

## CHAPTER 5

### THE HAURAKI GULF FORUM

The establishment and operation of the Hauraki Gulf Forum is provided for in part 2 of the Hauraki Gulf Marine Park Act 2000. The intention was to provide for a representative advisory body to coordinate the management of the Hauraki Gulf. The last sentence of the preamble to the Act states:

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.

During the hearing of the Wai 728 claim, two principal issues emerged relating to the Hauraki Gulf Forum: tangata whenua representation and the payment of the costs of tangata whenua participation in forum activities. These two issues are reviewed in this chapter, and we briefly comment on the proposal for a 'logo' for the park.

#### 5.1 TANGATA WHENUA REPRESENTATION

The membership of the Hauraki Gulf Forum is set out in section 16 of the Hauraki Gulf Marine Park Act and consists of three Government-appointed representatives, one each appointed by the Ministers of Fisheries, Conservation, and Maori Affairs; one representative of each of the 12 regional and territorial authorities; six tangata whenua representatives; and two further non-voting representatives appointed by the Auckland Regional Council. The focus of submissions by the claimants was on the perceived inadequacy of having only six tangata whenua representatives.

While the appointment of tangata whenua representatives is made under the Act, the Minister of Conservation had to establish a procedure, and this proved controversial. What follows is a brief description of the process, as explained in Dr Campbell's evidence.\* The appointment of the tangata whenua representatives was done through nominations by established Maori groups, particularly those organisations that had contributed to the discussions and negotiations leading up to the passing of the Act. The Hauraki Maori Trust Board was one of these groups, but it had insisted that only the Hauraki board and

\* Document B1, paras 245–256

## 5.1.1

the Ngati Wai Trust Board should be represented. The Hauraki board specifically denied that Ngati Whatua had any right to representation. On 1 May 2000, the Minister formally wrote to the Ngati Paoa Whanau Trust Board, the Ngati Wai Trust Board (representing Ngati Wai and Ngati Rehua), the Ngai Tai ki Tamaki Trust, the Kawerau a Maki Trust, Ngati Whatua o Orakei, and Te Wai o Hua seeking advice and nominations for the appointment of representatives. Dr Campbell stated that 14 nominations were received representing 19 groups of tangata whenua. The Minister decided to provide for the widest possible representation over time from all the groups within the marine park's boundaries. To facilitate this representation, the Minister decided, first, to appoint alternatives to cover any absences and, secondly, to 'stagger' the length of the appointments, so that not all of them terminated in the same year. Using these procedures, it was possible to appoint 11 people to the forum over a three-year period. This attempt to respond to the Hauraki Maori Trust Board's wishes fell short of the five members the trust board had insisted on. These issues coloured the inaugural meeting of the forum. The Hauraki representatives did not attend that meeting, although they did attend a second one.

## 5.1.1 Claimant submissions

Claimant counsel submitted that the level of Maori representation on the Hauraki Gulf Forum was inadequate. Of the 23 forum members (including two non-voting Auckland Regional Council representatives), only six were from tangata whenua, and only three of the six were representatives of the 12 Hauraki iwi represented by the Hauraki Maori Trust Board. Counsel submitted that this level of representation does not equate with Treaty partnership, particularly when claimants are 'arguably the owner' of the foreshore and seabed. Claimant counsel submitted that, even if iwi are unsuccessful in their application before the Maori Land Court, the Crown ought, in terms of the Treaty, to protect Maori involvement in matters which affect the area because the Crown has never extinguished Maori rights to that area with the consent of the iwi.

The claimants further submitted that equal representation was the minimum requirement for a Treaty partnership. It was not clear in this submission whether representatives should be only from iwi represented by the Hauraki Maori Trust Board or whether there should be representatives of other groups.\* However, the board had earlier indicated that Ngati Wai were acknowledged but not other groups in the Auckland area. In closing submissions, Wai 728 counsel suggested that, in the ratio of 15 Crown or statutory voting members to six tangata whenua representatives, Maori could be out-voted and argued strongly for equal representation on the forum:

There should be one tangata whenua representative for every Crown/Statutory delegate member. Given that the Forum has no actual powers to manage Tikapa Moana, but

Document A2, paras 29–31 \*

instead has a planning and co-ordinating role, equal representation will not mean that tangata whenua gain control but it will ensure that they can play an active and prominent part in determining policy and the Hauraki Gulf Forum can become a blueprint for a Treaty partnership in practice.\*

\* Document c2, para 56

### 5.1.2 Crown submissions

Crown counsel submitted that the establishment and recognition of the Hauraki Gulf Forum was an important element of the Act. A forum was originally established in 1997 by the Auckland Regional Council (three members), Environment Waikato, and nine district and city councils (one member each). Representatives of the Ministers of Fisheries and Maori Affairs were invited to join the original body, which was a committee of the Auckland Regional Council. Under section 22 of the Hauraki Gulf Marine Park Act 2000, the forum is treated as a 'special joint committee' under section 114s of the Local Government Act 1974.

The purpose of the forum is to 'integrate the management' of the Hauraki Gulf, its islands, and its catchment areas. There is a particular requirement set out in section 17(2) of the Act that, when carrying out its functions, the forum 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'. Crown counsel made the point that the forum has no particular management or policy responsibilities and that the constituent parties, other than tangata whenua, have those responsibilities under other legislation. Crown counsel also submitted that the fact that there is no overarching body for the management of the Hauraki Gulf underlined the point that the forum's role is to integrate and facilitate, rather than usurp, the management role of its constituent local authorities.†

† Document B4, paras 31–33

Crown counsel submitted that the number of tangata whenua members 'chosen for their ability to represent tangata whenua interests' was reasonable when set alongside the constituent local authority and Crown members who had statutory functions and given the tasks the forum was expected to perform under the Act:

The relationships developed on the Forum will be important and will enhance the capacity of tangata whenua to have effective involvement in the democratic and statutory processes affecting the Gulf. The representatives of the Minister and local authorities are not there as a block vote, they are there to represent particular interests.‡

‡ Document c3, para 85

Counsel also referred to the *Coal* case, which acknowledged that partnership did not mean a 50:50 split of 'every asset or resource in which Maori have some justifiable claim', and suggested that this was also appropriate in the context of the Hauraki Gulf Forum.§

§ *Tainui Maori Trust Board v Attorney-General* [1989] 2 NZLR 513 (CA) (the *Coal* case); doc c3, para 84

**5.2 COSTS OF TANGATA WHENUA PARTICIPATION**

Claimant counsel was critical of how the Hauraki Gulf Marine Park Act appears to constrain action by the forum: first, by the requirement that any activity must be agreed to by a majority of representatives and, secondly, by the requirement that one or more of the territorial authorities – but not tangata whenua – must agree in advance to fund any proposal.\* The claimants’ position was that section 20 of the Act makes it very difficult for tangata whenua to initiate activity.

There was some disagreement between Crown and claimant counsel as to whether tangata whenua representatives could choose to fund activities. The provisions of section 20 are:

**20. Costs of other activities**—(1) The Forum may undertake an activity under section 18(2)(e) if—

- (a) a majority of the representatives agrees to undertake the activity; and
- (b) one or more of the constituent parties (other than tangata whenua representatives) agree in advance to pay the costs of the activity.

(2) If the costs of an activity are not agreed in advance, the Forum must not proceed with the activity.

(3) Section 18(3) does not affect the powers of a constituent party to take proceedings and, in particular, does not affect the powers of a constituent party to enforce an agreement made in accordance with subsection (1).

(4) This section does not apply to the administrative and servicing functions in section 19.

The provisions of section 18(3) restrict the forum to appearing only as a witness in any proceedings before a court or tribunal and to participating only in an advisory capacity in any statutory decision-making process. The provisions of section 19 require the costs of administration and servicing to be shared equally among the constituent parties, unless otherwise agreed, but section 19(3) states that such costs are not payable by tangata whenua representatives.

Counsel for Wai 728 submitted that ‘the effect of section 20 is that it will be difficult for tangata whenua to initiate an activity’, even when ‘tangata whenua choose to pay the costs’.<sup>†</sup> The Crown countered with the submission that the intention of these provisions was ‘the Crown’s desire to promote tangata whenua representation and participation on an equal basis with other constituent parties’ and also to ensure that ‘tangata whenua were not disadvantaged’ by the lack of resources that would be available to other representative members of the forum.<sup>‡</sup> In a list of interpolations and corrections made to his closing submissions, a document submitted after the last hearing, Crown counsel conceded that it was likely that, if ‘the interpretation of “constituent parties” in s20(1)(b) does preclude the Forum from undertaking the activity that tangata whenua wish to fund, that is an

unintended effect of the drafting and should be amended’.\* This issue needs to be clarified, possibly by an amendment to the Act. However, there is nothing in the Act to prevent tangata whenua from taking the initiative and persuading the local authority and Crown members of the forum to fund a particular activity or investigation.

\* Document D2, para 35

Crown counsel also drew attention to section 29 of the Act, which provided ‘innovative funding for tangata whenua representatives over and above the levels normally permitted to Crown appointees on Boards’. Again, the intention was ‘to place the tangata whenua representatives in a similar position to other Forum members’.† The provisions of section 29 are:

† Document C3, para 39

**29. Payment of tangata whenua**—(1) The Minister must pay to tangata whenua representatives on the Forum, from any appropriation by Parliament for this purpose,—

- (a) remuneration by way of allowances, travelling allowances, and travelling expenses in accordance with the Fees and Travelling Allowances Act 1951; and
- (b) after agreement between the Minister and tangata whenua representatives, made before any costs are incurred, actual and reasonable communication costs and consultation costs incurred in the course of their work as tangata whenua representatives on the Forum.

(2) If there is no agreement between the Minister and tangata whenua representatives under subsection (1)(b), the Minister may make such payment to tangata whenua representatives as the Minister considers appropriate in the circumstances.

(3) The provisions of the Fees and Travelling Allowances Act 1951 apply to any payment made under subsection (1)(a).

Counsel for Wai 728 made no comment on these provisions in his closing submissions.

### 5.3 THE HAURAKI GULF FORUM ‘LOGO’

One of the grievances outlined in the amended statement of claim was that a ‘logo’ had been proposed for the Hauraki Gulf Forum ‘without consultation with, and which is offensive to, Hauraki iwi’.§ In opening submissions, Crown counsel suggested that this was a non-issue:

‡ Claim 1.1(b), para 10.2 (see app 1)

The ‘Logo’ or branding exercise was originally a concept put together for the proposed Marine Park. The Minister of Conservation [the Honourable Sandra Lee] made it clear to her officials that it would not proceed unless tangata whenua endorsed the idea and consultation with tangata whenua was undertaken.¶

§ Document B4, para 67

Counsel also referred to the Crown evidence of Marilyn Fullam, of the Auckland office of the Department of Conservation, who indicated that it was the then Minister of

Conservation, the Honourable Dr Nick Smith, not the Hauraki Gulf Forum, who had ‘initiated a process with a creative design consultant’ in 1999. The Minister had already asked Department of Conservation staff to consult with tangata whenua on this issue, and to discuss proposed legislation, and Ms Fullam was involved with this. Progress on the design of a logo was halted when the Hauraki Maori Trust Board refused to have anything to do with it, although other tangata whenua representatives involved were happy with the concept.\* In closing submissions, Wai 728 counsel commented that he was ‘pleased to note the Crown’s submission that the logo concept was effectively parked’.† The issue may be revisited at some future date in the Hauraki Gulf Forum, but the Tribunal sees no need to comment on this matter.

Document B2, paras 32–41 \*

Document C2, para 51 †

#### 5.4 TRIBUNAL COMMENT

The provision of parks and the coordination of environmental management are legitimate functions of modern governments. Environmental management must include the maintenance of kaitiakitanga. This is given expression in section 17(2) of the Hauraki Gulf Marine Park Act 2000, where ‘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 Hauraki Gulf Marine Park includes Crown land, land administered by local authorities, and, at least potentially, private land – on the initiative and with the agreement of the owner. The focus on providing information that can influence policy should help achieve the objective of protecting the gulf, a responsibility which is shared by Maori and the Crown.

That the kaitiaki role is a vital one is unquestioned, and a significant part of its expression lies in ensuring that the park’s management policy is consistent with these values. It is also important that tangata whenua be closely involved in the administration of areas of cultural significance within the park, irrespective of the ownership of those sites. The multiple territorial authorities that are mainly responsible for the administration of the environmental legislation are required to develop a positive relationship with the tangata whenua at this forum.

The Tribunal has been asked to consider making a recommendation for the equal representation of Hauraki iwi with territorial authorities and governmental appointees. The Tribunal has already noted that those who have tangata whenua status in the park are a considerably wider group than the iwi represented by the Hauraki Maori Trust Board and that it would be a breach of the Treaty if these other groups were not also recognised. The Tribunal also thinks that the lengthy arguments put to us on the make-up of the board were ultimately not very helpful. Here is an opportunity for close cooperation between

tangata whenua and local authorities. It is also noted that, in section 22(4) of the Act, the forum is empowered to 'appoint such subcommittees as it considers appropriate'.

The forum is not a governing body of a park and neither is it a local authority, although it could well become influential in how the area of the Hauraki Gulf Marine Park is administered and how territorial authorities make resource consent decisions. The forum is an advisory body only, but it could also act as a facilitator and promote communication among the various decision-makers. Territorial authorities have considerable responsibilities to tangata whenua under the Hauraki Gulf Marine Park Act, and these responsibilities can be carried out only as long as there is regular communication between all the groups. The Tribunal does not see any obvious Maori or local authority groupings that would necessarily vote on any strict 'party' lines. If this were to develop, then much of the intention of the legislation would be subverted. It would also seem that there are considerable benefits in having a body to coordinate the efforts of territorial authorities to consult with tangata whenua. Therefore, the creation of a forum where tangata whenua and elected local body representatives can meet regularly is to be welcomed. While tangata whenua are intimately involved in the activities of the forum, they are not burdened with funding responsibilities, which fall instead on the ratepayers of the territorial authorities. Crown funding of tangata whenua consultation with the various groups in the Hauraki Gulf is to be welcomed.

