

Section 88(6)

An assessment of any actual or potential effects of the activity has to be included in the application in such detail as corresponds with the scale of significance of the actual or potential effects of the activity may have on the environment. The application must also be prepared in accordance with the Fourth Schedule.

Clause 1 of the Fourth Schedule outlines matters that should be included in the assessment of effects on the environment including identification of persons interested or affected by the proposal and the consultation undertaken and any response to the views of those consulted.

Clause 2 indicates matters that should be considered when preparing an assessment of effects on the environment including cultural effects, and any effect on natural and physical resources having historic, spiritual, or cultural value for present or future generations.

Section 92 indicates that further information may be required to be supplied by the applicant to the consent authority if the consent authority is of the opinion that a significant adverse effect on the environment may result from the activity.

An iwi management plan should assist the council in this regard in that it will identify areas and issues of value and importance of tangata whenua to serve as a flag to consent authorities for the possible need for further information.

Section 93 – Notification of application

This section identifies where notice of an application should be sent once the consent authority is satisfied that it has received adequate information. This includes section 93 (1)(e) “served on such a persons who are in the opinion likely to be directly affected by the application, including owners and occupiers of land where appropriate” and, 93(1)(f) “served on such local authorities, iwi authorities, and other persons or authorities the authority considers appropriate”.

This section, therefore, identifies the importance of an iwi management plan in identifying sites and issues of importance so that a consent authority is better enabled to ensure that notices of applications are sent appropriately.

Section 94 indicates when applications do not require notification. This includes situations where the consent authority is satisfied that that the adverse effects on the environment of the activity will be minor. It is therefore important that the iwi management plan includes information about activities that are considered by iwi to be more than minor, such as discharge to waterbodies.

Section 104 deals with matters to be considered in making decisions on resource consent applications.

Section 104(1)(i) provides for “any other matters that a consent authority considers relevant and reasonably necessary to determine the application”. The provisions of an iwi management plan could be considered under this section.

Sections 107 and 108

Section 107 deals with the restrictions on the ground of certain discharge permits and section 108 the conditions of resource consents. It would therefore be helpful in an iwi management plan, in relation to certain matters, for iwi to indicate the kinds of conditions they would find appropriate in those circumstances.

MISCELLANEOUS

Section 140 deals with the Minister’s power to call in applications of national significance and what considerations the Minister has to have regard to in relation to any such proposal. This occurs when a proposal has aroused wide spread public concern or interest regarding effects on the environment, including

- is likely to involve to significant use of natural and physical resources,
- effects that are likely to affect any structure, feature, place, or area of national significance,
- is or is likely to be significant in terms of section 8 (Treaty of Waitanga).

Sections 187 – 198 deal with Heritage Orders including applications to become a Heritage Protection Authority. Sections 199 – 217 deal with water conservation orders including their purpose and applications for water conservation orders. IMP could indicate an iwi’s intentions in relation to seeking these protection for specific sites.

First Schedule – Part I, Clause 20 – a local authority must provide one copy of its operative policy statement or plan without charge to organisations including “(f) the tangata whenua, iwi authorities, and tribal Rūnanga”.

Second Schedule – Part I – matters that may be provided for in policy statements and plans matters related to regions.

Second Schedule – Part II – matters related to districts that may be provided for in policy statements and plans.

Third Schedule – Water Quality Classes.

CONSERVATION ACT 1987

Fact Sheet N° 2 – Conservation Act 1987

Introduction

This is an Act to promote the conservation of New Zealand's natural and historic resources, and for that purpose establish a Department of Conservation.

The Act sets up the Department of Conservation and outlines its functions. It also sets up the New Zealand Conservation Authority and Conservation Boards.

The Act also deals with among other matters:-

Conservation areas	Marginal strips
Management Planning	Stewardship areas
Concessions	Sports, Fish and Game Councils
Specially protected areas	Administration

There are a number of provisions in the Act relevant to iwi and to the preparation of iwi management plans. The overarching important section is section 4 which states –

Section 4: Act to give effect to Treaty of Waitangi – This Act should be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi.

As stated in Fact Sheet 1 the Principles of the Treaty include:

- the need to act reasonably and in good faith
- active protection of Māori interests, which requires positive action.
- consultation.
- the obligation recognised with tino rangatiratanga.

Comment:

Section 4 imposes a stronger obligation than legislation which merely requires a body "to take into account the Principles of the Treaty of Waitangi", section 4 applies to all legislation that is administered by the Department Conservation, i.e. Wildlife Act 1953, unless such legislation expressly provides otherwise.

In response to its section 4 obligations the Department has formulated the Kaupapa Atawhai strategy that includes guidelines for staff in maintaining working relationships with tangata whenua. It also outlines the Department's vision and strategy for the development of a relationship with Māori. The Kaupapa Atawhai Strategy has eight goals, the first three specifically refer to the Treaty of Waitangi.

(Reference: Department of Conservation/Te Kaupapa Atawhai Service Delivery to Māori) Monitoring and Evaluation Branch, November 1998.

It is therefore important that iwi through an iwi management plan articulate the relationship they wish to have with the Conservation estate. Iwi should make themselves familiar with the Conservation Management Strategy for the Department of Conservation areas within their rohe. The Conservation Management Strategy should articulate how the Department is going to give effect to the principles of the Treaty of Waitangi.

Iwi should make sure that they are intimately involved with the development and review of such Conservation Management Strategies and Conservation Management Plans and also other management plans, such as National Park Plans, developed within their rohe so that their values and aspirations are provided for.

As well as section 4 the Conservation Act has a number of other provisions of importance to iwi.

2 Part II: Establishment of Functions of Department of Conservation

The functions of the Department of Conservation are to administer the Conservation Act and Acts specified in the First Schedule shown below, to which section 4 obligations also attach –

The Canterbury Provincial Buildings Vesting Act 1928

The Fisheries Act 1983: Part V

The Foreshore and Seabed Endowment Revesting Act 1991]

The Harbour Boards Dry Land Endowment Revesting Act 1991]

The Historic Places Act 1993]

The Kapiti Island Public Reserve Act 1897

The Lake Wanaka Preservation Act 1973

The Marine Mammals Protection Act 1978

The Marine Reserves Act 1971

The Mount Egmont Vesting Act 1978

The National Parks Act 1980

The Native Plants Protection Act 1934

The New Zealand Walkways Act 1990]

The Ngai Tahu (Tutaepatu Lagoon Vesting) Act 1998]

The Queen Elizabeth the Second National Trust Act 1977

The Queenstown Reserves Vesting and Empowering Act 1971

The Reserves Act 1977

The Sand Drift Act 1908

The Stewart Island Reserves Empowering Act 1976

The Sugar Loaf Islands Marine Protected Area Act 1991]

The Trade in Endangered Species Act 1989]

The Waitangi Endowment Act 1932-33

The Waitangi National Trust Board Act 1932

The Waitutu Block Settlement Act 1997]

The Wild Animal Control Act 1977

The Wildlife Act 1953

3 A number of the functions of the Department are of interest to iwi – section 6 includes -

(a) *To manage for conservation purposes, all land, and all other natural and historic resources, for the time being held under this Act, and all other land and natural and historic resources whose owner agrees with the Minister that the Department should manage them:*

(ab) *To preserve so far as is practicable all indigenous freshwater fisheries, and protect recreational freshwater fisheries and freshwater fish habitats:*

(b) *To advocate the conservation of natural and historic resources generally...*

4 Conservation is defined in the Act to mean -

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

Comment:

It is important to note that the functions include conservation of historic resources on the conservation estate. Consideration should be given in the development of iwi management plans as to how iwi wish to develop co-operative conservation management of those areas with the Department of Conservation.

Similarly, iwi could expect to be involved in the management of indigenous freshwater fisheries and their habitats given the provisions of section 4.

It is important to realise that an iwi management plan addresses a number of audiences. In the past such plans have tended only to focus towards regional and district councils and the

provisions of the Resource Management Act. If integrated environmental management is to be achieved then a plan should also contain a consideration of the conservation estate and the values and vision, issues and outcomes, that iwi expect in relation to those areas.

5 Part IIA

This part establishes the New Zealand Conservation Authority, outlines its functions, powers, and membership, and other administrative matters in relation to the Authority.

It also establishes Conservation Boards, their functions and powers, membership, and other matters.

The functions of the Authority are contained in section 6B –

FUNCTIONS OF AUTHORITY –

- (1) *The functions of the Authority shall be--*
- (a) *To advise the Minister on statements of general policy prepared under the Wildlife Act 1953, the Marine Reserves Act 1971, the Reserves Act 1977, the Wild Animal Control Act 1977, the Marine Mammals Protection Act 1978, the New Zealand Walkways Act 1990, and this Act:*
 - (b) *To approve conservation management strategies and conservation management plans, and review and amend such strategies and plans, as required under the Wildlife Act 1953, the Marine Reserves Act 1971, the Reserves Act 1977, the Wild Animal Control Act 1977, the Marine Mammals Protection Act 1978, the National Parks Act 1980, the New Zealand Walkways Act 1990, and this Act:*
 - (c) *To review and report to the Minister or the Director-General on the effectiveness of the Department's administration of general policies prepared under the Wildlife Act 1953, the Marine Reserves Act 1971, the Reserves Act 1977, the Wild Animal Control Act 1977, the Marine Mammals Protection Act 1978, the New Zealand Walkways Act 1990, and this Act:*
 - (d) *To investigate any nature conservation or other conservation matters the Authority considers are of national importance, and to advise the Minister or the Director-General, as appropriate, on such matters:*
 - (e) *To consider and make proposals for the change of status or classification of areas of national and international importance:*
 - (f) *To advise the Minister or the Director-General, as appropriate, on any matter relating to or affecting walkways:*
 - (g) *To encourage and participate in educational and publicity activities for the purposes of bringing about a better understanding of nature conservation in New Zealand:*
 - (h) *To advise the Minister and the Director-General annually on priorities for the expenditure of money:*
 - (i) *To liaise with the New Zealand Fish and Game Council:*
 - (j) *To exercise such powers and functions as may be delegated to it by the Minister under this Act or any other Act.*

The Authority has a membership of thirteen outlined in section 6d-

MEMBERSHIP--

- (1) *The members of the Authority shall be appointed by the Minister having regard to the interests of conservation, natural earth and marine sciences, and recreation, and the Authority shall consist of--*
- (a) *Two persons appointed after consultation with the Minister of Māori Affairs:*
 - (b) *Two persons appointed after consultation with the Minister of Tourism:*
 - (c) *One person appointed after consultation with the Minister of Local Government:*
 - (ca) *One person nominated by Te Runanga o Ngai Tahu (as established by section 6 of Te Runanga o Ngai Tahu Act 1996):]*
 - (d) *One person appointed on the recommendation of the Royal Society of New Zealand:*
 - (e) *One person appointed on the recommendation of the Royal Forest and Bird Protection Society of New Zealand Incorporated:*
 - (f) *One person appointed on the recommendation of the Federated Mountain Clubs of New Zealand Incorporated:*
 - (f) *Four persons appointed following public notice given in accordance with subsection (2) of this section.*
- (2) *Every notice required by subsection (1) (g) of this section shall--*
- (a) *State the number of appointments intended to be made to the Authority:*
 - (b) *Call for nominations for membership of the Authority to be sent to the Minister:*
 - (c) *State a date, being not less than 28 days after the date of the first publication of the notice, after which the Minister may decline to accept such nominations:*
 - (d) *Be published--*
 - (i) *At least twice in a daily newspaper circulating in each of the cities of Auckland, Hamilton, Wellington, Christchurch, and Dunedin; and*
 - (ii) *In such other communications media and on such occasions as the Minister may direct.*
- (3) *Every appointment of a member of the Authority shall be made by notice published in the Gazette, and shall take effect from the date of such notice or such later date as may be specified in the notice.*
- (4) *No person employed by the Department shall be eligible for appointment as a member of the Authority.*

Comment:

One of the best ways to get iwi values and concerns recognised in the conservation estate is to be represented on the Conservation Authority and Conservation Boards.

There is no reason why, as well as the two persons appointed after consultation with the Minister of Māori Affairs, that Māori could not qualify for the other identified sectors including the four public appointments.

- 6 New Zealand is divided into conservancies under the Department of Conservation and each conservancy has a Conservation Board. The functions of the Board are contained in section 6M –

FUNCTIONS OF BOARDS--

- (1) *The functions of each Board shall be--*
- (a) *To recommend the approval by the Conservation Authority of conservation management strategies, and the review and amendment of such strategies, under the relevant enactments:*
 - (b) *To approve conservation management plans, and the review and amendment of such plans, under the relevant enactments:*
 - (c) *To advise the Conservation Authority and the Director-General on the implementation of conservation management strategies and conservation management plans for areas within the jurisdiction of the Board:*
 - (d) *To advise the Conservation Authority or the Director-General--*
 - (i) *On any proposed change of status or classification of any area of national or international importance; and*
 - (ii) *On any other conservation matter relating to any area within the jurisdiction of the Board:*
 - (e) *To advise the Conservation Authority and the Director-General on proposals for new walkways in any area within the jurisdiction of the Board:*
 - (f) *To liaise with any Fish and Game Council on matters within the jurisdiction of the Board:*
 - (g) *To exercise such powers and functions as may be delegated to it by the Minister under this Act or any other Act.*
- (2) *Every Board shall have such other functions as are conferred on it by or under this Act or any other Act.*

The Board has twelve members appointed by the Minister after a public process and consultation with the NZCA. In that appointment process, particular regard is given to –

- (a) *The particular features of land administered by the Department in the area of the Board's jurisdiction; and*
- (b) *The interests of nature conservation, natural earth and marine sciences, recreation, tourism, and the local community including the tangata whenua of the area.*

Comment:

- 7 Section 6P(3) provides that before making any appointments representing any interests of tangata whenua for an area the Minister should consult with the Minister of Māori Affairs about those interests. It should be noted that Ngati Tuwharetoa, the Taranaki Māori Trust Board, the Wanganui River Māori Trust Board, Kahui Ariki, and Ngāi Tahu all have membership of the Conservation Boards in their rohe.

Because the Boards are involved in the development of the Conservation Management Strategies and Plans it is important that iwi consider representation at the Board level throughout either the special provision or the general Ministerial appointment.

Section 6Q provides that any Board may co-opt for such term that it deems fits any suitable person or persons to be a member or members of the Board. Co-opted members entitled to attend and speak at any meeting of that Board but is not entitled to vote on any question.

Therefore, iwi should be aware that they may be able to persuade their Conservation Board to co-opt additional Māori members for the term or specific projects so that the Board better meets its responsibilities under section 4 of the Act.

9 Part III – Conservation Areas

This part states –

- How land may be acquired and held for conservation purposes;
- How conservation areas may become reserves, national parks, etc;
- Under what circumstances the conservation areas may be closed;
- How stewardship land under the control of the Department of Conservation can be exchanged for other land; and
- Provisions for access to conservation area.

10 Part IIIA

This part sets out the management planning provisions of the Act. It indicates how conservation areas are to be managed and the general policy and outlines Conservation Management Strategies and Plans.

Section 4 of the Act means that there will have to be thorough consultation with iwi in relation to the development of such strategies and plans.

Conservation Management Plans can also relate to areas managed by the Department under the National Parks Act, the Wildlife Act, the Marine Reserves Act, the Reserves Act, the Marine Mammals Protection Act, as well as the Conservation Act.

Section 17F sets out the procedure for preparation and approval of Conservation Management Strategies and through section 17G the procedures for Conservation Management Plans. Under those provisions the draft plan has to be prepared in consultation of Conservation Boards that are affected by it and “such other persons or organisations as the Director-General consider practicable and appropriate”. Given section 4 that consultation should be extended to iwi.

There is also provision that such a draft has to be notified to “the appropriate iwi authorities”. Iwi authority is not defined in the Act.

Comment:

It would, therefore, be appropriate that an iwi management plan includes comments and statements about proposed involvement in such management planning on the conservation estate, what the values, issues and concerns are, and what outcomes are hoped to be achieved.

- 11 Section 17J - N deals with freshwater fisheries management, plans and the preparation of sports fish and game management plans. This is another area where iwi no doubt have an interest and would want to have input. Such input will be easier if the issues and concern in relation to such matters have been expressed in an iwi management plan.

12 Part IIIB - Concessions**Comment:**

The use of the conservation estate by people with concessions including permits and licences should be a matter interest to iwi. This interest should be to make sure that iwi values, traditions, and culture are not adversely affected by such concessions.

The forms to be completed by concession applicants include questions in relation to effects on Māori values. It should be noted that many applicants do not consult with iwi prior to lodging their concession application and merely tick the boxes that say that Māori values are not affected. Iwi need to be vigilant to ensure that the Department of Conservation in assessing such applications are requiring applicants to explain how they know that Māori values have not be affected.

Processes should be established with each conservancy for consultation and input into the consideration of applications or conditions on any concession which is granted.

It is reasonable that if the concession is going to affect or impinge on an area of value to iwi, that a cultural audit report is required. The only appropriate persons to do such a report is iwi.

The Department of Conservation can require an environmental impact assessment in the form set out in the Fourth Schedule of the Resource Management Act.

That schedule includes - clause 1(h) the identification of those persons interested in, or effected by the proposal, the consultation undertaken, and any response to the views of those consulted.

Clause 2(a) any effect of those in the neighbour and, where relevant, the wider community including any social economic and cultural effects.

Clause 2(d) any effect on natural or physical resources having an athesthetic, recreational, scientific, historic, spiritual, or cultural, or other special values for present or future generations.

Therefore, it is important that iwi management plans contain a section on concessions and the conservation estate including what values in general and in relation to specific sites that are sought to be preserved and what restrictions or conditions iwi would expect to be attached to concessions. Including such information in an iwi management plan will help the Department of Conservation better fulfil its responsibilities under section 4.

It should be noted that such concessions also have to be consistent with Conservation Management Strategies and Plans.

13 Part IV

This part deals with special protected areas such as conservation parks, wilderness areas, ecological areas, sanctuary areas, watercourse areas, community areas, and the wildlife management areas.

14 Part IVA

This part deals with marginal strips including when they are to be reserved, when they can be reduced or increased, when exemptions can be given, as well as the purposes of marginal strips, and their management.

Comment:

It is important to remember that marginal strips can be a good tool for habitat protection around foreshores, lakes, and rivers.

15 Part VA

This part sets up the Sports Fish & Game Councils and states their functions, membership, the ability to co-opt members, their powers, and the appointment of rangers.

Comment:

It is important to note that section 26E provides the same ability for the New Zealand Fish & Game Council to co-opt members as does section 26V for the Regional Fish & Game Councils.

Involvement with the Fish & Game Councils is important to iwi so that relationships can develop where some waterways within the rohe can be agreed to be left for native fauna, and where introduced species are not to be placed. Such waterways can be identified in an iwi management plan. There are also a number of issues where there is common ground e.g. discharge to water, water abstraction.

16 Part VB

This part deals with freshwater fisheries. It is important to note section 26ZH which states

MAORI FISHING RIGHTS UNAFFECTED BY THIS PART--

- (1) *Nothing in this Part of this Act shall affect any Maori fishing rights.*
- (2) *Subsection (1) does not apply to customary Maori fishing rights with respect to freshwater fisheries within South Island fisheries waters, in respect of which regulations have been made under section 48B, for so long as such regulations remain in force.*

Conclusion

This fact sheet is only a summary of some of the more relevant parts of the Conservation Act for iwi.

It is important to recognise that section 4 of the Act gives iwi a great deal of ability to be involved in the management and business planning processes of the Department of Conservation. It is important to reinforce in iwi management plans, the importance of the DoC estate in the rohe to iwi, with particular reference to waterbodies, sites, and other toanga both from a general policy approach and in a site-specific manner. In this way those managing the conservation estate are better able to fulfil their section 4 duties in an appropriate way by making themselves aware of the values, visions, and concerns of iwi.

LOCAL GOVERNMENT ACT 1974

Fact Sheet N° 3 – Local Government Act 1974

Introduction

This Act, passed in 1974, is overdue for review. It makes no reference to the Treaty of Waitangi and does not contain a section similar to section 4 of the Conservation Act.

The purpose of the Local Government Act is contained in section 37K –

PURPOSES OF LOCAL GOVERNMENT--

The purposes of local government in New Zealand are to provide, at the appropriate levels of local government,--

- (a) Recognition of the existence of different communities in New Zealand:*
- (b) Recognition of the identities and values of those communities:*
- (c) Definition and enforcement of appropriate rights within those communities:*
- (d) Scope for communities to make choices between different kinds of local public facilities and services:*
- (e) For the operation of trading undertakings of local authorities on a competitively neutral basis:*
- (f) For the delivery of appropriate facilities and services on behalf of central government:*
- (g) Recognition of communities of interest:*
- (h) For the efficient and effective exercise of the functions, duties, and powers of the components of local government:*
- (i) For the effective participation of local persons in local government.*

Comment:

Apart from local authorities responsibilities under the Resource Management Act, the only way in which tangata whenua concerns could be formally recognised in relation to the functions and duties of local government is under section 37k(a) and 37(b).

CROWN MINERALS ACT 1991

Fact Sheet N° 4 – Crown Minerals Act 1991

Introduction

This Act restates and reforms the law in relation to the management of Crown owned minerals.

Section 4 of this Act states –

TREATY OF WAITANGI--

All persons exercising functions and powers under this Act shall have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

Comment:

The principles of the Treaty of Waitangi are those expressed in Fact Sheet 1 in relation to the Resource Management Act.

Those principles include consultation and active protection. The active protection requires positive action.

A group within the Ministry of Commerce processes permit applications. When considering whether to grant a permit the Ministry of Commerce must seek tangata whenua's view on the application.

Therefore, a copy of the application should be sent to the relevant iwi so that the Minister can take into account their views before deciding whether to grant the permit.

Tangata whenua may request protection of certain areas of land which are of importance to iwi and covered by the application. For example part of the application area may be important to the mana of tangata whenua because it is a known wāhi tapu site or that it has some traditional significance. Special conditions may then be placed on a permit to protect areas of significance.

When looking at comments from iwi the Minister will consider a number of points including:

- What it is about the specific area of land that makes it important to the mana of tangata whenua, hapū, and iwi;
- Whether the area is a known wāhi tapu;

- Whether the uniqueness of the specific area of land is one of many mahinga kai areas or the only waka tauranga;
- Whether the importance of the area to tangata whenua, hapū, and iwi has already been demonstrated, e.g. by Treaty claims, and other legislation;
- Whether granting the permit would impair the prospect of redress, grievances, or any relevant Treaty claims;
- **Whether any iwi management plans are in place that detail the area of importance**
- The area's land ownership status;
- Whether the area is already protected under other legislation, e.g. the Resource Management Act, the Conservation Act, or the Historic Places Act; and
- The size of the area and the value of the resource effected of the area is excluded.

Because the Minister has indicated that iwi management plans are matters that he will take into consideration when looking at Crown Mineral permit applications, it is important in areas where such applications may be made for iwi management plans to identify iwi sites of importance.

CROWN PASTORAL LAND ACT 1998

Fact Sheet N° 5 – Crown Pastoral Land Act 1998

Comment:

This is an Act to establish a system of reviewing the tenure of Crown land held under certain perpetually renewable leases; and establishing a system for determining how the Crown land formerly held under pastoral occupation licence should be dealt with.

Part II of the Act deals with tenure reviews. One of the objects is to promote the management of reviewable land in a way that is ecologically sustainable and to enable the protection of significant values of the land.

When undertaking tenure review the Commissioner has to take a number of matters into account. These are set out in section 25. Section 25(1)(b) indicates that while undertaking the review the Commissioner must take into account the Principles of the Treaty of Waitangi.

Section 26 of the Act deals with consultation and indicates that before undertaking a review or putting a preliminary, or a substantive proposal to a person in relation to tenure, the Commissioner must consult with the Director-General of Conservation. Therefore it is important that the Director - General of Conservation understands iwi values and concerns in relation to the tenure of Crown Land. It would be appropriate for iwi to be aware of pastoral leased land within their rohe and through the iwi management plan report their values, concerns, and issues in relation to that land.

CROWN RESEARCH INSTITUTES ACT 1992

Fact Sheet N° 6 – Crown Research Institutes Act 1992

Introduction

This Act provides for the formation of Crown and companies to undertake scientific research and other related activities. Organisations such as The National Institute of Water and Atmospheric Research, the New Zealand Institute of Crop and Food Research Limited, and Manaaki Whenua/Landcare Research are all examples of such Crown research institutes.

Section 10 of the Act states:

TREATY OF WAITANGI--

In relation to the transfer, pursuant to this Act, of any land, or any interest in any land, to a Crown Research Institute or a subsidiary of a Crown Research Institute, the shareholding Ministers shall have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

Under the Principles of Operation of Crown Research (CRI) institutes is that research should be undertaken for the benefit of New Zealand and should comply with any ethical standards. It also has to exhibit a sense of social responsibility by having regards to the interests of the community in which the CRI operates.

Therefore, in dealing with issues and interests such as mahinga kai and habitat it would be relevant for any iwi management plan to indicate what areas of research it considered necessary to enable better environmental management. Many institutes have access to funding which may enable joint research projects on matters of interest to iwi.

HAZARDOUS SUBSTANCES AND NEW ORGANISMS ACT 1996

Fact Sheet N° 7 – Hazardous Substances And New Organisms Act 1996

Introduction

The purpose of the Act is to protect the environment and the health and safety of people and communities by preventing or managing the adverse effects of hazardous substances and new organisms.

Hazardous substances is defined as –

unless expressly provided otherwise by regulations, any substance--

- (a) *With one or more of the following intrinsic properties:*
- (i) *Explosiveness:*
 - (ii) *Flammability:*
 - (iii) *A capacity to oxidise:*
 - (iv) *Corrosiveness:*
 - (v) *Toxicity (including chronic toxicity):*
 - (vi) *Ecotoxicity, with or without bioaccumulation; or*
- (b) *Which on contact with air or water (other than air or water where the temperature or pressure has been artificially increased or decreased) generates a substance with any one or more of the properties specified in paragraph (a) of this definition*

New organisms means –

MEANING OF TERM "NEW ORGANISM"--

- (1) *A new organism is--*
- (a) *An organism belonging to a species that was not present in New Zealand immediately before 29 July 1998:*
 - (b) *An organism belonging to a species, subspecies, infrasubspecies, variety, strain, or cultivar prescribed as a risk species, where that organism was not present in New Zealand at the time of promulgation of the relevant regulation:*
 - (c) *An organism for which a containment approval has been given under this Act:*
 - (d) *A genetically modified organism:*

- (e) *An organism that belongs to a species, subspecies, infrasubspecies, variety, strain, or cultivar that has been eradicated from New Zealand.*
- (2) *An organism ceases to be a new organism when an approval has been given in accordance with this Act for the importation for release or release from containment of an organism of the same kind as the organism.*
- (3) *Despite the provisions of this section, an organism present in New Zealand before 29 July 1998 in contravention of the Animals Act 1967 or the Plants Act 1970 is a new organism.*
- (4) *Subsection (3) does not apply to the organism known as rabbit haemorrhagic disease virus, or rabbit calicivirus."*

The principles relative to the purposes of the Act are contained in section 5 -

PRINCIPLES RELEVANT TO PURPOSE OF ACT--

All persons exercising functions, powers, and duties under this Act shall, to achieve the purpose of this Act, recognise and provide for the following principles:

- (a) The safeguarding of the life-supporting capacity of air, water, soil, and ecosystems:
- (b) *The maintenance and enhancement of the capacity of people and communities to provide for their own economic, social, and cultural wellbeing and for the reasonably foreseeable needs of future generations.*

Section 6 deals with matters relative to the purpose of the Act which are -

MATTERS RELEVANT TO PURPOSE OF ACT--

All persons exercising functions, powers, and duties under this Act shall, to achieve the purpose of this Act, take into account the following matters:

- (a) *The sustainability of all native and valued introduced flora and fauna:*
- (b) *The intrinsic value of ecosystems:*
- (c) *Public health:*
- (d) *The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, valued flora and fauna, and other taonga:*
- (e) *The economic and related benefits to be derived from the use of a particular hazardous substance or new organism:*
- (f) *New Zealand's international obligations.*

Section 6 has similar wording to sections in the Resource Management Act. Section 7 of the Act indicates that persons exercising function, powers, and duties, shall take into account the need for caution and the use of precautionary approach.

Section 8 of the Act states-

TREATY OF WAITANGI--

All persons exercising powers and functions under this Act shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

Section 14 of the Act sets up the Environmental Risk Management Authority. That authority investigates and hears applications in relation to hazardous substances and new organisms. There is an application process similar to that in the Resource Management Act, under which consultation has to be undertaken with iwi and submissions are open to the general public.

It is important that when developing an iwi management plan to provide specific policies for toanga fauna and flora species. This will generally be in relation to kaitiakitanga and rangatiratanga, mauri, and whakapapa. For instance, there may be a policy developed on the release of genetically modified plants into the environment, or the importation and release of organisms such as insects not previously been present in New Zealand.

STATE – OWNED ENTERPRISES ACT 1986

Fact Sheet N° 8 – State-Owned Enterprises Act 1986

Introduction

This is the Act to promote improved performance in respect of Government trading activities. It covers organisations such as the generation companies still owned by the State, Transit NZ, and Transpower.

Although the principle objective is to be a successful business the organisation has to exhibit a sense of social responsibility by having regard to the interests of the community in which it operates.

Section 9 states –

TREATY OF WAITANGI--

Nothing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi.

Therefore, the principles of active protection, good faith, and consultation apply.

The schedules to the Act contain the list of state enterprises –

<i>Agriquality New Zealand Limited</i>	<i>Meridian Energy Limited</i>
<i>Airways Corporation of New Zealand Limited</i>	<i>Meteorological Service of New Zealand Limited</i>
<i>Asure New Zealand Limited</i>	<i>Mighty River Power Limited</i>
<i>At Work Insurance Limited</i>	<i>New Zealand Post Limited</i>
<i>Crown Forestry Management Limited</i>	<i>New Zealand Railways Corporation</i>
<i>Electricity Corporation of New Zealand Limited</i>	<i>Solid Energy New Zealand Limited</i>
<i>Genesis Power Limited</i>	<i>Television New Zealand Limited</i>
<i>Land Corporation Limited</i>	<i>Terralink NZ Limited</i>
<i>MCS Limited</i>	<i>Timberlands West Coast Limited</i>
	<i>Transpower New Zealand Limited</i>

Therefore it is to be expected that such organisations will consult with iwi on relevant matters. For instance, generation companies such as Contact or Meridian would be expected to consult in relation to the review of water rights, resource consent applications, and work programmes which may affect iwi values.

Therefore, if within its rohe an iwi has significant works or lands owned by State-owned enterprises they should be recognised within the iwi management plan and perhaps an outcome noted of an intention to enter into memoranda of understanding with such organisations.

ENVIRONMENT ACT 1986

Fact Sheet N° 9 – Environment Act 1986

Introduction

This Act is to –

- (a) Provide for the establishment of the office of Parliamentary Commissioner for the Environment:*
- (b) Provide for the establishment of the Ministry for the Environment:*
- (c) 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*

This Act therefore puts the Parliamentary Commissioner for the Environment and the Ministry for the Environment on notice in relation to their duties and functions and the importance of the principles of the Treaty of Waitangi.

The functions of the Commissioner for the Environment are set out in section 16.

16. FUNCTIONS OF COMMISSIONER--

- (1) The functions of the Commissioner shall be--*
 - (a) With the objective of maintaining and improving the quality of the environment, to review from time to time the system of agencies and processes established by the Government to manage the allocation, use, and preservation of natural and physical resources, and to report the results of any such review to the House of Representatives and to such other bodies or persons as the Commissioner considers appropriate:*
 - (b) Where the Commissioner considers it necessary, to investigate the effectiveness of environmental planning and environmental management carried out by public authorities, and advise them on any remedial action the Commissioner considers desirable:*

- (c) To--
- (i) Investigate any matter in respect of which, in the Commissioner's opinion, the environment may be or has been adversely affected, whether through natural causes or as a result of the acts or omissions of any person or body, to an extent which the Commissioner considers warrants investigation; and
 - (ii) Advise, where necessary, the appropriate public authority and any other person or body the Commissioner thinks appropriate of the preventive measures or remedial action which the Commissioner considers should be taken; and
 - (iii) Report the results of the investigation to the House of Representatives:
- (d) At the request of the House of Representatives or any select committee of the House of Representatives, to report to the House or committee on any petition, Bill, or other matter before the House or committee the subject-matter of which may have a significant effect on the environment:
- (e) On the direction of the House of Representatives, to inquire into any matter that has had or may have a substantial and damaging effect on the environment, and to report the results of the inquiry to the House:
- (f) To undertake and encourage the collection and dissemination of information relating to the environment:
- (g) To encourage preventive measures and remedial actions for the protection of the environment.
- (2) For the purposes of any inquiry held under subsection (1) (e) of this section, the Commissioner shall have the same powers as are conferred on Commissions of inquiry by section 4 and sections 4B to 9 of the Commissions of Inquiry Act 1908; and those sections shall apply to all persons involved in any capacity in any such inquiry as if it were an inquiry conducted by a Commission under that Act.
- (3) The Commissioner shall have, in relation to any such inquiry, and any report on the results of the inquiry, the same immunities and privileges as are possessed by a District Court Judge in the exercise of the Judge's civil jurisdiction.

Therefore the Commissioner has the ability to undertake inquiries in relation to environmental matters. Therefore, it maybe that an iwi management plan can identify matters which the iwi consider needs such investigation with the rohe. Although these matters can be of regional, specific site matter it is important to understand that broader issues can be investigated and reports from the Commissioner have included "Kaitiakitanga and Local Government: Tangata Whenua Participation In Environmental Management". The functions for the Ministry for the Environment are stated in section 31 -

31 FUNCTIONS OF MINISTRY--

The Ministry shall have the following functions:

- (a) *To advise the Minister on all aspects of environmental administration, including--*
- (i) *Policies for influencing the management of natural and physical resources and ecosystems so as to achieve the objectives of this Act:*
 - (ii) *Significant environmental impacts of public or private sector proposals, particularly those that are not adequately covered by legislative or other environmental assessment requirements currently in force:*
 - (iii) *Ways of ensuring that effective provision is made for public participation in environmental planning and policy formulation processes in order to assist decision making, particularly at the regional and local level:*
- (b) *To solicit and obtain information from any source, and to conduct and supervise research, so far as it is necessary for the formulation of advice to the Government on environmental policies:*
- (c) *To provide the Government, its agencies, and other public authorities with advice on--*
- (i) *The application, operation, and effectiveness of the Acts specified in the Schedule to this Act in relation to the achievement of the objectives of this Act:*
 - (ii) *Procedures for the assessment and monitoring of environmental impacts:*
 - (iii) *Pollution control and the co-ordination of the management of pollutants in the environment:*
 - (iv) *The identification and likelihood of natural hazards and the reduction of the effects of natural hazards:*
 - (v) *The control of hazardous substances, including the management of the manufacture, storage, transport, and disposal of hazardous substances:*
- (d) *To facilitate and encourage the resolution of conflict in relation to policies and proposals which may affect the environment:*
- (e) *To provide and disseminate information and services to promote environmental policies, including environmental education and mechanisms for promoting effective public participation in environmental planning:*
- (f) *Generally to provide advice on matters relating to the environment.*

The Ministry for the Environment also has the responsibilities set out in clause 24 and 25 of the Resource Management Act, which include monitoring of the effects of the implementation of the Act.

Therefore an iwi management plan could indicate in general terms the matters under the Resource Management Act that iwi wish the Ministry to monitor in its rohe. This could include how local authorities are recognising and providing for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga. Now they are having particular regard to kaitiakitanga and how they are taking into account the Principles of the Treaty of Waitangi.

There may be specific issues within the rohe which iwi wish the Ministry to monitor such as discharge of sewage into waterbodies by local authorities in relation to their duties under the Act.

HISTORIC PLACES ACT 1993

Fact Sheet N° 10 – Historic Places Act 1993

Introduction

The purpose of this Act is to provide the identification, protection, preservation, and conservation of the historic and cultural heritage of New Zealand. In achieving the purpose of the Act all persons exercising functions and powers under it have to recognise the relationship of Māori and their cultural and traditions with their ancestral lands, water, sites, wāhi tapu, and other Toanga.

As part of the review of heritage management the Historic Places Act is being reviewed. There is an intention to devolve the responsibility from the Historic Places Trust in relation to the management of archaeological sites and historic heritage to local authorities. This intention is reflected in proposed amendments to the Resource Management Act, which at the time of preparing this fact sheet have not returned to the House from the Select Committee.

This fact sheet therefore deals with the legislation as it currently exists. The Act contains a process for Heritage Orders and Heritage Covenants and for the of application and consenting in relation to activities which may destroy, damage, or modify archaeological sites. An archaeological site is defined as –

any place in New Zealand that--

(a) *Either--*

(i) *Was associated with human activity that occurred before 1900; or*

(ii) *Is the site of the wreck of any vessel where that wreck occurred before 1900; and*

(b) *Is or may be able through investigation by archaeological methods to provide evidence relating to the history of New Zealand;*

The Trust also has the ability to investigate matters where it has reasonable cause to believe that work will destroy, damage, or modify an archaeological site and no application has been made to it.

The Act also sets out a registration process for historic places, historic areas, wāhi tapu, and wāhi taonga areas.

The New Zealand Historic Places Trust, Board of Trustees, and the Māori Heritage Council are also provided for under the Act. Section 84 describes the Māori Heritage Council

MAORI HERITAGE COUNCIL--

- (1) *There is hereby established a Council to be called the Maori Heritage Council.*
- (2) *The Council shall consist of the following:*
 - (a) *Two members of the Board who have been appointed under section 42 (b) of this Act; and*
 - (b) *One member of the Board, being Maori, who has been appointed under section 42 (d) of this Act; and*
 - (c) *One member of the Board who has been either elected by virtue of section 42 (c) of this Act and the regulations under the Act or who has been appointed under section 42 (d) of this Act; and*
 - (d) *Four persons, being Maori and having skills, knowledge, or cultural background appropriate to the functions and powers of the Council, to be appointed by the Minister after consultation with the Minister of Maori Affairs and the Board.*
- (3) *The Chairperson of the Council shall be a member of the Board and shall be appointed by all members of the Council from among their number.*
- (4) *Members of the Council shall hold office for a term of not more than 3 years and may from time to time be reappointed.*
- (5) *Unless a member of the Council vacates or is removed from his or her office under section 88 of this Act, or (in the case of a member appointed under subsection (2) (a) of this section) who ceases to be a member of the Board, he or she shall continue in office until his or her successor comes into office.*

The functions of the Council are

FUNCTIONS OF COUNCIL--

The Maori Heritage Council shall have the following functions:

- (a) *To ensure that, in the protection of wahi tapu, wahi tapu areas, and historic places and historic areas of Maori interest, the Trust meets the needs of Maori in a culturally sensitive manner:*
- (b) *To develop Maori programmes for the identification and conservation of wahi tapu, wahi tapu areas, and historic places and historic areas of Maori interest, and to inform the Board of all activities, needs and developments relating to Maori interests in such areas and places:*
- (c) *To assist the Trust to develop and reflect a bicultural view in the exercise of its powers and functions:*
- (d) *To develop its own iwi and other consultative and reporting processes and to recommend such processes for adoption by the Board, branches, and staff of the Trust when dealing with matters of Maori interest:*

- (e) *To make recommendations to the Trust on applications referred by the Trust under section 14 (3) of this Act that relate to archaeological sites of Maori interest:*
- (f) *To consider and determine proposals for the registration of wahi tapu and wahi tapu areas:*
- (g) *To propose the registration of historic places and historic areas of Maori interest:*
- (h) *To make recommendations to the Trust on applications for resource consents referred by the Trust under section 33 of this Act:*
- (i) *To perform such functions as are delegated to the Council by the Board:*
- (j) *To perform such other functions as are imposed on the Council by this Act or any other Act:*
- (k) *To advocate the interests of the Trust and the Council so far as they relate to matters of Maori heritage at any public or Maori forum.*

This is therefore important when developing an iwi management plan to consider the issues of wāhi tapu and wāhi toanga sites and the protection afforded by this Act in relation to the registration of sites and the need for consents to damage or modify sites. Therefore consideration should be given to identifying if not the actual sites then the general area of sites in the iwi management plan so that local authorities and applicants can undertake appropriate consultation.

BUILDING ACT 1991

Fact Sheet N° 11 – Building Act 1991

Introduction

The provisions of this Act should be viewed in conjunction with the Historic Places Act 1993 and its provisions for registration of wāhi tapu and wāhi toanga sites. Often an activity on land does not need a resource consent but will need a building consent.

As part of the building consent, anyone undertaking any building work can apply to a territorial authority for a project information memorandum in respect of the work. That project information memorandum provides information to the territorial authority about the building project. As well as the location of the building also includes provision for vehicular access and disposing of stormwater and wastewater. If the application affects any registered historic place, historic area, wāhi tapu, or wāhi taonga area, the territorial authority has to advise the Historic Places Trust of the application within five working days.

Therefore there is an additional benefit in having such sites registered with the Historic Places Trust or recognised in a regional or district plan in that the process of project information memorandum will serve as flag in relation to such sites that do not need a resource consent.

RESERVES ACT 1997

Fact Sheet N° 12 – Reserves Act 1997

Comment:

This Act is under review at the time of preparing this fact sheet but the changes proposed are generally minor and seek to improve the efficiency and effectiveness of the Act. For instance, making sure that the new concession provisions that relate to the Department of Conservation estate also apply to administering bodies who are not Department of Conservation.

The purpose of the Act –

GENERAL PURPOSE OF THIS ACT--

- (1) *It is hereby declared that, subject to the control of the Minister, this Act shall be administered in the Department of [Conservation] for the purpose of--*
 - (a) *Providing, for the preservation and management for the benefit and enjoyment of the public, areas of New Zealand possessing--*
 - (i) *Recreational use or potential, whether active or passive; or*
 - (ii) *Wildlife; or*
 - (iii) *Indigenous flora or fauna; or*
 - (iv) *Environmental and landscape amenity or interest; or*
 - (v) *Natural, scenic, historic, cultural, archaeological, biological, geological, scientific, educational, community, or other special features or value:*
 - (b) *Ensuring, as far as possible, the survival of all indigenous species of flora and fauna, both rare and commonplace, in their natural communities and habitats, and the preservation of representative samples of all classes of natural ecosystems and landscape which in the aggregate originally gave New Zealand its own recognisable character:*
 - (c) *Ensuring, as far as possible, the preservation of access for the public to and along the sea coast, its bays and inlets and offshore islands, lakeshores, and riverbanks, and fostering and promoting the preservation of the natural character of the coastal environment and of the margins of lakes and rivers and the protection of them from unnecessary subdivision and development.*
- (2) *In the exercise of its administration of this Act, the Department may take any action approved or directed from time to time by the Minister so far as it is consistent with this Act or is provided for in any other Act and is not inconsistent with this Act.*

The Act covers the administration, acquisition of land for reserves, classification of management of reserves, the management and control of reserves, the functions of administering bodies, and their general powers, and the particular powers of the Minister and administering bodies, as well as providing for the protection of private land and conservation covenants along with the ability to create bylaws and make provision for offences on reserves.

Organisations other than the Department of Conservation can manage and control reserves. Usually this is local authorities, however, other groups can be the administering body of reserves for example Ngäi Tahu under their Deed of Settlement.

Part III of the Act deals with the classification and management of reserves. Reserves can be classified as recreational, historic, scenic, nature, scientific, government purpose, or local purpose reserves. The overarching purpose of each of these kinds of reserves is outlined in the Act. However, if a body other than the Department of Conservation is given the responsibility to manage and control a reserve then that management and control will be subject to section 4 of the Conservation Act as already outlined as long as it does not conflict with the major purpose for the reserve. Most reserve classifications have an overarching and secondary purpose. In most cases the secondary purpose states that –

Where scenic, historic, archaeological, biological, geological, or other scientific features or indigenous flora or fauna or wildlife are present on the reserve, those features or that flora or fauna or wildlife shall be managed and protected to the extent compatible with the principal or primary purpose of the reserve:

Provided that nothing in this subsection shall authorise the doing of anything with respect to fauna that would contravene any provision of the Wildlife Act 1953 or any regulations or Proclamation or notification under that Act, or the doing of anything with respect to archaeological features in any reserve that would contravene any provision of the [[Historic Places Act 1993

It is important to consider in relation to the management of reserves by local authorities that they do, because of the umbrella of the Conservation Act, have some section 4 responsibilities attaching to that control and management. This may be a fact, that is not recognised by some local authorities.

One of the proposed changes to the Reserves Act would result in all reserves having to have a management plan developed for them, although a number of reserves could be grouped into one plan. It is important that in an iwi management plan the reserves in the takawä for which there is to be a management plan developed are recognised where there is an iwi interest, with an expectation that iwi are consulted about and involved in the development of the management plan.

MARINE RESERVES ACT 1971

Fact Sheet N° 13 – Marine Reserves Act 1971

Introduction:

The purpose of this Act is to preserve as marine reserves for the scientific study of marine life, areas of New Zealand that contain underwater scenery, natural features, or marine life of such distinctive quality, or so typical, beautiful, or unique, that the continued preservation is in the national interest.

Such areas have to be preserved as far as possible in their natural state and the marine life of the reserves is to be protected and preserved.

This is another Act that is currently under review at the time of preparing this fact sheet.

Currently, customary harvest is prohibited in a marine reserve. Therefore, if areas are made into marine reserves iwi are prevented from undertaking customary Māori fishing rights. This is a matter that iwi may wish to submit on as part of the review process.

Some tribes have only given its support for a marine reserve if a maitaitai or taiapure area is developed concurrently within the takiwā. Under existing legislation this is a clumsy and difficult solution because marine reserves are the responsibility of the Minister of Conservation and maitaitai and taiapure are the responsibility of the Minister of Fisheries.

S9 CONTROL AND MANAGEMENT OF RESERVES--

Subject to this Act, the Director-General shall administer, manage, and control marine reserves in accordance with approved general policies, conservation management strategies, and conservation management plans.

Section 3 sets out how Marine Reserves are to be maintained. This includes freedom of access where compatible with the protection of marine life.

3. MARINE RESERVES TO BE MAINTAINED IN NATURAL STATE, AND PUBLIC TO HAVE RIGHT OF ENTRY--

- (1) *It is hereby declared that the provisions of this Act shall have effect for the purpose of preserving, as marine reserves for the scientific study of marine life, areas of New Zealand that contain underwater scenery, natural features, or marine life, of such distinctive quality, or so typical, or beautiful, or unique, that their continued preservation is in the national interest.*
- (2) *It is hereby further declared that, having regard to the general purpose specified in subsection (1) of this section, marine reserves shall be so administered and maintained under the provisions of this Act that--*

- (a) *They shall be preserved as far as possible in their natural state:*
 - (b) *The marine life of the reserves shall as far as possible be protected and preserved:*
 - (c) *The value of the marine reserves as the natural habitat of marine life shall as far as possible be maintained:*
 - (d) *Subject to the provisions of this Act and to the imposition of such conditions and restrictions as may be necessary for the preservation of the marine life or for the welfare in general of the reserves, the public shall have freedom of access and entry to the reserves, so that they may enjoy in full measure the opportunity to study, observe, and record marine life in its natural habitat.*
- (3) *For the purposes of this section but subject to any authorisation given under section 11 (b) of this Act, no person shall fish in a marine reserve except--*
- (a) *Persons (not being persons holding a permit issued under Part IV of the Fisheries Act 1983) authorised by notice in the Gazette given by the Minister after having regard to the purpose specified in subsection (1) of this section; and*
 - (b) *In accordance with such conditions as to time, place, species of fish, methods, and gear to be used in fishing, as may be specified in the notice; and*
 - (c) *Where not inconsistent with any conditions imposed under paragraph (b) of this subsection, in compliance with restrictions imposed on fishing by the Fisheries Act 1983 and any regulations made under it.*
- (4) *Nothing in this section shall apply to prohibit any person from fishing in the reserve in accordance with any conditions imposed by any Order in Council made under section 5 of this Act.*

Comment:

Note: No fishing is allowed in the reserve, with limited exceptions, that relate to taking for scientific purposes and Part IV of the Fisheries Act 1983..

Part IV of the Fisheries Act 1983 relates to fishing vessels and methods of fishing including fishing permits and special permits. Therefore the Act contemplates that commercial fishing may take place with a special permit under certain circumstances.

Although section 5 of the Act empowers the Governor General to declare a marine reserve on conditions recommended by the Minister, it must be remembered that the Marine Reserve Act is subject to section 4 of the Conservation Act. However that provision is not permitted to overrule the purpose of the Marine Reserves Act.

Section 5 of the Marine Reserves Act sets out the procedures for declaring a marine reserve including a public information and objecting process.

S5. PROCEDURE FOR DECLARING A MARINE RESERVE--

- (1) *No Order in Council shall be made under section 4 of this Act unless--*
- a) *Application for the Order in Council is made to the Director-General by one or more of the following:*
 - (i) *Any university within the meaning of the Universities Act 1961:*
 - (ii) *Any body appointed to administer land subject to the Reserves Act 1977 if such land has frontage to the seacoast:*
 - (iii) *Any body corporate or other organisation engaged in or having as one of its objects the scientific study of marine life or natural history:*
 - (iv) *Maori iwi or hapu who have tangata whenua status over the area:*
 - (v) *The Director-General*
 - (b) *Notice of intention to apply for an Order in Council declaring the area a marine reserve has, after consultation with the [Director-General], been published by the applicant for the Order at least twice, with an interval of not less than 5 nor more than 10 days between each publication, in some newspaper circulating at or nearest to the place where the area is situated, and at least once in each of 4 daily newspapers, one of which shall be published in Auckland, one in Wellington, one in Christchurch, and one in Dunedin:*
 - (c) *Every notice published pursuant to paragraph (b) of this subsection--*
 - (i) *States the date of first publication of that notice:*
 - (ii) *States the place where the plan referred to in subsection (2) of this section may be inspected:*
 - (iii) *Gives a general description of the area proposed to be declared a marine reserve:*
 - (iv) *Gives an address for service:*
 - (v) *Calls upon all persons wishing to object to the making of the Order to send their objections in writing, specifying the grounds thereof, to the [Director-General] within 2 months from the date of first publication of the notice and to serve a copy of the objections, specifying the grounds thereof, on the applicant within the same time:*
 - (d) *Notice in writing of the proposed marine reserve is given by the applicant to--*
 - (i) *All persons owning any estate or interest in land in or adjoining the proposed reserve. For the purposes of this subparagraph, land shall be deemed to adjoin a proposed marine reserve notwithstanding that it is separated from it by the foreshore or by any road, or that is at a distance of not more than [100 metres] from the proposed marine reserve if separated from it by any other reserve of any kind whatsoever [or any marginal strip within the meaning of the Conservation Act 1987]:*

- (ii) *Any harbour board if the area or any part of the area proposed as a marine reserve is within the jurisdiction of that harbour board:*
 - (iii) *Any local authority or public body in which the foreshore or the control of the foreshore is vested if that foreshore or any part of it is within the area proposed as a marine reserve:*
 - (iv) *The Secretary for Transport:]*
 - (v) *The Director-General of Agriculture and Fisheries].*
- (2) *The [Director-General] shall cause a plan to be prepared on a suitable scale showing all tidal waters coloured blue, and the boundaries and extent of the area sought to be declared a marine reserve. The plan shall be open for inspection free of charge during ordinary office hours by any person at the office of the [Department] nearest to the proposed reserve.*
- (3) *All persons wishing to object to the making of the Order shall, within 2 months from the date of first publication of the notice published pursuant to paragraph (b) of subsection (1) of this section, send their objections in writing, specifying the grounds thereof, to the [Director-General] and shall serve a copy of their objections, specifying the grounds thereof, on the applicant within the same time.*
- (4) *The applicant may, on receiving any copy of objections under subsection (3) of this section, answer those objections in writing to the [Director-General] within 3 months from the date of first publication of the notice published pursuant to paragraph (b) of subsection (1) of this section, and the [Director-General] shall send any such answer he may receive within that time to the Minister for consideration.*
- (5) *The [Director-General] shall refer to the Minister all such objections received within the said period of 2 months, and any answer received within the said period of 3 months.*
- (6) *Where any objection has been made in accordance with subsection (3) of this section, the Minister shall, before considering the application, decide whether or not the objection should be upheld and, in doing so, shall take into consideration any answer made to the objection by the applicant [and, if the applicant is the Director-General, any report on the objection and the application the Minister may have obtained from an independent source]. If the objection is upheld the area shall not be declared a marine reserve. In making any such decision, the Minister shall not be bound to follow any formal procedure, but shall have regard to all submissions made by or on behalf of the objector, and to any answer made by the applicant, and shall uphold the objection if he is satisfied that declaring the area a marine reserve would--*
- (a) *Interfere unduly with any estate or interest in land in or adjoining the proposed reserve:*
 - (b) *Interfere unduly with any existing right of navigation:*
 - (c) *Interfere unduly with commercial fishing:*
 - (d) *Interfere unduly with or adversely affect any existing usage of the area for recreational purposes:*

- (e) *Otherwise be contrary to the public interest.*
- (7) *The decision of the Minister shall be final.*
- (8) *The [Director-General] shall cause the Minister's decision, together with the grounds therefor, to be notified in writing to the objector and to the applicant.*
- (9) *If, after consideration of all objections, the Minister is of the opinion that no objection should be upheld and that to declare the area a marine reserve will be in the best interests of scientific study and will be for the benefit of the public, and it is expedient that the area should be declared a marine reserve, either unconditionally or subject to any conditions (including any condition as to providing the cost of marking the boundaries of the marine reserve under section 22 of this Act, and any condition permitting fishing within the reserve by persons not holding a permit issued under Part IV of the Fisheries Act 1983), the Minister shall, if the Ministers of Transport and Fisheries concur, recommend to the Governor-General the making of an Order in Council accordingly.]*
- (10) *If notice is required by this section to be given to any person, it shall be deemed to be given to all the owners of any Maori land within the meaning of the Maori Affairs Act 1953, when it is given to such owners as have been nominated for the purpose by the Registrar of the Maori Land Court at the request of the person required to give the notice. On receiving any such request the Registrar shall nominate all owners whose current addresses are known to him.*
- (11) *For the purposes of this section the expression "estate or interest in land" shall include any mining interest.*
- (12) *This section shall bind the Crown.*

Comment:

Therefore, when contemplating an iwi management plan which includes the coastal marine area it would prudent to include consideration of where it may be appropriate to have marine reserves. However, this should be considered in conjunction with the issue of maitaitai and taiapure, which are discussed in the next fact sheet under the Fisheries Act.

NGĀI TAHU CLAIMS SETTLEMENT ACT 1998

Fact Sheet N° 14 – Ngāi Tahu Claims Settlement Act 1998

Comment:

This Act is to record the apology given by the Crown to Ngāi Tahu and to give effect to certain provisions of the Deed of Settlement entered into between the Crown and Te Rūnanga o Ngāi Tahu. The Act contains a number of provisions, which, although they apply only to Ngāi Tahu, might serve as the basis of discussion with bodies such as the Department of Conservation, for example, when considering how iwi might become more involved in the management of the Conservation estate. These instruments were created to recognise Ngāi Tahu's mana in relation to a range of sites and areas and to provide for this to be reflected in the future management of those sites.

Statutory Acknowledgements

The Statutory Acknowledgement provisions seeks is to improve the effectiveness of Ngāi Tahu's participation under the Resource Management Act, and the protection of areas significant to Ngāi Tahu receive under that Act.

Statutory Acknowledgements record the statement of Ngāi Tahu's association to each of 64 land and five coastal identified areas. There are four practical outcomes –

- a noting on plans – the existence and location of statutory acknowledgements will be shown on relative district and regional plans and policy statements prepared by councils, meaning that people applying for resource consents will be on notice that the areas are special to Ngāi Tahu.
- b notice of applications – whenever a council receives an application for resource consent relating to, or impacting on, one of the Statutory Acknowledgements areas it will be required, for a period of twenty years following the settlement, to send notice of that application to Te Rūnanga o Ngāi Tahu, so that the tribe will be aware of potential developments while there is still time to take part in the process.
- c Standing - when councils, the Environment Court, and the Historic Places Trust make decisions in relation to Statutory Acknowledgement areas about who had the right to comment on and be listened to, or to appear in court, they must have regard to the Statutory Acknowledgement.
- d The Statutory Acknowledgement may be produced by Ngāi Tahu in any proceedings under the RMA or Historic Places Act as evidence of this relationship with a particular area.

Deeds of Recognition

These apply to the same areas as Statutory Acknowledgements and compliment them by providing Ngāi Tahu input into the decision-making processes of the Crown body responsible for the administration of each of those areas.

The Deeds of Recognition take the form of specific agreements between Ngāi Tahu and the land holding agency (either DoC or Land Information New Zealand). They recognise Ngāi Tahu's historical, spiritual, cultural, and/or traditional relationship with each of the areas and the mana and tangata whenua status that results from that relationship. Deeds of Recognition also create an obligation on the Department of Conservation or LINZ to consult with Ngāi Tahu and to have particular regard to Ngāi Tahu's views in relation to the management of each of these areas.

Tōpuni

A tōpuni confirms and places an "overlay" of Ngāi Tahu values and specific pieces of land managed by the Department of Conservation. It does not override or alter the existing status of the land but ensures that Ngāi Tahu values are also recognised and acknowledged and provided for.

Each tōpuni will involve three levels of information –

- A statement of Ngāi Tahu values in relation to the area.
- A set of principles aimed at ensuring that the Department of Conservation avoids harming or diminishing those values.
- Specific acts that the Department has agreed to undertake to give effect to those principles.

FISHERIES ACT 1996

Fact Sheet N° 15 – Fisheries Act 1996

Comment:

The purpose of the Act is set out in section 8 –

S8. PURPOSE--

(1) *The purpose of this Act is to provide for the utilisation of fisheries resources while ensuring sustainability.*

(2) *In this Act--*

"Ensuring sustainability" means--

(a) *Maintaining the potential of fisheries resources to meet the reasonably foreseeable needs of future generations; and*

(b) *Avoiding, remedying, or mitigating any adverse effects of fishing on the aquatic environment:*

"Utilisation" means conserving, using, enhancing, and developing fisheries resources to enable people to provide for their social, economic, and cultural wellbeing.

The Act is based on a number of environmental principles which are set out in section 9 –

S9. ENVIRONMENTAL PRINCIPLES--

All persons exercising or performing functions, duties, or powers under this Act, in relation to the utilisation of fisheries resources or ensuring sustainability, shall take into account the following environmental principles:

(a) *Associated or dependent species should be maintained above a level that ensures their long-term viability:*

(b) *Biological diversity of the aquatic environment should be maintained:*

(c) *Habitat of particular significance for fisheries management should be protected.*

Comment:

The Act in the main deals with commercial fishing and the quota management system and there are provisions in relation to customary fishing with the Act.

Part IX deals with “Taiapure – Local Fisheries and Customary Fishing”. The Act recognises that areas of New Zealand fishery waters has customarily been a special significance to iwi as a source of food, spiritual, or cultural reasons, and therefore, seeks to make better provision for the inclusion of tino rangatiratanga and the rights secured in relation to fisheries by Article 2 of the Treaty of Waitangi.

Section 175 states that the Governor-General may from time to time by an Order of Council declare any area of New Zealand fisheries waters to be a “taiapure – local fishery”.

Sections 177 to 185 of the Act set out the process for establishing a taiapure. This includes a public process.

Essentially a taiapure is a fisheries management process under the management of iwi but including the rest of the community.

Customary fishing is dealt with by section 186 of the Act.

186. REGULATIONS RELATING TO CUSTOMARY FISHING--

- (1) *The Governor-General may from time to time, by Order in Council, make regulations recognising and providing for customary food gathering by Maori and the special relationship between tangata whenua and places of importance for customary food gathering (including tauranga ika and mahinga mataitai), to the extent that such food gathering is neither commercial in any way nor for pecuniary gain or trade.*
- (2) *Without limiting the generality of subsection (1) of this section, regulations made under that subsection may--*
 - (a) *Declare the relationship between such regulations and general fishing regulations and regulations relating to taiapure-local fisheries; and declare that the first-mentioned regulations are to prevail over the other regulations:*
 - (b) *Empower the Minister to declare, by notice in the Gazette, any part of New Zealand fisheries waters to be a mataitai reserve; and any such regulations shall require that, before any such notice is given, the Minister and the tangata whenua shall consult with the local community and the Minister shall have regard to the need to ensure sustainability in relation to the reserve:*
 - (c) *Provide for such matters as may be necessary or desirable to achieve the purpose of this Act in relation to mataitai reserves, including general restrictions and prohibitions in respect of the taking of fish, aquatic life, or seaweed:*
 - (d) *Empower any Maori Committee constituted by or under the Maori Community Development Act 1962, any marae committee, or any kaitiaki of the tangata whenua to make bylaws restricting or prohibiting the taking of fish, aquatic life, or seaweed:*
 - (e) *Empower any such Maori Committee, marae committee, or kaitiaki to allow the taking of fish, aquatic life, or seaweed to continue for purposes which sustain the functions of the marae concerned, notwithstanding any such bylaws.*

- (3) *The following provisions apply in relation to bylaws made under regulations made under subsection (2) (d) of this section:*
- (a) *Every restriction and every prohibition imposed on individuals by such bylaws shall apply generally to all individuals:*
 - (b) *Bylaws shall not come into force until they have been approved by the Minister and have been published in the Gazette:*
 - (c) *The publication in the Gazette of bylaws purporting to have been approved under this subsection shall be conclusive evidence that the bylaws have been duly made and approved under this section.*

Comment:

This section enables a maitaitai to be set up for food gathering that is neither commercial or for pecuniary gain or trade by iwi. The provisions set up a reserve which allows those who manage it to put general restrictions and prohibitions in respect of the taking of fish, aquatic life, or seaweed. It can also empower the Māori committee, marae committee, or kaitiaki to allow the taking of fish, aquatic life, or seaweed for the purpose that sustains the function of the marae concern, notwithstanding any by-laws to the contrary.

In developing an integrated iwi management plan it is therefore important for iwi to consider what areas within their tākawa they wish to develop as a taiapure or maitaitai and the programme for so doing. This would act as guidance to regional councils dealing with applications from marine farms and discharge into the coastal marine area.