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THE PLANNING FRAMEWORK FOR MAORI LAND

A thesis presented in partial fulfilment of the requirements for the degree of
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Abstract

The thesis examines the relationship between Maori land and the resource management planning framework within New Zealand, within an analytical framework of the Treaty of Waitangi and contemporary indigenous collaborative management regimes.

Maori land is a unique class of land in New Zealand, representing the remains of tribal lands still in Maori ownership. Maori traditional forms of resource management were integrally linked with tenure and the allocation of use-rights, but legislation and practices introduced following the signing of the Treaty of Waitangi transformed the tenure system and gave no recognition to Maori resource management practices. Maori land and Maori needs were virtually ignored by planning legislation while the Maori Land Court carried out a central role in planning decisions relating to Maori land. From 1977, planning law gave some recognition of Maori values, which over time influenced the development of district scheme provisions relating to the use of Maori land. The 1991 Resource Management Act gave Maori issues greater prominence, but when translated into district plan provisions failed to give Maori any significant role in resource management on their own land. Contemporary Maori concerns about the planning framework include its lack of recognition of Maori as a legitimate resource authority, the lack of incorporation of the principles of the Treaty of Waitangi, and the failure to give any real effect to the concept of rangatiratanga. The Waitangi Tribunal has also identified shortcomings of the current planning framework in terms of the principles of the Treaty. These findings, together with current trends such as the development of iwi/hapu management plans; the growth of parallel services for Maori in education and health; and the increasing international recognition of indigenous land and resource management rights, challenge the current planning regime as it relates to Maori land.

Contemporary planning needs to recognise its basis in a dual heritage by reshaping its institutions and laws so as to accommodate the co-existence of an indigenous planning system. It is suggested that this be by way of collaborative management agreements whereby resource management planning responsibilities for Maori land are largely devolved to iwi within a framework delineating national requirements for sustainable management.

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INTRODUCTION

This thesis sets out to examine the relationship between Maori land and the resource management planning framework within New Zealand.

Maori land is a unique class of land, representing the remains of Maori tribal lands still in Maori ownership. The thesis begins by describing the physical, socio-cultural and tenure characteristics of Maori land which differentiate it from general land. These include the genealogical and spiritual connections between Maori and their land; the limited property rights of Maori land; the multiple ownership structure; the poorer quality of the land; its high biodiversity values; and the range of obstacles which inhibit Maori aspirations for the use of their land. These characteristics have given rise to a number of current issues and problems relating to the use and development of Maori land.

The Treaty of Waitangi is the foundation of any study of Maori land and planning. Chapter 2 explores the implications of the Treaty and its principles in light of modern findings of the Court of Appeal, Waitangi Tribunal and contemporary commentators. Critical comments by the Tribunal regarding the Resources Management Act suggest a number of shortcomings in terms of the Treaty. The central issue for planning is the application of Article 2 of the Treaty – which promised rangatiratanga would be retained over Maori lands – in relation to the sovereignty granted to the Crown in Article 1.

While the roots of the thesis lie in the Treaty, it has also been nourished by a number of academic writers in the field of planning, and in the interstices of planning and indigenous self-management. These theoretical approaches and their application to the planning framework for Maori land are discussed in Chapter 3.

Maori customary methods of environmental management were exercised by iwi and hapu prior to European settlement, but have been poorly recognised in planning practice to date. By the time of European contact, Maori had generally developed a fine-tuned

approach to management of the environment to ensure the ongoing availability of food and other resources. Customary land tenure was a pivotal aspect of the resource management system, and its replacement with contemporary Maori land tenure changed the nature of the relationship between Maori and resources. Traditional Maori cultural and spiritual attitudes towards the environment, systems of land tenure and customary methods of resource management are outlined in Chapter 4. An appreciation of these methods is relevant in light of Maori calls for returning to traditional practices of resource management.

Following the signing of the Treaty of Waitangi in 1840, European law began to alter both Maori land tenure and its administration, largely ignoring Maori values and traditional methods of resource management. Early planning-type legislation was concerned with the orderly development of townships and services for settlers, and at times specifically targeted Maori land for these purposes. From the first Town Planning Act in 1926 until 1977, Maori land and Maori needs were virtually ignored by planning legislation, while the Maori Land Court had a central role in planning-type decisions relating to Maori land. From 1977, planning legislation gave some recognition of Maori values, which over time influenced the development of district scheme provisions relating to the use of Maori land. However Maori had increasingly strong disquiet about the planning framework including its lack of recognition of Maori values and the imposition of a level of control which some considered was inconsistent with the Treaty.

Maori were given an opportunity to express their concerns during the resource management law review during the 1980s. As described in Chapter 6, some of the issues raised by Maori were provided for to a limited extent in the Resource Management Act 1991 (RMA). Provisions of particular relevance to Maori land included certain sections within the principles of the RMA, the exemption of Maori land from most subdivision controls, the reference in the Act to iwi management plans, and the potential for transfers of powers to iwi authorities. However the apparent promise of these provisions has not been borne out by any significant changes in planning for Maori land except in the requirement to 'consult' at various junctures.

The Maori land planning framework is made more complex by the role of the Maori Land Court, which controls certain aspects of the use and development of Maori land under Te Ture Whenua Maori Act 1993 (TTWMA). Chapter 7 describes the Court's quasi-planning functions and compares the purpose and principles of TTWMA to those of the RMA.

Local planning documents drawn up by territorial local authorities have the most direct impact on the use and development of Maori land. Chapter 8 examines provisions relating to the use of Maori land in district schemes developed under the Town and Country Planning Act 1977, and compares these to provisions developed under the Resource Management Act 1991. District plans are also surveyed to assess how they provide for the practical expression of *rangatiratanga* and *kaitiakitanga* over Maori land.

Chapter 9 assesses contemporary Maori views on a proposed district plan and analyses the level of involvement in resource planning sought by Maori submitters. Using a theoretical framework developed by Berkes, Maori aspirations were compared to the level of involvement provided for in district plans. The results show a significant disparity between the level of involvement sought by Maori and the level provided in District Plans. Maori consider that the practical expression of *rangatiratanga* and *kaitiakitanga* mean that a greater degree of self-determination is appropriate for Maori land.

This suggestion is not as radical as it sounds. Modern international law acknowledges the special role of indigenous peoples in achieving sustainable development, and encourages a degree of self-determination, particularly in areas inhabited by indigenous peoples. There are numerous examples of indigenous control of resource management planning on indigenous lands. Co-operative resource management agreements with government agencies for both indigenous lands and state conservation lands are also increasingly common. Chapter 10 examines current international trends in indigenous rights, international environmental law and indigenous resource management and their implications for the New Zealand context.

Solutions to the issues raised require changes to the current planning framework. Such changes could occur within the current legislative structure, or may involve changes in

law and practice. Within the current structure of the RMA there is the potential for a more significant role for Maori in resource management planning aided by a number of extra-legal actions and projects. However these would be of limited effect, and it is proposed that ultimately changes to both the RMA and TTWMA may be required to give better recognition of the Treaty of Waitangi and to provide for greater control by tangata whenua of indigenous resources on indigenous lands.

Research methods

The main information sources for this thesis have been from secondary research. The initial approach was an extensive examination of secondary information sources to determine the extent of existing research and writing on the planning framework for Maori land. The results were disappointing. There appears to have been very little research focusing on Maori land and the planning framework, apart from a few references by current academic commentators (such as Matunga 1997, Tomas 1994), brief comments by those examining Treaty issues (Crosson 1992, Marr 1997) and some work relating to the Resource Management Law Reform process in the 1980s. This left the field wide open. The question then was whether to carry out in-depth research on a single aspect of the planning framework for Maori land, or whether to attempt to cover a wider range of the issues involved but in less depth. Having chosen the latter approach, it is hoped that the value of the thesis will lie in highlighting areas for future research, and in suggesting some possible approaches for future development by others.

Following the initial literature search, an analysis was carried out of historical and contemporary planning-related legislation. From here, the broad issues became apparent and research then focused on the relevant literature, ranging from early accounts of Maori resource management techniques to recent developments in international environmental law.

Primary research was carried out using methods which are compatible with the key assumptions of qualitative research. Sarantakos (1993: 45) proposes that qualitative research tries to approach reality without pre-conceived ideas and pre-structured models and patterns, studies a small number of respondents, employs no random sampling

techniques, uses no quantitative measures or variables, and employs research methods that produce descriptive data. This form of research was used in two main areas.

Firstly, semi-structured interviews were carried out with a small number of specialist informants where contemporary comment or up-to-date information was required. The individuals interviewed were chosen because of their known experience and knowledge.

Secondly, analysis was undertaken of district plan provisions and Maori submissions to a district plan. Random sampling techniques were not used. In the former a selection of district plans was chosen according to their availability and whether the district had significant amounts of Maori land. Given the 'overview' approach of this thesis, it was considered that it was more important to identify themes and issues than to make numerically precise conclusions based on representative samples. In the latter, a single proposed district plan was chosen because it was known that the Far North area had a high Maori population, and that a submissions had been received from a wide range of Maori submitters. Again, although not representative of Maori views as a whole, the findings are useful in indicating a range of views held by Maori towards the planning process.