

CHAPTER 6

CONCLUSIONS

The Tribunal acknowledges the considerable area of agreement between the claimants and the Crown on the need to enhance preservation and protection of the Hauraki Gulf. There is also agreement that a forum, where tangata whenua and territorial authorities can regularly meet to monitor the development of the park and formulate policy, is a sound idea. The Tribunal accepts that the iwi represented by the Hauraki Maori Trust Board are tangata whenua of Tikapa Moana. However, the physical boundaries of the park are greater than the rohe of Hauraki iwi represented by the board and include other groups who equally can claim to be tangata whenua of the park. As part of its Treaty obligations, the Crown must include those tangata whenua in the Hauraki Gulf Forum, and it has done so.

Toko Renata Te Taniwha told the Tribunal:

We have understood that the protection of Tikapa Moana's environment is a major concern of the Crown and can therefore not understand why the Crown and tangata whenua cannot work in partnership to protect what is clearly a mutual concern.*

* Document A3, para 17

The Hauraki Maori Trust Board has sought to delay implementation of the Hauraki Gulf Marine Park Act 2000 until the issue of Maori customary rights in the foreshore and seabed has been resolved. This is an issue of wider national significance which cannot be resolved in an Act of local significance. It is also an issue currently before the courts in other jurisdictions.

At a wider level the Crown's role in coordinating and facilitating conservation activities through the Hauraki Gulf Marine Park Act is generally consistent with the Tribunal's findings on conservation policy in the Ngawha and Whanganui River reports. The Tribunal acknowledges that the Crown must recognise the kaitiakitanga of tangata whenua. Kaitiakitanga is a dynamic concept and needs to be defined in terms relevant to the physical and social environment of the day. Both the claimants and the Crown have noted that the Hauraki Gulf Marine Park Act expands the kaitiaki role over previous practice. While the claimants argue that this is insufficient, this Tribunal would like to see how it works in practice. This has not been possible so far because of the reluctance of Hauraki Maori to attend initial forum meetings. Claimants have also been concerned about the level of funding available for consultation. The Tribunal has no particular difficulty with the regime set out

in the Act but notes that all parties will need to negotiate to determine the appropriate funding.

In conclusion, the Tribunal does not see any fundamental Treaty breach in the legislation per se. There is basic agreement between the parties that there is a need for protection of the Hauraki Gulf environment, and the marine park is an effective way of working toward that goal. The Hauraki Gulf Forum will operate efficiently only if the tangata whenua, territorial authorities, and other representatives develop a positive relationship based on goodwill. The principle that the Treaty established a partnership whereby both partners had a duty to act reasonably and in good faith was agreed to by all five members of the Court of Appeal in the *Lands* case. The president of that court, Sir Robin Cooke, stated that:

the duty to act reasonably and in the utmost good faith is not one-sided. For their part the Maori people have undertaken a duty of loyalty to the Queen, full acceptance of her Government through her responsible ministers, and reasonable co-operation.*

New Zealand Maori Council v Attorney-General [1987] 1 NZLR 641, 663 (CA) (the *Lands* case) *

We make no specific findings, because we are not convinced that Hauraki iwi have been prejudiced by the passing of the Hauraki Gulf Marine Park Act 2000. We would encourage all parties to focus on what they agree on: the need for the Hauraki Gulf environment to be protected for future generations. This is the spirit and intention of the Act, which provides a framework for all parties to work together towards this common goal.