

Motunui Waitara Report

Title

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REPORT OF THE WAITANGI TRIBUNAL ON THE MOTUNUI - WAITARA
CLAIM (WAI 6)

WAITANGI TRIBUNAL WELLINGTON NEW ZEALAND

March 1983

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WAI 6

The Minister of Maori Affairs Parliament House WELLINGTON

REPORT FINDINGS AND RECOMMENDATIONS

OF THE WAITANGI TRIBUNAL

ON AN APPLICATION BY AILA TAYLOR FOR AND ON BEHALF OF TE
ATIWA TRIBE IN RELATION TO FISHING GROUNDS IN THE WAITARA
DISTRICT

Edward Taihakurei Durie
Chief Judge of the Maori Land Court
Chairman

Walter Max Willis
District Court Judge
Member

Sir Graham Stanley Latimer, J.P.
Member

March 1983

Waitangi Tribunal, Department of Justice, Wellington.

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1 Introduction

1 Introduction

1. INTRODUCTION

1.1 Summary of findings

We have made inquiry into a claim by and on behalf of the Te Atiawa people of Taranaki that they are prejudicially affected by the discharge of sewage and industrial waste onto or near certain traditional fishing grounds and reefs and that the pollution of the fishing grounds is inconsistent with the principles of the Treaty of Waitangi. Evidence has been given as to the extent and use of the fishing grounds, their historical and cultural significance, the extent of pollution, the existing controls and the steps taken to minimise pollution, and certain related matters that were brought into issue during the hearing, including the extent to which any Maori interest in the fishing grounds is either recognised or provided for.

We find

- (a) That the reefs and river referred to in this claim constitute significant and traditional fishing grounds of specific hapu of the Te Atiawa people.
- (b) That the hapu are prejudicially affected in that the reefs and associated marine life suffer from various degrees of pollution and that those near to the mouth of the Waitara River in particular are badly polluted and stand to be polluted further.
- (c) That certain reefs near Motunui are likely to be deleteriously affected by the construction of the proposed ocean outfall associated with the synthetic fuels plant.
- (d) That there are insufficient planning requirements to provide an adequate assurance that the river and reefs will not be further polluted as a result of further development and growth in the area and that in any event insufficient recognition is given to the Maori interest in the coastal and inland waters to ensure the protection of that interest in existing mechanisms for planning and control and in legislation governing the use of the seafood resource.
- (e) That the Treaty of Waitangi obliges the Crown to protect Maori people in the use of their fishing grounds and to protect them from the consequences of the settlement and development of the land.
- (f) That the Treaty of Waitangi obliges the Crown to ensure that priority is given to the Maori interest in fishing grounds but an appropriate priority is not given, or is not able to be given by Departments of State and other bodies whose duties are prescribed by statute.
- (g) That the Treaty of Waitangi obliges the Crown to provide for legislative recognition of Maori fishing grounds and to confer upon the hapu most closely associated therewith certain rights of control.
- (h) That it is not inconsistent with the spirit and intention of the Treaty of Waitangi that the Crown and the Maori people affected should confer on matters arising thereunder and agree to alter the incidence of the strict terms of the treaty in order to seek acceptable practical solutions for any particular case. The Te Atiawa people have

stated a desire to establish a workable compromise in this case and our recommendations are a reflection of that.

1.2 Summary of recommendations

We recommend

- (a) That the proposal for an ocean outfall at Motunui be discontinued and
- (b) That the Crown seek an interim arrangement with the Waitara Borough Council for the discharge of the Synthetic Fuels Plant effluent through the Waitara Borough Council's outfall.
- (c) The establishment of a Regional Planning and Co-ordinating Task Force to propose medium term plans for development in the region and the provision of infrastructures and ancillary services commensurate with projected growth. In the first instance the Task Force should direct its attention to the replacement of the defective Waitara Borough outfall, and in the long term to the provision of land based treatment plants.
- (d) The establishment of an interdepartmental committee to promote legislation for the reservation and control of significant Maori fishing grounds, the recognition of Maori fishing grounds in general regulatory and planning legislation, to improve existing provisions for the assessment and control of particular work projects that may impinge on Maori fishing grounds, and to effect certain miscellaneous amendments. Our findings and recommendations and our reasons therefore are more particularly set out in the succeeding paragraphs.

Waitangi Tribunal, Department of Justice, Wellington.

Motunui Waitara Report

2 The Claim

2 The Claim

2. THE CLAIM

2.1 Particulars of the claim

The original claim was filed on 4 June 1981 and was made by Aila Taylor "for and on behalf of Te Atiawa tribe". A copy of the claim is annexed as Appendix 1.

In response to a request from the Tribunal for further particulars a more specific claim was filed 25 March 1982. A copy of the more specific claim is annexed as Appendix II.

2.2 A claim in a representative capacity

It was recognised that Mr Taylor made this claim in a representative capacity and that he spoke for the Te Atiawa people of the Taranaki area, and for those of the Manukorihi, Otaraua and Ngatirahiri hapu in particular. He gave evidence himself but he was supported by many others who had ample knowledge of the concerns of the Te Atiawa tribe.

2.3 Notification of the claim

Public notice of the claim and of the Tribunal's sittings was given in the Dominion, the New Zealand Herald and the Taranaki Daily News. Specific notice was given to those named in Appendix III.

In addition the claim and the Tribunal's hearings attracted considerable provincial and national media attention.

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3 Hearing Of The Claim

3 Hearing Of The Claim

3. HEARING OF THE CLAIM

3.1 Sittings, submissions and evidence

The tribunal sat

(a) during the week commencing 5 July for the purpose of hearing the Te Atiawa claimants,

(b) during the week commencing 18 October for the purpose of hearing other interested persons and bodies, and

(c) during the week commencing 22 November for the purpose of hearing final submissions and replies.

Those who made submissions to us are named in Appendix IV. No evidence or submissions were given in private but as shown in the appendix six written submissions were received without an appearance by or on behalf of the authors. The tribunal visited the reefs said to be affected, the synthetic fuels and methanol plant sites, Borthwicks Freezing Works, and the Waitara Borough outfall, all of which are in the vicinity of Waitara.

The tribunal also conducted its own researches into existing literature touching upon the areas of concern.

3.2 Prior proceedings

The tribunal did not commence its inquiries until after certain proceedings before the Planning Tribunal and the Court of Appeal had been concluded in the hope that certain areas of concern might be resolved before our inquiries opened and to the intent that the areas of concern might be made more certain. We were also conscious of the provisions of section 7 (1) (c) of the Treaty of Waitangi Act whereby we may decline to inquire into a claim where there is an adequate remedy or right of appeal that might be pursued in another forum, and we wondered whether the claimants might find satisfactory relief in other proceedings.

3.3 Matters of omission and rectification

During the course of the first week's hearings it became apparent that the claim and further particulars as filed were deficient in that

- they were not specific,
- they failed to make specific reference to the proposed Motunui ocean outfall associated with the synthetic fuels plant, and
- they did not adequately state the total concerns of the Te Atiawa people in relation to the fishing grounds.

It is our view that claims to the Waitangi Tribunal ought not to be overly constrained

by the adequacy of pleadings provided that the various claims can be adequately identified at the hearing, and other parties can be given a sufficient opportunity to respond to them. This approach seems to us to be important in order to facilitate Maori claims to the Tribunal without undue legalism, and to be particularly important where, as in this case, the claim is made on behalf of a tribal group in respect of whom it cannot be presumed that the individual members are all of one mind. Accordingly it was our approach in this case to accept that the full nature and extent of the claim might not be apparent until the Te Atiawa claimants as a whole had been heard, to use the first week of the proceedings to enable the various Te Atiawa claims and concerns to be identified and stated, and then to adjourn proceedings for a sufficient period to enable other interested parties to consider the claims and to respond to them.

In the result certain matters not specifically stated in the formal claim were brought within our purview and in particular

- the extent of pollution in the Waitara River and its effect on Te Atiawa River fishing practices,
- the existing provisions affecting the use, enjoyment and control of Maori fishing grounds, and
- the Motunui outfall

(The Motunui outfall was only obliquely referred to. The claim referred principally to the discharge of sewage and industrial waste into the sea between New Plymouth and Waitara but para. 7 of the claim went on to state -

"Petro Chemical Industries being established near Waitara have obtained approval for the discharge of industrial waste and sewage into the same area of the sea as is already polluted by the Waitara Outfall and the position in the absence of proper supervision is therefore likely to deteriorate.")

3.4 Marae hearings

It is useful to record that each hearing was held on the Manukorihi Marae. The Treaty of Waitangi Act enables the Tribunal to receive evidence in any form and it should be mentioned that none of the evidence in this case was sworn evidence. The proceedings were held on the Marae because the Tribunal was of the firm opinion that on their home territory the Maori people would be better able to express their feelings and make their concerns known. The Tribunal is completely satisfied that by adopting this procedure it was able to reach the real heart of the matter. This would not have been possible had the proceedings been held in a building such as a Courthouse or in proceedings conducted in the same manner as a court hearing.

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4 Background To The Reefs - Te Atiawa Perspective

4 Background To The Reefs - Te Atiawa Perspective

4. BACKGROUND TO THE REEFS - TE ATIWA PERSPECTIVE

4.1 History and legend

The Te Atiawa fishing reefs (or kaawa) extend for some 30 to 35 miles along the coast of the north Taranaki bight and provide an abundant source of seafood. Collectively they constitute one of the most extensive traditional fishing reefs of the Maori people. They are referred to in the songs and legends of the Te Atiawa people and were a source, not only of food, but of tribal pride and prestige. Sir Peter Buck ("The Coming of the Maori" page 378) has recorded one such legend as follows: "A curious story is connected with the visit of a Ngati Tama ohu to clear some land for a Taranaki tribe south of the present New Plymouth. The ohu speedily completed its task with a large stone adze named Poutamawhiria, to which a certain amount of magic power was ascribed. The working party had been fed with choice mussels from a local reef. They were so good that the Ngati Tama priest with the ohu decided to steal a portion of the reef. He waded out secretly to the reef, cut off its northern end with the adze, Poutamawhiria, and by means of magic incantations, floated it back to his own territory, where it is now fixed in the sea as the mussel-bearing reef named Paroa. However, Poutamawhiria marked its disapproval of the theft by allowing a chip to break off from one corner of its cutting edge. Generations later the adze disappeared, but a description of it was handed down orally. It was of very black polished stone about 16 inches in length, and it had a chip off one corner of its cutting edge. One night a young girl of the Ngati Tama dreamt that Poutamawhiria had been found at the neighbouring village of Pukearuhe by a European farmer named Black. The girl was so insistent that her father, Te Kapinga, visited Mr Black's home, where, to his intense surprise, Mrs Black produced a large stone adze which her husband had found recently. It was of polished black basalt, the right length, and it had a chip off one corner of the cutting edge. Mr Black arrived and, after hearing the story, very generously gave it to Te Kapinga as the representative of the rightful heirs. The Ngati Tama and Ngati Mutunga tribes held a meeting at which Poutamawhiria was laid in state on a flaxen robe on the marae, and the people greeted its return with a welcome of tears. The finder was publicly thanked and given a suitable present. Later, on a visit, I was shown Poutamawhiria. I looked doubtingly, perhaps, at Te Kapinga, as I felt the chipped corner. "Well," he replied, "If you examine the Taranaki reef, you will see that its northern end is cut off clean and if you examine the Paroa reef you will find that its southern end is cut off clean. Now if you were to bring the two reefs together you would find that the two cut ends would fit perfectly." Who am I to gainsay such proof?"

Evidence of the role which the reefs and sea-bed play as a means of recording and transmitting cultural values is also contained in statements made to us. The first concerns the events which give rise to the full name of the locality as Owae Waitara,

also borne by the portal of the Manukorihi marae. Wharematangi, a young man brought up by his mother's people north of Taranaki, expressed (circa 1420) the wish to meet with his father Rahue and paternal kinsfolk of Te Atiawa. Following the tara (dart) given to him by his mother Wharematangi's journey led him to the reefs off the river mouth of the river now known as Waitara, hence the Owae Waitara which other dialects would pronounce as Owae Whaitara.

(See also S P Smith - "Maori History of the Taranaki Coast.")

This episode demonstrates the richness of the history associated with the reefs and the way in which their names can act as signposts for further accounts of the history of the people.

Another person appearing before us referred to an event recorded in the oral history of the area by which the neighbouring reef of Waiongona was named. The name refers to Ngona, daughter of the well known voyager Kupe, who called in at that point so that Ngona could drink and refresh herself - hence the name Wai o Ngona (literally water of Ngona).

4.2 Hapu divisions of the reefs

Possession of the reefs was seen by Te Atiawa as important as the occupation and possession of the land. It is significant to note that just as the adjoining land is divided amongst the various hapu of Te Atiawa, so also are the reefs so that particular reefs are regarded as the property of particular hapu.

We were advised that the following reefs are associated with the following hapu:

Waiwakaiho }

Mangati } Ngati Te Whiti

Kunene }

Waiongona }

Tauranga }

Orapa } Otaraua, Manukorihi

Te Puna }

Tokataratara }

Titirangi Ngati Rahiri

Urenui Ngati Mutunga

Paraninihi Ngati Tama

The custom in this respect continues to this day. Aila Taylor for example stated that he would not take kaimoana (seafood) from a reef other than that belonging to his own hapu. We have been singularly impressed with the quiet honesty and integrity of Aila Taylor and accept his evidence entirely.

In regarding the extensive nature of the Taranaki reefs therefore it is not an adequate answer to the Maori claims to consider the pollution of the reefs in one locality not to be prejudicial for as long as other reefs remain untainted. The important question here is whether the whole or an undue proportion of the reefs of any particular hapu are prejudicially affected.

4.3 The seafood resource

In this particular inquiry we have not been concerned with the Taranaki reefs as a whole. Our inquiry has focused upon the Tauranga, Orapa, Te Puna and Titirangi

reefs off Waitara and Motunui, and which are regarded as belonging to the Manukorihi, Otaraua and Ngati Rahiri hapu.

Nonetheless, it is apparent that many of the claims made in respect of the particular reefs referred to hold true for the reefs as a whole. There can be no doubt that in the Taranaki area the various reefs along the coastline were and still are a valuable source of seafood. They are used today for the harvesting of kuku, kina, kotoretore, four genera of pupu (karikawa, mitimiti, korama and ngaruru or makiritai), rore, karengo, paua, wheke (octopus), starfish, the waiwakaiho crab, limpets, crayfish, starfish and fish generally.

4.4 The cultural value of the seafood resource

The harvesting of seafood from the reefs was and is not only for the purposes of survival. Kaimoana also has an intrinsic cultural value manifested in manaaki (token of the esteem) for manuhiri (visitors).

That attitude is expressed in the statement before this Tribunal -

" . . . mataitai [seafood] is very valuable, more valuable than meat - without that our table is nothing . . . "

It is a matter of tribal prestige and honour, not only that guests should never leave hungry, but that guests should be suitably impressed by an abundance of traditional foods prepared for them. The hakari (feast) associated with the numerous Maori tangi and hui is an important part of Maori culture, and as we were to witness for ourselves, it is important that the supply should exceed the guest's needs. (The residue is not wasted but is divided amongst the host hapu). The cultural value of kaimoana is therefore important, not only because it satisfies the traditional palate and sustains the way of life of the individual, but because it maintains tribal mana and standing. In Maori terms it would not be valid to contemplate the destruction of some reefs by assessing the individual needs of the local people and the resource necessary to meet that need. It is necessary to assess the tribal need.

4.5 Customs attaching to the reefs

There was ample evidence to show that from very early times the Te Atiawa people have not only looked upon the reefs as a source of supply but have tended, harvested and conserved them. Our attention was drawn to the particular cultural preferences that govern the Te Atiawa stewardship of their reef and river resources. In its outward manifestation it includes -

- the harvesting of seafood rotationally and in appropriate seasons;
- the preservation of the beds in their original state to the extent that even a dislodged rock is returned to its original position;
- the avoidance of all forms of despoliation from rubbish and waste to human and animal excreta in proximity to the sea or to the rivers that run into it;
- the placing of a rahui (prohibition) on the gathering of seafood following the loss of a body at sea or to guard against over exploitation (in this district the rahui was sometimes indicated by a sprig of rimu on a floating log);
- the avoidance of gutting fish or shelling shellfish below the high water mark; and
- a prohibition on the gathering of shellfish by women during menstruation.

Other customary practices of earlier years, not so commonly observed today were explained to us by one witness referring to the collection of seafood over a three day

period at a time of the month when the tide is most favourable. She described how on those occasions the women (and then only selected women) used only newly plaited and clean baskets. None of the seafood was cooked or prepared for eating until after the third day "so that the sea be calm", and bathing or washing in nearby rivers was prohibited. In referring to fishing generally she described how the fish had to be hooked and secured before it bled so that it did not bleed on the rocks ("or no more will go into the cupboard"). She described how the fish caught were not for the individual, but for the marae people as a whole and how the first fish caught had to be given away. She noted with some sorrow that the Orapa reef was once reserved for supplying the marae, but that because of the pollution it could no longer be used. The deterioration was such that the mussels had become soft to the extent that the shells would crumble in the hand.

Other customs were only obliquely referred to by the many elderly women who spoke to us at the hearing. We accepted that this had to be so. As Aila Taylor explained "It has been quite an exercise to get the elders to participate in an exercise such as this. We are a proud people. There are certain things that we don't wish to advertise, and neither do we seek to make a spectacle of ourselves." For our part it has been necessary to record those things tending to establish a traditional and continued user of the reefs, and which indicate cultural preferences that define the nature of that use. In its simplest form such customs are an outward manifestation of the respect paid by Maori people to the sea and its food resource. It is probably more important to note however that such customs are a manifestation of a far more complex Maori spiritual conception of life and life forces which compels them to insist upon a much higher standard in the maintenance of clean water and the preservation of natural states than that to which we are accustomed.

4.6 Spiritual and cultural factors

Many of those who appeared before us spoke therefore not only of the physical contamination of water by which a degree of pollution might be entertained as not injurious to health, but of the "spiritual pollution of water which affects the life force of all living things and eventually man" (Moke Couch) and according to which no degree of contamination can be contemplated. The tapu (sacred) nature of water in the Maori scheme of things was stressed by many (in particular Joe Tukapua, Milton Hohaia, and Hikaia Amohia) while a more pragmatic approach was adopted by another witness (Titi Tihu) who was within two months of his 100th year. He quite dramatically pointed out that if, for example, corn was thrown into the water it would rot because the water would reject it. The proper place for corn was on the land where it properly belonged. The water will react against what it does not like but will nurture what it does. Moke Couch pointed out "that which we dispose of from the body goes back to the earth and the earth can cope with it." He considered that no remnants from the human body, from washing or excreta, should pass into waters associated with food - "if we eat food that has particles of mortuary waste of possibly people we know - we are presenting a kind of insult." So strong is this feeling that others considered the eating of fish following the placing of a rahui was in some cases tantamount to cannibalism.

Accordingly, in the traditional Maori conception of life, it is irrelevant to consider whether effluent and human waste can be so treated as to be virtually pure before it is discharged into the river or sea. The position was succinctly stated by the Commissioner for the Environment as follows:

"It is the Commission's experience that the environmental impact of a given level of pollution depends in part on the subjective reaction of individuals to that particular form of pollution. For certain forms of pollution the reaction of individuals will be determined by cultural or religious factors. Submissions made during the opening stages of this Tribunal made it clear that this applies to the composition of the effluent discharged to the coastal waters off Waitara and that there is a strong philosophical and moral objection from Maori people to the discharge of sewage effluent into a food source and waters used for washing, bathing, fishing."

After a great deal of evidence on this subject from a number of Maori people we were convinced that there is a need for a much greater awareness of the spiritual and mental concepts of the Maori in relation to seafood and water by non Maori who share the seafood resource and by those who are charged with its protection. It would be particularly wrong if the administration of Maori fishing grounds was entrusted only to those whose judgements are founded upon cultural values that are entirely irrelevant to Maori people. For this Tribunal the question is not only whether the Treaty of Waitangi envisages a measure of protection for the Te Atiawa reefs, but whether any such protection should properly accord Te Atiawa cultural preferences.

4.7 Early legislative recognition - Maori Affairs Act - Fisheries Act

With the change and increase in the Taranaki population the danger arose that the Maori interest in the fishing grounds would not be recognised. With the failure of the European to appreciate fully Maori methods of conservation and harvesting the added danger arose of the seafood resources being reduced or extinguished.

In 1909 Section 232 of the Native Land Act was enacted to enable Maori land to be set apart as Maori reservations for the common use and benefit of the owners, for the purposes, amongst other things, of fishing grounds and bathing places. The provision continues to this day in Section 439 of the Maori Affairs Act 1953. It is a provision that is well known to Maori people being used regularly to secure to them the ownership and control of sites of particular importance and significance by application to the Maori Land Court.

Although the current Section 439 continues to refer to fishing grounds, the Section is not in fact capable of being used to secure most Maori fishing grounds. Maori reservations under section 439 can be created only in respect of land above the high water mark and then generally only in respect of Maori land. The Maori Land Court is unable to contemplate the reservation of fishing grounds except to the extent that they exist in rivers or lakes the beds of which are clearly Maori land, or except that Maori land adjoining a fishing ground may be reserved.

We consider that this has not been understood by the Te Atiawa people. Evidence was given of various areas along the Taranaki coastline set apart as Maori reservations in the 1920s, 1930s and 1970s. It was considered that by reserving the land for the purpose of providing fishing grounds the adjoining coastal fishing reefs had also been reserved. That is not in fact the case. The Maori reservation status applies only to the coastal land.

(We wonder also about the extent to which Maori reservations are in fact inviolate. Evidence was also given that part of one reservation had been taken in 1948 as waste land. Another, which contained a Tauranga waka (traditional boat race) and mauri (rock or other symbol representing the life force) was said to have been "taken over" by a local boat club and the race had been concreted.)

The Maori Councils Act 1900 created District Maori Councils and empowered them

to make Regulations and bylaws for the control and regulation of fishing grounds used by Maoris. By an amendment in 1903 provision was made for the gazetting of Maori fishing grounds "exclusively for the use of the Maoris of the locality or of such hapus or tribes as may be recommended" and by a consolidation of these provisions in Section 33 of the Maori Social and Economic Advancement Act 1945 provision was made for the control of such fishing grounds by tribal executives or committees. These provisions were repealed on the enactment of the Maori Welfare Act 1962. As far as we have been able to ascertain the Te Atiawa people did not take advantage of these provisions and no Maori fishing ground reserves were in fact created. Various reasons were given. One was that reliance had been (wrongly) placed upon the Maori reservation provisions in the Maori Affairs Act. Another was that the people were generally unaware of the provisions until it was proposed that they be repealed. Yet another was that approaches made to reserve areas had been met with a rejoinder that it could not be done as the areas sought were too large and there would be opposition from the European sector. Thus C. Bailey stated to us "Quite a number of years ago we marked out all the kaawa from Mokau to Patea. We had them all named too. We sent it to the Minister of Fisheries and his reply back was that no way could he see that the Maoris were going to claim the whole Taranaki coast." (The lack of legislative recognition in the past contrasts markedly with the recognition in fact given to Maori fishing practices in other policy areas. We were informed for example that during the depression of the early 1930's, unemployed Maoris received a smaller benefit than their European counterparts on the basis that they had access to natural food resources.)

4.8 Present Legislative recognition

The present position is that there are now no statutory provisions to secure to the Atiawa hapu the exclusive use, ownership or control of any of the Te Atiawa fishing reefs, and it appears that none have been reserved under earlier enabling legislation. Legislative provision for the harvesting and the control of harvesting seafood from the Te Atiawa reefs is now that which applies generally to all fisheries, and (save for one exception) to Maori and European alike. These provisions are generally contained in the Fisheries Act 1908 and its various amendments and the Regulations made thereunder.

Section 77 (2) of that Act, which exempts from Part I thereof "any existing Maori fishing rights" has no application to the Te Atiawa reefs as no existing Maori fishing rights have been established in respect of them. While for other tribal areas certain specific statutory provisions exist to acknowledge certain Maori fishing or other rights (in respect, for example, to Lakes Rotorua, Rotokakahi, Taupo, Rotoaira, Horowhenua and Forsyth and with regard to Oyster fisheries, the Fisheries Amendment Act 1965) there are no specific statutory provisions for the Te Atiawa reefs.

(The Rock Oyster provisions relate to designated Maori oyster fisheries along certain parts of the Northland foreshore. Harvesting is authorised for non-commercial purposes under the supervision of a committee of Maoris appointed by the Minister from residents in the neighbourhood. If necessary, for conservation purposes, closed seasons can be declared by the Minister on recommendation from the Committee. These fisheries were designated principally within the period 1913 to 1933.)

Special provisions are included in the Fisheries Regulations however to enable Maoris, on behalf of a Maori Committee or a District Maori Council, to be authorised

by a Maori Community Officer after consultation with an Inspector of Sea Fisheries to harvest certain kaimoana in excess of daily and personal quotas for use at specific hui or tangi. (Regulation 106K (5A) of the Fisheries (General) Regulations 1950). However, it is clear from the evidence that from time to time difficulties are created. It was pointed out that deaths do not always occur at a time which allows use to be made of the exemption provided in the Regulation. It is not always easy to find a Maori Community Officer or a Fisheries Officer, particularly at weekends. In addition, licences are issued for particular days but weather or tide conditions may make those days unsuitable.

Other Regulations are regarded as inappropriate for the Te Atiawa reefs. The Regulations require for example that paua under 125 mm or about 5 inches be not taken. While paua exceeding 125 mm may be common in other districts, there was clear evidence from the Te Atiawa people that their paua rarely grow in excess of three inches. In the Te Atiawa circumstance the Regulation serves not as a regulation but as a total prohibition.

While we were concerned only with a specific area it was abundantly clear that there is a general concern amongst Maori people throughout New Zealand that Maori fishing rights have been affected by the Fisheries Act and its Regulations. We note in this respect the evidence of T. E. Kirkwood before this Tribunal in a claim relating to a proposed power station at Waioua Pa, and submissions made, from time to time, by the New Zealand Maori Council.

4.9 Te Atiawa concern - ownership - control - user

The Te Atiawa concern with the application of particular regulations is however merely an outward manifestation of a more deep rooted concern. The reefs, in their view, are their reefs just as they were the reefs of their forefathers, but they have not the ownership of them nor the control. The control is in fact vested in others who may or may not be aware of their customs and preferences or who may be constrained by an empowering statute that does not enable them to give to the Maori interest any greater weight than that which must be given to the general public interest.

The Te Atiawa must apply to others to do that which in their view they ought to be able to do as of right. The question before this tribunal therefore is not merely whether the regulations ought to be amended in one way or another to enable the harvesting of smaller paua or to expedite licences to harvest kaimoana for tangi or hui, but whether the current presumption as to who may control or regulate the use of the reefs and the manner in which that is done, is consistent with the principles of the Treaty of Waitangi.

Some of those who appeared before us would seek the reservation of reefs and Maori fishing ground in a manner similar to that contemplated by the earlier legislation. It is significant to note however that although it might be argued that the Treaty intended that the Maori people should have an exclusive user of their fishing grounds, an exclusive user was not urged by those who sought this course. The overall impression gained was that that which was principally sought was the control of the reefs so that the "mana Maori" or authority in respect of them might be seen to vest in the local hapu. This was urged by many people and we refer in particular to the recorded statements of Sally Karena, Vera Bezems and Milton Hohaia. The way in which Fisheries Regulations for the control of the harvesting of sea food was seen as inimical to the mana Maori was graphically expressed by the Chairman of the Taranaki Maori Trust Board who stated "the legislation has made thieves of us Maori,

of our own food." It would not have assisted the restrained and dignified presentation of the Te Atiawa case to have asked him whether he saw that result as intended by the Treaty of Waitangi.

Some referred to past pleas to Government agencies. Milton Hohaia referred to a report of the Seminar on Fisheries for Maori Leaders with special regard to Taranaki Tikanga (customary practices) of 1976 which recommended "that legislation be formulated to ensure tribal council control of reefs adjacent to, and traditionally associated with, papakainga (Maori fishing reserves)." Sally Karena referred to a meeting at Tawhitiānui with representatives from the Department of Agriculture and Fisheries in 1981 to consider a proposed new Fisheries Bill and at which, she said, a resolution had been passed "supporting the clause relating to fisher's rights set out in the Treaty of Waitangi." Charles Bailey referred to similar resolutions over several years from the Aotea District Maori Council (which includes Taranaki) and the New Zealand Maori Council.

It was pointed out that several large tracts of Maori land have been set apart as Maori reservations for scenic and other purposes, but save to the extent that it has become necessary to control an abuse, the general public has not been denied access by the Maori persons appointed as trustees for the control of them.

Waitangi Tribunal, Department of Justice, Wellington.

Motunui Waitara Report

5 The Reefs - A General Public Perspective

5 The Reefs - A General Public Perspective

5. THE REEFS - A GENERAL PUBLIC PERSPECTIVE

5.1 Public Use and Concern

Today the reefs and coastal waters are used not only by Te Atiawa of course, but by the general public. They are used by commercial and non-commercial fishermen, skin-divers, surf-riders, bathers, and for rock scrambling and fossicking. The reefs are also used by non-Maoris for the gathering of seafood. A witness for the Taranaki Catchment Commission counted more non-Maori than Maori gathering shellfish from the Waitara reefs over a given period.

There was evidence of considerable public agitation for greater controls for the protection of the reefs and their associated marine life, of public concern with the alleged polluted state of the Waitara waters and with the prospect of further pollution from existing and proposed major industries. Submissions were made to us on behalf of the Taranaki Clean Sea Action Group Inc., the Taranaki Branch of the Soil Association of New Zealand, the Taranaki Branch of the Values Party, the Waitara Surf Riders Club and by individual members of the general public many of whom had also appeared before the Planning Tribunal in earlier hearings. Generally they urged greater protection of the reefs and coastal waters in the interests of the general public of the area.

A number of bodies having some responsibility for the protection and enhancement of the coastal and inland waters were also represented before us. Nearly all those who addressed us from this sector were either of the view that the Maori interest in the reefs could be held to be no greater than that of other special interest groups within the general public, or considered that they were constrained to adopt that view in terms of their empowering statutes.

5.2 Taranaki Catchment Commission and Regional Water Board

The Taranaki Catchment Commission and Regional Water Board administers the Water and Soil Conservation Act 1967 in its application to the Taranaki area and has responsibility for the overall management of Taranaki's water resources. It handles applications to take water and to discharge water and/or wastewater to natural water, conducts its own researches into water standards, marine ecology, water use and management plans and waste disposal options, investigates water rights applications and monitors and supervises granted water rights. In the performance of its functions the Regional Water Board is required to balance a number of public uses and, amongst other things, is required to have "due regard to recreational needs and the safeguarding of scenic and natural features, fisheries and wildlife habitats" (Section 20 (c) Water and Soil Conservation Act 1967).

The Commission is very conscious of the value that Maori people place upon the

Taranaki reefs. In a report on the "Recreational Use of Water in North Taranaki" it recommended "that the value placed on traditional fishery resources by the Maori people be recognised and that measures be undertaken to ensure the protection of these resources." Nevertheless, as was stated by many of the witnesses from the Commission, the Maori interest is but one of many public interests that must be brought into account and weighed in the balance. In the performance of its functions and in its consideration of water rights applications the Commission has no particular mandate to consider Maori values in relation to water and Maori fishing grounds, and has no authority to accord priority to the Maori interest. Indeed in its report on "Recreation water resource investigations. Synthetic petrol plant - Motunui" food gathering, (not Maori food gathering) is placed alongside such uses as rock scrambling and fossicking, surfing and skindiving. While the Water and Soil Conservation Act focuses upon a need to protect fisheries and wildlife habitats, there is no focus upon the Maori interest in them. The Maori interest is accorded no greater weight than the general public interest even although in many respects the Maori and the general public interest diverge.

The Maori people, along with the general public do however have (and have exercised) rights to object to water right applications. Section 23 of the Act enables persons "detrimentally affected" to object to the grant of a water right to the Crown, and, in reference to water right applications by bodies other than the Crown, Section 24 (4) of the Act provides

"Any person may lodge an objection to the application on the ground that the grant of the application would prejudice his interests or the interests of the public generally." It was urged upon us by counsel for the Ministry of Agriculture and Fisheries that there is nothing to prevent any Maori from objecting to an application on the ground that his or her people would be prejudiced by the grant that the applicant is seeking and that loss of fisheries as a food resource is a valid ground. In our view however there is a distinction to be made between the inchoate right of Maori people to present a case that may or may not be upheld upon a balance of factors, and defined rights stemming from a statutory recognition of Maori fishing grounds. As was stated to us by one witness " . . the Maoris' right is implicit and inherent and they should not forever have to be on their guard to fight for it."

It also appears that the current right of objection may be limited. "Detrimentally affected" means affected to a degree greater than or in a manner different from the degree or manner in which the general public will be affected (*Keam v Minister of Works and Development* (CA) 8 NZTPA 241) and it could be said that without legislative recognition for Maori fishing grounds, the Maori interest is no greater than the general public interest. Maori cultural and spiritual factors transcending the physical environment are also not recognised under the Act (*Minhinnick v Auckland Regional Water Board*. Planning Tribunal Decision No.A116/81 of 16.12.81). The Te Atiawa people related to us other difficulties confronting them in their endeavours to be heard before various bodies on planning related matters. Along with others of the general public they have experienced difficulties in funding the costs of expert witnesses and counsel and in taking time off work to prepare for and attend various hearings. On occasions their right to be heard has been challenged.

We note here that the Te Atiawa people were not represented when the Waitara Borough Council obtained its water right in 1973. We were advised that the Aotea District Maori Council voiced a concern but due to ignorance of planning procedures and financial constraints, did not pursue its concern at the hearing. Not only were the

Maori people unaware of procedures but also the general public. It is significant that the conservation movement was in its infancy at that time.

5.3 Ministry of Works and Development

The Water and Soil Conservation Act 1967 is administered in the Ministry of Works and Development.

In addition the Ministry provides engineering advice to other government departments and local authorities on matters of water supply, sewerage, sewage and solid waste disposal. The majority of these works are financed from loan money which must be sanctioned by the Local Authorities Loans Board and government subsidy available through the Department of Health. The Ministry acts as technical adviser to the Local Authorities Loans Board and the Department of Health, reporting on the capability of the works to meet the conditions of the water right and whether the selected works are the best and most economic option for any particular situation. It has no fixed policy as to sewage disposal systems applicable to any situation and considers that each case must be considered on its own. It checks however to ensure that the alternatives have been considered.

In processing proposals the Ministry seeks an appreciation of local support or opposition but it has no direct responsibility to ensure that the concerns and attitudes of the general public are considered. Rather it ensures that the various processes by which the general public can make their input to any proposal are completed before it reports to the Local Authorities Loans Board or the Department of Health.

Accordingly the Ministry of Works and Development is not in a position to seek or insist that public health works be created or designed to accord Maori cultural preferences in the disposal of waste in proximity to Maori fishing grounds.

5.4 Department of Health

The Department of Health advises and assists local authorities in the promotion and conservation of public health, conducts researches and investigations into such matters as the risk of infectious diseases from pollution, and undertakes surveillance of local sanitary conditions. One significant measure of assistance is provided to local authorities through the Department of Health, by Government subsidies for sewerage works and water supplies. There may from time to time be paid, out of money appropriated by Parliament, towards the actual capital cost of the construction of sewerage works and works for disposal of sewage such sums as the Minister of Health considers appropriate having regard to such considerations as appear to him to be material. The rates of subsidy and the conditions under which subsidies may be given are decided by Cabinet from time to time.

As was stated by one witness for the Department "The public health needs of all are considered without discrimination . . . it is the health of the public that is the concern of the Department" and its role "is to adequately promote and conserve the public health so as to achieve the greater good for the greatest number." Accordingly while it is pertinent for the Department to note the Maori predilection for the gathering of shellfish, (and the Department is involved in a joint committee concerned with health safety factors from shellfish harvesting) in the performance of its functions and in its review of subsidy applications for sewerage and water works, the Department has no particular duty or mandate to require or enable it to seek the protection of specific Maori fishing grounds.

It follows that in its concern for public sanitation and health, it is as legitimate for the Department of Health to prevent the use of polluted reefs as it is to seek the protection of the reefs from pollution. Thus in referring to the pollution of reefs off the Waitara River mouth from the Waitara Borough Council's ocean outfall, a witness from the Department of Health was able to state:

"However I am of the opinion that providing shellfish affected by water of inadequate purity are not eaten, the risk to public health is very small indeed from the present discharge albeit that it falls short of expectations in other respects."

5.5 Ministry of Agriculture and Fisheries

Amongst other things the Ministry of Agriculture and Fisheries promotes and carries out fisheries research and investigations and is concerned with fisheries conservation. In its concern to conserve the fishing resource it exercises an objector's role at hearings of water right applications under the Water & Soil Conservation Act.

It also administers the Fisheries Act. As was put to us by one witness for the Ministry " . . . the general thrust of the Fisheries Act is to ensure an equitable distribution of fisheries resources within lakes, rivers, estuaries or the marine environment for all persons which includes balancing the need to conserve and protect the resources and the harvesting of the resources by non-commercial or commercial interests." While the Ministry is aware of particular Maori interests in specific fishing areas, it has no specific instruction to pay particular attention to the Maori interest and no authority to give it any priority over the general public interest.

Indeed the Ministry's witness went on to state "The New Zealand Maori Council made representations to the Fishing Industry Committee in 1970/72 on (proposals to recognise Maori fishing grounds) but the Committee did not accept that areas should be withdrawn from the commercial fisheries except on the same principles as govern other divisions between non-commercial and commercial fishing. The same for both Pakeha and Maori."

5.6 Taranaki United Council

The Taranaki United Council was gazetted in 1979 and as required by the Town and Country Planning Act 1977, is preparing a regional planning scheme. Although there is no maritime planning scheme in force pursuant to Part V of the Town and Country Planning Act 1977 the Taranaki United Council has also applied to the Minister of Works and Development to have the territorial sea off Taranaki brought within its planning region pursuant to a gazette notice (section 19 (2) of the Act). In the preparation, implementation and administration of regional and maritime schemes the relationship of the Maori people and their culture and traditions with their ancestral land must in particular be recognised and provided for (Section 3 (1) (g) Town and Country Planning 1977). It must be noted however -

(1) that the provision for Maori people is but one of many "public interest" provisions that are required to be recognised and provided for under the section and there is no provision for any priority to the Maori interest in the event of a conflict;

(2) there must be doubts whether the reference to ancestral lands can be taken to encompass ancestral fishing grounds for the purpose of regional and maritime plans; and

(3) recent decisions of the Planning Tribunal suggest that ancestral land may mean land that was and remains Maori land.

Accordingly we doubt that section 3(1)(g) provides any assurance that in any maritime plan Maori fishing grounds will be recognised as such or will be provided for except to the extent that as a matter of public interest such plans are to deal with the preservation or conservation of "stretches of coastline of scientific, fisheries or wildlife importance . . ." Similarly in regional planning we do not see section 3(1)(g) as assuring an adequate protection for the Maori interest when important policy questions fall to be determined, such as whether new major industries should be spread across the region with individual waste discharge points along the coast, or whether they should be aggregated to minimise the spread of pollution and so that they might contribute to joint use treatment plants.

The Town and Country Planning Act is administered in the Ministry of Works and Development. A witness from the Ministry stressed to us the extent to which district and regional plans (and Planning Tribunal decisions) have moved to accommodate the Maori interest and the opportunities given to Maori people (along with the general public) to be involved in the planning processes. In the final analysis however while accepting that certain authorities may well in fact make provision for the Maori interest in fishing grounds, there appears to be no clear statutory assurance that the Maori interest in fishing grounds is to be protected or is to have a priority over the general public interest. Indeed, Counsel for the Ministry of Works and Development stated to us "Planning statutes apply to all - Maori and pakeha - as has been said, 'we are one people'." Perhaps it is that presumption that is the cause of a substantial problem.

5.7 Commission for the Environment

The Commission for the Environment was established by Cabinet in 1973 to advise and assist on environmental matters and on project proposals, to administer the Government's Environmental Protection and Enhancement Procedures, to identify areas of significant environmental concern and to initiate appropriate action and review. The Commission considers that environmental values are a reflection of cultural as well as scientific factors. In its audits it has not only given special emphasis to the enjoyment by Maori people of those features of the New Zealand environment which are of special importance to them but it has sought to relate that enjoyment to the particular spiritual, cultural and philosophical mores of the user. The Commission however is not a control agency. It issues no licences and administers no regulations. While it is an advocate and seeks to influence decisions, the decisions must be made by others and then within the parameters of their perception of the legal framework. Thus in its review of environmental considerations in the context of sections 20(5)(c) and 20(6) of the Water and Soil Conservation Act 1967 the Planning Tribunal felt unable to take into account Maori cultural and spiritual factors that transcend the mere physical environment. (*Minhinnick v The Auckland Regional Water Board and Waikato Valley Authority*, 16.12.81 Planning Tribunal No. 1 Division). To that extent the Maori interest in the environment is equated with the general public interest.

5.8 Maori Interest c.f. Public Interest

We have therefore had to ask ourselves whether the view (and apparent policy) that the Te Atiawa interest in the reefs is no greater than that of the general public is consistent with the spirit and intention of the Treaty of Waitangi.

Motunui Waitara Report

6 The Waitara River

6 The Waitara River

6. THE WAITARA RIVER

We have referred in this report to the Taranaki or Te Atiawa reefs and in particular to those near Waitara and Motunui. The hapu of Te Atiawa, and the general public, are also users of the Waitara River. We were given extensive photographic and other visual evidence of the large quantities of inanga, tuna, piarau, kahawai, kaupapa and yellow eyed mullet harvested from the Waitara River by the Te Atiawa people and used for both individual purposes and for feeding guests at tangi, hui and meetings. We consider that the Waitara River also contains traditional fishing grounds of the Te Atiawa people and as was noted in the report of the Planning Tribunal on the Synthetic Fuels Plant, ". . . is of prime importance to the Maori people as a source of food." Our earlier comments concerning the significance of the reef to the Te Atiawa people apply also to the river.

In similar vein, many of the things that we will hereafter refer to in this report in reference to the reefs, apply also to the river. In particular, we will refer to the Te Atiawa cultural preference for land based disposal systems as distinct from the discharge of effluent into either fresh or salt waters and will note that land based plants have been urged in recent years by the district branch of the Maori Women's Welfare League, the Taranaki Maori Trust Board, a meeting of the Te Atiawa people in 1976, and a meeting of tribal representatives with Waitara Borough Councillors during the course of our sittings. The physical pollution of the river affects of course the marine life of that river. Its additional affect upon Te Atiawa was explained to us by Hikaia Amohia in these words "My people personify the river as an entity allied to our ancestor Maruwaranui, with the spirit or taniwha of the river a personification of the spirit of the river. Those who cast pollution onto the spirit of the river are casting it onto the spirit of my people."

In another respect the river is in a singular position. Several people reiterated the Te Atiawa concern that the draw-off of large quantities of fresh water from the river for industrial needs must also affect the freshwater biota. We noted that the Taranaki Catchment Commission and the Planning Tribunal had given much thought to this matter and had proposed or recommended appropriate restrictions.

Motunui Waitara Report

7 Pollution Of The River And Reefs

7 Pollution Of The River And Reefs

7. POLLUTION OF THE RIVER AND REEFS

7.1 Borthwicks and the Borough of Waitara

The Borough of Waitara is situated on the banks and mouth of the Waitara River. There is also situated on the banks of the river, within the Borough and near to the coast, a meat export freezing works operated by Borthwicks - CWS Limited. It has been associated with the town for over 100 years and was and still is, its biggest single employer (over 1000 persons per annum), although the Borough includes a number of other industries both primary and secondary.

Certain reports held by the Department of Health describe the development and present state of sanitary conditions in the area. In 1937 Waitara had a population of 1971. (The Borough population in the 1982 census is given as 6012). None of the homes was sewered and the locality received a night soil collection. In 1947 it was reported that all stages of development in excreta disposal were evident at Waitara ranging from homes with only the crudest form of disposal or with bucket latrines serviced by a night soil collection, to homes with individual septic tanks and homes linked to the borough water-borne sewerage installation which discharged domestic sewage into the Waitara River via several septic tanks. By 1950 a sewerage installation scheme for the discharge of sewage from 5 septic tanks into the Waitara River was completed.

During this period the vast bulk of the freezing works discharge wastes received only minimal screening and were then discharged direct into the river, only a short distance from the coast. Primary treatment of the works' discharge was first introduced in 1956 and "a minimal amount" of the discharge was made via the Borough's septic tanks into the Waitara River (it appears that at that time the Borough's tanks were already over-committed by its own domestic effluent.)

An outbreak of bacillary dysentery in 1965-66 mainly centred in Stratford, became an epidemic with 224 notified cases, and with some in Waitara. Although it was concluded at the time that the spread was due to lack of personal hygiene, and lack of knowledge in several respects, the outbreak was a salutary reminder of the risks also present from inadequate sewerage and sewage disposal. As a further reminder in 1967 there were nine cases of typhoid, all in Maoris, with a strong possibility that polluted shellfish were implicated at Waitara and Patea.

Recognition by the Waitara Borough Council of the need to improve sewage disposal was given in 1970 when consultants were engaged to upgrade the system. The Medical Officer of Health in his 1970 annual report referred to badly malfunctioning septic tanks and the discharge to the Waitara River. He was of the opinion that pollution of the river by the freezing works could not be dealt with satisfactorily until the discharge of semi-raw sewage from the Borough Council's septic tanks was overcome.

By 1972 the Borough Council and the freezing works had a joint scheme in mind, for the discharge of effluent by an ocean outfall. By 1973 a water right No. 136 was obtained by the council from the Taranaki Catchment Commission and Regional Water Board for the discharge of 5.7 million gallons at a point approximately 1200 metres off shore.

The water right grant was subject, inter alia, to the following conditions:

(a) The discharge is to conform to class SE standards and any portion of the discharge that should reach the beaches must meet the classification SB or such higher classifications when the coastal waters are classified by the Water Resources Council in due course.

(b) In the event of the discharge or any portion of it not meeting the above classification then steps must be taken to give primary treatment to the discharge to ensure the classification is met and the Commission requires land to be reserved for a future Waste Water Treatment Plant site.

(c) Monitoring of the discharge from the outlet to and including the beaches as required from time to time by the Commission shall be carried out by the Waitara Borough Council and the result supplied to the Commission as and when requested, the full cost to be carried by the Council.

An application for subsidy was made in October 1974 by the Waitara Borough Council to the Department of Health. The Environmental Impact Assessment with the application concludes that the aim of the proposal was to remove the wastes presently fouling the Waitara River within the Borough, and discharge them far enough out to sea to minimise the effect on the environment.

The Department of Health supported the sanctioning of the loan by the Local Authorities Loans Board, noting that the water right contained a condition relating to primary treatment if the classifications of the sea water were not met in the future. The Department of Health also recommended to the Ministers of Health and Finance the approval of subsidy amounting to \$205,076 and this was approved in April 1975. The approved scheme was to collect the wastes discharged to the Waitara River and pump them out to sea, after comminution. The flow of waste was estimated to be 70 percent industrial and 30 percent domestic, and the subsidy was towards the domestic element only. On an organic pollution basis, the Ministry of Works and Development reported to the Department of Health that industry was equivalent to a population of 200,000 whilst the Borough had then a population of 5,460 and a design population of 8,000.

Borthwicks reported to us that none of its other works have joined with a local authority in building a municipal project such as the Waitara outfall pipe. Borthwicks' contribution is 72.8% (in excess of \$1.8 million) to the outfall costs. Its wastes, after receiving primary treatment, continue to be discharged through the ocean outfall and the company contributes 72.8% to ongoing running costs. It was put to us that this commitment together with the company's time payments to clear its portion of the capital cost must be seen in the context of the difficult trading conditions facing West Coast North Island Freezing Works and the high re-development cost thrust upon them by the American Meat Market and the EEC Hygiene Regulations.

The company does not have a separate water right. The water right was applied for and is held by the Borough. Similarly, while the company shared the capital and maintenance costs for the outfall it has had no role in its physical construction or maintenance.

There were delays in the commissioning and construction of the works and it was not until 1978 that a pipeline was fully operational. Initially there were delays due to

exchanges between the Borough's consultants and the Ministry of Works and Development concerning the materials and methods of installing the outfall pipe, the Ministry being required to be satisfied on the adequacy of the marine outfall before construction commenced. Then, extensive damage occurred at sea during the launching of the pipe in 1977 and repairs were needed. In July 1977 an additional subsidy of \$207,226 was approved by the Department of Health and in 1978 the works were completed.

By 1979 it was clear that the pipe leaked and that the diffuser on the end of it did not work well. A further application for additional subsidy made by the Waitara Borough in November 1979 has not been recommended for approval to the Ministers of Health and Finance because the Department of Health "cannot assure the Ministers that the outfall can operate as intended."

That is where the matter lies at present. Gross pollution of the river with wastes has been removed but a satisfactory conclusion of the intended scheme has not as yet been achieved by the Waitara Borough Council, and gross pollution of the river mouth area and the surrounding coastal reefs exists.

Although other industries discharge their effluent through the Waitara outfall, we were advised that some 70% to 80% of the waste discharge is meatworks waste. We were advised that the Borthwicks quantity of effluent is equal to a population of 40,000.

In addition to the problems arising from breakages in the outfall pipeline and the consequential leak of effluent close to the shore, concern was expressed by many that the Waitara outfall was overloaded and could not cope with the quantity of effluent that passed to it. We were advised that that was one factor that encouraged the Crown to opt for an independent outfall for the "Syngas" project at Motunui. One witness considered that the Waitara outfall is designed to produce 450 cubic metres per hour but that Borthwicks alone produced three times that figure, or 1350 cubic metres per hour.

Complaints were directed also to the low level of effluent treatment prior to discharge. The effluent in fact passes only through a comminuter, which, to use Aila Taylor's words, means that "it is minced up and then discharged."

Borthwicks has however effected some improvements within its own works. Sheep pellets that formerly passed through the bar screen and were not broken down in the comminuter are now, at least for the greater part, separately removed and buried. A bar screen for the removal of larger solids has been supplemented by an aquaguard screen which removes wool particles from fellmongery waste and a contrasher screen currently planned for installation in March 1983 will enable greater solids removal. Despite these improvements, it is raw effluent that is discharged to the ocean. There are no secondary or tertiary treatment processes the presumption apparently being that this is not necessary for a sea outfall. We were advised for example that other freezing works, not discharging to the ocean, used at least trickle filters.

There are no programmes for the conversion of waste to fertiliser.

The Waitara outfall is also badly located. It is adjacent to the Waitara River, the Waitara township, and runs between two major reefs.

We received unrefuted evidence of extensive pollution in this area. We were given photographic evidence of ocean "plumes" or "boils" indicating the rapid discharge of waste from fractures along the length of the outfall pipe, and evidence of how the predominating north-westerly winds, high wave action and on shore currents had the effect of returning the effluent along the shallow coastal shelf to the shellfish beds and to the shore.

Despite comminution, evidence was given of the deposit of solids and fat on the beach. A tallow spillage of 24.4.81 was due to a human error during loadout when the stopcocks on a railway tanker were left open as the tallow was loaded in, allowing the tallow to drain into the river through the stormwater drainage system. There was evidence however of the deposit of fat and other solids on the beach on other occasions, one witness claiming that he had observed such deposits at least three times a month. Reference was made to the murky bronze colouring of the water (although this is no doubt contributed to by the Waitara River) and to sludge on the water's edge.

The evidence is that the pollution of the area is in excess of that permitted by the water right. We received expert evidence on the extent of pollution as established by coliform counts, but the position was graphically illustrated for us by evidence of bathers contracting boils and other skin diseases after swimming in the area, of divers emerging from the water with toilet paper and other wastes on their bodies, and of the closing of the surf riding club.

Needless to say, the evidence is also that shellfish are now rarely, if ever, taken from the reefs at the mouth of the Waitara River. The elders referred to "sick mussels" on the reefs. On the Orapa reef, once "reserved" to service the Manukorihi marae, the mussel shells are said to be fragile, disintegrating underfoot and even crumbling in the hand. It was considered that the badly affected reefs, Orapa and Te Puna "receive pollution nearly every day."

It must be accepted that prior to the outfall becoming operative in 1978-79, there was some pollution at the mouth of the river, and in the lower parts of the river itself. One witness claimed that the pollution of the reefs was not apparent until after 1978 but others stated that they were deterred from taking shellfish from the adjoining reefs prior to 1978 because of the pollution of the shellfish beds.

It seems to have been well established that subsequent to the outfall being brought into operation the reefs became further polluted. There is a fear that the continued discharge of effluent from the Borough and Borthwicks will extend to pollute further reefs, and deny a source of seafood not only to the Maori people but to the rest of the population.

The Waitara Borough water right for the discharge of effluent expires in December 1983. We understand that an application for the renewal of that right is to be heard in about April-May 1983.

7.2 "Petralgas" and the Methanol Plant

In July 1980 Petralgas Chemicals (NZ) Limited (hereinafter called Petralgas) applied for a water right to discharge treated sewage and industrial waste into the Waitara River from its proposed methanol plant for the Waitara Valley situated near to the Waitara Borough. During the course of the hearing before the Planning Tribunal (the matter being under the National Development Act), and following submissions from the Department of Agriculture and Fisheries and a report from the Taranaki Catchment Commission, (and it seems, opposition from a number of other sources as well,) the Planning Tribunal indicated its disfavour of a river discharge. It followed that the Company sought and secured an arrangement with the Waitara Borough Council for the discharge of its effluent through the Borough's system under the Borough's existing water right and then withdrew its application to discharge to the Waitara River. The Planning Tribunal noted this fact in its report and commented: "In the light of the evidence that withdrawal was in our opinion properly made."

The consequences are both that the treated sewage and industrial waste from the Methanol plant are now added to the matters discharged through the Waitara outfall, and, that the marine discharge of industrial wastes from this major project has not, at this stage, been the subject of review and determination by a Regional Water Board or the Planning Tribunal. This was a matter of much comment to us and it is undoubtedly the cause of considerable concern to the local people that they were unable to comment on the alternative proposal for the oceanic discharge of the Methanol plant's industrial waste. The change in the proceeding highlights the constraints facing the Planning Tribunal. It must consider the specific proposals as they are laid before it, and has no authority to conduct a global review of other options.

We have some difficulties in assessing the extent of any pollution that may be occasioned by the Methanol Plant discharge through what is clearly a defective ocean pipeline. Evidence was adduced as to the possible long term sub-lethal effects on marine organisms of the toxic wastes from large industries and especially, as here, where chromates are used, for example, as rust inhibitors in cooling towers. It was submitted that the accumulation of chromium and other heavy metals in the marine environment is likely to be harmful to the biota and eventually to man. Evidence was produced of corrosion inhibitors which are not toxic to marine life and it was urged that these alternatives should be used.

Petralgas of course pays a trade wastes charge fixed by reference to the flow contributed by it as a proportion of the total. The terms of the agreement with the Borough entitle Petralgas to discharge trade wastes into the Borough system for a term of 25 years.

The water right for the Waitara outfall expires in December 1983 and the Borough has applied to the Regional Water Board for a new water right. We were advised that although Petralgas hopes to use alternatives to chromates in its plant, it is not yet able to give an assurance that that can be done, and as a "fallback position" it will seek to include the right to discharge chromates in any new water right that may be given.

The Government is a financial supporter of the Methanol project. Through the Secretary for Energy the Government is represented on the Board of Directors of Petralgas Chemicals Limited and through the Ministry of Energy and the Ministry of Works and Development the Government is undertaking the provision of the infrastructures associated with the works, including effluent disposal.

7.3 "Syngas" and the Synthetic Fuels Plant

In February 1981 New Zealand Synthetic Fuels Corporation (hereinafter called Syngas) applied for a water right to discharge sewage and industrial waste into the sea through an independent outfall adjacent to its synthetic fuels plant at Motunui, a short distance north of the Waitara Borough. This hearing also was before the Planning Tribunal under the National Development Act.

The application was opposed by the claimant who was disturbed that the proposal would endanger the Motunui reef a kilometre or so north of the mouth of the Waitara River.

After a full consideration the Planning Tribunal recommended to the Minister that the water right sought be granted upon certain terms and conditions and a grant was made subject to those terms and conditions, in the National Development (New Zealand Synthetic Fuels Corporation Limited) Order 1982 (SR 1982/37).

It would not be proper for us to comment upon an order having its genesis in a

decision of the Planning Tribunal but it is probably not unreasonable to record here the view of several witnesses that the Tribunal's approach was "cautious" and to note that its decision was made after hearing the local Maori people and following a review of the Te Atiawa interest in the reefs. It commented -

"The general Motunui reef system to which we are referring is unusual on the west coast because it is the only system of any consequence facing north. These areas contain an abundance of sea life which is an important food source for both the Maori and the European races. The Te Atiawa Tribe and its hapus have historic associations with the coast line in this area and depend upon the sea resources to provide them with the diet to which they have been accustomed for many centuries. Each hapu has its own particular reef or area and tribal custom discourages members of the one hapu from gathering food from the reef of another hapu. Thus the contamination of one reef would deprive the hapu which customarily was entitled to the sea food from that reef. Although the law does not prevent the gathering of sea food from anywhere along the coast, the evidence indicated that Maori custom, which is very strong amongst the members of the Te Atiawa Tribe, would act as an effective social prohibition."

"The Maori people treat the reefs with the greatest of respect in so far as cleanliness is concerned: there are stringent tribal rules concerning the personal hygiene of the sea food gatherers which are incompatible with any discharge of sewage effluent into the ocean, no matter how well such effluent is treated. However, the Water and Soil Conservation Act 1967 does not absolutely prohibit the discharge of effluent into the sea but, in respect of classified waters, sets a series of criteria and, in respect of unclassified waters, has some general guidelines. Although the waters off Motunui are not classified all parties appear to have accepted that the SA classification would be a minimum, this classification pertaining to areas where shellfish may be gathered for human consumption."

"All the reefs in the area of the proposed outfall share the plentiful supply of edible sea life we have referred to previously. The following is a list of the major reef inhabitants; all are edible although some species do not suit the European palate: Paua; Kina; Mussels; Limpets; Cooks Turban; Yellow Foot Paua; Papu; Octopus; Chiton; Crabs; Starfish; Anemone; Sea Lettuce."

"We have recorded the extensive use made of these reefs for two reasons:

- (a) To show that the danger of contamination does not relate to an area where occasional harvesting of shellfish may occur, but to an area where harvesting is a continuous process; and
- (b) To highlight the importance of the area should contamination result in sub-lethal effects on marine life, with particular reference to reproductive ability.

We are dealing with a valuable resource which, in the absence of disaster, is perpetually renewable. Nothing artificial should therefore be discharged into that system if the possibility exists of long-term damage which may not be detectable until too late."

It was further submitted to us that the scientific "uncertainties" as to potential risks to seafood led to recommendations endorsing the "extremely strict" standards and conditions proposed by the Taranaki Catchment Commission. The view that these standards and conditions were perhaps the most "stringent" to have been applied, at least in this country, was not challenged.

It is to be noted

- (1) that in recommending a marine outfall some 900 metres from the shoreline the Tribunal added a further 300 metres to the outfall as originally proposed to place the discharge well outside any possible near shore circulation zone;

(2) the terms of the work's right is 10 years and it therefore expires in March 1992 when application must be made for its renewal. In practical terms this authorises discharge for a period of some 5 years of the plant's operation. The term of the grant sought was 27 years;

(3) the water quality standard and conditions imposed appear to be considerably stricter than applicable national standards for seawater from which shellfish may be regularly taken (i.e., waters to which an 'SA' classification would be applicable under the Water and Soils Conservation Act 1967);

(4) Syngas originally proposed the use of chromium based compounds as corrosion inhibitors in the plant. In response to concerns expressed by local Maori and environmental groups that such compounds posed unacceptable risks to the environment, a decision to use zinc compounds was made and was publicly notified. Although research is still continuing in this area it was submitted to us, principally by the Commission for the Environment, that zinc and other heavy metal compounds may also have deleterious effects and that recent pollution control laws overseas and locally discourage the use of such chemicals. We were advised that a range of phosphate based cooling tower chemicals are now available and that these may be more environmentally acceptable. Syngas submitted to us that these have yet to be fully tested in a plant of the size and complexity of the Synthetic Petrol Plant. Syngas is investigating replacement of zinc based compounds with phosphate based chemicals that do not contain heavy metals such as zinc.

It was stated to us -

"It must be emphasised (that Syngas) is not undertaking to replace the zinc compounds at this stage. It remains firmly of the view that the low concentrations of zinc and biocide which will enter the sea as a result of this discharge pose no threat to the maintenance of healthy populations of seafood along the Motunui coast. If this does not prove to be the case the Catchment Commission has powers to order the Corporation to modify or cease the discharge. Further, the right must be reviewed after five years of operation. However providing the Corporation is satisfied that non-heavy metal treatment chemicals can provide an efficient, reliable and totally effective treatment then discussions will be held with the Taranaki Catchment Commission with a view to seeking any necessary changes to the water right."

Syngas also stated to us -

"One component of the treated effluent to be discharged by (Syngas) is sewage. During the construction phase of the plant sewage is treated on site and disposed of to the Waitara Borough system. For the operating phase of the plant, when some 230 employees will be present, the current plan is to provide in-plant treatment followed by disposal through the Corporation's outfall. In the course of the Planning Tribunal hearings last year, and again at this hearing, it has been made clear that the discharge of human sewage, no matter how well treated, is of particular concern to the Maori community. Subject to discussions with the Waitara Borough and the Catchment Commission, (Syngas) is willing to convey the small volume of treated sewage arising from plant operation (approximately 0.5 litres/sec) to the Borough system."

The legality of the Tribunal's decision in extending the outfall was subsequently challenged by the claimant (Aila Taylor) representing the Ngatirahiri hapu and others in review proceedings before the Court of Appeal. The Court concluded that the Tribunal had not acted unlawfully in ordering the outfall extension and that the allegations concerning the absence of a "fair hearing" on this point were not sustainable.

Before us the Te Atiawa claimants reiterated their concerns. The question that Aila Taylor had consistently posed to expert witnesses before the Planning Tribunal was whether they could guarantee that there would be no pollution of the reefs. It appears that before that Tribunal, as before us, that guarantee could not be given. (It may not have been only coincidence that in seeking a "guarantee" Aila Taylor chose to employ a word that is also employed in the Treaty of Waitangi.)

The local hapu are by no means convinced that even the stringent conditions attaching to the Motunui water right will not result in a measure of pollution. Nor are we. Evidence adduced by the Commission for the Environment through Professor M. W. Loutit suggests that much further study is needed on the marine discharge of chemical wastes, and although this evidence did not pass unchallenged, it appears to us that further research is necessary to remove present uncertainties.

Additionally the Maori people hold strongly to the view that serious consequences will result from the physical destruction of parts of a reef. To them every stone must be left unturned, and if that is not done, the mobile marine inhabitants of the reefs will move away.

In our view it is not entirely relevant to consider whether the Te Atiawa contention is corroborated by scientific evidence. Indeed we question the extent to which scientific evidence should be preferred. The Maori lore on the conservation and preservation of natural resources, as inherited by word of mouth, represents the collective wisdom of generations of people whose existence depended upon their perception and observation of nature. We do not consider that the weight given to scientific evidence should be such as to denigrate the worth of customary lore, or to inhibit Maori people from relying upon it. In the final analysis it is the test of experience (and the generations of the future) that will determine the worth of scientific postulates.

The local hapu consider further that they will suffer a cultural pollution of the reefs with the discharge of human and other waste in proximity to them. This would be substantially but nonetheless only partly alleviated by the proposal to re-route the sewage effluent to the Waitara Borough outfall.

There remains the prospect of pollution from accidental spillages at the plant, which is situated on the coast, and from breakages in the pipeline. There was evidence that accidental spillages have occurred from major industries in the region in the recent past including the 1981 tallow spillage at Borthwicks and in 1982 the spillage at the Ammonia Urea plant to the south at Kapuni, and the intentional discharge of ammonia waste at Manaia. We note that since our hearings there has been a seepage of chemical waste from a pit to the foreshore at New Plymouth.

As will be seen later in this report, a specific proposal was presented to us for the redirection of the Syngas effluent to the Waitara Borough outfall. Counsel for Syngas stated to us "Until (Syngas) is presented with an operationally and technically viable proposal for disposal of plant effluent through an alternative system it is not in a position to seek any delay by the Crown in the planning and construction of a separate outfall. At this stage any delay on the basis of possibilities or suppositions which may, or may not, be realised sometime in the future would involve totally unacceptable uncertainties in relation to plant operation."

As with the Methanol plant the Government is a participant as a financial supporter in the synthetic gasoline venture. The Secretary for Energy is the Government's representative as a director on the New Zealand Synthetic Fuels Corporation and through the Ministry of Energy, the Ministry of Works and Development is undertaking the provision of the infra-structure works associated with the

development, including effluent disposal. In terms of its agreement with Syngas, the Crown will need to have a fully operational effluent disposal system in situ in 1984.

7.4 Other sources of pollution

We were advised that from Urenui to New Plymouth there are some 16 discharges to the ocean. Many are natural rivers and streams such as the Urenui, Onaero, Waiongona, Waiwhakaiho, Hiroto and Te Henui but these serve substantial farm catchment areas and towns. Although several controls have been instituted on the discharge of farm effluent and farmers are now required to install settling ponds, it is inevitable that the rivers are affected from animal excreta and carcasses, fertiliser and chemical sprays and the like, as well as from some town residential and industrial wastes.

Other sources of pollution include the Urenui Domain and Motor Camp (with seepage from septic tanks), the Bell Block Brixton Dairy Factory and Bell Block oxidation ponds (both discharging onto the beach), the Clifton-Moa dairy factory, Port Taranaki and the New Plymouth Power Station. In New Plymouth the Elliott Street outfall discharging untreated wastes is to be closed down. It should be noted that after obtaining a water right in 1979 for the discharge of comminuted sewage 1600 metres offshore from the Waiwhakaiho River mouth to replace the Elliott Street outfall, and following pressure from the public, the New Plymouth City Council subsequently applied for and obtained a new water right. The new water right is to enable it to discharge into deep sea about 400 m from the high tide water mark, but only after treatment in a carousel system. The construction of a substantial carousel plant is now under way.

It is to be noted that the proposal to change from a long marine outfall with comminution, to a short outfall with secondary treatment, drew no objections from the public. The Te Atiawa people were involved in the 1979 hearings.

7.5 Summation

There can be no doubt that there is extensive pollution of the reefs in the area, and in particular around the Elliott Street outfall, the Waiongona reef, Airedale reef and Epiha reef. The evidence suggests that from strong northerly and westerly winds there is a drift of pollution along the coast in the northern and easterly directions, and there is evidence that the reefs and beaches at Motunui and further north to Onaero have suffered from pollutants emanating from Waitara.

The evidence is that the pollution comes from a combination of the various man-made outfalls along the coast and the various natural rivers and streams running into the coastal waters, and in particular the Waitara River. It is difficult to assess which source produces the greater contamination of the filter feeding shellfish. On the one hand the pollution as assessed by coliform counts is particularly marked just after heavy rainfall along the coastal region. On the other hand the more visible and, to most witnesses, the most offensive pollution results from the discharge of sewage and industrial waste.

The problem is clearly compounded by the damaged state of the Waitara Borough outfall, the very basic treatment of that effluent in a comminuter, the apparent overloading of the outfall, and the action of onshore winds and currents in returning solids and other effluent to the shore without adequate dilution or dispersal.

It is clear that the greater part of the reefs of the hapu involved in this claim have been

so affected as to be no longer usable as a source of kaimoana, and that all the reefs of one hapu have been spoilt. Their attention now focuses on the Ngati Rahiri reef at Motunui, which is still used, and which must replace the extensive food supplies that the others once provided. As one witness stated "We are now having to poach into the Ngati Rahiri reefs".

Waitangi Tribunal, Department of Justice, Wellington.

Motunui Waitara Report

8 Maori Fishing Grounds - The Extent Of Legislative Recognition And Protection

8 Maori Fishing Grounds - The Extent Of Legislative Recognition And Protection

8. MAORI FISHING GROUNDS - THE EXTENT OF LEGISLATIVE RECOGNITION AND PROTECTION

8.1 Early provisions in Fisheries legislation

It is not true to say that prior to the 1970's the legislature had never acknowledged that certain fishing rights might accrue to Maori people by virtue of the Treaty of Waitangi. Section 8 of the Fish Protection Act 1877 provided -

"Nothing in this Act contained, shall be deemed to repeal, alter, or affect any of the provisions of the Treaty of Waitangi, or to take away, annul, or abridge any of the rights of the aboriginal natives to any fishery secured to them thereunder."

The significance of that provision has now been lost. It is continued only in substantially modified form in Section 77 (2) of the Fisheries Act 1908 which merely provides

"Nothing in this Part of this Act shall affect any existing Maori fishing rights."

We referred to S77 (2) at 4.8 and noted that it afforded no advantage to the Te Atiawa people.

The present position appears to be that "existing Maori fishing rights" are only those rights that can be enforced because they are specifically provided for in special statutory provisions or have been reserved under earlier legislation. The view that customary fishing rights have been extinguished does not appear to have been seriously challenged in any decision of the Courts, since it was affirmed in *Waipapakura v Hempton* (194) 33 NZLR 1065.

We noted at 4.7 that other provisions in the Fisheries Act for the recognition, reservation and control of Maori fishing grounds were repealed in 1962.

8.2 Maori Affairs Act

At 4.7 also we referred to Section 439 of the Maori Affairs Act 1953 which enables Maori Reservation to be proposed by the Maori Land Court for the purpose, amongst other things, of reserving "fishing grounds." We pointed out that that provision is of very limited application.

Generally it applies only to Maori Land and it was determined in *In re the Ninety Mile Beach* (1963) NZLR 461 that areas of foreshore and seabed are not Maori Customary land but are vested in the Crown. S. 150 of the Harbours Act 1950 and S7 of the Territorial Sea and Exclusive Economic Zone Act 1977 put the title issue beyond all doubt.

8.3 Fisheries Act

At 4.8 we referred to the Fisheries Act 1908 which regulates the control and harvesting of seafood. It has no provisions to recognise Maori fishing grounds but regulations made pursuant thereto give to Maori people a right to apply for special licences for tangi and hui.

8.4 Health Act

At 5.4 we noted that the Health Act 1956 makes no special provisions for the protection of Maori fishing grounds or customary practices in its concern to promote and protect general public health and sanitary conditions and in its consideration of loans for the provision of sewage and water works.

8.5 Marine Reserves and Marine Farming Acts

The Marine Reserves Act 1971 provides for coastal areas to be reserved and maintained in a natural state, with limitations on commercial and non-commercial fishing. The Marine Farming Act 1971 enables leases and licences to be issued for the commercial sea farming of particular parts of the coastal waters and the seabed and an amendment to the Fisheries Act in 1977 permits areas to be designated as controlled fisheries to limit the number of fishing vessels that may use the area and to permit of non-commercial fishing only in accordance with strict management regimes. These provisions are not directed to the protection, management or control of Maori fishing grounds but they provide a precedent for the delineation of specific coastal areas for specific purposes and with specific restrictions on public uses. Conversely it is to be noted that there are no exemptions to exclude Maori fishing grounds in the application of the provisions referred to.

8.6 Water and Soil Conservation Act

The Water and Soil Conservation Act 1967 is an Act to promote a national policy in respect of natural water and to provide for its conservation, allocation, use and quality. Although its concern is also with Fisheries and Wildlife habitats, as we noted at 5.2 and 5.3, there are no special provisions for Maori fishing grounds and the Maori interest is merely an aspect of the general public interest.

It is consistent with that view that in *Minhinnick v The Auckland Regional Water Board and Waikato Valley Authority* (16 December 1981) the Planning Tribunal determined that under the Water and Soil Conservation Act 1967 the Tribunal could not take account of those concerns of the Maori people in relation to water that were merely cultural, spiritual or metaphysical.

We note too that while Regional Water Boards must (amongst many other things) "have regard to recreational needs and the safeguarding of . . . fisheries and wildlife habitats" (S20 Water and Soil Conservation Act 1967) they must also consider the multiple use of the natural water resource and then in the context that in terms of S21 (3) of the empowering Act and as noted by the Planning Tribunal (*Henderson v Water Allocation Council* (1970) 3 NZTCPA 327, 328) the disposal of waste is one of the functions of natural water. In its provisions for the grant of water rights the Act does not clearly spell out the broad principles to be applied in the fine balancing act that Regional Water Boards must perform or the extent to which any special interests should be protected.

What the Act instead provides for is the classification of regional waters to provide a

broad blueprint against which the Regional Water Boards are required to discharge their responsibilities in granting water rights. It is this provision which provides the essential planning and control mechanisms against which Regional Water Boards (and the Planning Tribunal) are able to measure individual applications. It provides the minimum standards of quality at which classified areas of natural water shall be maintained.

The classification of natural waters falls within the purview of the Water Resources Council. It was submitted to us that the Council should be urged to classify the water surrounding the Taranaki reefs to a minimum standard of SA, which, in accordance with the Fifth Schedule to the Act would hopefully ensure that there would be " . . . no destruction of natural aquatic life by reason of a concentration of toxic substances" It was pointed out that the Taranaki Catchment Commission had already carried out a considerable amount of the necessary investigatory work.

The SA classification of waters could be used to provide a measure of recognition for the de facto existence of Maori fishing grounds, and a measure of protection for them. It would also seem to be a natural corollary to any official recognition of particular Maori fishing grounds, but, as the law stands, no official recognition is given, and the de facto existence of Maori fishing grounds is only one of the factors that the Water Resources Council would need to consider in any proposal for the classification of local waters.

It is also of considerable concern to us that the classification system, the application of which appears to us to be essential if the provisions of the Water and Soil Conservation Act are to be applied in accordance with the sound planning principles envisaged by the Act, is in fact rarely applied. We were advised that the system whereby the Water Resources Council classifies water has been "fraught with difficulties and at the moment is seldom used" and that it is not the current policy of the Water Resources Council to invoke the powers of classification that it has.

The difficulties faced by the Planning Tribunal through the lack of classification was noted by the Tribunal in *Pikarere Farm Ltd v Porirua City Council* (1979) 6 NZTPA 545, 573. We consider that the lack of a classification system that also adequately recognises Maori fishing grounds, or, the failure of the legislature to provide a more workable alternative that would achieve the same end, has and will continue to disadvantage the Maori hapu of Waitara in the consideration of individual water discharge applications in proximity to the reefs.

8.7 Town and Country Planning Act

At 5.6 we referred to the Town and Country Planning Act 1977. We noted that while the relationship of the Maori people and their culture and traditions with their ancestral land must be recognised and provided for in district and regional plans, that provision is accorded no priority over other and possibly competing "public interest" provisions, and it was doubtful that the provision could be interpreted as encompassing the Maori interest in the sea for the purposes of regional and maritime planning. We noted also that while the preservation or conservation of stretches of coastline of scientific, fisheries or wildlife importance was to be considered in maritime planning, there were no particular provisions for Maori fishing grounds and in planning for major industries and ocean outfalls, the Maori interest could only be considered as an aspect of the general public interest.

Here again certain unfortunate lacunae appear in the application of the prescribed planning laws governing the discharge of waste by ocean outfalls. The appropriate

planning control mechanism is provided for in Part V of the Act relating to Maritime Planning.

Once an area has been constituted a Maritime Planning area s. 102A of the Act applies pending the preparation of a scheme. This Section prevents any work being commenced without consent if the use detracts or is likely to detract from the amenities of the area. It is possible that a pipeline would come within this definition. An application must be made and the Authority must have regard to the public interest and, more importantly -

"The likely effect of the proposed use on the existing and foreseeable future amenities of the area, and on the health, safety, convenience and economic, cultural, social and general welfare, of the people of the area and of any region or district affected by the application."

The Section furthermore makes those considerations subject to s. 3 of the Act which request that regard be had to

"The conservation, protection and enhancement of the physical, cultural and social environment, and

The preservation of the natural character of the coastal environment"

Again however, the evidence before us indicated that either little has been done in the way of maritime planning or that the plans are or are likely to be restricted to limited coastal areas. The consequence is not only a lack of co-ordinated policy with regard to ocean outfalls but that, without such planning, the Planning Tribunal is itself severely limited in its consideration of discharge rights. It is merely concerned with the standard of effluent at the point of discharge. The route of the pipeline, its proximity to sensitive marine areas and the potential for accidental discharge at a point other than the authorised point are not relevant considerations. As was put to us "there is no reason why the mere gazetting of an area should place it, for practical purposes, in a more protected situation than areas of perhaps greater sensitivity that have not been so gazetted," and "Thus machinery exists (for the Planning Tribunal) to investigate matters which appear to be of concern to the Waitangi Tribunal but the machinery is restricted to maritime planning areas."

The result appears to be also that in the application of the National Development Act to important works involving outfall pipes the application merely needs the consent of the Minister to construct the pipe and the Minister is under no obligation to take into account the protection of Maori fishing grounds or other fishing resources.

It would appear in particular that there is no co-ordinated overall planning to effectively regulate ocean outfalls in the Taranaki area and there have been constraints upon the Planning Tribunal in its consideration of the Motunui outfall.

We feel that it needs to be stressed here that the adequate consideration of individual applications depends largely upon a co-ordinated planning scheme being first proposed, tested and accepted in manner prescribed by the Act, in order that individual proposals may be tested against the broad plan. Indeed, as was stated by the Planning Tribunal in its report and recommendations on the Petralgas plant "The Tribunal is a judicial body which acts by weighing the evidence which it hears. It does not, indeed it cannot "plan". The initial identification and evaluation required in the course of the planning process must be done by others."

The hearing of an individual application is not then an opportunity for proposals to be made for the aggregation or dispersal of petrochemical industries, or, except to the extent that it may provide insights into the desirability of the chosen site, to promote the use of alternative sites. The Planning Tribunal is concerned with a particular proposal for a prescribed site. The absence therefore of firm regional and maritime

plans that can be tested and objected to, places real constraints not only upon the Planning Tribunal, but upon those who put objections to it, including in this case, the Te Atiawa people.

We have had to ask ourselves whether there is adequate legislative recognition of Maori fishing grounds and adequate legislative provisions for their protection.

Waitangi Tribunal, Department of Justice, Wellington.

Motunui Waitara Report

9 Special Problem Areas And Proposals

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9. SPECIAL PROBLEM AREAS AND PROPOSALS

9.1 Coastal Character, Waste Streams, Spillages, and disposal options

9.1.1 The Character of the Coast

The OECD review of Environmental Policies in New Zealand recognised the problem of the Maori people when it stated at p 62 of its review that:

" . . . in localised areas (for instance in Wellington and New Plymouth) there is evidence of contamination of shellfish from near-shore outfalls. This represents a potential health hazard, and affected areas are rendered extremely unattractive to bathers. The situation here is especially unacceptable to local Maoris who retain certain rights over shellfish gathering and for whom this comprises an important cultural and recreational pursuit. Notwithstanding New Zealand's otherwise good record in sewage management, it appears urgent that in certain localised areas the environmental threats posed by shallow-water discharge be countered either by the construction of land-based treatment plants in the affected areas or by the replacement of near-shore outfalls by deep sea discharge points."

While some of the witnesses who appeared before us argued that pollution problems would be overcome or satisfactorily ameliorated by long ocean outfalls with discharge points beyond the zone of wave generated currents, others doubted that deep sea discharge points could ever provide a satisfactory solution for the district. They considered that the action of the Taranaki winds, coastal currents and strong tides would always operate to return effluent to the shore without adequate dispersal or dilution.

Certainly from the evidence before us it is obviously far too simplistic to consider the vastness of the ocean to be such that it can be relied upon to safely dilute and disperse effluent in all cases. In Taranaki the high wave energy, the wind induced north westerly and along-shore coastal currents and the shallow waters of the continental shelf result in the movement of material to the shore and the carriage of effluent and contaminated sediment to the shellfish beds.

Nor do we think that it can be presumed or conclusively argued that the saline ocean will in all cases destroy the bacteria in effluent, or sufficiently dilute, remove or disperse chemicals discharged into it. There is evidence that chromium for example, and also bacteria, will remain in sediment on the ocean floor to pass later into the food chain, and the sediment may be washed in-shore to the shellfish beds.

The question therefore of whether or not deep sea discharge points are a satisfactory option cannot be argued in the general but only in the context of the particular character of the particular coast. While the evidence before us was conflicting and inconclusive, we at least felt able to determine that in the Waitara district even deep sea discharges are not a preferable option when they are in proximity to shellfish beds.

9.1.2 Engineering Capabilities

Other witnesses considered that even were a deep sea outfall to be effective, the turbulent nature of the coast would expose such outfalls to the likelihood of damage or destruction. K. M. Wood, a pipeline engineer, outlined the difficulties of constructing a marine outfall on this coast having regard to its turbulent nature and rapidly changing weather conditions, cross currents, and extensive reefs with large and mobile boulders. (We noted of course that the Waitara pipeline had been damaged. We were told that it had been damaged during launching. We note that its repair has not been effective.) Mr Wood referred also to certain construction difficulties and concluded "under these conditions an outfall should not be considered unless a careful costing - based on a thorough sea bed survey and firm proposals for construction - shows that the outfall is much cheaper than any other alternative". It seemed to us essential that any body charged with the function of approving ocean outfalls for the Taranaki coast should need to be satisfied that the state of the art in engineering is sufficiently advanced to provide an adequate assurance that the constructional work is capable of reaching the required standards. It appears to us that Regional Water Boards and the Planning Tribunal are limited in the extent to which they can consider these matters.

The Ministry of Works and Development has a responsibility for the matter in advising the Local Authorities Loans Board or the Department of Health where local authority loans or subsidies are involved, or the Ministry of Transport where consent is required in terms of section 178 (b) of the Harbours Act, but where the Ministry of Works and Development has a commitment to providing outfalls itself, for Crown projects or private projects with Crown involvement, it becomes a judge in its own cause in assessing the engineering capabilities.

9.1.3 Chemical Wastes and waste streams

As has been referred to at 7.2 and 7.3 considerable debate revolves around the use of zinc, chromate and other toxic materials in water treatment for cooling tower use, resulting in the consideration of non-toxic poly-phosphate alternatives. Certain researches indicate that such chemicals, and in particular the soluble hexavalent chromium, may not be diluted and dispersed even if discharged alone into the ocean, but may be discharged to the ocean floor and become attached to other matter consumed by marine animals. The likelihood of absorption with other matter is high if the chemical waste is discharged with other effluent or is able to mix with it. There is also concern with the synergistic effect that might operate from the mixing of chemical discharges.

The researches indicate that two measures are desirable. The first is that industries must actively search for alternatives to heavy metals. The second is that adequate effluent disposal schemes must have regard to the variety of waste streams, the separate of waste streams at source, and the application of different forms of treatment for each. It follows further that an assessment of the treatment and disposal needs of each waste stream in the current energy projects should be undertaken whenever there are proposed changes in the use of chemicals.

9.1.4 Accidental spillages

Evidence of accidental spillages in the recent past highlighted for us the importance of ensuring that at any industrial site the effluent treatment systems are able to cope with accidental spills of chemicals and any possible operational upsets. This requires an adequate engineering design and contingency planning procedures to operate the effluent treatment systems under adverse conditions. In our view it needs to be made clear that Regional Water Boards and the Planning Tribunal have a responsibility in

this area.

The prospect of an accidental spillage is, in our view, a further reason for considering that ocean outfalls should not be sited in proximity to fishing grounds.

9.1.5 Investigation of alternatives

Dr Patrick for the Taranaki Catchment Commission, and later Dr Stevenson of the Department of Scientific and Industrial Research at Petone, referred to a number of options for the treatment and disposal of the effluents in the Waitara area and highlighted many of the advantages and disadvantages of land disposal options as compared with ocean discharges. Dr Stevenson outlined irrigation treatments and rapid infiltration systems, considered the various types of discharges ranging from sewage and meatworks effluent to the chemical discharges of the Petralgas and Syngas plants, and stressed the desirability of separating the various types of waste streams for separate treatment according to the most optimum form of disposal for each. He reviewed comparative costings (based on very general cost guesstimates) and considered that if only the repair of the Waitara outfall were required, a land disposal option would be much more expensive but if milliscreening and chlorination were also required to achieve acceptable receiving water conditions, the cost of the land disposal option would be of the same order.

He concluded:

"Commitment of substantial expenditure to upgrading the outfall, or to treating the effluents before discharge would divert finance which might be used to develop land disposal systems, thereby possibly precluding the very high levels of receiving water protection which they offer. If there is any prospect of land disposal being a viable or attractive option, there is an urgent need for more detailed studies to determine definitely whether practical and acceptable economic systems can be developed within a reasonable time, so that a well-informed choice between land disposal and sea discharge approaches can be made before further expenditure is committed.

"One sea discharge option which would greatly decrease pollutant loads on the receiving water, and improve aesthetic conditions is based on the preliminary indications that the returns from sale of recovered protein may approximately cover the costs of physio-chemical treatment of slaughterhouse effluents. The consequent improvement in effluent quality could then be considered to be achieved at no cost. Construction of a new separate sewer from the freezing works to the outfall would then make it possible to consider separate treatment of the Waitara Borough sewage, perhaps in an oxidation pond, with ultimate disposal either by land application or discharge via the outfall. This might be achieved at a cost less than milliscreening and chlorination . . . but would provide much higher standards of effluent treatment and receiving water protection."

It is important to appreciate that Dr Stevenson did not pretend to having provided an exhaustive analysis on which he could proffer solutions. He was concerned to establish that although there were a number of problems associated with each there were a number of alternative possibilities and that they had not been adequately researched.

We too are concerned to note the lack of research, costing and planning in this area, and the extent to which alternative possibilities present themselves but have not been adequately researched.

9.1.6 Summation

from the evidence we conclude -

- that while the marine environment has an assimilative capacity to cope with wastes, the threshold of that capacity is not known, and that the dilution of a pollutant in the

sea does not equal its removal;

- that no proposal for a marine outfall in this district can be adequately considered without a detailed understanding of the coastal structure and the combined effect of winds, currents and erosion;
- that there is a need for greater certainty concerning engineering capabilities in the construction of long outfalls on this turbulent coast, and it should be clear that matters relating to the construction of outfalls, and the provision of emergency contingency plans and facilities, should be within the purview of Regional Water Boards and the Planning Tribunal;
- that there is a need to consider separate treatment for separate waste streams, and for a review of the position on any change in the nature of a wastestream; and
- that there is a need for a greater study of waste disposal options by an interdisciplinary team.

On the evidence before us there was insufficient data to enable any concrete conclusions to be drawn on whether deep sea discharge, land disposal or oceanic discharge after primary secondary or tertiary treatment should be sought, and then whether on an individual or regional basis.

What we do challenge however is the view that because the use of the coastal waters for the discharge of effluent is at law a legitimate use of that water, then ocean discharges should continue unless and until it can be shown that some other means of disposal can be proven to be better and economically comparable. Having regard to the known pollution of the coast and the uncertainties surrounding the effect of winds and tides, the lack of engineering evidence that adequate pipelines for this coast can be constructed, and having regard in particular to the pollution of the Te Atiawa reefs and the clear cultural preference of the Maori (and also many non-Maori) inhabitants for the disposal of the waste on land, we consider the presumption should be the other way. We consider in particular that land disposal systems, or at least the separation of wastes and the discharge of certain wastes to the ocean only after secondary or tertiary treatment, should be the presumed option, unless and until it can be clearly established that the other alternative is a sufficient guarantee against the further pollution of the coast.

9.2 Better planning and co-ordination

During the course of our hearings we made it clear that we did not consider it our function to blame, apportion fault or to judge others, be it the Crown, an agency of the Crown, or any person. We were concerned to identify problems but only for the purpose of seeking solutions.

We also made it clear that it was not our role to do that which the Planning Tribunal is able to do.

It was soon apparent however that the Te Atiawa hapu were prejudiced by the pollution of their reefs and that any proposals that we might envisage for the removal of the prejudice or to prevent other hapu from being similarly affected in the future, needed to be seen in the context of the total situation in the locality, and of the measures provided for, and the steps taken or not taken to provide relief for the district as a whole.

We noted that the Crown, through legislation, had made extensive provisions for the rationalisation and facilitation of both economic growth, and environmental protection. Although there were no specific provisions for the protection of Maori fishing grounds, Maori fishing grounds were not without some benefit from the

general provisions.

We noted also that the Crown, through its executive and various statutory agencies had undertaken considerable measures of implementation. We were impressed by the extensive research and other work undertaken by each of the Departments of State that were represented before us, and we were particularly impressed by the work that had been carried out by the Taranaki Catchment Commission and the Commission for the Environment.

We noted further that the major pollution problems were not primarily the result of recent economic growth in the petro-chemical area but rather that those developments threatened to compound an already existing problem. It appeared to us that the major cause of pollution arose from the damaged state of the Waitara Borough ocean outfall. Our Tribunal sitting afforded a unique opportunity for the various government, local authority and private enterprises involved, to meet in a relatively informal way to discuss common problems from the perspective of their own responsibilities, and to review future options. It was unique in that the parties were able to review, not an individual development proposal, but the developments as a whole, and thus to seek a broad overview of developments in the district.

It is from the perspective of that overview that we consider the major pollution and other problems arising from the past and present growth in the Waitara area, to result from a lack of adequate regional and maritime planning to facilitate and regulate that growth, and the lack of an adequate and co-ordinated plan for the provision and equitable funding of the necessary infrastructure to service it.

We consider that present conditions call for urgent measures, and measures that will bring together the various agencies and parties to fast track the procedures whereby ancillary works are proposed, built and funded, and to co-ordinate their efforts.

We see an important need for a medium term growth strategy with appropriate planning controls to provide for both industrial growth and coastal protection.

Without such planning and co-ordination, we envisage that growth in the region will be spasmodic and disparate, and environmental interest groups will be forced to a confrontation stance at a time when there is a need for the practical reconciliation of conflicting interests.

We were amazed that no regional policy for waste treatment and disposal had been formulated for North Taranaki and that there appears to have been no formal or informal forum where treatment and disposal options could be discussed by all interested parties before individual water right applications for waste disposal were proceeded with. Our attention was drawn to a joint study currently being undertaken by Government, the Taranaki and Wanganui United Councils and the Taranaki Catchment Commission to consider petro-chemical industrial location options and the opportunities for the community and developer to share such infrastructures as water supply and effluent disposal systems.

In our view however the Crown needs to go further. Above all we consider that having regard to existing local constraints and the existing and projected proposals for industries of national importance, the Crown ought reasonably to intervene to assist both the formulation and practical application of appropriate strategies.

At 8.6 and 8.7 we identified the lack of water classification and maritime planning as a major constraint in ensuring adequate protection of the coastal resource while yet providing for industrial growth. We noted that the lack of distinct policies for ocean outfalls and waste disposal and for the location and servicing of future petro-chemical industries was a major constraint in the consideration of individual project proposals as there was no broad blueprint or planning base on which to measure them.

It seemed to us that the new industrial growth in the region was proceeding faster than the planners could plan for it. We noted with some sorrow that although major new industries have already been established, and there is evidence that others are pending, the body most responsible for the production of an appropriate regional and maritime plan had only recently been established. We refer to the Taranaki United Council which was not gazetted until January 1979 and which has a staff of three persons, headed by a regional planner who, at the time when he appeared before us, had been in the employ of the Council for three weeks. We were concerned also that in response to our questions we were advised that the Taranaki United Council favoured the dispersal of major industries across the region. We were concerned because it opens the prospect of a proliferation of outfalls along the Taranaki coast with possible deleterious effects on a substantial number of reefs. We noted that the aggregation of petro-chemical industries had been urged by a number of those who appeared before us and that it had been urged before the Planning Tribunal. It had been put to us that the aggregation of industries enabled the establishment of pipeline corridors for the supply of natural gas and the transport of end products to the local port. It would facilitate the development of substantial joint use and jointly funded waste disposal plants, localise the spread of pollution and reduce roading and other servicing costs. We wondered at the extent to which the United Council's preference reflected independent planning advice, and the extent to which it reflected the nature of its constitution. While the Crown is represented on the United Council's regional planning committee, the committee is mainly comprised of representatives of local authorities in the region.

While certain parties stressed to us the rights of Maori and other members of the public to be heard in objection and appeal on planning matters, we note that with regional plans, there is an opportunity for public input, but no rights of objection or appeal.

We consider too that the replacement or repair of the pipeline for the Waitara Borough outfall is a matter of extreme urgency. We note that the water right in respect of that outfall expires this year and a new water right has been sought. If it is not granted a state of uncertainty will exist, and if it is granted subject to certain repair or replacement conditions or the provision of additional land based treatment plants, there are still doubts whether the requisite approvals for loan finance will be given through the Ministry of Works and Development and the Department of Health, (the latter expressing to us reservations about the effectiveness of the pipeline disposal) or whether the necessary works could be funded at all by local interests. We consider too that a number of other practical difficulties will arise over the extent to which the joint users of the pipeline ought to contribute to any repair or replacement proposals, and, having regard to existing commitments, the extent to which the Borough, Borthwicks, and other users will be able to meet the cost or furnish the loans.

In chapters 5, 6 and 7 we noted that lack of statutory recognition of Maori fishing grounds and the lack of a specific recognition of Maori fishing grounds in planning legislation. We consider that without such recognition in the relevant legislation, water classification and district, regional and maritime planning will not afford a sufficient guarantee that the Maori interest in Maori fishing grounds will be protected. The existing laws provide for the multiple use of water and as things stand, the Maori interest is but one of several interests to be weighed in the balance, and little or no weight attaches to the Maori cultural approach to the water as a source of food.

9.3 Amending existing plans

In considering the practical application of the Treaty of Waitangi to the particular case, we report that the Waitara hapu consider the reefs off the mouth of the Waitara River to be both physically and culturally polluted and that their concern is now to protect the Motunui reef and to minimise the spread of pollution to ensure that the remaining reefs remain open to them. Following a meeting with the Waitara Borough the local people urged us to propose that the Motunui outfall be not proceeded with, and that the Motunui discharge be re-routed through the Waitara outfall. This seemed to us to show not only a degree of planning sense, but a very commonsense and accommodating approach by Maori people to the application of Treaty of Waitangi. From the standpoint of their own culture, the local hapu would join with certain planners in urging the aggregation of industries and industrial waste, and the pooling of resources to localise and minimise pollution. It seems to us that Maori culture would join with European culture in urging the planned protection of seafood areas and the planned control of effluent disposal so as to localise the extent of water pollution in physically and culturally acceptable terms.

The Crown has agreed to provide the infrastructure for the Motunui works and this includes the location and construction of the Motunui ocean outfall pipe. This agreement has been made through the Ministry of Energy, and the necessary construction work will be undertaken through the Ministry of Works and Development. At this stage the necessary construction work has not been started. The Deputy Secretary for Energy outlined for us the Government's reasons for choosing an independent outfall at Motunui. There were doubts that the Waitara outfall was sufficient to handle the Syngas effluent and existing uses especially when the freezing works was operating at peak throughput. It was felt that the Syngas project should not be jeopardised by the possibility of technical difficulties, breakdown or other problems in an effluent disposal system in which the plant is only one of several users and over which it has no control, and it is obviously easier to monitor the effluent of the synthetic petrol plant through an independent outfall rather than through a joint facility. A principal drawback was also that the Borough's water right is due to expire this year (1983) and in view of the obvious defects in the outfall, it is by no means certain that this right will be renewed, except perhaps on conditions as to its repair, upgrading or complete replacement. There are other problems associated with any joint use or regional facility in assessing the total cost and apportioning costs, and in completing the extensive engineering and marine research that would be required before the technical and environmental feasibility of the proposal can be fully assessed. It appeared further that the provision of a regional facility at Waitara capable of handling present and future needs would require consideration of the construction of a completely new outfall.

Given the technical uncertainties and the corresponding uncertainties of whether water rights would be given for a regional facility and of the time it might take to determine those matters in the event of appeals, and given further that delays in the completion of an outfall facility would cause serious losses to private concerns and the country (as was put to us by Counsel for New Zealand Synthetic Fuels Corporation) it is understandable why an independent outfall was preferred.

The Deputy Secretary for Energy went on to state -

"Obviously, the Government would be able to contribute towards a regional facility only if it were clearly satisfactory from an engineering and environmental point of view, and the costs reasonable, and the Government's contribution to them fair.

Before the Government could make any financial commitment to the options under consideration, they would have to be properly costed, and agreement would have to

be reached between the Government and the other parties as to their relative contributions. It will be apparent from these remarks that the possibility does not exist of the Government meeting the totality of the costs of any new facility, or of it contributing to the costs of facilities which cannot be justified on technical grounds.

"The Government has always taken the view that the initiative for facilities such as a regional outfall should rest with the local authorities in the region. Similarly the initiative for developing and costing such facilities should be pursued by regional interests. At this point however, we are no closer to having answers on the points on which the Government would need to be satisfied before it could make a decision on the matter than we were eighteen months ago. In the interests of expedition therefore, the Minister of Energy has indicated to the Waitara Borough Council that the Ministry would be prepared, in consultation with the Council and the Taranaki Catchment Commission to commission studies of the technical feasibility and economics of a new regional outfall, through which the wastes of the existing users of the Waitara facility, NZSFC and any future petrochemical plants that may be constructed in the region might be discharged."

"The Minister has emphasised that this offer should not be construed as a commitment from the Government to fund the construction of a new outfall or the upgrading of the existing Waitara outfall. It has been made in the hope that this further work will serve to bring the various issues to a head, and facilitate a decision by the various parties on whether there would be merit in seeking a water right for any regional option that appeared to commend itself, on a joint funding basis."

"It will be appreciated that in view of the timing, and other potential technical constraints facing the New Zealand Synthetic Fuels Corporation, investigations of alternative disposal options must be undertaken in parallel with the Government's planning for the construction of the outfall at Motunui. It has been the concern of the Government throughout however, to work with the people of North Taranaki to find a mutually satisfactory solution to the several effluent disposal problems with which they are faced. It is also the Government's hope that with goodwill on all sides, and a spirit of compromise rather than confrontation, this solution can be developed in the rapidly diminishing time available."

We welcome the Government's moves to pursue the prospect of a regional facility. We consider that Government must go further to consider whether special measures are necessary to facilitate that goal. Just as it became necessary to make special provisions to facilitate the approval of major works of national importance in the district, so also it seems necessary now to consider special measures for the orderly development of the necessary infrastructures to minimise the harmful consequences of those works.

The question that we must ask ourselves too is whether the Crown has a particular obligation to seek better protection for the Te Atiawa fishing reefs. In particular, we must ask ourselves whether in terms of the Treaty the Crown has an obligation to protect the Te Atiawa people in the use and enjoyment of their fishing grounds, and if so, and if the provision of a regional facility will help achieve that end, whether it is appropriate that the Crown should consider that the provision of a regional facility must rest with the local authorities in the region, or whether the Crown has a responsibility to aid and assist local authorities to achieve that end.

It is in this context, and with regard to the background that we have reported on, that we consider the proper interpretation to be given to the Treaty of Waitangi in its application to this particular case.

Motunui Waitara Report

10 Interpretation Of The Treaty Of Waitangi

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10. INTERPRETATION OF THE TREATY OF WAITANGI

10.1 Background and Approach

The Treaty of Waitangi has been referred to as "The Maori Magna Carta" (refer thesis of T. J. Lanigan of 1939 "The Treaty of Waitangi: Its Intention and Interpretation") and as "The great charter of Maori rights" (T. L. Buick "The Treaty of Waitangi"). It has also been described as a "fraud" and a "sham" (Edward G. Wakefield in writing to Gladstone in 1846). It is however a fact, and whatever our personal perception of it, it seems also to be a fact that for over a century the Maori people have placed a significance on the Treaty far in excess of that given by the general public.

For over a century the Treaty of Waitangi has been a regular subject in marae debates throughout the country and in recent years, the focus of some Maori activism. With certain notable exceptions, as for example in a seminar at Victoria University of Wellington in 1972, it has not been the subject of concerted debate within the public at large. We were impressed by those Maori who appeared before us to recite incidents surrounding the execution of the Treaty as passed down to them from their forefathers and we know that the perpetuation of the Treaty in the oral history of the Maori is not peculiar to Te Atiawa.

We note too that over the last century the Treaty has been, and continues to be behind a number of Maori petitions to Parliament and to the Queen. It has also been the subject of pleas before the Courts in both New Zealand and the United Kingdom, and the Treaty continues to be pleaded in both inferior and appellate Courts in this country, despite the fact that our Courts have generally considered the Treaty to have no force or effect at domestic law.

It is not necessary for us to enter the current debate in which some writers argue that the Treaty could or should have judicial recognition, but merely to note that fact and to refer to -

A. P. Malloy "The Non-Treaty of Waitangi" (1971) N.Z.L. 193

B. Carter "The Incorporation of the Treaty of Waitangi into Municipal Law" (1980) 4 A.U.L.R. 1

P. G. McHugh "The Treaty of Waitangi : A judicial Myth revisited" (1981)

J. C. Clad "Politics, Law and Indigenous Peoples" (1981) and

J. D. Sutton "The Treaty of Waitangi Today" (1981) V.U.W.L.R. 17

In similar vein we need only note that the Maori people have persistently pleaded the Treaty in the Courts but without success, and refer to -

R. v. Symonds (1847) N.Z.P.C.C. 387

Wi Parata v. Bishop of Wellington (1877) 3 N.Z. Jur (N.S.) S.C. 72

Mangakahia v. New Zealand Timber Company (1881-82) 2 N.Z.L.R. 345

Nireaha Tamaki v. Baker (1901) N.Z.P.C.C. 371 (1902) A.C. 561

Hohepa Wi Neera v. Bishop of Wellington (1902) 21 N.Z.L.R. 655 (C.A.)

Baldick v. Jackson (1911) 13 G.L.R. 398

Tamihana Korokai v. Solicitor-General (1912) 32 N.Z.L.R. 321
Waipapakura v. Hempton (1914) 33 N.Z.L.R. 1065
Hoani Te Heuheu Tukino v. Aotea District Maori Land Court (1941) A.C. 308
Inspector of Fisheries v. Ihaia Weepu and anor (1956) N.Z.L.R. 920
In re the Bed of the Wanganui River (1962) N.Z.L.R. 600
In re the Ninety Mile Beach (1963) N.Z.L.R. 46
Keepa v. Inspector of Fisheries (1965) N.Z.L.R. 322
R. Hita v. H. D. Chisholm, Inspector of Fisheries (Supreme Court 8 February 1977)
While the Treaty may have a dubious status in international and municipal law it is interesting to note that in the cases in which the Treaty of Waitangi has been referred to, no argument has been adduced to question the existence of the Treaty as such or to deny the moral obligation it imposed.

Nonetheless the approach of the New Zealand Courts, and of successive Governments, does not compare favourably with that taken by other Courts and Governments in their consideration of indigenous minorities. In North America for example treaties with the original Indian populations have been recognised by the governments and enforced by the Courts, and in areas not covered by treaties, common law rights are regarded as vesting in the native peoples by virtue of their prior occupation (refer for example, *Calder v Attorney-General of British Columbia* (1973) 34 D.L.R. 145).

The overseas experience must cause us to re-think our perception of the Treaty of Waitangi and of its significance. In its consideration of a major oil pipeline running the length of Canada for example, and in proposing a moratorium on the continuation of the works, the Royal Commission in The McKenzie Valley Pipeline Inquiry (Justice Thomas R. Berger) considered it necessary that Native Land Claims be first settled, and that "native hunting, trapping and fishing rights . . . be guaranteed". We consider that it will be increasingly unrealistic for New Zealanders to assess the Treaty of Waitangi in the context only of their own history.

While in this particular case we have not found it necessary to stray beyond the wording of the Treaty, we are not unmindful of overseas developments that suggest that "native or aboriginal rights" may extend beyond the wording of a treaty itself. On this argument, certain customary rights exist and continue to exist unless by treaty they are voluntarily surrendered or modified. On this approach the question is not whether a treaty makes any guarantee in respect of native hunting or fishing rights for example, but whether any body of native customary law relating to hunting or fishing was expressly modified, taken away or added to.

In a consideration of the specific terms of the Treaty it is important to appreciate that the Maori text is not a translation of the English text and conversely, nor is the English version a translation of the Maori.

An historical explanation is given by Ruth N. Ross in an article "Te Tiriti of Waitangi - texts and translations" 1972 6 N.Z. Journal of History 129. Initially a number of drafts were prepared in English and one (only) of those drafts was given to the missionary Henry Williams to translate. It was his translation of that text (with one subsequent amendment) that came to constitute the Treaty of Waitangi as executed at Waitangi by Governor Hobson and various Maori on 6 February 1840. Unfortunately however, the English text given to Williams to translate does not appear to have survived.

Ross then records that in all Hobson forwarded five English versions of the draft Treaty to his superiors in Sydney or London, each with certain differences between them. However, Ross writes "If the differences were noticed in the Colonial Office, it

was perhaps supposed that Hobson's despatch of 15 October 1840 set the record straight with its enclosure of a certified copy of the Treaty both in English and the Native Language, with the names inserted of the chiefs and witnesses who signed it." The English text was not a translation of the Maori.

History records how, after Waitangi copies of the Maori text were taken about the country and executed at divers times and places by various Maori. (Reports vary as to the number of Maori who signed in all, but it is clear that the number was in excess of 500). At the Waikato Heads however, 33 Maori signed an English version (for reasons that are not clear) and to this six more names were subsequently added at Manukau. This English version contained slight differences from that sent to the Colonial Office on 15 October 1840, but it was the "Waikato Heads" version that came to bear Hobson's signature and seal, and it was the "Waikato Heads" version that has come to be regarded as the official version and which is now printed in the First Schedule to the Treaty of Waitangi Act. Again, it is not an accurate translation of the Maori text and there are significant differences.

It was because it was the Maori text that was executed (with the exception noted) that Ross considered "It has always appeared to me that one must accept the Maori text as the Treaty of Waitangi." An alternative view is that both texts must apply, as the signatory for the Crown, Lt Governor Hobson, would have relied upon an English text. In terms of the Treaty of Waitangi Act however we are "to determine the meaning and effect of the Treaty as embodied in the two texts".

The Treaty of Waitangi Act also recognises that there are differences between the two texts and we are required "to decide issues raised by the differences between them". It seems to us remarkable that the sad history of error, confusion, and inefficiency in the preparation, printing and preservation of the Treaty of Waitangi last century has continued into this. We are required to "have regard to the two texts of the Treaty set out in the First Schedule (to the Treaty of Waitangi Act)" but the text in Maori as printed in the First Schedule contains in Article the Second glaring errors and omissions.

We wondered whether the Maori wairua (spirit) was not in operation to ensure that the true and precise wording of the Treaty should forever be confused.

A Maori approach to the Treaty would imply that its wairua or spirit is something more than a literal construction of the actual words used can provide. The spirit of the Treaty transcends the sum total of its component written words and puts narrow or literal interpretations out of place.

Adopting for the moment however the English legal approach, we accept the submission of the Department of Maori Affairs with regard to the errors in the Maori text as follows:

"the Tribunal may have regard to a text of the Treaty acknowledged as being a correct reproduction to supply corrections of the numerous errors and the omission of certain words from Article 2 as reproduced - Maxwell on the Interpretation of Statutes, 12 ed. p. 228 and authorities there cited."

We find also that there are several similarities between the Maori approach to the meaning of things, and the "European" legal approach to the interpretation of treaties. The latter approach was described for us by the Department of Maori Affairs as follows:

"It is submitted that the principles of treaty interpretation should be applied to the Treaty of Waitangi rather than those relating to construction of a statute.

"The body of law which exists on the construction of treaties stands quite separate from its legislative counterpart. Furthermore the very nature of treaties, the circumstances in which they are drawn and their legal consequences dictate that the principles relating to treaty interpretation differ significantly from the traditional tenets of statutory interpretation.

"If the Treaty of Waitangi Act 1975 merely enacted the Treaty of Waitangi in identical or substantially similar wording a different view may be offered. However the manner in which the Treaty of Waitangi has been incorporated into the legislation indicates Parliament's intention that independent effect should be given to the terms of the Treaty for the purposes of interpretation, section 5 (h) of the Acts Interpretation Act 1924 notwithstanding.

"Furthermore the House of Lords has stated that:

'The correct approach in construing a United Kingdom statute which incorporates and gives effect to a European convention is to interpret the English text as set out in the statute in the normal manner appropriate for the interpretation of an international convention, unconstrained by technical rules of English law or by legal precedent but on broad principles of general acceptance.'

James Buchanan & Co. Ltd v Babco Forwarding and Shipping (U.K.) Ltd [1977] 3 All ER 1048.

"That opinion has immediate application to the documents before this Tribunal.

"Accordingly the Department adopts the principles set out by I M Sinclair in his work on Treaty Interpretation in the English Courts found in ICLQ (1963) Vol. 12 p. 508: a Treaties are to be interpreted primarily as they stand and on the basis of their actual text.

b Subject to paragraph (f) below, particular words and phrases are to be given their normal natural and unrestrained meaning in the context in which they occur. However, if the language used is obscure or ambiguous recourse may be had to extraneous means of interpretation such as consideration of surrounding circumstances.

c Treaties are to be interpreted as a whole.

d Treaties are to be interpreted with reference to their declared or apparent objects and purposes, and particular provisions are to be interpreted in such a way that a reason and a meaning can be attributed to every part of the text.

e Recourse to the subsequent conduct and practice of the parties in relation to the treaty is admissible.

f The terms of a treaty must be interpreted according to the meaning which they possessed, or which would have been attributed to them, and in the light of current linguistic usage at the time when the treaty was originally concluded.

"There is also recent judicial authority affirming the principle that treaties and other constitutional documents should be interpreted in the spirit in which they are drawn and taking into account the surrounding circumstances. *Fothergill v. Monarch Airlines Ltd* [1980] 2 All ER 696 (H.L.), *Minister of Home Affairs v. Fisher* [1980] A.C. 319 (P.C.)."

Referring then to bilingual treaties the Department submitted

"In relation to bilingual treaties *McNair (The Law of Treaties)* states that in the absence of a provision to the contrary neither text is superior to the other. Further, that there is ample authority for the view that the two or more texts should help one another so that it is permissible to interpret one text by reference to another.

"However, it is submitted that should any question arise of which text should prevail the Maori text should be treated as the prime reference. This view is based on the

predominant role the Maori text played in securing the signatures of the various Chiefs.

"In this regard the Department refers to Articles 33 (2) of the Vienna Convention on the Law of Treaties of 1969. The text of that convention is reproduced in Brownlie J. Basic Documents in International Law 2 ed. at p. 233. New Zealand became a party to the Convention on 4 August 1971 and it came into force on 27 January 1980.

"Finally, the rule of *contra proferentem* states that in the event of ambiguity a provision should be construed against the party which drafted or proposed that provision."

The Department made then a comparison with North American Treaties -

"The Supreme Court of the United States had laid down an indulgent rule which requires treaties made with Indian tribes to be construed "in the sense which they would naturally be understood by the Indians" - *Jones v Meehan* (1899) 175 U.S.1.

"The United States rule is in fact founded on Article VI of the Constitution of the United States which provides that treaties made under proper authority shall be the supreme law of the land and which has been held to apply to the treaties made with the Indians.

"In the light of the constitutional position of treaties in the United States we merely draw the rule to the Tribunal's attention. Discussion by the Courts and commentators on the rule indicate that it may be regarded as an extension of the *contra proferentem* rule."

From the standpoint of European legal concepts we incline to the broad approach urged by the Department of Maori Affairs. We consider that approach is also envisaged by the Treaty of Waitangi Act which requires us to determine "whether certain matters are inconsistent with the principles of the Treaty" (rather than "with the provisions of the Treaty") and we refer to the long title, preamble and Section 6 (1) (c) of the Act.

10.2 Particular Aspects of the Treaty

(a) "Fishing Grounds"

In the consideration of this particular claim differences in the Maori and English texts become important. In the English text specific reference is made to "fisheries" as follows:

"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 . . . "

In the Maori text there is no specific reference to forests (*ngaherehere*) or fisheries (*taunga ika*) but rather to "*o ratou wenua*" (their lands), "*o ratou kainga*" (their habitations), "*me o ratou taonga katoa*" (and all their treasured things).

The Te Atiawa people gave us examples of their use of the word "*taonga*" and illustrated for us that to them, the general word "*taonga*" embraces all things treasured by their ancestors, and includes specifically the treasures of the forests and fisheries. We accept that approach. We note that tribal fishing grounds, like specific areas that were renowned as sources of food, were regarded as part and parcel of tribal treasure troves, and were often the cause of tribal conflict. Tamaki isthmus for example, which was renowned for its rich fowl and fish resources, was referred to as "Tamaki, sought as a bride by a thousand lovers".

A remarkable feature of the English language is its facility to use words of precision so as to define arguments and delineate the differences that may exist. The Maori language is generally metaphorical and idiomatic. It is remarkable for the tendency to use words capable of more than one meaning in order to establish the areas of common ground, and for its use of words to avoid an emphasis on differences in order to achieve a degree of consensus or at least a continuing dialogue and debate. The use of the word "taonga" in a metaphorical sense to cover a variety of possibilities rather than itemised specifics is consistent with the Maori use of language. It would be entirely inappropriate to apply English canons of construction to the translation of a Maori text and so to argue that the failure to make specific reference to "fishing grounds" in the Maori text indicated that fishing grounds were not within the purview of the Treaty. Applying also the canons of construction in the interpretation of bilingual treaties as submitted by the Department of Maori Affairs, we conclude that in this respect the difference between the English and Maori texts is not as substantial as may at first be thought. We consider that the Treaty envisaged protection for Maori fishing grounds because the English text specifically provided for that while the Maori text implied it.

(b) "Rangatiratanga"

The essence of the second article in the Maori text of the Treaty of Waitangi is in the use of the word "rangatiratanga".

The English text states "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 . . ."

The Maori text goes further. It confirms to the Chiefs and the hapu, "te tino rangatiratanga" of their lands etc. This could be taken to mean "the highest chieftainship" or indeed, "the sovereignty of their lands."

Sir William Martin, New Zealand's first Chief Justice, wrote "To themselves they retained what they understood full well, the tino Rangatiratanga, full Chiefship (sic) in respect of all their lands." Williams, translating the Maori text back into English translated this part as "their full rights as chiefs, their rights of possession of their lands and all their other property of every kind and degree". In addressing us during our hearings Hikaia Amohia stated "(the Maori) accepted the Treaty relying on the honesty and honour of the Queen and her representative, believing that Chieftanship of their properties was guaranteed to them unreservedly and with no hidden conditions or reservations."

By 1840 the Maori people had had more than a fleeting acquaintance with the missionaries. The spread of Christianity amongst them was rapid. This is sometimes attributed to the thought that Maori spiritual and religious concepts, and many aspects of Maori communal life, were not far removed from concepts expressed in the Bible and that no major ideological shift was involved. It has been noted that many Maori were able to recite large passages from Scripture and the Book of Common Prayer by rote. It is also to be remembered that the missionaries played a major role in presenting and explaining the Treaty to Maori people, at Waitangi and throughout New Zealand. It must also have been readily apparent to the Maori that the Treaty was written in what could best be described as "Missionary Maori".

It appears to us that the Maori signatories to the Treaty would have been in no doubt that they and the missionaries were agreed on what "rangatiratanga" meant. It was well known to both parties for its use in scripture and prayer, as in "kia tae mai tou

rangatiranga" or, "thy kingdom come", as appearing in the Lord's Prayer. "Rangatiratanga" and "mana" are inextricably related words. Rangatiratanga denotes the mana not only to possess what is yours, but to control and manage it in accordance with your own preferences.

We consider that the Maori text of the Treaty would have conveyed to Maori people that amongst other things they were to be protected not only in the possession of their fishing grounds, but in the mana to control them and then in accordance with their own customs and having regard to their own cultural preferences.

We consider that that is the proper interpretation to be given to the Treaty, because the Maori text is clearly persuasive in advancing that view, and because the English text, referring to a "full exclusive and undisturbed possession" also permits of it.

The promise to protect the Maori interest as so defined is apparent in the second article of the English text, ("Her Majesty the Queen of England confirms and guarantees . . . ") and in the preamble of both the English and Maori texts:

"Her Majesty . . . regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property . . . " and "Ko Wikitoria te Kuini o Ingarangi i tana mahara atawai ki nga Rangatiratanga me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga . . . "

That then was the exchange of gifts that the Treaty represented. The gift of the right to make laws, and the promise to do so so as to accord the Maori interest an appropriate priority.

10.3 Broad Aspects of the Treaty

As we have said the Treaty of Waitangi has been referred to as "The Maori Magna Carta" and as "the great Charter of Maori rights". It may well be so described but we consider that that is but one aspect of the Treaty's significance and that it has broader implications.

Governor Hobson's view of the broad implications is illustrated in his statement to each Maori signing the Treaty of Waitangi when he said "He iwi kotahi tatou" which has been translated as "We are now one people". At Waitangi on 6 February 1841 however the present Governor-General, Sir David Beattie was to say - "I am of the view that we are not one people, despite Hobson's oft-quoted words, nor should we try to be. We do not need to be."

The Treaty was an acknowledgement of Maori existence, of their prior occupation of the land and of an intent that the Maori presence would remain and be respected. It made us one country, but acknowledged that we were two people. It established the regime not for uni-culturalism, but for bi-culturalism. We do not consider that we need feel threatened by that, but rather that we should be proud of it, and learn to capitalise on this diversity as a positive way of improving our individual and collective performance.

The Treaty was also more than an affirmation of existing rights. It was not intended to merely fossilise a status quo, but to provide a direction for future growth and development. The broad and general nature of its words indicates that it was not intended as a finite contract but as the foundation for a developing social contract.

We consider then that the Treaty is capable of a measure of adaptation to meet new and changing circumstances provided there is a measure of consent and an adherence to its broad principles.

We do not therefore consider that both the Maori and the Crown should be so bound that both sides must regard all Maori fishing grounds as inviolate. In our view it is not inconsistent with the Treaty of Waitangi that the Crown and Maori people should agree upon a measure of compromise and change.

In particular, it is not inconsistent with the Treaty that the Te Atiawa hapu should accept a degree of pollution in respect of certain of their fishing grounds, on the basis that other grounds will not be spoilt.

Waitangi Tribunal, Department of Justice, Wellington.

Motunui Waitara Report

11 Findings:

11 Findings:

11. FINDINGS:

11.1 Findings of Fact

There can be no doubt from the evidence adduced before us, nor was it challenged, that the river and reefs referred to in this claim constitute significant and traditional fishing grounds of the Manukorihi, Otaraua and Ngati Rahiri Hapu of Te Atiawa, and that the traditional user of them has continued unbroken into modern times (refer paras 4.1-4.9).

It is also clearly established that the river, reefs and associated marine life suffer from various degrees of pollution, that those near to the mouth of the Waitara River in particular are badly polluted and stand to be polluted further, and that the local Maori people are prejudiced as a result (refer paras. 7.1-7.5).

It is also apparent that the Crown intends to construct an ocean outfall at Motunui, that this will result in the physical destruction of a part of a further reef, and that either further pollution will follow, or that there can be no guarantee that there will not be further pollution. The local hapu are particularly prejudiced by the fact that this is the last remaining reef of those hapu not seriously affected by pollution (refer para. 7.3).

11.2 Findings of Interpretation

We are of the opinion that the Treaty of Waitangi obliges the Crown to protect Maori people in the use of their fishing grounds to the fullest extent practicable, and to protect them especially from the consequences of the settlement and development of the land (refer para. 10.2).

As noted at 10.2 the promise to "protect" is provided for in the second article of the English text, and in the preamble to both the English and Maori texts. That any legal or moral responsibility of the Queen by virtue of a treaty with native peoples, is a responsibility of the Queen in right of the territorial government, and thus in this case, the New Zealand Government, is established in *Indian Association of Alberta v. Secretary of State for Commonwealth* (1982) 2 All ER 118.

The protection envisaged by the Treaty involves at one level the physical protection of the fishing grounds from abuse and deterioration as a result of pollution or destruction. At another level the protection envisaged by the Treaty involves recognising the rangatiratanga of the Maori people to both the use and the control of their fishing grounds in accordance with their own traditional culture and customs and any necessary modern extensions of them (refer para. 10.2).

We do not find that the 'exclusive' use envisaged by the second article of the English text of the Treaty, necessarily means that an exclusive user of Maori fishing grounds by the hapu most closely associated with them must in all cases be upheld. The position was seen this way by the Commissioner for the Environment, K W

Piddington:

"We have the reference to 'rangatiratanga' in the Maori version, as opposed to the concept of 'full exclusive and undisturbed possession' in the English. The latter carries with it the implied right to buy and sell, whereas the Maori cultural context requires a different reading. As far as the Maori text is concerned, I would relate the idea of "rangatiratanga" to the mores of a society which treated resources as collective rather than individual assets. There is a parallel here with much environmental thinking about the use of natural resources, thinking which is reflected in the earlier English concept of 'stewardship'. If the Maori version is to prevail, it is clear that the emphasis of the English version on 'possession' is misleading."

We interpret this part of the Treaty to mean that the mana of the Maori people to be able to control their own fishing grounds ought to be upheld. This includes a power to regulate and restrict both the use and the class of persons who may use. It does not follow however, that there must in all cases be an exclusive user but rather that that is a matter to be determined in consultation and negotiation with the hapu concerned. We noted (at 4.9) that in this case the Te Atiawa people do not seek an exclusive user. We consider that this approach would be followed by other tribal groups as well in circumstances where extensive reefs adjoin areas of major public habitation and that this approach is consistent with Maori customs and values.

11.3 Findings on jurisdiction

We find that the Manukorihi, Otaraua and Ngati Rahiri people are or are likely to be prejudicially affected by the pollution and threatened pollution of the river and their traditional reefs. We consider them to be "prejudicially affected" within the meaning to be given to those words in the Treaty of Waitangi Act in that they are restricted in the exercise or enjoyment of a customary practice envisaged by the Treaty in accordance with their own culture.

We find that the hapu are prejudicially affected -

(a) by the Acts and Regulations for the time being in force as referred to in Chapter 8 in that while the Crown has enacted a number of commendable measures for the protection of the fish resource and coastal environs, they give insufficient recognition and protection for Maori fishing grounds and the Maori interest therein;

(b) (i) by the policies or practices adopted by the Departments of State and other statutory bodies created by the Crown as referred to in Chapter 5 in that a priority is not given or is not able to be given by them to the Maori interest in fishing grounds over and above the general public interest;

(ii) by the practice of the Crown in omitting to make appropriate laws for the protection of Maori fishing grounds from pollution, and for the control of Maori fishing grounds by Maori people;

(c) by the proposal of the Crown to erect an ocean outfall at Motunui, and by the omission of the Crown to provide for an effluent disposal system for the Methanol project without first ensuring that Maori fishing grounds will not be affected.

For the reasons given at 11.2 we find that the Acts, regulations, policies and practices, acts and omissions above referred to are inconsistent with the principles of the Treaty of Waitangi.

Counsel for Ministry of Works and Development argued that we did not have jurisdiction to consider the matters complained of. He argued that the responsibility for planning for the protection of the rivers and coastal waters was vested in certain local authorities and statutory bodies, that the application of those measures to given

cases was vested again in independent statutory bodies and judicial tribunals, and that the pursuit of individual applications was a right and responsibility of private enterprises. He argued that the policies and practices of those bodies could not be policies or practices of the Crown, that those bodies were not agents of the Crown, and it was clear that by entrusting responsibility to those bodies, the Crown had divested itself of any legal responsibility.

In similar vein he argued that the provision of sewerage and other schemes was the responsibility of local authorities. Government involvement was limited to making money available to local authorities by way of subsidy and loan, but the initiative must come from the local authority, and the government could act only on a proposal before it.

There must be doubts as to the independence of the bodies referred to in the manner submitted. In an interlocutory decision of 27.4.82 in *R and D Roach Ltd v Waitara Borough and Taranaki Catchment Commission and Regional Water Board* for example Prichard J commented "... in terms of the Water and Soil Conservation Act 1967... the sole right to discharge sewage and industrial waste into any natural water is vested in the Crown (S.21) subject, however, to the right of the Crown acting through a Regional Water Board to confer on any person the right to discharge waste into any natural water in any particular situation and on such terms and conditions as the Regional Water Board may see fit to attach to the grant." (The underlining being our own.) That same argument may be extended to other areas, but we do not find it necessary to consider it. We consider that the approach urged by Counsel for Ministry of Works and Development may be appropriate for argument in an action before a Court of record where the applicant cannot question the propriety of laws but must bring his case within the framework of such laws that exist. We do not consider that to be a proper approach to a consideration of the jurisdiction of the Waitangi Tribunal as set out in the Treaty of Waitangi Act.

The Treaty represents the gift of the right to make laws in return for the promise to do so so as to acknowledge and protect the interests of the indigenous inhabitants. We see it is as our function to assist the Crown by offering an independent opinion on its responsibilities under the Treaty in the making of laws and policies.

It appears to us that in the performance of that function the legislature intended that we should be able to adopt a broad approach. It is not so much that we are constrained by existing laws and policies but rather that we are specifically empowered to examine them. The question for us is not so much whether the Crown has divested itself of a responsibility or has placed a responsibility on bodies that it has made independent, but whether the Crown ought to have divested itself of that responsibility, or whether the statutory parameters that it has prescribed for others in defining their responsibilities are adequate having regard to the terms of the Treaty. We accordingly prefer and adopt the submissions in rejoinder by Counsel for the Waitara Borough Council. He argued that we were bound to consider "the responsibility of the Crown outside of all these planning acts" and then to review the acts in the light of our findings.

Motunui Waitara Report

12 Recommendations

12 Recommendations

12. RECOMMENDATIONS

12.1 Broad approach and the relief sought

Section 6 (3) of the Treaty of Waitangi Act provides that we may recommend to the Crown that action be taken to compensate for or remove the prejudice complained of or to prevent other persons from being similarly affected in the future.

We have come to the conclusion that the Te Atiawa hapu are prejudicially affected (Chapter 11), and having regard to all the circumstances we consider several recommendations to be appropriate.

In making recommendations we have had regard to the long title and preamble to the Act which refer to the "practical application of the principles of the Treaty". We have been assisted to do this by the reasonable and practical approach taken by the Te Atiawa people themselves. At 4.9 and 11.3 we noted that while seeking a measure of protection and control for their reefs, the hapu concerned did not seek the exclusive use of them. Perhaps because of the extensive nature of the reefs, the hapu were concerned to consider the general public interest. This contrasted markedly with the submissions of others who gave no priority to the Maori interest in fishing grounds (Chapter 5), and with our interpretation of the Treaty of Waitangi that it establishes the right of Maori people to a priority of consideration that is not in fact given them (para. 10.2).

The Te Atiawa willingness to accommodate the national interest is apparent also in the particular relief proposed by them. While it was open to them to insist upon the protection of all their reefs, they accept limited discharges in one area at Waitara. We refer now to the Te Atiawa proposals in greater detail.

For some years now, and at hearings related to various projects, the local hapu have urged the provision of land based treatment plants. It has been urged in resolutions of the District Maori Women's Welfare League, the Taranaki Maori Trust Board, the Aotea District Maori Council and at tribal hui. It has also been urged by many of the local community. We were advised for example of a petition in 1982 by 2033 residents of Waitara and surrounding districts, seeking a full land based treatment plant to replace the ocean outfall at Waitara.

The local hapu are also opposed to a proliferation of outfalls. They are opposed because this threatens to spread pollution and it threatens the physical destruction of further parts of the reefs in the completion of the necessary works. They oppose the Motunui outfall for the added reason that the cost of it could be better used to assist the establishment of a better facility at Waitara. They would like to see Syngas, Clifton County Council and proposed industries combine with the Waitara Borough Council and its present users to complete a land based tertiary treatment plant. They do not urge one plant for the total region, but they do seek one plant for the Waitara district. As one witness from the local hapu stated "If the Motunui outfall is built parts

of our reefs will be destroyed by the blasting and because of the poisons will be tapu also . . . We cannot and will never accept another sea outfall on our coast. I stress these are the last remaining reefs belonging to our hapu."

During the course of our hearings, and on 19 October 1983, the local hapu was able to fine up on what they sought following a meeting with representatives of the Waitara Borough Council. Following that meeting they asked, that for now, the treated effluent from Syngas be directed through the Waitara Sewer outfall, to be followed eventually by "a land based treatment plant (tertiary) or any other suitable type of waste disposal through Waitara Borough Council." They considered that there should be one outfall to take not only the sewer effluent and trade wastes from the existing Waitara Borough Council users and Syngas, but from any new petrochemical plants to be established in the Waitara region.

They considered that any Development Fund levy on developers or any direct Crown funding should also go to assist in the financing of the appropriate plant.

We referred to the proposal to re-route the Syngas effluent at 9.3 and considered that the proposal had a measure of planning sense to commend it. We noted earlier that the support for the establishment of land based treatment plants indicated, amongst other things, an important cultural preference. We note that the particular proposal of the hapu does not mean that in the long term there should be no marine discharge. It proposes localising the discharge, and then only after tertiary treatment.

Tertiary treatment is more advanced than secondary treatment, and certainly much more advanced than the present primary treatment. It is also much more expensive, but as one witness for the hapu stated "we cannot accept any argument which promotes an inferior system as the best, simply because it is the cheapest."

In other respects we thought the hapu proposals did not go far enough. On the evidence before us it seemed that while a treatment plant for Waitara is necessary, this should be considered only on the basis that certain waste streams, and especially chemical waste streams, will be kept separate with a separate treatment for each including land disposal for certain industrial and chemical wastes, or with provision for such wastes to be removed on site. It seemed also that any marine discharge should not be in proximity to Maori fishing reefs and accordingly, the replacement rather than the repair of the Waitara outfall is necessary.

12.2 Recommendations affecting the Syngas project

As noted at 7.3 and 9.3 the Crown has adduced a number of good reasons for preferring a separate outfall at Motunui. We would not dispute the validity of those reasons insofar as they advance the interests of Syngas and provide an assurance that a work of national value and importance can proceed. We consider however, that it would be helpful for the Crown to give further weight to the interests of the local community and the local Maori people.

We consider that the national economic interests, local interests and the protection of the coastal environment are not irreconcilable. We consider that each of those interests can be advanced together, by better planning and co-ordination (as noted at 9.2) and by integrating the Syngas infrastructures into a co-ordinated development plan for the area (as noted at 9.3).

We were pleased to learn that the Crown is undertaking a further study of its effluent disposal options. In view of certain time limits, and in case that study cannot be completed in time, we urge that the Crown adopt the suggested proposal of discharging through the Waitara outfall as an interim measure.

Accordingly as a first step towards providing integrated planning in the local interest we recommend to the Minister of Energy -

That the proposal for an ocean outfall at Motunui be discontinued, and

That the Crown seek an interim arrangement with the Waitara Borough Council for the discharge of the Syngas effluent through the Council's outfall.

Having regard to the hapu divisions of the reefs and the terms of the Treaty of Waitangi we consider that the Motunui outfall should not be proceeded with whether or not an alternative outlet is available and whether or not an economic loss is thereby sustained.

We consider however that if it is necessary to secure an alternative outlet pending the completion of further study and planning, the Crown would be justified in securing that outlet by special legislation as an interim measure, until a longer term proposal can be worked out and agreed upon.

12.3 Recommendation for further planning

The re-routing of the Syngas effluent is but a first step towards achieving better planning and co-ordination in the interests of the local community and the protection of the coastal waters. We do not see that the protection of Maori fishing grounds and other renewable resources should necessarily prevent the exploitation of non-renewable resources and economic growth. We do consider however, that planning is necessary if both objectives are to be reconciled and achieved. As with all natural resources, the protection of Maori fishing grounds as envisaged in the Treaty involves much more than merely confronting specific problems as they arise. Active protection involves positive forward planning to guard against the creation of future problems. Future planning must begin with an acknowledgement of existing problems. We consider -

(1) That a new outfall for the Waitara Borough Council is required as a matter of urgency (refer 9.1). It needs to have a greater working capacity and preferably should be relocated. Greater consideration needs to be given however to the feasibility of an ocean outfall having regard to the constructional standards required in the light of known coastal characteristics, known engineering capabilities and costs.

Consideration needs to be given to how capital and maintenance costs should be apportioned amongst the various users and to the nature and extent of Crown assisted funding required having regard to any financial constraints upon the existing users (refer 7.1) and any shortfall necessary for the completion of the works.

(2) Any new outfall for Waitara must eventually be supplemented by a land based secondary or tertiary treatment plant. Further research is needed as to the most optimum form of plant. It is necessary to plan this in conjunction with plans for the separation of waste streams and the application of different forms of treatment, including land dispersal and/or the removal of certain effluents at plant sites, and the re-cycling of wastes. Cost-benefit analyses are also necessary in the selection of appropriate options (refer 9.1).

(3) Future industries need to be located together to maximise the most efficient and economical use of resources but on the basis that they can also pool resources for the provision of the most optimum of effluent disposal systems, in their collective interest, and the interest of the district. Further research is required in this area, and it is necessary for appropriate plans and strategies to be formulated (refer 7.2, 7.3, 9.1, 9.2, 9.3).

(4) There is a need for better maritime and regional planning. The present lack of

planning is a major constraint in the assessment of individual proposals and we have doubts that in all the circumstances appropriate planning can be undertaken and resolved with sufficient expedition solely through the Regional Planning Committee of the Taranaki United Council (refer 5.6 and 9.2).

(5) There is a need for several agencies and organisations to be brought together for greater co-ordination of their efforts in both the planning for and actual provision of appropriate infrastructures for the area (refer 9.2).

(6) The extent of Crown involvement in the region requires a review of the extent and nature of Crown assistance in the planning, construction and funding of appropriate infrastructures (refer 9.2).

(7) It is not desirable to have ocean outfalls in proximity to shellfish beds. It is desirable that a body, and we would suggest the Taranaki Catchment Commission, should be commissioned to define existing Maori fishing grounds in North Taranaki in consultation with the District Maori Council, and to study the effect of existing outfalls on them. Nor is it desirable that there be discharges into the Waitara River (refer 9.1).

(8) The exigencies are such that special legislative provisions may be necessary. Future planning and the resolution of existing problems will require much further research and study (refer for example, 9.1.5). It is our view that having regard to the wide ranging nature of the problems, that study should be undertaken by an inter disciplinary team, and through the agency of a body that is able to draw together the various interested parties, and that is able, not only to bring down plans, but to facilitate the practical implementation of specific proposals.

We consider that the situation in North Taranaki calls for urgent measures (refer 9.2). Accordingly -

We recommend the establishment of a Regional Planning and Co-ordinating Task Force under the aegis of the Ministers of Energy and Works and Development with the broad function of proposing medium term plans for development in the region and making recommendations for the provision of infrastructures and ancillary services commensurate with projected growth, and with the particular function of addressing and making recommendations on the matters that we have raised in 1-8 above.

We envisage that the Task Force would be small, comprised of say three expert persons, but with authority to meet in consultation with a number of agencies and to commission reports and research from them.

Amongst such others as it may think fit, the Task Force should act in consultation and concert with the Taranaki United Council, the Taranaki Catchment Commission and Regional Water Board, the Waitara Borough Council, Borthwicks, the Secretary of Energy, the Ministry of Works and Development, the Department of Health and the Commission for the Environment and should call for joint consultations.

12.4 Recommendations for the statutory recognition and protection of Maori fishing grounds

We have to this point been concerned with the identification and resolution of specific problems arising from developments in the area and from the unsatisfactory nature of the Waitara Borough outfall. Planning measures will not adequately resolve the problem in the long term however, without concurrent recognition being given to Maori fishing grounds in planning and other legislation, to ensure their future protection (refer para. 8.7).

The lack of legislative recognition for Maori fishing grounds is in our view

inconsistent with the Treaty of Waitangi (refer 10.2).

At first glance there appear to be two approaches to the legislative recognition of Maori fishing grounds. One is to provide specifically for Maori fishing ground areas to be reserved, and to provide particularly for the protection of those reserves in planning and related legislation. This presumes that Maori people will come forward to lay claim to particular areas. We think it unrealistic to presume that this would be done in all cases.

The other approach is to provide generally for the protection of Maori fishing grounds in planning legislation without specific provision for their reservation, but this would not enable local hapu to exercise a measure of control in respect of fishing grounds of particular significance.

There is however a third alternative, and it commends itself to us, to provide generally for Maori fishing grounds and to provide specifically for certain of those fishing grounds of particular significance to be formally reserved.

We do not consider that the formal reservation of Maori fishing grounds should be entrusted to any department of state or agency with a predominant commitment to the general public interest. Rather, we consider that that function should pass to the Maori Land Court, but with provision for interested departments of state, and statutory agencies such as the local authorities and Catchment Commissions, to be notified of proposed applications for Maori fishing ground reserves, and to be heard.

Accordingly we recommend that provisions be made for the recognition and protection of Maori fishing grounds in:

The Maori Affairs Act 1953

The Fisheries Act 1908 (including the provisions for controlled fisheries)

The Maritime Reserves Act 1971

The Maritime Farming Act 1971

The Marine Pollution Act 1974

The Health Act 1956

The Water and Soil Conservation Act 1967 and

The Town and Country Planning Act 1977 (including the provisions for Maritime Planning areas)

and any similar legislation.

(During the course of our inquiry the Fisheries bill and the Marine Reserves Bills were referred to. We do not consider it appropriate that we should comment upon Bills before the House except upon formal reference to us under Section 8 of the Treaty of Waitangi Act, but to the extent that those Bills may fail to give recognition to Maori fishing grounds, it also ought to be the subject of the review hereinafter proposed.)

We recommend that provision be made in the Maori Affairs Act 1953 that the Maori Land Court may upon application recommend the gazetting of Maori Fishing Ground Reservations in respect of fishing grounds of particular significance to local hapu. In so doing the Court shall appoint trustees upon terms of trust empowering them to make regulations for their management and control of the reservations within parameters set by the Court. Provision should be made that notice of any such application shall be given to the Department of Agriculture and Fisheries, the Local Authority and any United or Regional Council and the local Catchment Commission and Water Board, so that they may be heard on all matters relating to the creation of the reservation, the appointment of trustees and the extent of their powers of regulation. There should be a right of appeal against any decision of the Court.

It would be appropriate to the Treaty of Waitangi if the formal creation of Maori Fishing Ground Reservations were to be effected by the Governor-General by Order in Council on the recommendation of the Court.

Provision should also be made for the definition of such reservations by survey effected through the Department of Lands and Survey.

Other legislative provisions appear to us to place unnecessary constraints on planning authorities in the protection of the environment generally, and thus of the seafood and freshwater resources of significance to Maori people (refer paras 8.7 and 9.2).

Legislative amendments appear necessary:

(a) To apply the provisions of Section 3 and Section 102 of the Town and Country Planning Act to any area in respect of which a Maritime Plan does not exist, and to extend the provisions of Section 3 (1) (g) to include Maori fishing grounds. (It should be made clear that those provisions cover applications to discharge effluent by ocean outfall pipelines). Our reasons for so recommending were given at 8.7.

(b) To empower Regional Water Boards to impose conditions or adopt practices enabling them to control the method of waste disposal. At present the Boards can do no more than set standards and enforce them when there is a breach. It is left to the developer to endeavour to attain those standards. We consider it important that the Boards' overview should be extended to a consideration of whether a particular proposed treatment facility will suffice.

(c) To enable Regional Water Boards to instigate variation procedures to existing water rights in recognition of changing circumstances. At present water rights issue for a fixed term and the current legislation does not enable the Boards to instigate variation procedures. An amendment should be made in recognition of the regional implications of rapid growth and the difficulties involved when discharge and other rights cannot be integrated with the grant of new rights.

We referred at 4.8 and 10.1 to certain anomalies that in our view call for further amendments. In particular we recommend:

(a) An amendment to the Fisheries (General) Regulations 1950 to enable the harvesting of paua under 125 mm from the Te Atiawa reefs and to enable special licences to issue for the taking of shell fish on the occasion of a tangi on the authority of only a Maori Community Officer, a Fisheries Inspector, or an elected representative to the New Zealand Maori Council where either a Community Officer or a Fisheries Inspector are not readily available.

(b) An amendment to the Maori text of the Treaty of Waitangi in the First Schedule to the Treaty of Waitangi Act 1975 to correct obvious errors.

Accordingly -

we recommend the establishment of an inter-departmental committee under the direction of the Minister of Maori Affairs comprised of representatives from the Department of Maori Affairs, the Minister of Agriculture and Fisheries, the Ministry of Works and Development, the Department of Health and the Department of Lands and Survey to draft amending legislation to provide for the reservation and control of significant Maori fishing grounds, for the recognition of Maori fishing grounds in general regulatory and planning legislation, to improve existing provisions for the assessment and control of particular work projects, and to effect certain miscellaneous amendments, in accordance with our proposals as given above.

We consider that the Committee should act in consultation with the New Zealand Maori Council on amendments providing for the creation and recognition of Maori fishing grounds, and the taking of shellfish for tangi and hui.

12.5 Compensation and Costs

Section 6 (3) of the Treaty of Waitangi Act enables us to "recommend to the Crown that action be taken to compensate for or remove the prejudice..."

In this case the Te Atiawa people have not sought compensation. Counsel for the Te Atiawa claimants did refer however to the "financial sacrifices" that the hapu have made in presenting their claim to us. During the course of our inquiry we noted that members of the hapu have been involved in other inquiries too in order to advance their case. This has involved appearances at the hearings related to the New Plymouth water rights application (about four days), the Petralgas application (about four weeks), the Syngas proposals (about seven weeks) and as appellants before the Court of Appeal in Wellington. These hearings have required a number of hui of the people and the preparation of evidence and submissions. Certain individuals, like Aila Taylor who is a butcher at the local freezing works, have had to take much time off work. It was obvious that the hapu had conducted extensive researches and done considerable work to present their case to us. The presentation of that case in fact took one week. We were impressed by the thoroughness of their work, and the restrained and dignified manner in which their case was presented.

The hapu also intend to be involved in the Waitara outfall hearing this year.

We have no authority to award costs or to make recommendations with regard thereto, but we would consider appropriate, an ex gratia payment by the Crown to Aila Taylor as representative of the hapu, for their efforts to protect that which in our view the Treaty guaranteed a protection.

We are grateful to the several Departments of State and statutory bodies or agencies that attended each day of our sittings to make extensive submissions and to assist considerably in our inquiries. We mention in particular the considerable assistance provided by the Taranaki Catchment Commission and Regional Water Board which has also been involved in extensive litigation and proceedings before other Tribunals in the performance of its statutory functions. The number of proceedings results largely from the growth in the area of new industries of national importance and we consider that this has placed an undue burden upon it. Its costs in appearing before us have been properly assessed at over \$20,000.

Owing to a pending Court action against it, the Waitara Borough Council was unable to present evidence to us, but we were ably assisted by counsel for the Borough. He attended each day of our sittings and made extensive submissions. He also sought a measure of agreement with the local hapu during the course of proceedings, and although that attracted some criticism, we considered his actions entirely appropriate to our inquiry where consultation and new understandings between different interest groups is important in seeking practical solutions to the sorts of problems that must confront us.

We consider that the consequences of national growth should be apportioned equitably on a national and a local basis. They should not result in an oppressive charge or levy on local people. We think it appropriate that the Crown should consider contributing to the legal costs of the Taranaki Catchment Commission and Waitara Borough Council in their appearances before this Tribunal.

12.6 Dispatch of this report

In accordance with Section 6 (5) of the Treaty of Waitangi Act 1975 the Registrar is directed to serve a sealed copy of this report containing our findings and

recommendations on

(a) The claimant, Aila Taylor and for the Te Atiawa people, S. Raumati, chairman of the Manukorihi Marae Trustees, R. Bailey, chairman of the Aotea District Maori Council and R. A. Muggeridge (Counsel).

(b) The Minister of Maori Affairs;

The Minister of Energy;

The Minister of Works and Development;

The Minister of Agriculture and Fisheries;

The Minister of Health and

The Minister for the Environment.

(c) The Secretaries for the Departments of State responsible to the above ministers and the Commissioner for the Environment;

The Waitara Borough Council and its Counsel Mr Bornholdt;

The Taranaki Catchment Commission and Regional Water Board and its Counsel Mr Somerville;

The Taranaki United Council;

Borthwicks C.W.S. Limited and its Counsel Mr Camp;

Petralgas New Zealand Limited and its Counsel Mr Boon;

Synthetic Fuels Corporation of New Zealand Limited and its Counsel Mr Holm;

F White for the Taranaki Clean Sea Action Inc.;

B Allison for the Taranaki Values Party;

C Jury for the Waitara Surfriders Club;

The Secretary for the New Zealand Maori Council; and

The Chief Registrar of the Maori Land Court.

In conclusion we pay tribute to the people of Manukorihi Marae for their hospitality in catering for the Tribunal and for those who attended our proceedings.

DATED at Wellington this 17th day of March 1983

Waitangi Tribunal, Department of Justice, Wellington.

Motunui Waitara Report

A1 Appendix I

A1 Appendix I

A1 APPENDIX I

THE ORIGINAL CLAIM

IN THE MATTER of the Treaty of Waitangi Act, 1975

AND

IN THE MATTER of a claim by Manukorihi and Atariawa Hapus of Te Atiawa Tribe

TO: THE WAITANGI TRIBUNAL

I, AILA TAYLOR of Waitara, member of Te Atiawa Tribe, claim the tribe to be prejudicially affected by the policy or practice adopted by or on behalf of the Crown which results in failure to properly control discharge of sewage and industrial waste into the sea between New Plymouth and Waitara such policy or practice being inconsistent with the principles of the Treaty of Waitangi in that it has in particular adversely affected fishing grounds known as Tauanga, Te Puna, Titi Rangi and Orapa Reefs belonging to Manukorihi, Otaraua and Ngati Rahiri Hapus and is causing and will continue to cause irreversible damage to a larger area of sea bed on which the Te Atiawa Tribe relies as a source of food thereby depriving the Te Atiawa Tribe of the full exclusive and undisturbed possession of fisheries which it desires to retain as confirmed and guaranteed to it by the Crown.

DATE: "2 June 1981"

FOR AND ON BEHALF OF TE ATIWA TRIBE

"A. Taylor"

.....

AILA TAYLOR

Waitangi Tribunal, Department of Justice, Wellington.

Motunui Waitara Report

A2 Appendix II

A2 Appendix II

A2 APPENDIX II

FURTHER PARTICULARS OF CLAIM

IN THE MATTER of the Treaty of Waitangi Act, 1975

AND

IN THE MATTER of a claim by Te Atiawa Tribe and its Manukorihi Otaraua and Ngati Rahiri and other Hapus

I, AILA TAYLOR of Waitara, member of and authorised spokesman for Te Atiawa Tribe say as follows: -

1. HAPUS OF TE ATIWA TRIBE both before and since the Treaty of Waitangi have enjoyed the full exclusive and undisturbed possession of their respective fisheries including those offshore and beyond low water mark along the Taranaki Coast and it is their wish and desire to retain the same in their possession.
2. PARTICULAR fishing grounds affected are Tauanga, Te Puna, Titi Rangi and Orapa reefs belonging to Manukorihi, Otaraua and Ngati Rahiri Hapus.
3. TE ATIWA TRIBE relies on its fisheries as a source of food.
4. THE Taranaki Catchment Commission by order dated 6/12/73 gave the Waitara Borough Council as a local authority constituted under the Local Government Act, 1974 the right for a period of ten years to discharge preliminary treated sewage and industrial waste into the sea off the Waitara River at a point approximately 1200 metres off shore subject inter alia to the following conditions.
 - (a) The discharge is to conform to class SE standards and any portion of the discharge that should reach the beaches must meet the classification SB or such higher classifications when the coastal waters are classified by the Water Resources Council in due course.
 - (b) In the event of the discharge or any portion of it not meeting the above classification then steps must be taken to give primary treatment to the discharge to ensure the classification is met and the Commission requires land to be reserved for a future Waste Water Treatment Plan site.
 - (c) Monitoring of the discharge from the outlet to and including the beaches as required from time to time by the Commission shall be carried out by the Waitara Borough Council and result supplied to the Commission as and when requested the full cost to be carried by the Council.
5. A series of tests carried out by both the Taranaki Catchment Commission and the Health Department has now established that pollution off the area of the Waitara River mouth and extending along a considerable area of the coastline on either side is to a level in excess of that permitted by the Commission.

6. SUCH tests have also established that bacterial contamination of shellfish exceeds the American Federal Drug Administration quality standards and renders them unfit for human consumption.
7. PETRO Chemical industries being established near Waitara have obtained approval for the discharge of industrial waste and sewage into the same area of the sea as is already polluted by the Waitara Outfall and the position in the absence of proper supervision is therefore likely to deteriorate.
8. TE ATIWA TRIBE claims that the policy or practice adopted on behalf of the Crown by its Agencies including the Taranaki Catchment Commission and the Health Department prejudicially affects its rights to its fisheries and is inconsistent with the principles of the Treaty of Waitangi.
9. TE ATIWA TRIBE requests that the Treaty of Waitangi Tribunal inquire into and make such recommendations as it may consider appropriate to remove the prejudice it complains of and to prevent other persons from being similarly affected in the future.

"A. Taylor 18/3/82"

.....
AILA TAYLOR

Waitangi Tribunal, Department of Justice, Wellington.

Motunui Waitara Report

A3 Appendix III

A3 Appendix III

A3 APPENDIX III

INDIVIDUAL NOTICES DESPATCHED TO -

The Applicant
New Zealand Synthetic Fuels Corp. Ltd
Petralgas Chemicals NZ Ltd
Borthwicks C.W.S. Ltd

The Minister of National Development and Energy
The Director-General of Health
The Ministry of Works and Development
The Department of Agriculture and Fisheries
The Department of Maori Affairs, Wellington

The Commissioner for the Environment

Taranaki Catchment Commission and Regional Water Board
Taranaki Harbour Board
Taranaki United Council
New Plymouth City Council
Waitara Borough Council
Clifton County Council

Environment and Conservation Organisation of New Zealand Inc.
Environmental Defence Society Inc.
North Taranaki Environment Protection Association
Taranaki Clean Sea Action Group Inc.
Waitara Fisherman's Association
Taranaki Branch, Values Party

Professor S. M. Mead, Maori Studies Section, Victoria University of Wellington
Professor H. Kawharu, Maori Studies Section, Massey University
Dr R. Mahuta, Maori Research Section, Waikato University
Dr P. Hohepa, Anthropology Department, Auckland University
Mr D. Williams, Senior Lecturer in Law, Auckland University
The Secretary, New Zealand Maori Council, Wellington
The Editor, Tu Tangata magazine, C/- Department of Maori Affairs, Wellington

Motunui Waitara Report

A4 Appendix IV

A4 Appendix IV

A4 APPENDIX IV

SUBMISSIONS AND EVIDENCE RECEIVED

This is a list in order of appearances of those persons who presented evidence and submissions before the Tribunal over the period of three sitting weeks.

* marks those persons who did not appear but lodged written submissions.

** marks those persons who appeared in each sitting and presented additional submissions or evidence.

*** marks those persons who gave submissions and called evidence.

WEEK OF 5 JULY 1982

Te Atiawa Tribe - Aila Taylor
- Ngawhakaheke Wetere
- Moke Couch
- Joe Tukapua
- Ray Watemburg

**Ministry of Agriculture and Fisheries. - Harold Thatcher

Te Atiawa Tribe - Fiona Clarke
- Ray Watemburg **
- Ted Maha
- Charles Bailey
- Vera Bezams **
- Milton Hohaia **
- Aila Taylor
- Sally Karena **
- Myra Tippins
- Sue Watson
- Kevin Morrell
- Dr David Lyall

North Taranaki Environment
Protection
Association - Dr
Ben Grey

Department of Health - Dr John Reid

New Plymouth City Council - Ian Dudding(watching brief only)

Te Atiawa Tribe - P. A. Muggeridge ***

WEEK OF 18 OCTOBER 1982

**Commission for the
Environment - S. Kenderdine ***
- K. Piddington *
- Prof. M. Loutit

Taranaki Catchment
Commission - R. Somerville ***
- J. V. Douglas
- F. M. Power
- W. E. Boyfield
- F. M. Patrick
- B.G. Chamberlain
- M. A. Patchett

Minister of Works &
Development - John Gallen ***
- K. J. Thompson
- D. R. Cameron
- C. W. Mills
Taranaki United Council - John Hutchings

On own behalf - Huirangi Waikerepuru

On own behalf - Sally Karena **

WEEK OF 22 NOVEMBER 1982

**Minister of Agriculture &
Fisheries - H. Gajadhar ***
- C. Little
- B. Cunningham

Taranaki Values Party - B. Allison

Petralgas N.Z. Ltd - B. Boon

**Commission for Environment
- H. Rigg-Hughes
- C. D. Douglas
- S. Kenderdine ***

Taranaki Clean Sea Action Inc.

- F. White
- A. Foley
- M. Wood
- R. Watemburg

Waitara Surfriders Club

- C. Jury

Department of Health

- O. Smuts-Kennedy ***
- Dr. C. Collins
- D. Till
- Dr J. Reid **

Borthwicks C.W.S. Ltd

- C. Stavens ***
- P. Mahoney

Ministry of Works and
Development - J. Gallen

Synthetic Fuels Corporation

- M. Holm

Minister of Energy - W. Falconer

Taranaki Catchment

Commission - J. Douglas **

- R. Neals
- R. Somerville ***

**

Waitara Borough Concil - B. Bornholdt

On own behalf - S. Te Waru

Department of Maori Affairs

- W. Dewes

On own behalf - Hikaia Amohia

On own behalf - Titi Tihu

Te Atiawa Tribe - R. Muggeridge **

- M. Hohaia **

On own behalf - Vera Bezams **

On own behalf - S. Karena **

In addition written submissions or commentaries were received, without appearance, from: -

District Judge, W. J. M. Treadwell, Chairman, No. 2 Division, Planning Tribunal

Professor S. M. Mead (Victoria University of Wellington)

Deputy Registrar, Maori Land Court, Wanganui (Acquisition of Maori land for Petro-chemical sites)

David V. Williams (University of Auckland)

J. H. Rapaea of New Plymouth

E. R. Tamati of Bell Block, New Plymouth

LIST OF REPORTS OF THE WAITANGI TRIBUNAL

Wai-1 Fishing Rights (Hawke) March 1978

Wai-2 Waiau Pa Power Station February 1978

Wai-4 Kaituna River November 1984

Wai-6 Motunui-Waitara March 1983

Wai-8 Manukau July 1986

Wai-9 Orakei November 1987

Wai-10 Waiheke Island June 1987

Wai-11 Te Reo Maori April 1986

Wai-12 Motiti Island May 1985

Wai-15 Fishing Rights (Te Weehi) May 1987

Wai-17 Mangonui Sewerage August 1988

Wai-18 Fishing Rights (Lake Taupo) October 1986 Wai-19 Maori 'Privilege' May 1985

Wai-22 Muriwhenua Fishing June 1988

Wai-25 Maori Representation (ARA) December 1986

AVAILABLE FROM:

Waitangi Tribunal
Department of Justice
Wellington
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Government Print
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