KAITIAKITANGA AND THE CONSERVATION AND HERITAGE MANAGEMENT OF THE KAITUNA RIVER.

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FOREWORD

"Ko te kinenga o te kai kai taku waimimi, kai te awa o Tapuika."

"The source of all sustenance is the water of my bladder, the river of Tapuika."[1]

This thesis examines concepts and information which are of great significance and sensitivity to Maori. It recognises that there are varying interpretations of the concepts and issues of Maori natural, cultural and environmental heritage discussed in this thesis, from both Maori and non-Maori commentators. It focuses on the extent to which kaitiakitanga has been incorporated effectively into New Zealand's resource management framework.

It must be noted that kaitiakitanga is an extremely important and sacred component in Maori philosophy. Thus there is no pretence that this thesis is a comprehensive interpretation of it. The author would like to acknowledge the information he has received from Ngati Pikiao kaumatua and the Te Runanga O Ngati Pikiao. He has worked closely them from the outset to incorporate their wisdom and knowledge into this thesis and to establish the historical and current circumstances of Ngati Pikiao's relationship to the Kaituna River.

The author offers this discussion on issues that are becoming central to a bicultural environmental management system with respect and good faith.

[1] A description of the Kaituna River in the famous Pohuatau a Te Kopuni (the song poem of Kopuni) by the great Ngati Hinerangi ancestor Te Pohuni.

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This thesis is dedicated to the late Koro Kawana Nepia to whom I am greatly indebted for his valuable and very timely contribution at the conception of my research. Without Koro Kawana's spiritual and familial interconnectedness with the Kaituna and its expression to this author, this piece of work would be without its wairua.

Firstly I would like to thank my dedicated supervisor, Peter Horsley, for his continued support and enthusiasm throughout the year. His all-hours and unlimited advice, accommodation, knowledge, guidance, belief and commitment to this work have been much appreciated.

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I would also like to thank some other important people who have helped me along the way. The late Mina McKenzie for her early advice on the concept of kaitiakitanga in the context of the "Maori world" and the implications of this concept in the resource management environment of regional and local government. Ngaire Reeves at Rotoiti for her explanation and understanding of the history of the Kaituna issue and helping this author with initial contacts with Ngati Pikiao kaumatua. Bertram Kingi, of the Lake Rotoiti Scenic Reserves Board, for early discussions, ideas and people to contact. Kalaveti Batibasaga for his initial discussion on the importance of a spiritual connection to land and resources for indigenous peoples. Todd Taiepa, for his help with readings, thesis ideas and structure as well as other discussions throughout the last two years.

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ABSTRACT

This thesis investigates kaitiakitanga as an integral component of the Maori environmental management system and the theoretical and practical implications of this concepts incorporation in modern resource management, in particular the conservation and heritage management of the Kaituna River, Okere, Rotorua. With increasing attention being focused on the development of bicultural policies for resource management, this thesis pursues the effectiveness of New Zealand's environmental mandate as inclusive of Maori and Treaty of Waitangi concerns.

Through the use of an extensive literature research and retroductive interviews, this thesis examines both the Maori and Western world-views and their resource management perspectives and practices. In terms of giving expression to kaitiakitanga, an investigation of the hierarchies, priorities and partnerships developed to resolve competing resource conflicts was undertaken, as well as the various legally based structures and mechanisms for processing and implementing partnership arrangements and recognising iwi rights and values. The Kaituna River was chosen as a case study because of the current ongoing resource management conflict between Maori and the Crown with respect to recreational use and commercial development versus Maori cultural and spiritual values.

The case study complemented the findings of this research in that, despite the widespread formal recognition of kaitiakitanga by management agencies and the various statutory and non-statutory mechanisms that could be used to accord Maori management authority, there have been neither a sufficiency, nor an appropriate choice of formally established structures to allow Ngati Pikiao to exercise, as Treaty partners, their kaitiakitanga responsibilities. More specifically, the situation investigated at the Kaituna River established the current inability of New Zealand's political and judiciary systems to apply kaitiakitanga effectively as a mechanism for dealing with resource management issues involving Maori and the Crown. At present, kaitiakitanga is expressed in the RMA as a principle to which territorial authorities shall have "particular regard" in achieving the purpose of the Act. It is to be effected through the requirement the RMA places on these authorities to "take into account" the principles of the Treaty of Waitangi. The problem is though, as many Maori involved in resource management are realising, it is a requirement which those with responsibilities under the RMA may choose to readily avoid. Whether the kaitiakitanga role of hapu and iwi will become better understood, appreciated and given effect to by resource management agencies involved and the promised Treaty of Waitangi partnership is being affirmed still remains to be seen.

While the case study was specific to the Kaituna River, the findings of this thesis could be relevant to any conflicting resource management situation between Maori and the Crown in New Zealand. The development of new principles and/or a new planning framework relating to the kawanatanga response needs to become consistent with New Zealand's dual mainstream planning heritage. Legal and constitutional adjustments may be needed to facilitate formal collaborative management structures and negotiated agreements at all levels.

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CHAPTER 1

INTRODUCTION

"Nga Toitoi tiaki o te awa Okere"[1]

1.1. THE KAITUNA RIVER AND NGATI PIKIAO

On the 30 January 1978, Sir Charles Bennett and other members of the Ngati Pikiao tribe filed the Waitangi Tribunal Kaituna claim (Wai 4).[2] They asked that the proposal for a nutrient pipeline to the Kaituna River should not proceed. This claim was prompted by an inherent bias in New Zealand's environmental planning legislation with regard to Maori cultural and spiritual values. It was the first claim to be lodged which seriously challenged the right of the dominant culture to use water as a means for waste disposal [the right to do so was part of the philosophy that was enshrined in the *Water and Soil Conservation Act 1967* (Fraser, 1988)]. Despite the untested nature of the Waitangi Tribunal's legislative powers, general political misgivings and European ignorance about Maori cultural and spiritual values, this claim was successful and led to an alternative type of sewage disposal for Rotorua's sewage - that of land-based treatment. The claim successfully questioned the environmental management practices of government at both national and regional levels. It also illustrated the inability of formalised institutional structures to recognise, and hence implement, Maori spiritual and cultural values when determining competing water resource uses. This highlighted the way the New Zealand legal and planning system has consistently and historically marginalised Maori political power, including the virtual abandonment of Article 2 of the Treaty of Waitangi, which guarantees *"...the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession..."*.[3]

However, despite this affirmation of the validity of Ngati Pikiao's cultural and spiritual values, a similar situation has arisen in recent years with the emergence of commercial rafting on the same stretch of the Kaituna River. This time the conflict involves the competing values of recreational use and development versus Maori cultural and spiritual values. The commencement of rafting has led to ecological changes to the river gorge ecosystem and has impacted on the traditional values of Ngati Pikiao, and their ability to exercise kaitiakitanga over this stretch of the Kaituna

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[1] Quote from a traditional waiata referring to Ngati Pikiao's role as guardians over the Kaituna [*Okere*] River.

[2] Including the late Pokiha Hemana of Okere Falls, Tikitere Takuira Mita of Maketu, Stanley Newton of Mourea, Irikau Kingi of Rotorua City and Tamati Wharehuia of Te Puke.

[3] Refer Appendix 1.

River.[4] To a large extent the basis for this clash of political and cultural frameworks has arisen from what some commentators term the "opposing world views" of tikanga Maori and the Western legal and administrative structures.

1.2. THE HISTORY OF THE KAITUNA RIVER CONFLICTS

The Okere River is the major outlet from Lake Rotoiti (Figure 1), although frequently referred to as the Kaituna River.[5] The river is properly known as the Okere from its lake outlet (Te Rotoiti) as far downstream as Kohangakaeaea (Parihaua); from Parihaua to Pakotore it becomes the Kaituna, and from there to the coast, Te Awarua (Stafford, 1996). The naming of these areas is an expression of kaitiakitanga and is related to the importance of the Kaituna River in the bigger Rotorua Lakes ecosystem. It is these traditional rights and values that confirm Ngati Pikiao's historical relationship with the Kaituna River, and which the Waitangi Tribunal, in the 1984 Kaituna report, recognise as being guaranteed by the Treaty of Waitangi. The findings discussed the importance of cultural and spiritual values, and how Ngati Pikiao had effectively demonstrated kaitiakitanga in the past.

The Waitangi Tribunal report challenged the philosophical value base of the *Water and Soil Conservation Act* that was previously thought to represent one of the most progressive forms of water and soil management in the world (Fraser, 1988 p. 59).[6] It was instrumental in bringing about subsequent legislative changes and led to the creation of the *Environment Act 1986* and the *Resource Management Act 1991* (RMA). However, despite the results of this landmark claim, Ngati Pikiao are still not being adequately accorded their kaitiaki status in New Zealand's environmental and resource management planning framework and are frustrated with their inability to curtail the environmental and spiritual damage from white water rafting on the upper Kaituna River.

1.3. THE PRESENT SITUATION

Currently, Ngati Pikiao exercise their kaitiakitanga through access control on the land trusts - Taheke and Okere Trust Inc (Figure 2) - and Maori land adjoining the Kaituna River (Morgan *pers. comm.*). This authority is also exercised legally over the Okere Falls Scenic Reserve (Figure 2) by Ngati Pikiao kaumatua through the Lake Rotoiti Scenic Reserves Board.[7] The Department

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[4] The flight paths and nesting patterns of the endemic black shag have been particularly affected (Park *pers. comm.* 1997).

[5] In this thesis the Okere River will be referred to as the Kaituna River.

[6] *Water & Soil Conservation Act 1967.*

[7] Composed principally of Ngati Pikiao elders, the Lake Rotoiti Scenic Reserves Board controls and manages the Okere Falls Scenic Reserve. A more detailed discussion of the jurisdiction of the relevant government management agencies will be discussed in Chapter 6.

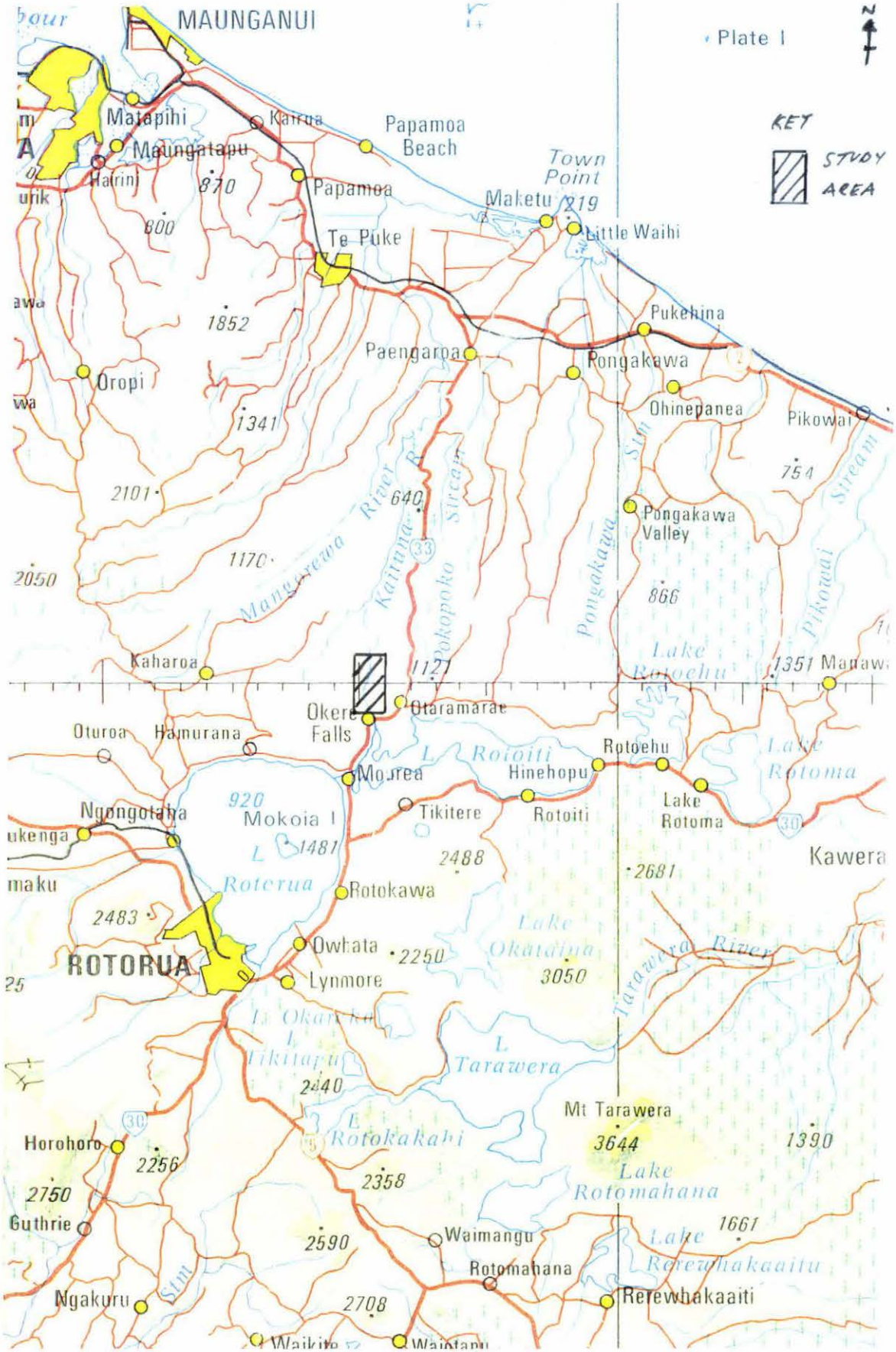

FIGURE 1. Map illustrating Kaituna River study area.

Refer Map 102

Refer Map 105

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OKERE INCORPORATION MAORI LAND TRUST

TAHEKE INCORPORATION MAORI LAND TRUST

Scenic Reserve (U.Z. Rv A)

Okere Falls Scenic Res (U.Z. Rv A)

TROUT POOL RD

TAHEKE RD (Unformed)

Kaituna River

OKERE FALLS RD

Roadway

(Unformed)

HOKO RD

Maori Res

Scenic Res (U.Z. Rv A)

LP Res (Esp) (U.Z. Rv A)

SH 33

TAHEKE RD

MALVERN RD

OKERE RD

RA

RE

CF

WA

RvB

87

88

90

3.9

Commercial F (Rural Commercial)
Reserve A (Public)
Reserve B (Private and Community)
Rural A (General)
Rural E (Lakeside Settlement)
Water A (Activity)
STUDY AREA

Figure 2. Planning map illustrating Okere Falls Scenic Reserve and the Kaituna River.

Proposed Rotorua District Planning Map

500 metres 400 300 200 100 0 100

of Conservation services the reserve under the Board's discretion.[8] However, there has been widespread conflict between the Board, the Department of Conservation (DOC), Environment Bay of Plenty (EBOP), Rotorua District Council (RDC) and rafters. This was illustrated in October 1994 when RDC attempted to re-zone the reserve to sell a section of it to rafting operators.[9] This management arrangement did not met Ngati Pikiao's aspirations as kaitiaki over the river, and they saw it as another example of their traditional cultural and spiritual values being overridden, in the interests of recreation and tourism. As a result Te Runanga O Ngati Pikiao attempted to utilise the Resource Management Act Heritage Protection Authority provisions[10] to legally establish the ownership and management powers needed to exercise their kaitiakitanga over the river and adjacent reserve.

The situation soured further on 29 October 1994 when the RDC (which is deemed to be a heritage protection authority under the RMA) issued a notice of requirement for a heritage order over the whole of the Kaituna River within the Rotorua district. The council initiative of this interim heritage protection order effectively pre-empted the Runanga's bid for control.[11] RDC publicly stated that the heritage protection order was the only way the council could get control of the river in terms of navigation and safety:[12]

> "The order certainly gives the opportunity for the Council to take a lead in managing the River, and to strike a fair balance between all community interests."[13]

The council's move was also intended to safeguard public access to the river and solve conflict between commercial rafting companies and some members of Ngati Pikiao, who felt the spiritual and cultural values of the river were being compromised.[14] The special significance of the river to tangata whenua was one of several reasons that the Council cited to explain why a heritage order was necessary. The RDC, under the terms of the RMA, is a heritage protection authority, and given its resources may be better placed than the Runanga to protect the waahi tapu on the Kaituna River.[15] However, it is inappropriate for a council to assume a kaitiaki role when it has

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[8] *Pers. comm.* David Field, ex-Bay of Plenty Regional Conservator, Department of Conservation.

[9] However, this move was successfully blocked by Te Runanga O Ngati Pikiao.

[10] Sections 187 - 198 RMA (refer Appendix 2).

[11] However, RDC's original application was withdrawn citing the need to "allow more time for consultation with interested parties as to the appropriate controls which will permanently regulate the use of the Kaituna River". Although there was no such consultation with Ngati Pikiao, a new notice of requirement was given on 29/11/94.

[12] RDC's past director of environmental services, Mr Brian Hughes (*cited in* Daily Post 31/1/96).

[13] Cr Robin Ford, Environmental Services Committee chairperson (Daily Post, 21/12/94).

[14] Mr Kawana Nepia (*pers. comm.*) highlighted the issue that commercial rafting had exposed the spirituality of the area. Many of the burial caves are hidden from public view, however increased rafting activity has seen a subsequent increase in track users on Tutea's Steps and has led to an associated opening up of the walking tracks and the adjacent forest for viewing purposes, further altering the sanctity and naturalness of Te Rere-a-Tutea.

[15] In which case the territorial authority follows the process (public notification, submissions and hearings) the same as that for resource consent applications. The territorial authority then considers the requirement (MfE Report on Resource Management Amendment Bill (No. 3) 19/07/96).

no mandate from the iwi to do so.[16]

In light of these issues, in August 1994 DOC recommended that Ngati Pikiao be encouraged to request the Reserves Board to investigate ways and means that it might be able to play a greater role in the management and planning of the Kaituna River. DOC intended this as a means of addressing Ngati Pikiao's concerns regarding the rafting operations, and to assist resolution of these conflicts. To some extent this problem has been remedied under the mandate of the Lake Rotoiti Scenic Reserves Board[17] (LRSRB) in cooperation with DOC in the form of a Management Plan.[18] There has been some acknowledgement of the various statutory roles and a more co-operative stance in finalising an appropriate management structure for the Kaituna River including controls over commercial activities (LRRRA, 1996).

The intervention of the Reserves Board came after several years of no effective control of white water rafting interests and their use of the Kaituna and surrounding area. The Board's initiatives were designed to redress the ecological degradation and user imbalance within this Reserve area. However, the initiatives have no statutory standing and have done little to remedy conflicts between commercial development pressure and the spiritual values of Ngati Pikiao on the Kaituna River, although it is apparent that they were instrumental in the withdrawal of RDC's heritage protection authority order over the river in February 1997.[19]

Even though RDC's HPA was withdrawn, Ngati Pikiao's attempt to protect the river's spiritual values from commercial tourism by requesting HPA status under the Resource Management Act 1991, was declined by the Minister of the Environment stating:

> *"I am not satisfied... that the approval of the Runanga as a heritage protection authority is appropriate for the protection of the place... The reasons for my decision are:*
>
> *(1) Despite a number of requests for further information, I am not satisfied that the application provides sufficient detail of the place for which the Runanga seek heritage protection.*
>
> *(2) That there are other bodies capable of protecting the place. In particular the... Rotorua*

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[16] Similar issues were identified in objections from the Ministry for the Environment and Te Runanga O Ngati Pikiao. For example, the Ministry for the Environment and Te Runanga O Ngati Pikiao objected to this application stating "RDC do not understand the legislation".

[17] The Lake Rotoiti Scenic Reserves Board, a body originally established under the Native Land Amendment and Native Land Claims Amendment Act 1919, has been appointed to control and manage these reserves under the Reserves Act 1977. The Board, which has representatives from Ngati Pikiao on it , was originally established to manage lands gifted to the Crown by various hapu of Ngati Pikiao. The board was set up to protect the Reserves against adverse impacts, facilitate public use and enjoyment, and license commercial enterprises.

[18] This includes terms of contract to license commercial rafting companies, defined periods of operation including cessation during the month of June (to eliminate disturbance at the height of the trout spawning season) and observation of rahui, establishment of boundaries, imposition of license fees, and provision of trained guides.

[19] It is this authors opinion that RDC's withdrawal may also be related to the proposed amendment to the RMA 1991, in which rivers may be excluded from such orders. This would in effect make "the Councils authority look shaky" (Daily Post 9/2/96).

District Council".[20]

This has resulted in the Minister for the Environment being taken to the High Court by Ngati Pikiao under Section 188 of the Resource Management Act. In a more recent twist, the Resource Management Amendment Bill (No. 3) proposes to exclude rivers from HPA applications, despite the Waitangi Tribunal finding in the Muriwhenua Report that there is no difference between water and land in terms of customary title and protection. This is a critical issue for Maori with traditional relationships with rivers and land that could influence the outcome of any legal proceedings between Ngati Pikiao and the Crown.

1.4. CONFLICT ARISING FROM NEW ZEALAND'S RESOURCE MANAGEMENT FRAMEWORK

"He iwi tahi tatou"
"We are now one people"[21]

By the time of the first European contacts [Abel Tasman in 1642, James Cook in 1769] Maori had forged a close relationship with their environment and had developed a sophisticated set of resource management practices which ensured that both people and natural resources could be sustained over succeeding generations. This early Hobson quote reflects the English legal system's swamping of *taha Maori* in New Zealand via predominantly Western-based legal structures and attitudes to resource management - Hobson probably never anticipating the ambiguity and misunderstanding that was to arise. Since 1840, Maori systems of resource management have seldom been recognised by European approaches to resource management and planning. Indeed, since the creation of the settler government by the 1852 Constitution Act, many Maori have claimed that their rangatiratanga has been subsumed by European laws and practices and that successive governments have continually adopted a mono-cultural approach to legislation. By adhering to such a process, the resources once owned totally by Maori, have been appropriated by Crown management agencies, resulting in the 'massive development of under-development' for Maori (Marsden, 1988).[22]

Marsden's clear implication is that Maori see that continued and persistent deprivation, oppression and manipulation of tangata whenua by the dominant culture is posing a serious threat to the very existence of present and future generations of tangata whenua. Such circumstances have often forced Maori to take an uncompromising stance on various issues regarding the Treaty of

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[20] Letter from the Hon Simon Upton, Minister for the Environment, to Kepa Morgan, Operations Manager, Te Runanga O Ngati Pikiao (2/5/95).

[21] Captain Hobson on signing the Treaty of Waitangi (1840).

[22] It was not until 1975 that a comprehensive and culturally sensitive means of addressing Maori grievances was established in the form of the Waitangi Tribunal.

Waitangi.

Prior to the *Town & Country Planning Act 1977* there was no recognition of Maori concepts in planning and resource management legislation and any subsequent provisions were very limited and did not meet the concerns of Maori at the time (Nuttall & Ritchie, 1995).[23] The extent of this recognition was also largely dependant on the comparative political strengths and weaknesses of Maori and the Crown and the prevailing attitudes towards Maori knowledge and their relationship with the land at the time. A greater understanding and appreciation of Maori knowledge, coupled with greater demands from Maori for mainstream recognition and incorporation of their cultural ideology has resulted in the increased recognition of Maori knowledge and concepts within New Zealand's legal and political institutions.

The 1984 Labour government's resource management law reform process provided for comprehensive participation and input from Maori. The Labour government saw Maori as not just an environmental stakeholder or interest group, but as a separate entity, and set up a working party with Maori input to process the review and development of the new legislation. This involvement culminated in the first environmentally based legislation in the world (the Resource Management Act 1991) which gave specific recognition to the environmental concepts and values of indigenous peoples (Burrows, 1997). This was done principally for two reasons: firstly, *...the government response to the political pressure from Maori for recognition within planning legislation of the Maori viewpoint and the Treaty of Waitangi*; and secondly, *...the recognition that Maori attitudes towards resource management could assist in meeting the purpose of the Act*:[24]

> "Throughout the Resource Management Law Reform process, Maori involvement was seen as vital, and a necessary component of constructing a new and improved resource management system. Extensive Maori involvement in the development of the Resource Management Act resulted from, not only the Crown's recognition of its Treaty obligations but also by the increased recognition that Maori, through their affinity to the land and their knowledge, tikanga and values, could contribute to sustainable management of natural and physical resources. As a result, government officials consulted with Maori throughout the country to determine ways to reflect and promote Maori environmental values and practices. This prompted the incorporation of provisions within the Act that would enhance the role and participation of Maori within this new environmental regime."

Other reasons included:

- an improved attitude towards the use of Maori terms in legislation and in society in general;
- the importance of Parliament being seen to adopt a bi-cultural approach to law-making; and

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[23] Section 3(1)g allowed for Maori historical and traditional concerns to be taken into account as a matter of national importance.

[24] Maynard, K. p. 5.

- the use of Maori terms in the Bill giving reinforcement of the status of the Maori language as recognised in the Maori Language Act.[25]

Consequently, under the RMA there is a considerable emphasis on the interests and resource management issues of concern to tangata whenua. The principles of the Act refer to the relationship of Maori and their culture and traditions to natural resources of special significance to them, to the role and function of kaitiakitanga and to the Treaty of Waitangi (Nuttall, & Ritchie, 1995). The incorporation of the principles of the Treaty of Waitangi and Maori values into the RMA is a reflection of New Zealand's maturing attitude towards the Treaty and their increasing relevance to environmental issues. Maori concerns relating to the degradation of the environment and protection of taonga guaranteed by the Treaty have significantly raised public awareness. Recent claims to the Waitangi Tribunal and Court decisions have focused and intensified the debate (Solomon, 1992). Today, the Treaty is recognised as an essential component of the fabric of New Zealand society. Consequently, the RMA's conception manufactured hope within Maori society that this new approach to resource management would eventuate into local partnerships between iwi and hapu authorities and regional councils and territorial authorities (Nuttall & Ritchie, 1995).[26]

Implicit in the RMA are various provisions enabling Maori to protect resources of cultural and spiritual significance. These include ss.6(e), 7(a) and s.8, as well as the s.33 provisions dealing with the transfer of powers to iwi. However, in the six years since its enactment, legal interpretations of Maori terms and concepts have differed widely and legal precedents relating to these provisions have been slow to develop. There has also been considerable concern at the use of Maori terms and concepts in the Act, such as kaitiakitanga, for the reason that control over determining their true meaning may be lost to non-Maori agencies such as local authorities, and the Environment Court (Blackford & Smith, 1993).[27] The interpretation of kaitiakitanga, in particular, and its subsequent proposed amendment highlights some of the difficulties and issues that arise when there is an attempt to incorporate elements of an indigenous system into a legal system that is based on different assumptions with a different conceptual base.

Similarly, there has also been conflict over cultural heritage protection and management. This was recognised in the findings of the 1996 Parliamentary Commissioner for the Environment report:[28]

> "There is a large and growing public appreciation of (historic and cultural) heritage and commitment to its protection; however this has yet to be fully reflected in New Zealand's

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[25]Ministry for the Environment 1990. *Resource Management Bill: Departmental Report - Words and phrases: use of the term "kaitiakitanga" in clause 4 of the Bill [1990].*

[26]An investigation of these issues will be discussed throughout the thesis.

[27]This can be illustrated by *Greensill v Waikato Regional Council* W17/95 (PT) in relation to kaitiakitanga. This decision formed the basis for the recent 1996 amendment to the definition of kaitiakitanga in the RMA.

[28]Parliamentary Commissioner for the Environment. 1996. *Historic and Cultural Heritage Management in New Zealand.*

> environmental management system. The system as a whole is performing quite poorly and permanent losses of all types of historic and cultural heritage are continuing ... There is a lack of clear Ministerial accountability for historic and cultural heritage protection and management... The role of tangata whenua as kaitiaki in the interpretation, protection and management of their historic and cultural heritage has been given insufficient support. Constructive relationships between national and local authorities and tangata whenua are essential to the process of protecting Maori historic and cultural heritage".

All these factors together with recent case law and Waitangi Tribunal decisions have heightened Maori aspirations. There has been a particular focus on the RMA as legislation inclusive of Maori rights and interests that provides mechanisms for exercising kaitiakitanga. However, whether these aspirations are being effectively expressed under New Zealand's current environmental and resource management framework will be examined particularly in respect of the Kaituna River - a precedent case for the conflict between Maori spiritual values and Western legal and administrative structures and therefore, a pertinent study area for bicultural resource management issues.

1.5. THESIS AIM

The overall aim of this research is to investigate kaitiakitanga as a traditional Maori approach to environmental management and to also examine its context, interpretation and how it is being reflected in New Zealand's resource and environmental legislation, particularly the Resource Management Act. Through examining the principles of one the more "essential elements" of the Maori environmental management system, this thesis establishes the place of kaitiakitanga in New Zealand's legislation, and more specifically, the institutional, functional and policy implications of kaitiakitanga on the planning framework of the Kaituna River.[29] This thesis also examines to what extent the RMA's gradual transition from a curative to preventative statute has worked with particular reference to recognising Maori values whilst having regard to environmental "bottomlines" and ecosystem integrity. This aim is attained through the use of a local case-study area and through the fulfilment of the following objectives.

1.6. THESIS OBJECTIVES

This thesis aims to fulfill the research aim through the following objectives:

- investigate the Maori world-view and its relationship with the concept of kaitiakitanga, both within traditional/conceptual resource management as well as in its more contemporary resource management application;
- investigate the Western world-view and its associated institutional, administrative and

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[29] As a component of this research, Ngati Pikiao's attempt at establishing their role as kaitiakitanga over the river resource through their Heritage Protection Authority application will be investigated in Chapter 6.

legislative structures as well as the corresponding notions of stewardship and guardianship;

- investigate the legal hierarchies, priorities and partnerships developed by the courts, Parliament and the Waitangi Tribunal to solve competing resource management interests between Maori and the Crown;
- investigate structures and mechanisms for processing and implementing partnership in New Zealand, in particular, consultation and participation;
- evaluate how kaitiakitanga can be given effect to in the resource management framework for the Kaituna River and note how these provisions and current management structures and processes are being met by the relevant resource management agencies and Ngati Pikiao at the Kaituna River;
- investigate a range of other possible management options for the Kaituna River that provide for greater general participation and collaborative management.

1.7. THESIS ISSUES AND RESEARCH QUESTIONS

The degree to which Maori values pertaining to the natural environment have been integrated into resource management and planning legislation is further complicated by 'Western' institutional structures, and two very different ways of thinking about nature and society, involving two very different world views (Murton, 1987). Given the conflicting nature of the aim and objectives of this thesis and its relationship to kaitiakitanga, the following research issues need to be addressed in order to meet the thesis aim and objectives:

1. Given that the Treaty of Waitangi requires a partnership response based on co-existence, co-operation and respect, wouldn't a future mainstream planning and resource management framework which recognises New Zealand's dual heritages and philosophies, and which recognises and respects the independent validity of a separate indigenous Maori planning system within that framework, be more appropriate than one that is about one culture's ideals, conventions and rules dominating and over-ruling anothers?

2. To what extent should the ideals and rules of the indigenous people have real active expression in the culture? In particular, to what extent should Maori be involved in environmental and resource management decision-making processes in the pursuit of self-determination?

3. To what extent is this cultural difference being allowed for in our resource management frameworks? Given New Zealand's Treaty of Waitangi obligations and environmental responsibilities, should these systems operate within a Maori/tribally specific context of attitudes, beliefs, values and institutions. What are Treaty of Waitangi and environmental responsibilities and obligations and how do they relate to kaitiakitanga? How can Maori give expression to and implement kaitiakitanga?

4. To what extent are Maori aspirations being prevented? Specifically, are the RMA provisions relating to Maori and the exercise of kaitiakitanga being given active expression? For example, are Maori tribal authorities being given adequate recognition as legitimate resource authorities within our environmental legislation and to what extent are iwi planning documents being incorporated into resource management and decision-making i.e are these documents being given the statutory recognition they deserve as Treaty partners?

5. To what extent has the RMA promulgated in increased understanding between Maori and Pakeha

cultures about the concept of kaitiakitanga in order to outline differences in perception and to establish common ground. In particular, has the RMA instigated an openness to Maori traditions and planning approaches simultaneously with heightening environmental values, or has it resulted in a forced political and institutional compromise with the European planning system?

6. Utilising a case study of the Kaituna River, what is the statutory basis for Ngati Pikiao to implement kaitiakitanga? What are the implications of kaitiakitanga on the Kaituna and who decides the adequacy of Ngati Pikiao's role as kaitiaki for the environmental management of the Kaituna River? How do these responsibilities translate into accountability e.g. resourcing, monitoring and reviewing if Ngati Pikiao are given kaitiakitanga status over the Kaituna River?

These issues have particular relevance in places such as the Kaituna River where there are different cultural perceptions and traditions. In such areas there needs to be a recognition of these differences, an acknowledgement of their validity, and provisions made in resource management processes for responding to the participation problems that arise. The crucial point is that the statutory base for environmental management must provide some authority for decision-makers to incorporate the specific values of any given community into their decisions, if there is to be likelihood that those decisions will result in environmental outcomes that suit, or at least do not derogate from, Maori preferences and priorities (Crengle, 1996).[30] This can be achieved either through specific references such as the s.7(a) obligation to have regard to kaitiakitanga, or by establishing broad values which generally accord with those of Maori (Crengle, 1996). In any event, such statutory standing for the values of Maori in New Zealand's environmental framework is a crucial prerequisite for effective participation by Maori in environmental management.

1.8. RESEARCH METHODOLOGY AND THESIS STRUCTURE

1.8.1. Identification of the planning issue and research on Maori

In order to gain an appreciation of the planning issue of kaitiakitanga and to recommend a solution, it is necessary to investigate the viewpoints of iwi, local government and other river users. Stokes (1987) is of the view that a geographical analysis of cultural relationships between Maori and Pakeha must first come to terms with conflict over resource allocation and use and how historical grievances have affected tribal Maori society. Therefore, the issue must be placed in its historical context through examining relationships between the Crown management agencies and local iwi, including the events leading up to the resource management law and local government reforms. An analysis of the legal framework within which management of the Kaituna River is under taken is also necessary to establish the appropriate background for the planning issue. All this information will be necessary to meet the project aim.

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[30] Values pertaining to Maori associations with place and environment must suit the cultural needs of both peoples.

1.8.2. Research design and methodology

This project follows an action-research design based on a retroductive approach. The methodology employed includes qualitative research techniques, applied within the context of a case study on the Kaituna River. A retroductive approach is where, "...the researcher concentrates on the relationship between theory and data, reasoning back to develop a theory to account for that which has been observed" (Eyles, 1986). A retroductive approach has been used for this thesis in order to identify and assess the planning problem of how kaitiakitanga can be given expression in the resource management framework for the Kaituna River.

Consequently, it was necessary to undertake action-based research in the Rotorua and Bay of Plenty region before carrying out a literature review in order to identify whether the planning issue existed, and establish the nature of the planning issue. This was confirmed through conducting a series of in-depth, semi-structured formal and informal interviews with members of Ngati Pikiao, the relevant statutory management agencies, and rafting companies and guides. This has given an appreciation of the differing perspectives of the nature of kaitiakitanga in the conservation and heritage management of the Kaituna River, an insight that is not wholly attainable through studying literature and relevant theory. The retroductive approach recognises that by taking the subject's perspective, or seeing through the eyes of the people who are being studied (Geertz, 1976; Bryan, 1992 *cited in* Gerber, 1993), "...the researcher thus discovers one "truth" not the truth as positivists (and others) would claim" (Eyles, 1986).

1.8.3. Information sources

Primarily, extensive literature reviews were used throughout the thesis. These involved research pertaining to kaitiakitanga; the origins and influence of both the Maori world-view and its relationship to the Western European world-view and associated legal and administrative structures. A large component of this research involved a detailed analysis of case law and Waitangi Tribunal decisions relating to these issues, in particular the hierarchies and priorities developed to deal with conflicting resource management issues, as well as consultation, participation and mechanisms to achieve effective Maori participation and exercise kaitiakitanga.

For detailed research on the Kaituna River case study, it was imperative to go through the various files held by the Crown management agencies, as well as the Ministry for the Environment regarding the Minister's decision on the Kaituna River and other heritage protection authority applications. At various stages of this research Official Information Act requests had to be used given the contested nature of the Kaituna River issue, in particular the Minister for the Environment's decisions and the DOC files on the Kaituna River. This literature review also involved comprehensive research at both the Maori Land Court and the Bath House in Rotorua, as well as National Archives in Wellington, in order to establish the historical situation with respect to land ownership at the Kaituna River. Following this, Department of Conservation files

at Wellington Head Office, and Te Runanga O Ngati Pikiao files (including their High Court files and affidavits) were examined.

These literature reviews were complemented through the use of unstructured interviews with a focus on particular themes. In these interviews, subjects were approached with specific issues. In particular: kaitiakitanga; the Maori world-view and spiritual attachments to water; ownership; heritage protection authorities; rafting; water jurisdiction; and traditional resource use conflict relationships over the Kaituna River. Initially, these interviews were conducted with Ngati Pikiao kaumatua and Te Runanga O Ngati Pikiao staff. These interviews and informal discussions were centred around the concept of kaitiakitanga in the Maori world-view as well as the Kaituna River issue. These interviews and discussions took part concurrently throughout various stages of the research, and as further issues at the Kaituna River came to hand. Interviews were also conducted with people involved in the relevant management agencies concerned with the Kaituna River. In particular, a formal interview with David Field (the Department of Conservation ex-Regional Conservator and Okere Falls Scenic Reserves Board Chairman) was undertaken on the current situation at the Kaituna River and the DOC response.

1.8.4. Use of a case study

In Chapter 6, a case study of the Kaituna is utilised to provide a more detailed insight into the application of kaitiakitanga by tangata whenua, in this case Ngati Pikiao. The Kaituna situation was chosen as a case study as it represented perhaps one of the best examples of a Maori sub-tribe trying to exercise their traditional rights and obligations as kaitiaki over their traditional resources, a river that was confiscated under the Public Works Act and taken out of Maori control. This situation was also heightened in 1984 when the Waitangi Tribunal, in one of its first decisions, acknowledged that Ngati Pikiao were the traditional kaitiaki of the Kaituna River. Despite these recommendations, Ngati Pikiao are yet to have this traditional status over the culturally and spiritually important Kaituna River accorded to them. Consequently, the Kaituna River provides an excellent case study for conflicting resource management issues and the exercise of kaitiakitanga in the context of New Zealand's environmental and resource management law.

1.8.5. Thesis structure and chapter outline

The thesis is presented in seven chapters. Part I introduces kaitiakitanga and the background to conflicting resource management situations, whilst Part II specifically investigates the place of kaitiakitanga in the conservation and heritage management of the Kaituna River. Within Part I of the thesis, Chapter 1 introduces the planning issue and outlines the project aim, objectives and research issues. The latter section of this chapter describes the research design and methodology. Chapter 2 investigates the Maori world-view in terms of a conceptual overview. This also discusses the notion of kaitiakitanga in the conceptual world-view as well as in contemporary resource management. Chapter 3 is a corresponding discussion of what is termed the Western

world-view and associated legal and administrative structures. This chapter discuses the notion of stewardship and guardianship in the context of these structures and traditions. By using this format, comparisons between world-views, their interpretations and ultimately the implications, can be made between the first two chapters.

Chapter 4 identifies the legal hierarchies, priorities and partnerships developed by the courts, Parliament and the Waitangi Tribunal to resolve competing resource management interests and conflicts between Maori and the Crown. These issues are expanded on in Chapter 5 which outlines structures and mechanisms for processing and implementing partnership. This is discussed through an investigation of the legal requirements for consultation and participation and to recognise 'other ways' of recognising iwi rights and values.

Chapter 5 is followed by Part II and the specific case study of the Kaituna River and Ngati Pikiao. In particular, Chapter 6 is a detailed case study of the Kaituna River that builds on all the issues outlined in the previous chapters of the thesis. This chapter identifies the issue of kaitiakitanga and the relationship of Ngati Pikiao to the Kaituna River and investigates how Ngati Pikiao and the Crown management agencies have historically dealt, and are dealing with, the current conflicting resource management situation at the Kaituna River. This involves a systematic analysis of the resource management planning and decision-making framework at the Kaituna River. In doing so, a comprehensive statutory plan analysis is undertaken with respect to kaitiakitanga and the Kaituna River.

Given that the New Zealand approach to sustainable conservation and heritage management has to accommodate a Maori perspective, Chapter 7 concludes with a discussion of a range of management options for the Kaituna River that provide for general participation and collaborative management. This chapter recommends a planning framework specifically for the Kaituna River that recognises both mainstream traditions of Aotearoa New Zealand's dual planning heritage, as well as explicitly recognises and provides for negotiated agreements and outcomes at all levels.

1.9. SUMMARY

The RMA, in terms of resource management philosophies, simply represents "a tide of legislative shift" in New Zealand's constitutional and statutory system. The more that traditional Maori concepts like kaitiakitanga are closely examined by Maori, the Crown and resource management authorities, the more the contests and the cultural inequities in resource management planning become apparent. This thesis, by introducing and discussing the examinations and philosophies of kaitiakitanga and *te akau* - the land and water interface, enters this highly contested zone and reveals the shape and character of those inequities and what will be necessary for them to be addressed. Can the concept of kaitiakitanga be effectively used to address these issues, given its place in resource management legislation, and if so, to what extent can it be deemed effective?

The question is, therefore, if kaitiakitanga, as a matter of national importance, is to work successfully as a traditional Maori concept of resource management, can it happen:

- Anywhere, wherever;
- Equally within the interests of local iwi who have exercised it traditionally and within Western legal and administrative resource management traditions;
- In situations where there has been a continuity of Maori acting as kaitiaki; or
- In very particular situations where there is a Maori population actively connected to the resource[s] in question who are, in varying degrees, dominated by European cultural institutions.

Or can it in effect never happen anywhere because of the minority position of Maori. If it is the latter, can there be any more obvious place than the Kaituna River?

> "Culture does not disappear but continues as those who carry it adapt and adjust to a new world. This does not happen in a slow step-like fashion but in a sequence of surges, each an attempt to weave the broken strands of the old way into a new mantle. Each surge is an attempt to revive the old tradition, to show that it still has meaning; and each may indicate some area of central concern with which people will not lightly part. So it has been with the New Zealand Maori."[31]

[31] Westra A. & Ritchie, J. 1967.

CHAPTER 2

THE MAORI WORLD VIEW - A CONCEPTUAL OVERVIEW

The first people, Polynesians, arriving in New Zealand 1000 years ago or earlier, were members of one of the most successful diaspora of humankind. But the environmental ethics that embellished their success originated from life on small islands. In the vastness and extremes of New Zealand mistakes were made, but the accumulated experience gradually led to an appropriate environmental ethic being established. It has been called the "Maori Environmental Resource Management System".[32] Despite some debate, it seems clear that Maori bought a magico-religious world-view of the environment that readily lent itself to the conservation of the earth's natural resources. The physical and spiritual dimensions formed an integral and indivisible entity in the natural world of the Maori. That perspective dominated from the beginning and provided the basis for later environmental controls. One major part of that system that has persisted through colonisation, albeit in an evolutionary form, is the practice of kaitiakitanga (Nga Tikanga Tiaki I Te Taiao, 1993).

This chapter investigates the Maori world-view through a conceptual overview of the history of Maori in New Zealand (*Aotearoa*) and then examines the place of the traditional concept and practice of kaitiakitanga. The early part of this chapter defines the Maori world-view and its relationship to tino rangatiratanga, whilst the latter part of this chapter will discuss the Maori use/relationship with resources through a discussion of kaitiakitanga, both in its conceptual form and in terms of contemporary resource management. This will be followed by an analysis of the legal response and statutory interpretations of this term and a discussion of the issues surrounding its incorporation as a principle of the Resource Management Act 1991 - a Western-based legal framework. A summary incorporating the national overview of the kaitiakitanga aspirations of Maori in contemporary resource management, focussing in particular on the place of kaitiakitanga in heritage conservation and management, will conclude this chapter.

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[32] Tomas (1994) states that this system was fully developed and operational throughout Aotearoa at the arrival of the European. According to Gow (1995) and others, it is estimated that Maori finally achieved a state of ecological sustainability some time around the 17th century.

2.1. CONCEPTUAL WORLD-VIEW

2.1.1. The Maori World View and Environmental Resource Management System

The Maori world view is one where physical and spiritual dimensions form an integral and indivisible entity. It is a holistic view in which everything possesses *mauri* (life-principle or life-essence) and where there is a strong spiritual connection between the land and the people. This interrelatedness between people and nature makes impossible any separation of nature or superiority over it - humans belong to nature and in nature, rather than being distinct, ascendant or dominant. Kaitiakitanga is an integral component of this and refers to the ethic and exercise of a Maori environmental management system, based on the practices or *tikanga* developed and observed to maintain the mauri of parts of the natural world (Love *et al* 1993).[33] It includes the rules and practices which were the means by which Maori regulated their world. Definition of kaitiakitanga is only possible by looking at the relationship of Maori with the environment and their rationalisation of who they are and how they came to be, i.e. *whakapapa*. Papatuanuku, having become embodied in the physical form of whenua, continues to provide sustenance for all her children, including humans. The earth has her own mana, separate and superior to humans. Human mana is indirectly derived from both Ranginui and Papatuanuku (Tomas, 1994). This is recognised in the following creation story:[34]

> *In the far-off time before there was night and day, Ranginui the Sky-father lay in the arms of Papatuanuku the Earth-mother. For long ages they clung together and their children groped their way blindly between them.*
>
> *The children, all sons, became anxious to escape the world of light. They met together, to discuss freeing themselves*
>
> *'Let us kill them,' Tumatauenga said. He was the god of war and to be the father of man.*
>
> *'No' cried Tane-mahuta, the father of the forest. 'They are our father and mother, we cannot kill them. Let us force them apart.' His brothers all approved, all except Tawhirimatea, father of the winds who said fiercely:*
>
> *'Be careful Tane for this is a deed of shame.'*
>
> *His words were drowned by the other gods, crying*
>
> *'We need the light, and the freedom of space.'*
>
> *Many of the brothers tried, Rongo-ma-tane, the father of cultivated food, Tangaroa, the father of the sea, Haumia-tiketike, father of the wildberries and fern-root, and Tumatauenga, but none of them could separate their parents.*
>
> *Last of all Tane-mahuta rose to his feet and gathered his strength. He stood on his head with feet planted firmly against the sky-father and shoulders pressed against the earth. Then Tane straightened his back, and Rangi was hurled far away from Papa, and the angry winds screamed through the space that had opened between earth and sky.*
>
> *A silver veil of mist hung over Papa's naked shoulders and tears dropped from the eyes of Rangi in his grief of separation.*
>
> *The gods breathed the free air, and planned their new world...*

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[33] Tomas (1994) considers that kaitiakitanga is the Maori ethical principle of resource management. The goal of environmental management is the maintenance of mauri through the exercise of kaitiakitanga. Sustainable management involves sustaining the mauri of natural, physical, and metaphysical resources.

[34] Reed, A.W. 1967. *The Myths and Legend of Maori Land.* Reed, Wellington.

This creation story recognises the personification of natural elements, species and phenomena as a fundamental aspect of Maori understanding of the world. From Ranginui and Papatuanuku on down through the mountains and rivers fundamental to tribal identity, to the manifestation of ancestors or spiritual presences in a bird, fish or lizard, all is interconnected like a family (NZCA, 1997) (Figure 3). Because there is a common bond recognised in this order, Maori interrelate to the surrounding environment accordingly:

> "Although the whakapapa of various tribes may vary as to the particulars, the process from which humans eventually emerge does not. Each begins with a series of abstract concepts, in genealogical form, emerging one from the other. The same order is used to describe the process of the physical universe as they unravel. The genealogy spreads in an ever-increasing web of relationships from the single ancestral source. It includes the spiritual aspects of existence that are common to all things. The bond this creates between humans and the rest of the physical world is both immutable and unseverable. It finds recognition in a single word - *whakapapa* (Tomas, 1994)."

Consequently, Maori perceive the environment in a holistic way and see themselves as an intrinsic element of that environment (Koroheke, 1993). The expression *tangata whenua* embodies the nexus between people and the land. This holistic view is also reflected in the different dimensions that all aspects of the universe are understood to have:

- te taha wairua (spiritual)
- te taha hinengaro (mental)
- te taha tinana (physical and economic)

For example, land is not just valued for the uses that can be made of it. Iwi have a close spiritual relationship with the land - it is regarded as a sacred trust and asset of the people as a whole (Asher & Naulls, 1987 *cited in* James, 1993). This has been further developed by the Waitangi Tribunal in the Muriwhenua Report, which found that the division of properties was less important to Maori than the rules that governed their uses (Orr, 1989). Subsequently, the Tribunal found the criteria underlying Maori thinking to be:

- A reverence for the total creation as one whole;
- A sense of kinship with fellow beings;
- A sacred regard for the whole of nature and its resources as being gifts from the gods;
- A sense of responsibility for these gifts as the appointed stewards, guardians and rangatira;
- A distinctive economic ethic of reciprocity; and;
- A sense of commitment to safeguard all of nature's resources (taonga) for future generations.[35]

The links with these intangible dimensions are central to Maori identity and activity, involving responsibilities and respect. Arising from this conceptualisation of the environment, a four-part

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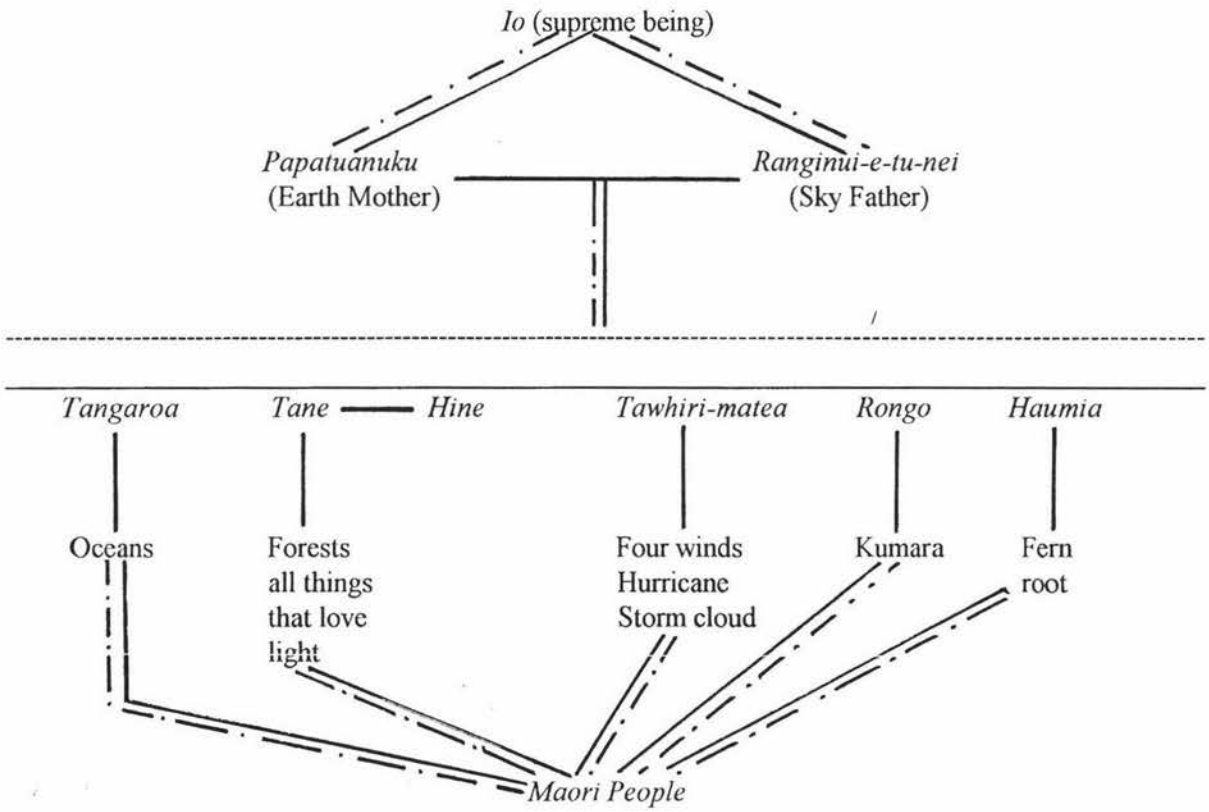
[35]Muriwhenua Report, Waitangi Tribunal; cited in Orr, 1989.

Figure 3.

TRADITIONAL MAORI RESOURCE MANAGEMENT SYSTEM AND ITS BASES

WITH

SPIRITUAL RELATIONSHIPS WITH GODS, NATURAL WORLD AND HUMANS[1]



——— Independence for continuity (lands, humans and nature)
—·—·— Mauri: life and energy source, spiritual force.

(After Williams *in* Fraser, 1988)

[1]This primodial relationship differs between each tribal group and so, while some characters do not appear in the lore of one hapu, they might in another.

framework for understanding Maori values has been proposed by Hirini Matunga.[36] Matunga recommends that culturally responsible environmental management decisions should take into account four fundamental Maori values: *taonga, tikanga, mauri, and kaitiaki*. Taonga is interpreted to mean, in its broadest sense, an object or resource which is highly valued. It has been said to cover cultural properties such as language, social properties including children, and environmental properties - rivers, birds, and special land sites.

The way in which a taonga is valued varies according to particular methods or recognition practised by different tribal groups - the tikanga. Tikanga are used as 'guides to moral behaviour' (Matunga, 1994) and within an environmental context refer to the preferred way of protecting natural resources, exercising guardianship, determining responsibilities and obligations, an protecting the interests of future generations. According to Durie (1998) few tribes have committed tikanga to writing or reduced them to a simple set of rules. Instead the most appropriate tikanga for a group at a given time, and in response to a particular situation, is more likely to be determined by a process of consensus, reached over time and based both on tribal precedent and the exigencies of the moment (Durie, 1998). These customary lores and practices regulate activities concerning the conservation and use of natural resources in order to protect the *mauri* inherent in all objects, animate and inanimate. It is the recognition of the divine origins of all things and is testimony to the holistic way in which the environment is perceived by Maori (Koroheke, 1993). Marsden (1989) describes mauri as:

> "...the life-force which generates, regenerates and upholds creation. It is the bonding element that knits all the diverse elements within the Universal Procession giving creation its unity in diversity."

The presence of mauri in all things entrusts people to appreciate and respect that resource. In this way over-use, depletion and/or the destruction of natural resources is unacceptable in normal resource management practices. As damage to a resource not only creates physical impairment, but also causes spiritual damage and in the process impinges on the mauri of other objects, including people, concepts of *tapu* and *rahui* were derived from the respect of mauri (Koroheke, 1993). In this body of lore, *tapu* is the status accorded to all elements of the natural world in recognition of the mauri that exists in them. Recognition of tapu involves an appreciation of and respect for another life-force and other life in general. Tapu is also used as a protective measure, a social control, a means for developing an understanding and an awareness of spirituality and the divine origins of all things (Koroheke, 1993).

In order to conserve the resources and ensure their replenishment and sustenance, the Maori introduced the tikanga of *rahui*. Rahui is a form of temporary restriction relating to the condition of a resource and the nature of the tapu in or around a specific area. Another form of rahui was

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[36] Matunga, H. P. 1994. *The Resource Management Act 1991 and Maori Perspectives.* Centre for Maori Studies and Research, Lincoln University.

applied when an *aitua* (misfortune resulting in death) occurred. Rahui and tapu were at times used interchangeably to mean the same thing, namely 'under a ban'.

The fourth part of the framework for understanding Maori environmental values and resource management is *kaitiaki*. Kaitiaki can be conceived as an environmental decision-making structure based on the principles which govern the relationship of Maori and the environment. Kaitiaki entails the expression of those principles as they apply to specific resources within a rohe (Koroheke, 1993). Kaitiakitanga is the interface between the spiritual and physical dimensions of natural resource management. It is a process that regulates human activity with the environment. In environmental terms the kaitiaki approach is holistic and provides for restoration of damaged ecological systems, restoration of ecological harmony, increased usefulness of resources, and reduced risk to present and future generations (Matunga, 1994). This regulatory function is derived from *mana* which provides the essential authority and power for kaitiaki to carry out their role. Kaitiaki, and the exercise of kaitiakitanga, will be discussed in greater detail later in this chapter. These concepts and values can be summarised as follows:

Key Value	Applications	
Taonga	ancestral land water, seas, rivers air minerals native animals mahinga kai (traditional food sources) taonga raranga (flax, weaving material)	waahi tapu estuaries, coasts atmospheric change energy (geothermal) native plants
Tikanga	wairuatanga manaakitanga rangatiratanga manawhenua	respect protection recognition authority
Mauri	status of resource abundance	extent of pollution regenerative capacity
Kaitiaki	guardianship restoration of balance reduced risk to present generations	future generations

Table 1. A framework for understanding Maori environmental values (after Matunga, 1994).

Consequently, according to many authors, the Maori world-view is based on philosophical premises very different to those held by Western European people. The following objectives illustrate how this world-view translates into the kaitiaki aspirations of Maori:[37]

[37] These objectives were developed by Te Iwi o Ngati Hauiti in *Kaupapa Taiao - Environmental Policy Statement.* Hunterville, N.Z. (1996).

- Kanohi ki te kanohi: discussing and resolving issues face to face.
- By ensuring that our representatives are given a mandate by the appropriate levels of whanau, hapu and iwi according to the issue under consideration.
- By making policy decisions on our marae.
- By recognising our links to neighbouring hapu and iwi with the aim of acting as one on regional issues.
- By supporting our own Ropu where possible (including financially) rather than relying on others.

Te Arikinui Dame Te Atairangikahu expresses a common set of principles underpinning Maori resource management that are linked to these objectives:[38] take only what you need; share the rest; respect the limits; protect the basis of the wealth; pass on to the mokopuna a world at least as good as we received. Kaitiaki exercise responsibilities for the management of natural and physical resources according to the above principles. Fundamental to the exercising of this responsibility is the objective of maintaining mauri (Te Iwi o Ngati Hauiti, 1996).

2.2. GOVERNANCE - TINO RANGATIRATANGA AND THE TREATY OF WAITANGI.

Ever since the creation of the Waitangi Tribunal through the Treaty of Waitangi Act 1975 and various recent legal decisions in the High Court, Maori ideas of biculturalism, partnership, and mana motuhake are becoming realisable goals (Marsden, 1988). This establishment that Maori values and approaches to environmental management are relevant today means that Maori are insisting on their guaranteed rights to tino rangatiratanga, particularly at a time when the principle of sustainability underlies all future uses of the environment. This can be established in two ways: firstly by isolating the various value systems inherent in Maori culture and lifting them out of the context sufficient that it may provide a working brief for those responsible for formulating policy and legislation; and secondly, by using the traditional holistic approach by which the Maori views the world (Marsden, 1988).

2.2.1. Te Tiriti o Waitangi (the Treaty of Waitangi) - and Tino Rangatiratanga

The Treaty of Waitangi, signed in 1840, is a strongly bicultural document, signed by representatives of the British Crown and Rangatira in the presence of iwi and hapu (Cant, 1996).[39] In Article I of the Treaty the New Zealand Tribes invited the Crown to exercise kawanatanga (governorship) while under Article II the tribes of New Zealand retained tino rangatiratanga (full tribal authority) over their lands, their settlements and their taonga (prized possessions - material and spiritual) (Kawharu, 1989). Article II of the Treaty guaranteed the continued right of hapu to manage and control their resources in accordance with their customs and having regard to their cultural preferences (rangatiratanga). The use of the term 'rangatiratanga' in the context of the

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[38] Opening speech, Planning and Development Conference, Te Rapa, November 1993.

[39] Refer Appendix 1.

Treaty denotes an institutional authority to control the exercise of a range of user rights in resources, including conditions of access, use and conservation management (Crengle, 1993).[40] The ability to exercise rangatiratanga over tribal resources goes to the heart of the mana of the iwi. It reflects the relationship between people and resources as sources, not only of physical commodities, but also of personal and tribal identity and community stability. Thus rangatiratanga is expressed in decisions which reflect Maori priorities and spiritual values, and is given practical effect in the application of customary regulatory practices and controls (Crengle, 1993).

Kaitiakitanga and rangatiratanga are intrinsically linked. Kaitiakitanga connotes a relationship between people and the environment (Crengle, 1993). This relationship encompasses and determines the position occupied by people in relation to the natural world in both its physical and metaphysical sense. Kaitiakitanga includes an obligation on people to use resources in ways which respect and preserve resources in the environment, both physically and as sources of spiritual power (Crengle, 1993). In comparison, rangatiratanga denotes the authority which tangata whenua collectively have to control all aspects of use of a resource. This includes the right to control other peoples access to a resource:

> "Rangatiratanga involved overseeing the management of the iwi lands. It included: (a) the allocation of land to hapu, whanau and individuals; (b) the eviction of unauthorised or unwanted occupiers; (c) the imposing and lifting of rahui; (d) the tuku of parts of the land for ends beneficial to the iwi (usually involving a return in kind and an on-going relation); to whanaunga (relatives) from other tribes for occupation in return for first fruits and support in war, and to non-whanaunga to establish an alliance or to wipe out and so prevent war" (Metge, J. *cited in* Burrows, p.11).

This statement is equally applicable to the management and kaitiakitanga of water resources. Rangatiratanga is thus an essential requirement for kaitiakitanga (Burrows, 1997). According to Mutu (1994) the Waitangi Tribunal considered that kaitiakitanga is an inherent part of the exercise of rangatiratanga. Without legal recognition of the latter, the former becomes difficult, if not impossible to put into effect. Therefore, to retrieve and reassert tino rangatiratanga, it is necessary for iwi to regain access to their traditional lands and resources. However, the exercise of tino rangatiratanga is dependant on the ability of tangata whenua to access waahi tapu sites and to control the access of others (James, 1993). In the Ngawha Report the Tribunal notes:

> "Rangatiratanga over a taonga denotes the mana of Maori not only to possess but to control and manage it in accordance with their own cultural preferences." (section 7.6.1.)

The Tribunal refers to the duty of the Crown to ensure that those holding rangatiratanga over a resource are protected from the actions of others which impinge on their rangatiratanga by adversely affecting the continued use or enjoyment of their resources, whether in spiritual or

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[40]The Waitangi Tribunal have expressed their preference for defining the rights guaranteed by Article II of the Treaty as "rangatiratanga" rather more than the "exclusive possession" of the English text. This approach accords with international law rules on the interpretation of bilingual treaties (Stokes, 1992; Crengle, 1994).

physical terms:

> "[T]he degree of protection to be given to Maori resources will depend on the nature and values of the resource. In the case of a very highly valued, rare and irreplaceable taonga of great spiritual and physical importance to Maori, the Crown is under an obligation to ensure its protection, save in very exceptional circumstances, for so long as Maori wish it to be so protected." (section 7.6.1)

This issue of rangatiratanga is further discussed in the Ngawha geothermal report.

> "While the needs of both cultures must be provided for and compromise may be necessary in some cases to achieve this objective, the Treaty guarantee of rangatiratanga requires a high priority for Maori interests when proposed works may impact on Maori taonga." (p.102)

Reasons for the lack of involvement of Maori in the management of publicly owned lands, lakes, rivers, national parks and reserves are related to this issue of rangatiratanga, where current management and decision-making processes are a reflection of Western priorities and values which often overlook Maori ways of debating issues (Hall *et al* 1992). This has been stated by a Kai Tahu member (in observance of his tribes denial of rangatiratanga):

> "Successive mono-cultural, imposed legislation has denied Kai Tahu the use of their traditional resources, removed their authority to regulate those resources and their own tribal members, and outlawed parts of their customary lifestyle... The frustration caused by lack of consultation and exclusion from administrative functions must be seen against the Crown protection and partnership principles which Kai Tahu believed they were securing through signing the Treaty of Waitangi."[41]

The notion of rangatiratanga is not confined to ownership.[42] It also includes elements of management, control and self-regulation of resources.[43] Land and water are central to the current debate about Maori sovereignty and the role of the Treaty of Waitangi:

> "Maori sovereignty is the Maori ability to determine our own destiny and to do so from the basis of our land and fisheries. In essence, Maori sovereignty seeks nothing less than the acknowledgement that New Zealand is Maori land, and further seeks the return of that land. At its most conservative it could be interpreted as a desire for a bicultural society, one in which taha Maori receives an equal consideration with, and equally determines the course of this country as taha Pakeha. It certainly demands an end to monoculturalism" (Awatere, 1984).

> "Future relationships between Maori and Pakeha may well depend on the extent to which government decision makers and people of the dominant culture generally are prepared to accept and act upon the findings and recommendations of bodies such as the Waitangi Tribunal" (Rangihau 1986; Waitangi Tribunal 1983, 1984, 1985; cited in Stokes, 1987).

A number of Waitangi Tribunal findings have endorsed the principle that the Treaty guarantee of

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[41] James, B. 1991. Public Participation in Department of Conservation Management Planning. *New Zealand Geographer*. Vol.47; 51-59.

[42] As in the Western sense of the Treaty.

[43] This statement effectively conveys the current relationship between Ngati Pikiao and the Kaituna River, hence the far-reaching precedent if their HPA application is granted.

rangatiratanga ensures to Maori not only possession of resources and taonga, but also the right to manage those taonga according to Maori tikanga and priorities, and to take into account Maori spiritual and cultural values.

2.2.2. Early legal developments that negated the Treaty

This has been a significant change since 1852, when British authority was devolved from London to New Zealand and the partnership between Crown and iwi was progressively disregarded. This situation was highlighted when Judge Prendergast in *Wi Parata v Bishop of Wellington* (1877) 3 NZLR enunciated the proposition that the Treaty of Waitangi:

> "...could not transform the natives' right of occupation into one of legal character since, as far as it purported to cede the sovereignty of New Zealand, it was a 'simple nullity' for no body politic existed capable of making cession of sovereignty." (Wai 4 para 5.6.9)

Prendergast further dismissed the Native Rights Act 1865 which directed that native title should be determined in accordance with ancient custom and usage because "a phrase in a statute cannot call what is non-existent into being" (cited in Hughes' submission Wai 22). From *Wi Parata v Bishop of Wellington* onwards, Maori values failed to be adequately accounted for in legislation. Subsequent land wars, widespread confiscations, legislation and individualisation of title removed land from iwi and eroded tribal authority (Cant, 1996). Christianity supplanted the ancestral *atua* or spiritual kaitiaki, and active supression of the role of *tohunga* was effected by various means including the *Tohunga Supression Act* of 1907 (Roberts *et al*, 1995). Allied with loss of land, Maori traditional relationships with the environment were seriously impaired. The Treaty and its promises, tenaciously retained by Maori, were lost from Pakeha memory from the 1850's through to the 1930's (Cant, 1996).[44] Therefore, despite the Treaty of Waitangi forming New Zealand's constitutional base, after a century and a half of legal, military, political and economic repression, a mere 3 million of the country's 66 million acres remain in Maori hands (Kelsey, 1995). This has had major implications for many other facets of Maori society and welfare in New Zealand, the effects of which are presently being dramatically felt.[45] Contemporary Maori have, therefore, had to fight not only to regain their land, but also to obtain recognition of their traditional customs and values relating to the management of environmental resources (Roberts *et al*, 1995).

2.2.3. The Treaty of Waitangi Act (1975, 1985) and the Waitangi Tribunal

The situation with respect to the validity of the Treaty of Waitangi changed in 1975 with the enactment of the Treaty of Waitangi Act.[46] Under the mandate of this Act, the Waitangi Tribunal

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[44] In the face of a legal challenge in 1877, Chief Justice Prendergast went so far as to declare that the treaty was a nullity with no standing in domestic law (Orange, 1987). However, this ruling was eventually overturned.

[45] There are overwhelming figures of state dependancy, unemployment and violent crime amongst Maori as a proportion of New Zealand's population (Maori and Work, Statistics New Zealand [Labour Household Survey]).

[46] *"An Act to provide for the observance, and confirmation, of the principles of the Treaty of Waitangi by establishing a Tribunal to make recommendations on claims relating to the practical application of the Treaty and to determine whether certain matters are inconsistent with the principles of the Treaty."* (Long-title)

was set up to enable the investigation of Maori grievances and to hear claims against the Crown for actions arising after 1975 (Crengle,1993). The Tribunal's powers were expanded in 1985 to address grievances dating back to the signing of the Treaty in 1840 (Orange, 1987; Stokes, 1992; Temm, 1990; Waitangi Tribunal, 1993). The extent of the Waitangi Tribunal's legislative powers have been noted:

> "The Treaty of Waitangi Act has another more far-reaching effect. Any 'policy of the Crown' that prejudicially affects a Maori gives rise to the right to make a claim... It seems necessary to follow that any Bill, or proposed Regulation, or Order in Council, or any proposed policy of the Crown must be measured against the principles of the Treaty because if any such legislation or policy conflicts with the principles of the Treaty and prejudicially affects a Maori, a claim could be relevant."[47]

Through the enactment of the Treaty of Waitangi Act 1975, the Government assumed responsibility for ensuring that the principles of the Treaty are present in legislation.[48] In doing so, the government has moved from being 'monocultural' (as by representing only the dominant culture's interests) to a position of beginning to embrace biculturalism. That position has been backed by current movement in the courts and has been the source of unprecedented Maori aspirations with regard to the Treaty and the management of natural resources. Consequently, many claims to the Tribunal have transcended the question of resource ownership and refer instead to the restoration of tribal mana in the context of resource management.[49] Boast (1989) draws attention to the important distinctions between management rights and actual ownership:

> "Indeed it is management rights, rights of tribal input into decisions affecting the environment and resources, which have so far claimed most of the attention of the Waitangi Tribunal. In a number of the principle reports...ownership questions were not an issue at all... A right to 'use' and even to 'control' does not necessarily have to amount to ownership... Tribal participation in management - either in isolation or in association with other authorities - is one method of giving effect to the obligations to protect rangatiratanga which falls short of a transfer of ownership."

These issues have been developed further by the Mangonui Report.[50] However, a large proportion of other claims to the Tribunal have been concerned with matters of resource management and conservation, and with the degradation, compromise and loss of natural taonga as a result of non-Maori practices and priorities (NZCA, 1997). Many of the concerns raised by iwi in these claims have bought significant conservation benefits to all New Zealanders. NZCA (1997) states that the concern of these Tribunal claims for the quality and ongoing protection of the natural environment is a practical expression of kaitiakitanga through contemporary official processes. Kaitiakitanga adapts continually, working through modern legal and procedural

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[47] Temm, 1990 - in relation to 1984 Kaituna Claim.

[48] The Treaty of Waitangi Act and the creation of the Waitangi Tribunal have emerged as a Maori response - tino rangatiratanga. A detailed summary of the Treaty principles - a European kawanatanga response - will be discussed in the following chapter.

[49] Solomon, M (1993) Treaty of Waitangi Issues and the Resource Management Act.

[50] The Mangonui report will be discussed in greater detail in Chapter 4.

frameworks to secure improved management of natural taonga.

Often associated with past Waitangi Tribunal claims are allegations of failure by the Crown to provide "an adequate legislative framework for land use, water use and resource planning which takes into account Maori concerns" (Orr, 1989). To some extent, this has been remedied by the Treaty's consequent incorporation in the RMA, coupled with the combination of legislative and judicial support for its principles. This has done much to restore the mana and authority of the Treaty. Palmer, the Attorney General in the 1987 Labour Government, has stated:[51]

> "It is important to remember that our system of government and indeed our very existence here stems from the signing of the Treaty in 1840. The Pakeha need to remember this, as much as the Maori do. To deny the Treaty rights of the Maori is to deny our own right to be here."

Almost without exception, the claims on which the Waitangi Tribunal has reported to date have concerned land and other natural resources, aspects of which are now being regulated by the RMA (Crengle, 1993). The Waitangi Tribunal has also made various recommendations concerning restoration of ecosystems which have been damaged by pollution, depletion (through overuse) of resources, and the protection of such areas from further damage (Horsley, 1994).[52] This recognition of metaphysical, spiritual and other cultural precepts has been accorded the status of a principle of the Treaty of Waitangi, endorsed by both the High Court and the Court of Appeal (Horsley, 1994). Metaphysical and spiritual values are an integral part of the Maori world-view, which sees the ecosystem in an holistic way. Maori concerns - the inviolables protected by tapu, regeneration, wise use, the interdependence of people and nature, the spiritual origins of taonga (the natural world) and the needs of future generations - can all be met by maintaining and restoring the integrity of ecosystems. Indeed, as Horsley (1994) states, recognition of the central element in Maori thinking - *mauri* - is an example of the way ecological, scientific and philosophical factors can meet Maori concerns.

Subsequent recognition of Maori aspirations, by both the decisions of the Courts and the recommendations of the Waitangi Tribunal,[53] have resulted in legislative change, in particular the wider requirements of the RMA for ensuring that Maori cultural, spiritual and traditional beliefs relating to the environment are taken into account. Accordingly, there is no doubt that the statutory position of Maori has been considerably strengthened by the provisions of the Resource Management Act 1991 (Crengle, 1996).[54]

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[51] Cited in Orr, G.S. 1989. *Implications for Environmental Issues of the Treaty of Waitangi.*

[52] This applies particularly to Maori grievances concerning water rights.

[53] This issue of increasing Maori aspirations will be discussed later in this chapter.

[54] The 16 cases illustrated in Appendix 3 illustrate that Maori have become: the kaitiaki; the conscience of the nation for water; communicators of a water ethic; change agents through intervention and participation in administrative control systems, legal and tribunal processes, direct negotiations and direct action (Ritchie, 1990).

However, the difficulties involved in this are illustrated by Tomas (1994):

> "The difficulty of reconciling Maori and European interests is most clearly apparent when Maori seek to give priority to spiritual values which restrict exploitation of resources over economic and social values which promote exploitation to serve the interests of humans."

Tomas's statement effectively portrays the ironies implicit in the current approach to resource management legislation. The problems for resource management have:

> "...arisen where, as with the RMA, the Crown has delegated functions to local government which Maori assert are properly their rights under the Treaty. In this context, Maori assert that they are already offering a major concession by agreeing to share with local government the unqualified authority which they were guaranteed" (Crengle, 1993).

This is implicitly interconnected and inseparable from the principle of partnership which implies an equitable partnership between the Crown and Maori.[55] Incidentally, many Maori also claim that the RMA was supposed to "give effect" to the principles of the Treaty and not just simply refer to them being "taken into account". They claimed that this is a further dilution of their tino rangatiratanga and their rights under Article II of the Treaty. Under the RMA Maori are no longer to be treated as simply another interest group. Their status as tangata whenua and Treaty partner has been fully recognised under the various provisions in Part II of the Act. Although not up to the expectations of many Maori, the provisions nevertheless give a legal status to Treaty issues that was non-existent under the *Town & Country Planning Act* regime (Solomon, 1993).

2.3. KAITIAKITANGA

This section will discuss the definition and place of the concept of kaitiakitanga in both the Maori conceptual world view and then in terms of its application in contemporary resource management.

2.3.1. Kaitiakitanga in the conceptual world view

The term kaitiakitanga can be broken into three component parts:

"kai"	meaning the person or thing who looks after, or protects or advocates, etc. The term "kai" in Maori means food and is the source of all energy and action and for this reason is the prefix of many Maori words;
"tiaki"	meaning the action of looking after something; and
"tanga"	is descriptive of the process. The addition of the suffix "tanga" extends the meaning to all those things pertaining to kaitiaki, or, "the role or office of the Kaitiaki" (Tomas, 1994)

The kaitiaki is therefore the person or thing that assumes the custodial role, depending on the

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[55] For further discussion of the Treaty principle refer to Crengle, D. 1993. *Taking Into Account the Principles of the Treaty of Waitangi - Ideas for the implementation of Section 8 Resource Management Act 1991.* Ministry for the Environment, Wellington.

nature and relationship within the resource. Kaitiakitanga is descriptive of the process involved in the kaitiaki performing its functions or obligations (Solomon, 1993). In a metaphysical sense, the kaitiaki may be taniwha, non-human personifications or presences that protect a resource or place. The kaitiaki may express the danger of a place in either a physical (as in a river rapid) or non-physical sense (as in guarding a waahi tapu or urupa). Such kaitiaki belong to families and thus form a link to the personalised world. They bestow the power and the duty of guardianship on groups, and they in turn rest it upon individuals (Ritchie, 1990).

Kawharu (1977) noted that the pre-European contact Maori attitude towards land and the life it carried was holistic: *"His cosmogonic beliefs anthropomorphised the environment and patterned it intricately with tapu [under spiritual restriction] and ritual observances"*. This relationship was expressed, amongst other ways, through asking the gods that human stewardship of the land be fruitful, and by endowing *"these personified creators and guardians of natural phenomena with a human-like spirit or natural principle, [known as] mauri"* (Kawharu 1977; *cited in* Ballantyne, 1992). Kaitiakitanga is thus an expression of an environmental ethic developed over generations of living in Aotearoa, of human trial and error, of learning how to be environmentally responsive and therefore responsible.[56]

Whakapapa describes the manner in which all things of the universe are descended from a common source and are interrelated (Burrows, 1997). This close relationship and bond with the earth, the environment and *nga taonga tuku iho* also means that corresponding obligations arise. Kaitiakitanga is the manner in which these obligations were carried out or given expression (Burrows, 1997) and the responsibility to do it right. Compliance with these rules [tribal tikanga], based on respect or reciprocity, were enforced primarily by fear of divine retribution, or failing that, by human acts of *mutu* (confiscation of resources) (Patterson, 1994; Roberts, *et* al 1995). The Resource Management Law Reform Working Paper (1988) stated that in traditional Maori society, priests (tohunga) were the kaitiaki of the life-force or physical life presence (mauri) of people:

> "Because in everyday life use was made of the environment, there was constant risk of limiting or affecting the mauri. To guard against this a set of rules governing conduct and behaviour consistent with ... spiritual beliefs had to be followed."

Tohunga would seek tohu from kaitiaki as to the health or state of the mauri of the taonga in the area. Decisions would then be made as to what restrictions need to be imposed or measures taken to ensure the mauri of the resource is enhanced for future generations (Burrows, 1997). In tikanga Maori this conceptual view of kaitiakitanga is interconnected and inseparable. Carmen Kirkwood (Roberts *et al* 1995) explains:

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[56]Refer Ritchie (1990) for a more detailed examination of these issues.

> "Kaitiaki is a big word. It encompasses atua, tapu, mana. It involves whakapapa and tika; to know 'kaitiaki' is to know the Maori world. Everybody on this planet has a role to play as a guardian. But if you use the word kaitiaki, that person must be Maori because of the depth of the word, and the responsibilities that go with it. The reason is that to be a kaitiaki means looking after one's own blood and bones - literally. One's whanaunga and tupuna include the plants and animals, rocks and trees. We are all descended from Papatuanuku; she is our kaitiaki and we in turn are hers."

All of these concepts are integral to the understanding of kaitiakitanga as Minhinnick (1989) explains:[57]

> "The physical kaitiaki system is based on whakapapa, lineage, and inherited nurtured responsibility ... and direction of tribal elders. [It is] traditional and inalienable. Kaitiaki cannot be filled by a group from anywhere [because] the status of kaitiaki stems from long tribal associations [tangata whenua, mana whenua, ahi ka]. Only tangata whenua can be kaitiaki, can identify kaitiaki, can determine the form and structure of kaitiaki."

However, the work of kaitiaki includes not only the duty to care for the physical and ecological wellbeing of the place or resource and the human communities dependant on them, but also to protect and nurture the equally important intangible dimensions (NZCA, 1997). The Report of the Board of Inquiry into the New Zealand Coastal Policy Statement (1994) explains this relationship:

> "Maoridom is very careful to preserve the many forms of mana it holds, and in particular is very careful to ensure that the mana of kaitiaki is preserved. In this respect Maori became one and the same as kaitiaki (who are after all, their relations) becoming the 'minders' for their relations ... As minders, kaitiaki must ensure that the mauri or life force of their taonga is healthy and strong. A taonga whose life force has been depleted ... presents a major task for the kaitiaki. In order to uphold their mana, the tangata whenua as kaitiaki must do all in their power to restore the mauri of the taonga to its original strength ... Should they fail to carry out their kaitiaki duties adequately, not only will mana be removed, but harm will come to members of the whanau and hapu. Thus a whanau or hapu who still hold mana in a particular area take their kaitiaki responsibilities very seriously. The penalties for not doing so can be particularly harsh. Apart from deriving the whanau or hapu the life sustaining capacities of the land and sea, failure to carry out kaitiakitanga roles adequately also frequently involves the untimely deaths of members of the whanau or hapu."

Accordingly, rather than dominion over nature, the traditional Maori view is to view the world from a kaitiakitanga perspective (Wai 8; Taylor & Patrick, 1987). Durie (1987) explains it thus:

> "People do not have authority over nature because they are part of it. They belong to it. The spirit world pervades all aspects of nature, and the Maori belong as much to the unseen world, the only permanent world, as to the more transient world of the living. The result is, that using the spiritual base of Maoridom, the duty to maintain is presumed. The need to develop must be proven ... the onus of proof is shifted to the developer."

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[57] However, for the purposes of this thesis, it is not considered that these concepts need to be included.

Thus the concept of kaitiakitanga in fact implies a knowledge of and expertise concerning a resource or taonga, and carries a practical obligation to manage the resource wisely and to be accountable for its management to the constituent iwi. It incorporates a spiritual component, and can only be exercised by tribal custodians who have tangata whenua and mana whenua status (Matunga, H *cited in* Blackford & Smith, 1993). This relationship explains why only tangata whenua can be kaitiaki - Pakeha cannot be kaitiaki. This notion is also explicitly linked to ahi ka and rangatiratanga.[58] Such notions are essential to the Pakeha understanding of the word. The Maori view of the natural world correlates closely with those of other indigenous cultures which share a philosophy of sustainable use of natural resources, including mechanisms for protection (DOC, 1997), equitable distribution (Stokes, 1992; Muriwhenua Report, 1993; Ward & Scarf, 1993; Jarman *et al* 1996) and the prevention of unnecessary exploitation. However, colonisation introduced a different set of values which rapidly replaced the sustainable management practices used by Maori. Current applications of traditional principles are now being explored as the kaitiaki responsibilities of contemporary Maori communities evolve and adapt to provide practical solutions in the modern world.

2.3.2. Kaitiakitanga in contemporary resource management

The continued exercise of kaitiakitanga in the modern environmental context has meant that the concept is evolving and, while the key threads of its traditional meaning are maintained, they should not be regarded as having the same meaning as kaitiakitanga in its traditional sense (Burrows, 1997). The full expression of kaitiakitanga needs to operate, or have room to operate within its own cultural context. It is implicitly linked to tino rangatiratanga, without which kaitiaki cannot fully perform their role. In a modern context it may involve restoring or enhancing the environment or mitigating any adverse effects on the environment. Kaitiakitanga may involve an element of *te whangai hau* which means to offer reward or thank the kaitiaki. It may also include compensation or financial contribution to hapu or iwi in recognition of their role as kaitiaki (Solomon & Schofield, 1992). Consequently, as a result of political pressure from Maori, particularly over the last quarter century, there has been an increase on the emphasis of rangatiratanga and its importance for Maori to carry out their role as kaitiaki.[59] *Korero* and interpretations of the kaitiaki role are being developed by iwi and by Maori commentators. Kaitiakitanga is being manifested in submissions and contributions to Environment Court processes, RMA plans and policy statements of regional and district councils and DOC, as well

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[58] There are other important concepts inextricably linked with kaitiakitanga, and which without considering , the Maori perspective pf preserving, conserving and developing resources would not be fully and appropriately analysed. These include: Maori ancestral lands; cultural and spiritual values; life-supporting capacity; mana; tapu; taonga; tikanga; rahui; rangatiratanga; waahi tapu; and manaaki. Hemi *cited in* Burrows (1997) states: *"while each [concept] has been treated as being distinct from the remainder, it is more truthful to note that each is in fact an implicit expression of the others. This mutual implicitness, or kotahitanga, when considered in its entirety provides full expression of tino rangatiratanga".*

[59] Traditionally kaitiakitanga and rangatiratanga went hand in hand, however, the historical process of colonisation has ensured that the two concepts have become separated and the RMA definition provides recognition of kaitiakitanga only. The actual conditions on resource use are regarded as separate and are made by the consent authority (Burrows, 1997).

as through more traditional activities (NZCA, 1997). Legal recognition and practical mechanisms are continually advancing with findings of the Environment and High Courts and Waitangi Tribunal claims. In *Huakina Development Trust v Waikato Water Board 1987* it was stated that:

> "According to Maori tradition, ... water has a mauri (spiritual life force). The mauri is the force that ensures ... that all species it accommodates will have continual life. The mauri cannot be intercepted or desecrated ... The mauri is defenceless against components that are not part of the natural environment. When the mauri is harmed, so too is the spirit of the tangata whenua."

Such case law has reitified these notions and concepts of Maori resource management. Recognition by the legal system of Maori spiritual and cultural values in the Manukau Report was another landmark decision.[60] As a result, the role of kaitiaki again came into prominence and was subsequently incorporated into resource management law.[61] However, as Tomas (1994) states:

> "The likelihood of kaitiakitanga prevailing is further weakened when one considers that the Maori "holistic" view of resource ownership and management is in direct conflict with the way the legal system views the land, the sea and other natural resources."

Although generally understood to mean legal title, the English concept of "ownership" encompasses rights of possession, use, and management of natural resources and the right to derive benefits of capital and income from those resources. This range of user rights are also characteristic of rangatiratanga (Crengle, 1994). The management functions devolved to local authorities under the RMA are the primary controls on how resources will be used, developed and protected, and by whom. The authority to make these decisions is an essential characteristic of the exercise of rangatiratanga. Local authorities have the capacity to provide significant opportunities for the expression of rangatiratanga in these aspects of use, management and control (Crengle, 1994). Local or traditional knowledge, such as that embodied in the Maori Environmental Management System or concepts such as kaitiakitanga, built up over centuries of living in an area and using the natural resources - often sustainably - must be used to the full. While this might not be considered scientific knowledge in the strict sense, its value has often been demonstrated, and can save years of detailed scientific study.

The importance of Maori as first peoples on the land and their inherent right as tangata whenua gains increasing emphasis to ensure the role of Maori as kaitiaki is recognised as distinct from any other group who do not have kaitiaki status. Therefore, kaitiaki, and the exercise of kaitiakitanga are a part of the Maori cultural and spiritual belief, deeply rooted in the values of that society.

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[60] In the Manukau report the Waitangi Tribunal accepted that *"'taonga' means more than objects of tangible value. A river may be a taonga as a valuable resource. Its mauri ... is another taonga. We accept the contention... that the Waikato river is a taonga of the Waikato tribes"*.

[61] However, there is no case law which examines the concept in any real detail i.e. *Haddon v Auckland Regional Council* 1994 found that hapu ought to be able to exercise a limited form of kaitiakitanga over the resource and to give guidance as to how it was to be developed and to what extent. They could not, however, prevent that use being for purposes that were unacceptable to kaitiaki but acceptable by the Planning Tribunal under s.5 of the RMA (Tomas, 1994).

They cannot be understood without reference to those values (Crengle, 1993). This has been recognised in New Zealand, where recent changes in environmental policies have created conditions where Maori, through pursuing development, may choose to pursue non-traditional uses of their resources, instead of, or complimentary to, their traditional practices[62]. Recognising the ability for Maori to develop their resources in accordance with cultural preferences in a manner which achieves the purpose of the Act is a challenge facing the local authorities and Maori (Solomon, 1993).[63] This has largely come about through frustration with the lack of consultation processes, policies and appropriate structures which satisfy iwi responsibilities for the management and health of New Zealand's natural, physical and cultural resources.[64]

The status of Maori, as people who hold indigenous rights and authority over ancestral lands, water and other taonga is acknowledged in legislation and requires that they are treated as partners and their values respected (James, 1993). Thus it is up to the tangata whenua to determine the nature and extent of kaitiakitanga within their different rohe through the exercise of their rangatiratanga (Solomon & Schofield, 1992).

2.3.3. The Resource Management Act 1991 definition and incorporation of kaitiakitanga

The Resource Management Law Reform process[65] culminated in the following common themes:

- The need to recognise Maori ownership of certain resources that the Crown had simply presumed ownership of, such as water, seabed, coastal habitat etc.
- Restoration of tino rangatiratanga over other natural resources which had been confiscated through various means by the Crown.
- Recognition of tribal rights of self-government over resources under Maori title.
- Protection of and access to resources, sites, waters, sacred areas and other taonga important to Maori tribes and sub-tribes, irrespective of ownership.
- Provision for Maori tribal ownership in resource management decision-making processes at all levels of government as a Treaty right rather than a privilege (Matunga, 1997).

This process and the ideas that emerged from it led to the concept of kaitiakitanga being included as a principle in Part II (Appendix 4) of the Resource Management Act 1991:[66]

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[62]Changes in policy, such as under the RMA, can create opportunities for ecosystem management projects to be identified and promoted, allowing the incorporation of indigenous knowledge systems and co-management structures in natural resource management. These will be looked at in more detail in Chapter 5.

[63]This might be done in a way which facilitates development by removing barriers that are often perceived by Maori as being restrictive e.g. management and control over waahi tapu and ancestral lands.

[64]Legal systems and policies based on the underlying Wester legal and administrative structures.

[65]The RMA is the culmination of the overhaul and rationalisation of local government and replaces a whole raft of ad-hoc legislation regarding environmental planning and resource management, repealing over 70 Acts including the *Town and Country Planning Act 1977* and the *Water and Soil Conservation Act 1967*. The legislators intention was for a holistic approach to resource management planning that moved away from the prescriptive, regulation driven regime of the *Town and Country Planning Act 1977*. The emphasis was on achieving a flexible approach to planning and resource use through the preparation of district and regional plans and policy statements and a consents process with a strong emphasis on consultation.

[66]The term 'kaitiakitanga' was coined specifically for the RMA, rather than trying to find a Maori term that was perfect (Fraser *pers. comm.* 1997; Forbes *pers. com.* 1998). This issue has lead to widespread debate on the meaning of the term as will be discussed in this chapter.

> *"In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to... kaitiakitanga" (s.7(a)).*

Kaitiakitanga is currently defined,[67] in the Act, to mean:

> *"The exercise of guardianship; and, in relation to a resource, includes the ethic of stewardship based on the nature of the resource itself."*

This must be read in context with the rest of Part II, which sets out, among other things, that the purpose of the Act is to promote the sustainable management of natural and physical resources;[68] that the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga must be recognised and provided for (s.6(e)); and that the principles of the Treaty of Waitangi (*Te Tiriti o Waitangi*) (s.8) must be taken into account.[69] Recognition and respect for such values is integral to an understanding of the concept of kaitiakitanga that must be had particular regard to under s.7(a). These sections give a greater substance to particularly those aspects of s. 5 concerned with conserving the natural environment and maintaining the interests of Maori (Harris, 1993). Sections 6 - 8 are arguably structured in a hierarchical way. For these reasons, councils need clear communication and effective processes of consultation with tangata whenua if the statutory requirements of s.7(a) are to be met at regional and district levels (Nuttall & Ritchie, 1995). Thus the cultural relationship of Maori with their taonga is inseparably linked with the concepts of rangatiratanga and kaitiakitanga. Figure 4 illustrates this relationship through the provision of a firm basis for kaitiakitanga to be exercised and for regional and district councils to work towards partnership with iwi.

However, Solomon & Schofield (1992) consider that the meaning of kaitiakitanga should not be limited by the statutory definition. The spiritual nexus Maori have with the environment is a feature that has been recognised in practically all of the claims before the Waitangi Tribunal. Therefore, it seems appropriate and desirable for local authorities to take into account the foundations of kaitiakitanga and the spiritual and cultural values and beliefs of iwi as a principle of the Treaty.

However, the expression of kaitiakitanga is restricted by the political, economic and social context within which the Act currently operates (Burrows, 1997). Therefore, implementing kaitiakitanga

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[67] This is the current definition that has existed since the Act's inception. The recently amended one (Resource Management Amendment Bill No.3) (which will be discussed later in this chapter), which at the time of publication of this thesis was still to be passed into law, is as follows: *"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 (based on the nature of the resource itself)".*

[68] Section 5 RMA. Refer Palmer, G. *The Resource Management Act - Has it Achieved the Intention of its Creators.* For a discussion on s.5 as a principle or purpose refer Upton, Hon S.D. *Purpose and principle int he Resource Management Act.*

[69] Refer Appendix 5 for the references in the RMA relating specifically to Maori issues.

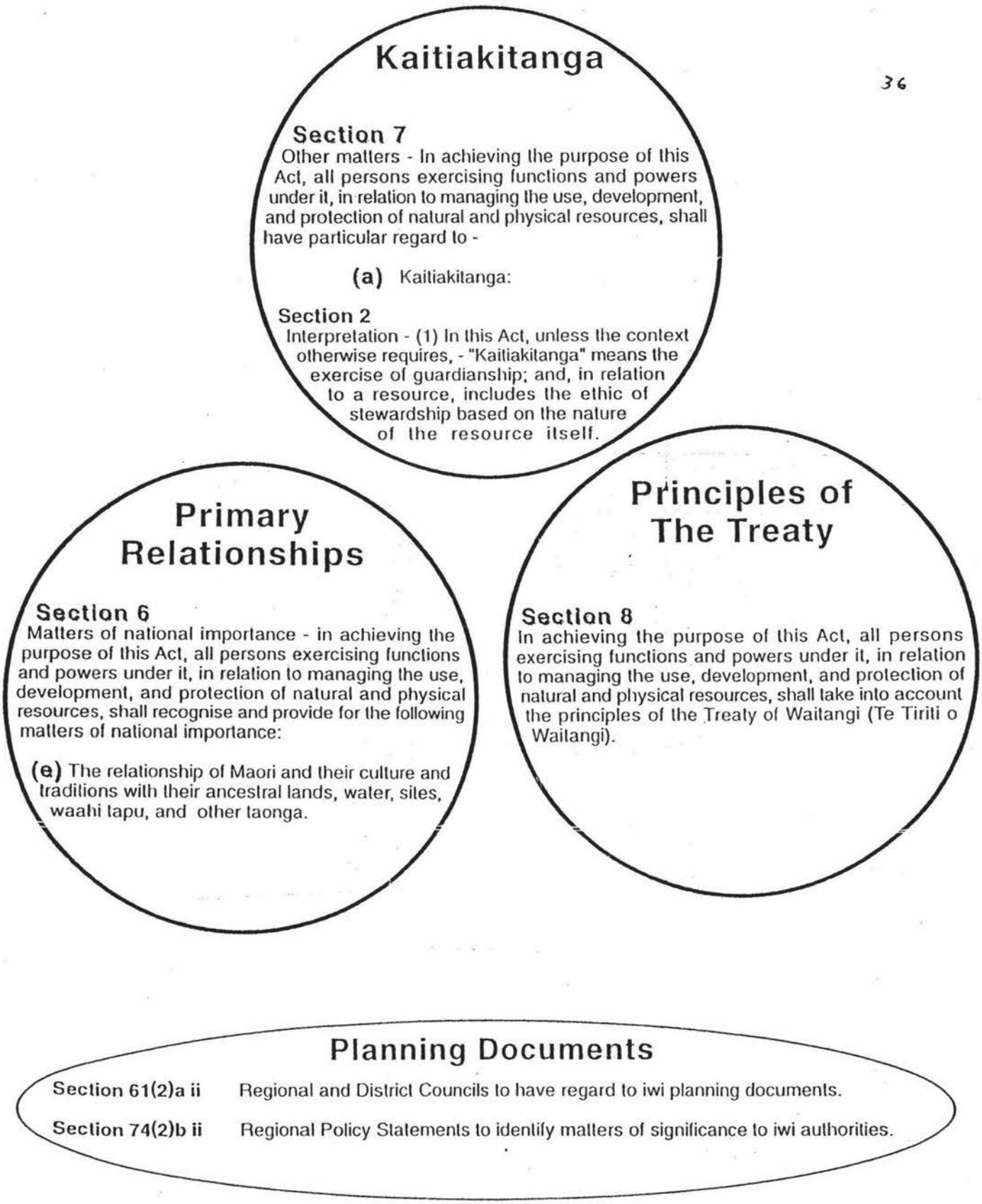

Figure 4. Maori dimensions of the Resource Management Act 1991 (after Cant, 1996; and Nuttall & Ritchie, 1995).

under the RMA in a practical sense is difficult, particularly as it is one of several matters that persons exercising powers and functions must have regard to. The Act thus prevents kaitiakitanga being given primacy (Tomas, 1994). Given this issue, Nuttall & Ritchie (1995) find it difficult to conceive how an individual council can attempt, or even consider attempting, to address the Part II requirements without extensive discussion and consultation with its Treaty partner at a local level. In this context, consultation will become the vehicle for discussion between tangata whenua and the consent agency on action to be taken to give effect to the Treaty guarantees as these might apply to the area or resource in question (Crengle, 1993).[70]

Therefore, despite the RMA representing a significant step forward from previous planning and resource legislation, it falls well short of addressing the themes and concerns raised by Maori during the Resource Management Law Reform process. As Matunga (1997) states, "...perennial dilemma's relating to ownership of resources, and mechanisms for restoring rangatiratanga over natural resources were conveniently sidestepped". With respect to this issue, the next section of this chapter investigates whether Maori can achieve their aspirations and goals - the full expression of kaitiakitanga - within the current dominant political, economic and social system. Can the Resource Management Act 1991 provide for this relationship from a Maori perspective?

2.4. LEGAL RECOGNITION OF KAITIAKITANGA WITHIN PART II RMA

To many Maori, kaitiakitanga is the link in the Act between sustainable development and the principles of the Treaty of Waitangi (Ballantyne, 1991). Hence cultural and spiritual expressions of customary law defining the source of rights (whakapapa), the maintenance of rights (whakawhanaungatanga and kaitiakitanga) and the boundaries of tribal authority require practical demonstrations. However, the way negotiators and litigants have used this information in the past has rendered this a mere cultural expression of a powerless people - easy to dismiss and override (Laurenson, 1993). This is largely because the context of the Act is within the dominant cultural framework of Pakeha New Zealand. The philosophy behind the Act is therefore primarily Western based.[71]

The legal interpretation of kaitiakitanga is not only restricted by s.7 and the s.2 definition, but also the cultural context of the Act, particularly Part II - the purpose and principles of the Act (Burrows, 1997). It is within this section that the provisions regarding Maori environmental values and the Treaty of Waitangi primarily emerge. Section 6 RMA provides for matters of "national importance" which requires those exercising functions and powers under the Act to *recognise and provide for* the matters listed. Included within this section is the requirement to recognise and provide for "the relationship of Maori and their culture and traditions with their

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[70] Related to this is the universal view that the Treaty is a living taonga and that its role will continue to be an evolving one.
[71] This issue is problematic because all New Zealand's legislation is Western by definition.

ancestral lands, water sites, waahi tapu and other taonga" (s.6(e)). This section is arguably the strongest section of the statute with regard to Maori issues (Nuttall & Ritchie, 1995). The next section in priority is headed "Other matters". Those administering the Act shall have *particular regard* to the matters listed. As has been discussed, it is this section that the legislators give recognition to "kaitiakitanga" (s.7(a)). Section 8 states that all those exercising powers and functions under the Act shall *take into account* the principles of the Treaty of Waitangi. Consequently, some Maori see s.8 as an injunction that councils can avoid if they choose.[72]

2.4.1. The dangers of redefining Maori concepts within a Western-based legal framework

Despite strong opposition from several sectors of Maori opinion, the concept of kaitiakitanga has been accorded a statutory definition that fits in with the underlying purpose of sustainability in the RMA.[73] This has had the effect of limiting and narrowing[74] the context in which administrators are statutorily required to view kaitiakitanga (Tomas, 1994).[75] The present definition[76] in the Act is limiting and highlights the danger of redefining Maori concepts within a Pakeha cultural framework (Solomon & Schofield, 1992).[77] The New Zealand Maori Council objects that, "...this definition is new and offensive. It is not proper for the Crown to unilaterally define in statute an important Maori spiritual and cultural dimension".[78] Similarly, Burrows (1997) states that the definition is prescriptive and is only inclusive to the extent that it has been confined within the term 'guardianship'. The key terms within the definition are guardianship and stewardship. These terms are of Western origin and, as their linguistic history shows, have a very different conceptual basis to kaitiakitanga.[79] Therefore, whilst these terms describe important aspects of kaitiakitanga, neither have their origins in *te ao Maori* (the Maori world) and there is no recognition that the obligation of guardianship arises through relationships that result from whakapapa. Hemi (1995) makes a pertinent point:

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[72] These issues and the hierarchy of the RMA will be discussed in Chapter 4.

[73] The 1990-1991 Review Group asserts that kaitiakitanga was sufficiently well understood as to not require definition (*Report of the Review Group on the Resource Management Bill.* 11/2/1991. p.13. However, according to a joint submission by the National Maori Congress, the New Zealand Maori Council and the Maori Women's Welfare League on the Resource Management Bill (1991 p.10), the definition of kaitiakitanga as set out in the Act is "unknown to Maori"(Blackford & Smith, 1993). This is a pertinent point as it is a new term coined specifically for the purposes of the RMA.

[74] Jarman *et al* (1996) refer to similar problems with differing interpretations of the Maori and European versions of the Treaty of Waitangi.

[75] Its inclusion in Part II of the Act means it has been reduced from a fundamental principle of Maori society to one factor for consideration among many (Tomas, 1994).

[76] It is hoped that the current amendment to s.7(a) (discussed later in this chapter) will change this.

[77] There are many Maori concepts which have no real English equivalent (Westra & Ritchie, 1967). This definition begs the questions of the meanings of the exercise of guardianship and the ethic of stewardship. It also ignores the difficulty of appropriating Maori values for use in the Pakeha land development regime. This latter point is underscored by the wealth of Maori terms in the Act, including maataitai, mana whenua, tangata whenua, taonga raranga, tauranga waka, tikanga Maori and waahi tapu (Ballantyne, 1992). Quite simply, the Maori term for kaitiakitanga has been used in the Resource Management Act and associated documentation because there is no equivalent term in English (DOC, 1994).

[78] New Zealand Maori Council. 1991. *Submission on the Supplementary Order Paper (to the Resource Management Bill)*, May 7th 1991.

[79] Refer Burrows (1997) for a discussion on the linguistic history of these terms.

> "[I]t would appear that kaitiakitanga, whose origins stem from ngaa atua Maaori, on being incorporated into the RMA, is defined and reinterpreted according to concepts whose origins in fact stem from a different theological base, Yahweh. Section 7 contains an obvious mis-representation of Maaori theology by defining a central Maori theme in Judeo-Christian terms. Kaitiakitanga is certainly a Maaori term, in the context of the RMA, however, its definition is clearly not Maori."[80]

Tomas (1994) also states that, *"...there are inherent dangers in defining Maori concepts by reference to seemingly analogous English terms... The translation process allows for subtle redefinition of the Maori concept... Through its inclusion in the RMA, the concept has become divorced from its Maori cultural and spiritual context".*[81] Mutu (1994) also warns of the incommensurability inherent in this translation process. For example, kaitiakitanga means a great deal more than simply "the exercise of guardianship":

> "Stewardship is not an appropriate definition since the original meaning of stewardship is 'to guard someone else's property'. Apart from having overtones of a master-servant relationship, ownership of property [in the traditional Maori world] was a foreign concept... Thus the resources of the earth did not belong to man but rather, man belonged to the earth" (Marsden & Henare, 1992).

The concept of kaitiakitanga also encompasses elements of advocacy and protection in that kaitiaki are often environmental indicators, or tohu, and may be intermediaries between the natural and supernatural (Solomon, 1993). Therefore, to Maori, the RMA definition begs the questions of the meanings of the exercise of guardianship and the ethic of stewardship. It also ignores the difficulty of appropriating Maori values for use in the Pakeha land development realm (Ballantyne, 1992). To some extent this has been expressed by Fisher (1991):

> "The words "guardianship" and "stewardship" both incorporate notions of care and protection. "Stewardship", in addition, contains elements of care and management for the future rather than for more immediate purposes."

Linked to this is the view held by certain Maori that the inclusion of the Maori principles in Part II are seen to be too far down the hierarchy of importance in the RMA.[82] Because s.7 is prefixed by the phrase "in achieving the purpose of the Act" and a priority is accorded to the overall purpose of sustainable management of natural and physical resources, then all recognition to kaitiakitanga in the Act must be in order to achieve the purpose of the Act.[83] Thus, whilst

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[80] However, these issues were acknowledged by Maori involved in drafting the RMA when the term 'kaitiakitanga' was coined to fit the Act rather than try to find a Maori term that was perfect (Fraser *pers. comm.* 1997; Forbes *pers. comm.* 1998).

[81] To some, Tomas's statement may carry no weight as the term 'kaitiakitanga' was coined specifically for the RMA, not translated.

[82] Refer Waitangi Tribunal Ngawha and Te Arawa Geothermal Reports for a discussion on this.

[83] These sections are to be interpreted and applied as an integral part of achieving the s.5 statutory purpose. However, they do not override s.5. In the hierarchy, it comes after matters of national importance - "to have particular regard to" has less force than s.6 "shall recognise and provide for". S.8 is subordinate to the overriding purpose of the Act. "Principles" include the concept of partnership, the duty of consultation, and the duty of active protection. There is some overlap with s.6 but its main relationship with lands, waters, sites, waahi tapu and taonga will be matters of national importance regardless of whether there are Treaty issues associated with the activity. These issues will be further discussed in Chapter 4.

kaitiakitanga could assist in achieving the purpose of the Act, it does not mean sustainable management of natural and physical resources (Burrows, 1997). Tomas (1994) sees this approach as reducing kaitiakitanga "from a fundamental principle of Maori society to one factor for consideration amongst many". The effect of this is that the Treaty-based argument of kawanatanga versus rangatiratanga is one sided by the inclusion of these few principles (always over-ridden by the underlying Western legal and administrative structures). Consequently, for some tangata whenua groups, the Act has not provided the rangatiratanga that they need to be able to deliver as kaitiaki properly, thus have refused to participate.

Further criticism of the use of kaitiakitanga is linked to a more general concern about the distortion of meaning when a Maori term is incorporated into legislation which has its own contextual constraints. Hemi (1995) alluded to this with the following statement:

> "Herein lies the failure of the RMA. It attempts, by statutory definition, to recognise certain choice elements of kaitiakitanga while failing to account for any of the remaining elements... Maori concepts when treated in isolation are incapable of proper function and development. In fact any concept when divorced from its cultural base is subject to dysfunction and cultural reinterpretation or hijack."

Related to this issue is that the ethic of stewardship has not yet been interpreted by Parliament, the Waitangi Tribunal or by the Courts. However, regardless of this issue, an appreciation of the historical and legal context is vital for an appreciation of the ethic of stewardship (Ballantyne, 1993).

2.4.2. Environment Court interpretations of section 7(a)

A number of decisions of the Planning Tribunal (now the Environment Court) have examined s.7(a) of the Resource Management Act. *Haddon v Auckland Regional Council* (A 77/93) and *Sea Tow Ltd v Auckland Regional Council* (A 129/93) are the two principle cases dealing with kaitiakitanga. Both presided over by Judge Kenderdine, the cases involved the offshore mining of white sands at Pakiri Beach near Mangawhai heads. A Mr Haddon, representing the tangata whenua of the area in both cases, gave evidence that showed the special relationship between the tangata whenua and the land, sea and offshore islands in the area. Haddon deposed that the resources of the sea at Pakiri are of paramount importance to his people, and that the tangata whenua who hold mana whenua over them are kaitiaki of them. Thus the use, development and protection (sustainable management) of those resources are part of their heritage and of their tino rangatiratanga.

In *Haddon*, the s.2 definition of kaitiakitanga within the Act was quoted and the word itself was summarily described as *"the Maori concept of stewardship"*. The Tribunal stated that hapu should be able to exercise kaitiakitanga over the resource and give guidance on how it should be

developed and to what extent.[84] In its recommendation to the Minister of Conservation the Tribunal stated:

> "...that if section 6(c) and 7(a) are to have any meaningful effect in Maori terms, then there should be a three step process with regard to your consent.
>
> (a) recognition in some form that these are the ancestral lands and waters of the hapu. That recognition will go some way to affirming the mana whenua of the hapu.
>
> (b) provision in some practical form for the ancestral relationship with the coastal resources (for example as part of the team monitoring the resource).
>
> (c) provision in some form for kaitiakitanga over the resource and its future."

This process requires consultation between the decision-maker and Maori.[85]

The judgements in both *Haddon* and *Sea Tow*, through the links with ss.6(e) nd 7(a), recognised some of the important aspects of kaitiakitanga described in its traditional meaning. The importance of tangata whenua is confirmed in both cases and can be recognised in (a) above. The practical application of kaitiakitanga through monitoring provided for in (b) above, may also enable monitoring of the mauri of a resource by the kaitiaki. The meaning of (c) above may appear rather open ended at first glance, however, Judge Kenderdine's statement in *Sea Tow* which followed *Haddon* that "the tangata whenua's mana and role as kaitiaki are recognised by the inclusion of their representative on the working party for the sand study",gives a better indication of its limited intention (Burrows, 1997).[86] This case is also important because it recognised *hapu* over *iwi* as kaitiaki.

Therefore, despite recognising some of the key aspects of kaitiakitanga, the judgement confines their meaning within the constraints of the Act. One of the more important aspects, rangatiratanga, is given no real recognition at all.

2.4.3. *Rural Management Ltd* and *Greensill* - can non-Maori be kaitiaki?

Because of the way kaitiakitanga is expressed and the way its legal expression has developed, views have been expressed that the application of kaitiakitanga can extend to non-Maori. Part

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[84] In both *Haddon* and *Sea Tow Ltd* the resource involved the offshore mining of white sands at Pakiri Beach (near Mangawhai Heads).

[85] Further examples of this balancing approach to the matters of national importance in s.6 are to be found in *New Zealand Rail v Marlborough DC* [1993] 3 NZRMA 449, 461, affirmed on that point in the High Court per Grieg J at [1994] NZRMA 70, 85, and in *Fortzer v Auckland RC* A32/94 (PT). There the Tribunal stated that a matter of national importance under s.6 was "not an objective on its own but is accessory to the statutory purpose of sustainable management" (following the Court of Appeal in *Environmental Defence Society v Mangonui CC* [1989] 3 NZLR 257, a case decided under the Town and Country Planning Act 1977, and the High Court in the *NZ Rail* case). The approach of the Tribunal was that where a consideration under s.6, as of the relationship of Maori to taonga, is consistent with sustainable management, then weight is to be given to the fact that the relationship exists (Crown Counsel).

[86] *Sea Tow Ltd v Auckland Regional Council* (A 129/93).

of this problem has been due to the section 2 RMA definition of kaitiakitanga that can be widely interpreted as to give non-Maori the rights and responsibilities of kaitiakitanga (Mikaere, 1995). However, to many Maori, non-Maori cannot be kaitiaki. The role and responsibility of kaitiaki and the exercise of kaitiakitanga is based on traditional experience and judgement (Morgan *pers. comm.*) and cannot be confused with European notions of stewardship and guardianship in its application. The problems inherent in approximating s.7(a) by various interest groups have ben raised by the recent judgements of Judge Treadwell in *Rural Management Ltd v Banks Peninsula District Council* (W 35/94) and *Greensill v Waikato Regional Council* (W 17/95). Both cases take a very narrow interpretation of the s.2 definition of kaitiakitanga with the result that the concept is completely divorced from its Maori origins and becomes a concept applicable to the public at large and in particular, to the administrators of the Act (Maynard *pers. comm.*; Burrows, 1997). Judge Treadwell makes the following statement in *Rural Management*:[87]

> "Returning however for a moment to kaitiakitanga, the RM Act does not restrict the concept to Maori... It is a general concept with a statutory definition. Where it is mentioned in the Act the concept is as binding on a consent authority as it is upon an applicant. It tells all people of this country including Maori that the taonga must be guarded and treasured."

On applying this statement to the facts of the case, the Tribunal found for the respondent Regional Council on this matter:

> "...It is our opinion that the Regional Council have lived up to the concept of kaitiakitanga and in doing so... it is thus guarding and improving that taonga."

Judge Treadwell chose to take the same approach with this statement in *Greensill v Waikato Regional Council* (W 17/95). In this case the Planning Tribunal considered kaitiakitanga and, according to Judge Treadwell, the wording of the definition is all inclusive and therefore allows a consent authority other than the tangata whenua to exercise kaitiakitanga:

> "Unfortunately, this expression is now defined in the Act. The definition is an all embracing definition in that it does not use the word "includes". Had that word been used then a general concept of kaitiakitanga would have been relevant. However, this word which embraces a Maori conceptual approach now has a different meaning ascribed to it by statute, a meaning which we gather does not find favour with the appellants. Further use of the word in the way it had been used, brings it within the statute as a word of general application causing us to comment as we did in the *Rural Management v Banks Peninsula District Council* (W34/94) that the concept of guardianship is now applicable to any body exercising any form of jurisdiction under this Act. Thus it would be competent for the tribunal to inquire whether a consent authority other than tangata whenua was in fact exercising kaitiakitanga in the manner envisaged in the Act."

Such legislative interpretation does not give any recognition to the key aspects of the concept of kaitiakitanga and it is not in fact recognisable as a Maori concept. It is in fact the antithesis to the

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[87] *Rural Management Ltd v Banks Peninsula District Council* (W 35/94) p. 10.

necessity of tangata whenua as a key component in the equation of kaitiakitanga (Burrows, 1997). As a result the whole basis of kaitiakitanga, the relationship of Maori with the environment that arises from whakapapa and rangatiratanga, is irrelevant and of no consequence.

This interpretation has arisen largely from an ignorance by Pakeha, the dominant culture, concerning the conceptual world view, traditional beliefs and practices of the Maori. Consequently, Judge Treadwell's judgement raises the question that if the legislators intended kaitiakitanga to mean guardianship or stewardship, applicable to all persons and organisations other than tangata whenua, then why did they use the term at all? Burrows (1997) makes a pertinent point:

> "Why was kaitiakitanga not simply substituted by the concepts of guardianship and stewardship as matters to have particular regard to under s.7?"

Solomon (1993) states that many people (who are experts in their field) are struggling with these new concepts such as kaitiakitanga. Recent case law has, to some extent, helped with this understanding of Maori cultural and spiritual values.

2.4.4. The Resource Management Amendment Bill (No. 3)

According to Maynard (*pers. comm.*) the approach taken in the cases of *Rural Management* and *Greensill* raised an unnecessary ambiguity in the statutory definition of kaitiakitanga. As a result, an amendment to remedy the ambiguity and clarify the meaning of kaitiakitanga has been included in Resource Management Amendment Bill (No. 3). The proposed definition in the Bill[88] is as follows:

> *"... 'kaitiakitanga' means 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 based on the nature of the resource itself."*

This new definition gives the Maori perspective much greater emphasis through explicit recognition of the importance of tangata whenua. Such an approach leaves no doubt as to who exercises the guardianship role and precludes the applicability of the concept to local government organisations such as regional councils. In particular, the qualifying words *"tangata whenua of an area"* will have the effect of ensuring that it is the tangata whenua of that particular tribal rohe (the people who have mana whenua) who have links to the taonga or resource through whakapapa that exercise the guardianship role, not tangata whenua in the general sense of the word. According to Burrows (1997), this has the effect of implicitly recognising the importance of whakapapa. To some extent the amendment also qualifies the terms of stewardship and guardianship through the addition of the words; *"in accordance with tikanga Maori"*. The

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[88] Clause 2, subclause (2) Resource Management Amendment Bill (No. 3).

reason for this addition is to "ensure there is no doubt about... what cultural practice underpins that exercise".[89] This ties the meaning of guardianship to tikanga Maori[90] and removes it from its Western origins, in effect reducing the problems inherent in identifying Maori concepts with terms of Western origin. As tikanga Maori provide the guiding principles and rules that control and direct the manner in which te iwi Maori interact (Burrows, 1997), this amended definition should provide sufficient room for those concepts which have been identified as essential for the full expression of kaitiakitanga - whakapapa, mana, rangatiratanga, mauri, tangata whenua and others - to be recognised.

However, despite this amendment, interpretations of the term tikanga Maori are still up to the discretion of the Courts. Burrows (1997) raises a pertinent point:

> "We could be faced with the prospect where the courts will be required to determine aspects of tikanga Maori, to determine and apply concepts such as whakapapa, mana, mauri and rangatiratanga. In consideration of the almost exclusively Anglo-Saxon backgrounds of New Zealand judges, how can we expect the judiciary to have any degree of in-depth understanding of tikanga Maori?"

However, while the definition of kaitiakitanga has been amended, the context in which the term is used still remains unaltered, that being the contextual framework of the RMA. These matters, being included in Part II of the Act, together with the position of s.7 within the Part II hierarchy, and finally, the political and social context within which the Act was created and interpreted, will continue to restrain the full expression of kaitiakitanga. Therefore, the effectiveness of kaitiakitanga in resource management will largely depend upon how the term and concepts are interpreted and defined in the resource management and planning framework. The revised definition will be more useful to management agencies than previously.[91] However adequate consultation is imperative if this term is to be given its full potential. This is explicitly related to the primacy of kaitiakitanga in the RMA as Nuttall & Ritchie (1995) question:

> "How can management agencies allow for the primacy of kaitiakitanga as the underpinning principle of a Maori Environmental Management System, and as such, often uncompromisable or negotiable without rendering that system impotent, whilst still having regard or taking into account the pot pourrie of other considerations and issues listed in ss. 6, 7 and 8?"

Hence the grave dangers and difficulties involved in attempting to provide for kaitiakitanga as one of a number of considerations included in Part II of the Act (Nuttall & Ritchie, 1995). These issues and the means for their expression and implementation will be investigated in Chapter 4.

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[89] Clause 2, subclause (2) Resource Management Amendment Bill (No. 3).

[90] Refer to discussion of tikanga Maori in Glossary.

[91] The new definition implies the real status of the concept in Maori culture and tradition, rather than European derived notions of stewardship and guardianship (Tomas, 1994; Maynard, C. *pers. comm.*).

2.5. SUMMARY

The recent amendment to the RMA recognises that the Crown is continuing to address Maori concerns in decision-making and legislature, despite the significant problems inherent in both Maori concepts such as kaitiakitanga and the interpretations of the Treaty of Waitangi. This is implicitly related to the language barrier between Maori and Europeans, specifically European interpretations of Maori concepts without the intrinsic sense of responsibility, spiritual connotations and danger inherent in the Maori definition.

While the concept and definition of kaitiaki discussed in the 1985 Manukau Harbour Case hearing[92] was subsequently incorporated into the RMA 1991, there is no universal definition within Maori society for kaitiakitanga. The meaning of the concept and the means of giving effect to it is something only those holding mana whenua over an area or a resource can determine.[93] However, as kaitiakitanga is governed by tikanga evolved from the atua, there is a responsibility of, and an obligation on, tangata whenua over and above any statutory requirements:[94]

> "The RMA does not go far enough to establish the ethic that Maori people place the highest priority on heritage aspects - our children will judge us Maori in terms of the conditions of the environment passed on to them - and the ancestors will also judge the quality of Maori stewardship in identical terms" (Ritchie, 1990).

To overlook tikanga Maori is to misunderstand Maori, yet this is still happening under the RMA. How can this be resolved?

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[92] In this early Waitangi Tribunal claim, this term also "guaranteed the authority to control, that is to say of rangatiratanga and mana" (Temm, 1990 p.52).

[93] This had been incorporated in the new definition in RMBill No.3.

[94] As was expressed by Tamati Wharehuia (Bob Roberts), an elder from Te Matai and one of a long line of chiefs who had lived by the Kaituna River for generations, when giving evidence to the Waitangi Tribunal in the 1984 Kaituna Claim: "... *If this scheme goes ahead I want to make it clear that I will myself have to take direct action. I will take the patu that has been handed down to me from my ancestors generation by generation and do injury to stop this thing. After that the law must take its course sith me, but that is beside the point...* "

CHAPTER 3

THE EUROPEAN WORLD-VIEW, CROWN RESOURCE MANAGEMENT PERSPECTIVES AND LEGAL RESPONSES

At the time of the signing of the Treaty of Waitangi in 1840, Western thought, most notably that motivating the colonial imperialism of Britain and its Empire, was emerging out of the intellectual ferment of scientific rationalism. Despite totally rejecting any spiritual relationship, it is generally accepted that early Celtic and ancient views of the land included a spiritual or ethical component of stewardship. This attitude, as previously explained, was similar to the ancient view of the Maori. By investigating the conceptual world-view of the European as well as the Crown response to this issue, this chapter outlines the different value systems reflected by Europeans and the Crown and assesses the impact of this on legislative systems dealing with resources and the environment (particularly Part II of the RMA and the Conservation Act). This perspective is important because, as has already been noted, the Western European-based resource management framework in New Zealand is trying to link Maori values into sustainability concepts.

To Maori, the conceptualisation of humans is part of a personified, spiritually imbued "environmental family". Their concept of a mutual dependancy among other members of this family is consistent with that of many indigenous peoples. This is enshrined in the Maori environmental management system (Tomas, 1994) where earth's bounty is considered to be a gift necessitating reciprocity on the part of humans users in order to maintain sustainability (Roberts *et al*, 1995), rather than a natural resource passively awaiting human exploitation. This holistic dichotomy is in direct contrast to the traditional Western environmental perspective, which is based predominantly on property rights and ownership. As New Zealand's modern history of rapid environmental exploitation and degradation[95] demonstrates, it is this anthropocentric view that has historically dominated our institutional and administrative context. This has largely happened within the constraints of a Western-based monocultural legislative framework (in which the rights of Maori were often over-ridden).[96]

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[95] To a large extent this has been reflected in New Zealand's biodiversity. Current examples of the compromised status of New Zealand's natural taonga are as follows: New Zealand has 11% of the world's endangered species; three quarters of New Zealand's present heritage of land and freshwater birds are threatened; nearly one-third of New Zealand's original diversity of land and freshwater bird species are now extinct; 90% of New Zealand's wetlands have been drained, destroyed or lost.

[96] The extent of this can be seen in the Treaty breaches and subsequent land confiscations (the Treaty was declared a nullity by the Crown in 1877 and was not truly recognised in law until the passing of the Treaty of Waitangi Act 1975).

However, recent years have seen this Western philosophy evolve rapidly. A recognition of the rights of indigenous people and the use of their specific knowledge systems in resource management and caring for the earth,[97] combined with increasing global environmental awareness of the Earth as a series of interconnected ecosystems, has culminated in changes to this predominantly Western-based approach. New Zealand has responded to many of these issues through the adoption of the Resource Management Act 1991 (RMA) which has a strong focus on ecological sustainability concepts with a more effects based and devolved environmental mandate. The RMA is radical legislation in that, for the first time in New Zealand history, it introduces into a legal system that has evolved overwhelmingly as a original Western transplant, concepts and principles that are Maori, and very different from anything in the original English system. This is reflective of growing international obligations for the rights and knowledge of indigenous peoples as well as the legal standing of aboriginal Treaties.

Therefore, due largely to a combination of the Treaty of Waitangi framing New Zealand's constitutional base; the large proportion of Maori that make up New Zealand's multicultural society; Western democratic principles; increasing participatory political mechanisms and international obligations (including the rights of indigenous peoples), Maori input into legislative and management frameworks has increased dramatically.

3.1. WHERE DOES THE CROWN PERSPECTIVE ON RESOURCE MANAGEMENT DERIVE FROM

3.1.1. Conceptual world-view

> *"Humans, even if armed only with the torch and with weapons of stone and fire-hardened wood, are the most dangerous and unrelenting predators in the world."*[98]

Even though European settlers had earth-related traditions in their cultural heritage (particularly the Celtic, who had holistic beliefs similar to the Maori), the overriding focus was on the acquisition of property and property rights:

> *"[Property] is that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe" (Blackstone, 1783).*

It is clear that the 17th and 18th century philosophic notions of land as property were the

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[97] See for example the various Treaties and conventions to which New Zealand is a signatory e.g. Convention for Biodiversity, Agenda 21.

[98] Crosby, A.W. 1986. *Ecological Imperialism: The Biological Expansion of Europe 900-1900.* Cambridge University Press *cited in* NZCA (1997).

dominant forces in the European settlement of New Zealand. Because the Crown's perspective was developed at the height of imperial confidence in these attitudes, it is not surprising that the settlers impact was so devastating.

3.1.2. Human impact on New Zealand ecosystems

Undoubtably the settlement of Aotearoa by the first Polynesian immigrants had major effects on the pre-human ecosystems (NZCA, 1997).[99] Fire, whether deliberate or accidental, destroyed vast expanses of the original forests:[100]

> *"....Polynesian impact on the landscape and its biota was severe and continued to be so throughout prehistory."*[101]

However, this exploitative ethic was not unique to Maori. The utilitarianist approach of Captain James Cook and Joseph Banks on their arrival in New Zealand is characteristic of the times:

> "The noble timber, of which there is such an abundance, would furnish plenty of materials either for the building (of) defences, houses or Vessels. The River would furnish plenty of Fish, and the Soil make ample returns of any European Vegetables sown in it... the timber trees which were the straightest, cleanest and I may say the largest I have ever seen..."[102]

In later years, this utilitarian view predominated legislation and government policy:

> By 1913, when the Maori population was about as low as the holocaust of Europeanisation took it, when few white New Zealanders had much reason to think about native values, let alone the treaty that had guaranteed Maori their 'forests', a Royal Commission on Forestry laid down the 'general principle' that still shapes the place of indigenousness in the New Zealand lowland landscape. No land, they said, unless required for a scenic or climatic reserve, 'should be permitted to remain under forest if it can be occupied and resided upon' (Park, 1997).

This anthropocentric view has today, in the entirety of New Zealand, resulted in only a handful of sad, and long-depopulated fragments of lowland forest where once stood towering kahikatea in the close proximity of populous *kainga* (Park, 1997).[103] However, many of these New Zealanders of European descent saw, felt and understood the deep spirituality of connection with this land. For some, this knowledge led them to question the devastation that was occurring, and

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[99] Various commentators and scientists have interpreted these practices as evidence that Maori culture and traditions are not consistent with an understanding and application of conservation principles. These studies insinuate a cumulative process of exploitation and depletion of natural food resources and extensive alteration of the natural environment. A pattern emerges of continuous adaptation, as the Polynesian settlers tested the new environment and its resources, slowly over the generations learning its capacities and constraints and developing appropriate management techniques and controls (NZCA, 1997) - the Maori environmental management system. However, whether Maori were conservationists hinges on conflicting world views and visions of humanity.

[100] For example, there is volcanic evidence of this from around 400 years before present and earlier.

[101] McGlone *cited in* Holdaway (1989) *in* NZCA (1997).

[102] Joseph Banks (quoted in Park p.29).

[103] Similarly, from the 1860's to the 1970's acclimatisation societies exterminated indigenous eels, shags and hawks in order to secure colonisation of streams by trout and were then invited to write the statute that governed them under the Fisheries Act 1983 (after R.M. McDowall. 1994. *Gamekeepers for the nation,* Christchurch University of Canterbury Press, p. 59 *cited in* Pond [1997]).

to reconsider their relationship with the natural world. This led to the evolution of the ethic of conservation and sustainability.

3.2. THE EVOLUTION OF THE ETHICS OF CONSERVATION AND SUSTAINABILITY IN THE MODERN WESTERN TRADITION

3.2.1. Key concepts that under-pin the Western 'use' ethic

Over the last two millennia of Western civilisation, the dominant concept of the relationship between people and the natural environment has been one of use and usefulness (NZCA, 1997). This rational humanistic world view enshrines human superiority over other species, human power and progress,[104] and human ability to solve all problems:

> "As superior beings, humans have a responsibility of wise treatment and good stewardship of animals and plants given to them by God. Human intervention and management of nature is an improvement to raw creation, modifying and refining wild resources for general benefit according to the divine plan (NZCA, 1997)."

Although many commentators, both Maori and non-Maori, optimistically note the parallels and similarities between rahui and contemporary protection of natural areas, ecosystems and species, it must be recognised that the purposes of rahui are fundamentally different from the modern preservation ethic (NZCA, 1997). In Maori resource management, the objective is to ensure the long-term viability of the resource of future use and harvesting. For contemporary preservationists, the objective is to preserve the resource inviolate from human exploitation - although non-consumptive, low impact uses such as recreation, tourism, aesthetic appreciation and the renewal of spiritual and personal values are accepted (NZCA, 1997).

Traditionally, New Zealand's ethical basis for conservation and environmental law has been 'anthropocentric', or concerned primarily with the protection of human interests in the natural environment. This ethic is both utilitarian and preservationist (nature is viewed as a commodity to be preserved for its usefulness in enhancing the human quality of life):[105]

> "Because the law has no conception of the earth as a functioning machine with essential and interactive parts, certain of whose operations are essential to common survival and well-being, it has no theory for dealing with such problems within its conception of property. The law only knows negative obligation: Don't trespass, don't commit a nuisance. Don't harm the rights of others....."[106]

Consequently, anthropocentrism has enabled humanity to continue to despoil nature because it

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[104] These "ideals" have traditionally provided an excuse for exploitation and as to what constitutes "progress".

[105] Howell (1986) *cited in* Bosselmann & Taylor (1995).

[106] Sax, J.L. 1989. *The Law of a Liveable Planet.* International Conference on Environmental Law, Sydney, Australia.

entails no obligations in relation to nature, only rights and privileges for the satisfaction of human self-interests. The predominance of this ethic is the result of many factors, however, none are more important than the emergence of private property rights. This 'technocratic' philosophy perceives the environment as "merely neutral stuff from which man may profitably shape his destiny" (Faludi, 1987). It is precisely this way of treating land as mere property for economic transactions that is leading us into a deep ecological crisis (Suzuki, 1996). This concept conflicted with the common-property perceptions of many indigenous peoples including Maori. Consequently, many authors, particularly Maori, have argued that this perspective is "wholly inadequate" (Bosselmann and Taylor, 1995). Another important factor in the new valuing of nature is the exponential advance of science and the idealisation of "wild and unmodified' nature as an antidote to the "ills and artifice" of civilisation (NZCA, 1997). This comes out in persistent talk about wildness and wilderness in our parks and natural areas, completely swamping any notions that these are 'peopled' places - named and used by Maori (Forbes *pers. comm.*).

For example, Bosselmann & Taylor (1995) refer to the underlying moral philosophy of the conservation ethic enshrined in the Conservation Act 1987 as significantly different to the Maori view. Concepts of "preservation" and "setting aside of land" only serves to further alienate all humans, particularly Maori, from their land, and thus their responsibilities as kaitiaki (Roberts *et al*, 1995). Ward & Scarf (1993) are also advocates of this contrasting attitude with respect to water i.e. water purity has no particular spiritual or cultural significance; its importance relates primarily to its suitability for satisfying human physical and economic needs.

3.2.2. Changing attitudes - NZ, Manapouri, NZCS, Brundtland

As noted previously, the richness and diversity of the new colony's natural resources and the relative ease of exploitation (NZCA, 1997) influenced the values of European arrivals. This anthropocentric and utilitarian ethic predominated colonisation and has ultimately led to New Zealand's current environmental crisis. However, in recent years, the globalisation of environmental issues and high-profile high-intensity local environmental campaigns - most dramatically the protection of Manapouri, Aramoana, Whirinaki and Pureora - have raised public awareness and support and gave added impetus to this debate (NZCA, 1997).[107] This view of the earth as a limited system brings with it a sense of limitations and an obligation to plan for future generations and to maintain biodiversity.[108] Consequently, the late 1960's and 1970's were years of unprecedented expansion and consolidation for conservation awareness in New Zealand and internationally.

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[107] Human impact on the global environment has increased greatly in recent centuries, and especially during the last 50 years (Goudie, 1987; Mather & Chapman, 1995).

[108] Foremost among these issues are global environmental problems that highlight the absence of any institutional regime capable of addressing them (Bolan, 1996).

The *World Conservation Strategy (WCS)*[109] in 1980 served to highlight this global need to achieve resource conservation and sustainability with the following definition of conservation:

> *"The management of human use of the biosphere so that it may yield the greatest sustainable benefit to present generations while maintaining its potential to meet the needs and aspirations of future generations."*.[110]

The WCS led to the preparation of a draft New Zealand Conservation Strategy which identified some key environmental problems of national concern, subsequently becoming influential in the development of the 1984 Labour Party environmental policy. This led to the Environment Act 1986 and the adoption of an holistic approach to resource management.[111] The 1987 Conservation Act focused on protecting the public conservation estate and defined conservation as:

> "...the preservation and protection of natural resources for the purpose of maintaining their intrinsic values, providing for the appreciation and recreational enjoyment by the public, safeguarding the options of future generations."

"Preservation" of a resource is defined as "the maintenance, so far as is practicable, of its intrinsic values".[112]

Many of these world environmental problems were redressed in 1987 with the World Commission on Environment and Development (*The Brundtland Report* - "Our Common Future"). WCED concluded that sustainable development required global integration, recommending that ecological dimensions be incorporated into policy at national and international levels. An attitude of living with the environment rather than dominating it is becoming more common and is more in tune with Maori attitudes towards land and water (Ward & Scarf, 1993).[113] This increased awareness and changing perception in the wider community is reflected in changes in legislation.

3.2.3. The Western Protection Ethic.

The contemporary concepts of conservation and preservation - and the principle that wild natural things should be respected and admired, protected and preserved - are very recent phenomena in Western culture (NZCA, 1997). These ideas of respect and conservation, and a sense of deep affinity and spiritual connection with natural places and creatures were advocated by Aldo Leopold in terms of a 'land' or 'eco-centric ethic'. Primarily, this revolutionary philosophy for

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[109] Developed by the International Union for the Conservation of Nature, United Nations Environmental Protection agency and the World Wildlife Fund.

[110] This definition closely approximated the "Maori conservation ethic" (Roberts *et al*, 1995).

[111] This Act enshrined the intrinsic values of ecosystems; all values which are placed by individuals on the quality of the environment; the principles of the Treaty of Waitangi; the sustainability of natural and physical resources; and the needs of future generations.

[112] The problems inherent in these predominantly Western-based terms will be discussed later in this Chapter.

[113] These issues will be further investigated in Chapter 6 - a case study on the Kaituna River.

the human relationship with nature entailed obligations affirming nature's right to exist, independently from its value as a means of satisfying human interests i.e. the protection of nature "for its own sake":

> "Conservation becomes possible only when man assumes the role of citizen in a community of which soils and waters, plants and animals are fellow members, each dependant on the other others, and each entitled to his place in the sun."[114]

This membership entails responsibilities toward nature, often expressed in terms of "guardianship" or "stewardship". Consequently, ecocentrism emphasises that humans and nature, while not identical, are aspects of just one ecological unity which needs to become "centre" of our awareness (Bosselmann & Taylor, 1995). The duty of humans to protect the existence and the rights of other beings has developed into a powerful moral imperative, particularly as human survival ultimately depends of the continued integrity of all ecosystems. This feature could be said to reflect an "enlightened self-interest". Such realisation of the true self is an archaic feature of all cultures, thus neither alien to Western civilisation nor unique to indigenous cultures, including Maori. The following fragments come from the famous Speech of Chief Seattle, probably the single best-known summation of the ideas of the environmental movement. It is familiar all across the globe:[115]

> "Every part of the earth is sacred... All things are interconnected. What happens to the earth happens to the sons and daughters of the earth... Man did not weave the web of life, he is merely a strand in it. Whatever he does to the web, he does to himself... Where is the thicket? Gone. Where is the eagle? Gone. What is it to say goodbye to the swift pony and the hunt? *The end of living and the beginning of survival.*"

This eco-centric ethic began to emerge in New Zealand's environmental legislation (under the Environment Act 1986 and the Conservation Act 1987) in the form of recognition of the "intrinsic values" of nature, along with human interests. More recently, the RMA followed this approach with the introduction of a new set of guidelines - key values of stewardship and guardianship as opposed to anthropocentric values of "use and usefulness".

3.2.4. Stewardship and guardianship

The terms guardianship and stewardship are of western origin and as their linguistic history shows, have a very different conceptual basis to kaitiakitanga. Guardian is defined in the Oxford dictionary as *"one who guards, protects or preserves"*[116] and guardianship as the *"condition or fact of being a guardian"*. In a legal sense, guardianship is a concept or relationship arising from the incapacities of infants and persons of unsound mind and sometimes other categories of persons, to manage their own affairs. A steward is defined as *"an official who controls the*

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[114] Leopold, A. 1949. *A Sand Country Almanac.*
[115] Rothenberg, p. 5.
[116] The Concise Oxford Dictionary of Current English, Eighth Edition, Clarendon Press, Oxford.

domestic affairs of the household, supervising the service of his masters table, directing the domestics, and regulating household expenditure".[117] Stewardship is defined as *"the office of steward ...the conduct of the office of steward, administration, management and control ...the responsible use of resources, especially money, time and talents... ".* In terms of environmental management, conservation and sustainability, the concepts enshrined in stewardship and guardianship are expressed alongside the two other major perspectives of nature in Figure 5.

1.	*Domination. 'Dominion' becomes 'domination'. Nature is controlled and exploited in order to satisfy the needs and wants of humans. It is simply a storehouse of potential resources, with no intrinsic value. Nature and its fruits are commodities, which are subject to market forces (humans are 'apart from' nature).*
2.	*Stewardship. Human dominion over nature is conditioned and moderated by stewardship. Humans are the stewards, not the owners of nature. Creation is good, and should not be defiled or abused by exploitative behaviour. As stewards, humans ought to be concerned with the equitable distribution of the fruits of nature, as well as how these fruits are produced (humans are 'apart from' but 'part of' nature)."*
3.	*Romanticism/deep ecology. An intrinsic value is attached to all forms of life, and especially to wild nature unmodified by humans. A dichotomy between humans and the environment is rejected; in other words 'biosperical egalitarianism' is observed, with non-human species seen as having rights and being of intrinsic value. Nature may be worshipped: it is not seen as something that should be exploited for human ends. A reduction on the size of the human population will be required if non-human life is to flourish (humans are 'part of' nature).*

Figure 5. Three human perspectives on nature (after Mather & Chapman, 1995).

This need for a stewardship ethic can be inferred by the use of words like sustainability, as is explicitly required by the purpose of the RMA 1991. However, as stated previously, there has been considerable debate as to the meaning of an ethic of stewardship and the exercise of guardianship.[118]

3.2.5. The Resource Management Act, stewardship and Maori environmental values

One of the innovative elements in the RMA is the linking of Western-based environmental concepts (like sustainability) with Maori environmental values. The RMA legislation, on behalf of the general population, realised that Maori may be active stewards of the environment whose energies should be harnessed and not suppressed. This was a radical change in environmental

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[117] *Ibid.*

[118] As stated previously, the definition in the RMA begs the questions of the meanings of the exercise of guardianship and the ethic of stewardship. Certainly, stewardship has some meaning for the Department of Conservation which, under s.25 of the Conservation Act, is responsible for the management, exchange and disposal of stewardship areas (a "stewardship area" is defined as *"a conservation area that is not a marginal strip, a watercourse area, a conservation park, an ecological area, a wilderness area, or a sanctuary area"*). Consequently, as Ballantyne (1993) states, given the Planning Tribunal's and the Court's interpretations of *"the wise use and management of New Zealand's resources"* (s.3 *Town and Country Planning Act 1977*), it is possible to arrive at a working definition of stewardship in the context of the RMA definition.

thinking that previously had actively dismissed and disregarded Maori conservation interests (Gillespie, 1995). This legislation largely came about due to three factors: firstly, Maori and conservationists found that they were working towards the same ends, thus coalitions developed and there was a flowering of the Maori renaissance; secondly, the growing realisation of some of the philosophies inherent in Maoritanga (holistic outlook, reverential approach to nature and the importance of a form of environmental guardianship) provided an intellectual core that has been attractive to many in the conservation movement (Gillespie, 1995). These considerations coincided with the third factor - a growing Western preoccupation with indigenous cultures and the eco-saving pathways they seemed to be offering. Gillespie (1995) terms this modern renaissance of Maori as environmental saviours as "romantic but simplistic environmentalism".

This paradigm shift from "pure anthropocentrism" has led a clearer understanding of the interdependency of humans and nature. However, striking the balance between the protection of ecosystems and their intrinsic values and enabling people and communities to provide for their own wellbeing will remain highly problematic, and it is not resolved by section 5 RMA itself (Grant, 1995).[119] This can be further recognised in that there is an uneasy tension between stewardship and ownership of land. Stewardship was an inherent part of peoples attitude to nature:

> *"[National land use] policies should also express an ethic towards our land use that goes rather deeper than planning guidelines. It should also express what we as a nation and as individuals, expect to get from the land, and ask what the land, in turn, might expect from us. For unless we establish an ethical responsibility towards the land, policies to get us what we want out of it will not be wholly successful."*[120]

3.3. NEW ZEALAND'S RESOURCE MANAGEMENT FRAMEWORK

The environmental reforms that set up New Zealand's resource management framework are notable for their clear articulation of ecological and conservation goals. However, all three Acts - the Environment Act 1986, the Conservation Act 1987 and the Resource Management Act 1991 - also refer to the Treaty of Waitangi. It is thus important to outline how the Treaty is being addressed by the legislature, the Courts and the Waitangi Tribunal. This section expands on these ideas by investigating the certain values set out by this legislation with respect to the overriding sustainability debate and its relationship to the Treaty of Waitangi.

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[119] Similar ideas have been expressed in Chapter 2 with regard to the relationship enshrined in kaitiakitanga being very different from that enshrined in terms of guardianship and stewardship. In particular, the notions inherent in kaitiakitanga in the conceptual Maori philosophy being more akin to romanticism or deep ecology (refer Figure 5).

[120] Molloy, L. *et al.* 1980. *Land alone yet endures: Land use and the role of research.* New Zealand Department of Scientific and Industrial Research.

3.3.1. The Environment Act 1986

The Long-Title to the Environment Act implicitly refers to the Treaty of Waitangi:

> *"An Act to ensure that.. in the management of natural and physical resources, full and balanced account is taken of -*
>
> *(I) The intrinsic values of ecosystems; and*
> *(ii) All values which are placed by individuals and groups on the quality of the environment; and*
> *(iii) The principles of the Treaty of Waitangi; and*
> *(iv) The sustainability of natural and physical resources; and*
> *(v) The needs of future generations. (Long Title to the Environment Act 1986)*

However, whilst this early legal inclusion of the Treaty of Waitangi into environmental and resource management legislation is important, these particular provisions have traditionally been over-ridden by the much stronger statutory obligations of section 4 of the Conservation Act and section 8 of the RMA. Accordingly, it is these two Acts that will be examined in this section.

3.3.2. The Conservation Act 1987 and public land

Fisher (1989 *cited in* Bossellmann & Taylor, 1995) suggests that conservation is a *mechanism* for environmental protection, which, under New Zealand law, usually results in the setting aside and management of land, natural and historic resources. Consequently, the creation of the Department of Conservation (DOC), a proactive conservation oriented government agency, was a critical recommendation of New Zealand environmental groups. The primary goal of DOC set forth in this Act is to act as an advocate for the conservation and protection of the natural environment, cultural heritage[121] and other resources warranting protection. DOC consolidated the stewardship role, which previously had resided with several agencies of the government. This allows for an integrated approach within a singular management structure. Implicit in DOC's role is the injunction of s.4 of the Conservation Act - that it *"shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi"*. While there is some debate over the incorporation of the Treaty into legislation (NZCA, 1997), s.4 and its implementation in the daily work of DOC have been described as *"a recognition of Crown obligations under the Treaty... a framework that recognises the rights and interests of tangata whenua"* (Te Puni Kokiri *cited in* NZCA, 1997).

3.3.3. The Resource Management Act 1991 and private land.

New Zealand's most recent legislative reform and overhaul and rationalisation of local government[122] led to a holistic and integrated approach to resource management - the Resource

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[121] This issue of protecting cultural heritage is an aspect of DOC's role often forgotten (Forbes *pers. comm.*).

[122] This rationalisation of local government reduced special purpose *ad hoc* authorities from over 800 to some 76. Previously, the laws relating to management of soil and water resources raised major issues of integration of management across land and water boundaries, and the need to look more comprehensively at wider environmental factors and ecosystems when making decisions about these resources (Gow, 1995).

Management Act 1991 - with a single and overarching purpose of *"the sustainable management of New Zealand's natural and physical resources"* (s.5).[123] This emphasis on a flexible approach to planning and resource use was to be achieved through the preparation of district and regional plans and policy statements and a consents process with a strong emphasis on consultation. Accordingly, this positive and compatible connection between environmental and economic sustainability means that achieving sustainable management involves managing the environment in an integrated way.[124] Thus the purpose of the RMA should have but one purpose - sustainable management[125] - applicable to every part of the RMA and therefore all decisions taken under the Act should be consistent with its purpose (Gow, 1995). In essence, s.5 is the single and authoritative source for all decisions under the Act.

3.3.4. Sustainable management

The primary ethic encapsulated in the RMA is the sustainable management of resources. This concept has no literal and absolute meaning, it is rather an ethic that has to be reflected in the reality of a situation (Upton, 1994). For example, sustainable management involves not just managing the principally modified ecosystems; it also requires recognising that any resource, modified or not, is part of a connected system of land, air, water, plants and animals (any change to one part can have consequences on others). Therefore, the laws and institutions which influence peoples behaviour, and their relationships with other resource users, need to reinforce the imperatives of these connections. Consequently, the definition of sustainable management can encompass the achievement of social, economic, health and safety objectives.[126]

By integrating development and conservation, this statutory mandate utilises an integrated and holistic framework that is inclusive of these values and very similar to Maori environmental management and the Maori "conservation ethic" i.e. sustainable utilisation of the environment (Kirikiri & Nugent *cited in* Roberts *et al*, 1995). The attitudes and values that coalesced behind the Resource Management Law Reform initiative included a realisation that the environment was not a dispensable and infinitely absorbative sump for the unwanted and unintended consequences of resource use (Upton, 1995):

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[123] Related to this was the issue of the needs of future generations and of the need to recognise and protect the intrinsic values of ecosystems.

[124] The partial and sectorial management of what are in fact integrated systems was a major contributor to the problems of unsustainable management (Gow, 1995).

[125] Sustainable management under the Act means: *" managing the use, development or protection of natural and physical resources in a way or at a rate which enable people and communities to provide for their social, economic and cultural wellbeing, and for their health and safety while -*

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment" (s.5(2) RMA).

[126] In essence, this means that sustainable management of natural and physical resources should not be traded off for the attainment of incompatible social and economic objectives, or of incompatible health, safety and cultural objectives (Gow, 1995).

> "In the same way that the notion of 'development' dominated our thinking for over a century, the notion of sustainability has come to dominate the thinking of many people. Like so much else in this world, the extent to which we achieve that aim [sustainable management] is in the hands of human beings who have to live, not just with the constraints of the physical environment, but also with the rules they are prepared to impose upon themselves." (Upton, 1994)

Incidentally, where issues are raised regarding environmental rights and responsibilities, there is an important link between the sustainable management of natural and physical resources and the obligations of the Treaty of Waitangi. Giving expression to this link is an explicit requirement of the kawanatanga response that must be recognised and provided for in all resource management decision-making.

3.3.5. Treaty of Waitangi - the kawanatanga response

The Treaty is generally accepted as the founding document of New Zealand and gives authority to government to make domestic law of this country, including the laws relating to the management of natural and physical resources. In particular, the powers and functions of local government are exercises of kawanatanga. Article I conferred on the Crown the right to make laws to protect the public interest. The Crown exercises this function primarily through Parliament and the enactment of statutes (Crengle, 1993). Under the RMA, resource management responsibilities are devolved to local government and territorial authorities.[127] These agencies are charged with producing policy statements and plans that have the force of a regulation. These determine conditions for use and access to resources. Given the importance of the Treaty of Waitangi to resource and environmental management and decision-making, it is important to outline how the Treaty is being addressed by the legislature, the Courts and the Waitangi Tribunal.

The Waitangi Tribunal has found that the Crown, in devolving its lawmaking authority, may not avoid Treaty obligations by conferring an inconsistent jurisdiction on others. Part of the Crown's response to this duty with respect to management and control of natural resources was the enactment of s.8 RMA and related provisions protecting Maori interests (Stokes, 1992). The authority of local government to act in the public interest in the management of natural resources carries concurrent obligations with respect to Maori and Treaty interests. Consequently, kawanatanga must be balanced with rangatiratanga to recognise and provide for the respective rights and duties of both iwi Maori and the Crown.

In the Motonui Report, the Waitangi Tribunal characterised the essential exchange of promises recorded in the Treaty as *"...an exchange of gifts... the gift of the right to make laws, and the promise to do so as to accord the Maori interest an appropriate priority"*. In the Manukau report kawanatanga was defined as, *"...the authority to make laws for the good order and security of the country, but subject to an undertaking to protect particular Maori interests"*.

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[127] The Crown's kawanatanga under the Treaty gives it the right to make laws for conservation.

However, there has been considerable debate as to whether "kawanatanga" (the word used to translate "governorship" in the Maori version of the text) means something less than is encompassed by the concept of sovereignty (Orange, 1987; Crengle, 1993):

> "The concept of sovereignty is sophisticated, involving the right to exercise a jurisdiction at international levels as well as within national boundaries. The single work 'kawanatanga' covered significant differences in meaning, and was not likely to convey to Maori a precise definition of sovereignty" (Orange, 1987 p.40).

This is particularly problematic as the English text of the Treaty stresses property rights and ownership whilst the Maori text stresses status and authority. These different emphases show the tradition from which each comes and the language associated with those traditions (Love *et al*, 1993). Solomon & Schofield (1992) state that kawanatanga may conflict with rangatira interests. Where this occurs, or the potential for this to occur arises, the exercise of good faith by both partners is required. This is where the development of Treaty principles by the Crown is important.

3.3.6. Treaty principles

Since 1983 the Treaty of Waitangi issue has become inextricably linked with concerns over the management of natural resources. In response to this issue, the courts and the Waitangi Tribunal have established a number of general principles for the Treaty and its application in contemporary resource management.[128] There appears to currently be some confusion about the precise nature of the constitutional relationship between local authorities and Maori. Nevertheless, Hewison's (1997) study established that almost all the local authority instruments produced recognise that the following leading principles of the Treaty have a significant bearing on the relationship between Maori and local authorities. They are typically expressed in the following way:

- the *'essential bargain'* (Maori ceded sovereignty and the right to govern to the Crown, in return for guarantees that the Crown protect rangatiratanga);
- the *'partnership/mutually beneficial relationship'* (imposes a duty on both tangata whenua and local authorities to interact in the best possible way with reason and respect);
- *'shared decision-making'* (a balance of the kawanatanga role in Article I of the Treaty and reservation of rangatiratanga in Article II);
- *'active protection'* (a local authorities duty to protect tangata whenua interests is not simply a passive one, but is in all respects an active one); and
- *'tribal self-regulation'* (local authorities have an obligation to legally recognise tribal rangatiratanga).[129]

In addition to the above leading principles, many of the instruments also recognise further that:

- the principles of the Treaty of Waitangi are still undergoing development and interpretation, with

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[128] The development of Treaty principles by the Crown is a kawanatanga response to providing for the Treaty of Waitangi.
[129] Appendix 6 outlines a raft of principles enunciated by the Court of Appeal, the High Court and the Waitangi Tribunal.

the possibility of new principles emerging in the future;

- the principles describe a dynamic relationship recognising that the Treaty is a living document;
- local authorities and tangata whenua may decide to develop and adopt further specific principles under the Treaty of Waitangi; and
- in exercising rangatiratanga and kaitiakitanga, tangata whenua are not bound just to the methods and technologies that were available at the time of signing the Treaty.[130]

These principles were designed by the Crown to overcome a number of problems associated with considering the literal words of the Articles in isolation (Appendix 1). Firstly, this approach reflects that the English and Maori texts are not translations one of the other and do not convey precisely the same meaning; and secondly, it recognises that the strict wording of the Treaty provisions assumed an ideal of equality which no longer exists (Crengle, 1993):

> "...it is an unspoken premise when one speaks of principles of the Treaty of Waitangi that land and estates, forests, fisheries and other properties transferred or taken at some earlier time often shrouded in history were transferred or taken allegedly contrary to the principles of the Treaty. So, when one speaks of the principles one is not just referring to the letter of the Treaty but to events since it was signed." (the Lands case, (High Court) Heron, J p. 646)

These principles have been articulated variously through the Courts and the Waitangi Tribunal and have evolved to assist the interpretation of the differing versions. Only those expounded by the Court of Appeal have any standing in law, although they proceed from a non-Maori legalistic point of view (Blackford & Smith, 1993). The Court of Appeal has noted however that, *"...in interpreting the principles of the Treaty, the spirit of the Treaty is to be applied, not the literal words.*[131] Several Acts now have Treaty references and all of these refer to the principles of the Treaty rather than the Treaty itself. Sir Robin Cooke has characterised this duty as being no light one, *"...it is definitely more than a formality. If a breach of the duty is demonstrated at any time, the duty of the Court will be to insist that it is honoured".*

In terms of legislation pertaining to the principles of the Treaty, Sir Robin Cooke has also stated that, *"...the Court will not ascribe to Parliament an intention to permit conduct inconsistent with the principles of the Treaty"* when interpreting ambiguous legislation or working out the import of an express reference to the principles of the Treaty.[132] This obligation extends to the associated legislation. For example, the Court of Appeal in *Ngai Tahu Maori Trust Board v Director-General of Conservation* (the Kaikoura Whalewatching case) found that:

> "Statutory provisions for giving effect to the principles of the Treaty of Waitangi in matters of interpretation and administration should not be narrowly construed. We accept that s.4 of the Conservation Act requires the Marine Mammals Protection Act (one of the statutes listed in the First Schedule)... to be interpreted and administered to give effect to the principles, at least to the

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[130] Hewison, G. 1997. *Agreements between Maori and Local Authorities.* Manukau City Council.

[131] "The differences between the texts and shades of meaning do not matter for the purposes [of interpreting the principles of the Treaty]. What matters is the spirit." (Cooke, P, in the Lands case, p. 663)

[132] *NZ Maori Council v Attorney General* [1987] 1 NZLR 641, 656.

> extent that the provisions of the Marine Mammals Act and Regulations are not clearly inconsistent with the principles."[133]

Consequently, even where there is no formal reference to the Treaty in the prevailing legislation, it must still be recognised as a fundamental underlying part of the fabric of all New Zealand legislation. Therefore, the formal statutory applicability or otherwise of a requirement to give effect to Treaty principles should not be allowed to constrain the development of a practical partnership framework (NZCA, 1997).

3.3.7. Criticisms of the Crown developed and imposed Treaty principles

The development of Treaty principles has not been without Maori criticisms, the most numerous of which are that the principles are still a reinterpretation of the original Treaty, and thus should have no legal standing (principles have been developed by the Crown to suit themselves and the Western legal system). For example, to certain Maori these principles have:

> "...in the main, been developed to legitimise the status quo (in terms of the relevant political power attributed to kawanatanga and rangatiratanga in the current political climate), while emphasising the fiduciary duty of the Crown to put in place mechanisms to safeguard claims to resources being privatised or corporatised. In this sense the effect of the Treaty has been abated and the provision for Maori to truly exercise rangatiratanga and thereby give full effect to the expression of kaitiakitanga has been significantly reduced." (Burrows, 1997)

Consequently, the common statutory use of "the principles of the Treaty of Waitangi" has led to various efforts to define and delineate what those principles might be:

> "...the principles are the underlying mutual obligations and responsibilities which the Treaty places on the parties. They reflect the intent of the Treaty as a whole and include, but are not confined to, the express terms of the Treaty."[134]

Many Maori insist that the Treaty principles do not convey the Treaty guarantees of adequate participation to iwi Maori in the process of conservation management and decision-making. Also the control of natural taonga by means of the statutes and the administrative arrangements of a Crown agency such as DOC are seen as unacceptable, and in breach if the Treaty - the kawanatanga or governance of Article 1 over-riding and negating the tino rangatiratanga guaranteed under Article II (NZCA, 1995). In particular, within the Conservation Act there is dispute as to the extent that the primary principle of management - preservation - is over-ridden by the s.4 injunction - that it *"shall be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi.* This injunction is unique in New Zealand law, establishing a stronger obligation than other recent legislation:

- the Resource Management Act 1991 (s.8) requires decision-makers to "take into account the

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[133] Court of Appeal, Judgement of Cooke P, 1995 3 NZLR 445.

[134] Waitangi Tribunal Muriwhenua Report 1988.

principles of the Treaty of Waitangi";

- Section 9 of the State-Owned Enterprises Act 1986 establishes that nothing in the Act shall permit the Crown to act in a manner inconsistent with the principles of the Treaty;
- the Foreshore and Seabed Endowment Revesting Act 1991 and the Harbour Boards Dry Land Endowment Revesting Act 1991 each contain a clause which requires persons exercising powers or functions under those Acts "to have regard to the principles of the Treaty of Waitangi"; and
- the Historic Places Act 1993 requires under s.4(2)(c) that all persons exercising functions and powers under it "shall recognise... the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga."

The NZCA (1997) study found that many conservation advocates saw this injunction as *"incompatible with this over-riding conservation ethic"*. Consequently, legal recognition of the Treaty has major implications for the sustainability debate in New Zealand.[135] Further criticisms have been outlined by McGuire (1996):

> "Current elucidation of the principles of the Treaty...elaborate in an extremely difficult and challenging exercise, the consequences of which are potentially enormous. Arguably the political and social future of this country is largely dependant on the resolution of this single meta-issue."

These ideas are continually contested, for example McGuire (1996) states the need for further elucidation and education of the *"rapid and unmerited developments in this area"* over recent years. Current failure to explain adequately the underlying rationale for the current approach to the meaning of the principles of the Treaty of Waitangi is likely to cause future friction if this issue is not dealt with reasonably promptly and more thoroughly (McHugh, 1992; McGuire, 1996). Currently, the precise legal situation in respect to the principles of the Treaty is unsettled and a clearer position may take several years to eventuate.

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[135] This issue will be discussed in Chapter 4.

CHAPTER 4

RESOLVING COMPETING RESOURCE MANAGEMENT INTERESTS AND CONFLICTS BETWEEN MAORI AND THE CROWN THROUGH ESTABLISHING LEGAL HIERARCHIES, PRIORITIES AND PARTNERSHIPS

Chapter 2 established the strength of the Maori world-view and its essential link with kaitiakitanga and rangatiratanga, both of which are recognised in the Treaty of Waitangi. Problems of defining kaitiakitanga were highlighted, particularly when Europeans are not aware of the subtleties and cultural domains inherent in Maori structures and concepts. Chapter 3 highlighted the predominant European attitudes towards land and property and outlined how these attitudes are changing, both as a result of the debates within New Zealand and the influence of international documents. The scope of change is illustrated in the manner that New Zealand's legislature, the Courts and the Waitangi Tribunal (with its bicultural membership) are dealing with Treaty issues, and their relevance to environmental concerns. Although there is a sharing of concerns about conservation matters by both Maori and Europeans, there is still major and ongoing debate regarding the relative importance of Maori concepts and Treaty principles and their application to contemporary resource management concerns.

It is apparent that an extensive common ground exists between the philosophies of Maori tikanga and Western ecological practice. Nonetheless, very real differences and much debate centres on whether the holistic view of the Maori is indeed compatible with the Western legal and administrative system in terms of underlying values and universal truths. Incidentally, while the western European world-view is being forced to change and accommodate other values and aspirations (e.g. environmental, Maori and Treaty of Waitangi concerns, as well as providing for Maori institutional responses), there is active debate as to what priorities should be placed on the environment and sustainability concerns versus those values enshrined in the Treaty of Waitangi. It is with these issues in mind that this chapter investigates specific legal and policy responses developed to deal with this new range of conflicts and values, and finds solutions and compromises that are generally acceptable to all groups concerned - Maori, European and others.

Because of the major and ongoing debate about the relative importance of competing conservation, development and Maori values with respect to the management of resources, Parliament, the Courts and the Waitangi Tribunal have all developed legal frameworks to guide

the resolution of Treaty and environmental conflicts. Based on case law in Canada and the United States (such as the *Sparrow* case[136]), these frameworks have established hierarchies between values and have set priorities to determine the relative importance of competing interests. These hierarchies have given priority to conservation (above anthropocentric interests) and then, importantly, have distinguished indigenous peoples interests and rights above those of other parties (Figure 6). They have also recognised the importance of the government's role and responsibility to pass laws of general applicability for the conservation of resources for the benefit of all.

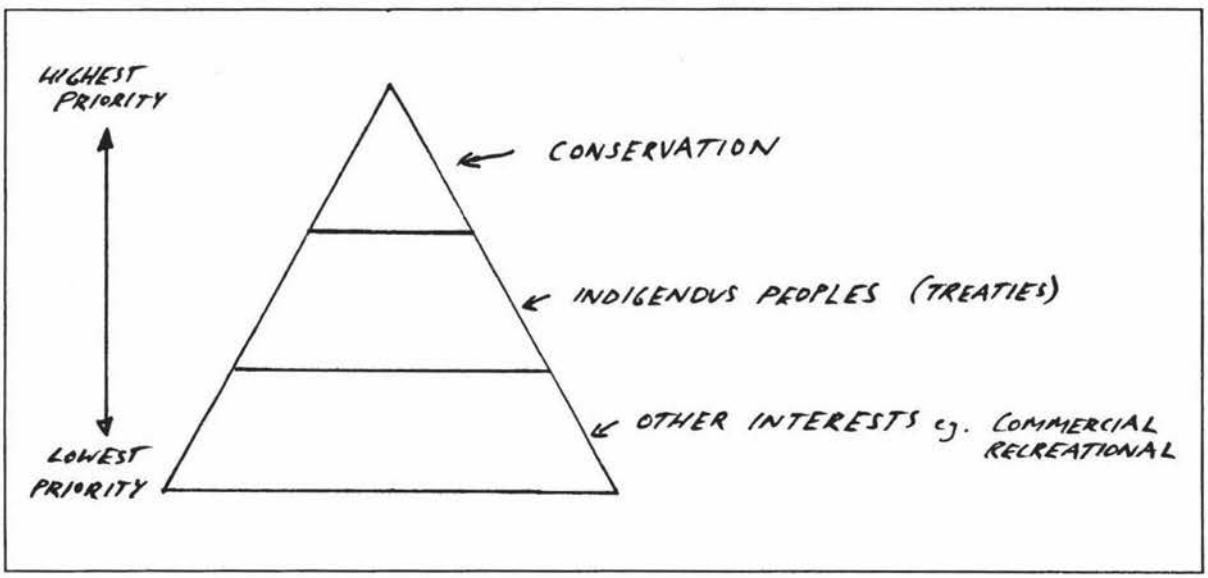

Figure 6. A hierarchy of interests (after Muriwhenua Report, 1988).

This hierarchy reflects a modern awareness both of the fundamental necessity for conservation laws, and of the duty of the courts in democratic states to protect the Treaty rights of indigenous minorities (above commercial and recreational interests). Within the RMA this weighting is not equal (Milne, 1992), therefore reconciling the interests and values of tangata whenua within the national interest is a continual problem facing political decision-makers (Keelan,1993).

By examining the competing interests inherent in the views developed in the previous two sections, this chapter analyses and attempts to establish how the setting of priorities and hierarchies established by Parliament, the Court of Appeal and the Waitangi Tribunal, can help to resolve resource management conflicts. This range of competing interests have been grouped in three areas: (1) rangatiratanga versus kawanatanga (Articles I and II[137]) and environmental protection versus development; (2) setting priorities for Maori values versus balancing of

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[136] *R.. v Sparrow, Supreme Court of Canada*

[137] Treaty of Waitangi.

interests; and (3) Part II RMA matters - firstly, environmental protection versus development and Maori and Treaty interests. The implications of the Treaty for resource management and conservation law add a further dimension to this issue.

4.1. COMPETING INTERESTS AND CONFLICTS BETWEEN VALUES

In many resource management issues involving Maori and the Crown, value conflicts are often inevitable. The question of how the legislative environmental response (kawanatanga) can be accommodated with Treaty recognition (rangatiratanga), has been addressed by both the Waitangi Tribunal and the Courts.

4.1.1. A two-fold approach - rangatiratanga (Article I) versus kawanatanga (Article II) and environmental protection versus development

The Waitangi Tribunal has examined the relationship between kawanatanga and tino rangatiratanga and has recognised the respective rights and duties of both iwi Maori and the Crown. Boast (*cited in* NZCA, 1997) summarises these two sets of rights and responsibilities as follows:

> In... the Motonui report, the Waitangi Tribunal characterised the essential exchange of promises recorded in the Treaty as 'an exchange of gifts... the gift of the right to make laws, and the promise to do so as to accord the Maori interest an appropriate priority'.
>
> In the Manukau report kawanatanga was defined as 'the authority to make laws for the good order and security of the country, but subject to an undertaking to protect particular Maori interests'.
>
> ...In the Muriwhenua report... the Tribunal's starting point was that the position which had prevailed until the present time - complete Crown control - was inappropriate and... not in accordance with kawanatanga. Kawanatanga was a limited, not an absolute right, qualified by rangatiratanga (just as rangatiratanga was restricted by the Crown's kawanatanga)...
>
> One proper exercise of kawanatanga is to make laws of general applicability with the objective of conservation control... But the right to legislate thus is not unfettered, and its exercise will be contrary to the Treaty if inadequate account is taken of rangatiratanga.

Consequently, the Tribunal's approach acknowledges that both conservation and rangatiratanga must be accommodated. Boast (1989 *cited in* NZCA, 1997) states:

> "Sometimes, however, *kawanatanga* can override *rangatiratanga*... one area in which the Crown's kawanatanga can over-ride tribal rangatiratanga is that of conservation. Laws binding on all for the purpose of conservation are not contrary to the Treaty. However, before such a limitation is within the terms of the Treaty (and is in that sense 'constitutional') it must be 'absolutely necessary' for conservation, and it must be shown that controls over those who lack Treaty rights have been applied first. Only if regulation of non-Treaty interests have proved insufficient can rangatiratanga be overridden in the interests of conservation."

However, to many Maori, the control of natural taonga by means of the statutes and the

administrative arrangements of a Crown agency such as DOC are seen as unacceptable, and in breach of the Treaty - the kawanatanga or governance of Article I over-riding and negating the tino rangatiratanga guaranteed under Article II (NZCA, 1997). This has major implications for conservation as the need for laws to protect increasingly scarce natural resources, species and habitat ecosystems, ecosystem processes and heritage areas, is indisputable. Both the Waitangi Tribunal and the Court of Appeal have adopted a similar approach.

4.1.2. Muriwhenua

This issue was initiated by the Waitangi Tribunal in its 1988 *Muriwhenua Fishing Report*, where the Tribunal took the position that conservation laws of general application were a valid exercise of the Crown's kawanatanga under Article I of the Treaty, but this must take into account the kawanatanga reserved in Article II. In the Tribunal's view, Maori should be left alone to manage their own resources in their own way, but if Maori self-management threatens the overriding objective of conservation, then it is acceptable - in terms of the Treaty - for the Crown to intervene (Milne, 1993).

4.1.3. Radio Frequencies

The Waitangi Tribunal, in its Radio Frequencies Report (Wai 22) spoke of a hierarchy of interests in natural resources:

> "Based on the twin concepts of kawanatanga [sovereignty] and tino rangatiratanga, first in the hierarchy comes the Crown's obligation or duty to control and manage those resources in the interests of conservation and in the wider public interest. Secondly comes the tribal interest in the resource. Then follows those who have commercial or recreational interests in the resource."

4.1.4. Court of Appeal

The Court of Appeal in *Ngai Tahu Maori Trust v Director General of Conservation* [1995][138] expanded on this issue by stating that with respect to the Treaty of Waitangi and the issuing of a permit for a commercial whale watch venture, the Treaty principles are relevant, although conservation concerns must be paramount:

> "[T]he first article of the Treaty of Waitangi... must cover power in the Queen of Parliament to enact comprehensive legislation for the protection and conservation of the environment and natural resources. The rights and interests of everyone in New Zealand, Maori and Pakeha and all others alike, must be subject to that overriding authority."
>
> "Beyond doubt, as regards whale-watching, the conservation object must be paramount."

Overseas jurisdictions which have examined similar issues have concluded that tribal rights to manage their own resources can be overridden, but only in the interests of conservation (Milne,

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[138] *Ngai Tahu Maori Trust v Director General of Conservation* [1995] 3 NZLR 553.

1993). Conservation conflicts between Crown and iwi have also been addressed in terms of rangatiratanga and kawanatanga priorities, and a balancing of interests as opposed to a priority for Maori values.

4.1.5. A rangatiratanga/kawanatanga issue

In the Mohaka Report (Wai 119, 1992), the Waitangi Tribunal attempted to strike a balance between the prerogative of rangatiratanga and the kawanatanga vested in the Crown:

> "We think that rangatiratanga, applied to the Mohaka River denotes something more than ownership or guardianship of the river but something less than the right of exclusive use. It means that the iwi and hapu of the rohe through which the river flows should retain an effective degree of control over the river and its resources asking as they wish to do so." (p.64)

> "In the public interest the Crown has a responsibility to ensure that proper arrangements for the conservation, control and management of the river are in place. That responsibility, however, must recognise the Treaty interest of Ngati Pahauwera by seeking arrangements which allow for the exercise of tino rangatiratanga over the river. It is in the nature of the partnership that Crown and Maori seek arrangements which acknowledge the wider responsibility of the Crown but at the same time protect tribal tino rangatiratanga."[139] (p.65)

4.1.6. Mangonui - Balancing of interests as opposed to setting of priorities

The 1987 Mangonui Claim, similarly to the 1984 Kaituna Claim and Motonui, dealt with Maori cultural values and pollution to water through sewage disposal. In this case the Waitangi Tribunal introduced the principle of compromise and the need for practical solutions:

> "It was a condition of the Treaty that the Maori possession of lands and fisheries would be guaranteed. The guarantee requires a high priority for Maori interests when works impact on Maori lands or particular fisheries for their guarantee was a very small price to pay for the rights of sovereignty and settlement that Maori conferred. In other cases, however, it is a careful balancing of interest that is required. It was inherent in the Treaty's terms that Maori customary values would be properly respected. But it was also an objective of the Treaty to secure a British settlement and a place where two people could fully belong. To achieve that end, the needs of both cultures must be provided for, and where necessary, reconciled.
>
> This is a case in our view, where the Treaty requires a balancing of Maori concerns with those of the wider community of which Maori form part... The Maori spiritual ethic was singularly suppressed or overlooked in the past but recent Planning Tribunal and High Court decisions show that need no longer be so. A balance must be maintained, however, not an over-redress... Construction of any sewage works necessarily imposes certain costs, both financial and cultural, on the local community. Ngati Kahu had good cause to bring their claim and reason to feel aggrieved, and yet the cost to the community, of which Ngati Kahu forms part, would be too great in this instance if their claim was allowed."

The Waitangi Tribunal findings in this claim provide another important approach to resolving

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[139] These findings are pertinent to the Kaituna River issue. Their influence will be investigated in Chapter 6.

competing resource management issues and conflicts between iwi and the Crown.

4.1.7. An iwi development issue

However, despite these legislative developments, the question still remains as to what weight is to be applied to the competing interests of use and development versus environmental interests and others. Solomon and Schofield (1992) believe that "the concept of resource development will be of increasing importance as a 'principle' in the context of resource management issues" and that in pursuing development, Maori may choose to pursue non-traditional uses of their resources instead of, or as complementary to, their traditional practices.[140] The Waitangi Tribunal has reiterated the need for resources to be restored to Maori and the right of iwi to develop those resources in accordance with their own needs and aspirations.

4.2. THE RESOURCE MANAGEMENT ACT - PART II MATTERS

4.2.1. Environmental protection versus development - environmental bottomlines (s.5)

The relative priority that is given to environmental and sustainability concerns as opposed to the other values (e.g. development or Maori concerns) has also been addressed in the RMA with its hierarchy of interests set out in Part II. Here *"sustainable management"* is the overriding purpose that must be promoted by all persons exercising powers and functions under the Act (which includes regional councils and territorial authorities). According to Milne (1993) "sustainable management" appears to include reference not only to the "social, economic and cultural well-being" of people and communities, but also to the well-being of the environment. This may be construed by the courts to imply a balance, but not necessarily an equal one, between these competing interests. However, there remains uncertainty as to the appropriate weighting to be applied to the competing interests of use and development versus the environmental interests expressed in ss.5(2)(a), (b) and (c). According to Upton (1995), the pre-eminent principle of sustainable management constitutes a non-negotiable "environmental bottom-line" which must be secured and cannot be traded off. Therefore, the sustainable management of a resource can only occur when each of the ecological values described s.5(2)(a), (b) and (c)are provided for.[141] However, Harris (1993) believes that absolute bottom-lines are inappropriate:

> "The pressing needs of the current generation in some circumstances will loom larger than the distant needs of future generations. The life-supporting capacity of a stretch of water will have to be sacrificed in order to generate electricity needed to maintain current social and economic wellbeing".

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[140] This will be discussed in later in the text.

[141] The fact that the Act is about *promoting* sustainable management makes it clear that how far we advance towards that goal will depend on attitudes and values over time (Upton, 1995).

This balancing of the humanistic (social, economic and cultural) and ecological factors hinges on the use of the word "while", which is largely subjective and ambiguous. There is growing acceptance that both limbs need to be considered together and case law supports this.[142]

4.2.2. Sections 6, 7 and 8 RMA

The Part II hierarchy also includes ss.6, 7 and 8 of the RMA. Nearly all the matters in ss.6, 7 and 8 (which decision-makers under the Act must pay special attention to) relate to the quality of the environment, rather than to "use and development". Thus it appears that the balance is not an equal one as it was, for instance, within the *Water and Soil Conservation Act 1967* and the *Town and Country Planning Act 1977.* For example, it is a "matter of national importance" under s.6 that councils "shall recognise and provide for" clauses which include s. 6(e): *the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga".* Section 7 lists "other matters" that councils "shall have particular regard to", including *"kaitiakitanga".* Section 8 directs that councils "shall take into account" the principles of the Treaty of Waitangi.

With respect to this introductory wording, the current legal view states that s.7 is subservient in the hierarchy to other sections in the Act:

> "Sections 6, 7 and 8 are principles of varying importance intended to give guidance as to the way in which the purpose is to be achieved. The matters in s.6, 7 and 8 are not seen as ends in themselves as were the matters of national importance in s.3 Town & Country Planning Act 1977." *(Reith v Ashburton DC.* CO34/94 NZPTD 424).

In *Auckland City Council v Smith* [1995] CRN 4004060455-459, Judge Bollard noted:

> "The provisions of s.6, s.7 and s.8 of the Act are not to be approached independently of s.5 as ends in themselves but are to promote the Act's central purpose of sustainable management".

Gow (1995) also suggests that given the positioning of ss.5, 6, 7 and 8, their content, and the strength of the language used, their collective effect is to impose strong duties on decision-makers to ensure sustainable management with primacy given to biophysical (or ecological) sustainability. Therefore, if this hierarchy between the three sections is accepted by the courts, then the "use and development" of resources may only be permitted if all the matters of national importance in s.6 have been recognised and provided for (all relating to environmental protection). This view has also been reflected in *Te Arawa Maori Trust Board and Others v Rotorua County Council* (1979), 6 NZTPA 520 (PT), where the Planning Tribunal concluded that:

> "...the conservation of the physical environment... would be in conflict with the other matters

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[142] See for example the Okura decision (*North Shore v Auckland Regional Council, 1997*) and *Campbell v Southland District Council* (1995).

> which we must recognise and provide for. We must decide whether in the circumstances conservation is of sufficient importance to over-ride all the other factors. Overall, essentially a value judgement is required".

This 'hierarchy of interests' reflects a growing awareness both of the fundamental necessity for conservation laws and of the duty of the Courts in democratic countries to protect the rights of indigenous peoples. As previously explained, the Waitangi Tribunal's Mangonui Report (1987) was significant in drawing a distinction between the balancing of Maori interests and Maori interests having a priority over other interests. The Waitangi Tribunal's (1993) Te Arawa Representative Geothermal Claims preliminary report found that:

> "The Crowns right to manage, or oversee the management of, geothermal resources in the wider public interest must be constrained so as to ensure that the claimants' interest in their respective taonga is preserved in accordance with their wishes." (Waitangi Tribunal, 1993b)

This interpretation has major implications for the hierarchy that is established regarding the Treaty of Waitangi under s.8 RMA.

4.2.3. Maori and the Treaty of Waitangi - (s.6(e), 7(a) and 8 RMA)

As has been noted, the hierarchy between ss. 6, 7 and 8, is illustrated by the differing introductory wording of each - matters of national importance (s.6) *must be provided for*, other matters (s.7) *must have particular regard paid to them* (a less demanding obligation) and the principles of the Treaty of Waitangi (s.8) *must be taken into account* (still less demanding). Therefore, specific Maori concerns may be more forcefully addressed by s.6(e), where they are treated as a matter of national importance (Milne, 1993), than by ss.7(a) and 8. Legal decisions, however, have interpreted this hierarchy in a number of ways. For example, in terms of s.6(e), the Planning Tribunal in *Haddon v Auckland Regional Council* [1994] NZRMA 49, noted that even with the high threshold imposed by that provision, the principle of sustainable management did not require resources to be tied up on the basis of Maori interests. Similarly the *Haddon* case makes comment on the meaning of "take into account" in s.8:

> "It would appear that the duty to "take into account" indicates that a decision-maker must weigh the matter with other matters being considered and, in making a decision, effect a balance between the matter at issue and be able to show he or she has done so."

However, in *Te Runanga o Taumarere v Northland Regional Council* [1995] A 108/95, the Planning Tribunal responded to the Part II hierarchy differently:

> "In summary we find that the district council's proposal generally serves the sustainable management of natural and physical resources as defined. However it falls short of promoting that purpose and of meeting the expectations of other provisions of Part II in the particular respect that the effluent disposal fails to provide for the attitudes of the tangata whenua in respect of their customary taking of shellfish from the beds of Te Uruti Bay...according to their culture.

> ...the [RMA's Part II] matters deserve more than lip-service but are intended by Parliament to affect the outcome of resource management in appropriate cases is evident from the primacy given to Part II in the Act, and in the strong language of its contents...
>
> We are not satisfied that the district council... gave the Maori cultural attitudes to the present proposal the weight and importance that Parliament intended, or for that matter the place that the regional and district planning instruments intended."

Consequently, Matunga (1990) and other commentators refer to the s.8 provision as subordinating the Treaty to the overriding principle of sustainable management (s.5). However, as Crengle (1993) states, "...if there is no conflict between the two, there should be no difficulty in giving effect to both. ...[I]n the event of conflict, s.5 is to be preferred". Therefore, it may be good practice for decision-makers to first endeavour to determine the extent to which both objectives are able to be achieved together. By combining s.6 and s.8, extra weight can be given to the need to recognise the ancestral relationship in any balancing exercise (Crengle, 1994). To combine s.7 and s.8 is to give extra weight to the consideration of the physical and spiritual relationships between Maori and the environment.

These legal interpretations have resulted in criticisms being voiced by numerous Maori, claiming that the inclusion of the Maori principles in Part II are too far down the hierarchy of importance in the RMA.[143] Because s.7 is prefixed by the phrase "in achieving the purpose of the Act" and a priority is accorded to the overall purpose of sustainable management of natural and physical resources, then recognition of kaitiakitanga Act must achieve the purpose of the Act.[144] Therefore, whilst kaitiakitanga could assist in achieving the purpose of the Act, it does not mean the same as the sustainable management of natural and physical resources (Burrows, 1997).[145] Tomas (1994) sees this approach as reducing kaitiakitanga "from a fundamental principle of Maori society to one factor for consideration amongst many". The effect of this is that they can be overridden by the underlying Western legislative and administrative traditions. The Waitangi Tribunal in the Ngawha Geothermal Resource Report (1993)[146] considers the relatively low profile given to the principles of the Treaty by s.8 to be inconsistent itself with the principles:

> "[T]he Tribunal recommends that an appropriate amendment be made to the Resource Management Act providing that in achieving the purpose of the Act all persons exercising functions and powers under it, in relation to managing the use, development and protection of natural and physical resources, shall act in a manner that is consistent with the principles of the

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[143] Refer Waitangi Tribunal Ngawha and Te Arawa Geothermal Reports for a discussion on this.

[144] These sections are to be interpreted and applied as an integral part of achieving the s.5 statutory purpose. However, they do not override s.5. In the hierarchy, it comes after matters of national importance - "to have particular regard to" has less force than s.6 "shall recognise and provide for". S.8 is subordinate to the overriding purpose of the Act. "Principles" include the concept of partnership, the duty of consultation, and the duty of active protection. There is some overlap with s.6 but main relationship with lands, waters, sites, waahi tapu and taonga will be matters of national importance regardless of whether there are Treaty issues associated with the activity.

[145] Refer Burrows (1997) for a more detailed discussion of kaitiakitanga within the context of Part II RMA.

[146] Similarly, the Waitangi Tribunal Te Arawa report criticised the Part II hierarchy of the RMA.

Treaty of Waitangi."

Maori have expressed similar concern that the injunction of *"have regard to"* in s.8 of the RMA in effect restricts the Act's capacity to protect resources of significance to Maori. For example, Sir Tipene O'Regan in the introduction to the Kai Tahu Plan states:

> "The injunction upon local authorities to "have regard to the principles of the Treaty of Waitangi"... is a responsibility which may be readily avoided if those with responsibilities under the Act choose to. Because they are surrogates for the Crown they are not, in the Ngai Tahu view, thereby exempted from the Crown's obligations and duties under the Treaty. The basic constitutional and statutory debate is, however, one between Ngai Tahu and the Crown... The onus now on those charged with responsibility of administrating the Act to reciprocate in a similar spirit."

The effect of this Part II hierarchy is therefore that ss.7(a) and 8 are strongly entrenched in the Western legal system and the rangatiratanga that some Maori groups need to be able to deliver as kaitiaki properly has not been provided by the RMA. This has significantly reduced Maori aspirations with regard to the RMA and some tangata whenua groups have refused to participate in this resource management framework.

4.3. THE LIMITATIONS OF ADDRESSING AND RESOLVING THE CONFLICTS BY THE LEGAL SYSTEM

It is noted from this analysis that there is a tendency in the Environment Court and superior courts not to accord weight to the interests protected by the provisions dealing with Treaty and Maori interests, and to highlight instead, the overriding purpose of the Act to promote the objective of sustainable management. While the RMA's incorporation of "sustainable management" and other features of an ecocentric ethic are positive steps, there are still many problems in terms of the relative weighting to be applied to the matters in Part II. For example, conservation and Treaty rights rank a long way ahead of those groups who have commercial and recreational interests in the resource (Boast, 1990), although it is recognised that sometimes competing interests will need to be balanced. As discussed by O'Sullivan (1994), outcomes from the Ngawha geothermal claims presented to the Waitangi Tribunal show that such a model fits very uncomfortably with recent attempts to manage resources by granting rights to private individuals, rights of absolute ownership, and the hierarchy established under the RMA. The findings of the Waitangi Tribunal's Ngawha Geothermal Resource Report (1993) conclude that:

> "...the Resource Management Act 1991 is inconsistent with the principles of the Treaty in that it omits any provision which ensures that persons exercising functions and powers under the Act are required to act in conformity with the principles of the Treaty of Waitangi. The Tribunal further finds that the claimants have been, or are likely to be, prejudicially affected by the omission and in particular, by the absence of any provision in the Act ensuring priority is given to the protection of their taonga and confirming their Treaty rights, in the exercise of their rangatiratanga and kaitiakitanga, to manage and control them as they wish." (*cited in* Waitangi Tribunal, 1993b, p.34)

Another associated issue discussed by McGuire (1996) relates to the inappropriateness of settling disputes involving Maori rights under the Treaty of Waitangi through case law. In particular, "representative cases" are not appropriate when potentially collective issues, such as the Kaituna, are at issue. Case law on the principles of the Treaty of Waitangi, if litigated, should generate only legal propositions confined to their facts and not principles (due largely to the effects of the doctrine of precedent) (McGuire, 1996). McGuire's view is that instead of precedent, all cases involving legal argumentation over Maori rights should be treated individually and cautiously. All these issues are significant in themselves. However, if there is further development of a Maori response to Maori exercising kaitiakitanga and tino rangatiratanga responsibilities, the conflicting issue of hierarchies and priorities (with regard to tino rangatiratanga versus kawanatanga and environmental values) will continue to evolve and must be accommodated.

While the Courts are currently attempting to deal with kawanatanga and tino rangatiratanga issues, the most difficult and challenging problem is to establish effective processes and structures on the ground. In particular, how is it to be done - is a legal expression of these values being provided - what structures are necessary? Consequently, while the interpretations outlined by the Courts are an initial response, there is a need for a different set of institutions, structures and processes to deal with two planning regimes - the established European one, and one that can effectively accommodate Maori values.

These issues pose the question as to the need to implement new planning regimes that provide for greater recognition of Maori rights and values and more comprehensively deal with their provision and implementation. Consequently, the next chapter investigates how the current planning regime is dealing with Maori concerns through a discussion on process, consultation and implementation issues. This will be achieved through an investigation of the statutory requirement for consultation and participation with tangata whenua, as well as a conceptual overview of potential participatory mechanisms, both statutory and non-statutory, to provide solutions to the conflicts inherent in our resource management framework.

CHAPTER 5

PROCESSING AND IMPLEMENTING PARTNERSHIP

By expanding on the hierarchies and priorities developed in Chapter 4, the purpose of this chapter on processing and implementing partnership is to investigate the legal requirements for consultation and participation, and to outline 'other ways' of recognising iwi rights and values. This analysis of how Maori can use, and are using, participatory mechanisms in current resource management frameworks provides an implicit recognition of Maori aspirations. However, it is also necessary to identify the components of an appropriate framework that can accommodate a response by Ngati Pikiao for the Kaituna River.

In the past, resource management decisions in New Zealand have often been made without any consideration given to the potential effects on Maori tribal and Treaty of Waitangi interests. The reasons for this are various, including a percieved legal inability to do so and uncertainty on the part of decision-makers. However, in recent years, due to our obligations as Treaty partners and the influence of international conventions, a review of our environmental policies and practices has promulated changes in perceptions of resource management. An important component of this is consultation and participation. At the United Nations Conference on Environment and Development (1992) the following principle was agreed upon:

> "Indigenous people and their communities, and other local communities, have a vital role in environmental management and development because of their knowledge and traditional practices. States should recognise and duly support their identity, culture and interests and enable their effective participation in the achievement of sustainable development." [Principle 22]

Consultation and participation issues tend to arise out of resource management processes, but ownership matters can influence the degree of control that can be exercised by resource owners. The distinction between management and ownership is thus particularly important.

5.1. MANAGEMENT AND OWNERSHIP RIGHTS

Conservation and environmental law under the RMA is primarily concerned with the *management* of resources, rather than their *ownership*. Consequently, issues of resource ownership and control remain unresolved and are often governed by the old English common law rules of property ownership, or by a confusing interplay between common law and various statutory provisions

(Boast, 1993; Mikaere, 1995).[147] One of the various authors that have drawn attention to the important distinction between management rights and ownership rights is Boast (1990) who states that:

> "...many claims (to the Waitangi Tribunal) transcend questions of resource ownership, extending to the restoration of tribal mana in the context of resource management. Indeed it is management rights, rights of tribal input into decisions affecting the environment and resources, which have so far claimed most of the attention of the Waitangi Tribunal. In a number of the principle reports...ownership questions were not an issue at all... [A] right to 'use' and even to 'control' does not necessarily have to amount to ownership... Tribal participatioin in management - either in isolation or in association with other authorites - is one method of giving effect to the obligations to protect rangatiratanga which falls short of a transfer of ownership."

Such issues, particularly where there are different management agencies and iwi vying for control, must be resolved. The acknowledgement of kaitiakitanga by management agencies means that the Maori relationship with ancestral land must be recognised, even if the land is no longer held in Maori hands. This relationship was endorsed in *Royal Forest & Bird Protection Society (Inc.) v W.A. Habgood Ltd* [1987] 12 NZTPA 76, where a wide definition of ancestral land was upheld to include recognised tribal boundaries and symbols on the landscape, dwelling places and marae, waahi tapu and wai tapu, land in Maori ownership, and land containing resources of cultural significance [such as the Kaituna River], irrespective of ownership. In this case, Justice Holland ruled that:

> "There may be a danger in interpreting what a European would describe as his or her ancestral land. What is required to be determined is the relationship of the Maori people and their traditions with *their* ancestral land."

However, while the Waitangi Tribunal established that there is no traditional boundary across land, water and sea, the proposed Resource Management Amendment Bill (No. 3) denies this cross-ecosystem link of management (Forbes, *pers. comm.*). Consequently, there is currently debate regarding the use of the term "land" in this context. Similarly, Pond's (1997) view establishes that most research on Treaty of Waitangi issues focuses on "land" instead of "whenua" and this has the consequence of trapping tribes in a Western value-based profit-taking economy which has colonised and impoverished them. Treating whenua as bare land disregards a socio-ecological covenant implicit in the Treaty text and moves Treaty claims towards "tribal capitalism" (Pond, 1997) rather than enabling them to develop economic and social structures based on values of reciprocity, respect, sustainability and connectivity.

For example, experience from all over the world has shown that when governments classify land as belonging to the state, local people often lose interest in the land and treat it as common land

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[147] Linked to this is the refusal by the Planning Tribunal [now the Environment Court] to delay resource consent decisions until the appropriate body, the Waitangi Tribunal, is able to deal with ownership issues (Mikaere, 1994, 1995).

to be abused and over-exploited.[148] In comparison, the recognition of land tenure, rights of access or rights to use the natural resources strengthens local incentives for management, and represents an important component of ecosystem management projects (IUCN, 1997). Collaborative management agreements between the Crown, Maori and other stakeholders[149] recognise that the rights of access to natural resource benefits may be coupled with responsibilities for management. Such empowerment will require extensive policy analysis and the establishment of mechanisms for delivering structures, powers and functions for co-management. More importantly, given that tangata whenua, as kaitiaki, have inherent rights to continue to nurture and determine the wise management of those resources, New Zealand's legislative mandate requires appropriate mechanisms to allow iwi to express kaitiakitanga:

> "...the Maori people derive their status as kaitiaki to be fully recognised... this is not the same as ownership..." (Minhinnick *cited in* NZCA, 1997)

This right is recognised in legislation such as RMA (s.7(a)) and by the High Court in *Royal Forest & Bird Protection Society (Inc.) v Habgood* [1987], which recognised that iwi have a relationship to their traditional lands, regardless of legal ownership, and that this relationship must have a corresponding affect on management decisions. Formalising 'common goals' for the management of our natural and physical resources will make this task easier. Overseas jurisdictions which have examined similar issues to those under the Treaty of Waitangi have concluded that tribal rights to manage their own resources can be overridden, but only in the interests of conservation (Boast, 1992). Nevertheless, issues of resource ownership remain unresolved under the RMA. Boast (1992) states:

> "Until these basic ownership issues are resolved satisfactorily (which does not mean that they have to be resolved permanently), it is hard to see how a truly fair an workable system of conservation law can develop in this country."

This issue is made more complex by uncertainty as to the ownership of water beds. Robinson (1992) infers that the powers of regional councils to "manage" water resources are subject to being written down on two sides: *"The policy of the RMA is unclear. It is likely that the solution will only be found by a combination of litigation and political manoeuvering"*. With regard to Treaty of Waitangi interests this issue is further complicated.

5.2. CONSULTATION WITH TANGATA WHENUA

The Waitangi Tribunal in the Manukau Report established that the Maori interest is:

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[148] This has been particularly evident with the South Island High Country Pastoral leases.

[149] Stakeholders refer to those people who use, affect, or otherwise have an interest in the ecosystem. An analysis of their needs and values is fundamental to both ecosystem management and collaborative management.

> "...more than that of a minority section of the general public, more than just a particular interest in particular (taonga), but less than that of exclusive ownership. It is in the nature of an interest in partnership the precise terms of which have yet to be worked out. In the mean time any legal owner should... acknowledge particular fiduciary responsibilities to the local tribes, and the general public, as distinct entities."

This was echoed by the Court of Appeal in that:[150]

> "The iwi are in a different position in substance and on the merits from other (parties). Subject to the over-riding conservation considerations... (the iwi) are entitled to a reasonable degree of preference."

And by the Parliamentary Commissioner for the Environment (1992):

> "...tangata whenua are not 'just another interest group' but have special status by virtue of their long-standing prior inhabitance of the area, the Treaty of Waitangi, and the principles of the Treaty, and as provided for in the Resource Management Act and other legislation...
>
> Tangata whenua find that they are often treated by decision-makers as just another minority group... They are indeed as individuals part of the general community with equal rights as citizens under Article III of the Treaty, but in addition members of a tribe as a group have particular rights guaranteed by Article II of the Treaty, for the area where they are traditional tangata whenua."

Therefore, Maori have a status in any decision-making above other interest groups, although it is subject to the overriding interests of conservation. As matters of rangitiratanga and kaitiakitanga over particular resources or areas cannot be understood without reference to the Maori cultural context, they must be accurately determined by the people who hold mana whenua over that resource (Crengle, 1993). Consequently, consultation will often become the vehicle for discussion between tangata whenua and the consent agency regarding any necessary action to be taken to honour the Treaty guarantees applying to the area or resource in question.

5.2.1. Consultation with tangata whenua under the Resource Management Act 1991

Mr Justice McGechan has used the following definition of consultation:

> "Consulting involves the statement of a proposal not yet finally decided upon, listening to what others have to say, considering their responses and then deciding what will be done."[151]

McGechan J, noted that consultation should be a reality, not a charade. Although there were no universal legal requirements as to form or duration, he found that the essential elements of genuine consultation should include:

- *sufficient information* provided to the consulted party, so that they can make intelligent and

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[150] Judgement of Cooke P, 22 September 1995.

[151] *Air New Zealand v Wellington International Airport Ltd* [1992], High Court Wellington Registry, CP No. 403/91, McGechan J.

informed decisions;

- *sufficient time* for both the participation of the consulted party and the consideration of the advice given; and
- *genuine consideration* of that advice, including an open mind and a willingness to change.[152]

The Ministry for the Environment (1991) described the following as the essential ingredients of good consultation: honesty of intention; certainty of purpose; clarity of information; statement of what is required; and provision of resources. However, consultation is not merely telling or presenting, or intended to be a charade, or the same as negotiation - although a result could be an agreement to negotiate (*Wellington International Airport v Air New Zealand* [1991]). The PCFE (1992) also makes the pertinent point that consultation does not just encompass the gathering of information, but also *why* the information is being gathered, *how* the information will be used, and the *status* that information will have in the decision-making process. With respect to these guidelines, McGechan J has ruled that tangata whenua, as the original long-standing inhabitants and kaitiaki of this land, have unique rights under the Treaty to continue playing an essential role in resource management. Therefore, those in power should consult to obtain the information to carry out their obligations and deal in utmost good faith with tangata whenua in the spirit of the Treaty of Waitangi. A similar view expressed by the Parliamentary Commissioner for the Environment (PCFE) (1993) stated that consultation is an essential part of the relationship between local government and tangata whenua, in order to determine how they will work together to give effect to the principles of the Treaty, to enhance tino rangatiratanga and to develop and maintain fair and equitable government. This duty to consult is expressly provided for by the RMA: express or implied obligations imposed by particular provisions of the Act such as ss. 8, 6(e), 7(a), and clause 3(1)(d) of the First Schedule; and consultation as a recognised principle of the Treaty of Waitangi, which, by virtue of s.8 *"all persons exercisng functions and powers ... shall take into account"*.

However, the majority of these decisions have resulted from Maori dissatisfaction regarding government policy and decision-making processes, many stating these processes "alienate many Maori people" (Royal Commission on Social Policy, 1988) and give iwi little opportunity for direct input into policy and settlement formulation (Durie, 1995).[153] These concerns have also been advocated by Matunga (1997) with respect to the RMA's consultative provisions and McKenzie (*pers. comm.*) who views poor consultation processes undertaken by management agencies as being one of the major weaknesses in implementing the RMA and understanding kaitiakitanga. In a similar vein, the PCFE (1988) has referred to the need to establish guidelines

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[152] Ibid, pp. 7-8.

[153] This process goes right through all government processes including Treaty settlements, Waitangi Tribunal, Crown Forest Rental Trust, the Maori Land Court, the Office of Treaty Settlements and Ministers of the Crown. The same is true for national social and economic policies - all being shaped by the State and approved by the Executive without needing to incorporate Maori priorities (Durie, 1995).

for consultation with Maori and to give these guidelines statutory recognition.[154] However, such concerns are not being dealt with adequately, and the formulation of policies are still being driven by government.

Therefore, despite the Court of Appeal's requirement to act reasonably and in utmost good faith where the principles of the Treaty of Waitangi are concerned,[155] Maori are becoming increasingly frustrated with this process.

5.2.2. Section 8 RMA and Consultation

The Court of Appeal has established that consultation with Maori is one of the key principles of the Treaty of Waitangi.[156] Therefore, everyone, when exercising functions and powers under the Act in relation to managing the use, development, and protection of natural and physical resources, must take into account the principles of the Treaty of Waitangi (s.8). In *Gill v Rotorua District Council* the Planning Tribunal said:

> "One of the nationally important requirements of the Act under Part II considerations is that account be taken of the principles of the Treaty of Waitangi 1840: Section 8 of the Act. One of these principles is that of consultation with the tangata whenua: see *New Zealand Maori Council v Attorney General* [1989]."

Ngai Tahu Maori Trust v Director General of Conservation CA18/95, with respect to s. 8, found that:

> "...the Crown is not right in trying to limit (the Treaty principles) to consultation. Since *New Zealand Maori Council v Attorney General*... it has been established that the principles require active protection of Maori interest. To restrict this to consultation would be hollow... a reasonable Treaty partner would not restrict consideration of Ngai Tahu's interests to mere matters of procedure."

Also with regard to s.8, *Ngatiwai Trust Board v Whangarei DC* C007/94 established that consultation with tangata whenua as required by the principles of the Treaty of Waitangi requires more than passive notification and requires particular regard to kaitiakitanga under s.7(a). This process must allow sufficient time, involve meaningful discussion and requires that genuine efforts are made to consider the other party's point of view:

> "Consultation is a two way process. If one party actively facilitates a consultative process and the other chooses to withdraw without giving any reasons, they can not later complain about inadequacy of consultation." (*Rural Management Ltd & Others v Banks Peninsula District*

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[154] This could be established by way of statutory recognition of Maori tribes and their tribal resource management plans as legitimate resource authorities and planning documents (Matunga, 1997). This issue will be further discussed in the concluding chapter of this thesis (Chapter 7).

[155] *New Zealand Maori Council v Attorney General* [1987] 1 NZLR641, Cooke P.

[156] *NZ Maori Council v Attorney General* [1987] 1 NZLR 641; *Haddon v Auckland Regional Council* 1994 NZRMA 49 and *Gill v Rotorua District Council* 2 NZRMA 604 provide guidance on this.

Council W35/94 3 NZPTD 442)[157]

However, *Minhinnick, Huakina Development Trust & Others v Watercare Services Ltd & Miniser of Conservation* A55/97 NZED 385, established that:

> "Consultation does not necessarily lead to agreement. However, consultation is not to give a right of veto, and failure to achieve agreement does not necessarily invalidate consultation."

Nevertheless, consultative difficulties may arise in defining kaitiakitanga:

> "Iwi may have their their own particular ideas about the extent and meaning of the concept, so it is important that they be checked out first. It may be that some iwi do not use the term kaitiakitanga, but it is certain that all iwi will have a sustainable management philosophy that compares with the pure spirit of the term kaitiakitanga" (MfE, 1991).

Currently, Maori aspire under the RMA for a distinctive type of Maori research and for the development of management which may differ quite radically from that which preceeded it (Adds, 1988). In terms of kaitiakitanga, the research will be done by Maori people from which the results will be passed back into the community from where it was taken. Moreover, the research will not be seen as a threat to the Maori world view (Adds, 1988). It is with this issue in mind that this chapter moves on to a discussion of participation as a means of processing and implementing partnership.

5.3. PARTICIPATION OPPORTUNITIES

> *An equitable balance of socio-economic ends and cultural means cannot be satisfactorily achieved unless the special rights and interests of Maori people are effectively represented in the determination of public policy by representatives who are also members of the Maori community - The Principle of Active Participation/Consultation* (after James, 1993).

The principles of the RMA 1991 require that Maori have a fundamental place in resource management policy and decision-making with regard to promoting the sustainable management of New Zealand's natural and physical resources. Maori therefore have an expectation that they will participate in the resource management system in order to gain recognition of their traditional, cultural and spiritual values and their incorporation into the decision-making process of local and central government in decision-making on environmental issues (James, 1993). Tangata whenua seek involvement in this process through participation, representation, and management (refer James, 1993). Iwi planning documents help improve this process of participation and consultation, and are one way by which Maori can participate in the system established by the RMA to manage the effects of the use of natural and physical resources (Love *et al*, 1993).

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[157] For an example of a case where consultation with iwi was ruled inadequate and the hearing adjourned to allow further consultation see *Purnell v Waikato Regional Council* 96 1 NZED 674.

However, historically, Maori participation has not been facilitated. Maori have been excluded from decision-making and their values and interests have been significantly under-represented. For example, the recent NZCA (1997)[158] study found that many local Maori communities seek to become more closely involved in conservation of forests, wetlands and other natural ecosystems. Maori throughout New Zealand are deeply concerned at the decline and degradation of natural places and resources. In many instances this concern finds few opportunities to translate itself into practical constructive action. Accordingly, priority should be given to extending and developing - in conjunction with Maori - appropriate participation systems (NZCA, 1997).

As previously noted, the Treaty obligation of active participation has resulted in a slow but progressive inprovement in the consultation and participation mechanisms of Crown management agencies. However, there is still much more that could be done to harness the energy and support of Maori for resource management, conservation and heritage work in their rohe. This issue is compounded by the fact that most decision-makers in local government are non-Maori and have had little opportunity to learn and understand Maori values or why local tribes have special status by virtue of the Treaty of Waitangi (PCFE, 1992). Consequently, there are considerable differences between the philosophies and cultural dynamics of iwi authorities and local authorities as well as the ability to conduct resource research, consultation and participation, despite the legal impetus to consult and involve tangata whenua in the RMA processes.[159] This onus is on local government, both at the regional and territorial level. Since the introduction of the RMA, many local authorities, more particularly rural, had to overcome deeply ingrained and ethnocentric predjudice against Maori (Blackford and Smith, 1993) and their associated cultural and spiritual values. That predjudice was [and still is] born of a lack of understanding, and being "forced" by the requirements of the RMA to widen their decision-making responsibilities.[160]

However, many Maori still express strong dissatisfaction with the provisions for representation, consultation and involvement in the present conservation management systems (NZCA, 1997). This echoes an earlier study by PCFE (1992) which found that iwi groups that had previously attempted to participate in the resource management system had found their views consistently ignored or marginalised in the final decision. This has led to some groups refusing to directly address the issues of consultation unless consultation was part of a greater process to recognise Treaty rights.[161] This concern is often linked to a lack of resources and obligations on iwi to deal with numerous consultative requests at their own expense (Harmsworth *et al* 1995).

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[158] New Zealand Conservation Authority. 1997. *Maori Customary Use of Native Birds, Plants and Other Traditional Materials. Interim Report and Discussion Paper.* New Zealand Conservation Authority, Wellington.

[159] As discussed previously, this situation extends to an ignorance of Maori concepts such as kaitiakitanga.

[160] Forbes, *pers. comm.* 1998.

[161] Such iwi groups were, not surprisingly, sceptical about the ability of the Crown to actively protect their taonga (PCFE, 1992).

Nevertheless, concerns about participation are not restricted to Maori, as non-Maori are also absolutely determined to be involved in processes for conservation management.[162] According to the NZCA (1997) study, *all* respondent groups insist on their right to have their views heard, their knowledge taken into account, their contribution accommodated, their rights respected, and their long-term aspirations given an opportunity. However, some non-Maori believe that current systems are working well and are providing Maori with adequate opportunities for participation and access to traditional resources (NZCA, 1997).

The extent to which participation in these processes can be facilitated varies from little or no involvement through to operating with delegated or transferred powers. R.T. Mahuta observes:[163]

> "...Let me emphasise two issues. The first is that until the quality of Maori input is considerably improved by contracting Maori agencies to write their own management report, proposals and strategies, environmental management will continue to be based on the implicit assumptions of the dominant culture. Lip service to the recognition of Maori interests is valueless unless backed by real understanding expressed by Maori people themselves and not filtered through the straining mesh of Pakeha preconceptions.
>
> The second clear indication from this research is that Pakeha institutions try to address Maori issues by compartmentalising them and therefore all parts of the administrative structure need to take Maori considerations into account. While Maori people are making immense strides to become effective in environmental planning, still too few Pakeha planners and managers are putting similar energy and effort into reaching an understanding of Maori."

Despite Crown devolution of regulatory resource management decision-making to local government under the RMA, there remains widespread debate and uncertainty over the precise legal situation as to whether local government should be agents of the Crown, and how far s.8 requires local authorities to act. This issue is linked to a lack of understanding amongst local authorities about the exercise of rangitiratanga and its relationship to their statutory requirement to undertake the integrated management of resources (Swinney, 1997). Local authority initiatives and structures tend not to provide sufficient opportunities for Maori to exercise their rangatiratanga, and thus kaitiakitanga. Most initiatives put in place by local government reflect European cultural preferences (Horsley *pers. comm.* 1997), therefore local authorities need to ensure that all initiatives and structures are acceptable to tangata whenua (Swinney, 1997). For example, decision-makers ought to appreciate that merely offering some form of participation in the expectation that Maori will take up the offer will not be enough to satisfy their Treaty responsibilities under the RMA and other legislation. In such circumstances, it would not be unreasonable for the tangata whenua to choose to decline to participate.

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[162] According to Pollock & Horsley (1997), participatory principles are increasingly becoming the cornerstone of democratic processes.

[163] In the forward of Nuttall & Ritchie's (1995) study,

With respect to this issue, the transfer of powers or functions under s.33 RMA potentially provides the best opportunity for applying the powers conferred by kawanatanga and to support the practical expression of rangitiratanga (Crengle, 1993).[164] Similarly, Solomon & Schofield (1992) suggest that the relationship between kawanatanga and tino rangitiratanga is probably best dealt with through a Declaration of Understanding signed between iwi and relevant statutory bodies. These participatory mechanisms will be investigated in the next part of this chapter.

It is important that Maori should avoid unreal expectations of management agencies who face legal, financial and political constraints in the community, whilst carrying out a wide range of functions and powers. However, it is important for management agencies to remember that the duty to consult with Maori and provide for their participation will not be satisfied if the approach is merely to give minimum effect to the Treaty obligations. The next section of this chapter will investigate some of the various statutory and non-statutory mechanisms for allowing Maori to exercise their kaitiakitanga, and will evaluate the European and Crown response to these requirements to establish whether it is facilitating its role as a Treaty partner.

[164] This issue refers back to the matter of management and ownership discussed at the start of this chapter.

MECHANISMS FOR PARTICIPATION.

The previous section has illustrated the statutory requirement for processing and implementing Maori participation in resource management issues. This section of the analysis investigates some of the current statutory mechanisms for participation that have been established in the RMA and other legislation, together with possible structures (both formal and informal) that allow Maori to express their aspirations and participate in these processes. The mechanisms investigated are directly applicable to the protection of water and waahi tapu, which is the focus of the case study in Chapter 6, and are discussed in relation to their merits for expressing kaitiakitanga imperatives.

5.4. AN ANALYSIS OF THE STATUTORY MECHANISMS FOR IMPLEMENTING KAITIAKITANGA

According to the Historic Places Trust[165] there are approximately 40 statutory and planning mechanisms to protect waahi tapu and archaeological sites (Forbes *pers. comm.*). However, for the purposes of this thesis, only those relating to the Kaituna River and Ngati Pikiao will be analysed in detail. Primarily, this will involve analysis of the Resource Management Act provisions for implementing kaitiakitanga, as this statute provides the main mechanisms for resource management over water and waahi tapu. This will be followed by a discussion of the other legal mechanisms and provisions established that also provide for Maori, particularly Ngati Pikiao, to express their aspirations and participate in these processes.

5.4.1. Section 32 RMA - "Duties to consider alternatives, assess benefits and costs etc."

An integral element of the concepts of kaitiakitanga and rangatiratanga is the recognition that tangata whenua have their own traditional means of managing resources and the environment. For example, regional councils will need to ensure that the assessment of alternative methods required under s.32 can adequately incorporate iwi concerns, values and aspirations. How such methods may be of benefit to Maori will be an issue to address as part of the assessment process (Solomon, 1993).

5.4.2. Section 33 RMA - "Transfer of Powers"

The transfer of powers provisions in s.33 is a practical way in which councils could give effect to kaitiakitanga under the Act (Solomon & Schofield, 1992). Section 33 provisions are the best way for iwi to formally implement their own management strategies. Under these provisions, management agencies can transfer specific management functions to iwi as well as incorporate traditional ecological knowledge with scientific knowledge of such matters as water quality and

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[165] This has been stated by Dave Robson of the Historic Places Trust, Wellington.

biodiversity. The use of these knowledge systems is extremely valuable in the management of water and waahi tapu where there is a lack of baseline environmental data, functioning and gaps in ecosystem knowledge (Sunde, 1996).[166] For example, it may be possible for local authorities to transfer powers of decision-making on a consent application to an iwi authority. The nature of any function to be transferred to an iwi authority would depend on the type of resource, the scale of the development project and the particular cultural or spiritual significance that resource had to the hapu or iwi affected (Solomon, 1993).

Therefore, a s.33 transfer could be envisaged for the management of waahi tapu and control of commercial rafting operations where, clearly, an iwi authority is both the *appropriate community of interest* and provides *special capability of expertise* (s.33(3)). In terms of policy, there is thus potential for a transfer of powers in the following provision of the Bay of Plenty Regional Policy Statement (1993): *"rangatiratanga should be recognised and provided for in all resource areas..."* including *"...but not limited to, the management and control of waahi tapu..."*. However, despite the potential of these provisions, in the seven years since the enactment of the RMA there has been no use of the s.33 transfer of powers provisions under the RMA.
Another far-reaching implication of these provisions is their relationship to kaitiakitanga. According to Morgan (*pers. comm.*), as the exercise of kaitiakitanga invokes the responsibility to act effectively as well being accountable, this section of the Act can be interpreted so as to mean that if the Crown does not transfer over these RMA functions and powers to iwi, then the Crown can be held responsible for any adverse physical or spiritual effects on the environment.[167]

5.4.3. Section 34 RMA - "Delegation of Functions".

Section 34[168] has the potential to allow Maori regional representative committees (established under the Local Government Act) to have delegated functions with respect to certain areas. Similarly, standing committees[169] established by regional or district councils may be delegated any of the authorities functions, powers or duties under the RMA. The delegation of functions to these sort of committees is a particularly powerful option to iwi because these committees have access to council's funds through influence, if not directly (Sunde, 1996). However, disagreements between iwi can be problematic, illustrated by the disagreement which has arisen

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[166] The extent of this can be demonstrated in the total abandonment of the river ecosystem by native shags since commercialisation of the river for rafting purposes. In this case there was no scientific documentation of species distribution of the shags and their role in ecosystem functioning on the Kaituna River, other than traditional ecological knowledge held by Ngati Pikiao kaumatua and local residents and users of the river.

[167] In effect, such an interpretation makes the Crown accountable for the sustainable management of natural and physical resources under the RMA.

[168] Section 34(1) allows a local authority to: "...delegate to any committee of the local authority established in accordance with the Local Government Act 1974 any of its functions, powers, or duties under this Act in respect of any matter of significance to that community, other than the approval of a plan or change to a plan".

[169] Standing committees can be appointed by councils for specific areas under the Local Government Act 1974. For example, the Te Arawa Standing Committee on the Rotorua District Council allows Te Arawa iwi views, of which Ngati Pikiao should form an important component (they currently do not due to iwi politics (White *pers. comm.*)), to be made to the elected councillors. Standing committees can make recommendations to council, but they are restricted by having no voting power.

between Te Runanga O Ngati Pikiao, an iwi-based authority, as opposed to council-based iwi authorities, with respect to the delegation of functions to these authorities in terms of the Rotorua Lakes (Sunde, 1996).[170]

5.4.4. Sections 61(2)(a)ii and 74(2)(b)ii RMA - "Iwi Planning Documents"

Iwi management plans are the generic name give to the relevant planning documents recognised by an iwi authority. The RMA has paved the way for pro-active Maori input into resource management through the preparation of iwi management plans which potentially identify resources and environmental values of importance to the tangata whenua. Iwi management plans are a mechanism for the recognition of the rights of Maori to manage their own resources, they can also influence the way that the Crown manages its resources. The RMA states that both regional councils and territorial authorities *"shall have regard to"* iwi planning documents *"...when preparing or changing..."* their plans and policy statements as well as in accordance with their functions (s.30 and 31 respectively), the provisions of Part II and their duties under s.32 (assessment of alternatives to regulation, costs and benefits of policies etc.). Thus, from an iwi perspective, these sections provide the opportunity for the wider community to express their views and aspirations regarding the issues they consider are relevant to the region or district, and more specifically allow for the recognition and expression of tino rangatiratanga, kaitiakitanga and the right of self-regulation.[171] Matunga (1993) suggests that this can be done by the following three broad approaches:

i. Direct input of iwi policy into statements and plans;
ii. Establishment of structural mechanism by management authorities to implement iwi policy, both at the political and operational level;
iii. Establishment of partnership agreements between management agencies and iwi to monitor implementation of iwi policy.

Matunga goes on to say that, whilst these plans will be recognised as a *"relevant planning document"* under the RMA, the challenge is to ensure the integration, incorporation or adoption of iwi policy by various management agencies with jurisdiction over resources in iwi territories. In particular, many Maori envisage that these plans should be integrated or applied within the systems of contemporary conservation management such as the formal requirements of the RMA. Therefore, these documents should only be used as a consultative guide, not as a substitute for direct consultation with Maori (Nuttall, 1996). Despite this issue, Maori are concerned that these policies should be acknowledged by the Crown under the Treaty of Waitangi, and that councils and government agencies should recognise and work with them in planning and management

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[170] This problem could be remedied through the development of an independent Maori committee, with Ngati Pikiao representatives/established by Ngati Pikiao, with whom RDC could consult and seek advice on all iwi matters relating to the River. This approach would improve current *ad hoc* consultation procedures and address the criticisms of the Te Arawa Standing Committee by TRONP and other organisations (Sunde, 1996).

[171] The power sharing potential of these documents can be seen in the wording of Part II of the RMA which states *"any person may request a change to a district plan or regional plan"*.

activities (NZCA, 1997). For example, the Planning Tribunal in *Whakarewarewa Village Charitable Trust v Rotorua District Council* [PT] W 61/94 noted that "kaitiakitanga in this instance most properly requires the control to be vested in an iwi authority" and expressed the hope that the community would be able to work towards an iwi management plan, thereby assuming greater control over its own future and taking on kaitiakitanga responsibilities. It also noted that in the meantime the regional council was, by default, *"acting in a kaitiakitanga role"*, a situation which the Tribunal clearly felt to be second-best (Mikaere, 1995).

This is linked to the issue that despite the strong statutory requirement being accorded to the production of iwi management plans, the tribal goals, objectives, alternative strategies, management and decision processes developed are not legally binding, with decision-makers only having to "have regard" to these documents. Matunga (1997) refers to this issue in his recent criticisms of the RMA:

> "[The RMA] lacks a mechanism for ensuring that Maori tribal resource management plans are given the statutory recognition they deserve as autonomous statements of tribal resource policy."

This shortcoming of the RMA is exacerbated by an almost total lack of guidance regarding the preparation and means for implementation of these statutory plans. It is therefore unclear as to what legal basis these plans have and what the basis is for their implementation. This lack of guidance stresses the need to establish a common basis for preparation and implementation of these plans similar to the "Western planning methodology", which is a clearly defined legal framework with consultation requirements, submissions and hearing processes.[172] Many of these planning frameworks have detailed policy and procedural guidelines. For example, the repealed Runanga Iwi Act set out guidelines and prescribed a basis for plan preparation and evaluation.[173] Another related issue is that s.2 RMA defines 'tangata whenua' and 'iwi authority' but not 'tribal runanga', which creates difficulties when consulting tangata whenua. Historically, these terms were related to the provisions of the now repealed Runanga Iwi Act 1991 which itself prescribed characteristics of iwi and runanga (Appendix 7). The repeal of the Runanga Iwi Act has left the RMA terms, to some extent, unclear (MFE, 1995). Consequently, the Courts have not yet considered what constitutes an "iwi authority", "runanga" or an "iwi planning document".

Under the RMA, management agencies only need to "have regard to" iwi management plans when preparing their policy statements and plans. This is a problem, as no provision is made for the iwi to carry out resource management in its own right or to prepare iwi management plans that are in any way legally binding on other agencies (Matunga, 1990). Nor is there any guarantee given

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[172] This process is utilised by Part II RMA, regional policy statements, district plans and conservation management strategies.

[173] However, this issue can have negative implications as such plans are bound by their relevant legislation e.g. Part II RMA. Similarly, this is linked to another concern regarding the effectiveness of these plans in relation to tribal rohe boundaries being inconsistent with the biophysical boundaries adopted by current management agencies.

that the relationship of Maori with their ancestral lands, waters, sites and other taonga will be protected. Kaitiakitanga itself is simply one of many principles that decision-makers shall "have particular regard to", but not necessarily "recognise and provide for" when making decisions. Consequently, one of the challenges of developing iwi resource management plans and initiatives is accommodating them within government kawanatanga structures. The overlapping and complementary natural resource management responsibilities of kaitiaki and government agencies will ultimately require the establishment of appropriate management structures which represent both interests and values.

5.4.5. Sections 187 - 198 RMA - "Heritage Protection Authority provisions"

The heritage order provisions in the RMA built on the protection notices of the Town & Country Planning Act 1977 and the Historic Places Act 1980.[174] The range of places that could be protected under the old legislation was relatively narrow, focusing mainly on the protection of historic buildings. The intention of the provisions under the RMA was to broaden the definition of "place" and the range of places that could be protected.[175] However, Matunga (1990) questions the subordinating effect of the RMA's HPA provisions on iwi:

> "Despite defining a HPA as any Minister of the Crown, local authority or Historic Places Trust and enabling the Minister of Maori Affairs, or a local authority, to act on the recommendation of the iwi authority, the RMA HPA provisions do not allow the iwi to independently act as heritage protection authority and issue protection orders of its own volition. In doing so it completely undermines the authority and rangatiratanga of the iwi."

More recently, the HPA definition has been the subject of a Resource Management Amendment Bill (No. 3) which proposes to exclude rivers from the HPA provisions and provides a different decision-making framework for heritage orders made by body corporate heritage protection authorities than that for orders made by other heritage protection authorities.[176] These issues, and a more detailed investigation of the Heritage Protection Authority provisions and their potential application, will be discussed in greater in the next chapter - a case study of the Kaituna River. In a related issue, a current proposal for a review of heritage legislation may have widespread implications for iwi, particularly the drive to devolve heritage protection to local authorities (Forbes *pers. comm.* 1998). This is linked to the findings of the Commissioner for the Environment[177] in that, with respect to Maori interests in environmental matters and the implications of the Treaty of Waitangi for environmental and resource management, mechanisms available for the protection of cultural and historic heritage were inadequate. Omission of heritage values from matters of national importance under s.6 of the RMA has contributed to local

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[174] These provisions were further remedied with the passing of the Historic Places Act 1993.

[175] This included making provision for the protection of waahi tapu sites (MfE Report on Resource Management Amendment Bill (No.3)).

[176] MfE Report on Resource Management Amendment Bill (No.3) [19/07/96]

[177] Parliamentary Commissioner for the Environment. 1996. *Historic and Cultural Heritage Management in New Zealand.* Parliamentary Commissioner For the Environment, Te Kaitiaki Taiao a Te Whare Paremata, Wellington.

authorities being able to exercise the discretion to do little; and thus there is insufficient linkage between the RMA and the Historic Places Act 1993. This is particularly so in relation to a potential gap between the archaeological provisions of the HPA and the RMA when local authorities fail to provide for the protection of sites in their policies and plans (PCFE, 1996).[178]

5.4.6. Section 199(c) - 217 RMA - "Water Conservation Orders"

At the top of the hierarchy of planning instruments and processes established under the RMA are national planning responses that include water conservation orders. The Act provides for water conservation orders for *"...the purpose of recognising and sustaining outstanding amenity or intrinsic values of water bodies, or the protection of characteristics which any water body has or contributes to, and which are considered to be of outstanding significance in accordance with tikanga Maori".*[179] Water conservation orders restrict or prohibit the exercise of a regional council's powers to control the taking, use, damming or diversion of water. To a certain extent, therefore, the Act provides for the protection of water bodies by means other than by the heritage order process (MfE, 1996). However, there has been concern that water conservation orders would not provide the equivalent protection for water bodies as heritage orders would[180] (as they only apply directly to water, not the bed and banks of the river), nor would they be directly applicable in situations of competing uses of water (Milne, 1993). In comparison, heritage orders can deal with the protection of the heritage values of both the water body itself, and of the area of land surrounding that water body, and are thus more appropriate for Maori in their exercise of kaitiakitanga. This is why the proposed amendments to the RMA HPA provisions are concerning for many Maori.

5.4.7. Conservation Act 1987.

The Conservation Act is the principle statute which both establishes DOC and empowers it to carry out the conservation of New Zealand's natural and historic resources. With particular respect to issues of kaitiakitanga and participation, this Act provides for the establishment of the decision-maker for any particular decision as well as for the circumstances in which the decision-making authority may be transferred or delegated to another party. However, these provisions are significantly restricted under the associated legislation administered by DOC - in particular decisions cannot be transferred to another party (except in the case of the Reserves Act processes) and can only be delegated to departmental activities (DOC, 1997a). Current statutes, therefore, do not give DOC the power to transfer the Crown's decision-making role to tangata whenua.

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[178] In conflicting resource management situations such as the Kaituna River, planning problems and implementation issues can be linked to a lack of integration between planning activities within and between Acts, particularly over water.

[179] *"A water body may be considered to be "outstanding" because of its value as wildlife habitat, as a fishery, for its wild or scenic characteristics, for scientific or ecological values, and for recreational, historic, spiritual, or cultural purposes"* (s. 199(2)(c) RMA).

[180] MfE Report on Resource Management Amendment Bill (No.3) referring to concerns held by Environment Bay of Plenty.

However, some systems established by DOC have the support of tangata whenua, in particular the following key factors:

- consultation and dialogue with kaumatua or appropriate Maori interests;
- tangata whenua participation in the development and definition of criteria and procedures;
- acknowledgement of the mana and interests of iwi and hapu;
- observation of tikanga Maori as well as the protection of conservation values; and
- the context of the wider relationships between the Conservancy and tangata whenua (NZCA, 1997).

5.4.8. Conservation Management Strategies and Plans

The Conservation Act provides for the preparation, approval and review of CMSs and CMPs, and each of these regional strategies and plans may make provision for appropriate Maori access to traditionally important resources in that region. Each CMS will be slightly different, reflecting the concerns and priorities of that area as expressed through extensive public consultation processes meted out in each DOC conservancy - including hui and dialogue with tangata whenua. It should be noted however that two draft CMSs - Northland and Tongariro/Taupo - have been the subject of claims to the Waitangi Tribunal, challenging the Department's implementation of s.4 and asserting that the draft CMSs:

- detrimentally affect taonga and other interests of great significance to iwi;
- override the right of iwi to exercise tino rangatiratanga over the land and natural resources within their rohe;
- prevent the iwi form exercising the rights and obligations of kaitiaki over the land and natural resources within their rohe; and
- fail to give any real or practical recognition to the Treaty of Waitangi (NZCA, 1997).

5.4.9. Reserves Act 1977 provisions[181]

Section 29 of the Reserves Act provides a legal means for management, control and responsibility for a particular designated area to be transferred from the Department of Conservation to an iwi or hapu, where it is agreed that the iwi or hapu is the most appropriate manager. Such transfers are encouraged for areas considered to be waahi tapu and provide the legal basis by which management and operational responsibilities can be shared. Whilst the Reserves Act has no explicit reference to the Treaty of Waitangi, the implications of the Court of Appeal judgement in *Ngai Tahu v Director-General of Conservation* [1995] applies s.4 of the Conservation Act to the Reserves Act 1977.

The Motatau Forest in Northland provides an example of how tangata whenua can be involved in these provisions. In this situation, a Crown scenic reserve is being managed by Te Runanga o Ngatihine under a contract with DOC. Under this contract, Kevin Prime [on behalf of Te

[181] Provisions relevant to Maori as discussed in this chapter include sections 29, 30, 35, 45, 46, 77A and 86.

Runanga o Ngatihine] and DOC staff have devised a scientifically-based and carefully managed plan to lower the predator population in the forest and maintain a sizable buffer zone in surrounding private land (Pullman & Pullman, 1997).

5.4.10. Historic Places Act 1993

Under this Act any Maori may apply for registration of a waahi tapu area (includes land of social, spiritual, cultural or historical significance to Maori). Once a historic place is proposed for registration, it is protected on an interim basis as if a heritage order were in place. This allows for the Trust to apply for a Heritage Order. These provisions also provide a link to the RMA, in that once a site is registered, the Historic Places Trust becomes an affected party and must be notified in any consents process, management or decision-making [s.22(2)(c)]. Other protection mechanisms for waahi tapu include the *Maori Affairs Act 1953* provisions where the Maori Land Court appoints trustees for the protection of *"sites of cultural value"*. However, most of these protection mechanisms are not applicable to rivers. This may be due to the loophole in the legislation relating to the the bed and banks of rivers. This issue remains despite the 1987 Conference of the Historic Places Trust, where the Maori Advisory Committee[182] noted that it was increasingly dealing with archaeological and traditional sites (Allen, 1988):

> "The committee wanted greater liason with the Archaeology Committee so that Maori groups would know what was happening to sites in their area and could become part of the decision-making process. The wish was expressed that the Historic Places Trust Act be amended so that traditional sites would have the same status as archaeological sites, and so that Maori groups would be able to have input through the Maori advisory committee" (New Zealand Historic Places Trust, 1987; cited in Allen, 1988).

Similar thoughts have been echoed by Young (1988), stating "every tribe has such treasures, but even today they may not wish to expose them to the scrutiny of an Historic Places Trust Committee, let alone the public". However, despite these issues being addressed by an amendment to the Act in 1993, Maori still voice concern that there is inadequate protection (and control) mechanisms available to Maori in the protection of waahi tapu, even more so when combined with protection of a water body. This is despite there being around 40 statutory and planning mechanisms for protection of archaeological and waahi tapu sites, such as covenants, consent notice conditions and Land Information Memorandums.[183]

5.4.11. Waitangi Tribunal - "Treaty of Waitangi Act, 1975, 1985"

The significance of the Treaty of Waitangi Act can not be underestimated. From the point of environmental management, the Tribunal can be particularly creative in that it can take into account: a) cultural and spiritual values; b) alternative technological and environmental options;

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[182] Now the Maori Heritage Council.

[183] These issues have been expressed by Dave Robson, Historic Places Trust (Forbes *pers. comm.*).

c) comparitive costings; and d) alternative proposals which are mostly precluded from examination in environmental and planning legislation because they are outside the purview of vested legal rights. In the past, the Waitangi Tribunal has shown an ability to work in a bicultural manner, respecting both European and Maori world views. However, despite such recommendations tangata whenua have not been accorded any management control.[184] Consequently, without recognition of their rangatiratanga, tangata whenua cannot exercise their kaitiakitanga.

5.4.12. Section 30 Te Ture Whenua Maori Act - "Recogniton and Representation"

Section 30 of Te Ture Whenua Maori empowers the Maori Land Court to determine the most appropriate representatives of particular groups of Maori who are affected by proceedings or who are involved in negotiations, consultations, allocation or "other matters". This new power reflects the increasing importance that issues of recognition and representation have assumed as Maori strive to be involved as Treaty partners, with both local and central government (Mikaere, 1995). However, these powers would only be used if there is a major disagreement between iwi groups about the management and control of certain areas and resources such as the Kaituna River.

5.4.13. Kaitiaki Models for Resource Management

In the Auckland Regional Council's Proposed Coastal Plan (1995) 'Tangata Whenua Management Areas' have been set aside in the Manukau Harbour at Whaapaka Creek and Pukaki-Waiokauri Creek. Both of these areas have been established as Maori Reservations under the Te Ture Whnua Maori Act 1993 for the purpose of a place of significance for the common use and benefit of Whatapaka Marae and for hapu of Te Akitai and Te Ahiwaru o Waiohua, respectively:

> "The local Tangata Whenua are Kaitiaki of the lands in question, and have maintained the natural and ecological values over several centuries, despite significant development pressures over the last century. These Tangata Whenua Management Areas recognise this, and the customary rights, responsibilities, and relationships of the Tangata Whenua with their ancestral taonga." (Proposed Auckland Regional Council Coastal Plan (1995))

Minhinnick (1989) states that, given the opportunity, kaitiaki can achieve resource management objectives by a partnership arrangement while still recognising the mana of tangata whenua:

> "Acknowledging, giving recognition to and returning power to existing kaitiaki structures must be based on trust: Trust that the Maori tribal system has methods of dealing with its own people; Trust that Maori tribal system is at one with the lands, waters, the fisheries, the air and all that nature provides; Trust that the Maori tribal system is alive and well." (Minhinnick , 1989)

Consequently, Minhinnick suggests the following functions and role of kaitiaki:

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[184] For example despite the recommendations of the Waitangi Tribunal in the 1984 Kaituna Claim, Ngati Pikiao have not been accorded their status as kaitiaki. These issues will be investigated in greater detail in Chapter 6.

- to administer resource legislation in partnership with existing local authorities;
- to develop and implement programmes to restore damaged ecological systems, to restore balance and harmony;
- to declare tapu (in consultation with kaumatua);
- to apply, lift or remove rahui where necessary;
- to develop guidelines for fisheries wherever stocks may be plentiful to ensure conservation;
- to establish guidelines and policies for commercial endeavours;
- to establish a list of all users of the natural resource and develop liaison with them; and
- to develop education programmes, which explore the harmonious relationships of all taonga (e.g. land, fisheries, forests, water, air, animals, life and people).

Iwi expressions of kaitiakitanga and tino rangatiratanga may be best incorporated into local authorities through the development of iwi resource management plans by iwi, as discussed previously.

5.5. LIMITATIONS WITH STATUTORY PARTICIPATION MECHANISMS

While there are no legal impediments to establishing a range of Maori resource management initiatives, very few have been set up. This has been particularly demonstrated by the s.33 provisions dealing with the transfer of powers to iwi. Consequently, the current management approach is working to the exclusion of Maori cultural, spiritual and traditional values. This illustrates the need for other structures to be implemented in our resource management legislation to deal with Maori aspirations, particularly in politically contentious resource-use conflict situations such as that represented by the Kaituna River. There is a need, therefore, for the Crown to review its current statutory approach and establish a range of structures for power-sharing and co-management. The next section investigates this issue by analysing some of the various non-statutory mechanisms presently being utilised between the Crown and Maori to facilitate and implement partnership arrangements.

5.6. AN ANALYSIS OF NON-STATUTORY PARTICIPATORY MECHANISMS FOR IMPLEMENTING KAITIAKITANGA

Increasingly, management agencies in New Zealand are favouring voluntary, informal agreements with specific community groups and iwi to promote more effective resource management. These initiatives are wide-ranging and have been successfully implemented in a range of resource management situations throughout New Zealand. This section analyses the more recent and successful initiatives as they could potentially relate to water and waahi tapu management at the Kaituna River.

5.6.1. Charters of Understanding/Deeds of Agreement

Hewison, in a recent study[185], established that the negotiation of formal written agreements provides the best way to formalise constitutional relationships between itself and tangata whenua[186]. Hewison's report stated that the following points are particularly significant in developing any written instrument:

- there will be at least two parties to the instrument - council and Maori. It seems important that council ensure the Maori party/parties to the instrument are adequately resourced throughout any negotiations;
- consideration should be had at the outset about whether council is seeking to negotiate a broad instrument encompassing an overall relationship with tangata whenua, or a more limited instrument relating to particular activities (such as resource management, representation or consultation);
- council should determine whether the instrument is to be considered legally binding;
- council should examine whether the instrument should be in English, Maori or both languages;
- where council is seeking to establish relationships with more than one Maori party, there might be consideration about whether to establish one written instrument for all Maori parties or separate distinct instruments; and
- there is a need for further clarification of local government's constitutional relationship with Maori.

5.6.2. Department of Conservation initiatives

Under the Conservation Act, the Department of Conservation manages thirty per cent of the area of the country as well as advocates the protection of natural and historic resources anywhere in New Zealand. This must be done within the spirit of the Treaty of Waitangi; in effect, by forging partnerships with the iwi of New Zealand[187]. This relationship is explicitly required by the injunction of s.4 of the Conservation Act - that it *"...shall so be interpreted and administered as to give effect to the principles of the Treaty of Waitangi"*. Accordingly, DOC has been developing initiatives to deal with this management relationship and their obligations as Treaty partners. Most recently, as part of the Crown's proposed settlement with Ngai Tahu, protocols have been developed on how the Department of Conservation and Ngai Tahu will work together on specified matters of cultural significance to Ngai Tahu. These protocols cover cultural materials, historic resources, freshwater fisheries, culling of species, visitors and public information and Resource Management Act advocacy (DOC, 1997b). These protocols are a negotiated outcome intended to help build a relationship, consistent with the Treaty of Waitangi principle of partnership, between DOC and Ngai Tahu that achieves conservation policies, actions and outcomes sought by both Ngai Tahu and DOC.

Several new statutory instruments were developed during the negotiations that create a legal recognition of Ngai Tahu's special relationship with land, conservation and species and are an

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[185] Hewison, G. 1997. *Agreements between Maori and Local Authorities.* Manukau City Council, Auckland.

[186] These kinds of agreements have also been used extensively overseas between management agencies and indigenous peoples. Refer website: www.halcyon.com/FWDP/treaties.html.

[187] Molloy, L. 1993. The Interpretation of New Zealand's Natural Heritage *in Heritage Management in New Zealand and Australia.*

important part of the settlement. Topuni, Statutory Advisor, Deed of Recognition, Statutory Acknowledgement and nohoanga instruments all recognise and formalise Ngai Tahu's role, involvement in conservation management and access to resources. For example, as a legal mechanism a Topuni carries the mana and confers the authority of Ngai Tahu and places it over particular areas of conservation land, managed by DOC for the Crown. This approach ensures that Ngai Tahu values are recognised, acknowledged and provided for, however it does not override the powers and obligations of the Crown to manage and protect that land (DOC, 1997b). A Deed of Recognition aims to make sure Ngai Tahu has input into management of specified areas and is similar to a Topuni in that it also recognises Ngai Tahu's historical, spiritual, cultural or traditional associations with particular areas. Under such a Deed, there is a specific obligation to consult Ngai Tahu and have particular regard to its views in relation to the management or administration of areas (DOC, 1997b). Nohoanga entitlements give Ngai Tahu the right to camp temporarily at certain areas near rivers or lakes to access customary fishing and gathering of other natural resources like plants. These entitlements preclude public access on 210 days of the year, although they will not be located on national parks, marginal strips, nature reserves, esplanades, or scientific reserves (DOC, 1997b).

Other initiatives are also underway. For example, the Northland and Auckland DOC conservancies are currently liaising with iwi Maori in the aim of strengthening their kaitiakitanga responsibilities and satisfying their cultural requirements by formalising their role in the management of whale strandings in their tribal rohe. By acknowledging iwi rights as guaranteed by the Treaty of Waitangi and facilitating the gathering of scientific information, this protocol is intended to meet both needs by way of a partnership approach to the management of whale strandings. The protocol gives effect to the principle of partnership as expressed in Te Tiriti o Waitangi as well as enabling DOC to fulfill its s.4 Conservation Act responsibilities and assist with the conservation of cetacean species. This partnership approach is intended to encourage the reconnection and/or enforcement of traditional tikanga by interested iwi through the process of active participation at whale strandings, and by the recovery of bone from dead cetaceans. The protocol also sets out guidelines for the appropriate procedures to be followed at a stranding.

Such provisions are remedying the balance between kawanatanga and rangatiratanga responses. However, interestingly, these initiatives are only happening in partnership with Ngai Tahu. DOC has no other such protocols or policies, despite their obligations under s.4 of the Conservation Act.

5.6.3. Forums

In carrying out its s.4 requirement, Wanganui DOC conservancy has embarked on a significant step in relationship with Whanganui Iwi through the Te Ranga Forum Agreement. The

Agreement was signed by representatives of the Whanganui Iwi[188] and the Minister of Conservation in 1995, providing a forum to discuss and negotiate a range of matters which affect all Whanganui Iwi (DOC, 1997c). The Te Ranga Forum places the Treaty partners in an ideal situation to exchange ideas and to express their expectations and aspirations on how the principles of the Treaty of Waitangi should be given effect to, particularly in the administration of lands and natural and historic resources within the Wanganui DOC conservation estate and the Whanganui Iwi tribal boundaries. Importantly, the Te Ranga Forum recognises that both parties are committed to protecting the natural environment for future generations. There is clear potential for the Te Ranga Forum process to be formalised and expanded into policy guidelines and management issues in order to allow practical and progressive relationships for managing the Whanganui River and surrounding lands within the Conservation Estate.

5.6.4. Collaborative management.

> *Collaborative management is a partnership in which government agencies, local communities and resource users, non-governmental organisations and other stakeholders negotiate the authority and responsibility for the management of a specific area or set of resources.*[189]

This can also involve non-governmental organisations, local administrations, traditional authorities, research institutions, businesses, and others (Borrini-Feyerabend, 1996). Specifically, the agency with jurisdiction over the protected area develops a partnership with other relevant stakeholders which specifies and guarantees their respective functions, rights and responsibilities (Borrini-Feyerabend, 1996). First among all, these groups include the communities who live within or close to protected areas and, in particular, derive their income from their natural resources. They also include the people who possess knowledge, capacities and aspirations that are relevant for the management of these communities and the people who recognise, in the protected area, unique cultural, religious or recreational values. Many such communities possess customary rights over the protected territories and resources, although official recognition of those rights may be uncertain or nil (Borrini-Feyerabend, 1996). Generally a collaborative management partnership identifies:

- a protected territory (or set of resources) and its boundaries;
- the range of functions and sustainable uses it can provide;
- the recognised stakeholders in the protected area;
- the functions and responsibilities assumed by each stakeholder;
- the specific benefits and rights granted to each stakeholder;
- an agreed set of management priorities and a management plan;

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[188] The Iwi Liaison Group consists of mandated representatives from Tamaupoko, Hinengakau, Tupoho, Ngati Rangi, Ngati Kurawhatia (Pipiriki Incorporation), Mana Whenua and the Whanganui River Maori Trust Board. Opportunity for Tamahaki to participate within the group remains open.

[189] IUCN. 1997. *Ecosystem Management: Lessons from around the world.* A guide for World Bank Managers and Development Practitioners. The World Conservation Union , February 1997.

- procedures for dealing with conflicts and negotiating collective decisions about all of the above;
- procedures for enforcing such decisions; and
- specific rules for monitoring, evaluating and reviewing the partnership agreement, and the relative management plan, as appropriate (after Borrini-Feyerabend, 1996).

Pinkerton (1993) explains that collaborative management usually develops around common pool or common property resources because these are vulnerable to over-exploitation by private individuals, by large corporations and by state agencies under the influence of either of the former. The Kaituna River situation reflects this relationship well and illustrates the need for a specific approach to collaborative management given New Zealand's Western-based institutional mindset and socio-economic make-up, consisting of almost fully integrated residential populations of Maori and non-Maori. Exemplifying this, Borrini-Feyerabend (1996) states that collaborative management processes and agreements are *"...tailored to fit the unique needs and opportunities of each context. Approaches to stakeholder participation in different [natural resources] need to fit their specific historical and socio-political contexts and cannot be appreciated outside of such contexts"*. Collaborative management partnerships are also particularly appropriate when one or more of the following situations apply:

- the local stakeholders have historically enjoyed customary/legal rights over the territory at stake;
- local interests are strongly affected by the way in which the protected area is managed;
- the decisions to be take are complex and highly controversial (e.g. different values need to be harmonised or there is disagreement on the ownership status of the land or natural resources);
- the agency's previous management has clearly failed to produce the expected results;
- the various stakeholders are ready to collaborate and request to do so;
- there is ample time to negotiate.

The Kaituna River situation illustrates all of the above, hence its applicability for establishing co-management structures as a viable and effective option.[190] Pollock and Horsley (1997) state that it must be recognised that the practice of preparing and implementing collaborative management agreements should take place at a level which is based on the particular ecosystem or area concerned, and which actively seeks the involvement of all major interest groups connected with the area. This happens when the agency with jurisdiction over the protected area develops a partnership with other relevant stakeholders which specifies and guarantees their respective functions, rights and responsibilities with regard to the protected area (Borrini-Feyerabend, 1996). This will mean that local government, Maori and community interest groups need to work together to provide amicable solutions to the Kaituna Issue. The nature of a collaborative management agreement will inevitably depend on the ongoing commitment of the players involved and will obviously be dynamic as the health of the resource and the understanding, respect and co-operation between the players develops and evolves (Sunde, 1996).

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[190] Collaborations of a range of stakeholders within a collaborative management arrangement, as a viable and effective option for the Kaituna River, will be examined n Chapter 7.

5.7. LIMITATIONS WITH NON-STATUTORY PARTICIPATORY MECHANISMS

Despite having the potential to facilitate Maori participation in the resource management decision-making arena, there remains an important issue as to whether these instruments are legally binding. Most of these formal written instruments, such as Charters of Understanding, are drafted in a manner that would make their obligations difficult to legally enforce, although they often contain the elements necessary for them to be considered deeds or contracts (Hewison, 1997). Similar issues have been identified by Matunga (1997) with respect to iwi management plans produced under the RMA, especially given the extensive resources and time taken to establish these documents and facilitate them in the planning and decision-making process.

This issue is made further problematic with respect to DOC's role in resource management. The first problem is related to a lack of statutory recognition, under the *Conservation Act 1987*, for DOC conservancies to have regard to iwi planning documents and other non-statutory mechanisms for partnership and participation. This issue is compounded by the Conservation Act's s.4 requirements which, despite being the strongest legally, contain no explicit references to participatory mechanisms and structures. Similarly, the distinction between political relationships within DOC is having a significant effect on conflicting resource management issues between iwi and the Crown, and in particular, between DOC's operational role and the broader relationship of tino rangatiratanga. Such issues can be seen at the Kaituna River where, despite underlying difficulties of ownership, management and control not being adequately resolved, DOC must meet their statutory obligations whilst at the same time protecting their relationships with Ngati Pikiao.[191]

5.8. SUMMARY - THE IMPLICATIONS FOR THE SUSTAINABILITY DEBATE

While collaborative management ideas are still in their infancy, they are being explored around the planet because of their importance for achieving sustainable management and resolving conflicting resource management situations. As New Zealand's judicial system and the political framework for decision-making (and legislation) largely reflects these pressing global issues and those key values of the majority of New Zealanders (predominantly European-Pakeha), recent case law and legislation can be used as a measure for establishing these values and priorities. Given the recent statutory response to this legislation, it seems that sustainability will continue to be the overarching priority in resource management policy.[192] Therefore, in terms of the implications of these values and responses to the sustainability debate, the judicial response is that sustainability overrides all these other issues - the "New Zealand response". This is reflected in the structure of both the RMA and the Conservation Act which give the environment and sustainability priority

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[191] Chapter 6 investigates these issues in greater detail through a discussion of the situation at the Kaituna River.

[192] Part II of the RMA can therefore be said to be a hierarchical representation of these values and priorities.

over other values and concerns.[193]

This approach, where sustainable management is only being achieved when Maori cultural and spiritual values are taken into account, often leads to conflict despite case law to the contrary and the recommendations of the Waitangi Tribunal. This issue of maintaining and enhancing environmental quality is not easy if environmental law allows a major trade-off between environmental quality and development. The RMA recognises this in an ecosystem-based approach to sustainable resource management where environmental limits are set through specifying duties and responsibilities and the duty to avoid, remedy or mitigate adverse effects on the environment. It is with these issues in mind that the RMA has empowered local authorities to consider and incorporate Maori interests in ways which will help avoid future grievances. It remains to be seen whether the RMA and other statutory provisions relating to Maori and their relationship with the natural environment are being actively recognised and implemented in legislative and management systems.

Despite allowing for consultation and participation in law and resource management decision-making, there is still Maori discontent over the inability to fully express their cultural aspirations and values. This extent to which this issue is being addressed and implemented will be analysed specifically in the next chapter - a case study of the Kaituna River. This chapter investigates the situation at the Kaituna River which, in recent years, has been the site of escalating resource use conflicts between Crown management agencies, commercial rafting operators and Maori (who are pressing for their Treaty rights, their rangatiratanga and the exercise of their kaitiakitanga). Statutory policies in place between the various management agencies as well as Ngati Pikiao's management policies are investigated in terms of how they provide for kaitiakitanga and ultimately the physical, cultural and spiritual well-being of the Kaituna River.

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[193]These Acts represent the major legislative systems with regard to the Kaituna issue and this thesis.

CHAPTER 6

THE KAITUNA (OKERE[194]) RIVER AND KAITIAKITANGA: A CASE STUDY

Waiata mo Ngati Hinerangi.[195]

E kore a Ngati Hinerangi e ruia e au he hapai rakau
I can never elevate Ngati Hinerangi to the likes of a tall tree.

Tenei rawa te mamae kai roto ia hau
The anxiety within me of the sadness

E Karanga tia ana e Aka kia ora
and the acknowledgement towards Aka

Huri hia iho ra ite tini o kino
The battles and skirmishes of the past

E ngari nga toi toi tiaki ote Awa ki Okere ra
They are like the fish (cock-a-bullies) of the Okere River

Ka kite ra koe ite Kiri Kahurangi
Of a light coloured stone

Eh hohoro mai Hinerangi ki konei
From under came the Hinerangi people

Eh paheke nei aku toto he, waitohi, mauri noa, Kawiti te kai a Here here
My blood runs of the charm repeated before battle, my life source, but woe I am a prisoner of Kawiti

Ma wai e kai atu me whaka poutuki I roto I ahau
I wonder who would be feasted, it shudders me

Ite wai roro e o Ngati Pukenga e noho mai ra
Of Ngati Pukenga at home

Eh whaka kii ki ana, kai raro nei e, kai aku hui nga
But some one is always instigating reprisals

Herenga tiki tiki no ngaro pa atu kino e.
But to no use for my girdle was lost in battle.

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[194]"Only a small part of the river is called Kaituna. From the source of the river at Lake Rotoiti to Kohangakaeaea about 12 kilometres along the river, it is known as Te Awa O Okere. From Kohangakaeaea to Pakotore - perhaps another 12 kilometres - the river is known as the Kaituna. It is called that because this is the stretch of river legendary for the size and quantity of tuna or eels available to be fished" (High Court Affidavit - Tutewehiwehi Kingi). However, for the purposes of this thesis it is known as the Kaituna River.

[195]This waiata was specifically translated for this author by the late Koro Kawana Nepia for inclusion in this thesis.

6.1. THE SITUATION AT THE KAITUNA RIVER

6.1.1. Geographical context.

The Rotorua Lakes district and the Kaituna River are all part of one strongly interconnected water ecosystem (Figure 1), having strong cultural and spiritual connotations for Maori.[196] The Okere Falls Scenic Reserve consists of a 14 hectare area gazetted as a scenic reserve in 1974 to protect its natural and historic significance (Figure 2). Predominantly native bush, the reserve plays an important component in the natural ecosystem between the Rotorua Lakes and the Maketu estuary. The 900 metre stretch of river running through the middle of the reserve is the only major river in the region and contains important riparian vegetation which influences water quality and quantity on the down-stream environment, particularly the Maketu estuary. The landform patterns in this section of the deeply incised river gorge consists of very steep-vertical soft ignimbrite rocks and cliffs that are characterised by various water-worn caves and deep hole sections. This produces Grade 4-5 rapids and waterfalls which provide for both the rivers strong cultural and traditional values as well as the major attraction for the white-water rafting industry. The surrounding terrain is rolling to undulating and the soils are characteristic of well-drained, nutrient-enriched, highly porous volcanic loams in the Taupo-Rotorua volcanic zone (Molloy, 1988). The river is surrounded by semi-intensive pastoral farming on both sides of the river.

6.1.2. Social, cultural and traditional context.

Long and intensely settled and battled over, this area was traditionally very important to Ngati Pikiao of Te Arawa. The most important stretch of the river reserve contains important *waahi tapu* and *urupa* sacred to Ngati Pikiao (Figure 7). In times of warfare, Ngati Pikiao would lower their women and children and elderly into these impenetrable caves until their menfolk returned. The caves were also used as storage for the bodies of ancestors and by warriors to wash themselves of the blood from battles (Nepia *pers. comm.*). Ngati Pikiao successfully held *ahi ka* status over this area for many generations (Stafford, 1996) until 1899 when the land was taken under the Public Works Act 1894. This confiscation led to the bodies of Ngati Pikiao being interred to other sites in the area (Stafford, 1996) and has resulted in major conflict with respect to ownership and management of both the reserve and the river. Despite the Waitangi Tribunal's recent confirmation of Ngati Pikiao's traditional status as kaitiaki over the Kaituna River in the 1984 Kaituna Claim, there remains conflicting interests between a section of Ngati Pikiao, statutory agencies, recreational users and commercial operators with respect to commercial rafting impacting on the spiritual and cultural values of this section of the river.

The reserve is also very significant in terms of European history and was protected for tourism in its "natural state" as one of the regions earliest tourist attractions. This commenced in the late

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[196] The territory to Maori is shaped like a *taha* (gourd or calabash). The wide interior lands of the volcanic plateau are the body, with the neck being the Kaituna River running down to Maketu estuary (Wai. 4 para. 3.2).

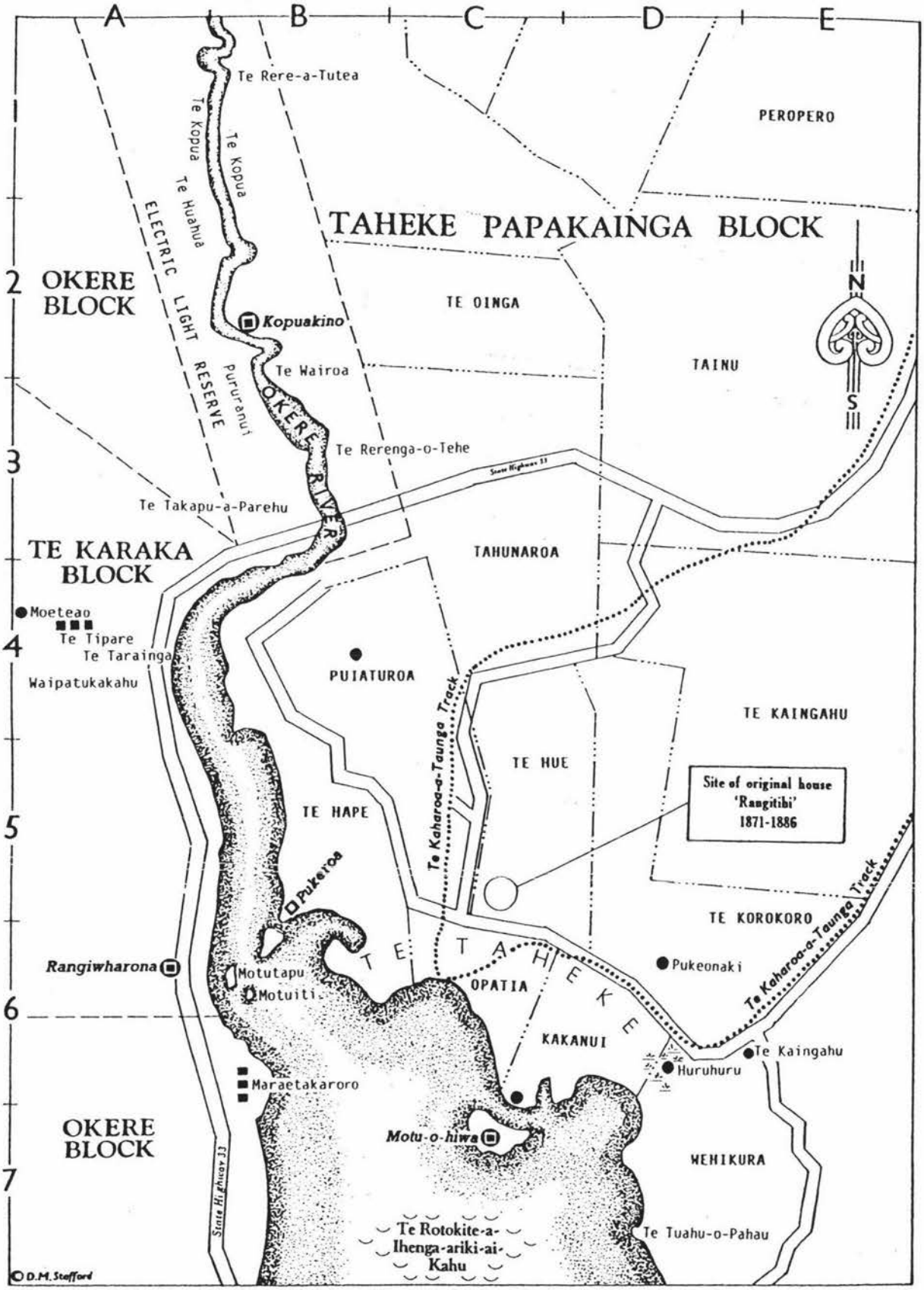

Figure 7. Traditional map of Taheke- Papakainga block illustrating Ngati Pikiao's traditional sites in relation to the Kaituna River.

1890's when the caves were opened up, through the creation of access steps, and turned into a major tourist destination - Hinemoa's Steps. However, the major social facet is the river and the reserve's recreational potential which attracts around 60,000 visitors per year.[197] The major recreational usage is "eco-tourism" - in particular white-water rafting[198] - with up to eighty people being put through daily in peak season by each of the five main rafting companies (Daily Post, 22/3/94). These figures are expected to increase rapidly over the next few years.[199] Associated with the commercial operations are the indirect effects such as people observing the rafting, taking photographs and using the tracks and associated infrastructure. It also has a high usage from fishermen[200] and local residents, particularly in summer months when commercial activity is at its peak.

6.1.3. Economic context.

Currently, some of the major rafting companies are earning up to $200,000 in the summer months of operation alone (Morgan *pers. comm.*). There is also considerable indirect revenue generated for the tourist-associated industry such as accommodation, transportation and local business. The rafting sector at the Kaituna employs at least 80 people with some companies being totally dependant on the river (Caudwell, 1994). Consequently, the Kaituna River is important for the local community in terms of revenue from rafting boosting the local economy. However, there has been a problem as to who profits from rafting - currently DOC get concession money[201] with a small financial contribution to the Lake Rotoiti Scenic Reserves Board and Ngati Pikiao. However, the majority of Ngati Pikiao feel that this arrangement is inadequate (Morgan, *pers. comm.*). The river also provides a lot of traditional resources for the local community and Ngati Pikiao.[202] Traditionally these have been gathered according to local practices (Nepia *pers. comm.*). However, commercial rafting has impacted on these resources and the availability of fishing spots to both recreational users and local commercial fishing guides. The river also has a high development pressure for hydro-electricity generation as one of Rotorua's only major rivers.

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[197] According to the latest surveys by Bob Neale, DOC recreation development officer (Daily Post, 3/8/96).

[198] The seven metre high waterfall rafted in this section of the Grade 5 river is, according to legend, the highest commercially rafted waterfall in the world (Allison, 1995).

[199] Tourism Rotorua predicts tourist numbers to New Zealand to rise to 3 million per annum by the year 2000. Based on current figures, Rotorua is expected to get 40 percent of this number. This has huge implications for high-usage areas such as the Kaituna River.

[200] The Kaituna River is renowned for its trout fishing and bird life (Department of Conservation Publication 1995; Clarkson & King, 1987) and is one of the Rotorua regions highest usage recreational fishing locations.

[201] This issue as to who should profit from concessions has led to conflict both at the Kaituna and more recently on the Whanganui River.

[202] These resources include *kie kie* (native flax-like plant used for weaving), *tuna* (freshwater eels), *koura* (freshwater crayfish), freshwater mussels, trout and the native shag. These resources are used for various activities ranging from personal consumption to marae-based usage.

6.1.4. Natural character.

The majority of the reserve consists of *rewarewa/kamahi* forest, with *kamahi* more prominent on the ridge and rewarewa in the valleys, whilst the northern end of the reserve is predominantly *tawa/pukatea* forest. The latter is an important remnant of the original forest cover prior to modification of the area by Maori fires (Nicholls, 1966 *cited in* Clarkson & King, 1987). Consequently, this section of the reserve provides the only extensive area of unmodified natural vegetation along the Kaituna River and is characteristic of vegetation succession relating to volcanic destruction and disturbance within historic times. This type of vegetation is unique to New Zealand and is therefore of national significance. Within the context of a national reserves network, these representative areas are the vegetation features which deserve priority for preservation. This biologically diverse and fragile area is very sensitive to excessive visitation. In terms of fauna, this stretch of the Kaituna was previously one of the only nesting habitats of the endemic black shag (*Phalacrocorax melanoleucos*) in New Zealand.[203] Since the onset of commercial rafting the shag colony has abandoned the trees on the steep sides of the gorge and moved to Lake Rotoiti where the species is much more at risk and more frequently disturbed due to its proximity to recreational lake users. Prior to rafting, this nesting colony of shags provided the major tourist attraction for the area (Daily Post, 22/3/94). The Kaituna also acts as an important corridor for various bird species between both the estuary and the Rotorua lakes and various other patches of native forest. Due to its isolation from other large forest areas, the area is also currently free of possums and other pest species.[204] Therefore, the main value of this reserve is scenic and recreational enhanced by the native vegetation which is of special botanical significance.

In the wake of the Kaituna Claim, the passing of the RMA and its inclusion of kaitiakitanga as a matter of national importance, this section of the thesis investigates kaitiakitanga in the context of white-water rafting - "eco-tourism" - and commercial profits.

6.2. THE ISSUES BEARING IN THE KAITUNA RIVER SITUATION[205]

6.2.1. Ngati Pikiao as a land/water interface people

The Rotorua Lakes district and the Kaituna River are all part of one strongly interconnected water ecosystem, having strong cultural and spiritual connotations for the iwi who are its tangata whenua. The condition of the state of water is a reflection on the state of the land, and this in turn is a reflection of the health of the tangata whenua (James, 1993). Waita Mo Ngati Hinerangi illustrates the importance of the Kaituna to the very existence of Ngati Pikiao. The River and the

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[203] And perhaps the largest nesting colony in New Zealand (Park *pers. comm.* 1997).

[204] Including plant species such as *Clematis vitalba*, spindle berry, willows, wild ginger, honeysuckle.

[205] Appendix 8 outlines a synopsis of events leading to the current situation on the Kaituna River.

resources it supported determined the siting of their *kaaika*, their identity, and the rhythm of their lives (Palmer & Goodall, 1988). It is within this immediate, intimate and productive interface of land and water - *te akau*, also, that the philosophical and ideological struggle between Maori and the Crown has been shaped.

The occurrence of valued resources such as *tuna*, *shags* and *kie kie* determined the positions of Ngati Pikiao's settlements along the Kaituna River. Accordingly, the traditional values and controls regarding water are all included in Ngati Pikiao's spiritual beliefs and practices. This recognises and reinforces the absolute importance of water quality in relation to both *mahinga-kai* and hygiene. Water is therefore sacred as life and Ngati Pikiao, as a tribal unit, act as kaitiaki over the Kaituna River and ensure that its use is consistent with tribal laws. Marsden (1989) states:

> *"Water and associated resources confirm life to man and thereby form a basis for his identification, his belonging, his mana".*

6.2.2. Ngati Pikiao and the cultural water ethic

To Maori water is seen as containing life-giving characteristics. Water in its most pure form is known as *waiora* (Ward & Scarf, 1993), and is considered to be the physical and spiritual expression of Rangi's tears as he wept for Papa-tua-nuku. Traditionally, there are five strands or categories of water, which derive from the environmental and social realities in which Maori found themselves (Ward & Scarf, 1993). These are:

Waiora - the purest form of water, like the rain. It has the potential to give life, to sustain the well-being of all things and to counteract evil. Waiora is used in sacred rituals to purify and to sanctify. It can remain pure only if contact with humans is protected by appropriate ritual prayers.

Waimaori - water that has come into contact with human beings. It has become ordinary and has no particularly sacred associations.

Waikino - can be potentially harmful in that it conceals its intention or deceives a user by its habit. This category of water may hide boulders and snags that can cause damage. In a spiritual sense, this is water that has been polluted, debased, spoilt, or corrupted.

Waimate - water that has lost its mauri or life-force. The power to rejuvenate itself or any living thing has gone; it is so damaged as to be considered dead.

Waitai - the term used for the sea, the surf and the tide. It represents the end of the water cycle from its inception through all states to the sea. From the sea, it is lifted back into the heavens and is purified to fall again as waiora.

Figure 8. Maori perceptions of water and the environment (after Douglas (1984) and Ward & Scarf (1993)).

This relationship between the health of the land and its tangata whenua was confirmed by the Waitangi Tribunal Kaituna and Mangonui Sewage Claims which established the spiritual, cultural

and economic associations Maori have with water, particularly emphasising:

- The link between water and land;
- The separateness of bodies of water, each with its own mauri or wairua;
- The spiritual associations between the environment and Maori;
- The link between the mana of a tribe and the surrounding environment; and
- The significance of Article 2 of the Treaty to environmental management[206].

For Ngati Pikiao, their intense feeling for the Kaituna River provides a basis for identification, belonging and tribal mana (Fraser, 1987). This is often expressed in the following way:

"Nga-wai-koe	*- What (water) are you?*
No-wai-koe	*- Who are you?"*[207]

In the answering of the questions posed, an image forms of the person, their area, their resources, their way of life and provides an 'unwritten postal address' (Patrick & Taylor, 1987). Subsequently, water has great spiritual significance to Ngati Pikiao as a source of physical and spiritual sustenance as well as a source of traditional food. Thus the importance of ensuring the ability of the Kaituna to produce is sustained. Ngati Pikiao recognise that the health of the general environment is largely reflected in the quality of the Kaituna River and hence it is of primary importance. The protection of the river can be linked to the following objectives: restore the mana of the iwi; plan for the long term usage of taonga; protect sensitive features of the environment; and plan for the provision of kai for the use of future generations.[208]

In terms of kaitiakitanga the Maori cultural water ethic can be summarised in a series of direct and simple statements:[209]

- water must be approached both physically and metaphysically;
- it follows therefore that origin myths and cultural beliefs for the tribal groups who are kaitiaki for that water must be heard and understood;
- it has specific guardians;
- no one owns it;
- no one has the right to pollute it;
- everyone must learn how to protect it;
- its use should benefit all;
- Maori people never yielded the right to control it;
- control decisions must move through the politics of people processes not be decided by the authority of power;
- water should ever be wasted; and
- purity should be restored through natural processes.

With respect to the Kaituna River and the Waitangi Tribunal evidence, it is very apparent that the

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[206] Durie, M. 1994. *Study Guide Two: Treaty of Waitangi in New Zealand Society.* Massey University, p.94.
[207] White *pers. comm.* 1997.
[208] Ngaa Tikanga O Ngaati Te Ata - Tribal Policy Statement 1991.
[209] After Ritchie (1990) - Bicultural Responsibilities for Stewardship in a new Environment.

mixing of human waste is a grievous wrongdoing, an act which would seriously diminish the mauri of the water, demean its wairua, and thereby affect the mana of those who use it and its resources. As a consequence, the Maori claims challenge the basic (Western) tenet of "disposal of waste to water is an appropriate and valid use of that water" (Taylor & Patrick, 1987).

6.2.3. Ngati Pikiao and a sense of place

> "Sacred space is a place where human beings find a manifestation of divine power, where they experience a sense of connectedness to the universe... when one asks a traditional Indian how much of the earth is sacred space? The answer is unhesitatingly all."[210]

With respect to the Kaituna River, the specifics of place and issue can only be elaborated through participation of Ngati Pikiao or the appropriate iwi, hapu or whanau concerned. Tuan (1974) suggests that "people demonstrate a sense of place when they apply their moral and aesthetic discernment to sites and locations". The outcome of such a discernment may be a feeling of attachment; a belief that a place is, in some way, personally meaningful (Keelan, 1993). To Ngati Pikiao, who for generations have held *ahi ka* status over this area, their relationship with place is very important. The Kaituna River portrays their interconnectedness with the land. If these values are trampled on or lost so is this relationship and Ngati Pikiao's territorial roots. Current commercialisation of the river is threatening this and ultimately short-term economic gains are impacting on Ngati Pikiao's tribal identity (memory and history accumulated over 1000 years of occupation). A similar relationship exists with many local non-Maori who have been associated with the area for many generations - the memories and experiences that are an expression of their personal values and history. These are essentially spiritual values (Suzuki, 1996). Consequently, the management and interpretation of heritage landscapes should reflect the full spectrum of possible values relevant to each specific context (Kirby, 1993).

Thus, it becomes increasingly clear that heritage sites such as the Kaituna, are not a single, unified concept, applicable only in the national context and at a national scale. Rather, they are strong indicators of local communitys' sense of identity, thus serving to separate them from other communities (Kirby, 1993). Hence the importance to acknowledge that although traditionally Maori identify strongly with their land, Pakeha feel deeply too, and that what was significant is sense of place - a culturally determined concept. Although non-Maori do not express themselves as intensely, there are nevertheless some strong expressions of identity and belonging to the Kaituna River.

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[210] Hughes & Swan (1986) *cited in* Keelan (1993).

6.2.4. Ngati Pikiao as kaitiaki - the historical situation

"Ehara taku toa I te toa takitahi engari he toa Takitini."
"Individual rights and claims subjugated to the common cause - Unity is our Strength."

The Kaituna River is a site of significant Maori values. It is an important part of the larger ecological and social system, and part of the health, unity and identity of Te Arawa (Cant, 1996). It is the traditional river of Ngati Pikiao, a sub-tribe of Te Arawa, who have made their home here for many years. Because the Kaituna provided a rich source of eels, birds and other products, ownership and rights were jealously guarded and disagreements were frequent (Stafford, 1996). For Ngati Pikiao[211] to retain their status of *ahi ka* over the river and its resources was considered imperative and became a major part of their lives. However, this was placed in jeopardy in the late 1870's when Ngati Pikiao were subjected to a new pressure that their inland location had shielded them from during the unrest of the previous decades. This was the gradual development of a tourist industry - a period when visitors from all over the world clamoured to view the wonders of the pink and white terraces, the thermal areas and the lakes and forests of the Rotorua district, as illustrated in the preamble to the Thermal Springs District Act:

> *"It would be advantageous to the colony, and beneficial to the Maori owners of the land in which natural mineral springs and thermal water exist, that such localities should be opened to colonisation and made available for settlement..." (Te Arawa Trust Board, 1974).*

It was in this period that the Arawa people were experiencing a time of disillusionment and doubt concerning just what their rights were in respect of their land. The fact that concurrently Maori had reached their lowest ebb numerically and were facing constant predictions of their total demise did little to help. On the 25 of January 1899, in this depressed state and facing a future of considerable foreboding of the Pakeha, land at Okere Falls was taken by the Crown for the purposes of an Electric Light Reserve and Road Reservation under s.92 of the Public Works Act 1894.[212] A burial cave named Te Huahua was situated at the point where excavations began for construction of the generator house beside the river. This was the site where Mango and his descendants down to Huiterangiora had been interred (Stafford, 1996). The intention was "to compensate the natives".[213] As a result, in 1922, the Okere Falls Scenic Reserve on the Kaituna River was formally gifted by Ngati Pikiao to the Crown in order to ensure the protection of these

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[211] Ngati Pikiao, one of the sub-tribes of the Tamatekapua sector of Te Arawa, are tangata whenua of the land contained within the following boundaries: "From Te Tumu in the west, stretching eastward to Pikowai and heading inland along the Waimimiha Stream extending to the west of Lake Rotoma and encompassing Lakes Rotoma, Rotoehu, Rotoiti and a section of Lake Rotorua and advancing along the Hururu stream up the Kaituna River, and down the Kaituna Estuary and back along the coast to Te Tumu." (Te Roopu Mahi Rangahau a Te Runanga o Ngati Pikiao. 1997).

[212] The land taken was known as the Part Te Taheke Block No. 5516 (Refer Appendix 9). There was apparently some dispute regarding the validity of this action, and special legislation was put through under the Rotoiti Validation Act 1909 (No.33) This Act also provided for the payment of certain compensation for the lands taken (Department of Industries and Commerce, Tourist and Publicity, Rotorua - 10/11/1938).

[213] Letter from the Department of lands and Survey, Wellington, to the Acting Superintendent, Department of Tourist and Health Resorts, Wellington (1/12/1904). *National Archives, Wellington.*

waahi tapu areas and reserves.[214] The gift was made on the condition that only Ngati Pikiao men were to be allowed on the Rotoiti Scenic Reserves Board.[215] However, in January 1942 the New Zealand Gazette formally declared this land as "taken for a Government work and not required for that purpose to be Crown land". This led to the land being used for other purposes and Ngati Pikiao receiving a minimal figure of compensation.

6.2.5. The 1984 Kaituna Claim

The Kaituna claim is representative of those grievances and injustices suffered by the Maori which started almost as soon as the Treaty of Waitangi was signed in 1840 (Fraser, 1987). It was not until the 1970's that Maori rights gained a sufficiently strong and unified voice to carry over a blithely ignorant Pakeha population (Sorrenson, 1981: Fraser, 1987). The background to the Kaituna conflict came to the public eye in 1982 when Ngati Pikiao and Te Arawa Maori argued that a sewage discharge proposal from Rotorua into the Kaituna River was not only contrary to the principles of the Treaty of Waitangi but also in direct contravention to their spiritual, cultural and traditional values. For Maori of this area the Kaituna River was considered to be spiritually and culturally sacred. The late Ngati Pikiao kaumatua Mr Stanley Tetekura Newton, speaking on behalf of the Te Arawa Trust Board in respect of the sewage proposal and the effect it would have on Ngati Pikiao, stated:

> "Along the sheer cliffs of the river are many caverns and these caverns have been used by my ancestors in pre-European times as burial grounds for their dead. The more accessible of these have been declared Maori Reserves or Urupa, but there are many more unidentified on our modern maps of which nature has secreted into her fold of vine, fern and tree. It is interesting to mention here that one of those huge caverns contains a lake of warm water with an island in the centre forming a hallowed depository for the numerous remains of our ancestors; and there have been many more of those caves and secret places along the river.
>
> The Kaituna River has been and will always be the food bowl of the Arawa people and of the nation. Eels abound in great numbers and the harvest is continuous.... why pollute and despoil it with our own human waste. The idea is absolutely abhorrent. The Maori concept of such a thing is catastrophic and the resultant impact would be almost indescribable. Historically it is damnable to our mana and prestige. Culturally it would be a curse on my tribe the Ngati Pikiao for ever and ever.
>
> Of the traditional chants, in waita, pokeka and oriori and the songs of this most enchanted of all sacred rivers, I shudder in lament. My grief is likened to tear-drops over the dead; my speech is incoherent, my mana, my rangatiratanga has been shattered. I am not able to parry this onslaught with taiaha or mere; with a kotiate or a koikoi. My only weapon is the pakeha pen, which I am

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[214] The Okere Falls Scenic Reserve was one of many parcels of land within Ngati Pikiao rohe 'gifted' at the time of the creation of the Te Arawa Maori Trust Board under the Arawa District Lakes legislation, 1922, a provision of the Native Land Amendment and Native Claims Adjustment Act, 1922 (Te Arawa Maori Trust Board, 1974). This Act lead to the establishment of the Lake Rotoiti Scenic Reserves Board.

[215] In practice this has changed over time. In spite of its membership, the Rotoiti Scenic Reserves Board does not solely represent Ngati Pikiao. It is subject to the Scenic Reserves Board legislation, and therefore represents the views of the Crown, not the iwi.

> using to express the torture which is within me; eating at the very root of my conscience, my hinengaro..." [Mr Stan Newton in an objection to Water Right 904/1 and 904/3].

Mr Tamati Wharehuia, kaumatua of Ngati Pikiao stated:

> "I want to express my objection to the discharging of effluent into the Kaituna River... such effluent would destroy our food resources... I cherish the supplies of flora down the river and the location of our urupa along its banks... we cherish our urupa and the dear ones who lie there" (oral evidence in Maori and translated, 24th July).

Mr Te Irirangi Te Pou o Uruika Tiakiawa, Ngati Pikiao kaumatua:

> "...we own this river, we have always owned it, we have never really surrended ownership that authorities do as they please" (oral evidence in Maori, translated 25th July).

The late Mr Kawana Nepia (*pers. comm.*) also expressed similar feelings to this author with respect to the importance of Te-Rere-a-Tutea[216] to Ngati Pikiao and the importance of the river's immediate protection through kaitiakitanga. Mr Nepia told me of his ancestors coming to this section of the river to wash themselves of the blood from battles, and the use of these caves for the storage of the bodies of ancestors:

> Mata Morehu spoke with deep emotion of the place called Te-Wai-I-rangi, a stretch of the water near to where the discharge is to take place as the pipeline was planned. This spot on the river (a lovely clear pool from which the river flows on into a green tunnel of vegetation) was, he said, the place "where my ancestors returning from battle would go to the water and rid themselves of the tapu upon them after the bloodshed of warfare". He went on to speak of the burial caves that line the river in the steep gorges through which it runs, all of which are sacred places to the Ngati Pikiao. The silence in the meeting house as he spoke showed the close attention which all present, Maori and European alike, paid to his words [Wai 4 ch. 3.17].

Consequently, since the 1970's, there has been an increasing conflict in terms of the rivers management and ownership, during which time there have been recent legislative attempts to address such inconsistencies. This has worsened considerably in the last five years with the commercialisation of the river for rafting purposes,[217] the extent of which has lead to significant ecological changes to the largely unspoilt river gorge ecosystem, an area which had been enjoyed as a scenic attraction by passive recreationalists and visitors for many years. These issues have been compounded by the conflicting legislation in terms of jurisdiction over the river. For example, DOC has clarified that the Lake Rotoiti Scenic Reserves Board has been appointed to control and manage the scenic reserve at Okere Falls, which "extends along both banks of the river and includes the *bed and banks of the river*". The previous Bay of Plenty regional conservator, Mr David Field, has stated that the department's legal advice was that the river bed and water were part of the reserve and therefore subject to control through the Reserves Board.

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[216] The upper section of Okere Falls at the site of the Tutea caves (Kawana Nepia *pers. comm.*;Stafford, 1996).

[217] Most recently, there have been over nine rafting companies vying for position on this section of the Kaituna River.

However, Tarawera MP Max Bradford states that, "...the approach taken by DOC and the Reserves Board suggests they are assuming they own both the river and water and therefore have control over who does what".[218]

Despite the most recent environmental reform under the Resource Management Act 1991,[219] there is continued conflict over the water resource of the Kaituna River due to the competing interests of all parties. This confrontation and conflict has resulted in a hardening of attitudes and the strengthening of resolves for all parties involved to have their own way, including the idea that the river is a public resource[220] and available for commercial exploitation. Because of this conflict, Ngati Pikiao have attempted to establish kaitiakitanga status in the hope of constraining the deterioration of the cultural and spiritual values of the Kaituna River. However, a lack of recognition of their rangatiratanga and thus their kaitiakitanga is partly why the present management system under the Lake Rotoiti Scenic Reserves Board has not worked adequately for Ngati Pikiao.

6.2.6. Connection, ownership and control of resources

Of primary importance in pre-European times was the "ownership" and control of resources. Because of the Maori connection to land as part of the holism of their traditional ethic, the Maori "ownership" relationship derived from "whenua" and was vastly different to the notions of "land" and "property" enshrined in the Western "ownership" tenet. These resources determined the tribe's welfare in the physical, economic and spiritual sense (Palmer & Goodall, 1988). Wars were fought and alliances were made to increase or secure these ownership rights, and areas had to be occupied and the resources used, to maintain their status as *mana whenua* and their *ahi ka* rights. Figure 7 portrays this relationship through the high concentration of pa, kainga and waahi tapu in the Taheke-Okere-Kaituna area - evidence of its value as an ecosystem. These rights were extremely valuable and were seriously defended, as illustrated by the depth and sincerety of Ngati Pikiao's waiata. To this day, concepts of ownership and control are indivisible and are central to effective resource management. Ownership includes the benefits derived from those resources, but also places a serious responsibility on Te Runanga O Ngati Pikiao to manage them for the welfare of the tribe as a whole and to ensure that they are sustained. Accordingly, strict management regimes were formed and enforced (Palmer & Goodall, 1988) with concepts of connection, ownership and control being indivisible. The Kaituna River is thus an apt example of this relationship between a resource and tribal identity.

However, successive mono-cultural, imposed legislation[221] has denied Ngati Pikiao the use of their

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[218] Daily Post Article 9/2/96.

[219] Legislation based on ecosystem sustainability and the idea of future generations.

[220] *Pers. comm.* Kepa Morgan (1997) & Dave Field (1997).

[221] Including the original taking of Ngati Pikiao land on the Kaituna River under the 1894 Public Works Act.

traditional resources and removed their authority to regulate those resources and their own tribal members. It is this which has often led to a disregard and lack of respect for current legislation. This frustration caused by lack of consultation and exclusion from administrative functions must be seen against the Crown protection and partnership principles which Ngati Pikiao believed they were securing through signing the Treaty of Waitangi.

6.2.7. The localisation of the Treaty of Waitangi on this stretch of the Kaituna River

Subsequently, the 1984 Kaituna Claim recognised Ngati Pikiao's legitimate grievance at proposed action which is inconsistent with Treaty principles. Under Article 2 of the Treaty, Maori have the right to determine the most appropriate means of protecting and managing their cultural heritage. Ngati Pikiao see kaitiakitanga as their way of exercising these fundamental rights. Implicit in these guarantees made by the Crown to Maori under the Treaty of Waitangi was the assumption that the exercise of rangatiratanga included tribal customs and practices in relation to resource management. Consultation with tangata whenua as kaitiaki is a key process for recognising rangatiratanga. Only Ngati Pikiao can adequately define the nature and role of a kaitiaki in respect of the Kaituna River. Thus, it is only Ngati Pikiao who can determine the nature and extent of kaitiakitanga in respect of their different rohe. In other words, Ngati Pikiao's stewardship for their heritage will pass on to their descendants and will be a balance between conservation and development. Ngati Pikiao's status as kaitiaki over the Kaituna River was confirmed by evidence presented by kaumatua and kuia before the Waitangi Tribunal in the 1984 Claim:

> *"In 1840 the Kaituna river was owned and had been owned for many generations by Ngati Pikiao o Te Arawa".*

This evidence intertwined people, places and resources, spelling out a deep physical and spiritual attachment to the Kaituna River, its lands and its resources (Cant, 1996). The Kaituna is a symbol of Ngati Pikiao's existence, deeply embedded in tribal and individual consciousness. Therefore, through the Waitangi Tribunal in 1984, Ngati Pikiao have established a tangible, spiritual association with the Kaituna River, and their relationship with it. Thus one might expect they should be able to gain the protection offered by s.6(e) and s.7(a) of the RMA. However, partly because Waitangi Tribunal decisions or claims do not bind the RMA process,[222] this has not been the case and the current situation on the river still reflects conflict between Maori spiritual values and the Westminster law of the dominant culture. Nga Tikanga Whakahaere Taonga o Ngati Pikiao Whanui states:

> "Despite a very positive affirmation [by the Waitangi Tribunal] of the tangata whenua status we enjoy and the responsibility of kaitiakitanga that flows from this, the Crown and its agents have

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[222] Under s.5.5(1) of the Treaty of Waitangi Act 1975 the function of the Waitangi Tribunal was to make recommendations to government after its investigations. The Tribunal did not have the power to make law, only recommend changes.

> actively canvassed against Ngati Pikiao assuming jurisdictional authority over the river and its tributaries. This has manifested itself in Crown opposition at every opportunity when the Confederation of Ngati Pikiao Iwi have attempted to seek legitimate recognition of our status in all levels of local and central government.
>
> The unique provisions [of the RMA] which enable tribal entities to assume exclusive responsibility for the management of the environment have not been supported at all by the government of its departments where the Confederation of Ngati Pikiao Iwi has sought to have these invoked as part of our tribal management plan. The most graphic illustration, which builds on recommendations from the Kaituna claim to the Waitangi Tribunal, is our application to have the [Kaituna] river made the subject of a Heritage Protection Order where Ngati Pikiao hapu/iwi would assume the exclusive responsibility for the management of the river... We witnessed political interference from all levels of local and central government with the economic ethic of exploitation winning out over the ecological ethic of conservation."

Consequently, with respect to this issue and the guidelines established in the previous chapter, Ngati Pikiao see themselves deprived of consultation amongst Environment Bay of Plenty (EBOP), the Department of Conservation (DOC) and particularly Rotorua District Council (RDC) in terms of facilities on the Kaituna River (Morgan, 1997). Perhaps if the issue of rafting had been better managed by RDC then it would not have come this far.

Ngati Pikiao kaumatua Mr Te Ariki Morehu's (*pers. comm.*) personal expression of kaitiakitanga on the Kaituna River goes deeper than guardianship, extending to the role of a protector of resources for the benefit of future generations. This characteristically expresses a greater notion of sustainability than prescribed in the RMA. It was also illustrated, with respect to the expression of kaitiakitanga, that to the majority of Pakeha, there is no properly known term that enshrines spiritual and physical danger, such as the terms embraced in tikanga Maori.[223] This represents an important issue with respect to how these terms are conveyed in legislation pertaining to environmental and resource planning. Subsequently, an important issue for Ngati Pikiao is the portraying of the spirituality of the Kaituna River, both to passive recreationalists and visitors as well as to the relevant statutory authorities. Kawana Nepia (*pers. comm.)* expressed the idea that rafting companies were making a living out of a resource that is essentially Maori. However, he also stated to this author that this is not the issue so much as the ignorance and lack of respect for *waahi tapu* on the river. Ngati Pikiao are more concerned about the effects[224] of commercial rafting operations on the river. In a similar situation on a Tauranga river Ngati Kahu state that commercial activity is permitted so long as respect for the resource comes with it.[225] This supports the argument of environmental bottomlines and the idea that Maori, although environmentally conscious, are not anti-development. That the Maori ideal of kaitiakitanga is not in opposition to land development has been eloquently discussed by the Waitangi Tribunal in its

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[223] *Pers. comm.* Ngati Pikiao kaumatua Mr Kawana Nepia and Mr Te Ariki Morehu.

[224] This is an interesting issue as the RMA is an *effects*-based piece of legislation and should, therefore, safeguard Ngati Pikiao's concerns. However, as demonstrated by the current situation it does not provide for this.

[225] *Pers. comm.* Antoine Coffin, *Ngati Kahu Resource Centre*, Tauranga.

report on the Manukau Harbour:

> "There is a myth that Maori values will unnecessarily impede progress. Maori values are no more inimical to progress than Western values. The Maori are not seeking to entrench the past but to build on it. Their society is not static. They are developers too. Their plea is not to stop progress but to make better progress and to progress together. It is not that they would opt out of development in New Zealand. It is rather that they need to know they have a proper place in it" (*Manukau Claim*, 1985).

Indeed, the breadth of development sought illustrates that, for many, kaitiakitanga is merely a sub-set of the question of ownership of resources (Ballantyne, 1992):

> "First and foremost, Maori believe that all resource use and management decisions must be guided by the kaitiaki principle of understanding and respect for the interrelationship of all ecological communities. Second, legal and regulatory systems must fully recognise and respect Treaty principles and afford Maori effective participation in decision-making... Thirdly, Maori must retain meaningful control over resources taken illegally" (Mahuta, 1991).

This context, being particularly relevant to Ngati Pikiao's case, must be appreciated by all users of the RMA.

6.2.8. What the Kaituna Claim's success did in strengthening Ngati Pikiao's sense of place and ownership/control and use of the Treaty of Waitangi

To some extent Ngati Pikiao's aspirations for kaitiakitanga over the Kaituna River are reflected in the Waitangi Tribunal's Manukau Harbour Claim findings. In this case the Tribunal recommended an action plan to clean up the harbour, and that:

> "To restore the mana of the tribes and to protect their particular interests one set of Guardians, the Kaitiaki o Manukau, should be appointed by the Minister of Maori Affairs to seek the well-being and preservation of the traditional status of the tribes in the harbour and environs. Another set of guardians, the Guardians of the Harbour, should be appointed by the Minister for the Environment to promote with them the restoration of the harbour".

In addition, the kaitiaki were to speak with authority on the identification and protection of the marae, waahi tapu, Maori lands, significant sites, and fishing grounds, and on the assessment of development levies or compensation from projects affecting them. To Ngati Pikiao, the constitutional guarantees (kaupapa) of the Treaty have never been realised in modern government. Constitutional change to protect the inherent rights and status of the tangata whenua is a prerequisite to the formulation, implementation and monitoring of any strategy which protects the environment.[226] The following section investigates how Ngati Pikiao propose to implement kaitiakitanga.

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[226] Nga Tikanga Whakahaere Taonga o Ngati Pikiao Whanui (1997).

6.3. A LEGAL ANALYSIS OF NGATI PIKIAO'S ATTEMPT TO EXERCISE KAITIAKITANGA

A major consequence of the 1984 Waitangi Tribunal ruling was that it raised the status of the Treaty to the point where the relevant legislation[227] now contains specific provisions for compliance with the Treaty of Waitangi. However, despite the Treaty guarantees which asserts the right to develop practices based on these principles and which meet their present day needs, this report illustrated the inability of formalised institutional structures to recognise, and hence implement, Maori spiritual and cultural values when determining competing water resource uses (*Minhinnick v Auckland Regional Authority*; *cited in* Fraser, 1988). This issue has again been raised by Ngati Pikiao in relation to their kaitiakitanga status over water and waahi tapu 10 years later, and under a different planning regime, that of the Resource Management Act 1991. By examining Ngati Pikiao's iwi resource management plan and the response to their Heritage Protection Authority application, this section investigates the RMA's claim to provide statutory recognition of Maori participation at kaitiaki level legal. One important question it asks is whether the currently held philosophy regarding kaitiakitanga in relation to water and waahi tapu resource use and management is still the same that dominated the previous conflict on the Kaituna River.

6.3.1. Te Tikanga Whakahaere Taonga o Ngati Pikiao Whanui[228]

Ngati Pikiao have the right to participate in national and local affairs as a distinct community according to their own cultural preferences for defining who they are. Crengle (1993) states:

> "The tangata whenua who have mana over the resource will be able to determine both the characteristics of kaitiakitanga and how it should be given expression."

In theory this has been accorded under the RMA. However the multiplicity of these references has created some undesirable practical problems for decision-makers (Crengle, 1996). The outcome of this issue may tell whether the legislation has given effect to the principles of the Treaty and not just simply referred to them being taken into account (as under RMA 1991). An example of this is the Bay of Plenty Regional Policy Statement where the council acknowledges that iwi Maori, in accordance with Treaty of Waitangi, exercise tino rangatiratanga over their resources through tikanga Maori. This includes the right of different iwi to interpret the principles of the Treaty.[229] In terms of the Kaituna River, Ngati Pikiao's response to active encouragement by regional authorities, tourist operators and other agencies differs significantly. This is because Maori and Pakeha values with respect to heritage differ, and in this case, conflict.[230]

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[227] The Environment Act 1986; Conservation Act 1987; Resource Management Act 1991.

[228] Te Runanga o Ngati Pikiao's iwi resource management plan.

[229] The Treaty principles developed by the Court of Appeal, the Waitangi Tribunal and Parliaments (Appendix 6) are not considered to have a Maori perspective or evaluation.

[230] These issues will be discussed later in this chapter via a detailed policy analysis.

Environmental policy statements and iwi planning documents are a good way of providing insight into Maori cultural philosophy and alleviating any fears or misconceptions that the wider community may have (Te Runanga o Ngati Hauiti, 1996).

In response to these issues, TRONP have developed their draft iwi resource management plan which enables Ngati Pikiao iwi to express their resource management and development objectives on a much broader scale ranging outside the parameters of the RMA (Solomon, 1993). Ngati Pikiao's iwi management plan applies to their whole rohe and entails social, economic and environmental issues in a holistic approach to resource and environmental planning and management. This plan promotes the integrated management of resources and, as the partnership between local authorities and Ngati Pikiao evolves with respect to the Kaituna River, allows the development of policies and objectives that are complimentary to those of other management agencies. This includes all statutory plans relating to resource management and tourism. Te Tikanga Whakahaere Taonga o Ngati Pikiao Whanui states iwi proposals for waahi tapu, management or development of Maori land and other resources as well as Ngati Pikiao's aspirations for kaitiakitanga over the Kaituna River.

Consequently, by its very intent and its existence, Te Tikanga Whakahaere Taonga o Ngati Pikiao Whanui is part of Ngati Pikiao's exercising of kaitiakitanga. The fact that such a plan has been produced[231] means that it is a valuable source of information in the consultation process required by the RMA. In preparing or amending statutory plans required by this legislation, local authorities are required to have regard to any relevant planning documents recognised by an iwi authority affected by the plans (PCFE, 1992). However, as discussed in Chapter 5, the wording of these sections in the Act suggest the documents are not legally binding and there is a great deal of uncertainty as to what extent management agencies must have regard to them. This legal uncertainty has done little to resolve the situation and commercial rafting activity still continues to impact on the environmental values of the Kaituna River and the spiritual relationship of Ngati Pikiao with this river

The response to TRONP's draft iwi management plan since its release has been very positive so far (Field *pers. comm.*), however, its influence and effectiveness in terms of policy recognition and process remains to be seen. An example of this is its integration with the Rotorua District Plan and plans and strategies produced by DOC.[232] This aspect can be seen in terms of DOC's concern at Ngati Pikiao involvement in the management of reserves along the Okere section of the Kaituna River with their HPA application. These issues will be analysed in greater detail later in this chapter.

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[231] Currently the Iwi Management Plan is under review and awaiting release for comment (Te Runanga o Ngati Pikiao, December 1997).

[232] David Field, *pers. comm.* 1997. ,

6.3.2. Relevant planning legislation and the role of agencies in site protection of the Kaituna River

The RMA is the major statute for the Kaituna River issue. It deals with environmental and resource use, with the sustainable management of natural and physical resources as its fundamental bottom line.[233] However, the Environment Act 1986, the Conservation Act 1987, the Reserves Act 1977, the Treaty of Waitangi 1840 and the Treaty of Waitangi Act 1975, 1985 are also of major importance. Because of the range in planning and environmental legislation and a lack of clearly defined management boundaries, particularly over water, there are a plethora of agencies involved. The relevant agencies, their legislative jurisdictions and their current and historical involvement in the Kaituna River and Okere Falls Scenic Reserve issue are prioritised as follows:

- *Rotorua District Council (RDC).* Under s. 31 of the RMA has control of surface water activity; the protection of land and associated natural and physical resources of the reserve; the control of any actual or potential effects of the use, development and protection of land; and the control of the emission of noise and the mitigation of the effects of noise. Another adjacent RDC reserve is used for egress, parking and changing by the rafting companies. RDC have recently withdrawn their status as a Heritage Protection Authority[234] over the Kaituna River in respect of a proposed amendment to the Resource Management Act 1991 and conflicts of interest over this position.

- *Department of Conservation (DOC).* Under the Conservation Act 1987 and the Reserves Act 1977, DOC controls the use of the scenic reserve and licencing of commercial water recreation activities[235] (Field *pers. comm.*). 90 percent of the river and bed used by rafters is vested in DOC and run by the Rotoiti Scenic Reserves Board.[236] DOC manages the reserve on behalf of the Lake Rotoiti Scenic Reserves Board for the "freedom of entry and access". It is the contention of DOC that the surface of the river is part of the Okere Falls Scenic Reserve and therefore subject to their control through the Lake Rotoiti Scenic Reserves Board.[237] DOC Bay of Plenty has legal opinion that the Reserves Board is entitled to control and license commercial activities within the Reserve, including on the water which flows over the Kaituna bed, incorporated in Reserve land. DOC has a duty to foster the use of the natural and historic resources of the reserve for recreation, and to allow their use for tourism in so far as those uses are consistent with conservation values (s.6 Conservation Act).

- *Okere Falls Scenic Reserves Board (OFSRB).* Established under the mandate of the Reserves Act 1977. The board is made up of members of Ngati Pikiao and other interest groups and is seen to have the *mana* from an iwi perspective over the Kaituna River.[238] OFSRB has managed the reserve

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[233] With respect to water, the basic presumption in the RMA is that nothing is permitted unless specifically allowed by the Act, a rule in a plan, or by a consent.

[234] RDC utilised the Heritage Protection Order procedure under s. 188 of the RMA 1991 because of a technical problem encountered when RDC resolved to extend its Rotorua District Lakewaters and Rivers Control Bylaw to include the Kaituna River. This technical problem has still not been resolved by the Ministry of Transport and accordingly the only process available by RDC to control rafting on the Kaituna is through the Heritage Protection Order (Letter from B.G. Hughes, Director of Environmental Services, RDC, to the Planning and Bylaws Committee, RDC, 30 January 1993). RDC withdrew their HPA in February 1997.

[235] According to Hughes (1996) there is no other similar situation currently licenced by the Department of Conservation.

[236] Department of Conservation internal memo *cited in* Pikiao Panui, Nov/Dec 1994. Issue no. 9.

[237] However, this issue is still to be clarified by Crown Law, the results of which were unavailable to this author despite an Official Information Act request.

[238] Letter of recommendation from B.G. Hughes, Director of Environmental Services, RDC to the Planning and Bylaws Committee of Rotorua District Council, 8 March, 1996.

for 75 years and has the mandate to control commercial activities (Field, *pers comm*) although there is conflict over this position with DOC. The Board currently wishes to see more Ngati Pikiao involvement in the rivers management and a return of Maori control to the river and reserve. There is no question in the Board's opinion that Ngati Pikiao have mana whenua for the Kaituna River, irrespective of the present legal status of lands along the river[239].

- *Environment Bay of Plenty Regional Council (EBOP).* Under s. 30 of the RMA controls: the use of land for the purposes of soil conservation; water quality and quantity; the use of water and the control of the quantity, level, and flow of water; discharges of contaminants into or onto land and water; and the introduction or planting of any plant on land or the bed of a water body. EBOP has also been designated the control of navigation and safety issues for the Kaituna River under the Harbours Act 1950.

- *Te Puni Kokiri.* Has an interest with respect to the development of Maori-owned land surrounding the Kaituna River. There are significant blocks of land in the Kaituna River owned collectively by Ngati Pikiao and Ngati Hinerangi, some of which is farmed, forested or under plantation forestry.

- *Transit New Zealand.* Controls land use on the road edge adjacent to the river and reserve. This area is used for changing, car parking, loading and unloading rafts as well as for an entry point to the river.

- *Tauranga Harbour Board.* Controls navigation and safety issues under the Harbours Act 1950 on the lower section of the river gorge.

- *Rotorua Maritime Authority.* Jointly, with RDC, controls navigation and safety on the upper section of the river. This includes the loading sites for most of the commercial operations.

- *Te Runanga o Ngati Pikiao.* Represents the iwi mandate for management of the river, the reserve and waahi tapu and historic sites. Have produced an iwi management plan and therefore, under the Treaty of Waitangi and the RMA, should be accorded consultative rights and partnerships in any management or control regimes. Were declined their HPA application under s. 188 of the RMA prior to RDC's notification. This decision is currently awaiting a High Court ruling on Ngati Pikiao's legitimate rights to ownership and therefore Heritage Protection Authority status.

- *Okere Incorporation* and *Taheke Trust.* Own and control the land on both sides of the river and land surrounding the reserve. This land provides a site where ingress to the Kaituna is gained by some of the white water rafting companies. There is currently conflict between the two trusts as to development for both commercial rafting and hydroelectricity generation and conservation of the area for spiritual reasons.

This plethora of both legislation, management agencies and other stakeholders means that there has been a lot of uncertainty, and thus conflict, with respect to management and control over the reserve and the subsequent section of the Kaituna River.[240] This is primarily linked to legal ownership issues between Ngati Pikiao and the Crown as well as overlapping responsibilities between the RDC and DOC in terms of management and control of the Kaituna River (Field, *pers.*

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[239] Letter from Dave Field, ex-Regional Conservator, Chairman, Lake Rotoiti Scenic Reserves Board to Minister for the Environment (8/12/94).

[240] Rotorua Review, 23 August 1994.

comm.). For example, the RDC Heritage Order implies that RDC alone could control all activities on the river[241] and fails to acknowledge the role of DOC (Field, *pers. comm.*). With respect to the Waitangi Tribunal findings in 1984, David Field indicated that although Ngati Pikiao traditionally owned the land, it is now under the jurisdiction or Reserves Board legislation, administered through DOC (Field *pers. comm.*).

However, despite this conflict and legislation vesting the management of many of those places in Crown control, Ngati Pikiao's relationship and strong emotional connection with the river and reserve has not diminished. Irrespectively of whether the Kaituna River is Maori-owned, privately-owned, or government-managed land the issue for iwi is whether, and how those sites and their identities are being managed and protected (DOC, 1997a). Ngati Pikiao's approach is, to some extent, being accorded by some management agencies. For example, EBOP acknowledge that iwi Maori exercise tino rangatiratanga over their resources through tikanga Maori, conceding that the Treaty gives tangata whenua greater status than the other stakeholders and interest groups involved in this issue. This recognition should make way for a realistic basis for ongoing dialogue, consultation and participation (Nuttall & Ritchie, 1995) between Ngati Pikiao and management agencies. The next section discusses Ngati Pikiao's attempt at exercising this role of kaitiakitanga through their Heritage Protection Authority application.

6.3.3. Te Runanga O Ngati Pikiao's Heritage Protection Authority (HPA) application

The RMA sets up a process for territorial authorities to assess whether the place merits protection and whether the requirement for a heritage order is reasonably necessary for protecting the place. The provisions include *"any place or area of special significance to tangata whenua for spiritual, historical or cultural reasons"* (Appendix 2)[242]. Heritage Orders are very effective and useful as the protection they confer is fully integrated into all aspects of resource management (they are incorporated into district or regional plans and operate like rules [ss.194(1), (2)(c)]) (Milne, 1992). Once a heritage order is applied for, no one is allowed to do anything which could adversely affect the site or the values present there. Therefore, by offering greater protection for the Kaituna River than the kaitiakitanga provisions under the RMA, a heritage order can be used to stop what would otherwise be a lawful activity. Consequently, for kaitiakitanga to work properly under the RMA, it must be accorded a better statutory definition or given higher priority in the RMA provisions of Part II.

Currently Ngati Pikiao exercise their kaitiakitanga over the Kaituna River jointly with DOC through the Lake Rotoiti Scenic Reserves Board (LRSRB) under the mandate of the Reserves Act

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[241] Daily Post, 25 November, 1994.

[242] However, the Heritage Protection Authority provisions discussed in this thesis are currently under review and, more recently have been the subject of a proposed amendment to the RMA (Resource Management Amendment Bill (No. 3). This amendment will be discussed in greater detail following this section.

1977. However, in terms of catering for Ngati Pikiao's spiritual and cultural values in the protection of the waahi tapu along the river, this form of management has proved ineffective, with such values continually being degraded. Consequently, TRONP have become increasingly frustrated with their incessant efforts to protect this resource under current resource and environmental legislation through DOC and RDC from the continual exploitation and degradation of their sacred Kaituna River. Therefore, TRONP see their HPA application as the only way that Ngati Pikiao can ascertain and exercise kaitiakitanga relating to the Kaituna River - without acknowledgement of kaitiakitanga through Heritage Protection Authority status, the mana of Ngati Pikiao will continue to be eroded:

> "This waahi tapu is not being respected and Ngati Pikiao iwi are bearing the brunt of the consequences".

Te Runanga O Ngati Pikiao are seeking approval as a HPA to protect the bed and banks[243] of the Kaituna River from Okere Falls to Paengaroa. The features of importance are the waahi tapu[244] belonging to Ngati Pikiao as kaitiaki (Appendix 10). It is important to note that Ngati Pikiao see the HPA application not as an issue of land ownership, but rather an issue of tino rangatiratanga which under the Treaty of Waitangi belongs to the rangatira and hapu (Morgan *pers. comm.).* As kaitiaki of the Kaituna River, Ngati Pikiao hold the knowledge and experience, as well as the cultural sensitivity, to warrant full authority over future management of the Kaituna River. Consequently, decisions regarding the management of the Kaituna will be made by the appropriate hapu on their marae. This means that Ngati Hinerangi and Ngati Hinekura will retain the authority to manage the Kaituna (Morgan, 1994a). This is important in the establishment of any management forums as Ngati Pikiao have been given the mandate for the river.

Ngati Pikiao see their involvement in the issue as necessary because of inaction on the part of DOC among others, particularly due to the ineffectiveness of the present arrangement for management of these reserves i.e. under the chairmanship of the Regional Conservator[245]. In terms of iwi authority Ngati Pikiao have ben given the mandate to protect the river by various hapu and adjacent land trusts.[246] The Lake Rotoiti Scenic Reserves Board are also in support of Ngati Pikiao's application:

> "The Reserves Board is prepared to support Ngati Pikiao's application....with the proviso that the Runanga accept and accommodate existing arrangements for existing Scenic reserves administration on the Kaituna River. In particular the Runanga would need to recognise the

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[243] As defined in the Resource Management Act 1991 and by the Court of Appeal.

[244] These are protected under the Resource Management Act 1991 and the Historic Places Act 1993.

[245] Mr David Field, ex-Regional Conservator, incidentally had to be removed from this position due to a perceived conflict of interest (letter from Kepa Morgan, TRONP, to Helen Atkins, MfE (11/11/94)). Control of these positions is a hang-over from the Reserves Act where DOC chair all Domain Boards and Reserves Boards etc., effectively giving them a majority in any management decision-making.

[246] Letter from T.B. Nikora, Secretary of the Proprietors of Taheke 8C and Adjoining Blocks (26/10/94) (Figure 1.1).

> history, expertise and mana of the Lake Rotoiti Scenic Reserves Board. Furthermore, if the Runanga becomes a Heritage Protection Authority, and subsequently determine a Heritage Protection Order for the Kaituna, the Reserve Board would expect that Order and define on the ground and authority of Scenic Reserve jurisdiction, which would remain with the present administration."[247]

Legally, it is considered that the Runanga's application answers all the questions raised[248]. In particular, Helen Atkins, Solicitor for Secretary for the Environment[249], made the recommendation that the Minister:

> "Approve Te Runanga O Ngati Pikiao Inc as a heritage protection authority for the purpose of protecting its waahi tapu on the bed and bank of the Kaituna River from the northern boundary of Okere Falls Scenic Reserve... to Paengaroa."

This view was similarly expressed by Sue Veart and John Gallen, for Secretary for the Environment in a briefing paper to the Minister for the Environment:

> "The Runanga appears well placed to fulfil a Kaitiakitanga role over the waahi tapu on the Kaituna River and therefore meets this criterion [under s.188(5)(a)].... Approval of the Runanga as an HPA would be consistent with the principles of the Treaty of Waitangi, and would therefore meet this criterion."

These opinions reiterate J.J. McGrath, Solicitor-General, and Brian Gordon's, Crown Counsel, comments in relation to the Kaituna River:

> "The requirement to take into account the Principles of the Treaty of Waitangi is relevant to the Ministers decision under s.188, together with the requirement to recognise and provide for the relationship of Maori with their ancestral lands, water sites, waahi tapu and other taonga (s.6(e)) and the requirement to have particular regard to kaitiakitanga (s.7(a))."

Brian Gordon is of the opinion that the findings of the Waitangi Tribunal in the Kaituna Report support the view that the Runanga does have a relationship with the River and associated sites as referred to in s.6(e) of the Act. Appointment as an Authority would be a means of recognising and providing for that relationship, as was found by the summary of the Crown Law opinion:

- The Waitangi Tribunal findings support the view that the Runanga has a relationship with the Kaituna River in accordance with s.6(e) of the Act;
- The Runanga appears well placed to fulfil a kaitiakitanga role over the waahi tapu on the Kaituna River and therefore meets this criterion; and
- Approval of the Runanga as a HPA would be consistent with the principles of the Treaty of Waitangi, and would therefore meet this criterion.

However, Ngati Pikiao's application is a highly contentious issue, being the first substantive HPA

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[247] David Field, ex-Chairman, Lake Rotoiti Scenic Reserves Board - 8/10/94.

[248] Helen Atkins, Solicitor for Secretary for the Environment (letter to Minister for the Environment 5/12/1994)

[249] In a briefing paper from the Ministry for the Environment for the Minister for the Environment (5/12/1994).

application under the RMA relating to the protection of a river. This issue is particularly contentious because of what has now become a long running dispute between a section of Ngati Pikiao and rafting operators on the river. This warrants special consideration with respect to the appropriateness of Te Runanga O Ngati Pikiao becoming a heritage protection authority, as it is over a Crown owned resource.[250] The political contentiousness of this issue is illustrated by New Zealand First's support.[251] Tau Henare states:[252]

> "It is my belief that if Ngati Pikiao were granted the Heritage Protection Authority status this would in no way hinder or preclude any commercial activity of the river, moreover it would enhance the provisions of the treaty of Waitangi."

Henare goes on to state that Ngati Pikiao's concerns are not only on a spiritual level, but on a user level. Henare is also of the view that the Treaty of Waitangi should be the basis of the application. Similarly, Love *et al* (1993) state that there is nothing in the Act to prevent such an order covering areas which include water.[253] Although water may flow over it, a heritage order protects the site, not the water itself. It is the significance to iwi/hapu that matters. A more proactive approach, such as partnership with management agencies, would allow for resource management functions for the Kaituna River to be transferred to Ngati Pikiao iwi. This approach follows recent case law and legislation in which Maori cultural and spiritual interests have precedence over commercial and recreational interests (Chapter 4). If TRONP were to gain the Minister's approval, they would be able to give notice to a territorial authority of its requirement for a heritage order. However, the question remains as to whether protection of the Kaituna River from the adverse effects of tourism and recreational activities, especially where rafters impact on special sites of significance to Maori, can be best achieved by Ngati Pikiao.

Embodied in this issue is the traditional approach to archaeological site management. Previously dominated almost exclusively by the Pakeha bureaucratic administrative tradition, whereby waahi tapu are essentially regarded as a scientific resource (Adds, 1988),[254] the RMA has allowed, to some extent, for the Maori traditional view to be taken into account. However, to Maori waahi tapu are not a potential source of scientific information, nor are they interesting places to be gazed upon by hundreds of tourists. Adds (1988) enunciates this view:

> "[Waahi tapu] are, and always have been, an integral part of the culture. It is the waahi tapu in any tribal group which affirms the identity and affinity of the people with the land. These are highly important places and are thus tapu and protected for those reasons... The traditional Maori view

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[250] Simon Upton, Minister for the Environment (letter 26 August 1994).

[251] Mrs C.J. Shearer letter to S. Upton, 10/10/1994 & Tau Henare letter 15/9/94.

[252] Letter in support of Te Runanga O Ngati Pikiao becoming a Heritage Protection Authority (15/9/94).

[253] However, the proposed amendment to the RMA may jeopardise this.

[254] One of the basic underlying assumptions and ethics of the archaeological tradition is that archaeological sites should be "used" in some way (Adds, 1988). However, this subjective comment is highly challengeable as most academic archaeologists propose sites should be for research only.

> was and is, one of preservation at all costs. In traditional times the desecration of a waahi tapu by an enemy was said to be one of the most shameful things that could ever happen to the offended group and one of the best reasons that utu (revenge) could be claimed for. This intensity associated with waahi tapu has never been lost, merely inundated in an expanding Pakeha dominated cultural milieu".

Hence the potential conflict in terms of management over these areas. The problem at the Kaituna River is how to incorporate two vastly different attitudes/world views into the sustainable management of this resource, given that neither group will be willing to give up what they both believe to be a legitimate right of access to it. However, the HPA application opens up management problems over the Reserve as well as the potential to restrict users, particularly rafters from using the once public water resource. PANZ states:[255]

> "Maintaining the sanctity of the so-called Queen's Chain on the margins of rivers and lakes becomes farcical if the public cannot be guaranteed free and unfettered access to the water or to dare touch the bottom of river or lake without permission... With corporate riverbed and water ownership now established, it is a very short move for some river somewhere to be closed to all but those prepared to pay. And that, for the vast majority of New Zealanders, would be culturally, spiritually and historically offensive."

This has been particularly evident in management structures in respect of the bed of Lake Taupo, vested in Ngati Tuwharetoa in 1993 by the Maori Land Court. The bed of this lake is managed as a reserve under an agreement between DOC and the Tuwharetoa Maori Trust Board. Similarly, at the Kaituna River there is conflict with DOC administered and managed reserves within Ngati Pikiao's HPA application boundary. Hence there is a need for efficient and effective co-management structures between Ngati Pikiao and management agencies. However, Ngati Pikiao need to clearly explain the implications of their HPA with no hidden agendas[256]. Cliff Lee[257] appears to suggest that the Runanga is not an appropriate body for an HPA because they will use the order to pursue their own cultural agenda/s:

> "It would appear to me to be unintelligent to create further points of strife between Maori and European and to set further precedent where Maori pressures leads to further alienation of publicly owned and used land for minority group use alone".

However, the Runanga's response to this is that these issues are unknown until the iwi has developed a management plan for the Kaituna River following approval of their HPA application (Morgan *pers. comm.*). These issues may be addressed under s.188(5)(b) RMA through an inquiry into the applicants commitment to the role of kaitiakitanga and its administrative capacity

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[255]Public Access New Zealand. No.7, p.11. 1996.

[256]The following questions have been posed in relation to Ngati Pikiao's HPA application: (a) the possibility that cultural issues and agendas would be used to prohibit or restrict legitimate use of the scenic reserve; (b) the allegation that the purpose of the application is to seek imposition of a heritage order to prevent or restrict rafting activity on the upper reaches of the Kaituna (Atkins letter to TRONP 18/8/94)

[257]Chairman, Works Committee Rotorua District Council (letter to Minister of Conservation 31/5/94).

in terms of cultural commitment. This includes the applicants ability to have regard to technical factors such as those necessary if a monitoring or development role is to be carried out by the applicant as an authority.[258] There is also the potential for iwi to corporatise the river through ventures such as hydro-electricity generation, or establish 100 percent Ngati Pikiao owned rafting operations on the river in anticipation of an entry into the tourist industry. Under these circumstances, the development of Maori-owned, Maori-driven tourist packages will provide unique experiences for the discerning visitor and lessen the risks of cultural commodification and bastardisation by placing the responsibility and control back in Maori hands (Keelan, 1993). For this to take place, Ngati Pikiao, as kaitiaki, need to have accountability for their decisions instead of Crown management agencies.

An inter-related issue is that commercial rafting operators understand there is potential for the river to be closed off to rafting due to a resistance by management agencies to share the administrative decision-making power-base with Maori people. The recent conflict in the area, caused by a lack of administrative delegation, has only made this scenario worse. This worsening situation justifies the Minister for the Environment's precautionary approach to this issue. Consequently, despite recent case law, the recommendations of the Waitangi Tribunal in 1984 (and subsequent cases) and approval from the Crown law office and others, TRONP's application for HPA status was declined by the Minister for the Environment on the 2 May 1995, stating there was:

> "...insufficient detail and that there are other bodies capable of protecting the River, in particular the Rotorua District Council".

In response, the Runanga has initiated judicial review proceedings to challenge the Minister's decision, also stating that the proposed RMA amendment (discussed below) stems directly from its HPA application with respect to the river. Consequently, the Runanga are concerned that the proposed amendment could defeat these proceedings. This author is of the opinion, however, that the Minister's decision to decline Ngati Pikiao's application is due to the far reaching consequences this precedent might set if their application was successful. As this is the first example of a HPA over water by tangata whenua, it has the potential to be followed by iwi Maori over water bodies throughout New Zealand. This is exemplified by recent Treaty settlements for Ngai Tahu over South Island Rivers, Niko Tangaroa spearheading the resolve of similar issues on the Whanganui River and Tainui over the Waikato River. With the Kaituna as a precedent case for kaitiakitanga, the possibilities for asserting tino rangatiratanga[259] throughout New

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[258] Brian Gordon, Crown Counsel, letter to Helen Atkins, Secretary for the Environment (22/2/95).

[259] In Article II of the Treaty of Waitangi, by which the Crown confirmed and guaranteed to the Maori signatories the full exclusive and undisturbed possession of their lands and estates, forests, fisheries and other properties, Mr Williams translated the guarantee as one of "... te tino Rangatiratanga" and went on to specify the land (ratou whenua) the estates (ratau kainga) and included the English references to "forests fisheries and other properties" in the phrase "ratou taonga katoa" (all things highly prized) (Wai. 4, 1978).

Zealand are interminable. Similar concerns are raised by councillor Cliff Lee[260] in relation to DOC's stance on licencing requirements:

> "It should be obvious to Mr Marshall [Minister of Conservation] that other Maori groups will be watching this issue closely. DOC will now come under enormous pressure from these groups to relinquish various water bodies and other reserves to their control."

However, research[261] has shown the results of this decision are inconsistent with the other four cases which the Minister has approved, although none were related to iwi control and management of a resource, nor a river.[262] To date, no examples of an iwi 'body corporate' being given approval by the Minister for the Environment as a HPA have been transacted in New Zealand, despite the six years since the enactment of the RMA and the current political climate with respect to Treaty of Waitangi claims and settlements. Historically, the legislative trend has been to recognise the right of iwi to identify their waahi tapu sites but stopping short of allowing full authority over them (Webber, 1992). Accordingly, without full rangatiratanga over their taonga and their resources, Ngati Pikiao have had to adjust to ensure the kaitiaki role can continue.[263]

6.3.4. Resource Management Act Amendment Bill No. 3

This situation has demonstrated the need for current legislation pertaining to rivers and lakes to be amended making management and control by management agencies more easily understood. This problem was not adequately dealt with under the RMA 1991, leaving a loophole open for considerable debate, as well as creating tensions such as those illustrated in this case study, between management agencies, particularly with regard to jurisdictional problems. This situation was so problematic that when Ngati Pikiao first applied for HPA status they were told that HPA's were not designed to protect water bodies.[264] The Ministry for the Environment (MfE) stated that it was not anticipated that the heritage order process would be used over very large areas such as the Kaituna River. It has become apparent over time that the breadth of the provisions means that potentially heritage orders may be used in such a way. Similarly, Ngati Pikiao's current attempt to establish their kaitiakitanga relationship through their HPA application has highlighted one of the constraints of the RMA's promise to improve the position of Maori in resource management - that is the failure of local government reform to deliver institutional opportunities

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[260] Daily Post 20/6/96 - Mailbag.

[261] Minister for the Environment's decisions on Heritage Protection Authority applications.

[262] The writers of RMABill (No 3) acknowledge that iwi as kaitiaki may see the heritage order process as a way of gaining some direct management over resources of importance to them. Thus Te Runanga O Ngati Pikiao and Ngatiwai Trust Board were concerned that the proposed amendment would restrict the ability of iwi to become heritage protection authorities for the purpose of managing and protecting water bodies that are taonga of spiritual significance (RMAB 1996).

[263] The key to Ngati Pikiao's application is ownership of the resource - there is concern over how to manage something adequately without "owning" the resource. Why should Ngati Pikiao put resources into a management role that does not absolutely guarantee them tino rangatiratanga, and thus the full expression of kaitiakitanga over the Kaituna River? Similarly, how can the Crown sell the rights to use something they do not own?

[264] Kepa Morgan *pers. comm.* January 1997.

for active decision-making by Maori in the system (Crengle, 1996).[265] As a result, the overall power distribution between Maori and the Crown is even further unbalanced, invariably reflecting and promoting a set of cultural values that are not Maori. Ultimately, the environment the RMA has created favours planners, planning lawyers and consultants, with Maori people commanding very few of these strategic personal (Ritchie, 1990).

Consequently, due to comments made in Resource Management Amendment Bill (No. 3) and by Maynard (*pers. comm.*), it is this author's view that clauses 32 and 34 of the proposed Resource Management Amendment Bill (No.3) were made in relation to Ngati Pikiao's HPA application. The Bill proposes the following amendments to the heritage order provisions:

A Definition of "place" (clause 32 - section 188(2)). This clause excludes water bodies from the range of places that a heritage order can be placed over. Section 188(2) of the Act is to be amended by clause 32 so as to prevent application being made for heritage protection authority in respect of a river or lake. As presently worded s.188(2) allows application in respect of rivers to be made.

B Decisions on heritage orders (clause 34, with consequential amendments by way of clauses 33, 35 and 74 - New Section 191(b)). These clauses provide a different decision-making framework for heritage orders that are made by body corporate heritage protection authorities than that for orders made by other heritage protection authorities.

The effect of the proposed new section 191 (b) is, in Ngati Pikiao's case, to give to the Rotorua District Council a right of veto in respect of the Ngati Pikiao application. As s.191 currently stands, the Council has no such power. Decisions are for the Minister for the Environment and no other. However, possibly due to Ngati Pikiao's submission,[266] these amendments never amounted to permanent changes and therefore failed to remedy this problem.

6.3.5. The Department of Conservation - legal considerations

DOC are also of the view that the approval of another party as an HPA for these areas is not necessary for their protection (Holloway, 1994) as many of the reserves in the HPA application are already administered by DOC and waahi tapu within these reserves are fully protected under the Reserves Act 1977 and the Historic Places Act 1993. DOC state that this, coupled with the present arrangement for management of these reserves by the Lake Rotoiti Scenic Reserves Board, is further reason why approval of HPA status over these lands is inappropriate (Field *pers. comm.*). Similarly, DOC states that the entry and exit points for the rafting operations are not on land administered by the department, and the department has not had a role in consenting to the

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[265] Ngati Pikiao's involvement in this issue is interesting as it is the reverse situation of what happened with Pahauwera, where iwi opposed a Water Conservation Order placed over the Pahauwera River by Federated Mountain Clubs, as an infringement of their rights and values.

[266] "Te Runanga O Ngati Pikiao and Ngatiwai Trust Board were concerned that the proposed amendment would restrict the ability of iwi to become heritage protection authorities for the purpose of managing and protecting water bodies that are taonga of spiritual significance. We acknowledge that iwi as kaitiaki may see the heritage order process as a way of gaining some direct management over resources important to them" (RMAB [No. 3]).

operations (Field *pers. comm.*). However, Ngati Pikiao are not happy with the present arrangement regarding the nature of recognition - in terms of responsibilities, advice, consultation and management, and therefore are continuing with their legal action (Morgan *pers. comm.*). In a further twist to this issue, DOC, on behalf of the Rotoiti Scenic Reserves Board, recently informed companies they would be required to pay fees to the reserve board and sign an agreement in order to have access to the Kaituna River where it flows through the Okere Scenic Reserve. This approach requires companies to pay a fee for each customer and had a clause allowing the board to suspend licenses without compensation to observe rahui (closure of the river for spiritual reasons such as drowning). Other steps required companies to:

- Accept liability for fires and damage to property or trees in the scenic reserve caused by their customers or staff;
- Employ competent guides who are trained to interpret the historical and spiritual significance of the river; and
- Observe a code of safety and cultural, spiritual and historic values of the river;

These steps are, to a certain extent, consistent with some of Ngati Pikiao's (and traditional Maori) concepts of kaitiakitanga, particularly the clause for the observation of *rahui*.[267] Rotoiti Scenic Reserves Board chairman Mr Arapeta Tahana said the purpose of the licence was to bring about control and safety, ensure that rafters did not dominate the river to the detriment of other users and to protect the spiritual and cultural aspects of the river. It did not affect public access to the river in any way. This step has fuelled the debate regarding the issue of "ownership" of rivers and river beds. Mr Max Bradford, Tarawera MP, stated:

> "The approach taken by DOC and the Reserve Board suggests they are assuming they own both the river and water and therefore have control over who does what".

Mr David Field, ex-regional conservator, said the department's legal advice was that the river bed and water were part of the reserve and therefore subject to control through the Reserve Board (s.56 Reserves Act and s.4 Conservation Act).[268] However, Milne (1992) states that under the RMA, regional councils have the responsibility for the management of water and lake and river bed management (s.30). When speaking with David Field[269] regarding the Office Solicitor's legal opinion into the status of the water flowing through the Okere Falls Scenic Reserve this author was informed that this information was unavailable.[270] With respect to ownership of the river, Katie Paul of Te Puni Kokiri (1996) states:

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[267]Rahui is a prohibition or ban instituted to protect resources (Marsden & Henare, 1992). Another form of rahui is applied when an *aitua*, misfortune resulting in death, occurs. In the case of the Kaituna River, that area was placed under a rahui because it had become contaminated by the tapu of death.

[268]Daily Post 9/2/96 and PANZ No.7, p.11, June 1996.

[269]*Pers. comm.* David Field, ex-Regional Conservator for Bay of Plenty Conservancy.

[270]Despite a request under the Official Information Act, this information is still being withheld by the Department of Conservation.

> "At this point in time [29/4/96], the issue of the ownership of the riverbed is unclear. Ngati Pikiao have never ceded ownership of the river, and they still own nearly 90 percent of the surrounding land."

Accordingly, DOC's licensing approach, issued on behalf of Ngati Pikiao's Rotoiti Scenic Reserves Board, has been slammed by the mayor of Rotorua as "high handed and bloody minded".[271] With respect to unfettered public access to the area, Public Access New Zealand (PANZ) have responded similarly:

> "The Reserves Board has exceeded its authority under the Reserves Act by breaching the statutory principle of freedom of public entry and access to the reserve, and by accommodating Maori cultural wishes well beyond that envisaged by the Treaty and its principles."[272]

This jurisdictional issue has confirmed the need for clearer guidelines as to responsibilities for delegated powers and functions under the RMA and the Conservation Act (and relevant legislation), particularly pertaining to water and waahi tapu. This issue has been compounded by the rights of public access to rivers and lakes inferred under the Queens Chain legal provisions. As such, the situation on the Kaituna River is in direct contravention to section 6(d) of the RMA,[273] as well as various policies and rules of management agencies. If this is the case for the Kaituna River, it is difficult to see how kaitiakitanga status can be achieved other than under the HPA provisions of the RMA as s.7(a) falls lower in the statutory hierarchy than s.6(d). However, this issue may be established through the HPA provisions of TRONP if their application is successful. Therefore, this legal analysis and the approach taken by DOC has demonstrated that the kawanatanga response does not meet the rangatiratanga response.[274] Consequently, as IUCN (1997) state, there is a need for ecosystem-based collaborative-management:

> "Any type of management, however, must accept that change is inevitable. Successful collaborative-management means that it may be possible to mitigate against change, to encourage it or adapt to it. This depends on social choice - principally, what the stakeholders want to do with the ecosystem. Strict protection means allowing only natural local and wider global changes to have their effects on an area, whilst modifying existing use may allow certain attributes of the ecosystem to be lost whilst preserving core functions."

Kaitiakitanga in a practical sense should be a reality. It is not on for the Crown to own and manage all New Zealand's resources. Although Ngati Pikiao have been acknowledged as kaitiaki, this is seriously bounded by the unresolved ownership issues of the Kaituna river. Because of the insecurity of this situation, conflict in relation to this resource has escalated and the role of kaitiakitanga has been disadvantaged.

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[271] Daily Post 31/1/96.

[272] Public Access New Zealand. 1996. *Whose Waters.* No.7, p.11. June 1996.

[273] The maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers (s.6(e) RMA).

[274] This issue highlights the need for a review of legislation relating to heritage.

6.3.6. Other considerations

Another matter is that Te Runanga O Ngati Pikiao, through their HPA application, does not represent the views of all of Ngati Pikiao.[275] Groups expressing this have raised the point that the management of the river should be in a partnership arrangement between the local territorial authority (RDC), and representatives of Maori owners along the river. This is despite the Runanga being given the iwi mandate at a hui[276] as well as the findings of the Waitangi Tribunal on the Kaituna Claim. Ngati Hinerangi also raise the point that there are no waahi tapu sites where the white water rafting takes place.[277] Crown Law considers that these points need to be taken into account in the Minister's decisions on the HPA application. In terms of consultation with Government Departments, DOC are concerned that the application refers to bed and banks of the Kaituna River which are administered by the Department under the Reserves Act 1977. DOC has requested that this land be excluded from any authority given to the Runanga.[278]

This is linked to the concern of warranting Ngati Pikiao the legal powers and functions of kaitiaki. As far as this author could ascertain, Ngati Pikiao did not have any structures in place to notice the abandonment of the river cliff shag rookery at the commencement of commercial rafting.[279] Consequently, the implications of the disappearance of this important environmental indicator was not publicly expressed, other than by a visiting ecologist to the area. This matter exposes the inability of Ngati Pikiao (as well as management agencies) to forestall or forewarn about the consequences of the onset of rafting. Because Ngati Pikiao let commercial rafting become established before they achieved a reaction within the legal decision-making system, one must be critical of them as an iwi and therefore any transfer of management powers or functions to them. This conveys the importance of not over-romanticising Maori as kaitiaki and their ability to administer their traditional *mana whenua* rights. However, the antithesis of this issue is that if Ngati Pikiao had formal control, they would probably develop monitoring programmes,[280] such as State of the Environment indicators based on kaitiaki indications. This would also provide a good management tool for use over the river.

6.4. LIMITATIONS OF THE RMA IN CONSERVATION AND MANAGEMENT

Perhaps the major limitation of the RMA in the conservation and management of the Kaituna

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[275] These concerns have been raised by Chadwick Bidois Barristers and Solicitors on behalf of Ngati Hinerangi and the Okere Incorporation, as well as Hinton & Hulton, representing Committee of Management of Ruahine & Kuharua Incorporation (land owners on the Kaituna River).

[276] A letter from the Runanga (13/12/94) includes a letter from Te Runanganui O Te Arawa endorsing the Runanga's HPA application and noting that the representative Iwi are fully supportive.

[277] According to Ngati Hinerangi kaumatua there are no such sites since the power station was built in 1901 and that the waahi tapu were removed and interred elsewhere (Hinton & Hulton, on behalf of Committee of Management of Ruahine & Kuharua Incorporation - letter 11/9/94). Stafford (1996) also makes reference to this statement.

[278] Department of Conservation letter to Secretary for the Environment 22/8/94.

[279] However, neither did the Department of Conservation.

[280] Similar to those used by the Forestry and Wildlife Departments, although neglected by the Department of Conservation.

River and surrounding Okere Falls Scenic Reserve is that there is a lack of adequate legislation and mechanisms to deal with adverse spiritual effects. Despite endeavouring to address these issues with ss.6(e), 7(a) and 7(d), the RMA is not adequately resolving these issues as is demonstrated by this case study. Under this system, neither the Parliamentary Commissioner for the Environment nor the Minister for the Environment can be called in unless an activity has "significant adverse effects"on the natural environment that have national implications. This is due to the RMA placing significant emphasis on avoiding or limiting environmental effects from the use of resources, rather than on the activities themselves. As the current commercial rafting use does not generate adverse ecological effects, little is being done despite the s.6(e) requirement to "recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga".[281] Ultimately, for issues such as the Kaituna, there is a need for more comprehensive legislation (including site appraisal criteria) to deal with adverse effects on spiritual values. This must be combined with the establishment of baseline data in areas such as the Kaituna where there is increased potential for significant adverse ecological and spiritual effects. The latter could be better achieved through the implementation of a national biodiversity framework.

Linked to this issue is the RMA's failure to adequately provide concurrently for both European and Maori value systems in environmental and resource management. This clash between science and holism must be addressed, and the value of the knowledge-practice-belief complex of indigenous peoples must be fully recognised and incorporated into legislation, conservation and management structures. Conserving this knowledge is often vital to the success of management and conservation of natural areas and might be best accomplished through promoting the community-based resource management systems of indigenous peoples.

6.5. HOW IS THE SITUATION BEING DEALT WITH - A DETAILED ANALYSIS OF PLANS AND RESPONSES FOR KAITIAKITANGA AT THE KAITUNA RIVER

The previous chapters have illustrated that the sustainable management of natural and physical resources requires the incorporation of both Western scientific knowledge and expertise and Maori cultural and spiritual values through the recognition of the Maori relationship with the environment and their traditional environmental knowledge. This has been incorporated into the framework of Part II RMA stating that the sustainable management of natural and physical resources requires decision-makers to *"recognise and provide for"* s.6(e), *"have regard to"* s.7(a) and *"take into account"* s.8.[282] The statutory incorporation of the principles of the Treaty

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[281] This is in direct contrast to the proposed sewage outfall which would have severely compromised the health and sustainability of the river ecosystem.

[282] These three sections of Part II RMA are the three most important to Maori. A significant point here is that, underlying these key policies, the river ultimately has to be protected for the benefit of future generations. Providing for the sustainable management of the Kaituna River is of greater importance than s.7(a) and subsequent sections of the Part II hierarchy.

of Waitangi and subsequent case law relating to the hierarchy of Part II RMA has confirmed the place of these legal provisions in New Zealand's legislative framework. Maori self-determination combined with the statutory obligation on management agencies to *"recognise and provide for"* Maori cultural, spiritual and traditional values has fuelled this debate. Maori are now calling for their rights as Treaty partners to be recognised in active participation in resource management decision-making, and an end to Crown domination of the management of New Zealand's natural and physical resources.

With respect to these issues, and in confirmation that the current Western-based approach to resource management is working in opposition to Maori cultural and spiritual values, this chapter investigates primarily how kaitiakitanga is being recognised at the Kaituna River in terms of current policy. It also evaluates the statutory and non-statutory mechanisms that could be used to implement these policies i.e. does the kawanatanga response meet the rangatiratanga response.

6.5.1. Policy recognition of section 7(a) RMA by Te Runanga O Ngati Pikiao and management agencies

This section undertakes an assessment of the policy recognition of kaitiakitanga at the Kaituna River in relation to the statutory requirements placed on management agencies, as well as those developed by Te Runanga O Ngati Pikiao. A substantive policy analysis framework is used to ascertain a generic identification of the extent to which kaitiakitanga is being recognised in policy by management agencies. The criteria for analysis and assessment consists of specific policy recognition relating to kaitiakitanga at the Kaituna River in terms of the generic categories outlined below:[283]

1. Agency has recognised its legal obligation to have particular regard to kaitiakitanga in the policy statement/plan.
2. Agency has recognised that kaitiakitanga and tino rangatiratanga are inextricably linked.
3. Agency has recognised that the statutory definition of kaitiakitanga as given in Section 2 of the RMA is narrower than that which may be accorded the concept by tangata whenua.
4. Agency has accepted that kaitiakitanga is the underlying principle of a Maori environmental resource management system.
5. Agency has acknowledged that only tangata whenua can adequately define the role and function of kaitiaki within their rohe and that this may vary from rohe to rohe or from one hapu or iwi to another.
6. Agency has recognised the Kaituna River, together with its cultural resources and waahi tapu, as a taonga.
7. Agency has recognised the need to establish mechanisms for dialogue with Ngati Pikiao.
8. Agency has recognised and appreciated the kaitiakitanga role of Ngati Pikiao in the management of the Kaituna River.

These criteria are used to assess the responses of management agencies and Te Runanga O Ngati

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[283] The framework used for this analysis is based on the results from the literature review, in particular Nuttall & Ritchie's (1995) study and Cant's (1997) recommendations. Nuttall & Ritchie's (1995) study will also be used as a national baseline for the policy analysis component of this thesis.

Pikiao to the requirements of s.7(a) RMA by applying them to each policy statement and plan. The results can be seen in Appendix 12.

6.5.2. Summary of s.7(a) RMA provisions in the relevant statutory documents produced by the management agencies at the Kaituna River

The Environment Bay of Plenty Draft Regional Policy Statement, Rotorua District Plan, DOC Bay Of Plenty Conservation Management Strategy, and Te Runanga O Ngati Pikiao's Iwi Resource Management Plan were analysed to determine how differing management agencies at the Kaituna River had responded to the s.7(a) requirements. These results were scored in relation to the eight previous assessment criteria.[284] Only those parts of policies or objectives directly effecting kaitiakitanga are mentioned as these were seen to be the most relevant. However, ultimately, any policy/objective that impacts, or has the potential to impact on any issue concerning Maori environmental resource management has the potential to effect kaitiakitanga (Nuttall & Ritchie, 1995).

6.5.2.1. Environment Bay of Plenty (EBOP)

The RPS acknowledges that iwi Maori, in accordance with the Treaty of Waitangi, exercise tino rangatiratanga over their resources through tikanga Maori expressed by way of the "Maori Environmental Resource Management System". To Maori, sustainable management can only be achieved by protecting, preserving and enhancing the mauri of natural and physical resources. Maintenance of mauri and all parts of the natural world is through the development of tikanga. Observing these tikanga evolved into the ethic and exercise of kaitiakitanga.

Council acknowledges tino rangatiratanga and kaitiakitanga and the ability to use opportunities to transfer functions and powers. Kaitiakitanga is the practice of guardianship, with the proviso that guardianship is used in the Maori sense and so is exercised by those who are genealogically linked to the resource (and not by appointment by any other agency). In the section entitled Iwi Matters, the RPS states that:

> *"Kaitiakitanga is a central manifestation of the Maori resource management system and should be recognised as both a practice and the result of a philosophy of resource management. The recognition of kaitiakitanga implies the recognition of kaitiaki as the implementors in any kaitiakitanga system. The role of kaitiaki would traditionally belong with a particular whanau or person. Kaitiaki can also be appointed when tribal processes nominate kaitiaki in relation to a particular resource."*

A further issue is seen as the recognition of and provision for the exercise of tino rangatiratanga and the traditional practice of kaitiakitanga. This involves the use of practices such as tapu, rahui, tikanga and other aspects of the Maori environmental resource management system.

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[284] A summary of specific policies/objectives found in the planning documents was made and is found in Appendix 11.

In the Resource Management Practice section, council states that it will recognise and provide for Maori cultural and spiritual values in the management of natural and physical resources of the region, and that recognition and provision for tangata whenua roles as kaitiaki of their resources will be a method of implementing this. However, there is no specific policy in this section addressing s.7(a) directly.

6.5.2.2. Rotorua District Council (RDC)

Under the Cultural and Tangata Whenua Issues section, RDC believes there should be a spirit of partnership between tangata whenua and council, and a recognition of the special relationship of iwi, whanau and hapu with their ancestral land under the Treaty of Waitangi. This relationship will be recognised when council is dealing with resource management issues. One of the ways this can be done is through the identification and protection of sites of significance to tangata whenua. In the Maori Development Section, kaitiakitanga supports the sustainable management of natural and physical resources which is the purpose of the RMA 1991. RDC states that it is the responsibility of all agencies in the district to exercise the principle of kaitiakitanga in managing any natural and physical resource. This includes the operations of the district council, regional councils and iwi authorities in preparing and implementing their plans. Council also states that the principle of kaitiakitanga is important in identifying certain unsustainable land management practices, and the adverse environmental effects associated with certain activities on amenity values, natural heritage and water bodies, as significant resource management issues.

A further issue is the recognition of rangatiratanga in conjunction with the Treaty principle of reasonable cooperation. Iwi see the rangatiratanga principle as enabling them to undertake resource developments without, or with the minimum of, outside control. There is also a desire by iwi authorities to undertake rangatiratanga and kaitiakitanga in accordance with iwi management plans. Kaitiakitanga, to which council must have particular regard, is closely related to both culture and traditions, and to rangatiratanga. Rangatiratanga enables iwi to exercise kaitiakitanga in accordance with their traditions. However, council states that it is unable to give full rangatiratanga to iwi - that can be done only by the Crown. Jointly developed plans and strategies and transfers under s.33 of the RMA could provide for iwi to formally exercise kaitiakitanga.

6.5.2.3. Department of Conservation (DOC)

The Draft Conservation Management Strategy for Bay of Plenty (CMS) states that the land, water and natural resources are of considerable cultural and spiritual significance for tangata whenua, whose mana and cultural perspective demand that the mauri and physical wellbeing of the environment be protected. Activities which affect the quality and sustainability of these resources are of special interest to the tangata whenua, who see themselves as both kaitiaki and users of some of New Zealand's natural resources. The CMS acknowledges that tangata whenua have

substantial knowledge of many of the region's natural and historic resources, their values, and their vulnerability to exploitation. Consequently, conservation planning and management today can make use of this knowledge and wisdom. In order to carry out their statutory obligations under the Treaty of Waitangi and s.4 of the Conservation Act 1987, DOC cannot treat Maori as just another interest group. Their status, as people who hold traditional rights and authority over ancestral lands, water and other taonga, is acknowledged in legislation and requires that they are treated as partners and their values respected and upheld.

In the section entitled The Role of Tangata Whenua in Conservation Management, rangatiratanga is acknowledged as being central to the way Maori see themselves in relation to the environment and, through linkages to traditional cultural precepts, involves the concept of mana. Kaitiakitanga refers to the exercise of guardianship and to an ethic of stewardship. Kaitiakitanga also implies a relationship between people and the environment. The people who have mana over the resource will be able to determine the characteristics of kaitiakitanga and how it should be given expression. Kaitiakitanga includes an obligation on people to use resources in ways which respect and preserve resources in the environment, both physically and as sources of spiritual power. Kaitiaki can be iwi, hapu, whanau, and/or individuals of the region. Whilst tribal authorities themselves may not be considered kaitiaki, they can represent kaitiaki and help to identify them. This is implicitly related to *mauri* (life force), *whenua* (land), and *rahui* (prohibition). Specifically, the kaitiakitanga principle implies that not only does the land belong to tangata whenua but the tangata whenua belongs to the land, and to lose touch with ancestral land is to lose touch with one's source of identity, leaving people with no place to belong to.

This is shared by the vision of Atawhai Ruamano: "to conserve the natural and historic heritage of New Zealand for present and future generations".[285] A part of this mission is to foster an iwi contribution to conservation management by adopting customary management practices where these are applicable; supporting iwi development of a Maori customary approach to conservation; and integrating iwi initiatives into the programmes of the department.
The goals relevant to Kaupapa Atawhai's strategy are all related to the Treaty and forging bicultural relationships with Maori, specifically the potential for Maori knowledge to be an active component of policy-making, and the opportunity that Tikanga Atawhai projects provide for Maori to revive customary practices and techniques to achieve conservation outcomes. DOC also state in one of their goals that "Maori should be involved in managing historic places significant to them, including transfer of management responsibility where appropriate" and that "existing levels of legal protection, public access and recreational rights should not be diminished at any historic place where management responsibility is transferred to iwi". To do this, DOC will consult with Maori in its historic resources work generally to ensure their interests are recognised,

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[285] Atawhai Ruamano (Conservation 2000) as one of their three major conservation goals wants to achieve "the effective management of historic places in co-operation with the community and iwi, and significant gains in their conservation and appreciation" by the year 2000.

and work with Maori to develop co-operative projects covering a range of options for the management of historic places of significance to them. This also involves the establishment of procedures for the management of waahi tapu that acknowledge the traditional and Treaty rights of Maori.[286]

6.5.2.4. Te Runanga O Ngati Pikiao

Te Tikanga Whakahaere Taonga o Ngati Pikiao Whanui (IRMP[287]) states that Ngati Pikiao iwi hold the tino rangatiratanga and mana whenua for the Okere (Kaituna) River. In this document Maori have a holistic approach to resource management with all the aspects of the resources - the physical, the mental and the spiritual - which are inextricably linked. Maori identify with the physical elements of their environment, such as mountains, rivers, lakes and seas. The domains of the *Atua* (Gods) provide the linkages across resources giving an holistic approach to the environment. *Whakapapa* demonstrates the non-dualistic approach of the environment and establishes *tangata* as an inseparable part of nature.

This holistic approach demonstrates that no delineation exists between the spiritual and physical aspects of the environment. The *mauri* concept reinforces the spiritual aspects. Recognition of Atua by Maori was achieved through the practice of *karakia* (prayer), *kawa* (protocol) and *tikanga* (practices). This regime of social controls maintained the integrity of Maori society and led to a sensitive environmental management system. Observation of these tikanga evolved into kaitiakitanga, which has a fundamental function of the protection of mauri. Consequently, Maori exercise *mana* over resources as they are essential to the sustenance of the tribal populations. *Take whenua* (right of occupation) gave iwi *"mana whenua"* according to the following rights: *toa* (conquest), whakapapa, occupation, marae, urupa and *mahinga kai* (cultivation, fishing grounds, forest) permanent or otherwise. Mana whenua is maintained through rangatiratanga and kaitiakitanga and the obligation to manage tino rangatiratanga wisely for the benefit of present and future generations.

In relation to the Kaituna River Claim (1984), the IRMP states that, despite a very positive affirmation of the tangata whenua status Ngati Pikiao enjoy and the responsibility of kaitiakitanga that flows from this, the Crown and its agents have actively canvassed against Ngati Pikiao assuming jurisdictional authority over the river. This has manifested itself in Crown opposition at every opportunity when the Confederation of Ngati Pikiao Iwi have attempted to seek legitimate recognition of their status in all levels of local and central government. Without active participation in the proposed Government strategy to protect the environment (RMA 1991), the Confederation of Ngati Pikiao Iwi cannot support any aspect of the Crown's policy documents

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[286] However, these initiatives only relate to Crown land. All other land falls outside DOC management and is therefore left to district and regional councils to protect cultural heritage.

[287] Nga Tikanga Whakahaere Taonga o Ngati Pikiao Whanui (Draft Iwi Resource Management Plan) will be referred to as IRMP.

because it places Maori in a subordinate role to the government, in all functions, contemplated in the strategy. It also has the potential to erode the Maori principles of kaitiakitanga which are to be interpreted in a vacuum and not as an integral part of the complex matrix of development (mana Atua; mana tangata; mana whenua) which governs a Maori world view - *"we cannot allow Maori concepts to be redefined within a Pakeha cultural framework"* (IRMP, 1997). In particular, the IRMP states that all resource management agencies shall recognise and provide for the following: that only the Confederation of Ngati Pikiao Iwi hold the 'mana whenua' and can be 'kaitiaki' over its tribal lands, waters and other taonga; and that only the Confederation of Ngati Pikiao Iwi can determine what the principles of kaitiakitanga are and how such principles shall be implemented.

6.5.3. Findings from the policy statement/plan review

Following the review of all the relevant documents pertaining to the Kaituna River, these were assessed according to the criteria devised. These are represented in Appendix 12.

6.5.3.1. Recognition of statutory obligation to have particular regard to kaitiakitanga

The results of this broad institutional analysis demonstrate firstly and on a basic level that all of the management agencies have specific and detailed recognition of their statutory obligation to have regard to kaitiakitanga, despite DOC being under a separate management regime - that of the Reserves Act 1977 and the Conservation Act 1987. The following statement is typical of plans and policy statements:

> "Kaitiakitanga supports the sustainable management of the natural and physical resources which is the purpose of the RMA 1991. In fact it is the responsibility of all agencies in the District to exercise the principle of kaitiakitanga in managing any natural and physical resource. This includes the operations of the district council, regional councils and iwi authorities in preparing and implementing their plans." (Rotorua District Plan).

However, the reference to the "principle of kaitiakitanga" is confusing and is not specifically addressed. This, combined with a lack of specific policies and objectives to implement s.7(a), leads to major implementation problems. Another problematic issue arising from this statement is that only Maori can be kaitiaki - the term cannot be applied by non-Maori, councils or other resource management agencies.

6.5.3.2. Recognition that kaitiakitanga and tino rangatiratanga are inextricably linked

Three of the documents analysed acknowledged this linkage, however the CMS did not recognising this factor at all. This relationship differed considerably to Nuttall & Ritchie's (1995) generic analysis which found that this was the least recognised component of the study.[288]

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[288] Nuttall & Ritchie's (1995) study found that nine of fifteen (60%) of regional policy statements and one of ten (10%) district plans acknowledged this link.

Generally, the RPS contained the most explicit linkages of these concepts, thereby demonstrating the greatest awareness of the importance of this relationship to Maori in resource management. This contrasted strongly to the literature reviewed in this study which generally stressed that these concepts are inextricably linked.

6.5.3.3. Recognition that statutory definition is narrower than Maori definition[289]

As was stated in Chapter 2, the definition of kaitiakitanga in the RMA was the focus of great debate in the drafting of legislation and was to be amended in 1998. However, despite various submissions stating that the definition given to kaitiakitanga in the Act is too narrow to be effective and the amended legislative definition of the term, it still remains to be properly incorporated into these statutory documents. This has been demonstrated in particular by the CMS and the RDP. Generally, recognition in the IRMP was very vague and recognition by the RPS was marginal.

6.5.3.4. Kaitiakitanga is the underlying principle of the Maori environmental resource management system

Only two of the policy documents analysed supported the leading experts on the above criterion that kaitiakitanga is an underlying principle of the Maori environmental management system and cannot be understood or provided for without reference to its context. Consequently, there was a range of recognition from full and specific detail (in the IRMP and RPS) to a total absence (RDP and CMS). This was similar to the results of Nuttall & Ritchie's (1995) study, particularly for District Plans.

6.5.3.5. Only tangata whenua can define the role and function of kaitiakitanga and that this may vary from rohe to rohe

Nuttall & Ritchie (1995) state that within Maori society, tikanga can vary from iwi to iwi, between hapu within an iwi and even from whanau to whanau. Consequently, only those holding the mana whenua over resources can adequately give meaning to the role and function of kaitiaki within their rohe. Therefore the results of this analysis are surprising in that only the RPS and the IRMP acknowledged this thoroughly.

6.5.3.6. Kaituna River, together with its cultural resources and waahi tapu, is a taonga

The RPS and the IRMP were the only documents that contained specific recognition of the Kaituna River as a taonga. However, despite the RPS's specific mention of the Kaituna River in the Subregional Issues section (minimal recognition in the preparation of plans covering the Kaituna River), there was no incorporation of Maori cultural or spiritual values, nor the kaitiakitanga role of Ngati Pikiao in its management. Surprisingly, while the Okere Falls Scenic

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[289] This policy analysis was undertaken with respect to the original section 2 RMA definition. Consequently, this has been used for policies already in place, although the new definition can still be taken into account.

Reserve is one of DOC' s higher-usage reserves, there was no specific mention of it within both the CMS and the RDP.

6.5.3.7. Recognises the need to establish mechanisms for dialogue with Ngati Pikiao

There were various references to Treaty principles, especially partnership, throughout all the documents analysed. However, there was no specific reference to establishing mechanisms for dialogue with Ngati Pikiao in any of these documents. Implicit in all the documents, however, was the requirement to consult with Maori in the preparation or changing of plans or policy statements. Possibly, the neglect of specific reference to Ngati Pikiao was because it is only a sub-tribe of the much bigger Te Arawa Confederation, and the influence of established Trust Boards and advisory committees (such as the Southern Te Arawa Standing Committee) already established to deal with tangata whenua.

6.5.3.8. Recognises and appreciates the kaitiakitanga role of Ngati Pikiao in the management of the Kaituna River

There was no specific recognition of the kaitiakitanga role of Ngati Pikiao, either directly or specifically in relation to the Kaituna River in any of the statutory documents produced under the RMA. However, the RPS mentioned Te Runanga O Ngati Pikiao as one iwi authority to be "liaised closely with in the preparation of plans covering the Kaituna River".

6.6. EVALUATION

In terms of evaluation, this analysis has investigated the extent to which the various agencies have included specific policies and objectives to implement kaitiakitanga under s. 7(a) RMA within their policy statement or plan. Consequently, in terms of specific policies to implement s.7(a) very few had detailed policy provisions. This was surprising as there were various policies and objectives relating to ss.6(e) and 8, such as:

> Policy 9.3.1(b)(iii): *To recognise and provide for, in regional and district plans and in the consideration of consent applications, the relationship of Maori and their culture and traditions with their ancestral lands, water, sites waahi tapu and other taonga* (Proposed Bay of Plenty Regional Policy Statement).

Similar policies included:

> Policy 12.3.2(b)(I): *To recognise and provide for Maori cultural and spiritual values in the management of the natural and physical resources of the Bay of Plenty Region* (Proposed Bay of Plenty Regional Policy Statement).

There were also various provisions and methods for the implementation of these policies, however, none were specific to kaitiakitanga. Consequently, this study has confirmed that while a foothold has been established in terms of statutory recognition of kaitiakitanga, all documents

still need substantial work in respect of the majority of the other categories. For example, resource management issues important to Maori are clearly set out, but they are not fully integrated into the documents. Both EBOP and RDC recognise kaitiakitanga in a substantial discussion but, despite the recognition, fail to incorporate the concept in more specific sections relating to water (Nuttall & Ritchie, 1995) and waahi tapu. Nuttall and Ritchie in assessing the Bay of Plenty Regional Policy Statement in their 1995 study comment:

> "It is clear that the council sought and got competent advice on this matter. However, despite the lengthy discussion of kaitiakitanga, there is a failure....to back these statements up when devising policies and objectives.... In terms of fresh water resources there is.... no mention of kaitiaki....iwi are listed after community groups....as one party amongst others to be consulted in order to assess their values associated with water and their preferred mechanisms for management."

This approach was also taken by the district plan and the CMS, and is consistent with the "convenient" approach that acknowledges an ethical responsibility to include Maori people in the decision-making process and then do nothing about it (identified by Adds (1988)). Similar concern was expressed to this author by Antoine Coffin[290] in relation to the minimalistic approach adopted by councils in relation to fulfilling their legal obligations to tangata whenua. For example, in the Bay of Plenty Regional Policy Statement, kaitiaki are not included in policies on land, ecosystems, heritage protection or fresh water resources. Consequently, there are objectives that can be construed as unsurpassing the role of kaitiaki (Nuttall & Ritchie, 1995):

> Objective 1.3.1(b)(v) is "to recognise that landowners have the primary responsibility for the implementation of sustainable land management practices" and objective 1.3.1(b)(ix) is "to recognise the role of landowners and resource users in the management of riparian ... areas".

While the transfer of powers provisions of the RMA are a step towards recognition of tino rangatiratanga of the iwi, they need to be accompanied by an equivalent transfer of resources (taonga) that iwi seek to control and manage (Nuttall & Ritchie, 1995). Policies to implement kaitiakitanga should recognise, enable and encourage the process and management of this concept, including comprehensive consultation with tangata whenua on a resource and site specific basis (Nuttall & Ritchie, 1995). However, there are no legal precedents that relate to the s.33 provisions. The introduction in the Bay of Plenty Policy Statement includes the statement that, *"...the region acknowledges that iwi Maori, in accordance with the Treaty of Waitangi, exercise tino rangatiratanga over their resources through tikanga Maori through the Maori environmental resource management system"*. However, the competing positions of the Crown and Maori regarding ownership of water resources is noted as posing resource management issues of significance for EBOP. There are no subsections relating to water resources. A specific policy is included on the Heritage section, and a specific objective and policy is also included in the

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[290] A member of the Ngati Kahu/Ngati Pango Resource Management Team - NZPI Conference, 16-18 April, Palmerston North.

Resource Management Practice section. Methods of implementing this section include recognising and providing for traditional Maori uses and practices relating to natural and physical resources; providing in plans and resource management decisions for the protection of areas or sites of traditional value or other significance to tangata whenua; and developing appropriate provisions, in consultation with iwi or hapu, for protecting and managing sites or places which are of special significance to tangata whenua (Nuttall & Ritchie, 1995). Similarly, EBOP have put a lot of effort into identifying why s.6(e) RMA was of such importance to Maori, yet have failed to adequately provide for it (Nuttall & Ritchie, 1995). Part of this problem is related to a lack of innovative policy development with respect to Maori (Kahotea *pers. comm.*) and plans that only restate the requirements of the RMA.[291]

In relation to this study, the results have shown EBOP portraying the clearest identification of the importance of kaitiakitanga, and also showing the strongest acknowledgement of their obligations to have regard to s.7(a) RMA. This is consistent with Nuttall and Ritchie's (1995) study that found that district plans demonstrate less awareness of the s.7(a) requirements and their obligations under the Act than did regional plans and policy documents. For example, RDC state that it is the responsibility of all agencies in the district to exercise the principle of kaitiakitanga in managing any natural and physical resource. However, there was no distinction drawn between recognising and the exercising of kaitiakitanga. Unexpectedly, in the CMS there was found to be a widespread recognition of kaitiakitanga and the role of Maori as kaitiaki. This may be attributed to the Board of Inquiry Report into the New Zealand Coastal Policy Statement raising specific awareness of kaitiakitanga,[292] as there are no statutory obligations for DOC to "have regard" to kaitiakitanga other than the Treaty of Waitangi obligations under s.4 of the Conservation Act. However, this awareness was not extended to substantial policies or objectives in the CMS directly pertaining to kaitiakitanga.

This analysis has shown that there is a large range of results in the recognition of policies relating to kaitiakitanga. The following policy from the Rotorua District Plan exemplifies the common policy response of management agencies that is totally inconsistent with the current situation on the Kaituna River, the recommendations of the Waitangi Tribunal and the statutory obligations implicit in Part II of the Act:[293]

> Policy 2.1.3.1: *"Developers of tourist related activities will be required to show that any adverse effects of significant landscapes, ecological values, the water quality and the natural character of the District's lakes, rivers and their margins, Maori cultural and spiritual values...archaeological sites... can be avoided, remedied or mitigated."*

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[291] This issue is not restricted to just the Kaituna River. According to Forbes *pers. comm.* (1998) this issue is characteristic of the whole country.

[292] Refer to the New Zealand Coastal Policy Statement and case law relating to this and kaitiakitanga.

[293] Other inconsistent polices, objectives, and implementation methods as they are relevant are included in Appendix 11.

Such policies are typical of the tokenistic approach of the majority of management agencies. However, this is not always the case as various agencies in New Zealand are moving into innovative approaches to co-management. According to Rosier (1997) this situation can be remedied by the establishment of clearer objectives and goals with respect to kaitiakitanga and processes of participation. Currently, such objectives are lacking from all statements and plans produced under the RMA and Conservation Act. Their inclusion could be achieved through more comprehensive national policy statements or guidelines. Rosier (1997) and Nuttall & Ritchie (1995) also stated that a need for resourcing of Maori participation at national, regional and local levels is imperative and must be resolved if a holistic and integrated management regime is to be effected in the future. Subsequently, acknowledgement, acceptance, understanding and incorporation of kaitiakitanga is pivotal to achieving a truly holistic and bicultural approach to attaining sustainable management of natural and physical resources. As Nuttall & Ritchie (1995) state:

> "Without sufficient provision to include the role of kaitiaki in natural resource management it is difficult to see how any Maori environmental dimension can be successfully accommodated by local government or any notion of rangatiratanga given effect. Sufficient provision requires far more than just acknowledging the existence or validity of the concept."

The next section investigates the process and implementation of policies from the policy analysis and planning document review, particularly focusing on attempts at co-management structures with Ngati Pikiao with respect to the Kaituna River.

6.7. RESULTS AND DISCUSSION

The previous chapters have investigated the statutory obligations for partnership and powersharing between Maori and the Crown in the management of water and waahi tapu. However, the policy analysis has established that despite strong policy recognition of kaitiakitanga by management agencies, there is little happening on the ground in terms of process. Despite this factor, the strong policy recognition implies that management agencies are ready and willing to develop a management partnership for the provision and implementation of policies specifically for the Kaituna River. This section will analyse common key polices relating to water and waahi tapu on the Kaituna River from the relevant documents to illustrate the process of policy provision and recognition of kaitiakitanga and whether mechanisms such as co-management structures have been established with regard to these policies. A component of this will be the investigation of the implications of the policy responses outlined previously in terms of rights and control of the Kaituna River, and therefore the effectiveness of kaitiakitanga as a protection

mechanism in the heritage conservation of the Kaituna River.[294] Accordingly, this section expands on the results of Appendix 12 by investigating Ngati Pikiao's input in terms of processes - specifically how are Ngati Pikiao, as kaitiaki, being involved in the management of the Kaituna River (and thus exercising kaitiakitanga)? In doing so, this section will investigate the process response of each management agency in terms of provision and implementation of the key policies relating to the management of water and waahi tapu on the Kaituna River.

In both the Bay of Plenty Policy Statement and the Rotorua District Plan, although there is a discussion of the effects on tourism and the economy, there is only mention of the importance this has to Maori in the 'environmental results anticipated' section, and no consideration of the roles that kaitiaki could play. This type of omission is perhaps reflective of the fact the plan was not drawn up with a partnership role with iwi in mind. The methods of implementation of kaitiakitanga or policies relating to water and waahi tapu are vague and not specific to the Kaituna or Ngati Pikiao. There are no details of how the council will give practical effect to 'participation', have 'regard to' or facilitate the kaitiakitanga requirements of the RMA. In other sections of the statutory documents produced by EBOP and RDC relating to administration and management of the resource, there has been no regard paid to the alternative systems offered by Maori. Consequently, these documents seem to be focused on achieving sustainable management of resources, by using a very literal interpretation of the RMA.

Albeit, despite numerous references to Maori, there is no creativity involved in terms of this relationship. Recognition of Maori interests are very similar to many other plans notified nationally, and it seem that regard for the special relationship between Maori and the Kaituna River and the potential this has for effective resource management has not been fully explored. This may be linked to the majority of plans produced under the RMA simply restating what the RMA dictates they must do. In particular, these plans seldom say how they will accomplish these objectives. For example, despite DOC in Atawhai Ruamano referring specifically to the potential for Maori knowledge to be an active component of policy-making, there have been no specific policies ever written to achieve this (Forbes, *pers. comm.* 1998). Similarly, recent DOC strategies have also highlighted iwi protocols as a priority. However, it remains to be seen as to whether mechanisms are being developed to check that these structures are working and being utilised.[295]

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[294] The Waitangi Tribunal found in 1984 that Ngati Pikiao held traditional use rights to the river and the resources it supported. These rights were not created by the Treaty of Waitangi, however, as they were firmly entrenched well before European colonisation of New Zealand and the swamping of *taha Maori*. Thus the importance of elements of use and control and the exercising of tino rangatiratanga.

[295] For example, Wellington Regional Council state that, "tangata whenua may seek recognition by local authorities of the importance of waahi tapu to tangata whenua and provision for the traditional relationship with waahi tapu. This traditional relationship also includes the right of tangata whenua to exercise tino rangatiratanga. The exercise of rangatiratanga is dependent on the ability of tangata whenua themselves to access waahi tapu sites and to control the access of others". However, the WRC do not actually provide for this to happen (Forbes, *pers. comm.* 1998).

Therefore, the results of this section have illustrated that despite a wide and substantive recognition of the statutory requirements of kaitiakitanga by management agencies, combined with the various statutory and non-statutory mechanisms for implementing these polices , the process of providing for and implementing these policies has been negligible. The following diagram (Figure 9) portrays this minimalistic process as 'tokenism', or 'full control' by the agencies in charge.[296] This is a common approach to such situations throughout New Zealand and, although not yet an example of management partnership with local stakeholders, is an important show of attention, concern and desire to develop a positive relationship.

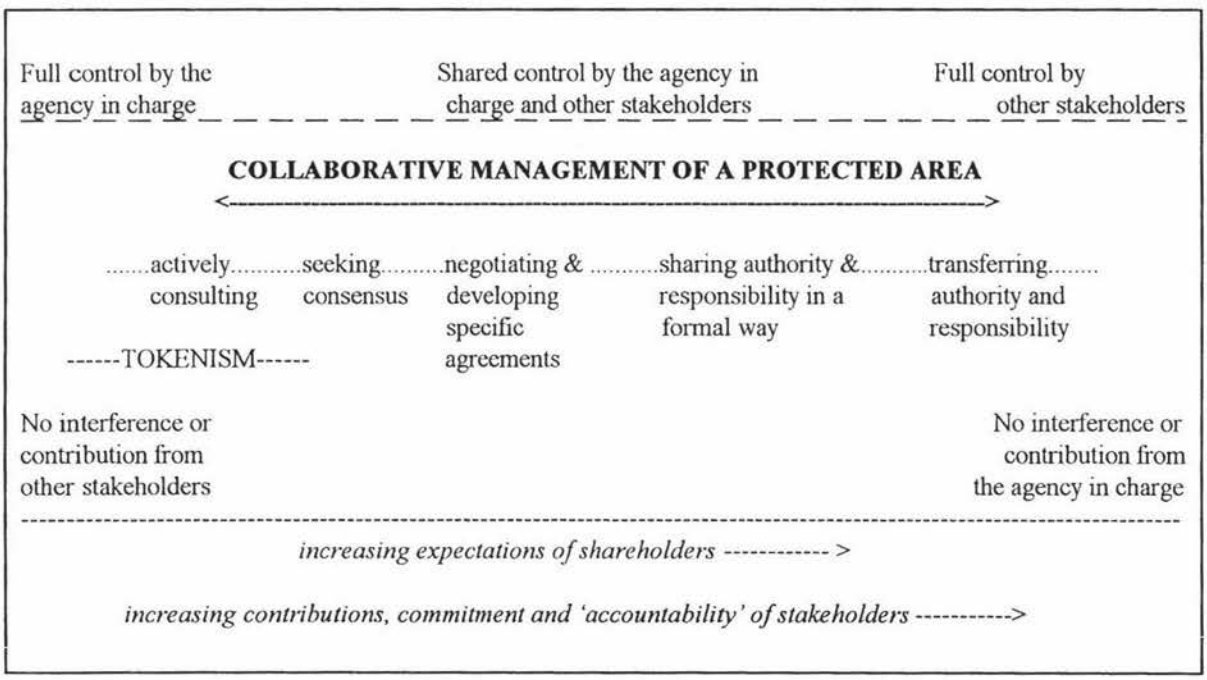

Figure 9. Participation in protected area management (sharing of influence and control) - a continuum (after Borrini-Feyerabend, 1996 and IUCN, 1997).

Effective sustainable management requires getting past this tokenistic approach and adopting mechanisms that promote active participation in resource management decision-making (allow it to actually and actively happen). Current recognition by management agencies has included discussion, although European values have dominated and development pressure has impacted on Maori spiritual values.[297] Incorporation of such structures allows for the development of constructive relationships between Maori and the Crown and moves away from traditional conflict-ridden situations that have dominated in the past, forging the way for holistic, community-based approaches to environmental management. As illustrated in Chapter 5 and the *Haddon*[298]

[296] It is not appropriate to use the term "collaborative management" for a situation in which stakeholders are merely consulted and not given a share of authority in management. Therefore, the term "tokenism" is used.

[297] This issue is compounded by the statutory standing of iwi resource management plans, as discussed previously.

[298] *Haddon v Auckland Regional Council* [1994] NZRMA 49.

case - if Maori are to be kaitiaki, and thus exercise kaitiakitanga, they must be given the authority to participate in these roles and in the management and decision-making processes with regard to resources of cultural, spiritual and traditional significance to them.

6.8. A SYNTHESIS OF THE KAITUNA RIVER SITUATION

The results of the previous analysis have illustrated that, despite the RMA paving the way for extensive policy recognition of kaitiakitanga (and other Maori interests), there have been no significant changes since the *Town & Country Planning Act 1977* and the 1984 Waitangi Tribunal findings. Consequently, given the issues outlined in the first half of this thesis, there is a lack of implementation of participatory-type structures allowing Maori to exercise kaitiakitanga. This has been demonstrated in this case study where, despite:

- the gifting of the Kaituna River and reserve by Ngati Pikiao to the Crown with the understanding that Ngati Pikiao is represented on the board in any management decisions relating to the reserve;
- that Ngati Pikiao have had a part in this management role for the last 75 years;
- having a demonstrated history of kaitiakitanga, confirmed by the Waitangi Tribunal in 1984;
- the Resource Management Act framework and its provisions for dealing with these issues;
- the wide range of policies and objectives inherent in the relevant planning documents;
- recognition that Maori cultural and spiritual values are now cognisable in law;
- the hierarchies and priorities accorded to the interests of Maori above the interests of others;
- the statutory requirements for consultation and participation and recent case law giving effect to this relationship; and
- various attempts by Crown management agencies to implement partnership agreements and mechanisms for recognising these issues and their relationship as Treaty partners

Ngati Pikiao are not being accorded their rights and responsibilities as kaitiaki under the RMA planning framework and decisions with respect to this relationship. Despite legislative attempts to address such inconsistencies through the requirements and provisions of the RMA relating to site protection and management, it remains to be seen as to whether these issues have been adequately addressed and tangata whenua, such as Ngati Pikiao, are being empowered with resource management and decision-making responsibilities. The significance of the Kaituna River can only be determined by Ngati Pikiao, the tangata whenua who have traditional rights over the river, and it cannot be assessed in any other way. From this analysis, it is now possible to say there is an inequity in application - the kawanatanga response is not meeting the tino rangatiratanga response. Consequently, there is a need for increased dialogue between Ngati Pikiao and management agencies through, for example, a more active presence of Ngati Pikiao on management boards and getting other management partners in the marae doors when discussion is required.

Kaitiakitanga used to be a practical reality comprising people within a spiritual dimension. It depended on relationships between people, and between people and the river (Laurenson, 1993). The singular characteristic of kaitiakitanga is that Ngati Pikiao accommodated nature and did not seek to dominate the relationship. Now, unfortunately, Ngati Pikiao unwillingly accommodates the Crown's interests and does not seek to dominate that relationship within the area of its ancestral occupation. The legal system, it seems, is still working in opposition to Maori spiritual values and pre-European tribal law.[299] For kaitiakitanga to be an effective component of the RMA and provide for the relationship of Ngati Pikiao, as kaitiaki of the Kaituna River, there will need a greater effort to provide for and implement mechanisms (such as s.33 RMA). This is in order for the Crown to pull back from its kawanatanga role and allow a legal basis for powersharing and more particularly, the co-management of resources - the provision of tino rangatiratanga. This case study has illustrated the need for the establishment of a dual planning approach that gives full expression to Maori values, and allows tangata whenua to exercise their rights as kaitiaki and participate in resource management decision-making on the Kaituna River.

[299] Niko Tangaroa, Whanganui Maori, 60 Minutes, 23/3/97.

CHAPTER 7

CONCLUSIONS

This study has investigated the current situation with respect to the application of kaitiakitanga and the historical context in which the situation has developed. Chapter Two demonstrated that the Maori world-view, in which kaitiakitanga developed, has been subsumed by the Western legal and administrative structures. This view is now beginning to re-express itself with growing strength and confidence. Maori aspirations will continue to grow as Maori make greater use of legal and political mechanisms to articulate and give effect to Treaty of Waitangi and cultural self-determination concerns. Chapter 2 also highlighted the strength of the Maori world-view and its essential link with kaitiakitanga and rangatiratanga, both of which are recognised in the Treaty. Chapter Three established that the Western/European world-view is being forced to change and accommodate other values, in particular environmental concerns and Treaty of Waitangi and Maori concerns. These values are changing as Maori become more assertive regarding their role in a future New Zealand, and New Zealanders of European descent become more familiar with Maori concepts and aspirations and accordingly seek to resolve past injustices whilst accommodating and providing for Maori institutional responses.

Although there is shared concern about conservation matters by both Maori and Europeans, there is still major and ongoing debate about the relative importance of Maori concepts and Treaty principles and their application to contemporary resource management concerns. Consequently, Chapter Four investigated specific legal and policy responses that deal with the new range of conflicts and values and examine these conflicts to find solutions and compromises that are generally acceptable. The hierarchies and priorities investigated in this chapter were expanded on in Chapter Five through an analysis of how Maori can use and are using participatory mechanisms in current resource management frameworks to exercise their kaitiakitanga. As partnership is not the definitive way to resolve these issues, this chapter also outlined other mechanisms and possible structures, both statutory and non-statutory, that allow Maori to express their aspirations as kaitiaki. These included s.33 RMA options, iwi planning documents, Heritage Protection Authority provisions, and those mechanisms developing on the edge of the law such as Deeds of Agreement and Charters of Understanding.

However, these developments notwithstanding, Maori discontent continues over the inability to fully express cultural aspirations and kaitiakitanga responsibilities, and to have that expression accepted and operating within the political and legal framework. This issue was specifically exemplified in the case study in Chapter Six where, despite the strongly expressed Maori values,

the resource management structures are inconsistent with the potential for a collaborative management structure. At the Kaituna River at Okere in the Bay of Plenty, this situation has seen the subsuming of Ngati Pikiao's role as kaitiaki coinciding with a deterioration of the cultural, spiritual and natural values of the river and its environs as the commercialisation and exploitation of the river increases. It remains to be seen if the kaitiaki role of hapu and iwi is properly appreciated by the resource management agencies involved and the promised Treaty partnership between the Crown and tangata whenua is affirmed. This concluding chapter evaluates the issues covered in the thesis and provides a synthesis of the main points.

While the RMA "accepts" and "operates" the concept of kaitiakitanga through its inclusion in the Act as a matter to "have particular regard to", the political and judiciary systems are currently unable to apply this concept effectively as a mechanism for dealing with conflicting resource management issues involving Maori and the Crown. This has been demonstrated particularly at the Kaituna River where, given the historical ownership problems (and a lack of mechanisms to adequately attempt to identify the legal owners), the outcome is the recognition of the need to first develop appropriate management approaches.

7.1. ACCOMMODATING A BICULTURAL RESPONSE

The RMA is moving the nation closer to a bicultural partnership through important recognition of Maori cultural and spiritual values and explicit links to the principles of the Treaty of Waitangi. However, it has not, as yet, ensured that the principles of partnership and the mutual co-existence of kawanatanga and rangatiratanga are properly understood and accommodated in local and regional planning regimes. Facilitating this relationship will require an understanding of the concept of *whenua* that aligns with traditional values of land connection (and use) rather than Western tenets of ownership and domination (Pond, 1997).[300] Corresponding with a greater understanding of whenua concepts will be an understanding of the place of kaitiakitanga in redefining our relationship with land and property rights. Kaitiakitanga, as an RMA principle, highlights both the difficulties, and the potential, for establishing a legal framework for resource management that is meaningful to both Maori and New Zealanders of non-indigenous descent.

While kaitiakitanga can be seen as the key bridging concept for putting conservation policy partnerships into place, its effectiveness depends on greater statutory recognition of the tino rangatiratanga role of iwi and hapu alongside the kawanatanga roles of Crown management agencies. There is a clear need to further develop new principles relating to the kawanatanga response including possible legal and constitutional adjustments. It is only when these issues, principles and concepts are redefined and become consistent with New Zealand's dual mainstream cultural heritage that a planning framework can be developed that meets the needs of Maori and

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[300] Pond's point is that the judiciary (and decision-making) system can no longer equate land ownership as the primary means by which Maori were traditionally connected with land and resources.

their reasonable expectation that the Treaty relationship will be honoured. While resource managers, scientists and policy makers throughout Crown management agencies recognise the differences in these two world-views and the Treaty of Waitangi as a constitutional structure that brings them into juxtaposition, they do not necessarily validify them in their planning and management functions and actions.[301] Now the outstanding issue is how new mechanisms, processes, and structures can be implemented to give effect to Maori aspirations. This is the issue at the heart of Maori criticisms of the RMA's current inability to not merely 'express' partnership, but to put these partnerships into 'effect'. Matunga (1997) has put it succinctly:

> "While there are many sections in the Act which at least create an obligation for statutory resource agencies to engage in dialogue with Maori when they are preparing regional policy statements and plans, district plans or deciding on consent applications, there are still no guarantees that the concerns of tangata whenua will be given the attention they deserve. Neither is there any method for independently assessing the effectiveness of this engagement:
>
> - It [the Act] doesn't recognise Maori tribes as legitimate resource authorities in the way that it recognises regional councils and territorial local authorities as primary resource managers.
> - It doesn't attempt to grapple with the concept of rangatiratanga and what it may mean for resource management.
> - It doesn't give any positive direction to regional councils and territorial local authorities, as to their obligations under the Treaty of Waitangi, but leaves them for better or worse, to "find their own way".
> - It lacks a mechanism for ensuring that Maori tribal resource management plans are given the statutory recognition they deserve as autonomous statements of tribal resource policy."

7.2. DEVELOPING A FRAMEWORK FOR A DUAL PLANNING APPROACH

Given that the RMA neither provides for a statutory base for a *separate* indigenous Maori planning system, nor does it fully incorporate the concept of tribal management plans into the Act, the challenge is with mainstream planning to recognise the validity of indigenous planning approaches, and from it develop a new concept of planning which recognises dual heritages, traditions, philosophies, methods and practices and allows these to co-exist (Matunga, 1997). The issues identified by Matunga set out the unique problems in New Zealand that arise because of the specific responsibilities under both the Treaty of Waitangi and the Resource Management Act. However, solutions need to be found to these differences and problems. Consequently, the following points are pertinent:

1. If kaitiakitanga is to become an effective component of resource management in New Zealand, it will be necessary for the concept to be accepted as a "matter of national importance" that can be incorporated into the policy frameworks at the regional and district planning level.

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[301] Given the context of the Treaty partnership, these two world-views, despite being different, have equal validity, and together open the way for a sustainable future for Aotearoa New Zealand.

2. Given Ngati Pikiao's successful demonstration as river kaitiaki in the 1984 Kaituna claim and their subsequent actions to try and protect the river, their kaitiaki role is both strongly established, and has been recognised in our legal history (the question can be asked, therefore, if kaitiakitanga cannot "work" in a situation as clear-cut as the Kaituna River at Okere, where anywhere in Aotearoa New Zealand can it work?).

3. Notwithstanding these events, it has not proved possible for Ngati Pikiao to legally exercise their kaitiaki role in a meaningful way. There is, therefore, a need for management structures that can give effect to and implement their kaitiaki responsibilities.

With respect to these questions and the issues outlined in this thesis, this concluding chapter discusses the extent to which they can be incorporated into the existing legislation in a dual planning approach for the Kaituna River, given the restrictions identified throughout the thesis. The situation illustrated at the Kaituna River is not unique in New Zealand, and reflects the need for the Crown to redefine its statutory role and to establish alternative non-statutory co-management options, and a legal basis for power sharing. The next section proposes such structures and the potential for collaborative management in both the resolution of conflict and recognition of the cultural, spiritual and ecological protection of water and waahi tapu on the Kaituna River. Through recommending such management systems, this part of the chapter suggests greater acknowledgement of Ngati Pikiao's rights as Treaty partners to exercise their tino rangatiratanga rights as kaitiaki and to utilise their traditional ecological knowledge in the sustainable management of the Kaituna River.

7.3. DEVELOPING THE FRAMEWORK - THE APPLICATION OF KAITIAKITANGA AT THE KAITUNA RIVER THROUGH COLLABORATIVE MANAGEMENT

Kaitiakitanga, like whanaunatanga, turangawaewae and mauri, is a *whenua*-based concept, implicitly about *connectedness* to land rather than *ownership* of it. It is imperative, *a priori*, therefore, that if kaitiakitanga is to apply in any way at the Kaituna, it involves devolution of an effective degree of authority[302] to Te Runanga O Ngati Pikiao; the agent that represents the people who are ancestrally connected to it. The components of this connection are manifold (Table 2).

Currently, Crown management agencies under the RMA have a clear role in ensuring that the overall natural resources of the Kaituna River are maintained and used sustainably. Therefore, a redefinition of the role of government agencies will be required to achieve this form of power sharing. There is a need to develop policies and to co-ordinate the resource use, but increasingly, as we are beginning to see in New Zealand, Crown agencies may not wish to carry out an

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[302] I.e. with sole authority, or in a collaborative management relationship with a Crown or territorial resource management authority.

extensive day-to-day policing role in resource management (IUCN, 1997). Devolution of authority to Te Runanga O Ngati Pikiao means that the Runanga would take responsibility for enforcement to ensure that the river is not being illegally used or over-exploited by commercial activities. Usually legislation giving the right to manage the resources to local communities confers a residual right to government agencies to intervene if the agreement is not followed

- *existing rights to Kaituna River and associated resources;*
- *continuity of relationship (e.g. Ngati Pikiao and residents versus visitors and tourists);*
- *unique knowledge and skills for the management of the Kaituna River and its waahi tapu;*
- *losses and damage incurred in the Crown management process;*
- *historical and cultural relations with the Kaituna River;*
- *degree of economic and social reliance on the Kaituna River;*
- *the effective exercise of kaitiakitanga in the 1984 Waitangi Tribunal case;*
- *degree of effort and interest in management;*
- *equity in the access to the Kaituna River and the distribution of benefits from their use;*
- *compatibility of the interests and activities of the stakeholder with national conservation and development policies;*
- *present or potential impact of the activities of the stakeholder on the resource base.*

Table 2. Possible criteria to distinguish Ngati Pikiao among stakeholders on the basis of effectiveness and equity (based on Borrini-Feyerabend, 1996).

In particular, the exercising of kaitiakitanga through participatory management structures (be it through HPA's, s.33, or informal mechanisms) will require a formal agreement between Ngati Pikiao and the government agencies dealing with the various aspects of the proposal. When such an agreement is executed, it may need to be given full legal effect by a supporting Act of Parliament. In such circumstances, environmental protection and conservation mechanisms may need to be redefined by virtue of the agreement and, instead, a special set of environmental measures can be prescribed in the agreement.[303] Thus, at the Kaituna River there may be legal guidelines that facilitate the approval of kaitiakitanga provisions which operate in particular situations alongside, or to the exclusion of, some of the provisions of the RMA and the Conservation Act.[304]

A key point is where ownership issues come into play. New Zealand has become a property owning society; one that believes deeply that to care for a place, you have to see your direct involvement with it. For Ngati Pikiao to properly manage the resource, they must be accorded ownership rights or adequate recognition of their ancestral relationship with the River in appropriate collaborative management structures (such as demonstrated by the preceding examples). Without these structures and the support and facilitation from relevant Crown agencies, the well-being and public use potential of the Kaituna River ecosystem will continue to

[303] There is no devaluing of environmental standards but mechanisms that provide for greater recognition of Maori values.
[304] Recent statutory examples involving Maori management of natural resources include the Ngai Tahu Settlement.

deteriorate, as will the mana of Ngati Pikiao as kaitiaki. However, in establishing mechanisms for collaborative management, it may be more practicable to leave ownership issues to one side and let the appropriate Waitangi Tribunal mechanisms resolve this separately.

7.3.1. Support and facilitation - Treaty obligations and the Principle of Partnership

The major role of Crown agencies in collaborative management arrangements is one of support and facilitation, particularly given the increasing rights of indigenous peoples and the Crown's obligations as a Treaty partner. In addition to this, the need for collaborative management has evolved because of resource use conflicts and a crisis in respect of the cultural, spiritual and conservation values of the Kaituna River. In the past, conflicts and misunderstandings between central and local government agencies, iwi, rafting companies and local residents have led to a failure to manage the Kaituna River in a sustainable and integrated way. It is important to note that such agencies can facilitate conflict resolution among groups of resource users and ensure that negotiated agreements take into account the interests of diverse groups within the community (IUCN, 1997). These agencies are also important in providing back-up to groups of users who attempt to implement management regulations and are unable to enforce them (IUCN, 1997).

7.3.2. A framework for establishing partnerships at the Kaituna River

Regional and district councils, rather than central government, are the key players in the new decision-making environment fostered by the RMA. This legislative framework provides impetus for the development of partnerships which recognise the statutory role of councils and the tino rangatiratanga role of iwi and hapu (Cant, 1997). The right of Maori to exercise kaitiakitanga is the key mechanism for securing these partnerships. However, there is a serious need for the resourcing of iwi authorities so that forums for dialogue can be developed and maintained. Facilitating active involvement and open dialogue between Ngati Pikiao and management agencies are essential to this process. However, conflict between iwi and hapu must be dealt with before these mechanisms can be implemented.[305]

A collaborative management agreement must represent a formalisation of local involvement, including the clear empowerment of Ngati Pikiao to assist in the management of the Kaituna River through their kaitiaki role. At the local level, the recognition of specific responsibilities and rights can be endorsed through the adoption of bylaws and formal agreements (IUCN, 1997). In order to work effectively, collaborative management has to be strengthened by building the capacity of these local institutions and groups to take sustainable management decisions and to implement them based upon sound technical and social advice (IUCN, 1997). In New Zealand the lack of

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[305] For example, there is conflict between Taheke and Okere Incorporations over the rafting issue on the Kaituna with respect to capitalising on the lucrative tourist market the river presents or protecting the spiritual and cultural health of the river from the affront of commercialisation. Hence the ongoing dilemma regarding the sacrifice of tribal identity for commercial use. In the past Ngati Pikiao have not let economic values compromise spiritual values and their interconnectedness with the land.

commitment and capacity has been the biggest problem, and can be largely attributed to a lack of resources and funding of iwi authorities and other community-based organisations (Rosier *pers. comm.*).

Whilst it is imperative that the Western administrative and legal systems evolve through paying full homage to Maori and the Maori world-view, the establishment of Ngati Pikiao's aspirations and linking them to common policy goals developed by management agencies is the first step to implementing successful collaborative management structures for the Kaituna River. An important component of this is the nature of use on the River, now that it has changed, in relation to the expression of Ngati Pikiao values (through their iwi resource management plan). The establishment of a Maori response through Ngati Pikiao's iwi resource management plan complements the statutory documents produced by management agencies under the RMA. In any partnership agreement, provisions may have to focus on the limited use of the river during certain months of the year (for example, to incorporate breeding and nesting cycles of the black shag) and to give the river a 'rest' period.[306] Such agreements would give Ngati Pikiao kaumatua the right to declare rahui and tapu, relinquishing the rights to operate on the river at certain times such as drownings, specific resource extraction (such as kiekie, flax, shags and eels). Rafting operators and public users would need to comply with rules and restrictions, and to assist in conserving the area as a whole. Such agreements could result from a negotiation process and ongoing dialogue.

It is possible that such agreements and management options may not suit all parties, and there may be some conflict in the values and aspirations of one or some of the parties.[307] Conflict resolution mechanisms would thus need to be incorporated into any negotiations process. Any agreements and resultant interaction would need to satisfy at least some of the needs of local stakeholders and give them a status and a voice that may grow over time.

7.4. DEVELOPING MANAGEMENT OPTIONS FROM THE EXISTING LEGAL FRAMEWORK

In terms of procedures under the RMA that give recognition to kaitiakitanga, legislation and policy has gone to some extent down the track of collaborative management through, for example, s.33 and heritage protection authorities. However, the resource management situation at the Kaituna River has demonstrated that these processes are not being facilitated and Ngati Pikiao's relationship with the river is being marginalised. More specifically, this situation has highlighted the need for formal collaborative management structures and negotiated agreements

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[306] At present, the Department of Conservation are having difficulties enforcing a month 'rest' period due to statutory jurisdiction issues over the river.

[307] The difficulty of coming to a decision with any agreements and management options is highlighted by the diversity and complexity of competing (and complimentary) values (Horsley & Rosier, 1989; Young, 1989; *cited in* Heerdegen & Rosier, 1991).

at all levels through the development of a range of management options specifically for the Kaituna River (Figure 10). In terms of the elements that are necessary to set the scene for negotiation and ultimately resolution of the resource use conflict on the Kaituna River, the following framework is suggested for the implementation of management options that accommodate both mainstream traditions:

7.4.1. Political Level Options

Primarily, iwi ownership concerns and the settlement of Treaty grievances are the key focus of Ngati Pikiao in the political level options category. These types of agreements could be dealt with either by Waitangi Tribunal recommendations, or by government negotiations such as the Ngai Tahu Settlement. This most recent settlement provides the closest outline to date of the potential scope of such agreements with new legal provisions formalising Ngai Tahu's future involvement in conservation management. Other potential examples include the use of a Memorandum of Understanding or a Deed of Agreement signed between Ngati Pikiao and the Crown setting out heritage and conservation partnership objectives. For example the Te Ranga Forum for the Whanganui National Park contains the basic elements of an effective political understanding, including a negotiated agreement between Whanganui Iwi and the Crown that addresses policy, functional and iwi resourcing issues, with the capacity to be expanded into a broader collaborative management agreement that can acknowledge ownership rights, should the parties wish to continue the process.[308]

7.4.2. Policy Advice Level Options

Any policy advice level options for Ngati Pikiao will depend primarily on legislative mandates and structures such as implementation methods and agreements on representative decision-making powers, functions and duties. For example, the Ngai Tahu Settlements process (discussed earlier) outlines these issues in a policy framework that devolves specific powers and functions to Ngai Tahu respectively. As previously outlined, New Zealand's current policy framework is not giving Maori the powers and functions they seek as Treaty partners through, for example, s.33 RMA. There is a need for detailed policy advice level options that give Ngati Pikiao these respective powers and functions to be able to exercise kaitiakitanga.

7.4.3. Functional Level Options

Functionally-based options refer to both specific management functions and operations that Crown management agencies at the Kaituna River currently carry out, as well as to staff activities such as planning, research, monitoring and administrative work required by management agencies to carry out their respective powers, functions and duties. For Ngati Pikiao involvement in the Kaituna River, these responsibilities would need to be directly focused on the activities that

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[308] Such agreements can link managerial, policy and functional considerations in the agreements that are reached.

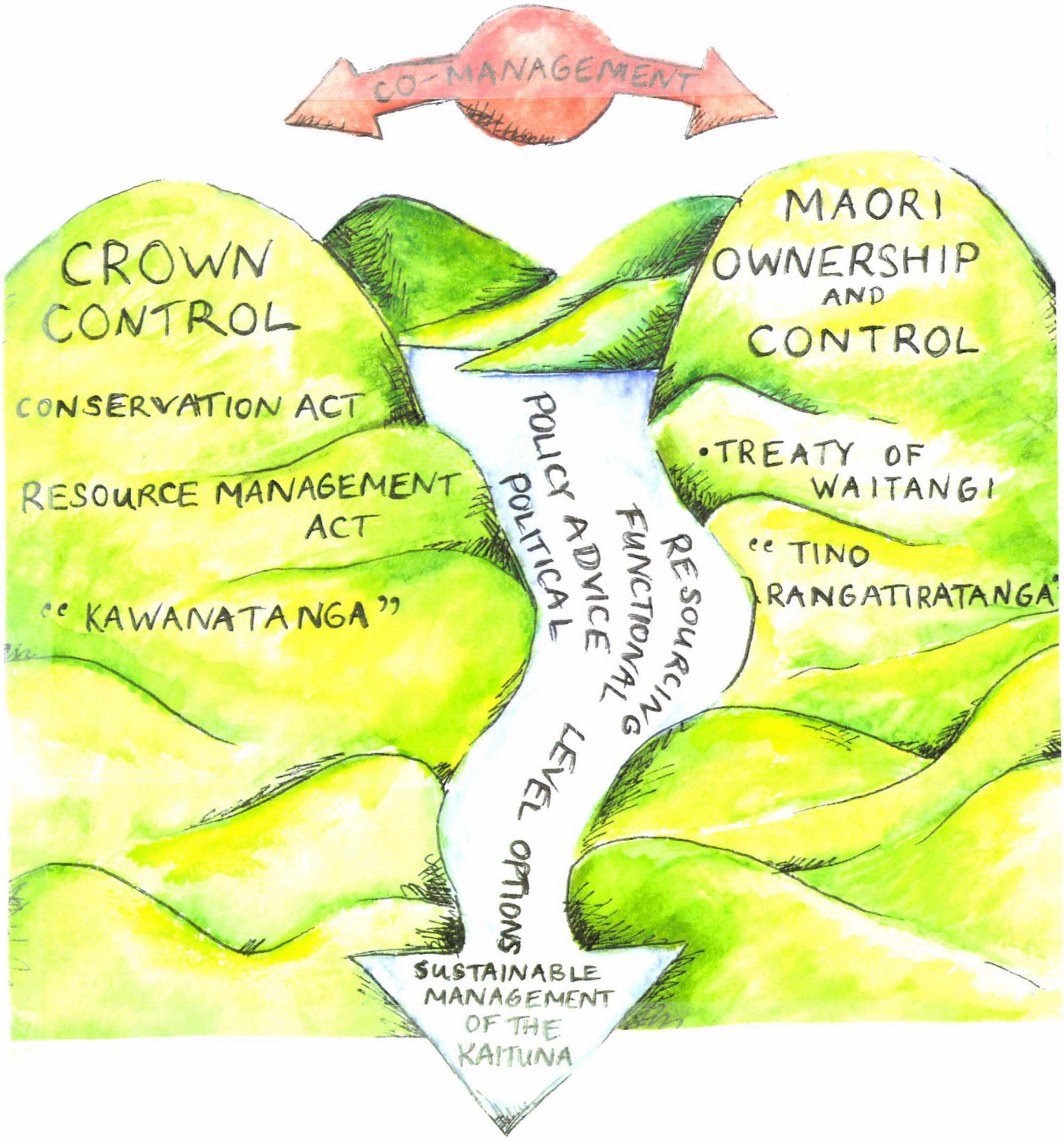

Figure 10. Achieving sustainable management at the Kaituna River through the implementation of appropriate structures.

management agencies currently undertake in the course of carrying out their functions. They would also need to be consistent with management agencies plan processes (such as s.33 RMA) and subject to standard administration and accountability procedures. Ngati Pikiao could become actively involved in management at the Kaituna River through heritage protection, ecosystem management, visitor services and rafting operation and management (including licensing) and other functions given adequate resourcing, training and support by the key management agencies concerned.

7.4.4. Resourcing Level Options

Resourcing is at the heart of many of the current problems for achieving integrated partnerships between management agencies and iwi[309] and is, therefore, a key priority for Ngati Pikiao in the implementation of management options within each of these complementary categories. For example, the use of practical methods for assisting Ngati Pikiao may include the provision of technical assistance with submissions on applications for consent; financial assistance with hui on major issues for the region which involve extensive consultation with iwi; regular workshops with Maori to keep them updated on issues of mutual concern; contracting iwi as consultants to management agencies on specific projects; or Ngati Pikiao operated and managed heritage tourism ventures.

In order to allow such a participatory process to work, it may be necessary to put ownership issues to one side and develop agreed principles for the management of the Kaituna River. Ultimately, in any decision-making framework or agreement reached at the Kaituna River, the following issues need to be considered:

- Do the options developed by Ngati Pikiao and management agencies meet these core values and aspirations (common ground)?
- Do the suggested mechanisms and processes meet the goals of both the RMA and the Conservation Acts, in particular do they promote the sustainable management of New Zealand's natural and physical resources (the priority established in the hierarchy of interests)?
- Do the suggested mechanisms allow them to be implemented within the existing resource management legal framework, current management structures and evolving management processes?
- Do they meet both Maori and European values and aspirations?

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[309] According to Solomon (1993) many Maori see this issue as related to the Crown delegating local authorities responsibility for Treaty of Waitangi issues without responsibilities for resourcing Maori participation at the local government level. Accordingly, tangata whenua do not have sufficient resources to effectively participate in the system.

7.5. CONCLUSION

This thesis has argued the case that, despite the widespread formal recognition of kaitiakitanga by management agencies and the various statutory and non-statutory mechanisms that could be used to accord Maori management authority, there have been neither a sufficiency, nor an appropriate choice of formally established structures to allow Ngati Pikiao to exercise, as Treaty partners, their kaitiakitanga responsibilities. The practical application of this argument is that, since the RMA's enactment, there has been no effective legal establishment of the RMA's inclusion of kaitiakitanga as a principle of resource management practice and decision-making. In a practical sense, this relationship, where the Crown has majority control of the management of New Zealand's natural and physical resources, is inadequate. Consequently, as Jarman *et al* (1996) state, *"...only when the Treaty of Waitangi is truly interpreted and applied from a genuine base of common and mutual understanding, respect and agreement between its two partners, will the current state of perpetual confusion and almost irreconcilable differences cease to exist and negatively impact upon this country and its peoples"*. In particular, the resolution of current resource management conflict situations, such as represented by the Kaituna River, will require new mechanisms that recognise the respective rights and duties of both iwi Maori and the Crown, and that achieve an effective balance between tino rangatiratanga and kawanatanga.

Like 'natural character',[310] and the resource management environment of sustainability within which they are enshrined, the concept of kaitiakitanga is a matter in active evolution subject to a wide range of interpretations. Therefore, the Resource Management Act, in including this concept, invites inevitable debate. At present, kaitiakitanga is expressed in the RMA as a principle to which territorial authorities shall have "particular regard to" in achieving the purpose of the Act. It is to be effected through the requirement the RMA places on them to "take into account the principles of the Treaty of Waitangi". However, as many Maori involved in resource management are realising, this is a requirement which those with responsibilities under the Act may readily avoid.[311]

Given the difficulties associated with determining and giving practical effect to kaitiakitanga at the Kaituna, the effectiveness of this concept in the domain of conservation and heritage management remains to be seen. It seems clear that its potential as a key bridging concept for establishing conservation and heritage partnerships is dependent upon the yet to be realised recognition by the wider New Zealand community of an environmental management system that can articulate Maori beliefs and practices.

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[310] In the context of section 6(a) of Part II of the RMA.

[311] Sir Tipene O'Regan's foreward to Kai Tahu ki Otago's Natural Resource Management Plan, 1997.

GLOSSARY OF MAORI TERMS USED

It must be noted that many of the English equivalents do not accurately translate the true meanings of those terms used.

ahi ka to keep the fires burning. The requirement to occupy and use land.

Aotearoa Land of the Long White Cloud - New Zealand.

atua God(s), spiritual entities, identities or personifications of presences.

hapu sub-tribe, extended family.

hinengaro thoughts and emotions.

hui gathering of people.

iwi tribe.

kahikatea *Dacrycarpus dacrydioides* (white pine). A New Zealand genus with one endemic species of forest tree.

kaitiaki guardian, protector, caretaker.

kaitiakitanga refers to the exercise of guardianship and to an ethic of stewardship (RMA 1991). It also infers a relationship between people and the environment. Tangata whenua who have mana over the resource will be able to determine the characteristics of kaitiakitanga and how it should be given expression. Kaitiakitanga includes an obligation on people to use resources in ways which respect and preserve resources in the environment, both physically and as sources of spiritual power (DOC).

karakia prayer, incantation.

kaumatua senior elder, male or female.

kawa etiquette, protocol.

kawanatanga governorship.

kiekie *Freycinetia banksii*, a climbing plant.

kuia senior female elder.

mahinga kai food resources.

mana dignity and integrity of a person; prestige, power, identity, influence, authority.

mana the customary rights and authority of land (Waitang Tribunal Report [Wai 27] 1991),

whenua and customary authority exercised by an iwi or hapu in an identified area (RMA 1991) or over the land which it occupies. The people who hold mana whenua status are known as tangata whenua (people of the land).

Maori the indigenous people of New Zealand.

marae open courtyard in front of the meeting house.

mauri often translated as life principle or life essence. Described by Marsden (1989) as: "...the life force which generates, regenerates and upholds creation. It is the bonding element that knits all the diverse elements within the Universal Procession giving creation its unity in diversity." The state of the mauri will reflect the overall health of the resource.

mutu the act of confiscation or revenge.

nga taonga tuku iho treasures or resources passed down from the gods or ancestors.

pa village including wharenui, wharekai, urupa etc.

Pakeha person of European descent.

papatuanuku Earth Mother.

rahui In order to conserve the resources and ensure their replenishment and sustenance the Maori introduced the tikanga of *rahui*. Rahui was a prohibition or ban instituted to protect resources. Another form of rahui was applied when an *aitua*, misfortune resulting in death, occured. Rahui and tapu were at times used interchangeably to mean the same thing namely 'under a ban'. Rahui in its basic meaning is 'to encompass'. A rahui designated the boundaries within which the tapu as a ban was imposed. Tapu meaning 'sacred or set apart' denoted that a ban was in force (Marsden & Henare, 1992).

rangitira chief.

rangitira-tanga tribal authority, chiefly authority. "All powers, privileges and mana of a chieftain" (Prof. Kawharu in Wai. 4, para. 4.7).

rohe tribal area where tangata whenua exercise their authority - often through the exercise of their rangitiratanga (Solomon & Schofield, 1992).

ropu participation in appropriate co-operative working groups (Te Iwi o Ngati Hauiti, 1996).

taiaha a weapon of hardwood carved in the shape of a tongue with a face on each side and adorned with a fillet of hair or feathers.

take whenua right of occupation.

taonga prized and sacred possesions that may have both tangible and intangible characteristics. They include things such as te reo (the Maori language), mountains, and fisheries (Crengle, 1993 p.12 PCFE, ibid.). *"Perhaps most significantly, they are a source of personal and collective emotional spiritual strength... The fundamental thing to understand and accept*

about taonga is that... the concept cannot easily be understood except by referece to the Maori world view" (Crengle, 1993, ibid.).

tangata whenua the people who hold mana whenua status are known as the tangata whenua. This status is based largely upon the continual occupation of an area by the relevant iwi; hapu or whanau which, over a number of generations, is said to "belong" to the land, rather than the land belonging to them. Whakapapa establishes the spiritual link back to the land. Kaitiaki in their human form are always tangata whenua, being the people who have a historic association and intimate knowledge of a resource or taonga, through whakapapa. The status of kaitiaki stems from long tribal associations.

taniwha guardian spirit (usually of a water body)

tapu sacred

te akau the interface of water and land.

Te Tiriti o Waitangi Treaty of Waitangi.

tikanga Tikanga Maori translates as Maori custom, donoting cusom and traditions that have been handed down through many generations and accepted as a reliable and appropirate way of fulfilling and achieving certain objectives and goals. Such proven methods, together with their accompanying protocols are integrated into the general cultural institutions of the system of standards, values, attitudes and beliefs (Marsden & Henare, 1992). The way in which laws are practised or applied, vary amongst iwi.

tino rangitiratanga full tribal authority (refer discussion in text).

toa conquest.

tohu signs or indicators sought by tohunga from kaitiaki as to the health or state of the mauri of the taonga or resources in a particular area

urupa cemetery, burial place.

wai ora water of life, pure water.

waahi tapu sacred sites. Examples of which might be places associated with death, canoe landing sites and tribal tuahu (and other sites of cultural, spiritual and historical importance to a tribe). Waahi tapu are defined by the local hapu or iwi who exercise kaitiakitanga over them (PCFE, 1992 p.32). Waahi tapu has been generally left undefined in the Act. This is because it sould be left up to iwi/hapu to both define and disclose to resource management agencies the exixtence and extent of waahi tapu in their areas (Nuttal & Ritchie, 1995).

whakapapa genealogy

whanau family, extended family.

whenua land.

BIBLIOGRAPHY

PUBLISHED BIBLIOGRAPHY

Adds, P. 1988. He Taonga Tuku Iho - A treasure handed down by the ancestors. *The Landscape.* Vol.37/38. Autumn/Winter, 1988.

Allen, H. 1988. Archaeology in New Zealand. *Public Archaeology - Choices for the 1990's.* Vol.31(3), pp.142-152.

Allison, P. 1995. Terror tourism. *Pacific Wave,* 1995.

Ansley, B. 1988. Settling up. *New Zealand Listener.* Vol. 121, No. 2527. 6th August 1988.

Awatere, D. 1984. Maori Sovereignty. *Broadsheet,* Auckland.

Ballantyne, B. 1992. A Surveyor's Quest for Kaitiakitanga. *New Zealand Surveyor*, Vol.XXXIII, No.281, August 1992.

Ballantyne, B. 1993. The Ethic of Stewardship: statutory requirement or flavour of the month. *New Zealand Surveyor,* Vol.XXXIII, No.282, February 1993.

Berke, P.R. 1994. Evaluating Environmental Plan Quality: The Case of Planning for Sustainable Development in New Zealand. *Journal of Environmental Planning and Management*, Vol. 37, No. 2, pp. 153-167.

Blackford, C. & Smith, A. 1993. *Cross cultural mediation: guidelines for those who interface with iwi.* Information Paper No. 46. Centre for Resource Management, Lincoln University, May 1993.

Boast, R. 1990. *The Treaty of Waitangi and Natural Resources - A Case Study*. Wellington.

Boast, R. 1992. Treaty of Waitangi and Environmental Law. *In* Milne, C. 1992. *Handbook of Environmental Law.* Royal Forest and Bird Protection Society of New Zealand, Wellington.

Borrini-Feyerabend, G. 1996. *Collaborative management of Protected Areas: Tailoring the Approach to the Context,* Issues in Social Policy, IUCN, Gland (Switzerland).

Bosselmann, K & Taylor, P. 1995. The New Zealand law and conservation. *Pacific Conservation Biology*, Vol. 2, No. 1, pp. 113-21.

Boyd, W.E. & Ward, G.K. 1993. Aboriginal Heritage and Visitor Management. *In* Hall, M. & McArthur, S. (*Eds*). 1993. *Heritage Management in New Zealand and Australia*. Oxford University Press, Auckland.

Burrows. K. 1997. *Kaitiakitanga and the Resource Management Act. An Analysis of the Interpretation of an Indigenous Concept Within a Western Based Legal System.* Masters in Business Studies, Massey University. March 1997.

Butts, D.J. 1993. Institutional Arrangements for Cultural Heritage Mange in New Zealand. *In* Hall, M. & McArthur, S. (*Eds*). 1993. *Heritage Management in New Zealand and Australia.* Oxford University Press, Auckland.

Cant, G. 1996. *Ngati Pikiao and the Waitangi Tribunal - The contributions of the Kaituna Claim to bicultural partnership in Aotearoa New Zealand.* University of Canterbury paper.

Clarkson, B.D. & King, D.R. 1987. *Scenic and allies reserves of Rotorua Lakes and White Island Ecological Districts, Northern Volcanic Plateau Region.* Department of Conservation Files, Bay of Plenty Conservancy, Rotorua.

Consultative Committee with Rafting Companies. 1993. *Summary of Proceedings (Kaituna River).* May 25, 1993, Rotorua

Cook, C.J. *et al.* 1987. *The Treaty of Waitangi in the Court of Appeal.* Government Printer, Wellington.

Crawford, J; Dixon, J. & Eriksen, N. 1996. What Makes a Good Plan? *Planning Quarterly*, March 1996.

Crengle, D. 1993. *Taking Into Account the Principles of the Treaty of Waitangi. An analysis of Section 8 of Resource Management Act 1991.* Ministry for the Environment, Wellington.

Crengle, D. 1996. Keynote Address: Environmental Management Topic. *EAROPH World Planning Congress.* Auckland 4-7 Sept. 1996.

Department of Conservation. 1994. *Report and Recommendations of the Board of Inquiry into the New Zealand Coastal Policy Statement.* Department of Conservation, Wellington.

Department of Conservation. 1993. *Draft Conservation Management Strategy for Bay of Plenty: Volumes 1 & 2.* Bay of Plenty Conservancy, Department of Conservation, Wellington.

Department of Conservation. 1997a. *Kaupapa Atawhai Strategy - Atawhai Ruamano/Conservation 2000.* February 1997.

Department of Conservation. 1997b. *Ngai Tahu Settlements - Protocols; Ngai Tahu Settlement - New Legal Provisions; Ngai Tahu Settlement - Land Transfers; Ngai Tahu Settlements - Access to Resources; Ngai Tahu Settlements - Freshwater Fisheries; Ngai Tahu Settlements - Native Species.* Department of Conservation Fact Sheets September 1997.

Department of Conservation. 1997c. *Conservation Management Strategy - Wanganui Conservancy.* Wanganui.

Douglas, E.M.K. (ed). 1984. *Waiora, Waimaori, Waikino, Waimate, Waitai. Maori Perceptions of Water and the Environment.* Centre for Maori Studies and Research, Occasional Paper No. 27, Waikato University, Hamilton.

Durie, M.H 1994. *Study Guide Two. Te Kawenata O Waitangi: The Treaty of Waitangi in New Zealand Society.* Massey University, Palmerston North.

Durie, M. 1995. Tino Rangatiratanga: Maori Self Determination. *Hi Pukenga Korero. Koanga* (Spring), Vol. 1, No. 1, pp. 44-55.

Durie, M. 1998. *Te Mana Te Kawanatanga - The Politics of Maori Self-Determination.* Oxford University Press, New Zealand.

Environment Bay of Plenty. 1995. *State Owned Enterprises Report.* Environment Bay of Plenty, Whakatane.

Environment Bay of Plenty. 1993. *Proposed Bay of Plenty Regional Policy Statement.* Environment Bay of Plenty, Whakatane

Eyles, J. 1986. *Qualitative Approaches in Social and Geographical Research.* Department of Geology and Earth Science, Queen Mary College, University of London.

Faludi, A. 1987. *A Decision-Centred Review of Environmental Planning.* Pergamon Press, Oxford, pp. 143 - 153.

Fenwick, R. 1995. To save our natural heritage we need something better than DOC. *The Press.* P.11, 20 December 1995

Fisher, D.E. 1987. The new environmental management regime in New Zealand. *Environmental Planning Law Journal.* Vol. 2, p. 43-88.

Fisher, D.E. 1991. In *The Resource Management Legislation of 1991: A Juridical Analysis of it's Objectives.*

Fisher, D.E. 1993. *Environmental Law - Text and Materials.* Australia.

Fraser, T.W. 1988. *Water Resource Use; a Matter of Perspective.* A case study of the Kaituna River Claim, Waitangi Tribunal. MA Thesis, University of Canterbury.

Gillespie, A. 1995. Nature's saviour or destroyer? *In Wilderness*, October 1995, pp. 46-47.

Guest, P. 1987. Planning - A direct responsibility. Who values our waterways? *Soil & Water.* Vol.23, No. 3.

Hall, M., Mitchell, I & Keelan, N. 1992. Maori Culture and Heritage Tourism in New Zealand. *Journal of Cultural Geography*, Vol.12, No. 2.

Hall, M & McArthur, S. (*Eds.*). 1993. *Heritage Mange in New Zealand and Australia.* Oxford University Press, Auckland.

Harris, B.V. 1993. Sustainable Management as an Express Purpose of Environmental Legislation: The New Zealand Attempt. *Otago Law Review*, Vol. 8, No. 1.

Heerdegen, R. & Rosier, J. 1991. Features: Knowledge and the Environmental Planning Process. *Sites: A Journal for Radical Perspectives on Culture.* Vol.22, Autumn 1991 p.5-20.

Hemi, M.A. 1995. 'Tino Rangatiratanga: Assessing the Resource Management Act'. Masterate thesis, Lincoln University.

Hewison, G. 1997. *Agreements between Maori and Local Authorities.* Manukau City Council.

Horsley, P. 1989. *Recent Resource Use Conflicts in New Zealand: Maori Perceptions and the Evolving Environmental Ethic.* Massey University.

Horsley, P. & J. Rosier. 1989. Maintaining and Restoring the Integrity of Ecosystems. *Planning Quarterly.* Vol.94, pp.5-13.

Huakina Development Trust v. Waikato Water Board. 1987 (2):188. *New Zealand law Reports.* N.Z. Council of Law Reporting.

Hughes, B.G (Director of Environmental Services, Rotorua District Council). 1996. Letter of recommendation to the Planning and Bylaws Committee of Rotorua District Council, 8 March, 1996.

IUCN - The World Conservation Union. 1997. *Ecosystem Management: Lessons From Around The World. A guide for World Bank Managers and Development Practitioners (DRAFT).* IUCN.

James, B. 1991. Public Participation in Department of Conservation Management Planning. *New Zealand Geographer.* Vol.47, pp. 51-59.

James, B. 1993. *The Maori Relationship with the Environment.* Wellington Regional Council and the Department of Conservation, Wellington.

Jarman, L.A., Moeau-Punga, M.C. & Moeau, P.J.R. 1996. *Ko Papatuanuku Te Matua O Te Takata. "Managing" Papatuanuku: Essential differences between Maori and western ways of viewing resource "management".*

Kai Tahu. 1998. *Kai Tahu ki Otago: Natural Resource Management Plan.* Kai Tahu.

Kawharu, I.H. 1977. *Maori land tenure.* Clarendon Press/Oxford University Press, Auckland.

Kawharu, I.H. (*Ed*). 1989. *Waitangi: Maori and Pakeha Perspectives on the Treaty of Waitangi.* Oxford University Press, Auckland.

Keelan, N. 1993. Maori Heritage - Visitor Management and Interpretation. *In* Hall, M. & McArthur, S.(*Eds)* 1993. *Heritage Management in New Zealand and Australia.* Oxford University Press, Auckland.

Kirby, V.G. 1993. Landscape, Heritage and Identity. *In* Hall, M. & McArthur, S. (*Eds*). 1993. *Heritage Management in New Zealand and Australia.* Oxford University Press, Auckland.

Koroheke, C. 1993. *Matters of Resource Management Significance to Iwi Authorities.* Wellington Regional Council, Wellington.

Lake Rotoiti Ratepayers and Residents Association. 1996. Newsletter May 1996.

Laurenson, M. 1993. *Loss of water, loss of power.* Mana Tangata. Hongongoi 1993.

Leopold, A. 1949. *A Sand County Almanac.* Oxford University Press, New York.

Love, M., Tuata-Nathan, T., Barns, M. & Kruger, T. 1993. *Ngaa Tikanga Tiaki I Te Taiao: Maori Environmental Management in the Bay of Plenty Regional Policy Statement.* A report prepared for the Bay of Plenty Regional Council.

Manatu Maori. 1991. *Maori Values & Environmental Management - He kakano I ruia mai I rangiatea.* Manutu Maori, Hune 1991.

Marsden, M. 1989. *Resource Management Law Reform. The natural World and Natural Resources: Maori Value Systems & Perspectives.* Working paper No.29. Ministry for the Environment, Wellington.

Marsden, M. And Henare, T.A. 1992. *Kaitiakitanga: A definitive introduction to the holistic world view of the Maori.* Unpublished manuscript.

Mather, A.S. & K. Chapman. 1995. *Environmental Resources.* Longman Group, England.

Matunga, H. 1990. Maori and Treaty of Waitangi Issues. *Planning Quarterly*. Vol. 97, March 1990, pp. 17-19.

Matunga, H. 1993. Walking the talk. *Planning Quarterly* No. 109, March 1993.

Matunga, H. P. 1994. *The Resource Management Act 1991 and Maori Perspectives.* Centre for Maori Studies and Research, Lincoln University.

Matunga, H. 1997. The Dual Heritage. *University of Auckland News*, September 1997.

Maynard, Kristen, Maruwhenua, Ministry for the Environment. *He Tohu Whakamarama - Draft*

report on the interactions between local government and Maori organisations which identifies relevant issues affecting Maori participation in Resource Management Act processes. Ministry for the Environment, Wellington.

McGlone, M.S. 1989. The Polynesian Settlement of New Zealand in Relation to Environmental and Biotic Changes. *New Zealand Journal of Ecology,* Vol. 12 (supplement) pp. 115-128.

McGuire, J. 1996. The concept of "tangata whenua" and collective interests. *New Zealand Law Journal*, January 1996, pp. 28-34.

McHugh, P.G. 1992. "Legal Reasoning and the Treaty of Waitangi: Orthodox and Radical Approaches" *In* Oddie, G., Perrett, R. (eds) 1992. *Justice, Ethics and New Zealand Society.*

Mikaere, A.L. 1995. Maori Issues. *New Zealand Law Review,* pp. 137-155.

Mikaere, A.L. 1994. Maori Issues. *New Zealand Law Review*, pp. 265-279.

Milne, C. (*Ed*). 1992. *Handbook of Environmental Law.* Royal Forest and Bird Protection Society of New Zealand, Wellington.

Minhinnick, N. 1989. *Kaitiaki.* Print Centre, Auckland.

Ministry for the Environment. 1988. The Treaty of Waitangi and its significance to the Reform of Resource Management Laws. *Resource Management Law Reform Working Paper No.8.* August 1988.

Ministry for the Environment. 1991. *The Ministry for the Environment Report on Supplementary Order Paper No. 22.* Resource Management Bill, June 1991.

Ministry for the Environment. 1992. *The Resource Management Act - Kia Matiratira - A Guide for Maori.* Ministry for the Environment, Wellington.

Ministry for the Environment. 1995. *Case Law on Consultation - Working Paper No. 3.* Ministry for the Environment, Wellington.

Ministry for the Environment. 1996. *Report on Resource Mange Amendment Bill (No. 3).* Ministry for the Environment, Wellington.

Ministry for the Environment. 1997. *The National Agenda for Sustainable Water Management: Background Information for Participants in stage 2 and 3 of the NASWM Process.* Wellington.

Molloy, L.F. 1988. *Soils in the New Zealand Landscape.* Wellington.

Molloy, L. 1993. The Interpretation of New Zealand's Natural History. *In* Hall, M. & McArthur, S. (*Eds).* 1993. *Heritage Management in New Zealand and Australia.* Oxford University

Press, Auckland.

Murton, B. Maori Territory. *In* Holland, P.G. and Johnston W.B. (Eds) *Southern Approaches: Geography in New Zealand.* New Zealand Geography Society pp. 91-115.

Mutu, M. 1994. Discussion on kaitiakitanga. *In* Department of Conservation. 1994. *Board of Inquiry Report into the New Zealand Coastal Policy Statement.* February 1994.

New Zealand Conservation Authority. 1997. *Maori Customary Use of Native Birds, Plants and Other Traditional Materials. Interim Report and Discussion Paper.* New Zealand Conservation Authority, Wellington.

Nuttal, P. & Ritchie, J. 1995. *Maaori Participation in the Resource Management Act - An Analysis of Provision made for Maaori Participation in Regional Policy Statements and District Plans produced under the Resource Management Act 1991. The Products.* Tainui Maaori Trust Board & the Centre for Maaori Studies and Research, University of Waikato.

Oliver, W.H. 1991. *Claims to the Waitangi Tribunal.* Waitangi Tribunal Division, Department of Justice, Wellington.

Orange, C. 1987. *The Treaty of Waitangi.* Allen & Unwin, Wellington.

Palmer, D. & Goodall, A. 1988. *Resource Management Law Reform. Water Resources and the Kai Tahu Claim.* Working Paper No.29. Ministry for the Environment, Wellington.

Park, G. N. 1995. *Nga Uruora: The Groves of Life - Ecology and History in a New Zealand Landscape*, Victoria University Press, Wellington.

Park, G.N. 1997. Shopkeepers, savages and the flora and fauna. *Draft article for Laboratory News*, 26 October, 1997.

Parliamentary Commissioner for the Environment. 1992. *Proposed Guidelines for Local Authority Consultation with Tangata Whenua.* Parliamentary Commissioner for the Environment, Te Kaitiaki Taiao a Te Whare Paremata, Wellington.

Parliamentary Commissioner for the Environment. 1996. *Historic and Cultural Heritage Management in New Zealand.* Parliamentary Commissioner For the Environment, Te Kaitiaki Taiao a Te Whare Paremata, Wellington.

Patterson, J. 1994. Maori environmental virtues. *Environmental Ethics,* Vol. 16, pp. 397-409.

Phillips, J. 1987. (Ed) *Te Whenua te Iwi: The Land and the People.* Allen and Unwin, Wellington.

Pollock, G. & Horsley, P. 1997. *Co-management: Learning by Doing.* (In press)

Pond, W. 1997. The land as a tradeable commodity. *New Zealand Books*, December 1997.

Public Access New Zealand. 1996. *Whose Waters.* No.7, p.11. June 1996.

Pullman, N & Pullman, M. 1997. Protecting the kukupu: Motatau Forest, Northland. *Royal Forest & Bird Protection Society*, No. 286, November 1997.

Reed, A.W. 1967. *The Myths and Legend of Maori Land.* Reed Publishers, Wellington.

Review Group. *Report of the Review Group on the Resource Management Bill.* February 11, 1991.

Reynolds, T. 1990. The Treaty today - what went wrong and what are we doing about it? *New Zealand Geographic.* Vol.5, pp. 32-71. January/March 1990.

Roberts, M.,Norman, W., Minhinnick, N., Wihongi, D. & Kirkwood, C. 1995. Kaitiakitanga: Maori perspectives on conservation. *Pacific Conservation Biology,* 2, 7-20.

Robinson, T. 1992. Who is managing these waters? *New Zealand Local Government.* Vol.28, No.4. April 1992.

Rose, D. B. 1996. *Nourishing Terrains: Australian Aboriginal Views of Landscape and Wilderness.* Australia Heritage Commission, Canberra ACT.

Rothenberg, D. 1996. Will the Real Chief Seattle Please Speak Up? *Resurgence*, No. 178, Sept/Oct 1996

Rotorua District Council. 1994. *Notice of a Requirement for a Heritage Order Under Section 189A of the Resource Management Act 1991.* Rotorua District Council, Rotorua, November 1994.

Rotorua District Council. 1996. *Rotorua District Plan.* Rotorua.

Rotorua District Council. 1996. *Report of Planning and Bylaws Committee - Future Management Kaituna River*, 11 March, 1996, Rotorua.

Rotorua District Council. 1997. *Rural Reserves Management Plan (2nd Draft)*, Rotorua District Council, June 1997.

Solomon, M. & Schofield, R. 1992. *The Resource Management Act and the Treaty of Waitangi - a Starting Point and Framework.* A report prepared for the Taranaki Regional Council, 1992, Stratford.

Solomon, M. 1993. *Treaty of Waitangi Issues and the Resource Management Act.* A paper presented to a Conference of the International Institute of Research, Hyatt Hotel, Auckland. 6 April 1993.

Sorrenson, M.P.K. 1975. How to Civilise Savages: Some 'Answers' from Nineteenth Century New Zealand. *New Zealand Journal of History.* Vol. 9, No. 2 pp. 97-110.

Sorrenson, M.P.K. 1981. Maori and Pakeha. *In* Oliver, W.H. (ed). *The Oxford History of New Zealand.* Oxford University Press, pp.168-193.

Sorrenson, M.P.K. 1990. Giving better effect to the Treaty of Waitangi: Some thoughts for 1990. *New Zealand Journal of History.* Vol.24, No.2.

Stafford, D.M. 1996. *Landmarks of Te Arawa. Volume 2: Rotoiti, Rotoehu, Rotoma.* Reed Books, Auckland.

Statistics New Zealand. 1996. *Household Labour Force Survey September 1996*, Department of Statistics, New Zealand.

Stokes, E.M. 1985. *"Maori Research and Development."* A Discussion Paper for the Social Sciences Committee of the National Research Advisory Council. February 1985.

Stokes, E.M. 1987. Maori Geography or Geography of Maoris. *New Zealand Geographer.* Vol. 43, No. 3. p. 118-123.

Stokes, E. M. 1992. The Treaty of Waitangi and the Waitangi Tribunal: Maori claims in New Zealand. *Applied Geography*, Vol. 12, pp. 176-191.

Sunde, C.H. 1996. *Co-management options for the Rotorua Lakes.* Dissertation, Bachelor of Resource and Environmental Planning, Massey University.

Suzuki, D. 1996. Native Values. *Resurgence,* No. 178, Sept/Oct 1996.

Taylor, A. and Patrick, M. 1987. Looking at Water Through Different Eyes: The Maori Perspective. *Soil and Water*, Summer 1987/88, pp. 22-24.

Te Ao Marama Incorporated. 1997. *Charter of Understanding between Southland Regional Council, Invercargill City Council, Southland District Council, Gore District Council and Te Ao Marama Incorporated.*

Te Arawa Maori Trust Board. 1974. *Te Arawa Maori Trust Board 1924-1974: A Review of its First 50 Years.* Rotorua Printers Ltd, Rotorua..

Te Maire Tau, Anake Goodall, David Palmer & Rakiihia Tau. 1990. *Te Whakatau Kaupapa: Ngai Tahu Resource Management Strategy for the Canterbury Region.* Aoraki Press, Wellington.

Te Iwi o Ngati Hauiti.1996. *Kaupapa Taiao - Environmental Policy Statement.* Hunterville, N.Z.

Te Roopu Maki Rangahau a Te Runanga o Ngati Pikiao. 1997. *Nga Tikanga Whakahaere Taonga o Ngati Pikiao Whanui (Ngati Pikiao Iwi Resource Management Plan).*

Te Runanga O Ngati Pikiao. 1997. *Puronga mo te Hui a Tau.* Te Runanga O Ngati Pikiao,

Rotorua.

Temm, P. 1990. *The Waitangi Tribunal: The Conscience of the Nation.* Random Century, Auckland.

Tomas, N. 1994. Implementing Kaitiakitanga under the RMA. *Environmental Law Reporter*, pp.39-42., July 1994.

Waitangi Tribunal. 1983. *Report of the Waitangi Tribunal on the Motonui-Waitara Claim* (Wai 6), Department of Justice, Wellington.

Waitangi Tribunal. 1984a. *Report of the Waitangi Tribunal on the Kaituna River Claim* (Wai 4). Department of Justice, Wellington.

Waitangi Tribunal 1984b. Kaituna hearings (Wai 4). Audiotapes of Hearings July 24 to July 27. Waitangi Tribunal, Wellington.

Waitangi Tribunal. 1985. *Report of the Waitangi Tribunal on the Manukau Claim* (Wai 8). Government Printer, Wellington.

Waitangi Tribunal. 1988. *Muriwhenua Fishing Report* (Wai 22), Waitangi Tribunal, Wellington.

Waitangi Tribunal. 1988. *Report of the Waitangi Tribunal on the Mangonui Sewerage Claim (Wai 17)*, Waitangi Tribunal, Department of Justice, Wellington.

Waitangi Tribunal. 1990. *Report of the Waitangi Tribunal on Claims Concerning the Allocation of Radio Frequencies (Wai 26 and Wai 250)*, Brooker and Friend, Wellington.

Waitangi Tribunal. 1991. *Ngai Tahu Report 1991 (Wai 27)*, Volume 1, Brooker and Friend, Wellington.

Waitangi Tribunal. 1992. *Mohaka River Report (Wai 119).* Government Print Publications, Wellington.

Waitangi Tribunal. 1992. *Ngai Tahu Fishing Report (Wai 27).* Waitangi Tribunal, Wellington.

Waitangi Tribunal. 1993. *Ngawha Geothermal Resource Report (Wai 304)*, Waitangi Tribunal, Wellington.

Waitangi Tribunal. 1993. *Te Arawa Representative Geothermal Claims (Wai 32)*, Waitangi Tribunal, Wellington.

Waitangi Tribunal. 1993b. *Preliminary Report on the Te Arawa Representative Geothermal Resource Claims.* Waitangi Tribunal, Brooker & Friend, Wellington.

Waitangi Tribunal Findings Analysis. 1988. *Resource Management Law Reform Working Paper No.9.*

Ward, J. & Scarf, F. 1993. Water Resources. *In* Memon, P.A. & Perkins, H.C. (eds.). *Environmental Planning in New Zealand.* The Dunmore Press, pp. 57-75.

Webber, C. 1992. Sites Sacred and Secret - Recognising spiritual values in legislation. *Terra Nova.* Vol.13, February 1992.

Westra, A. & Ritchie, J. 1967. *Maori.* A.H. & A.W. Reed, Wellington.

Young, D. 1988. "Sacred sites" - *Listener* editorial, 30 January, 1988.

UNPUBLISHED BIBLIOGRAPHY

Cant, G. 1997. *The Waitangi Tribunal and the Resource Management Act recognising the role of Kaitiaki in environmental management.* NZGS/IAG Conference, Hobart, January 1997.

Crengle, D. 1994. *The Resource Management Act - A New Relationship.* Draft notes for 85.206, University of Waikato, Hamilton.

Crengle, D. 1996. *Seminar on Maori and the RMA.* EAROPH Conference and Workshop seminars.

Durie, M.H. 1996. *Maori Science and Maori Development.* Address to the Faculty of Science, Massey University.

Gow, L.G.A. 1995. Implementing Sustainability: New Zealand's Experience with its Resource Management Act. *Address to World Resources Institute (WRI)/ New Zealand Embassy Seminar.* New Zealand Embassy, Washington, 6 June 1995.

Harmsworth, G. & Taumata, D. 1995. *Geographic Information Systems and other databases: planning tools for iwi and hapu.* NAMMSAT Conference, 5-8 July.

Hirangi Conference. April 1996. *Tongariro te maunga. Taupo-Nui-A-Tia te moana. Te Heuheu te tangata.*

Kingi, Tutuwehiwehi. *High Court Affidavit for Te Runanga O Ngati Pikiao v Minister for the Environment.*

Mahuta, R. 1991. *Maori Perspectives in Resource Planning Practice.* Abstract of Paper 2.3. presented at Regional Resources Futures Conference. August 28, 1991.

Matunga, H.M. 1997. Indigenous Peoples and Planning Education (Recognising a Dual Planning Heritage). *Australian and New Zealand Planning Schools Annual Conference*, July 1997.

Ministry for the Environment. 1996. *Ministry for the Environment Report on Resource Management Amendment Bill (No.3).* 19/07/96.

Ministry for the Environment. 1996. *Minister for the Environment's briefing notes and decisions into the Heritage Protection Authority applications - Kaimaumau estuary, Northland, Erskine College, Wellington, Mount Street Cemetery, Wellington.* Ministry for the Environment, Wellington (Requested under the Official Information Act).

Mutu, M. 1994. *The use and meaning of Maori words borrowed into English for discussing resource management and conservation.* Unpublished discussion paper for Conservation Board Chairpersons. Conference, 10 February, 1994.

Nga Korero. 1997. *Proceedings of Workshop on Kaitiakitanga.* Courtesy of Susan Forbes.

Ngati Kahu/Ngati Pango Resource Management Team. 1997. *Preparation of Iwi and Hapu Resource Management Plans.* New Zealand Planning Institute Conference Workshop, 16-18 April 1997, Palmerston North.

Nuttall, P. *The Resource Management Act and iwi resource management plans.* EAROPH/NZPI Conference Workshop, Huakina Development Trust, Auckland.

Orr, G.S. 1989. *Implications for Environmental Issues of the Treaty of Waitangi.* Address to Environment and Conservation Organisations of New Zealand (ECO) Conference, 4 August 1989.

Park, M.C. 1996. *The effectiveness of the Resource Management Act's Heritage Protection Authority Provisions.* Essay for Masters of Environment and Resource Planning - Professional Practice Course.

Planning and Development Conference. *Te Rapa*, November 1993.

Reeves, N. *Submission to Rotorua District Council on Lake Rotoiti Scenic Reserve and the Kaituna River* (regarding Rotorua District Councils Heritage Protection Authority application).

Ritchie, J.E. 1990. *Bicultural Responsibilities for Stewardship in a new Environment.* A joint conference of the NZ Institute of Parks and Recreation Administration (Waikato/Bay of Plenty Branch). 7 February 1990.

Sax, J.L.; House, J.H. and Hurd, H.H. 1989. *The Law of a Liveable Planet.* International Conference on Environmental Law, Sydney, Australia.

Swinney, K. 1997. *Kai Tahu Participation in Resource Management Processes: an analysis of initiatives in Murihiku.* Scoping Report for BRP Planning Project, Massey University.

Te Runanga O Ngati Pikiao. 1996. *Historical and Current Relationships between Ngati Pikiao and Regional Government.* A report commissioned by Ministry of Maori Development.

Tunnicliffe Walters Williams Barristers and Solicitors. 1996. *Record of Proceedings filed by the Crown in the Matter of Te Runanga O Ngati Pikiao's Heritage Protection Order.* 27

June 1996.

United Nations Conference on Environment and Development. 1992. *Outcomes of the Conference.* Ministry of External Relations and Trade, Ministry for the Environment, Wellington.

Upton, S. 1994. *The Meaning and Role of Section 5 - the Purpose of the Resource Management Act.* Address to the Resource Management Law Association, 7th October, 1994, Wellington.

Upton, S. 1995. *Purpose and Principle in the Resource Management Act.* The Stace Hammond Grace Lecture, University of Waikato. Hamilton.

Waaka, H. 1995. *The Resource Management Act and Iwi Development.* Director, Kaupapa Maori - Ministry of Foreign affairs and Trade, Wellington.

Whanganui River Maori Trust Board. *Whanganui River Charter on Tino Rangitiratanga and Iwi Water Rights.* Ngapuwaiwaha Marae, Taumaranui. 118-19 September, 1993.

NEWSPAPERS

DAILY POST NEWSPAPER, Rotorua. *Various articles on the Okere Falls Scenic Reserve and the Kaituna River rafting issue.*

DOMINION, Wellington.

LAKE ROTOITI RATEPAYERS NEWSLETTER.

NEW ZEALAND HERALD, Auckland. - Editorial, February 7, 1996.

NEW ZEALAND LISTENER.

PIKIAO PANUI - Magazine of Te Runanga O Ngati Pikiao.

OTHER INFORMATION SOURCES

Alexander Turnbull Library, Molesworth Street, Wellington.

Department of Conservation. *Files on Kaituna River, Okere Falls Scenic Reserve, Lake Rotoiti Scenic Reserves Board.* Bay of Plenty Conservancy, Rotorua.

Maori Land Court Files, Rotorua.

National Archives, Mulgrave Street, Wellington.

Rotorua Public Library. *Files on Kaituna River, Rafting and Heritage Protection Authority matters.*

Te Runanga o Ngati Pikiao files on Kaituna River.

Tunnicliffe Walters Williams, Barristors and Solicitors, *Files and record of proceedings of correspondence on Kaituna River and Minister for the Environments decision on Ngati Pikiao's application for Heritage Protection Authority Status.* Auckland.

LEGAL SOURCES

Air New Zealand v Wellington International Airport Ltd. [1992] High Court CP No. 403/91.

Auckland City Council v Smith CRN 4004060455 19/5/95 4 NZPTD 447.

Environmental Defense Society v Mangonui City Council [1989] 3 NZLR 257.

Fortzer v Auckland Regional Council A32/94 (PT).

Gill v Rotorua District Council 2 NZRMA 604.

Greensill v Waikato Regional Council W17/95 (PT).

Haddon v Auckland Regional Council [1994] NZRMA 49.

Hanton v Auckland City Council and BP Oil NZ Ltd A10/94 3 NZPTD 240.

Huakina Development Trust v Waikato Valley Authority [1987] 2 NZLR 188.

Minhinnick, Huakina Development Trust & Others v Watercare Services Ltd & Minister of Conservation A55/97 2 NZED 385.

New Zealand Rail v Marlborough District [1994] NZRMA 70.86.

New Zealand Maori Council v Attorney General [1987] 1 NZLR 641, 656.

New Zealand Maori Council v Attorney General [1989] 2 NZLR 142 CA

Ngatiwai Trust Board v Whangarei District Council C007/94

Ngai Tahu Maori Trust Board v Director General of Conservation [1995] 1NZED 103 C18/95.

Purnell v Waikato Regional Council A85/96 1 NZED 674.

R v Symonds (1840-1932) NZPCC 387.

Reith v Ashburton District Council CO34/94 NZPTD 424.

Royal Forest & Bird Protection Society v W.A. Habgood H.C. M655/86.

Rural Management Ltd v Banks Peninsula District Council (W34/94).

Sea-Tow Ltd v Auckland Regional Council [1994] NZRMA 204 (PT).

Te Arawa Maori Trust Board and Others v Rotorua County Council (1979) 6 NZTPA 520 (PT).

Te Runanga O Taumarere v Northland Regional Council [1995] A 108/95 (PT).

Wellington International Airport v Air New Zeland [1993] 1 NZLR 671, 674.

Whakarewarewa Village Charitable Trust v Rotorua District Council [1994] W 61/94 (PT).

Wi Parata v Bishop of Wellington (1877) 3 NZLR 72.

STATUTES - ACTS & AMENDMENT BILLS

Treaty of Waitangi 1840.
Native Lands Act 1852.
Native Lands Act 1865.
Te Arawa District Lakes Legislation 1922.
Harbours Act 1950.
Water & Soil Conservation Act 1967.
Treaty of Waitangi Act 1975
Treaty of Waitangi Amendment Act 1985.
Town & Country Planning Act 1977.
Environment Act 1986.
State Owned Enterprises Act 1986.
Conservation Act 1987.
Reserves Act 1977.
Resource Management Act 1991.
Resource Management Amendment Bill (No.3) 1996.
Historic Places Act 1993.
Maori Land Act 1993.
Maritime Transport Act 1993.

TELEVISION DOCUMENTARIES

Television One. *60 Minutes*. 23 March 1997.

TV3. *Inside New Zealand: Radicals.* 24 June 1997.

PERSONAL COMMUNICATION

Batibasaga, Kalaveti. 1997. *Fijian Chief and Massey University Post-graduate student*, Massey University.

Coffin, Antoine.1997. *Ngati Kahu Resource Centre*, 69 Carmichael Road, Tauranga.

Field, David. 1997. *Ex-Regional Conservator*[312], *Department of Conservation, Rotorua.*

Forbes, Susan. 1997-1998. *Archaeologist, Kotuku Consultants*, Paekakariki Hill Road,

Fraser, Tim. 1997. *Author of 1988 Masters Thesis on the Kaituna River.*

Kingi, Bertram. 1997-1998. *Okere Falls Scenic Reserves Board, Secretary of Maori Land Trust at Kaituna River.*

McKenzie, Mina. 1996 - 1997. Palmerston North.

Maynard, Cristin. 1996. *Maruwhenua, Ministry for the Environment*, Wellington.

Morehu, Te Ariki Derek. 1997-98. *Kaumatua, Te Runanga O Ngati Pikiao*, Rotorua.

Morgan, Kepa. 1997- 1998. *Operations Manager, Te Runanga O Ngati Pikiao,* Rotorua.

Nepia, Koro Kawana. 1997. *Kaumatua, Te Runanga O Ngati Pikiao,* Rotorua.

Nuttall, Peter. 1996-1997. *Huakina Development Trust*, Pukekohe.

Park, Geoff. 1997-1998. *Landscape Ecologist, Geoff Park Landscape Ecology and History*, Wellington.

Paul, Katie. 1997. *Te Puni Kokiri*, Wellington.

Reeves, Ngaire. 1997-1998. *Resident at Okere Falls,* Lake Rotoiti, Rotorua.

Rosier, Jo. 1997. *Senior Lecturer, Department of Environmental and Resource Planning, Massey University*, Palmerston North.

Shaw, Willie. 1997. *Ecological Consultant, Wildlands Consultants,* Rotorua.

Skerrett-White, Colleen. 1997-1998. *Research Coordinator, Ngaa Tikanga Whakahare Taonga*

[312]At the time of this authors personal comunication with Mr Field, he was the regional conservator for DOC.

o Ngati Pikiao Whanui (Iwi Resource Mangement Plan). Te Runanga o Ngati Pikiao.

Tahana, Pini. 1997. *Maori Land Court*, Rotorua

Taiepa, Todd. 1996-1998. *Lecturer, Department of Environmental and Resource Planning*, Massey University, Palmerston North.

Tatana Kahotea, Desmond. 1997. *Ngati Kahu/Ngati Pango Resource Management Team, Ngati Kahu Resource Centre*, 69 Carmichael Road, Tauranga.

Donald. 1997-1998. Owner and Manager, *Kaituna Rafting and Kayak Adventures*, State Highway 33, Okere Falls, Rotorua.

Whittle, Jo. 1997. Ministry for the Environment, Wellington.

FIRST SCHEDULE

THE TREATY OF WAITANGI

(THE TEXT IN ENGLISH)

HER MAJESTY VICTORIA Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorised to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those islands—Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorise me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

ARTICLE THE FIRST

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or to possess over their respective Territories as the sole Sovereigns thereof.

ARTICLE THE SECOND

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

ARTICLE THE THIRD

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

W. HOBSON Lieutenant Governor.

Now therefore We the Chiefs of the Confederation of the United Tribes of New Zealand being assembled in Congress at Victoria in Waitangi and We the Separate and Independent Chiefs of New Zealand claiming authority over the Tribes and Territories which are specified after our respective names, having been made fully to understand the Provisions of the foregoing Treaty, accept and enter into the same in the full spirit and meaning thereof: in witness of which we have attached our signatures or marks at the places and the dates respectively specified.

Done at Waitangi this Sixth day of February in the year of Our Lord One thousand eight hundred and forty.

[*Here follow signatures, dates, etc.*]

(THE TEXT IN MAORI)

Ko Wikitoria te Kuini o Ingarani i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kea tukua mai tetahi Rangatira—hei kai wakarite ki nga Tangata maori o Nu Tirani—kia wakaaetia e nga Rangatira maori te kawanatanga o te Kuini ki nga wahikatoa o te wenua nei me nga motu—na te mea hoki he tokomaha ke nga tangata o tona Iwi Kua noho ki tenei wenua, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kau ai nga kino e puta mai ki te tangata Maori ki te Pakeha a noho ture kore ana.

Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani a tukua aianei amua atu ke te Kuini e mea atu ana ia ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me Rangatira atu enei ture ka korerotia nei.

KO TE TUATAHI

Ko, nga Rangatira o te wakaminenga me nga Rangatira katoa hoki ki hai i uru ki taua wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu—te Kawanatanga katoa o o ratou wenua.

KO TE TUARUA

Ko te Kuini o Ingarani ka wakarita ka wakaae ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou kainga me o ratou taonga katoa. Otiia ko nga Rangatira o te wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata mona te Wenua—ki te ritenga o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

KO TE TUATORU

Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini—Ki tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki, nga tangata o Ingarani.

(Signed) W. Hobson,
Consul & Lieutenant Governor.

Na ko matou ko nga Rangatira o te Wakaminenga o nga hapu o Nu Tirani ka huihui nei ki Waitangi ko matou hoki ko nga Rangatira o Nu Tirani ka kite nei i te ritenga enei kopu, ka tangohia ka wakaaetia katoatia e matou, koia ka tonungia ai o matoa ingoa o matou tohu.

Ka meatia tenei ki Waitangi i te ono o nga ra o Pepueri i te tau kotahi mano, e waru rau e wa te kau o to tatou Ariki.

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187. Meaning of "heritage order" and "heritage protection authority"—In this Act—

"Heritage order" means a provision made in a district plan to give effect to a requirement made by a heritage protection authority under [section 189 or section 189A]:

"Heritage protection authority" means—

(a) Any Minister of the Crown including—

(i) The Minister of Conservation acting either on his or her own motion or on the recommendation of the New Zealand Conservation Authority, a local conservation board, the New Zealand Fish and Game Council, or a Fish and Game Council; and

(ii) The Minister of Maori Affairs acting either on his or her own motion or on the recommendation of an iwi authority:

(b) A local authority acting either on its own motion or on the recommendation of an iwi authority:

(c) The New Zealand Historic Places Trust in so far as it exercises its functions under [the Historic Places Act 1993]:

(d) [A body corporate] that is approved as a heritage protection authority under section 188.

"Heritage order": The words in square brackets were substituted for the expression "section 189" by s. 100 (1) of the Resource Management Amendment Act 1993.

"Heritage protection authority": In para. (c) the Historic Places Act 1993, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed Historic Places Act 1980; and in para. (d) the words in square brackets were substituted for the words "Any other person" by s. 100 (2) of the Resource Management Amendment Act 1993.

188. Application to become a heritage protection authority—(1) Any body corporate having an interest in the protection of any place may apply to the Minister in the prescribed form for approval as a heritage protection authority for the purpose of protecting that place.

(2) For the purpose of this section, and sections 189 and 191, "place" includes any feature or area, and the whole or part of any structure.

[(3) The Minister may make such inquiry into the application and request such information as he or she considers necessary.

(4) The Minister may, by notice in the *Gazette*, approve an applicant under subsection (1) as a heritage protection authority for the purpose of protecting the place and on such terms and conditions (including provision of a bond) as are specified in the notice.

(5) The Minister shall not issue a notice under subsection (4) unless he or she is satisfied that—

(a) The approval of the applicant as a heritage protection authority is appropriate for the protection of the place that is the subject of the application; and

(b) The applicant is likely to satisfactorily carry out all the responsibilities (including financial responsibilities) of a heritage protection authority under this Act.

(6) Where the Minister is satisfied that—

(a) A heritage protection authority is unlikely to continue to satisfactorily protect the place for which approval as a heritage protection authority was given; or

(b) A heritage protection authority is unlikely to satisfactorily carry out any responsibility as a heritage protection authority under this Act,—

the Minister shall, by notice in the *Gazette*, revoke an approval given under subsection (4).

(7) Upon—

(a) The revocation of the approval of a body corporate under subsection (6); or

(b) The dissolution of any body corporate approved as a heritage protection authority under subsection (4)—

all functions, powers, and duties of the body corporate under this Act in relation to any heritage order, or requirement for a heritage order, shall be deemed to be transferred to the Minister under section 192.]

(8) *Repealed by s. 101 of the Resource Management Amendment Act 1993.*

Subss. (3) to (7) were substituted for the former subss. (3) to (8) by s. 101 of the Resource Management Amendment Act 1993.

189. Notice of requirement to territorial authority—(1) A heritage protection authority may give notice to a territorial authority of its requirement for a heritage order for the purpose of protecting—

(a) Any place of special interest, character, intrinsic or amenity value or visual appeal, or of special significance to the tangata whenua for spiritual, cultural, or historical reasons; and

(b) Such area of land (if any) surrounding that place as is reasonably necessary for the purpose of ensuring the protection and reasonable enjoyment of that place.

(2) For the purposes of this section, a place may be of special interest by having special cultural, architectural, historical, scientific, ecological, or other interest.

(3) A notice under subsection (1) shall be in the prescribed form and shall include—

(a) The reason why the heritage order is needed; and

(b) A description of the place and surrounding area to which the requirement applies; and

(c) A specification of any restrictive conditions applying to the place or surrounding area; and

[(d) A statement of how the heritage order will affect the present use of the place and surrounding area, and the extent to which that and other uses may be continued or commenced without nullifying the effect of the heritage order; and]

(e) Any information required to be included in the notice by a plan or regulations; and

(f) Where consultation with any person likely to be affected by the heritage order—

(i) Has taken place, a statement giving details of such consultation, including any arrangements in respect of the upkeep of the place and surrounding area; or

(ii) Has not taken place, a statement giving the reasons why such consultation has not taken place.

(4) A heritage protection authority may withdraw a requirement under this section by giving notice in writing to the territorial authority affected.

(5) Upon receipt of notification under subsection (4), the territorial authority shall—

(a) Publicly notify the withdrawal; and

(b) Notify all persons upon whom the requirement has been served.

In subs. (3), para. (d) was substituted for the former para. (d) by s. 102 of the Resource Management Amendment Act 1993.

[189A. Notice of requirement by territorial authority—(1) A territorial authority may publicly notify, in accordance with section 93, a requirement for a heritage order within its own district for the purposes specified in section 189 (1); and the provisions of section 189 shall apply, with all necessary modifications, to such notice.

(2) Sections 96, 97, and 99 to 103 shall apply, with all necessary modifications, in respect of a notice under subsection (1), as if every reference in those sections—

(a) To a resource consent were a reference to the requirement; and

(b) To an applicant were a reference to the territorial authority; and

(c) To an application for a resource consent were a reference to the notice under subsection (1).

(3) In considering a requirement under this section, a territorial authority shall have regard to the matters set out in section 191 and all submissions, and may—

(a) Confirm or withdraw a requirement; or

(b) Modify a requirement in such a manner, or impose such conditions, as the territorial authority thinks fit.**]**

This section was inserted by s. 103 of the Resource Management Amendment Act 1993.

190. Further information, public notification, submissions, and hearing—Sections 92, 93, and 95 to 103 apply, with all necessary modifications, in respect of a requirement made under section 189 as if every reference in those sections—

(a) To a resource consent were a reference to the requirement; and

(b) To an applicant were a reference to the requiring authority; and

(c) To an application for a resource consent were a reference to the notice of the requirement under section 189; and

(d) To a consent authority were a reference to the territorial authority; and

(e) To a decision on the application for a resource consent were a reference to a recommendation by the territorial authority under section 191.

191. Recommendation by territorial authority—(1) **[**Subject to Part II, when**]** considering a requirement made under section 189, a territorial authority shall have regard to the matters set out in the notice given under section 189 (together with any further information supplied under section 190), and all submissions, and shall also have particular regard to—

(a) Whether the place merits protection; and

(b) Whether the requirement is reasonably necessary for protecting the place to which the requirement relates; and

(c) Whether the inclusion in the requirement of any area of land surrounding the place is necessary for the purpose of ensuring the protection and reasonable enjoyment of the place; and

(d) All relevant provisions of any national policy statement, New Zealand coastal policy statement, regional policy statement, regional plan, or district plan; and

(e) . . . Section 189 (1); and

(f) As appropriate, management plans or strategies approved under any other Act which relate to the place.

(2) After considering a requirement made under section 189, the territorial authority may recommend—

(a) That the requirement be confirmed, with or without modifications; or

(b) That the requirement be withdrawn.

(3) In recommending the confirmation of a requirement under subsection (2) (a), the territorial authority may recommend the imposition of—

(a) A condition that the heritage protection authority reimburse the owner of the place for any additional costs of upkeep of the place required as a result of the making of the heritage order:

(b) Such other conditions as the territorial authority considers appropriate.

(4) The territorial authority shall give reasons for a recommendation made under subsection (2).

In subs. (1) the words in square brackets were substituted for the word "When" by s. 104 (a) of the Resource Management Amendment Act 1993; and in para. (c) the words "Part II and" were omitted by s. 104 (b) of that Act.

192. Application of other sections—The following sections shall, with all necessary modifications, apply in respect of a requirement under [section 189 or section 189A] as if the heritage protection authority was a requiring authority, the heritage order was a designation, and references to section 171 were references to section 191:

(a) Section 172, which relates to decisions of requiring authorities:

[(aa) Section 170, which relates to the discretion to include requirements in proposed plans:]

(b) Section 173, which relates to public notification of such decisions:

(c) Section 174, which relates to appeals against such decisions:

(d) Section 175, which relates to the provision of designations in district plans:

(e) Section 180, which relates to the transferability of designations:

(f) Section 181, which relates to the alteration of designations.

The expression in the first set of square brackets was substituted for the expression "section 189" by s. 105 (1) of the Resource Management Amendment Act 1993; and para. (aa) was inserted by s. 105 (2) of that Act.

193. Effect of heritage order—Where a heritage order is included in a district plan then, regardless of the provisions of any plan or resource consent, no person may, without the prior written consent of the relevant heritage protection authority named in the plan in respect of the order, do anything including—

(a) Undertaking any use of land described in section 9 (4); and

(b) Subdividing any land; and

(c) Changing the character, intensity, or scale of the use of any land—

that would wholly or partly nullify the effect of the heritage order.

[193A. Land subject to existing heritage order or designation—(1) Subject to sections 9 (3) and 11 to 15, where a heritage order is included in a district plan, and the land that is the subject of the heritage order is already the subject of an earlier heritage order or a designation,—

(a) The heritage protection authority responsible for the later heritage order may do anything that is in accordance with that heritage order only if that authority has first obtained the written consent of the authority responsible for the earlier order or designation; and

(b) The authority responsible for the earlier order or designation may, notwithstanding section 193 and without obtaining the prior written consent of the later heritage protection authority, do anything that is in accordance with the earlier order or designation.

(2) The authority responsible for the earlier designation or order may withhold its consent under subsection (1) only if that authority is satisfied—

(a) That, in the case of an earlier designation, the thing to be done would prevent or hinder the public work or project or work to which the designation relates; or

(b) That in the case of an earlier heritage order, the thing to be done would wholly or partly nullify the effect of the order.]

194. Interim effect of requirement—(1) Where a heritage protection authority has given notice of a requirement for a heritage order during the period described in subsection (2) then, regardless of the provisions of any plan or resource consent, no person may, without the prior written consent of the heritage protection authority, do anything (including the things referred to in paragraphs (a) to (c) of section 193) that would wholly or partly nullify the effect of the heritage order.

(2) For the purposes of subsection (1), the period commences on the date on which the heritage protection authority gives notice of the requirement under section 189 [or section 189A] and ends on the earliest of the following days:

(a) The day on which the requirement is withdrawn by the heritage protection authority:

(b) The day on which the requirement is cancelled by the Planning Tribunal:

(c) The day on which the heritage order is included in the district plan.

(3) No person who contravenes subsection (1) during the period described in subsection (4) commits an offence against this Act unless that person knew, or could reasonably have been expected to have known, at the time of the contravention, that the heritage protection authority had given notice of the requirement.

(4) For the purposes of subsection (3), the period commences on the date on which the heritage protection authority gives notice of the requirement under section 189 [or section 189A] or clause 4 of the First Schedule and ends on the day upon which the territorial authority publicly notifies the requirement under that section or the proposed plan under clause 5 of that Schedule.

(5) Subsection (3) applies notwithstanding anything to the contrary in section 338 and section 341 (which deal with offences).

In subss. (2) and (4) the expression in square brackets was inserted by s. 107 (1) and (2) respectively of the Resource Management Amendment Act 1993.

195. Appeals relating to sections 193 and 194—(1) Any person who—

(a) Proposes to do anything in relation to land that is subject to a heritage order or requirement for a purpose which, but for the heritage order or requirement, would be lawful; and

(b) Has been refused consent to undertake that use by a heritage protection authority under section 193 or section 194, or has been granted such consent subject to conditions—

may appeal to the Planning Tribunal against the refusal or the conditions.

(2) Notice of an appeal under this section shall—

(a) State the reasons for the appeal and the relief sought; and

(b) State any matters required to be stated by regulations; and

(c) Be lodged with the Planning Tribunal and served on the heritage protection authority whose decision is appealed against, within 15 working days of receiving the heritage protection authority's decision under section 193 or section 194.

(3) In considering an appeal under this section, the Tribunal shall have regard to—

(a) Whether the decision appealed against has caused or is likely to cause serious hardship to the appellant; and

(b) Whether the decision appealed against would render the land which is subject to the heritage order or requirement incapable of reasonable use; and

(c) The extent to which the decision may be modified without wholly or partly nullifying the effect of the requirement or heritage order—

and may confirm or reverse the decision appealed against or modify the decision in such manner as the Tribunal thinks fit.

196. Removal of heritage order—Section 182 shall apply, with all necessary modifications, in respect of the removal of heritage orders as if—

(a) A heritage protection authority was a requiring authority; and

(b) A heritage order was a designation, except that the removal of a heritage order from a district plan shall not take effect until 10 working days after notice of removal is received by the territorial authority [or after the territorial authority gives notice of the removal of its heritage order in its own district].

In para. (b) the words in square brackets were added by s. 108 of the Resource Management Amendment Act 1993.

Appendix 3 -Sixteen Water Cases (after Ritchie, 1990).

MOTU RIVER - Wild and Scenic Preservation Order

HUNTLY POWER STATION - Water Right

MOTONUI - Industrial pollution of coastal food source

MANUKAU - Pollution and desecration of large inland harbour

N.Z. STEEL - Water rights - mixing of waters

HUAKINA - Spiritual values and water pollution

LAKE WAAHI - Pollution. Eutrophication. Food source.

WAIKATO RIVER CLAIM - Restore title of bed to tribal control

TAUPO MANAGEMENT PLAN - Large lake planning

WHANGAMARINO WETLANDS - Wetland management

KAITUNA - Land disposal of treated effluent

WAIKATO RIVER MANAGEMENT PLAN - Clean up a major waterway

WHANGANUI HYDRO - headwaters capture

KAHUNGUNU/HERETAUNGA - water zoning

WHANGANUI - sewage outfall

MOHAKA RIVER - cascade hydro dam plan.

These cases illustrate that Maori have become:

1. the kaitiaki;
2. the conscience of the nation for water;
3. communicators of a water ethic;
4. change agents through intervention and participation in administrative control systems, legal and tribunal processes, direct negotiations and direct action.

PART II

PURPOSE AND PRINCIPLES

5. Purpose—(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

(2) In this Act, "sustainable management" means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well being and for their health and safety while—

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

6. Matters of national importance—In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

(a) The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:

(b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:

(c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

(d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:

(e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

7. Other matters—In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

(a) Kaitiakitanga:

(b) The efficient use and development of natural and physical resources:

(c) The maintenance and enhancement of amenity values:

(d) Intrinsic values of ecosystems:

(e) Recognition and protection of the heritage values of sites, buildings, places, or areas:

(f) Maintenance and enhancement of the quality of the environment:

(g) Any finite characteristics of natural and physical resources:

(h) The protection of the habitat of trout and salmon.

8. Treaty of Waitangi—In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

Appendix 5 - References in the Resource Management Act 1991 relating specifically to Maori issues.

PART I	
Section 2(1)	Definitions including kaitiakitanga, iwi authority, maataitai, mana whenua, tangata whenua, taonga raranga, tauranga waka, tikanga Maori.
PART II	
Section 6(e)	The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga is a matter of national importance.
Section 7(a)	Requirement to have particular regard to kaitiakitanga.
Section 8	Duty to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).
PART III	
Section 14(3)(c)	The use of water is not prohibited by the section if the use is in accord with tikanga Maori for the communal benefits of tangata whenua and does not have an adverse effect on the environment.
PART IV	
Section 33(1), (2)	Provision for transfer of functions, powers, or duties to another "public authority", which includes an iwi authority.
Section 39(2)(b)	Recognition of tikanga Maori and receiving of evidence in Maori.
Section 42(1)(a)	Protection of sensitive information.
PART V	
Section 45(2)(h)	Reference of Section 8 (Treaty of Waitangi) in the context of whether it is desirable to prepare a national policy statement.
Section 58(1)(b)	A New Zealand coastal policy statement may state policies about the protection of the characteristics of the coastal environment of special cause to the tangata whenua including waahi tapu, tauranga waka, mahinga maataitai, and taonga raranga.
Section 61(1)	Regional policy statement to be prepared and changed in accordance with Part II.
Section 61(2)(a)(ii)	In preparing regional policy statements, regional councils are to have regard to any relevant planning documents which are recognised by an iwi authority, and to any regulations relating to management of taiapure.
Section 62(1)(b)	Regional policy statements to state matters of resource management significance to iwi authorities.
Section 65(3)(e)	Regional council to consider preparing a regional plan where tangata whenua have concerns about their cultural heritage in relation to their natural and physical resources.
Section 66(1)	Regional plan to be prepared and changed in accordance with Part II.
Section 66(2)(c)(ii), (iii)	In preparing regional plans, regional councils shall have regard to any planning document recognised by an iwi authority, to any regulations relating to taiapure.
Section 74(1)	District plans to be prepared and changed in accordance with Part II.
Section 74(2)(b)(ii), (iii)	In preparing district plans, territorial authorities shall have regard to any planning document recognised by an iwi authority or regulation relating to taiapure.

PART VI

Section 93(1)(f)	Notification to iwi authorities of resource consent applications.
Section 104(1)	When considering a resource consent application, consent authorities are to have primary regard to Part II, before other matters in Section 104.
Section 140(2)(h)	Section 8 (Treaty of Waitangi) reference for Minister may have regard to Section 8 duty in deciding whether a proposal is of national significance.

PART VIII

Section 187(a)(ii), (b)	Minister of Maori Affairs or local authority may act as heritage protection authority. Either may act on own motion or on iwi authority recommendation.
Section 189(1)(a)	Notice may be given to a territorial authority for the protection of an area of significance to tangata whenua.

PART IX

Section 199(2)(c)	Refers to protection of water body considered to be significant in accordance with tikanga Maori.
Section 204(1)(c)(iv)	Iwi authorities to be notified of application to special tribunal.

FIRST SCHEDULE

Clause 2(2)	Proposed regional plan to be prepared in consultation with iwi authorities.

PART I

Clause 3(1)(d)	Requires local authorities preparing policy statements or plans to consult the tangata whenua through iwi authorities and tribal runanga.
Clause 5(4)(f)	Local authority to provide copy of proposed policy statement or plan to tangata whenua through iwi authorities and tribal runanga.
Clause 20(f)	Local authority to provide copy of operative policy statements or plan to tangata whenua through iwi authorities and tribal runanga.

Appendix 6 - Treaty Principles[1].

Where applicable, the adumbrations of the principles used here are those used in the Parliamentary Commissioner for the Environment's (1988) publication "Environmental Management and the Principles of the Treaty of Waitangi" and the Ministry for the Environment/Dianne Crengle's "Taking Into Account the Principles of the Treaty of Waitangi".

Court of Appeal	**Waitangi Tribunal**
Principle 1: The Essential Bargain. The cession by Maori of sovereignty to the Crown was in exchange for the protection by the Crown of Maori rangatiratanga.	The right of the Crown to make laws was exchanged for the obligation to protect Maori interests.
Principle 2: The Treaty Relationship. The Treaty requires a partnership and the duty to act reasonably and in good faith. The responsibilities of the parties are analogous to fiduciary duties. The Treaty does not authorise unreasonable restrictions on the Crown's right to govern.	The Treaty implies a partnership, exercised with utmost good faith. The Treaty is an agreement that can be adapted to meet new circumstances. The courtesy of early consultation. The wider needs of both Maori and the wider community must be me, which will require compromises on both sides.
Principle 3: Active Protection. The duty is not merely passive, but extends to active protection of Maori people in the use of their resources and other guaranteed taonga to the fullest extent practicable. The obligation to grant at least some form of redress for grievances where these are established.	The Maori interest should be actively protected by the Crown. The Crown right of preemption imposed reciprocal duties to ensure that the tangata whenua retained sufficient for their needs. The Crown cannot evade its Treaty obligations by conferring an inconsistent jurisdiction on others.
Principle 4: Tribal Self-Regulation. Maori were to retain chieftainship rangatiratanga over their resources and taonga and to have all the rights and privileges of citizenship.	The Crown obligation to legally recognise tribal rangatiratanga.

[1] Based on a raft of principles enunciated by the Court of Appeal, the High Court and the Waitangi Tribunal.

*Appendix 7 - **Runanga Iwi Act 1990 (repealed)** (after MfE 1995).*

There is no definition of what constitutes an iwi but it could be helpful to refer to the Runanga Iwi Act 1990 which was repealed in 1991.

Some terms referred to in that Act were:

"Essential characteristics of iwi - For the purposes of this [the Runanga Iwi] Act, the essential characteristics of an iwi include the following:

(a) Descent from tupuna:
(b) Hapu:
(c) Marae:
(d) Belonging historically to a takiwa:
(e) An existence traditionally acknowledged by other iwi." (Section 5, Runanga Iwi Act.)

"Runanga" means a council of iwi, or two or more iwi: (Section 2 Runanga Iwi Act.)

"Takiwa", in relation to an iwi, means the territory in which the members of the iwi are tangata whenua: (Section 2, Runanga Iwi Act.)

Appendix 8. A Synopsis of events at the Kaituna River[1].

Pre -European - Intense Maori occupation of the Kaituna River and surrounding area.

1840 *Treaty of Waitangi* signed by Maori and representatives of the Crown.

1852 Creation of the Settler Government in New Zealand under the *Constitution Act 1852.*

1899 January - Land at Okere Falls taken by Crown for purposes of an Electric Light Reserve and Road Reservation under section 92 of the *Public Works Act 1894.*

1903 The Hon. Hone Heke, Member for Northern Maori, objected to the Crown's presumption of ownership of rivers under the proposed Water Power Act.

1909 *Rotoiti Validation Act 1909 (No. 33)* enacted to validify the confiscation of the land at Okere Falls.

1922 Okere Falls Scenic Reserve formally "gifted" by Ngati Pikiao to the Crown as one of many parcels of land to be managed under the Lake Rotoiti Scenic Reserves Board, a provision of the *Native Land Amendment and Native Claims Adjustment Act 1922.*

1924 Te Arawa Maori Trust Board established.

1941 *Soil Conservation and Rivers Control Act* established Catchment Boards to administer the Act.

1967 *Water and Soil Conservation Act* enabled natural waterways to be used for the disposal of treated effluent, subject to water right applications (although Maori traditional rights not given cognisance).

1974 14 hectare Okere Falls Scenic Reserve gazetted to protect its natural and historic significance.

1975 *Treaty of Waitangi Act 1975* enacted and the creation of the Waitangi Tribunal.

1977 *Town and Country Planning Act 1967* enacted.

1977 *Reserves Act 1977* enacted.

1978 January - Waitangi Tribunal Kaituna claim filed by Ngati Pikiao tribe.

1984 Waitangi Tribunal recognised Ngati Pikiao's legitimate grievance of sewage disposal proposal and confirmed Ngati Pikiao's status as traditional owners of the Kaituna River.

1984 Labour Government Resource Management Law Reform process initiated.

1985 *Treaty of Waitangi Amendment Act.*

1991 Resource Management Act passed with its inclusion as kaitiakitanga as a matter of national importance.

1991 Government and local government agencies notified of shag (native kawaupaka) colony problems and damage to environment from commercial rafting activity.

1994 April - Hui-a-iwi mandates Te Runanga O Ngati Pikiao (TRONP) to act on Kaituna River issues and apply for Heritage Protection Authority (HPA) status to protect the Kaituna River.

1994 August - Ministry for the Environment recommend TRONP's HPA application be approved.

1994 October - Rotorua District Council (RDC) attempted to rezone Okere Falls Scenic Reserve to sell to rafters.

1994 August - DOC recommended that TRONP be encouraged to request the Reserves Board to investigate ways and means that it might be involved in the management and planning of commercial rafting operations.

1994 August - DOC states that approval of TRONP is not necessary for the protection of the Kaituna River and adjacent Reserve and waahi tapu.

1994 October - DOC Regional Conservator David Field removed from his position as Chairman of the Lake Rotoiti Scenic Reserves Board.

1994 October - RDC issued a notice of requirement for a heritage order over the whole of the Kaituna River in n the Rotorua district, effectively pre-empting the Te Runanga O Ngati Pikiao's application.

1995 May - TRONP's HPA application declined by the Minister for the Environment.

1995 *Greensill v Waikato Regional Council* W17/95 (PT). Treadwell J, rules that given the wording of s.7(a) RMA, the term is an all-embracing definition and one of general application - "the concept

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[1]This timeline synthesises the essential events that have led to the current situation at the Kaituna River, forming the present conflict between [members of] Ngati Pikiao and the various relevant management agencies - the "problem". This issue is not being adequately resolved and resides in the legal conflict and current inability of the RMA and the judiciary and political systems to accept and operate with the concept of kaitiakitanga. It is these issues and events which highlight the relevance of the Kaituna River as a case study in which to research this type of "problem" and propose solutions.

of guardianship is now applicable to any body exercising any form of jurisdiction under this Act".

1996 July - Ministry for the Environment Report published on (1) the proposed amendment to the definition of "kaitiakitanga" in the RMA and (2) the exclusion of "water bodies" from the HPA provisions in the RMA..

1996 DOC initiates licensing as a solution to the conflict through the assumption that the Kaituna river bed and the water were part of the reserve and therefore subject to control through the Reserves Board (s.56 Reserves Act and s.4 Conservation Act).

1997 February - RDC formally withdrew from their HPA role and obligations.

1997 TRONP currently awaiting High Court decision regarding the Minister for the Environment's decision on the Kaituna River under s.188 RMA.

Appendix 9 - Original Survey map and letter regarding land at Okere Falls taken for purposes of an Electric Light Reserve under the 1894 Public Works Act.

L. & S. 38081. B

please quote this number.

04/329

LETTERS TO BE ADDRESSED "THE SURVEYOR-GENERAL, WELLINGTON."

Department of Lands and Survey,

Wellington, December 1st. 1904.

The Acting Superintendent,

Department of Tourist and Health Resorts.

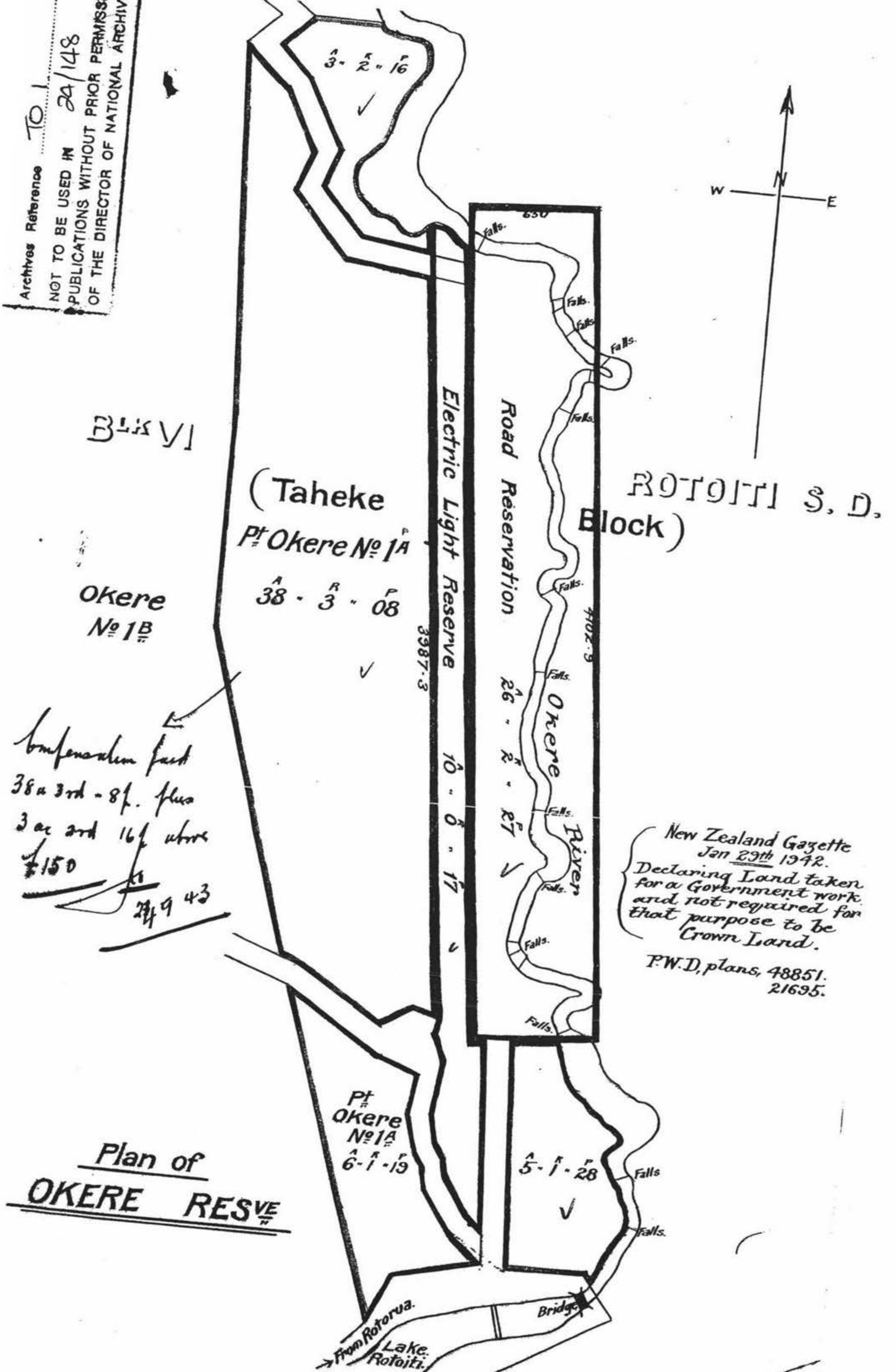
Wellington.

In reply to your memorandum of the 28th ultimo enquiring on what conditions the land at Okere, on which the electric light works are erected is held, and whether or not any portion of that area could be leased for the purpose of erecting an accomodation house thereon, I have to inform you that one area containing 27ac. 3r. 9p. was taken under section 92 of "The Public Works Act, 1894", on the 25th January, 1899. The remaining areas-aggregating 15ac. 2r. 5p. were taken by proclamation under "The Public Works Act, 1894", on the 23rd March, 1901.

The intention was to compensate the Natives, and I am given to understand that the Native Land Court is now ascertaining which individual Natives are interested and the amount of compensation to which each is entitled.

Until the question of compensation claims has been definitely settled by the Land Court it will be injudicious to lease any portion of the land for the purpose of erecting an accomodation house or for any other purpose which may leave the impression on the Native mind that the object of the acquisition of the land was in any sense one of profit.

for Under Secretary.



Appendix 10 - Ngati Pikiao's Heritage Protection Authority Application.

The Runanga's mission is:

> "To foster, promote and expand the health, spiritual, education, social, economic, political, communication, sporting and recreational interests of all tribal members within the Ngati Pikiao rohe."

Te Runanga O Ngati Pikiao's application is because of the following:

1. The various options available, to fill the role of kaitiaki as the Heritage Protection Authority, have been identified and discussed at a Hui a iwi called specifically regarding the Kaituna. The Runanga was given the Iwi mandate at that hui, because it has the resources and expertise required.

2. Findings of the Waitangi Tribunal on the Kaituna Claim, released 7 December 1984, state that:

> "In 1840 the Kaituna River was owned and had been owned for many generations by Ngati Pikiao o Te Arawa."[1].

3. Since the Kaituna Claim, Ngati Pikiao have <u>not</u> been accorded the Mana of kaitiaki for the Kaituna, and Local Authorities have given consents for activities which further contravene the Treaty of Waitangi.

4. Protection of this taonga is also an issue for a number of other groups;

Rotoiti Scenic Reserves Board
Rotoiti Ratepayers Association
Eastern Region Fish & Game Council
Te Arawa Maori Trust Board
Federation of Maori Authorities
and various Maori Land Incorporations.

Note: Indication of scope of Waahi Tapu on Kaituna River (Te Runanga O Ngati Pikiao 1/7/94):

- **Urupa:** More than 50 caves identified between Okere Falls and Kaingaroa.
- **Kaitiaki:** More than 12 kaitiaki identified between Okere Falls and Paengaroa.
- **Waahi Tikanga:** More than 6 places identified between Okere Falls and Paengaroa.
- **Waahi Raumi Taonga:** More than 50 identified between Okere Falls and Paengaroa.

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[1] Further the findings refer to the traditional rights being guaranteed by the Treaty of Waitangi. The findings discuss the importance of Maori cultural and spiritual values, and that uses such as the proposed discharge prejudicially affect Maori, and contravene Maori spiritual and cultural values.

Appendix 11 - Relevant Policies from the plan review and analysis.

Environment Bay of Plenty - Proposed Regional Policy Statement.

Implementation Method 3.3.1(c)(xiv): *"Establish appropriate criteria to determine the significance of intrinsic, ecological, amenity, cultural, spiritual, aesthetic, recreation and scientific values of the Region's water resources."*

Implementation Method 3.3.1(c)(xv): *"Identify those water resources with significant intrinsic, ecological, amenity, cultural, spiritual, aesthetic, recreational and scientific values and provide for the protection of those water resources from the effects of inappropriate use and development."*

Implementation Method 3.3.1(c)(xvi): *"Consult with community interest groups, organisations, iwi and district councils to assess values associated with water resources and preferred mechanisms and priorities for protection and the integrated management of land and water."*

Policy 9.3.1(b)(I): *"To identify and provide for the protection of outstanding and significant heritage places in the Region."*

Policy 9.3.1(b)(iii): *"to recognise and provide for, in regional and district plans and in the consideration of consent applications, the relationship of Maori and their culture and traditions with their ancestral lands, water, sites waahi tapu and other taonga."*

Policy 9.3.1(b)(v): *"To ensure and integrated inter-agency approach to the protection of heritage places in the Region."*

Implementation Method 9.3.1(c)(xi): *"Identify and examine the issues and pressures relating to outstanding and significant heritage places."*

Implementation Method 9.3.1(c)(xii): *"Include provisions in district plans to protect outstanding and significant heritage places."*

Rotorua District Council - Rotorua District Plan.

Resource Management Objective 2.1.2: *"Maintenance of natural and cultural values which are not adversely affected by tourism activities."*

Policy 2.1.3.1: *"Developers of tourist related activities will be required to show that any adverse effects of significant landscapes, ecological values, the water quality and the natural character of the Districts lakes, rivers and their margins, Maori cultural and spiritual values...archaeological sites.... can be avoided, remedied or mitigated.." (Rotorua District Plan)*

Policy 2.2.1.3.2: *"To reduce the adverse environmental effects of developments that may put additional pressure on existing reserves by increasing visitor numbers."*

Policy 2.2.2.3.2: *"To minimise the adverse environmental effects of recreational and community activities on reserves (noise etc.) on surrounding areas."*

Policy 3.2.1.3.1: *"To identify and protect, where appropriate, natural, cultural and amenity values of lakes and river and their water bodies and their margins in the District."*

Anticipated Environmental Results 3: *"Protection of the natural, cultural, and amenity values associated with water bodies and their margins."*
"Minimisation of adverse effects and potential conflicts in relation to the use of the surface of water in rivers and lakes."

Policy 4.2.1.3.1: *"To identify and protect sites important to the natural heritage of the District."*

Policy 4.2.1.4.7: *"Heritage Orders will only be considered in exceptional circumstances."*

Policy 4.2.4.3.4: *"To recognise and use the conservation principles contained within the ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value when making decisions that might affect heritage resources in the District."*

Department of Conservation - Draft Conservation Management Strategy for Bay of Plenty.

Implementation Method 5.3.1.10: *"Tangata whenua will be consulted and their consent be obtained before there is any management of culturally significant sites such as waahi tapu." (CMS)*

Implementation Method 5.3.1.21: *"Urgent remedial work in response to immediate threats may be carried out without the normal process of planning if a historic place of apparent high significance is under threat of significant loss of integrity." (CMS)*

Objective 5.3.3: *"To develop and establish a charter of partnership to manage waahi tapu with tangata whenua." (CMS)*

Implementation Method 5.4.1.2: *"Adverse recreational activities may be restricted." (CMS)*

Implementation Method 5.4.1.3: *"Visitor access to sensitive environments may be restricted." (CMS)*

Implementation Method 5.4.1.4: *"Waahi tapu sites will not be developed unless the tangata whenua agree. Visitors may be dissuaded from visiting waahi tapu sites in some areas." (CMS)*

Te Runanga O Ngati Pikiao Iwi Resource Management Plan - Ngaa Tikanga Whakahaere taonga o Ngati Pikiao Whanui.

A summary of some of the major policies relevant to the policy analysis section in Chapter 6 is included in this section.

Policy 1.2. *That the Historic Places Trust and any agency delegated authority on its behalf recognise and provide for the following;*

(a) *That only the Confederation of Ngati Pikiao Iwi has the right to manage, control and protect its tribal heritage.*

(b) *That any other organisations who presume this authority are acting illegitimately.*

(c) *That the Trust allocate such resources as are necessary to the appropriate Confederation of Ngati Pikiao Iwi Authority to enable it to carry out its Kaitiaki/ownership responsibilities.*

Policy 1.6. *That the Department of Conservation recognise and provide for the following;*

(a) *That the Confederation of Ngati Pikiao Iwi as Kaitiaki are the legitimate conservators of natural and historic resources within the Ngati Pikiao tribal territory.*

(b) *That any other agencies who presume this role are acting illegitimately.*

(c) *That the Department of Conservation, when appropriate, allocate relevant resources to the Confederation of Ngati Pikiao Iwi to enable Ngati Pikiao to effect such changes as are necessary to carry out our role of Kaitiaki.*

(d) *That within the Confederation of Ngati Pikiao Iwi tribal territory only Ngati Pikiao Iwi have the right to determine/interpret the Iwi perspective of the Treaty of Waitangi.*

Policy 1.9.1. *All Resource Management Agencies with statutory responsibilities under the Act shall recognise and provide for the following;*

(a) *That the Confederation of Ngati Pikiao Iwi alone has the right to define Maori concepts referred to in the Act (RMA) in accordance with its tikanga (Pikiaotanga) and prescribe how such concepts shall be applied to tribal resources within its tribal rohe.*

(b) *That the Confederation of Ngati Pikiao alone has Manawhenua within its tribal rohe.*

(c) *That the Confederation of Ngati Pikiao Iwi exists in its own right as a confederation of Hapu and Iwi and for the purposes of the Act Te Pukenga Kaumatua o Ngati Pikiao or a designated representative is the Iwi Authority within its tribal rohe.*

(d) *That the Confederation of Ngati Pikiao Iwi tikanga (Pikiaotanga) means its inherent rights as an Iwi and incorporates all those elements which promote Iwi self-determination (Rangatiratanga) and self-sufficiency.*

Policy 1.9.2. *Ministers of the Crown, Regional Councils, Territorial Authorities and other resource management agencies shall recognise and provide for the following;*

(a) *That only the Confederation of Ngati Pikiao Iwi has the right to determine what constitutes sustainable management of its natural resources within its tribal territories.*

(b) *That any other agencies who presume this right are acting illegitimately.*

All Resources Management Agencies shall recognise and provide for the following;

(a) *That only the Confederation of Ngati Pikiao Iwi has the right to determine the nature of the relationship between its culture and traditions and its ancestral lands, waters, sites, waahi tapu and other taonga.*

AND

(b) *How this relationship shall be recognised and provided for.*

(c) *That the Confederation of Ngati Pikiao Iwi determinations in respect of (a) and (b) above be effectuated by all Resource Management Agencies.*

(d) *That any other Agencies who presume this right are acting illegally.*

All Resource Management Agencies shall recognise and provide for the following;

(a) That only the Confederation of Ngati Pikiao Iwi hold the 'Manawhenua' and can be 'Kaitiaki' over its tribal lands, waters, and other taonga.

(b) That only the Confederation of Ngati Pikiao Iwi can determine what the principles of Kaitiakitanga are and how such principles shall be implemented.

Policy 1.9.3. *All Resource Management Agencies shall recognise and provide for the following;*

(a) That only the Confederation of Ngati Pikiao Iwi has the legitimate authority to determine the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) in respect of management of natural and physical resources within its tribal territories.

(b) That once determined such Agencies shall give effect to these principles in accordance with (a) above.

(c) That any other Agencies who presume this authority are acting illegitimately.

Policy 1.9.4. *All Resource Management Agencies shall relinquish such 'legal' powers and resources to the Confederation of Ngati Pikiao Iwi or its 'Mandated Representative' as are necessary;*

(a) To enable the Confederation of Ngati Pikiao Iwi to carry out its Kaitiaki responsibilities over its natural and physical resources and other taonga and to maintain its territorial integrity over such resources and taonga.

(b) To give effect to this policy statement.

Appendix 12 - Recognition of Section 7(a) in policy statements/plans (adapted from Nuttall & Ritchie, 1995).

Criteria for assessment	Environment Bay of Plenty	Rotorua District Council	Department of Conservation	Te Runanga O Ngati Pikiao
1. Obligation: Agency has recognised its obligation to have particular regard to kaitiakitanga.	1	1	2	1
2. Linkage: Agency has recognised that kaitiakitanga and tino rangatiratanga are inextricably linked.	2	2	3	1
3. Narrowing: Agency has recognised that the statutory definition of kaitiakitanga is narrower than that which may be accorded the concept by tangata whenua	2	3	3	2
4. Basic to Maori: Agency has recognised that kaitiakitanga is the underlying principle of a Maori environmental resource management system	1	3	3	1
5. Variability: Agency has recognised that only tangata whenua can adequately define the role and function of kaitiaki within their rohe and that this may vary from rohe to rohe or from one hapu to the other.	1	3	2	1
6. Recognition: Agency has recognised the Kaituna River, together with its cultural resources and waahi tapu, is a taonga.	1	3	3	1
7. Dialogue: Agency has recognised the need to establish mechanisms for dialogue with Ngati Pikiao.	2	3	3	-
8. Appreciation: Agency has recognised and appreciated the kaitiakitanga role of Ngati Pikiao in the management of the Kaituna.	2	3	3	-

This analysis employed a three point scale determining whether the particular aspect was recognised in detail in the document (1); recognised but vague (2); or absent altogether (3)[1].

[1]The framework for analysis is based on guidelines developed by Berke (1994) and Crawford; Dixon & Eriksen (1996) to assess plans released under the RMA although it has been adapted specifically in this thesis for assessing kaitiakitanga.