately covered in an environmental and resource management report[670]. When the earlier scoping report of Michael Belgrave et al addressed the issue only briefly[671], it became appropriate that the overview report required by this research commission fill the gap, notwithstanding that the creation of the Authority occurred outside the post-1970 period that is the focus of the report.

The research has disclosed some differences between the Waikato Valley Authority and the catchment boards that were established elsewhere around the country. These differences are discussed in some detail, as they occur at the nexus between central government and local government, and may be of particular interest to the Tribunal in the context of the relevance of local government actions as a matter of Treaty jurisprudence.

Another reason for covering the establishment of the Waikato Valley Authority from its inception is that doing so explains why only part of the Waikato catchment within Te Rohe Potae was administered by the Authority prior to 1973, and provides a context for the extension of the Authority's jurisdiction across the remainder of the Waikato catchment in 1973.

The purpose in examining the establishment of the Authority is to assess what role Te Rohe Potae Maori played, if any, and the extent to which the Crown considered the specific interests of Maori during the establishment phase. As will be seen, the needs

[670] Jane Luiten, *Local government in Te Rohe Potae*, January 2011, Wai 898 document #A24, pages 16-17.
[671] Michael Belgrave et al, *Te Rohe Potae harbours and coast, inland waterways, indigenous flora and fauna, sites of significance, and environmental management and environmental impacts scoping report*, March 2010, Wai 898 document #A64, pages 32-33, 35 and 37.

and wishes of Maori do not appear to have been sought or considered, so that this topic study is very much a Pakeha history. Moments during the establishment phase when opportunities to involve Maori were not taken up are identified.

A.2 Soil Conservation and Rivers Control Act 1941

Prior to 1941 the Government's approach to soil erosion and flooding was patchy and inconsistent, responding piecemeal to discrete events and problems. The Soil Conservation and Rivers Control Act 1941 provided a foundation for a more proactive stance of recognising inherent problems and identifying measures to forestall flooding and prevent erosion arising or getting worse.

The legislation established a national body, the Soil Conservation and Rivers Control Council, and made provision for it to set up a regional structure of administrative bodies. These bodies, known as catchment boards, would be responsible for catchment districts based on whole river catchments to allow for integrated action.

As an additional administrative body, among the gamut of local authorities already in existence, the establishment of catchment boards would impact on the existing authorities and therefore had to be negotiated with them. This appears to have been less straightforward with respect to the catchment of the Waikato River than with other regions around New Zealand.

A.3 Proposed Waikato Catchment Board, 1945-1948

The national Council addressed the needs of the Waikato region in December 1945, when it considered and adopted a paper proposing a Waikato Catchment Board. This Board would have fifteen members, five of whom would be non-elected Government nominees, being officials from Government departments.

From the start the various catchments draining into the west coast harbours were included in the planning for a Waikato catchment authority. These coastal catchments were collectively described as:

> The whole of the drainage basin … of the smaller rivers and streams draining into the Raglan, Aotea and Kawhia Harbours, and direct into the Tasman Sea

> between the Waikato Heads and south to and inclusive of the Marokopa River, some seven miles north of Tirau Point.[672]

This description excludes the Awakino and Mokau River catchments, the next major catchments south of the Marokopa River.

Within the Waikato River and the adjacent coastal catchments were 12 County Councils and 9 Borough Councils. The territorial local authorities in Te Rohe Potae inquiry district were:

- Waipa County Council
- Otorohanga County Council
- Raglan County Council
- Kawhia County Council
- Waitomo County Council
- Otorohanga Borough Council
- Te Kuiti Borough Council

With the exception of Waitomo County, the whole area of these counties and boroughs would be affected. Some 30% of Waitomo County would be included in the proposed catchment district. The 1945 proposal was that, combining some of the local authority districts for the purpose of electing representatives, the twelve counties would provide six of the ten elected members, and the nine towns would have four representatives.

When a meeting of local body representatives was held in Hamilton in April 1946, to discuss the national Council's proposal for the establishment of a catchment board, considerable reservations were expressed. These were based around the ability of the catchment board to levy a rate on ratepayers for its operations, and on the relative weighting of country and town representation on the board. When a motion was moved to support the formation of a catchment board, a less positive amendment was put and passed:

> That this meeting is in favour of the object of the formation of a Soil Conservation and Rivers Control Board for this Area, but considers that before

[672] Invitation to local authorities issued by Chairman Soil Conservation and Rivers Control Council, 13 December 1945. Works and Development Head Office file 75/16. Supporting Papers #69-70.

> proceeding with the formation of a Catchment Board in the Waikato a further meeting be held at which the proposals can be more fully discussed.[673]

Following the initial meeting of local body representatives in Hamilton, the Kawhia County Council asked that the county not be included in the proposed catchment district. Its main reason was that the catchment board would impose an additional burden of rates while offering no apparent prospect of benefit for the county. This would cause undue hardship for the ratepayers.

> It was pointed out that this County is ringed in by a high range of hills, constituting a natural basin of its own, almost entirely separated from the rest of the Waikato Catchment Area…. Soil conservation and rivers control problems did not exist to any appreciable degree in this County, and it is inconceivable that any works would be carried out within this area for many years to come, if at all….
>
> The Kawhia County has many problems to face, one of which is the burden carried by the European ratepayers through the inability to collect rates from Natives, and another the large areas of Crown lands served by roads but for which no rates are payable.[674]

Opposition was also expressed by Waipa County Council[675] and Raglan County Council[676].

A further meeting of local body representatives was held in June 1946. One speaker (the Waipa County Council chairman) argued that no urgent soil conservation problems existed in the Waikato, and establishment of a catchment board should be deferred until there was greater clarity on what catchment works were necessary, and how those works could to advantage be carried out by a catchment board rather than by the existing local authorities. This reflected the mood of the meeting, as the motion that was passed called for "a survey and plan showing the necessity for such a Board, and the urgency for its being set up immediately". One of the national Council's staff members pointed out to the meeting the chicken-and-egg nature of this, in that one of the objects of setting up a catchment board was to obtain such

[673] Minutes of meeting of Waikato local body representatives, 11 April 1946. Works and Development Head Office file 75/16. Supporting Papers #71-74.
[674] County Clerk Kawhia County Council to Minister of Works, 3 May 1946. Works and Development Head Office file 75/16. Supporting Papers #75-76.
[675] *Waikato Times*, 12 June 1946. Copy on Works and Development Head Office file 75/16. Supporting Papers #78.
[676] *Waikato Times*, 25 June 1946. Copy on Works and Development Head Office file 75/16. Supporting Papers #79.

information on a catchment-wide basis, so that soil conservation and river control problems could be better addressed[677].

Another reason for the cautious approach taken by the Waikato local authorities is alluded to in a history of the Waikato Valley Authority, which noted that some loans for river control works taken out in 1913 were still being paid off in the late 1940s, so that there was resistance to the ratepayers being burdened with further expense[678].

As a result of the resolution passed by the local body representatives, the Soil Conservation and Rivers Control Council decided at its meeting in Wellington the following month to defer action for six months[679].

One of the local body participants provided his comments, in confidence, about local attitudes to the catchment board proposal. These comments are dated the day before the national Council meeting, and were therefore probably not received in time to be taken into account at the Council meeting.

> The local people are aware of the need for soil conservation, and do approve the objects of the Soil Conservation Act, but fear that powers given in the Act to the Minister, to the Council, and to the Boards may be used in a dictatorial way…. Your action in granting our wish and not proceeding with the formation of the Waikato Board at the present time has removed a considerable part of the fear we had as to how the powers contained in the Act would be used.
>
> The local people are not satisfied that the members of the [national] Council do yet thoroughly understand the difficulties of land owners in meeting present taxation, and they fear that if a Board is formed too soon it may rapidly become another large rating authority. The local ratepayer will have greater confidence in the Soil Conservation Council when the local ratepayer knows that the members of the Council understand his financial difficulties.
>
> The history of all rating authorities is that the rate levied gradually increases until it becomes a burden on the ratepayers. When local ratepayers know that you understand their difficulties, and have no intention of undertaking work in

[677] Minutes of meeting of Waikato local body representatives, 26 June 1946, attached to Town Clerk Hamilton City Council to Secretary Soil Conservation and Rivers Control Council, 10 July 1946. Works and Development Head Office file 75/16. Supporting Papers #80-82.
[678] Jim McKenzie, *The men and the river: the Waikato Valley Authority, an historical review of the first 21 years*, 1980, page 13. Wai 898 document #A76(a), Part D, pages 939-967, at page 945.
[679] Excerpt from minutes of meeting of Soil Conservation and Rivers Control Council, 3 July 1946, attached to Minister of Works to County Clerk Kawhia County Council, 19 June 1946. Works and Development Head Office file 75/16. Supporting Papers #77.

> respect of which the tax on the land will be a burden, the local ratepayer will then approve of the formation of a Board. A year or two will make no great difference to the problems in the Waikato. Take the local people slowly and gain their confidence.
>
> You may well say in reply to this that the local farming ratepayer is well protected by having a larger proportion of representation on the proposed Board than either the Government or the towns. My reply is that the Government nominees hold the balance of power, and the local farming ratepayers do not know how that balance of power will be used when it comes to voting on projects which will be financed by rates on farm land. It is no use saying to the farming ratepayer that his elected representatives have a say, if the combined vote of his elected representatives is not enough to protect him when charges may be levied on his land. You may know, in your heart, that you intend to use your powers wisely and justly, but the local farming ratepayers have no evidence that the Government nominees and the city representatives will pay sufficient regard to farmers' financial difficulties.
>
> At Hamilton you did a lot to remove the fears of the local people. Take them slowly, have regard for their interests, and give them a chance to see that you are honourable and trustworthy people, and the Waikato Soil Conservation Board will become another feather in your cap.[680]

The Crown official to whom this advice was sent replied on a personal basis:

> Your letter is very encouraging indeed, and actually we thought the meeting went fairly well. We realise that most of the Local Body men are at present pre-occupied with the question of rating, and that has no doubt influenced their opinions a great deal. You can be assured that the Soil Conservation Council are aware of this, and indeed have three County Councillors on the Council who are very well aware of the position…. I know of no instances where the Council has even thought of forming a Catchment Board against the wishes of the people….
>
> The powers which appear in the Act may seem somewhat dictatorial, but everything really depends upon the wise way in which they are administered. Many acts have these same dictatorial powers, which are necessary so that they can be invoked only when all other approaches fail. Many a County and Borough have similar powers, but the question of using these powers in an arbitrary fashion has never arisen.
>
> I think you can take it that the Council will again raise the matter with the Waikato people after an appropriate period, but in the meantime there seems no need for urgency of any kind.[681]

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[680] County Engineer Franklin County Council to Engineer Soil Conservation and Rivers Control Council, 2 July 1946. Works and Development Head Office file 75/16. Supporting Papers #83-87.
[681] Engineer Soil Conservation and Rivers Control Council to County Engineer Franklin County Council, 18 July 1946. Works and Development Head Office file 75/16. Supporting Papers #88.

A more official reply indicating that the national Council had not given up its ambitions to establish a Waikato Catchment Board was provided in December 1946 by the Council's chairman:

> In broad terms the main functions of the Board would be, within its District, to minimise flooding, to prevent or mitigate soil erosion, and to promote soil conservation. With this in view, the District of such a Board should embrace the whole catchment of the Waikato River. In this instance the District has been made rather wider to include the narrow strip of coastal country between the Waikato watershed and the West Coast, as this latter area could be better administered along with the Waikato area than independently.
>
> The Catchment Board would be assisted in its works by the Soil Conservation and Rivers Control Council. Some problems in the area have already been studied, and all relevant information would be made freely available to the Board, but the major activities of the Board would include the following:
>
> Flood control: mostly in the Lower Waikato River, the Waipa River and their major tributaries, e.g. … willow clearing particularly in the Waipa River and tributaries; coordination with the State Hydro-electric Department in the operation of the major dams on the Waikato River and on Lake Taupo to reduce flooding in the lower river.
>
> Drainage: this will be a major works activity of the Board, to co-ordinate the work of the numerous Drainage Boards and assist in their development. There are over 20 such Boards, and the Catchment Board would have general supervisory control over these, not only to sponsor additional work but to ensure that all their works are carried out for the improvement of the District as a whole, without damage by way of flooding to other areas.
>
> Soil conservation: this will probably be the most important activity, although inevitably it will be of very long term benefit. It will embrace control by the Board of land use of all the hill country to preserve vegetative cover, and in addition the carrying out of works on hill country to check active erosion of the soil. Its benefits are twofold, (1) to retain hill soils in place, and thus preserve the fertility and production of hill country, and (2) to reduce flooding of low country by preventing undue run off from hills and deposition of silt and debris in the main streams.
>
> The Board will have power to exercise control, in the interests of saving the soil, of grazing, land management and fire, thus to preserve and strengthen the vegetative protection of the soil. In addition it could, with the Council's assistance, carry out soil saving projects on farming country whenever erosion is active, such as in steeper and slipping country, gullies, etc. The Council and Boards are already initiating such works in Catchment Districts by tree planting, construction of debris dams, fencing off of steep areas, riverbank protection, and allied classes of work. Where it is agreed that land is eroding and cannot profitably be farmed, the Board may acquire land for either permanent or temporary retirement.

> The Waikato District includes considerable areas of hill country where erosion is not yet severe enough to warrant major work by the Board. In this instance the Board's activity would be in exercising control, thus to prevent damage which can quickly develop by over grazing and severe burning. This would be the less spectacular but most valuable part of the Board's work. There are, however, other areas on which erosion by slip and gully and loss of top soil would warrant attention, and these should be tackled by the Board in the near future along the lines indicated.
>
> The above indicates only briefly the main activities before a Catchment Board, and in the opinion of the Council these are of such importance as to warrant the establishment and full attention of the Board in the very near future.[682]

One year later, in December 1947, the Soil Conservation and Rivers Control Council unilaterally decided to push ahead with the formation of a Waikato Catchment District and Board. It sent its proposals to the Local Government Commission for approval. These proposals contained some changes in proposed representation:

> Under the Council's first proposal the Counties, with 70% of the capital value and 65% of the population, would have had only 60% of the local body representation. This can be overcome by the distribution of members as now proposed, which gives 7 seats to the Counties, 3 to the Boroughs, and 5 Government nominees. This, however, may still not completely satisfy the country people, who are admittedly those most intimately and individually concerned in the activities of a Catchment Board. They fear that the balance of power between town and country will be held by the Government nominees, and that the activities of the Board will thereby be controlled by the Minister of Works. This fear is groundless. Government appointees do not represent their Departments; their appointment is personal, designed to give Boards the benefit of the experience of senior officers of those Government Departments interested in Soil Conservation and Rivers Control.[683]

Commenting on soil conservation problems in the Waikato River catchment, the Council stated:

> Soil erosion problems on the rolling to steep land in this catchment are potential rather than real, owing to the rigorous fern, manuka and bush cover on unfarmed land, and to the fact that extensive burning and sowing of marginal land is not a payable farm practice without topdressing and fencing. The result is that farm practices which ensure a rigorous pasture cover must be adopted to win further farm land. These, in the main, are being adopted on the farming frontier. But a very real danger exists on the remaining steeper pumice land if these were ever farmed in conjunction with better land, and

[682] Chairman Soil Conservation and Rivers Control Council to Town Clerk Hamilton City Council, 4 December 1946. Works and Development Head Office file 75/16. Supporting Papers #89-90.
[683] Chairman Soil Conservation and Rivers Control Council to Secretary Local Government Commission, 22 December 1947. Works and Development Head Office file 75/16. Supporting Papers #91-97.

> extensive and repeated burning, sowing and overgrazing were practiced. The overlying pumice is fluffy, even-grained and readily removed by wind after burns, and scours readily to form rills and gullies during heavy rains. In the Atiamuri region, bare clay faces exist from which the pumice has been removed by wind and water after fire and grazing, thus indicating what can happen over extensive areas. Over the greater portion of the upper catchment, land use regulations are necessary to ensure restriction of farming to land that can be won successfully, and to ensure that effective measures are used to grass and farm this land. Further, restrictions on the clearing and farming of cut-over forest areas are very necessary in the interests both of forest regeneration and soil conservation, particularly on steeper slopes. The secondary effects of soil erosion in contributing debris to the Waikato River are of considerable importance.

Of the coastal catchments, the Council commented:

> Though not geographically in the [Waikato] catchment, it will be desirable to include this region. The extensive sheet and slip erosion on this steep coastal hill country warrants conservation practices to prevent, if possible, and control subsequent slipping, as this land is potentially highly productive in the main, owing to the generous rainfall and excellent response to good farm management. Undoubtedly much of it is too steep for farming and more suited to forestry, consequently the need for an organisation to ensure the best utilisation of all types of land necessitates control of land use through a local Catchment Board.[684]

Particular matters within Te Rohe Potae district that would benefit from the attentions of a catchment board were said to be:

- Waipa River improvements
- Waipa River willow clearing, Otorohanga County
- Marokopa River improvement, straightening, clearing or drainage
- Soil erosion, Kawhia and Raglan districts[685]

In concluding its paper to the Local Government Commission, the Council recommended:

> Although no finality was reached at the two Hamilton meetings convened by the Council, it was fairly obvious that most of the opposition to the formation of a Catchment District was localised, and it is for this reason that the Council has recommended that the proposal should be dealt with by the Commission as a provisional scheme. It is very probable that if this course of action were

[684] Chairman Soil Conservation and Rivers Control Council to Secretary Local Government Commission, 22 December 1947. Works and Development Head Office file 75/16. Supporting Papers #91-97.

[685] Chairman Soil Conservation and Rivers Control Council to Secretary Local Government Commission, 22 December 1947. Works and Development Head Office file 75/16. Supporting Papers #91-97.

> taken, any objections to the proposal would be of such a nature that they could be adjudicated upon by the Commission without the necessity for a public enquiry. The Council would welcome a public enquiry, but if the expense and labour of such can be saved, it would seem desirable.[686]

The Local Government Commission decided that a public inquiry was necessary, and a hearing was held over three days in Hamilton in June 1948. At the end of the hearing, the Commission adjourned its inquiry sine die. It was then asked to defer further consideration, pending a reconsideration of Government policy. This effectively meant that the proposals of the Soil Conservation and Rivers Control Council had been abandoned.

Throughout the period from 1945 to 1948 there is no mention in the records about the proposal for a catchment board of a Maori dimension to the debate. The discussion was between the Government, the Soil Conservation and Rivers Control Council, and the existing local authorities. Even representatives of drainage boards were not invited to the two meetings in Hamilton in 1946. The local authorities, while speaking for their ratepayers, were primarily articulating the views of those who paid their rates (the European farming community) rather than those who did not pay (many of whom were the beneficial owners of multiply-held Maori land).

A.4 Proposed Waikato Valley Authority, 1954-1956

The matter was revived again in 1954. During the hiatus, the Waikato River had continued doing what it had done for many years, with major flooding in the lower reaches of the river in July 1952 and July 1953. In April 1954 the Soil Conservation and Rivers Control Council presented a proposal to representatives of 32 local bodies in Hamilton. This proposal was confined to the Waikato and Waipa catchments, and therefore excluded the western half of Raglan County and all of Kawhia County. This difference from the 1940s proposals was to be a constant during the debate between 1954 and 1956. The Council wanted one authority for the whole Waikato catchment (including the Waipa Catchment), and suggested it be a catchment board set up under

[686] Chairman Soil Conservation and Rivers Control Council to Secretary Local Government Commission, 22 December 1947. Works and Development Head Office file 75/16. Supporting Papers #91-97.

the Soil Conservation and Rivers Control Act 1941[687]. The meeting reaffirmed the local authorities' opposition to a catchment board, while supporting the setting up of a committee "for the purpose of studying the problems of the Waikato River and submitting a proposition in connection therewith to the Soil Conservation and Rivers Control Council"[688]. As a *New Zealand Herald* editorial described it, in examining local views about establishing a catchment board, it was "on this narrower question of procedure – rather than on the general principle of controlling the river – that the local bodies do not agree"[689].

The Minister of Works presented a paper to Cabinet in July 1954 that summarised the earlier objections to a catchment board:

> Attempts to set up a Catchment Board … have failed largely because strong local bodies in the affected areas object to having an ad hoc organisation introduced when they feel that they themselves are capable of doing all that is required. The less-affected areas object because they claim they have no problem, and that in any case the Waikato River, being harnessed for power, is a national responsibility.

He proposed that the deadlock between the Government and the local authorities be broken by setting up a special authority "with direct controlling representation from the major local bodies". This would avoid the election of representatives in seeming competition with the elected representatives of the existing local bodies, and would allow those existing local bodies to feel that their direct representation would give them control over the catchment authority. Establishment of the new organisation would be sweetened further by the Government contributing a proportion of the administrative costs of the catchment authority. The catchment authority would still have the powers of a catchment board; the special legislation would set up a Waikato Valley Authority, "dovetailing in with the Soil Conservation and Rivers Control Act

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[687] *New Zealand Herald*, 28 April 1954. Copy on Works and Development Hamilton file 96/434000. Supporting Papers #128.
Attendees of this meeting are listed in Jim McKenzie, *The men and the river: the Waikato Valley Authority, an historical review of the first 21 years*, 1980, page 16 (Figure 2). Wai 898 document #A76(a), Part D, pages 939-967, at page 947.

[688] Resolution of meeting, 28 April 1954. Referred to in historical summary, 24 August 1956. Works and Development Head Office file 75/16. Supporting Papers #98-99.

[689] *New Zealand Herald*, 30 April 1954. Copy on Works and Development Hamilton file 96/434000. Supporting Papers #129-130.

1941". He sought and received Cabinet approval to approach the local authorities with his proposals[690].

The Minister's proposals do not seem to have been discussed in advance with the Soil Conservation and Rivers Control Council. Following its August meeting[691], its chairman wrote to the Minister in September 1954:

> The consensus of opinion [of the Council] was that there was no need for the erection of a special authority, as existing legislation could meet the position quite adequately.
>
> The Council considered that there were insufficient grounds for departing from the Act, and that there were no reasons for preferential treatment, outside the provisions of the Act, for this area….
>
> The Council requests that, if any special legislation is contemplated for the Waikato area, that the Council and the Catchment Board Association be given the opportunity of considering it in its early stages.[692]

The initial reaction from the Waikato local bodies was not much better. The Minister sounded out the chairmen of five of the counties at a meeting in Wellington in August 1954. A written response from Otorohanga County Council stated that it had unanimously decided to resist the setting up of a commission of inquiry to take the Minister's proposals forward, as Otorohanga would receive no benefit from the likely focus of any new organisation on the lower Waikato River, which was the locality with the greatest drainage problems[693]. However, this was before the Minister had formally presented his proposals to all the Waikato local bodies, which he did in Hamilton in early September 1954.

In a separate note to the Minister, the Commissioner of Works suggested two options, a catchment board under the Soil Conservation and Rivers Control Act, with a

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[690] Minister of Works to Cabinet, 21 July 1954. Works and Development Head Office file 50/866. Supporting Papers #1-2.

[691] Excerpt from minutes of meeting, 17 August 1954. Works and Development Head Office file 50/866. Supporting Papers #3.

[692] Chairman Soil Conservation and Rivers Control Council to Minister of Works, 1 September 1954. Works and Development Head Office file 50/866. Supporting Papers #7.

[693] County Clerk Otorohanga County Council to Minister of Works, 18 August 1954. Works and Development Head Office file 50/866. Supporting Papers #4.
Waipa County Council also wrote supporting Otorohanga County Council's views. County Clerk Waipa County Council to Minister of Works, 18 August 1954. Works and Development Head Office file 50/866. Supporting Papers #5.

legislative alteration setting out the Government's commitment to fund a proportion of the administrative costs (this commitment to be paid for by the State Hydro-electric Department because the operation of the power stations on the Waikato River affected downstream river flows), or a tribunal to decide what an alternative catchment authority structure should be[694].

The meeting with local authority representatives in September 1954 was described in a history of the Waikato Valley Authority as "the most important of a long series of meetings" concerning the establishment of the Authority[695]. At the meeting, the Minister expressed his view that the present arrangements for the rivers in the proposed area were not working, and that the rivers needed to be controlled from their source to the sea. He proposed a special authority comprised of local body representatives and Government representatives (with a similar structure to a District Roads Council). The Government would provide a proportion of the administrative costs, a "very heavy amount" of funding for improvements to the bed of the Waikato River, and three to one subsidies for minor streams and drainage (paid through the Soil Conservation and Rivers Control Council). It was agreed at this meeting that a steering committee would be set up to examine the Minister's proposals and report back to a further meeting. The committee would have four members from the counties, two from the municipalities, one from the drainage boards, and two representing the Government[696].

For the first meeting of the Committee[697], later in September 1954, the District Commissioner of Works prepared some briefing notes outlining the soil conservation

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[694] Commissioner of Works to Minister of Works, 24 August 1954. Works and Development Head Office file 50/866. Supporting Papers #6.

[695] Jim McKenzie, *The men and the river: the Waikato Valley Authority, an historical review of the first 21 years*, 1980, page 15 (with attendees listed in Figure 1 on the same page). Wai 898 document #A76(a), Part D, pages 939-967, at page 946.

[696] Minister of Works to Commissioner of Works, 16 September 1954. Works and Development Head Office file 50/866. Supporting Papers #9-11.
New Zealand Herald, 7 September 1954. Copy on Works and Development file 50/866. Supporting Papers #8.
Quotes from the minutes of the 6 September 1954 meeting are included in Jim McKenzie, *The men and the river: the Waikato Valley Authority, an historical review of the first 21 years*, 1980, pages 15-20. Wai 898 document #A76(a), Part D, pages 939-967, at page 946-949.

[697] The membership of the steering committee is set out in Jim McKenzie, *The men and the river: the Waikato Valley Authority, an historical review of the first 21 years*, 1980, page 20. Wai 898 document #A76(a), Part D, pages 939-967, at page 949.

and drainage problems confronting each local authority. For the councils in Te Rohe Potae, this briefing note stated:

> Waipa C.C. Lies between Waikato and Waipa Rivers, from Ngaruawahia to Arapuni, and Ngaruawahia to S.W. of Te Awamutu. Problems on the Waikato are negligible…. The 38 miles of its frontage to the Waipa is infested with willows requiring eradication at a cost of £50,000. A further 60 miles of tributary streams are willow infested, and these should be cleared at a cost of £80,000. There are a further 50,000 acres of swamp, fairly well developed, requiring some major works which could well cost a further £60,000.
>
> Otorohanga C.C. Controls 22 miles of R.B. [right bank] and 13½ miles of L.B. [left bank] of Waipa River, all willow infested, requiring eradication at cost of about £35,000. Also controls another 50 miles of tributary streams, also willow infested except for the Mangaorongo which has been cleared. £60,000 at least is required to clear willows. About 30,000 acres require drainage and flooding improvements, particularly to the outfalls, and this might cost another £50,000. Rate of runoff from this county is high.
>
> Kawhia C.C. Only Pirongia mountain drains to the Waikato, the remainder to the Tasman. Soil erosion is severe and widespread throughout the upper catchment of the Marokopa River, which has a high rate of runoff from high rainfall. It used to be navigated to Te-Anga, but has been silted considerably.
>
> Waitomo C.C. Has its northern third draining into the Waipa. The upper portion of Waitomo Stream is willow infested, estimated to cost £10,000 to clear. Together with the Mangapu has about 20,000 acres of good land affected by stream outfalls. Considerable drainage and river improvement works are desirable, estimated possibly at £20,000. Runoff rate is high.
>
> Raglan C.C. Approx. left half of County drains direct into Tasman with a number of streams, each tidal for some distance, flowing through swampy valleys. Clearing the willows is a big problem, while several thousand acres could have drains improved. Controls 38 miles of left bank of Waipa, all willow infested, which should be cleared at a cost of about £35,000. Also whole of left bank of Waikato from Ngaruawahia to the sea….
>
> Otorohanga [Borough]. Would derive considerable direct and indirect benefit from improvements to drainage and flooding of surrounding area, including improvements of Waipa to avoid flooding of communications.
>
> Te Kuiti [Borough]. Has flooding problems within the town itself from high stream runoff, and would derive considerable indirect benefit from drainage and flood improvements to nearby areas.[698]

[698] 'Waikato Valley Authority – county problems', undated, attached to Commissioner of Works to Minister of Works, 27 September 1954. Works and Development Head Office file 50/866. Supporting Papers #45-55, at 47-48.

The District Commissioner also prepared a second briefing paper setting out some ideas for the distribution of administrative costs. This examined the likely scope of the catchment authority's activities in addressing the problems identified in the first briefing paper. All of the Waipa catchment south of Pirongia township was defined as the Upper Waipa River Catchment, in which problems were described as being "of a minor nature", certainly as compared to the lower reaches of the Waikato River, and another section described as the Middle Waikato Basin, where most of the authority's activities would be concentrated.

> (3) Upper Waikato and Waipa River Catchments
> … It is anticipated that the proposed Waikato Valley Authority would confine its direct investigations and activities to the Lower and Middle Basins, and the County Engineers will undertake the investigation and carrying out of smaller drainage and river control works on tributary streams. This will enable the Authority to operate with a smaller staff than would otherwise be the case, but the Authority would advise and co-ordinate the efforts of County Engineers in these areas….
>
> Much of the initial drainage work required in these areas, especially in the Waipa catchment, has already been carried out, and drainage systems are functioning satisfactorily. Trouble is experienced in many streams due to willow growth decreasing discharge capacity, and the emphasis at present is on improving these channels. Increasing run-off due to farming development on hill country is also a factor in some of these problems….
>
> Some consideration should be given to the larger problems of removing willows from the Waipa River. This problem affects the Middle Waikato Basin as well as the Upper Waipa Catchment. However, it is considered that too much emphasis should not be placed on this problem at present, as comparatively small areas of land are affected. The project would be costly, and it would be necessary to carry out improvements in the Lower Waikato before the job could be undertaken.
>
> This work would be one on which the Waikato Authority would decide the policy issue of when and where such work would be carried out. The Counties in the area could undertake the actual work.
>
> Problems in each County [in Te Rohe Potae] are briefly as follows.
>
> (3.1) Waipa County
> Minor problems associated with smaller drainage areas and streams. These could be engineered and undertaken by the County Engineer, with assistance, general advice and co-ordination of effort from the central authority.
>
> The larger problem of willow clearing on the lower Waipa will have to be given consideration in the future.

(3.2) Otorohanga County
Problems associated with small drainage districts and streams exist. Work to be undertaken is very similar to that in the Waipa County.

Some major work may be necessary on the Waipa River at Otorohanga. This problem affects Otorohanga Borough more directly than the County. Willow clearing on the Waipa downstream of Otorohanga will also have to be given consideration in the future.

(3.3) Waitomo County
Drainage and river problems are again similar to those of Otorohanga and Waipa counties, in that part of the county in the Waikato Catchment….

(4) Hamilton City, Boroughs and Town Board Areas
The urban areas of the Waikato Basin are generally free of serious flooding troubles, and would not make extensive demands on Waikato Valley Authority for engineering services.

Most of the urban areas, however, make use of the main rivers and tributaries for sewage disposal, and some obtain their water supply from the Waikato rivers.

All the urban areas would receive indirect benefit from increased volume of business if adjacent undeveloped land was brought into production as a result of the activities of a Waikato Valley Authority….

The problems of each urban area [in Te Rohe Potae] and the use made of the river are set out briefly below….

(4.3) Te Awamutu [Borough]
Discharges sewage into the Mangapiko, tributary of the Waipa. Has no direct flooding problems of a serious nature.

(4.4) Otorohanga [Borough]
In future will use Waipa River for water supply and for sewage discharge. Low areas of the Borough are flooded by the Waipa River, and the Borough could obtain the services of the Waikato Valley Authority to investigate this problem.

(4.5) Te Kuiti [Borough]
Water supply from Mangaokewa and tributary. Sewage discharge to Mangaokewa.

The Mangaokewa flows through the centre of the town, and trouble has been experienced with erosion. This problem could be dealt with in one comprehensive scheme of moderate cost if the Borough was prepared to tackle the problem. Waikato Valley Authority could assist.

The paper suggested that annual administrative costs would be of the order of £20,000, of which central Government would contribute £5,000 (£4,000 from State Hydro-electric Department and £1,000 from Marine Department). £10,000 could be collected from a uniform rate over the whole catchment district, from both rural and urban areas. The remaining £5,000 would be raised from those counties and boroughs where investigations and control works were necessary[699].

It was these administrative costs, and how they would be raised, that was the most significant item of discussion at the steering committee meeting. The local authority representatives felt that central Government should contribute a bigger share, with one-third (rather than one-quarter) being proposed. They agreed to approach the Minister of Works about this. In reporting to the Minister on the meeting, the Commissioner of Works summed up that:

> The representatives are now fully conversant with the issues involved (except Mr Noble [the drainage boards' representative]), and they see that some formula is necessary. They can be expected to advance alternative proposals and they are unlikely to recommend that their Councils withdraw from negotiations. Further patient discussions could yet produce results, but wooing Hamilton will require some careful courtship.[700]

There was little progress over the next six months, until the Minister of Works decided to acquiesce to the Waikato local bodies' request that the Government share of administrative costs be raised to one-third. This seems to have broken a deadlock, with the Commissioner of Works reporting to his Minister in April 1955:

> Your offer, on behalf of the Government to contribute one-third of the administrative costs of the proposed Waikato Valley Authority was a definite contributing factor to further progress with the organising committee which sat on Friday afternoon last.
>
> All local body representatives viewed this extra offer as a challenge to them to do something positive, and with the exception of the Hamilton City representative would now be agreeable to weigh in on a distribution worked out on the basis of:
>
> | | |
> |---|---|
> | Government | one-third |
> | Local Body flat rate | one-third |
> | Local Body (proportion to degree of problems) | one-third |

[699] 'Proposed Waikato Valley Authority – distribution of administrative cost to local authorities', undated, attached to Commissioner of Works to Minister of Works, 27 September 1954. Works and Development Head Office file 50/866. Supporting Papers #45-55, at 49-55.
[700] Commissioner of Works to Minister of Works, 27 September 1954. Works and Development Head Office file 50/866. Supporting Papers #45-55, at 45-46.

> Hamilton will also participate, thanks to the good work of the Mayor, but not yet to the degree required. It is hoped that further progress in this direction will be achieved as details of proposals are being worked out.
>
> The matter now stands in the satisfactory position that conditions for the preparation of a draft bill are being worked out, and these will be sent to us in Wellington to knock into shape.[701]

In preparation for the drawing up of a draft bill, the District Commissioner of Works summarised the differences between the Crown and the local bodies, and outlined the principles to be followed in the legislative drafting:

> It has been the desire of past Governments to set up a Catchment Board for the Waikato Catchment. Local Body representatives have from time to time indicated that this form of control of the Waikato River is not acceptable to them, and an endeavour has been made to find a form of control which expresses more reliance on existing Local Authorities, and in which Central Government accepts a greater share due to Hydro development. This has led to the conception of a Waikato Valley Authority which would control the uses to which the river was put, as well as normal drainage and river control works in the Waikato Catchment. The intention is that although such an Authority would have overall responsibility, it should not be able, without very good cause where River Control could be prejudiced, to withhold approvals affecting Hydro development, water supply and sewerage services. Whilst this Authority would work within the scope of the Soil Conservation Council's administration, and receive any Government subsidies for works and investigation through that Council, it would differ from a Catchment Board in many respects.

As a governing principle, he considered that the existing powers and services provided by existing local bodies should be utilised to the maximum, with the new Authority operating through them. In his opinion, the local bodies were "prepared to accept" a coordinating authority, and "when the occasion demands, an overriding one", provided the first call remained with them.

The local bodies did not want the new Authority to be able to levy a special rate for administration, or set up dual administrative staffs. They wanted to continue to have direct access to central Government, rather than have that access transferred to a new Authority. This applied in particular with the Waikato River that, with ten power stations, was dedicated to hydroelectric power generation; the need to have close

[701] Commissioner of Works to Minister of Works, 18 April 1955. Works and Development Head Office file 50/866. Supporting Papers #12.

contact with central Government was behind the proposal that the State Hydro Department was represented on the new Authority.

The District Commissioner envisaged that the Authority's primary object would be "to study and investigate flood control and drainage problems in the Lower and Middle Waikato Basins", although it would "have overall control over all river and drainage work in the Waikato Catchment".

> It would delegate its authority for minor works to Local Authorities in the area, and use Local Authority Engineering services wherever possible to supplement its own services in investigations of major works.
>
> The Authority could assist with such measures as pollution control, water supplies and any major irrigation schemes carried out in the Waikato area in the future.[702]

Following receipt of the District Commissioner's report, the legislation creating the Authority was, in June and July 1955, conceived as being an amendment to the Soil Conservation and Rivers Control Act. However, the draft legislation that was drawn up received a negative reception from a meeting of local body representatives in July 1955. The Commissioner of Works advised the Minister:

> The result was most disappointing, and it was obvious that any hope for passing enabling legislation must be abandoned this session….
>
> The Chairman had a difficult job leading the discussion to a point where the Committee could decide what to do next. He patiently avoided allowing representatives to cause a collapse in the negotiations, and at a later hour postponed further discussion till a later meeting when the District Commissioner will put before the representatives amended proposals that will meet the various objections raised.
>
> A summary of the discussion could be said to be a division of thought between two courses of action. River Boards and Hamilton pressed for a preliminary survey of the whole problem of the river spread over 3 to 5 years, for which the proposed annual contributions would be paid, and at the end of that time further action would be determined. The remaining representatives supported the view that an authority should be set up, but that it should be required to justify its existence at the end of 5 years, and if it could not it should be abandoned.
>
> Neither of these courses appears to be realistic. The necessity for a continuing controlling authority, which has been recommended repeatedly by successive

[702] District Commissioner of Works Hamilton to Commissioner of Works, 9 May 1955. Works and Development Head Office file 50/866. Supporting Papers #13-18.

> Commissions, has not yet impressed itself sufficiently on the local authorities. By keeping the discussions going and by useful publicity, there is hope that the present indications that the region is becoming more alive to the principles involved will eventually result in the establishment of the Authority so essential to the satisfactory drainage of the Waikato.[703]

The Commissioner of Works' summary of two possible courses of action ignored some outright opposition expressed by some local body representatives. For Te Rohe Potae district, it could be said that views on the proposed Authority became more negative as one moved upstream up the Waipa River. Raglan and Waipa County Councils and Otorohanga Borough Council supported the establishment of the Authority, and Otorohanga County Council offered support provided special rating areas were limited, while Waitomo County Council and Te Kuiti Borough Council were completely opposed[704].

Nearly one year later, little progress had been made. Then, at the instigation of the Commissioner of Works, Professor Lance McCaskill spoke to a public meeting in Hamilton. Professor McCaskill had been one of the people instrumental in having the Soil Conservation and Rivers Control Act passed in 1941, and he was a member of the Soil Conservation and Rivers Control Council. In suggesting that he should speak in Hamilton, the Commissioner of Works wrote:

> The Ministry of Works is responsible for the administration of the Soil Conservation and Rivers Control Act, and in recent years we have been concerned that little progress is being made towards extending the area covered by Catchment Boards. Only about 60% of the Dominion so far comes under the jurisdiction of a Catchment Board, and it is highly desirable that this percentage be increased to as near 100% coverage as possible.
>
> To achieve this, it is necessary first to break down a hard core of resistance to Catchment Boards that had unfortunately become evident in certain regions, owing to fears on the part of the local people that another local body is "not necessary". The only force we can bring to bear against this attitude is one of public enlightenment through judicious publicity and, when opportunity offers, by direct contact with the people primarily concerned.
>
> The Waikato River catchment is one of the critical areas where a central authority such as a Catchment Board (or a Waikato Valley Authority) is really essential, and it is felt that Professor McCaskill is the ideal person to throw

[703] Commissioner of Works to Minister of Works, 18 July 1955. Works and Development Head Office 50/866. Supporting Papers #19-20.
[704] Table attached to Commissioner of Works to Minister of Works, 18 July 1955. Works and Development Head Office 50/866. Supporting Papers #19-20.

> some more weight behind our efforts over the past 18 months to persuade members of existing local bodies and others that a central authority is necessary for the proper control of the Waikato's many river and drainage problems.[705]

At the public meeting in June 1956, Professor McCaskill argued that a Waikato Valley Authority could be a counterweight to the State Hydro Department, whose interest in electricity generation could often be at odds with the interests of riparian landowners in avoiding and reducing flooding. He believed that an authority with a fulltime professional staff would make better progress with the survey of catchment problems that would inevitably be one of the authority's early tasks. The farming community could not ignore the impact their actions had on the rivers, he said, and needed to manage the land in a manner that prevented floods[706].

There was a further meeting of local body representatives the following month. For this meeting the steering committee (which had been appointed at the September 1954 meeting of local body representatives) provided a report on its deliberations. It had seen its task as being to prepare sufficient information to enable the participating public bodies to decide whether or not a Waikato Valley Authority should be set up. In March 1956 it had resolved to support the establishment of an authority subject to an opportunity to review its operation and purpose after three to five years. In May 1956, following receipt of a report on the review proposal, it decided:

> That this Committee is of the opinion that an extensive problem exists, and that a Controlling Authority should be set up to deal with the problem. The problems have been sufficiently outlined by the reports of the District Commissioner of Works to enable an Authority to commence preliminary operations, and that this Committee recommends to the main Committee the setting up of a Waikato Valley Authority without the provision of an interim review period.

Conscious that this viewpoint was not held unanimously by all local bodies, the steering committee's report summarised the main objections:

> (a) The setting up of a permanent Authority. The question of interim review has been fully dealt with in the report of 2.5.56 and subsequent discussions with Local Councils throughout the area.

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[705] Commissioner of Works to Director Canterbury Agricultural College, 8 May 1956. Works and Development Head Office file 50/866. Supporting Papers #21.

[706] *Waikato Times*, 22 June 1956. Copy on Works and Development Head Office file 50/866. Supporting Papers #22.

(b) The complaint that the Authority is undemocratic in its representation. Only elected Council members can be appointed, but the Hon Minister indicated that the actual decision on representation should not be regarded as a closed matter. Nominated membership is an important aspect of Local Council participation in the Authority's activities and in the basic conception of its administration.

(c) That the Local Councils will be rated heavily for capital works and at least initially would lack knowledge as to what extent they were financially committing their ratepayers – this has been met by a re-cast of the draft legislation to give more specific interpretation to the basic principle and spirit of the proposed authority. This re-cast of the draft bill assumes that local Councils are willing and prepared to accept a coordinating authority providing the above principle operates. Each Council will be in a position to evaluate its own capital works and to place ratepayers in a similar position before final committal. As a further point the recast draft bill makes it mandatory upon the local Council to have the works classified, first with due regard to their location in relation to the boundaries of the Council area, within which the works are situated. After full consideration of this dominant factor, the area of benefit is then to be defined. This safeguards the possibility of undue extension of the area to be classified whilst still retaining the principle that those who benefit should pay. The application of this principle would also mean that no area involved in capital works according to the above principles would be rated beyond its capacity. In the event of the cost of essential capital works needing rating beyond saturation point, then a good case would be possible for heavier Government contribution.

(d) That Drainage Boards will be abolished. It has been made clear that there is no intention of abolishing any efficient Drainage Board, and that no Drainage Board will go out of existence except at its own request and with provision made for its functions to be carried on in some other way.[707]

The meeting in July 1956 was attended by the Minister of Works. Also present were eight local Members of Parliament, seven public servants from three Government departments, and representatives of nineteen local Councils and thirteen Drainage Boards. The national associations of the local urban Councils and the Drainage Boards (Municipal Association of New Zealand, and Drainage and River Boards Association respectively) were both represented. Besides the public body representatives, there were five representatives from Federated Farmers. No

[707] Report of Steering Committee, undated (July 1956). Works and Development Head Office file 50/866. Supporting Papers #24-27.
The Steering Committee's deliberations and reports are discussed in Jim McKenzie, *The men and the river: the Waikato Valley Authority, an historical review of the first 21 years*, 1980, pages 20-22. Wai 898 document #A76(a), Part D, pages 939-967, at pages 949-950.

representatives of other community organisations, or of iwi or Maori organisations, were present.

The Minister described the meeting as "one of the most important meetings that I have been called upon to attend during my term as Minister of Works". He was personally convinced that the existing patchwork of river boards and drainage boards was incapable of taking a source-to-the-sea approach to rivers, and a catchment authority of some sort was necessary. He did not believe that river management was solely a national issue, and wanted local participation, building on the strength of the existing local authorities, to work in partnership with the financial assistance and technical advice that central Government could provide. He wanted the meeting to come up with workable proposals of a cooperative nature that could attend without delay to the practical tasks associated with managing the rivers.

The representatives of the local authorities then each reported on the views of their council. While there was no substantive change to the stances each council had previously taken, the bodies that did not believe there was any need for an authority seemed to have become reconciled to the majority opinion that it should be established, and were ready to accept the inevitable. However, they were prepared to pay only the minimum contribution, and did not want their ratepayers to be burdened with additional costs from which they were unlikely to receive any benefit. They also sought a review of the necessity of the authority after five to seven years.

The Minister and his officials in the Ministry of Works might have hoped that the July 1956 meeting would be a final one giving the green light to the drawing up of the bill establishing the Waikato Valley authority. If such a view had been unanimous, a resolution to that affect might have been passed. However, the Minister avoided the passing of any resolution, as that could have entrenched the strongly-held differing views. Instead he suggested that the steering committee (or some other committee) continue its work and consider possible solutions to the matters raised at the meeting.[708]

[708] Minutes of meeting 13 July 1956. Works and Development Head Office file 50/866. Supporting Papers #28-42.

The steering committee met later in July 1956 to see if the points of concern could be incorporated into the draft legislation:

(1) A review of the operations of the Authority in, say, 7 years, to see whether business should be continued. It was agreed that the Authority should do this reviewing, and even though every local authority could do this at any time it was believed that it would be worthwhile making a special provision in this case to pacify public opinion. It was understood that any recommendation would need legislative action to remove the Authority.
(2) Nominated or elected Members. The constitution of the Authority should be such that its members would be drawn from members of existing local bodies. This was regarded as elected. There was practically no choice as to principle if the Authority was to function as desired, i.e. using the resources of local bodies. A representative from Drainage Boards was considered desirable. The number on the Authority would [end] up at 16, of which 11 would be local body and 5 Government.
(3) Special account under Soil Conservation Fund. This produced the nearest approach to a stalemate. Most representatives wanted to go direct from the Authority to Government for funds as they do for Roads Vote and Rural Water Supply subsidies, etc. Lengthy discussion partly convinced delegates that the Government had a statutory method of checking and providing money for River Control schemes, and that to establish a second method wasn't very logical. They were invited to supply reasons why they imagined there would be trouble dealing with the Soil Council, and an offer was made on your behalf to examine whatever data they chose to put forward.
(4) Administration Levy to remain as fixed percentage. All were satisfied on this point, except that Franklin County has so far not got anywhere near accepting its percentage. Possibly a small portion of its share may be transferred to Rotorua, Taupo, Piako and Taumarunui….
(5) Better representation for municipalities: Counties 7, Boroughs 3, Government 5, Drainage Boards 1, Total 16.
(6) Quorum for meetings – 9 members.
(7) Authorised Deputies with power to vote.
(8) Term of office, same as local authorities.

The meeting agreed that the points covered here would be included in a draft amendment to be submitted to another meeting for polishing up before submitting to you as a basis for Parliamentary discussion.

It is clear that all parties [handwritten in margin, "except Hamilton"] are reconciled to the establishment of a River Authority, and are now merely making defensive objections.[709]

[709] Commissioner of Works to Minister of Works, 25 July 1956. Works and Development Head Office file 50/866. Supporting Papers #43-44.

This last remark was also apparent when the steering committee held its final meeting at the end of August 1956[710]. Discussion had moved beyond debating the principles that would be covered by the legislation, to examining the actual wording of the draft bill. The District Commissioner commented that:

> Much of the comment preferred is back-tracking over decisions already made, and there were a number of attempts to re-commit decisions, with irksome delay, in consideration of various clauses.[711]

The Office Solicitor from the Head Office of Ministry of Works was also present at the August meeting of the steering committee. His report provided the basis for a briefing note to the Minister:

1. There seems to be no clear change in the attitudes of Hamilton City, Waitomo County and Te Kuiti Borough, who seem opposed basically to the whole project.
2. They seem prepared to cooperate to some degree in getting the most satisfactory Bill if the proposed project must go on.
3. To the extent that the Bill is now an independent Bill and not an amendment or part of the Soil Conservation and Rivers Control Act, and to the extent that it provides a large measure of independence from the Soil Council, they moved a resolution of satisfaction which was passed at this meeting.
4. A number of suggestions (mostly in line with the draft) were tabled and are being examined.
5. At the end of the meeting I informed the Committee that the next move would be the revision of the draft by the Law Drafting Office with amendments to date, and that they would next see the printed Bill, still on a confidential basis.[712]

An unsigned and undated report on the proposed bill from about this time provided some further analysis of the thinking behind the bill[713]. It is possible that this report was intended as speech notes for the Minister of Works when introducing the Bill in Parliament. The report looked first at the history of local opposition to a catchment authority:

> The need for getting all of the local authorities in the Valley to devise a common policy and work to it has been realised for many years. There have been many inquiries and reports upon what needs to be done, and the best

[710] Attendees at the 29 August 1956 steering committee meeting are listed in Jim McKenzie, *The men and the river: the Waikato Valley Authority, an historical review of the first 21 years*, 1980, page 22. Wai 898 document #A76(a), Part D, pages 939-967, at page 950.
[711] District Commissioner of Works Hamilton to Commissioner of Works, 31 August 1956. Works and Development Head Office file 50/866. Supporting Papers #65-66.
[712] Commissioner of Works to Minister of Works, 31 August 1956. Works and Development Head Office file 50/866. Supporting Papers #23.
[713] Notes on Waikato Valley Authority Bill, undated. Works and Development Head Office file 50/866. Supporting Papers #56-64.

> means of doing it, and there seem still to be people who would sooner have another inquiry than spend the same money on doing some of the things that would ease the situation. However, the Government is satisfied that the people of the district generally agree that the time has come for the establishment of a body to make a complete study of all the problems of the Waikato and to go to work on the remedies.
>
> There is a school of thought that the taxpayers of the Dominion should organise and pay for the study as well as the solution of the problems. They feel that the location of a chain of hydro-electric lakes on the Waikato constitutes a sufficient State interest in the river to warrant handing the whole responsibility over to the State. Those views have been considered and rejected by the State, which considers that the State Hydro dams tend to safeguard the river from floods and from the movement of material down the bed of the river. However, as will be seen later, the State Hydro Department will be contributing £6000 per annum towards the administration costs of the Authority, and will have a seat on the Authority for the better coordination of flood control with the use of the rivers for generating electricity.
>
> This Bill is based upon the principle that the organisation to cope with this river is a matter principally for the inhabitants of the area; and the Government accordingly has endeavoured through a Steering Committee of representatives of the local authorities of the districts to find what kind of authority should be established to undertake the coordination which apparently all agree is necessary, and how the authority should work.

Next, the report looked at the opposition to catchment boards under the Soil Conservation and Rivers Control Act 1941:

> Some of that [antagonism] seemed to have been engendered from outside the Valley and was based upon partisan accounts of conflicts elsewhere.
>
> Perhaps it should be made clear at this point that in introducing this Bill the Government does not endorse that attitude. The Soil Conservation and Rivers Control Council has done and continues to do an immense amount of good. The need for a coordinating body in this field is perfectly evident to anyone who concerns himself with facts. The local authorities of this Dominion had the whole field of soil conservation and river control to themselves for the first hundred years of government, and while a few did good work there were many sorry stories of the results of the lack of cooperation between them, and some of acts hostile to all other interests.
>
> It is abundantly clear that the passing of the Soil Conservation and Rivers Control Act and the setting up of Catchment Boards has resulted in much more real progress being made in solving our major river, drainage and soil conservation problems than would have been achieved without it….
>
> The Waikato Valley has many and major problems, and it is essential that immediate progress be made in solving these problems. It is for that reason

> that the Government is introducing a Bill that may on the face of it be appearing to be bypassing existing administration….
>
> Because this work to be done is essentially the responsibility of the people affected, the Government is prepared to let the people of the Waikato Valley try out the system which they seem to prefer. If it proves better in any respect, those better features will no doubt be applied elsewhere.

The report then looked at the provision in the bill that allowed the national Council to be bypassed:

> One apparently substantial difference in the Bill is superficial only. That is the elimination of the Soil Conservation and Rivers Control Council, and substitution of the Minister of Works as the supervising and approving authority. Everything which the Soil Conservation and Rivers Control Act requires to be done by the Council will under this Bill require to be done by or under the direction of the Minister. That is not the choice of the Minister – it is against his personal wishes, and is accepted only because the local desire seems so firm on the point. But it is superficial because the Minister must have the best independent advice he can get upon every proposition that comes forward, and equivalent advice cannot be obtained from any source other than the Soil Conservation and Rivers Control Council and its expert staff. Every proposition from the Waikato must receive the same examination as similar propositions from elsewhere. The Waikato demands upon the public purse by way of subsidies must be fully and properly compared with all similar demands from elsewhere. There can be neither preferential nor prejudiced consideration of the claims of the various districts, and it is the function of the Minister to see that it is so and continues so. That result cannot be assured unless the Minister calls upon the Soil Conservation and Rivers Control Council and its officers, and the officers of a number of other Departments for the same reports and recommendations in respect of Waikato proposals as are prepared in respect of proposals from elsewhere. The difference will be only that the Minister will be involved in some additional supervision which in other places is not regarded as necessary.

On the question of review of the Authority after a certain number of years to test its relevance, the report noted:

> A full review of the Authority's activities is to be made in 1962, covering the whole period of its activities….
>
> There seems to be agreement that the Authority should be dissolved <u>if</u> the 1962 review does not show justification for its continued existence. The Local Government Commission exists for the express purpose (amongst others) of disposing of redundant local authorities, and if this Authority is unable to justify its existence by 1962, it will be a proper subject for the Commission's attentions. But some of the local Councils have already indicated so much aversion to this whole movement that it is thought desirable to require some

> minimum weight behind any application for dissolution of the Authority. It has been fixed at not less than four Counties and two Boroughs.
>
> The Government doubts that any genuinely held and informed opinion prompted the suggestion that the Authority will not have fully justified itself by 1962. Suggestions of that kind were made of the Catchment Boards in places where their good work has long since won complete acceptance by the people who foot the bill; and inquiries in those places where Catchment Boards are allowed to operate, and not frustrated at every turn by people who do not want them to succeed, will show clearly that they fill exceedingly well an important function.
>
> The determination with which some local authorities of the Waikato have over the years successfully resisted all attempts at coordination of control of the whole river basin, seems convincing argument as to the need for an Authority of this general nature to investigate all work on this river. But the Steering Committee – perhaps each member with a different viewpoint – has agreed that this provision should be inserted, and the Government has accepted it on the basis that the review itself cannot possibly be harmful and may be helpful in applying the spur to practical progress. There must of course be other consequences of these express references before the Authority is created, to the possibility of its dissolution in seven years' time but those consequences are referred to later.
>
> The general intention is to allow the Authority about a year to organise itself, and five years of operation before this question may be raised.[714]

In this report, which has been quoted from extensively because it amplifies the thinking that had been put into the Bill, there was no mention of Maori. It was apparently not considered relevant that Maori in the Waikato region might comprise a constituency with different expectations and requirements, or that the Crown might have any particular obligations towards Maori such that it would be appropriate to make special provision for their needs.

A.5 Waikato Valley Authority Act 1956

The Waikato Valley Authority Bill was introduced to Parliament in October 1956, and was passed to the Local Bills Committee for report.

The most significant amendment to the Bill as it passed through Parliament was a reduction in the number of central Government members on the Authority from five

[714] Notes on Waikato Valley Authority Bill, undated. Works and Development Head Office file 50/866. Supporting Papers #56-64.

to two. As a consequence the quorum was reduced from twelve to ten. The two central Government appointees, gazetted in December 1956, were the District Commissioner of Works in Hamilton, and the Hamilton manager of the State Hydro-electric Department[715].

The Act identified the Waikato Valley as comprising all the land lying within the catchment area of the Waikato River and its tributaries. Besides the two Government appointees, there were to be 11 members, who would be elected by the members of the local authority Councils that each Authority member represented. Each member of the Authority had to be an elected member of one of the bodies by which he or she had been elected. Within Te Rohe Potae inquiry district, one member represented "so much of the County of Waipa as lies within the Valley", two members represented "so much of the County of Waikato as lies within the Valley", one member represented "the combined district comprising so much of the Counties of Otorohanga and Waitomo as lies within the Valley", and one member represented "the combined district of the Boroughs of Te Awamutu, Te Kuiti and Otorohanga". In addition one member represented the local Drainage and River Boards.

Under Section 9 of the Act, the Minister of Works took the place in the legislation of the Soil Conservation and Rivers Control Council, so that any functions and powers under the Soil Conservation and Rivers Control Act 1941 that were held by the Council were to held by the Minister with respect to the Waikato Valley. Section 11 set out a general policy whereby the Authority would operate mainly through the already existing local Councils, so that those local Councils did not lose any of their functions, and were given the powers of a catchment board to carry out works. The Authority was expected "to confine its activities to the co-ordination and general direction of each undertaking within the Valley". In 1962, the Authority had to prepare a review report about its income, expenditure, works programme and progress generally since its formation, showing what had been initiated, what had been accomplished, and what was proposed. In terms of Section 14, this report had to be distributed to local authorities before the end of June 1962. Under Section 15 the local authorities then had a window of opportunity before the end of March 1963 to

[715] *New Zealand Gazette* 1956 page 1778. Supporting Papers #131.

apply to the Local Government Commission for the dissolution or a reorganisation of the Authority.

A former Ministry of Works official, who was involved in the negotiations during 1956, remarked in his history of the early years of the Waikato Valley Authority:

> It says much for the tenacity of those local leaders who saw the need for an overall coordinating authority, and despite objections and frustrations (some at times abrasive) kept going until the objective was achieved. Also to be commended is the open-mindedness of the Ministry of Works officers who patiently sifted the pros and cons, and faithfully reported to the Government the feelings and hopes of the local people.[716]

He also commented, with respect to the length of the negotiations, that "undoubtedly, the steps leading to the passing of the Act illustrated the more painful processes of democracy"[717].

A.6 Defining the boundaries of the Waikato Valley

While the Waikato Valley Authority's boundary was generally understood to be the watershed of the Waikato and Waipa catchments, it was not a straightforward matter to legally define the watershed, display it on a survey plan, and provide a written description. The view taken was that, rather than send out a survey party to define the watershed by a new dedicated survey, it was simpler, more cost-effective, and more practical for rating purposes, to define it by already surveyed title boundaries (or by straight lines between points whose locations had already been surveyed) that most closely approximated to the location of the watershed[718]. Even that was a large task, and was not attempted until 1970. A draft boundary definition and description was prepared in June 1970, and sent to the Waikato Valley Authority for confirmation[719].

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[716] Jim McKenzie, *The men and the river: the Waikato Valley Authority, an historical review of the first 21 years*, 1980, pages 22-23. Wai 898 document #A76(a), Part D, pages 939-967, at page 950.
Mr McKenzie was the Administrative Assistant to the District Commissioner of Works Hamilton, was the Acting Secretary to the Waikato Valley Authority when the Authority was first established, and became the first fulltime Secretary when the Authority recruited its own staff in 1957. He held the position of Secretary until 1968.

[717] Jim McKenzie, *The men and the river: the Waikato Valley Authority, an historical review of the first 21 years*, 1980, page 25. Wai 898 document #A76(a), Part D, pages 939-967, at page 951.

[718] Chief Surveyor Hamilton to Chief Engineer Waikato Valley Authority, 23 January 1970. Waikato Valley Authority file 21/5. Supporting Papers #152.

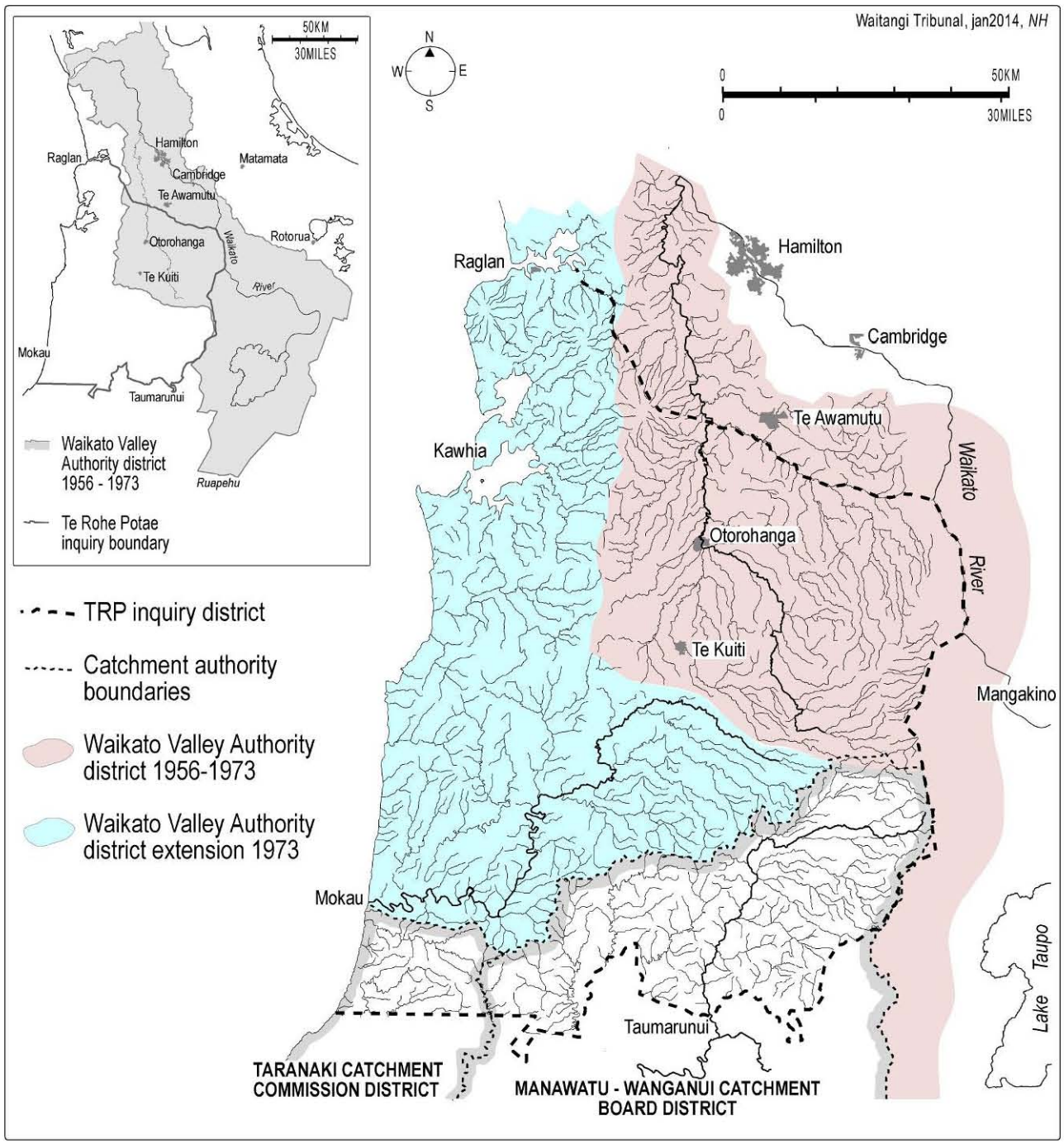
[719] Chief Surveyor Hamilton to Chief Engineer Waikato Valley Authority, 8 June 1970 and 22 June 1970. Waikato Valley Authority file 21/5. Supporting Papers #157-158 and 159.

The Authority in turn sent it to the territorial local authorities for their information[720]. The Authority then confirmed its agreement with the boundaries as drawn up by the Department of Lands and Survey, and the boundary description was gazetted in 1970[721].

An example of the difference between the actual watershed and survey lines approximating the watershed can be gauged from an inquiry from the European owner of Pukenui B65 block. When the Valuation Department included his block in the Waikato Valley Authority district, he complained that only a small portion of the block was on the Waipa side of the watershed that ran through his land[722]. It was then agreed that in following the closest cadastral boundary line, the boundary of the Authority's district would follow the surveyed boundary of Pukenui B65, and exclude that particular block altogether[723].

[720] Circular letter by Secretary Waikato Valley Authority, 1 July 1970. Waikato Valley Authority file 21/5. Supporting Papers #160.
[721] *New Zealand Gazette* 1970 pages 2139-2143. Supporting Papers #132-136.
[722] GG Beaven, Te Kuiti, to Classification Officer, 10 February 1970. Waikato Valley Authority file 21/5. Supporting Papers #153-154.
[723] Chief Engineer Waikato Valley Authority to Branch Manager Valuation Department Hamilton, 5 May 1970. Waikato Valley Authority file 21/5. Supporting Papers #155-156.

Map 4 Waikato Valley Authority district and extension



A.7 How the Waikato Valley Authority differs from Catchment Boards

While the Waikato Valley Authority was established as a de facto catchment board for the Waikato catchment (including the Waipa catchment), there are a number of differences between the two, as defined by the respective statutes (the Waikato Valley Authority Act 1956 and the Soil Conservation and Rivers Control Act 1941). The main features of the Authority's constitution that are not shared with the constitutions of catchment boards can be summarised as:

- The Authority is responsible to the Minister of Works
- The Authority's local membership is elected members of local authorities
- The Authority is primarily responsible for coordination and direction-setting, rather than the carrying out of works
- The Authority only has specific rating powers
- The Authority is subject to a statutory review

Each of these differences is examined below[724].

A.7.1 The Authority is responsible to the Minister of Works

According to a paper to the Minister of Works in May 1958:

> A Catchment Board is subject to the control and direction of the Soil Conservation and Rivers Control Council, while the Waikato Valley Authority is subject to the control and direction of the Minister of Works. This difference is superficial only, as in directing the Authority the Minister would normally rely on the best independent advice, which would be given by the Soil Conservation and Rivers Control Council and its experts in the field.[725]

The significance of the Authority being responsible to the Minister of Works rather than to the Soil Conservation and Rivers Control Council was discussed with the Minister as soon as the legislation was passed. The Office Solicitor wrote to the Commissioner of Works:

> Now that the legislation is enacted, it is necessary to have clear directions as to its administration.

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[724] The formatting of these differences is based on a report to the Minister of Works in May 1958 (Commissioner of Works to Minister of Works, 6 May 1958. Works and Development Head Office file 75/16 - Supporting Papers #115-117).
This report also appears to be the basis for a summary of the differences set out in a book published by the Ministry of Works in 1968 (AR Acheson, *River control and drainage in New Zealand*, Ministry of Works, 1968, pages 27-28).

[725] Commissioner of Works to Minister of Works, 6 May 1958. Works and Development Head Office file 75/16. Supporting Papers #115-117.

> The local people made a feature of their objections to being under the jurisdiction of the Soil Conservation and Rivers Control Council; but at the time when the Bill was proposed to be altered from an additional Part of the Soil Conservation and Rivers Control Act to an independent Bill, I made very clear to the Steering Committee in words of one syllable that the Minister would necessarily be guided by reports from the only organisation established to deal with river and drainage problems, viz., the Council and the Departmental staff attached to it. I stressed that the Waikato River problems would get neither more nor less consideration than the problems of other rivers, and that the same organisation must be used also to ensure that the Waikato got the benefit of the best available experience. They appreciated the point, but said they still preferred an independent Bill – and they now have it.
>
> The point therefore is that instructions now require to be issued for the channelling and handling of the administration of the Act.
>
> I recommend that the staff who handle Soil Conservation and Rivers Control matters be instructed to control and handle matters arising under the Waikato Valley Authority Act as if it were part of the Soil Conservation and Rivers Control Act, and that the Soil Conservation and Rivers Control Council be requested also to consider and advise the Minister upon all matters arising under the new Act in accordance with Section 11(1)(l) of the [Soil] Conservation and Rivers Control Act 1941.
>
> In his address to the House on the Second Reading Debate, the Minister explained briefly what are the principal differences between the Authority and a Catchment Board, and inter alia stated: "Catchment Boards look to the Council for subsidies and are guided and supervised by the Council in any matter which carries Government subsidies. The corresponding relationship of the Authority will be with the Minister, <u>but the Minister will necessarily have reports from the Soil Conservation and Rivers Control Council on all such matters</u>".[726]
> [Underlining in original]

The Commissioner of Works presented this advice in abridged form to the Minister, who approved it[727].

In July 1957 the Commissioner of Works advised Waikato Valley Authority that the administrative procedure to be followed for the consideration of proposals, fixing of subsidies, payment of claims, and the like would be the same as had been developed already for catchment boards:

[726] Office Solicitor to Commissioner of Works, 26 October 1956. Works and Development Head Office file 50/866. Supporting Papers #67.
[727] Commissioner of Works to Minister of Works, 6 November 1956. Works and Development Head Office file 50/866. Supporting Papers #68.

> Although there are differences in the controlling authority, the same principles apply. These procedures are detailed in the Appendices [being copies of circular instructions sent to catchment boards], and with appropriate modifications can serve the purpose of the Authority also.
>
> To save a great deal of work, these circulars are being sent in their present form, i.e. they have not been rewritten specially to suit your purposes. The principal modification required is that any reference to the "Council" in the circulars and instructions should be taken as a reference to the "Minister".
>
> Although the Authority is responsible direct to the Minister of Works, it will be readily appreciated that administrative machinery is necessary to deal with proposals and correspondence, and the Minister will use the Ministry of Works for this purpose – the Commissioner of Works being his advisory and executive authority in this respect.
>
> For this reason a good deal of delay and perhaps confusion will be avoided if Authority correspondence and proposals are dealt with through existing well-established channels, i.e. through the District Commissioner to the Commissioner of Works; and thereafter to the Minister….[728]

A.7.2 The Authority's local membership is elected members of local authorities

According to a paper to the Minister of Works in May 1958:

> Members of a Catchment Board are elected by the same electorate as the local authority of the district, and usually only a small proportion of the members elected to the Catchment Board are also members of the local authority. The Waikato Valley Authority is comprised of local authority members elected by the members of the local authorities which they represent. Apart from 2 members representing State Hydro-Electric Department and the Ministry of Works, the Waikato Valley Authority Act requires every member of the Authority to be a member of the Council or Board by which he is elected.[729]

By contrast, members of catchment boards were directly elected by local ratepayers. This difference prevailed until a legislative amendment of the 1941 Act in 1959 allowed for the appointment of catchment commissions. These commissions shared the same powers and functions as catchment boards, but their local membership was appointed by already-existing local authorities. In this respect the Waikato Valley Authority was a forerunner of the subsequently legislated-for catchment commissions.

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[728] Commissioner of Works to Secretary Waikato Valley Authority, 10 July 1957. Works and Development Head Office file 75/16. Supporting Papers #102-112.
This letter was triggered by a request from the District Commissioner of Works in Hamilton for appropriate instructions to be issued by his Head Office. District Commissioner of Works Hamilton to Commissioner of Works, 2 April 1957. Works and Development Head Office file 75/16. Supporting Papers #100-101.

[729] Commissioner of Works to Minister of Works, 6 May 1958. Works and Development Head Office file 75/16. Supporting Papers #115-117.

A.7.3 The Authority is responsible for coordination and direction-setting

According to a paper to the Minister of Works in May 1958:

> Section 11 of the Waikato Valley Authority Act states that it shall be the general policy and function of the Authority, so far as the local councils are willing and able to undertake and finance the works, to confine its activities to the coordination and general direction of each undertaking, and it shall be the function of each local council to finance, organise and execute works within its district as the Authority shall direct. The Authority, however, is responsible for dredging the Waikato and Waipa Rivers. A catchment board differs in this respect under the Soil Conservation and Rivers Control Act in that it is itself responsible for works in its area.[730]

As the Commissioner of Works said in December 1957:

> Section 11 of the W.V.A. Act was to make plain what the Authority is NOT to dabble in. Without that section, the Authority would automatically become paramount in small as well as large matters, and the objective was to assert the right of the local Councils to do as much as they may be able and willing to undertake.
>
> Section 12 recognises that the local Councils might be called upon to undertake works which required exercise not of their own powers but of the powers of the Authority; and its objective inter alia is to ensure that the powers of the Authority are not usurped. The local Council exercising its own statutory powers at its own expense is outside the range of that section; but when it is exercising the powers of the Authority it must quote the delegation under which it claims to be acting.[731]
> [Underlining in original]

A.7.4 The Authority only has specific rating powers

According to a paper to the Minister of Works in May 1958:

> Section 87 of the Soil Conservation and Rivers Control Act 1941 … provides for a special works rate over the whole district, whereas the only special works rates the Authority may levy will be confirmed to part of the district.

The maximum rate the Authority could levy over part of a district was double the maximum a Catchment Board could levy.

> The reason for doubling the rate allowed by the Soil Conservation and Rivers Control Act is that the Authority has fewer avenues of raising money than a catchment board.

In addition:

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[730] Commissioner of Works to Minister of Works, 6 May 1958. Works and Development Head Office file 75/16. Supporting Papers #115-117.
[731] Commissioner of Works to District Commissioner of Works, 4 December 1957. Works and Development Head Office file 75/16. Supporting Papers #113-114.

> The Authority does not levy an administrative rate as does a catchment board; instead its administration expenses are paid as to 2/3rd by the local councils of the constituent districts, and as to 1/3rd from moneys appropriated by Parliament. The Authority has no power to strike a "general rate", nor a "separate rate", nor a "special works rate", as does a catchment board under Sections 85, 86 and 87 of the Soil Conservation and Rivers Control Act, but the Authority finances its works from the increased maximum [allowed in its works rating of part of its district].[732]

The 1956 Act capped the Authority's administrative costs at £18,000, while catchment boards could determine their own total of administrative costs.

A.7.5 The Authority is subject to a statutory review

The Authority was required by law to undertake a review of itself in 1962. A Catchment Board had no review requirement, although the Local Government Commission could decide at any time to undertake a review.

The nature of the review carried out by the Authority into its own performance has not been researched for this topic study. The history of the Authority states that the Authority's Chief Engineer tabled a review report in October 1959, adding that "no request to the Commission was made, and the Authority still exists"[733]. A book published by the Ministry of Works in 1968 noted that there had been no move made by any of the constituent local authorities to have the Authority dissolved or reorganised, and "every indication that the Authority will carry on in its present form"[734].

A.8 Extending the boundaries of the Waikato Valley Authority's district

Having full coverage of the country by catchment boards was still one of the ambitions of central Government. This took on an added relevance in 1967 when the Water and Soil Conservation Act was passed. This statute provided for regional water boards to be established to administer at a regional level the power that the Crown had acquired in the 1967 Act, when it vested in the Crown the right to use water, and then provided for the Crown to issue water rights for the use of water by others. Issuing

[732] Commissioner of Works to Minister of Works, 6 May 1958. Works and Development Head Office file 75/16. Supporting Papers #115-117.
[733] Jim McKenzie, *The men and the river: the Waikato Valley Authority, an historical review of the first 21 years*, 1980, page 24. Wai 898 document #A76(a), Part D, pages 939-967, at page 951.
[734] AR Acheson, *River control and drainage in New Zealand*, Ministry of Works, 1968, pages 27-28.

water rights was to be the task of regional water boards, or the Water Allocation Council (a Wellington-based body) where no regional water board had been appointed.

Under the 1967 Act the Waikato Valley Authority automatically became a regional water board for the Authority's district, which the Act defined as being a "water region". The Act also instructed that parts of the country not in any water region were to be added to an adjoining region, or defined as a separate water region, "as soon as practicable". Section 19(3) allowed existing regional water boards and territorial local authorities to make representations to the National Water and Soil Conservation Authority about the future status of any area not within a water region no later than 1 July 1968. The National Authority then had until 1 October 1968 to forward proposals about areas not in any water region to the Local Government Commission.

Raglan County Council was quick off the mark once the legislation had been passed. It wrote to the Ministry of Works in November 1967 applying to be appointed as the regional water board for the western half (approximately) of its county area that was located outside the Waikato Valley Authority's water region.

> Section 19(10) of the Act provides that wherever possible the outside boundaries separating water regions shall be the crests of outer water sheds of the area generally, so that every tributary of each river or stream in the region is included in that region; and that the region shall include the territorial sea and sea-bed thereof lying within the seaward projections of its side boundaries. That part of the Raglan County which is outside the boundaries of the Waikato Valley Authority complies with the conditions laid down under Section 19(10) as it is a separate water-shed or water-sheds, and is surrounded by water or the Waikato Valley Authority on three sides, and all streams flow into the sea or the Raglan and Aotea Harbours.[735]

The District Commissioner of Works was asked for his comments, in the context of some general policy considerations.

> In considering any application for the constitution of a new water region, it is thought that the National Authority would give consideration to such matters as:
>
> (a) The ability of the applicant body to carry out the functions of a Regional Water Board as detailed in Section 20 of the new Act.

[735] County Clerk Raglan County Council to Director Water and Soil Division, 29 November 1967, attached to Commissioner of Works to District Commissioner of Works Hamilton, 26 March 1968. Works and Development Hamilton file 96/6/1. Supporting Papers #118-119.

(b) Its ability to accept and carry out any delegated powers given to it by the Authority in relation to these functions.
(c) Whether or not the above could be done, could the necessary work be better or more economically carried out in some other way rather than by setting up of a new Board.
(d) Any other relevant matters.

A further consideration was the views of the Waikato Valley Authority, in its capacity as the board of an adjoining water region, in terms of Section 19(3) of the Act[736].

The District Commissioner discussed the application with the Chief Engineer of the Authority.

> He says that the Authority does not wish to make any move in this matter at the present time. However, I think that when it has resolved its current difficulties with the Raglan County and other of its constituent authorities, it will come down in favour of the area being added to its present water region.
>
> To answer your questions:
> (a) I must qualify my answer by saying that if there were no alternative the applicant body's ability to carry out the function of a Regional Water Board would be acceptable.
> (b) With the same qualification, its ability to carry out powers delegated by the Authority would also be acceptable.
> (c) The necessary work could be done better and more economically by the Waikato Valley Authority, and it is quite unnecessary for a separate water board to be established.
> (d) The County has not advanced any specific reasons why this area should become a separate water region. The quoted requirements of Section 19(10) would apply with equal force to the inclusion of the area in the water region of the Waikato Valley Authority.
>
> It is relevant to consider other areas in this district which are not part of existing water regions. These are the whole of the Coromandel County, and coastal portions of the Otorohanga and Waitomo Counties….
>
> I understand that when the proposed Taranaki Catchment Authority is constituted, its territory will extend to the southern boundary of the Mokau catchment, and the balance areas of Clifton, Waitomo and Otorohanga Counties will come into the Waikato Valley Authority's Catchment District[737].

In making this last remark, the District Commissioner was revealing the informal conclusion already reached by central government officials prior to any discussion with the local authorities.

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[736] Commissioner of Works to District Commissioner of Works Hamilton, 26 March 1968. Works and Development Hamilton file 96/6/1. Supporting Papers #118-119.
[737] District Commissioner of Works Hamilton to Commissioner of Works, 11 April 1968. Works and Development Hamilton file 96/6/1. Supporting Papers #120-121.

The District Commissioner was then instructed to line up the support necessary to achieve the officials' informal decision. In June 1968 he was told to contact the Waikato Valley Authority "suggesting it should be prepared to have its territory extended to include the areas adjoining the Waikato valley".

> The National Water Authority will need an indication of WVA's attitude, and some prompting will be necessary to get it by 1st July, or at all. Do not be specific about adjoining areas, though I hope WVA will cover whole West Coast including Mokau catchment. It is known that Raglan has applied to be the regional water board for its own coastal strip, but this should not deter a competent authority from making a generous offer to the NWA, particularly if it does so in general terms.[738]

The District Commissioner wrote to the Authority[739], and clearly succeeded in the task he had been given as later that month the Waikato Valley Authority passed a resolution:

> That providing satisfactory arrangements can be made, this Authority as the Regional Water Board is prepared to have its territory extended to include any adjoining area which is not included within a Water Board.[740]

In this context of the resolution reflecting the ambitions of Crown officials, it needs to be remembered that the District Commissioner of Works was one of the two Crown appointees on the Waikato Valley Authority.

Referring to the resolution, the District Commissioner told his superiors in Wellington:

> In this district, the areas which WVA is prepared to take over as extensions of its water region are the coastal portions of the Raglan and Otorohanga Counties, and the coastal and southern portions of the Waitomo County at least to the northern boundary of the Mokau catchment.
>
> I understand that the northern boundary of a proposed Taranaki catchment authority is likely to be the southern boundary of the Mokau catchment. If this is so, then it would be very appropriate for the extended WVA water region to take in the coastal portions of these three counties plus the Clifton portion of the Mokau catchment.[741]

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[738] Telex Commissioner of Works to District Commissioner of Works Hamilton, 19 June 1968. Works and Development Hamilton file 96/6/1. Supporting Papers #122.
[739] District Commissioner of Works Hamilton to Secretary Waikato Valley Authority, 20 June 1968. Waikato Valley Authority file 21/5. Supporting Papers #148.
[740] Secretary Waikato Valley Authority to District Commissioner of Works Hamilton, 26 June 1968. Works and Development Hamilton file 96/6/1. Supporting Papers #123.
[741] Telex District Commissioner of Works Hamilton to Commissioner of Works, 2 July 1968. Works and Development Hamilton file 96/6/1. Supporting Papers #124-125.

Separately, but in the same timeframe, Otorohanga County Council wrote asking that the only part of its county (the Kawhia North Riding) not included in the Waikato Valley Authority area be brought under the jurisdiction of the Waikato Valley Authority[742]. The District Commissioner reported in August 1968 that it was his understanding that Waitomo County Council wanted the balance of its county area to be included in the Waikato Valley Authority's district[743].

In September 1968 the National Authority advised the Waikato Valley Authority that it was recommending to the Local Government Commission that the following areas west and south-west of its region be added:

> (a) The land bounded in the south by the southern extremities of the Mokau River catchment, in the west by the Tasman Sea and extending northwards to the southern boundary of the Raglan County, be added to the area of land under the jurisdiction of the Waikato Valley Authority.
> (b) That the part of Raglan County at present excluded from the jurisdiction of the Waikato Valley Authority be included for the purposes of the Water and Soil Conservation Act 1967 only.[744]

Thus the western part of Raglan County where the Waikato Valley Authority was the regional water board would be a water region, but it would not be part of the Waikato Valley Authority's district for catchment control purposes under the Soil Conservation and Rivers Control Act 1941.

There was a delay of four years from receipt of the National Authority's advice before the Local Government Commission advertised the proposed changes to the Waikato Valley Authority's area of jurisdiction[745]. The extension to the south and south-west was one of three proposed adjustments to the Authority's boundary, and was the fourth item in the First Schedule to the Commission's provisional local scheme, while the Raglan water region proposal was described in the Second Schedule to the provisional local scheme. The differences between the two proposals were

[742] County Clerk Otorohanga County Council to Director of Water and Soil Conservation, 28 June 1968. Waikato Valley Authority file 21/5. Supporting Papers #149.
[743] Telex District Commissioner of Works Hamilton to Commissioner of Works, 21 August 1968. Works and Development Hamilton file 96/6/1. Supporting Papers #126-127.
[744] Director of Water and Soil Conservation to Secretary Waikato Valley Authority, 26 September 1968. Waikato Valley Authority file 21/5. Supporting Papers #150-151.
[745] Provisional Local Scheme for alteration of Waikato Valley Authority boundaries, 11 July 1972, attached to Secretary Local Government Commission to Secretary Waikato Valley Authority, 12 July 1972. Waikato Valley Authority file 21/5. Supporting Papers #161-173.

highlighted in a staff report to the Waikato Valley Authority. The south and south-west extension would add 1195 square miles to the Authority's district. This area would receive what was described as "full servicing":

> The areas … will become subject to Section 10 of the W.V.A. Act 1956, and will therefore share the costs of administration in the manner described in that section, being
>
> - One third from N.Z.E.D.
> - One third from equalized Capital Values
> - One third being in proportion to the assessed loading for works and services
>
> The practical assimilation of the additional areas within the framework of the Authority's administration, and on a comparable basis to areas already within the existing district, in the opinion of your officers present no problem.
>
> The additional areas are (with the exception of Clifton) already constituent councils of this Authority, so their inclusion merely means increasing the capital value as required for uniform assessment while the existing apportionment of works and services loading is left constant in terms of the Act.
>
> The additional areas are loaded for works and services in the same manner as was applied in 1967, with the sum of the points so assessed being increased from 100 to 107.18 to accommodate the additional areas. This then leaves undisturbed the existing relationship between constituent councils, and so conforms to existing legislation.

The western half of Raglan County, some 473 square miles, would be included for "Water Board purposes only":

> In this instance, Section 10 of the W.V.A. Act dealing with the apportionment of administration costs applies only to the extent of an agreement between the territorial local authorities and this Authority, and subject to the approval of the National Water and Soil [Conservation] Authority. In the event of failure to reach agreement, the decision is to be made by the National Authority.
>
> To assist the Authority in deciding on an appropriate cost sharing basis for such areas, it is suggested that the costs of the central administrative and decision making structure of this Authority should be applied throughout the total area of the Authority including the extended area.

The additional areas were thought to "have a need for mainly soil conservation with some ancillary engineering servicing". The main expense would be the employment of an additional soil conservator:

> An additional cost of the extended area is already part of the budget and comprises the supervision and expert advice of your senior officers, and becomes an economy that greater size confers on the Waikato Catchment as a

> whole. It therefore follows that the additional areas will have increased charges proportional to the rest of the catchment, while there will be slight reductions to charges for the balance of the catchment based on this year's budget estimate.[746]

Submissions on the provisional local scheme with respect to the south and south-west extension were made by Waitomo County Council. Its concern was one of cost, that a portion of the county that had little call for the type of works and services provided by the Waikato Valley Authority would be rated to the average demand for works and services, when the average was affected by the heavy demands placed by the lower Waikato and flood-prone parts of the Authority's district. The only catchment works carried out by the County Council (in the absence of the Waikato Valley Authority) was removal of willows, while the requirement for soil conservation services was negligible. Furthermore, the proposed extension in the county "drains generally to the west coast by the Mokau, Marokopa and Awakino Rivers, and therefore has little in common with the Waikato Valley". As alternatives the County Council suggested a separate catchment board and regional water board, or inclusion in the Taranaki Catchment Commission's district[747].

Submissions on the provisional local scheme with respect to the western half of Raglan County being included for water board purposes only were made by Waikato Valley Authority and Raglan County Council. The Authority argued that the western half of Raglan County should receive the full services of the Authority as both a regional water board and a catchment authority. Receiving partial services only was considered to be impractical and contrary to sound local government. It disagreed that soil conservation or river control works were not required in the western half of Raglan County[748]. Raglan County Council said its western ratepayers had never felt the need for or desired additional services, and even the need for water board services was "minimal". The existing drainage districts provided all the river control works that were required, and the catchments draining to the coast had little in common with the Waikato catchment. While the County Council was prepared to accept water

[746] Secretary, Chief Engineer and Chief Soil Conservator to Chairman Waikato Valley Authority, undated (August 1972). Waikato Valley Authority file 21/5. Supporting Papers #174-176.
[747] Deputy Chairman Waitomo County Council to Local Government Commission, 8 November 1972. Waikato Valley Authority file 21/5. Supporting Papers #177-178.
[748] Representations of Waikato Valley Authority to Local Government Commission, undated (November 1972). Waikato Valley Authority file 21/5. Supporting Papers #179-183.

board services only, "if satisfactory financial arrangements can be concluded", it was strongly opposed to Waikato Valley Authority's proposal that full services should be provided and its ratepayers should be rated to that extent[749].

The Local Government Commission's decision was issued in February 1973. It dismissed all the objections, for the following reasons:

> In commenting on the points raised in the objections of the Waikato Valley Authority and the Waitomo County Council, and in the related supporting and counter-submissions, it is apparent that fundamentally the objectors query the appropriateness of the recommendations made to the Commission by the National Water and Soil Conservation Authority when it submitted its proposals under Section 19(4) of the Water and Soil Conservation Act. We had on the one hand the Waikato Valley Authority maintaining in the face of the denials of the Raglan County Council that soil conservation work was necessary in the particular part of Raglan County, and on the other hand the Waitomo County Council maintaining in the face of the denials of the Waikato Valley Authority that such work was unnecessary in the particular part of Waitomo County. The need for soil conservation work in any part of the country is not a matter on which this Commission professes expert knowledge. We believe it is a matter on which we are entitled to look to the National Water and Soil Conservation Authority for guidance.
>
> Mr Collins informed us at the meeting that the Soil Conservation and Rivers Control Council (a body which is represented on the National Water and Soil Conservation Authority) had "always regretted" that parts of the country were not susceptible to soil conservation control. The council regarded the present position as "unfortunate" and hoped that ultimately the whole country would be covered. For this reason he was sure the Council would be "sympathetic" to the views of the Waikato Valley Authority which sought to have all parts of its district on a uniform basis. That may be so, but the position is that whereas the National Water and Soil Conservation Authority saw fit to recommend that the respective part of Waitomo County be included for the purposes of both soil erosion control and water control, it recommended in respect of the Raglan County area that it be included for water control purposes only. We believe our proper course is to uphold those recommendations.

It also rejected the alternatives suggested by Waitomo County Council[750]. The commission then proceeded to issue a final local scheme[751].

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[749] Submissions by Raglan County Council to the Local Government Commission, undated (November 1972). Waikato Valley Authority file 21/5. Supporting Papers #184-186.

[750] Decisions of the Local Government Commission on objections to three provisional local schemes, 8 February 1973, attached to Secretary Local Government Commission to Waikato Valley Authority, 19 February 1973. Waikato Valley Authority file 21/5. Supporting Papers #187-197.

[751] Final Local Scheme, 26 February 1973, attached to Secretary Local Government Commission to Secretary Waikato Valley Authority, 28 February 1973. Waikato Valley Authority file 21/5. Supporting Papers #198-208.

The expanded boundaries of the Waikato Valley Authority were gazetted in April 1973[752].

A.9 Dissolution of the Waikato Valley Authority

With effect from 1 April 1988, which coincided with the abolition of the Ministry of Works and Development (and the internal agency within the Ministry known as the National Water and Soil Conservation Organisation), there were legislative changes made to soil and water administration. By Section 41 Soil Conservation and Rivers Control Amendment Act 1988, the Waikato Valley Authority's district was declared to be a catchment district under the Soil Conservation and Rivers Control Act 1941, and the Waikato Valley Authority was declared to be reconstituted as a catchment authority known as the Waikato Catchment Board and Regional Water Board. Consequential on this change, Section 42 Soil Conservation and Rivers Control Amendment Act 1988 repealed the Waikato Valley Authority Act 1956. By these changes the special status of the Waikato Valley Authority, as compared to other catchment authorities, was lost.

The Waikato Catchment Board and Regional Water Board had a lifespan of only one and a half years, before it was amalgamated in November 1989 with a number of other local authorities to form the Waikato Regional Council, which continues to exist today[753].

A.10 Concluding remarks

As intimated in the introduction to this topic study, the history of the establishment of the Waikato Valley Authority in 1956, and the expansion of its district in 1973, does not appear to have involved Te Rohe Potae Maori, or any other iwi in the Waikato region. Despite being the foremost matter searched for during a check of relevant Crown records, nothing was located to suggest that iwi interests were considered or addressed. The establishment of the Authority was very much a matter of central government politicians negotiating with local government politicians. While the local body politicians undoubtedly considered that they were looking after the interests of

[752] *New Zealand Gazette* 1973 pages 726-728. Supporting Papers #137-139.
[753] *New Zealand Gazette* 1989 pages 2460-2490, at pages 2460-2467. Supporting Papers #140-147. The amalgamation, which took effect on 1 November 1989, involved two catchment authorities, three united councils, 12 noxious plant authorities, 11 pest destruction boards, and 12 drainage boards.

their ratepayers, and Maori were among those ratepayers, the specific interests and needs of Maori members of each local authority community do not appear to have been regarded as a relevant factor. There is no indication that a Maori dimension influenced the structure of the new Authority.

The approach adopted by the Crown during the 1940s and 1950s, of a regional authority in the Waikato region being an amalgam of the existing local authorities, with membership of the regional body drawn from the ranks of the local bodies, provided no opportunity for Maori involvement. In fact Maori were doubly on the outer. Not only were they perceived solely in the context of being rural ratepayers, they were also perceived as being "problem" ratepayers as, speaking in generalities, they had developed a reputation of being non-payers of local body rates. As rural ratepayers, they were distinguished in the minds of local body politicians from Pakeha rural inhabitants, who were described as "farmer ratepayers", and who were regarded as the financial engine of the county councils. While it is a matter of speculation what might have happened if Maori voices had sought to participate in the development of the Waikato Valley Authority, most likely there would have been a contrary view expressed that Maori did not deserve to be involved because of their financial lack of engagement with existing local government structures.

The relationship between the Waikato Valley Authority and central government contained some subtle differences to the relationship between catchment boards and central government, which have been identified in this topic study. In particular there was a direct relationship between the Authority and the Minister of Works, while the relationship that catchment boards had was with the Soil Conservation and Rivers Control Council. Whether being responsible to a Minister of the Crown rather than to a statutory Crown agency altered the exercise of Crown kawanatanga in the Waikato region, as compared to other regions in New Zealand, is a matter for legal interpretation and submissions. Ministry of Works officials at the time the Waikato Valley Authority was established were at pains to stress that the special provisions made no appreciable or practical difference, though these judgements were not made in the context of Treaty jurisprudence.

The consequence of the changes to the Waikato Valley Authority boundaries was that the coastal catchments of Te Rohe Potae, including the Mokau River catchment, and the catchments draining into Kawhia and Whaingaroa Harbours, were subject to direct Crown control by the Ministry of Works, with respect to functions under the Soil Conservation and Rivers Control Act 1941, for longer than the Waipa River catchment. In the Waipa catchment direct Crown control lasted until 1956, while in the coastal catchments it lasted until 1973. Taking direct Crown control beyond the implementation date of the Water and Soil Conservation Act 1967 had consequences with respect to the issue of water rights by a Crown agency at Taharoa and the Mokau valley hydro-electric power schemes that are discussed in the two other topic studies.

A.11 References for Topic Study A

Government Department Files

Works and Development Head Office file 50/866
Land miscellaneous – Waikato Valley Authority
Location, Archives NZ Wellington, reference ABKK 889 W4357 327

Works and Development Head Office file 75/16
Soil conservation and river control – Waikato Valley Authority works (old series)
Location, Archives NZ Wellington, reference AATE 889 W3391 67

Works and Development Hamilton District Office file 96/6/1
Rivers and drainage – Water boards
Location, Archives NZ Auckland, reference AATE 5113 A1002 784d

Works and Development Hamilton District Office file 96/434000
Soil conservation and river control – Waikato River flooding
Location, Archives NZ Auckland, reference BBAD 1054 641d

New Zealand Gazette

Waikato Regional Council Files

Waikato Valley Authority file 21/5

Reports prepared for Waitangi Tribunal Te Rohe Potae District Inquiry

Michael Belgrave et al, *Te Rohe Potae harbours and coast, inland waterways, indigenous flora and fauna, sites of significance, and environmental management and environmental impacts scoping report*, March 2010, Wai 898 document #A64.

Jane Luiten, *Local government in Te Rohe Potae*, January 2011, Wai 898 document #A24.

Other published and unpublished documents

AR Acheson, *River control and drainage in New Zealand*, Ministry of Works, 1968.

Jim McKenzie, *The men and the river: the Waikato Valley Authority, an historical review of the first 21 years*, 1980.

AN OVERVIEW OF SELECTED ENVIRONMENTAL AND RESOURCE MANAGEMENT ISSUES IN TE ROHE POTAE INQUIRY DISTRICT, WITH A FOCUS ON THE PERIOD SINCE 1970

TOPIC STUDY B:

HYDRO-ELECTRIC POWER GENERATION IN THE MOKAU RIVER CATCHMENT

March 2014

B.1 Introduction

This topic study examines the history of Maori involvement (and lack of involvement) with three hydro-electric power schemes, two actual and one proposed, on the Mokau and Mokauiti Rivers. With the two operating power schemes, applications were made by the generating authority[754] for resource consent in 1995, to enable the continued operation of the two schemes for a further 35 years. Both applications attracted submissions by the representative local Maori organisation, and these were carried through to appeals before the Environment Court. Resource consents for the proposed scheme were applied for in 2004.

Some aspects of the two operating hydro schemes have been examined by Belgrave et al[755]. This was in the context of the passage of tuna upstream past the barriers erected by the dams, and downstream past the fast-whirring turbines of the power station. This topic study looks at other aspects, in particular the role of the Crown in authorising the operating power stations in the first place, and the exercise of kaitiakitanga by local Maori during the consent processes for all three schemes under the Resource Management Act.

The information is presented in the form of a topic study because of the extensive documentation that exists about the three power schemes. Pre-1970 events relating to the Crown's regulatory involvement with the two existing schemes are examined alongside events that have occurred since 1970. Since the Crown's direct involvement with these two schemes was more substantial in the pre-1970 period than since then, to have focused solely on the period since 1970 would have failed to cover a significant part of their history.

B.2 Early history of Wairere Power Scheme

The first known interest in generating electricity at Wairere Falls occurred in a report in May 1914, which proposed a design based on a power station on the true right

[754] The generating authority has had a variety of names over the years, including Wairere Electric-power Board, Waitomo Electric Power Board, Waitomo Energy Services Limited, and (since 1 April 1999) King Country Energy Limited.
[755] Michael Belgrave et al, *Te Rohe Potae environmental and wahi tapu report*, August 2011, Wai 898 document #A76, pages 285-287 and 293-298.

(northern) bank of the river[756]. Subsequent visits to Wairere by Crown engineers of the Public Works Department were made in 1917 and 1919[757]. However, it was not until 1924-1925 that the potential of the falls was harnessed. The Falls have a drop of 19 metres, and today there is a 2.5 metre high concrete dam constructed across the river at the top of the falls to create a small head-pond and allow the water to be drawn off into an intake channel on the true left (southern) bank. The water then drops through the power station turbines before being discharged back into the river below the falls. The power station is a run-of-the-river scheme with little storage capacity behind the dam. The initial generator installed in 1925 had a capacity of 490 kilowatts. Additional generators were installed in 1938 (240 kilowatts), 1952 (825 kilowatts), and 1981 (300 kilowatts).

Following an agreement in principle in a letter signed by the Minister of Public Works in October 1922[758], and the setting up of a Wairere Electric-power Board the following year, consent for the Wairere scheme was given by the Crown, in terms of the Public Works Act[759], with a licence issued in October 1924 for a period of 42 years[760]. Consent by the Crown was required because legislation in 1903 had vested in the Crown the sole right to use water for electricity generation purposes. The confiscatory nature of such a vesting was ameliorated by qualifying that it was "subject to any rights lawfully held"[761]. Discussion in Parliament when the 1903 legislation was being debated showed that such "rights lawfully held" could include

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[756] Report (unsigned) to Chief Electrical Engineer, 19 May 1914. Electricity Head Office file 10/57/1. Supporting Papers #1-3.

[757] Office Engineer to Chief Electrical Engineer, 13 June 1917, and Chief Electrical Engineer to Under Secretary for Public Works, 9 October 1919. Electricity Head Office file 10/57/1. Supporting Papers #4-7 and 11.
A report of the 1919 visit was published in *King Country Chronicle*, 4 September 1919. Copy on Electricity Head Office file 10/57/1. Supporting Papers #8-10.

[758] Minister of Public Works to WT Jennings MP, 6 October 1922. Electricity Head Office file 10/57/1. Supporting Papers #12.

[759] Consent was pursuant to Section 5 Public Works Amendment Act 1908. When the public works legislation was rewritten in 1928, this section became Section 318 Public Works Act 1928.

[760] *New Zealand Gazette* 1924 pages 2284-2285. Supporting Papers #59-60.
There were also takings under the Public Works Act 1908 for road and for power-house site purposes. *New Zealand Gazette* 1925 page 3239, and 1925 page 3241. These takings are included in the public works taking database for Te Rohe Potae (Wai 898 document #A63(b)).

[761] Section 2 Water-power Act 1903. The enactment of this vesting power, and findings on how the power can be exercised by the Crown in a manner consistent with its obligations to Maori under the Treaty of Waitangi, have been examined in the following Waitangi Tribunal reports:

- *Ika Whenua Rivers Report*, 1998, pages 105 and 126-135.
- *He Maunga Rongo: report on Central North Island claims, stage 1*, 4 volumes, 2008, pages 1176 and 1188-1189.

mining water races, irrigation races, and Maori use of falls of water (for instance, for customary fishing).

When application for consent for the Wairere power scheme was made in 1924[762], however, there was no consideration given by the Public Works Department as to whether Maori or anyone else held any existing rights to the river at Wairere Falls. This is despite there being Maori occupation on the true right bank upstream of the Falls because it was an eel fishing site, and the Public Works Department being made aware of this (in another context) in 1922 and 1924[763]. The only referrals of the application were to the Railways Department and the Post and Telegraph Department[764], in respect of the potential for the electric power lines radiating from the proposed power station to cause conflict with existing telegraph and telephone lines belonging to those departments. Neither department had any objection[765]. When the Power Board accepted the draft terms of the licence[766], the way was clear for the Minister of Public Works to recommend to the Governor General that the Electric-power Board be authorised to use the waters of the Mokau River at Wairere. The licence authorised the use of up to 100 cubic feet per second of water for the purpose of generating electricity. It was exclusive to the Wairere Falls site, though the Crown could issue other licences elsewhere on the Mokau River provided they did not reduce the height of the fall of water or the amount of water allowed under Electric-power Board's licence. The licence specified that a rental was owed to the Crown for the licence; this was set at one shilling per annum per kilowatt of maximum output[767]. The legislation originally intended for the sound management in

[762] Chairman Wairere Electric-power Board to Under Secretary for Public Works, 29 May 1924, and HW Climie and Son, Carterton, to Under Secretary for Public Works, 30 May 1924. Electricity Head Office file 10/57/7. Supporting Papers #20 and 19.
[763] Discussed in David Alexander, *Public Works and Other Takings in Te Rohe Potae District*, December 2009, Wai 898 document #A63, pages 154-157 and 327-329.
[764] Assistant Under Secretary for Public Works to General Manager Railway Department, 2 August 1924, and Assistant Under Secretary for Public Works to Chief Telegraph Engineer, 2 August 1924. Electricity Head Office file 10/57/7. Supporting Papers #21 and 22.
[765] General Manager New Zealand Government Railways to Under Secretary for Public Works, 20 August 1924, and Chief Telegraph Engineer to Under Secretary for Public Works, 26 August 1924. Electricity Head Office file 10/57/7. Supporting Papers #24 and 25.
[766] HW Climie and Son, Inglewood, to Under Secretary for Public Works, 13 August 1924. Electricity Head Office file 10/57/7. Supporting Papers #23.
[767] *New Zealand Gazette* 1924 pages 2284-2285. Supporting Papers #59-60.
In addition a companion authority to conduct electricity works was issued pursuant to the Electric-power Boards Act 1918; these electric works included the diversion of water "through suitable conduits, etc, to a power-station situated on the bank of the Mokau River, and to erect suitable

the national interest of the hydro-electric generation resources of the country had also become a revenue generating opportunity for the Crown.

In 1927 Maori complained about the effect that the power scheme was having on their pa tuna (eel weirs) at Wairere. Ta Auwe Kaahu wrote to the Native Minister:

> This is to inform you, o Honourable Native Minister, that a block of 30 acres and 2 roods from the Te Karu-o-te-whenua block was set aside by Kaahu Huatere for himself on account of the eel weirs on the waterfall. There is one eel weir on the waterfall and another at the foot thereof. These eel weirs were handed down from the time of the ancestors even to Kaahu Huatere's days. These eel weirs are of great importance, and have been kept sacred from the ancestral days even to the days of Kaahu Huatere. These have been taken under the Public Works Act by the Wairere Power Board.
>
> This is a prayer to you the Honourable Native Minister to consider this undue hardship which has been occasioned by the confiscation of these very important weirs which has been handed down from the days of our ancestors even to Kaahu Huatere's days. It is mete and just that compensation should be paid for depriving the owners of these eel weirs, and also for the acquisition of the land by the Wairere Power Board….
>
> From us, the children of Kaahu Huatere.[768]

The Public Works Department passed the letter to the Wairere Electric-power Board for a response. The Board's Engineer Manager replied that it had been discussed at a Board meeting, all members of which "have had long residence in this District".

> The only member who has any knowledge of an eel weir being used during the last twenty years is one whose residence is within a mile of the falls, and who remembers a weir that was placed some distance below the falls and downstream from the present point of re-entry of the turbine tail-race.
>
> During my own three years knowledge of the Falls, no eel weirs have been in evidence in the vicinity of the Falls at all, and in the construction of the works the Falls have not been altered or interfered with in any respect except that a portion of the water has been diverted by means of a 10 foot open cut at the

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machinery for the conversion of such water-power into electrical energy". *New Zealand Gazette* 1924 pages 2277-2278. Supporting Papers #57-58.
A further Crown involvement was the taking of European-owned riparian land under the Public Works Act 1908 for power-house site purposes, and for associated road access. *New Zealand Gazette* 1925 pages 3239 and 3241 (not included in Supporting Papers). These takings are referred to in the spreadsheet database accompanying David Alexander, *Public Works and Other Takings in Te Rohe Potae District*, December 2009, Wai 898 document #A63(b).

[768] Te Auwe Kaahu and 3 Others, Te Kuiti, to Native Minister, 1 July 1927, attached to Native Minister to Minister of Public Works, 22 July 1927. Electricity Head Office file 10/57/1. Supporting Papers #13-16.

> top of the falls, used in the turbine and returned at the foot of the falls as authorised under the Order in Council….

The Engineer Manager explained that the headrace, power station and tailrace were all on the opposite (southern) bank of the river to the Karu-o-te-whenua block, and none of the Maori-owned block had been taken for the power scheme[769].

In 1938 the Power Board proposed alterations to the dam, by raising the dam itself by one foot and adding wooden flashboards along its crest[770]. When asked to explain what the consequences would be in time of flood flows in the river[771], the engineers had to undertake further assessments and alter their design, as the highest recorded flood, in 1907, had raised the river level above the falls by more than nine feet[772]. They sought amendments to the licence for the revised design, and also to divert an additional amount of water through the power station, because they wished to install another turbine generator[773]. As in 1924, the amended licence, increasing the water draw-off from 100 cusecs to 150 cusecs, was referred in draft form to the Railways and the Post and Telegraph Departments[774]. Again, neither department had any objection[775]. There is no record of any consideration of any Maori interest in Wairere Falls, even though the 1927 correspondence was on a Public Works Department file for the Wairere Falls power scheme. When the Minister's consent was sought, he was told that "all interested parties have been consulted and have raised no objection"[776]. He gave his consent and the licence was amended[777]. There was also an amendment

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[769] Engineer Manager Wairere Electric-power Board to Chief Electrical Engineer, 8 September 1927. Electricity Head Office file 10/57/1. Supporting Papers #17-18.

[770] Mandeno, Lee and Brown, Consulting Engineers, Auckland, to Chief Electrical Engineer, 1 February 1938. Electricity Head Office file 10/57/7. Supporting Papers #38-39.

[771] Chief Electrical Engineer to Mandeno, Lee and Brown, Consulting Engineers, Auckland, 4 February 1938. Electricity Head Office file 10/57/7. Supporting Papers #40.

[772] Mandeno, Lee and Brown, Consulting Engineers, Auckland, to Chief Electrical Engineer, 9 February 1938 and 21 February 1938. Electricity Head Office file 10/57/7. Supporting Papers #41 and 42.

[773] Mandeno, Lee and Brown, Consulting Engineers, Auckland, to Chief Electrical Engineer, 10 March 1938, Chief Electrical Engineer to Mandeno, Lee and Brown, Consulting Engineers, Auckland, 19 August 1938, and Mandeno, Lee and Brown, Consulting Engineers, Auckland, to Chief Electrical Engineer, 31 August 1938. Electricity Head Office file 10/57/7. Supporting Papers #43-44, 45 and 46.

[774] Assistant Under Secretary for Public Works to General Manager New Zealand Railways, 12 April 1939, and Assistant Under Secretary for Public Works to Chief Engineer Post and Telegraph Department, 12 April 1939. Electricity Head Office file 10/57/7. Supporting Papers #47 and 48.

[775] Chief Engineer Post and Telegraph Department to Under Secretary for Public Works, 24 April 1939, and General Manager New Zealand Government Railways to Under Secretary for Public Works, 26 April 1939. Electricity Head Office file 10/57/7. Supporting Papers #49 and 50.

[776] Submission to Minister of Public Works, 2 June 1939. Electricity Head Office file 10/57/7. Supporting Papers #51.

[777] *New Zealand Gazette* 1939 page 1809. Supporting Papers #61.

to the rental provision in the licence, retaining the rental of one shilling per annum per kilowatt of maximum output for as far as the first 470 kilowatts per annum was concerned, and setting the rental for any additional electricity generated above that figure at £1 per kilowatt of maximum demand; this latter rental complied with scale rates set out in the Water-power Regulations 1934.

A report has been located about the actions of a branch of the Auckland Acclimatisation Society in trapping eels at Wairere in the late 1940s. Eels were regarded by acclimatisation society members as predators of introduced trout and ducklings.

> Mr JW Johnston, Secretary of the Pio Pio Sub-Society, writes that for the past 10 years he has made a close study of the eels in his district. He lives close to the Wairere Dam, and the Power Board has erected three galvanised pipes down in front of the screens at the head race. An electric current is passed through these and as soon as the eels pass between or come close to the pipes they get an electric shock. During the run of eels, Mr Johnston and members of his Sub-Society watched the screens, and as the eels piled up on them they raked or gaffed them out. The eels vary in size from 14 inches to almost 5 feet. They begin their run to the sea any time from Christmas until late April. In a dry season they run late and they always get a big run on only one night. Last year the big run occurred on the night of 15th April, when over 2,000 eels weighing about 2 tons were caught. The next night they caught about 300. Altogether he estimates that during the season they caught about 3,000 eels, with another 500 destroyed in the turbines.[778]

The present 2.5 metre high concrete dam was apparently built in 1952 in accordance with the 1939 licence approval. It was located immediately downstream of the earlier dam.

The licence issued for 42 years in 1924 was renewed in 1966 for a 21-year period (up to 31 March 1987)[779]. This occurred as virtually a formality. The Electricity Department wrote to the Power Board when the licence was about to expire, saying that "although a renewal of these licences has not been requested, I presume that you will want one, and I have prepared a draft licence for a new 21 year term"[780]. The

[778] Auckland Acclimatisation Society, Annual Report for year ended March 31 1948, page 6. Supporting Papers #1346-1347.
[779] *New Zealand Gazette* 1966 pages 1780-1781. Supporting Papers #63-64.
[780] General Manager to Secretary Wairere Electric Power Board, 16 May 1966. Electricity Head Office file 10/57/1. Supporting Papers #34.

Power Board confirmed this[781], and the licence was then issued, it being noted that "there are no objections"[782].

At the time that the power station was built, the consent under the Public Works Act was the only consent required. This changed in 1967 when the Water and Soil Conservation Act was passed. Under this legislation, any use of water (other than for domestic, stock watering or fire-fighting purposes) had to be permitted by regional water boards (or the Ministry of Works if there was no regional water board). This broader requirement, governing a wider range of uses than just electricity generation, effectively superceded the Public Works Act requirement for hydro-electric generation, and the hydro-electric generation requirement was abandoned when the relevant section of the Public Works Act was repealed by the Electricity Amendment Act 1969.

B.3 Early history of Mokauiti Power Scheme

The Mokauiti power station is a more modern development, being commissioned in 1963. It has two generators, with capacity of 1295 kilowatts and 630 kilowatts. It relies on a fall created by a series of rapids on the Mokauiti River. A 10-metre high earth-fill dam or weir above the top rapid dams the river, and the water is led through a tunnel to the power station about half a kilometre downstream, before being returned to the river below the rapids. The head-pond behind the dam is small, and the scheme is run-of-the-river.

This scheme's use of water also had to be authorised by the Crown under the Public Works Act. When application was made in February 1962[783], a draft licence was circulated for comment to the Marine Department (the Crown department responsible for fisheries matters) and Waitomo County Council[784]. Neither had any objection[785]. The Electricity Department then advised its Minister:

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[781] Secretary Wairere Electric Power Board to General Manager, 29 September 1966. Electricity Head Office file 10/57/1. Supporting Papers #35-36.
[782] Assistant Secretary to Acting General Manager, 25 October 1966. Electricity Head Office file 10/57/1. Supporting Papers #37.
[783] Mandeno, Chitty and Bell, Consulting Engineers, Auckland, to General Manager, 28 February 1962. Electricity Head Office file 10/57/1. Supporting Papers #26-28.
[784] General Manager to Secretary for Marine, 16 April 1962, and General Manager to County Clerk Waitomo County Council, 16 April 1962. Electricity Head Office file 10/57/1. Supporting Papers #29 and 30.

> Because of the relatively short length of line involved, the new station will provide a source of cheaper power than could be made available from the Department's system, and make a small but useful contribution to the North Island's generating capacity. Interchange of power with the Department will ensure that the plant is used to the best advantage. The Order in Council is recommended for signature.[786]

There is no suggestion in this submission that there had been any analysis of whether other rights to the water existed. The authorisation was given in August 1962, with a licence issued for the four years or so up to the date that the 42-year licence for the Wairere scheme was due to expire in 1966[787].

Separately the Wairere Electric Power Board applied to the Minister of Marine under the Fish Pass Regulations 1947 for permission to build the dam on the Mokauiti Stream without any provision for a fish pass. These Regulations only applied in the event that trout or salmon were present in the affected river.

> We would point out that, to our knowledge, fly fishing is not practised in this stream. It is, of course, largely populated by eels, and these will have unimpaired passage over the spillway at every fresh.
>
> So far as we know, no other fish exist in this stream, and because of its permanent turbidity and the overgrowth on practically all its banks, we imagine that there is not likely to be any future attempt to liberate fish into it.[788]

The Marine Department sought the advice of the Auckland Acclimatisation Society[789], which responded that the Mokauiti Stream

> contains no trout and has never been stocked. It is considered unsuitable for trout. In addition its banks are blackberry and you cannot get near them. The stream contains a great many eels.
>
> A number of my Councillors know the stream and in our opinion it would be a waste of money to ask for the provision of a fish pass.[790]

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[785] Secretary for Marine to General Manager, 15 May 1962, and County Clerk Waitomo County Council to General Manager, 15 May 1962. Electricity Head Office 10/57/1. Supporting Papers #31 and 32.
[786] General Manager to Minister of Electricity, 18 July 1962. Electricity Head Office file 10/57/1. Supporting Papers #33.
[787] *New Zealand Gazette* 1962 page 1289. Supporting Papers #62.
[788] Mandeno, Chitty and Bell, Consulting Engineers, Auckland, to Minister of Marine, 28 February 1962. Marine Head Office file 1/7/43. Supporting Papers #52.
[789] Secretary for Marine to Secretary Auckland Acclimatisation Society, 12 March 1962. Marine Head Office file 1/7/43. Supporting Papers #53.
[790] Secretary Auckland Acclimatisation Society to Secretary for Marine, 10 April 1962. Marine Head Office file 1/7/43. Supporting Papers #54.

Officials in the Marine Department held the same view, and the Minister was recommended to agree that there was no need for a fish pass of any kind on the Mokauiti Dam[791]. The Minister advised the Power Board accordingly[792].

A new licence issued in 1966, when the licences for both the Wairere and Mokauiti schemes expired, consented both schemes for a 20-year period (up to 31 March 1987)[793].

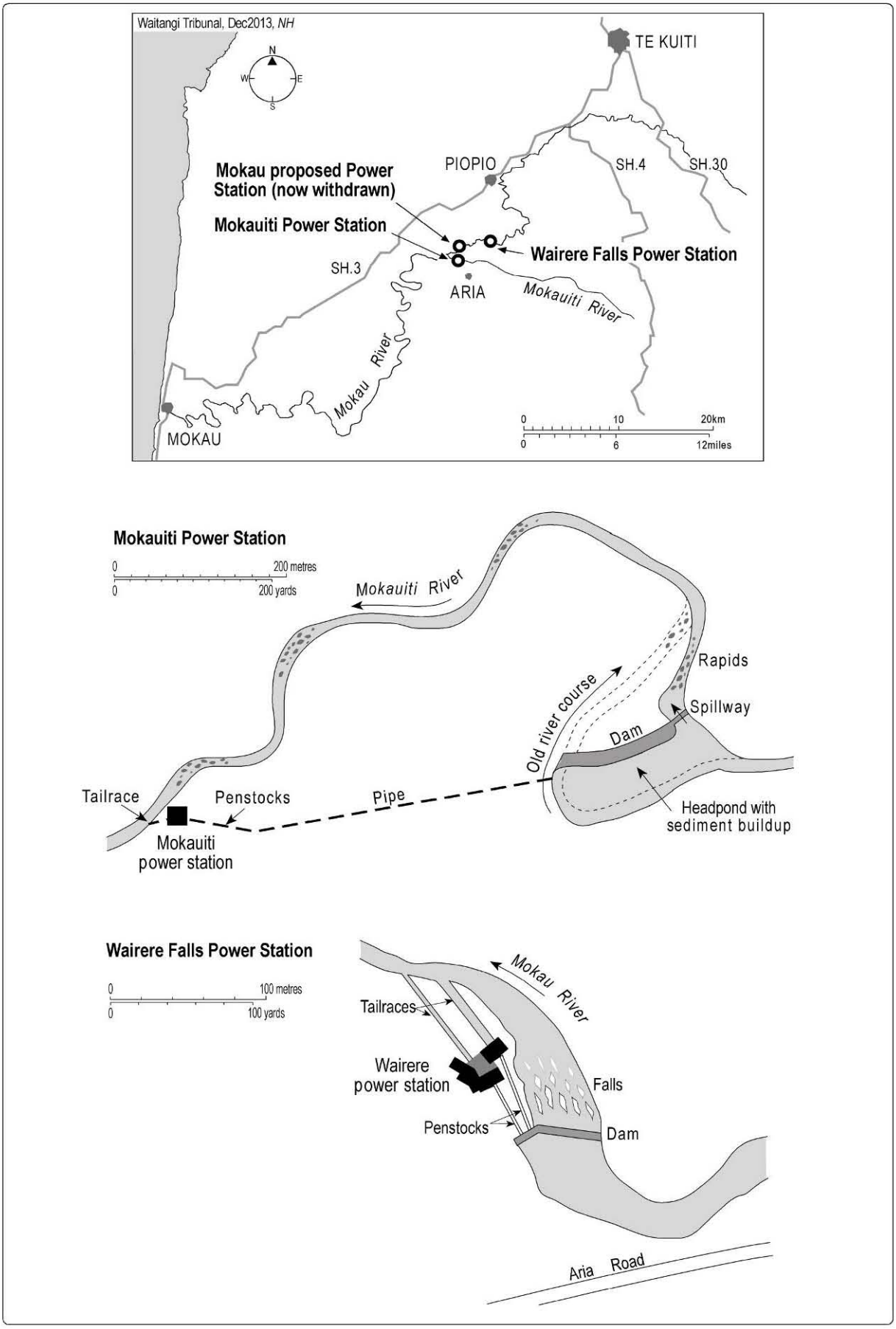
The existence of flashboards on the top of the Mokauiti dam became an issue later when the Resource Management Act consents were being considered. Flashboards are normally an additional wooden barrier that is designed to be able to be sacrificially destroyed during periods of high water level and high water flows. In 1999 it was reported that

> archived drawings show the original 1963 spillway as a free overfall concrete sill and slab without flashboards. From our records the flashboards appear to have been installed in 1971 or 1972.[794]

In the case of Mokauiti, however, the flashboards were seen as more permanent in nature, and intended to allow the headpond to operate at a higher water level. Additional land was acquired at this time for a larger-sized headpond.

[791] Secretary for Marine to Minister of Marine, 18 April 1962. Marine Head Office file 1/7/43. Supporting Papers #55.
[792] Minister of Marine to Mandeno, Chitty and Bell, Consulting Engineers, Auckland, 19 April 1962. Marine Head Office file 1/7/43. Supporting Papers #56.
[793] *New Zealand Gazette* 1966 pages 1780-1781. Supporting Papers #63-64.
[794] Worley Consultants Ltd, Hamilton, to Resource Officer Waikato Regional Council, 2 August 1999. Waikato Regional Council file 60.61.36A. Supporting Papers #1027=1029.

Map 5 Hydro-electric developments in the Mokau catchment



B.4 First water rights for both Power Schemes

When the Water and Soil Conservation Act was passed in 1967, there was a transitional provision (Section 24(2)) protecting existing users of water, provided they registered their use with the relevant regional water board before 1 April 1969. The Wairere Electric Power Board failed to register the two power stations in the time allowed, with the result that the dams became unauthorised structures, and the takes and discharges of water became unauthorised uses of water.

The unauthorised nature of the power schemes must have become apparent to the Power Board in the mid 1970s, as in September 1976 it lodged applications with the Waikato Valley Authority seeking, with respect to both schemes:

- A right to dam the river for electric power generation purposes
- A right to take a specified amount of water from the river at an intake above the dam for electric power generation purposes
- A right to discharge a specified amount of water to the river at a point below the dam[795]

The Waikato Regional Council files that record the applications and the decisions contain no suggestion that there was any investigation. Instead the Chief Engineer's monthly report to the Authority's meeting in December 1976 noted that the applications had been received, that they were for long-established existing activities, and that the purpose of the applications was "to legalise the situation". He recommended that the water rights be granted for a term of 20 years[796]. The recommendation was adopted and the rights were granted, to take effect from January 1977[797].

[795] Wairere Power Scheme - Application for right in respect of natural water, 29 September 1976. Waikato Regional Council file 60.61.36A. Supporting Papers #988-990.
Mokauiti Power Scheme – Plan of layout of Mokauiti power station, Mokauiti Stream, 15 September 1976. Waikato Regional Council file 60.61.33A. Supporting Papers #334.
[796] Excerpt from Chief Engineer's Monthly Report to December 1976. Waikato Regional Council file 60.61.36A. Supporting Papers #991.
[797] Wairere Power Scheme – Water rights 3020, 3021 and 3022. Waikato Regional Council file 60.61.36A. Supporting Papers #992-997.
Mokauiti Power Scheme – Water rights 3017, 3018 and 3019. Waikato Regional Council file 60.61.33A. Supporting Papers #335-340.

The right to dam the Mokauiti River allowed for a dam not exceeding 1.2 metres in height[798]. The base level for this height limitation was never specified, and during the resource consent process in 1999 it became a matter of debate whether the dam height included the wooden flashboards on top of the spillway. The generating authority argued that it did, and that the flashboards were of a height that complied with the dam height limitation. Objectors whose upstream property was subject to flooding when during high water levels the flashboards held back the flow of water and allowed it to build up upstream argued that the flashboards had not been consented by the water right and should be removed. Waikato Regional Council, perhaps embarrassed by the failure of its predecessor (Waikato Valley Authority) to provide certainty on the matter, declined to make a ruling. The issue became academic when the generating authority agreed to build a control gate in the spillway in order to alleviate the upstream flooding threat.

The volume of water that could be taken from and discharged to the river for the Wairere power scheme was varied in 1978[799], preparatory to the installation of the additional turbine that was commissioned in 1981. The amount of water was increased four-fold, from 562,800 cubic metres per day to 2,333,000 cubic metres per day. This was considered to be "of a minor nature as far as the resource is concerned"[800].

The 1976 applications for Wairere and Mokauiti, and the 1978 variation for Wairere, were all considered under the Water and Soil Conservation Act 1967. There was no public notification, little apparent consideration for the effect they would have on the river, no assessment of their effect on Maori interests in the river, and no opportunity provided for Maori involvement.

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[798] Water right 3017. Waikato Regional Council file 60.61.33A. Supporting Papers #335-336.

[799] Chief Engineer Waitomo Electric Power Board to Chief Executive Waikato Valley Authority, 21 December 1977. Supporting Papers #998-999.
Excerpt from minutes of meeting of Waikato Valley Authority, 22 February 1978. Supporting Papers #1000.
Secretary Waikato Valley Authority to Chief Engineer Waitomo Electric Power Board, 2 March 1978. Supporting Papers #1001.
All on Waikato Regional Council file 60.61.36A.

[800] File note on Chief Engineer Waitomo Electric Power Board to Chief Executive Waikato Valley Authority, 21 December 1977. Waikato Regional Council file 60.61.36A. Supporting Papers #998-999.

Once water rights under the Water and Soil Conservation Act were issued, the licence issued by the Crown under the Public Works Act for the use of water in 1966 became superfluous. However, another purpose of the Crown licence, to regulate whether a particular hydroelectric power generation proposal was the most appropriate use of the hydroelectric generation potential that existed at the particular site, still applied. This purpose had been retained by a requirement to obtain a consent pursuant to Section 25 Electricity Act 1968, enacted as a consequence of the passing of the Water and Soil Conservation Act the previous year. In 1977 the 1966 Public Works Act licence for the Wairere and Mokauiti schemes was revoked, and a consent under the Electricity Act 1968 was issued in its place[801].

B.5 De-silting of the Mokauiti head-pond

The Mokauiti catchment above the power scheme is an area with known erosion problems, and a catchment control scheme was developed as a response to a storm in 1976 that caused significant erosion in the headwaters, together with downstream sediment deposition and flooding. The scheme was prepared by Waikato Valley Authority, and was approved by the National Water and Soil Conservation Authority in 1985, thereby qualifying it for Government subsidies to supplement local contributions[802]. It comprised measures to reduce erosion in the headwaters, such as tree planting and debris detention dams in gullies, together with straightening, deepening and widening of the river channel, removal of willows, and bank protection works to prevent sediment deposition and bank erosion in the downstream areas. While such engineering works were being carried out, and even afterwards once the revised stream channel had a steeper and more regular gradient, there was potential for the problems the control scheme sought to solve to be shifted downstream, with

[801] *New Zealand Gazette* 1977 page 912. Supporting Papers #65.
This consent was for a 21-year period, but was effectively revoked in 1987 as part of the electricity industry reforms when the provision it was issued under (Section 25 Electricity Act 1968) was repealed by Section 3(1)(k) Electricity Amendment Act 1987.

[802] The scheme was not implemented as approved. In 1984 proposed expenditure was $1.94 million, split between soil conservation works in the upper catchment (60%) and river channel works further downstream to reduce flooding and improve drainage (40%). Actual expenditure was $1.36 million, split between soil conservation works (30%) and river channel works (70%). Only 30% of the intended soil conservation works were carried out (i.e. the source of the problem was not tackled as fully as intended). This was because the soil conservation works were locally funded by voluntary direct contributions from landowners, while the river channel works were locally funded by compulsory special rating. Waikato Regional Council, *Mokauiti Catchment Scheme: Proposed Asset Management Plan (draft)*, undated (approximately March 1997). Waikato Regional Council file 60.61.33A. Supporting Papers #409-414.

sediment deposition occurring below the lengths of the river where the works were located. The engineering works also would have had an impact on fish life in the Mokauiti River; this was drawn to the attention of Waitomo District Council (responsible for the control scheme's engineering works) in a report on a fish survey of the river by MAFFish in 1987 that had been commissioned by the Department of Conservation. In a summary of the conclusions of the report, it was stated:

> Although none of the rarer native species were found in the catchment, probably as a result of already drastic modifications to the catchment, the river does provide suitable habitat for eels which provide locally important recreational and commercial fisheries. Meanders, loops, oxbows and swamp margins in the present mainstem provide good eel habitat. It was therefore recommended that retention of these areas as backwaters or swamps would mitigate habitat loss associated with the channelisation. These recommendations have since been incorporated into the drainage scheme.[803]

The same summary report of the survey noted the fishing that occurred on the Mokauiti River:

> Recreational fisheries for migratory eels and lamprey occur at the dam sites during the year. Up to 20 people per night fish for the large eels which migrate to sea to spawn during the first floods of autumn. During spring and early summer people also collect adult lampreys as they move upstream on their spawning migration. Commercial eel fishing is also carried out infrequently in the Mokauiti mainstem.[804]

The transport of sediment material downstream from the headwaters has had a consequence for the power scheme, in that sediment is deposited and accumulates in the head-pond during flood flows. In part this is deliberate, as it serves to reduce the amount of abrasive sediment that passes through the turbines. However, the accumulation of sediment also reduces the capacity of the head-pond, which can affect the amount of water storage that can be used to allow increased generation during short periods of peak electricity demand. In extreme circumstances, the presence of accumulated sediment could restrict or block water access to the intake structure. The head-pond was dredged by suction dredge in a two-week operation in November 1991, and by 1995 further removal of sediment (also known as de-silting) was required. At that time Waitomo Energy Services commissioned a report on the

[803] S Hanchet, 'Fish and fisheries of the Mokauiti Stream', in *Freshwater Catch*, April 1988, volume 35, pages 14-15. Supporting Papers #1348-1349.
[804] S Hanchet, 'Fish and fisheries of the Mokauiti Stream', in *Freshwater Catch*, April 1988, volume 35, pages 14-15. Supporting Papers #1348-1349.

instream effects of de-silting[805], and commenced discussions with Waikato Regional Council[806]. In May 1996 consultants for the generating authority advised that it was proposed that the silt be removed by suction dredge, and discharged into the Mokauiti River below the powerhouse. The discharge of silt would be undertaken during times of high river flows and when fish were not migrating[807].

In October 1996 Waitomo Energy Services convened a meeting with iwi and conservation interests at Piopio. By this stage, the proposal had been amended to remove lesser amounts of silt per year, and to discharge at the base of the spillway rather than below the powerhouse. Some of the matters discussed at this meeting were:

- The option of land disposal of the silt, notwithstanding acknowledged difficulties of finding a suitable site, and cost
- The raising of the sediment load in the river, with effects of silt deposition in the river estuary and on shellfish beds
- The effects of discharge to the river on the freshwater ecological system, including high levels of suspended solids, silt deposition on whitebait spawning areas, and the presence of migrating fish in the river some months before migration movement commences[808]

A further matter discussed was the role of the catchment control scheme in creating the silt problem in the first place. The minutes recorded:

> It was the belief of the attendees that the cause of the ongoing siltation problem is due to the drainage and catchment works carried out by Environment Waikato. It was considered that siltation would continue to be created for some time into the future as the river banks were still eroding.

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[805] Brian T Coffey and Associates Ltd, *Headpond Desilting Progamme Mokauiti Hydro-electric Power Scheme: Assessment of Instream Effects*, December 1995. Copy on Waikato Regional Council file 60.61.33A. Supporting Papers #341-358.

[806] Worley Consultants Limited, *Waitomo Energy Services: Mokauiti Head Pond Desilting Project: Background Paper*, 12 December 1995. Waikato Regional Council file 60.61.33A. Supporting Papers #359-362.

[807] Worley Consultants Limited, *Waitomo Energy Services: Mokauiti Head Pond Desilting Project: summary of desilting options considered and proposed desilting regime*, 7 May 1996, attached to Worley Consultants, Hamilton, to Environment Waikato, 7 May 1996. Waikato Regional Council file 60.61.33A. Supporting Papers #363-380 at 364-380.

[808] Minutes of consultation with iwi and conservation interests, Piopio, 10 October 1996. Waikato Regional Council file 60.61.33A. Supporting Papers #381-386.

> As the works undertaken by Environment Waikato are the cause of the problem, the meeting considered that it was reasonable for Environment Waikato to be contributing towards the costs of the land disposal option, and undertaking catchment improvement works.
>
> The meeting considered it incongruous that the body responsible for creating the situation is now the body determining the resource consent application required to be sought to remedy the situation.

This was a view strongly held by the generating authority, which initiated legal action in 1993 against Environment Waikato, seeking compensation for the damage to the power scheme allegedly caused by excessive siltation derived from the catchment control works. The history of this legal action has not been researched for this topic study.

At the end of the meeting, one of the generating authority's consultants summarised the opinion of the meeting as:

> … support for the disposal of silt to a land based facility, not to the river system. He made it clear to the meeting that this option was not favoured by Waitomo Energy Services, primarily due to the practical difficulties in carrying this out, and the consequential costs making the option unviable. In addition, Waitomo Energy Services believed that disposal to the river could be undertaken with minimal (if any) significant adverse effect on the environment.

Following the consultation meeting, local Maori put their concerns in writing. Two letters were sent to Environment Waikato, one by Mokau ki Runga Regional Management Committee, and the other by Eric and Barbara Marsh of Aria.

The Mokau ki Runga Regional Management Committee (RMC) is one of seven local committees of the Ngati Maniapoto Trust Board, a body established by legislation (Maniapoto Maori Trust Board Act 1988). It is mandated by the Trust Board to act for Ngati Maniapoto iwi on resource management matters within the Committee's rohe[809]. In its letter to Environment Waikato, Mokau ki Runga RMC reiterated a position it had expressed at previous meetings with Waitomo Energy Services:

> That we the Mokau ki Runga Regional Management Committee and local iwi strongly object to the cutter-suction dredge method of de-silting head pond, as recommended by Worley Consultants Limited.

[809] A map of the rohe of the seven Regional Management Committees is included in Kowhai Consulting Ltd, *He Mahere Taiao: the Maniapoto Iwi environmental management plan*, Maniapoto Maori Trust Board, 2007, page 50. Supporting Papers #1394-1395.

> That we are deeply concerned of the effects this could have on the many fish species that inhabit the Mokauiti and Mokau Rivers, including the mussel reefs adjacent to the Mokau River mouth.
>
> That although there are several species of freshwater fish in our rivers, we are ever mindful of the declining numbers of tuna (the common eel), tuna heke (migrating eel), tuna repo (swamp eel), piharau (blind eel), inanga (whitebait species), of which we as Maori have a great …[illegible] … food source.
>
> An old saying among our tupuna comparable to a famous Waikato saying was, 'he piko, he tuna', meaning 'around every bend of the river is an abundance of food (eels)'.
>
> Declining the resource consent would surely help to maintain what is left of a food source necessary to Maori.
>
> That we are conscious of the damage already inflicted on the river from flooding, slips, debris, river reconstruction, swamp drainage, etc.
>
> Finally, we the Mokau ki Runga Regional Management Committee and local iwi insist on the alternative presented at the previous meeting with all concerned, that is to remove the silt, sediment, sludge by truck transport to the area provided by Mrs B Marsh which is approximately 3 kms from head pond.
>
> We strongly oppose the re-introduction of any contaminant, silt, sediment or sludge from the Mokauiti hydro dam head pond, being the said area, back into the Mokauiti Stream.[810]

The Marshs in their letter of concern to Environment Waikato wrote as local landowners affected by the works as part of the catchment control scheme, and as members of the local iwi concerned at the effects of the proposed de-silting operation on fish populations.

> We Eric Raymond and Barbara Ngawai Marsh, farmers of Aria, hereby object to the upgrading and maintenance of the Wairere and Mokauiti Hydro Dams.
>
> During a recent visit to the Mokauiti Dam site in the company of Worley Consultants representatives to view and discuss the de-silting project, we noticed that the level of the dam had been raised by way of a steel construction on top of the original concrete structure. When was the extension added, also was a resource consent granted to increase the height of the dam? Was there a consultation process with local farmers or iwi?
>
> As farmers directly affected above the dam, no notification regards this issue was received. We therefore request that the added extension be removed to

[810] Acting Secretary Mokau ki Runga Regional Management Committee to Environment Waikato, 21 November 1996. Waikato Regional Council file 60.61.33A. Supporting Papers #387-389.

> reduce the level of flooding above the dam. Presently we are experiencing the ill effects of mismanagement of Environment Waikato and Waitomo District Council's Mokauiti Valley Drainage Scheme. Flooding is more frequent with a greater volume of water than prior to scheme taking place. Due to the straightening of both the Mokauiti and the Huioteko Stream, the banks are continually eroding, leaving in flood time large deposits of silt on low-lying land.
>
> We request compensation for loss of revenue due to continuing problem, furthermore to be reimbursed for costs incurred to develop this scheme initially.
>
> As one of the local iwi restricted from being able to fish in our Pa Tuna near the powerhouse for our piharau, tuna heke seasons, we request a copy of the proposed upgrading and maintenance to be carried out on both Mokauiti and Wairere Hydro Dams.
>
> We also object to the de-silting of the Mokauiti hydro Dam and the reintroduction of the silt at a lower level of the stream.[811]

All the discussion described above preceded any application for resource consent to undertake the de-silting works. It was not until December 1996 that the applications were lodged[812]. Separately Mokau ki Runga RMC and the Marshs were advised[813]. Both made submissions in opposition. Other submissions in opposition came from the Department of Conservation, the Tainui Whitebaiters Association, and the Tainui Residents and Ratepayers Association, among others.

In its submission, Mokau ki Runga RMC stated that the proposal would be destructive, and have a bad effect on fish life for years to come and right down to the sea. The Committee asked

> that the de-silting take place now while deposit is dry. It may be that such a practice will reduce the need for an annual de-silting, and thus be less costly.
>
> Reason for needing to tip this over the dam. We say the damage this will cause cannot be costed, but the environment of this stream and the Mokau River will be badly affected for years to come, not only fish life but bird life too. People, especially the Maori community and the people of Mokau dependent on the whitebait season for income, will suffer badly. The extra

[811] ER and BN Marsh, Aria, to Environment Waikato, 21 November 1996. Waikato Regional Council file 60.61.33A. Supporting Papers #390.
[812] Worley Consultants Ltd, Hamilton, circular letter to interested parties, 13 December 1996. Waikato Regional Council file 60.61.33A. Supporting Papers #391-394.
[813] Worley Consultants Ltd, Hamilton, to Mokau ki Runga Regional Management Committee, 13 December 1996, and Worley Consultants Ltd, Hamilton, to T & B Marsh, Aria, 13 December 1996. Waikato Regional Council file 60.61.33A. Supporting Papers #395-396 and 397-398.

> silting could also affect the mussel reef at Mokau and tourist enterprises just getting off the ground.
>
> I refer you to your own publication No 10 which includes a study of the effects of Ruapehu on streams and fish life. Nobody has control of Ruapehu but in the case of the Mokauiti Dam we have the ability if we care enough to control such damage. No cost can be so high that this can be allowed to happen to these rivers.[814]

Barbara Marsh explained that she was a trustee of Te Paemate marae at Aria, and was a Te Paemate delegate on Mokau ki Runga RMC. Her submission was in support of the submission by Mokau ki Runga RMC. She complained that the minutes of the consultation in October 1996 were not a true and accurate account, but rather were an overall account only. She explained:

> The Mokauiti, the Huioteko and the Mokau Rivers are the traditional fishing waters of the Ngati Te Paemate and Ngati Waiora hapu. There are many pa tuna situated on these rivers where tuna, piharau, inanga, koura, freshwater pipi, kuku, whitebait, elvers, kokopu are fished.

Her concern was that no environmental impact report had been prepared to assess the effects of the proposal as far downstream as the river mouth and beyond to include the adjacent mussel reef. The rivers were customary fishing waters, and the silt would be discharged into what local Maori considered to be wahi tapu "of cultural significance to our people and our needs"[815].

The Department of Conservation gave two reasons for its opposition, that the continued discharge of silt had the potential to impact on native fish life downstream of the dam, and that there were other options available such as discharge of the silt on to land. It asked that the application be declined, or if granted only allow discharge at times of high water flow[816].

In March 1997 Environment Waikato requested further information on a number of matters. It took 15 months for the generating authority to respond. Information was then provided on whitebait spawning months, the need for an ecological monitoring

[814] Mokau ki Runga Regional Management Committee to Environment Waikato, 10 February 1977. Waikato Regional Council file 60.61.33A. Supporting Papers #399-400.
[815] B Marsh, Aria, to Environment Waikato, 14 February 1997. Waikato Regional Council file 60.61.33A. Supporting Papers #401-406.
[816] Acting Regional Conservator Hamilton to Chief Executive Environment Waikato, 14 February 1997. Waikato Regional Council file 60.61.33A. Supporting Papers #407-408.

programme downstream of the discharge site, the volume of silt to be cleared each year, and whether land disposal of the silt would be achievable[817].

In July 1998, Waitomo Energy Services lodged two further resource consent applications, one to remove dried silt from the head-pond, and a second to dispose of it on land[818]. While this would not substitute for the applications already lodged for removal of wet silt in slurry form by suction dredging and its discharge into the river, any dried silt that could be excavated would reduce the quantities of wet silt that needed to be removed. When the applications were publicly notified in August 1998, there were no submissions. Both the Department of Conservation and the owner of the land where the silt would be deposited had signed written consents agreeing to the proposal, and the local iwi organisation (Mokau ki Runga RMC) was known to be in favour of dry silt removal and land disposal. Resource consents for a five-year period were granted in December 1998[819].

In summary, the proposed de-silting of the head-pond was the first opportunity available to tangata whenua under the Resource Management Act 1991 to become involved in the management of the hydro power scheme on the Mokauiti River. It was an opportunity they took up vigorously, expressing a point of view (disposal of sediment on land) that was eventually adopted. It was also an opportunity to express wider concerns that tangata whenua had about the state of the Mokauiti waterway generally – the particular focus of the resource consent applications on de-silting of the head-pond meant that tangata whenua were less successful in getting these wider concerns addressed.

B.6 Resource consent application for Wairere, 1996

When the 1977 water rights for Wairere and Mokauiti were due to expire (in January 1997), Waitomo Energy Services Limited applied for resource consents. Application

[817] Worley Consultants, Hamilton, to Chief Executive Environment Waikato, 5 June 1998. Waikato Regional Council file 60.61.33A. Supporting Papers #415-417.
[818] Worley Consultants, Hamilton, to Chief Executive Environment Waikato, 21 July 1998. Waikato Regional Council file 60.61.33A. Supporting Papers #418-430.
[819] Consent evaluation report and decision, 1 December 1998. Waikato Regional Council file 60.61.33A. Supporting Papers #431-435.

was made in October 1996 to dam, to take and to discharge[820]. The Resource Management Act 1991 provided that as this was more than three months prior to expiry, the applications had been received in time to allow the existing consents to run on until the newly applied for consents were decided upon[821]. Having protected its position, however, the generating authority took few further steps to advance its applications until March 1999, at which point it wrote to Waikato Regional Council.

> It is our understanding that the only outstanding matter is completion of consultation with the Mokau ki Runga Regional Management Committee. Consultation with this party has been ongoing since 1996…. It was felt that, before notifying the applications, it would be good to hold a further meeting with Mokau ki Runga RMC, since it is now some two years since the last formal meeting (on this particular subject) and matters meriting further consultation may since have arisen. However the RMC have avoided agreeing a date for a meeting on the grounds that no agreement has been reached concerning consultation fees. The RMC has made certain demands which the applicant has in part met but so far attempts at compromise have proved unsuccessful.
>
> We are now requesting that the applications be notified as soon as practicable, and seek advice of likely notification dates. Upon receipt of advice as to when the notification is to take place, we will make attempts to have further discussions with Mokau ki Runga RMC.[822]

The applications for Wairere were publicly notified in the *Waitomo News* the following month[823]. Submissions in opposition were lodged by Mokau ki Runga RMC, and by Eric and Barbara Marsh.

The Mokau ki Runga RMC opposition was based on the lack of consultation. It stated that consultation had been requested in November 1996, when the Committee had responded to an approach from the generating authority's consultants, but the request had never been responded to by Waitomo Energy Services[824].

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[820] Environment Waikato to Waitomo Energy Services Ltd, 9 October 1996 and 31 October 1996. Waikato Regional Council file 60.61.36A. Supporting Papers #1002-1003 and 1004.
[821] Environment Waikato to Worley Consultants, Hamilton, 12 November 1996. Waikato Regional Council file 60.61.36A. Supporting Papers #1005.
[822] Worley Consultants Ltd, Hamilton, to Waikato Regional Council, 1 March 1999. Waikato Regional Council file 60.61.36A. Supporting Papers #1006-1010.
[823] Public notice of resource consent applications, *Waitomo News*, 7 April 1999. Waikato Regional Council file 60.61.36A. Supporting Papers #1011.
[824] Mokau ki Runga Regional Management Committee to Environment Waikato, 5 May 1999. Waikato Regional Council file 60.61.36A. Supporting Papers #1012-1016.

The Marshs' submission did not provide any reasons for their opposition to the Wairere applications, referring only to Mokauiti matters, although it did support the Mokau ki Runga RMC submission and asked to be heard as there were "other issues to be addressed"[825].

Independently of the opportunity for submissions provided under the Resource Management Act, Barbara Marsh had been in touch with Environment Waikato to explain that the only consultation had been in connection with the Mokauiti head pond de-silting, and there had been no consultation about either of the power scheme operating consents. She was upset that the applications were being advertised in the absence of any consultation[826].

Waikato Regional Council decided that the submissions had raised a number of questions that needed to be answered by an updated Assessment of Environmental Effects. It decided to put the application on hold pending receipt of this further information[827]. There was therefore a further hiatus between 1999 and 2001, before the applications were revived. During this period it would seem that King Country Energy was reviewing the comments made in the submissions on the Wairere applications. This included the commissioning of a fish passage study, and assessing what upstream flooding was caused by the dam acting as a barrier to water flows. The company recorded the state of affairs with respect to passage by eels at Wairere in 1999 as:

> Passage of elver at Wairere Falls is via manual collection within a large plastic container, and carriage to the top of the dam for release. There are no statistical records available for the number of elver transported via this method, but comments by staff who were at the time employed by Waitomo Energy Services indicate that significant numbers have been transported via this method, and that fishing of adult eels has continued above the dam. It is proposed that this method be continued.[828]

[825] ER Marsh and BN Marsh, Aria, to Environment Waikato, 5 May 1999. Waikato Regional Council file 60.61.36A. Supporting Papers #1017-1021.
[826] Internal email U Trebilco to D Palmer, 31 March 1999. Waikato Regional Council file 60.61.33A. Supporting Papers #444.
[827] Environment Waikato to Worley Consultants Limited, Hamilton, 11 May 1999. Waikato Regional Council 60.61.36A. Supporting Papers #1022-1023.
[828] Worley Consultants Ltd, Hamilton, to Resource Office Waikato Regional Council, 28 June 1999. Waikato Regional Council file 60.61.36A. Supporting Papers #1024-1026.

This catch-and-transfer process apparently required King Country Energy to obtain a fishing permit from the Crown (Ministry of Fisheries), although this has not been researched for this topic study

The commissioned report on fish passage issues was completed in May 2000[829]. This noted that while migrating fish such as elvers and lampreys are able to climb over quite substantial natural obstacles, they found it less easy to do so over man-made barriers, which are "engineered to be uniform and highly efficient", resulting in the fall of water over a concrete weir being "a concentrated, violent release of energy". Migrating fish need resting and feeding areas among the rocks of a waterfall or rapid. At Wairere the waterfall, a drop of 19.6 metres between the crest of the weir and the river level at the powerhouse, often ran dry as all the flow of the Mokau River was passed through the power station. Despite these difficulties, fish sampling above the falls showed that the eel population had received migratory recruitment, with elvers climbing the falls and getting over the dam at the top. King Country Energy was transferring elvers trapped below the falls and releasing them above the falls, and was also providing a residual flow down the spillway. Closing down some of the turbines at night helped reduce the numbers of downstream migrating adult eels that were killed by the turbine blades. The report recommended that these measures be continued, together with further deterrents to eels passing though the turbines, such as electric pulses or strobe lights at the intake, or more tightly spaced bars on the intake screens. The report also suggested that there be more study of the migratory behaviour of lampreys.

Because of the lengthy period that had elapsed since the Wairere applications for resource consent had been lodged in 1996, King Country Energy prepared what it termed an "information update" in November 2000[830]. This relied on the fish passage report, and a flood modelling study (discussed below), to address the concerns expressed in submissions. In its update, the company committed itself to the following:

[829] CP Mitchell and IA Kusabs, *Fish passage issues at the Wairere Falls and Mokauiti hydroelectric facilities*, May 2000. Copy on Waikato Regional Council file 60.61.36A. Supporting Papers #1039-1062.
[830] King Country Energy Limited, *Wairere Falls power scheme: replacement consent applications information update*, November 2000. Copy on Waikato Regional Council file 60.61.36A. Supporting Papers #1063-1088.

King Country Energy Ltd has and will continue to take the following actions to mitigate the effect the Wairere Dam may have on fish migration:

1. Continued nigh-time trapping of elvers and shrimps below the dam, and transporting these to the headpond;
2. Continue to pump small volumes of water down the concrete spillway slope to facilitate upstream migration, and;
3. Where feasible, close down the turbines and water to spill over the weir during the early hours of the morning during autumn (March – May inclusive) to facilitate downstream migration of adult eels.

In addition, King Country Energy will:

- At future times of screen replacement, consider re-engineering the screens to reduce the bar spacing and to reduce through-screen velocities;
- Encourage the operators to log the times and locations where lampreys are seen below the falls and powerhouse to assist understanding of the behaviour of these fishes and to enable a passage strategy to be devised;
- Make an annual report of the fish migration mitigation measures to Waikato Regional Council.

With the implementation of the measures outlined above (some of which constitute current practice), the effect of the Wairere Dam and power station on migrating fish species will be minimised.[831]

In March 2001 King Country Energy convened a pre-hearing meeting to consider the Wairere applications. The "information update" had been provided to the attendees in advance. The matter of greatest concern for Maori was fish passage; they were seeking to avoid continuation of the catch-and-transfer process in favour of allowing elvers and eels to traverse Wairere Falls naturally. The minutes of the March 2001 meeting record Mokau ki Runga RMC representatives suggesting the construction of a platform with some water trickling down and covered in a synthetic grass mat that the elvers could follow as they traversed the barrier. They also expressed concern about the downstream migration of eels, as it was known that some were killed in the intake structure. It was agreed that a Committee representative work with the generating authority's consultants on the design of a fish pass. As for another concern expressed at the pre-hearing meeting about sediment affecting pipi and mussel beds at the coast, the King Country Energy response was that this was a matter related to

[831] King Country Energy Limited, *Wairere Falls power scheme: replacement consent applications information update*, November 2000, pages 23-24. Copy on Waikato Regional Council file 60.61.36A. Supporting Papers #1063-1088 at 1087-1088.

management of the whole catchment that should be taken up with Waikato Regional Council and other landowners[832].

Prior to the meeting, flood modelling had been undertaken to assess to what extent the dam at Wairere was contributing to upstream flooding. This concluded that the Aria Road bridge, upstream of the dam, was a constriction in the width of the channel that was having a greater effect on flooding than the dam. However, that conclusion was challenged by local landowners present at the meeting. After the meeting an error in the modelling data was discovered, which meant that when the modelling programme was re-run it was found that the road bridge was not the problem, and it was the dam that had the greatest effect on water levels upstream, as far as the confluence with the Mapiu Stream[833]. This prompted further study of how flooding could be alleviated, in particular whether a flood control gate could be incorporated into the dam to allow a greater volume of water to pass over the dam during flood flows. Prior to this, allowing more water to pass through the turbines was the main operational method available to reduce upstream flooding.

A second pre-hearing meeting was held in June 2002[834]. By then King Country Energy had committed to building a floodgate on an 8 metre width of the spillway crest. There was discussion on the effect of the gate on upstream flooding (summarised in a statement that a 200 cumec flood would be reduced to the equivalent of a 120 cumec flood), and on the possibility of flooding downstream. There was also discussion on fish passage, which still remained problematical.

> Mrs Marsh [a member of Mokau ki Runga RMC] considered the trap and transfer system for upstream passage was not a natural procedure, and that a climbing structure was essential.

King Country Energy was willing to consider this.

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[832] Minutes of Wairere Dam pre-hearing meeting, 19 March 2001, attached to Meritec Ltd (formerly Worley Consultants Ltd), Hamilton, to Waikato Regional Council, 9 April 2001. Waikato Regional Council file 60.61.36A. Supporting Papers #1030-1035.

[833] Meritec Ltd, Hamilton, to Waikato Regional Council, 27 June 2001. Waikato Regional Council file 60.61.36A. Supporting Papers #1036-1038.
Meritec Ltd, *Wairere Falls power station consent renewal: Mokau River flood study (Revision 3)*, April 2001. Copy on Waikato Regional Council file 60.61.36A. Supporting Papers #1089-1108.

[834] Minutes of meeting with interested parties, Piopio, 26 June 2002, attached to Meritec Ltd to Chief Executive Environment Waikato, 31 July 2002. Waikato Regional Council file 60.61.36A. Supporting Papers #1128-1135.

> Mr Mitchell [fisheries scientist] and power station operators noted that a structure could be installed on the far side of the dam beyond the No. 6 spillway bay. This is a sheltered area, would involve only about a 2m climb, and be kept wet by the trickle flow through a hole in the dam abutment. No structural issues were envisaged. King Country Energy is to prepare a design for the structure. Consultation with iwi would take place.

With respect to downstream passage, the meeting was told that two holes had been drilled through the concrete dam in April 2002 to allow a water flow down over the falls during low flows that the adult eels might be willing to follow. If they proved successful, more holes could be drilled[835]. During that and the following month, 409 adult eels used the holes and 135 eels used a flexible siphon pipe over the spillway, results described by the company's consultants as "good success"[836].

In response to the flood gate and fish pass proposals, Waikato Regional Council decided that a further resource consent application was necessary to allow for works in, on, under or over the bed of a river[837]. The additional application was lodged in September 2002. When the Council decided that this application could be considered on a non-notified basis, the way was cleared for a hearing of all four Wairere applications to proceed.

Both the Wairere and Mokauiti applications went to hearing in December 2002. A report (with recommendations) by Waikato Regional Council staff on the Wairere applications was pre-circulated.

In connection with the migration of eels downstream, the hearing was told in the staff report:

> The dam has recently been modified to assist the passage of downstream migrating eels. Historically, downstream migrators could only negotiate the dam during times of higher flows when water would overtop it. Two pipes approximately 100 mm in diameter have recently been drilled into the dam between the two intakes. These pipes join and discharge into a small pool downstream of the dam. During times when adult eels migrate, a valve in the pipe is opened allowing water and eels to pass down this route…. The

[835] Minutes of meeting with interested parties, Piopio, 26 June 2002, attached to Meritec Ltd to Chief Executive Environment Waikato, 31 July 2002. Waikato Regional Council file 60.61.36A. Supporting Papers #1128-1135.
[836] Meritec Ltd, Hamilton, Chief Executive Environment Waikato, 7 August 2002. Waikato Regional Council file 60.61.36A. Supporting Papers #1136-1151.
[837] Resource Officer Energy Waikato Regional Council to Meritec Ltd, Hamilton, 27 August 2002. Waikato Regional Council file 60.61.36A. Supporting Papers #1152.

> applicant has advised that for 11 days in April/May 2002, 409 adult eels used this system to get past the dam.
>
> A siphon pipe has also been placed over the dam. This operated for 5 days during the last migration season and transported 135 eels.[838]

The proposed upstream elver pass would be a route over the dam that would be kept wet by a trickle flow during the migration season. Both fish passage methods were still experimental, and their design could change. For instance a further pipe and widening the pipes were being considered for the downstream pass, and an electric field was being investigated to deter eels entering the intake.

The legal limitations surrounding the resource consent applications were canvassed in the Waikato Regional Council staff report prepared for the hearing. Under the Resource Management Act, the effects of a proposal have to be assessed against an environmental starting-point or baseline. For this application the baseline was not the natural undisturbed state of the Wairere Falls without the existence or influence of the dam or the power station. Rather it was the locality with the dam in place, and with all pipes and penstocks open to water flow, but without the power station operating[839]. This gives rise to two points. First, the concrete dam had been in existence since 1952, and Maori had never been given any opportunity to have a say on whether it should be built. Though the 2002 resource consent hearing was the first opportunity for Maori to formally express their views, those views could not be about whether or not there should be a dam at Wairere. Second, if the existence of the dam and its modification to natural flows is a barrier to fish passage, then any efforts undertaken to encourage or assist passage automatically become an environmental improvement to the baseline, and are considered under the Act to be a positive effect that can be weighed against any negative effects in deciding whether or not to grant consent.

It was the staff report's recommendation that the consents be granted subject to conditions, because the effects on the baseline would be minor, and the activities

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[838] Staff report on resource consent applications for Wairere Falls power station, 23 October 2002. Waikato Regional Council file 60.61.36A. Supporting Papers #1153-1182.

[839] At the hearing the staff report's assessment of the baseline was challenged by King Country Energy, which argued that it was more sensible from a civil engineering point of view to close the penstocks to water flow if consent was declined, so that all water would flow over the spillway. The company's argument was adopted by the Hearing Committee in its decision. Decision of Hearing Committee, 19 December 2002, paragraphs 2.7 and 2.8, page 9. Waikato Regional Council file 60.61.36A. Supporting Papers #1205-1258 at 1213.

would not be contrary to the Act or to Waikato Regional Council's objectives, policies and standards as expressed in its planning documents. A 25-year term for the three operating consents, and a 5-year term for the construction consent in the riverbed, was recommended[840].

In opening statements on behalf of King Country Energy, the planning consultant provided a timeline of the consultation that had occurred with interested parties, including Mokau ki Runga RMC. He set this out in some detail in order to support his argument that the electricity generator had been active in promoting consultation, and had listened and responded to concerns expressed during the consultation process. He considered that, because of the changes to the proposal that had been made, the consultation process had been "appropriate and successful"[841].

The company's fisheries consultant also presented written evidence. He argued in his written submission to the hearing that in his opinion the company was in advance of any other generation company in the country in the steps it had taken to allow fish passage. He pointed out that the dam was built on top of the 19 metre high falls, which are themselves a natural barrier for all but a few species of native fish. Above the dam are turbid, mud-bottomed, low gradient rivers flowing through pasture rather than native forest, resulting in variable flows and high summer water temperatures. Together these represent difficult or stressful habitats for the more sensitive native fishes, narrowing the likely range of migratory native species to lamprey, longfinned eel, shortfinned eel, giant and banded kokopu, common and redfinned bully, and freshwater shrimp. Of these, eels are the most significant. For the upstream migration of elvers, his preference was for trap and transfer, as it was a proven method in use at Wairere since 1997, it avoided exhaustion and predation while elvers climbed both the falls and the dam, and an attempt at a ramp had been washed away. While King Country Energy had agreed to an elver pass, he still wanted the trap and transfer method to be continued. For the downstream migration of eels, there were significant unresolved issues in New Zealand generally, because many eels became stuck on the intake screens, or died in the turbines if they got through the screens.

[840] Staff report on resource consent applications for Wairere Falls power station, 23 October 2002. Waikato Regional Council file 60.61.36A. Supporting Papers #1153-1182.
[841] Opening Statement of William David Burton, undated (December 2002). Waikato Regional Council file 60.61.36A. Supporting Papers #1109-1127.

However, eels were smart enough to wait in the head-pond for a safe opportunity to present itself – under natural conditions they would be inclined to wait for an autumn flood to spill water at night over any barrier to migration – and the recently installed pipes through the Wairere dam had been very successful; he described them as a "breakthrough … which has implications for the sustainable management of eels all over New Zealand and, in fact, world-wide". More trials and experiments were needed to improve the design of the pipe method, and this should be allowed for in the consent conditions[842].

Barbara Marsh appeared for Mokau ki Runga RMC at the hearing. Her written submission to the hearing panel was primarily concerned with the process the applications had followed up to that point. Despite consultation being requested back in 1996, when the applications were first lodged, the only substantive consultation had been in 1999. Because the proposals put to the hearing panel were for only partially-formed proposals for an elver pass and for a control gate, the design plans for these structures should have been finalised before the hearing was held. She claimed that while the Department of Conservation had consented to the proposals, it had not followed due process before doing so, as it had not consulted with tangata whenua. Until the designs for the additional works had been completed, Mokau ki Runga RMC felt it was unable to comment. In the meantime, the Committee reiterated its comments made in 1999, that the Wairere Dam was an obstruction to migration upstream by elvers, piharau, inanga, poroka, koura and kokopu, and an obstruction to the tuna heke downstream migration. For the latter a diversion race was required. There was also a concern for adverse effects to riparian lands downstream of the power scheme[843].

Not discussed in the written submission, but addressed in verbal submissions, according to the report of the Hearing Committee, were Mokau ki Runga RMC's views on the trap-and-transfer of elvers during their upstream migration. The

[842] Statement of Evidence of Charles Paul Mitchell, undated (December 2002). Waikato Regional Council file 60.61.36A. Supporting Papers #1183-1201.
[843] Submission by Mokau ki Runga Regional Management Committee, December 2002. Waikato Regional Council file 60.61.36A. Supporting Papers #1202-1204.

Committee considered that manual transfer was not a natural method, and a climbable fish pass was essential[844].

The Waikato Regional Council Hearing Committee gave its decision later in December 2002[845]. It decided that the provision of a control gate "will mitigate much of the present upstream flooding, and the effect of operating the gate will be less than minor, and undetectable downstream"[846]. It was satisfied with the performance of the various methods in operation or proposed to allow fish passage, which it considered "will, at least in part, remedy some of the historical effects of the dam structures and will appropriately mitigate potential adverse effects of the dam structure". It considered that involvement of tangata whenua in the design of structures, and the distribution to them of monitoring information, as set out in consent conditions, "will assist iwi to exercise their responsibilities as kaitiaki of these resources, and appropriately recognises the relationship of iwi with the waters which are the subject of these applications"[847].

Of the concerns of Mokau ki Runga RMC about inadequate consultation, the Hearing Committee agreed that consultation "could probably best be described as patchy", and "may not have been ideal". However, it felt there had been considerable contact between the applicant and tangata whenua, a willingness by the applicant to share information and address concerns, and a willingness by the applicant to continue to liaise with tangata whenua. Having regard to case law on the principles of consultation, it considered the consultation that had occurred had been effective because the applicant had adjusted its intentions in response to the substantive issues raised by tangata whenua[848]. The Hearing Committee's conclusion was that granting the consents would be consistent with the purpose of the Resource Management Act

[844] Decision of Hearing Committee, 19 December 2002, paragraph 6.10, page 20. Waikato Regional Council file 60.61.36A. Supporting Papers #1205-1258 at 1224.
[845] Decision of Hearing Committee, 19 December 2002. Waikato Regional Council file 60.61.36A. Supporting Papers #1205-1258.
[846] Decision of Hearing Committee, 19 December 2002, paragraph 4.39, page 17. Waikato Regional Council file 60.61.36A. Supporting Papers #1205-1258 at 1221.
[847] Decision of Hearing Committee, 19 December 2002, paragraphs 6.17 and 6.18, page 21. Waikato Regional Council file 60.61.36A. Supporting Papers #1205-1258 at 1225.
[848] Decision of Hearing Committee, 19 December 2002, paragraphs 7.6 to 7.8, pages 22-23. Waikato Regional Council file 60.61.36A. Supporting Papers #1205-1258 at 1226-1227.

(as set out in Part II). In deciding to grant the consents, with conditions, for both Wairere and Mokauiti it stated:

> The substantial measures proposed by KCE in the form of control gates and the implementation of fish passage measures at both dams will go some way towards addressing the historical effects of the schemes, and will be effective to avoid or mitigate the potential adverse effects of the ongoing operations of these schemes. The Committee is satisfied that, once these measures are implemented, the effects of both schemes will be no more than minor. The Committee takes that view on whichever formulation is adopted of the baseline environment, i.e. for Wairere with the penstocks open or closed….
>
> The Committee is satisfied that the measures which KCE propose to adopt in relation to flooding, silt control, fish passage etc, will go a long way towards addressing the concerns raised by Tangata Whenua in relation to these schemes, and that the requirements in the conditions to continue to consult with MKRRMC, including sharing the results of investigations on fish passage and iwi involvement in the design of fish passage structures, represent appropriate recognition of Tangata Whenua and enable MKRRMC to exercise these responsibilities as kaitiaki over the resources affected by these schemes.[849]

The Waikato Regional Council's decision was appealed against by King Country Energy Limited, and by Mokau ki Runga RMC. King Country Energy considered that the conditions attached to the dam consent were onerous and restricted the operation of the power scheme. The particular conditions of concern were a requirement for real-time telemetric monitoring of river levels and flows (rather than the applicant's preferred method of continuous recording of river levels and occasional recovery of the data), and an incorrect cross-referencing in one condition to another condition[850].

The appeal by Mokau ki Runga RMC was against the granting of both the Wairere and the Mokauiti consents, on the grounds that there had been a lack of consultation, that the trap-and-transfer method of fish passage for migrating elvers did not address the migration needs of other native fish species, and that de-silting would have

[849] Decision of Hearing Committee, 19 December 2002, paragraph 9.2, pages 26-27. Waikato Regional Council file 60.61.36A. Supporting Papers #1205-1258 at 1230-1231.
[850] Notice of appeal by King Country Energy Limited, 4 February 2003. Waikato Regional Council file 60.61.36A. Supporting Papers #1259-1262.

substantial effects on freshwater fish, kaimoana, and the river and coast ecosystem generally[851].

With respect to the company's appeal, King Country Energy held a meeting with Waikato Regional Council in March 2003 to see if its appeals could be resolved by consent. At this meeting, the purpose of the proposed monitoring of river levels and flows was agreed upon, and the company undertook to review how it could achieve this purpose[852]. It responded three months later with a revised wording for the monitoring condition[853], which was agreed to by Waikato Regional Council, with minor amendments[854].

On receipt of the Mokau ki Runga RMC appeal, the Environment Court took the view that it was potentially capable of being resolved by mediation[855]. The parties to the appeal (Mokau ki Runga RMC, King Country Energy and Waikato Regional Council) agreed, and a Court-facilitated mediation meeting was held in September 2003. No minutes of this meeting were taken, in line with the thinking that a mediation is a process where the parties are encouraged to talk frankly and openly. However, at the end of the meeting a memorandum of understanding was drawn up and signed by the parties. The agreement was in two parts, for the Wairere Dam and for the Mokauiti Dam, with the part concerned with the Wairere Dam stating that condition 8 of the dam consent (requiring installation of an upstream elver ramp over the top of the dam) would be amended "to provide for ongoing consultation between KCE and MKRRMC as to the effectiveness of the fish pass, and improvements and alternatives", and the parties would consider removing condition 10 (continuation of existing trap-and-transfer work) if the proposed fish pass was successful. It was also

[851] Notice of appeal by Mokau ki Runga Regional Management Committee, 5 February 2003. Waikato Regional Council file 60.61.33A. Supporting Papers #509-512.
[852] Notes of meeting between Waikato Regional Council and King Country Energy Ltd, 25 March 2003. Waikato Regional Council file 60.61.33A. Supporting Papers #515-518.
[853] Meritec Ltd, Hamilton, to Chief Executive Environment Waikato, 10 June 2013. Waikato Regional Council file 60.61.36A. Supporting Papers #1263-1267.
[854] Environment Waikato to Meritec Ltd, Hamilton, 4 August 2003. Waikato Regional Council file 60.61.36A. Supporting Papers #1268-1269.
[855] Senior Support Officer Environment Court to Waikato Regional Council, 14 February 2003. Waikato Regional Council file 60.61.33A. Supporting Papers #513-514.

agreed that "there is no consent to increase the height of the Wairere Dam or to de-silt it on an ongoing basis"[856].

Following the mediation meeting, King Country Energy's consultants proposed some additional wording to condition 8. When circulating the draft wording to the parties, the consultants noted some limitations applicable to consent conditions issued under the Resource Management Act.

> It was suggested at the mediation that additional wording would be required to elaborate on what consultation with RMC involved. However, as discussions progressed through the day it became clear that the consultation relationship between RMC and KCE is not something that can be set down in the words of a resource consent condition. To address this matter, both parties agreed to undertake the preparation of a Memorandum of Understanding. Accordingly the draft [condition] has not elaborated on consultation.[857]

This was reinforced in comments by counsel for Waikato Regional Council.

> My only concern about the [rewording of condition 8] relates to its validity. In *Carter Holt Harvey Ltd v Te Runanga o Tuwharetoa ki Kawerau* (decision AP 42/02, High Court, Rotorua, 12 December 2002, Heath J.), the High Court held that there was no jurisdiction to impose a condition requiring consultation with tangata whenua before applying to change or cancel any condition of consent pursuant to section 127. It appears to me that the Judge's reasoning applies equally to post-consent consultation which does not relate to a section 127 application. The Judge held (paragraph 55(b)) that while consultation with tangata whenua is good practice, there are difficulties in elevating the obligation to the status of a legal obligation because once it is so elevated disputes can arise as to whether the obligation to consult has been adequately discharged. Secondly, the nature of the obligation to consult tangata whenua interests springs from section 8 of the RMA and the principles of the Treaty of Waitangi. It would be wrong in principle to impose an obligation on individual or corporate citizens to consult with tangata whenua interests when there is no obligation to do so.
>
> However, on the merits Meritec is happy to recommend to KCE that it agree to the imposition of such a condition. I have explained to Dave [Burton of Meritec] that in the consent memorandum, KCE will need to request the imposition of the condition so as to give rise to an *Augier* estoppel, and warrant that it will not challenge the validity of the condition in any Court of competent jurisdiction.[858]

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[856] Memorandum of Understanding, 4 September 2003, attached to J Milne, Barrister, Hamilton to Chief Executive Officer Waikato Regional Council, 25 September 2003. Waikato Regional Council file 60.61.36A. Supporting Papers #1273-1276 at 1275-1276.

[857] Meritec, Hamilton, to Environment Waikato, 8 September 2003. Waikato Regional Council file 60.61.36A. Supporting Papers #1270-1272.

[858] J Milne, Barrister, Hamilton to Chief Executive Officer Waikato Regional Council, 25 September 2003. Waikato Regional Council file 60.61.36A. Supporting Papers #1277-1278.

From subsequent events, it is apparent that a fundamental difference of opinion emerged during the mediation meeting, concerning the appropriateness or otherwise of the trap-and-transfer method to allow upstream migration by elvers, which is only tangentially alluded to in the signed memorandum of understanding. This difference of opinion was summarised in some comments after the meeting by counsel for Waikato Regional Council:

> Paragraph 2B of the memorandum of understanding records that consideration is to be given to a means of removing this condition if the fish pass is successful. Condition 10 of consent 961118 requires the continued operation of the existing trap and transfer system. The appellant is opposed to the continuation of that system because Mrs Marsh regards it as unnatural, and complained that the eels are squeezed. She continued to hold to that position notwithstanding [Regional Council fisheries biologist] David Speirs' explanation of the impressive performance of trap and transfer compared to fish pass structures. It is his strong recommendation that the condition should be retained.[859]

In January 2004 the consultants for King Country Energy sought to make progress on the two appeals by proposing that they could be settled by consent of the parties, rather than requiring an Environment Court hearing. With regard to telemetric monitoring, King Country Energy and Waikato Regional Council had held some discussions that agreed upon the purpose for which the data was being gathered (to enable a comparison of water levels and flows at the dam with water levels and flows upstream so as to identify the effect of the operation of the control gate on upstream flooding), and that agreed to consign the methods to achieve that to a yet-to-be-prepared Operations and Maintenance Manual. With regard to the Mokau ki Runga RMC appeal, the revised wording of Condition 8 had been discussed with Mokau ki Runga RMC and revised further. In addition a design plan for the upstream fish pass climbing structure, and modifications to the downstream fish pass piping, had been agreed upon with Mokau ki Runga RMC[860].

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[859] J Milne, Barrister, Hamilton to Chief Executive Officer Waikato Regional Council, 25 September 2003. Waikato Regional Council file 60.61.36A. Supporting Papers #1273-1276.

[860] Maunsell Limited (formerly Meritec), Hamilton, to Environment Waikato, 28 January 2004. Waikato Regional Council file 60.61.36A. Supporting Papers #1284-1292.
King Country Energy Ltd had separately advised the Environment Court in December 2003 that, given time to allow ongoing discussions to continue, it believed that the appeals could be resolved by consent. Two memoranda to Environment Court, 9 December 2003. Waikato Regional Council file 60.61.36A. Supporting Papers #1279-1280 and 1281-1283.

Counsel for Waikato Regional Council drew up and circulated a draft consent order, and a draft accompanying memorandum to the Environment Court, the following month[861]. After further discussions with King Country Energy's consultants, amended versions of the two documents were circulated in May 2004[862]. There was no immediate response from Mokau ki Runga RMC to either of these proposals to resolve the Mokau ki Runga RMC appeal with respect to Wairere. The Mokau ki Runga RMC silence was a frustration for both the counsel for Waikato Regional Council[863], and for the Environment Court (which had the appeal under active case management). The appeal was provisionally put down for a hearing in late July, and a judicial telephone conference with the parties was scheduled for mid June. Whether this was held is not known.

It was not until the end of June 2004 that Mokau ki Runga RMC responded, in a submission to the Environment Court. This followed an all-day meeting between Mokau ki Runga RMC and King Country Energy.

> The first part of the meeting was used to brief everyone present on what has been installed and what is proposed by KCE to provide fish passage at Wairere Falls Power Station. This was followed by a site visit to both the Wairere Falls and Mokauiti intake structures. Following lunch, final discussions were held.
>
> In general, upstream and downstream facilities proposed by KCE are acceptable with the following proviso.

The submission then proceeded to itemise a number of features that Mokau ki Runga RMC wanted included in the Wairere consents. These were a natural wetted climbing structure up the falls and the dam, measures to discourage upstream migrants from using the bypass pipes intended for downstream passage, and monitoring of fish use by both King Country Energy and Mokau ki Runga RMC. Mokau ki Runga RMC accepted that until the fish pass was in place and shown to be effective, trap-and-transfer would need to continue. For downstream migration, larger holes or slots in the dam were required, which would be less prone to blockage, together with a pool at the downstream end of the pipe. The submission concluded:

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[861] J Milne, Barrister, Hamilton, to Maunsell Limited, Hamilton, 11 February 2004. Waikato Regional Council file 60.61.36A. Supporting Papers #1293-1305.
[862] J Milne, Barrister, Hamilton, to Secretary Mokau ki Runga Regional Management Committee, 28 May 2004. Waikato Regional Council file 60.61.36A. Supporting Papers #1306-1317.
[863] J Milne, Barrister, Hamilton, to Registry Manager Environment Court, 4 June 2004. Waikato Regional Council file 60.61.36A. Supporting Papers #1318-1321.

> Proposed passage facilities shall be installed immediately after the consent is issued, and tested within two years. Should the system prove ineffective, further modifications to be implemented and tested within two years, until a suitable structure has been constructed.
>
> To date Mokau ki Runga Regional Management Committee and King Country Energy Ltd have been working through the above listed concerns, and we are both committed to achieving an amicable result.
>
> Be advised that we the MKRRMC totally object to the changes made by [the] barrister for Environment Waikato to our agreement with King Country Energy Ltd.[864]

This submission did not alter the timetable already set by the Environment Court. The late July date set down for the hearing of the appeal, however, became a callover, where the parties reported to the Court on the stage that negotiations between them had reached. After the callover, the parties had their own meeting, and agreed to hold a further meeting at Piopio the next day. Before that second meeting of the parties was held, counsel for Waikato Regional Council expressed some concerns. He wrote to the consultants for King Country Energy:

> At our meeting with Mrs Marsh this morning following the callover, she indicated that the Committee would accept a settlement that incorporated the matters in its statement of issues faxed on 25 June 2004. [At issue is] what matters were, and what matters were not, appropriately the subject matter of consent conditions. That distinction may well prove the sticking point at tomorrow's meeting, as it was apparent from Mrs Marsh's comments today that she does not understand the distinction between a side agreement and conditions of resource consent to be imposed, monitored and enforced by the Regional Council….
>
> Given that the matters at issue essentially boil down to the question of law as to what can be imposed in conditions of consent, I raised with you whether a judicial settlement conference before a Judge may not be preferable to mediation….
>
> I told you that I see [tomorrow's] meeting as the final make-or-break attempt to resolve the Committee's appeal. Unless that meeting resolves the matter or achieves something close to a resolution that can be polished off by a final mediation or judicial settlement conference, then I will be asking for the matter to be set down for hearing in the next Hamilton session [in] October, together with the remaining unresolved appeals. I am concerned at the amount

[864] Submission to Environment Court by Mokau ki Runga Regional Management Committee, 24 June 2004, attached to Fax Barbara Marsh, Aria, to J Milne, Barrister, Hamilton, 25 June 2004. Waikato Regional Council file 60.61.36A. Supporting Papers #1322-1325 at 1323-1325.

> of time (and hence money) that these appeals are swallowing up, and it is my opinion that they must be brought to a conclusion one way or the other.[865]

He also wrote to Barbara Marsh of Mokau ki Runga RMC.

> During the discussion at Court yesterday which followed the callover, you indicated that your Committee sought the inclusion in the consent conditions of the matters listed in your statement of issues, which was faxed on 25 June 2004. Both Mr Burton and I endeavoured to explain that there are matters in that statement that are not appropriate to include in conditions of consent. It may be helpful to your Committee if I elaborate on that.
>
> It is my understanding that your Committee and the applicant King Country Energy Ltd have been discussing entering into a Memorandum of Understanding. From a legal point of view, that is a separate matter which lies outside the scope of your appeal. Neither the Regional Council as the consent authority in the first instance, nor the Environment Court on appeal, has any jurisdiction to direct King Country Energy Ltd to enter into a Memorandum of Understanding with your Committee, nor to direct what the contents of such a Memorandum of Understanding should be. Those are matters exclusively for your Committee and KCE to determine.
>
> Your appeal is part of a statutory process under the Resource Management Act 1991. There is a considerable body of case law under that Act determining what can and cannot validly be imposed as conditions of consent. I referred to some of that case law in my letter dated 11 February 2004 (addressed to Maunsell Ltd with a copy minuted to your Committee). The point of that letter was to explain that the Court would have no power to impose some of the provisions sought by your Committee, even if all parties were to request it to do so. Whether or not these matters can be included in the Memorandum of Understanding with KCE is a matter for your Committee to negotiate with KCE, and would not involve the Regional Council.[866]

Following the meeting, King Country Energy prepared amended documentation for resolving the appeal by consent. As at November 2004 there had still been no response from Mokau ki Runga RMC. This was preparatory to an Environment Court judicial conference, at which it was expected that a date would be set for a hearing of the appeal. The judicial conference had been requested by Waikato Regional Council, which had written to the Environment Court in November 2004:

> These appeals were lodged in February 2003. The Regional Council is concerned that the momentum that was gained by having them set down as backup fixtures in July [2004] has since been lost, notwithstanding the draft

[865] J Milne, Barrister, Hamilton, to Maunsell Limited, 27 July 2004. Waikato Regional Council file 60.61.36A. Supporting Papers #1326-1327.
[866] J Milne, Barrister, Hamilton, to Secretary Mokau ki Runga Regional Management Committee, 28 July 2004. Waikato Regional Council file 60.61.36A. Supporting Papers #1328.

> consent documentation being further amended in an attempt to address the concerns of the Regional Management Committee when they were finally articulated. The Regional Council wishes to see the appeals resolved so that the Wairere Falls power station consents can then commence in terms of section 116, and thereby authorise the construction of the fish pass. The Council is concerned that if this cannot be achieved in the relatively near future, then it is likely that a further summer construction season will be lost and the intended environmental improvements required by the conditions of the new consents will not be achieved for a further year. In the meantime the activities of KCE continue to be authorised by section 124.
>
> I am instructed to request that a judicial conference is convened on a date convenient to the Court, so that directions can be given by the Court to enable this matter to be finalised.[867]

Setting a date in December 2004 for the judicial conference turned out to be the spur that was needed to bring the appeals concerning Wairere to a conclusion. Two meetings were held between Waikato Regional Council, King Country Energy and Mokau ki Runga RMC, one on the day before the judicial conference, and a second on the morning just before the judicial conference was due to begin. At the second meeting, agreement was reached by all three parties on the revised wording of the Wairere resource consents[868].

In January 2005 the Environment Court signed a consent order approving the agreed changes to the conditions that had been set by the hearing panel in December 2002[869]. The changes covered the matters arising from both King Country Energy's appeal and Mokau ki Runga RMC's appeal. The main change that Mokau ki Runga RMC achieved by filing its appeal was to ensure that the condition concerning the upstream migration structure was defined with greater particularity and with better provision for all migrating fish species. As approved by the hearing panel, condition 7 of the consent to dam the Mokau River at Wairere Falls read:

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[867] J Milne, Barrister, Hamilton, to Registry Manager Environment Court, 26 November 2004. Waikato Regional Council file 60.61.36A. Supporting Papers #1329-1330.

[868] Email D Palmer to B Butcher and S Berry, 10 December 2004. Waikato Regional Council file 60.61.36A. Supporting Papers #1331-1332.

[869] Consent Order of the Environment Court, 11 January 2005. Waikato Regional Council file 60.61.36A. Supporting Papers #1333-1345.

> The consent holder shall carry out its operations so as to minimise as far as practicable any adverse effects on the upstream migrations of shrimp and fish, particularly elvers.[870]

The condition approved by the Environment Court was to minimise adverse effects on "the upstream and downstream migrations of crustaceans and all native fresh water fish, particularly elvers and piharau (lamprey)"[871].

Condition 8 of the consent to dam the river had then continued, in the hearing panel's decision:

> 8. The consent holder shall install and maintain an upstream elver ramp, … which provides a migration route for elvers over the dam structure. The design of the structure is to be developed in consultation with the Mokau ki Runga Regional Management Committee or its authorised successor. The structure shall be installed within one year of the commencement of this consent.[872]

The revised condition approved by the Environment Court read:

> 8. The consent holder shall install and maintain an upstream fish passage ramp … which provides a migration route for elvers and other native climbing fish over the dam structure. The structure shall be installed within one year of the commencement of this consent.
>
> The operation of the upstream fish structure shall provide for continuous flow at all times, which is sufficient to provide for native climbing fish and to maintain a continuous flow in the ponds / riffles that form the passage to the structure.
>
> The consent holder, in consultation with Mokau ki Runga Regional Management Committee or its authorised successor, shall develop and implement monitoring methods and measures to monitor the effectiveness of this structure as a measure to provide for upstream passage for elvers and other native climbing fish. The consent holder shall in that consultation … develop improvements to tis structure to provide for the upstream passage of elvers and other native climbing fish.
>
> The results of the monitoring and considerations regarding possible improvements to the structure shall be reported to the Regional Council in an agreed format (with a copy to the Mokau ki Runga Regional Management Committee or its authorised successor) by 30 June of each year this consent is current.

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[870] Decision of Hearing Committee, 19 December 2002, Resource Consent 961118, condition 7. Waikato Regional Council file 60.61.36A. Supporting Papers #1205-1258 at 1248.
[871] Consent Order of the Environment Court for Resource Consent 961118, condition 7, 11 January 2005. Waikato Regional Council file 60.61.36A. Supporting Papers #1333-1345 at 1337.
[872] Decision of Hearing Committee, 19 December 2002 , Resource Consent 961118, condition 8. Waikato Regional Council file 60.61.36A. Supporting Papers #1205-1258 at 1248.

Advice notes
King Country Energy acknowledges Mokau ki Runga Regional Management Committee as Nga Tangata Kaitiaki of the Mokau River.

Mokau ki Runga Regional Management Committee considers the natural process of fish passage is preferable to the trap and transfer process.

Condition 16(c)(i) of this consent provides the mechanism in the event that changes to conditions are necessary to implement agreed improvements or alternatives.

Any such application to change or cancel any condition of this consent shall be made only following consultation between the consent holder and Mokau ki Runga Regional Management Committee or its authorised successor.

8A. The consent holder shall in consultation with the Mokau ki Runga Regional Management Committee or authorised successor, prepare and implement a maintenance schedule for the upstream elver ramp as required in condition 8 above….[873]

With respect to King Country Energy's appeal, the revised wording of condition 5 of the dam consent removed the requirement that monitoring be a real-time record of water levels and flows with results transmitted by telemetry, and substituted wording that specified the purpose of the monitoring ("to verify the effect of gate operations on upstream flooding"), and required recording of flows and levels at the gate and upstream, while leaving it up to the generating company's operations and maintenance manual to decide on the methods to achieve the purpose[874].

There was no change to the term of the resource consents, which run until the end of 2032.

B.7 Resource consent application for Mokauiti, 1996

As with the Wairere scheme, the operational water rights for Mokauiti issued in 1976 were also due to expire in 1997, and fresh applications for resource consent were

[873] Consent Order of the Environment Court for Resource Consent 961118, conditions 8 and 8A, 11 January 2005. Waikato Regional Council file 60.61.36A. Supporting Papers #1333-1345 at 1337-1338
[874] Consent Order of the Environment Courtfor Resource Consent 961118, condition 5, 11 January 2005. Waikato Regional Council file 60.61.36A. Supporting Papers #1333-1345 at 1336.

lodged in October 1996 at the same time as the Wairere applications (see earlier section on resource consent application for Wairere). As with Wairere, there were three consents sought; to dam, to take water and to discharge water. Once the applications had been accepted, and the existing use was protected until the consents applied for had been decided upon, attention shifted to the de-silting of the head-pond during 1997 and 1998, as described earlier.

In April 1999 the Wairere and Mokauiti applications were publicly notified in the *Waitomo News*. The objections lodged by Mokau ki Runga RMC, and by Eric and Barbara Marsh, were in connection with both power schemes, and have already been partly covered in the section on the Wairere applications. The Mokau ki Runga RMC objection distinguished between the consultation by King Country Energy in connection with the desilting of the headponds, and the consultation in connection with renewal of the operational consents applied for in 1996. As far as Mokau ki Runga RMC was concerned, consultation on the operational consents had never taken place[875].

The Marsh's objection considered that the new flashboards on top of the dam increased the risk of flooding and stock loss on their riverbank property (and on two other neighbouring properties) located upstream of the dam. They considered that the new flashboards had been built without a resource consent and should be removed. They also asked that their letter of opposition dated November 1996 be considered to be a part of their objection[876].

It was not until 2001 that further progress was made on the applications for operational consent. In March, on the same day that a pre-hearing meeting was held at Piopio to discuss the Wairere applications, a second meeting was held to discuss the Mokauiti applications. The same concerns of flooding and fish passage were

[875] Mokau ki Runga Regional Management Committee to Environment Waikato, 5 May 1999. Waikato Regional Council file 60.61.36A. Supporting Papers #1012-1016.
Lack of consultation on the operational consents had also been referred to by the Secretary of Mokau ki Runga Regional Management Committee (Barbara Marsh) in a discussion with a Waikato Regional Council staff member the previous month. File note by U Trebilco, 26 March 1999, U Trebilco to Barbara Marsh, 29 March 1999, and U Trebilco to D Palmer, 31 March 1999. Waikato Regional Council file 60.61.33A. Supporting Papers #436-439, 440-443 and 444.
[876] ER Marsh and BN Marsh, Aria, to Environment Waikato, 5 May 1999. Waikato Regional Council file 60.61.36A. Supporting Papers #1017-1021.

present at Mokauiti. An additional complication was the matter flagged by Barbara Marsh in her submissions about the proposed de-silting, that the generating authority had erected wooden flashboards along the top of the dam, thereby effectively raising its height above the river bed. These flashboards, which had never been directly consented (though may have come within the terms of the 1977 water right, depending on one's interpretation of the conditions of that water right), aggravated the flooding problems for landowners upstream. At the meeting the landowners complained that flooding occurred 3 to 4 times per year. While the intention of the flashboards when originally erected was that they could be washed away during severe flooding, they had been reinforced since installation and had become a more permanent feature of the dam. The affected landowners asked that the flashboards be either removed or made collapsible[877].

With respect to fish passage, the company was asked to work with a Mokau ki Runga RMC representative to develop a fish pass suitable to meet the needs of the Mokauiti River[878].

After the meeting King Country Energy went away to address the concerns about flooding, the flashboards, and lack of provision for fish passage[879]. A second pre-hearing meeting was held at Piopio in August 2002, at which the company proposed that a control gate be installed to replace the flashboards, and a trickle flow maintained over the spillway to attract elvers. If this trickle flow was successful the spillway could be modified to incorporate a climbing structure[880]. To allow these works to be constructed, an additional resource consent, to alter the dam and undertake works in the river bed, was applied for[881].

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[877] Minutes of Mokauiti Dam pre-hearing meeting, 19 March 2001, attached to Meritec Ltd to Engineer Waikato Regional Council, 9 April 2001. Waikato Regional Council file 60.61.33A. Supporting Papers #445-450 at 447-450.

[878] Minutes of Mokauiti Dam pre-hearing meeting, 19 March 2001, attached to Meritec Ltd to Engineer Waikato Regional Council, 9 April 2001. Waikato Regional Council file 60.61.33A. Supporting Papers #445-450 at 447-450.

[879] Meritec Ltd to Engineer Waikato Regional Council, 9 April 2001. Waikato Regional Council file 60.61.33A. Supporting Papers #445-450.

[880] Minutes of meeting, 19 August 2002, attached to Meritec, Hamilton, to Waikato Regional Council, 16 September 2002. Waikato Regional Council file 60.61.33A. Supporting Papers #453-459.

[881] Meritec, Hamilton, to Waikato Regional Council, 12 September 2002. Waikato Regional Council file 60.61.33A. Supporting Papers #451-452.

The Mokauiti consent applications continued to follow the same timetable as the Wairere applications, with both being the subject of a joint hearing in December 2002. A separate staff report on the Mokauiti applications was prepared for the hearing[882]. This concentrated on the installation of a control gate on top of the existing spillway, as that was the more definite proposal, even though it had not been fully designed. The flashboards would be retained during the construction period (as that would keep the construction area dry), and only removed once the control gate had been completed.

Provisions for fish passage were less advanced than at Wairere. The Waikato Regional Council staff report noted:

> There are a number of options that could be adopted to assist in the upstream migration of elvers. The applicant proposes to carry out a "trap and transfer" system in the tailrace during the upcoming migration season. This would involve setting a trap within the tailrace to catch upstream migrating elvers. These would then be physically transported from the trap site and released upstream of the dam. The number of elvers (and any other trapped species) would be recorded. Coupled with this KCE also proposes to undertake some minor modifications at the spillway to provide a trickle flow in the residual channel. Monitoring would be undertaken to establish if elvers were attracted to this flow. At the end of the migration period KCE would assess the results to establish the most appropriate method (or methods) to assist elvers in their upstream migration.
>
> KCE further propose to investigate methods to assist the downstream migration of adult eels. These include trialling a pulsed electrical charge on the intake screens to deter eels from approaching the intake screens. In addition a pipe bypass from near the intake screen to the spillway crest will be trialled over the next migration season and if successful would be retained.
>
> Adult lampreys have been reported to congregate below the power station during October and November. Because there is little information on these species, the applicant is proposing to log the times and locations where lampreys are seen below the dam and at the powerhouse in order to develop an understanding of the behaviour of lamprey and possibly lead to a means to better provide for their migration.[883]

The staff report concluded that the applications either complied with the objectives, policies and standards of planning documents, or where non-compliant had only a

[882] Staff report on resource consent applications for Mokauiti Power Station, 13 November 2002. Waikato Regional Council file 60.61.33A. Supporting Papers #460-489.
[883] Staff report on resource consent applications for Mokauiti Power Station, 13 November 2002. Waikato Regional Council file 60.61.33A, pages 5-6. Supporting Papers #460-489 at 464-465.

minor environmental effect. It recommended that the applications be granted, subject to conditions, for terms of 25 years for the operational consents and five years for the construction consent[884].

At the joint hearing by the Waikato Regional Council Hearing Committee of both the Wairere and Mokauiti applications in December 2002, the environmental baseline at Mokauiti was the subject of a difference of opinion. The Waikato Regional Council staff report had proposed that it be the existing dam structure with all controllable aspects removed or disabled, including the flashboards. King Country Energy argued that the flashboards were permanent and formed part of the dam structure that had been legally authorised in 1976, so there should be no obligation to remove them. The Hearing Committee agreed that, practically speaking, the flashboards were a permanent part of the dam structure and should be included in the baseline. In making this decision, it acknowledged its significance for the hearing:

> The baseline environment is theoretically more significant in terms of the Mokauiti scheme because if it is assumed that the flashboards do not form part of the baseline environment the control gate can be seen as having an adverse effect (albeit minor) in terms of flooding. If the flashboards are assumed to exist, these effects are positive.[885]

The upstream farmers who were objecting to the impact the dam had on their land saw the choices being debated at the hearing as being removal of the flashboards or installation of a control gate. For them removal of the flashboards was the preferred alternative. However, King Country Energy argued that removal of the flashboards would reduce generating capacity by 30%. The Hearing Committee viewed this as a significant loss, while the provision of a control gate "effectively mitigated" the effect of upstream flooding. It therefore supported the generating company's proposal to substitute a control gate for the flashboards. However, it considered that the construction of the control gate and its initial operation should not be used as an opportunity to discharge downstream any accumulated silt in the headpond, because of a potential effect on eels and downstream fish; it required that sediments within

[884] Staff report on resource consent applications for Mokauiti Power Station, 13 November 2002. Waikato Regional Council file 60.61.33A, pages 20-21. Supporting Papers #460-489 at 479-480.
[885] Decision of Hearing Committee, 19 December 2002, paragraph 2.17, page 10. Waikato Regional Council file 60.61.36A. Supporting Papers #1205-1258 at 1214.

100 metres of the control gate be removed by dredging before the control gate was brought into operation.

Because no fish passage measures had been trialled or set in place at Mokauiti, the Hearing Committee acknowledged that there needed to be some experimentation to assess whether trap-and-transfer or provision of a trickle flow over the spillway would be appropriate for upstream passage. Trials were also needed for downstream passage. It set a minimum residual flow of 70 litres per second to be maintained in the reach of the river below the spillway that was bypassed by the power scheme.

All three operating consents sought by the company were granted for terms of 30 years[886], with the control gate construction consent granted for a five-year term.

Waikato Regional Council's decision was appealed against by King Country Energy Limited, and by Mokau ki Runga RMC. King Country Energy considered that the conditions attached to the dam consent, the water take consent and the construction consent were onerous and restricted the operation of the power scheme. Among other things the company sought a reduction in the residual flow of the bypassed reach of river from 70 litres per second to 30 litres per second[887].

The appeal by Mokau ki Runga RMC was against both the Mokauiti and the Wairere consents, on the grounds that there had been a lack of consultation, that the trap-and-transfer method of fish passage for migrating elvers did not address the migration needs of other native fish species, and that de-silting would have substantial effects on freshwater fish, kaimoana, and the river and coast ecosystem generally[888].

There was also a third appeal, lodged by HA Tucker and Company Limited and FP Barnett, both being owners of land upstream that was liable to flooding. Tucker and Barnett considered that because the decision allowed the power scheme to be managed in a manner that meant their land upstream would be subject to flooding, to

[886] Decision of Hearing Committee, 19 December 2002, paragraph 9.4, page 27. Waikato Regional Council file 60.61.36A. Supporting Papers #1205-1258 at 1231.
[887] Notice of appeal by King Country Energy Limited, 4 February 2003. Waikato Regional Council file 60.61.33A. Supporting Papers #499-508.
[888] Notice of appeal by Mokau ki Runga Regional Management Committee, 5 February 2003. Waikato Regional Council file 60.61.33A. Supporting Papers #509-512.

grant the consents would therefore be contrary to the purposes of the Resource Management Act and would adversely affect the natural character of the area[889]. The manner in which this appeal was addressed is not discussed in this topic study, beyond noting that it was resolved.

Waikato Regional Council and King Country Energy held a meeting in March 2003 to see if changes of wording to the conditions of consent could be agreed upon. While a number of changes were agreeable to both parties, no agreement could be reached on the minimum flow in the bypassed reach, and how to avoid a flush of silt downstream when the control gate was first brought into operation[890]. Three months later, the company suggested some further proposals. It had obtained a report from a fisheries scientist about the environment of the bypassed reach of river, which showed low flows between 3 and 10 litres per second, so the environment would be substantially altered if there was a higher residual flow. The company asked for a residual flow of 10 litres per second, which would match the environmental baseline. With respect to the silt upstream of the proposed control gate, investigations had shown that there was no accumulation that would become mobile when water flowed through the gate. However, removal might still suit the company's other objectives, and the company sought a rewriting of the condition that allowed additional flexibility to choose how much silt to remove[891]. Waikato Regional Council responded to these proposals in August 2003, disagreeing with any reduction in the residual flow, and agreeing to the revised wording on removal of silt[892].

The mediation referred to earlier in this topic study in connection with the Wairere scheme also applied to those parts of the Mokau ki Runga RMC appeal about the Mokauiti scheme. The memorandum of understanding signed at the end of the mediation meeting in September 2003 included agreement on the way forward with Mokauiti matters:

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[889] Notice of appeal by HA Tucker and Company Limited and Frank Patrick Barnett, 29 January 2003, attached to Roger Clark, Barrister, Hamilton, to Waikato Regional Council, 29 January 2003. Waikato Regional Council file 60.61.33A. Supporting Papers #490-498.
[890] Notes of meeting, 25 March 2003. Waikato Regional Council file 60.61.33A. Supporting Papers #515-518.
[891] Meritec Ltd, Hamilton, to Chief Executive Environment Waikato, 10 June 2003. Waikato Regional Council file 60.61.33A. Supporting Papers #519-540.
[892] Resource Officer Energy to Meritec Ltd, Hamilton, 4 August 2003. Waikato Regional Council file 60.61.36A. Supporting Papers #1268-1269.

a. KCE has sought the reduction of the 70 litres/second minimum flow in Consent 961114 Condition 11 to 30 litres/second. Representatives of the parties will meet to explore whether a IFIM study should be undertaken, or any alternative study to be undertaken by an independent expert….
b. The circulated draft rewording of Condition 11 of Consent 108146 was agreed.
c. New consents for the disposal of removed sediment will be the subject of consultation with MKRRMC.[893]

There is no record of any progress on the points agreed at the mediation meeting, or of any discussions with Mokau ki Runga RMC about Mokauiti, over the next 18 months while the Wairere appeal remained unresolved, apart from a brief note by counsel for Waikato Regional Council in July 2004:

> Mrs Marsh informed us this morning [during a meeting to discuss the Wairere appeal] that the Committee's interests in [the Mokauiti] consents are not restricted to the residual flow issue, but extend to all matters. She complained that there had been no consultation with the Committee about these consents. Your client [King Country Energy] needs to decide what if any steps it wishes to take in this regard.[894]

Of perhaps greater interest to Waikato Regional Council and King Country Energy at that time was the matter of the size of the residual flow. King Country Energy commissioned reports from NIWA[895] and from a consultant fisheries scientist, both of which were received in May 2004[896]. The NIWA scientist found that on the day of his inspection, the flow just below the dam was 15 litres per second, and just below the powerhouse was 36 litres per second. At these flows there were no obvious barriers to fish passage. The fisheries scientist concluded that there was little difference in aquatic habitat between flows in the range from 15 litres per second to 70 litres per second, though the higher the flow the lower the summer water temperature, and therefore the less stressful the habitat would be. After reviewing these papers, Waikato Regional Council proposed that the minimum flow requirement

[893] Memorandum of Understanding, 4 September 2003, attached to J Milne, Barrister, Hamilton to Chief Executive Officer Waikato Regional Council, 25 September 2003. Waikato Regional Council file 60.61.36A. Supporting Papers #1273-1276 at 1275-1276.
[894] J Milne, Barrister, Hamilton, to Maunsell Limited, 27 July 2004. Waikato Regional Council file 60.61.36A. Supporting Papers #1326-1327.
[895] National Institute of Water and Atmosphere Research.
[896] I Jowett (NIWA), *Flow requirements below the Mokauiti Dam*, 20 May 2004. Copy on Waikato Regional Council file 60.61.33A. Supporting Papers #541-544.
Charles Mitchell and Associates, *Effects of summer low flows on aquatic biology of the residual Mokauiti River between Mokauiti dam and the powerhouse*, May 2004. Copy on Waikato Regional Council file 60.61.33A. Supporting Papers #545-557.

(set in the water take consent being appealed at 70 litres per second just above the powerhouse) could be split into three parts, 15 litres per second immediately downstream of the spillway, 36 litres per second just upstream of the powerhouse, and 70 litres per second below the powerhouse. While the company agreed with the proposed flows downstream of the spillway and just upstream of the powerhouse, it did not support the proposed flow of 70 litres per second below the powerhouse[897]. The company's fisheries consultant suggested that the proposed minimum flow below the powerhouse would make little difference to water levels, water temperature, or the quality of the aquatic habitat, but would require the turbines to operate 24 hours a day (which they were not doing during times of low flow)[898]. In the absence of agreement between the company and the Regional Council, there was no immediate further progress. Mokau ki Runga RMC had not been involved in these discussions during mid 2004.

The Mokau ki Runga RMC appeal proceedings were revived when two meetings of Mokau ki Runga RMC, Waikato Regional Council and King Country Energy were held in April and May 2005. For the April meeting Mokau ki Runga RMC put its concerns in writing. Because these concerns relate to the substantive matters, rather than to the adequacy or otherwise of past consultation, they are quoted in full.

> **1. Residential [sic – should be Residual] Water Flow**
> We have observed that in the river channel below the spillway the water flow is near to 0 m^3/sec.
> It is proposed a Residential Water Flow needs to be established at 70 l/sec, but we feel this is highly inadequate. Therefore it is [proposed that a minimum of 0.5 m^3/sec residential flow is required.
> Residential flow needs to be established at turbine intake end of storage lake.
> This will also help the downstream river at times of non-generation.
>
> **2. Fish passages**
> No plans have been given on fish passages. Catch and transfer is not an acceptable option to the committee, i.e. currently who transfers fish that reach the bottom of the spillway.
> Fish passage needs to be made out of as near natural materials as possible, i.e. rocks, etc.
> It is possible to use residential water flow to water fish pass, which needs to be positioned at intake end of headpond.

[897] File note D Palmer and D Speirs to J Milne, 24 June 2004. Waikato Regional Council file 60.61.33A. Supporting Papers #558-559.
[898] CP Mitchell, Comment on Mokauiti Residual Flow, June 2004. Waikato Regional Council file 60.61.33A. Supporting Papers #560-561.

3. Existing extra damming – flashboards

The so-called flashboards in the Mokauiti Dam spillway have become a permanent damming structure.

No paperwork has been given showing where approval has been given to increase the height of the dam.

All we have been shown is a Waipa [sic] Valley Authority Right No. 3017, which covers water use in he region under the Water and Soil Conservation Act 1967.

All dams were covered under the Public Works Act until 1990.

We have been to Wellington and there is no record of permission to increase the height of the Mokauiti Power Station.

The extra height has caused silting of the riverbed and channel. It has created flowing upstream. Willows have also been allowed to establish in Dam headpond and river channel for approximately 1.3 kms upstream.

Therefore the illegal structure blocking the spillway needs to be removed.

Environment Waikato have an obligation under the Building Act – safety of Dams and SEED guidelines, to see it is removed, as they have known since 1999 that it jeopardises the security of the Dam.

4. New proposed floodgate

We oppose this structure being built for the following reasons.

The flooding of 800 metres of riverbed, including rapids once used for fishing.

Restricting the flow of the river, therefore altering the sediment regime.

The proposed floodgate will fold downstream, therefore changing the effect of the spillway, affecting downstream fish passage.

None of the hydrologists seem to agree on the effect of the floodgate, as a true baseline has not been given.

KCE attempted by removing the boards in the spillway, but neglected to remove the uprights therefore decreasing flows.

The uprights collected debris and logs in the only significant experience in the time without spillway dammed.

They then proceeded to downgrade the flood from approx 78 m^3/sec to 29 m^3/sec, saying debris had caused a false reading.

Rainfall records for that flood would indicate it would have been around 70-80 m^3/sec.

Debris of the size indicated in KCE photos would not have been picked up and brought downstream unless flood was of considerable magnitude, i.e. 80 m^3/sec.

Floods of this size are considered to be a 1 in 2 year event, but for some reason, possibly work done by the Waikato Regional Council in the upper catchment, these seem to be a regular event.

Therefore we feel Maunsell Ltd, consultants, have been misleading in their figures.

A true and accurate baseline will not be obtained until past damages are rectified. KCE to remove structure in spillway. To clean willows in their headpond. EW to clean willows and silting from dam upstream to Aria Bridge.

> The Mokauiti Power Station has been flooding our fishing areas, swimming holes, old village sites, blocking the passage of our fishes, stopping the flow of the river, and also destroying our traditional fishing grounds.
>
> Be advised that the Mokau ki Runga Regional Management Committee are the Iwi Authority who advocate and administer activities for and on behalf of whanau hapu. We are aware that three farmers directly upstream have been severely affected by the illegal dam structure, of which two are already seeking compensation for damages.
>
> We too will be seeking recompense for all damages incurred through flooding to fences, stock losses and siltation erosion and restoration of land and expenses incurred on behalf of the late ER Marsh and Barbara Marsh.
>
> In relation to the loss of all Pa Tuna we will be lodging a claim with the Waitangi Tribunal in regards to the loss of our Traditional Fishing Grounds.[899]

The outcome of the April meeting was to give King Country Energy a chance to respond to the statement prepared by Mokau ki Runga RMC, and then hold a further meeting at the end of the following month[900]. The response from the company addressed each of the four concerns raised by Mokau ki Runga RMC[901]. On the matter of residual water flow it acknowledged that the existing flow was "minimal", that a residual flow was required, and that Mokau ki Runga RMC had to be a party to the decision on what the residual flow should be. No agreement had been reached in discussions between the company and Waikato Regional Council.

> Your request for a residual flow of 500 l/s is considerably more than what is currently tabled. The current information and advice suggests that there is no substantial benefit from maintaining residual flows above the values currently in the consent. If fish passage is a principal concern, then we must realise that the design of the fish passage system as required by the consent will contrite to the flow, and will have to be sufficient for the fish passage. Putting figures on the passage now without trials would jeopardise the fish passage.
>
> Also we need to put your request in perspective. EW have provided the information used for their reports. This estimates the five-year low flow at 520 l/s, the mean annual flow at 680 l/s. These figures have up to a 25% error. So assuming the error is at its worst case (25% low), then the revised figures are 650 l/s five-year low and 850 l/s mean annual low flow. By taking 500 l/s from this figure, there is practically nothing left for generation, which would mean that KCE would have to close the station in low flows. An initial

[899] Mokau ki Runga Regional Management Committee to KCE Generation Ltd, 6 April 2005. Waikato Regional Council file 60.61.33A. Supporting Papers #562-564.
[900] King Country Energy Ltd to Environment Court, 7 April 2005. Waikato Regional Council file 60.61.33A. Supporting Papers #565-566.
[901] Generation Manager KCE Generation Ltd to Secretary Mokau ki Runga Regional Management Committee, 18 May 2005. Waikato Regional Council file 60.61.33A. Supporting Papers #567-569.

> estimate has shown that it would be impractical for the station to be closed down for 3 months of the year in low flow conditions and with the generation in the remaining months being substantially reduced from current output.

On the matter of fish passage, the company explained that, unlike Wairere, no definite plans had been drawn up because monitoring and design was to be done after the consent was issued. King Country Energy was committed to installing both upstream and downstream fish passages at Mokauiti. With respect to the flashboards, they would be removed once the control gate was installed. The total opposition of Mokau ki Runga RMC to the installation of a control gate meant there was no opportunity for mediation, and the matter would have to be heard by the Environment Court.

> KCE advises that the operation of the control gate is fundamental to the proposal that was put forward and which has been granted a resource consent.
>
> The RMC has raised some interesting points including reference to a lack of agreement by hydrologists on the effect of the control gate. KCE are only aware of one hydrologist report currently that has been made available to the parties concerned. This is the Maunsell report you refer to. KCE understands that another study of the river was done for another party [Tucker and Barnett]. However during the mediation with the other party, this report was with-held at their request and has not been made available to the other parties in the Mokauiti appeals. If KCE are to be able to respond to your comments, then the evidence to support your position needs to be passed on to KCE for consideration / comment.
>
> However, we would like to remind the RMC that the intention of the control gate is to collapse during higher flows so the 'weir level' would then be to the top of the concrete dam.
>
> With regard to the willows, KCE are more than happy to proceed with any vegetation management, providing of course it is done through EW and is incorporated as clear instruction through the consent.[902]

The planned follow-up meeting at the end of May 2005 was not held. The reason for this is not known. In June King Country Energy asked the Environment Court to agree to Court-facilitated mediation. However, when the Court asked the other parties if they were agreeable[903], it would seem that not all of them indicated agreement, so the appeals were set down for a Court hearing.

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[902] Generation Manager KCE Generation Ltd to Secretary Mokau ki Runga Regional Management Committee, 18 May 2005. Waikato Regional Council file 60.61.33A. Supporting Papers #567-569.

[903] Environment Court to HA Tucker and Co Ltd and FP Barnett, Waikato Regional Council and Mokau ki Runga Regional Management Committee, 17 June 2005. Waikato Regional Council file 60.61.33A. Supporting Papers #570.

In August 2005 Mokau ki Runga RMC, at the request of the Environment Court, provided a statement of issues as it saw them. This statement was written by a lawyer acting for Mokau ki Runga RMC, the first time that the Committee had obtained legal representation. The issues identified by Mokau ki Runga RMC were:

- Residual water flow
- Fish passages
- Flashboards
- New proposed floodgate
- Presence of willows
- Failure to address silting
- Protection of wahi tapu sites
- Historical and cultural issues

Counsel for Mokau ki Runga RMC added that she believed that the flashboards were exacerbating the upstream flooding, and that the proposed summer residual low flows would be ineffective in providing an adequate aquatic habitat for all types of native fish. Wahi tapu such as traditional pa tuna (eel fishing sites) had been affected by the dam's operation[904]. Attached to this response was a copy of the engineering report on flooding commissioned by Tucker and Barnett, which King Country Energy had said in its response in May 2005 had not been made available to all parties.

In preparation for a mediation meeting scheduled by the Environment Court for October 2005, the Waikato Regional Council staff member handling the appeals provided a staff comment on the issues as they might affect Waikato Regional Council:

> I have listed the issues as identified by iwi below, and fleshed them out as good as I can (based on previous discussions), and also noted what our (staff) position is.
>
> Residual water flow. Condition 14 on [Consent] 961114 requires a residual flow in the cut off section of the stream to be 70 l/s. KCE have appealed to reduce this to 30 l/s (and later wanted to reduce it further). Iwi are requesting this be increased to 500 l/s. We do not support reducing the residual flow below 70 l/s (as sought by KCE), and we are neutral on it being raised above

[904] Govett Quilliam, Lawyers, New Plymouth, to Environment Court Unit, 9 August 2005. Waikato Regional Council file 60.61.33A. Supporting Papers #571-599.

70 l/s. If KCE agreed to a higher figure with iwi we wouldn't oppose it, but we do not actively seek it. I think it unlikely that the residual flow will be increased given the Q5 is 520 l/s and the mean annual low flow is 680 l/s.

Fish passages. The consents require KCE to investigate and trial various options for fish passage (includes upstream elver, lamprey, and downstream adult eel), report and then with EW agreement install the preferred option/s. The RMC has stated that it is totally opposed to trap-and-transfer of elvers, and wants only static climbing ramps. In all the evidence presented, T&T is the best method for transferring levers. This needs to remain as an option to investigate, and unless something odd happens at Mokauiti it would need to be installed. We are however happy for ramps to also be installed.

Flashboards. Iwi have been stating that the flashboards are illegal and need to be removed. They have a lot of issues with historic matters which I don't think are relevant in the appeal. Removal of the flashboards is a requirement of the consent.

New control gate. The proposal is to replace the flashboards with a control gate. I don't think iwi want either. Conflict with Tucker and Barnett resolution as well, as this provides for control gate. Iwi state flooding and sedimentation issues as reasons. As I recall this was not supported by evidence we had at time. I may need to get further technical advice on this. As far as changes to the conditions go….[four full stops in original] If KCE agree to remove flashboards and gate (which I doubt) no real issue for us. Not sure what their issue is here. Suspect it may be that upstream landowners have been (apparently) required to remove willows. Already a condition in consents requiring KCE to keep channel within their property clear of debris and blockages at all times.

Protection of wahi tapu and historical and cultural issues. First time that these last 2 issues have been really noted. Iwi noted that the station has been "flooding our fishing areas, swimming holes, old village sites, blocking the passage of our fishes, stopping the flow of the river and also destroying our traditional fishing grounds".[905]

For its part, King Country Energy accepted the need for a programme of trials of various methods to facilitate fish passage. With respect to one of the consent conditions that a trial of a trap-and-transfer system was required, it commented, in notes prepared prior to the mediation meeting:

> While this aspect is understood to be opposed by MKRRMC, this is a matter between EW and the RMC. KCE will abide by whatever outcome is agreed in this regard…. KCE would welcome assistance of MKRRMC in conducting the trials / monitoring, etc.

[905] Email D Palmer to J Howland, B Butcher and S Berry, 6 September 2005. Waikato Regional Council file 60.61.33A. Supporting Papers #600-601.

It was committed to implementing the recommendations arising from any trials programme, although adding:

> Should alternative measures installed to enable fish passage past / over the dam prove to be successful, trap and transfer will no longer be employed as a measure to provide for upstream passage of native climbing fish.[906]

An on-site meeting at Mokauiti the day before apparently preceded the mediation meeting in October 2005. At the mediation meeting there were a number of matters that could not be resolved, and it appeared inevitable that an Environment Court hearing would be necessary. With respect to fish passage, Mokau ki Runga RMC, which was legally represented at the meeting, opposed King Country Energy's design and installation programme for the upstream climbing structure, as it wanted the structure to be as near to natural a possible. In addition, Mokau ki Runga RMC and Waikato Regional Council could not agree on the trap-and-transfer programme, with Mokau ki Runga RMC opposed to the trap-and-transfer method because of its unnaturalness, while Waikato Regional Council actively wanted it because it was, in its opinion, a proven and superior method of achieving fish passage. On the matter of wahi tapu, most sites identified by the Committee would not be affected, as they were downstream of the run-of-the-river power scheme, although there was an urupa upstream that should be avoided during construction works, and a pa tuna in or around the headpond that would be affected (unless the headpond water levels were significantly reduced). Discussion about residual flows drew out that Mokau ki Runga RMC's main concerns were with achieving an adequate flow in the dewatered section of the river between the dam and the outlet race below the powerhouse. Because Mokau ki Runga RMC members could not understand what a 70 litres per second flow looked like, it was agreed that there would have to be a demonstration of this flow volume, after which Mokau ki Runga RMC would advise if their objectives could be achieved at that flow level.

Of the upstream matters, the Mokau ki Runga RMC request that willows be removed was agreed to by King Country Energy, provided it was in line with any river management plan. The request for de-silting of the head pond was not agreed to, as in

[906] Report by Maunsell Limited on Mokauiti fish passage requirements, undated, attached to Tompkins Wake, Lawyers, Hamilton, to J Milne, Barrister, Hamilton, 12 October 2005. Waikato Regional Council file 60.61.33A. Supporting Papers #602-608 at 606-608.

King Country Energy's view it had no impact on upstream flooding, and would be only a temporary measure because silt would build back up to the original level within two years. The matter of flashboards and the control gate was unable to be resolved. Mokau ki Runga RMC wanted the flashboards removed, no control gate installed, and the head pond level maintained at a lower level than it was being operated at, in order to prevent upstream flooding and reinstate the use of the pa tuna at or near the head pond. King Country Energy, on the other hand, viewed the control gate as necessary to alleviate the upstream flooding[907].

The demonstration flow of 70 litres per second was viewed by all parties at the end of November 2005. Representatives of the Ministry of Fisheries and the Department of Conservation were also present[908]. The flow of 70 litres per second was apparently considered to be adequate by all parties.

A second mediation meeting was held in February 2006. For this meeting King Country Energy's consultants prepared a document recording the progress made and the differences of opinion that still existed[909]. The main feature of the meeting was that by the end of it Mokau ki Runga RMC had narrowed the matters still at issue to just two:

- Whether the control gates should be permitted on top of the spillway
- Whether trap-and-transfer should be included in the initial two-year trial of native fish passage methods

The revised wording of the conditions of consent as at the end of this mediation meeting, and incorporating also the revisions agreed by consent that had resolved the appeals lodged by King Country Energy and Tucker and Barnett, were attached to the decision issued later by the Environment Court[910]. These changes represented the

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[907] Tompkins Wake, Lawyers, Hamilton, to J Milne, Barrister, Hamilton, 12 October 2005. Waikato Regional Council file 60.61.33A. Supporting Papers #606-608.

[908] Ministry of Fisheries, Hamilton, to B Marsh, Aria, 10 January 2006, and Department of Conservation, Hamilton, to B Marsh, Aria, 28 February 2006, attached to submission by Mokau ki Runga Regional Management Committee to Environment Court, March 2006. Waikato Regional Council file 60.61.33A. Supporting Papers #614-671 at 629-631 and 632.

[909] Email Maunsell Ltd to Resource Officer, 1 February 2006. Waikato Regional Council file 60.61.33A. Supporting Papers #609-613.

[910] *Mokau ki Runga Regional Management Committee v Waikato Regional Council*, decision of the Environment Court, 10 April 2006, (Decision A046/2006, [2006] NZ EnvC 113), Appendix. Waikato Regional Council file 60.61.33A. Supporting Papers #728-754 at 737-754.
This decision is also posted on www.justice.govt.nz/courts/environment-court

agreed state of the consents before the two matters still at issue in the appeal of Mokau ki Runga RMC were argued before the Court.

It was these two matters that became the focus of the appeal hearing before the Environment Court in March 2006. Mokau ki Runga RMC was not legally represented, apparently because of funding problems; instead its representatives were Ross Tucker and Barbara Marsh.

Evidence presented to the Court is not discussed in this topic study, as it largely covers the ground already covered earlier in this chapter. Statements of evidence presented on behalf of King Country Energy, Mokau ki Runga RMC, and Waikato Regional Council are included in supporting papers[911].

In its decision issued the following month, the Environment Court found against Mokau ki Runga RMC with respect to the control gate, agreeing with the proposal to install it, and found in favour of Mokau ki Runga RMC with respect to fish passage, agreeing that trap-and-transfer was not necessary while the climbing structure was trialled[912].

In agreeing to the installation of a control gate, the Court was mindful of the evidence presented to it that the capacity of the power scheme would be reduced without the control gate, and the absence of a control gate would affect the security of the dam, as overtopping could lead to scouring out of the earth fill dam material.

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[911] Statement of evidence of William David Burton, planning consultant, for King Country Energy. Supporting Papers #672-695.
Statement of evidence of Charles Paul Mitchell, fisheries scientist, for King Country Energy, attached to Simpson Grierson, Barristers and Solicitors, Auckland, to Environment Court, Mokau ki Runga Regional Management Committee and J Milne, 10 March 2006. Supporting Papers #695-709 at 696-709.
Statement of evidence for Mokau ki Runga Regional Management Committee. Supporting Papers #614-671.
Statement of evidence of David Alexander Speirs, freshwater biologist, for Waikato Regional Council. Supporting Papers #710-716.
Submissions by counsel for Waikato Regional Council (respondent). Supporting Papers #717-727.
All on Waikato Regional Council file 60.61.33A.

[912] *Mokau ki Runga Regional Management Committee v Waikato Regional Council*, decision of the Environment Court, 10 April 2006, (Decision A046/2006, [2006] NZEnvC 113). Copy on Waikato Regional Council file 60.61.33A. Supporting Papers #728-754.
This decision is also posted on www.justice.govt.nz/courts/environment-court

> We accept that the inundation of their traditional fishing sites during times of flooding reduces to some extent the traditional fishing practices of the people of Paemate. However, such effects need to be seen in context. We are satisfied from the evidence, particularly the evidence of the engineers, that not all of the Pa Tuna are submerged all the time. Some of them would be fishable during normal and low flows – in a river where the mean flow is very low. Further, there are a large number of Pa Tuna that are outside the backwater effect and are thus not affected…. Notwithstanding the effects on the people of Paemate, the benefits from their [the gates'] installation will far outweigh those effects.

In deciding on the trap-and-transfer proposal, the Court put the matter in an historical context.

> Given that the Mokauiti Dam has been operating since 1963, some 43 years, without any assisted fish passage methods in place, we do not consider that it is unreasonable to listen to the Iwi and allow an initial trial of a passive fish pass or passes, as may be appropriate. Such a trial could be monitored and compared with the pre-trial situation to confirm the effectiveness of such methods before embarking on additional trials of active methods, such as trap and transfer. The Management Committee confirmed their willingness to be involved in all phases of the trial process.

Having decided these two points, the Court agreed to issue the resource consents, subject to a revised set of conditions that had been agreed upon between the parties when resolving by consent the other two appeals, and an amendment to the conditions to accommodate two stages of fish passage trials, with trap-and-transfer as a second stage if the climbing structure proved unsatisfactory. Provision was made for Waikato Regional Council to provide an updated set of final conditions within 25 working days of the Court's decision.

Providing an updated set of final conditions proved to be a difficult task for Waikato Regional Council[913]. This was because the Council and King Country Energy were unable to reach agreement on a form of wording that would satisfy them both. It was

[913] Memorandum of counsel for Waikato Regional Council, 13 October 2006. Supporting Papers #755-759.
Memorandum of counsel for King Country Energy, 20 November 2006, attached to Simpson Grierson, Barristers and Solicitors, Auckland to J Milne, Hamilton, 20 November 2006. Supporting Papers #760-764 at 761-764.
Memorandum by Secretary, Mokau ki Runga Regional Management Committee, 20 November 2006. Supporting Papers #765-766.
Memorandum of counsel for Waikato Regional Council in reply, 29 November 2006, attached to J Milne, Hamilton, to Environment Court, 1 December 2006. Supporting Papers #767-771.
All Waikato Regional Council file 60.61.33A.

not until eight months later in December 2006, when a judicial telephone conference was held, that the Environment Court suggested some wording that would overcome the difficulties[914]. Mokau ki Runga RMC were not involved in the exchanges of memoranda during late 2005, nor in the judicial telephone conference, as they could not be contacted by any of the other parties or the Court. The Committee was given five working days to respond to the Court's proposed wording. It was not until March 2007 that a written response was provided by Mokau ki Runga RMC[915]. This written response was unclear as to its meaning, so far as counsel for the Regional Council was concerned; he asked for the Court to go ahead and issue its order incorporating the wording as determined in December 2006[916]. It was therefore not until April 2007 that the Environment Court stamped its seal on the final version of the four consents and their conditions for the Mokauiti scheme[917]. There was no change to the term of the resource consents, which run until the end of 2032.

In the meantime, King Country Energy had applied to the Environment Court for an award to it of costs against Mokau ki Runga RMC. It sought to be paid for the costs of its expert witnesses and legal costs. The company argued that Mokau ki Runga RMC had failed to present its case in a timely and efficient manner, that its case was without substance, and that its case was poorly pleaded. The Court's decision on this application stated:

> In the present case, we are of the view that, in the main, the Management Committee acted responsibly and with reasonable efficiency. They attended mediation. Following mediation they narrowed the issues. Albeit some of the issues were not finally determined between the parties until the morning of the hearing. However, when the hearing progressed only two issues were left for the Court to determine. Their case was in our view efficiently pleaded and did not lack merit.
>
> The only matter that causes us concern is the failure by the Management Committee to meet the timetabling order agreed by the parties and endorsed by the Court. The Management Committee maintains that this omission was the result of difficulties it had with representation. However, a late filing of its

[914] Minute of the Environment Court following judicial telephone conference held on 1 December 2006, 4 December 2006. Waikato Regional Council file 60.61.33A. Supporting Papers #772-773.
[915] Secretary Mokau ki Runga Regional Management Committee to Environment Court, 2 March 2007, attached to Environment Court to Waikato Regional Council, 27 March 2007. Waikato Regional Council file 60.61.33A. Supporting Papers #774-776 at 775-776.
[916] J Milne, Hamilton, to Environment Court, 23 April 2007. Waikato Regional Council file 60.61.33A. Supporting Papers #777-778.
[917] Order of the Environment Court, 26 April 2007, attached to Environment Court to All Parties, 26 April 2007. Waikato Regional Council file 60.61.33A. Supporting Papers #779-800 at 780-800.

> evidence no doubt contributed to some extra expense and inconvenience on the part of King Country Energy Limited, as claimed by them. We therefore propose to allow an award of costs for that procedural failure, which we fix at $5000.[918]

B.8 Wairere Power Scheme since 2005

It is a part of the conditions of the resource consents for the Wairere power station that a written annual report on fish passage be prepared, and provided to Mokau ki Runga RMC[919]. The conditions were unspecific about which fish species were to be covered, referring only to "native climbing fish". This means it is not confined to eels, but would also cover lamprey, kokopu and freshwater shrimp.

The resource consents provided for Waikato Regional Council to trigger a review of the conditions of consent by serving notice on King Country Energy during the month of June 2013 (and every five years thereafter). Whether the Council took that opportunity is not known.

B.9 Mokauiti Power Scheme since 2007

One of the conditions of the dam consent required consultation with Mokau ki Runga RMC within one month on who would be a suitable person to design the trials for fish passage. The person agreed upon was Jacques Boubee, a fisheries scientist at NIWA in Hamilton[920]. An initial meeting of the company, Mokau ki Runga RMC and Waiakato Regional Council was held in May 2007, at which it was agreed that:

- There would be a series of two-year programmes addressing lamprey migration monitoring, trials of upstream natural fish passages (with the option of a trap-and-transfer system, depending on the success of the natural systems), and downstream migration trials[921]

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[918] *Mokau ki Runga Regional Management Committee v Waikato Regional Council*, decision of the Environment Court, 11 July 2006, (Decision A097/2006, [2006] NZEnvC 240). Supporting Papers #1391-1393.
This decision is also posted on www.justice.govt.nz/courts/environment-court

[919] Consent to dam (961118), conditions 8 and 10, and consent to take water (961117), condition 5. Approved consents attached to Consent Order of Environment Court, 11 January 2005. Waikato Regional Council file 60.61.36A. Supporting Papers #1333-1345 at 1337-1338 and 1342.

[920] Generation Manager King Country Energy to Secretary Mokau ki Runga Regional Management Committee, 4 May 2007. Waikato Regional Council file 60.61.33A. Supporting Papers #801.

[921] Programme for managing fish passage requirements under KCE's Mokauiti resource consent, May 2007. Waikato Regional Council file 60.61.33A. Supporting Papers #802.

- The fish species to be provided for would be those that traversed the Mokauiti rapids before the dam was built: shrimp, elver, lamprey, koaro / kokopu
- The basis for the natural fish passage would be at the western end of the earth dam where there was an existing depression, and the trials would assess whether upstream migrating fish were attracted to a flow at this point.

A more refined programme was prepared in October 2007[922].

It was not until January 2008 that a meeting with Mokau ki Runga RMC and Jacques Boubee was held. This identified that there were some differences between the two parties, as summarised in Boubee's report of that meeting:

> Instead of the trapping presented in Draft 1.1, RMC would like "elvers to make their own way across the dam". The solution proposed by RMC is to install a siphon across the dam that would carry the full 100 l/s minimum flow. A small pump would then be used to moisten the ground between the fence line on the northern end of the dam face, and the end of the siphon. From there, the elvers would find their own way across the dam crest and on across existing grass to the head-pond. According to RMC, only occasional visual observations are required as proof of efficiency. These visual observations can be supported by photographic evidence if KCE so desire.
>
> The present proposal is based on the wishes expressed by RMC, and is not supported by NIWA as:
>
> 1. It will inevitably result in the death of elvers (desiccation, and predation by rats, birds, etc)
> 2. It will not cater for species other than elvers (and possibly lamprey)
> 3. It would not be possible to quantify the numbers of elvers attracted by the compensation flow
> 4. No efficiency measure or comparison with numbers attracted to other areas such as the power station tailrace would be possible[923]

The consequence was that no substantive work was undertaken during the 2007/2008 season. A revised monitoring plan was prepared in September 2008 in preparation for the 2008/2009 season[924].

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[922] Fish monitoring plan for Mokauiti Power Station, October 2007 (version 1.2), attached to Generation Manager King Country Energy to Secretary Mokau ki Runga Regional Management Committee, 31 October 2007. Waikato Regional Council file 60.61.33A. Supporting Papers #803-809.

[923] Mokauiti power station consents, proposed revision for discussion, 8 January 2008, attached to Email Chris Fincham to Diane Palmer, 17 January 2008. Waikato Regional Council file 60.61.33A. Supporting Papers #810-813.

[924] Fish monitoring plan for Mokauiti Power Station, September 2008 (version draft 3.0), attached to Email Chris Fincham to Diane Palmer, 23 September 2008. Waikato Regional Council file 60.61.33A. Supporting Papers #814-820.

Work on construction of the control gate was not delayed, and the gate was completed in 2008. In the manner it has been operated, flooding upstream has been reduced, although the river channel is still subject to continuing change as a result of willow growth and changes to the upper catchment.

A fish passage channel (described as a fishway) was constructed in October 2008. This was not a complete fish pass of the power scheme, but a partial one only, leading to a holding tank where the fish using the fishway were counted before being transferred to the headpond. In this way the numbers of fish using the fishway could be known. The monitoring report for the first year's trials recorded that 69 kilograms of elvers and a similar weight of shrimps used the fishway. The conclusion reached at the end of the season was that the fishway, at the rate that water flowed through it (12 l/sec on average), was proven to be attractive to elvers and shrimps. In keeping with the wish of Mokau ki Runga RMC that a natural fish passage was completed so there was no need to handle the fish, the next stage was to connect the top of the fishway (at the holding tank) with the headpond[925].

NIWA has produced three annual reports covering its involvement since 2008[926]. One of these reports, for 2010-2011, is discussed in the environmental report of Belgrave et al[927]. Each report has formed the basis for the annual reporting by King Country Energy to Waikato Regional Council on fish passage that is required under the resource consents.

The parties have not shown any inclination to abandon the fishway, and rely on trap-and-transfer instead. There has, however, been a tension between a Maori desire to avoid unwarranted interference with a natural fish passage process, and a scientific

[925] NIWA, *Mokauiti and Wairere Falls power stations: monitoring of fish passage 2009*, Client report HAM2009-105, June 2009. Copy on Waikato Regional Council file 60.61.33A. Supporting Papers #821-872.
[926] NIWA, *Mokauiti and Wairere Falls power stations: monitoring of fish passage 2009*, Client report HAM2009-105, June 2009. Supporting Papers #821-872.
NIWA, *Mokauiti and Wairere Falls power stations: monitoring of fish passage 2010*, Client report HAM2010-085, June 2010. Supporting Papers #873-949.
NIWA, *Mokauiti and Wairere Falls power stations: monitoring of fish passage 2010-11*, Client report HAM2011-061, June 2011. Supporting Papers #950-987.
Copies on Waikato Regional Council file 60.61.33A.
[927] Michael Belgrave et al, *Te Rohe Potae environmental and wahi tapu report*, August 2011, Wai 898 document #A76, pages 293-295.

desire to be able to closely monitor the success or otherwise of the process, and in particular to count the numbers of fish passing the dam upstream and downstream. The more that passage occurs naturally, the less easy it is to count or weigh numbers of fish with any degree of scientific rigour. Counting or weighing is an easy and straightforward matter when the fish are being physical handled

The numbers of observed kokopu and lamprey have been so low that it is not clear whether the fishway, which clearly suits the needs of elvers and shrimps, also suits these other species. It has been observed that lamprey prefer a smoother bed surface in the fishway, while elvers prefer a rougher bed surface. However, kokopu and lamprey tend to be more secretive, and do not crowd together in the way that elvers do when they are running.

B.10 Mokau Dam proposal

The proposed hydro-electric power scheme on the Mokau River has not been examined is as much detail as the Wairere and Mokauiti schemes. To distinguish it from those two schemes, it is referred to as the Mokau Dam scheme.

The Mokau Dam scheme was developed in the early 2000s by King Country Energy Limited. It involved the damming of the Mokau River approximately 4½ kilometres downstream of Wairere Falls. The dam, in a gorge where the river's width was about 20 metres, would be 44 metres high, and would create a 60 hectare lake flooding the river back to near the tailrace of the Wairere power scheme. The water diverted through the power station would bypass about 300 metres of the river below the dam; a residual flow would be maintained between the dam and the tailrace.

A briefing paper for Mokau ki Runga Regional Management Committee (RMC) was prepared by King Country Energy at the end of 2003, and presented to the Committee in January 2004[928]. Following this initial meeting, a schedule of further meetings was prepared; these further meetings were intended to feed issues of concern to tangata

[928] RET Consultants, *The Mokau Hydro Scheme 2003: Briefing paper for Mokau ki Runga Regional Management (RMC) and King Country Energy Ltd*, December 2003. Copy on Waikato Regional Council file 61.30.04A. Supporting Papers #66-81.

whenua into the preparation of the assessment of environmental effects, and allow for feedback on how the issues were being addressed in the assessment[929].

In preparation for the application for resource consents and associated assessment of environmental effects documentation, King Country Energy commissioned a fish and fish passage report from NIWA[930]. This report concluded, on the evidence at that time, that trap and transfer programmes and fish lifts were the most reliable methods of allowing fish passage over high dams. Because of the proximity of the proposed dam to Wairere Falls, the report recommended that fish on their upstream migration be trapped below the proposed dam and released above Wairere Falls. For species migrating downstream, trapping above Wairere Falls and release downstream of the dam would also be appropriate, as well as a suitably designed spillway and water spilling regime over the dam. The report also showed how sparse was the scientific knowledge about lamprey lifecycle and migration requirements acknowledging that it was not known whether trap and transfer would work for that species.

The application for resource consents was made by the company in early March 2005[931]. In all 19 consents were required from Waikato Regional Council, and two consents (for land use and subdivision) were required from Waitomo District Council. The Regional Council consents related to damming the river, takes and discharges of water, excavating the riverbed and dust discharges, covering both the construction period and the subsequent operating period. All the applications were publicly notified, and submissions invited, later the same month[932]. There were eight submissions lodged with Waitomo District Council and 63 submissions lodged with Waikato Regional Council. Mokau ki Runga RMC made submissions in opposition to both councils. Other submissions came from the Department of Conservation, form river recreational groups (jet boaters and kayakers), and from fishing organisations (including Fish and Game New Zealand).

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[929] King Country Energy, Mokau power station consulting process, undated (received 28 October 2004). Waikato Regional Council file 61.30.04A. Supporting Papers #82-84.
[930] J Boubée and J Richardson, *Mokau hydroelectric development – effects on fish and fish passage*, November 2004, NIWA Client Report HAM2004-150. Supporting Papers #1350-1390.
[931] Application for resource consents, undated (March 2005). Waikato Regional Council file 61.30.04A. Supporting Papers #85-90.
[932] Public notification of resource consent applications in *Waikato Times*, *Waitomo News*, and *Taranaki Daily News*, 17 March 2005. Waikato Regional Council file 61.30.04A. Supporting Papers #91-93.

There was a joint hearing of the applications by a hearing committee for Waikato Regional Council and a hearing commissioner for Waitomo District Council in August 2006. In connection with the effect on the Mokau River, the hearing panel was told that the company would provide a minimum continuous residual flow of 1.64 cumecs. However, this flow would be through penstocks of the power station and would discharge into the tailrace. There would be no continuous flow over the dam and down the spillway, or down the length of the river between the dam and the tailrace, although ponding in this stretch would not lead to it being de-watered. For the company, evidence was given by Buddy Mikaere about the consultation undertaken and about Maori cultural values; he "noted that the applicant recognises [Mokau ki Runga RMC] as being kaitiaki for this stretch of the Mokau River, and also outlined his own discussions with the RMC". Two ecologists also gave evidence for the company.

> Dr Ryder, Water Quality Scientist and Aquatic Ecologist, addressed the following matters: methodology and information sources; a general ecological description of the Mokau River; water quality and effects of the scheme on reservoir and downstream water quality; a general overview of New Zealand river ecosystems; aquatic biota of the Mokau River and effects of the scheme on benthic communities and fish; effects on fish passage and recommended mitigations; and comments on the officers' report and submissions.
>
> Dr Goldsmith, Freshwater Ecologist, addressed the following matters; impacts of reservoir inundation on aquatic habitats; instream habitat assessment and minimum flow; and effects of fluctuating flow regime on instream habitat.[933]

The evidence given by Mokau ki Runga RMC was summarised in the following fashion:

> Mr H Tangihaere presented evidence that included concerns that the proposal could destroy historic places including wahi tapu in the river, banks, side of hills and burial grounds. He also discussed downstream effects.
>
> Mr S Walsh's presentation included describing Mr Tangihaere's status as a kaumatua, and that he has lineage linking him to all of the river.
>
> Mrs B Marsh presented evidence which included the following matters: the hapu the Mokau ki Runga Regional Management [Committee] represents;

[933] Decision of Waikato Regional Council hearing committee, 20 September 2006, and Waitomo District Council commissioner, 15 September 2006, paragraph 6.1 - Applicant. Waikato Regional Council file 61.30.04A. Supporting Papers #94-117 at 100-101.

concerns with the Wairere Falls and Mokauiti dams; the effects of the proposal on the river including the traditional fishing sites; and consultation.

Mr W Ngauru presented evidence identifying pa tuna and settlement sites; and the history and importance of the lamprey fishing sites.

Mr J Cross raised issues in relation to downstream effects on mussel and pipi beds at the mouth, whitebait spawning, and lack of water depth for boats.[934]

Turning to the subject matter of the submissions, the hearing panel found that there was no dispute between the parties on the following matters:

- The biological potential of the proposed reservoir would be limited, particularly for rainbow trout, and would create potential habitat for pest fish species;
- Upstream and downstream fish passage provisions are required to ensure effects on migrating species are kept to a minimum;
- There will be no net degradation of water quality downstream of the proposed dam
- No adverse effect on whitebait spawning in the lower river are expected.

However, flows downstream would fluctuate quite significantly, in terms of both depth of water and velocity, at least as far downstream as the confluence with the Mangaotaki Stream (5 kilometres), and possibly to the Totoro Road bridge (8 kilometres). This would result in a significant loss of aquatic habitat both in percentage and length of river terms. The hearing panel was unimpressed with a minimum flow of 1.6 cumecs (referred to in the application) or 2 cumecs (offered by the company at the hearing), and preferred alternative evidence arguing for a minimum of 3 cumecs. It considered that there would be a net loss of biodiversity values, which meant that the dam proposal would not be consistent with Section 7(d) of the Resource Management Act[935]. It was the discharge into the tailrace, if consent was granted, that caused the fluctuating flows that had a significant adverse effect on

[934] Decision of Waikato Regional Council hearing committee, 20 September 2006, and Waitomo District Council commissioner, 15 September 2006, paragraph 6.1 – Mokau ki Runga Regional Management Committee. Waikato Regional Council file 61.30.04A. Supporting Papers #94-117 at 102.

[935] Decision of Waikato Regional Council hearing committee, 20 September 2006, and Waitomo District Council commissioner, 15 September 2006, paragraph 7.4 – Aquatic Effects. Waikato Regional Council file 61.30.04A. Supporting Papers #94-117 at 106-108.

aquatic fauna, so therefore "exceptional circumstances would be necessary to allow us to grant the discharge permit"[936].

In examining the effect of the proposal on iwi, the panel identified effects on urupa and pa sites (both identified and unidentified), on a sacred tree, and on five pa tuna sites in the reservoir area. While the company had offered to allow a pa tuna site in the tailrace, this had been rejected by iwi. It stated:

> We acknowledge that constructed pa tuna would not compensate, from a spiritual perspective, the loss of the pa tuna, but could still allow for the ongoing traditional fishing activities….
>
> We agree that loss of pa tuna is a matter of regret and consider that while five families may be directly affected by the loss of pa tuna, a number of other families also benefit from the pa tuna. Therefore we find that the effects are wider than just 5 families, and that those effects cannot be adequately avoided, remedied or mitigated…. We consider that there is a relationship that will be severed by the inundation of the pa tuna fishing spots. We therefore find that the proposal will be inconsistent with Section 6(e) of the Act.
>
> Sections 7(a) and (aa) require us to have particular regard to kaitiakitanga and the ethic of stewardship. In relation to these sections, it is our understanding that should the proposal be granted conditions could be imposed that would allow for the practical expression of kaitiakitanga.[937]

In reaching a decision on the application, the panel had to weigh the benefits against the adverse effects.

> Generating electricity clearly enables people and communities to provide for their wellbeing and thus on its own promotes sustainable management. However, the definition of sustainable management clearly envisages that these benefits are not to be at all costs, and certain environmental bottom lines are to be met or adverse effects remedied or mitigated.
>
> We heard that some effects can be mitigated, for example fish passage issues and vegetation loss. However, some effects cannot be avoided and no mitigation was proposed. One of the key adverse effects is quite simply associated with the dam. We note that the features of the river which make it attractive for the applicant are the same features that make it attractive to recreation users, that is, the rapid change in gradient. Damming the river as proposed will replace 6.2 km of flowing water with still water, which will

[936] Decision of Waikato Regional Council hearing committee, 20 September 2006, and Waitomo District Council commissioner, 15 September 2006, paragraph 7.6 – Section 107. Waikato Regional Council file 61.30.04A. Supporting Papers #94-117 at 112.

[937] Decision of Waikato Regional Council hearing committee, 20 September 2006, and Waitomo District Council commissioner, 15 September 2006, paragraph 7.4 – Effects on Iwi. Waikato Regional Council file 61.30.04A. Supporting Papers #94-117 at 109.

> have adverse environmental and recreational effects. Associated with the dam is the flow manipulation the applicant proposes, and the resulting adverse effects downstream.[938]

Both councils therefore concluded that the proposal had significant adverse environmental effects, which were not outweighed by the benefits to be gained from generating electricity. They also found that the proposal was not consistent with the purpose and principles of the Resource Management Act. The regional council decision was based on declining two of the applications (to dam the river and to discharge water back to the river) on these grounds. It then declined all the other applications on the basis that they were for consents that were dependent on the two declined consents, and in the absence of those two consents they were not required[939].

King Country Energy Ltd appealed both councils' decisions, on the grounds that they had incorrectly weighed up the competing values, failed to recognise the benefit to national energy policy, and were contrary to the weight of expert evidence presented[940]. Mokau ki Runga RMC was among thirteen submitters that then applied to the Environment Court to be allowed to participate in the appeal proceedings as a Section 274 party (i.e. pursuant to Section 274 Resource Management Act 1991)[941].

In June 2007 King Country Energy took a different tack. It notified the Environment Court that it intended to apply to the Court for consent to alter its application to allow the dam to be constructed of roller compacted concrete rather than a composite of earth and rock. The Environment Court convened a judicial telephone conference the following month to consider this matter. During this telephone conference it emerged

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[938] Decision of Waikato Regional Council hearing committee, 20 September 2006, and Waitomo District Council commissioner, 15 September 2006, paragraph 8.0 – Discussion and Conclusions. Waikato Regional Council file 61.30.04A. Supporting Papers #94-117 at 112-113.

[939] Decision of Waikato Regional Council hearing committee, 20 September 2006, and Waitomo District Council commissioner, 15 September 2006. Waikato Regional Council file 61.30.04A. Supporting Papers #94-117.

[940] Notice of appeal against Waikato Regional Council decisions, 13 October 2006, attached to Buddle Findlay, Lawyers, Auckland, to Environment Court, 13 October 2006, and Notice of appeal against Waitomo District Council decision, 13 October 2006, attached to Buddle Findlay, Lawyers, Auckland, to Environment Court, 13 October 2006. Waikato Regional Council file 61.30.04A. Supporting Papers #118-127 and 128-135.

[941] A fourteenth party, Ariana Karutahi Whanau Trust, also applied to become a Section 274 party. It notified Waikato Regional Council, but failed to notify the Environment Court. The status of its application was considered by the Environment Court during a judicial conference held in July 2007. Minute of Environment Court following judicial telephone conference held on 20 July 2007, 20 July 2007. Waikato Regional Council file 61.30.04A. Supporting Papers #136-139.

that the Court had intended to hear the company appeals during October 2007, although it had not yet notified the parties. However, it agreed to postpone this hearing, while it granted time for the company to lodge its application for consent-to-alter, and time for parties to the appeal to provide responses on the application[942].

In response to the consent-to-alter application of the company, Waikato Regional Council argued that there was insufficient detail in the application, that the proposed change did not address by way of remedy or mitigation any of the issues that had caused the original application to be declined, and that the new proposal raised fresh matters that would require additional resource consents, applications for which should be made and decided upon before the appeals were heard.

Mokau ki Runga RMC and the Ariana Karutahi Whanau Trust also filed a response, which supported the matters put forward by the Regional Council, and added:

> We … totally object to the notice of motion for leave to amend the proposal contained in the resource consent application under appeal and related orders. We reiterate our previous objection to the damming of the Mokau River…. We contend that it is a new proposal, i.e. (a) the dam appears to have been relocated from the original proposed plan, and (b) dam structure appears to have been altered. For example, proposal and the number of new changes generate concerns that we the RMC and the AKWT have not been notified of or consulted on any of the affidavits provided on behalf of KCE Ltd.
>
> Be advised that we … request that KCE Ltd be required to follow due process of the RMA Act 1991 to re-advertise their new application due to the major changes to the use, structure and condition concerning the alteration to the dam.[943]

King Country Energy accepted the need for additional resource consent applications, and asked that its request to be allowed to alter its declined applications be put on hold, to which the Court agreed. Additional resource consent applications were then lodged in April and July 2008[944]. These sought consent for a concrete batching plant, an aggregate quarry, an overburden disposal area, and water takes for the batching

[942] Minute of Environment Court following judicial telephone conference held on 20 July 2007, 20 July 2007. Waikato Regional Council file 61.30.04A. Supporting Papers #136-139.
[943] Submission of Mokau ki Runga Resource Management Committee and Ariana Karutahi Whanau Trust to Environment Court, 14 September 2007. Waikato Regional Council file 61.30.04A. Supporting Papers #140.
[944] Argo Environmental, Auckland, to Waikato Regional Council, 24 April 2008. Waikato Regional Council file 61.30.04A. Supporting Papers #141.

plant. As with the original application, consents were required from both Waikato Regional Council and Waitomo District Council. It was not until December 2008 that the councils judged that the applications lodged with them contained sufficient information, and allowed them to be notified to affected parties; a decision was made that there would not be wider notification to the public at large. All those who had made submissions on the initial applications were deemed to be affected parties and were sent personal notice of the applications[945]. Mokau ki Runga RMC objected to one of the applications, to abstract up to 155 cubic metres of water from the Mokau River for the operation of the concrete batching plant and ancillary purposes[946].

There was no hearing of the applications until November 2010. While the reasons for the delay in holding a hearing have not been researched for this topic study, they are believed to be related to the need for the King Country Energy to obtain further information in order to respond to issues raised in the submissions from interested parties. In the meantime the Environment Court had granted the company's application to be allowed to alter its original applications so that the appeals against the declining of those applications (which would be considered de novo) could be heard and decided on the basis that the proposed dam was of a concrete construction[947]. This decision was on the basis that the appeals against the declining of the original applications would not be heard until the additional applications had been heard and decided, and until it was known whether or not they were the subject of further appeals.

The key issue the hearing panel had to consider in November 2010 was the relationship between the fresh applications and the initial applications that had been declined. Were the fresh applications to be considered on their individual merits, or was the fact that they were components of a wider project a relevant issue. While it decided that the assessment of effects had to examine the effect on the environment of

[945] Circular letter by Waikato Regional Council, 17 December 2008. Waikato Regional Council file 61.30.04A. Supporting Papers #142-147.
[946] Secretary Mokau ki Runga Regional Management Committee to Waikato Regional Council, 3 April 2009 (being page 126 of staff report to November 2010 hearing). Waikato Regional Council file 61.30.04A. Supporting Papers #148-288 at 288.
[947] *King Country Energy Limited v Waikato Regional Council*, decision of the Environment Court, 15 December 2009 (Decision A130/2009, [2009] NZEnvC 358). Supporting Papers #289-298.
This decision is also posted on www.justice.govt.nz/courts/environment-court

each application individually, there was a wider procedural issue as to whether the weighing up process of the Resource Management Act as a whole required consideration of the fact that the applications were ancillary to a project that in other respects had been rejected. Waikato Regional Council staff and counsel urged that the applications:

> Should be declined consent because these activities are ancillary to activities that have been declined consent by both Councils, and which are awaiting a hearing in the Environment Court. Their view is that all consents should be "bundled" together and considered as one integrated package.

Many submitters also urged this approach. The company urged the granting of the applications, because the evidence had shown the effects were minor or could be reduced or mitigated by the setting of conditions.

The hearing panel decided:

> Having heard and reviewed all the evidence and submissions, we find ourselves in a quandary to which there is no clear answer. One the one hand, these applications are a minor part of a much wider and contentious proposal, and are inexorably linked to it.
>
> On the other hand, our role is to hear and decide applications in front of us, pursuant to the relevant tests under the RMA. Aside from the "bundling" issues, we are satisfied that consents could be granted, subject to conditions.
>
> It is abundantly clear that the applications before us will be largely immaterial to the consideration of the substantive applications by the Environment Court. If, on the evidence, we declined these applications, as we would be entitled to do, they would certainly be appealed by the applicant as they are essential to the implementation of the substantive project which is itself subject to appeal. In those circumstances, the Court would have no option but to hear these current applications without the benefit of a merits-based assessment from he hearing at first instance.
>
> On balance we think the purpose of the Act would better served if we were to grant these consents, subject to conditions, given their generally benign nature and because doing so would hopefully assist the Environment Court and allow it to focus on the primary issue before it, that being the damming of the Mokau River.
>
> In deciding that we should grant these consents, we have been careful to include a condition on each consent to the effect that it cannot be exercised unless the wider proposal were to proceed.[948]

Appeals against this decision were filed by three kayaking organisations.

[948] Report of Waikato Regional Council / Waitomo District Council joint hearing panel, 20 January 2011. Waikato Regional Council file 61.30.04A. Supporting Papers #299-328.

The suite of appeals about the Mokau Dam never proceeded to a hearing before the Environment Court, because in June 2011 King Country Energy Ltd shelved its proposal. Citing "consenting delays, mounting costs, and significant increases in the expected capital cost", it announced that it would no longer pursue the resource consents required[949]. In adding that "high consenting costs on smaller developments are a significant hurdle", it ignored its own contribution to this issue when it had changed its dam design in mid-stream. Other factors played down or ignored in its announcement were the increased supply of electricity nationally at a time of static or falling electricity demand (which reduced the likelihood in the future of price increases), and a change of company ownership away from a community base in the King Country area.

The practical steps that took place to implement this decision were the withdrawal of the appeals against the Waikato Regional Council and Waitomo District Council decisions on the initial consent applications[950], and the surrender of the additional consents that the company had been granted[951].

B.11 Concluding remarks

Notwithstanding that the 1903 legislation vesting in the Crown the sole right to use water to generate electricity stated that such vesting was "subject to any rights lawfully held", terminology that could include rights held by Maori and guaranteed to Maori in 1840, there was no investigation by the Crown in either 1924 or in 1962 as to whether any Maori rights to water in the Mokau and Mokauiti Rivers existed. Instead, the Crown assumed that it had acquired all necessary rights to the water at the two power station sites by the 1903 vesting legislation. The Crown's assumption in these two cases is no different to the approach it took in other instances of its use of the vesting power elsewhere in New Zealand, which have been examined in other

[949] Media release by King Country Energy Limited, 28 June 2011. Waikato Regional Council file 61.30.04A. Supporting Papers #329-330.
[950] Notice of withdrawal of appeals, 28 June 2011. Waikato Regional Council file 61.30.04A. Supporting Papers #331-332.
[951] Buddle Findlay, Lawyers, Auckland, to Waikato Regional Council, 9 August 2011. Waikato Regional Council file 61.30.04A. Supporting Papers #333.

reports to other Tribunals[952]. The findings of these other Tribunals have been critical of the Crown's actions[953]. The evidence in this topic study is that there was customary and traditional tuna and piharau fishing at both Wairere Falls and the rapids on the Mokauiti River, which would imply pre-existing "rights lawfully held" at these locations before the Crown's assertion of a statutory right to the use of water for electricity generation in 1924 and 1962.

Because of the Crown approvals in 1924 and 1962, and subsequently, both power stations were well-established before water rights under the Water and Soil Conservation Act 1967, and resource consents under the Resource Management Act 1991, were required. When water rights were sought in 1976, they were treated as a regularisation of an existing use, and were granted for a twenty-year term without any public or Maori involvement. Despite the expectation in the preamble to the 1967 Act that fisheries matters were a legitimate and equally as important use of water as power generation, there was no recognition of this in practice in the water rights granted in 1976. The rights granted by the Waikato Valley Authority locked in a further twenty years (which lengthened out in practice to closer to thirty years) when provision for fish passage was sub-optimal.

The Resource Management Act 1991 has provided Maori with an opportunity to state a point of view about the circumstances prevailing at Wairere and Mokauiti, and with respect to the Mokau Dam, and have that point of view recognised. This opportunity was not available before the Act was passed. There was perhaps a growing societal recognition before 1991 that fish passage around hydro-electric power stations was an ecological gap that needed to be addressed, and to this extent the traditional needs of Maori would have received a positive reception even without the Act. However, the legislation made such a reception mandatory, and made it possible for Maori to be insistent about their needs, through to the appeal stage.

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[952] David Alexander, *Some aspects of Crown involvement with waterways in the Whanganui Inquiry District*, August 2008, Wai 903 document #A158, pages 41-42.
David Alexander, Brief of evidence to National Freshwater and Geothermal Resources Claim Tribunal, July 2012, Wai 2358 document #A69, pages 30-35.

[953] Tribunal findings are summarised in David Alexander, Brief of evidence to National Freshwater and Geothermal Resources Claim Tribunal, July 2012, Wai 2358 document A69,pages 24-28.

Mokau ki Runga RMC probably entered into the consents process for the two operating schemes with some suspicion, because of the history of the two schemes, the effects they had had on the fisheries, and the limited recognition for the fisheries displayed by the predecessors of King Country Energy. Having been told that the legislation gave them a right to be consulted, their suspicions became channelled into a feeling that the consultation would be tokenistic and limited in its effectiveness. The record, however, shows that this was not the case, and that if anything it was Mokau ki Runga RMC that was less forthcoming than the parties involved. Certainly, there were difficulties for King Country Energy and Waikato Regional Council when deadlines were missed, concerns were not expressed in advance of consent and appeal hearings, and there were periods of silence on the part of Mokau ki Runga RMC.

The staff, consultants and counsel of King Country Energy and Waikato Regional Council can be thought of as professionals who were living the processes and language of the Resource Management Act on an everyday basis. Mokau ki Runga RMC can be thought of as amateurs when it came to dealing with the Resource Management Act, struggling to learn how to use the opportunities and responsibilities thrust upon them, in their spare time. The consultation was not between equals. This makes it incumbent on professionals to recognise the inequality in the relationships, and to look beyond any frustrations in the processes of the consultation to ensuring that the consultation on the substantive issues is real. To a large extent, this was what did occur.

Relationships between King Country Energy and Mokau ki Runga RMC have undoubtedly been pulled in different directions by the overlap in time between resolving old issues at Wairere and Mokauiti, and addressing new issues at Mokau Dam. Mokau ki Runga RMC must have felt at times that it was under assault from multiple directions. King Country Energy, for its part, must have wondered about the effort it had to put in to schemes which, from a national perspective, are small, dependent on seasonally fluctuating water flows, run using old equipment, and probably not particularly profitable. It is possible that it was only its loyalty to its foundation district that encouraged it to make the commitments it did to providing for fish passage, and there might therefore be a risk that its recent changes in ownership could weaken its regard for the two operating schemes in future. And yet, the history

of providing for fish passage at Wairere and Mokauiti is very much in the New Zealand idiom of a number 8 wire, try-it-and-see approach[954], which however has still to reach a satisfactory conclusion for all migratory species.

One feature of the decision by the Waikato Regional Council's Hearing Committee was its reference to the provision being made for fish passage being a remedy for some of the historical effects of the two power stations[955]. However, this is contradicted in part by the statutory requirement that the environmental baseline exclude the existence of the Wairere dam since 1952. It is a moot point whether historical effects can have a bearing on resource management decisions. That is perhaps a matter of legal interpretation of Section 8 of the Act and its reference to having regard for the principles of the Treaty of Waitangi, which is beyond the scope of this report.

Still to be considered at Wairere and Mokauiti is whether the current monitoring regime and the current operating regime are best practice. It is possible for conditions of consent to be written that drag an operation up to a certain level of compliance, and that level then becomes a plateau where participants are allowed to then rest on their laurels. Yet there may be a higher level of performance that could be aspired to. When consents are given for long periods of time (30 years in this case), it is the ability to review conditions during the term of consent that become important measures of progress and provide an opportunity to insist on the incorporation of best practice.

The Crown's involvement has been to interpose itself by requiring licences, water rights and consents, and then to show little interest in the consequences. Visits by Electricity Department officials up to the 1980s were to check on the safety of the

[954] This approach has been lauded in international scientific publications, eg:
- JAT Boubée and EK Williams (NIWA), 'Downstream passage of silver eels at a small hydroelectric facility', in *Fisheries Management and Ecology*, 2006, volume 13, pages 165-176.
- J Boubée and E Williams (NIWA), 'Implementation of a surface bypass for downstream migrating eels at a hydroelectric facility in New Zealand', in P Gough (ed), *From sea to source: international guidance for the restoration of fish migration highways*, 2012, Regional Water Authority Hunze en Aa's, Veendam, Netherlands, pages 244-245.

[955] Decision of Hearing Committee, 19 December 2002, paragraph 6.18, page 21. Waikato Regional Council file 60.61.36A. Supporting Papers #1205-1258 at 1225.

power lines rather than to check on the use of the rivers. Since the 1980s, direct Crown involvement has been confined to occasional interest in each resource consent application by the Department of Conservation, all other involvement being left to the regional and district council, with no apparent check on the effectiveness of those councils' operations.

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AN OVERVIEW OF SELECTED ENVIRONMENTAL AND RESOURCE MANAGEMENT ISSUES IN TE ROHE POTAE INQUIRY DISTRICT, WITH A FOCUS ON THE PERIOD SINCE 1970

TOPIC STUDY C:

IRONSAND MINING AT TAHAROA

March 2014

C.1 Introduction

One of the most substantial economic developments in Te Rohe Potae during the last forty years has been the mining of ironsands at Taharoa. This has had major socio-economic consequences, with Taharoa settlement changing almost overnight from a community more easily accessible on horseback than by road, to the third largest population centre in Waitomo local authority district. It has also had significant environmental consequences, as the outlet stream from Lake Taharoa was dammed, and as mining moved on a front across the open sand dunes of Taharoa C block, to then be replaced by a pine plantation. It is the environmental rather than the social impacts that are discussed in this topic study.

Mining of ironsands at Taharoa has also been covered briefly in:

- The environmental scoping report of Michael Belgrave et al[956]
- The resource-based industries report of Philip Cleaver[957]

The environmental changes at Taharoa can be compared with the state of other areas of coastal sand dunes in Te Rohe Potae. Kahotea, relying on Wilkes when writing about the archaeological features of Oioroa (the north head of Aotea Harbour), has referred to "the massive destruction of sand hill sites by ironsand dredging at Taharoa", as compared to the generally undisturbed archaeological sites at Oioroa, which "relatively speaking … is well preserved"[958]. The sand dunes at Kawhia have also become clothed in pine trees, though without the interim step of being mined.

This topic study was initially intended to be solely an examination of the water rights and resource consents that have been issued since 1970 by the Crown and by local authorities for the ironsands mining operation. As these matters were researched, and in light of claimant evidence presented to the Tribunal during the third week of hearings in March 2013, it became apparent that a wider study covering a broader

[956] Michael Belgrave et al, *Te Rohe Potae Harbours and Coast, Inland Waterways, Indigenous Flora and Fauna, Sites of Significance, and Environmental Management and Environmental Impacts Scoping Report*, March 2010, Wai 898 Document #A64, pages 149-150 (paragraphs 310-313), and pages 261-263 (paragraphs 608-609 and 615).
[957] Philip Cleaver, *Maori and the Forestry, Mining, Fishing and Tourism Industries of the Rohe Potae Inquiry District, 1880-2000*, February 2011, Wai 898 Document #A25, pages 180-181 and pages 249-258.
[958] DT Kahotea, *The Archaeology of Oioroa – the Aotea Scientific Reserve*, 2011, Wai 898 Document #A77, page 16.

range of Crown actions was warranted. This study therefore includes steps taken by the Crown to encourage an iron and steel industry in New Zealand based on the exploitation of the ironsands resource. So far as Taharoa is concerned, these steps commenced in earnest in the mid 1950s, with the Crown promoting a reorganisation of Maori land titles, and were followed by the vesting in the Crown of the right to prospect and mine for ironsands under the Iron and Steel Industry Act 1959. Under this legislation prospecting and investigations were carried out at Taharoa during the 1960s by a limited liability company in which the Crown was a shareholder. These investigations established the feasibility of ironsands mining at Taharoa, which commenced in 1972, the first water rights having been issued two years earlier.

The Crown was directly involved during the establishment of the mining operation in 1970-72. Not only was it the water rights issuing authority (as Taharoa was then outside the region administered by the Waikato Valley Authority), but it also issued an ironsands mining agreement under the Iron and Steel Industry Act 1959 at that time. This mining agreement remained in force (with one renewal) until 1997. Environmental management and consenting by either the Crown or regional government (under delegated authority from the Crown) has been an ongoing matter throughout the mining period.

Perhaps the most significant unresolved environmental effect of the mining operation is its impact on the declining fish populations of Lake Taharoa. This was identified in a 1994 report as requiring action "immediately"[959], and in a 2007 commentary as being at "a crisis point"[960]. The effects on an exclusively Maori fishery, and the various steps taken over a 35-year period to halt and reverse the decline in fish populations, are discussed in a separate section that pays particular attention to the actions of the Crown and the Regional Council. Besides the special attention devoted to the effect of mining on fisheries, some aspects of the Crown's involvement in wahi tapu protection and forestry on Taharoa C block are also examined. In addition,

[959] BL Chisnall, *Eel Stock Evaluation in Lakes Harihari, Numiti and Rototapu*, March 1994. NIWA Consultancy Report BHP001. Copy attached to River Lake and Sea, Rotorua, to BHP New Zealand Steel Mining Limited, 15 April 1994. Waikato Regional Council file 60.40.32A. Supporting Papers #837-860.

[960] Managing Director Maumahara Consultancy Services Ltd to "To Whom it May Concern", 2 May 2007. Waikato Regional Council file 60.40.32A. Supporting Papers #1558.

references to some specific pollution incidents caused by mining operations are covered.

C.2 First approaches to the Maori owners

While the mineral value of the West Coast ironsands had been well known for many years, it was not until the mid 1950s that serious consideration was given to mining the ironsands at Taharoa. The Taharoa ironsands were believed to have higher than normal concentrations of iron, such that interest in mining there outweighed any difficulties associated with the locality's isolation.

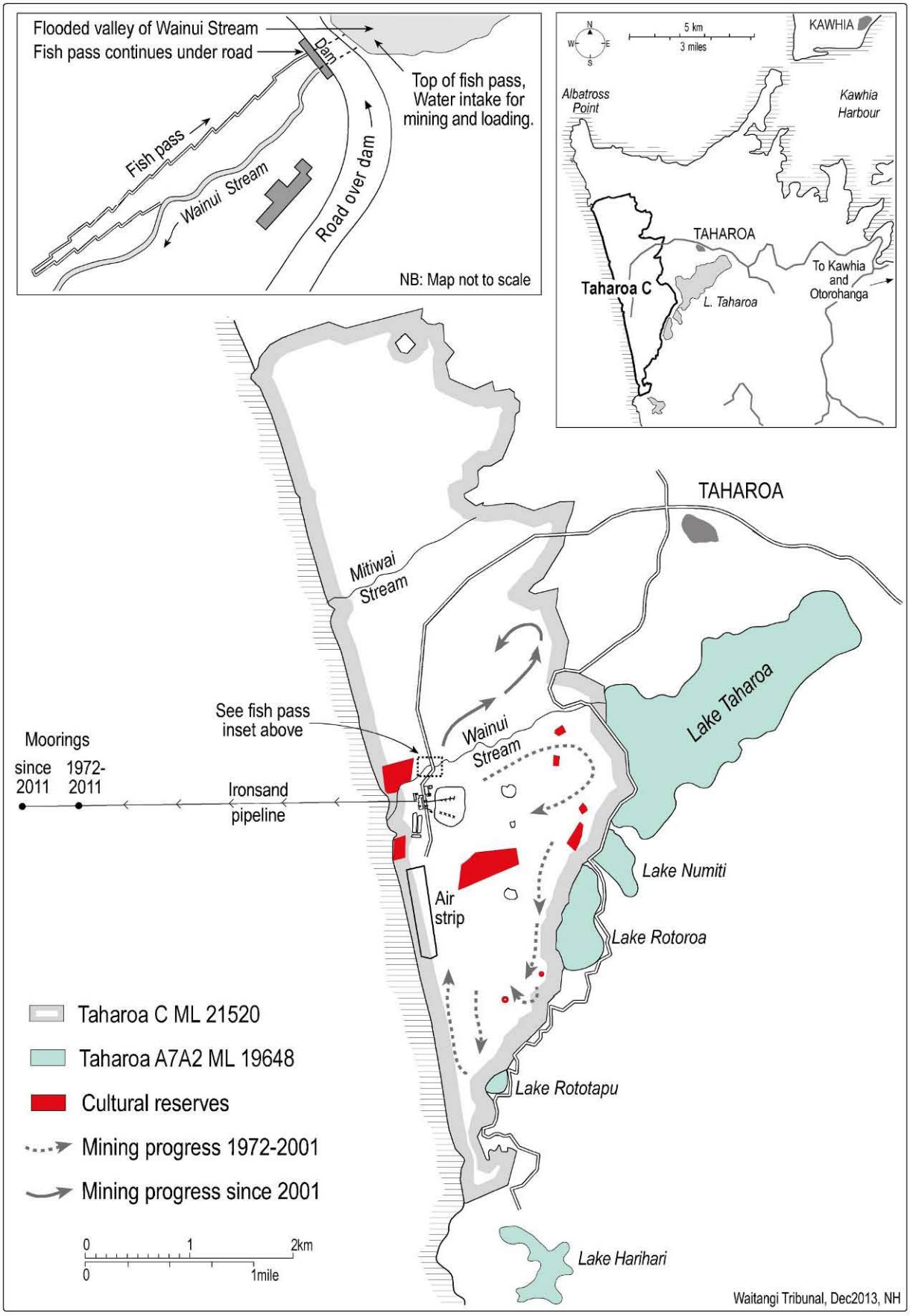
A syndicate of New Zealand businesspeople approached the Mines Department and the Department of Maori Affairs in 1956 about being able to obtain prospecting rights at Taharoa, so that testing of the deposits could be carried out to assess whether they were present and in concentrations suitable for commercial exploitation. This required the consent of the Ngati Mahuta landowners and the Maori Land Court. The Secretary for Maori Affairs wrote to the Maori Affairs Department's local District Officer in confidence in March 1956:

> If the venture proceeds it is contemplated that a reasonable royalty should be paid to the Maori owners of the land concerned, and in the meantime the syndicate will want to secure the permission of the Maori owners to do the necessary prospecting….
>
> I am sure that you will read the information in this memorandum with great interest. In view of the probable tremendous importance of this matter to the future of New Zealand, I should be glad if you would ensure that all officers under your control give every assistance they are able to the Syndicate and its solicitors and agents, and make available all their local knowledge.[961]

This letter highlights some of the issues facing the Crown. From a national development perspective, it wanted to be wholeheartedly supportive of any exploitation of the ironsands at Taharoa. Yet it also had duties to safeguard the interests of local Maori. This section is a study of whether the Crown was successful in reconciling those twin objectives.

[961] Secretary for Maori Affairs to District Officer Auckland, 28 March 1956. Maori Affairs Hamilton file 32/16. Supporting Papers #324-325.

Map 6 Ironsand mining at Taharoa



It was not until nearly one year later that an application was made to the Maori Land Court. This application was made by the Minister of Mines under Section 30(1)(a) Mining Act 1926, to allow land at Taharoa to be declared open for prospecting[962]. Section 30 authorised the Court, on application made by or on behalf of the Governor General, to declare any Maori Land to be open for prospecting without the consent of the owners or occupiers. Accompanying this application was another application from the syndicate, seeking the issue by the Court of a mineral prospecting warrant if the Court declared the land to be open for mining.

Not included in the application was recourse to a second provision in Section 30, whereby the Maori Land Court could declare Maori land to be ceded to the Crown for mining purposes, provided this was agreed to by a majority of the owners. Both parts of Section 30 represent a statutory incursion by the Crown into the realm of the authority of Maori owners for their own affairs on their own land.

While the legislation made it possible for the Court to allow prospecting to take place without the prior consent of the owners, bypassing the owners was not what the syndicate or the Court wanted. Once the applications had been lodged, the syndicate held an information meeting with the Taharoa owners at Maketu Pa in March 1957[963]. Three Maori Affairs Department officials, including the District Officer, also attended. The District Officer told the 40 people attending that the Department was impartial, could provide information about titles, location and surveys, and would be prepared to act as a go-between in the dealings between the people and the syndicate. He explained that, in his opinion,

> when the Court made an Order declaring the land open for prospecting, the rights of the Maoris in so far as they pertained to minerals in the area were by this Order extinguished, and for this reason it was essential that the owners take the utmost interest in the proceeding, and focus their attention on the Court's sitting….[964]

[962] Under Secretary for Mines to Registrar Maori Land Court Auckland, 21 February 1957. Maori Affairs Hamilton file 32/16. Supporting Papers #326-332.
[963] Minutes of meeting, 15 March 1957. Maori Affairs Head Office file 32/16. Supporting Papers #333-336.
[964] Minutes of meeting, 15 March 1957, page 1. Maori Affairs Head Office file 32/16. Supporting Papers #333-336 at #333.

However, the District Officer acknowledged that this was a matter of legal interpretation, and there could be differing opinions. He added that there would be economic benefits from the mining of ironsands, ownership of the sand areas would not be disturbed, burial grounds and reserves could be excluded from the areas to be mined, and areas of farm land would be protected.

While no decisions were reached at the meeting, it was clear that some people had reservations. The one reservation spoken about was that there were many burials in the sand areas, and those burials might be disturbed. The syndicate's spokesperson

> made it quite clear that the burial grounds and reserves would be protected. The burial grounds would be pointed out by the tribal elders, and they would not go anywhere near them.[965]

So far as the legal status of Section 30 was concerned, the Office Solicitor in the head office of the Department of Maori Affairs provided his own interpretation, after being advised what the District Officer had stated at the meeting with Ngati Mahuta[966]:

> Under Section 30 of the Mining Act 1926, there are two types of order which the Court is empowered to make, namely
>
> (a) An order that the land be open for prospecting;
> (b) An order that the land be ceded to the Crown for mining purposes.
>
> If the order is made under Section 30(1)(a) the authority of the Minister of Mines is limited to the granting of prospecting warrants or licences. These can be granted without further reference to the Maori owners. An order under Section 30(1)(a) does not, however, authorise the Minister of Mines to grant a mining lease, and before the Minister can do this an order of the Court would be required under Section 30(1)(b) declaring the land to be ceded to the Crown for mining purposes.
>
> It is understood that the syndicate interested in this matter does not desire the land to be declared to be ceded land, but intends, if the results of the prospecting are satisfactory, to negotiate to obtain mining licences from the owners under Parts XIX, XXIII or Section 438 of the Maori Affairs Act 1953. I can see nothing in the Mining Act 1926 whereby an order under Section 30(1)(a) of that Act would prevent the owners from granting such mining licences.[967]

[965] Minutes of meeting, 15 March 1957. Maori Affairs Head Office file 32/16. Supporting Papers #333-336.
[966] District Officer Auckland to Secretary for Maori Affairs, 21 March 1957. Maori Affairs Hamilton file 32/16. Supporting Papers #337-338.
[967] Office Solicitor to District Officer Auckland, 27 March 1957. Maori Affairs Hamilton file 32/16. Supporting Papers #339.

On the basis of this interpretation, the Maori Land Court could pass to the Crown the ability to give consent to prospecting or mining, or it could oversee the granting of consents for such activities by the owners themselves. Either way, the Court would be involved, and the owners would need to organise themselves in such a fashion that they could legally give their collective consent and issue a prospecting licence or mining lease.

Having received the Minister's application that the land be opened for prospecting, the Judge set out his expectations of the parties to the proceedings:

> Application under Sec 30 is by Hon Minister of Mines, and should be prosecuted by him or his representative.
>
> His representative should support the application by evidence (including a report from and personal attendance at the Court of the Inspector of Mines, Huntly) to satisfy the Court that this is a proper case for an Order being made under Sec 30(1)(a), e.g. types of iron ore, quantities available and extent of deposits in this area, factors of national interest etc, protection of interests of Maori owners if scheme develops.
>
> The Court will require legal submissions by the representative of the Minister of Mines, and by counsel for the applicants, [Messrs] Law and others [the members of the syndicate], as to whether Sec 81(1) of the Mining Act 1926 applies to a mineral prospecting warrant granted under Sec 77(1) following an order under Sec 30(1)(a); also as to reconciling the words in Sec 30(1)(a) "without the consent of the owners or occupiers" with the proviso to Sec 77(1) of the Mining Act 1926.[968]

The holding of the hearing to consider the Minister's application was advertised in the *New Zealand Gazette* in April 1957[969].

There was another issue that was being discussed during the lead-up to the Court hearing. This concerned the ironsands deposit at Taharoa possibly extending onto the foreshore. The syndicate, in applying to the Minister to exercise his right to apply to the Maori Land Court, had referred to land for which it was applying including the foreshore. However, when forwarding the Minister's application to the Court, the Under Secretary for Mines pointed out that the Minister's application specifically excluded the foreshore:

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[968] File note by Judge Brook, 2 April 1957, and District Officer Auckland to Under Secretary for Mines, 4 April 1957. Maori Affairs Hamilton file 32/16. Supporting Papers #340 and 341-342.
[969] *New Zealand Gazette* 1957 page 635. Supporting Papers #593.

> This was done because the [foreshore] is considered to be Crown Land, and the solicitors [for the syndicate] have been notified that application for a warrant must be made to the Commissioner of Crown Lands, Hamilton, in respect of that area, as required by Section 171 of the [Mining] Act.[970]

The Office Solicitor commented:

> Even if on application for investigation of title to the foreshore at Taharoa it is determined by the Court that the Maoris have established their case, I do not think that before any such determination there is any objection to the warrant in respect of the foreshore being issued by the Crown.
>
> By Section 158 of the Maori Affairs Act 1953, any such warrant by the Crown cannot be questioned or invalidated in any Court or in any proceedings, and by reason of Section 160 it is only the Crown that is in a position to deal with any such land.
>
> The fact that the Crown has granted a mineral prospecting warrant over the area does not appear to me in any way to affect the powers of the Court to deal with an application for investigation of title. If any such application should in fact be lodged with the Court, the Solicitor-General will no doubt be interested in having representations made on behalf of the Crown in opposition to the claim.[971]

In early April a further application under Section 30(1)(b) to have the land at Taharoa ceded to the Crown for mining purposes was made. This was made in the alternative to the original application to allow the Crown to issue a prospecting warrant. The reasons given by the syndicate when applying to the Minister to have him lodge this alternative application were:

> The area in respect of which the application is made covers roughly 6,500 acres, and in order to prospect it sufficiently to determine adequately its potential would involve a considerable outlay. Our clients therefore do not wish to be put in a position where, having tested adequately the resource available, they could then be held to ransom by the owners when it came to a question of consideration of mining leases and royalties. It is desired, therefore, that before exploration and prospecting commences both our clients and the Maori owners should know exactly where they are, and it is considered that the application for cession will best achieve this end. In addition, as Maori lands are concerned, any mining lease even if negotiated independently of the Mining Act would require to be confirmed and approved by the Maori Land Court. For purposes of practical convenience it is desired that both matters if possible should come before the Court at the same time,

[970] Under Secretary for Mines to Registrar Maori Land Court Auckland, 21 February 1957. Maori Affairs Hamilton file 32/16. Supporting Papers #326-332.
[971] Secretary for Maori Affairs to District Officer Auckland, 10 April 1957. Maori Affairs Hamilton file 32/16. Supporting Papers #343.

> when the whole situation will have been fully reviewed and all the possible submissions can be made from all interested parties.[972]

The receipt of the second application required the publication of a further notice in the *New Zealand Gazette* about the sitting of the Court[973].

The Court sat at Kawhia on 15 May 1957[974]. Written submissions were prepared in advance by the syndicate and by the Mines Department[975]. At the hearing the representative of the Mines Department stated that the Department had examined the applications received from the syndicate, and "considered proposals reasonable for consideration by this Court". While prospecting as a first step was prudent business practice, applicants also needed to know at an early stage what mining rights they could later expect to obtain over the area. If the land were to be ceded to the Crown for mining purposes, then a regulatory regime that already existed would apply. A mining district would be incorporated, applications invited and considered by a Mining Warden (a judicial officer), and any mining rights granted would be consistent with the Mining Act and with any conditions included in the deed of cession. A Mines Inspectorate and a penalties regime in the legislation existed to ensure compliance with the conditions. He argued that, with a deed of cession the Mines Department became a "functionary medium" making it possible for the applicants to make use of the mining legislation and obtain rights to prospect and to mine. While offering the services of the Department in this manner, and stating that the Department's role was to assist and encourage development of the mineral resources of the country, he said it was for the syndicate to argue its case for mining at Taharoa.

Counsel for the syndicate stated that the preliminary work on the ironsands at Taharoa indicated it was the most valuable known deposit (on the surface at least) in the North Island. This needed to be confirmed by further prospecting. The work required would be an expensive proposition, and the financing for it would not be forthcoming unless there were assurances that the syndicate would get an opportunity to mine the

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[972] Chapman Tripp and Co, Barristers and Solicitors, Wellington, to Under Secretary for Mines, 11 April 1957, attached to Under Secretary for Mines to District Officer Auckland, 11 April 1957. Maori Affairs Hamilton file 32/16. Supporting Papers #344-346.
[973] *New Zealand Gazette* 1957 page 787. Supporting Papers #594.
[974] Maori Land Court minute book 81 OTR 145-160. Typed copy of minutes on Maori Affairs Hamilton file 32/16. Supporting Papers #348-355.
[975] Submissions on behalf of BR Law and others, undated, and Submissions on behalf of Mines Department, undated. Maori Affairs Head Office file 5/14/3. Supporting Papers #19-25 and 26-30.

resource. That would include an agreement from the Maori owners and the Court that they would enter into a deed of cession with the Crown. Certain conditions had been proposed by the syndicate, as a basis for negotiation, for inclusion in the deed of cession, although no negotiations had yet taken place. He concluded:

> My clients would not consider prospecting unless assured that they can mine and have prior right (and sole right so long as they avail themselves of it) to do so. An iron and steel industry in New Zealand would be of prime economic importance; any by-products also of value to country at large.[976]

Counsel for the Maori owners at Taharoa explained that he had attended an evening meeting at Maketu Pa at which the owners present, who he described as "very representative", had agreed to consider the proposal favourably. At a second meeting outside the court hearing, the owners had also agreed to incorporate under the Maori Affairs Act. An interim committee of eleven owners had been appointed. The owners wished to have the ownership of the foreshore investigated, indicating they did not necessarily accept the Crown's contention that the foreshore was Crown Land.

The Court heard that the application for cession of land for mining purposes was "novel proceedings". There had been no other deeds of cession entered into since a number of deeds were drawn up in the 1860s and 1870s (and published in Turton's Deeds), so the Court was "not therefore bound by precedent, we are at liberty to start de novo". All the historic deeds of cession had been for a limited time period, rather than open-ended.

After hearing the different parties, the Court gave its decision the same day, which was to adjourn the three applications before it sine die[977]. It felt that the application to cede the land to the Crown was more substantial than the application to open the land for prospecting, and felt that it required greater consideration than could be given to it on that day. Additionally, conditions to be attached to the deed of cession had to be agreed upon between the Crown and the Maori owners before the Court could consent

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[976] Maori Land Court minute book 81 OTR 149-150. Typed copy of minutes on Maori Affairs Hamilton file 32/16. Supporting Papers #348-355 at 350.

[977] Maori Land Court minute book 81 OTR 158-160. Typed copy of minutes on Maori Affairs Hamilton file 32/16. Supporting Papers #348-355 at 344-345.
Waikato Times, 16 May 1957, *New Zealand Herald*, 16 May 1957, *Auckland Star*, 16 May 1957, and *King Country Chronicle*, 17 June 1957. Copy on Maori Affairs Hamilton file 32/16. Supporting Papers #356-357, 358, 359 and 360-363.
Te Awamutu Courier, 20 May 1957. Copy on Mines Huntly file 13/17B. Supporting Papers #425.

to the cession, and negotiations over the conditions had not taken place. The Court made some remarks for the benefit of the owners:

> It considers it proper to point out to the owners that theirs is obviously not the only deposit of ironsand in this country, although it is a very valuable one; the owners should prudently consider whether this opportunity to have surveyed and investigated – at no cost to themselves – an asset which it may be impossible for them (from lack of technical skill or monetary resources, or both) to themselves survey and investigate, should be allowed to slip by because of demands for royalty or other type of compensation unreasonably in excess of what those who are willing to undertake such investigation – and to bear the full cost of so doing – are prepared to meet. An Order under Section 30(1)(b) does not deprive the owners of the freehold, and there are very many safeguards of their rights in both the Mining Act 1926 and the Regulations thereunder.[978]

The Court remarked that, if it only had before it the application to open the land for prospecting, then it would have been prepared to grant it, for the following reasons:

- Proper safeguards existed in the Mining Act to prevent entry upon or interference of urupa, gardens and cropping areas
- It would be in the interests of the Maori owners to investigate and determine the extent and quality of the ironsands
- It would be in the national interest to establish a New Zealand iron and steel industry

The Court would also have been prepared to recommend to the Minister that the syndicate's application for a prospecting warrant be granted. However, the Court's view was that all three applications were bracketed together, and it would not be appropriate to consider each one independently of the others.

C.3 Title reorganisation

Following the Court hearing, the Mines Department started examining in more detail what a cession for mining purposes might mean. It approached the Maori Affairs Department to see if the Board of Maori Affairs would be involved, as that Board was the sole body authorised (under Section 252 Maori Affairs Act 1953) to negotiate for the acquisition by the Crown of "any Maori owned land or interest in land, whether by way of purchase, lease, exchange or otherwise". At issue was whether a cession for mining purposes fitted within that definition. The Office Solicitor advised:

[978] Maori Land Court minute book 81 OTR 159-160. Typed copy of minutes on Maori Affairs Hamilton file 32/16. Supporting Papers #348-355 at 355.

> In my opinion it does not. The effect of such an order [of cession by the Maori Land Court] appears to me to constitute the Crown, during the period the order remains in force, as the statutory agent of the owners for the purpose of granting mining rights. This in effect puts the Crown in an analogous position to the Minister of Forests under Section 64 of the Forests Act 1949, or the Board of Maori Affairs under Section 341 of the Maori Affairs Act 1953, or the Maori Trustee under Sections 323, 324, 387 and 447 of that Act.
>
> The Mining Act 1926 is special legislation dealing with a particular branch of the law, and therefore it should not be necessary to look to some other statute for qualifications to provisions which are capable of being applied without qualifications.
>
> For these reasons I am of the opinion that the Board of Maori Affairs has no jurisdiction or statutory functions in relation to any such deed.[979]

The Judge was not so sure about the Office Solicitor's reasoning, although he did not seem to be disagreeing with the overall conclusion that the Board of Maori Affairs need not be involved:

> Owners do not grant mining rights, therefore no one can do that as their agent, statutory or otherwise. Effect is (Sec 32 Mining Act) to declare the Native ceded land open for mining under the provisions of the Mining Act 1926, in same manner as Crown Land, subject to special provisions of that Act and to terms and conditions of particular agreement under which land is ceded.[980] [Underlining in original]

In the event, nothing came of the syndicate's proposal, as the syndicate itself fractured and fell apart. The members formed themselves into two competing groups, a Fletcher Industries-based group, and a group calling itself the New Zealand Development Corporation[981].

For their part, the owners continued looking at incorporation. This would involve cancellation of the various partition orders at Taharoa, amalgamation into a single block, and management of that single block by an Incorporation that had appointed a Committee of Management. In November 1957 the owners held a meeting and unanimously agreed to apply to the Maori Land Court for the setting up of an

[979] Office Solicitor to District Officer Auckland, 24 May 1957. Maori Affairs Hamilton file 32/16. Supporting Papers #364.
[980] File note by Judge Brook, undated (29 May 1957), on Office Solicitor to District Officer Auckland, 24 May 1957. Maori Affairs Hamilton file 32/16. Supporting Papers #364.
[981] *Truth*, 15 April 1958. Copy on Maori Affairs Hamilton file 32/16. Supporting Papers #370-371.

incorporation[982]. An application for the first step in the process, summoning a meeting of owners to consider the matter, was lodged later that month[983].

The reaction of the Judge and the Registrar of the Court was that this approach, requiring a series of separate meetings of the owners of each block included in the proposal, would be difficult to bring to a conclusion. They advised that a better alternative might be to apply to the Court to cancel a number of partitions and form one common amalgamation block, then call a meeting of the owners of this single block to debate whether or not to incorporate[984]. Even this could be a drawn-out process, as considerable clerical work would be required to amalgamate lists of owners into a single list, and to update the ownership list by arranging a number of successions to deceased owners. The advice was accepted[985], and a retired official of the Maori Affairs Department with considerable experience of consolidation work in Tai Tokerau, Mr MV Bell, was engaged[986]. He already held a warrant as a Commissioner of the Maori Land Court, which would allow him to make partition, succession and amalgamated title orders.

Bell worked on the task from June 1958 to February 1959, providing a series of reports during this period[987]. In his first report he stated that the objective was to create "one ironsands area title" with "one list of shareholders", followed by Incorporation. The area involved stretched about five miles along the coast and up to two miles inland. The owners only wanted the amalgamated block to comprise the sand dune country, and not take in any lands inland of the sand dunes that they were

[982] *Auckland Star*, 13 November 1957. Copy on Maori Affairs Hamilton file 32/16. Supporting Papers #365.
[983] Application to Summon Meeting of Owners, 12 November 1957, attached to BD O'Shea, Barrister and Solicitor, Ngaruawahia, to Registrar Maori Land Court Auckland, 20 November 1957. Maori Affairs Hamilton file 32/16. Supporting Papers #366-367.
[984] Registrar Maori Land Court Auckland to BD O'Shea, Barrister and Solicitor, Ngaruawahia, 19 December 1957, and Notes of interview, 18 March 1958. Maori Affairs Hamilton file 32/16. Supporting Papers #368 and 369.
[985] BD O'Shea, Barrister and Solicitor, Ngaruawahia to Registrar Maori Land Court Auckland, 8 May 1958. Maori Affairs Hamilton file 32/16. Supporting Papers #372.
[986] Secretary for Maori Affairs to Secretary Public Service Commission, 13 May 1958, and Secretary Public Service Commission to Secretary for Maori Affairs, 19 May 1958. Maori Affairs Head Office file 5/14/3. Supporting Papers #31 and 32.
[987] Commissioner Bell to Registrar Maori Land Court and District Officer Auckland, 27 June 1958, 13 August 1958, 26 September 1958, 5 November 1958, 4 December 1958 and 4 February 1959. Maori Affairs Hamilton file 32/16. Supporting Papers #373-375, 378-380, 383-384, 385-386, 387-389 and 390-394.

farming, which introduced an extra difficulty of requiring partition as a preliminary step, as some fourteen titles were partly covered in sand and partly used for farming. He also referred to the lakes inland of the sand dunes:

> The position of the lakes is also involved (Taharoa Lake and five smaller lakes). These lakes are part of the title Taharoa A7A, which comprises "sand area and lakes". The question arises – does the Mines Department require the lakes or any part of them?[988]

When the Mines Department was shown this report, the Under Secretary replied:

> The inclusion of the lakes in the ironsands title (including Harihari Lake) is desired, if there are no insurmountable difficulties.[989]

The reasoning behind this was that the mine would undoubtedly require the use of water[990]. A number of other adjustments to the northern and the inland boundaries of the proposed ironsands title were also requested by the Mines Department.

In his second report in August 1958, Bell indicated that he wished to visit Wellington to discuss the proposed boundary adjustments with Mines Department officials[991]. The visit took place later that month, and included discussion with officials of the Maori Affairs and Mines Departments, and the university lecturer who had been the scientific advisor to the original syndicate[992]. The Under Secretary for Mines recorded these discussions as identifying a suitable inland boundary for the ironsands title, and agreeing that the Bell would "look into" the creation of a separate title for the lakes, which might then become "the subject of a separate Deed of Cession insofar as water and transport rights were concerned". The Under Secretary concluded:

> In all these cases it was agreed that Mr Bell would have a free hand to do the best he could with the Maori owners.
>
> The Department and the Minister [of Mines] are very pleased with the work that Mr Bell and your Department are doing to arrive at a satisfactory Ironsands title. The progress made to date is heartening.[993]

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[988] Commissioner Bell to Registrar Maori Land Court and District Officer Auckland, 27 June 1958. Maori Affairs Hamilton file 32/16. Supporting Papers #373-375.
[989] Acting Under Secretary for Mines to Registrar Maori Land Court and District Officer Auckland, 24 July 1958. Maori Affairs Hamilton file 32/16. Supporting Papers #377.
[990] File note by Commissioner Bell, 24 July 1958. Maori Affairs Hamilton file 32/16. Supporting Papers #376.
[991] Commissioner Bell to Registrar Maori Land Court and District Officer Auckland, 13 August 1958. Maori Affairs Hamilton file 32/16. Supporting Papers #378-380.
[992] File note by Commissioner Bell, 25 August 1958. Maori Affairs Hamilton file 32/16. Supporting Papers #381.
[993] Under Secretary for Mines to Registrar Maori Land Court and District Officer Auckland, 26 August 1958. Maori Affairs Hamilton file 32/16. Supporting Papers #382.

On the basis of this letter, it is clear that the Mines Department saw the role of Bell as being to act for the Crown in arranging land title and ownership in a form that would suit the development of mining of the ironsands. Bell, however, saw things slightly differently, as in his notes of the meeting he described himself as "M.L.C. Commissioner and representing owners"[994]. The different viewpoints about his role symbolise the multiple roles of the Crown, in seeking to secure its own interests and recognising the need to go through the proper processes of the Maori Land Court as required by law, while allowing the Taharoa owners to make their own freely-chosen decisions.

What Bell did during an eight-month period (June 1958 to February 1959) was an enormous effort that shows what can be done when an individual is given a single clearly-defined task to perform, and sufficient authority to achieve it. He was vastly experienced in Court procedures, and this undoubtedly helped. But he was also pursuing a direction that the owners generally supported, and he clearly had their trust. Among his achievements during this period were:

- Arranging for the Court Registrar to lodge succession applications, working with the owners to ensure they attended a sitting of the Court and provided the necessary evidence about who were the rightful successors, sitting as Commissioner (including sessions into the evening, and in other places besides Kawhia) to make nearly 400 succession orders, and arranging for the Court staff to carry out the paperwork to draw up and enable issue of the court orders
- Walking and riding the land with the owners to negotiate suitable boundaries for an ironsands title that did not encroach on their farmed lands, yet also had regard for the objectives of the Mines Department
- Arranging 24 partition orders for those blocks of land that contained both sand dunes and farmed land
- Arranging a combined partition for the amalgamation of 19 titles to create one large block for the ironsands lands

[994] File note by Commissioner Bell, 25 August 1958. Maori Affairs Hamilton file 32/16. Supporting Papers #381.

It was fortunate for the Taharoa owners that Bell was able to complete his task, as he died not long afterwards, in September 1959[995].

The Secretary for Maori Affairs was sufficiently impressed by Bell's work to make special mention of it in the Department's annual report for 1959:

> In view of the possibility of setting up of a large scale iron and steel industry based on the very extensive ironsand deposits in the Taharoa area, which is Maori owned, it was necessary to undertake certain essential title improvement operations. Mr M.V. Bell, a former Commissioner of the Maori Land Court, was engaged by the Department to do the title reformation work, which involved determining the up-to-date ownership of all the subdivisions of the Taharoa Block, the cancelling of the partitions of the existing subdivisions, and the repartitioning of the whole block so that, among other things, a separate title was created for the area in which the ironsands were located.
>
> These title improvement operations have now been completed and the owners of the Taharoa C Block, in which the ironsand deposits are situated, have formed an incorporation to facilitate negotiations on behalf of the beneficial owners. Discussions are at present taking place between the Committee of Management of the body corporate and the Mines Department to determine the terms and conditions under which the mining rights will be ceded to the Crown.[996]

The Department of Maori Affairs had also arranged some publicity about its involvement, and about the Government's enthusiasm to see use made of the ironsands resource, with an article published in December 1958 in *Te Ao Hou*, a magazine published by the Department for the Maori Purposes Fund Board[997].

The resulting ironsands title was ordered in October 1958[998]. It was given the appellation Taharoa C of 3256 acres approximately (subject to survey), and had 547 owners. The five lakes (Taharoa, Numiti, Rotoroa, Rototapu and Harihari) were placed in their own separate title (Taharoa A7A2 of 646 acres[999], with 360 owners), with that block then vested in nine trustees under Section 438 Maori Affairs Act

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[995] Maori Land Court minute book 97 GIS 140-141. Not included in Supporting Papers.
[996] Annual report of Department of Maori Affairs for the year ending 31 March 1959. *Appendices to the Journals of the House of Representatives*, 1959, G-9, page 45. Supporting Papers #592.
[997] 'The ironsands of Taharoa', 'Memories of our valley', and 'Ironsand', in *Te Ao Hou*, Number 25, Volume 6(4), December 1958, pages 31-35 and 61. Supporting Papers #2020-2025.
[998] Order of Combined Partition, 17 October 1958. Supporting Papers #527-546.
Maori Land Court minute book 37 M 345-346 and 361-379. Supporting Papers #503-504 and 505-523.
[999] South Auckland plan ML 19648. Supporting Papers #606.

1953[1000]. The terms of trust authorised the trustees to grant rights to the use of water, to grant fishing, shooting and camping rights, and to cede the land to the Crown for mining purposes, or to grant mining rights[1001].

C.4 Incorporation

The Commissioner's final action in the sequence of events was to arrange the lodging of an application for the calling of a meeting of owners to consider a proposed resolution that the owners be incorporated under Part XXII of the Maori Affairs Act 1953, primarily for the purpose of ceding mining rights to the Crown. The meeting was held at Kawhia early in March 1959; it was described by a Maori Affairs official as "a strongly attended meeting, and one that lasted some time in questions and explanations"[1002]. Bell was the recording officer. A resolution to become incorporated "for the following objects" was passed unanimously:

(a) To negotiate for and execute a Deed of Cession whereby the said land is ceded to Her Majesty the Queen for mining purposes under the Mining Act 1926 upon such terms and conditions as may be mutually agreed upon between the Governor-General and the Committee of Management of the Incorporation.
(b) To lease or otherwise make revenue producing any part or parts of the said land upon terms which will not in any way interfere with the mining rights ceded to the Crown or with the lawful rights and privileges of any licensee of the Crown under the Mining Act 1926.
(c) To do any other thing in relation to the land that may be incidental to the above mentioned objects.
(d) To carry out such modified or additional objects as the Maori Land Court may from time to time approve under Section 270A of the Maori Affairs Act 1953.[1003]

The Maori Land Court confirmed the resolution and ordered the creation of the Incorporation later that month[1004]. Having set up the Incorporation, the Court then adjourned while the owners held their inaugural meeting. A Committee of Management of 11 persons was elected at the meeting, and when the Court resumed its sitting it made an order appointing the Committee[1005].

[1000] Maori Land Court minute book 37 M 379. Supporting Papers #523.
[1001] Order of the Court vesting land in trustees, 20 October 1958. Supporting Papers #547.
[1002] District Officer Auckland to Secretary for Maori Affairs, 26 March 1959. Maori Affairs Hamilton file 32/16. Supporting Papers #400.
[1003] Resolution proposed for consideration at meeting of owners, and passed, 4 March 1959, as noted on notice of meeting, 18 February 1959. Maori Affairs Hamilton file 32/16. Supporting Papers #395.
[1004] Maori Land Court minute book 29 ALWM 79-84. Supporting Papers #495-500.
Typed copy of minutes on Maori Affairs Hamilton file 32/16. Supporting Papers #396-398.
[1005] Maori Land Court minute book 29 ALWM 84-86. Supporting Papers #500-502.

The establishment of the Taharoa C ironsands block and its Incorporation concluded the preparatory work of creating a legal structure whereby the owners were empowered to negotiate a Deed of Cession agreement with the Crown, or a mining agreement directly with a mining company. The only outstanding item was the preparation of a survey plan to define the boundaries of Taharoa C, which would allow a diagram to be added to the title order and the order to then be signed and perfected[1006]. Throughout the process, there is no indication that the owners faced any financial charges, all costs of the work (including Court fees) apparently being absorbed in the operating expenditure of the Department of Maori Affairs and the Maori Land Court. An assessment of the cost prepared for a Parliamentary Select Committee in October 1959 was £1512, comprised of £1112 for Bell's salary, and £400 for "part time clerical services and other expenses while investigating titles to Taharoa ironsands"[1007].

There was one meeting held between the Committee of Management and the Mines Department, in June 1959. This was concerned with a cession of mining rights to the Crown, and what the terms of such a cession might be. The Wellington-based Office Solicitor of the Maori Affairs Department also attended, and wrote up the notes of the meeting[1008]. The representative of the Mines Department explained that he was acting on political instructions:

> The Prime Minister has given instructions that we were to meet the people, to arrange a full exchange of information, and to hear proposals which the Maori owners through their Committee wished to put to the Government.

He set out what would happen if a Deed of Cession were in place:

> The deed of cession sets out the terms under which prospecting could be carried out. An application is made to the Warden's Court for a Mineral Prospecting Warrant. The Warden's Court hears the application and makes a recommendation to the Minister of Mines. The local Inspector of Mines has the duty of ensuring that persons who are granted rights carry out the terms.

Typed copy of minutes on Maori Affairs Hamilton file 32/16. Supporting Papers #398-399.

[1006] A survey plan was not approved until September 1984. South Auckland plan ML 21520. Supporting Papers #607-611.

[1007] Secretary for Industries and Commerce to Chairman Goldfields and Mines Select Committee, 13 October 1959. Legislative Head Office file 1959/3. Supporting Papers #17-18.

[1008] Notes of meeting, 15 June 1959. Maori Affairs Head Office file 5/14/3. Supporting Papers #33-38.

The legislation provided that when mineral rights in Maori land were ceded to the Crown, the land was then treated as if it was Crown Land, subject to the specific terms of the Deed of Cession prevailing if there was any conflict with more general provisions set out in the Mining Act.

Responding to the Mines Department's proposals, the Chairman of the Incorporation's Committee of Management said that Taharoa Maori would like to have priority for unskilled labour "if the opportunity arises", with "as much of the work as possible to be done in the district".

When discussion turned to the amount of rent or royalty that could be demanded as part of a prospecting licence, the Mines Department representative was quick to identify the potential disadvantages of Taharoa, presumably with the intention of encouraging the owners to be realistic in their expectations:

> The Taharoa C block is not the only area to be investigated, and it does not necessarily follow that if an iron and steel industry based on the iron sands is established it will be based on the Taharoa sands. There is one considerable problem over the question of access, and whether a suitable harbour can be constructed without undue cost at Albatross Point. The actual prospecting at Taharoa might all be done in twelve months. The investigating company is to have a look at all the deposits which are available.
>
> The main reason for suggesting a lump sum payment for prospecting was to meet the preliminary expenses and legal costs of the Committee of Management.

At the end of the meeting some generalised terms for a Deed of Cession were approved in principle, to form the basis for a legal document or memorandum of agreement. This agreement would have to be presented to the Committee of Management for final approval. The generalised terms were:

> That the terms of a Deed of Cession or other suitable document be drafted to give to the Crown such prospecting rights as are required, upon the following terms:
>
> (a) Payment of a lump sum on account of expenses incurred by the Committee of Management (Mr O'Shea to supply a statement of expenses)
> (b) Utilisation of local labour required
> (c) Payment for sand taken for sending overseas for testing purposes
> (d) Damage to property to be repaired
> (e) Sacred places to be respected
>
> and that such mining rights as are required be upon the following terms:

(a) royalty to be determined by mutual arrangement between the parties, having regard to the quantity and quality of sands after prospecting
(b) Utilisation of local labour if required
(c) Protection of sacred places
(d) Rehabilitation of the area from which sand removed
(e) Damage to property to be repaired[1009]

This meeting with the Maori owners discussed above was held in June 1959, and it was later the same month that the Mines Department was approached about a change to the mining legislation that would completely alter the Crown's approach, doing away with a Deed of Cession and instead vesting in the Crown all rights to prospect and mine the Taharoa ironsands. The development of this change of thinking is discussed in the next section.

C.5 Iron and Steel Industry Act 1959

The change of viewpoint in Wellington was the result of a push towards industrial development and economic self-reliance in New Zealand emanating from the Department of Industries and Commerce. This vision was cross-party, surviving the change of Government in 1957 when Labour, under Walter Nash, came to power. The following year the Government announced its support for the development of an iron and steel industry, starting with approval for a steel mill using scrap metal as its raw material.

In October 1958 the Government asked an Interdepartmental Committee on Iron and Steel to "investigate and report as to the best procedure to develop research work" on the development of an iron and steel industry in New Zealand based on ironsands. The Government was keen on a collaboration with private industry, and sought advice on likely costs to the Crown, how collaborative research could be structured, and whether legislative changes would be necessary. The Committee recommended the formation of a limited liability company to undertake the investigations into the feasibility of an ironsands processing industry. The Crown would hold a majority of the shares and director positions in this company. The part of the Committee's report most relevant to the ironsands deposits themselves was included as a single paragraph among its recommendations for legislative change:

[1009] Notes of meeting, 15 June 1959. Maori Affairs Head Office file 5/14/3. Supporting Papers #33-38.

Possibility of speculation in ironsands deposits
The Committee recommends that the Government, before announcing that investigations into a major iron and steel industry will proceed, should ensure that there will be no possibility of private interests' speculations in ironsands-bearing land prejudicing the ability of a future operating company to secure its ore at reasonable prices. The Committee suggests that legislation be brought down prohibiting the prospecting or mining of ironsands, or dealing in lands bearing ironsands deposits, by anyone not authorised by the Government.[1010]

The Committee's recommendations were accepted, and in June 1959 officials commenced consideration of the legislative changes it had identified[1011]. A file note on an Industries and Commerce Department file recorded the views of the Mines Department at this time following a telephone conversation with an official from that Department. Past precedents had been established with the Crown taking control of prospecting and mining for uranium and petroleum, though these were not entirely appropriate as precedents as landowners were usually not aware of the existence of those minerals on their land at the time the Crown passed legislation about them, unlike ironsand where its presence and value was well-known to landowners. A Crown restraint on prospecting and mining for ironsand needed to be found that did not in effect nationalise the resource as the legislation on uranium and petroleum had done. The Mines Department also thought it was only certain ironsand deposits that needed to be protected, rather than all ironsands in New Zealand. It regarded speculative holding of access rights to the largest and most valuable deposits, as the reason why Crown intervention was most needed. The Industries and Commerce official who had the telephone conversation concluded:

> I think that we now need to get our own thinking on what we want a little clearer. If we do so it seems likely that we will get further with the Mines Department than we did earlier. As I see it we want:
>
> (i) to ensure access to the sands (and to the coal) for proving,
> (ii) to determine how the mining rights will be obtained and held until the operating company is established, and
> (iii) to prevent speculation while the investigations are proceeding.
>
> The first two points will have to be settled in detail with Mines Department, and it seems likely that they have the necessary powers. The main difficulty

[1010] Report of the Interdepartmental Committee on Iron and Steel, on the form of an organisation to undertake research and investigation into a major iron and steel industry, February 1959. Treasury Head Office file 39/7/2. Supporting Papers #273-284.
[1011] Secretary for Industries and Commerce to Secretary to the Treasury, 11 June 1959. Industries and Commerce Head Office file 3/35. Supporting Papers #4.

would seem to be in the possibility of speculation which would force up the final cost of royalties to the operating company.

To some extent this can be overcome by the investigating company carrying out tests at all trial deposits and negotiating for royalties for the deposit chosen before its findings are made public. This would probably not prevent all speculation, but it would spread the area of any speculation and, therefore, probably tend to reduce its effect. The only other way would be to pass legislation specifically prohibiting trading in rights over ironsands deposits or in the land containing the deposits.[1012]

One month later, both the Industries and Commerce Department and the Mines Department reported to their respective Ministers. These reports set out the policy basis for passing legislation, and are therefore quoted from extensively below. They provide the justification, from a Crown perspective, for it to intervene to prevent a free-for-all situation developing where speculators dominated the market, and allow it to decide who could prospect or mine for ironsands and under what conditions. They also demonstrate that the Crown wanted to achieve this intervention without antagonising landowners, and without incurring any requirement to compensate them.

The Industries and Commerce Department report to its Minister stated:

Prohibition of prospecting or mining

Most of the ironsand-bearing land is owned by the Crown or by Maoris. A very small proportion is privately-owned.

The main safeguard needed is to ensure that speculating by private interests does not take place in ironsands-bearing land, as this would prejudice the ability of a future operating company to secure its ore at reasonable prices. Without some safeguard, it would also be possible for outside interests to obtain mining rights to some areas of ironsands in order to prevent the establishment of an iron and steel industry in New Zealand….

In the case of petroleum and uranium, the legislation declares all deposits to be the property of the Crown. Licences may be issued by the Minister of Mines for prospecting, and the finder of deposits is able to work the deposits subject to control by the Crown.

With petroleum and uranium, the particular location of deposits is not known, and property-owners therefore have little knowledge of the likely existence or value of such deposits on their properties. The position is somewhat different with ironsands, where the existence of deposits is obvious and landowners are able to estimate the worth of the deposits.

[1012] File note to Deputy Secretary for Industries and Commerce, 29 June 1959. Industries and Commerce Head Office 3/35. Supporting Papers #5-6.

> If these deposits of ironsands were vested in the Crown as is the case with petroleum and uranium, there would be criticism of interference with the private rights of the property-owners, and claims for compensation could be made. It is likely that far more land would need to be acquired than was needed, if this method were the one selected to avoid early speculation.
>
> It appears that the best method of dealing with possible speculation in ironsand-bearing land would be by following the lines of the Iron and Steel Industry Act 1937 – that is by providing that no person or authority other than the nominee of the Crown be entitled to prospect or mine for ironsands or iron-ore on any lands in New Zealand. However, as not all the ironsands deposits would be of use for an iron and steel industry (while they could possibly be used for other purposes), and in order to minimise possible allegations of interference with private rights, provision could be made for the granting of prospecting and mining rights in such cases as may be approved by the Minister. For similar reasons the reservation of prospecting and mining rights for the nominated organisation could possibly be limited to a period of 5 years, without affecting the organisation's interest or the national interest.
>
> This procedure could still leave it open for existing landowners, or purchasers from them, to demand exorbitant royalties from the investigating company or the operating company. On the other hand, it is probable that negotiations with landowners would result in the fixing of reasonable rates of royalties, particularly if each landowner knew that his deposit was one among many.
>
> A public statement could be made that Government would invoke the provisions of the Public Works Act or, if necessary, introduce further legislation, for acquiring land if attempts were made to nullify the efforts to investigate ironsands deposits and to mine suitable deposits, or if speculation in any of the land were apparent. This should discourage the acquisition of land by outside interests wishing to prevent the establishment of an iron and steel industry; or by persons wishing to establish such an industry themselves, or to demand extortionate rates of royalties.
>
> The aim would be to negotiate rates of royalties for mining at the same time as prospecting rights were being negotiated. This is the usual practice. Otherwise, if royalties were negotiated after the deposit had been proved, the owner would be in a much stronger bargaining position.[1013]

A few days later, Mines Department officials briefed their own Minister:

> The real problem is to have rights to prospect over the iron sand deposits, and mining rights over what is proved to be the most suitable deposit at royalties and rent determined in advance.

[1013] Secretary for Industries and Commerce to Minister of Industries and Commerce, 24 July 1959. Industries and Commerce Head Office file 3/35. Supporting Papers #7-10.

After consideration, I think that legislation should be drafted to declare all ironsand and iron-ore deposits ceded to the Crown for prospecting and mining purposes, with associated rights of entry and the right to disturb the surface to extract the iron sands and iron-ores. The rights would be held for a limited period, except in respect of the deposit selected as the source of raw material for the iron and steel industry. This deposit would be proclaimed as required for the iron and steel industry.

In general terms the legislation would act as a "stay order" until the most suitable deposit is determined, and then mining rights over that area would operate on the basis of compensation and royalty, which would also be fixed in the legislation.

The Minister was told that legislation along these lines would have the following advantages:

(a) It would enable prospecting to proceed under statutory powers, and remove the necessity for the investigating company to obtain such rights. As Maori titles would be involved in some areas, the procedure would be simpler and quicker.
(b) When the suitable deposit was selected, the required mining rights would already be held by the Crown.
(c) As deposits are ruled out as unsuitable, these could be released for other purposes.
(d) The basis of compensation and the rent and royalty to be paid will be fixed before even prospecting commences.
(e) The Crown will hold the rights and will be in a position to assign to the operating company recommended by the investigating company.
(f) There will be no blanket vesting of all ironsands and iron-ore deposits in the Crown.[1014]

The key features of the proposed legislation were outlined in a companion paper:

1. All ironsand and iron-ore deposits and the lands in which they exist to be declared ceded to the Crown for prospecting and mining purposes, including rights of entry and profit a prendre. The right of entry would be conferred on persons authorised by the Minister of Mines – see subsection 2 of Section 4 of the Coal-Mines Amendment Act 1941.
2. All ironsands in the Dominion to be included in the scheme.
3. The cession of the rights to prospect and mine to be subject, in respect of iron-ore or sands, to valid rights now granted and existing to use the same for any purposes other than an iron and steel industry.
4. The cession to continue for a maximum period of eight years, and to cease at the end of that period, except in respect of any deposit or area which the Minister of Mines by Proclamation declares to be required for an iron and steel industry.

[1014] Under Secretary for Mines to Minister of Mines, 7 August 1959. Mines Head Office file 12/30/22. Supporting Papers #82-85.

5. The owner of ironsands ceded as above (except when proclaimed) to have the right to the continued use and disposal of his land for purposes other than in connection with an iron and steel industry. This would mean that the owner would continue to use and deal with his land subject to the prospecting and possible mining rights. On the issue of a Proclamation by the Minister the deposit or area selected for the purpose of supplying ironsand to the iron and steel industry would continue to have prospecting and mining rights ceded to the Crown, and the owner compensated for the value of land and improvements.
6. During prospecting the compensation would be limited to any damage caused through prospecting or other investigational work – see subsections 3 and 4 of Section 4 of the Coal-Mines Amendment Act 1941.
7. Compensation for the deposit or area required for an iron and steel industry to be based on a dead rent of 2/6d per acre or part thereof, and a royalty of 1/6d per ton of titano-magnetite concentrates used in the industry, computed at six-monthly intervals and reviewed at seven-yearly periods. The owners would also have to be compensated for the value of the land excluding the titano-magnetite(s) as such, and the improvements existing thereon.
8. The Minister of Mines to have the authority to relinquish rights in respect of any area to enable the ironsands and iron-ore deposits there and land to be available for purposes other than an iron and steel industry.
9. Power to take any land or ironsands upon the basis of the compensation set out in paragraph 7.
10. Power to subscribe for and hold shares in investigating and operating company.[1015]

During further discussions between Industries and Commerce Department and Mines Department officials, the impact on Maori landowners of the proposed legislation was noted, and it was agreed that when legislation had been drafted,

> the Bill would be referred to Maori Affairs Department for comment on question of Maoris' feelings, and also referred to anyone else the Government considers should be consulted (e.g. discussion with Taharoa Maoris, or other Maori groups). Mr Higgins [of Mines Department] will tell Maori Affairs what is being proposed.[1016]

Industries and Commerce officials advised their Minister about the Mines Department's proposals about the content of the legislation. These proposals seem to have been fleshed out somewhat during the week that elapsed between the Mines Department's briefing of its Minister, and the comments in response prepared for the Minister of Industries and Commerce. For instance, Mines Department had increased

[1015] Broad Outline of Legislation, 7 August 1959 attached to Under Secretary for Mines to Minister of Mines, 7 August 1959. Mines Head Office file 12/30/22. Supporting Papers #82-85 at 84-85.
[1016] File note, 13 August 1959. Industries and Commerce Head Office file 3/35. Supporting Papers #11.

the time period for the cession of rights from five years to eight years, and was suggesting that the legislation set out that for any mining right issued rent would be fixed at 2/6d per acre per year, and royalty would be fixed at 1/6d per ton extracted, both to be reviewed at seven-yearly intervals.

> These proposals would give statutory powers to prospect and mine the ironsands deposits instead of having to rely on negotiations with individual land owners for rights of entry, or prospecting and mining, and the amounts of rent and royalty to be paid.
>
> As the legislation would deprive the owners of their opportunity to negotiate, there could be some criticism, particularly by the Maoris at Taharoa. However, such difficulties could, in the opinion of the Mines Department, be resolved by prior discussions.
>
> The amounts of rent and royalty payable might also be criticised, but as there is no precedent as a guide to the reasonableness or otherwise of the amounts suggested by the Mines Department, other than tentative discussions between the Mines Department and the Maoris of Taharoa, no firm basis for demanding a higher rate would exist. The fact that the amounts would be subject to review after seven years should assist in satisfying the owners that if circumstances warranted higher payments might be made once the iron and steel industry was firmly established.

The Minister was advised that the model for the new legislation would be the Coal-Mines Amendment Act 1941. He was asked to agree to a Bill being drafted, and that

> [t]he draft Bill, when prepared, to be referred to Maori Affairs Department for comment regarding the possible reaction of Maori land-owners, and also to be referred to any other parties which the Government considers should be consulted.[1017]

The Minister agreed to the consultation proposed, "but this will have to be quick!"[1018].

It was then the task of the Minister of Mines to take a proposal to Cabinet for approval to the drawing up of legislation along the lines that had been developed by Mines Department and by Industries and Commerce Department. In the draft paper prepared for the Cabinet, it was stated:

> Legislation giving prospecting rights to the Crown over the various iron sand deposits, and mining rights over the deposit finally selected as the most suitable on which to establish an iron and steel industry based on iron sands, will eliminate protracted delays that are otherwise bound to occur if the rights

[1017] Secretary for Industries and Commerce to Minister of Industries and Commerce, 14 August 1959. Industries and Commerce Head Office file 3/35. Supporting Papers #12-14.
[1018] Approval of Minister of Industries and Commerce, 17 August 1959, on Secretary for Industries and Commerce to Minister of Industries and Commerce, 14 August 1959. Industries and Commerce Head Office file 3/35. Supporting Papers #12-14.

> are to be obtained by negotiation with the owners of each deposit. Maori titles to the iron sands particularly are likely to require special investigation before the real owners can be established, whereas suitable legislation can avoid this. It has taken over two years to determine the owners of the Taharoa iron sands, and similar work would presumably be involved in the cases of other Maori titles to the sands.[1019]

When presented with the draft paper for Cabinet, the Minister was told in a covering note that:

> The preparation of the Bill will enable the subject matter to have further consideration, and for interested partes, such as the owners of the Taharoa ironsands, to be consulted if the Government so directs. You will recall that negotiations have been going on with the owners of the Taharoa ironsands for a Deed of Cession for prospecting and mining rights. The legislation insofar as the owners of this area are concerned would replace the need for further negotiations to determine the terms and conditions of a Deed of Cession. There are, however, other areas which have to be prospected and investigated, and obviously the legislation will greatly facilitate the work. At the same time it will define the rights of the Crown and the rights of the owners of the ironsands.[1020]

With Cabinet's approval, the legislation was drafted. The Maori Affairs Department was asked for its comments on one of the versions of the draft Bill in mid September 1959. In reply, the Department had two attempts at a response, with the first one being rejected and then rewritten. The wording included in both versions, and which therefore survived the rewriting, stated:

> As requested, we have studied the provisions of the draft Iron and Steel Industry Bill (L.D.O. 82/2).
>
> The only group of Maoris who to the knowledge of this Office have taken active steps recently in connection with their iron sand resources are the Taharoa Maoris. On the assumption that the Bill will be referred to a Select Committee of the House to consider any representations which may be made in respect of it by interested parties, we think that Mr B.D. O'Shea as the Solicitor for the Taharoa C Block Incorporated should be notified in time, so that if he wishes to do so he will have an opportunity of making any representations which he may wish to make.
>
> Even although we do not see any matters which he could take great exception to in the Bill, we feel that it is most desirable that the opportunity should be

[1019] Minister of Mines to Cabinet, 18 August 1959, attached to Under Secretary for Mines to Minister of Mines, 18 August 1959. Mines Head Office file 12/30/22. Supporting Papers #86-89.
[1020] Under Secretary for Mines to Minister of Mines, 18 August 1959. Mines Head Office file 12/30/22. Supporting Papers #86-89.

> given, especially as there has been an element of suspicion in the minds of Maoris in this part of the country when any Government action affecting their rights has been proposed. The Taharoa Maoris have recently been brought to a co-operative frame of mind over iron sands matters, and we feel that every effort should be made to avoid any action which would severely affect the present good relations.[1021]

The part of the first draft that was removed when the letter was rewritten stated:

> [We] feel that [the Bill] will facilitate the establishment of the industry by providing legislative machinery which will be much easier to work than the existing provisions in the Mining Act 1926.
>
> So far as we can see, the Bill makes proper provision for the protection of rights of property and for the payment of compensation where property rights are taken. There may be some possible argument as to whether a maximum royalty should be provided for at the rate of 1/6d per ton of titano-magnetite concentrates, as provided in clause 9(1) of the Bill. This Department has no sources of information as to whether such a figure is an appropriate one or not. It is understood that you are going to ask Cabinet to consider whether this particular provision will be retained or omitted.[1022]

The comment on this first draft, which explains why it was rewritten, was:

> Why should we express opinions regarding the provisions of the Bill, and in any case do we know enough about such things to do so? I would prefer to omit paras 1 and 2.[1023]

When the Bill was introduced into Parliament it was referred to the Goldfields and Mines Select Committee for consideration. The solicitor for the Taharoa C Incorporation was advised on the day of its introduction (Friday 2 October 1959)[1024], and in the short time available to him he prepared a written submission and presented it to the Select Committee on the day the Committee considered the Bill (Wednesday 7 October 1959). His submission read:

> Mr Chairman.
> 1. The Chairman of the Committee of Management of Taharoa C Block Incorporation has instructed me to appear on their behalf before your Committee and make such submissions as I think fit. Having acted as counsel and solicitor for the owners for 2½ years, I know something of their feelings about ironsands development, and the Chairman has

[1021] Secretary for Maori Affairs to Under Secretary for Mines, 21 September 1959. Maori Affairs Head Office file 5/14/3. Supporting Papers #40.
[1022] Secretary for Maori Affairs to Under Secretary for Mines, 18 September 1959 (not sent). Maori Affairs Head Office file 5/14/3. Supporting Papers #39.
[1023] File note dated 21 September 1959, on Secretary for Maori Affairs to Under Secretary for Mines, 18 September 1959 (not sent). Maori Affairs Head Office file 5/14/3. Supporting Papers #39.
[1024] Under Secretary for Mines to Secretary for Maori Affairs, 2 October 1959. Maori Affairs Head Office file 5/14/3. Supporting Papers #41.

informed me that he has confidence in my ability to express the owners' views.

2. The Committee of Management has not had time to meet to consider this Bill.
3. In principle the Committee of Management considers that the present Mining Act 1926 is unsuitable for the control and development of an iron and steel industry, and suitable special legislation is both necessary and desirable.
4. The owners of the ironsands deposits at Taharoa which, it is submitted, is at present the most substantial and likely area for development, have for the past 3 or 4 years watched with interest the plans being made by private persons and companies. For their own part the owners have at all times expressed a willingness to assist and co-operate in the advancement of the plans.
5. As evidence of their awareness of the importance of the proposals made over the past 3 or 4 years, the owners have come from many different parts of New Zealand to attend Court hearings, meetings of assembled owners and Committee meetings; they have unanimously resolved to incorporate as a corporate body (known as Taharoa C Block Incorporated) under the provisions of the Maori Affairs Act 1953; and the Committee of Management has resolved that a suitable Deed of Cession be drafted to give to the Crown prospecting rights on reasonable conditions.
6. The Committee of Management believes that the investigations and development of the iron and steel industry should be under the control of the Government. If the setting up of the industry is to be in the hands of registered companies, their full resources both financial and technical should be made known to, and satisfy, the Government and the owners of the areas to be worked.
7. It would appear certain that there is room for only one organisation for the industry, and that a monopoly will be created. Therefore to protect the interests of the owners of the deposits and the ultimate consumer, substantial control must be exercised at all times by the Government.
8. The Bill itself provides for compensation for the taking of land, and to this there is no objection.
9. The Bill (Clause 9) provides for the payment of royalties with an objectionable reference to 9d per ton maximum. I submit that the words "not exceeding ninepence for every ton of ironsands mined from the land" should be deleted. Why should there be any maximum? No minimum is mentioned. In fairness the future royalties should not be tied to any minimum or maximum by unilateral arrangement. It is not right that future royalties should be pegged to some figure which may be quite out of proportion in the years to come. The Taharoa people want only a fair royalty for the asset which they own, and which they are willing to put into the national economy.
10. The Committee of Management wants all sacred places at Taharoa treated with respect. There are numerous cemeteries there. Treating with respect means really that earth-moving equipment should not encroach on known cemeteries without prior satisfactory arrangements being made, and if earth-moving operations reveal unknown cemeteries such operations shall cease until satisfactory arrangements have been made.

11. I place on record that the Maoris of Taharoa claim the foreshore between the Tasman Sea and the lands now known as Taharoa C Block. An investigation of title will be instituted if necessary.
12. Taharoa is a remote district west of the Waikato with poor access, no electricity supply, and consequently lacking in the usual advantages of urban and rural New Zealand. Their ironsands are their great asset and the Taharoa people expect a fair return for them.[1025]

In summary, this submission supported the Crown taking control of prospecting and mining the ironsands at Taharoa, where this would "protect the interests of the owners of the deposits". Such taking control was seen as being to allow for the orderly development of mining. This is consistent with the discussions the owners had been having over the preceding three years, when it was contemplated that there would be a Deed of Cession to the Crown of rights to ironsands prospecting and mining. However, consistent also with the promises held out to Taharoa Maori that they could decide the terms and conditions of cession, the submission set out the owners' expectations that they were entitled to "a fair return", that royalties should not be capped, and that wahi tapu sites should be respected and protected. There is no indication that the submission caused any change to the Bill that was reported back to Parliament. Certainly the nine pence per ton maximum royalty, which the submission described as the most objectionable part of the legislation, was not altered.

The Iron and Steel Industry Act 1959 established a new regime for the mining of ironsands. In an "ironsands area" covering parts of the west coast of both the North and the South Island, the right to prospect and mine for ironsands was vested in the Crown. The North Island area was a strip above mean low water mark and extending inland for three miles[1026], from the South Head of Kaipara Harbour in the north to the mouth of the Whangaehu River (on the south Taranaki coast) in the south. This description included all of Taharoa C block. The vesting in the Crown by statute effectively by-passed the need to obtain a Deed of Cession from the Maori owners, and the need for any involvement of the Maori Land Court. Instead the right to prospect and mine became instantly placed in the hands of the Crown. There was,

[1025] Submission by BD O'Shea to Goldfields and Mines Committee, 7 October 1959. Legislative Head Office file 1959/3. Supporting Papers #15-16.
[1026] The Schedule to the Act specified that it was "3 miles wide measured inland from mean high water mark", together with "all tidal lands contiguous to that land". This description included the foreshore on the beach and in the west coast harbours.

however, a time limit placed on the vesting; if the land had not been taken or purchased by the Crown for ironsands mining by 1 January 1968, then the vesting expired on that date. If any land was taken for the mining of ironsands (in accordance with Public Works Act procedures), compensation would be paid for the land so taken (not including the value of the ironsands), and the former owner would also be entitled to royalties of up to nine pence per ton of ironsands mined as fixed by the Minister of Mines. This royalty rate was only half the figure being discussed two months prior to the passing of the legislation; the circumstances surrounding this change, which represented a Crown-imposed cap on the benefit that Maori landowners could gain from having ironsands on their land, are not known.

In the period leading up to the introduction of the legislation, and in the debates in Parliament, there was little explanation of exactly what the vesting in the Crown meant for the rights of Maori landowners. Perhaps the best explanation of the nature of the right vested in the Crown located during the research for this topic study was a legal opinion provided by the Solicitor General in December 1996. He wrote:

> The Crown's interest under the 1959 Act was a right to take ironsands. It was in the nature of a profit a prendre which, as described in Hinde McMorland and Sim's *Land Law* at p 711 para 6055, "confers a right to sever and take from the servient tenement to the grantee's own use some part of the realty of that tenement which is capable of ownership as some part of the soil or minerals". Ownership of the interest in land that comprises the servient tenement in the case of the ironsand areas was not disturbed by the 1959 Act. The Maori owners retained ownership of the minerals accordingly, subject to the Crown, or the licensee's, right to acquire ownership of the minerals severed and removed pursuant to the Act.[1027]

As explained earlier in this study, Maori landowners had already lost the sole rights to minerals when the Mining Act had granted some decision-making powers over minerals on Maori-owned land, including a power to act without obtaining prior consent of the owners, to the Native/Maori Land Court. Those powers held by the Maori Land Court continued in force after the passing of the Iron and Steel Industry Act 1959 for all minerals others than ironsand. The 1959 Act substituted the Court-held intervention power with a Crown-held intervention power, which among other things amounted to a power of veto over actions by Maori landowners with respect to ironsand. Maori rights to ironsand on their lands, which were already partial prior to

[1027] Solicitor General to Solicitor Ministry of Commerce, 5 December 1996. Commerce Head Office file 12/30/25-12. Supporting Papers #246-248.

1959, were altered by the 1959 legislation. It is a matter for legal interpretation whether, in the basket of rights to Maori land that included rights to minerals, the 1959 Act resulted in the Crown and the Land Court, considered together, having a greater, lesser, or similar proportion of that basket than before the Act was passed.

The changed statutory environment as a result of the passing of the Iron and Steel Industry Act 1959 raised two specific issues at Taharoa. These were:

- The future of the applications under Section 30 Mining Act that were before the Maori Land Court, and had been adjourned sine die in May 1957
- What role the Incorporation continued to have

The Crown proposed that the Court's jurisdiction to consider the applications had been removed by the new legislation, and that the applications should regarded as having lapsed[1028]. The Court, however, felt that proper process should be followed, all the parties should be notified, and the matter set down for a hearing. If all parties were agreeable that the Court had no jurisdiction, then the applications could be withdrawn or struck out[1029]. By this time an additional affected party existed, the New Zealand Development Corporation Limited, which had acquired by assignment the interests of the syndicate. It would not agree that the action before the Maori Land Court cease, because it felt that this might prejudice a claim it was pursuing against the Crown to be refunded the expenses it had incurred before its rights had been affected by the passing of the 1959 legislation; it sought a deferral of the decision to have the applications withdrawn or struck out[1030]. The Judge agreed to a one-year deferral[1031]. When that period was up the Development Corporation sought a further deferral, pointing out that the eight-year temporary nature of the vesting in the Crown could allow the adjourned applications to be revived once the vesting ceased[1032]; a further one-year deferral was granted by the Court[1033]. In March 1964

[1028] Under Secretary for Mines to Registrar Maori Land Court Auckland, 2 August 1960. Maori Affairs Hamilton file 32/16. Supporting Papers #401-404.
[1029] Maori Land Court minute book 39 M 232. Typed copy on Maori Affairs Hamilton file 32/16. Supporting Papers #405.
[1030] Registrar Maori Land Court Auckland to Secretary New Zealand Development Corporation Limited, 4 October 1960, and Gault, Mitchell and Wilson, Barristers and Solicitors, Wellington, to Registrar Maori Land Court Auckland, 17 October 1960. Maori Affairs Head Office file 32/16. Supporting Papers #406 and 407-417.
[1031] File note by Judge Brook, undated (27 October 1960). Maori Affairs Head Office file 32/16. Supporting Papers #418.
[1032] Gault, Mitchell and Wilson, Barristers and Solicitors, Wellington, to Registrar Maori Land Court Auckland, 11 December 1961. Maori Affairs Head Office file 32/16. Supporting Papers #419-420.

the Court ruled that the applications would be struck out at the conclusion of the next sitting of the Court at Ngaruawahia if they had not been prosecuted during that sitting[1034]. No one appeared at the next sitting to attempt to keep the applications alive, and they were accordingly struck out. Throughout this process the Crown could have withdrawn the two Section 30 applications it had lodged, but chose not to do so, instead adopting a passive stance[1035].

The vesting in the Crown of the right to issue a prospecting licence meant that the Taharoa C Incorporation was left with nothing to do. The Incorporation lapsed and was dissolved in October 1967[1036]. A new Incorporation, with the same name, had to be formed in 1970 when mining was proposed and the mining company needed to be able to negotiate with a legal entity representing the owners of Taharoa C.

C.6 Prospecting licence

With the passing of the Iron and Steel Industry Act 1959, the concept of the Crown obtaining a Deed of Cession at Taharoa was abandoned, and The New Zealand Steel Investigating Company Limited was set up. In December 1961 it applied to the Crown for a prospecting licence for the coastline between a point 8 miles north of the Awakino River and Albatross Point[1037]. The Minister was advised by his officials to approve the application, in a briefing note that included the following information:

> The strip [applied for] will be three miles wide measured inland from mean high water mark, and will include the bays, inlets and creeks and all the tidal lands contiguous thereto. These areas are covered by the Iron and Steel Industry Act 1959, and under that Act you have authority to grant the right to prospect. You will recall that your colleague, the Minister of Industries and Commerce, had earlier intimated that rights over this ironsand area were necessary in order that there should be a proper assessment of the reserves of suitable ironsands should an iron and steel industry based on ironsands be established….

[1033] Maori Land Court minute book 40 M 287-288. Typed copy on Maori Affairs Hamilton file 32/16. Supporting Papers #421.
[1034] Maori Land Court minute book 42 M 318. Typed copy on Maori Affairs Hamilton file 32/16. Supporting Papers #422.
[1035] Under Secretary for Mines to Minister of Mines, 20 March 1962, approved by Minister of Mines 21 March 1962. Mines Head Office file 12/30/25-4. Supporting Papers #93.
[1036] Order dissolving Body Corporate, 3 October 1967, and Order vesting land of a Body Corporate in the beneficiaries, 3 October 1967. Supporting Papers #548 and 549-570.
[1037] Secretary The New Zealand Steel Investigating Company Limited to Under Secretary for Mines, 20 December 1961. Mines Head Office file 12/30/25-4. Supporting Papers #90-91.

> As the company is a Crown company, no rent has been provided for in the authority. This area includes the Taharoa Block, which is in Maori ownership. Prior to the passing of the Iron and Steel Industry Act 1959, applications had been made by the New Zealand Development Corporation Limited for mineral prospecting warrants over the Taharoa area. The obtaining of any prospecting rights by the company at that time was contingent upon the settlement of a Deed of Cession by the Crown with the Maori owners, and the making of an Order by the Maori Land Court to authorise prospecting and mining. The passing of the Iron and Steel Industry Act 1959 replaced the procedure under the provisions of the Mining Act 1926.[1038]

The Minister gave his approval[1039].

The investigating company then continued its work on the west coast of the North Island throughout the 1960s. The time pressure it would have been under was removed when the Iron and Steel Industry Amendment Act 1965 repealed the subsection lifting the vesting on 1 January 1968. By this amendment, the vesting in the Crown of the right to prospect and mine for ironsands in the "ironsands area" became permanent.

C.7 Consents to mine

The drilling results showed greater reserves of ironsand concentrates at Taharoa than previously estimated[1040]. From 1970 onwards, up until production started in 1972, a new company, New Zealand Steel Limited (or its subsidiary New Zealand Steel Mining Limited), sought the necessary consents to mine the ironsands. Five of these consents are examined below:

- Ironsands mining agreement, issued by Minister of Mines in terms of the Iron and Steel Industry Act 1959
- Mining lease arrangement with the landowners, The Proprietors of Taharoa C Block Incorporation
- Licence to operate a port, issued by Minister of Marine
- Application for water rights, issued by the Water Allocation Council in terms of the Water and Soil Conservation Act 1967

[1038] Under Secretary for Mines to Minister of Mines, 18 January 1962. Mines Head Office file 12/30/25-4. Supporting Papers #92.
[1039] Under Secretary for Mines to Minister of Mines, 18 January 1962, approved by Minister 19 January 1962. Mines Head Office file 12/30/25-4. Supporting Papers #92.
[1040] Final report on ironsands prospecting at Taharoa, August 1969. Mines Huntly file 13/17/B. Supporting Papers #426-432.

- Compliance with town and country planning requirements in the Waitomo County district planning scheme

C.7.1 Ironsands mining agreement

The promising results from the prospecting work encouraged a new company, New Zealand Steel Limited, to develop a proposal for mining at Taharoa[1041], and apply to the Crown for a mining agreement[1042], as required by Section 3 Iron and Steel Industry Act 1959. The company intended to construct a concentration plant that would float in a pond within the ironsand dunes. A cutter dredge would extract the sand from one side of the pond and feed it into the concentration plant, with the concentrate then pumped to a stockpile while the waste tailings were returned to the back of the pond. From the stockpile the concentrate would be mixed into a slurry which could be pumped through a pipeline to a ship moored to a loading buoy offshore. Production was expected to be 1 million tons of concentrate a year, which would require the mining of 2 million cubic yards of sand a year[1043].

The company made the first approach to the Minister of Mines in May 1970.

> Prospecting rights over this area are held by New Zealand Steel Limited, but as a fully owned mining subsidiary company has been formed, it is desired to make the application in the name of the subsidiary, and for the mining rights to be likewise granted to the subsidiary.[1044]

At that stage the company's thoughts were that a tripartite agreement would be reached involving the company, the Crown and the Maori owners, in effect combining in the one document the ironsands mining agreement issued by the Crown and the

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[1041] New Zealand Steel Limited, Taharoa ironsands mining proposal, 19 May 1970. Mines Huntly file 13/17B. Supporting Papers #433-440.

[1042] The term used in this report is "ironsands mining agreement". This is intended to distinguish the right granted by the Crown under the Iron and Steel Industry Act 1959 from a mining lease or licence under the Mining Act, and from a land occupation lease entered into with the Maori landowners. While some of the historical documents quoted in this section use alternative terminology, the references should be read as being to a mining agreement. Crown Law Office had proposed the use of the term "agreement":

> [Crown Counsel] is of the opinion that the authority to mine ironsands should be by Agreement between NZ Steel and the Minister – not licence.
> [underlining in original]

File note, 5 October 1970. Mines Head Office file 12/30/25-12. Supporting Papers #102-103.

[1043] New Zealand Steel Limited, Taharoa ironsands mining proposal, 19 May 1970. Mines Huntly file 13/17/B. Supporting Papers #433-440.

[1044] Chairman New Zealand Steel Limited to Minister of Mines, 13 May 1970. Mines Head Office file 12/30/25-12. Supporting Papers #94-96.

land occupation lease issued by the Maori landowners[1045]. However, Crown Law Office opposed this approach.

> I confirm that in my opinion it is preferable that the grant by the Minister of prospecting and mining rights under the Iron and Steel Industry Act 1959 should be created by a licence separate from the mining lease granted by the land owners. The draft lease submitted [by the company] would combine the licence and the lease. The two matters however are quite distinct, and it is not desirable that the Minister should be so closely associated with the land owners in the exercise of his powers under the Act. Moreover the draft involves the Minister in matters which are no concern of his, and a number of obligations imposed on him would be quite unacceptable, even if there were to be a composite document….

Crown counsel recommended that the ironsands mining agreement to be granted by the Minister could include the following terms:

a) Term of years. The lessee has evidently arranged with the Maori owners for a 70 year term but, as discussed, I do not consider the Minister should grant a licence for this long period. Mr Summers [of Mines Department] has explained that discussions have shown that there was to be no rent or charge payable to the Crown in respect of the licence, but circumstances may change and licence rent, or the imposition of other conditions, may be desirable in the future. The Minister should be in a position to review the terms of the licence at intervals, and I suggest the first licence be granted for a term of 10 or at most 15 years.
b) Any conditions as to diligent prosecution of working the ironsands, and as to returns to the Department of progress, with perhaps the right to inspect books.
c) Any conditions as to physical working of the land and restoration of surface.
d) Approval of Minister to mining lease or any amendment. We agreed that the Minister would not be greatly concerned with the terms of the mining lease between the Maoris and the company, but it may be desirable to control the mining lease so that the Minister's approval is necessary to the royalty payable to the Maori owners. While the present royalty may be acceptable, the parties may alter it in the future, and some control may be preferred, especially if it may affect a licence rent later charged by the Minister.
e) Generally to comply with the terms of the Act and any other legislation affecting the operations.[1046]

[1045] Butler, White and Hanna, Barristers and Solicitors, Auckland, to Under Secretary for Mines, 10 June 1970, and Under Secretary for Mines to Crown Solicitor, 25 June 1970. Mines Head Office file 12/30/25-12. Supporting Papers #97 and 98.
[1046] Crown Counsel to Under Secretary for Mines, 16 July 1970. Mines Head Office file 12/30/25-12. Supporting Papers #99-100.

The concept of a stand-alone ironsands mining agreement was explained when a draft agreement was circulated to government departments for comment towards the end of 1970.

> A separate agreement between the Minister of Mines and NZ Steel Mining Co will be issued. This agreement will give authority for mining, specify the term, and require that all pertinent legislation will be complied with, i.e. the Iron and Steel Industry Act 1959, the Mining Act 1926, the Quarries Act 1944, the Workers Compensation Act 1956, and the Water and Soil Conservation Act 1967.[1047]

The ironsands mining agreement was intended to be an all-of-Government overarching document, covering all Crown matters except those to be considered under other legislation (such as water rights or port operations). In September 1970 a first draft of a stand-alone ironsands mining agreement was prepared by the Mines Department, and submitted to Crown Law Office for comment.

> Attached is a draft licence for your perusal. Would you please let me have your comments on whether or not it is drafted in a suitable form for issue, and any suggestions you might have for its improvement.
>
> The draft licence is not at present complete, because additional conditions will be required concerning reinstatement of the surface after mining. I am at present awaiting advice from the Catchment Board in this respect.
>
> Once the draft is in a suitable form, I propose to submit it to the government and local authorities concerned, and invite suggestions for additional conditions.[1048]

A revised draft was sent to the company for comment in October 1970[1049]. It was explained that the tripartite concept had been abandoned, that the company needed to redraft the proposed lease with the Maori landowners, and that the ironsands mining agreement would include a requirement that the lease with the Maori landowners had to be submitted to the Minister of Mines for his approval. By this means the Crown would not be a party to the land occupation lease, though it would be able to exercise some control over its contents. The Crown reserved the right to make changes to the

[1047] Under Secretary for Mines to District Commissioner of Works Hamilton, 29 October 1970. Works and Development Hamilton file 60/43. Supporting Papers #441.
[1048] Assistant Under Secretary for Mines (Administration) to Solicitor General, 15 September 1970. Mines Head Office file 12/30/25-12. Supporting Papers #101.
[1049] Assistant Under Secretary for Mines (Administration) to Mining and Development Manager New Zealand Steel Ltd, 9 October 1970. Mines Head Office file 12/30/25-12. Supporting Papers #104-105. Mining Agreement (draft prepared by Crown Law Office 6 October 1970), attached to Assistant Under Secretary for Mines (Administration) to Commissioner of Crown Lands Hamilton, 21 December 1970. Lands and Survey Hamilton file 3/2346. Supporting Papers #316-322.

draft agreement it supplied[1050]. The draft that was sent to the company left blank the length of the term of the agreement. When the company suggested in response that the term be 70 years, to be the same length as the term of the land occupation lease[1051], it was told that the term

> will not be co-terminus with the agreement with the Proprietors of Taharoa C Block. It is intended that the term will be fixed conjointly with approval for export contracts with Japanese steel mills. I understand that at present approval has been given for an export contract of up to 15 million tons of ironsand concentrate over a ten-year period.[1052]

This was, however, modified one month later, when the company was advised:

> Following discussions with Mr Higgins in Wellington, agreement has been reached to insert a new clause in the agreement. This new clause will provide for an initial term of 10 years and rights of renewal will be contingent upon the feasibility at that time of additional processing of ironsands.[1053]

A renewal for one further term of five years, with a right of priority to then negotiate a new agreement for a term of ten years, was proposed.

The mining proposals at Taharoa were examined by the Nature Conservation Council in November 1970. It advised the Minister of Lands that it was concerned with the following matters:

(a) Archaeological salvage – The New Zealand Historic Places Trust has informed Council that finance has not been obtained to carry out a full programme and the Trust is financing a three weeks investigation short programme. Requests for finance have been made to both the Steel Corporation and Government.
(b) Effects of operations on the water table – The information is that the proposals include the construction of a dam at Lake Taharoa, and use fresh water for separation of sand and other purposes. It does not appear that effects of this on the natural water table have been fully determined, and it is suggested that more research is required.
(c) Wildlife – The effects of the operations on wildlife in the area need further study.
(d) Total coastal stability – It is obvious that the sands in this area move quickly, depending on weather and the final stability of the area should

[1050] Assistant Under Secretary for Mines (Administration) to Mining and Development Manager New Zealand Steel Ltd, 9 October 1970. Mines Head Office file 12/30/25-12. Supporting Papers #104-105.
[1051] Butler, White and Hanna, Barristers and Solicitors, Auckland, to Assistant Under Secretary for Mines (Administration), 15 October 1970. Mines Head Office file 12/30/25-12. Supporting Papers #106-107.
[1052] Assistant Under Secretary for Mines (Administration) to Butler, White and Hanna, Barristers and Solicitors, Auckland, 27 November 1970. Mines Head Office file 12/30/25-12. Supporting Papers #109-110.
[1053] Assistant Under Secretary for Mines (Administration) to Butler, White and Hanna, Barristers and Solicitors, Auckland, 21 December 1970. Mines Head Office file 12/30/25-12. Supporting Papers #111.

> be safeguarded in a proper and efficient manner. This would probably involve the planting of marram grass, erection of some fences and ultimate planting with trees.
>
> The status of the land is Maori land, and while Council would not oppose a wise use of this natural resource, it is considered that the abovementioned matters should be taken into account before operations are commenced.[1054].

All of these matters were covered to one degree or another in the conditions of the mining agreement in its final form.

According to a newspaper report in January 1971, the Nature Conservation Council appears to have had some other concerns as well.

> Part of the export operation will involve the ponding of the Wainui Stream, Lake Taharoa's only outlet. Conservationists had speculated that the level of the lake would thus be raised automatically….
>
> Much of the history and wildlife [at Taharoa] is concentrated on Lake Taharoa, declared tapu by the local tribe, the Ngati Mahuta. The lake contains a species of grey mullet, the only place the fish occurs in a fresh water lake in New Zealand. It is also the home of three species of rare water fowl, whose existence would have been threatened if the lake was raised.
>
> New Zealand Steel's assurance that the lake will not be raised follows representations by the Nature Conservation Council and the New Zealand Historic Places Trust. A private individual approached the Council pointing out that the mullet and birds could be in danger of extinction. Among the birds that would have been threatened by even the slightest rise in the lake level were bitterns, rails, dabchicks and many other species of water fowl.
>
> The Council, a branch of the Lands and Survey Department, then approached the Wildlife Division of the Internal Affairs Department and asked them for a report on Taharoa. The report is still being compiled….
>
> New Zealand Steel has also allowed for the movement of grey mullet up and down the Wainui Stream in its ponding plans. Although they spend most of their life in the lake, the fish need to migrate to the sea to breed.
>
> The Maori owners of Lake Taharoa are at present engaged in a legal wrangle with the Crown as to who actually owns the lake. The Crown claims it owns the water and the Maoris the lake bottom. The Maoris dispute this, saying the entire lake is theirs.[1055]

[1054] Chairman Nature Conservation Council to Minister of Lands, 27 November 1970. Mines Head Office file 12/30/25-12. Supporting Papers #112-113.

[1055] *Waikato Times*, 23 January 1971. Copy on Lands and Survey Hamilton file 3/2346. Supporting Papers #323.

Despite a search for details of the "legal wrangle" about the ownership of Lake Taharoa, no correspondence about it was located during the research for this topic study.

There was still no agreement, however, on the length of term of the ironsands mining agreement. The company continued to want the term to match the 70-year lease with the landowners, though it was willing to consider an initial 15-year term with five rights of 10-year renewals, while the Crown considered this to be too long. As a file note in March 1971 recorded:

> The policy of granting shorter terms is aimed at providing a more regular review of the licence conditions and the licensee's performance, in view of the rapid changes taking place in technology and attitudes….
>
> The right of renewal at 10-year intervals for a total period of 65 years commits Government too deeply, and reduces the options open to it, for little purpose or national gain.

The Crown preferred to take the 13-year length of term of the company's sales contract with the Japanese steel works, and the associated export certificate that it had separately granted, as its guide. It had already agreed to a 10-year initial term, then a 5-year renewal, followed by a 10-year right of priority to a fresh agreement. The difference between a renewal and a new agreement with right of priority was the ability to set totally new conditions, such as requiring the payment of an export levy, or insisting on further processing in New Zealand prior to export[1056]. In August 1971 the company altered its request to a term of 16 years plus one right of renewal for 10 years[1057]. Sixteen years represented 15 years of production after allowing one year for establishment of the operation.

The implications for the Crown of a 16-year term were examined in a background paper for a meeting of officials from the Mines Department, Department of Trade and Industry, Treasury and Crown Law Office in October 1971. In particular it would cut across the reasoning behind a 10-year term.

[1056] File note, undated (March 1971). Mines Head Office file 12/30/25-12. Supporting Papers #122-124.

[1057] Butler, White and Hanna, Barristers and Solicitors, Auckland, to Assistant Under Secretary for Mines (Administration), 9 August 1971. Mines Head Office file 12/30/25-12. Supporting Papers #132.

> Consideration was given to charging a Crown levy on ironsands mined, and it was decided no levy to be payable for first 10 years, and that the matter be reconsidered upon expiry of ten years when renewal was requested….
>
> Ten years was to be a firm initial term for the agreement and after this the company could apply for an extension on such terms as determined by the Minister. There was therefore no need to mention levy, and this was dropped in the first draft by Crown Law which was submitted to the company….
>
> The company's requests for a longer period now take it past the initial 10 year levy-free period.[1058]

At the meeting it was agreed that the Crown would accept the company's proposal as to the term of the agreement, to be changed slightly to the extent that the term would be 15 years commencing on the date of the first shipment of ironsands. However, a renewal for a further 10 years was not accepted, as "this would bind the Crown to granting continued mining rights in 15 years time when the position could be markedly changed". Instead a right in priority would be given. These conclusions of the officials were put to the Minister of Mines[1059], who approved them and wrote to the company accordingly[1060].

The ironsands mining agreement was agreed between the parties in December 1971, and was signed on behalf of the company in January 1972, though it was not presented to the Minister of Mines for his approval and signature until March 1972[1061]. The delay was caused by the Crown's need to sight and approve some associated loan and debenture documents in advance of approval of the mining agreement. The agreement had a term of fifteen years from the date that loading of the first shipload of ironsands concentrate commenced[1062], and was confined to the Taharoa C block. It replaced the prospecting licence with respect to Taharoa C, though that licence continued in force with respect to all other lands that it covered; partial surrender of the prospecting licence was a part of the final ministerial approval

[1058] Background Notes, undated (September 1971), for interdepartmental meeting on 5 October 1971. Mines Head Office file 12/30/25-12. Supporting Papers #133-134.
[1059] Assistant Under Secretary for Mines (Administration) to Minister of Mines, 15 October 1971, approved by Minister 15 October 1971. Mines Head Office file 12/30/25-12. Supporting Papers #135-136.
[1060] Minister of Mines to Chairman New Zealand Steel Limited, 15 October 1971. Mines Head Office file 12/30/25-12. Supporting Papers #137-138.
[1061] Director of Administration to Minister of Mines, 28 March 1972, approved by Minister 29 March 1972. Mines Head Office file 12/30/25-12. Supporting Papers #139-142.
Ironsands Mining Agreement between the Minister of Mines and New Zealand Steel Mining Limited, 29 March 1972. Waikato Regional Council file 60.40.32A. Supporting Papers #1181-1196.
[1062] The first ship commenced loading on 23 October 1972.

of the mining agreement[1063]. The agreement was conditional on the company entering into a mining lease with the Taharoa C Incorporation. Conditions of an environmental nature included compliance with the Water and Soil Conservation Act 1967 (required in Clause 5), plus the following clauses:

> 17. The Company shall not do or cause to be done any act which in the opinion of the Secretary for Marine will accelerate or induce erosion to land above mean high water mark, injuriously affect any existing or proposed harbour works, or in any way interfere with navigation.
> 18. The Company will not in removing ironsands or ironsand concentrate erect any structures across the foreshore, or erect, anchor or position any moorings, lights or other structures in connection with the loading of ironsand concentrate on board ocean going vessels, without the prior written consent of the Minister of Marine….

Other conditions of the agreement covered protection of wahi tapu and site restoration work following mining; these are set out in later sections of this topic study dealing with those particular matters.

In a Second Schedule to the agreement, it was stated (among other matters concerned with site restoration referred to in a later section):

> 5. The Company will consult with the Wildlife division of the Internal Affairs Department with regard to any fauna inhabitation of the said land, and will do all things necessary to prevent sand from mining operations moving eastwards into the lakes situated along the eastern boundary of the said land….
>
> 7. The company will commence dredging operations at the most practical southern point of the said land, and will ensure that whenever possible mining operations are advanced systematically from south to north in the direction of the prevailing wind, so as to allow for restoration from time to time after completion of mining operations in any particular portion or piece of the said land….
>
> 9. The Company will progressively as mining operations permit, bury to a depth of not less than 3 feet all rock, clay, slag, other wastes and any impervious material and strata exposed during mining operations.

[1063] Director of Administration to Minister of Mines, 28 March 1972, approved by Minister 29 March 1972. Mines Head Office file 12/30/25-12. Supporting Papers #139-142.

10. The Company during mining operations will not unduly interfere with existing streams, and will endeavour at all times to ensure that such streams are kept open.[1064]

Throughout the period of negotiations leading up to the signing of the ironsands mining agreement, there is no record of any contact between the Mines Department and the Taharoa C Incorporation or their legal advisers. Either the Crown did not consider that there was any overlap, or it opted to act unilaterally. The Crown was of course aware of the terms and conditions of the mining lease that had been signed by the Incorporation and the mining company in March 1971 (see next section).

Once the ironsands mining agreement was signed and in place, the Mines Department file shows that there was no day-to-day monitoring of the operation in the head office of the Department in Wellington. There may, however, have been some monitoring of the terms of the agreement by the local Inspector of Quarries based in Huntly. However, that office's file records held by Archives New Zealand are slight, and time did not permit further inquiries being made to locate any other records. Essentially the mining agreement provided a broad framework within which the company operated, while more detailed specifications requiring closer monitoring were set out in other approvals such as the mining lease with the Maori owners, the water rights, and the inspection requirements of the Quarries Act 1944.

C.7.2 Mining lease

In addition to obtaining a mining licence from the Crown, New Zealand Steel Limited had to obtain the permission of the owners of Taharoa C block, and pay them a royalty based on the amount of ironsand extracted.

The Incorporation ordered by the Maori Land Court in 1959 had lapsed and been dissolved in 1967, so a new Incorporation was required. At a meeting of owners in January 1970, a resolution to become incorporated was passed. In March 1970, the Maori Land Court confirmed the resolution, created the Incorporation, and appointed

[1064] Ironsands Mining Agreement between the Minister of Mines and New Zealand Steel Mining Limited, 29 March 1972. Waikato Regional Council file 60.40.32A. Supporting Papers #1181-1196.

seven persons to be the Committee of Management[1065]. The objects of the Incorporation were:

> (a) To negotiate with and enter into any agreement or agreements with New Zealand Steel Limited and/or the Minister of Mines for royalties in respect of any ironsands and other minerals mined or to be mined from the Taharoa C block.
> (b) To arrange for the alienation by sale or lease or otherwise of the land or any portion thereof.
> (c) To engage in mining operations on the said land or to grant leases or licences for the removal or production therefrom of metal or minerals.
> (d) To carry on any enterprise or do any other thing in relation to the said land that may be specified in this Order of Incorporation.

Negotiations between the company and the Incorporation commenced in April 1970[1066]. During the negotiations, the Crown appears to have made a policy decision to avoid having any involvement. A sequence of correspondence on the Maori Affairs Department's file highlights this. In September 1970 a member of the public wrote to the Minister of Maori Affairs asking if the Crown had any protective duty towards the Maori owners.

> What protection is the Maori Minister giving to the interests of the Maori people, owners of the land involved in the takeover? They are mostly small farmers and fishermen, and will have no conception of the big business interests involved. The Government has a right to protect these interests for us, as well as for the Maori owners, and I hold that the Minister of Maori Affairs and the Minister [of] Mines [are] responsible to see that justice is done.[1067]

The Minister replied:

> I share your concern, expressed in your letter, that the owners of Maori lands where mineral deposits are being extracted be adequately safeguarded during negotiations with commercial enterprises.
>
> In the case of the Taharoa ironsands area, the land is owned by a Maori Incorporation. The Incorporation's Committee of Management has been conducting negotiations on behalf of the owners with New Zealand Steel Limited for the sale of ironsands….

[1065] Maori Land Court minute book 47 W 214-215. Supporting Papers #524-525.
Order of Incorporation, 9 March 1970, and Order appointing members to Committee of Management, 9 March 1970. Supporting Papers #571-590 and 591.

[1066] *Waikato Times*, 16 April 1970 and 17 April 1970. Copy on Mines Huntly file 13/17. Supporting Papers #423 and 424.

[1067] Enid I Sonntag, Dunedin, to Minister of Maori Affairs, 24 September 1970, attached to Minister of Maori Affairs to Secretary for Maori Affairs, 29 September 1970. Maori Affairs Head Office file 5/14/3. Supporting Papers #42-44.

> The Management Committee of any Maori Incorporation accepts a good deal of responsibility in its month-to-month administration of the land and other assets it owns, and over the years these committees have developed considerable management experience and expertise. I have no doubt that in this case the Committee concerned, which has retained professional advisers on some points, is quite able to discharge its responsibilities to the owners of the Incorporation, and to take any steps necessary to safeguard their interests.
>
> The Incorporation is well aware of the general situation regarding the ironsands, and would be unlikely to welcome unasked for intervention in its affairs.[1068]

The member of the public was unconvinced.

> I do not agree, and I am sure you cannot, that these people have the business training, astuteness and international financial background to enable them to deal with foreign interests backed by the Japanese and German banks.
>
> This eight-man [Japanese] delegation were picked men – our Maori people would be "babes in the wood" in their hands.
>
> The New Zealand Steel Co Ltd, of which I think the Government holds shares, would be exploiting its own interests. Indeed, they already had an agreement with the Japanese before the Maori owners were consulted….
>
> Mr McIntyre, you had a duty to be there or be represented.[1069]

The Minister replied:

> I appreciate the points you make in your letter of 6 November, but the fact is that whether or not the incorporation is competent to handle its own affairs – and I believe it is – I have no standing in the matter.
>
> You suggest in your letter that in my capacity as Minister of Maori Affairs I should intervene on the Maori owners' behalf. Such an intervention would be completely unwarranted, and would probably quite justifiably be unwelcome to the owners.
>
> I do understand your concern that the Maori people's assets must not be exploited to the owners' disadvantage, particularly in dealings with foreign companies, but it is not within my authority, or the Government's, to intrude upon the judgment and decisions of the persons and bodies who are legally in a position to run their own affairs.[1070]

[1068] Minister of Maori Affairs to Enid Sonntag, Dunedin, 4 November 1970. Maori Affairs Head Office file 5/14/3. Supporting Papers #45.
[1069] Enid I Sonntag, Dunedin, to Minister of Maori Affairs, 6 November 1970. Maori Affairs Head Office file 5/14/3. Supporting Papers #46.
[1070] Minister of Maori Affairs to EI Sonntag, Dunedin, 13 November 1970. Maori Affairs Head Office file 5/14/3. Supporting Papers #47.

The negotiations were completed and the mining lease signed in March 1971[1071]. It was for a seventy-year period commencing on 1 April 1972. The lease provided for occupation of Taharoa C for all measures required to extract and process ironsands, including "to divert watercourses (with the prior written consent of the Incorporation which shall not be unreasonably withheld)". During the first five years of the lease, a royalty of 15 cents per metric ton of ironsand concentrate would be paid with respect to the first 5 million tons, then 25 cents per metric ton with respect to any additional volume. For the following five years (1977-1982), the royalty would be 25 cents per metric ton. After 1982 the royalty would be adjusted annually according to a formula specified in the lease that was based on the New Zealand consumer price index. The company would pay an advance on royalties of $25,000 on signing, and a further $25,000 one year later. There were a number of conditions forming part of the lease. Those of an environmental nature were:

> [New Zealand Steel Mining Limited, the lessor,]
> (5) Will, where mining operations have been conducted within two (2) chains of mean highwater mark, construct or reconstruct suitable and uniform foredunes to the satisfaction of the Minister of Marine for the purpose of protecting the said land from erosion.
> (6) Will not commit any unnecessary damage or waste in and about the said land or any part thereof in carrying out the said works, or in exercise of the liberties hereby granted….
> (9) Will, progressively as and when mining operations in respect of parts of the said land are completed and such parts of the said land no longer required for mining operations, contour each such part to easy grades to facilitate as far as practicable the establishment of marram grass and lupin and afforestation by the Incorporation, so that within six months after the expiration or sooner determination of the said term all those parts of the said land which have been the subject of mining operations pursuant to this deed shall have been contoured as aforesaid….
> (11) Will take all possible precautions to prevent damage to historic places, burial grounds, relics, artefacts, fossils and other articles of antiquity, all of which shall be the property of the Incorporation, and will immediately upon discovery thereof and where possible before disturbance thereof acquaint the Incorporation of such discovery and carry out at the lessee's expense the Incorporation's reasonable instructions as to disposal or protection thereof….
> (14) Will consult with the Wildlife division of the Internal Affairs Department and the Incorporation with regard to any fauna inhabitation of the said land.
> (15) Will comply with the Water and Soil Conservation Act 1967 and its amendments in respect of the taking of water from or discharging of water into any stream or creek on the said land.

[1071] Mining Lease between The Proprietors of Taharoa C Block and New Zealand Steel Mining Limited, 1 March 1971. Waikato Regional Council file 60.40.32A. Supporting Papers #1166-1180.

(16) Will consult with the incorporation before interfering with any stream or creek on the said land with a view to safeguarding fishing and associated rights as far as is practicable.

It is apparent from the above that many of these conditions duplicated the conditions in the Second Schedule of the agreement with the Crown. In reality it was the other way around, that the mining lease had been drawn up first, and the ironsands mining agreement had been drawn up later. Why the conditions needed to be required by both parties is not clear. However, the duplication emphasises the consultation that occurred between the Crown and the Incorporation as the conditions were being developed, and the interconnecting nature of the two consenting documents.

This interconnection had been reinforced by the decision of the Minister of Mines in October 1970 to make it a condition of the ironsands mining agreement that the Minister would have to approve the mining lease. In this instance, the Crown's kawanatanga authority was being viewed as more dominant than the landowners' rangatiratanga. During the period between the Minister's decision and the lease being signed, a Crown Law Office legal opinion had commented:

> There is no specific provision under the Iron and Steel Industry Act 1959 providing for the Minister's approval of such a lease, although of course he may impose a condition that his approval be given before an agreement to mine under the Act is completed. This is what he has done on this occasion. However, in the circumstances, I do not think a formal consent by the Minister is necessary, and accordingly I think that it will be sufficient if a letter is written by your Department returning the Lease to the solicitors concerned and advising that the terms are acceptable to the Minister. It should be pointed out however that the agreement is not to be varied in any way without the express prior approval of the Minister, who may at his discretion either decline or consent to such variation, or consent upon such terms as he may in his absolute discretion see fit to impose.[1072]

A newspaper article in May 1972 suggests that the advance payment of royalties was made at the request of the Incorporation[1073]. Among the items on which the advance was spent were:

- $12,000 worth of New Zealand Steel shares

[1072] Crown Counsel to Under Secretary for Mines (Administration), 29 March 1971. Mines Head Office file 12/30/25-12. Supporting Papers #125-126.
[1073] *Waikato Times*, 15 May 1972. Copy on Maori Affairs Head Office file 5/14/3. Supporting Papers #48.

- A $1000 loan to Waitomo Electric Power Board, in order to get electricity to Taharoa
- $1000 to the fund for renovations to the Kimikimi dining hall at Turangawaewae

There were also legal expenses and the expenses of the Committee of Management to be paid.

It is not the purpose of this report to examine the work of the Committee of Management, or assess the effectiveness or otherwise of the mining lease (which remains in force today). However, a number of the annual reports of the Chairman of the Committee were located in the Maori Affairs Department files during research for the report; the first two of these annual reports are included in supporting papers[1074].

C.7.3 Licence to operate a port

A further Crown involvement concerned the development of port facilities at Taharoa. Consideration of this matter got underway in March 1970, when New Zealand Steel Limited advised that the ironsand concentrate would be mixed with water to form a slurry that could be transported by pipeline from the land via an offshore buoy to the export ship moored there. The Navy's hydrographic section assisted with soundings of the approaches to the site of the buoy[1075]. The Secretary for Marine told the company at this initial stage:

> I do not anticipate any difficulty in advising the Minister of Marine to grant you a licence to occupy Crown land, that is the bed of the sea off Taharoa, for which a small charge will be made.[1076]

That approach was changed by the Crown over the next two months, when it was decided that instead of a specific seabed licence, a more all-encompassing measure would be adopted, with the sea off Taharoa being declared a harbour. This was "so that the General Harbour Regulations, and Customs and Health requirements etc, can

[1074] Annual reports of Chairman for the years to 31 March 1971 and 31 March 1972. Maori Affairs Head Office file 5/14/3. Supporting Papers #49-50 and 51-54.
[1075] New Zealand Steel Limited to Secretary for Marine, 2 March 1970. Transport Head Office file 54/41/3. Supporting Papers #255-256.
[1076] Secretary for Marine to Mining and Development Manager New Zealand Steel Limited, 17 March 1970. Transport Head Office file 54/41/3. Supporting Papers #257.

be made to apply to ships" using the loading buoy[1077]. Harbour limits at Taharoa were defined, in terms of the Harbours Act 1950, in June 1970[1078]. These were for what was later described as "the 'notional' harbour of Taharoa"[1079]. At the time the harbour limits were defined, a summary of the Crown's general approach was provided in a letter by the Minister of Marine to his colleague the Minister of Internal Affairs:

> The exact proposed position of the buoy is now known, and it was considered to be essential to declare the limits of a "harbour" at this site in order that these ore-carrying ships should be subject to the General Harbour Regulations 1968, which apply to every harbour in New Zealand, and that ships arriving in this "harbour" should be subject to customs and health clearance requirements, and be made liable to pay coastal light dues.
>
> Unless some other arrangement later appears to be necessary, when further details are known, this "harbour" will be under the control of the Marine Department. The Company will be licensed under the Harbours Act 1950 Section 162 to occupy the bed of the ocean by placing buoy moorings on it, and I intend to charge a licence fee of $1,000 a year, which should cover the cost of administration. The plans of the buoy and its moorings will be subject to my approval under Section 178 of the Harbours Act 1950, and it may be necessary to prohibit anchoring within the harbour limits, or make other regulations for the safety of navigation and to protect the moorings and pipeline.[1080]

All these additional consents, and the charging of a licence fee, arose from the Crown choosing to exercise specific authorities available to it under the Harbours Act in relation to the part of the sea within the harbour limits. There was no consultation with local Maori. The licensing arrangements were formally confirmed in writing in November 1970[1081].

The Minister of Marine issued a licence to operate a port for 14 years from October 1972[1082]; it was during this month that the harbour was first visited by a ship to load

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[1077] Secretary for Marine to Minister of Marine, 28 May 1970. Transport Head Office file 54/41/3. Supporting Papers #258.
[1078] *New Zealand Gazette* 1970 page 1235. Supporting Papers #595.
[1079] Acting Secretary for Marine to Minister of Marine and Fisheries, 23 November 1970. Transport Head Office file 54/41/3. Supporting Papers #261.
[1080] Minister of Marine to Hon DC Seath, 12 June 1970. Transport Head Office file 54/41/3. Supporting Papers #259.
[1081] Secretary for Marine to Mining and Development Manager New Zealand Steel Limited, 6 November 1970. Transport Head Office file 54/41/3. Supporting Papers #260.
[1082] Licence to operate at Taharoa Harbour, issued 17 October 1972. Transport Head Office file 54/41/3. Supporting Papers #262-272.

ironsands. By the time the licence was issued, the annual fee had risen to $6000, reviewable annually[1083].

C.7.4 Water rights

The company had to apply for water rights as a consequence of all rights to natural water becoming vested in the Crown by Section 21 Water and Soil Conservation Act 1967. These applications had to be made to the Crown, because as at 1970-71 the Taharoa district was not within the catchment district administered by the Waikato Valley Authority or any regional water board.

The first contact by the company about water rights was made in March 1970, when consultants made a preliminary application to the Ministry of Works in Hamilton to take water from Wainui Stream for use in the dredging operations and in the pumping of the slurry to the ship.

> It is anticipated that the dredge will use 7,500 g.p.m. [gallons per minute], but this quantity will be re-circulating and the only requirement will be for a small amount of make-up water.
>
> The pumping of the concentrate to the ship involves the use of 50,000 tons of water over a period of 2 days. To provide this water it is proposed to construct a dam near the mouth of the stream to form a storage basin of sufficient capacity to meet this demand. The height of the dam will be limited to the maximum obtainable without affecting the level of Lake Taharoa. It is expected that this ship loading operation will occur every 10-20 days.[1084]

The Ministry's initial response was to seek further information, in order to understand whether there was sufficient flow out of Lake Taharoa, and sufficient storage created on the Wainui Stream, to meet the company's needs[1085]. While a preliminary water budget study suggested that there would only just be sufficient water if the volumes set out in the application proved to be accurate[1086], this needed to be confirmed by

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[1083] Between July and September 1972, in preparation for the issue of the port operating licence, a pilotage district was defined (*New Zealand Gazette* 1972 page 1644 - Supporting Papers #596), a harbourmaster was appointed (*New Zealand Gazette* 1972 pages 1819, 1956 and 1979 - Supporting Papers #597, 598 and 599), and a pilot was appointed (*New Zealand Gazette* 1972 page 2021 - Supporting Papers #600).

[1084] Andrew Murray and Partners, Auckland, to District Commissioner of Works Hamilton, 11 March 1970. Works and Development Hamilton file 96/415000. Supporting Papers #467.

[1085] District Commissioner of Works Hamilton to Andrew Murray and Partners, Auckland, 15 April 1970. Works and Development Hamilton file 96/415000. Supporting Papers #468-469.

[1086] Report by hydrologist G McGillivray, 24 May 1970. Works and Development Hamilton file 96/415000. Supporting Papers #470-471.

further more detailed investigations[1087]. At this point the company's consultant expressed some surprise at the extent of the further investigations required.

> We had not appreciated the need for a more precise establishment of water requirements at this stage.
>
> The question is tied up to some extent with the method finally adopted for winning the sand. Since there is no other landowner between the proposed dam and the sea, and therefore no one to be affected by any variation in the volume taken, we had contented ourselves at this stage with ensuring that the volume available would be adequate. To go beyond this point at present would entail the finalisation of some design and operational details which, we understand, are not ready to be finalised.
>
> In view of the location of this particular water source, we trust that you will consider our approach reasonable.[1088]

The District Commissioner's reply did not comment on the suggestion that as no one else would be affected the company could take all of the water draining from the lake. Instead it queried the amounts sought in the preliminary application, and how any greater requirement might not be able to be met from the flow in the Wainui Stream.

> The water requirement for pumping concentrate to ships as given in your [application] is equivalent to the storage of 2 cusecs for 10 days. This flow of 2 cusecs equals the minimum predicted discharge from Lake Taharoa.
>
> The water requirement for the dredge is given as 7500 g.p.m., that is 20 cusecs. It has been stated in your [application] that only a small quantity of water would actually be required as make up water, as the major portion would be recirculated. In site discussions it appears to have been agreed that a significant portion of the dredge water could be lost and the make up water demand would be high.
>
> The total of this as yet unspecified amount of make up water, and the concentrate transport requirement of 2 cusecs means that the entire Lake Taharoa discharge, if not even a greater amount, is required for the operation. It is understood, though, that dredging and concentration techniques are still being reviewed, and that overseas advice is being sought.[1089]

[1087] Murray North Partners, Auckland, to District Commissioner of Works Hamilton, 10 June 1970, and District Commissioner of Works Hamilton to Murray North Partners, 17 June 1970. Works and Development Hamilton file 96/415000. Supporting Papers #472-474 and 475.

[1088] Murray North Partners, Auckland, to District Commissioner of Works Hamilton, 19 June 1970. Works and Development Hamilton file 96/415000. Supporting Papers #476.

[1089] District Commissioner of Works Hamilton to Murray North Partners, 26 June 1970. Works and Development Hamilton file 96/415000. Supporting Papers #477-478.

Further information on water requirements became available in July 1970[1090], and a calculation of the effect of this demand on Wainui Stream and Lake Taharoa was made later that month. This showed that during most of the year the flow in Wainui Stream would meet the operation's minimum requirements. However, during drought conditions, the water requirements could only be met by drawing down on the level of the lake, either by taking water directly from the lake or by lowering the stream level at the lake outlet[1091]. This prompted discussions between Ministry of Works and the company's consultants, which apparently resulted in a conclusion that lowering the level of the lake outlet was the preferred option, as the consultants were written to asking for their confirmation that what was being applied for was a total of five rights for a period of 10 years:

1. Right to dam the Wainui Stream … to create a reservoir of 45 acre feet at a minimum RL [reduced level] of 28.5' [feet].
2. Right to divert the Wainui Stream … for construction of concentrate pipeline. (Note that any reversion of the stream to natural alignment would not be stopped after the installation of the pipeline.)
3. Right to excavate the Wainui Stream channel so that 4.5 cusecs will flow when Lake Taharoa is at RL 29.0' and the reservoir is at RL 28.5'.
4. Right to take 4.5 cusecs per day from the Wainui Stream for dredging operation and pumping concentrate to ships.
5. Right to lower Lake Taharoa to a minimum level of RL 29.0'.

> The right to lower the lake has been introduced so as to provide for the deficiency between the demand of 4.5 cusecs and the minimum predicted flow in drought periods of 2 cusecs.
>
> The water demand of 4.5 cusecs comprise an allowance of 2.15 cusecs for dredging, 2.15 cusecs to be stored for 10 days to provide for pumping concentrate to the ships, and a 0.2 cusecs allowance for seepage and evaporation from the reservoir.
>
> The minimum level of Lake Taharoa has been based on our observations [that] zero outflow under natural conditions occurs at RL 30.0 (c.f. your level of RL 30.5).
>
> Our analysis shows that a slight back water may occur under design flood discharge, but it is anticipated that the stream improvement necessary to pass minimum flow of 4 cusecs at low lake level will rectify the position.[1092]

[1090] Murray North Partners, Auckland, to District Commissioner of Works Hamilton, 21 July 1970. Works and Development Hamilton file 96/415000. Supporting Papers #479-482.
[1091] Report by hydrologist G McGillivray, 31 July 1970. Works and Development Hamilton file 96/415000. Supporting Papers #483-488.
[1092] District Commissioner of Works Hamilton to Murray North Partners, Auckland, 26 August 1970. Works and Development Hamilton file 96/415000. Supporting Papers #489-490.

The consultants confirmed that this was correct, and also asked for two additional rights:

> The right to extend the reservoir at the same governing levels in the course of sand dredging operations.
> The right to discharge pumping water into the sea at the offshore loading point (approx 1¼ miles off shore).[1093]

When the application for water rights was publicly notified in October 1970, the seven component rights were listed, along with an eighth one added by the Ministry of Works, to "discharge water from Wainui Stream in new diversion". The public notification occurred only in the *New Zealand Herald*[1094]. No objections were received.

The following month the District Commissioner of Works advised the Commissioner of Works in Wellington that the application had been received, adding that:

> The quantity of water available has been assessed by the District Hydrologist using the very short term data available from the Oteke Representative Basin. The granting of the rights will utilise all the dry weather flow of the Wainui Stream, and the right to lower the lake is to provide sufficient water for mining operations during extended dry weather periods.
>
> It is recommended that the rights be granted.[1095]

The immediate reaction in Wellington was that the legislation required that affected persons had to be notified, and that "the County and the Acclimatisation Society are two bodies that probably should have been notified"[1096]. There was no mention of the Maori owners of Taharoa C, or of the Taharoa Lakes Trustees. In January 1971 the applications were placed before the approval body, the Water Allocation Council. By this time the company's consultants had provided a further notice of application on the standard form set out in the First Schedule to the Water and Soil Conservation Act

[1093] Murray North Partners, Auckland, to District Commissioner of Works Hamilton, 18 September 1970. Works and Development Hamilton file 96/415000. Supporting Papers #491.
[1094] *New Zealand Herald*, 10 October 1970. Copy on Works and Development Hamilton file 96/415000. Supporting Papers #492.
[1095] District Commissioner of Works Hamilton to Commissioner of Works, 12 November 1970. Works and Development Head Office file 75/11/2/1. Supporting Papers #285-286.
[1096] Telex Commissioner of Works to District Commissioner of Works Hamilton, 18 November 1970 (incomplete). Works and Development Head Office file 75/11/2/1. Supporting Papers #287.

1967[1097], in which they stated that the dam across the Wainui Stream would be 8 feet high. This information, together with advice that the diversion of the stream would be 700 feet long "to an outlet to the sea some 1,200 feet north of the present mouth", was put before the Council. The district office's comments, including its recommendation that the rights be granted, were repeated. There was no other analysis of the applications before the submission to the Council recommended that the rights be granted[1098]. The Council resolved to grant the water rights[1099]. Each right was issued for a period of 10-years from 27 January 1971[1100].

Five days after the Council had granted the rights, the comments of the Wildlife Division of Internal Affairs Department and the Auckland Acclimatisation Society were received in Wellington. Wildlife Division was "satisfied that no detriment will occur to wildlife in Lake Taharoa", and the Acclimatisation Society considered that "acceptance of the application by [Wildlife Division staff] is sufficient"[1101].

Neither the Head Office nor the District Office files of the Ministry of Works show any attempt to approach or consult Maori at Taharoa. The Wainui Stream was included in the land title of Taharoa C block, while Lake Taharoa was included in the title of Taharoa A7A2A block. No consents were sought from the legal owners of these two blocks, an Incorporation and Section 438 trustees respectively. The only manner in which the legal owners could have become aware of what the Crown was doing was if they had noticed the public notification in the *New Zealand Herald*; this was particularly unlikely for the Taharoa Lakes Trustees who were resident at Taharoa, and yet who were the most affected by the damming and water taking proposals.

[1097] Application for right in respect of natural water, 24 November 1970. Works and Development Hamilton file 96/415000. Supporting Papers #493-494.
[1098] Director of Water and Soil Conservation to Water Allocation Council, 19 January 1971. Works and Development Head Office file 75/11/2/1. Supporting Papers #288-290.
[1099] Excerpt from minutes of Water Allocation Council, 27 January 1971, and Director of Water and Soil Conservation to Manager New Zealand Steel Ltd, 19 February 1971. Works and Development Head Office file 75/11/2/1. Supporting Papers #291 and 292-293.
[1100] Water Right Numbers 185-192, issued 25 February 1971. Works and Development Head Office file 75/11/2/1. Supporting Papers #300-315.
[1101] District Commissioner of Works Hamilton to Commissioner of Works, 29 January 1971. Works and Development Head Office file 75/11/2/1. Supporting Papers #294.

In October 1971 New Zealand Steel applied to transfer the water rights to New Zealand Steel Mining Limited, and also to extend the term of the rights so that they coincided with the term of the mining licence.

> The terms of the mining licence from the Minister of Mines for mining operations at Taharoa have now been settled, and the Minister's licence under the Iron and steel Industry Act will be for a term of fifteen years from the commencement of loading of the first shipment of ironsands, or the 31st day of December 1987, whichever is the earlier.
>
> The target date for the first shipment is August / September 1972.
>
> In addition New Zealand Steel Mining will have a right in priority to any other person to mine the area for a further ten years in the Minister's discretion.
>
> It is desired if possible that the Water Rights should be for a period co-terminus with the mining licence, and we would appreciate your Council giving favourable consideration to this matter and varying the terms of the Rights accordingly, or issuing new ones.[1102]

Changing the name of the licence holder was largely a formality. Extending the term of the rights was not so trivial. The submission to the Water Allocation Council stated:

> The term of a water right is designed to provide adequate provision for the best use of the particular water resource. The duration of the term depends primarily on the known information about the quantity of water available, including its temporal distribution, and on the likely present and future use or demand to be made on the particular water resource. Additional consideration is given to the term depending on the use being made of the water. Uses which demand large capital or which must be continued in full in the national interest must obviously tend to attract water rights with longer durations.
>
> When consideration is given to renewing the right, then the factors mentioned in the letter [of application] will be a factor weighing in favour of renewal. However it is possible that in view of additional water demands since the right was first issued, different conditions on the exercising of the right … may be necessary. Presumably also a Regional Water Board will be established for this area by the time these rights have expired.[1103]

[1102] Butler, White and Hanna, Barristers and Solicitors, Auckland, to Director of Water and Soil Conservation, 27 October 1971. Works and Development Head Office 75/11/2/1. Supporting Papers #295.

[1103] Director of Water and Soil Conservation to Water Allocation Council, 10 November 1971. Works and Development Head Office file 75/11/2/1. Supporting Papers #296-297.

The submission recommended that the term of the water rights should not be extended, and the Council made a decision that followed that recommendation[1104]. Yet again there was no contact with or consultation with Maori at Taharoa.

With the extension of the catchment district of the Waikato Valley Authority in April 1973 to encompass the Kawhia district and other parts of Te Rohe Potae's west coast, administration of the water rights issued by the Water Allocation Council for mining at Taharoa became the responsibility of the Waikato Valley Authority, in its capacity as the regional water board.

C.7.5 Compliance with town and country planning requirements

In 1971 Waitomo County Council had prepared a provisional draft of its district planning scheme, and forwarded it to the Ministry of Works and Development for its comments on proposed public works likely to be carried out in the county by the Crown during the 20-year planning timeframe of the scheme. Because the ironsand mining site was coastal land, it had been examined by a coastal survey conducted by the Department of Lands and Survey looking at future recreational and scenic reserve requirements along the coast. This survey had looked at the Taharoa sand dunes, inland to and including Lakes Taharoa, Nukumiti, Rotoroa, Rototapu and Harihari, and concluded that "possibly in the distant future" this area "could be suitable as a regional reserve catering for swimming, fishing, boating, camping, wildlife protection etc"[1105]. When Works and Development planning officials and Lands and Survey officials discussed this recommendation initially, they agreed that "it would be wise to draw the local authority's attention to its powers under the Town and Country Planning Act to control the extraction operations"[1106]. It is not known whether this happened or not; it was not mentioned in the formal response to the request for comment on proposed public works from Waitomo County Council.

[1104] Excerpt from minutes of meeting of Water Allocation Council, 1 December 1971, and Director of Water and Soil Conservation to Butler, White and Hanna, Barristers and Solicitors, Auckland, 9 December 1971. Works and Development Head Office file 75/11/2/1. Supporting Papers #298 and 299.

[1105] Commissioner of Crown Lands Hamilton to District Commissioner of Works Hamilton, 13 December 1971. Works and Development Hamilton file 60/43. Supporting Papers #442-443.

[1106] Commissioner of Works to District Commissioner of Works Hamilton, 22 December 1971. Works and Development Hamilton file 60/43. Supporting Papers #444.

The proposed public reserve at Taharoa continued to be discussed by officials. In May 1972 a joint departmental committee known as the Coastal Review Committee was reported as feeling that "there is little point in recommending a reserve designation [in a district planning scheme] if in fact coast and lake is to be substantially affected and altered by mining operations". The contrary view, however, was that mining would improve access and "eventually public reserve needs will have to be provided for"[1107]. The actual minutes of the meeting were more non-committal, declining to support a recommendation to ask the local authority to designate reserves around the lakes and rivers of a width that would protect them from the detrimental effects of mining, and preferring to keep a watch on developments[1108].

When the Waitomo County district planning scheme was publicly notified in May 1973, an objection was lodged by NZ Steel Mining Ltd, seeking to have an Iron Sands Zone created, and provision made for staff housing in the Rural Zone[1109]. The Minister of Works and Development then lodged a cross-objection:

> Although supporting the principle of a special zone for the company's operations, opposes the provisions suggested on the grounds that no provision is made for the restoration of areas mined, or to protect the scenic environs of Lake Taharoa, and that other changes are necessary if the special zone is to adequately provide for the company's operations and the interests of others affected.[1110]

The solicitors for the mining company responded with some proposed statements and ordinances (rules) that could be included in the planning scheme[1111]. The Crown considered these satisfactory, and at the hearing before Waitomo County Council the Crown's representative advised that there was no objection to the company's

[1107] Telex Commissioner of Works to District Commissioner of Works Hamilton, 17 May 1972. Works and Development Hamilton file 60/43. Supporting Papers #445.
[1108] Minutes of meeting of Coastal Review Committee, 17 May 1972. Works and Development Hamilton file 60/43. Supporting Papers #446-450 at 450.
[1109] Objection number 25 in Schedule of Objections, undated (received 20 September 1973). Works and Development Hamilton file 60/43. Supporting Papers #451-454.
[1110] Notice of opposition to objections by Minister of Works and Development, 12 October 1973, attached to Minister of Works and Development to County Clerk Waitomo County Council, 12 October 1973. Works and Development Hamilton file 60/43. Supporting Papers #455-458.
[1111] Butler White and Hanna, Barristers and Solicitors, Auckland, to District Commissioner of Works Hamilton, 25 October 1973. Works and Development Hamilton file 60/43. Supporting Papers #459-462.

objection. The Council then allowed the company's objection, so that the Iron Sands Zone was included in the district planning scheme[1112].

C.8 Variation to ironsands mining agreement

Ironsands mining got off to such a successful start that by 1975 the company was looking to enter into additional supply contracts with Japanese steel mills and increase the volume mined at Taharoa. Associated with this increase was the use of larger tonnage purpose-built ships. The investment in these new ships would be more commercially attractive if longer-term supply contracts could be negotiated. With this background, the company approached the Crown to ask that the ten-year right of priority after the first fifteen years of the ironsands mining agreement be converted to an extension of the agreement for ten years; this would make the agreement run until October 1997[1113]. The Crown was generally receptive to this extension. In a briefing paper to the Minister of Mines, the Secretary for Mines explained that the greater volume of ironsand exported would still come within the volumes covered by the agreement[1114].

> Total deposits of titano-magnetite ironsands along the west coast North Island beaches are roughly estimated to provide somewhere between 500 and 750 million tons of concentrate. Less than 10 million tons has so far been exported from both operations. Even at the maximum allowable rate of extraction under the agreement of 3 million tons per year for each of the Taharoa and Waverley [south Taranaki] operations, during the whole existing term of those agreements (11 years at Taharoa and 10 years at Waipipi [Waverley]), plus the proposed extended 10-year tem applied for by New Zealand Steel Mining, less than 100 million tons could be exported. Neither New Zealand Steel Mining nor Waipipi Ironsands are expected to reach the maximum of 3 million tons per year. Presently they have contracts with the Japanese for about 1.2 million in the case of New Zealand Steel and 1.6 million in the case of Waipipi. It is unlikely that in the foreseeable future either of the operations will be able to exceed 2 million tons per year.

However, the request for an extension reopened the question of whether an export levy should be charged.

> The Government had a substantial interest in the parent company, New Zealand Steel Ltd, when it was formed, and continues to do so. The current Government shareholding in the company is 47.5%, of which 30% is held in

[1112] Decision on Objection number 25, 13 December 1973. Works and Development Hamilton file 60/43. Supporting Papers #463-466.
[1113] General Manager New Zealand Steel Mining Limited to Minister of Mines, 22 December 1975. Mines Head Office file 12/30/25-12. Supporting Papers #152-153.
[1114] Secretary of Mines to Minister of Mines, 25 February 1976. Mines Head Office file 12/30/25-12. Supporting Papers #154-158.

> ordinary shares and the balance in special preference shares. When the mining agreement was negotiated, it was agreed that forbearance by the Crown from charging a royalty would substantially improve the economics of both the Glenbrook iron and steel operation and the Taharoa export operation, and thus materially assist a new and nationally significant industry to develop successfully…. Export is now exceedingly profitable for the mining company and its parent. While it would be difficult now to change the terms of the agreement to provide for a levy to be payable to the Government, if an extension of term of the agreement is approved the extension should require a substantial levy payment based on the tonnages exported. To equate it to some degree with Waverley, at least initially, it would seem that a levy of 5% of gross proceeds would not be unreasonable.

The briefing paper concluded:

> Additional export can be supported without adversely affecting reserve supply for a growing indigenous iron and steel industry. The request of New Zealand Steel Mining can be supported on this basis. Nevertheless, the depletion of a natural resource for use outside New Zealand, to little direct national benefit, should not be lightly encouraged, and it is considered that rather than approving a straightforward extension of term of the present agreement, an offer should be made to the company for an extension under limiting conditions. Because Taharoa is such a valuable ironsands area, further export should only be allowed if, at the time the extension is to commence, it has been proven to the satisfaction of the Minister of Trade and Industry that it is not economically feasible to undertake any additional processing of the ironsands in New Zealand prior to export, and if firm contracts for supply to the Japanese companies have been completed. In addition, the Taharoa operation could support a levy payable to the Crown of 5% of the gross proceeds of ironsands concentrate shipped during any extended agreement term.[1115]

The Minister agreed with this advice[1116], and the company was advised[1117].

However, from the company's point of view, the proposed conditions set by the Crown failed to provide the certainty needed for the negotiation of longer-term supply contracts or for the construction of larger ships. The additional supply contracts were predicated upon lower freight rates that the larger vessels would allow. During March 1976 there were negotiations with Crown officials that resulted in a further briefing paper being prepared for the Minister of Mines with some alternative proposals.

[1115] Secretary of Mines to Minister of Mines, 25 February 1976. Mines Head Office file 12/30/25-12. Supporting Papers #154-158

[1116] Secretary of Mines to Minister of Mines, 25 February 1976, approved by Minister of Mines, 9 March 1976. Mines Head Office file 12/30/25-12. Supporting Papers #154-158.

[1117] Minister of Mines to General Manager New Zealand Steel Mining Limited, 9 March 1976. Mines Head Office file 12/30/25-12. Supporting Papers #159-160.

> Officials have considered at length the figures presented to them by the company, and have now come to the view that extended mining with associated export rights for a period of five years from 1987, rather than the 10 originally asked for, can be supported.

This shorter extension would exclude the condition that the Crown had to be satisfied, at the time of the extension commencing (i.e. in 1987), that it would not prejudice the development of the domestic iron and steel industry. However, the proposed export levy would remain.

> The company representatives also raised the question of the levy requirements of 5% of gross value of proceeds, and argued that this was too high. Officials cannot agree, other than to clarify that it was intended only to apply to the 'fob' price, and would not include value inflated by freight costs, and this paper recommends essentially no change to that condition of the offer other than to clarify that point. However, the company did mention that it pays a commission to the Japanese 'sellers' of the ironsands concentrate of something like 3% of the 'fob' price, and officials agree that it would be reasonable to exclude this commission from the price for the purposes of assessing the levy.[1118]

Both the Minister of Mines and the Minister of Trade and Industry agreed to the changes in proposed conditions[1119], and the company was advised accordingly[1120]. The company's response was to clarify its expectation that the five-year extension still allowed for a five-year right of priority after the extension expired, and to advise that it would be taking up the rate of the export levy directly with the Minister[1121].

The approach to the Minister was made the following month, with the company arguing that it needed the cash flow from the export operation to finance the capital development of its steel works operation at Glenbrook, and pointing out that the export economics would be affected by the payment to the Maori landowners at Taharoa of escalating royalties (in line with the consumer price index) from 1982 onwards[1122]. Officials were unimpressed:

> The export of ironsands from Taharoa is extremely profitable, the proposed levy will not affect the viability of the operation, nor will it significantly affect

[1118] Secretary of Mines to Minister of Mines, 24 March 1976, approved by Minister of Mines 24 March 1976. Mines Head Office file 12/30/25-12. Supporting Papers #161-163.
[1119] Minister of Mines to Minister of Trade and Industry, 24 March 1976, approved by Minister of Trade and Industry 24 March 1976. Mines Head Office file 12/30/25-12. Supporting Papers #164.
[1120] Secretary of Mines to Supply Manager New Zealand Steel Ltd, 6 April 1976. Mines Head Office file 12/30/25-12. Supporting Papers #165.
[1121] Supply Manager New Zealand Steel Ltd to Secretary of Mines, 27 May 1976. Mines Head Office file 12/30/25-12. Supporting Papers #166-167.
[1122] General Manager New Zealand Steel Limited to Minister of Mines, 10 June 1976. Mines Head Office file 12/30/25-12. Supporting Papers #168-169.

> profitability for the company. An 'export' levy provides a direct benefit or return as an offset to the depletion of a natural resource. I therefore recommend that you confirm the requirement for a 5% levy to be paid on all ironsands exported during the extended term of the mining agreement.[1123]

While the Minister agreed with this recommendation (and so did his colleague the Minister of Trade and Industry[1124]), he also agreed a few days later, at a meeting with the General Manager of New Zealand Steel Ltd, to reconsider his decision. However, this was apparently just a matter of politeness, as the official who attended the meeting recorded:

> After the meeting I talked briefly with the Minister, and it was quite apparent he had no intention of changing his mind. The 5% levy stays![1125]

In July 1976 the company was advised that a 5% levy would apply during the extension period commencing in 1987[1126].

Having defined the terms of the extension, it still took one year to complete the documentation. Initial instructions to draw up the amendment to the agreement were issued to Crown Law Office in July 1976[1127], and a draft agreement was prepared the following month[1128]. In November 1976 the Minister approved a further amendment, whereby the amount of ironsands concentrate that could be mined was altered from 3 million dry metric tons per year over the twenty-year period of the agreement plus its extension to a total of 60 million dry metric tons over the twenty-year lifetime of the amended agreement[1129]. The variation to the ironsands mining agreement was signed in September 1977[1130].

[1123] Secretary of Mines to Minister of Mines, 25 June 1976, approved by Minister of Mines 25 June 1976. Mines Head Office file 12/30/25-12. Supporting Papers #170-171.
[1124] Minister of Trade and Industry to Minister of Mines, 7 July 1976. Mines Head Office file 12/30/25-12. Supporting Papers #173.
[1125] File note by MA Canning, 29 June 1976. Mines Head Office file 12/30/25-12. Supporting Papers #172.
[1126] Secretary of Mines to Supply Manager New Zealand Steel Limited, 16 July 1976, and Minister of Mines to General Manager New Zealand Steel Limited, 19 July 1976. Mines Head Office file 12/30/25-12. Supporting Papers #174 and 175.
[1127] Secretary of Mines to Solicitor General, 26 July 1976. Mines Head Office file 12/30/25-12. Supporting Papers #176-177.
[1128] Crown Counsel to Secretary for Mines, 25 August 1976. Mines Head Office file 12/30/25-12. Supporting Papers #178.
[1129] Secretary of Mines to Minister of Mines, 30 November 1976, approved by Minister of Mines 2 December 1976, Minister of Trade and Industry to Minister of Mines, 18 January 1977, and Secretary of Mines to Supply Manager New Zealand Steel Limited, 3 February 1977. Mines Head Office file 12/30/25-12. Supporting Papers #179-181, 182 and 183.
[1130] Secretary of Mines to Minister of Mines, 16 August 1977. Mines Head Office file 12/30/25-12. Supporting Papers #184.

In late 1987, when it came time to pay the levy, there was some discussion among officials about its philosophical basis. On the one hand it was acknowledged that the Iron and Steel Industry Act 1959 conferred a "development right" to the ironsands in the Crown while leaving their ownership (for royalty payment purposes) in the hands of the landowners[1131]. On the other hand there was an assessment that the imposition of the levy was "to some extent viewed as economic rent or a depletion payment accruing to the Crown for depletion of the resource"[1132]. In March 1988, following discussion with company representatives, it was recorded:

> The company do not consider that the levy is either fair and reasonable or lawful, and that they were forced to agree to it back in 1976 to ensure a long term contract with the Japanese. They requested that we waive this condition of the licence.
>
> After some discussion Phil Taylor and I agreed with them that the reasons for the introduction of the levy now form part of ancient history, are currently unreasonable, and quite possibly unlawful….
>
> Quite reasonably the Iron and Steel Industry Act does not provide a payment of a royalty to the Crown where the Crown does not own the minerals. Nor does it provide for the payment of an export levy, though this might not be included by the Act if Trade and Industry thought it was a good idea at the time. It seems the levy was actually imposed as a type of depletion policy instrument, and was set at a rate which took into account the amount the Crown was charging (using similar depletion policy reasons) at Waipipi, where it was entitled to charge a royalty.[1133]

Ultimately it was decided that, even though the Department of Trade and Industry was reviewing the general topic of export levies, the terms of the ironsand mining agreement should apply and the company should pay the levy[1134].

Variation of ironsands mining agreement, 20 September 1977. Waikato Regional Council file 60.40.32A. Supporting Papers #1197-1201.

[1131] Handwritten note on L Theyers to D Franks, 11 November 1987. Energy Head Office file 12/30/25-12. Supporting Papers #187-188.

[1132] Summary history of Taharoa ironsands mining agreement compiled by D Franks, undated (between November 1987 and March 1988). Energy Head Office file 12/30/25-12. Supporting Papers #189-190.

[1133] B Chapman to P McCarthy, 13 March 1988. Energy Head Office file 12/30/25-12. Supporting Papers #191-192.

[1134] Secretary for Energy to Manager New Zealand Steel Mining Limited, undated (March 1988). Energy Head Office file 12/30/25-12. Supporting Papers #193.

C.9 Amendments to water rights issued in 1971

In September 1976 New Zealand Steel Mining Limited applied to the Waikato Valley Authority (which in 1973 had taken over administration of the water rights issued in 1971 by the Water Allocation Council) for variations to the water rights to allow for an expanded mining operation[1135]. Under revised contracts with Japanese steel mills, the volume of exported ironsands concentrate was expected to double to 2.1 million tons over the 1976-1988 period. Consent to vary five of the eight water rights was sought:

- The right to dam the Wainui Stream to be varied to allow a dam "with a structure 17.5 feet high to a crest level of R.L. 38.0 feet creating a reservoir which will merge with the existing Lake Taharoa". A later clarification explained that initially the dam was to be built to a crest level of R.L. 35.0 feet, there would normally be a freeboard of 5 feet, and the normal operating level of Lake Taharoa would be between R.L. 28.0 and 30.0 feet[1136]. The application was treated as a variation that would increase the height of the dam from 13 feet to 17.5 feet with a crest level of R.L. 38.0 feet.
- The right to take water from the Wainui Stream storage lake to be increased from a maximum rate of 11,000 cubic metres per day to 100,000 cubic metres per day for up to 6¼ days per year.
- The right to dredge and maintain the bed of the Wainui Stream upstream to Lake Taharoa so that there could be a flow down the stream of 100,000 cubic metres per day, provided this change to the bed would not allow the level of Lake Taharoa to fall below R.L. 28.0 feet. This represented a reduction in the minimum level of the lake by one foot from the permitted level of R.L. 29.0 feet.
- The right to discharge an average of 2.5 million cubic metres per year of water containing suspended solids from vessels offshore as they were dewatering the slurry. This was an increase from an average of 1.92 million cubic metres per year.

[1135] Murray-North and Ridley Partnership, Tokoroa, to Secretary Waikato Valley Authority, 8 September 1976. Waikato Valley Authority file 60/N046. Supporting Papers #612-613.
[1136] Murray-North and Ridley Partnership, Tokoroa, to Secretary Waikato Valley Authority, 27 September 1976. Waikato Valley Authority file 60/N046. Supporting Papers #614.

- The right to discharge up to 50,000 cubic metres per day of water to the dredging pond. This was an increase from the permitted amount of 5,260 cubic metres per day.

The application as a whole was publicly notified and no objections were received. Officers of the Waikato Valley Authority recommended approval[1137], and in November 1976 the Authority gave its consent to the five variations sought[1138]. New Zealand Steel Mining is believed to have discussed the variations with the Committee of Management of the Taharoa C Incorporation before the application was lodged. There is no evidence, however, that there was any consideration given by the Waikato Valley Authority to the impact of the variations on fish, on wildlife, or on Maori values.

In June 1977, the company's consultant engineers provided an explanation of how the company intended to operate within the bounds set by the varied consents. The explanation is useful in including a conversion from imperial to metric measurements.

> The amended water right gives us permission to draw down to RL 28.00 (8.53 metres) (i.e. 1 foot (0.30 metres) lower than that specified in the original water right). At the same time the amended Water Right gives us permission to raise the Wainui Dam Crest to RL 38.00 (11.58 metres).
>
> It is proposed to control the Lake at RL 31.83 ft (9.70 m) throughout the winter, with a weir gate opening automatically during floods to limit the maximum flood level to RL 33.00 ft (10.06 m).
>
> The 3.83 ft (1.17 m) of storage between RL 28.00 ft (8.53 m) and RL 31.83 ft (9.70 m) will be for the plant operation through the summer months, when plant demand exceeds normal lake inflows.[1139]

The absence of any consultation with the Taharoa Lakes Trustees about changing the levels of the lake was raised by lawyers acting for the Trustees in November 1977, one year after the water rights had been issued. They complained to the Waikato Valley Authority that no specific notice had been sent to each trustee, even though their names and addresses were available in Maori Land Court records. They also

[1137] Excerpt from monthly officers' report to 24 November 1976. Waikato Valley Authority file 60/N046. Supporting Papers #615.
[1138] Chief Executive Waikato Valley Authority to NZ Steel Mining Ltd, 3 December 1976. Waikato Valley Authority file 60/N046. Supporting Papers #616.
[1139] Murray-North and Ridley Partnership, Auckland, to Waikato Valley Authority, 13 June 1977. Waikato Valley Authority file 60/N046. Supporting Papers #617.

complained that publicly notifying the applications in the *New Zealand Herald*, which was not readily available in Taharoa, was unacceptable[1140]. The Authority's response was to argue that Section 2(2) of the Water and Soil Conservation Act 1967 prevented it from notifying each trustee individually, as it defined a notice in a newspaper or on a hoarding as adequate public notification[1141]. A subsequent note on the Authority's file stated:

> Rang Mr Phillips 29/11/77. Discussed general situation. Owners under the impression that they owned the water. Main problem lack of precise knowledge of land boundaries. No further action required in the meantime.[1142]

C.10 Additional water rights, 1978-1985

Following a visit by Waikato Valley Authority staff in October 1977, the Authority identified some additional discharges, to Wainui Stream and onto the sand dunes, which were not covered by the existing water rights[1143]. A right for one of the discharges, of septic tank effluent onto the dunes, was immediately applied for and was granted for a 10-year term in February 1978[1144]. Applications for the other rights were delayed while an overall plan was prepared, the discharge sites were accurately plotted, and the discharge amounts were calculated[1145]

In September 1978 New Zealand Steel Mining Limited applied for five more water rights[1146]. These were:

- To discharge stormwater from buildings and hardstand areas into Wainui Stream, subject to the discharge first passing through an oil trap

[1140] Phillips and Powell, Barristers and Solicitors, Otorohanga, to Secretary Waikato Valley Authority, 7 November 1977. Waikato Valley Authority file 60/N046. Supporting Papers #621-622.
[1141] Chief Executive Waikato Valley Authority to Phillips and Powell, Barristers and Solicitors, Otorohanga, 11 November 1977, Phillips and Powell, Barristers and Solicitors, Otorohanga, to Secretary Waikato Valley Authority, 15 November 1977, and Chief Executive Waikato Valley Authority to Phillips and Powell, Barristers and Solicitors, Otorohanga, 24 November 1977. Waikato Valley Authority file 60/N046. Supporting Papers #623, 624 and 625.
[1142] File note 29 November 1977, on Chief Executive Waikato Valley Authority to Phillips and Powell, Barristers and Solicitors, Otorohanga, 24 November 1977. Waikato Valley Authority file 60/N046. Supporting Papers #625.
[1143] Chief Executive Waikato Valley Authority to Operations Manager NZ Steel Mining Ltd, 13 October 1977. Waikato Valley Authority file 60/N046. Supporting Papers #619-620.
[1144] Extract from minutes of meeting of Waikato Valley Authority, 22 February 1978, Secretary Waikato Valley Authority to NZ Steel Mining Ltd, 2 March 1978, and Water Right Number 3260. Waikato Valley Authority file 60/N046. Supporting Papers #628, 629 and 630-631.
[1145] Murray-North and Ridley Partnership, Tokoroa, to Waikato Valley Authority, 30 November 1977 and 23 December 1977. Waikato Valley Authority file 60/N046. Supporting Papers #626.
[1146] Murray-North Partners Ltd, Auckland, to Secretary Waikato Valley Authority, 25 September 1978. Waikato Valley Authority file 60/N046. Supporting Papers #632-633.

- To discharge stormwater at another location into Wainui Stream closer to the stream mouth
- To discharge tailings water in slurry form on to land
- To discharge tailings water, after passing through a settlement pond, into the sea
- To discharge stormwater, process water and under-stockpile drainage water into Wainui Stream

The Waikato Valley Authority approved all but the last of these applications in February 1979[1147]. They were issued in 1979 for a period of 10 years[1148]. The last application was deferred to allow for further investigation. Whether or not it was approved is not known.

In 1985 a water right was issued for the damming of Wainui Stream as a temporary measure while maintenance work was done on the dam and the stream channel (water right 850479).

C.11 Renewal of water rights in 1983 and 1988

The water rights issued in January 1971 were for a period of ten years. No application for renewal was received from the company prior to expiry, prompting a reminder letter from Waikato Valley Authority in April 1981[1149]. Following a meeting in July 1981, at which the Authority agreed to set out its requirements for renewal applications[1150], it was not until November 1981 that the requirements were provided to the company. With respect to the damming and taking of water from Wainui Stream, the company was told it should "give some indication as to the remaining flow in the Wainui Stream". Biological and fisheries information was not sought. Of the discharge to the Wainui Stream, the following comment was made:

> Of particular relevance is what they [the company] intend to do with the stormwater – process water outfalls that enter the stream near its mouth at present. These discharges should either be treated to prevent the formation of

[1147] Excerpt from minutes of Waikato Valley Authority, 28 February 1979, and Secretary Waikato Valley Authority to NZ Steel Mining Limited, 15 March 1979. Waikato Valley Authority file 60/N046. Supporting Papers #634 and 635-636.
[1148] Water Right Numbers 3464-3467, issued 17 April 1979. Waikato Valley Authority file 60/N046. Supporting Papers #637-644.
[1149] Chief Executive Waikato Valley Authority to New Zealand Steel Mining Ltd, 27 April 1981. Waikato Valley Authority file 60/N046. Supporting Papers #662.
[1150] File note, 6 July 1981. Waikato Valley Authority file 60/N046. Supporting Papers #663.

> a barrier across the stream, or should be diverted so as to not discharge into the stream. The stream could also be diverted to avoid the discharges, however after doing so the stream may revert to its natural course and the problem would reappear.[1151]

The applications were not submitted until September 1982[1152]. Four water rights were sought:

1. To dam Wainui Stream and take from the stream up to 67,500 cubic metres of water per day for ship loading operations, or up to 11,000 cubic metres per day for sand transportation purposes. This right was in continuation of the original rights Nos 185 and 186.
2. To discharge into the sea up to 67,500 cubic metres per day of surplus slurry water after ship loading. This would continue original right No 188.
3. To discharge from the mine site up to 330 cubic litres per second of stormwater off roofs and yards, water collected from under stockpile drainage, and process water overflows after settling in a new pond through an existing but not used slurry pipe into the Tasman Sea. This application was in replacement of the applications made for outfalls 'B' and 'C', consideration of which were deferred in 1979.
4. To discharge to Wainui Stream up to 240 litres per second of overflow water from the settling pond under right 3 above at times of heavy rain when the pump capacity may not be able to cope. This right would be in replacement of existing right No. 3465.

When the applications were advertised the following month (in the *New Zealand Herald*, with notification by letter to the Taharoa Lakes Trustees' lawyer), there was one objection, from Phillip Te Uira and other Taharoa Lakes Trustees, on the grounds that

> the grants would prejudice their interests as trustees and custodian of the Taharoa lakes. They believe the applicant should be under an obligation to show that it has thoroughly investigated all other possible sources of supply.[1153]

[1151] Chief Executive Waikato Valley Authority to Murray-North Partners Ltd, Hamilton, 3 November 1981. Waikato Valley Authority file 60/N046. Supporting Papers #664-665.
[1152] Murray-North Partners, Hamilton, to Chief Executive Waikato Valley Authority, 6 September 1982. Waikato Valley Authority file 60/N046. Supporting Papers #666.
[1153] Phillips and Powell, Barristers and Solicitors, Otorohanga, to Secretary Waikato Valley Authority, 2 November 1982. Waikato Valley Authority file 60/N046. Supporting Papers #668.

The applications were considered by the Waikato Valley Authority in March 1983. The staff report consisted of reports by a water resources officer and a biologist. The water resources officer considered that there were "no technical reasons why [the] rights cannot be granted", provided the recommendations of the biologist (see below) were included in the conditions of the rights. This was despite his acknowledgment that the dam imposed a barrier to fish passage, and no water budget for the lake, including inflows, outflow and abstraction, had been carried out[1154]. The biologist noted that Lake Taharoa was "the only significant coastal body of fresh water between Kaipara to the north and the South Taranaki bight" to the south, and was "a very productive bird sanctuary". He referred to the traditional Maori fishery for eels and mullet, remarking that "a correctly operating fish pass is now essential to the reinstatement and maintenance of this fishery". He recommended:

1. Should a right be granted to dam (existing) the Wainui Stream, it is recommended that the present pipe section of fish ladder passing from the dam under the road to lower sections of the fish ladder be modified or replaced to create resting stages for migratory fish, and flows appropriate to juvenile fish migration.
2. Should a right be granted to take water from the reservoir created by a dam, it is recommended that a water budget be prepared. This budget should take into account inflows to Lake Taharoa and mining operation demands, and permit the maximum natural flow over the dam to the Wainui Stream.
3. Should a right be granted to discharge stormwater and ironsand concentrate stockpile drainage water to the Tasman Sea, it is recommended that provision for diversion of some or all of this water to the dam on the Wainui Stream be considered. In the event that present or future treatment procedures can produce a discharge of a quality compatible with fisheries requirements, such provision may be of considerable benefit to the maintenance of a water budget for the Wainui Stream.[1155]

When the Authority's Standing Tribunal considered the applications, it also heard from the lawyer acting for the objectors. There had been a meeting between the Taharoa Lakes Trustees and the company three days earlier. At this meeting the company had emphasised how its mining operations were being conducted close to

[1154] Report by RJ Matthews, undated, attached to Notice of Hearing, 14 March 1983. Waikato Valley Authority file 60/N046. Supporting Papers #669-681 at 671-674.
[1155] Report by MW Davenport, Waikato Valley Authority Internal Report MWD 83/3, March 1983, attached to Notice of Hearing, 14 March 1983. Waikato Valley Authority file 60/N046. Supporting Papers #669-681 at 675-681.

Wainui Stream, with the result that the Trustees accepted that an alternative source of supply was not practicable at that time, though may become practicable in about five years time. The Trustees therefore asked that the rights be granted for a term of five years. They also looked ahead to the time when the rights expired. At that time they wanted the lake system restored to its natural state. At the meeting the company had indicated its willingness to accept the biologist's recommendations, and also agreed to a recommendation from the Trustees that one of them should liaise with the company "on matters relating to the management of the fish ladder and as a result of the preparation of the [water] budget"[1156].

In its report to the full Authority, the Standing Tribunal observed:

1. The ironsand mining operation at Taharoa is of high regional and local importance, both economically and socially.
2. The lake is a wildlife area and gamebird habitat of some note, and once supported a locally significant freshwater fishery.
3. The existing dam is important to the maintenance of the wildlife and gamebird habitat in the lake and its surrounds. The dam is, however, a barrier to migratory fishes, most notably the mullet. The Tribunal notes that the applicant has operated a fish pass in the past and has expressed its commitment to continuing and improving its operation.
4. The taking of the amount of water applied for is critical to the continued operations at Taharoa.
5. The limited knowledge of the hydrological system suggests drawdown of the lake during abstraction for shiploading purposes should not be excessive having regard to the number of and discontinuity of such operations.
6. A 'water budget' should however be prepared and implemented in order to minimise any detrimental impact of the abstraction. The Tribunal notes the applicant's acceptance of this proposed condition.
7. The discharge from the ship loading operations and the stormwater and stockpile drainage water into the Tasman Sea will not have significant deleterious effects.
8. Should treatment of the stormwater and stockpile drainage water to a reasonable quality prove possible, diversion of that water to the Wainui Stream would be of ecological benefit. The Tribunal notes the applicant has agreed to study possible means of achieving this.
9. The discharge of settling pond overflow into the Wainui Stream at times of heavy rain will not have significant detrimental effects on the stream or fishery values.

[1156] Submission on behalf of the objectors, 14 March 1983, prepared by FL Phillips. Waikato Valley Authority file 60/N046. Supporting Papers #682-685.

10. The question of removal of the dam and rehabilitation of the lake and stream system upon completion of mining activities would be better discussed at a later date.[1157]

The Standing Tribunal recommended to the full Authority that the rights be granted, though only for the five-year period that had been proposed by the Taharoa Lakes Trustees. Conditions to which the rights would be subject included immediate upgrading of the steel pipe section of the fish pass, operation and maintenance of the fish pass to the satisfaction of Waikato Valley Authority, a minimum flow of 29 litres per second through the fish pass, no drawdown of Lake Taharoa below R.L. 8.53 metres, and preparation of a water management budget within one year[1158]. The recommendations were accepted by the full Authority[1159].

In 1985 New Zealand Steel Mining applied for a water right to allow for maintenance of the storage pond on the Wainui Stream. Shifting sand and weed growth had accumulated in the pond, and needed to be removed to maintain the capacity of the pond. The company proposed building a control dam at the lake outlet (about 100 metres upstream from the existing dam). This dam would have removable stop-boards to block the flow down the stream, and would be of a permanent nature as the maintenance operation would be required on a continuing basis. With the flow blocked, the storage pond could be de-watered and excavators could be moved into the stream bed. The proposed dam height would be R.L. 9.50 metres, to reduce overtopping and allow a high lake level to be retained. The first round of maintenance might take one week, while subsequent annual operations would be of one to two days duration. It was estimated that the storage pond would take ten days to be refilled. During the blocking of the flow the minimum flow requirement in the fish pass would not be met, so the application also sought an amendment to the water right issued in 1983 to exempt "short periods during stream channel cleaning operations"[1160].

[1157] Report of Standing Tribunal Chairman, 23 March 1983. Waikato Valley Authority file 60/N046. Supporting Papers #686-694.
[1158] Recommendations of Standing Tribunal, attached to report of Standing Tribunal Chairman, 23 March 1983. Waikato Valley Authority file 60/N046. Supporting Papers #686-694 at 693-694.
[1159] Secretary Waikato Valley Authority to New Zealand Steel Mining, 5 April 1983, and Water Right numbers 4402-4407. Waikato Valley Authority file 60/N046. Supporting Papers #695 and 696-707.
[1160] Murray-North Partners, Hamilton, to Secretary Waikato Valley Authority, 20 June 1985, Chief Executive Waikato Valley Authority to Murray-North Partners, Hamilton, 15 August 1985, and

It is not clear whether or not the application was publicly notified, and the Taharoa Lakes Trustees in particular given an opportunity to object or make a submission. All that is known is that no objections were received[1161].

The possible impacts identified by Authority staff were:

1. Possible scouring and erosion of stream channel during lake draining. A condition is recommended which limits the rate of draining to 5000 m^3/hour, which is estimated to be in the order of 10% of the rate of flow which a 24 hour, 2 year return period storm event would result in. Investigations staff consider that such a flow would have negligible detrimental effects on instream values.
2. Possible stranding and death of fish life due to drainage of the reservoir. During damming some flow will continue to pass through or over the dam, hence fish will still be encouraged to migrate upstream into the reservoir area. Investigations staff suggest the granting of the right should be conditional upon the applicant firstly making provision for a minimum through-flow at all times of 29 l/sec, and secondly constructing an impoundment immediately downstream of the proposed dam for holding fish during maintenance works.
3. Possible detriment to fish migration and spawning. If this right is granted it would necessitate that a fish ladder bypassing the existing dam would become non-operational during the periods of lake drainage. Investigations staff consider that provided the right is exercised only during non-spawning times there should be minimal detriment resulting from the non-operation of the fish ladder.
4. Possible water effects on Lake Taharoa. Staff recommend that a maximum dam crest height of [R.L.] 9.50 m.a.s.l. be specified, and that the dam is constructed as per the specifications provided. These have been approved by Operations staff. If these conditions are adhered to, staff consider that any minor temporary lake level fluctuations arising during the exercise of the right are likely to have minimal effects on property bordering the lake.

They recommended granting the right subject to these conditions[1162]. The recommendation was accepted[1163].

Murray-North Partners, Hamilton, to Chief Executive Waikato Valley Authority, 19 September 1985. Waikato Valley Authority file 60/N046. Supporting Papers #708-710, 711 and 712-717.

[1161] Report and recommendations included in papers for Waikato Valley Authority meeting, undated (February 1986). Waikato Valley Authority file 60/N046. Supporting Papers #718-721.

[1162] Report and recommendations included in papers for Waikato Valley Authority meeting, undated (February 1986). Waikato Valley Authority file 60/N046. Supporting Papers #718-721.

[1163] Chief Executive Waikato Valley Authority to NZ Steel Mining Ltd, 12 March 1986, and Water Right Number 850479. Waikato Valley Authority file 60/N046. Supporting Papers #722-723 and 724-726.

In November 1987, shortly before the water rights issued in April 1983 for a five-year term were due to expire, New Zealand Steel Mining Limited applied for fresh rights[1164]. When the application was publicly notified in the *New Zealand Herald* the following month, the only submission received was from the newly-established Department of Conservation. This was not classified as an objection[1165]. The Department's submission sought an improvement in quality or recycling of the mining operation process water that was being discharged into the Tasman Sea, more effective operation of the fish pass, and a reduction in the discolouration of the sea at the loading buoy[1166]. No submission or objection was received from anyone in the Taharoa Maori community, and the action of notifying in an Auckland newspaper must cast doubt on whether anyone at Taharoa was aware of the application.

The Waikato Regional Water Board staff report on the applications referred to the impact on Lake Taharoa.

> The dam has a considerable influence on the ecology of Lake Taharoa and the Wainui Stream…. The construction of the dam has prevented the free access of mullet to and from the lake, inhibited the migration of whitebait, and caused the loss of some 2 kms of stream habitat. The mullet fishery has collapsed, however eels, which are aggressive migrants, are still taken from the lake.
>
> As a requirement of the previous right, the company was required to construct a fish ladder to enable fish to bypass the dam. Design limitations, and in particular excessive water velocity, restricted the passage of some fish and prevented the passage of others, particularly mullet which have very low swimming speeds. The initial wooden ladder has now been replaced by a more elaborate, concrete structure which provides slower water velocities and resting areas. Initial indications are that it is certainly an improvement over the previous ladder, but that it is still a barrier to mullet. It is apparent that the construction of a fish ladder of sufficiently low gradient to enable the passage of mullet may not be feasible.
>
> Staff will continue to encourage and take an active interest in the optimal operation of the fish ladder.

With respect to the water budget and the effect of taking water from the stream, the report commented:

[1164] Applications for Right in respect of Natural Water, 12 November 1987. Waikato Valley Authority file 60/N046. Supporting Papers #769-771 and 772-774.
[1165] Staff report on Applications 870786-870791, undated. Waikato Valley Authority file 60/N046. Supporting Papers #776-780.
[1166] Regional Manager Hamilton to Chief Executive Waikato Valley Authority, 8 January 1988. Waikato Valley Authority file 60/N046. Supporting Papers #775.

> As a condition of the previous right for this dam, the company was required to produce a water balance for the Taharoa Catchment, in order that the effect of the abstraction could be assessed. This was produced and submitted to WCB [Waikato Catchment Board], and has been reviewed by Resource Hydrology staff as part of the assessment of this application. The review notes that the total water usage by the company is equivalent to less than 0.2% of the annual lake water balance. The effect of shiploading during drought conditions was also assessed. In the worst-case situation it is estimated that a typical shiploading event would alter lake levels by about 64mm. This is unlikely to significantly affect the lake, and will not hinder the operation of the fish pass, which has a normal freeboard of about 1 metre.

With respect to the discharge from plant operations to the Tasman Sea, the company proposed to recycle the treated water from the settling pond into the dredge pond, which would do away with most of the discharge to the sea, but it still wanted to retain the ability to discharge to the sea when necessary.

The report found that other environmental impacts were minor or localised. It recommended that the rights be granted, subject to broadly similar conditions to those set out in the expired rights[1167]. The recommendations were accepted[1168].

The six rights granted in August 1988, all for 10-year terms (i.e. expiring on 31 August 1998), were:

- To discharge stormwater and waste to the sea (water right 870786)
- To dam Wainui Stream (water right 870787)
- To take water from Wainui Stream for shiploading (water right 870788)
- To take water from Wainui Stream for mining and processing of the ironsands (water right 870789)
- To discharge stormwater and wash-down water into Wainui Stream (water right 870790)
- To discharge shiploading water to the sea at the mooring buoy (water right 870791)

[1167] Staff report on Applications 870786-870791, undated. Waikato Valley Authority file 60/N046. Supporting Papers #776-780.
[1168] Chief Executive Waikato Catchment Board to NZ Steel Mining Ltd, 10 August 1988. Waikato Valley Authority file 60/N046. Supporting Papers #781-782.

It was a condition of the dam water right that "a fish ladder around the dam shall be operated and maintained to the satisfaction of the [Regional Water] Board", and that the fish ladder should have a minimum flow of 29 litres per second[1169].

A further water right was issued three months later, for the discharge of stormwater, stockpile drainage water and process water, being infrequent overflows from the settling pond, to the sea[1170]. This water right was for a term expiring at the same time as those granted in August 1988.

It seems clear that the Waikato Valley Authority and its reconstituted successor the Waikato Regional Water Board were largely going through the motions in renewing the water rights that had been granted in the 1970s. The water right applications were for a continuation of an existing activity that, with the exception of the fish pass, had not resulted in any problems, and appeared to be operating smoothly and largely in compliance with the conditions of the previously held water rights. The problems with the fish pass had been acknowledged and responded to by the company, with an upgrade in 1986-87 (see a later section of this topic study). In 1983 the request of the Taharoa Lakes Trustees for a five-year term for the water rights had been accepted by the administering authority. However, the concerns that had prompted such a short length of term then were not raised again in 1988, and were not apparently reconsidered when a staff recommendation for a ten-year renewal term was accepted.

C.12 Renewal of the ironsands mining agreement

The ironsands mining agreement under the Iron and Steel Industry Act 1959 issued by the Crown in 1972 and varied in 1977 was for a 20-year period and was due to expire on 22 October 1992. The right of priority in the existing agreement required the company to apply at least one year before expiry. In March 1990, New Zealand Steel Mining Limited applied for an extension of its ironsands mining agreement for a further five years. The reason for applying more than eighteen months before it was necessary to do so was to seek approval in principle as a basis for entering into further

[1169] Staff report on Applications 870786-870791, undated. Waikato Valley Authority file 60/N046. Supporting Papers #776-780.
[1170] Staff report on Application 880351, undated, Chief Executive Waikato Catchment Board to New Zealand Steel Mining Limited, 9 November 1988, and Water Right Number 880351. Waikato Valley Authority file 60/N046. Supporting Papers #783-785, 786-787 and 788-789.

supply contracts with the Japanese steel works[1171]. The Taharoa C Incorporation provided a letter of support later in 1990[1172].

At this time there was an expectation that the Iron and Steel Industry Act 1959 would be repealed as part of the Resource Management Law Reform changes. However, the timetable for these changes was uncertain, and it was unclear whether transitional provisions would protect applications under the 1959 Act that had been lodged and were partly processed[1173].

Waikato Regional Council, Waitomo and Otorohanga District Councils, the Department of Conservation, and the regional office of the Ministry of Commerce were asked for their comments on a proposed extension of the ironsands mining agreement[1174]. This request for comments followed a site meeting and round-table discussions between the above agencies and company representatives at Taharoa in September 1990.

Waikato Regional Council replied that it was satisfied that the company's intended works over the following five years were such that the conditions of the water rights that had been issued would be complied with. It confined its comments to supporting the company's wish to recycle its process water, to urging a speedy and satisfactory solution to the fish pass problems, and to seeking active steps to avoid the introduction of toxic dinoflagellates in ballast water (such as multiple flushing of the ballast water during the trip from Japan to New Zealand)[1175].

[1171] General Manager New Zealand Steel Mining Limited to Unit Manager Coal and Minerals, 28 March 1990. Commerce Head Office file 12/30/25-12. Supporting Papers #194-195.
The company provided further details for its application in June 1990. General Manager Raw Materials New Zealand Steel Mining Limited to General Manager, 14 June 1990. Commerce Head Office file 12/30/25-12. Supporting Papers #197-201.

[1172] Chairman The Proprietors of Taharoa C Block to General Manager, 11 September 1990. Commerce Head Office file 12/30/25-12. Supporting Papers #202.

[1173] B Reilly to E Lotter, 4 April 1990. Commerce Head Office file 12/30/25-12. Supporting Papers #196.

[1174] General Manager Ministry of Commerce to Waikato Regional Council, 6 July 1990. Waikato Regional Council file 60.40.32A. Supporting Papers #790.

[1175] Manager Consents Waikato Regional Council to Ministry of Commerce, 25 October 1990. Commerce Head Office file 12/30/25-12. Supporting Papers #203-204.

The two District Councils had no objection[1176]. The Department of Conservation provided information about the conservation interest of the Taharoa locality, in particular the adjoining lakes, which had not been considered when the agreement was first being negotiated during 1970-72.

> The large weed beds, in the lakes, extensive wetland fringe, and proximity to the west coast make the area a very productive bird habitat. It was identified as of high wildlife habitat value by the Fauna Survey Unit, as containing regionally and some nationally threatened bird species including NZ scaup, NZ dabchick, spotless crake, Australasian bittern, banded rail and North Island fernbird.
>
> The interconnected coastal dune lake system represents the only significant coastal body of freshwater between Kaipara and South Taranaki bight. The lake system supports an important very diverse fishery with no known release of exotic fish, it is important for eels, mullet, galaxid, smelt and the rare species dwarf inanga.

With respect to the coast, the Department reported that "Taharoa has one of the best occurrences of pingao in the Waikato". It sought changes to some of the conditions in the Second Schedule of the mining agreement:

- Deleting Clauses 1 and 8, because the company's plans showed it had no intention of mining within 100 metres of mean high water mark.
- Amending Clause 3 to reduce emphasis on restoration planting of introduced species such as lupin and marram, and focus instead on indigenous cover species such as pingao, sand tussock and Spinifex, with a requirement to consult with the Department of Conservation
- Amending Clause 5, regarding consultation with Wildlife Division of Internal Affairs Department, to ensure consultation with the Department of Conservation "with regard to any fauna inhabitation of land and water bodies within the licence area"
- Amending Clause 9 to provide some discretion about the burial of rock, clay and other impervious material as these materials could assist with revegetation by providing some ground stability

[1176] Manager Regulatory Services Waitomo District Council to Ministry of Commerce Hamilton, 22 November 1990, and District Planner Otorohanga District Council to Ministry of Commerce Hamilton, 26 November 1990, attached to Environment and Resources Officer Hamilton to General Manager, 19 December 1990. Commerce Head Office file 12/30/25-12. Supporting Papers #205-227 at 226 and 227.

- Amending Clause 10 to broaden protection of "existing streams" to include also "lakes and riparian wetlands and their associated habitat[1177]

The regional office of the Ministry of Commerce in Hamilton incorporated these remarks in its own report and recommendations. It considered that mining had to date "had no apparent effect on the lake systems" or on coastal habitat and fauna, and noted that the company was aiming to move away from a sea-based wastewater disposal system to a land-based system. Of the operation of the fish pass on Wainui Stream, it reported:

> The Company dammed the Wainui Stream, under conditions of a water right, for water supply purposes for the mining operations. This resulted in destroying the natural fish passage. The Company have built an elaborate fish pass, in consultation with MAF, to facilitate the migration of native fishes into the Lake system. This has proved to be both difficult to design and costly. The migrating mullet seem to be the most difficult to induce up the fish pass, and netting to artificially stock the lake has been resorted to on several occasions. The Company are committed to resolving this problem as the lake fishery plays an important part of the local peoples' customs. The Department of Conservation have offered their help in this area also.

The report considered that rehabilitation had been "performed satisfactorily in compliance with the Agreement and to the satisfaction of the landowners", at a rate of between five and ten hectares a year. Of the relationship between New Zealand Steel Mining and tangata whenua, it stated:

> The Company has a 70 year mining lease arrangement with the Taharoa C Block Incorporation. This association between landowner and mines has reaped considerable benefits to both parties. The conditions of the Agreement and the Lease addresses issues such as archaeological sites, burial of remains, and royalty payments.
>
> Water related issues such as the Wainui Stream dam, fisheries, wastewater disposal options and lake management are concerns raised by some of the local people. The Company have tried to treat these concerns in a sensitive manner, and have wherever possible respected the Maori perspective.
>
> The Proprietors of Taharoa C Block support the extension of the Ironsand Mining Agreement.[1178]

[1177] Conservation Officer Mining Hamilton to Manager Hamilton, 7 November 1990, attached to Environment and Resources Officer Hamilton to General Manager, 19 December 1990. Commerce Head Office file 12/30/25-12. Supporting Papers #205-227 at 220-223.
[1178] Environment and Resources Officer Hamilton to General Manager, 19 December 1990. Commerce Head Office file 12/30/25-12. Supporting Papers #205-227.

Of the amendments proposed by the Department of Conservation, the regional office of the Ministry of Commerce did not support deletion of Clauses 1 and 8, as the company's plans could change, and the terms of the existing mining agreement conformed with the terms of the mining lease. Likewise, a change to Clause 3 to emphasise replanting with native species would take the mining agreement out of conformity with the mining lease, and was therefore not supported. The change to Clause 10 to provide for lake edge habitat protection would be better placed in a revised Clause 5. The change to "Clause 9 was supported.

The Ministry of Commerce regional office raised four additional issues for possible inclusion in the mining agreement. These were:

- Establishment of a Taharoa Liaison Committee, to meet annually "to allow the Company to explain how it is progressing, what is planned, and for the rational exchange of views and concerns"
- Provision of public liability insurance, which had by 1990 become a standard condition in mining leases. However, because this requirement was already included in the mining lease with Taharoa C Incorporation, it was not felt to be necessary for inclusion in the ironsands mining agreement
- Preparation annually of a detailed rehabilitation plan setting out areas to be mined, proposed tailings placement and recontouring, revegetation, ongoing management of previously restored areas, and steps to be taken to resolve any problems encountered
- Provision of a bond to ensure compliance with the mining agreement and in particular its rehabilitation requirements. A bond of $50,000 was recommended

The proposed changes to the agreement had been discussed with the company, which supported all of them except for the bond requirement[1179].

New Zealand Steel Mining Limited was given a chance to formally comment on the regional office's report and recommendations[1180]. As expected, it considered the

[1179] Environment and Resources Officer Hamilton to General Manager, 19 December 1990. Commerce Head Office file 12/30/25-12. Supporting Papers #205-227.
[1180] General Manager to General Manager Raw Materials New Zealand Steel Mining Limited, 11 January 1991. Commerce Head Office file 12/30/25-12. Supporting Papers #228.

bond to be unnecessary, because there was no requirement for such in the Iron and Steel Industry Act 1959, because of the conditions already included in the mining agreement and the mining lease, and because of the company's acceptance of its responsibilities and past satisfactory performance[1181].

The application for a renewed ironsands mining agreement, and recommendation that it be renewed, was put before the Minister of Energy in February 1991. The briefing paper to the Minister followed the format in the report and recommendations from the regional office, with the section on the relationship between the company and tangata whenua being repeated in its entirety. Renewal was recommended because of "the company's past performance and the national and regional benefits of the operation". The Minister gave his approval in principle to a renewal for five years, with a right of renewal for a further five years; the final approval would be given when the legal documents had been drawn up[1182]. While the approval covered all the amendments to conditions in the existing mining agreement, and two additional conditions covering the Liaison Committee and an annual rehabilitation plan, there was no mention of the bond; because this was not provided for in the 1959 Act it could only be required if voluntarily and separately agreed to by the company. The company did agree to enter into a bond obligation for the sum of $50,000, though when this bond was completed is not known[1183].

It was not until June 1992, sixteen months later, that the renewal agreement was drawn up and sent to the company for its signature and seal[1184]. And it was not until September 1992 that the Minister was recommended to sign the renewal document[1185]. This gap between approval in principle and final approval introduced some legal uncertainty, because it was during this period that the Iron and Steel

[1181] General Manager Raw Materials New Zealand Steel Mining Limited to General Manager, 18 January 1991. Commerce Head Office file 12/30/25-12. Supporting Papers #229-230.
[1182] General Manager to Minister of Energy, 5 February 1991, approved by Minister 5 February 1991. Commerce Head Office file 12/30/25-12. Supporting Papers #231-238.
[1183] Bond to secure compliance with the terms and conditions of a mining privilege, date unknown. Commerce Head Office file 12/30/25-12. Supporting Papers #244-245.
[1184] General Manager to New Zealand Steel Mining Limited, 9 June 1992. Commerce Head Office file 12/30/25-12. Supporting Papers #239.
[1185] Manager Crown Minerals Operations Group to Minister of Energy, 8 September 1992, approved by Minister 15 September 1992. Commerce Head Office file 12/30/25-12. Supporting Papers #240.
Renewal of ironsands mining agreement, 15 September 1992. Waikato Regional Council file 60.40.32A. Supporting Papers #1210-1216.

Industry Act 1959, the legislation that the ironsands mining agreement was founded upon, was repealed. Repeal occurred in October 1991 as a result of the passing of the Resource Management Act 1991 (Section 361). Section 107 of the Crown Minerals Act 1991, which came into force concurrently with the Resource Management Act, sets out some transitional provisions that cover existing mining privileges and uncompleted actions under the old minerals legislation. The legal uncertainty relates to whether the transitional provisions encompass an application for renewal within the prescribed period set out in the old mining agreement, plus approval in principle granted in February 1991, both actions occurring while the old legislation was still current. That is a matter for legal argument, and is not addressed in this topic study, beyond noting that the Ministry of Commerce considered that the issue of a renewed ironsands mining agreement dated September 1992 was a lawful action.

The amended wording of Clause 5 of the Second Schedule, arising from the recommendations of the Department of Conservation and the further changes recommended by the regional office, was:

> 5. The Company will consult with the Department of Conservation, and where appropriate also the Ministry of Agriculture and Fisheries, with regard to fauna and fishery inhabitation of the said land and water bodies within the licence areas, and will do all such things necessary to prevent sand migration induced by mining operations from moving eastwards into the lakes situated along the eastern boundary of the said land. Summaries of such consultations should be recorded and copied to the Inspector of Quarries.

Besides the amended wording to Clause 5 of the Second Schedule, there were two entirely new additional matters covered in the renewed ironsands mining agreement. The first matter was in the main body of the agreement:

> 27. The Company shall initiate the formation of a Taharoa Liaison Committee which shall comprise of representatives of the following bodies; Ministry of Commerce, Waikato Regional Council, Department of Conservation, Waitomo and Otorohanga District Councils, and Tangata whenua. The said group shall meet annually, or where significant change in operation is planned, to allow the Company to outline its proposals for the next stage of mining, and to provide a forum for the rationalised exchange of views, concerns, objectives and goals between the parties present. The company shall be responsible for arranging a suitable venue and time to reasonably suit the participants.

The second new clause was in the Second Schedule:

> 11. The Company shall supply a detailed annual rehabilitation plan to the Inspector of Quarries specifying:

(a) Broad overall rehabilitation and landscape planning for the next five years
(b) Details of rehabilitation planned for the following year including
    i. Areas to be mined;
    ii. Placement of tailings and re-contouring of disturbed areas;
    iii. Revegetation and any surface pre-treatment;
    iv. Post-rehabilitation management of previously restored areas;
    v. Results of rehabilitation trials;
    vi. Any rehabilitation problems identified, and steps to resolve these.[1186]

While the clause in the agreement providing a right of priority for a renewal for a further five years had been carried over from the old ironsands mining agreement into the renewed agreement, there was no statutory provision for a further renewal because of the repeal of the Iron and Steel Industry Act 1959. So when the renewed ironsands mining agreement expired on 22 October 1997, the mining company's rights to operate after that date relied solely on the mining lease with the Taharoa C Block Incorporation and any consents issued under other legislation, such as the resource consents issued by Waikato Regional Council under the Resource Management Act 1991[1187]. The export levy income to the Crown generated by the ironsands mining agreement, said in 1996 to be approximately $800,000 a year[1188], also ceased in 1997.

With the expiry of the ironsands mining agreement, the only concluding action required of the Crown was the release of the land rehabilitation bond. Agreements to release the bond, because the rehabilitation requirements of the mining agreement had been carried out satisfactorily by the company, were obtained from the Inspector of Quarries in Hamilton, from the Taharoa C Block Incorporation, and from Waikato Regional Council[1189], and in August 1998 the Minister of Energy agreed to the release[1190].

[1186] Renewal of ironsands mining agreement, 15 September 1992. Waikato Regional Council file 60.40.32A. Supporting Papers #1210-1216.
No figure of the total income gained by the Crown during the 10-year (1987-1997) period that the export levy was payable was identified during research for this topic study.
[1187] Senior Operations Advisor Crown Minerals Group to Production Manager BHP New Zealand Steel Mining Limited, 15 May 1996. Commerce Head Office file 12/30/25-12. Supporting Papers #242-243.
[1188] BJ Winfield to P Toye, 9 May 1996. Commerce Head Office file 12/30/25-12. Supporting Papers #241.
[1189] Inspector of Quarries Hamilton to Crown Minerals, 12 March 1998, The Proprietors of Taharoa C Block to Manager Crown Minerals, 4 May 1998, and Resource Officer Waikato Regional Council to

C.13 Resource consents issued after 1991

In 1988, when the water rights were being renewed, New Zealand Steel Mining Limited applied for a right to discharge tailings back into the dredge pond. Waikato Valley Authority decided that no right was required under the Water and Soil Conservation Act 1967, as the tailings were not considered to constitute waste entering water. However, with the passing of the Resource Management Act 1991, and its regulation of any discharge of contaminants onto or into land, a resource consent was required. The company applied for consent to discharge tailings and process water (surplus recycle water) on to land in September 1994[1191]. The company anticipated that disposal on to land would reduce the use of the water rights it held to discharge process water to the Tasman Sea and to Wainui Stream, with reliance on the sea discharge right required only in exceptional circumstances. If the disposal of water to land resulted in sub-surface seepage into the dredge pond, this would also reduce the amount of water it would need to pump from Wainui Stream into the pond to maintain its water level. The chances of there being sub-surface seepage into Lake Taharoa was reducing with time as the mining operations moved further away from the lake. However, moving further away from the lake moved the operations closer to the sea.

Both the Taharoa Lakes Trustees and the Taharoa C Incorporation were consulted by the company. The Incorporation had agreed in writing to the proposal from the time of the application[1192]. For their part, the Lakes Trustees adopted a more cautious stance. At a meeting with the company in October 1994, they were said to be willing to allow further consideration although not having agreed to the proposal[1193]. After reading a draft version of the Waikato Regional Council staff report and assessment on the application, circulated in March 1995, they confirmed at a meeting with the

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Crown Minerals, 10 June 1998. Commerce Head Office file 12/30/25-12. Supporting Papers #249, 250 and 251.

[1190] Unit Manager Finance to Minister of Energy, 3 August 1998, approved by Minister 6 August 1998. Commerce Head Office file 12/30/25-12. Supporting Papers #252-254.

[1191] Resource Consent Application, 21 September 1994. Waikato Regional Council file 60.40.32A. Supporting Papers #861-870.

[1192] Secretary The Proprietors of Taharoa C Block to "To Whom it may Concern", 21 September 1995, attached to Resource Consent Application, 21 September 1994. Waikato Regional Council file 60.40.32A. Supporting Papers #861-870 at 869.

[1193] Notes of meeting, 6 October 1994. Waikato Regional Council file 60.40.32A. Supporting Papers #871.

company and the Regional Council the following month that "so long as the lakes were protected, and there were conditions to ensure the company monitored that, they were happy that the consent be granted"[1194].

In March 1995 the Regional Council asked the Department of Conservation if it had any comments on the application, adding:

> We intend at this stage to process the application as a non-notified one, as we believe there will be beneficial outcomes due to discharging the recycled water onto land rather than into the sea.[1195]

Resource consent was granted. While the earlier consents for discharge into the sea remained, it was a condition of the newly granted consent that the sea outfalls only be used in emergencies when disposal on to land was for some reason not possible.

The water rights issued in 1988 were for a 10-year period, so that new rights, termed resource consents under the Resource Management Act, were required in 1998. During the lead-up to the application for consents, the company held a meeting with the Taharoa community in May 1997. According to a summary of events prepared in 2006, issues raised at the meeting included lake level management, the effectiveness of the fish pass, and flooding around the lake[1196]. Further details about this meeting are not known.

The company also initiated a consultation group with Taharoa Maori organisations and others. This consultation got off to an inauspicious start when a meeting of the group in June 1997 had to be adjourned because the question of payment for attendance, or reimbursement of costs of attendance, had not been settled before the meeting, and the senior company representative was unable to make any commitment on behalf of the company at the meeting itself[1197]. This initial problem was apparently resolved, and the Lake Consultation Group, comprising of representatives of the Taharoa C Incorporation, the Taharoa Lakes Trustees, the Department of

[1194] Minutes of meeting, 6 April 1995. Waikato Regional Council file 60.40.32A. Supporting Papers #877-882.
[1195] Manager Resource Monitoring to Field Centre Manager Te Kuiti Department of Conservation, 17 March 1995. Waikato Regional Council file 60.40.32A. Supporting Papers #872.
[1196] Consent Evaluation Report, 5 April 2006, page 16. Waikato Regional Council file 60.40.32A. Supporting Papers #1452-1549 at 1467.
[1197] Minutes of meeting of Consultation Group for Resource Use, 26 June 1997. Waikato Regional Council file 60.40.32A. Supporting Papers #913-914.

Conservation and Waikato Regional Council, then met regularly from February 1998[1198].

Waikato Regional Council also engaged in direct consultation with the Lakes Trustees, meeting them in October 1997 (at their request) to hear from them any concerns they might have about the mining operation.

> The Trustees emphasised they were not in principle opposed to the company's operation at the site. They recognised the effort the company had made in the past, and the benefit of employment that the company provided to the local community. There were areas where improvements could be made, however.

The matters the Lakes Trustees raised at this meeting were:

- Interruption to mullet migration into Lake Taharoa (discussed in the next section of this report)
- Ponding of water on the dunes, possibly because the clay fraction in the discharged water was impeding seepage into the ground
- Increase in weed growth in the lake
- Possibility of greater variation in lake levels if larger bulk carrier ships were used and the slurry loading operation required larger amounts of water, resulting in a greater draw-down of water from the lake
- Discharge from boat loading into the sea, due to slurry de-watering and discharge of ballast water; a dirty foam on the shore seemed to be associated with times of ship loading
- Old structures (pipes, posts, etc) on the beach
- The impact on Lake Taharoa of a water right requirement that the dam on Wainui Stream be removed if the mining operation ceased; what measures were in place to ensure the removal (and in effect the reversal of the raising of the lake) was done carefully in a manner that avoided any adverse impact on the lake[1199]

[1198] Minutes of meeting, 20 February 1998, and Minutes of Meeting 1, 31 March 1998. Waikato Regional Council file 60.40.32A. Supporting Papers #932-935 and 936-938.
[1199] File note on meeting with Trustees of Lake Taharoa, 12 October 1997. Waikato Regional Council file 60.40.32A. Supporting Papers #915-917.

The applications for multiple resource consents were made in February 1998[1200]. Because this was before the existing water rights expired, the company was legally entitled to continue to operate after the expiry date, with the water rights running on until the new resource consents were granted. An objection to the granting of the consents was lodged by Patrick Maikuku, on behalf of himself "and others", in April 1998[1201]. However, no specific reasons were set out in the objection, beyond a general complaint that the application was incomplete and failed to answer a number of questions. In any event, the applications had not been publicly notified and submissions invited, so the objection could not at that stage be accepted and acted upon[1202].

The running-on of the 1988-1998 water rights was to last for eight years, until 2006, in large part because an additional proposal emerged in 2000 that required more urgent attention. There was also a need to gather further information about the environmental effects of the consents that had been applied for, and a need for further consultation with affected parties. The formal process for this ability to allow existing consents to run on was activation of the provisions of Section 124 Resource Management Act 1991, which applied when applications were made between three and six months before existing consents expired. How long they ran on for was dictated by the length of time required to process the new applications. In this regard Section 92(3) Resource Management Act 1991 allowed the processing of applications to be suspended while further information was obtained. An application to have processing of the Taharoa applications suspended was made by the company in mid May 1998[1203], less than three months after the renewal applications had been lodged. This suspension lasted almost continuously in one form or another until 2005. The running-on of existing consents was therefore a combination of the use made of the statutory provisions by an applicant, and the willingness of a Regional Council to

[1200] Environmental Officer BHP New Zealand Steel Limited to Environment Waikato, 25 February 1998. Waikato Regional Council file 60.40.32A. Supporting Papers #926-931.
[1201] Patrick Maikuku, Taharoa, to Environment Waikato, 1 April 1998. Waikato Regional Council file 60.40.32A. Supporting Papers #939-940.
[1202] Resource Officer to Patrick Maikuku, Taharoa, 14 April 1998. Waikato Regional Council file 60.40.32A. Supporting Papers #941.
[1203] Environmental Officer BHP New Zealand Steel Limited to Environment Waikato, 15 May 1998, and Resource Officer to BHP New Zealand Steel Limited, 16 June 1998. Waikato Regional Council file 60.40.32A. Supporting Papers #942 and 946-950.

await receipt of further information necessary to allow the renewal application to be deemed to be complete.

The additional proposal that arose in 2000 was a move of the mining operation from the area south of Wainui Stream, where it had been operating since mining commenced in 1972, to the area north of Wainui Stream. Rather than dismantle the floating dredge and its associated ironsands concentration plant, and reassemble it in a new dredge pond north of the stream, the company conceived the idea of, in effect, moving the pond itself and the dredge and concentration plant that floated in it. This would be done by constructing an aqueduct across Wainui Stream, wide enough to allow the dredge and concentration plant to be manoeuvred along it and into its new position. The Wainui Stream would be diverted through corrugated steel culverts 80-100 metres long, and the aqueduct would be in place over the culverts for about three months. Once the aqueduct was no longer required, the structure over the stream would be removed. However a different structure would then be required to cater for the piping of water to the new mining area, and the transfer of ironsand concentrate and recycle water from the mining area to the stockpile area (which would remain on the south side of the stream).

Although the need to move north of the Wainui Stream was part of a longer term plan, it had to be brought forward in time because mining conditions in the southern area had become more difficult, with clay and hard pan layers and lower quantities of free-flowing dune sand than expected. A decision to move north was made in mid 1998, after the lodging of the application in February 1998 for the resource consents allowing for continuing operation of the project as a whole.

BHP New Zealand Steel Mining Limited applied in February 2000 for the resource consents to undertake the move to the north side of Wainui Stream[1204]. The consents sought were a land consent for the temporary aqueduct and the permanent services structure over the Wainui Stream, a water permit to allow diversion of the Wainui Stream during construction work, and a discharge permit for sediment-laden runoff

[1204] Application for Resource Consents, February 2000, and Assessment of Environmental Effects, 3 February 2000, attached to Environmental Officer BHP New Zealand Steel Limited to Environment Waikato, 4 February 2000. Waikato Regional Council file 60.40.32A. Supporting Papers #972-1026.

associated with earthworks affecting the stream during construction work. A canal and holding pond on the southern side of Wainui Stream, along which the dredge and concentration plant would be floated, and a holding pond on the northern side of the stream, were deemed to be the type of activity that was already covered by the existing water rights, and so not requiring new consents. In its assessment of environmental effects report, the company explained the monitoring agreement it had reached with the Taharoa Maori community:

> In addition, BHP New Zealand Steel Mining has established a protocol with the local tangata whenua for monitoring the site during earthworks. A kaumatua or designated tangata whenua will be present during the installation of the culvert, as this is the most likely location of any items of cultural significance. It has been agreed that if any large items of significance are discovered during the earthworks, then consideration will be given to relocating the culvert to avoid disturbing the site. Should this not be possible, then the matter will be further discussed with relevant kaumatua.[1205]

The timing of aqueduct construction, use and dismantling, and of the stream diversion through the culverts, would avoid the peak fish migration periods of March to April and September to November each year[1206], and would occur during expected lower flow periods.

Two weeks before lodging the application, the company participated in a consultation hui at Aruka Marae, at which it presented its proposal and answered questions. Those elders with a knowledge of the negotiations for the mining lease in 1970 stated that it was recognised at that time that mining would at some stage move from south of Wainui Stream to north of the stream. At the end of the meeting the chairman sought a vote of support for the proposals. There was overwhelming support, although two objections were noted[1207].

[1205] Assessment of Environmental Effects, 3 February 2000, page 9, attached to Environmental Officer BHP New Zealand Steel Limited to Environment Waikato, 4 February 2000. Waikato Regional Council file 60.40.32A. Supporting Papers #972-1026 at 993.

[1206] Exceptions to this are August to April, with migratory peaks in October and January, for elvers, and throughout the year, with migratory peaks in January to February, for bullies.

[1207] Minutes of Wainui Crossing Consultation Hui, Aruka Marae, 22 January 2000, attached to Operations Manager Taharoa to M Henry, 23 February 2000. Waikato Regional Council file 60.40.32A. Supporting Papers #1027-1057.
Assessment of Environmental Effects, 3 February 2000, page 27, attached to Environmental Officer BHP New Zealand Steel Limited to Environment Waikato, 4 February 2000. Waikato Regional Council file 60.40.32A. Supporting Papers #972-1026 at 1014.

During a question and answer session at the hui, one matter that came up was the place of tangata whenua in the resource consent process. Was it possible for tangata whenua to have the final say on the consents? Did that fit inside Environment Waikato's policy? The answer given was that the legislation defined that it was the elected body (the Waikato Regional Council) that made the decisions, based on the information presented to it. There was a right of appeal to the Environment Court against the Regional Council's decision[1208].

Following the lodging of the consent applications, they were publicly notified and submissions were called for. Six submissions were received, from Sonny Ruki-Willison, Patrick Pari Maikuku, the Taharoa Lakes trustees, Charles Oscar King, New Zealand Historic Places Trust, and the Department of Conservation[1209]. The Historic Places Trust submission is discussed in the section of this topic study about wahi tapu. The other submissions are not discussed because an alternative method of moving the mining equipment was subsequently chosen. After receipt of submissions, Waikato Regional Council identified the matters it required further information about, before the applications could be decided upon[1210].

In the event, it was decided that the construction of an aqueduct and culvert would be too costly, and moving the dredge equipment on a road transporter was chosen instead. This did not require resource consent, and the company abandoned the applications it had made in February 2000 for the culvert and aqueduct over Wainui Stream[1211]. The overland move took place in January 2001[1212].

[1208] Minutes of Wainui Crossing Consultation Hui, Aruka Marae, 22 January 2000, page 13, attached to Operations Manager Taharoa to M Henry, 23 February 2000. Waikato Regional Council file 60.40.32A. Supporting Papers #1027-1057 at 1041.

[1209] Submissions to Environment Waikato by Sonny Ruki-Willison, Taharoa, undated (received 22 March 2000), Patrick Pari Maikuku, Taharoa, 18 March 2000, Chairman Taharoa Lakes Trustees, 22 March 2000, Charles Oscar King, Te Kuiti, 21 March 2000, Manager Maori Heritage Division New Zealand Historic Places Trust, 23 March 2000, and Area Manager Maniapoto Department of Conservation, 23 March 2000. Waikato Regional Council file 60.40.32A. Supporting Papers #1058-1060, 1061-1064, 1065-1068, 1069, 1070-1072 and 1073-1075.
The submission by the Chairman of Taharoa Lakes Trustees was subsequently challenged by the Secretary of the Lakes Trustees as being a personal submission and not representing the views of the Lakes Trustees as a body. Secretary Taharoa Lakes Trustees to Environment Waikato, 12 May 2000. Waikato Regional Council file 60.40.32A. Supporting Papers #1112.

[1210] Programme Manager to BHP New Zealand Steel Limited, 28 March 2000. Environment Waikato file 60.40.32A. Supporting Papers #1077-1078.

[1211] The company requested suspension of consideration by the Regional Council of the applications in June 2000 (Taharoa Operations Manager BHP New Zealand Steel Mining Limited to Environment Waikato, 10 June 2000), and withdrew the applications in March 2001 (Environmental Officer BHP

Once the relocation to the area north of Wainui Stream had been completed, it was possible to refocus attention back to the obtaining of the operating resource consents. Waikato Regional Council advised BHP New Zealand Steel Mining Limited in March 2001 of its information requirements, additional to the information provided with the applications in 1998[1213]. A revised assessment of environmental effects document was then completed in draft form in June 2001. Updated applications, including a final version of the assessment of environmental effects document, were lodged in July 2002[1214].

The revised applications were publicly notified in May 2003. Four submissions were received, which were classified in the following manner in the staff report prepared for the hearing of the applications[1215]:

- Institute of Quarrying NZ Inc's submission[1216] was classified as being in support
- Royal Forest and Bird Protection Society of NZ Inc's submission[1217] was classified as being neutral, and did not seek to be further involved
- Department of Conservation's submission[1218] was classified as being neutral, asked to be involved in pre-hearing meetings, and asked to be heard
- The submission of Tukotahi Tuteao Trust and Taharoa Lake Trustees[1219] was classified as being in opposition to the issue of the consents as applied for, asked to be involved in pre-hearing meetings, and asked to be heard

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New Zealand Steel Limited to Environment Waikato, 27 March 2001). Waikato Regional Council file 60.40.32A. Supporting Papers #1115 and 1129.

[1212] *Waitomo News*, 24 January 2001 and 31 January 2001. Copies on Waikato Regional Council file 60.40.32A. Supporting Papers #1124-1125 and 1126.

[1213] Programme Manager to BHP New Zealand Steel Mining Limited, 15 March 2001. Waikato Regional Council file 60.40.32A. Supporting Papers #1127-1128.

[1214] Assessment of Environmental Effects, July 2002. Waikato Regional Council file 60.40.32A. Supporting Papers #1217-1448.

[1215] Consent Evaluation Report, 5 April 2006, pages 17-18. Waikato Regional Council file 60.40.32A. Supporting Papers #1452-1549 at 1468-1469.

[1216] National Secretary The Institute of Quarrying New Zealand Incorporated to BHP New Zealand Steel Mining Limited, 9 May 2003. Waikato Regional Council file 60.40.32A. Supporting Papers #1132-1133.

[1217] Royal Forest and Bird Protection Society of NZ Inc to Waikato Regional Council, 19 June 2003. Waikato Regional Council file 60.40.32A. Supporting Papers #1134-1137.

[1218] Maniapoto Area Manager to Chief Executive Waikato Regional Council, 20 June 2003. Waikato Regional Council file 60.40.32A. Supporting Papers #1146-1148.

Pre-hearing consultation took place with the Department of Conservation and with the Maori submitters in October 2003[1220]. The most significant issue discussed during this consultation opportunity was the poor performance of the fish pass and its impact on the fish populations of Lake Taharoa; this is a matter discussed in a later section of this topic study. Other issues discussed were the protection of natural duneland ecosystems, stream bank planting initiatives, any ecological impacts on the sea floor associated with the ship-loading operation, and the length of any consent term.

Waikato Regional Council produced in draft form its evaluation report and recommendations for the granting of consents and their associated conditions. Having seen the draft report and recommendations, the two submitters that had participated in the pre-hearing consultation, and that had asked to be heard, then withdrew their requests to be heard[1221]. This meant that there was no longer a requirement to have a hearing, and the decision whether to grant or decline the consents could be an internal one within Waikato Regional Council. The evaluation report was finalised to reflect the absence of a public hearing[1222], and the consents were granted in April 2006[1223]. There was still an opportunity for New Zealand Steel to appeal against the decision, though this was not taken up.

The details of the assessment of environmental effects and the evaluation report by Regional Council staff are not discussed here, though the fish passage and wahi tapu matters are discussed in later sections of this topic study.

There were twelve consents granted in all, as follows:
With respect to Wainui Stream

[1219] Tukotahi Tuteao Trust and Lake Tahaaroa Trustees investigation team subcommittee to Environment Waikato, 17 June 2003. Waikato Regional Council file 60.40.32A. Supporting Papers #1138-1145.
[1220] Notes of 6 October 2003 meeting, 20 October 2003. Waikato Regional Council file 60.40.32A. Supporting Papers #1149-1150.
[1221] Maniapoto Area Manager Department of Conservation to Environment Waikato, 13 June 2005, and Chairman Tukotahi Tuteao Trust to Environment Waikato, 4 April 2006. Waikato Regional Council file 60.40.32A. Supporting Papers #1165 and 1449.
[1222] Consent Evaluation Report, 5 April 2006. Waikato Regional Council file 60.40.32A. Supporting Papers #1452-1549.
[1223] Waikato Regional Council to NZ Steel Limited, 11 April 2006. Waikato Regional Council file 60.40.32A. Supporting Papers #1550-1551.

- Water permit (dam) to dam and divert Wainui Stream for the purpose of creating a water supply reservoir for ironsand mining operations (Consent 100903)
- Water permit (diversion) to place a rock weir in the bed of Wainui Stream, and to divert water through a fish pass channel located adjacent to Wainui Stream (Consent 100904)
- Water permit (surface water take) to take up to 27,200 cubic metres of water per day from the water supply reservoir created by the damming of Wainui Stream, for the purpose of ironsand mining operations (Consent 100905)
- Water permit (surface water take) to take up to 75,000 cubic metres of water per day from the water supply reservoir created by the damming of Wainui Stream, for the purpose of loading ironsand onto ships (Consent 100906)
- Discharge permit (discharge to water) to discharge up to 2,100 cubic metres of settled stormwater and washdown water per day into Wainui Stream from the area containing the administration building, stores compound and workshops (Consent 100908)

For land based operations

- Land use consent (disturbance to land) to undertake ironsand mining operations and associated land disturbance activities, including construction of dredge ponds, access roads, ironsand stockpiles and ancillary buildings (Consent 100902)
- Discharge permit (discharge to land) to discharge process water into the ground as a result of ironsand mining operations (Consent 100909)
- Discharge permit (discharge to land) to discharge mine overburden onto land for the purpose of rehabilitating mined area (Consent 100910)

With respect to the coastal marine area

- Discharge permit (discharge to water) to discharge up to 75,000 cubic metres per day of ironsand slurry water into the coastal marine area during ship-loading operations (Consent 100899)
- Discharge permit (discharge to water) to discharge up to 32,600 cubic metres per day of stormwater and process wastewater to the coastal marine area (Consent 100900)

- Coastal permit (disturbance to seabed) to operate, maintain and replace the ship-loading and mooring buoy in the coastal marine area (Consent 100901)
- Coastal permit (disturbance to seabed) to operate, maintain and replace the existing pipeline in the coastal marine area for the purpose of ship-loading (Consent 111002)

All these consents were granted for a term expiring on 31 December 2020.

The consents listed above and granted in April 2006 have recently been amended[1224]. This was to account for changes in the manner in which the mine is now being operated. There are two main changes. Mining is now done by a dry excavation method, rather than by dredging in a pond. This now allows mining to exploit a greater depth of sand, and with an upgraded concentration plant allows a higher iron-content concentrate to be exported. The manner of mining the central portion of Taharoa C block, between Wainui Stream and Mitiwai Stream, has been adjusted to allow for this. The other change has been the introduction of a new larger ore-carrying ship, which has necessitated the moving of the loading buoy further offshore. Both changes were planned for from 2010 onwards.

Consents to move the loading buoy approximately 500 metres further offshore were granted in June 2011[1225]. The evaluation report noted that the proposal had the support of the Taharoa Maori community, and that the Taharoa C Incorporation had given its written consent[1226].

Variations to the 2006 consents to account for the changed mining operations were approved in March 2013. These variations stayed within the existing parameters for the minimum water level in Wainui Stream (8.53 metres RL), and the maximum amounts of water that could be taken in any one day (75,000 cubic metres during shiploading days, and 27,200 cubic metres on other days). The Regional Council in

[1224] Consent evaluation report, 28 June 2011, approved 28 June 2011, and Application for Section 127 change to consent evaluation report, 21 March 2013, approved 21 March 2013. Waikato Regional Council file 60.40.32A. Supporting Papers #1862-1869 and 1993-2019.
[1225] Consent evaluation report, 28 June 2011, approved 28 June 2011. Waikato Regional Council file 60.40.32A. Supporting Papers #1862-1869.
[1226] Secretary The Proprietors of Taharoa C Block to General Manager NZ Steel Mining Limited, 28 February 2011, and Secretary The Proprietors of Taharoa C Block to Environment Waikato, 2 March 2011. Waikato Regional Council file 60.40.32A. Supporting Papers #1860 and 1861.

granting the variations considered that consultation with iwi was not necessary, as "the level of effects from the change of mining methods is within the effects permitted by the existing consents", and the iwi submitters to the original consents granted in 2006 had withdrawn their right to be heard on their submissions (thereby indicating that they had been satisfied that the 2006 consents with associated conditions could be granted). The variations were granted on a non-notified basis[1227].

Compliance audits by Waikato Regional Council in November 2010 and June 2012 determined that New Zealand Steel Mining Limited was in full compliance with the terms and conditions of its resource consents[1228].

In summary, the Waikato Regional Council had allowed the mining company to continue operating under expired water rights issued under the Water and Soil Conservation Act 1967 from 1998 to 2006. The more rigorous processes for the issue of water permits under the Resource Management Act 1991 were deferred until fifteen years after the new legislation was passed. There was, however, little doubt that the water permits would be issued to allow an existing operation to continue.

C.14 Fish life in Wainui Stream and Lake Taharoa

The research for this report has not identified any scientific fish surveys undertaken in Lake Taharoa before the dam was built across Wainui Stream, the outlet stream from the lake. This is unfortunate, as it means there can be no "before and after" assessments of the impact of the mining operations. Local evidence included in published reports referred to later in this section was that there were good numbers of tuna (eels) and kanae (grey mullet) in the lake, sufficient to allow fishing for consumption by the local community. There were also smelt, bullies, and shrimps. There were inanga (whitebait) runs in the tidal waters of the Wainui Stream estuary, kokopu laid their eggs in the vegetation on the upper edge of the tidal waters at the mouth of Wainui Stream (where affected by spring tides), and kokopu inhabited the Taharoa lakes.

[1227] Application for Section 127 change to consent evaluation report, 21 March 2013, approved 21 March 2013. Waikato Regional Council file 60.40.32A. Supporting Papers #1993-2019.
[1228] Waikato Regional Council to New Zealand Steel Mining Limited, 10 November 2010 and 20 June 2012. Waikato Regional Council file 60.40.32A. Supporting Papers #1704-1705 and 1972-1975.

The mining lease that New Zealand Steel negotiated with the Taharoa C Block Incorporation, and that was signed in March 1971, specified:

> 16. [The lessee, i.e. the company] will consult with the Incorporation before interfering with any stream or creek on the said land, with a view to safeguarding fishing and associated rights as far as is practicable.[1229]

Fish and fisheries were not specifically mentioned in the ironsands mining agreement negotiated between the Crown and the mining company. The references in the agreement were more general in their nature, referring to "the lawful use" of "water, rivers, streams, pools, lakes and other natural channels or depositories of water (whether containing water or not), and tributaries", together with an obligation to "observe and comply" with the Water and Soil Conservation Act 1967. This put the onus for fisheries protection and other water use matters on whatever terms and conditions might be included in the water rights granted under the 1967 Act. The preamble to the 1967 legislation had as one of the matters relevant to water use administration "ensuring that adequate account is taken of … fisheries". However, as explained earlier in this topic study, there were no conditions directly related to fisheries included in the water right issued by the Water Allocation Council for the damming of the Wainui Stream and the raising of the level of Lake Taharoa.

The construction of the dam on Wainui Stream interrupted the migratory patterns of eels, mullet, and smelt. This was not a specific statutory concern of the Crown at that time, as the only obligation to provide a fish pass at a dam was set out in the Fish Pass Regulations 1947, and Regulation 3 of these regulations stated that they were only applicable to "any dam or weir in any river, stream or waters in which salmon or trout exist, or have been liberated, or may hereafter be liberated". Wainui Stream was not a salmon or trout fishery.

Shortly after the dam was constructed a fish pass was built around it. This was based on a ladder-type structure, with an artificial channel consisting of a series of small falls separated by sections of flat water that the fish could use for resting[1230]. In

[1229] Mining Lease, 1 March 1971. Waikato Regional Council file 60.40.32A. Supporting Papers #1166-1180.
[1230] Consent Evaluation Report, 5 April 2006, page 6. Waikato Regional Council file 60.40.32A. Supporting Papers #1452-1549 at 1457.

October 1977 the Minister of Agriculture visited Taharoa, and requested a report from his Ministry about the fish pass and the fishery.

> They have built a fish ladder to allow eels, whitebait and mullet to transfer from the lakes to the sea and vice versa.
>
> I was told that at some time our Department undertook to inspect this ladder from time to time, and the Maoris claim that we have not done so.[1231]

The Director General of Agriculture provided a report.

> The Fish-Pass Regulations 1947 only make provision for waters containing trout and salmon, or waters where they are likely to be introduced. Therefore, it was considered that these regulations do not apply to Lake Taharoa.
>
> However, the Maoris made strong demands to have the fish in the lake protected, and Auckland University designed a fish-pass which was incorporated in the project.
>
> The Ministry has no record of any formal written commitment to inspect the pass, but a former Senior Fisheries Officer at Auckland agreed to keep an eye on the project.
>
> At least one inspection has been made by Mr R.W. Little, Senior Fisheries Management Officer (Freshwater) and Mr E.N. MacDonald, Regional Fisheries Officer Auckland. Mr Little reported that the fish-pass was poorly designed and had some serious shortcomings, in fact that it was most unlikely to achieve its purpose. It is understood that this information was passed on to the Maori community.
>
> While the pass would undoubtedly work when the water flow was sufficient, the fluctuating reservoir resulted in the upstream end of the pass being often well above water level, and the pass dry. The downstream end is too far from the dam face to attract fish when water is flowing past the dam. Some type of submerged baffled orifice pass (perhaps similar to the one on the Lake Manapouri control structure) would be required, and would need to penetrate the existing dam or gate structure. This would be very expensive.
>
> It is believed that a private consulting firm in Auckland, "Bioresearches", has been commissioned (it is not known by whom) to check the pass design.[1232]

Bioresearches Ltd had been commissioned by engineering consultants for New Zealand Steel Mining Ltd, which was planning to increase the rate of ironsands extraction to meet new contractual commitments. More processing and shiploading water would be required, and one of the options was to increase the storage capacity

[1231] Minister of Agriculture to Director General of Agriculture and Fisheries, 12 October 1977. Agriculture and Fisheries Head Office file 43/1/1. Supporting Papers #1.
[1232] Director General of Agriculture and Fisheries to Minister of Agriculture, 2 November 1977. Agriculture and Fisheries Head Office file 43/1/1. Supporting Papers #2-3.

of Lake Taharoa by raising the level of the lake. The company sought a report from a biologist on the existing condition of the lake, and the effects of raising the level of the lake. The report examined the fishery and fish life in the lake only peripherally, remarking that the lake, and the marshland areas surrounding it, were "in a healthy ecological condition". Of the fishery it noted:

> Lake Taharoa has direct access to the sea via Wainui Stream, with a fish pass providing access around the dam. A traditional natural fishery exists and is based largely on eel fishing (spearing, netting and line fishing), mullet fishing (spearing and set-netting), and seasonal whitebaiting (dip-netting).
>
> Although only a single eel was observed on the 3/2/77 visit, a number of species are known to use the lake…. No releases of exotic fish species have been made into Lake Taharoa.
>
> No commercial fishery exists, but a traditional fishery has long been in existence, and many of the local population are involved. The lake is an ideal habitat for a wide variety of freshwater and marine species tolerant of freshwater conditions.
>
> Of the five species of fish known to use the lake, all require access to the sea. A correctly operating fish pass is critical to the survival of these fish species in the lake.[1233]

The collapse of the grey mullet and eel populations, which are a major discussion point in subsequent reports (see below), was not identified. The main conclusions of the report instead concentrated on the potential for erosion on the lake's eastern shore, and the impact on the marshland vegetation. It concluded that raising the level of the lake by less than 0.5 metre was unlikely to have much ecological effect, but that above that amount the effect would be considerable[1234].

A ranger from Auckland Acclimatisation Society visited Taharoa in August 1977, and then approached the Waikato Valley Authority.

> He was concerned about two of [the] activities of N.Z. Steel.
>
> 1. Discharging [waste water] across mouth of stream, causing a biological barrier to whitebait, smelt, etc, also a rusty orange discolouration.

[1233] Bioresearches Limited, *An assessment of the present ecological condition of Lake Taharoa, and the effect of further raising lake levels*, 1977. Copy on Waikato Valley Authority file 60/N046. Supporting Papers #727-742.

[1234] Bioresearches Limited, *An assessment of the present ecological condition of Lake Taharoa, and the effect of further raising lake levels*, 1977. Copy on Waikato Valley Authority file 60/N046. Supporting Papers #727-742.

2. Dam across stream is being raised 3-4 feet. This will affect bird habitat around shores of present lagoon.[1235]

However, it was not so much the biological impacts that seemed to concern the Waikato Valley Authority, so much as the absence of a water right for discharge at the stream mouth. NZ Steel Mining was approached about this[1236], thereby setting in train the application for the water rights that were eventually granted in February 1979.

Separately the Acclimatisation Society ranger (Rowan Strickland) wrote up his findings from his visit:

> Generally the water rights [that have been issued] are presented in a very vague form and, although they may not be intended, give most elusive definitions….
>
> [The right allowing discharge to the sea] goes to the sea via the Wainui Stream. Because of the visible amount of suspended solids in the discharge (not to mention what else might be in the discharge), I believe this is forming part of a major barrier to the seasonal migration of fish, namely whitebait, mullet and eels….
>
> There have been local reports of hundreds of dead glass eels found below the dam. This could be attributed to build up in numbers below the dam obstruction, where water levels are low, thus causing an oxygen depletion, or the release of something toxic in the discharge.
>
> As mentioned previously, fish migrating from the sea to Lake Taharoa are faced with a discharge barrier, but secondly hindered almost entirely by a dam which N.Z.S.M. have constructed across the Wainui Stream to form a reservoir from which they can draw the water required for their plant operation. In an endeavour to satisfy local complaints about the massive decline in fish numbers since the construction of the dam, N.Z.S.M. have constructed a fish ladder. The fish ladder's design was apparently researched by university students, but with all the expense that has gone into this project the problem still remains. A local person has monitored the number of fish utilising the fish ladder, and the best run recorded was 12 whitebait. No mullet have been recorded in the ladder.
>
> Previous to the construction of the dam, the Wainui Stream provided an excellent whitebait fishery, according to local people. The Wainui Stream also used to support a great mullet and eel fishery when both these species migrated to the sea, but since the building of the dam there has been a drastic

[1235] File note by JM Milne, 30 September 1977. Waikato Valley Authority file 60/N046. Supporting Papers #618.
[1236] Chief Executive Waikato Valley Authority to Operations Manager NZ Steel Mining Ltd, 13 October 1977. Waikato Valley Authority file 60/N046. Supporting Papers #619-620.

> decline in numbers caught. The mullet more severely noticeable than the eels. This is probably because young eels are better adapted for coping with barriers whereas mullet are not. The only mullet being caught now are probably fish which have remained semi-landlocked in the lake because of the dam, which has tended to allow a slow-filtered migration of residual stock.
>
> According to local reports, the sea in the Taharoa harbour area has looked very turbid over the last few years, particularly with wind change. Turbidity in the past has only been noticed as a result of floodwaters from the land. Also fishing and shellfish picking has not been as productive since the sea has been in this condition. One conclusion is that the seabed for a large area around the discharge into the Wainui Stream, and from the ship mooring, has received large amounts of settled residue from the discharges. The local Maori people attribute these phenomena as being directly caused by the N.Z.S.M. discharges, and certainly cannot be blamed when they see the ocean turn a milky-rust colour around both these points. Therefore, they ask, how long will it be before there is so much residue on the ocean floor in this area that it suffocates all the existing bottom fauna.
>
> The local Maori people are very concerned over the gradual decline in quality in this marine fishery, and also the fishery provided by the Wainui Stream, which they have relied upon for many years as both a traditional and basic food source.

The Ranger was critical of what he described as a "pseudo-environmental impact assessment" that had been carried out by Bioresearches Limited for the mining company in early 1977, considering it to be "a very general and incomplete study of the lake, and their conclusions largely built on surmise". In particular the report had failed to appreciate the value of the marshy areas and raupo stands around the lake edge for wetland birds such as spotless crake, marsh crake and banded rail, and for adult whitebait. Some possible solutions he identified were:

> Any discharge into the Wainui Stream should be ceased forthwith to comply with the water right. This would alleviate the visual if not the physical barrier to migrating fish.
>
> Rather than discharge directly into the sea, it should first be passed through some form of settling pond to overcome the amount of suspended solids in the discharge.
>
> Although an expensive idea, any dewatering discharge from the ships should also go through some form of settling process.
>
> In order to do away with the dam, which is the worst barrier that could ever be placed on such an important migratory system, investigations should be made into the feasibility of drawing water directly from the lake. The intake and

> water levels would have to be carefully monitored, which would be better than is happening at the present.[1237]

The Acclimatisation Society Ranger returned to Taharoa in December 1977, after being alerted to a fish kill.

> Young eels, whitebait, shrimps, bullies and possibly young mullet were found in a pool at the bottom of the fish ladder.
>
> The fish ladder was in operation when I inspected it, having only just had major improvements made to the top section above the dam. The water flow was cut on 1.12.77 for these improvements, and I suspect that a very small trickle of water was coming down.
>
> With the heat wave we had over the days between 1.12.77 and 6.12.77, a large build-up of fish numbers would have occurred due to the cut off of their access and the negotiable trickle of water.
>
> I suspect that the cause of death was oxygen depletion and excessive water temperature. The water temperature on 6.12.77 was 22°C, measured at the top and bottom end of the fish ladder while in operation. All the shrimps found were scarlet coloured as if they had been cooked. The shrimps amounted to the largest percentage of dead fish found. An estimated guess at the numbers killed would run into thousands.

He then discussed the design of the fish pass:

> The new flexi-mounted floating intake [at the top end] rises and falls with the level of the lake, thus maintaining an almost constant rate of water flow. The new construction is made of galvanised steel with fibreglass floats at the intake. Baffles and rest-boxes are installed in the same way as the wooden version below the dam.
>
> Although this new construction is obviously a very good effort on behalf of N.Z.S.M., there are still some serious matters which need dealing with:
>
> 1. The approximately 70 foot pipe which runs through the dam wall and connects the wooden section of the fish ladder to the new galvanised section also needs some form of baffle system as the run at present probably creates too much velocity for all species of fish wishing to use the ladder.
> 2. The maximum water velocity which all fish species utilising the Wainui Stream can negotiate will need to be found, so that a maximum water velocity can be set for all sections of the fish ladder.
> 3. Upgrading of wooden section of fish ladder in permanent materials similar to the new construction would be desirable.

[1237] Report by R Strickland, Auckland Acclimatisation Society Field Officer, 6 October 1977. Copy on Waikato Valley Authority file 60/N046. Supporting Papers #645-647.

4. Outflow end of fish ladder should be in line with (2) above, and also maintenance of an efficient weir [at the lower end] to guide fish to the ladder mouth in order that they do not accumulate in the entrance pool.
5. [line missing] … now need careful investigation as the water passing through the fish ladder exceeds the amount going through the overflow (6.12.77). Some form of screen system or wings may need to be looked into so that all downstream fish utilise either the fish ladder or some other device. If they go over and out through the existing overflow, they will become trapped behind the weir which forms a dam at low flow levels. The major downstream runs occur when there are low level flows from November on.
6. As pointed out in an earlier report, the discharge from the plant still exceeds the normal flow of the Wainui Stream. An educated guess reveals the number of fish that swim towards the discharge and accumulate in a rust-coloured pool instead of utilising the Wainui Stream. The result is probably an incomplete life cycle. Further to this the discharge in its present form and placement acts as a physical and visual barrier to countless numbers of fish which either die, go elsewhere, or hover at the mouth longer than they should and are predated on in some form or another.

> The mere placement of a dam on the Wainui Stream means the total destruction of a traditional spawning ground for whitebait, who depend on the rise and fall of spring tide conditions to complete this cycle….
>
> Because of the above facts, and points mentioned in a previous report (6.10.77), I feel that any artificial means of fish pass are a poor compromise.[1238]

The different requirements of the different species were highlighted in a report by a Government fisheries scientist (Dr Bob McDowell from Ministry of Agriculture and Fisheries) prepared at this time. His report was written one month after the approach to his Ministry by the Minister of Agriculture referred to above. He first discussed upstream migrations:

> Young eels, whitebait and mullet are moving up into the lake during the spring. Eels are able to move upstream past very severe barriers, and are probably able to make the migration into the lake in spite of the dam, [though] no doubt there is some decline in movement. Their movements would be facilitated by an area with water overflow sufficient to keep the surface damp. Young eels will climb vertical concrete surfaces as long as they are damp. Whitebait and young mullet are much less aggressive migrants, and require a low velocity water channel to allow them to penetrate the system. The whitebait mature in the lake and move downstream to spawn again in the autumn. The maturing and adult fish do not form an important food resource

[1238] Report by R Strickland, Auckland Acclimatisation Society Field Officer, 7 December 1977. Copy on Waikato Valley Authority file 60/N046. Supporting Papers #648-649.

> for the local Maori population. However, if they are prevented from reaching the lake, then a further spawning population of fish is destroyed, and so a further decline in the whitebait populations of the Waikato occurs. It would be preferable if this could be avoided, and I believe that it can be if the fish-pass is suitable or other measures are taken. Failure of mullet to reach the lake does affect a food resource for the local Maori population, who regard this as important. The lake is the habitat where the fish grow to maturity and where the fish are caught.

He then examined downstream migrations:

> Downstream movements comprise spawning migrations of the two eels, the whitebait and mullet. All of these migrations occur in the autumn. Although occasional downstream eel migrants may get 'lost', I see no problem in eels getting down from the lake and reaching the sea. They migrate at night. Adult inanga are also probably able to make their way downstream under existing conditions. I do not regard any inhibition of downstream migrations of the mullet as of any serious consequence. This species is very widespread around northern New Zealand, and they produce huge numbers of eggs – several hundred thousand. The loss of the spawners of Lake Taharoa from the overall spawning population is of little consequence.

Dr McDowell commented on the flow pattern in the Wainui Stream, in particular the frequency of very low flows, which he regarded as "most important to fish during the spring and autumn migrations", and therefore likely to have an effect on fish populations. He speculated that such low flows might be less frequent than would have occurred under natural conditions with no dam and no abstraction of water:

> This problem all points to the need for a proper water budget for the lake/stream/processing plant system. I believe that studies should be made of inflow rates, outflow rates, etc, and a water budget for the whole system prepared that allows the company with proper safeguards to predict its needs and release surplus water. At present "as much water as possible" is being retained to safeguard the company's interest, to the detriment at times of the lake/stream system and its fishes. By examining fluctuations in lake levels with known outflows, it should be possible, using estimated lake areas, to measure the effect of abstraction on lake level and, knowing approximate water needs by the plant, the company should be able to develop projections on water needs which may make it possible to increase the water release down the stream at times when flows are very low.

He concluded his report by providing his comments on the suitability of the fish pass:

> I doubt very much whether the fish-pass is working. Water velocities seem, to me, to be too high, partly a function of gradient, partly of flow volumes. The floating intake to the fish-pass will solve some of the problems. Further advantage can be gained by covering the bed of the pass with rock, 5-10cm in diameter, so that the water is flowing over a rocky bed. Experiments are

> needed to see if the fish are getting upstream with rocks in the pass, and I suggest that the lower 30-50 metres of the pass be modified and a trap inserted in one of the resting boxes, to assess the results before the rest of the pass is modified. Otherwise it may be necessary to alter the gradient of the pass.
>
> Entry of fish to the mouth of the pass would be much facilitated by construction of a wall leading out from the mouth of the pass at such an angle that a gyre forms in the pool there.
>
> The steel pipe passing under the roadway is obviously quite hopeless. Any fish that do reach the mouth of the pipe face a major hurdle getting up through the pipe, and I would be surprised if any significant number of fish make it. The bed of the pipe needs to be covered with a 10-15 cm depth of smallish rocks and gravel, to allow fish to settle to the bottom while moving upstream.
>
> The company may wish to consider an alternative to a fish-pass. Upstream migrants could be led into a holding trap below the dam, and manually transferred over the dam on a regular basis. This may seem a tedious job, but in the long run may prove the simplest.[1239]

In May 1978 the Auckland Acclimatisation Society conducted a survey of grey mullet in Lake Taharoa. Comparing the results of this survey with results obtained from a survey of Lake Waahi, it concluded that there was "a lack of replenishment or upstream movement of mullet stocks into Lake Taharoa", with no mullet under four years of age having been trapped. This indicated that both the dam and the fish pass were absolute barriers to upstream migration of grey mullet[1240].

The Waikato Valley Authority was made aware of all these reports showing that the water rights affecting Lake Taharoa and Wainui Stream were not protecting the customary and traditional fisheries. A staff biologist wrote in September 1979:

> The Wainui Stream apparently at one time supported a locally important whitebait fishery, and Lake Taharoa supported a locally important mullet fishery. Both these fisheries are at present much reduced, and this is probably due to one or both of the following:
>
> 1. A dam on the Wainui Stream with an inefficient fish ladder
> 2. The discharge into the stream of stormwater, process water and under-stockpile drainage water.[1241]

[1239] Dr RM McDowell (Ministry of Agriculture and Fisheries), *Wainui Stream – Lake Taharoa*, December 1977. Copy on Waikato Valley Authority file 60/N046. Supporting Papers #650-653.
[1240] R Strickland (Auckland Acclimatisation Society), *Grey Mullet Survey – Lake Taharoa*, 7 June 1978. Copy on Waikato Valley Authority file 60/N046. Supporting Papers #654-658.
[1241] PR Hendriques, *N.Z.S.M. waste discharge into the Wainui Stream (outlet of Lake Taharoa)*, Waikato Valley Authority Internal Report No. PRH/15, September 1979. Waikato Valley Authority file 60/N046. Supporting Papers #659-661.

Of these two problems, the dam was the subject of a water right issued by the Water Allocation Council in January 1971 and expiring in January 1981, while the discharge was the subject of an application for a water right in September 1978, a decision on which had been deferred by the Authority in February 1979. There is no record of any progress being made on further consideration of this application during 1979 or 1980.

There was an upgrading of the fish pass in 1982, when a rock weir was built downstream of the dam in order to direct fish into the channel leading to the ladder structure, and there was a lengthening of the pass to reduce its gradient. There was also a commitment to provide some shading of the pass. Despite these changes, the fish seen in resting boxes in the fish pass were concentrated at the lower end, suggesting that gradient, shelter, the piped section under the road, and the generally hostile environment of the fish pass were still a barrier to migration[1242].

At this time, according to a file note made by a Waikato Valley Authority staff member, the role of the Government's Fisheries Research Division of Ministry of Agriculture and Fisheries was "now one of advising locals and NZ Steel on how best to achieve their needs", rather than any more active involvement[1243].

Two fisheries scientists from the Fisheries Research Division (Rowan Strickland and Charles Mitchell) examined the suitability of the fish pass in May 1983:

> At first inspection, it was apparent that the water in the flume sections was very shallow, which would obviously discourage fish from trying to penetrate the pass. Depths ranged between 3 and 10 cm, with most sections of flume only holding about 5 cm of water. The resting box areas looked better, with depths from 15-20 cm. In addition, the water flow appeared to be quite rapid in the flume sections, and a series of current velocity measurements were made….
>
> [Based on these velocity measurements and swimming speeds of the fish species] grey mullet would find it extremely difficult to penetrate beyond the third flume. Both elvers and inanga (Galaxias maculatus) would be able to move through the fish pass, although this would still require bursts of high speed swimming through the flume sections. Grey mullet normally only

[1242] File note by MW Davenport, 11 October 1982. Waikato Valley Authority file 60/N046. Supporting Papers #667.
[1243] File note by MW Davenport, 11 October 1982. Waikato Valley Authority file 60/N046. Supporting Papers #667.

> penetrate into slow flowing or tidal lowland creeks and rivers, and their relative poor swimming performance compared to fishes which naturally inhabit swifter water or which penetrate further upstream from the sea may be reflected by their distribution.

The report recommended that:

> The existing wooden fish pass is now beginning to deteriorate and will have to be replaced in the future. Before this is undertaken, it is suggested that the basic design be re-examined and, if it cannot be modified to a constant depth of at least 30 cm and a velocity no greater than 0.15 [metres per second] throughout, then some new design be implemented.[1244]

In September 1985 Rowan Strickland (by then a scientist with Fisheries Research Division) brought together all the scientific knowledge accumulated about the Taharoa lakes and Wainui Stream in a 48-page Fisheries Environmental Report[1245]. He found that the mullet fishery had disappeared, the eel fishery had to that point been unaffected, and the whitebait fishery had been reduced from 3 kilometres of fishable water to barely 200 metres. He commented:

> Pressure from locals on NZSM to ensure the continuation of former fisheries has never been very strong, due partly to the fact that jobs created by the mining operation changed the locals' subsistence lifestyle, which included fishing. However, sufficient time has now passed for local Maoris to have experienced the loss of former fisheries, and for them to desire the restoration of those values. To achieve this, and also maintain employment through continuation of NZSM's ironsand operation might appear mutually exclusive. However, with some careful thought and perhaps some concession, there is room for mining and restoration of the fisheries.

The options for fisheries restoration that he identified were an upgrade of the fish pass, realignment of Wainui Stream below the dam back to its original course, encouraging eel migration over the dam, and making the ironsand concentrate stockpile drainage outlet into the Wainui Stream less attractive as a competing flow of water (which was encouraging eels to become diverted and stranded). More radical ideas advanced were removing the dam and placing the mining intake in Lake Taharoa, reducing the level of the stream immediately above the dam to its original state in between ship loadings, provision of a fish lock, catch-and-transfer of grey

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[1244] R Strickland and C Mitchell (Ministry of Agriculture and Fisheries), *Report on the design efficiency of the Lake Taharoa fish pass*, 1983. Copy on Waikato Valley Authority file 60/N046. Supporting Papers #743-745.

[1245] R Strickland (Ministry of Agriculture and Fisheries), *Fisheries aspects of the Taharoa lakes and Wainui Stream*, Fisheries Environmental Report No 66, September 1985. Supporting Papers #2031-2079.

mullet around the dam, and restocking of grey mullet in Lake Taharoa with fish from Kawhia Harbour.

By 1986 the wooden fish ladder had come to the end of its useful life. It could not be repaired or modified, needed to be replaced, and was still impassable for mullet. This was an opportunity to review the fish pass as a whole, and determine what new structure was needed. At a meeting in April 1986 between the company and representatives of the Taharoa C Incorporation and the Taharoa Lakes Trustees, attended also by a representative of the Waikato Valley Authority and by Rowan Strickland of Ministry of Agriculture and Fisheries, the type of fish pass was discussed. For the meeting, an employee of the company who had taken a particular interest in the operation of the fish pass and how it could be improved, prepared a report on the specifications for a new design. He recommended that the wooden section be replaced by a more permanent structure made of concrete or galvanised steel, a concrete box section be laid under the road to replace the steel pipe, baffle plates to reduce the velocity of the flow be tested, and the whole fish pass be extended in length to reduce its overall gradient. Other improvements he suggested were:

- Diversion of the Wainui Stream back into its original course, which would increase the length of the steam below the dam and provide resting areas for migrating fish before they moved upstream
- Manual transfer of grey mullet around the dam, as well as re-introduction into the lake from elsewhere
- Cutting slits in the top of the concrete wall of the dam, so that the dam face was wetted and elvers would be attracted to climb the dam face
- Boring a hole through the dam wall which fish could use on their downstream migration
- Investigation of alternatives to a fish ladder, such as manual restocking, and the building of a second dam to allow control of flows between the two dams to raise and lower the water level, thereby simulating the operation of a canal lock[1246]

The minutes of the April 1986 meeting recorded:

[1246] J Uerata, Laboratory Supervisor Taharoa, to Operations Manager Taharoa, 10 March 1986. Waikato Valley Authority file 60/N046. Supporting Papers #746-753.

> All fish but mullet had been able to use the fish ladder, and the latter were now non-existent in the lake. The Lake [Trustees] representatives were keen to see the mullet reintroduced as this had been an important food source in the past. They also felt that the eel population was declining, and though some big eels had been caught, when the stream was blocked for dam maintenance, they were smaller than in the past. They did agree that it was possible that the large increase in population at Taharoa, over the period in question, could have had a detrimental effect on the fish population, but that they strictly controlled the fishing, and had refused permission for commercial fishing in the lake….
>
> The consensus of opinion was that a fish ladder was the best long term solution to the problem, and that with the information now available about the swimming abilities of mullet, and the experiments done by John Uerata, a fish ladder could be designed with a water flow of such velocity that mullet could traverse the ladder.
>
> The materials available for the ladder were discussed, and though concrete box sections [under the road] were preferred, it was felt that further investigation was required….
>
> Concern was expressed that as the ladder ran along the borders of a reserve, it would be difficult to lengthen it without some incursion into the reserve area. The Lake [Trustees] representatives were of the opinion that provided any incursion into the reserve area was kept to a minimum, and to the lower slopes of the hill which rises from the Wainui Stream reserve boundary, approval would be given by the kaumatua for any such incursion.

The meeting concluded with agreement that restocking of Lake Taharoa with juvenile mullet from elsewhere would be attempted during April/May, a modified fish ladder would be designed and shown to interested parties for approval, and work on the under-road section of the ladder would be carried out during the intended maintenance shut-down in October 1986[1247].

A design of a new fish pass became available in September 1986, and was discussed at a further meeting of the interested parties in January 1987. A steel flume was proposed to take the place of the wooden ladder structure. However, the design was only intended to be suitable for species other than grey mullet. The designers advised that "the provision of a pass to suit the swimming speeds of the grey mullet is not practical unless further hydraulic research can identify a suitable design". This was because provisional estimates suggested that the fish pass might need to be 4 kilometres long to have a low enough gradient to keep water velocities in the range

[1247] Minutes of meeting, 23 April 1986, attached to Operations Manager NZ Steel Mining Ltd to Chief Executive Waikato Valley Authority, 9 May 1986. Waikato Valley Authority file 60/N046. Supporting Papers #754-757.

suitable for mullet[1248]. Having reached the conclusion that a pass for mullet was not a practical proposition, the designers had then prepared a pass suitable for the next slowest swimming species, the smelt[1249]. The meeting in January 1987 accepted this advice, and resolved to push ahead with the construction of a new fish pass for all species other than grey mullet, and to manually stock Lake Taharoa with juvenile mullet transferred from the Wainui Stream below the dam[1250].

A fish trap was installed at the top end of the fish pass in 1991 to allow monitoring of the fish using the pass. A weekly programme to identify species, numbers, water temperature, lake levels and weather conditions was instituted. There was also an attempt at transferring juvenile mullet from below the dam into the lake. Separately a proposal to research some different baffle types in the ladder was agreed to by the company[1251].

In 1992 a weir was constructed at the downstream entrance to the fish pass, to guide migrating fish towards the pass, direct the main flow of the stream away from the entrance, and provide some resting space for fish. Rowan Strickland, by this time a private fisheries consultant, considered that construction of the weir and the fish pass maintenance represented a big improvement that required only some fine tuning[1252]. However, the Taharoa Lakes Trustees were not so sure, and a meeting with Strickland was arranged. Their concern was that while whitebait were being caught below the fish pass, none had appeared in the trap at the top of the pass. This was in contrast to previous trap data from 1981 and 1991, when whitebait were the species trapped in the greatest numbers. A number of minor modifications were proposed, with the comment that if monitoring showed that whitebait were still not using the fish pass, then a fish trap should be installed in the first or second resting box from the bottom of the fish pass, to see if the problem lay with the entrance to the fish pass (and the

[1248] The validity of this length is questionable, given that the length of Wainui Stream from the sea to Lake Taharoa is about 3 kilometres.
[1249] Murray-North Partners Ltd, Hamilton, to Manager NZ Steel Mining Ltd, 16 September 1986, attached to Operations Manager Taharoa to Chief Executive Waikato Valley Authority, 16 December 1986. Waikato Valley Authority file 60/N046. Supporting Papers #758-767.
[1250] File note, 14 January 1987. Waikato Valley Authority file 60/N046. Supporting Papers #768.
[1251] Production Manager to Waikato Regional Council, 5 July 1991. Waikato Regional Council file 60.40.32A. Supporting Papers #791-793.
[1252] R Strickland, River Lake and Sea, Rotorua, to J Uerata, 7 August 1992. Waikato Regional Council file 60.40.32A. Supporting Papers #826-827.

new weir), or with the pass itself. If the problem lay with the fish pass, then the trap had to be progressively moved up the pass to discover what part of the pass was presenting a barrier to migration[1253].

Two other matters were also discussed at the meeting, according to Rowan Strickland:

> The problem of getting grey mullet in to Lake Taharoa was discussed. I am still certain that juveniles of this species will never use the fish pass. Nobody in the world has been able to get them to swim up a fish pass as steep as the Wainui fish pass. As I have suggested before, the simple solution is to have somebody, even school children during the May holidays, catch grey mullet juveniles in the river in the lower Wainui and bucket them up in to the reservoir.
>
> The Lake Trustees suggested the need for several studies. These are as follows:
>
> 1. That a repeat of the 1978 and 1984 mullet surveys be carried out to check if (a) any mullet have reached the lake via the fish pass, and (b) if any of the artificially stocked mullet survived.
> 2. That a comparative study be made of Lakes Taharoa and Harihari, with particular emphasis on eels. There is concern that insufficient elvers (young eels) are reaching Lake Taharoa because of the dam. This study will identify any fall off in eel recruitment, by plotting numbers against year classes, and comparing the same from Harihari.[1254]

By 1993 BHP New Zealand Steel Mining Limited was in regular contact with the Taharoa Lakes Trustees, and quarterly meetings had been instituted. When these quarterly meetings started is not known. The core concern of the meetings was the ability for eels and other native fish to have free passage up and down Wainui Stream, to allow for migration between Lake Taharoa and the sea.

In 1993, as a result of his recommendations made the previous year, Rowan Strickland and a fisheries scientist working for the Crown Research Institute NIWA (Ben Chisnall) conducted a survey to assess the changes that had occurred as a result of damming the lake's outlet stream. By then both the eel and mullet fisheries on the lake had collapsed. Their survey of the lake's fish populations found that while there was a population of older eels in Lake Taharoa, there were few younger eels. There was also an absence of inanga, bullies, mullet and smelt in the lake. As these fish,

[1253] R Strickland, River Lake and Sea, Rotorua, to Operations Manager, 7 September 1992. Waikato Regional Council file 60.40.32A. Supporting Papers #828-831.
[1254] R Strickland, River Lake and Sea, Rotorua, to Operations Manager, 7 September 1992. Waikato Regional Council file 60.40.32A. Supporting Papers #828-831.

mullet in particular, were a food source for the eels, the lake environment in its depleted state could not support a large eel population. Strickland believed that mullet, which are not strong swimmers and are averse to difficult water conditions, had shunned the fish pass and the lake population had therefore not been replenished by migration. The loss of mullet as a food source had encouraged the larger eels to then turn cannibalistically on the smaller younger eels. However, he also acknowledged that there could be another explanation for the reduced eel population in the lake. There had been a national decline in eel numbers, and a change in overall environmental conditions affecting New Zealand or the west coast generally might be an explanation for a drop in elver numbers migrating to the lake, and a drop in eel numbers in the lake. The results from the survey were reported to a quarterly meeting between the company and Taharoa Lakes Trustees in September 1993[1255].

The proposal discussed with the Lakes Trustees at the meeting was to extend the fish population survey to Lakes Harihari, Rototapu and Numiti. These lakes had never been commercially fished, and had not been affected in the way that Lake Taharoa had been affected by the changes to Wainui Stream, so could provide a control to gauge whether Lake Taharoa's eel population decline was part of a national or a general west coast trend, or was due to the changes caused by ironsands mining[1256].

The eel population survey of Lakes Harihari, Numiti and Rototapu during the 1993-94 summer identified a similar pattern in the eel population in Lakes Numiti and Rototapu as in Lake Taharoa. These lakes are physically connected to Lake Taharoa, and so rely to the same extent on Wainui Stream for migratory passage. Lake Harihari had been recently fished, and there were fewer large eels. In all three lakes, however, there was a "very low occurrence" of small-sized eels likely to be less than 8 years old, which "suggests a decline in recruitment to this coastline". The report on the survey concluded:

> If steps are not taken IMMEDIATELY to ensure adequate elver recruitment to this lake system, within ten years the eel population will be reduced to a much lower density and the bulk of the few remaining eels could be below takeable size.

[1255] Minutes of quarterly meeting with Lake Trustees, 2 September 1993. Waikato Regional Council file 60.40.32A. Supporting Papers #832-834.
[1256] Minutes of quarterly meeting with Lake Trustees, 2 September 1993. Waikato Regional Council file 60.40.32A. Supporting Papers #832-834.

Recommendations arising from the fish survey were to introduce artificial stocking of elvers, monitor recruitment, and assess the effectiveness of the fish pass on Wainui Stream for elver migration by surveying numbers both below and above the dam[1257].

For their part, the Lakes Trustees were prepared to look at other possibilities. At one of their quarterly meetings with the company, in March 1994, there was some preliminary talk of introducing trout into Lake Taharoa as an alternative food source for eels[1258]. Introducing carp or trout was also suggested at a meeting between the Trustees and Waikato Regional Council staff in October 1997[1259].

Despite the thinking of Strickland in 1992 that the weir at the bottom of the fish pass would guide migrating fish toward the pass entrance, by 1994 it was apparent that in practise it was not particularly effective and there was a problem in getting fish to enter the fish pass; at a meeting in October, "it was acknowledged that a great deal of effort and money had gone into the fish pass, but in spite of that it was not achieving the desired goal"[1260]. The following year, Strickland was advising the company that, for the ladder to be effective, fish and eel species could not be permitted to migrate above the weir, the entrance to the ladder had to be submerged if the ladder was to work properly, and the major flow below the weir had to be positioned on the opposite side of the stream, so that a large pool was created at the entrance to the fish ladder. His proposed solution was a larger weir across the whole stream, angled so that it encouraged flow to the side opposite the fish ladder entrance, and constructed of rocks in gabion baskets. He had also come to the conclusion that the flow requirement down the fish pass that was specified in the water right, of 29 litres per second, was too great a volume for the fish ladder to work effectively, given the lower swimming abilities of juvenile fish, and needed to be reviewed[1261].

[1257] BL Chisnall, *Eel Stock Evaluation in Lakes Harihari, Numiti and Rototapu*, March 1994. NIWA Consultancy Report BHP001. Copy attached to River Lake and Sea, Rotorua, to BHP New Zealand Steel Mining Limited, 15 April 1994. Waikato Regional Council file 60.40.32A. Supporting Papers #837-860 at 838-860.

[1258] Minutes of quarterly meeting with Lake Trustees, 3 March 1994. Waikato Regional Council file 60.40.32A. Supporting Papers #835-836.

[1259] File note on meeting with Trustees of Lake Taharoa, 12 October 1997. Waikato Regional Council file 60.40.32A. Supporting Papers #915-917.

[1260] File note on quarterly meeting between BHP New Zealand Steel Mining and Lake Taharoa Trustees, 6 October 1994. Waikato Regional Council file 60.40.32A. Supporting Papers #871.

[1261] File note of discussion with R Strickland, 27 March 1995, attached to minutes of meeting, 6 April 1995. Waikato Regional Council file 60.40.32A. Supporting Papers #877-882 at 880-882.

The proposed gabion basket weir was discussed at three meetings between the company, the Taharoa Lakes Trustees and Waikato Regional Council staff over the space of about one week in March / April 1995[1262]. There was agreement that the construction work should go ahead as soon as possible. Resource consent was applied for later in April 1995[1263], the Department of Conservation (which had not been at the meetings) had no objection[1264], and the consent was approved the following month[1265]. In granting consent, the Waikato Regional Council evaluation report noted:

> It is anticipated that the effects of this proposal will be positive, in that access to Lake Taharoa will be enhanced for eels, shrimp, whitebait and bullies. It is likely, however, that even these works will not enable juvenile mullet to enter the lake system, and a separate system of manual trapping and transfer is proposed for mullet.
>
> The ecology of Lake Taharoa and its various fish populations is complex, and not fully understood, hence it must be remembered that this proposal alone will not necessarily solve all the problems relating to the lake fisheries.[1266]

At the meeting with the Lakes Trustees in October 1995, it was recorded that "everyone seems pretty happy about the improvements made, and monitoring is continuing"[1267]. There were equally positive comments about the performance of the fish pass at the next two quarterly meetings[1268].

[1262] Minutes of meetings, 29 March 1995, 31 March 1995, and 6 April 1995. Waikato Regional Council file 60.40.32A. Supporting Papers #873-874, 875-876 and 877-882.
More than one meeting was required as key Trustees could not attend the earlier meetings.

[1263] Application for resource consent, 13 April 1995. Waikato Regional Council file 60.40.32A. Supporting Papers #883-893.

[1264] Regional Conservator Hamilton to Environment Waikato, 26 April 1995. Waikato Regional Council file 60.40.32A. Supporting Papers #894.

[1265] Approval of Consent, 3 May 1995, attached to Manager Consents to BHP New Zealand Steel Mining, Taharoa, 10 May 1995, and Resource Consent 950437, issued 22 June 1995. Waikato Regional Council file 60.40.32A. Supporting Papers #895-899 at 896-898, and 900-901.

[1266] Approval of Consent, 3 May 1995, attached to Manager Consents to BHP New Zealand Steel Mining, Taharoa, 10 May 1995. Waikato Regional Council file 60.40.32A. Supporting Papers #895-899 at 896-898.

[1267] Minutes of meeting, 11 October 1995. Waikato Regional Council file 60.40.32A. Supporting Papers #902-903.

[1268] Minutes of meetings, 13 December 1995 and 27 February 1996. Waikato Regional Council file 60.40.32A. Supporting Papers #904-908 and 909-910.

By mid 1996 a new fish trap and a lake level monitor had been installed[1269]. In November 1997, it was proposed that the company undertake a trial transfer of mullet. The manual transfer would be for the purpose of re-establishing mullet as part of the lake ecosystem, grey mullet having previously been a large food source for eels in Lake Taharoa, and was not intended to be for the more ambitious purpose of re-establishing a mullet fishery[1270]. Guidelines were drawn up by Rowan Strickland[1271]. Manual transfer was carried out for a short period in April 1998, ending earlier than expected when mullet ceased to be present below the dam.

A review of the research was carried out in 1998[1272]. This was in response to a presentation from a NIWA scientist to a meeting in May 1998 of the Lake Consultation Group (which had replaced the quarterly meeting with the Taharoa Lakes Trustees and had wider representation including Taharoa C Block Incorporation and Department of Conservation)[1273]. The review report noted that while there had been a slight increase in some migrating fish species, the increase was not as great as modelling and population numbers in similar-sized waters would expect. Other fish species, such as smelt and inanga, had shown drastic declines since earlier monitoring. It recommended some relatively minor improvements to the fish pass, discontinuation of the manual transfer of mullet, allowing a flow over a modified crest of the dam (to encourage shrimp and eel migration), and an investigation into the installation of a fish lift (because the review authors were not convinced that any substantial improvements to the fish pass would remedy the problems it was already causing). However, a fish lift would be a first for New Zealand, and its ability to reintroduce a mullet migration was unknown. A review of a draft version of the NIWA review by a Waikato Regional Council scientist

[1269] Minutes of quarterly meeting, 20 August 1996. Waikato Regional Council file 60.40.32A. Supporting Papers #911-912.
[1270] Minutes of meeting of Taharoa C Block, Taharoa Lake Trustees, Environment Waikato, BHP New Zealand Steel Mining, and Department of Conservation, 13 November 1997, and General Manager Primary Operations to Chairman Taharoa C Block Incorporation, 2 December 1997. Waikato Regional Council file 60.40.32A. Supporting Papers #918-920 and 921-922.
[1271] Proposed guidelines for the transfer of juvenile grey mullet, undated (February 1998). Waikato Regional Council file 60.40.32A. Supporting Papers #923-925.
[1272] BL Chisnall and M Bellingham (NIWA), *Review of the operation of the Taharoa fish-pass and associated fisheries issues*, August 1998, NIWA Client Report BHP90202/1. Copy included in Assessment of Environmental Effects, July 2002, Appendix 10. Waikato Regional Council file 60.40.32A. Supporting Papers #1217-1448 at 1359-1400.
[1273] Minutes of Lake Consultation Group meeting, 26 May 1998. Waikato Regional Council file 60.40.32A. Supporting Papers #943-945.

generally agreed that the fish pass was a failure, considered that manual transfer of mullet would always be too small-scale to have much effect, opposed a flow over the dam crest (as it would divert the attention of fish away from the fish pass), and reserved judgment on whether a fish lift was the best alternative[1274]. Besides the fish pass study, two other studies were carried out during 1998-1999, largely prompted by the mining company's application for renewed resource consents lodged in February 1998 and the reaction of tangata whenua to the Assessment of Environmental Effects report that accompanied the application. These were a study of Lake Taharoa water levels[1275], and design options for a fish lift[1276].

A summary of the Lakes Consultation Group's activities during the 1998 year noted:

> BHP New Zealand Steel Mining recognises that the migration of grey mullet into the Taharoa Lakes is still an issue. Much work has been done over the years to improve the fish pass so that juvenile grey mullet may migrate to the lakes. However, Rowan Strickland of the Cawthron Institute, and who has had a long association with Taharoa fish pass, believes there is nothing more which could be done to the fish ladder to improve the situation.
>
> We would all like to resolve this situation, and so BHP New Zealand Steel Mining undertook to trial the transfer of juvenile mullet from the lower Wainui Stream to above the dam. During the 1998 migration period Meno Te Uira and several others caught around 700 juvenile grey mullet and successfully transferred them across the dam. For this operation to be successful, however, much larger numbers would need to be transferred every year, that is around 30,000 fish per year.[1277]

A monitoring inspection by Waikato Regional Council in March 1999 found that the fish pass was being poorly maintained, and commented that "the company had perhaps let itself down with the lack of maintenance of the existing structure"[1278]. Maintenance was carried out the following month[1279].

[1274] Consent Evaluation Report, 5 April 2006, pages 25-27. Waikato Regional Council file 60.40.32A. Supporting Papers #1452-1549 at 1477-1478.
[1275] Woodward Clyde (NZ) Limited, *Taharoa Lake level and Wainui Stream dam intake*, 19 October 1998. Copy included in Assessment of Environmental Effects, July 2002, Appendix 9. Waikato Regional Council file 60.40.32A. Supporting Papers #1217-1448 at 1329-1357.
[1276] Woodward Clyde (NZ) Limited, *Investigation of fish lift for Wainui Stream*, 14 April 1999. Copy included in Assessment of Environmental Effects, July 2002, Appendix 11. Waikato Regional Council file 60.40.32A. Supporting Papers #1217-1448 at 1402-1419.
[1277] Newsletter of Taharoa Lakes Consultation Group, 2 December 1998. Waikato Regional Council file 60.40.32A. Supporting Papers #953-954.
[1278] Monitoring Inspection Report, 11 March 1999. Waikato Regional Council file 60.40.32A. Supporting Papers #955-956.
[1279] Minutes of Lake Consultation Group meeting, 4 November 1999. Waikato Regional Council file 60.40.32A. Supporting Papers #964-966.

During 1998 and 1999, there appears to have been a shift in the attitudes of the Taharoa community. While non-Maori parties were focussed on resolving problems with the grey mullet migration, this did not have the unanimous support of tangata whenua. Nora King, a Taharoa C Block Incorporation representative, was recorded in the September 1998 minutes of the Lake Consultation Group as saying that "the issue of mullet not in the lake has been raised many times and should now be left alone"[1280]. One year later, John Keepa, Chairman of Taharoa Lake Trustees, was recorded in the Consultation Group minutes as saying that "the elders believe (exception P Te Uira) that the migration of mullet is not the issue. The bigger issue is people's employment"[1281]. Essentially the local community was coming to the same conclusion as the fisheries scientists and the Department of Conservation, whose representative at the October 1999 Consultation Group meeting stated that the Department "has reviewed the mullet situation and concluded that there is not much that can be done"[1282]. At about this time, there were comments from the mining company's environmental officer that the company had been advised by the fisheries scientists that "when the mine was closed and the dam was removed, all fish species would return to Lake Taharoa"[1283]. The ongoing survival of the operation was uncertain, with Japanese supply contracts becoming progressively shorter-term, leading to the company becoming more cautious about making any further capital investment (apart from the relocation north of Wainui Stream)[1284].

Finding solutions to fish passage up and down Wainui Stream was put to one side from late 1999, while attention was focused on the relocation to the central area of Taharoa C between Wainui Stream and Mitiwai Stream. When attention re-focused onto the renewal of the resource consents, after the relocation had taken place in January 2001, Waikato Regional Council advised the mining company that a revised

[1280] Minutes of Lake Consultation Group, 8 September 1998. Waikato Regional Council file 60.40.32A. Supporting Papers #951-952.
[1281] Minutes of Lake Consultation Group, 8 October 1999. Waikato Regional Council file 60.40.32A. Supporting Papers #957-963.
[1282] Minutes of Lake Consultation Group, 8 October 1999. Waikato Regional Council file 60.40.32A. Supporting Papers #957-963.
[1283] Minutes of Lake Consultation Group, 4 November 1999. Waikato Regional Council file 60.40.32A. Supporting Papers #964-966.
[1284] Minutes of Lake Consultation Group, 24 November 1999 and 15 December 1999. Waikato Regional Council file 60.40.32A. Supporting Papers #967-969 and 970-971.

Assessment of Environmental Effects document would need to incorporate additional fisheries studies that had been undertaken since the applications had first been lodged in February 1998[1285].

The Assessment of Environmental Effects documentation was provided in July 2002. It summarised the history of the fish pass and the results of fish surveys, before commenting, in the type of language used in the Resource Management Act:

> [The 1998 NIWA] study would suggest that the dam installation and water abstraction may adversely affect the ecology of the Wainui Stream and Taharoa lakes. With the exception of the grey mullet, the migratory species present in this aquatic ecosystem prior to establishment of the mine are still present there, and it is anticipated that following mine closure (possibly within 15 to 20 years) the lake and stream ecosystem would return to its original state. Therefore any adverse effect is of a short and defined duration. Any additional mitigation measures adopted by the Company in the meantime are not likely to significantly improve the current situation.[1286]

The company did not propose any further improvements to the fish pass, nor did it propose to reintroduce the manual transfer of grey mullet juveniles[1287]. While provision of a fish lift had been explored, it was not intended to install one[1288]. Instead the existing fish pass would be maintained (with monthly inspections), and the fish trap at the top of the pass would be used to monitor and provide data on the extent to which different fish species used the pass[1289]. This proposed management regime had been discussed with the Lake Consultation Group and had the Group's support[1290]. The Department of Conservation, however, remained concerned about "the impact of the restricted fish passage into Lake Taharoa (for eels and mullet)" [1291].

It was with this background that Waikato Regional Council had to consider the resource consent application lodged by BHP New Zealand Steel Limited in 1998 (and

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[1285] Programme Manager to BHP New Zealand Steel Mining Limited, 15 March 2001. Waikato Regional Council file 60.40.32A. Supporting Papers #1127-1128.
[1286] Assessment of Environmental Effects, July 2002, page 25. Waikato Regional Council file 60.40.32A. Supporting Papers #1217-1448 at 1247.
[1287] Assessment of Environmental Effects, July 2002, pages 40-41. Waikato Regional Council file 60.40.32A. Supporting Papers #1217-1448 at 1262-1263.
[1288] Assessment of Environmental Effects, July 2002, page 46. Waikato Regional Council file 60.40.32A. Supporting Papers #1217-1448 at 1268.
[1289] Assessment of Environmental Effects, July 2002, pages 47-48. Waikato Regional Council file 60.40.32A. Supporting Papers #1217-1448 at 1269-1270.
[1290] Assessment of Environmental Effects, July 2002, page 58. Waikato Regional Council file 60.40.32A. Supporting Papers #1217-1448 at 1278.
[1291] Assessment of Environmental Effects, July 2002, page 59. Waikato Regional Council file 60.40.32A. Supporting Papers #1217-1448 at 1279.

updated in 2002) for continued operation of the fish pass. The first thoughts that staff had was that "the consent holder should prepare a management plan for the Wainui Stream, inclusive of the dam and fish pass", and that "overall, I do not think that efforts to improve fish passage or populations should stop"[1292].

In May 2003 the company's applications to dam and draw water from Wainui Stream were publicly notified. As already discussed in an earlier section of this topic study, five submissions were received, the two most directly relevant to fish passage being from the Department of Conservation and Tukotahi Tuteao Trust. Underlying the Department's submission was an acceptance of the existing fish pass, though it asked for a number of other improvements to the Wainui Stream environment:

- Complete implementation of NIWA's 1998 recommendations, including providing a friendlier environment for fish migrating downstream over the dam
- Continue manual transfer of grey mullet juveniles, or provide for other measures to restore a grey mullet population in Lake Taharoa
- Improve monitoring; while upstream migration data was being gained from the fish trap, there was no gathering of downstream migration data to assess the success or otherwise of all the fish passage efforts
- Set a minimum flow in Wainui Stream below the dam that ensures "aquatic ecosystem functioning between the sea and the dam"
- Enhance the riverbank habitat by planting riparian vegetation for shade and to improve inanga spawning[1293]

The submission from the Tukotahi Tuteao Trust was made on behalf of the Trust and an investigation team sub-committee of the Taharoa Lake Trustees. The leading figure was Kahuoterangi (Sid) Tuteao, who the mining company understood had "the mandate from the Lake Trustees to head an Investigation Team looking at the issue of fisheries in the Taharoa Lakes"[1294]. The Trust stated that it had a customary authority

[1292] M Davenport to G Blackie, 24 February 2003. Waikato Regional Council file 60.40.32A. Supporting Papers #1130.
[1293] Maniapoto Area Manager to Chief Executive Waikato Regional Council, 20 June 2003. Waikato Regional Council file 60.40.32A. Supporting Papers #1146-1148.
[1294] Environmental Officer BHP New Zealand Steel Limited to G Blackie, 7 May 2003. Waikato Regional Council file 60.40.32A. Supporting Papers #1131.

(as descendants of Kiwi Te Roto) to control and exercise kaitiakitanga over lands, springs and waters of the Taharoa lakes; this included authority regarding customary food gathering. Their submission sought:

- Development of a sustainable lake and water management plan in regard to customary fisheries (including tuna, kanae and inanga), whereby the mining company accepted responsibility for restoring populations of the species that had customarily been fished
- Better coordination and management of dam regulation / opening times, fish migration periods, and shiploading operations
- Inclusion of the Trust in ongoing consultation to achieve these objectives[1295]

The Trust retained NIWA fisheries scientists as their technical advisors.

From June 2003, when public submissions were received, to April 2006, consultation with the Tukotahi Tuteao Trust and the Department of Conservation continued, though in light of the length of time involved this can only be described as having been in a desultory fashion, with little pressure coming on the affected parties from the Regional Council. During this time any physical changes to fish passage were put on hold. In October 2003, there was a meeting of affected parties, where each party ran through their respective points of view, and agreed that the next step would be the preparation by Waikato Regional Council of a draft set of consent conditions as a basis for further discussions[1296]. The draft conditions were circulated in about September 2004, with written comments provided later that month by the Tukotahi Tuteao Trust and by a NIWA scientist advising the Trust[1297], and comments provided by the Department of Conservation in November 2004[1298]. A revised set of draft conditions was distributed in May 2005, as a result of which the Department of Conservation signalled that it no longer wished to be heard at a hearing to consider

[1295] Submission on behalf of Tukotahi Tuteao Trust and Lake Tahaaroa Trustees Investigation Team sub committee, 17 June 2003. Waikato Regional Council file 60.40.32A. Supporting Papers #1138-1145.
[1296] File note about 6 October 2003 meeting, 20 October 2003. Waikato Regional Council file 60.40.32A. Supporting Papers #1149-1150.
[1297] Review of draft conditions by Tukotahi Tuteao Trust, September 2004. Waikato Regional Council file 60.40.32A. Supporting Papers #1151-1160.
[1298] D Smith to D Lal, 16 November 2004. Waikato Regional Council file 60.40.32A. Supporting Papers #1163-1164.

the applications[1299]. Nearly one year later, in April 2006, the Tukotahi Tuteao Trust also advised that it no longer wished to be heard[1300]. This latter advice was provided immediately following a meeting between the Trust, the mining company, Waikato Regional Council and their respective technical advisors – the Regional Council had apparently finally brought matters to a head by scheduling a hearing for later in the month[1301].

With no affected parties seeking a hearing, it was possible for the Chairperson of Waikato Regional Council's Regulatory Committee to make a decision under delegated authority. A consent evaluation report was prepared by Regional Council staff as the basis for allowing the decision to be made. On the matter of fish passage, the report noted that the existing fish pass had largely reached the limits of its capabilities, without meeting the full range of fish migration needs, and concluded:

> I recommend consent conditions that require the applicant to investigate the feasibility of constructing a new fish pass that can effectively provide passage, … both upstream and downstream, for all migratory fish species. In addition to the feasibility study, I recommend that within 2 years of the commencement of the consent that the applicant constructs a new fish pass. I consider this timeframe to be appropriate as evidence suggests that the current fish pass is unable to facilitate the passage of all migratory species. On this basis there is no need to put the construction or modifications off, thus delaying the inevitable. The applicant is also well aware of the limitations of the current fish pass.[1302]

On the matter of minimum flows downstream of the dam, the report noted that the previous water right had required a flow velocity of not less than 29 litres per second through the fish pass, with the intention that this would provide a sufficient flow downstream of the dam. However, this rate had been deliberately reduced because it was found that the flows in the pass were too great to enable fish to migrate upstream. Recent measurements of flow in the pass indicated an average flow of 18 litres per second. It was recommended that low and mean annual low flows be established with

[1299] Maniapoto Area Manager to Environment Waikato, 13 June 2005. Waikato Regional Council file 60.40.32A. Supporting Papers #1165.
[1300] Chairman Tukotahi Tuteao Trust to Environment Waikato, 4 April 2006 [sic, should be 5 April 2006]. Waikato Regional Council file 60.40.32A. Supporting Papers #1449.
[1301] Notes of pre-hearing meeting, 5 April 2006. Waikato Regional Council file 60.40.32A. Supporting Papers #1150-1151.
[1302] Consent Evaluation Report, 5 April 2006, page 27. Waikato Regional Council file 60.40.32A. Supporting Papers #1452-1549 at 1478.

greater accuracy, and an optimum flow velocity be determined to meet the needs of both fish passage in the pass and aquatic habitat downstream[1303].

In response to the applicant's suggestions that the dam be removed when mining operations ceased, the evaluation report recommended that a bond should be required to cover the costs of dam removal and rehabilitation of the Wainui Stream aquatic environment, should the Regional Council find itself left with the costs of this work[1304].

The consents were granted, and all recommended conditions concerning fish passage that were made in the consent evaluation report were accepted[1305]. The consents granted in April 2006 were for a term expiring on 31 December 2020[1306], and remain operative today. The conditions relevant to fish passage included the following obligations placed on BHP New Zealand Steel Mining Limited:

- Weekly maintenance inspections of the fish pass
- A maximum flow in the fish pass of 0.3 cumecs (cubic metres per second)[1307]
- A technical assessment within 6 months of an optimum flow regime in the fish pass and in the Wainui Stream downstream of the dam, to be approved by Waikato Regional Council following its own technical evaluation and consultation with the Department of Conservation
- A technical assessment within 9 months of the feasibility of a new fish pass, to be approved by Waikato Regional Council following its own technical evaluation and consultation with Department of Conservation and iwi

[1303] Consent Evaluation Report, 5 April 2006, pages 23-24. Waikato Regional Council file 60.40.32A. Supporting Papers #1452-1549 at 1474-1475.
[1304] Consent Evaluation Report, 5 April 2006, page 27. Waikato Regional Council file 60.40.32A. Supporting Papers #1452-1549 at 1478.
[1305] Administration Officer to New Zealand Steel Limited, 11 April 2006. Waikato Regional Council file 60.40.32A. Supporting Papers #1550-1551.
[1306] This term was different to consent durations discussed in the consent evaluation report. In the report it was recommended that Consents 100899, 100900, 100903, 100904, 100905 and 100906 (see an earlier section of this report for the details of each consent) would be for a term of 10 years, while the other consents would be for a term of 20 years, "due to the ineffectiveness of the current fish pass in providing passage for all migratory fish species". Consent Evaluation Report, 5 April 2006, page 54. Waikato Regional Council file 60.40.32A. Supporting Papers #1452-1549 at 1505.
[1307] This figure is based on guidelines published by the Department of Conservation (J Boubee et al, *Fish passage at culverts: a review with possible solutions for New Zealand indigenous species*, 1999. Department of Conservation Science Investigation No. 2103). Not included in Supporting Papers.

representatives, and to be followed by preparation of a detailed design within 12 months, and construction within 2 years

- Monitoring (in accordance with a monitoring plan) of the effectiveness of the new fish pass for the juveniles of the following fish species: inanga, smelt, longfinned eel, shortfinned eel, and mullet
- Enhancement (in accordance with a Wainui Stream Enhancement Plan prepared within 12 months) of inanga spawning in the stream below the dam that will improve indigenous biodiversity values and establish suitable riparian vegetation
- Provision within 6 months of a bond to cover, among other things, removal of the dam (if required), associated stream rehabilitation "and any pre-removal assessment of environmental effects, actions or reporting that may be required"

In addition, Waikato Regional Council gave itself the ability to review the conditions of consent concerning "the performance of the Wainui Stream fish pass and any current or required mitigation measures, including its total replacement", if it notified the mining company to this effect in any of the second quarters of 2007, 2009, 2011 and 2015[1308].

The reason that Tukotahi Tuteao Trust withdrew its request to be heard at a resource consent hearing in April 2006 was that it had reached a private side-agreement with BHP New Zealand Steel Mining Limited. By a memorandum of understanding drawn up at the pre-hearing meeting on 5 April 2006[1309], it was agreed that the mining company would contribute to an eel restoration project, would compensate the Trust for its members being unable to use traditional fishing equipment at an historic tuna fishing site at Turanga's Crossing on the Wainui Stream that became flooded when the level of Lake Taharoa was raised, and would pay the expenses incurred during consultation over the resource consents[1310]. With respect to the eel restoration project,

[1308] Conditions of Consent 100904 and General Conditions, included in Consent Evaluation Report, 5 April 2006, pages 65-67, 73-74, and 79. Waikato Regional Council file 60.40.32A. Supporting Papers #1452-1549 at 1516-1518, 1524-1525 and 1530.
[1309] Notes of pre-hearing meeting, 5 April 2006. Waikato Regional Council file 60.40.32A. Supporting Papers #1450-1451.
[1310] Memorandum of understanding, 5 April 2006, and Mining Operations Manager Taharoa to Chairman Tukotahi Tuteao Trust, 20 June 2006. Waikato Regional Council file 60.40.32A. Supporting Papers #1552 and 1553.

Verna Tuteao and the Tukotahi Tuteao Trust prepared a progress report on development of a Taharoa Freshwater Fisheries Enhancement Plan in November 2006[1311].

When the first opportunity for review of the resource consent conditions came in the second quarter of 2007, there was a request from the Ministry of Fisheries for a review, because the fish pass was ineffective, a recent survey had shown no juvenile recruitment of eel stocks, and the outlook was for a decline in the population sustainability of eels[1312]. Taharoa Lakes Trustees and Tukotahi Tuteao Trust also sought a review of conditions[1313]. However, the 2007 review opportunity was only 12 months after the resource consents had been granted, and a final design of a new fish pass had not been completed, so Regional Council staff considered that a review would be premature[1314].

The Ministry of Fisheries had commissioned the recent survey of eel stocks in Lake Taharoa that it had referred to in its request for a review of conditions. The trigger for this renewed interest by the Ministry is not known; there is no record on Waikato Regional Council files of any contact with or correspondence from the Ministry (or its predecessor the Ministry of Agriculture and Fisheries) during the period between the fisheries research review report written by Rowan Strickland in 1985, and its approach in 2007. The report on the 2007 survey was not completed in final form until March 2008[1315]. However, before then, in May 2007, one of the two consultants who prepared the report expressed his concern about the state of the Lake Taharoa eel fishery in an open letter:

> The results show a crisis point for the customary eel fisheries for Taharoa. There has been poor annual recruitment of elvers into the Taharoa lakes to replenish dwindling adult stocks because of an inadequate and inefficient fish

[1311] Verna Tuteao and Tukotahi Tuteao Trust, *Tahaaroa freshwater fisheries: enhancement planning progress report to Lake Taharoa Trust*, November 2006. Supporting Papers #2080-2096.
[1312] Pou Takawaenga Auckland to Environment Waikato, 11 April 2007. Waikato Regional Council file 60.40.32A. Supporting Papers #1554-1555.
[1313] Secretary Tahaaroa Lakes Trust to Environment Waikato 4 May 2007, and Chairman Tukotahi Tuteao Trust to Environment Waikato, 7 May 2007. Waikato Regional Council file 60.40.32A. Supporting Papers #1556 and 1557.
[1314] J Rodriguez to C Jewell, 11 May 2007. Waikato Regional Council file 60.40.32A. Supporting Papers #1559-1560.
[1315] B Chisnall and I Ruru (Maumahara Consultancy Services Ltd), *Taharoa Lakes customary eel fisheries*, March 2008, report for Ministry of Fisheries project number EEL2006-06. Supporting Papers #2097-2143.

> pass installed in the 1970s to allow fish to pass the dam. For Lake Harihari, the substantial cause for low recruitment of eels is an overhanging culvert. In all cases this is evident from the deficiency of small eels of both species, and the significant decline in historical catch rates of large eels. The ineffective fish pass has also hindered the movement of other native species such as the once-abundant mullet into the interconnected Taharoa Lake system. Despite attempts to modify the pass to assist access of juvenile mullet, Ngati Mahuta has not enjoyed their abundance since the late 1970s.
>
> Recommendations:
> For Taharoa, there is a clear need for a fish lift to be installed as advised in previous research studies, or the dam to be removed.
>
> For Lake Harihari, we recommend that the culvert be replaced to ensure movement of juvenile and adult native fish.[1316]

The two reports required by Waikato Regional Council, on the feasibility of a new fish pass and on enhancements downstream of the dam, were not completed in the timeframes set by the Council. The fish passage report had been required nine months after April 2006. Three options were discussed with the Taharoa Lakes Trustees and Tukotahi Tuteao Trust in April 2007, and this discussion identified one of them, known as the vertical slot fishway, as the preferred option. This option was worked on further, and presented in a report in August 2007 that was circulated to Waikato Regional Council, the Department of Conservation, and the two Maori trusts for comment. New Zealand Steel Limited was hoping to get approval from these organisations so that a detailed design could be prepared by November 2007[1317]. A vertical slot fishway is the type of fish pass that already existed at Taharoa:

> The basic design of a vertical slot fishway is a rectangular channel partitioned by baffles into resting pools. When the water is flowing, the fish swim from pool to pool through vertical slots that are orientated vertically.[1318]

Notwithstanding the poor performance of the existing fish pass, particularly at the lower-level entrance for upstream migration, and at the steel pipe through the embankment near the top of the pass, this type of fish pass was still considered suitable; both the upstream entrance to the pass and the baffle-and-pool section below

[1316] Managing Director Maumahara Consultancy Services Ltd to "To Whom it May Concern", 2 May 2007. Waikato Regional Council file 60.40.32A. Supporting Papers #1558.
[1317] Environment Teamleader New Zealand Steel Limited to Environment Waikato, 4 September 2007. Waikato Regional Council file 60.40.32A. Supporting Papers #1561-1606 at 1561-1562.
[1318] Tonkin and Taylor Limited, *Wainui Stream fish passage feasibility assessment*, August 2007, attached to Environment Teamleader New Zealand Steel Limited to Environment Waikato, 4 September 2007, at page 12. Waikato Regional Council file 60.0.32A. Supporting Papers #1561-1606 at 1577..

the pipe through the embankment were regarded as being technically robust and able to be retained. Attention therefore focussed on designing a better entrance at the downstream end (by changing entrance orientation and modifying the weir), and a better passage through the embankment (by continuing the vertical slot fishway through the embankment)[1319].

However, when the report was received, neither the Department of Conservation nor Waikato Regional Council's fisheries scientist favoured the upgrade of the existing fish pass that had been proposed. They instead favoured one of the other two options, an open bypass channel. Both agreed that the third option, a fish lift, was not suitable[1320]. Apparently Sid Tuteao and the Taharoa Lake Trustees also favoured an open bypass channel. In advising the mining company of these opinions, the resource officer for Waikato Regional Council stated:

> Looking at the big picture, conditions of consent 100904 require three main things to be done to mitigate the adverse effects, i.e. construct a new fish pass, design and implement a monitoring programme, and develop a Wainui Stream Enhancement Plan. I note [the Council fisheries scientist's] comments regarding loss of natural stream channel (between the dam and the weir) and loss of natural habitat; when thinking about the Wainui Stream Enhancement Plan, I have the feeling that this plan would probably be more successful if it is developed in conjunction with the construction of the bypass. In addition, it would be easier to develop an overall plan that had a look at the whole picture, and I believe everyone (DOC, iwi, etc) would be more comfortable with that approach.
>
> In conclusion, I think that all the parties involved (not sure about NZS) agree that the best option is to construct the open channel bypass; personally I think that it would be very difficult for New Zealand Steel to sell the idea of upgrading the fish ladder to the community and other stakeholders.[1321]

This response was probably not received by New Zealand Steel Limited in time to alter the progress being made on the stream enhancement plan, a draft version of

[1319] Tonkin and Taylor Limited, *Wainui Stream fish passage feasibility assessment*, August 2007, attached to Environment Teamleader New Zealand Steel Limited to Environment Waikato, 4 September 2007. Waikato Regional Council file 60.40.32A. Supporting Papers #1561-1606 at 1563-1606

[1320] D Smith to J Rodriguez, 23 November 2007, and D Speirs to J Rodriguez, 13 December 2007. Waikato Regional Council file 60.40.32A. Supporting Papers #1607 and 1608-1609.

[1321] J Rodriguez to C Jewell, 14 December 2007. Waikato Regional Council file 60.40.32A. Supporting Papers #1610-1611.

which was circulated to affected parties for comment in December 2007[1322]. There was a meeting of the mining company, Waikato Regional Council and the two Maori trusts in March 2008 to discuss the draft report. The main criticism directed at the report was that it tended to address the clothing of the riverbanks with vegetation, when the objective of the plan was to create spawning areas for inanga; in essence it had been prepared by a landscape architect, rather than by a landscape architect and a fisheries scientist working together[1323]. Following the meeting a fisheries scientist engaged as a consultant by Waikato Regional Council provided more detailed comments, including a recommendation that there be a survey of whitebait spawning during autumn/winter 2008 before the enhancement plan was revised[1324]. This was accepted, and a revised plan, renamed an "inanga spawning and stream health plan", and which included the results of the survey of spawning areas, was presented to Waikato Regional Council in September 2008[1325]. The Regional Council provided written approval of the plan in December 2008 as set out in the resource consent condition; this was subject to the plan being revised within three months of the final design of the new fish pass being approved, in order to ensure complementarity between the two matters[1326].

Meanwhile further work was being done on the design of the new fish pass, including construction of a scale model to test its effectiveness. A final version of the design report was completed in March 2009[1327], and approved in writing by the Regional Council later that month[1328]. This meant that approval of the stream enhancement design and the fish pass design had taken from April 2006 to March 2009 (three

[1322] Tonkin and Taylor Limited, *NZ Steel Taharoa mine: Wainui Stream enhancement plan*, October 2007, attached to Environment Teamleader New Zealand Steel Limited to Environment Waikato, 6 December 2007. Waikato Regional Council file 60.40.32A. Supporting Papers #1612-1649 at 1614-1649.
[1323] File note, 7 March 2008. Waikato Regional Council file 60.40.32A. Supporting Papers #1650.
[1324] C Mitchell and Associates, Raglan, to Environment Waikato, 25 March 2008. Waikato Regional Council file 60.40.32A. Supporting Papers #1651-1658.
[1325] Tonkin and Taylor Limited, *NZ Steel Taharoa mine: Wainui Stream inanga spawning and stream health plan*, June 2008, attached to Environment Teamleader New Zealand Steel Limited to Environment Waikato, 11 September 2008. Waikato Regional Council file 60.40.32A. Supporting Papers #1659-1702 at 1660-1702.
[1326] Resource Officer to New Zealand Steel Limited, 2 December 2008. Waikato Regional Council file 60.40.32A. Supporting Papers #1703.
[1327] Tonkin and Taylor Limited, *Taharoa fish pass: design report*, March 2009. Copy on Waikato Regional Council file 60.40.32A. Supporting Papers #1706-1761.
[1328] Resource Officer to New Zealand Steel Limited, 30 March 2009. Waikato Regional Council file 60.40.32A. Supporting Papers #1762-1764.

years), when the conditions of resource consent had expected them to both be completed within one year. This delay added to other delays that had occurred before the consents were granted.

However, there was to be a further delay. In July 2009 New Zealand Steel Limited advised Waikato Regional Council that it considered the capital cost of the open bypass channel to be too high, and sought permission to be allowed to construct an amended upgrade of the existing vertical slot fishway instead[1329]. The Regional Council's response was that the amended upgrade was unlikely to allow migration by grey mullet, though it would work for other species, and was therefore not consistent with the resource consent conditions. A change to the consent conditions would need to be applied for (pursuant to Section 127 Resource Management Act 1991) if the mining company wanted to exclude grey mullet from the range of species for which the fish pass was designed. For this application to be processed on a non-notified basis, consultation with and the approval of the submitters to the consents granted in 2006 would be required. Alternatively the company could proceed with construction of the open bypass channel already approved[1330]. New Zealand Steel Limited then argued that the revised design for the vertical slot fishway would in fact allow fish passage by all the intended species, cause less environmental disturbance, and be less complex to construct[1331].

A meeting between the mining company and Waikato Regional Council to discuss these different viewpoints was held in October 2009; at the meeting the mining company gave a presentation on the revised design, including its hydraulic characteristics, which it argued would (in theory, based on modelling calculations) allow for passage by all species including mullet[1332]. After the meeting, the Regional Council advised the company that it was "comfortable in principle with the proposal,

[1329] Tonkin and Taylor Limited to New Zealand Steel Limited, 16 July 2009, and Resource Officer to New Zealand Steel Limited, 12 August 2009. Waikato Regional Council file 60.40.32A. Supporting Papers #1765-1774 and 1775-1776.
[1330] Resource Officer to New Zealand Steel Limited, 12 August 2009. Waikato Regional Council file 60.40.32A. Supporting Papers #1775-1776.
[1331] Vice President Mining and Co-Product Businesses New Zealand Steel Limited to Environment Waikato, 26 August 2009. Waikato Regional Council file 60.40.32A. Supporting Papers #1777-1778.
[1332] Tonkin and Taylor Limited, powerpoint presentation of Taharoa fish pass: detailed analysis of the proposed new and existing fish ladder – revised option 1, undated (October 2009). Copy on Waikato Regional Council file 60.40.32A. Supporting Papers #1779-1804.

and considers that this proposed option would be able to meet the requirements of the conditions of the resource consent 100904". However, it noted that before approval could be given, consultation with the Department of Conservation and the two Maori trusts was still required, and it also supported consultation with Taharoa C Incorporation. In addition, the Regional Council sought further information about the operation of the new design during periods of low lake level, and about a monitoring programme to assess the effectiveness of the pass once it had been built[1333]. A consultation meeting with the Taharoa Lakes Trustees took place in December 2009; the Secretary of the Trustees later advised the Regional Council that the presentation was overly technical, presumably when discussing the hydraulic characteristics of the design, and those attending did not understand those technicalities, though there was a general feeling that the revised design would work[1334].

New Zealand Steel Limited conducted modelling that showed that there would still be the required flow down the fish pass at times of low lake level[1335], and produced a draft version of a monitoring programme[1336]. These were prepared in advance of a consultation meeting with the Taharoa Lakes Trustees to be held in May 2010[1337]. During April 2010 both Regional Council technical staff (a freshwater ecologist, a hydrologist, and an engineer) and the Department of Conservation advised that, in light of the reassurances provided by the new documentation, they believed the design for upgrading the existing fish pass could be approved[1338].

Despite earlier advice that Waikato Regional Council wanted to know the results of consultation with tangata whenua organisations before it decided whether or not to approve the revised upgrade of the existing fish pass, a decision was in fact made before the May 2010 consultation took place. Approval was given in April 2010 on

[1333] Resource Officer to New Zealand Steel Limited, 3 November 2009. Waikato Regional Council file 60.40.32A. Supporting Papers #1805-1807.
[1334] File note of phone contact, 9 December 2009. Waikato Regional Council file 60.40.32A. Supporting Papers #1808.
[1335] Tonkin and Taylor Limited, *Derivation of synthetic reservoir record analysis components*, 23 March 2010. Copy on Waikato Regional Council file 60.40.32A. Supporting Papers #1815-1823.
[1336] Tonkin and Taylor Limited, *Taharoa fish monitoring programme (draft)*, February 2010. Copy on Waikato Regional Council file 60.40.32A. Supporting Papers #1809-1814.
[1337] Environment Teamleader New Zealand Steel Limited to Environment Waikato, 26 April 2010. Waikato Regional Council file 60.40.32A. Supporting Papers #1824.
[1338] B David to J Rodriguez, 22 April 2010, and Technical Support Officer (Freshwater) Waikato Conservancy to New Zealand Steel Limited, 26 April 2010. Waikato Regional Council file 60.40.32A. Supporting Papers #1825 and 1826-1827.

the basis of the positive technical comments, "the level of consultation undertaken by New Zealand Steel", and compliance with the consent conditions. The "level of consultation" with the tangata whenua organisations comprised both what had already occurred and the promise of a further consultation opportunity the following month. Approval was granted on condition that New Zealand Steel Limited would continue consultation and provide a summary of the meeting to be held in May 2010[1339].

Shortly after the May 2010 meeting, the mining company advised the Regional Council that at the conclusion of the meeting there was "majority agreement for NZS to proceed with the design approved by Environment Waikato on April 30"[1340]. The minutes of the meeting became available later; they showed that of the fifteen Maori attendees just one Lakes Trustee had not supported the fish pass design (and may have asked for his opposition to be recorded)[1341].

The upgrade of the fish pass was completed in July 2010[1342], and a draft version of a monitoring programme was prepared the following month[1343]. Annual monitoring reports of fish passage have been produced in June 2011[1344] and June 2012[1345], and a review of the Wainui Stream enhancement plantings was completed in April 2012[1346]. There is no indication on Waikato Regional Council files that the opportunity provided by the consents granted in 2006 to review conditions with respect to fish passage in 2009 and 2011 was activated by the Council.

[1339] J Rodriguez to G Blackie, 28 April 2010, approved 28 April 2010, and J Rodriguez to New Zealand Steel Limited, 30 April 2010. Waikato Regional Council file 60.40.32A. Supporting Papers #1828-1830 and 1831.

[1340] Project Manager Engineering Services New Zealand Steel Limited to Environment Waikato, 12 May 2010. Waikato Regional Council file 60.40.32A. Supporting Papers #1832-1833.

[1341] Minutes of meeting, 5 May 2010. Waikato Regional Council file 60.40.32A. Supporting Papers #1834-1837.

[1342] File note, 28 July 2010. Waikato Regional Council file 60.40.32A. Supporting Papers #1838-1839.

[1343] Tonkin and Taylor Limited, *Taharoa fish pass monitoring programme (draft)*, August 2010. Copy on Waikato Regional Council file 60.40.32A. Supporting Papers #1840-1859.

[1344] Tonkin and Taylor Limited, *Wainui Stream and fish pass, October 2010 and January 2011 fish surveys*, June 2011. Copy on Waikato Regional Council file 60.40.32A. Supporting Papers #1870-1900.

[1345] Tonkin and Taylor Limited, *Wainui Stream and fish pass, October 2011 and January 2012 fish surveys*, June 2012. Copy on Waikato Regional Council file 60.40.32A. Supporting Papers #1916-1971.

[1346] Bernard Brown Associates Ltd, *NZ Steel Ltd, Taharoa: review of Wainui Stream enhancement plantings*, April 2012. Copy on Waikato Regional Council file 60.40.32A. Supporting Papers #1901-1915.

The review of the stream-side enhancement plantings was undertaken by a landscape architect rather than by a fisheries ecologist. He found many of the plantings had failed because of the harsh coastal environmental conditions, because of inappropriate choice of species, and because the young nursery-raised seedlings had not been hardened off in the Taharoa environment prior to planting. He recommended infill planting (where seedlings had died) of species sourced locally and occurring naturally in the Taharoa coastal environment, such as pohutukawa, ngaio, flax, raupo and cabbage tree[1347]. Just how these predominantly tree species would assist whitebait spawning was not explained, though it is possible that a cover of woody species could provide a shady microclimate that encourages growth of low leafy vegetation that can adapt to inter-tidal conditions and assist spawning.

The two annual monitoring reports viewed during research for this topic study (a report on the 2012-2013 migration season has not been seen) were prepared by the consulting firm that designed the fish pass. They do not comment on the success or otherwise of the design, although a minor improvement was recommended in the 2010-2011 report. According to both reports, the presence of juveniles both below and above the fish pass, and trapping at the top of the fish pass, indicated that inanga, smelt, common bully and shortfinned eel were consistently negotiating the fish pass. Only very small numbers of longfinned eel and redfinned bully were identified. Grey mullet were observed in Wainui Stream below the fish pass during a night spotlight survey in January 2012, but were not observed in the fish pass itself during the intensive survey periods in October 2011 and January 2012. However, two grey mullet had been trapped at the top of the fish pass in June 2011[1348].

Considering all the effort put in over so many years to develop a functioning fish pass, the reported results from the first two monitoring reports probably rate as a meagre return, and appear to indicate the newly upgraded fish pass is only partially successful. Grey mullet migration would appear to still appear to be a problem; the

[1347] Bernard Brown Associates Ltd, *NZ Steel Ltd, Taharoa: review of Wainui Stream enhancement plantings*, April 2012. Copy on Waikato Regional Council file 60.40.32A. Supporting Papers #1901-1915.
[1348] Tonkin and Taylor Limited, *Wainui Stream and fish pass, October 2010 and January 2011 fish surveys*, June 2011; and Tonkin and Taylor Limited, *Wainui Stream and fish pass, October 2011 and January 2012 fish surveys*, June 2012. Copies on Waikato Regional Council file 60.40.32A. Supporting Papers #1870-1900 and 1916-1971.

natural survival of the species in Lake Taharoa depends on strength in numbers, so their successful reintroduction requires migration through the fish pass not in tens but in tens of thousands. However, a proper analysis of the results, and comparison of these recent results with the results obtained in earlier surveys before the fish pass was updated, would require a review by a fisheries scientist.

C.15 Protection of wahi tapu

It is not clear at what stage during the establishment phase of the mining operation that the protection of wahi tapu became a matter of Crown concern. It had always been a matter of Maori concern, being raised at the first meetings in the mid 1950s (see earlier section of this topic study).

There is no evidence that early survey plans were referred to by the Crown or by the Waikato Regional Council for information about Taharoa. If they had been referred to, the Crown and the Regional Council would have discovered that a survey plan in 1911 identified two areas as "native burial ground" within the boundaries of what later became Taharoa C; these urupa were named Wharangi and Tauwhare[1349]. Another plan in 1932 showed "Karaka urupa" and "Tauwhare urupa"[1350]; since 1970 these have been referred to as Te Kepuna and Tuawhare, while another wahi tapu has been referred to as Te Kakara, suggesting that "Karaka urupa" was both incorrectly named and incorrectly located.

In March 1970 an archaeologist from the New Zealand Historic Places Trust, with two members of the University of Auckland Archaeological Society, visited Taharoa. They "walked over 30 miles" across the dunes during the Easter weekend visit, "locating many sites and assessing the archaeological significance of the area". The archaeologist reported that the sand dune country was part of a larger "total prehistoric scene", with many large pa sites located on the hills to the east. His report identified a total of 21 sites, twelve on the sand dunes and nine inland of the dunes. On the dunes, he reported:

[1349] South Auckland plan ML 7809, Sheets 1, 4, 6 and 7. Supporting Papers #601-604.
Wharangi is an inlier within, and not included in the title of, Taharoa C block. South Auckland plan ML 21520. Supporting Papers #607-611.
[1350] South Auckland plan ML 15354, Sheet 2. Supporting Papers #605.

> It is clear that prehistoric occupation in this area has been widespread and has extended over a long period. Wherever the movement of the dunes has exposed underlying surfaces, they are invariably littered with occupation debris – stones, shells, chert and obsidian flakes, and many artefacts.

He identified five of the dune sites, three just to the south of Wainui Stream and two just to the south of Mitiwai Stream, as key sites. The three Wainui Stream sites were described as follows:

> [Site 1] Wainui Stream; slightly south of the small hut on stream bank and north of the dry watercourse into Wainui at point where it straightens for its run across sand to the sea. Large area of heaped-up midden, hangi stones, copious chert (including points) and obsidian adze flakes. Some moa bone. Main area is heaped up about 6' – but this may not be stratified deposit. This site is surrounded by many square chains of eroded midden, hangi, etc, but some pieces of it are intact.
>
> [Site 2] Stretched out for 2-300 yards from NZ Steel bore hole…. A low ridge or outcrop of flat brown sandy/iron sand material, lying roughly parallel to beach which is about a ¼ mile distant. On this are seven clusters of shallow rectangular structures. There are 3-7 main rectangles (8-10' x 12-15') in each group, together with associated smaller rectangles. These structures are only about 10cm deep, but they may have been 'shaved off' by surface erosion. To the northern end of the line is a large shell midden. All over area is scattered hangi material, chert, obsidian, and a piece of adze of Nelson grey argillite.
>
> [Site 9] Large area of dune littered with hangi stones, and with a large quantity of stone (greywacke) flakes, obsidian, chert, sandstone grinders and files, several adze pieces, 1 small argillite adze, and chert drill points. On side nearer to Wainui Stream is a surface rectangular arrangement of much larger stone blocks. This looks like an extensive habitation and adze manufacturing area. It is badly wind eroded, but some of the top area is still intact.

The archaeologist recommended:

1. That this matter should be discussed by the Archaeology Committee [of NZ Historic Places Trust].
2. That NZ Steel be asked to provide finance for a full field survey of this area to be carried out in a University vacation, so that students can be used for the work.
3. That on the basis of this survey, a programme of salvage archaeology be presented to NZ Steel, with the hope that they would finance the work.
4. Should the preparatory work of NZ Steel threaten the five key sites (sites 1, 2, 9, 7, 8) that these should be fully investigated as soon as possible.

He advised that he had provided the results of his assessment to New Zealand Steel and to the Chairman of the Incorporation[1351].

[1351] Archaeologist to Chairman NZ Historic Places Trust, 17 April 1970. Copy held by Auckland University Library. Supporting Papers #2026-2030.

The field survey recommended by the Historic Places Trust archaeologist was not immediately carried out. The Nature Conservation Council reported in November 1970 that the Trust had been unable to obtain funding for "a full programme", and would instead be financing "a three weeks investigation short programme"[1352]. The full field survey was not carried out until 1978 (see below).

The lease between the company and the Incorporation, signed in March 1971, specified that:

> 11. [The lessee, i.e. the company] will take all possible precautions to prevent damage to historic places, burial grounds, relics, artifacts, fossils and other articles of antiquity, all of which shall be the property of the Incorporation, and will immediately upon discovery thereof, and where possible before disturbance thereof, acquaint the Incorporation of such discovery and carry out at the lessee's expense the Incorporation's reasonable instructions as to disposal or protection thereof.

This clause became the basis for the clause to be included in the Crown's ironsands mining agreement. While the Crown accepted that all artefacts would be the property of the Incorporation, it also wanted there to be "some way in which government could influence the protection of any relics discovered"; it suggested that the Inspector of Quarries should be able to direct the company on their protection "after consultation" with the Incorporation[1353]. However, this arrangement would bypass the involvement of the Historic Places Trust[1354]. When the Department of Internal Affairs, which was responsible for the Historic Places Trust, was asked for its views[1355], it replied:

> The Department would be gratified to see the condition incorporated in the mining agreement with the Crown. If possible, we would also like the mining company to be obliged to notify the New Zealand Historic Places Trust as well as the proprietors of the discovery of historic places, burial grounds, relics, artefacts, fossils and other articles of antiquity.

[1352] Chairman Nature Conservation Council to Minister of Lands, 27 November 1970. Mines Head Office file 12/30/25-12. Supporting Papers #112-113.
[1353] Under Secretary for Mines to Crown Counsel, 14 May 1971. Mines Head Office file 12/30/25-12. Supporting Papers #127-128.
[1354] Crown Counsel to Under Secretary for Mines, 3 June 1971. Mines Head Office file 12/30/25-12. Supporting Papers #129.
[1355] Assistant Under Secretary for Mines (Administration) to Secretary for Internal Affairs, 20 July 1971. Mines Head Office file 12/30/25-12. Supporting Papers #130.

> Although it is an independent statutory body, the Historic Places Trust operates under legislation administered by this Department, and its staff are officers of the Department. The Taharoa ironsand area is an important archaeological site, and the Trust has for some years been negotiating with NZ Steel Ltd for a financial grant to enable salvage archaeology to be carried out prior to the removal of ironsand. While the Trust is still hopeful that such a grant will eventually be forthcoming, it is now clear that it will not be made in time to enable adequate archaeological survey and investigation to be made. The Trust has therefore from its own slender resources financed a limited archaeological survey and will probably extend this in the coming summer.
>
> Earlier in the negotiations the Trust attempted to negotiate a three-party agreement with the company and the Maori owners, but unfortunately it was not possible to finalise this. The opportunity to comment on the proposed provision for the mining agreement is therefore appreciated.
>
> The Trust has, through its archaeologist, been able to reassure the owners on the question of respect for the sites and relics of their ancestors, and this has been to the interests of NZ Steel Ltd.[1356]

The limited archaeological survey referred to in this letter was apparently carried out over the 1971-72 summer, although no report writing up the survey results has been identified or located during the research for this topic study.

In October 1971 a meeting between officials from Mines Department, Industries and Commerce Department, Treasury and Crown Law Office was held, to seek to resolve the Crown stance on the outstanding issues with the mining agreement. The historic places and artefacts clause was one of the matters discussed. In a briefing to the Minister of Mines after the meeting, it was explained in connection with this clause:

> Agreement has been reached to the effect that if the Maori owners fail to give directions for the company to safeguard any relics unearthed or historic places found during mining, the Inspector of Quarries may give such directions for their protection as he thinks fit after discussions with the NZ Historic Places Trust.[1357]

The ironsands mining agreement between the Crown and the mining company, which was signed in March 1972, contained the following clause in the Second Schedule:

> 4. The Company will take all possible precautions to prevent damage to historic places, burial grounds, relics, artifacts, fossils and other articles of antiquity, all of which shall be the property of the

[1356] Secretary for Internal Affairs to Assistant Under Secretary for Mines (Administration), 30 July 1971. Mines Head Office file 12/30/25-12. Supporting Papers #131.
[1357] Assistant Under Secretary for Mines (Administration) to Minister of Mines, 15 October 1971. Mines Head Office file 12/30/25-12. Supporting Papers #135-136.

> proprietors of the said land, and immediately upon discovery thereof, and where possible before disturbance thereof, acquaint the proprietors of the said land and the said Inspector of Quarries of such discovery. Thereafter the Company shall carry out at the Company's expense such reasonable instructions as to the disposal and protection thereof as may be given to it by the proprietors of the said land, and in the absence of instructions from the said proprietors as may be given by the Inspector of Quarries at Huntly.[1358]

Because this clause was contained within the Second Schedule to the agreement, and the application of the Schedule only applied, pursuant to Clause 21 of the main agreement, when restoration was to be done following completion of mining, the placement of the clause in the Second Schedule was described in a legal opinion in 1975 as "inept drafting"[1359], as it was intended that the clause would apply during mining as well as once mining had ceased in an area.

The terms of the agreement caused some confusion, in two respects, when the Antiquities Bill and the Historic Places Amendment Bill were passing through Parliament in 1975. First, the Antiquities Bill deemed artefacts to be the property of the Crown in the first instance, while the mining agreement treated them as the property of the Maori landowners. Second, the Historic Places Amendment Bill gave the Historic Places Trust the power to require archaeological investigation work, while the mining agreement placed that responsibility with the Inspector of Quarries. New Zealand Steel Mining Limited in a submission to Parliament on the proposed legislation preferred the terms of the ironsands mining agreement, and sought to have this preference referred to in the legislation[1360]. The Department of Internal Affairs, responsible for the new legislation, sought a Crown Law Office opinion, which stated that:

> This answer rests on the general principle that in the event of conflict between a person's contractual obligations and his statutory obligations, the latter must still be complied with (in the absence of a section preserving contractual obligations).

[1358] Ironsands Mining Agreement, 29 March 1972. Copy on Waikato Regional Council file 60.40.32A. Supporting Papers #1181-1196.
[1359] Crown Counsel to Secretary for Internal Affairs, 29 August 1975, attached to Secretary for Internal Affairs to Secretary for Mines, 15 September 1975. Mines Head Office file 12/30/25-12. Supporting Papers #145-151 at 148-149.
[1360] Submission to Select Committee on Historic Places Amendment Bill, undated, attached to Mining Manager New Zealand Steel Limited to Secretary for Mines, 15 August 1975. Mines Head Office file 12/30/25-12. Supporting Papers #143-144 at 144.

Neither Crown counsel nor the Department of Internal Affairs felt that any conflict would arise in practice, as the Crown in its administration of the mining agreement would be unlikely to insist on the terms of the agreement being absolutely complied with in the face of the statutory requirements[1361].

At a date that has not been identified during research for this topic study (possibly 1974), the mining company and the Taharoa C Incorporation agreed on the identification of a number of wahi tapu sites that would not be mined. The sites, referred to as cultural reserves, were named in 2000 as being Wainui 1, Wainui 2, Te Kepuna 1, Te Kepuna 2, Te Kakara 1, Te Kakara 2, and Tuawhare[1362]. There was also close consultation between the mining company and the Taharoa C Incorporation about wahi tapu from 1972 onwards, with protocols agreed and followed in the event that koiwi were discovered during mining operations. It is not the purpose of this topic study to examine the relationship between the company and the Incorporation, as the Waitangi Tribunal's inquiry is directed towards the activities of the Crown and bodies to whom it has delegated some of its kawanatanga powers.

The full field survey recommended by the Historic Places Trust archaeologist in 1970 was eventually carried out in January 1978[1363]. The introduction to the report on the survey stated:

> The need for a detailed investigation of the full range of archaeological evidence within the ironsands area at Taharoa was known from a previous partial survey by the New Zealand Historic Places Trust in 1972, and an investigation of one site (N73/194) containing burials and habitation material by Dr H Allen (Anthropology Department, University of Auckland). On the basis of this work it was apparent that archaeological sites in the area being

[1361] Crown Counsel to Secretary for Internal Affairs, 29 August 1975, and Minister of Internal Affairs to Assistant Secretary New Zealand Steel Limited, 3 September 1975, attached to Secretary for Internal Affairs to Secretary for Mines, 15 September 1975. Mines Head Office file 12/30/25-12. Supporting Papers #145-151 at 148-149 and 146-147.

[1362] The location of these reserves is shown on a plan in Assessment of Environmental Effects, Appendix 2, 3 February 2000, attached to Environmental Officer BHP New Zealand Steel Limited to Environment Waikato, 4 February 2000. Waikato Regional Council file 60.40.32A. Supporting Papers #972-1026 at 1019.

[1363] S Bulmer, *Archaeological site survey at Taharoa C Block, January 1978*, April 1978, Anthropology Department, University of Auckland. Copy on Waikato Regional Council file 60.40.32A. Supporting Papers #1079-1087.
While the text of the report indicates that a map formed part of the report, there was no map attached to the copy located during the research for this topic study. A map (Figure 3) labelled "after Bulmer 1978" is included in O Wilkes, *Report on archaeological survey of King Country coastline, 1992-1994*, September 1994. Excerpts on Waikato Regional Council file 60.40.32A. Supporting Papers #1088-1099.

> quarried by the New Zealand Steel Company were both numerous and of remarkable interest.

As a result of the one-week field survey, a total of 129 sites on Taharoa C block were recorded. The total comprised:

- 2 pa sites, on headlands between the three largest lakes
- 6 large settlement sites, between 50 and 300 metres long, in the immediate vicinity of the beach
- 27 other large settlement sites, between 50 and 300 metres long, in the middle of the sand dunes, overlooking one of the two streams that cross the dunes, or overlooking the inland lakes
- 59 smaller habitation areas, less than 50 metres long, i.e. mounds of scatters of general occupation material, such as stone flakes and midden, but without structural evidence
- 16 cooking sites, i.e. scatters or clusters of cooking stones, with or without food debris, but lacking stone tools or structural evidence
- 17 sites with undefended structural evidence (pits, terraces or ditch), with or without midden material
- 2 stands of karaka tress, indicating probable former habitation; there was one further stand of karaka trees associated with pits and terraces

The report noted that:

> Two of the above sites included human bone. One (investigated by Dr Allen) had definite burials, while another had only highly fragmentary remains which were at the time of recording immediately broken and dispersed in a wind storm.
>
> Other sites, most of which are now destroyed through dredging and mine construction, were investigated by J McKinlay in the 1972 fieldwork. These included a large habitation area, at which an archaeological excavation was carried out, and a chert-working site, both near the present mine plant.

The survey identified only the sites visible on the surface; the shifting sands meant that there would be further buried sites with no indications on the surface. The shifting sands had probably also contributed to the large number and widespread dispersal of the sites, as they would have required habitations and cooking sites to be moved on a regular basis. When sites were exposed, they were affected by wind erosion and collecting. They were also being destroyed by the ironsands mining. The report on the field survey recommended appointment of a professional archaeologist

to carry out surveys in advance of ironsands mining, funding for occasional more intensive site investigations (including graduate student projects), and a public relations programme in the local Taharoa community, perhaps associated with a small museum[1364].

In September 1994, a professional archaeologist prepared a report on archaeological sites along the King Country coastline between Awakino and Te Maika[1365]. While a copy of his full report has not been located during the research for this topic study, photocopies of excerpts with specific references to Taharoa are held by Waikato Regional Council. His survey and assessment allows the Taharoa archaeological sites to be placed in a wider regional context, although it is apparent from his report that he was denied access to Taharoa C block and was instead obliged to rely on publicly-available information such as the 1978 field survey report, New Zealand Archaeological Association records, and aerial photographs.

> [The Taharoa] sector is dominated by sand-dunes and by the lakes and swamps which have been dammed inland of the sand-dunes. As noted in Section 1, it has an unusually high density of recorded sites, probably because wind erosion of the sand-dunes has exposed a higher proportion of sites than elsewhere. Of the 147 sites recorded in these 7 sand-dune segments, 11 are pa and 14 are pit storage sites, which thus occur at their usual density, and which are located on bedrock elevations around the perimeter of the sandhills. The high site density is accounted for by kitchen sites – shell middens and ovenstone scatters, etc. There are 89 of these, located on the dunes.
>
> The sand-dune country is also remarkable for the average size of the sites. Some 32 of the sites are over 2500 sq m in area, and 20 of them are over 1 ha in area. Presumably the abundance of the very large sites is at least in part due to wind erosion having exposed much larger areas of them than is usual elsewhere.
>
> Archaic / moahunter sites seem to be more common on the sandhills than elsewhere. Bulmer recognised only 2 sites as being archaic, but there are 6 sites which seem to exhibit archaic characteristics. Five of these are larger than 1 ha.

[1364] S Bulmer, *Archaeological site survey at Taharoa C Block, January 1978*, April 1978, Anthropology Department, University of Auckland. Copy on Waikato Regional Council file 60.40.32A. Supporting Papers #1079-1087.

[1365] O Wilkes, *Report on archaeological survey of King Country coastline, 1992-1994*, September 1994. Excerpts on Waikato Regional Council file 60.40.32A. Supporting Papers #1088-1099.
This report is the basis for a published article: O Wilkes, 'Archaeological survey of sites between the Awakino River and Kawhia Harbour' in *Archaeology in New Zealand*, Volume 38(4), December 1995, pages 235-256.

> The final distinguishing characteristic of this area is the large quantity of stone flake materials associated with sites. This may be a reflection of the strong archaic / moahunter presence.[1366]

In a chapter on "site importance, condition and future protection", Wilkes wrote:

> Assessment of destruction and threatened destruction of sites on the Taharoa sandhills has been hindered by the refusal of the Maori landowners, the Taharoa C Corporation [sic], and the sand miners, BHP NZ Steel, to allow fieldwork in the area. Nevertheless, some idea of the mining situation can be achieved by comparing Bulmer's 1978 site records with maps showing area mined and area to be mined, which were kindly provided by BHP NZ Steel. Sites affected by plantation forestry can be documented by recent air photos which show the extent of forest planting.
>
> Fig 20 shows the locations of all known Taharoa sand-dune sites, together with areas mined, areas currently scheduled to be mined, areas reserved from mining, and areas planted in pine trees. Of 115 sand-dune sites known, 63 are now under pine plantation, 8 have been destroyed by mining, 5 are threatened by planned sand mining, and 39 appear reasonably safe for the time being. Of the 14 sites here regarded as important (i.e. those with ratings of 6 or more), 7 are in plantations, 4 have been destroyed by mining, and 3 appear to be safe.
>
> Ironsand mining at Taharoa could ultimately extend over the entire area of the sand-dunes, after plantations have been harvested. If this happened, without reservation of sites it could involve destruction of more than 100 of the known sites, not to mention whatever sites, covered by sand at the time of the Bulmer survey, are still awaiting discovery.
>
> Many of these sites are of little significance, few of them are spectacular, but some of them could yield important information about and cultural treasures from the moahunting period.[1367]

Section 93(1)(c) Resource Management Act 1991 provides for the Historic Places Trust to be notified if an application affects any registered site, any site subject to a heritage order, or any land otherwise identified in a regional or district plan as having heritage value. The Trust relied on this section to become involved when BHP New Zealand Steel Mining Limited applied for resource consent in February 2000 to construct an aqueduct over Wainui Stream in order to move the dredging and concentrate plant from south of the stream to north of the stream. It lodged a

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[1366] O Wilkes, *Report on archaeological survey of King Country coastline, 1992-1994*, September 1994, page 14. Excerpts on Waikato Regional Council file 60.40.32A. Supporting Papers #1088-1099 at 1089.

[1367] O Wilkes, *Report on archaeological survey of King Country coastline, 1992-1994*, September 1994, page 41. Excerpts on Waikato Regional Council file 60.40.32A. Supporting Papers #1088-1099 at 1091.

submission opposing the resource consent application, because the company's assessment of environmental effects did not include any assessment of effects on archaeological values or on the archaeological sites recorded as likely to be affected by aqueduct construction. In addition there were likely to be unrecorded sites. Disturbance to any archaeological site required prior consent from the Historic Places Trust. The Trust sought as conditions of consent that an archaeological survey should be carried out in advance of construction works, and that a strategy of avoidance or mitigation of adverse effects on archaeological values identified by the survey should be followed. The objection noted that "given the shifting nature of the sand dunes, and ongoing effects of mining activities, an up to date survey is definitely required"[1368]. When its submission was rejected as being out of time[1369], the Historic Places Trust came back with a request for reconsideration, and a complaint that Waikato Regional Council had failed to comply with the legislation and notify the Trust of the application[1370]. Section 93 of the 1991 Act was quoted, along with a statement in the proposed Waikato Regional Policy Statement that the west coast coastline was of historical, spiritual and cultural significance to iwi. Waikato Regional Council was forced to apologise for its inadvertent failure to notify the Trust; its failure was said to be "an omission on our part, not an intention"[1371]. The submission was allowed, although this did not have any practical effect in this instance as the resource consent application was withdrawn before a hearing was held (see separate section of this topic study), though not before a meeting of the parties was held (see below).

It is apparent from subsequent events that the Historic Places Trust had had little or no contact with BHP New Zealand Steel Mining Limited or Taharoa C Incorporation prior to lodging its submission in 2000. After initial telephone contact was made with the Secretary of the Incorporation, the Trust sent him a letter:

[1368] Manager Maori Heritage Division New Zealand Historic Places Trust to Chief Executive Environment Waikato, 23 March 2000. Waikato Regional Council file 60.40.32A. Supporting Papers #1070-1072.
[1369] Administration Officer to New Zealand Historic Places Trust, 24 March 2000. Waikato Regional Council file 60.40.32A. Supporting Papers #1076.
[1370] Chief Executive New Zealand Historic Places Trust to Chief Executive Waikato Regional Council, 11 April 2000. Waikato Regional Council file 60.40.32A. Supporting Papers #1100-1102.
[1371] Programme Manager to Chief Executive New Zealand Historic Places Trust, 17 April 2000. Waikato Regional Council file 60.40.32A. Supporting Papers #1103-1104.

> The NZ Historic Places Trust has lodged a submission to a resource consent application from BHP New Zealand Steel raising concerns about the impact of the iron-sand mining on archaeological sites and wahi tapu at Taharoa. We also have separate concerns about the impact of any forestry activities at Taharoa.
>
> Some limited archaeological inspections have previously been undertaken at Taharoa which indicated a large number of archaeological sites were present over the mining and forestry areas. The archaeological site types recorded are pits, burials, shell midden, ovens, pa, stone working areas and cultivation and occupation sites. There is reasonable cause to suspect that further unrecorded archaeological sites may be present on the land. All archaeological sites are protected under the provisions of the Historic Places Act 1993, in that it is unlawful for any person to destroy, damage or modify an archaeological site (whether or not the site is recorded) without the prior authority of the Historic Places Trust.
>
> The Trust understands that cultural areas have been set aside at Taharoa to preserve cultural sites and wahi tapu. Heritage places that are not archaeological sites and have no physical evidence (e.g. natural features, streams, springs, flora and fauna, trees, battle sites) are not protected by legislation. The Trust would, however, support iwi / hapu in the future preservation or management of those places.

A meeting on site was requested.

The meeting was held in May 2000, and was attended by Trust, mining company, Incorporation, Regional Council and District Council representatives[1372]. An Historic Places Trust archaeologist explained that while the Trust was not against mining, it wanted the mining company to "manage the process to gather information from the area before it is destroyed". This required the company to:

- Get proposals implemented to manage the archaeological aspects
- Establish a procedure to handle any future archaeological findings
- Introduce a continuous archaeological programme to manage known sites and those that might still be discovered[1373]

Both company and Incorporation representatives were obviously concerned at the interest the Trust was showing in the Taharoa operations. There were comments that historic sites were already recorded, and that the significance of archaeological findings was a matter for local people to determine. They considered that consultation between the two had worked well for 28 years, that procedures were

[1372] Minutes of meeting, 9 (should be 10) May 2000. Waikato Regional Council file 60.40.32A. Supporting Papers #1108-1111.
[1373] Minutes of meeting, 9 (should be 10) May 2000. Waikato Regional Council file 60.40.32A. Supporting Papers #1108-1111.

already in place, and that this included mining being stopped when certain archaeological features were sighted[1374]. In addition, neither the company nor the Incorporation wanted the move to the area north of Wainui Stream to be held up, as it was important to them both that the mine did not run out of sand to extract. They were supported by the Waitomo District Council representative. At the end of the meeting, it was agreed that the mining company would arrange for an archaeological survey to be undertaken where there would be construction works at the stream crossing, along the route to be taken by the dredge, and where the new dredge pond would be excavated, and that "the parties will get together to discuss long term management of historical cultural issues on the mining lease area"[1375].

In separate notes about the same meeting that were recorded by the Regional Council representative, it was stated:

> Taharoa C people were very disturbed and dismayed at the submission from HPT. In particular that the submission was a blanket opposition to a (BHP) proposal that C Block had already considered and approved in principle, that it was a denial of the use and management of their land, and that previous archaeological surveys which had been facilitated by Taharoa people had never been communicated to them. They also noted that there were long standing and current protocols between BHP and local Taharoa C for dealing with archaeological matters and re-burials, and that there were cultural reserves in existence and protected in the mining area.

It was also recorded that, while the Historic Places Trust was "not concerned with management of koiwi, such being a matter for local tangata whenua, hapu and trusts", it was, however, interested in a wider range of types of sites, including "middens, cooking sites and stones, moa hunter traces etc", and was concerned "for the preservation and / or recording of information for all peoples"[1376].

Not dwelt upon (although perhaps an underlying issue) during the discussions that the Historic Places Trust had with the mining company and the Maori landowners in May 2000 was that the protocols the two parties were working under may not have been lawful. The Assessment of Environmental Effects document prepared by the

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[1374] *Taharoa mine site safety and general procedures: discovery of human remains*, issued 10 March 1995, attached to Environmental Officer to Waikato Regional Council, 20 April 2000. Waikato Regional Council file 60.40.32A. Supporting Papers #1105-1107.

[1375] Minutes of meeting, 9 (should be 10) May 2000. Waikato Regional Council file 60.40.32A. Supporting Papers #1108-1111.

[1376] Notes of 10 May 2000 meeting, 14 May 2000. Waikato Regional Council file 60.40.32A. Supporting Papers #1113-1114.

company in support of its resource consent applications contained the following statement:

> In addition BHP New Zealand Steel Mining has established a protocol with the local tangata whenua for monitoring the site during earthworks. A kaumatua or designated tangata whenua will be present during the installation of the culvert, as this is the most likely location of any items of cultural significance. It has been agreed that if any large items of significance are discovered during the earthworks, then consideration will be given to relocating the culvert to avoid disturbing the site. Should this not be possible, then the matter will be further discussed with relevant kaumatua.[1377]

However, a submission by the Department of Conservation on the resource consent applications had remarked that:

> The protocol for the known archaeological site described in the Assessment of Environmental Effects appears to be contrary to the law. Archaeological sites are known to be abundant elsewhere on the Taharoa sand dunes, and there is a high probability of undiscovered archaeological sites in the immediate vicinity of the Wainui Stream. Under the Historic Places Act 1993 all archaeological sites older than 1900 are protected, and an authority has to be obtained from the NZ Historic Places Trust before any archaeological site is modified.[1378]

When a consent to remove pines north of Wainui Stream was granted to Taharoa C Incorporation in July 2000, to clear the ground before mining commenced, the conditions of consent included the following:

> 3) Prior to commencement of activities authorised by this consent, the consent holder shall (in consultation with the New Zealand Historic Places Trust and BHP New Zealand Steel Ltd) undertake an archaeological survey of the land area subject to this consent, to identify any sites of spiritual or archaeological significance to Maori.
> 4) Prior to commencement of activities authorised by this consent, the consent holder shall provide a report(s) for the written approval of the Waikato Regional Council, which shall as a minimum include;
> i. The methodology and results of the survey required by condition 3), and
> ii. Procedures for the management of any archaeological sites identified by condition 3) and any unidentified archaeological sites which may be discovered during the course of activities authorised by this consent.

[1377] Assessment of Environmental Effects, 3 February 2000, pages 9 and 24, attached to Environmental Officer BHP New Zealand Steel Limited to Environment Waikato, 4 February 2000. Waikato Regional Council file 60.40.32A. Supporting Papers #972-1026 at 993 and 1011.
[1378] Area Manager Maniapoto Department of Conservation to Chief Executive Waikato Regional Council, 23 March 2000. Waikato Regional Council file 60.40.32A. Supporting Papers #1073-1075.

5) Activities authorised by this consent shall be undertaken in accordance with the procedures required by condition 4), or as subsequently modified with the mutual agreement of Waikato Regional Council, and any other statutory approvals required under the Historic Places Act 1993.

This consent was the first issued by Waikato Regional Council at Taharoa that incorporated requirements for archaeological sites.

The archaeological survey was carried out by Dr Rod Clough in July 2000. His report identified previously recorded sites, and recommended a more detailed assessment after the existing pine plantation had been removed[1379].

Following the contact made by the Historic Places Trust in May 2000, BHP New Zealand Steel Mining Limited revised its protocol for "the discovery of human remains and / or items of cultural significance". The revised protocol replaced the protocol that had been in operation since 1995[1380], and was approved in February 2001.

Policy

In the event of [discovering] human remains or items of cultural significance

a) It should not be touched. On no account shall the area around the discovery be disturbed.

Procedure

a) Immediately report the findings to the Operations Manager, or in his absence the Production Manager, verbally or by phone.
b) The Manager or his designate shall inspect the site and locality to determine the nature of the finding.
c) The Manager shall contact and report the findings to a local kaumatua.
d) The Manager shall inform the NZ Historic Places Trust of the discovery.
e) The Manager shall inform the Police Constable at Kawhia, in case of human remains.
f) The remains shall be inspected by the local kaumatua and the Police Constable with the Manager present.

[1379] R Clough, *Taharoa C Block ironsand mining: preliminary archaeological appraisal*, 5 July 2000. Copy on Waikato Regional Council file 60.40.32A. Supporting Papers #1976-1984.

[1380] *Taharoa mine site safety and general procedures: discovery of human remains*, issued 10 March 1995, attached to Environmental Officer to Waikato Regional Council, 20 April 2000. Waikato Regional Council file 60.40.32A. Supporting Papers #1105-1107.

g) The Police shall determine whether other off-site personnel shall be notified and / or requested to attend an inspection.
h) The remains shall be removed from the finding area under careful supervision.
i) The Manager shall ensure that kaumatua are given the opportunity to undertake karakia and such other religious or cultural ceremonies and activities at the site as may be considered appropriate in accordance with Maori custom and protocol.
j) The Manager shall arrange for an archaeological recording of any item of cultural significance that has been found.
k) The local kaumatua shall be responsible for the remains after Police have completed their inquiries.
l) The Manager shall be responsible for recording such findings and reporting to the President, New Zealand Steel.

Records
Records shall be retained by the Operations Manager for a period of 7 years.[1381]

In May 2001 Rod Clough prepared a further report after the pines had been harvested; this report covered the whole of the area between Wainui Stream and Mitiwai Stream. Only one recorded site, consisting of hangi stones and midden, lay in the path of future mining operations for the period up to 2004, though others were located nearby in a buffer zone alongside Wainui Stream that would not be mined. A further five recorded sites lay in the path of mining proposed during the period 2005-2022, and the consent of the Historic Places Trust would be required for their modification or destruction when mining was imminent. For unrecorded sites, he recommended:

> That if subsurface archaeological evidence (intact shell midden, hangi, storage pits) relating to Maori occupation should be exposed during mining, work should cease in the immediate vicinity of the remains and the Historic Places Trust should be contacted.[1382]

This recommendation was consistent with the protocol the company and the landowners had agreed.

[1381] Safety and General Procedure on discovery of human remains and/or items of cultural significance, 27 February 2001. Copy included in Assessment of Environmental Effects, July 2002, Appendix 15. Waikato Regional Council file 60.40.32A. Supporting Papers #1446-1447.
[1382] R Clough, *Taharoa C Block ironsand mining: archaeological appraisal*, 3 May 2001. Copy included in Assessment of Environmental Effects, July 2002, Appendix 13. Waikato Regional Council file 60.40.32A. Supporting Papers #1217-1448 at 1430-1438.

When the company applied for resource consents to continue its mining operations, it summarised the Clough report in its own Assessment of Environmental Effects report as follows:

> Mining in the central region will largely avoid the identified archaeological sites. This is because the sites are within the stream buffer or on the periphery of the clear area. The nature of the mining process makes protection of further sites discovered during the mining process impossible.[1383]

When Waikato Regional Council staff prepared a report on the applications for consent, they wrote:

> In regards to protocols for the discovery of koiwi, as discussed above NZS and Maori have agreed to adopt specific protocols in this regard. Environment Waikato has standard consent conditions relating to circumstances where archaeological sites are discovered. The inclusion of these conditions does not preclude the use of other protocols if agreed between the applicant and Maori, however they do provide a minimum standard to be followed.[1384]

The condition that they recommended, and that was included as a general condition applicable to all the consents granted for the mining operation, was:

> The consent holder shall make all efforts to avoid culturally significant sites. All sites shall be managed in accordance with [the February 2001 protocol]. In addition, in the event that any archaeological remains are discovered, the works shall immediately cease in the vicinity of the discovery, and the Waikato Regional Council, iwi and the Historic Places Trust shall be notified within 48 hours. Works may recommence with the written approval of the Waikato Regional Council. Such approval is subject to:
>
> (a) Tangata whenua interests and values,
> (b) The consent holder's interests, and
> (c) Any archaeological or scientific evidence.[1385]

A further assessment of archaeological sites in the central portion of Taharoa between Wainui Stream and Mitiwai Stream was carried out in April 2008. The report on this survey and assessment[1386] has not been sighted during research for this topic study, though it is referred to in a subsequently-produced archaeological site management plan. This subsequently-produced plan noted that:

[1383] Assessment of Environmental Effects, July 2002, page 35. Waikato Regional Council file 60.40.32A. Supporting Papers #1217-1448 at 1257.
[1384] Consent Evaluation Report, 5 April 2006, page 53, approved 6 April 2006. Waikato Regional Council file 60.40.32A. Supporting Papers #1452-1549 at 1504.
[1385] General Condition 12. Copy in Consent Evaluation Report, 5 April 2006, page 78, approved 6 April 2006. Waikato Regional Council file 60.40.32A. Supporting Papers #1452-1549 at 1529.
[1386] B Baquie, R Clough and S Macready, *Taharoa Sand Mining 2008-2014: archaeological assessment*, April 2008. Not included in Supporting Papers.

> Continued sand mining … is planned for 2008-2014 in the area between the Wainui and Matauwai [sic] Streams. Remnants of only one archaeological site (R16/69, habitation site) have survived within the sand dredging area. The remains of this site will be destroyed by sand dredging activities, as would the remains of any other subsurface sites that may be present.[1387]

The management plan was a recasting and restating of the protocols that had been prepared in February 2001, covering the action to be taken by mining company staff in the event of archaeological deposits, koiwi or portable taonga objects being uncovered[1388].

C.16 Crown involvement in restoration and afforestation

Restoration and afforestation is only covered to a partial extent in this topic study, as it is primarily a matter governed by the direct relationship between the mining company and the Taharoa C Incorporation landowners, which is not the focus of this study[1389]. However, the Crown was involved at the commencement of mining, because of the close connections between the land lease and the ironsands mining agreement, and because the Incorporation was reliant on the skills and expertise of the New Zealand Forest Service. Forest Service had some experience of afforestation on the sand dune country of the west coast of the North Island, including on the Tainui Kawhia amalgamated block around Kawhia township.

The Taharoa C owners were very conscious during the late 1960s and early 1970s that ironsands mining would be a temporary activity. While it offered high returns, there was a finite resource, which moreover could only be mined if there was a demand for it; mining would proceed contract by contract. The Incorporation therefore strongly believed in the need for afforestation of the sand dunes in order to establish an ongoing and sustainable use of the land. Its Committee of Management wanted to establish a land use pattern where mining of discrete parts of the block fitted into a planting and harvesting regime that covered the whole of the block. Restoration of

[1387] R Clough, *Taharoa sand mining 2008-2014: archaeological site management plan*, April 2008, page 2. Copy on Waikato Regional Council file 60.40.32A. Supporting Papers #1985-1992.
[1388] R Clough, *Taharoa sand mining 2008-2014: archaeological site management plan*, April 2008. Copy on Waikato Regional Council file 60.40.32A. Supporting Papers #1985-1992.
[1389] There is a brief discussion of the afforestation project in P Cleaver, *Maori and the forestry, mining, fishing and tourism industries of the Rohe Potae inquiry district, 1880-2000*, Wai 898 document #A25, February 2011, pages 180-181.

mined areas would be carried out in a manner that aided this wider objective and prepared the land for pine planting.

Both the Crown's ironsands mining agreement, and the Incorporation's mining lease, envisaged that areas of the sand dunes where mining had ceased would be revegetated, first with marram grass and lupins, and later with pine trees. The mining lease between New Zealand Steel Limited and the Taharoa C Block Incorporation, signed in March 1971, included the following conditions concerned with restoration:

> 5. [The lessee, i.e. the company] will, where mining operations have been conducted within two (2) chains of mean highwater mark, construct or reconstruct suitable and uniform foredunes to the satisfaction of the Minister of Marine, for the purpose of protecting the said land from erosion….
>
> 8. Will at the expiration or sooner determination of the said term deliver up unto the Incorporation in as good state and condition as the nature of the case will admit having regard to the lessee's rights and obligations hereunder.
> 9. Will progressively, as and when mining operations in respect of parts of the said land no longer required for mining operations, contour each such part to easy grades to facilitate as far as practicable the establishment of marram grass and lupin and afforestation by the Incorporation, so that within six months after the expiration or sooner determination of the said term all those parts of the said land which have been the subject of mining operations pursuant to this deed shall have been contoured as aforesaid….
>
> b) In the event of the Incorporation wishing to establish exotic forests on the said land, it shall be entitled so to do upon terms mutually acceptable to it and the lessee, or failing agreement between them then upon terms to be decided upon by the Minister [of Mines] and the Minister of Forests. Such terms shall in any event be such as shall permit the lessee without hindrance to carry out the mining and associated activities hereby envisaged, and will not derogate from nor depreciate the rights, powers, liberties, advantages and benefits hereby consented to or conferred upon the lessees.[1390]

When the draft ironsands mining agreement was circulated around Government departments for comment towards the end of 1970, both Ministry of Works[1391] and

[1390] Mining lease, 1 March 1971. Copy on Waikato Regional Council file 60.40.32A. Supporting Papers #1166-1180.
[1391] In its capacity as Catchment Authority at Taharoa under the Soil Conservation and Rivers Control Act 1941.

the Department of Lands and Survey were asked to suggest suitable conditions for restoration of the surface of the land after mining[1392]. Ministry of Works suggested that the conditions specify that foredunes should be restored to their original slope and height. It also suggested that, as the sand hills were "devoid of all vegetation", the conditions should be concerned with restoring land contour, with any vegetation planting to be the responsibility of the Maori landowners[1393]. The Department of Lands and Survey's response was to express a concern about the protection from erosion of the land closest to the coast:

> Workings of any kind on the coastal strip could have a detrimental effect with the rise and fall of tides, undue turbulence and wind erosion. Any disturbance of the coastal strip and/or sand dunes could encourage penetration of the tides inland.
>
> The fortification with marram and lupin would appear essential on a coastal strip of not less than 10 chains [approximately 200 metres] inland from high water mark reserved from the Company's sand mining operations.[1394]

Subsequently, in March 1971, New Zealand Forest Service provided comments about stabilising the dunes by planting pine trees[1395]. Later that month, the Inspector of Mines at Huntly visited Taharoa with representatives from the Agriculture and Lands and Survey Departments, and Forest Service.

> We were advised … that the first area programmed for mining operations by the Mining Company is a 100 acre block on the south bank of the Wainui Stream. A further two 100 acre blocks lying immediately south of the first 100 acre block are scheduled for later mining operations, moving progressively southward.
>
> An important point to note is that the prevailing wind is from the south west, and the direction of movement of the ironsands is in this direction. This means that stabilisation work must move progressively from the south northwards. If such work is commenced at any point other than at the south end of the deposit, it will be engulfed by the moving sand…. There seems little point therefore in commencing stabilisation efforts until the mining company has worked the area to its southern limits.

[1392] Under Secretary for Mines to District Commissioner of Works Hamilton, 29 October 1970. Works and Development Hamilton file 60/43. Supporting Papers #441.
Assistant Under Secretary for Mines to Commissioner of Crown Lands Hamilton, 21 December 1970. Lands and Survey Hamilton file 3/2346. Supporting Papers #316-322.

[1393] District Commissioner of Works Hamilton to Under Secretary for Mines, 11 November 1970. Mines Head Office file 12/30/25-12. Supporting Papers #108.

[1394] Commissioner of Crown Lands Hamilton to Under Secretary for Mines, 2 February 1971. Mines Head Office file 12/30/25-12. Supporting Papers #114.

[1395] Director General of Forests to Under Secretary for Mines, 8 March 1971 and 9 March 1971. Mines Head Office file 12/30/25-12. Supporting Papers #115-116 and 117.

> The Committee recommends that the surface level of the sand be restored to ensure that there is at least 3 feet of sand available above maximum ground water level. This is essential to ensure the success of any future afforestation scheme.
>
> It is also recommended that all rock, clay or other impervious strata exposed during mining operations be buried to a depth of not less than 3 feet, and that any slag or other wastes to be deposited on the area should be buried likewise…..
>
> We consider that the land should be contoured after mining in such a way that adequate drainage is provided, so that ponds are not created.
>
> We also believe it is necessary to ensure that the streams are not interfered with unduly, and are kept open at all times.[1396]

It would seem that these interdepartmental steps allowed the wording for the restoration clause of the ironsands mining agreement to be firmed up. The restoration clause in the agreement signed in March 1972 stated:

> a. [The company] will, progressively as and when mining operations in respect of parts of the said land are completed and such parts of the said land no longer required for mining operations, restore such parts of the said land in accordance with provisions set forth in the Second Schedule hereto.

The relevant provisions in the Second Schedule stated:

> i. The Company will, where mining operations have been conducted within 2 chains of mean highwater mark, construct or reconstruct suitable and uniform foredunes to the satisfaction of the Minister of Marine, for the purpose of protecting the said land from erosion.
> ii. The Company will not commit any unnecessary damage or waste in and about the said land or any part thereof in carrying out the said works or in exercise of the liberties hereby granted.
> iii. The Company will progressively, as and when mining operations in respect of parts of the said land are completed and such parts of the said land no longer required for mining operations, contour each such part to easy grades to provide adequate drainage so as to prevent ponds forming, and facilitate as far as practicable the establishment of marram grass and lupin and afforestation by the proprietors of the land, so that within six months after the expiration or sooner determination of the said term all those parts of the said land which have been the subject of mining operations pursuant to this agreement shall have been contoured as aforesaid, and if within a further six months the proprietors of the said land

[1396] Inspector of Mines and Quarries Huntly to Under Secretary for Mines, 22 March 1971. Mines Head Office file 12/30/25-12. Supporting Papers #119-121.

have failed to establish marram grass and lupin on the said land, the Company shall take all steps necessary as directed by the Minister [of Mines] to ensure that an adequate ground cover is established so as to prevent erosion and provide a stable vegetative cover….

6. In the event of the proprietors of the said land wishing to establish exotic forests on the said land, they shall be entitled to do so upon terms approved by the Minister [of Mines] and the Minister of Forests. Such terms shall in any event be such as shall permit the Company without hindrance to carry out the mining and associated activities hereby envisaged and will not derogate from nor depreciate the rights, powers, liberties, advantages and benefits hereby consented to or conferred on the company, and in the event of the Minister [of Mines] requiring any ground cover to be established progressively during mining operations the Company shall do all things necessary to provide such ground cover so as to prevent erosion.
7. The company will commence dredging operations at the most practical southern point of the said land, and will ensure that whenever possible mining operations are advanced systematically from south to north in the direction of the prevailing wind, so as to allow for restoration from time to time after completion of mining operations in any particular portion or piece of the said land.
8. The Company will progressively as mining operations permit restore the level of sand after mining to at least three feet above maximum ground water level, and to prevent any movement of sand from worked over areas that are within two chains of mean highwater mark will construct or reconstruct suitable foredune conditions and will erect breakwinds and generally do all things deemed necessary by the said Inspector of Quarries to give effect to stabilisation.[1397]

By contrast to the Crown's lack of involvement in negotiating the mining lease with New Zealand Steel, there was Crown involvement in establishing the afforestation project. The difference was due to the actions of the Incorporation. For the mining lease, it made no approach to the Crown for assistance and the Crown declined to become involved (see an earlier section of this topic study), while for the afforestation project there was an approach to the New Zealand Forest Service. In July 1974 the Minister of Forests told his colleague the Minister of Maori Affairs:

> I am pleased to advise you that already the Conservator of Forests, Auckland, has had a number of meetings with the proprietors and considerable progress has been made in advancing proposals to stabilise sand country in preparation for planting pine trees. Recently the Conservator has made arrangements to

[1397] Ironsands mining agreement, 29 March 1972. Copy on Waikato Regional Council file 60.40.32A. Supporting Papers #1181-1196.

> establish a marram grass nursery in order that sand stabilisation may begin, providing the majority of the interested owners agree to making funds available for this purpose from royalties obtained from the mining of iron sands.
>
> The Forest Service will continue to assist with plans for other areas as these are included in any amalgamation of titles and will see that the interests of the Maori owners are taken care of fully. The Director General of Forests advises me that he hopes eventually the owners will become self-sufficient in forest establishment and management expertise, and thus able to manage a fully productive forest in their own right.[1398]

That same month the Incorporation held a meeting with the Minister of Maori Affairs, stating that the help they sought was "advice on aspects of finance and development". This included assistance with title rearrangement, as the Incorporation felt that a viable forestry scheme should not be confined to Taharoa C block, and should include some other adjoining "idle" lands concentrated in two blocks and held in a series of individual titles. This would allow for a 9000-acre forest estate, while a further 500 to 1000 acres would not be planted up for conservation or environmental reasons. According to the minutes of the meeting, the Minister was told:

> Our deputation seeks your help and advice in setting land titles and forming a viable scheme. The point is, while many are keen to develop lands for forestry, the lands are under individual title. There is emotional attachment to specific land units, there are family and group burial places on specific areas.
>
> But there is also the growth of noxious weeds, especially sedge, and the danger thereof of land compulsorily coming under the control of a local body for the purpose of weed eradication. The aim would be to get forestry begun since this eliminates weeds and does hold the land in the hands of the owners.
>
> The questions are:
>
> (a) If we can persuade the owners to incorporate their holdings should we have one or three incorporations?
> (b) If through emotional and other reasons we cannot incorporate lands, is there some other alternative which will still enable us to afforestate?
> (c) In the search of titles now being done by our legal firm, would the Department help us defray the cost of title search, surveys and such costs? We feel that Taharoa C returns should be invested in trees and training people for afforestation.

The Minister's response emphasised self-management.

[1398] Minister of Forests to Minister of Maori Affairs, 12 July 1974. Maori Affairs Head Office file 5/14/3. Supporting Papers #55.

> The important point of this whole exercise is that Maori Owner – Management Principles initiated the scheme. The owners should continue to decide on the policies, work on the land, and receive the results of their efforts; the department will be asked to clear up the land title position and the legalities involved with calling a meeting of owners.

He added that there was also a need a for an in-depth feasibility study of the economic opportunities available at Taharoa and what would be the best uses of the land there, including forestry, intensive farming, horticulture, eel-farming, and conservation or environmental protection. He would ask the Forest Service to examine the feasibility of afforestation on Taharoa and the other two blocks, and ask the Department of Maori Affairs to investigate the title position of the two additional blocks and "to prepare for the Maori Land Court a set of alternatives to put to a meeting of assembled owners"[1399].

A meeting of owners of the two additional blocks that were held in a series of individual titles was held in March 1975. Just prior to this meeting, the Minister of Maori Affairs met with representatives of the Committee of Management, and set out the extent of the assistance that his Department would be willing to provide.

> The Minister asked that our officers present at the meeting should give every assistance in helping the Incorporation present its case to the owners of the adjoining lands. It seems that there has been a good deal of delay in the attempt to utilise these lands, and the Minister made it clear that if the proposals tomorrow do not succeed that he wanted the Department to do everything in its power to arrange some alternative utilisation at the earliest possible moment.[1400]

At the meeting of owners, there were some owners who did not want their lands to be part of any afforestation scheme. Those who did want their lands to be included were not in favour of the individual titles being amalgamated and brought under the control of an Incorporation, preferring instead that each block be vested in a Section 438

[1399] Minutes of meeting, 24 July 1974, and Minister of Maori Affairs to Secretary Taharoa C Incorporation, 4 September 1974. Maori Affairs Head Office file 5/14/3. Supporting Papers #56-58 and 59.

[1400] File note by Executive Officer Trusts and Titles, undated (26 March 1975). Maori Affairs Head Office file 5/14/3. Supporting Papers #60.
Official minutes of the meeting were also taken. Minutes of meeting, 26 March 1975. Maori Affairs Head Office file 5/14/3. Supporting Papers #61-63.

trust; the trustees would be the same persons for each block, so that there was a common group of trustees empowered to further the afforestation proposals[1401].

The District Officer's opinion of this decision was that "there may be considerable difficulties encountered at a later date". This was because separate trusts for each block "would require separate accounting for each block and would appear to be unworkable"[1402]. The decision of the meeting was a setback in terms of any progress being made on the afforestation scheme. The Minister's commitment that his department would investigate alternatives if the Incorporation proposal was not supported does not seem to have been followed through on; perhaps with a change of Government in November 1975 it was lost sight of. Another possible reason is that doubts were being cast at this time about the authority of the Taharoa C Incorporation to engage in forestry; the objects of the Incorporation defined in 1970 (and referred to earlier in this report) did not appear to include this matter.

Orders of the Court establishing Section 438 trusts were made on 3 February 1976[1403], and an agreement was signed between the Incorporation and the mining company in July 1979[1404]. The negotiations between 1975 and 1979 leading up to the signing of the agreement have not been researched for this topic study.

Under the ironsands mining agreement, both the Minister of Energy and the Minister of Forests gave their consent to the afforestation proposals in October 1979[1405]. The only comment on the forestry agreement in the briefing paper to the Ministers was:

> From a study of the deed it appears that the terms are such that they do not run counter to any of the requirements or the spirit of the original mining agreement.[1406]

[1401] Minutes of meeting of owners, 27 March 1975, attached to District Officer Hamilton to Secretary for Maori Affairs, 16 April 1975. Maori Affairs Head Office file 5/14/3. Supporting Papers #64-72.
[1402] Minutes of meeting of owners, 27 March 1975, attached to District Officer Hamilton to Secretary for Maori Affairs, 16 April 1975. Maori Affairs Head Office file 5/14/3. Supporting Papers #64-72.
[1403] Maori Land Court minute book 55 W 167. Supporting Papers #526.
[1404] Forestry agreement between The Proprietors of Taharoa C Block and New Zealand Steel Mining Limited, 27 July 1979. Copy on Waikato Regional Council file 60.40.32A. Supporting Papers #1202-1209.
[1405] Forestry agreement between The Proprietors of Taharoa C Block and New Zealand Steel Mining Limited, 27 July 1979, consented to by Minister of Energy, 8 October 1979, and Minister of Forests, 10 October 1979. Copy on Waikato Regional Council file 60.40.32A. Supporting Papers #1202-1209 at 1209.
[1406] Deputy Secretary of Energy (Mines) to Minister of Energy, 2 October 1979, approved by Minister of Energy 8 October 1979. Energy Head Office file 12/30/25-12. Supporting Papers #185-186.

The rehabilitation and afforestation measures following mining did not require land use consents under the Town and Country Planning Act 1953, the Town and Country Planning Act 1977, or the Resource Management Act 1991, because of the permitted uses in the district planning schemes and the district and regional plans. However, harvesting and removal of the planted pines does require resource consent under the Resource Management Act 1991, because of the ground disturbance that would be caused. The first harvesting consent was applied for in 2000, and was in connection with the move of the mining operation from south of the Wainui Stream to north of the stream. Consent to remove pines north of Wainui Stream was granted to Taharoa C Incorporation in July 2000[1407]. This and other harvesting consents have not been examined for this topic study due to time constraints.

C.17 Water pollution

This section of the topic study records a small number of specific references to water pollution at Taharoa identified during the research. It is not intended to be a complete assessment of all pollution events.

The first reference located about this subject is dated September 1977. The Minister of Maori Affairs was due to visit Taharoa, and among the suggested matters for discussion were:

> Re NZ Steel Mining and slurry operations.
> (a) Pollution of Wainui Creek and fish life
> (b) Pollution of sea affecting shellfish life
> (c) Water levels of Taharoa Lake in summer (revenues from Lakes dependent on bird life)
> (d) Would like Company to recycle water being used
> (e) Fish ladder[1408]

The Department of Maori Affairs had no information on the subject, so was unable to comment in briefing notes prepared for the Minister[1409]. A subsequent volume of the

[1407] Consent evaluation report for land use consent 103773, 30 June 2000, approved 5 July 2000. Waikato Regional Council file 60.40.32A. Supporting Papers #1116-1123.
[1408] Suggested matters for discussion, undated (September 1977), attached to KT Wetere MP to Minister of Maori Affairs, 27 September 1977. Maori Affairs Head Office file 5/14/3. Supporting Papers #73-75.
[1409] Background briefing notes for Minister of Maori Affairs, undated (September 1977), and District Officer Hamilton to Minister of Maori Affairs, 29 September 1977. Maori Affairs Head Office file 5/14/3. Supporting Papers #76-77 and 78-80.

Maori Affairs Department file that might provide further information on the Minister's visit has not been located during the research for this topic study, so the type of pollution that was causing concern, and any further action following the Minister's visit, is not known. It may be relevant that a report by an Auckland Acclimatisation Society ranger in October 1977, quoted from in the fisheries section of this topic study, referred to discoloured and turbid seawater, and the fear of local Maori that sedimentation was destroying the marine life on the seabed.

In May 1992 a dune acting as one side of a tailings water pond slumped, and tailings water was able to flow down into a natural depression near Lake Taharoa. Some of the sediment-laden water leaked into the lake. After some delay, the mining company prevented further pollution by pumping water out of the tailings water pond into the dredge pond. In the opinion of the Taharoa Lakes Trustees and Waikato Regional Council, the company had chosen to mine and place its operations too close to the lake, leaving an insufficient buffer zone width[1410]. The company later provided an explanation.

> Historically the lake Barrier [i.e. the dune closest to the lake] is prone to slumping, and in an effort to prevent this we try to build a buffer between the dredge pond and the Barrier. In approximately 4 weeks we were to lift our dredge pond to cross a small clay ridge. In anticipation of this we started to stack tailings along the Barrier in an effort to maximise the sand buffer between the pond and the lake. We did this in a controlled manner, keeping the edge of the tailings 20 m away from the side of the Barrier to prevent tailing [sic] breaking out towards the lake….
>
> Although the reason for the slump is uncertain, it is believed that the increase in the water table may have caused it….
>
> [A subsequent inspection by engineering consultants concluded that] the slump occurred due to the high water table causing the sand to move over a clay layer some 2 to 5 metres below lake level.[1411]

Another pollution spill occurred the following month, when process water that had been pumped to a seepage pond in an unmined part of the sand dunes close to the sea overflowed, and scoured out a channel some 50 to 80 metres long down to the sea. The Waikato Regional Council officer who investigated the incident reported:

[1410] *Waikato Times*, 30 May 1992, and file note by D Crequer, 28 May 1992. Waikato Regional Council file 60.40.32A. Supporting Papers #796 and 794-795.

[1411] Report by New Zealand Steel Mining Limited engineer, 8 June 1992. Waikato Regional Council file 60.40.32A. Supporting Papers #799-802.

> I believe little harm has been caused by the incident. In practice, the discharge to the sea would be similar to that which is permitted by water right from the process pond, and which the dune disposal replaces. The permitted discharge, however, had the potential to affect the mouth of Wainui Stream.
>
> However, I expressed concern that the incident had not been prevented by staff at the site. [The company's Operations Manager] noted that concern, and advised that later today all supervisory staff were to be brought together for an education session which would address their responsibilities for all aspects of site operation, rather than just their own specific tasks.[1412]

The company had taken a more precautionary approach to the possibility that discharge of ballast water by the vessels loading ironsands concentrate at Taharoa might bring new marine organisms to New Zealand. In 1992 it funded some research by the Cawthron Institute into the presence of non-indigenous marine dinoflagellates at Taharoa, and committed itself to establishing an ongoing monitoring programme[1413].

There was a further spill of polluted water in January 1993, when a dam holding recycle water failed, and water scoured through the clay barrier adjacent to Lake Rotoroa[1414]. This was a consequence of an effort to avoid discharging water to the sea, and instead holding it in ponds and allowing seepage into the land. In the subsequent review of the spill, involving the company, Waikato Regional Council, the Department of Conservation and the Taharoa Lakes Trustees,

> it was generally agreed that whilst the company's reasons for undertaking land disposal (rather than the permitted discharge to sea) were to be commended, and their intent was good, in this case they had blundered somewhat. The ponding area had not been provided with a spillway, and there was inadequate control and monitoring of the water level in the pond. Company staff acknowledged that, and it was agreed that a similar ponding could be used safely so long as:
>
> - A spillway was provided, preferably leading back to the dredge pond
> - A system of marking and monitoring the maximum water level needed to be instituted
> - The site should only be used when the ponding area near the old dry-mining area was overloaded or not able to be used

[1412] File note by D Crequer, 5 June 1992. Waikato Regional Council file 60.40.32A. Supporting Papers #797-798.
[1413] Operations Manager New Zealand Steel Mining Limited, Taharoa, to Waikato Regional Council, 10 August 1992. Waikato Regional Council file 60.40.32A. Supporting Papers #803-809.
[1414] File notes by D Crequer, 18 January 1993 and 22 January 1993. Waikato Regional Council file 60.40.32A. Supporting Papers #810 and 811-820.

- Management supervisory staff must be aware that the pond is in use, and of the need to monitor it[1415]

In May 1994 a fire in the dredge stopped production, and required disposal of the burnt debris. The company wished to bury the debris in a clay-lined pit on site. A resource consent was granted in August 1994; rather surprisingly, this consent, covering a fixed amount of fire-damaged industrial plant materials (125 cubic metres), and therefore quite specific in its purpose, was for a term of 35 years, the maximum allowable under the Act[1416]. It is possible this lengthy term was intended to impose an obligation on the company to maintain the disposal site in an environmentally safe manner.

C.18 Concluding remarks

The Crown has been actively involved with ironsands mining at Taharoa for sixty years, often making the running and promoting the development. It was actively associated at a whole range of levels with getting the proposal off the ground. These included the reorganisation of Maori titles, establishment of a Maori incorporation to smooth the dealings the mining company would have with the owners, direct intervention in the mineral rights to the land of the Maori owners in order to promote prospecting, full ownership of the prospecting company and partial ownership of the mining company, and negotiation of an ironsands mining agreement intended to facilitate the smooth-running of the mining operation.

Even before ironsands mining at Taharoa was contemplated in the mid 1950s, the Crown had intervened more generally in the tino rangataritanga authority of Maori for mining of their land, by statutorily interposing the Maori Land Court in the decision-making. Section 30 Mining Act 1926 authorised the Court to allow mineral prospecting, or allow mineral rights to be ceded to the Crown[1417]. While the Maori owners could still act on their own, they could also be bypassed by an order of the Court.

[1415] File note by D Crequer, 22 January 1993. Waikato Regional Council file 60.40.32A. Supporting Papers #811-820.

[1416] Staff report, approved 29 July 1994, Manager Consents to BHP NZ Steel Mining Ltd, 1 August 1994, and Resource Consent 940350, 30 August 1994. Waikato Regional Council file 60.40.32A. Supporting Papers #821-822, 823 and 824-825.

[1417] This provision had been on the statute books since 1892 (Section 16 Mining Act Amendment Act 1892; Section 28 Mining Act 1898; Section 29 Mining Act 1905; Section 28 Mining Act 1908).

With the passing of the Iron and Steel Industry Act 1959, Crown authority was increased while Maori Land Court authority was reduced. Taharoa Maori had some sympathy with the legislation, as they had already commenced negotiation of a cession to the Crown of their rights with respect to ironsands before the 1959 Act negated that particular approach. However, they did not consent to the provision in the legislation that placed a cap on the rate of royalty that could be paid to them as owners of the ironsands. The level of support they expressed for the legislation would also have been influenced by the vesting of the right to prospect and mine being temporary only, and due to expire in 1968. In 1965 amending legislation dropped the temporary nature of the vesting and made it permanent instead.

During the prospecting phase in the 1960s rangatiratanga was effectively sidelined, and this continued to a lesser extent when the mining phase commenced in the early 1970s. One of the most revealing phrases included in the licence to mine was that the owners would allow the company "to divert watercourses (with the prior written consent of the Incorporation which shall not be unreasonably withheld)". While the owners maintained a notional control of the watercourses, the practical control had been passed to the Crown, with diversion activity administered under water rights granted under the Water and Soil Conservation Act 1967. The intention in the title and trustee orders for Taharoa A7A2, the lakes' title, that the Maori trustees would be able to control use of the waters of the lakes, was negated by the passing of the Water and Soil Conservation Act 1967, which saw water rights at Taharoa issued under Crown authority, and no consent sought from the lakes trustees.

Customary fisheries have been a casualty of the mining at Taharoa. Effect on fish life was not a consideration mentioned when the Crown's Water Allocation Council issued the first water rights in 1971. By 1977, when the alarm bells were ringing, the damage had already been done. The mullet fishery had already collapsed, and the associated eel fishery was showing signs that it too was in danger of collapse. The history of Taharoa demonstrates how easy and quick it can be to harm natural ecosystems, and how difficult and slow it can be to repair any damage. Indeed it is not clear if, even today, the damage is being repaired, given that the fish ladder past

the dam on the Wainui Stream has water flow rates designed with eel passage in mind but not mullet passage.

The length of time it has taken to implement solutions to the damage caused to customary fisheries calls into question the environmental protection mechanisms in operation. Waikato Regional Council and its predecessor has been aware of the problems since the late 1970s. However, the manner in which the legislation has been administered has been littered with delay and lost opportunities. The trustees for the Taharoa Lakes and the Taharoa Maori community are the natural partners of the Regional Council, yet Taharoa Maori have been kept at arm's length by the Council. The Regional Council regards the mining company as the entity that it has a direct continuing relationship with, via the resource consents it has issued. By contrast, Taharoa Maori have been treated primarily in their capacity as submitters on resource consent applications, with a relationship which can be switched on or off depending on what stage has been reached in the processing of any applications.

The Regional Council has largely left it to the mining company to make the running in repairing the damage to the customary fisheries. Its conditions of resource consent are designed to get the company to confront its obligations to come up with solutions. In one sense that is entirely appropriate, as it is the mining operations that have caused the damage. Yet the length of time it is taking suggests that this approach on its own is not sufficient, and other responses are also necessary. These other responses may need to look beyond the confines of the existing Resource Management Act procedures. Given the past involvement of the Crown, there could be a role for the Crown to play here.

The Maori landowners thought they were in a position to exercise their own rangatiratanga with respect to the treatment of koiwi and other signs of past occupation on Taharoa C. They negotiated an agreement with the mining company that ensured they would be included, and could make any relevant decisions. It came as a surprise to them to discover in 2000 that the Crown was also involved, as a result of the provisions of the Historic Places Act preventing the disturbance of archaeological sites without prior consent of the Historic Places Trust and giving the Trust the authority to determine the future of archaeological sites. This authority had

been placed in the hands of the Historic Places Trust in 1975, although even before then the Crown had leveraged its ironsands mining development right to insert in the ironsands mining agreement that the consent of the Inspector of Quarries (who would be advised by the Historic Places Trust) was required to decide what should happen to archaeological material uncovered during mining operations. Environmental law reform that saw concurrent introduction of the Resource Management Act 1991 and the Crown Minerals Act 1991 effectively removed the Inspector of Quarries from the equation while introducing the Waikato Regional Council as a new exerciser of Crown authority. The consents issued by the Regional Council at Taharoa allow the Council to make judgements on tangata whenua interests and values with respect to archaeological sites. The intervention of the Crown to provide protection for wahi tapu has resulted in executive powers being conferred on non-Maori Crown agencies such as Historic Places Trust and Waikato Regional Council to decide how that protection should happen.

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Appendix – Research Commission

Wai 898

IN THE WAITANGI TRIBUNAL

CONCERNING the Treaty of Waitangi Act 1975

AND the Te Rohe Pōtae District Inquiry

DIRECTION COMMISSIONING RESEARCH

1. Pursuant to clause 5A of the second schedule to the Treaty of Waitangi Act 1975, the Tribunal commissions David Alexander, an independent researcher, Matthew Cunningham and Martin Fisher, members of the Tribunal's staff, to prepare an overview research report on selected issues concerning non-land resources, environmental management and impacts in Te Rohe Pōtae inquiry district from the 1970s until the present day, complementing the existing casebook research. The commission also includes four local case studies of the Mōkau River mouth, the Waipā River, Pirongia Forest Park and Whaingaroa Harbour. This project is a result of the Tribunal's Chief Historian's rapid appraisal review of the Te Rohe Pōtae research casebook and subsequent discussions with parties to the inquiry (Wai 898, #6.2.43 and #2.5.126).

2. Significant issues concerning Crown policy and action affecting Te Rohe Pōtae Māori that the researchers should address in this district overview include:

    a) The provision and implementation of harbour management regimes, in particular their impact on kaimoana and Māori access to and kaitiaki responsibilities for customary marine resources;

    b) The provision and implementation of local government zoning schemes and their impact in particular on Māori communities adjacent to towns and on coastal land;

    c) The provision and implementation of management regimes for forest parks and any other conservation estate areas;

    d) The provision and implementation of management regimes, for the control and prevention of the environmental degradation of coastal areas, harbours and natural waterways, and associated resources. The coverage should include:

        i) industrial pollution and gravel and sand extraction and their impacts on customary Māori usage and guardianship; and

        ii) mahinga kai, kaimoana and customary management of inland waterways and estuaries;

    e) The provision and implementation of environmental management regimes for introduced species in waterways and the consequences for Te Rohe Pōtae Māori in respect of customary freshwater fisheries, including tuna;

f) The implementation, insofar as they affect Te Rohe Pōtae inquiry district, of statutory provisions and regimes for the protection of wāhi tapu from damage, and of portable taonga from damage, desecration and removal;

g) The adequacy of Crown-established environmental and resource management regimes implemented in this district, including those with powers and responsibilities delegated to local authorities, for enabling consultation with and the participation of Māori, including for decision-making and the exercise of kaitiakitanga and focusing in particular on the operation of the Resource Management Act 1991; and

h) The adequacy of the Crown's monitoring of delegated powers for environmental and resource management in Te Rohe Pōtae district.

3. The report will provide more in-depth coverage of the above issues by way of four case studies:

a) A case study of Whaingaroa Harbour and the surrounding area, covering environmental management provisions and implementation, local authority powers and zoning, introduced and native species protection and control, management powers for water rights, powers for the protection of wāhi tapu and cultural heritage items and consideration of impacts of these in areas such as the continued exercise of kaitiakitanga, participation in environmental decision making, water pollution and loss of water quality, losses or reductions in customary fishery resources and loss or damage to wāhi tapu and cultural heritage items.

b) The cultural and environmental impact of the resource management and statutory regimes for protecting wāhi tapu at the Mōkau River mouth, including the status of wāhi tapu not thus protected.

c) The environmental management regime provided for the Waipā River and its tributaries, in particular downstream of Te Kuiti, and its impacts on the exercise of kaitiakitanga over the waterways and their resources, the maintenance of water quality, the maintenance and protection of customary river resources, including fisheries, and the protection of wāhi tapu and cultural heritage items.

d) The establishment of Pirongia Forest Park, the management regime provided and implemented, and its impacts on continued Māori kaitiakitanga over park resources, customary uses and interests in the park, and the adequacy of Department of Conservation's engagement with tangata whenua over the administration and decision-making for the park.

4. A complete draft of the report will be circulated to claimants and the Crown for comment prior to the report being finalised.

5. The commission ends on 16 December 2013, at which time one copy of the final report must be submitted for filing in unbound form. An electronic copy of the report should also be provided in Microsoft Word or Adobe Acrobat format. Indexed copies of any supporting documents are also to be provided as soon as it is practicable after the final report is filed. The report and any subsequent evidential material based on it must be filed through the Registrar.

6. At the discretion of the Presiding Officer the commission may be extended if one or more of the following conditions apply:

   a) The terms of the commission are changed so as to increase the scope of work;

   b) More time is required for completing one or more project components owing to unforeseeable circumstances, such as illness or denial of access to primary sources; and

   c) The Presiding Officer directs that the services of the commissionee be temporarily reassigned to a higher priority task for the inquiry.

7. The report may be received as evidence and the researchers may be cross-examined on it.

8. The Registrar is to send copies of this direction to:
   David Alexander, independent researcher
   Matthew Cunningham and Martin Fisher, Research Analysts/Inquiry Facilitators
   Claimant counsel and unrepresented claimants in the Te Rohe Pōtae district inquiry
   Director, Waitangi Tribunal
   Chief Historian, Waitangi Tribunal
   Manager – Research Inquiry Facilitation, Waitangi Tribunal
   Inquiry Supervisor, Waitangi Tribunal
   Inquiry Facilitator, Waitangi Tribunal
   Solicitor-General, Crown Law Office
   Director, Office of Treaty Settlements
   Chief Executive, Crown Forestry Rental Trust
   Chief Executive, Te Puni Kōkiri

DATED at Wellington this 18th day of December 2012.

Judge D J Ambler
Presiding Officer
WAITANGI TRIBUNAL

WAITANGI TRIBUNAL

CONCERNING the Treaty of Waitangi Act 1975

AND the Te Rohe Pōtae District Inquiry

DIRECTION EXTENDING COMMISSIONED RESEARCH

1. Pursuant to clause 5A of the second schedule to the Treaty of Waitangi Act 1975, David Alexander, an independent researcher, Matthew Cunningham and Martin Fisher, members of the Tribunal's staff, were commissioned on 18 December 2012 to prepare an overview research report on selected issues concerning non-land resources, environmental management and impacts in Te Rohe Pōtae inquiry district from the 1970s until the present day, complementing the existing casebook research. The commission was also to include four local case studies of the Mōkau River mouth, the Waipā River, Pirongia Forest Park and Whaingaroa Harbour. The deadline for this project is 16 December 2013 (Wai 898, #2.3.87).

2. Mr Alexander is also the author of a Crown Forestry Rental Trust report, 'Public Works and other takings in the Rohe Pōtae district' commissioned for the Te Rohe Pōtae district inquiry (Wai 898, #A63). This report is to be heard in the December 2013 hearing week. The researcher must prepare for this hearing and meet the filing requirements set down for the inquiry accordingly.

3. At my discretion, I may extend commissions if the services of the commissionee are temporarily reassigned to a higher priority task for the inquiry. More time is required by Mr Alexander to finalise the overview research report and the presentation of evidence at a hearing week must take priority. An extension is therefore granted. The commission will now end on 31 January 2014, by which date the final report must be presented for filing.

4. The Registrar is to send copies of this direction to:
   David Alexander, independent researcher
   Matthew Cunningham and Martin Fisher, Research Analysts/Inquiry Facilitators
   Claimant counsel and unrepresented claimants in the Te Rohe Pōtae district inquiry
   Director, Waitangi Tribunal
   Chief Historian, Waitangi Tribunal
   Manager – Research Inquiry Facilitation, Waitangi Tribunal
   Inquiry Supervisor, Waitangi Tribunal
   Inquiry Facilitator, Waitangi Tribunal
   Solicitor-General, Crown Law Office
   Director, Office of Treaty Settlements
   Chief Executive, Crown Forestry Rental Trust
   Chief Executive, Te Puni Kōkiri

DATED at Whangarei this 27th day of November 2013

Judge D J Ambler
Presiding Officer
WAITANGI TRIBUNAL

IN THE WAITANGI TRIBUNAL

CONCERNING the Treaty of Waitangi Act 1975

AND the Te Rohe Pōtae District Inquiry

DIRECTION EXTENDING COMMISSIONED RESEARCH

1. Pursuant to clause 5A of the second schedule to the Treaty of Waitangi Act 1975, David Alexander, an independent researcher, Matthew Cunningham and Martin Fisher, members of the Tribunal's staff, were commissioned on 18 December 2012 to prepare an overview research report on selected issues concerning non-land resources, environmental management and impacts in Te Rohe Pōtae inquiry district from the 1970s until the present day, complementing the existing casebook research (Wai 898, #2.3.87). The commission is also to include four local case studies of the Mōkau River mouth, the Waipā River, Pirongia Forest Park and Whaingaroa Harbour. The deadline for this project was extended to 31 January 2014 (Wai 898, #2.3.94).

2. Mr Alexander requests more time to consider relevant issues arising from the examination of the evidence of Professor Michael Belgrave et al entitled 'Te Rohe Potae Harbours and Coast, Inland Waterways, Indigenous Flora and Fauna, Sites of Significance and Environmental Management and Environmental Impacts Scoping Report' (Wai 898, A64) and 'Te Rohe Pōtae Environmental and Wāhi Tapu Report' (Wai 898, A76). This evidence was presented at hearing week nine in December 2013.

3. An extension is therefore granted. The commission will now end on 21 March 2014, by which date the final report must be presented for filing.

4. The Registrar is to send copies of this direction to:
   David Alexander, independent researcher
   Matthew Cunningham and Martin Fisher, Research Analysts/Inquiry Facilitators
   Claimant counsel and unrepresented claimants in the Te Rohe Pōtae district inquiry
   Director, Waitangi Tribunal
   Chief Historian, Waitangi Tribunal
   Manager – Research Inquiry Facilitation, Waitangi Tribunal
   Inquiry Supervisor, Waitangi Tribunal
   Inquiry Facilitator, Waitangi Tribunal
   Solicitor-General, Crown Law Office
   Director, Office of Treaty Settlements
   Chief Executive, Crown Forestry Rental Trust
   Chief Executive, Te Puni Kōkiri

DATED at Whangarei this 3rd day of February 2014

Judge D J Ambler
Presiding Officer
WAITANGI TRIBUNAL