

## CHAPTER 2

### THE EVOLUTION OF THE HAURAKI GULF MARINE PARK

#### 2.1 INTRODUCTION

The concept of a Hauraki Gulf marine park evolved in the 1960s and was given status in the Hauraki Gulf Maritime Park Act 1967, which set up the Hauraki Gulf Maritime Park Board. This Act was repealed in 1990 by the Conservation Law Reform Act 1990, which also moved the board's functions to the Department of Conservation. During the 1990s, there were moves to establish a management strategy for the Hauraki Gulf that coordinated the activities of the Department of Conservation, the Auckland Regional Council, and the various local territorial authorities with interests in the gulf. In reviewing the developments leading up to the passing of the Hauraki Gulf Marine Park Act 2000, the Tribunal has relied in this chapter on the evidence of Dr Graeme Campbell and the comprehensive set of documents attached to his evidence.\* Dr Campbell was in a unique position to review events through the 1990s, having served as the Auckland regional conservator for the Department of Conservation from 1989 to 1995 and as the corporate adviser (strategic policy) in the Wellington head office of the department between February 1995 and September 1996. From December 1996, he was employed as a conservation adviser in the parliamentary office of the Honourable Dr Nick Smith, the Minister of Conservation, and, from December 1999 to June 2000, he had the same role in the office of the Minister's successor, the Honourable Sandra Lee.

\* Documents B1, B1(a)–(f)

#### 2.2 THE HAURAKI GULF MARITIME PARK, 1967–90

In 1967, the Hauraki Gulf Maritime Park was established under the Hauraki Gulf Maritime Park Act 1967 to preserve and protect the island reserves in the Hauraki Gulf north to the Poor Knights Islands. The reserved areas were expanded by the addition of other Crown land (eg, Titiritiri Matangi, North Head, Cuvier, Burges, etc), by giftings (eg, the Aldermen Islands), or by purchases (eg, Mansion House on Kawau Island). The Hauraki Gulf Maritime Park Board approved a management plan in 1982 that integrated nature conservation, historic heritage management, public recreation, and farming. The board pioneered work on island pest destruction and habitat restoration.

The Conservation Law Reform Act 1990 gave effect to the then government's policy of reducing the very large number of environmental and conservation quangos. The Hauraki Gulf Maritime Park Board was abolished and its establishing legislation repealed. In 1990, the Department of Conservation took over the operation of the park. There was considerable local opposition to the abolition of the board, while the operational, and later policy, responsibilities for the gulf fell into three conservancies – Northland, Auckland, and Waikato – in the Department of Conservation.

### 2.3 A NEW PARK PROPOSAL

Allan Brewster, a member of the former Hauraki Gulf Maritime Park Board, had lobbied in the mid to late 1980s for a marine park in the inner gulf waters where all commercial fishing would be prohibited. His proposal failed, but the concept of a more substantial park was picked up by the Opposition. In a pre-election speech in 1990, the National Party spokesperson on conservation, Denis Marshall, announced that a National government would promote a 'complete marine park which would protect the natural, recreational and environmental values of the Gulf'.\* On 26 November 1991, Mr Marshall, by then the Minister of Conservation, asked officials to provide a scoping paper on how best to implement the park proposal by July 1992. A month earlier, the Minister, with Cabinet approval, appointed a technical working party to draft a discussion paper on the options. The working party called for submissions and, although it received 764 responses and held 30 meetings, from the evidence provided by Dr Campbell, it 'failed to engage tangata whenua'<sup>†</sup> and this had serious consequences in the subsequent relationship.

Cited in doc B1, para 156 \*

Document B1, para 161 †

The working party recommended the establishment of a Hauraki Gulf marine park but cautioned that, before any public announcement, the proposal should be discussed with tangata whenua with interests in the Hauraki Gulf.

### 2.4 CONSULTATION WITH MAORI AND THE MOTUTAPU ACCORD

By the end of 1991, the Minister had received numerous representations about the need to have greater regard for tangata whenua interests, including nine written submissions from Maori. The Minister met with tangata whenua representatives in Auckland on 23 January 1992. These groups included iwi represented by the Hauraki Maori Trust Board, Ngati Paoa, Ngati Whatua, Ngati Wai, and Te Iwi o Wai-o-Hua. In general, tangata whenua groups wanted to prepare separate reports on the proposal. As a consequence, the Minister did not release the working party's report, although in June he gave that report

to tangata whenua to assist them in preparing submissions. Later, in response to public demand, the report was released to the public. In June 1992, the Minister established a caucus subcommittee to review the working party's recommendations. The subcommittee received 230 public submissions. The Department of Conservation made a submission identifying a number of principles, including 'that the interests and rights of tangata whenua under the Treaty of Waitangi must be recognised and provided for'.\*

\* Document B1, para 168

By August 1992, there had been no response from tangata whenua groups and the position of liaison officer was established by the Department of Conservation. In this role, Ngakete (Ron) Peters instituted hui with the Hauraki Maori Trust Board, Ngati Wai, Ngati Paoa, Ngati Whatua, the Huakina Development Trust (Tainui), and Whanau o Haunui. Payments ranging from \$1041 to \$5000 were made to five of the groups to facilitate the production of reports. Iwi endorsed the concept of a 'Hui-a-Iwi' to develop an overall policy on the park. The hui was held at the Department of Conservation's facility on Motutapu Island on 14 and 15 November 1992. Representatives of the Hauraki Maori Trust Board, Ngati Paoa, Ngati Whatua, Ngati Wai, and Te Iwi o Wai-o-Hua attended. The 'Motutapu Accord' ratified by the meeting is an assertion by tangata whenua of their ownership of this taonga and was the first modern instance where so many iwi of the wider Hauraki Gulf had met together.†

† A copy of the Motutapu Accord is at document B1(a)(1).

## 2.5 THE MINISTER MEETS WITH TANGATA WHENUA

On 2 December 1992, the Minister of Conservation met with 21 representatives of the five tangata whenua groups that had attended the Motutapu hui. He was presented with a copy of the Motutapu Accord and seven further reports from the groups. The Minister agreed to further meetings with the groups.

In the first half of 1993, the caucus committee continued its reporting. In July of that year, the Minister advised tangata whenua that prior to forming an opinion on the caucus report he wished to consult with them. A meeting took place on 8 August 1993 in which the Minister proposed to establish:

- ▶ a Hauraki Gulf marine park;
- ▶ a set of principles that would be binding on any authority undertaking statutory functions within the park but that would not conflict with the purposes of other legislation; and
- ▶ a three-person commission to carry out an advocacy and investigative role under the legislation (members, including one tangata whenua representative, were to be appointed by the Minister for the Environment).‡

‡ Document B1, para 181

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**2.6 AUCKLAND CITY COUNCIL : 'VISION HAURAKI'**

When the Minister put these proposals before Cabinet on 23 August 1993, Cabinet sought a report from officials, particularly on the precedent that might be set by a Hauraki Gulf marine park. Despite a modified proposal being put to the Minister, nothing was finalised before the 1993 election. When the reappointed Minister met with Auckland mayors and discussed the proposal in February 1994, there was considerable confusion about the Crown's intentions, and an intolerance of possible Government intervention, particularly any measure that would impose costs on local bodies. Meanwhile, Maori were still waiting for the Minister to get back to them.

Document B1, para 186 \*

Dr Campbell described this period as a 'comparative vacuum' in which Auckland City announced its 'Vision Hauraki' to provide leadership on conservation in the area.\* 'Vision Hauraki' served over the next five years to promote the environmental and heritage importance of the Hauraki Gulf. It engaged Pauline Kingi from Te Puni Kokiri to consult with iwi. Given the overlap of the two initiatives, it is not surprising that Maori were confused about the purposes of the consultation.

**2.7 THE AUCKLAND REGIONAL COUNCIL AND THE HAURAKI GULF FORUM**

In August 1995, Cabinet agreed that a Government Bill be drafted to establish a Hauraki Gulf marine park. The limited consultation with the mayors had indicated their lack of willingness to contribute to the costs, and the project stalled. Following the 1996 election of a National – New Zealand First government, the new Minister of Conservation, the Honourable Dr Nick Smith, announced his goal to pass the legislation within the term of that Government.

In April 1997, the Auckland Regional Council succeeded in negotiating with other councils to establish a collaborative group of local body and Crown representatives – to be known as the Hauraki Gulf Forum – to provide a mechanism for the coordinated management of the Hauraki Gulf. At the forum's first meeting in June 1997, which was attended by the Minister of Conservation, there was considerable discussion of and commitment to consultation with iwi in the management of the proposed Hauraki Gulf marine park. A hui was held with tangata whenua on 13 October 1997 and reported on in a meeting in February 1998.

**2.8 THE MINISTER MEETS WITH TANGATA WHENUA**

The Minister of Conservation met with tangata whenua for initial discussions on a draft Bill in several meetings in July 1997 at Paeroa, Orakei, Pakiri, and Pukekohe.

The Minister later attended a separate hui with Hauraki Maori in December 1997 at Kauaeranga, in which he made it clear that the marine park proposal would not deal with issues of ownership or compromise the proper prosecution of claims through the Waitangi Tribunal or the courts. At a general meeting with tangata whenua representatives at Ericsson Stadium on 3 March 1998, the Hauraki Maori Trust Board representatives rejected the proposal, partly because, at this stage, it still seemed vague and they were reluctant to be seen to be committed to a proposal that might be changed. The trust board considered that the proposed Hauraki Gulf marine park should be left until after the Maori Land Court had determined an application for the ownership of the foreshore and seabed that had been lodged in late January 1998. It was only after a further meeting between the Minister and the former chief executive of the Hauraki Maori Trust Board, Josie Anderson, that there was sufficient good will for Hauraki Maori to involve themselves in consultation on a draft Bill.

On 20 July 1998, the Minister of Conservation received advice from the Waitangi Tribunal that it had received a claim by Toko Renata Te Taniwha on behalf of the Hauraki Maori Trust Board and that the claim had been registered as the Tikapa Moana (Hauraki Gulf) National Marine Park claim (Wai 728).

#### **2.9 THE TANGATA WHENUA WORKING PARTY**

The Minister of Conservation wrote to tangata whenua groups on 10 August 1998 to update them on the progress made in developing policy on how to achieve their representation in the Hauraki Gulf Forum and seeking their advice on the options previously canvassed. On 2 November 1998, Cabinet approved the draft Bill and released it for discussion. The Minister's private secretary, Dr Campbell, wrote to all tangata whenua groups on 30 August 1998 on the Minister's behalf and invited them to send representatives to a working party to study and make recommendations on the draft Bill. The working party met on six occasions during November 1998. The Hauraki Maori Trust Board iwi were represented by Harry Mikaere and Paul Majurey, and there were three other Maori members, one each from Ngati Wai, Ngati Whatua, and Ngai Tai. They were advised by lawyers from Auckland firms Walters Williams and Russell McVeagh. The Department of Conservation met all travel and related costs, as well as the costs of tangata whenua legal advice. The three Crown representatives included Dr Campbell, representing the Minister of Conservation, and Marilyn Fullam of the Auckland office of the Department of Conservation, who also gave evidence before the Tribunal in this claim.

Changes were made to the draft Bill as a consequence of the working party's recommendations. They included the following:

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- ▶ the long title was revised to include recognition of the historical, traditional, cultural, and spiritual relationship of tangata whenua with the Hauraki Gulf and its islands;
- ▶ a new clause was inserted recognising the Treaty and providing that nothing in the Act would affect the obligations of any person under any Act in respect of the principles of the Treaty, and secondly, specifically to require the Hauraki Gulf Forum to have regard to Treaty principles;
- ▶ references to an 'association' of tangata whenua with the land were replaced with references to a 'relationship';
- ▶ the heading of a clause (now section 14) was changed from referring to the Crown's ownership of the land and natural resources to the preservation of existing rights; and
- ▶ the number of tangata whenua representatives on the forum was increased from three to four.

**2.10 THE HAURAKI GULF MARINE PARK BILL IN THE HOUSE**

The Hauraki Gulf Marine Park Bill was given its first and second reading and referred to the Transport and Environment Committee on 24 November 1998. The select committee called for submissions, and 150, including some from tangata whenua, were received. At a meeting with tangata whenua on 14 June 1999, issues relating to the Treaty clause, the clause relating to the preservation of rights, and the deeds of recognition remained controversial. The committee recommended that the Bill be amended to include provision for the payment to tangata whenua of the costs of communication and consultation in addition to their attendance and travel costs. The Department of Conservation's recommendations included an increase in tangata whenua representatives from four to six, and this was done.

After the Bill was reported back to the House in July 1999, the Minister attempted to consult with all interests expressing concerns. The Minister or senior officials met with the Hauraki Maori Trust Board (10 August), the Auckland Regional Council-initiated Hauraki Gulf Forum (11 August), and the Ngati Wai Trust Board's legal adviser (25 August), and attended public meetings at Clevedon (11 August) and Thames, Whangamata, and Whitianga (12 August), where tangata whenua were present.

At the meeting with the Hauraki Maori Trust Board, there was further discussion and explanation of the intent of the clause concerning the national significance of the Hauraki Gulf, the preservation of existing rights, representation on the Hauraki Gulf Forum, and the provisions for deeds of recognition in the Bill. At a meeting with Ngati Wai, the impact of the Bill on commercial and customary fishing was clarified.

A new government was formed in mid-December 1999 and the Honourable Sandra Lee was appointed Minister of Conservation. In the speech from the throne, the Governor-General indicated that the Government intended to pass the modified Hauraki Gulf marine park legislation in the near future. From mid-January, there were three rounds of intensive negotiation regarding:

- ▶ the transfer of Department of Defence land (HMNZS *Tamaki* reserve) to the park;
- ▶ the administration of the new Hauraki Gulf Forum requiring consultation with local authorities; and
- ▶ Hauraki iwi concerns arising from earlier tangata whenua consultation.

On 9 February, the Cabinet Policy Committee approved a supplementary order paper covering changes in the areas mentioned above.

On 10 February 2000, the Hauraki Maori Trust Board, some Hauraki Maori, and Hauraki member of Parliament John Tamihere raised objections to clauses relating to the Treaty and tangata whenua representation on the forum, the provisions for the payment of the costs of consultation and the costs of tangata whenua representatives, and the provisions relating to deeds of recognition. Representations on these matters were also made by Te Runanga o Iwi o Ngati Tamatera, the Ngati Hei Trust, and Jeanette Fitzsimons, the member of Parliament for Coromandel. Cabinet approved the changes suggested in the supplementary order paper on 14 February 2000 and noted that further amendments had been proposed. The matters raised by tangata whenua were referred to in the Labour and Alliance caucuses on 15 February. These concerns were further referred to the Minister of Conservation and the Minister in Charge of Treaty of Waitangi Negotiations. The Ministers decided that the proposed changes had policy implications wider than the Hauraki Gulf Marine Park and that to include them might pre-empt wider policy discussion and Treaty policy development. The Attorney-General (who was also the Minister in Charge of Treaty of Waitangi Negotiations) advised that she had embarked on a programme of consultation and policy development in relation to the foreshore and seabed. Both caucuses did agree to amend the reference in deeds of recognition from iwi to tangata whenua to allow hapu and whanau groups to be included.

Those changes were included, and the Act was passed on 23 February 2000 on a 104 to 15 vote. The Act received its royal assent on 27 February 2000 and immediately came into force. In the next chapter, we review the provisions of the Hauraki Gulf Marine Park Act 2000.

