

## CHAPTER 3

### THE HAURAKI GULF MARINE PARK ACT 2000

In his opening submissions, counsel for the Wai 728 claimants, Grant Powell, made it clear that this was a ‘specific and discrete claim’ which involved ‘the content of the Hauraki Gulf Marine Park Act 2000’.\* Claimant submissions are considered in chapters 4 and 5. In this chapter, we provide a summary of the provisions of the Act that are significant in the Wai 728 claim.

\* Document A2, para 1

#### 3.1 THE PREAMBLE

The lengthy preamble to the Hauraki Gulf Marine Park Act 2000 outlines the many factors that contributed to a need for legislation providing for the coordinated management of the Hauraki Gulf:

(1) The Hauraki Gulf has a quality and diversity of biology and landscape that makes it outstanding within New Zealand. The islands of the Gulf are valued as the habitats of plants and animals, once common, now rare, and are often the only places in the world where these species exist naturally:

(2) On some islands natural ecosystems remain intact while other islands have ecosystems that are evolving rapidly or are islands that provide opportunities for habitat restoration. A diverse marine environment extends from the deep ocean to bays, inlets, and harbours off the coastline and the shallow sea and broad intertidal flats of the Firth of Thames:

(3) The Hauraki Gulf has a rich history of human settlement and use. The Gulf is one of the earliest places of human settlement in New Zealand and for generations supported and was home to tangata whenua. While tangata whenua have no single name for the Gulf, the names Tikapa Moana and Te Moananui a Toi are recognised as referring to the Gulf. Auckland, the first seat of government, is also on its shore. Along the shores of the Gulf the changing culture and technologies can be traced through places like the pa, kain-ga, and garden sites of antiquity on every island, driving dams, copper and gold mines, whaling stations, timber mills, industrial sites, and grand and ordinary homes:

(4) The Treaty of Waitangi was signed by tangata whenua of the Hauraki Gulf both at Waitangi and on the shores of the Gulf. The Treaty provides guarantees to both the Crown and tangata whenua and forms a basis for the protection, use, and management of the Gulf, its islands, and catchments. The Treaty continues to underpin the relationship between the Crown and tangata whenua. The assembled tribes of the Hauraki Gulf reaffirmed its importance to them in a statement from a hui at Motutapu Island, 14–15 November 1992 (**The Motutapu Accord**):

(5) The hinterland of the Gulf is intensively developed and settled. Its shores contain New Zealand's largest metropolitan area and extensive tracts of productive farm land. The coastal waters are of great importance to commerce in New Zealand. The Gulf contains the Port of Auckland, many smaller ports, and marinas. The Gulf is lived in and worked in, and is used for marine commerce, commercial fishing, and harbour and gulf transport. The Gulf is economically important:

(6) People use the Gulf for recreation and for the sustenance of human health, well-being, and spirit. The natural amenity of the Gulf provides a sense of belonging for many New Zealanders and for them it is an essential touchstone with nature, the natural world, and the marine environment of an island nation:

(7) The Gulf, its islands, and catchments have complex interrelationships that need to be well understood and managed. Many improvements have been made in the administration of statutory jurisdictions in the Gulf, the exercise of individual and collective responsibility, and stewardship of the Gulf. But the need for co-operation, and the need for integrated management, recognised in the establishment by local authorities of the Hauraki Gulf Forum, by Auckland City of 'Vision Hauraki', by tangata whenua in the Motutapu Accord, and by the Government in establishing in 1967 the Hauraki Gulf Maritime Park, still remains. The Gulf must be managed in a manner that crosses territorial jurisdictions, crosses land and water boundaries, and crosses cultures and that respects both conservation and development needs.

### 3.2 THE PURPOSE OF THE ACT

In section 3 of the Act, the complex set of factors outlined in the preamble have been incorporated in a brief statement of purpose:

**3. Purpose**—The purpose of this Act is to—

- (a) integrate the management of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments:
- (b) establish the Hauraki Gulf Marine Park:

- (c) establish objectives for the management of the Hauraki Gulf, its islands, and catchments:
- (d) recognise the historic, traditional, cultural, and spiritual relationship of the tangata whenua with the Hauraki Gulf and its islands:
- (e) establish the Hauraki Gulf Forum.

The interpretation of terms used in the Act is set out in section 4, and section 5 states ‘This Act binds the Crown’.

The Act is divided into several parts: part 1 – ‘Management of Hauraki Gulf’; part 2 – ‘Hauraki Gulf Forum’; part 3 – ‘Hauraki Gulf Marine Park’; and part 4 – ‘Miscellaneous’.

### 3.3 THE TREATY OF WAITANGI

In section 6(1), there is a general provision that the management of the Hauraki Gulf Marine Park ‘must be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)’. However, there are qualifications in section 6(2) which provide that this provision does not apply to any area of the park that is foreshore, seabed, private land, taiapure-local fishery, or mataitai. In section 6(3), the Hauraki Gulf Forum is required, when carrying out its functions under part 2 of the Act, to ‘have regard to the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)’. In section 6(4), reference is made to the statutes listed in schedule 1 (21 Acts are there listed) and provides that nothing in the Act ‘limits, affects, or extends the obligations’ set out in those statutes and that ‘those obligations must be fulfilled in accordance with those Acts’. The provisions of section 6 were argued by Wai 728 counsel to be inadequate, and this issue is reviewed in chapter 4.

### 3.4 THE MANAGEMENT OF THE HAURAKI GULF

Part 1 of the Act – comprising sections 7 to 14 – is concerned with the management of the Hauraki Gulf and the relationship of the Act with other statutes. In section 7, the national significance of the Hauraki Gulf is recognised:

**7. Recognition of national significance of Hauraki Gulf**—(1) The interrelationship between the Hauraki Gulf, its islands, and catchments and the ability of that interrelationship to sustain the life-supporting capacity of the environment of the Hauraki Gulf and its islands are matters of national significance.

(2) The life-supporting capacity of the environment of the Gulf and its islands includes the capacity—

- (a) to provide for—
  - (i) the historic, traditional, cultural, and spiritual relationship of the tangata whenua of the Gulf with the Gulf and its islands; and
  - (ii) the social, economic, recreational, and cultural well-being of people and communities;
- (b) to use the resources of the Gulf by the people and communities of the Gulf and New Zealand for economic activities and recreation;
- (c) to maintain the soil, air, water, and ecosystems of the Gulf.

The provisions of section 8 recognise that these qualities of the Hauraki Gulf must be protected, maintained, and, where appropriate, enhanced. In section 9, the Act's relationship with the Resource Management Act 1991 is set out, requiring regional and territorial authorities to comply with the provisions of sections 7 and 8 of the Hauraki Gulf Marine Park Act in regional and district plans, policy statements, and resource consent processes. In section 10, the provisions of sections 7 and 8 are to 'be treated as a New Zealand coastal policy statement issued under the Resource Management Act'. In sections 11 and 12, the policy provisions of sections 7 and 8 are related to the Conservation Act 1987 (and to the statutes listed in the first schedule to that Act) and the Fisheries Act 1996.

Provision is made in section 14 to preserve existing rights and title to the foreshore, seabed, land, and natural resources within the Hauraki Gulf. The claim of ownership of the foreshore and seabed is a significant component of the Wai 728 claim, and this provision is reviewed in more detail in chapter 4.

### 3.5 THE HAURAKI GULF FORUM

Part 2 of the Hauraki Gulf Marine Park Act 2000 sets out in sections 15 to 31 the provisions governing a body called the Hauraki Gulf Forum. This body should not be confused with earlier informal groups referred to in chapter 2 which also called themselves the Hauraki Gulf Forum. For the purposes of this report, all following references to the forum mean the body defined in part 2 of the Hauraki Gulf Marine Park Act 2000.

The purposes of the Hauraki Gulf Forum are set out in section 15:

- 15. Purposes of Forum**—The Forum has the following purposes:
- (a) to integrate the management and, where appropriate, to promote the conservation and management in a sustainable manner, of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments, for the benefit and enjoyment of the people and communities of the Gulf and New Zealand;

- (b) to facilitate communication, co-operation, and co-ordination on matters relating to the statutory functions of the constituent parties in relation to the Hauraki Gulf, its islands, and catchments, and the Forum:
- (c) to recognise the historic, traditional, cultural, and spiritual relationship of tangata whenua with the Hauraki Gulf, its islands, and, where appropriate, its catchments.

Representation on the Hauraki Gulf Forum is set out in section 16(2):

- (2) The Forum consists of the following representatives:
  - (a) 1 representative appointed by the Minister [of Conservation]:
  - (b) 1 representative appointed by the Minister of Fisheries:
  - (c) 1 representative appointed by the Minister of Maori Affairs:
  - (d) 1 representative appointed by each of the following local authorities:
    - (i) Auckland City Council:
    - (ii) Auckland Regional Council:
    - (iii) Franklin District Council:
    - (iv) Hauraki District Council:
    - (v) Manukau City Council:
    - (vi) Matamata–Piako District Council:
    - (vii) North Shore City Council:
    - (viii) Rodney District Council:
    - (ix) Thames–Coromandel District Council:
    - (x) Waikato District Council:
    - (xi) Waikato Regional Council:
    - (xii) Waitakere City Council:
  - (e) 6 representatives of the tangata whenua of the Hauraki Gulf and its islands appointed by the Minister, after consultation with the tangata whenua and the Minister of Maori Affairs:
  - (f) 2 further representatives appointed by the Auckland Regional Council.

The local authority areas are shown in map 2.

The issue of Maori representation on the Hauraki Gulf Forum is another significant component of the Wai 728 claim. There are six tangata whenua representatives and one person appointed by the Minister of Maori Affairs, making a total of seven representing Maori interests out of a total of 21 voting members. The two additional members appointed by the Auckland Regional Authority under section 16(2)(f) do not have voting rights. The local authority members are all elected in accordance with the Local Government Act 1974 and represent the whole population of their constituent areas. The question of tangata whenua representation is reviewed in chapter 5.

The functions of the Hauraki Gulf Forum are set out in section 17:

**17. Functions of Forum**—(1) To promote sections 7 and 8, the Forum has the following functions in relation to the Hauraki Gulf, its islands, and catchments:

- (a) to prepare a list of strategic issues, determine a priority for action on each issue, and regularly review that list:
- (b) to facilitate and encourage co-ordinated financial planning, where possible, by the constituent parties:
- (c) to obtain, share, and monitor information on the state of the natural and physical resources:
- (d) to receive reports on the completion and implementation of deeds of recognition:
- (e) to require and receive reports from constituent parties on the development and implementation of policies and strategies to address the issues identified under paragraph (a):
- (f) to receive reports from the tangata whenua of the Hauraki Gulf on the development and implementation of iwi management or development plans:
- (g) to prepare and publish, once every 3 years, a report on the state of the environment in the Hauraki Gulf, including information on progress towards integrated management and responses to the issues identified in accordance with paragraph (a):
- (h) to promote and advocate the integrated management and, where appropriate, the sustainable management of the Hauraki Gulf, its islands, and catchments:
- (i) to encourage, share, co-ordinate where appropriate, and disseminate educational and promotional material:
- (j) to liaise with, and receive reports from, persons and groups having an interest in the Hauraki Gulf and business and community interests to promote an interest in the purposes of the Forum:
- (k) to commission research into matters relating to the functions of the Forum.

(2) When carrying out its functions under subsection (1), the Forum must have particular regard to the historic, traditional, cultural, and spiritual relationship of tangata whenua with the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments.

The powers of the forum are set out in section 18 and are defined as ‘the powers that are reasonably necessary to carry out its functions’. They include the power:

- (a) to consider issues related to [the forum’s] purpose; and
- (b) to receive reports from constituent parties; and
- (c) to make recommendations to constituent parties; and
- (d) to advise any person who requests the Forum’s advice; and
- (e) to commission or undertake those activities that are necessary to achieve [the forum’s] purpose.



Map 2: Local authority areas

The forum must not appear before a court or tribunal except as a witness or take part in any statutory decision-making process other than advise when requested to do so. The Hauraki Gulf Forum therefore has a coordinating and advisory role in the management of

the Hauraki Gulf. It has no statutory powers to make decisions, and the Act clearly leaves those powers with the constituent Government departments and local authorities operating under various other statutes.

The remaining sections of part 2 of the Hauraki Gulf Marine Park Act (ss19–31) are mainly concerned with administrative matters. The Auckland Regional Authority is responsible for maintaining forum records (s27), and certain obligations of constituent members, including that of sharing the costs, are set out. However, section 19(3) states: ‘Administrative and servicing costs are not payable by constituent parties who are tangata whenua representatives’. In section 20 are set out provisions for sharing the costs of any activity that a majority of the members may agree to undertake, but, in section 20(1)(b), tangata whenua are excluded from any obligation to pay for such an activity. This provision, and the provisions of section 29 concerning the making of payments to tangata whenua representatives (for attending meetings, for travel costs, and for related communication and consultation costs), were raised by Wai 728 counsel as matters that were contested by the claimants. The issue of the costs of tangata whenua participation in the Hauraki Gulf Forum is discussed in chapter 5.

### 3.6 THE HAURAKI GULF MARINE PARK

Part 3 of the Hauraki Gulf Marine Park Act sets out various provisions for the administration of the park (ss 32–43) and for the recognition of a ‘tangata whenua statement of relationship’ in a ‘deed of recognition’ (ss 44–48).

The purposes of the Hauraki Gulf Marine Park are set out in section 32. They are:

- (a) to recognise and protect in perpetuity the international and national significance of the land and the natural and historic resources within the Park:
- (b) to protect in perpetuity and for the benefit, use, and enjoyment of the people and communities of the Gulf and New Zealand, the natural and historic resources of the Park including scenery, ecological systems, or natural features that are so beautiful, unique, or scientifically important to be of national significance, for their intrinsic worth:
- (c) to recognise and have particular regard to the historic, traditional, cultural, and spiritual relationship of tangata whenua with the Hauraki Gulf, its islands and coastal areas, and the natural and historic resources of the Park:
- (d) to sustain the life-supporting capacity of the soil, air, water, and ecosystems of the Gulf in the Park.

In section 33(1), the park is established, and section 33(2) lists what it consists of:

- (a) all conservation areas, wildlife refuges, wildlife sanctuaries, reserves, marine mammal sanctuaries, and marine reserves held, managed, or administered by the Crown from time to time in accordance with the Conservation Act 1987 or any Act in the First Schedule of that Act within the Hauraki Gulf, its islands, and coastal area:
- (b) any reserve controlled and managed from time to time by an administering body (whether or not that administering body is a local authority) under an appointment to control and manage made in accordance with the Reserves Act 1977 or any corresponding former Act, within the Hauraki Gulf, its islands, and coastal area:
- (c) all foreshore and seabed that is land owned by the Crown within the Hauraki Gulf other than foreshore or seabed held for defence purposes:
- (d) all seawater within the Hauraki Gulf:
- (e) all land of the Crown in the Hauraki Gulf, within a wetland approved by the Minister of Foreign Affairs and notified to the Bureau of the Convention on Wetlands of International Importance done at Ramsar on 2 February 1971:
- (f) all land included in the Park in accordance with section 34 or section 35:
- (g) all mataitai reserves and taiapure-local fisheries included in the Park in accordance with section 36.

In sections 34 and 35, provisions for the inclusion in the park of other public lands and private lands are set out, and section 36 provides for certain fisheries. In section 33(3), the status of seawater is clarified:

- (3) The inclusion of seawater in the Hauraki Gulf Marine Park is to give effect to the purposes of the Park and does not—
  - (a) give the Crown or any other person ownership of seawater; or
  - (b) affect the responsibilities of a regional council in the coastal marine area.

In section 37(3), provision is made for land areas in the park to be 'held, managed, or administered in accordance with the Conservation Act 1987, or any Act in the First Schedule of that Act, if any of those Acts applies to that land'. The Department of Conservation is therefore responsible for the management and administration of areas of public land in the park within its jurisdiction, but in section 37(2)(c) the Act does not otherwise change the ownership or management of areas of the land, foreshore, seabed, or waters of the Hauraki Gulf. In sections 38 to 41 are set out provisions for the removal of lands or fisheries from the park.

**3.7 DEEDS OF RECOGNITION**

The Crown or a local authority may acknowledge any historic, cultural, and spiritual relationship of tangata whenua of the Hauraki Gulf with any land, foreshore, or seabed in the park under a deed of recognition. The deed must also identify specific opportunities for contribution by tangata whenua to the management of the stated area. However, that deed may not relate to any water or any private land included in the park (s 44).

Deeds of recognition do not affect the exercise of any power over that land and, under section 46(b), ‘must not be taken into account by any person in the exercise of any power or the carrying out of any function or duty under any Act, regulation, or bylaw’. A deed is a form of acknowledgement of the existence of a relationship tangata whenua have with a particular place for a specific reason, but it does not override other statutory provisions. A deed’s existence should not give any greater or lesser weight to a statement of relationship of tangata whenua to an area and does not affect the rights of any other person, and it is not in any way to be considered an estate (s 46(c)–(e)). The usefulness of deeds of recognition was questioned by the claimants, and this issue is discussed in chapter 4.