INSIDE THE RESOURCE MANAGEMENT ACT

A TAINUI CASE STUDY

by

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ABSTRACT

Under the Resource Management Act (RMA) 1991 councils are required to promote the sustainable management of physical and natural resources within their respective areas. In carrying out their duties, councils are obliged to recognise and provide for the relationship of Māori with their culture, traditions, lands, waters and other taonga. They are also required to have regard to kaitiakitanga, and to take into account the principles of te Tiriti o Waitangi when making decisions.

This thesis focuses on the RMA experiences of Tainui, a hapū in Whaingaroa. It sets out to prove that in the last 19 years, since the enactment of the RMA, Waikato councils have failed to honour these obligations to Tainui. While the RMA specifically provides for Māori interests, in reality those interests are contested and eroded by decision makers who write and enforce rules which inequitably affect Māori relationships with land and other taonga.

The thesis engages multiple theories and methodologies including Kaupapa Māori, critical theory, autobiography, and a longitudinal case study to expose personal experiences that bring the realities of planning impacts on Tainui to life. The fact that Tainui has successfully appealed several council decisions to the Environment Court indicates that councils are failing to meet their obligations as laid out in the legislation.

ACKNOWLEDGMENTS

As a Māori, mother, grandmother, hapū advocate, full time lecturer and student I found it extremely difficult to manage time, fulfil whanau and hapū responsibilities, and complete this thesis. I could not have done it without the support of a number of people.

Thanks Dad for instilling in me the principles of mahi, manaaki and dedication to Te Ao Turoa. Thanks Mum for encouraging me to resist injustice and to question those whose actions adversely affect our current and future generations.

John and Robyn I applaud your patience, tolerance and unspoken support for my efforts to finish a journey I started four years ago. Your advice was needed and appreciated. Finding time to write in a different way, autobiographically, was challenging. I am not sure that I actually succeeded but I enjoyed grappling with ideas, and with trying to write in a way that would satisfy the academy, while at the same time satisfying the needs of my hapū to have research that is relevant, accessible and easily understood.

The three day writing retreat into a silent space at Whaingaroa allowed me to refocus and recall narratives hidden within the deepest recesses of my mind. Nga mihi nui kia koe Linda me nga kaimahi PVC Māori for the time out. The only negative was, I lost my USB stick and had to start again!

Pippa, Annette and Malibu thanks for your friendship, interest and encouragement to finish. I finally did it, a bit late, but I finished.

My last words are to my hoa rangatira Alan, and whanau especially Hautai and Aaron. Thanks for the meals, sound advice and willingness to help. As always I appreciate your unconditional support and love and dedicate this thesis to you all.

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Anors	and others
DOC	Department of Conservation
ENC	Environment Court
MfE	Ministry for the Environment
MFish	Ministry of Fisheries
MOU	Memorandum of Understanding
NZCPS	New Zealand coastal Policy Statement
Ors	others
PCE	Parliamentary Commissioner for the Environment
pers. comm	personal communication
RCB	Raglan Community Board
RMA	Resource Management Act 1991
TAMC	Tainui Awhiro Ngunguru te Po Ngunguru te Ao Management Committee
Tainui	Tainui (o Tainui ki Whaingaroa)
TVNZ	Television New Zealand
WDC	Waikato District Council
WRC	Waikato Regional Council (Environment Waikato)
www	worldwide web

PREFACE

I sit on my tribal land at Te Kopua, looking out to sea for inspiration,
Tama Te Ra shines down relentless, warming Papatuanuku,
Energizing her as she struggles to reinvigorate our parched land.
Whaingaroa our place where we stand proud,
We try hard to look after our whaea.
Tangaroa roars incessantly,
I enjoy the message I am hearing tonight,
He tells me it's going to rain,
A gift for the kumara and riwai we planted a month ago,
Our whaea will quench her thirst once again,
We live.
Ko wai ahau,
Kei te taha o toku whaea,
Ko Karioi te maunga,
Ko Whaingaroa te moana,
Ko Tainui te hapū,
Ko Tainui Awhiro, ngunguru i te po, ngunguru i te ao,[1]
Kei te taha o toku papa,
Ko Hikurangi te maunga,
Ko Waiapu te awa,
Ko Ngati Porou te Iwi,
Ko Ngahina ahau.

[1] Who am I? On my mother's side, Whaingaroa is the harbour, Tainui is the canoe, Tainui is the tribe, Tainui people like the sea groan and rumble by night and by day. On my father's side, Hikurangi is the mountain, Waiapu is the river and Ngati Porou are the people. I am Ngahina. The words in the preface are mine, random thoughts that entered my head as I sat in my bach looking out at sea and wondering what to write.

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CHAPTER 1
WHAINGAROA - OUR PLACE

Ko Karioi te maunga	Karioi is the mountain
Whaingaroa te moana	Whaingaroa is the harbour
Whareiaia te tangata	Whareiaia the man

Ko Tainui Awhiro ngunguru i te pō ngunguru i te ao

Tainui of Whiro grumbles and growls by night and by day

Karioi symbolises the permanence of my occupation. Whaingaroa is the essence that flows through me. Both are important sites of identity for my hapū, Tainui o Tainui ki Whaingaroa (Tainui), and neighbouring hapū Ngati Tamainupo, Ngati Te Huaki, Ngati Kotara, Ngati Hourua and Ngati Mahanga, who occupy the lands around Whaingaroa harbour 50 kilometres west of Kirikiriroa.

Karioi is gendered, both male and female, depending on which side of the maunga is telling its story. From the Whaingaroa side, she sprawls across the skyline, dominating the rivers, lands, foreshore, seabed, harbour and people below (see Figure 1), a fitting backdrop to Whaingaroa, my case study area.

The pepeha continues, acknowledging Whareiaia one of the rangatira in my whakapapa that links our whanau and hapū to this whenua. It ends with a metaphorical saying which compares the grumbles and moans of the local people, Tainui, with the continual grumbling sounds heard day and night from the sea.

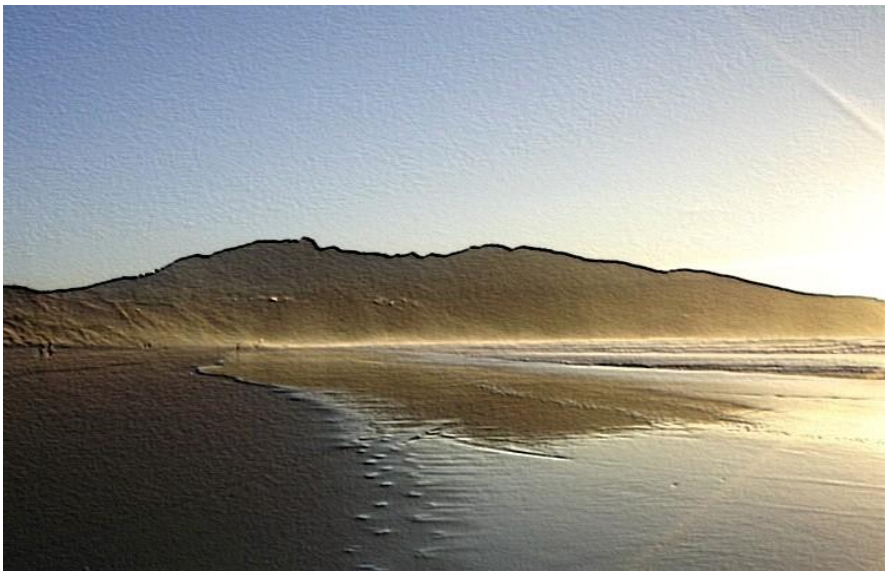

Figure 1: Tupuna maunga Karioi from Ngarunui beach

This chapter introduces Whaingaroa, the place, and Tainui, the people, the ahikāroa, who stoke the metaphoric fires and fuel the flames of tupuna long departed. As a descendant of those tupuna, I am intimately connected to Whaingaroa and have inherited lifelong responsibilities, to protect, guard, grumble, roar and rage in defence of Whaingaroa, our taonga tuku iho, our turangawaewae, our treasured place.

> Place is an essential part of our existence that tells us, if only provisionally, who we are, where we have been, and where we might be going. It is worthy of study and reflection … (Aultman 2006 85).

To describe Whaingaroa would take volumes. It is a place of multiple meanings to the diverse peoples who have arrived and settled here during my lifetime. First Māori, then the British settlers and missionaries. From the 1960s, the Australian surfers 'discovered' the perfect left hand break at Waikeri in the Karioi Native Reserve and called it 'the Point'. I wonder what they would have called 'Heahea' an ancient surfing beach to the north of Raglan had they 'discovered it. Since then a steady tide of international visitors have arrived, felt the healing powers of Whaingaroa and stayed.

Whaingaroa, ‘the long pursuit’, is a fitting descriptor of the characteristics of the place I have chosen as my case study. It is a place where time is not as important as the process of finally arriving at one’s destination having negotiated and made connections and relationships along the way. In kaupapa Māori terms, whakapapa is the appropriate place to begin discussions about how relationships to place are culturally constructed according to our own experiences, values and upbringing. Everything according to Tainui tikanga is interconnected.

It is a common practice in Tainui to introduce oneself to strangers with reference to ancestors, people, places, and events. This practice of acknowledging connections first provides an opportunity for relationships to be woven together and understood before deliberations about important matters, such as the Tainui resource management experiences, the topic of my thesis, begin in earnest.

My preference for first establishing a context based on whakapapa is accepted as a given when operating within a kaupapa Māori framework, because whakapapa upon which whanaungatanga is based permeates everything in the Māori world. It links everything in the natural, energetic and physical world together, and recalls and values older knowledge, which in turn provides a foundation upon which new understandings can be built. Peeling back the layers of history exposes the ideas that influenced relationships in the past and shaped the space and place we occupy and study today. Edward Relph sees place as a kind of “geographical epistemology which is founded on personal geographies composed of direct experiences, memory, fantasy, present circumstances and future purposes” (1976 4).

Memories of my upbringing and the experiences I have had throughout life influence how I perceive interpret and relate to Whaingaroa, to whanau and hapū who share whakapapa, to the Raglan community, and the world. I was privileged to grow up with siblings, extended whanau and whangai on Rangipu hill overlooking Whaingaroa harbour. We watched the landscape change beyond recognition as the Raglan township grew on

both sides of the Opotoru River. Memories of my childhood and what our lives were like then flood back to me as I witness the miracle and power of Tama nui te Ra slowly rising above the Hakarimata ranges in the east over the sleeping town of Raglan. For a brief moment I am blinded as he climbs skyward on a well-worn path to the west, casting brilliant shafts of light across the harbour, bathing Horea in white light and blanketing the land with the warmth of a new day (See Figure 2).

Figure 2: Te Moana o Whaingaroa

This awe inspiring sight is firmly ingrained in my memory and instantly recalled whenever I need physical, spiritual and mental fortitude to deal with the many challenges and conflicts that arise over the management and mismanagement of our place, Whaingaroa.

> Māori people are all about place. Land defined as 'that which feeds' is the epitome of our sense of love, joy and nourishment, Papatuanuku. Land is our mother. This is not a metaphor. We come from a place, we grow up in a place and we have a relationship with that place. Land shapes our thinking, our way of being and our priorities of what is of value. It is not as easy as simply learning about land, we learn best from land. To my people – this makes you intelligent (Taylor 2006 2).

Tainui land occupies space in and around Whaingaroa harbour. We have an interdependent ongoing reciprocal relationship with, Papamoana and Papatuanuku. There is no barrier between the lands above and below the moana. They are both one expansive papa connecting the people, the whenua and the moana. I return to the shores of Whaingaroa regularly, to recharge my batteries for the next onslaught of council manoeuvring that has shaped Tainui relationships with Whaingaroa for over 170 years. Environmental mismanagement is an ongoing saga.

Whaingaroa

Whaingaroa, commonly known to visitors as Raglan, is located 48 kilometres west of Kirikiriroa (Hamilton), and 149 km south of Tamaki Makaurau (Auckland). The town itself is located on the southern shores of the 'Raglan Harbour'. The population rose from 2667 in 2001 to 3459 in 2006 of which 72.6% identified as European and 29.8% as Māori (Statistics 2009). The influence of the majority population can be seen in the 2008 Raglan Naturally Community Plan which promotes consumer-oriented goals for Raglan to become a thriving place (See Figure 3).

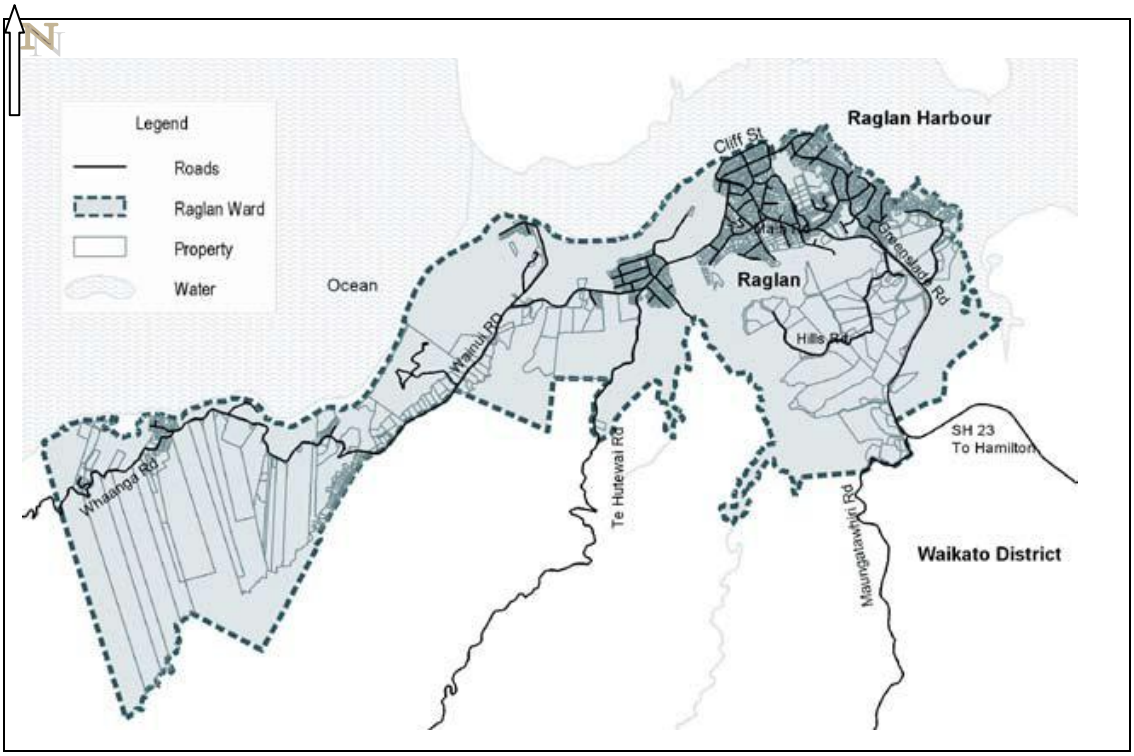

Figure 3: Raglan Naturally CP area including Māori owned land (WDC, 2008).

Raglan will “Focus on attracting visitors and residents by developing annual events, outdoor activities, social events and cycle tracks and more shops” (Council 2008 14). The fact that the walkways and tracks are planned to cross Māori land is not mentioned. The name Whaingaroa appears once in the community snapshot section of the plan which reads:

> Raglan is a town steeped in old history tracked back nearly 1000 years to the early Māori who arrived on the migratory canoe – Tainui. The early European settlers knew Raglan as Whangaroa (which was later changed to Whaingaroa – the long pursuit). In 1858 it was renamed Raglan after Lord Raglan, an officer who led the charge of the Light Brigade in the Crimean War. Raglan’s population has grown in the past 10 years as access roads have been improved and people want somewhere to escape the busy city life. Renowned for its surf beaches and laid back lifestyle Raglan’s population grows by approximately 300 - 400% each summer as people flock to enjoy the sunshine and the sea (WDC 2008 5).

To Tainui, Whaingaroa has a multiplicity of different meanings and characteristics. It is a sacred site and significant space, immortalised in waiata, pakiwaitara, and pepeha. It is a place where the holistic cosmological connections between humans, atua, and pure energy are acknowledged and experienced firsthand. It is a place of learning, a place of healing, cleansing and blessing, a place of history and ever changing moods, a productive place where kaimoana, albeit now polluted, continues to grow. It is an ancient and timeless place, where rhythms and tidal flows continually synchronise with the rise and fall of the moon, exposing papamoana, and inviting us to take a walk.

I walk in the footsteps of my tupuna (ancestors) marvelling at the legacy they left to guide us in moving forward. I reflect on the past and the self-sustaining communities now gone, but their presence is still inscribed on the familiar landscape we share. All spaces were claimed, named, and shaped and responsibilities to look after places were shared between whānau and hapū. Sites were selected for their ability to provide

sustenance shelter, and protection for the people. Where we have retained these lands against the onslaught of British colonialism, we have also managed to secure a place, of relative permanency for current and future generations to live on.

Kakati, Rakaupukupuku, Hounuku, Te Ikaunahi, Whareiaia and other Tainui tupuna lived on Karioi maunga. Tawhao lived at Te Whaanga. Illustrious ancestors, sisters Pūnui-a-te-kore and Maru-tē-hiakina lived at Horea on the northern shore of Whaingaroa moana. They were later to become hoa rangatira of Tawhao and mothers of two famous brothers in Tainui history, Tūrongo who married Māhinaarangi of Te Tai Rāwhiti, and Whatihua who married Ruaputahanga of Taranaki. Ruaputahanga later left him and he married Apakura. Through these strategic marriages, relationships were forged between hapū and iwi so access to whenua and resources and other rights could be negotiated.

As life evolved so did the rules to live by. Tikanga Māori dictated that the mauri, of the moana, kaimoana, whenua and other taonga would be protected from harm to ensure the survival of current and future generations. Water, was given special attention. In the case of the Wainui Stream, whose source lies within the bosom of Karioi, areas were partitioned off for whanau use.

In our village, Te Kopua, water for drinking was gathered at Te Tarata, washing and bathing happened further downstream, and food gathering took place at different sites around the harbour. Human waste was deposited in the whenua away from waterways. Today pa once vibrant with life, stand as silent sentinels scattered along the coast and around the harbour, monuments to a time when mana radiated from the land and our ancestors were firmly in control of all resources in Whaingaroa.

The arrival of Wesleyan missionaries in the 1830s changed that, heralding in the beginning of pakeha, power, politics and influence. Remnants of this era can be clearly seen in the historic buildings and churches in the township and in the surrounding pastoral landscape. While Tainui tupuna like Wetini Mahikai gifted substantial acreages for residences,

schools and mission stations on both sides of the harbour generosity was met with covetousness and greed for the lands to the north at Te Akau and to the west of the Opotoru river.

In 1840, on Rangitoto ki te Tonga, an island in the Cook Strait, my tupuna, Turi te Patete signed te Tiriti o Waitangi. I have no evidence of why he signed te Tiriti or whether the presence of British soldiers or naval officers influenced that decision. What is clear though is his actions secured for us guarantees to lands, water and other taonga. He exchanged kawanatanga for tino rangatiratanga. I am guessing the expectation was that the covenant signed between himself and representatives of the British crown would enable both parties to live in harmony together in one land. Unfortunately, within 12 years, the treaty was breached, wars erupted and confiscations took place. The tide had turned.

The establishment of a settler parliament in 1852 provided the machinery for what was to follow. The imposition of British common law (which promoted individualism, private property and economic development), created difficulties for Tainui whose existence was and still is embedded in the land, and whose tikanga is grounded in concepts of mana, tapu, reciprocity, and respect for Te Taiao.

Confiscations of land through numerous laws began in 1863 paving the way for the wholesale destruction of the bush-covered lands surrounding the harbour. Since 1863 the descendants of Te Patete, Hone Kingi and others have used armed resistance, submissions, petitions, civil disobedience, protest letters, court cases, occupations and other tactics to retain remnants, a few hundred hectares out of the thousands of hectares around Whaingaroa harbour, which Ngati Koata, Ngati Hounuku, Ngati Te Ikaunahi and other Tainui hapū, once owned.

Once appropriated, indigenous land cover became flattened layers of monotonous green grass as forests were felled to provide pasture to feed stock. The cleared land instigated silt laden runoff to be transported down the Waitetuna, Waingaro, Ponganui, and Whaingaroa rivers into the inner harbour where it resulted in smothering kaimoana in traditional fishing

grounds. Pipirua, a mussel rock seeded from mussel spat from Kawhia escaped this as it was based closer to the harbour entrance. It was a mahinga kai set aside principally to feed the thousands of attendees at major hui like the annual Koroneihana at Ngaruawahia. However years later Pipirua was subjected to destructive fishing methods permitted under Fisheries laws.

In the 1960s, licensed fishers were permitted to drag kūtai and tupa beds in the harbour. Tainui managed with the assistance of our Western Māori MP, Mrs Ratana, to stop the destruction of Pipirua, Unfortunately despite our best efforts at reseeding the bed, it has failed to recover from the damage done over 40 years ago.

While Tainui were preoccupied with fishing issues, the Raglan County Council (RCC) were applying for grants from the Health Department to improve sewerage infrastructures in coastal towns such as Raglan. Government policy at the time encouraged local councils to apply for subsidies to decommission septic tanks, connect homes into centralized sewage systems, and discharge untreated human effluent into harbour mouths for dispersal.

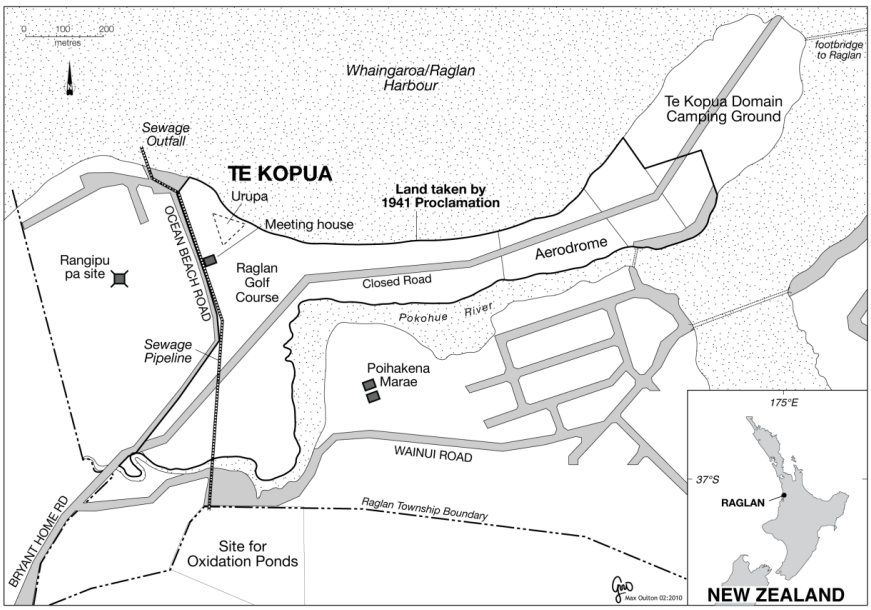

Figure 4: Location of Raglan and wastewater (Source: Oulton, M. 2010)

The setting up of Raglan's oxidation ponds on a wāhi tapu (see Figure 4) by the Raglan County Council (RCC), and the construction of a pipeline, through Te Kopua, the turangawaewae of Tainui, was deemed a racist act by the hapū. Racist, because the council chose to site the oxidation ponds receiving waste, not in the vicinity of the township producing the waste, but on a wāhi tapu area less than 200 metres from Poihakena, our local marae.

Related to this was the affront of having a pipeline constructed to discharge human waste into the Whaingaroa harbour entrance a 100 metres west of the local Kohanga Reo.

Whaingaroa is the food basket not only of Tainui and other hapū around the coast, but also of migratory species feasting before journeying to distant lands like Siberia. It is a nursery for kaimoana and flat fish and occasionally hosts stingray escaping the predatory Orcas on their annual hunts. Over the years the productivity of the harbour has noticeably deteriorated with the over exploitation of species such as seahorses, which were once plentiful in the pools of the Opotoru. They have now disappeared and are mere memories, more sad stories to tell the mokopuna. Likewise kokota also suffered from over-harvesting by strangers who adhere to Fisheries Acts and laws which fail to have regard for spawning seasons, and encourage fishing methods that damage kaimoana beds.

As well as challenging councils and governments over exploitation of species and pollution of waterways, our hapū were also questioning why lands taken for war purposes were given to a golf club instead of being returned. In 1978, when my mother, Tuaiwa Kereopa Eva Rickard and 16 others were arrested for 'trespassing' on our burial grounds at Te Kopua, the RCC, some of whom were key personnel in the Raglan golf club, were implicated in the issue. The 'trespassers' won that case.

The RCC had leased Te Kopua, which had been vested in them by the government, to the Raglan golf club even though they were aware of the history that the land should have been returned to Tainui after World War

11. In 1983, after further court cases and negotiations with politicians, Te Kopua was finally returned to the descendants of those who had witnessed the destruction of the marae and papakainga in 1941.

Whaingaroa was not only affected by land confiscations but also by treaty settlements between Waikato and the government over fisheries and land. As a coastal people with a long history of fishing one would have thought Tainui would have received benefit directly from the Treaty of Waitangi Fisheries Settlement 1992. However, to this day that hasn't happened and remains an unresolved matter for Tainui.

Similarly, when the Waikato Land Settlement Act 1995 was signed, Tainui objected. Our marae, Te Kopua and our hapū Tainui were not mentioned in the deed despite losing land under raupatu. In February 1996, as a result of our mana being challenged and to protect our rights over our remaining lands, kaumātua signed a proclamation declaring Te Kopua to be Te Whenua Motuhake o Whaingaroa. Kaumatua at the time thought it was an appropriate action reminiscent of Governor Hobson's proclamation declaring the South Island belonged to the Queen of England by right of discovery.

Currently new challenges have emerged with the enactment of the Energy Efficiency and Conservation Act 2000 No 14 Public Act. The purpose of this Act is to promote, in New Zealand, energy efficiency, energy conservation, and the use of renewable sources of energy. The challenge for Tainui is how to prevent historic and significant wāhi tapu sites at Te Akau from being obliterated by a 35 km wind farm currently being applied for in front of a Board of Inquiry. The relationship to hundreds of important kainga and cultural landscape features, some over a 1000 years old will be severed as roads are carved into the whenua to make way for an industrialised metallic landscape of turbines. Such developments and their adverse effects are keenly felt by those of us who descend from rangatira who occupied Tauterei area before the raupatu in 1863. This one act changed the power base of Tainui society.

Tainui

Tainui has been a contested term since 1857 when Fenton compiled and provided a list of 'tribes and families' that lived within the 'Waikato District' lands north of the Puniu River, to the House of Representatives (New Zealand Government, 1857). Tainui has been used in a number of different contexts over the intervening years. Tainui is an ancestor, a tree, a waka, high tide, a corporation, an iwi, a rohe, a brand, my brother, and a hapū.

For the purposes of this research, Tainui refers to the collective hapū and iwi who are linked through whakapapa relationships and identify with the coastal lands located between Te Akau, north of Whaingaroa to just south of Karioi maunga. While we like to think we still enjoy flexible and dynamic relationships as hapū, increasingly this is changing as relatively new corporate entities like Waikato-Tainui impose legal structures which require members to forsake multiple identities based on whakapapa and choose one of their numerous hapū and marae to affiliate to for the purposes of receiving benefits from treaty settlements.

Once an iwi has received its treaty settlement it becomes recognised by government agencies as the one stop shop where matters such as fisheries, community development, health, mining, energy, foreshore and seabed, resource management and other matters affecting hapū are agreed. By way of example, Waikato - Tainui recently imposed a regime which required 'marae to cluster' together to take advantage of government funds from the latest government social policy. Severing historic whakapapa ties between hapū and establishing new rōpu has not been welcomed in the Tainui area. The numerous questions arising from such relationships need to be researched in some future project.

When I refer to Tainui as 'the' hapū I am referring to the entity whose tupuna were guaranteed rights in Te Tiriti o Waitangi and who are recognised by other hapū as traditionally residing in the Whaingaroa harbour area (See Figure 5). I represent the hapū when I engage on their behalf as the environmental spokesperson, with councils and other

functionaries' delegated power to make resource consent decisions in Whaingaroa.

Some Tainui members refer to the hapū at Whaingaroa as Tainui o Tainui ki Whaingaroa to make it clear that this hapū is based in and around Whaingaroa and not to be confused with Tainui Development Ltd, Tainui Groups Holdings, or other organisations that use the name Tainui but are located inland near the Waikato River.

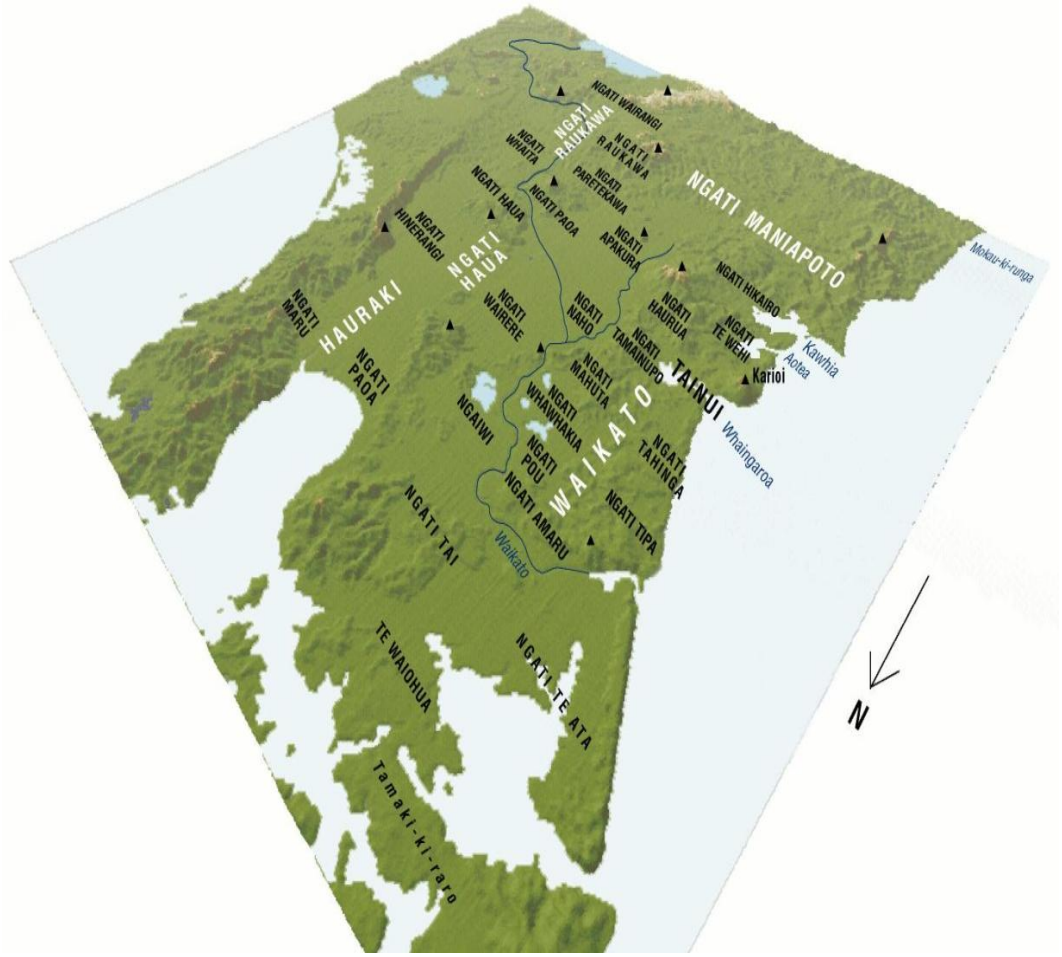

Figure 5: Location of Tainui hapū within the Tainui waka area.

(Source: Kirkpatrick, R. and Greensill, A.. 2002: Tainui Defined).

Tainui people lead multiple and complex lives. This is understandable given the fact that our papakainga was destroyed and people were scattered to the four winds. Some members stayed and faithfully carry

out obligations to our whenua, through enduring whanau, hapū and iwi relationships strategically developed over time. Others commit to the continuous struggle to thwart multinational attempts to secure hapū support for large scale mining operations and energy projects which have the potential to negatively affect our ability to exercise kaitiakitanga in our area. Others live oblivious to the issues that the haukainga face on a regular basis. Some of our members, now third generation urban dwellers have no knowledge or understanding of cultural obligations to the ancestral lands they have inherited. Some have dreams of building hotels on lands looked after in their absence by the hau kainga. Under tikanga Māori they have neglected to keep the land warm and have relinquished their rights. Under Te Ture Whenua Māori Act 1993, they retain rights those rights as determined by the land court. Changing circumstances and perceptions within the hapū have made my role more difficult in recent years as councils, developers and government agencies; continue to promote their aspirations, policies and plans at our expense.

Ko Wai Au?

I am a mother of 7 children, a grandmother of 12 mokopuna and am part of the whanau and Tainui hapū who are responsible in Māori terms for protecting the health and wellbeing of Whaingaroa. I introduced myself in the preface and have been present throughout this chapter weaving in and out, relating narratives of places and stories I am intimately familiar with. In Chapter 4, I explain why I have used an autobiographical and longitudinal case study approach to undertake this research.

For the past thirty years, I have on behalf of Tainui, challenged laws, plans, policies and practices which had the potential to change Whaingaroa beyond recognition. Pa sites could have become subdivisions or turbine sites, kaimoana areas covered in marine farms, and waterways polluted through landuse activities if challenges to economic growth and development objectives of councils had not been made. It is these first hand experiences which inform my research.

Summary

In this first chapter, I explained why I needed to privilege and acknowledge Whaingaroa first. I introduced some of the important Tainui ancestors who through whakapapa connect hapū and iwi throughout Aotearoa. I then briefly introduced the Raglan community and set the foundation for the debate that follows regarding planning outcomes under the Resource Management Act (RMA).

Some of the complex issues that Tainui has addressed over the years both with councils and with iwi were traversed to give an insight into the resilience of this hapū and the challenges we continue to confront in attempting to retain our name, mana and land while at the same time trying to make decision makers accountable according to their statutory obligations under the RMA. The experiences and values I have enunciated here are reflected in conversations, submissions and evidence I developed with submitters, and later presented to councils and courts over the past 19 years. Chapter 2 introduces my topic and explains how I intend to approach my research.

CHAPTER 2

HE AHA TE KAUPAPA? WHAT IS THE PURPOSE?

Haere mai ra e nga manuwhiri tuarangi e,
Haere mai ki te whenua Motuhake o Whaingaroa
ki te tautoko te kaupapa o te ra nei e…

Our kuia stands in front of our wharenui, greets the environment, summons the deceased and calls the living to come on to the marae. The karanga, the first voice, an aged but powerful voice starts the proceedings of the day. It is the voice that identifies people, establishes the purpose of the gathering, and acknowledges relationships between Tainui and those who are responding to the call to come and participate in discussions about a particular issue. The purpose of the hui is alluded to in the karanga, pursued in the mihi and elaborated on in the whai korero that follow as the formal exchanges take place.

Laying the koha, greeting the host with a hongi and hariru before heading off to the wharekai for refreshments signals the end of the tapu, and the beginning of the in depth conversation about our latest appeal to the Environment Court. Today the WDC has been called to discuss provisions contained in the Waikato Proposed District Plan (WPDP). The Mayor, cultural advisor and kaumatua, planners and local councillor turn up to discuss provisions appealed to the court. I introduce the kaupapa, they respond. We let them talk, and then we respond. We are polite but firm. We point them in the right direction to check their files. The meeting closes with a karakia, a cup of tea and a commitment to try to work through the issues we have raised. Failure to reach an agreement will mean more time and money wasted on litigation.

In the past, Tainui made decisions about resource use based on tikanga, kawa and the maramataka. When, where, how and what to fish for were determined by the health of the fishery, phases of the moon and the occasion. Planting crops followed similar timelines. Our tikanga evolved to

meet changing circumstances. Today councils determine whether applications to use land and other resources for particular activities are approved, or declined using provisions in the RMA.

Resource Management Act

The RMA is the main environmental law in Aotearoa today. . Its purpose is to "promote the sustainable management of natural and physical resources". There are 12 regional councils who sustainably manage the rivers, air, coast and soil, 68 city and district councils and 5 unitary councils (Ministry for the Environment 2009 3-4). For the purposes of this thesis, I will be looking at the Waikato District Council (WDC) and Waikato Regional Council (WRC). Under section 31 of the RMA, territorial authorities (councils) have a number of functions to fulfil to give effect to the Act. One function is:

a) The establishment, implementation, and review of objectives, policies and methods to achieve integrated management of the effects of the use and development, or protection of land and associated natural and physical resources of the district. (New Zealand Government 1991).

Another function is:

b) The control of any actual or potential effects of the use, development, or protection of land and associated natural and physical resources of the district. The main method to control effects on the environment at a national, regional, and district level is through rules in regional and district plans.

The RMA delegates decision making functions regarding local resource use to councils who formulate policies and legitimise rules in plans which often privilege 'the public' and 'community' while subjugating Tainui.

Tainui has been proactive over several decades in challenging proposed rules and continue to follow both tikanga Māori and statutes to manage fisheries and forests on coastal lands in Whaingaroa. Tainui has used the submission process to comment on discussion documents, and proposed

plan provisions including the Operative District, Proposed District Plans, and the Raglan Structure Plan which affects Tainui lands.

With less than 200 members of the hapū living locally it is difficult to ensure that Tainui aspirations are given due weight against the tide of submissions from the more numerous residents who have chosen Whaingaroa as a place to reside or retire. To strengthen the position of Tainui as tangata whenua and ahikāroa, Tainui has written a hapū management plan outlining policies and rules that the council will receive.

The power to decide whether the rules are adopted and incorporated into plans however rests with the council and the RMA which contains provisions that specifically recognise Māori rights, interests and obligations to the environment. For example, in Part 2, section 6(e) of the RMA councils are directed to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga. Section 7(a) states that particular regard is to be had to kaitiakitanga, defined in section 2 as "the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources, and includes the ethic of stewardship". Section 8 directs councils to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

As the environmental spokesperson for Tainui I have been reflecting on our situation as tangata tiaki for a number of years. This thesis provides an opportunity for me to review planning processes and critically assess council planning outcomes since the RMA came into force in 1991.

Research Question

In this thesis I argue that Waikato councils have failed to honour their statutory obligations to the Tainui hapū of Whaingaroa under the RMA. In order to support my thesis, I first identify who Tainui is and where Whaingaroa is located. I identify the obligations owed to Tainui by

councils, and seek to find out to what extent those obligations had been honoured. To assist me to address my claims, I propose to answer the following questions:

- Where is Whaingaroa located and who is Tainui in the context of this research?
- What obligations do councils owe Tainui under the RMA?
- Have those obligations to Tainui been honoured over the past 19 years?

By reflecting on Tainui planning practices, submissions made, council hearing decisions and environment court cases settled in favour of Tainui, I am able on one hand to illustrate the lengths that Tainui have gone to, to protect rights to carry out our obligations as mana whenua to the environment, and on the other to demonstrate that councils who occupy positions of privilege and power, have failed to honour their obligations by designing policies and rules and making decisions which have adversely affected both Tainui and Whaingaroa.

Planning policies and practices under the RMA are influenced by Eurocentric ideologies, which conflict with Tainui beliefs, values and practices. For example, a block of Tainui land covered in indigenous forest is classified as significant for biodiversity by pakeha scientific experts. They base their view on criteria and classifications that they have helped to develop. The application of such criteria in council plans, secures protection for insects, birds and trees, and ignores the existence of Tainui who have been living with this natural landscape for generations.

While permissive rules allow neighbouring property owners to clear land for farms, subdivisions and other developments, Tainui land is designated as landscape, coastal, having high amenity value, iconic, and any other descriptor that ensures we are constrained in lands reserved for us over 150 years ago. As descendants of treaty signatories, we would expect to have rangatiratanga recognised on lands we retain under our control in keeping with section 8 of Te Tiriti o Waitangi. Instead we have spent years relegated to challenging council decisions in the hope that positive

outcomes will result. To date it appears that transformation will only come for hapū, when hapū become the decision makers. Recommendations to address these deficiencies are included in the final chapter. Given the influence of modernity and positivism in planning I question whether councils are capable of honouring their obligations to Tainui or whether they are condemned to continue ignoring Tainui aspirations, experience and concerns and intend to impose decisions which, when analysed, are found to be divisive, environmentally racist and unjust.

Significance of the Study

An extensive literature search revealed that numerous reports have been written about tangata whenua interests and how they can be better provided for under the RMA (Working Party of the New Zealand Local Government Association 1995; Ministry for the Environment 1999; (Ministry for the Environment 2000; Mfodwo 2001; KCSM Solutions Ltd & I.G.C.I 2005; Kapua 2007). While mention is made of case law involving the Tainui hapū, (Greensill v Waikato Regional Council 1995; Tainui Hapū v Waikato District Council 1996) little has been written about the effects of decisions and the obligations of decision makers like councils to hapū like Tainui. This hapū has struggled to 'promote sustainable management' (Section 5 RMA 1991) address issues pertaining to coastal erosion, fisheries, and pollution of waterways since the RMA was enacted almost two decades ago.

This research fills that gap and is timely in that it will complement a study currently being commissioned by the Waitangi Tribunal, to look into breaches of Te Tiriti o Waitangi concerning environmental issues within the three west coast harbours, Kawhia, Aotea and Whaingaroa. This Tainui longitudinal case study illustrates how councils as delegated authorities have implemented the RMA over the past 19 years with little regard for te Tiriti o Waitangi, or with honouring other statutory obligations owed to Tainui under the RMA.

Context

This research takes place in Whaingaroa within the context of planning regulations under the RMA. For almost 20 years, Tainui have challenged council interpretations of the RMA as applied to activities in Whaingaroa. Several decisions made by councils had the potential to negatively affect Whaingaroa and harm our hapū. In those circumstances the hapū had no option but to use the law to protect our rights and our environment from abuse.

Tainui has learnt over the years that the rhetoric of provisions and the reality of their implementation under the Act often fail to meet the expectations of the hapū. For example, hapū members wishing to build homes on our own lands are prevented from doing so because the activity does not comply with rules and policies in WDC's plans. Tainui does not accept that council, whose role is to promote sustainable management of natural and physical resources, has a right to manage hapū lands on our native reserve. We have managed this area according to tikanga efficiently since prior to European settlement and will continue to do so.

The importance of holding hui to identify and discuss important issues has been stressed for many years. A hui provides a space for interested and affected parties to meet kanohi ki te kanohi to discuss proposals and issues requiring resolution with councils who occupy powerful decision-making positions at the local, regional and national levels in Whaingaroa and Aotearoa. Debate about the validity of Māori presence, knowledge, and struggle to retain customary land and to use the environment has been continual at a hapū and iwi level. Positive outcomes from more informed debates between hapū and local government could make a major contribution to the current and future wellbeing of local environments with a flow on effect to other areas.

Why this Topic?

I have lived and breathed resource management since before the RMA was enacted and over the years have remained concerned at the lack of will councils have shown to recognise and provide for Māori relationships in a tangible way. When the RMA became law in 1991, I thought it heralded in a new era where Māori values and knowledge about the environment would be recognised. Previous laws like the Town and Country Planning Act (TCPA) had one section, 3 (1) (g) that gave recognition to "the relationship of Māori people and their culture and traditions with their ancestral land".

Under the TCPA the health and wellbeing of Whaingaroa especially kutai beds in the harbour deteriorated progressively from a productive space to a polluted liability. The RMA created a new opportunity for decision makers to actively promote the sustainable management of natural and physical resources in a way that would benefit future generations. I intend to discover whether councils have carried out their obligations to Tainui while promoting the purpose of the act.

RMA Reality Today

Whether environmental planning processes and decision making by councils, courts and commissions have delivered outcomes sought by various sectors of the community has been the subject of papers, articles and theses ever since the RMA was enacted in 1991 (Rennie 2000; Wallace 2004; Randerson 2001; Kapua 2007).

In 2010 I am still in court challenging laws and decisions which constrain the rights of Tainui to relate to our ancestral lands and waterways. This situation is not unique to Tainui. Whanau, hapū and iwi throughout the country are also confronting similar challenges, as innovative ideas for exploitation of remaining resources are promoted. A recent example is the 2009 Nga Uri o Hau appeal in the Environment Court against Crest Energy who is seeking to install 200 turbines on the seabed of the Kaipara

Harbour to provide up to 200MW power as a contribution to the renewable energy targets set by government (Crest Energy Kaipara Ltd & Ors v Northland RC 2009).

While I agree that the sun, moon and tides produce regular sources of energy, the scale of activities suggested by corporations raises questions about impacts. Once the Crest application is approved by the court, developers may use Kaipara as the precedent for lodging other applications for the use of other west coast harbour entrances to site further turbines, instead of taking a precautionary approach, and encouraging the public to use the energy we already have more efficiently. Precedents set in one case are likely to be used to assist similar decision making in the next.

Like Nga Uri O Hau, Tainui as coastal people are obliged to protect the mauri of coastal resources by ensuring that developments have minor effects on the environment. This is difficult to do when tikanga Māori is ignored and new laws are poorly understood. Councils control all activities likely to affect the environment including discharges to waterways which have been condoned by councils and courts as having effects that are no more than minor. Tainui with no power to force our tikanga or laws on others are left in an unenviable position of being unable to fulfil our cultural obligations of kaitiakitanga.

Even with the advent of the RMA, water quality is still being compromised by various discharges, coastal erosion has increased, wāhi tapu have been destroyed, fish, and native birds depleted, forests felled and hapū members denied the right to build homes on our own land. While kaumātua have wisdom and experience to respond to such phenomena, their efforts to save the environment are not widely supported, and their contribution to the health of Whaingaroa either goes unnoticed or is challenged by those who have little understanding of dynamic processes.

An example is the coastal erosion mitigation work my father James Rickard has experimented with for the past 40 years. His laboratory is the

foreshore where he observes and then works with the wind, sea and land. If his theory works then the dune is built. If his calculations are amiss, then Tangaroa claims the work. His method of speeding up the rate of dune reformation on badly eroded sandy west coast beaches is the subject of field trips by NIWA scientists and other tertiary trained people. Kaumatua knowledge in this situation is contested but synergies and areas of commonality can exist, providing spaces where traditional knowledge built up over generations can intermingle with the knowledge of university educated experts.

Experts, council and court decision makers are informed by values, beliefs, laws and theories derived from Europe. They are in a privileged position in the planning process. Positivism for example, relies on facts, quantitative data and one truth rather than accepting that the world is a complex place and life itself requires us to consider the existence of multiple truths. In Whaingaroa, Tainui practices its own multiple yet collective truths.

Structure of the Thesis

Chapter 1 sets the scene by introducing and defining Tainui and Whaingaroa, Tainui is a west coast hapū whose territory is beside te Tai, the sea. Chapter 2 discusses the research question within the context of kaupapa Māori and planning, and outlines how the thesis is structured.
Chapter 3 discusses some of the main theories that have influenced planning and establishes the theoretical context and foundation for the mixed methodological approach followed. In Chapter 4, I acknowledge my positionality as a researcher, and discuss the qualitative autobiographical case study approach used to examine resource management experiences. I chose this approach because it provided me with flexibility to move across boundaries, to reflect on my role of working inside and outside, within the crevasses, and on the margins of RMA decision making. Chapter 5 examines three decisions within the context of RMA provisions, processes and procedures as interpreted and implemented by the councils. These decisions were either overturned on

appeal or modified by the environment court to include stringent consent conditions to better promote the sustainable management of natural and physical resources. The decisions chosen provide an insight into the breadth of experience that Tainui has had in responding to environmental matters in Whaingaroa; and demonstrate the rationale applied by courts and councils to decision making under the RMA. The decisions involve wāhi tapu, allocation of marine space and discharges into the harbour. Current involvement with other planning cases, including appeals to provisions of the district plan are mentioned purely to highlight the fact that power continues to be exercised inequitably over Tainui resources in Whaingaroa. Chapter 6 provides an analysis of the cases referred to and comments on the rhetoric and the reality of hapū working under the RMA. It discusses the findings and identifies limitations and opportunities for further research that could be explored to improve the delivery of section 6(e) 7(a) and 8 for Māori as envisaged under the RMA. Chapter 7 provides a summary, some recommendations for further research and concluding remarks. Māori terms used in the thesis are included in a glossary following the concluding chapter.

Summary

This chapter has outlined my research topic which focuses on Waikato councils' failure to honour their statutory obligations to Tainui in Whaingaroa under the RMA. It has also given an indication of how the thesis is structured, and commented on hapū concerns have been ignored and need to be strongly articulated to balance council and community voices that are currently dominating the council planning processes. There is a need to monitor numerous laws which rather than promoting sustainability have been implicated in degrading our environment and consequently destroying our culture and way of life as a coastal hapū.

CHAPTER 3
INFLUENTIAL IDEAS

Kaupapa means a plan, a philosophy, and a way to proceed. Embedded in the concept of kaupapa is a notion of acting strategically, of proceeding purposively (Smith 1999 2).

Introduction

This chapter sets the theoretical framework upon which planning laws and decisions affecting Tainui are based. While Māori resource management seeks to sustain the mauri of the interconnected physical, spiritual and energetic world, planning under the RMA reflects ideas and influences of domination sourced from Western Europe. Positivism and modernity are two examples which I allude to later in this chapter. It is understandable that where there are diverse philosophical views, talking past each other is likely.

Kaupapa Māori

Kaupapa Māori in its broadest sense is a Māori way of existing according to principles, practices and philosophies of living which underpin Māori worldviews (Smith 1997). According to Pihama (2001), Kaupapa Māori is a culturally defined theoretical space within which Māori voices and perspectives can be articulated. I use Kaupapa Māori theory to articulate a Tainui worldview as it relates to my hapū in Whaingaroa.

In *Decolonising Methodologies* Linda Smith (1999 1) aligns Kaupapa Māori with critical theory and identifies notions of critique, resistance, struggle and emancipation as common to both. She states that "Kaupapa Māori is the development of 'insider' methodologies that incorporate a critique of research and ways of carrying it out for Māori, with Māori and by Māori". Smith goes on to explain that "Kaupapa Māori is concerned with sites and terrains. Each of these is a site of struggle" (1999 191). This

seems to be an appropriate position from which to critique environmental issues affecting local sites and terrains of struggle within Tainui at Whaingaroa. The moana, whenua, ngahere, wāhi tapu, and awa in Whaingaroa have all been sites of struggle since the RMA was enacted in 1991.

The theme of Kaupapa Māori was developed further by Graham Smith (1997: 466-473) who identified the following key elements of Kaupapa Māori theory in his work with Kura Kaupapa Māori.

(a) Tino rangatiratanga, the self-determination principle encourages Māori people to undertake our own research on matters chosen by and for us;

Tainui is undertaking research in a number of areas as part of our hapū planning for the future reoccupation and use of our remaining lands. The information gained will support the positions we advocate in a number of environmental areas such as adopting traditional responses to coastal erosion, and developing a model for land-based sewage treatment and disposal systems to suit papakainga. There are opportunities for tino rangatiratanga or hapū autonomy to be recognised and provided for under the RMA, but to date only those iwi who have settled treaty claims have managed to gain decision-making power through co-management arrangements gained politically.

(b) Taonga tuku iho, is the cultural aspirations principle which accepts the validity and legitimacy of Māori language, culture and identity as a given;

Tainui has aspirations of living once again on hapū lands as of right without being excluded by rules imposed by councils under the RMA. The signing of the UN Declaration on the Rights of Indigenous People on the 20th April 2010 is a signal to all decision makers that Māori aspirations need to be recognised and provided for especially on lands that have been retained by them.

(c) Kia piki ake i nga raruraru o te kainga, is the socio-economic principle which focuses on redressing socio-economic disadvantage to impact positively on the well-being of whanau.

Tainui has undertaken feasibility studies into suitable projects to support hapū aspirations to live and work in Whaingaroa. The Tihei Mauriora Plan which allows for a camping ground, conference centre, restaurant, motel units, papakainga housing, wananga, and other ventures has been accepted and included in the Proposed WDC Plan.

- Whanau is the extended family structure principle or whakawhanaungatanga which sees responsibility for the whanau as paramount.

Tainui view everything in the environment we live in and are dependent on as whanau to be respected and looked after.

- Kaupapa is the collective philosophy principle, which promotes a collective commitment and vision to achieve Māori aspirations for holistic wellbeing.

Smith states that this set of principles reflects both the praxis of Māori communities interested in transforming their lives, and organic Māori theory (1997 472). These elements can be adapted and applied to the management, use and development of resources in Whaingaroa.

While most Tainui members in Whaingaroa are committed to protecting remaining Tainui lands from adverse effects of development, there are some who aspire to investing in capitalist ventures on hapū lands regarded as prime real estate by agents in the Raglan community. Such diversity within hapū and whanau is to be expected from people who have been colonised, exist in poverty, and have lived elsewhere without being accorded the opportunity to discover ancestral links and relationships with the land or with Whaingaroa until later in life.

Sadly I have witnessed exchanges in the Māori Land Court between urban whanau who want to mortgage whenua to develop 'their piece', and ignore those who keep the fires burning on the land. Without such opportunities they will continue to see the lands they inherited for their great grandchildren as an opportunity to make some cash during their

lifetime, while the needs of their future descendants will become a burden on those who continue to carry out hapū obligations as required.

Sheilagh Walker contends that “Kaupapa Māori is a resistance against European dualistic paradigms; which challenges, critiques and poses alternatives to the discourse of violence, allowing Māori to define themselves” (Walker, 1996, p. iii). She sees Kaupapa Māori as a counter to pakeha hegemony, a position supported by Smith (1999).

Charles Royal (1998 85) extends kaupapa Māori principles by identifying further concepts derived from matauranga Māori such as te Tiriti o Waitangi, rangatiratanga, manaakitanga, whanaungatanga, ūkaipō, tohungatanga. He argues that these concepts need to be taught to children so that they understand the interconnectedness of the world and their obligations to look after it.

At Te Kopua in Whaingaroa, these concepts are not only part of the curriculum at the local kohanga reo, they inform the actions taken by the young in defending the environment. The Tainui mokopuna seen here (Figure 6) had just returned from giving evidence to the Waikato Regional Council Hearings Committee against the application by the Waikato District Council to continue discharging wastewater into Whaingaroa Harbour for another 35 years.

Figure 6: Nga mokopuna o Whaingaroa Kohanga Reo.

Source: 1999: *Waikato Times*, 19 February.

They regularly witnessed effluent being discharged into the harbour as they cleaned up rubbish left by recreational fishers. They could not understand why councils were allowed to treat Tangaroa with such disrespect. In their presentation given in te reo Māori they explained their paintings showing the tutae floating from the discharge pipe to the surface and out to sea, and asked the council to stop WDC from doing it. How do you explain to mokopuna such practices?

Shane Edwards (1999 33) argues that Kaupapa Māori approaches "challenge the unequal power relations and taken for granted assumptions that are present in New Zealand society today". Under such circumstances, clashes during the planning process between opposing viewpoints are inevitable as attempts made to subjugate Māori knowledge, beliefs and practices are resisted The idea that only scientifically proven quantitative truths are acceptable as evidence is contested by traditional Māori knowledge and wisdom traditionally handed down to successive generations.

For example, impact assessments relying on core sampling of estuarine marine life carried out on two or three occasions can be countered by the anecdotes and other qualitative data of lived experiences conveyed orally over a lengthy period to successive generations. As Vine Deloria (1997 37) aptly puts it:

> Tribal knowledge was not fragmented data arranged according to rational speculation. It was simply the distilled memory of the people describing the events they had experienced and the lands they had lived in.

Kaupapa Māori approaches to research have gained momentum over the past decade. Increasingly advocates of Kaupapa Māori (Irwin 1994; Smith 1997; Smith 1998; Bishop 1996; Pihama 2001; Hutchings 2002) have taken up the challenge and thrown off the shackles of theory constructed under western rules and begun focusing on creating theories based on te

ao Māori and kaupapa Māori. One approach has been the development and application of Mana Wahine theory.

Mana Wahine

Mana Wahine operates within a Kaupapa Māori theoretical framework and recognises the unique position Māori women occupy and speak from as resisters and survivors in a colonised land. Māori women over several decades have gained prominence through actively challenging decisions made by authorities intent on degrading Papatuanuku and te Taiao, from which mana is derived. An example of this is the proposed degradation of the blueprint of life from genetic manipulation. This issue gained prominence in 1999 when the Royal Commission on Genetically Modified Organisms (GMOs) heard submissions from organisations like Nga Wahine Tiaki O Te Ao, a Māori women's collective. Wahine challenged the arrogance of science, the risks it unleashed for humanity and the lack of respect for existence itself. Unfortunately we also had to challenge Māori male submitters whose interpretations of purakau condoned human manipulation of te ira tangata, and defend our rights as women to promote our own understanding of the same stories we value and nurture rather than fragment and destroy the potential of life.

Jessica Hutchings (2002) a member of the collective, uses the term "Mana Wahine to mean Māori women's theories". She argues that these theories are processes of tino rangatiratanga, practices, and strategies that Māori women employ individually or collectively which are "grounded in te reo me ona tikanga…where Māori women's thoughts and theories become validated giving visibility and space to the herstories of Māori women" (38).

> Mana wahine is a way of being. It is also a theory and a tool for analysis that can be adopted by Māori women to enable them to have space to develop their own ideas about situations and events…Mana wahine theory is derived from kaupapa Māori (Māori theory). It is the definition and application of kaupapa to situations and analysis by Māori women that informs mana

> wahine theory and challenges current hegemonic colonial masculinist ideologies (Hutchings 2002 38)

The ideologies Hutchings refers to have their genesis in the enlightenment period, which though distant is still evident in places where the objective reductionist, rationalist male still oppresses and subjugates other forms of knowledge.

As an anti-colonial theory, Mana Wahine has been used in recent times to position Māori women's responses to western colonial thought (Irwin 1992; Smith 1998; Pihama 2001; Hutchings 2002). This approach is proving useful to mana wahine scholars interested in critiquing positivist planning processes from an indigenous feminist perspective.

Hutchings draws upon the work of Pihama (2001), Smith (1992), Huia Jahnke (1998 2) and others to extend the application of Mana Wahine theory. She adopts Jahnke's view that Mana wahine is "about the power of Māori women to resist, challenge, change, or transform alienating spaces within systems of domination" and argues that mana wahine theory "makes visible issues and analysis pertinent to Māori women" (Hutchings 2002 11). Managing the physical and natural resources in a manner which ensures supplies for future generations is one such issue.

The spaces where resource management and planning issues are negotiated and made visible in Whaingaroa, remain challenging spaces, spaces to be transformed by Tainui who have a long history of resisting, reclaiming and influencing relationships. Resistance may lead to more positive decisionmaking outcomes for Tainui in the future. One cannot leave this chapter on Kaupapa Māori and Mana Wahine without discussing racism, or more specifically environmental racism.

Environmental Racism

According to Robert Bullard:

> racism plays a key factor in environmental planning and decision making. Indeed, environmental racism is reinforced by

> government, legal, economic, political and military institutions…racism influences the likelihood of exposure to environmental and health risks (Bullard 2002 471).

In this instance Bullard is referring to the environmental inequalities experienced by people of colour in the United States who were exposed to living in close proximity to polluting industries, or receiving the wastes from urban areas on a daily basis. Similar examples can be found in predominantly Māori and working class areas in Aotearoa such as Karikari, Mangakahia, Tokerau, Kawerau, Manukau, Motunui and Whaingaroa.

Development in Whaingaroa has escalated over the last 20 years partly due to the permissive interpretations of the RMA by councils. Council decisions have lead to outcomes which have exposed Tainui to environmental and health risks and adversely affected the tikanga, beliefs, values, and culture of Tainui as well. Cultural ideas which are prevalent in te ao Māori (the Māori world) such as tapu, noa, mauri, mana, whakapapa, manaaki, kaitiaki and tikanga, influence environmental processes and planning decisions made by the hapū. However in the planning cases discussed in Chapters 5 and 6, kaupapa Māori concepts though recognised are largely subordinated and ignored, while ideas having their origins in the Western European enlightenment period are privileged.

Modernity

Modernist planning theories have undergone a number of changes throughout the twentieth century, however the basic assumption that everyone has the same values, and that the world is an objective place, separate from us and amenable to rational analysis and rational forms of goal-setting has remained constant. Decisions made by councils regarding Whaingaroa appear to have been informed and influenced by modernity. These decisions are critiqued in Chapter 5 to determine

whether councils have honoured their statutory obligations and recognised and provided for the relationship Tainui has with the local environment.

According to John Friedmann (1987 47) “planning is concerned with making decisions and informing actions in ways that are socially rational”. This thesis shows that while councils followed processes and made decisions according to their interpretation of the RMA, they operated largely within the parameters of western, modernist and hegemonic planning processes which favoured positivist, scientific, and rational approaches to decision making. The decisions made, used scientific approaches to view a fragmented world as a number of disconnected parts.

This approach contrasts with kaupapa Māori holistic views of an interconnected and interdependent world. The preference to make decisions which subjugate hapū beliefs, values and culture, and promote environmentally unsound practices are questioned here, as the cumulative impact s of decisions made in our interconnected world are far reaching. Smith (1999 5) warns that with the “shift towards the new right” economic policies and positivist approaches to research, “there are profound implications for Māori cultural values and practices” (1999 6) which will be discussed further in Chapter 4.

Ali Memon (1993 46) explains that the state’s attitude to the environment has been “dominated by ideologies of material progress and technological superiority”. These ideologies remind Tainui of the pervasive presence of colonial thinking which is evident in the minds of those who are privileged to make decisions under ‘the’ law about the use of the Whaingaroa environment. The influence of these theories which view nature and culture as separate is seen in the rules, regulations, objectives and goals outlined in various planning documents. Using these plans, authorities often make decisions in the name of science, progress and development, which demean deeply held traditional beliefs. Nature, under this paradigm is not treated as a living being, but is viewed as a commodity, a physical thing to be classified, dominated and exploited for capitalist gain

even to the point of extinction. Indigenous peoples like Tainui, the Sami of Norway, Tangata Maoli of Hawaii, and various North and South Native American peoples, have regularly expressed concerns at both the local, national and international levels, about overexploitation and the lack of respect and understanding for the ecological cycling of the 'natural world'. These concerns have relevance today as the cumulative impacts of unsound environmental decisions are being experienced not just locally but world-wide. Ideas that influenced decision makers to allow activities that produced these negative outcomes, can no longer be relied upon to meet the challenges posed by increasing development. Processes which recognise the fact that planning takes place in multiple settings and in a multitude of ways now need to be widely promoted and implemented.

In the context of Whaingaroa, an approach which hears, considers and provides for hapū expectations under the Treaty of Waitangi framework (Matunga 2000) is more likely to achieve more positive outcomes for all, than the current processes which favour cheap options without forethought for expected impact s further down the track. Matunga is critical of the current environmental decision and policy processes which exclude Māori from decision making and relegate them to the position of onlookers, "not being allowed to plan, but being planned for", in breach of the rights affirmed in the Treaty of Waitangi (Matunga 2000 36). Such an approach is influenced by modernist ideas such as deductive reasoning, economic individualism and positivism (Merrett 2008 704-6).

Positivism

Positivism is an approach to the gathering of data using the 'scientific method'. Science has been defined as "the intellectual and practical activity encompassing the systematic study of the structure and behaviour of the physical and natural world through observation and experiment" (Oxford Reference online 2008). In recent years the value and limitation of science in environmental policy and decision-making has come under increased scrutiny especially in the area of resource consent hearings and risk management. This trend was highlighted by the Parliamentary

Commissioner for the Environment, (PCE) in a discussion paper "*Illuminated or blinded by Science?"* (2003) which drew attention to some of the challenges faced by environmental policy and decision makers in New Zealand in making decisions that could be accepted as "scientifically sound, economically, socially and culturally acceptable, and environmentally sustainable" (PCE 2003 5).

Out of the forty two submissions received on the discussion paper, only one was from a Māori organisation, and seven were from territorial authorities including the WDC whose decisions are the subject of this research. In their response, the WDC described science as having a necessary role in "transferring knowledge to the community to assist its decision-makers and to increase community awareness and accountability for outcomes as a result of community behaviours" (PCE 2003 24).

Other responses to the paper were largely from the scientific community who endorsed the view that "Science was an aid to decision-making, acting as an independent information provider" (2003 53). I agree that science can aid decision making, but professional planners, experts and others in the inner circle of planning can hardly be called independent when they continue to promote positivist ideas of scientific verifiability/falsification, rationality, objectivity and universality in resource management processes while subordinating Māori and other cultural beliefs, values and practices.

The supposed value free findings, and independent expert opinions contained in numerous scientific or technical reports, are often considered to be more reliable and accurate than knowledge based on oral tradition, customary knowledge and practices carried out over several generations. The undue weight often given to western scientific knowledge reminds Tainui that in the context of Aotearoa, matauranga Māori (Māori knowledge) while recognised by planners and councils is still considered subordinate, as 'other', to be disregarded.

According to Sotirios Sarantakos (1993 25), positivists assume that "all members of society define reality in the same way because they all share the same meanings". Andreas Faludi (1973) and Friedmann (1987 36) have pointed out that:

> For many years planning was defined as the art of making social decisions rationally, that rationality was dependent on links being made in a scientific way between the information gathered and the expert opinion based on interpretative scientifically sourced skills.

These ideas were supported by Bent Flyvbjerg (1998) in his case study of the Danish town of Aalborg. Flyvbjerg drew on Francis Bacon's dictum: "Knowledge is power" to examine the politics, administration and planning in the town from an anti-Enlightenment perspective. He critiqued the use of a rational approach and linked it to the exercise of power which ebbs and flows and is constantly being produced and reproduced (Flyvbjerg 1998 226).

> Power concerns itself with defining reality rather than with discovering what reality really is…power defines what counts as rationality and knowledge and thereby what counts as reality …power defines and creates, concrete physical, economic, ecological, and social realities (Flyvbjerg 1998 231).

Decisions made concerning the use of the Whaingaroa environment reflect Flyvbjerg's sentiments. Councils define reality and in the process deny Tainui reality which celebrates different histories, experiences, beliefs and values. A useful tool for critiquing such power relationships and challenging positivism and modernity is critical theory.

Critical Theory

In reflecting on positivism and science, critical theorists, have challenged the notion that empirical science is neutral or value free. Rather it is more likely to be seen as a value-laden tool of domination wielded by technocrats whose role is to support planning decisions made by territorial

authorities, like councils. Smith (1999 3) has referred to Kaupapa Māori as “Localized Critical Theory” and draws on Pihama (1993) to link critical theory with Kaupapa Māori.

Critical theory describes a diverse set of approaches linked by a shared commitment to critique, questioning and emancipatory politics to promote progressive social change e.g., Actor-Network Theory, Marxism, feminist theory, critical social theories and so on. Environmental planning is one area that is instrumental in promoting or facilitating development and rapid change to local communities and should therefore be subject to such a critique.

John Forester (1989 138) regarded planning as political and stated that a critical theory of planning aids understanding of the role of planners, who may be “technically skilful and politically inept”, in achieving particular outcomes. He explained how “existing social and political-economic relations actually operate to distort communications, to obscure issues, to manipulate trust and consent, to twist fact and possibility” (141). This theme was picked up by Nicholas Low (1994) who recognized the inequities that existed between planners and the people being planned for. He argued that “planning for justice (equity planning) should be a necessary position for planning” (116). His views were expanded by Johnston (2000).

Ron Johnston et al (2000 129) described critical theory as focusing on the “connections between human agency and social structure which exist under capitalism and which can be recognised and restructured through a process of critical reflection”. Geographers have used critical theory to oppose unequal and oppressive power relations. Marxism, feminism, post colonialism, queer theories are examples of critical theories. They have all evolved out of western intellectualism. Attempting to apply critical theories sourced from Aotearoa and specifically Whaingaroa seems a logical extension of this work.

Critical theory has synergies with anti-colonial, Kaupapa Māori and Mana Wahine theories and methodologies, all of which are useful in analyzing

racist power relationships and structures, and interrogating the notions of resistance, struggle and liberation. Critical theory highlights the fact that realities are not natural but constructed by people and the societies in which they live. New Zealand has a colonial history which has influenced how contemporary society has been constructed. The struggle for Tainui to be heard, and to influence change, exposes not only the inequalities that exist within the society but also the tools used by the dominant group to maintain the status quo. Some decision makers have interpreted and used their interpretation of 'the' law to justify the imposition of unjust rules and activities on Tainui at Whaingaroa. How they have done this is analysed in Chapter 6.

Anti - Colonial Theory

Anti colonial and some postcolonial theorists argue that the impacts of colonialism are still present in the contemporary experiences of indigenous peoples. They argue that there is 'no post to colonial' as Māori like indigenous peoples in America, Australia, and Scandinavia are still being colonised, therefore the need to resist and challenge colonialism remains (Loomba 2005 40; Pihama 2001; Reynolds 2004 iii).

Robert Young (2001) states that "colonialism was never just an idea, a theoretical position, or a philosophical view of the world. Its ideas were embedded as part of a dynamic input into material, political, and social organizational infrastructures" (2001 427). Tainui know about the impacts of British colonisation through firsthand experience. We are aware that it continues today unabated in a more insidious form, a form which uses the English language, law and values to subsume Tainui tikanga, matauranga and reo.

Our views are shared with Kenyan writer Ngugi Wa Thiong'o (1986) who believes the presence and use of English "continues a process of erasing memories of pre-colonial cultures and history and as a way of installing the dominance of new, more insidious forms of colonialism". Unfortunately as a colonised person I have no choice but to write this thesis in the language

of the coloniser as we were forbidden to speak te reo Māori at school and my competency in the language is still at an intermediate school level.

Kaupapa Māori is an anti colonial counter hegemonic approach which legitimates Māori knowledge, culture, values and position in a continually contested and rapidly changing world. Anti-colonial theories allow space at the margins for debates to extend understanding to a wider audience about ongoing historical struggles which have emerged over the recognition of rights, difference, identity and justice as a result of ongoing colonisation.

Summary

This chapter introduced theoretical ideas of relevance to this research. It accepted Kaupapa Māori and Wahine Māori approaches as valid as research being done by Tainui for Tainui and about Tainui. The chapter also identified a number of western theories, whose influence can be clearly seen in the decisions councils made in Whaingaroa. Acknowledgement of conflicting theoretical positioning may appear ambiguous however, the ideas discussed here will become more obvious when discussions take place around the case study examples later in Chapter 6.

Smith's description of kaupapa as a "plan, a philosophy, and a way to proceed...a notion of acting strategically, of proceeding purposively" (1999 2) is useful in that it can be applied to Tainui who have a plan, but the way forward to achieve its goals is strewn with obstacles which need to be cleared if we are to achieve our aspirations as a people on our own land. The influence of Kaupapa Māori will be seen as a thread running through the methodological chapter, which follows.

CHAPTER 4
LOOKING FROM THE INSIDE OUT

> The core of kaupapa Māori is the affirmation and legitimation of being Māori In other words, it is the (re)centering of te ao mārama...for if you are Māori and looking out, you do so from your own centre…We wish to look at things our way, from the inside out, not from the outside in (Penehira 2003 5).

Introduction

In the previous chapter I discussed the theories which influenced the methodological approaches taken in this research. Linda Smith states that Kaupapa Māori is the development of 'insider methodologies that incorporate a critique of research and ways of carrying out research, for Māori, with Māori and by Māori' (Smith 1999). Methodology, according to Smith "is important because it frames the questions being asked, determines the set of instruments and methods to be employed and shapes the analyses" (1999 142).

In this chapter I elaborate on the multi-methodological approaches I used to collect and analyse information to support my thesis. I begin with autobiography, a useful method to relay personal lived experiences. My journey with Tainui over the past 19 years has been documented through personal, council and court records. In this research I draw some of that material together to review and reflect on. Rachel Saltmarsh (2001) has opined:

> Autobiography is a way for me to share my knowledge of my culture. Through snatches of autobiography I can share its riches, its pain, its pleasures, and its everydayness. My constant battle is only with those too blind to see its value: the scientists – those who say that my research cannot be 'scientific' because I'm too involved, I'm not objective; and so on and so on and so on (Saltmarsh 2001 147-148).

It is interesting that in deciding to use an autobiographical approach, I have been confronted with similar arguments. An autobiographical approach is not objective or scientific enough for critics familiar with analyzing quantitative data My personal experiences are my primary source of information which I draw on to extend meanings about cases discussed in an attempt to contribute new knowledge to the debate about equitable outcomes for hapū in Whaingaroa.

Pamela Moss has stated that "geographers [have] used autobiography in their approaches to research … to reflect on where they are located in the web of power relations constituting society and to utilise this positioning as a mediating relation in the interpretation of information gathered through the research process" (Moss 2001 15). Tainui locates itself within spaces and on the periphery or margins of a centre mainly occupied by councils. It is from the margins and fringes of the community that plans are made and change is possible.

Although the words insider and an outsider have been used in the past to describe such positioning I prefer to think of myself as both an advocate working from the margins and a knowing insider creating crevasses near the centre where power is concentrated. Experiences as a wahine, political activist, hapū advocate, and participant, in informal mainly unfunded research arm me with knowledge which can influence council planning decisions made on a daily basis. It is from this perspective that I write.

According to Sandra Harding "declaring the position from which one writes may lead to more sound analyses rooted in the authority of experience, than apparently disinterested research which fails to acknowledge its partiality" (Johnston 2000 604). As the hapū environmental spokesperson, I occupy a position of power within my hapū in that I represent their interests at council, court and a ministry level to ensure that our concerns about threats to our relationship with Whaingaroa are heard and understood. The fact that decisions are made for us about matters which

affect us, but not made by us, clearly illustrates the inequitable position the hapū occupy in the power relationship which decide how resources will be managed and sustained.

The elevation of Waikato-Tainui, as the iwi authority in our area permits them to speak for Tainui within the raupatu boundaries. Our lands to the south of the line, which runs along the northern shores of the Whaingaroa harbour, provide a space from which we continue to speak on matters that affect our hapū.

While councils and governments once attempted to ignore us years of 'being there' and participating through submissions means the decision maker is always conscious that decisions made will be scrutinised by us. From marginalisation has emerged a resilient determined people, able to resist and question why in the hierarchy of decision making about lands inherited from tupuna, tangata whenua remain a silent partner, barely visible. On occasion I have asserted our rights, voiced Tainui concerns, and given advice to ministerial bureaucrats, planners, and councils on issues which are of profound importance to the future wellbeing of Whaingaroa. On rare occasions our words are reflected in reports and legislation.

Engaging with councils to negotiate differences over rules, policies or the amount of weight to be given to certain provisions for particular activities has been a frustrating task. Successive councils have listened but ignored our submissions, forcing us to appeal to the Environment court where in all but one case taken we have received a favourable response. Although we have been successful 3 out of 4 times in overturning decisions made at a local level, I feel aggrieved at processes and outcomes which unfairly discriminate against Tainui and other Māori communities. Undertaking research into the whakapapa of such processes and identifying how decisions have been made is a first step to finding transformative solutions to improve outcomes for Tainui, councils and our communities.

Method

To undertake this research I adopted a mixed method approach, using participant observation, autobiography, critical reading, and a longitudinal case study based on Tainui experiences in Whaingaroa.

A worldwide web (www) search using the word Tainui hapū and resource management received 9030 hits. I refined this by including “Whaingaroa” which reduced the references to 230, however most of the articles on www related to Waikato –Tainui, a trust based at Hopuhopu which manages Waikato Raupatu Lands Settlements, and various Waikato hapū of Tainui waka, rather than relating to the Tainui hapū at Whaingaroa. The majority of articles that were written about Tainui hapū have been authored by me. This indicates that there are still gaps in the literature and opportunities for others to write about the Whaingaroa especially in the area of legal and cultural geographies.

An extensive literature review of Human Geography textbooks, Waitangi Tribunal Reports, Waikato planning documents such as the Waikato Transitional, Operative and Proposed District Proposed District Plan, Waikato Regional Policy statement, Waikato Proposed Regional Coastal Plan, the New Zealand Coastal Policy Statement 1994, council hearing committee decisions, copies of Environment Court decisions relating to Tainui environmental issues, and media statements in the Raglan Chronicle and Waikato Times, revealed a wealth of information about Resource Management.

Once I had completed the literature review I began examining personal correspondence, submissions, resource consent applications, and council decisions to identify resource consent applications which had been appealed to the Environment court. Personal records highlight my involvement on behalf of Tainui in planning processes over the past 30 years. These documents though personal, give voice to the planning experiences of my hapū under the RMA. By using myself as one of the key sources of information I privileged practical knowledge and experience over the rhetoric and theory of planning.

I reviewed resource consent applications received over the last two decades. While hundreds of applications ranging from subdivisions to water discharges were received, less than 10 were appealed by Tainui to the Environment court. Of those I have chosen three to discuss.

Next I identified the decision makers who had initially granted permission for activities and looked at the provisions 6(e), 7(a) and 8 of the act to identify obligations owed to tangata whenua.

Case Study

I adopted a longitudinal interpretive case study approach to review Tainui planning experiences and council decisions appealed to the Environment Court A case study method gave me an opportunity to examine 'a unit of human activity embedded in the real world, which can only be understood in context' (Gillham 2000 1). I chose three decisions to critique to find out whether councils assisted or discriminated against Tainui in their decision-making roles especially in regard to Māori provisions within the RMA. The decisions critiqued were Greensill v Waikato Regional Council, Tainui hapū v TV3, and Tainui hapū v WDC.

I examined the language used in submissions and decisions to see how it influenced or constructed particular land use outcomes within Whaingaroa. With each decision I identified the main issues of contention, evidence given, and outcomes achieved for Tainui. I also discussed how the legislation that delegates authority to Councils has been interpreted to undermine the authority of Tainui on its own ancestral lands.

Some methods not used were interviews, and focus groups, as ample written material submitted by Tainui witnesses to the council hearings committees and courts existed from which to complete my research.

Summary

This chapter began by discussing the multi-methodological approach taken and methods used to gather evidence required to support my thesis that councils have failed to honour their obligations to Tainui under the RMA.

A qualitative, interpretative and autobiographical approach was adopted to ensure that a Māori voice was heard within an area where Māori knowledge has been shared but ignored.

The case study method focused attention on particular cases to tease out comments which are indicative of the attitudes held by those who sit in judgement. I have noticed our concerns being ignored, and rights and aspirations for the use of ancestral lands and space denied, during my years of challenging decisions made by councils. The chapter that follows highlights deficiencies in the decision making process.

CHAPTER 5

19 YEARS OF PAPER WARS

> Law is...a construct of a culturally based framework which endeavours to set normative standards for culturally socially, economically and politically diverse peoples, and rationalises its basis for doing so by saying that the law is the equaliser and the balance in all this diversity...In terms of indigenous peoples, law has acted as the destroyer of balance (Kelsey 2002 394).

Figure 7: Sewage discharge pipeline entering the moana at te Kopua.

Introduction

In 1866 the compensation court sat to determine how much confiscated land it would return to Tainui loyalists and how much it would retain to punish Tainui 'rebels' who had dared to take up arms to defend hapū lands against the British incursion. The decisions made that day lead to my ancestor Haami Kereopa, Manu Kapua Paekau and others beginning a paper war that ended with an appeal in 1907 to the Privy Council in England, a case they lost in 1913. This setback did not stop them fighting to regain and retain Tainui land and other resources. In 2010, we are still engaged in paper wars as we battle against unfair laws and practices that

interfere with our culture, shape our existence and adversely affect our relationship with our lands, taonga and each other.

Waikato District Council Submissions and Plans

Part 11 of the RMA clearly sets out principles for decision making, and requires that Tainui relationships with land and other taonga be recognised and provided for by WDC. The Act also provides opportunities for input into district, regional and community plans. These plans once completed contain rules, policies and objectives that govern how land and other resources in Whaingaroa will be used.

On the 24 August 1991, the WDC sought feedback from its community as part of its review of its District Scheme. I lodged a submission for Whaingaroa Kite Whenua Charitable Trust, an organisation committed to training unemployed youth in environmentally focused programmes at Te Kopua. Other members of our hapū including my uncle Haami Kereopa also submitted on the *Draft Scheme Review: Coastal and Māori issues*. Haami, the kaitiaki of Te Whaanga, was disturbed that the scheme encroached on whenua that belonged to our whanau and hapū exclusively. He was particularly concerned at reserves being concretised and names such as Manu Bay[2] Reserve and Whale Bay[3] Reserve being inscribed by WDC, within the Karioi Native Reserve, and instructed me to call them to a hui.

My uncle was not someone you ignored. The words of a song I wrote for his 60th birthday invade my thoughts. *"He's over 6 foot 4, he's mean and proud, doesn't like living among the crowds, and lives out at Te Whaanga, Whaingaroa. Haami Whakatari, Sam to most of you, lives with Rosa at Whale Bay, chasing trespassers away..."*

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[2] Known as Waikeri

[3] Known as Te Whaanga

As a member of the 28th Māori Battalion, he spent his teenage years fighting Germans 'for king and country' in World War 11. When he returned to Whaingaroa after the war, his papakainga and tupuna whare Miria te Kakara had disappeared. The New Zealand government had taken the land to make way for an emergency runway that was never used. My uncle's demeanour towards government and council officials changed. When the WDC designated Te Whaanga as a scenic reserve, he threatened to call in the battalion for an armed occupation. He never trusted them again and spent the rest of his life patrolling Whale Bay, and keeping an eye on public notices, just to make sure the council couldn't steal his land. Like my mother, he was a resister extraordinaire.

I called the hui and the WDC mayor, local councillor and planner turned up. The hui, at Te Kopua followed the usual pattern. We let them talk. The planner explained that content from the submissions on the review document could be included in the first Waikato District Proposed Plan under the new law. My uncle listened, fired a few questions in his usual abrupt fashion, stood up, strolled out and went home. The Manu Bay Recreation Reserve Management Plan was finally launched, and committee members representing various interests were approved, after he died. Tainui has one representative voice on this committee, despite the fact that the reserve sits within the Karioi Native Reserve, Māori land set aside in 1855 for Tainui.

On 23 March 1992, at another hui with council, we outlined our vision for marae development, land use and the proposed district plan. We reminded WDC that their representatives had been present in 1988 when we unveiled a plan *Tihei Mauriora* outlining our development aspirations for a block of land at Te Kopua. We requested that it be included in their Proposed Waikato District Plan (WDP). When the first WDP was released, Tainui were pleased to see some of the policies and rules permitted developments as of right, at Te Kopua. This was a huge achievement but one that Tainui has been unable to take full advantage of due to the

presence of WDC's wastewater pipeline running through our land (See Figure 8).

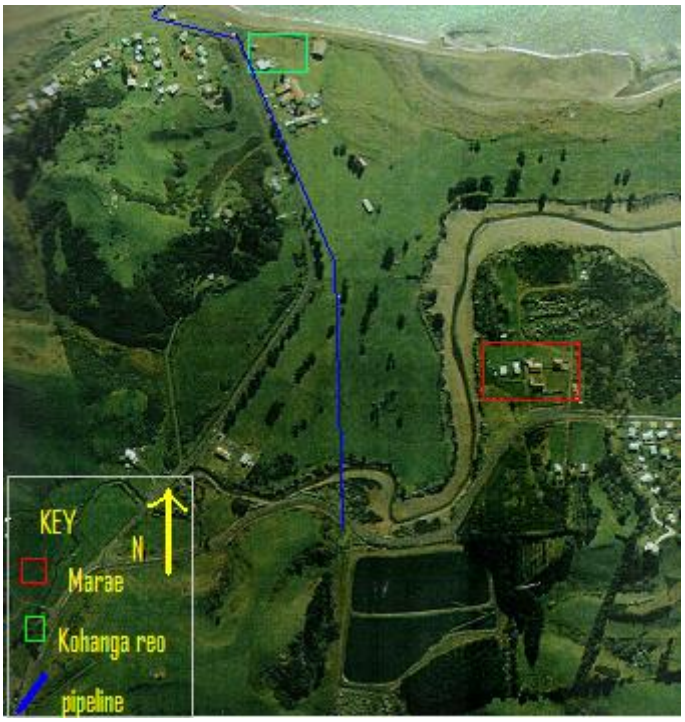

Figure 8: Pipeline illegally embedded in Tainui land

The wastewater issue came to prominence in the 1970s. It became the subject of numerous council meetings, hearings and appeals to Planning Tribunals[4] (PT) or Environment Court (court) and continues to plague relationships between Tainui and the council to this day.

In this chapter I discuss the wastewater case, television translator consent and a marine farm application. I appealed all cases to the court on behalf of Tainui. In two out of the three cases we were successful in having the consents granted by council overturned. Tainui cases relied principally on three key sections of the RMA, sections 6(e), 7(a) and 8 and it is those sections that are applied here to help assess whether obligations contained within the RMA were met over the past 19 years.

[4] Planning Tribunals became known as the Environment Court in 1996.

Provisions of the RMA

The RMA is New Zealand's primary environmental legislation. It sets out purposes and principles of the act for functionaries like councils, who are delegated authority to make decisions.

Section 5 (1) sets out the purpose of the RMA which is to promote the sustainable management of natural and physical resources**.**

(2) which ... means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—

(a) Sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and

(b) Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and

(c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

Part 2 obligations under section 6 directs that those exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

(a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development:

(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:

(c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

(d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:

(e) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga:

(f) the protection of historic heritage from inappropriate subdivision, use, and development:[5]

(g) the protection of recognised customary activities.[6]

Section 7 discusses other matters. In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

(a) kaitiakitanga: (defined in s 2(1) as: the exercise of guardianship by the tangata whenua of an area in accordance with tikanga

(aa) the ethic of stewardship:

(b) the efficient use and development of natural and physical resources:

(ba) the efficiency of the end use of energy:

(c) the maintenance and enhancement of amenity values:

(d) intrinsic values of ecosystems:

(f) maintenance and enhancement of the quality of the environment:

(g) any finite characteristics of natural and physical resources:

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[5] Section 6(f): added, on 1 August 2003, by section 4 of the Resource Management Amendment Act 2003 (2003 No 23).

[6] Section 6(g): added, on 17 January 2005, by section 4 of the Resource Management (Foreshore and Seabed) Amendment Act 2004 (2004 No 94).

(h) the protection of the habitat of trout and salmon:

(i) the effects of climate change:

(j) the benefits to be derived from the use and development of renewable energy.

Section 8 directs all councils to take into account the principles of the Treaty of Waitangi when exercising functions under the act.

While there are several other important sections such as section 33, I have only chosen sections that have been regularly argued in courts by Māori during the life of the RMA. As well as the RMA, there are provisions within several other documents that must be taken into account when decisions are made. eg National Policy statements such as the New Zealand Coastal Policy Statement (NZCPS) (NZ Government 1994), and transitional, proposed, operative, coastal, regional and district plans. These documents are relied upon to guide decision making processes and outcomes.

The Case Studies

Tainui have engaged with councils over resource consent applications and planning matters for almost 20 years. Sometimes consent applications require research, site visits that take time, money, and knowledge undertaken during my 'spare' time. Out of the hundreds of applications that arrive annually, only one or two require face to face meetings with WDC to ensure that major effects on the environment and people are avoided. It is not possible to comment on all cases taken over the past 19 years but from the list, I have chosen three to give an indication of the scope of issues Tainui contend with to maintain our mana and sustain Whaingaroa under the RMA.

The three council decisions examined in this chapter support my claim that councils in promoting sustainable management of natural and physical resources, failed to honour their statutory obligations to Tainui under the Act over the past 19 years.

1. Tainui Hapū v Waikato Regional Council Environment Court A063/2004 (Whaingaroa Harbour Wastewater Treatment and Disposal). I chose this 2004 decision first as it is the longest running case I have been involved in.

2. Greensill v Waikato Regional Council Planning Tribunal W17/95 (Paritata Marine Farm). Judicial interpretations of concepts such as Kaitiakitanga and consultation raised in this case have been used as precedents in cases that followed.

3. Tainui Hapū anors v Waikato District Council Planning Tribunal A075/96 (Horea and TV3). This case dealt with metaphysical and intangible matters of importance to Tainui and became a leading case on these issues due to its appeal by TV3 to the High court.

Since the RMA came in Tainui have been parties in the following hearings:

1993/2004	Wastewater cases Tainui v WDC	Won 1993WRC Lost 1987 WRC Lost 2004 EC
1994	Greensill v WRC - Paritata Oyster farm	Lost WRC Won PT
1995	Tainui hapū v TV3	Lost WDC Won PT
2006	Raglan museum and jetty	Won WRC
2007	Hauauru mai Raki wind farm	Awaiting BOI hearing date
2009	Tainui hapū & Ors v WDC plan provisions	In mediation ENC
2010	Hemi v Waikato District Council	waiting decision ENC
2010	Tainui Awhiro v HPT	In mediation

Figure 9: Council decisions taken to court since 1991

CASE 1: TAINUI HAPŪ v WAIKATO REGIONAL COUNCIL

Raglan's Wastewater Treatment and Disposal

> *I am going to wait and see if the government is going to pass an act to take our land again for your sewerage system, then we will go to war again. That gentleman is the alternative. You find an alternative to your sewage scheme. Polluting the Harbour Whaingaroa is not on and you can try and convince me that treated effluent going into the harbour is harmless. I am not thick. In conclusion, gentlemen, your sewage does not come across Te Kopua the ancestral land of my people* (Rickard T 2004).

Background

The Raglan wastewater case, which had its genesis in the 1970s, angered the hapū, especially kaumatua. To defile Tangaroa was unthinkable. Where was the respect? Because of council's actions, we could no longer gather food in our area or pass on customs. Our place was affected. Whaingaroa, recognised in Tainui history through waiata, purakau, narratives, and poetry as an important site of spiritual, cultural and historical value to Tainui, at the stroke of a pen, became the repository of human waste.

The System

The current wastewater system (consisting of two oxidation ponds and a pipeline) was originally designed to cater for a population of 1600 people. Government policy at that time encouraged local councils to apply for subsidies to decommission septic tanks, hook everyone into centralized sewage systems, and pump untreated human effluent into harbour mouths. Despite hapū opposition, oxidation ponds were built over Te Rua o Te Ata, our wāhi tapu, and a pipeline was constructed to pump the town's effluent through hapū land into the harbour mouth. None of the

thirty houses on hapū land are hooked into the wastewater system despite being within the Raglan township residential area for town planning purposes.

In 1977, WDC began pumping human effluent from the township to the oxidation ponds at Rakaunui where it would sit before being discharged through the pipeline into the harbour mainly on the outgoing tide. Our lives changed dramatically. No more swimming and no more gathering of pupu or kutai in the river or at Ngarunui. When that consent ran out in November 1990, WDC applied to the WRC under the provisions of the Water and Soil Conservation Act 1967 for a water right to discharge up to 3,400 cubic metres of treated domestic sewage per day into the Harbour. My mother and I objected on behalf of Tainui.

Negotiations took place between Tainui, WRC, and DOC to try to resolve the impasse and in December 1993, WDC agreed to "work with the Tangata Whenua in the on-going monitoring of the existing situation and in the investigation of alternative sewage treatment and disposal systems *with a view to ending the current harbour discharge of treated sewage effluent*" (pers. comm). WDC signed an MOU with Tainui to that effect. The Minister of Conservation, in issuing a coastal permit for a 5 year discharge, encouraged WDC and Tainui *to "use every endeavour to ensure the spirit of this Agreement is given effect to".*

The Proposal and Background

Two years later WDC lodged another application with WRC for permits to designate an area including the wāhi tapu site a wastewater treatment and disposal system, discharge to air, and water over a 15 year consent period. In its application, WDC sought permission to upgrade the system, build five new treatment ponds, decommission the pond closest to the Wainui stream, and incorporate the UV, wetlands and another outfall into the harbour through which 3,400 cubic metres would be released three times daily.

At a prehearing meeting, held on the 18 December 1997, Tainui objected on several grounds. We claimed that customary rights and ancestral obligations to Whaingaroa affirmed in te Tiriti o Waitangi by our tupuna; that the practice was offensive and its continuation culturally and spiritually unacceptable, and economically debilitating, and that the site of the constructed wetland was a site of cultural significance, a wāhi tapu. We argued that granting the consents would be contrary to sections 5, 6, 7, and 8 of the RMA and sections 2, 3, 5, 6, 8 of the NZCPS. We informed WRC that the land and harbour were subject to a Waitangi Tribunal claim, and that Tainui were intending to build a cultural centre and economic base at Te Kopua. It wasn't until February 1999, that the WRC heard evidence from the 26 submitters of which eleven had submitted on the designation of land for a treatment and disposal area and 15 on the discharges, earthworks and new pipeline.

Evidence

All tangata whenua submitters informed WRC that they opposed the application on cultural and spiritual grounds and on the adverse effects to kaimoana especially kutai. Other issues raised by tangata whenua related to the Treaty of Waitangi, principles of consultation and active protection, the stability of the proposed outfall in an erosion prone zone, the effects on the life sustaining capacity of salt water, the presence of wāhi tapu, the suitability of alternative sites, the protection of Te Rua o Te Ata from being part of the treatment and disposal system and the fact that Māori development was constrained with the wastewater treatment and disposal in place. The majority of the submitters supported a land-based disposal option similar to Pauanui.

WDC however, relied heavily on scientific technical witnesses and case law to justify giving less weight to Māori concerns under Part 2 provisions of the Act e.g., *"Māori cultural and spiritual beliefs as to protection of water from discharges should not be accorded an absolute entitlement"*. While economic development was deemed necessary, it was argued by WDC's

counsel that tangata whenua expectations should be overridden (Tainui Hapū Anors v Waikato Regional Council 2004).

The council engineer relegated Māori concerns to 'perceptions' with his comments:

> the major issue in Council's view appears to be the *perceived* effect on local Māori land owners in the vicinity of the existing outfall, and the cultural issue of discharge of human waste to the sea (Safey 2004 10).

Over 20 years of actual impact s on our culture and relationship to the coast was completely ignored. Mr Mathieson, a planner for the applicant stated that if the discharge of wastewater into the sea continued against the stated opposition of tangata whenua that section 6 of the RMA would not have been recognised and provided for (Tainui Hapū Anors v Waikato Regional Council 2004).

In its decision, WRC used a precedent[7] to point out to WDC, the obligations of consent authorities to recognise and provide for tino rangatiratanga as required under section 8 of the Act.

> This includes management of resources and other taonga according to Māori cultural preferences. That approach would not, however, give Māori any right of exclusionary developments...the oxidation pond...should be retired from use as a wastewater facility as soon as practicable (Tainui Hapū Anors v Waikato Regional Council 2004).

While WDC was adamant there were no land based alternatives, its own witness "advised WRC that if the wastewater was treated to a high

7 Mason-Riseborough v Matamata Piako DC

standard and the soils role was simply to have effluent pass through it... then small areas of land could be used.

In terms of the application, decisions must be made on the evidence presented. Evidence presented by mainly technical experts stated that the proposed wastewater discharge would not have adverse effects on marine biota, a position Tainui disagreed with but did not challenge using 'western trained' technical witnesses or experts. In its deliberations WRC decided that although tangata whenua values had already been compromised by developments undertaken at a time when the relationship of Māori and their land and the cultural issues arising from that relationship were not taken into account, there should be no more desecration.[8]

Having heard the evidence WRC looked at the options. If the application was declined then Te Rua o te Ata would continue to be desecrated, the pipeline would not cope with increased capacity and the repositioning of the pipeline would be delayed. In their decision WRC also recognised the financial investment made by WDC.

WRC (with one dissenting judgement) granted a 15 year consent to WDC to upgrade the Raglan wastewater treatment plant and to discharge 3400 cubic metres of treated wastewater into the mouth of Whaingaroa harbour, food basket of the Tainui hapū, three times a day for the next 15 years.

The dissenting member who had sat on previous hearing committees granted two years. She focused on the language used by technical witnesses such as '*should*', '*poses little risk'* or '*discharge should not continue beyond 4.5 hours*' etc. In her view, these words failed to ensure that there would be no adverse effects. She also pointed out that WDC's

[8] Ibid,12

own witness had stated that '*treated effluent would require only about 1 hectare if discharged to land'*.[9]

Tainui appealed the WRC decision to the Environment Court who ordered Tainui, other appellants and WDC to mediate. Tangata whenua, the community and council staff appointed a mediator acceptable to all parties and met under her guidance over a period of almost two years to try and find alternative options to sea discharge. When the case resumed, the court focused not on the discharge but on the five year time period Tainui approved to allow WDC more time to find a land based solution. WDC identified six sites. Their first and second choices were the current Rakaunui site and Kiripaka to the south of the site. Horea, the sand dune area on the northern shores of the moana was next, followed by Te Pae Akaroa (Wainui Reserve) which is just south of Te Kopua. The other two sites to the east of Raglan township were never fully investigated despite the fact that most of the large subdivisions are now occurring in that area. No final agreement was reached on land based disposal options so the matter was litigated in court.

Judgment

In 2004, the court supported the WRC decision and granted a 15 year consent with conditions to discharge wastewater into the moana till the year 2019. The court found there would be no significant, actual, or potential effects on the environment by allowing the discharge of treated effluent in accordance with a set of proposed conditions.

The presence of this pipeline in the centre of our lands has been a site of contention for over thirty years. It has affected our ability to live off the sea because human waste washes over the kaimoana. It has also affected

[9] Ibid, 19-20

our ability to use our land to meet our aspirations as a hapū. Its presence is a constant reminder that Māori people and their culture don't matter.

If the RMA is about enabling communities to provide for their economic, social, cultural, and spiritual wellbeing, then surely Tainui culture, beliefs and values need to be recognised. The Environment Court read down Tainui evidence by treating appellants' evidence as "*assertions ... not so much of effects as such but of indirect or consequential results of the discharge"*. Their findings were influenced by the evidence of technical and expert witnesses and case law established in previous cases. For example at paragraph 96 of the 2004 decision it states: *"WDC accepted that the Raglan harbour environment is not what it used to be, and through a combination of factors of which the existing wastewater treatment plant is at most a minor one"*. To Tainui there is nothing minor about the presence of the treatment plant on the sacred site of a hapū ancestor (See Figure 10). Imagine the uproar if it had been located over the cemetery of famous settlers.

Figure 10: Reclaiming Te Rua o Te Ata

The court considered the effects of allowing the activity by reference to 'the environment as it exists now'. WRC relied on *Marlborough DC v NZ Rail (1995 NZRMA357 (PT)* to support this position. At paragraph 103 the court stated: *"It is not appropriate to judge the application by reference*

to the effects it would have on the environment as it existed at a halcyon time in the past, reported with such nostalgic pleasure by tangata whenua witnesses".

In its judgment the court found that WDC "*recognised Tainui as tangata whenua have a traditional and cultural relationship with Te Kopua and Whaingaroa, including kaitiakitanga and provided for these matters by: consulting with them fully, investigating alternative sites, proposing an alternative outfall pipeline, producing shellfish standard effluent, agreeing to abandon te Rua o te Ata and restoring it to a tidal wetland. Tangata whenua were also to be included in management plans and reviews*".[10]

While Tainui argued that the discharge to the harbour was inconsistent with tikanga was offensive and unsafe putting ourselves and visitors at risk, the court accepted precedents set in previous cases about communication towers near schools where people in that community were also told the court wanted evidence on '*real risks'* not '*perception'*. In terms of the 6(e) relationship of Tainui hapū and their coastal environment and section 8 te Tiriti o Waitangi provisions, the court found *'the recognition of and provisions for tangata whenua interests are substantial, and they do not have a power of veto'* a phrase that has gained credence in several cases since then including the *Watercare Services v Minhinnick case*[11]. The wastewater treatment and disposal system directly affects Tainui relationships with place. The waste is generated in the township and piped to Māori land for disposal.

> While there is no doubt that more ponds and treatment will improve wastewater quality, the fact that the final product will continue to be piped through Te Kopua and discharged into our

[10] Para 157 and 158 page 36 Tainui hapu decision.

[11] [1998] NZRMA 113, 127 (CA).

> harbour while alternatives are available can no longer be justified.... Effluent is of the land and needs to be disposed of on the land or within it. For the future of our harbour and the well-being of tangata whenua and kaitiaki there is no other choice (Greensill 2004).

CASE 2: TAINUI HAPŪ ANORS v WAIKATO DISTRICT COUNCIL

A075/96 (1996). Planning Tribunal, 21 August 1996 Judge Sheppard

> From time immemorial, our culture has had laws governing rights, responsibilities and right conduct. As tangata whenua of Horea we ask that Council recognise the rights of the descendant of Maru te hiakina and Punuiatekore to say no to this development on our ancestral land. The location is totally inappropriate (Greensill 1996).

Background

A number of inquiries from Telecom, Bell South, and Vodafone in the 1990s seeking transmitter sites at Horea raised alarm bells for the hapū (See Figure 11).

Figure 11. Horea from Te Kopua

A letter received from Telecom stated that Horea, opposite the Raglan township was an ideal site for a mast. We immediately replied, inviting Telecom to a hui to discuss their proposal and air our concerns. The thought of a transmitter protruding permanently like some phallic symbol in the space above Horea mortified me.

I had grown up with stories about Horea. It is the ancestral home of numerous tupuna including Punuiatekore and Marutehiakina, famous whaea tupuna of Tainui. It is where our tupuna whare, Tainui once stood, a place where physical remains of numerous tupuna are deposited and where unsettled spirits roam. Unsettled because the land was ours until 1941. Its alienation through unethical deals and the unwilling departure of Tuhoea, the last of our people living there, remains recorded in the Māori Land Court minutes to be addressed at some future date.

Horea has not forgotten us. In the dim morning light it lies there, silent, ominous, a long dark shadow, waiting. When we receive the calls, we go, usually to tend to tupuna who surface to remind us they are still there. Sometimes we go for other reasons. I recall one such event that occurred in the early 60s.

> "Tumu we need to go over and lift the tapu" said Te Uira. "Their mother rang this morning. Those kids have been getting visitors. Bet I know what they've been up to". The boat, headed out into the harbour. The fog thickened and we waited. We didn't have to wait long. The boat returned. "We couldn't do it" said Te Uira to my mother. "We didn't even get there. We couldn't see. The fog was too thick so we had to turn back. We can't lift it." Unfinished business. Waiting.

Fogs are an unusual phenomena in Whaingaroa, especially on a fine day, but when spirits are invoked mist, rain, and fog are normal. Reinterring koiwi who have been disturbed by grave robbers, children, and the wind, is a job that arises from time to time. Looking after the remains of our tupuna is part of the kaitiakitanga role we are obliged to fulfil. That role is

becoming more difficult in our consumer driven capitalist world where an insatiable appetite for space, resources, and technology clashes with cultural values and beliefs more attuned to care and protection of space for unborn generations to inherit.

Evidence of threats to Horea were alluded to in my mother's statement, against the TV3 Network (TV3) application to install a translator.

> Today we face yet another enemy. This time people want to desecrate the sacred places of my tupuna. The place where they lived died and buried their children and believed they were safe, is no longer safe. Now strangers from another foreign place, dare to desecrate my people's sleeping place, the place where one can sit and dream (Rickard 1996).

Telecom was the first company to identify Horea as an ideal site for a transmitter, however following our hui, they abandoned their application and sought assistance from Tainui to find another location which would suit their engineering requirements and address our cultural concerns. We were extremely pleased with their attitude and assisted them to find another site near a pa, in Te Hutewai road. Rather than sending a signal to other network operators to abandon attempts to site transmitters at Horea, Telecoms departure was seen by TV3 and the RCB as an opportunity to apply for the site. Within a month we received the application for land use consent to erect 'two equipment cabinets and two wooden poles to enable better TV1, TV2 and TV3 reception in the Raglan Township".

Unlike previous consultants, those handling TV3's consultation processes wrote to the chairman of the TAMC asking him to *"give us your approval in principle and all you need to do is sign it and return it to our office as soon as possible. Enclosed is a small gift in appreciation of your time and effort in helping us achieve our aim of providing a long awaited TV service to the people of Raglan"* (personal correspondence).

The attached letter read: *I…Iwi Representative….give approval in principal for this installation to proceed. This approval is based on the mutual agreement between the Iwi and TV-3/TVNZ that the mains power to the TVNZ site be conveyed overhead from the nearest mains supply (approximately 230 metres away) and then underground between TVNZ's and TV-3's equipment cabinets (approximately 45metres away)".*

This was TAMC first experience of cheque book resource management. Unfortunately it won't be the last. The practice of buying approval has escalated as wind farm applicants, rent turbine sites for $20,000 per annum from farmers, sponsor town community boards, fund environmental and conservation schemes and establish long term community trusts to 'benefit' affected communities. Who benefits and who pays?

The response of TAMC was to refuse consent as a site was available in Te Hutewai Road. In September 1995 approaches were made once again to TAMC by the RCB chair stating that TVNZ was willing to use sonar to scan the earth for archaeological remains before drilling holes for the mast. Though the RCB thought this would assuage our fears, we deemed such work as an intrusion in a space that contains remains of ancestors but is also energetically and spiritually alive. Delving into the unseen could have repercussions. It could also open the way for further developments and possible desecration of many more wāhi tapu sites in the area.

On the 23 September. I informed WDC that all members of the TAMC, (bar one who wanted better TV reception), refused to support a mast at Horea because of its cultural and spiritual significance to our people. It was pointed out that Horea was heavily populated prior to colonization and was known to contain substantial evidence of pre-European Māori habitation, wāhi tapu and other sites of significance. In fact the family who had farmed the area since the 1940's had built up a substantial collection of taonga for their museum from farming and artefact hunting in the area. WDC was told that koiwi should not be unnecessarily disturbed and that if unearthed; kaumatua would have to be contacted to carry out appropriate

karakia and rituals to restore the balance. Tainui preferred to leave the ancestors undisturbed.

The TV3 Proposal

TV3 which operates a national television channel applied to install a television translator at Horea to provide better television reception for the Raglan area. On the 19th October TAMC received a letter from the WDC Manager of Environmental Services informing us that TV3 Ltd and TVNZ had applied to WDC for consent to locate two TV wooden masts on Horea despite its importance to Tainui.

The council planner prepared a report based on the application, supporting evidence and submissions received. In deciding whether to grant or deny consents, the council looked into particular provisions of the RMA and weighed up points of contention. Because impact s and effects were perceived to be minimal, WDC granted the consent to erect a 13 metre single pole television translator and ancillary equipment at Horea with two conditions:

1. That the location and layout would be as shown on plans submitted on the 20 July 1995.
2. That an iwi rep appointed by TAMC would be invited to be present on site during the course of earthworks to monitor excavation. During the establishment of the telecommunication facility a qualified archaeologist and a council representative shall be present on site during the course of earthworks to monitor excavation. If cultural material is revealed during the course of the work, the work shall cease until the feature has been recorded, or the appropriate protocol followed to enable the removal or reburial of such material (Tainui Hapū v Waikato District Council 1996).

WDC's hearings committee decided that the proposal complied with all rules, the effects would be minor, there were no Māori features noted on planning documents, or archaeological features found on the site and that granting the application would not be contrary to section 6(e). Their view

was that our concerns could be mitigated by having cultural protocols in place in case something was uncovered during development. The main reason for approving the application was Raglan would get better TV reception.

TAMC and the Tainui hapū lodged an appeal to the Environment Court objecting on five grounds:

1. Granting consent would compromise hapū rights recognized in the Declaration of Independence 1835 and reaffirmed in the Tiriti o Waitangi;
2. The application did not recognize and provide for sections 6(a)(b) and (e);
3. The application had no regard to section 7(a) (e) and (f);
4. The applicants had not taken into account section 8 of the RMA; and finally,
5. The application did not fulfil section 5 of the RMA.

In view of our relationship with Horea and its significance we asked that the application be declined, consent refused and that the applicants find an alternative site which did not 'compromise our traditional values, beliefs, history and well-being.

On the 10th April 1996 the Planning Tribunal advised Tainui that a hearing date had been set and 4 months later the case was finally heard. In the court, WDC plans and provisions came under scrutiny. In their decision making WDC had looked at the transitional district plan (TDP) and the proposed district plan (PDP), determined that the effects of the activity were minor and ruled to grant the consent.

When the Tribunal heard the case, they gave weight to the TDP which did not make provision for structures such as television translators so the activity was non-complying and therefore the court could exercise discretion in making its decision. In the PDP there were several policies and objectives which when added to sections 6(e), 7a and 8 of the RMA

gave added weight to the arguments raised by Tainui. For example Section 6:

Objective 6.1.1. “Take into account Māori perspectives of natural and physical resource management”.

(i) have regard to the cultural values and history of the coast;
(ii) have particular regard to Māori values and archaeological sites;
(iii) promote respect for, the protection and preservation of wāhi tapu;
(iv) recognise the spiritual and cultural significance of particular land-forms to the tangata whenua;
(v) ensure tangata whenua participated in the sustainable management of resources in keeping with s8 RMA;
(vi) protect areas of cultural heritage; and
(vii) ensure that no work on any Māori feature or wāhi tapu listed on planning maps be commenced without council consent.

Section 54 of the WDC plan states:
Objective
To ensure that developments associated with heritage resources do not adversely affect their historical or cultural integrity.
Policies
54.2.2.
to ensure that the use of land within areas where there are ...objects, items and areas associated with early Māori and European settlement should not compromise the visual character of those settlements or the links that they provide with ancestral lands, water, sites, wāhi tapu and other taonga”.
54.3.6.
“A large number of the heritage resources of the Waikato District are of significance to Māori. It is important that this relationship is recognised by ensuring that consultation takes place regarding resource consent applications that may affect sites of cultural heritage value”.

54.3.8

” The lands surrounding many heritage resources is integral to their historical and cultural value. It is important that proposed activities do not utilise the land in a way that would compromise that value”.

54.5.4

“....prior to granting consent for any activity which may involve destruction, damage or modification of any archaeological feature. Council shall require confirmation from the applicant that consultation has been entered into with the tangata whenua ...”

Evidence

Expert witnesses for TV3 commented on the fact that Tainui had failed to use the tools available to identify items of cultural heritage. They relied on an archaeologist’s report which said nothing had been found in the area minimising the significance of the area. Because there was uncertainty a standard clause stating that an archaeologist should be on site to oversee the excavations in case material was uncovered was included.

A couple of weeks before this case went to court a male koiwi was disturbed when the farmer bulldozed a track below the site. His presence in a clay bank was unexpected. My mother was called to the site by the chairman of our committee to reinter our tupuna. Such occurrences are viewed as tohu in the Māori world. Although the archaeological investigation had occurred in the area, the presence of this tangata had not been noticed or recorded. In Tainui history we have found the best protection of wāhi tapu to date to be silence. Unfortunately in this changing world, technology now has the ability to peel back the layers of whakapapa and reveal our tupuna, to the world.

Judgment

The court relied on section 6(e) supported by plan provisions in making its decision to overturn WDC’s decision and decline the consent. It acknowledged the cultural and traditional relationship Tainui had to our

ancestral land and felt that any disturbance of the ground for a translator would be regarded by tangata whenua as desecration. It pointed out that there were possibly other alternative sites but TV3 had focused on cost and effectiveness rather than on the relationship we had with our ancestral land and wāhi tapu.

When Tainui won this case, TV3 immediately appealed to the High Court. This thesis does not engage with the High court case that followed except to say that precedents such as accusing Tainui of exercising an exclusionary veto were used in an attempt to win the case. The High court supported the decision made by the Environment court as being consistent with the purposes of the RMA.

In this case Māori cultural beliefs and values clashed with the desires of people wanting a better TV reception and improved mobile coverage in the Raglan area. Telecom and Bellsouth (now Vodafone) in the same year began competing for sites within the Whaingaroa area. The fact we managed to get the two main cellular networks to co-site took some persuading and is an achievement in my view.

CASE 3: GREENSILL ANORS V WAIKATO REGIONAL COUNCIL

Introduction

Paritata is an important customary fishing ground in the upper reaches of Whaingaroa harbour. (See Figure 12). It is the turangawaewae of those who descend from Tamainupo, Te Huaki and Kotara. In 1993 this area became a site of contention when it was identified as suitable for a marine farm. The announcement last year that the government had settled claims with iwi who have aquaculture farms in their areas, brought back memories of this case and its outcome.

Whaingaroa harbour covers an area of approximately 33km2 of which 24km2 are tidal estuarine flats. Estuaries are home to numerous species ranging from the micro faunal benthic communities, and eel grass through to flounder, herrings, tio, pipi, kokota, kutai, peraro and other delicacies.

Figure 12. Estuarine flats south of Paritata.

Unfortunately, these species have been affected in recent years by the noticeable increase in the accumulation of storm water runoff and sediment washed down from lands in upper catchment. They have also been affected by fishing methods like dragging, which destroyed highly productive beds. Whaingaroa is one of two harbours on the west coast which are devoid of structures like marine farms.

Proposal and Background

Since the 1960's several proposals for marine farms in the harbour have been sighted. On each occasion, the hapū have opposed them mainly because the harbour has always been widely used a people including tangata whenua, visitors and other members of the community. In 1993 an application was lodged with the WRC for a discretionary activity to establish a 3.2 hectare pacific oyster farm over a traditional customary fishing area at Paritata Bay, Whaingaroa. At issue was the conflict over use of space between traditional fishers and the posed marine farm of a foreign species

Evidence

At the hearing before WRC, Tainui, and hapū Ngati Tamainupo, Ngati te Huaki, and Ngati Kotara from the Paritata area introduced themselves as the direct descendants of the original inhabitants of the area and claimed

rights of occupation and use of the area under articles 2 and 3 of te Tiriti o Waitangi. We asked for the consent to be declined. WRC was informed that there was (and still is) a Waitangi Tribunal claim lodged over the harbour, but such matters which challenge the legitimacy of those managing the area under the RMA without authority from the hapū who inherited it, weren't considered relevant by WRC to the weighing up of evidence. This stance is understandable as only matters pertaining to resource management can be considered by hearings committees under the RMA.

We gave evidence about the colonisation of kutai areas by pacific oysters and preferred that they not be encouraged to colonise any further areas by having the presence of a marine farm in the harbour. We stated that we had opposed all marine farming applications for over 32 years and attempts to get a yes answer by the applicant in the case bordered on harassment. Consultation with the applicant had been difficult given the close friendships and long relationship he had had with Māori families in the district. Unfortunately he did not take our advice to forget about establishing a marine farm in the area seriously and hence ended up being challenged in the tribunal (now known as the Environment Court).

Interestingly enough comments made in the judgment of this case regarding consultation and kaitiakitanga rapidly became precedents in several cases that followed. The use of Paritata by Māori owners as a recreational space and customary fishing area, the presence of a wāhi tapu and a metaphysical occurrence were all presented to the WRC at their hearing and yet WRC approved the consent with conditions such as moving the farm further away from the bay to provide for the presence of a wāhi tapu.

Appeal

I lodged an appeal on behalf of all of the hapū affected in the inner harbour against the granting of the three resource consents by WRC. The consent permitted 3.2 ha of Paritata Bay, Raglan Harbour to be occupied for the purpose of a pacific oyster farm. Other permits had been granted to

take water for washing pacific oysters and discharge water and sediment back into the harbour. The consents had been granted without recognising and providing for the relationship of Māori with our lands and other taonga as required under section 6(e) of the RMA.

Judgment

The tribunal weighed up the effects, costs and benefits of the application and found that the site applied for was a customary Māori fishing ground, and the pacific oyster farm could potentially adversely affect the fisheries such as flounder, kutai and other the kaimoana gathered by whanau and hapū of the area. It also found that the farm took up space in the harbour which would effectively exclude public use of the area. Waitangi Tribunal claims and recommendations on ownership and the application of the Treaty of Waitangi Claims Fisheries Settlement Act 1992 came in for special mention. These matters were considered irrelevant to the hearing of consent applications under the RMA as Māori had no veto rights over consent applications. The tribunal gave special attention to the special meaning of "kaitiakitanga" under RMA. It struggled over section 7(a) kaitiakitanga as it was obvious that the statutory definition followed in previous cases like Rural Management Ltd v Banks Peninsula, District Council (W34/94) differed from a Māori interpretation. I will discuss the outcome of this in Chapter 6.

The Tribunal took into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) as required under the RMA by recognising the tangata whenua and our relationship with customary fishing grounds. In the end the court found that the cumulative effects of the pacific oyster marine farm outweighed the benefits and it cancelled the decision of WRC.

Summary

This chapter introduced cases which illustrate to what extent councils have honoured their obligations to Tainui. It reviewed the experiences of Tainui through case law beginning in 1866 to the present day, highlighting the fact that we have been engaged in a paper wars over resources for over 100 years with no end in sight. It also discussed our relationship with councils planning documents and processes and identified statutory provisions which spell out obligations councils owe to Tainui. Three cases were chosen to audit the obligations:

- Tainui Hapū v Waikato Regional Council Environment Court A063/2004 (Whaingaroa Harbour Wastewater Treatment and Disposal).
- Greensill v Waikato Regional Council Planning Tribunal W17/95 (Paritata Marine Farm).
- Tainui Hapū anors v Waikato District Council Planning Tribunal A075/96 (Horea and TV3).

Chapter 6 discusses the findings from cases examined in this chapter.

CHAPTER 6
FINDINGS FROM CASES EXAMINED

> Government is not really a single mode of control exercised by and through the state, but is rather an ensemble of institutions, calculations and tactics…a diversity of forces and groups that in a number of ways regulate the lives of individuals (Foucault, 1991 102).

Introduction

This chapter discusses common themes that emerged from the cases examined in Chapter 5. The themes are: - colonial thinking and racism, planning reports, western trained 'experts', veto, economic versus environmental, and rhetoric and reality of the RMA. The chapter comments on the cases and positions councils and Tainui currently occupy in the web of power, and questions whether power sharing with Tainui as envisaged under te Tiriti o Waitangi is possible or whether Councils are destined to continue to fail to honour their obligations to Tainui under the Act. Reference is made to the limitations of this research in the final page of this chapter.

Part 2 Obligations

The purpose of the RMA is to promote sustainable management of all natural and physical resources. While there are numerous persons who have regulatory functions under the Act, I focused on councillors because they have the ability to make decisions on resource consents, and share power; on planning staff because they interpret the Act, write the rules in plans and play a pivotal role when these rules are applied to local situations like Whaingaroa; and on technical expert witnesses who influence the decisions made by councils and courts. I viewed all three collectively as the 'council' for the purposes outlined in this thesis. I made this differentiation because there are other parties who also play a pivotal

role in some RMA matters, such as the Minister of Conservation with regard to restricted coastal matters.

As pointed out earlier, Councils obligations are outlined under Part 2 of the RMA, matters of national importance. Those obligations are contained in sections 6(e), 7(a) and 8 of the Act.
Section 6(e) directs that those exercising functions and powers are to: recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga; Section 7(a) to have regard to kaitiakitanga; Section 8 to take into account the principles of the Treaty of Waitangi when exercising functions under the Act.

Using the court decisions from cases in chapter 5, I argue that councils have not carried out their obligations under the act and explain why under the headings that follow. I deal firstly with relationships, refer to the three cases, and then address each theme.

Relationships with Land and other Taonga

Tainui are sea people. We regard water in the rivers and ocean a taonga, a priceless treasure. The tears of Ranginui flow as a gift, bathing Papatuanuku, and filling the creeks and rivers so life on earth continues. The rivers meander from the mountains back to Tangaroa and the cycle begins again.

Gifts of pupu, kokota, and other delicacies from Tangaroa, Wainui and Hinemoana once graced our tables. Whanau, who were cash poor, enjoyed regular banquets from the sea until the wastewater system was constructed in our area. Nobody noticed the change, except those who lived within a few hundred meters of the ponds and relied on the river and sea for sustenance. They suffered the most.

When effluent began to be discharged into the moana our culture and traditions of gathering, began to die. We lost the ability to practice and pass on traditional knowledge about the unique ecosystems, the lunar

cycles, and manaakitanga. We lost the ability to host cheaply. As coastal people, we are obliged to provide seafood or fish when visitors are hosted. So rather than lose mana, kutai would be bought from Pak and Save, so the kawa of Tainui could be upheld. Councils have imposed rules to manage our whenua, but ignore basics like respecting the mauri of the water and sea. They have made it impossible for us to carry out our obligations, and consequently, Whaingaroa and the people suffer.

I miss the social benefits, the practice of gathering, preparing and eating kaimoana with whanau and friends on a regular basis. Those days have gone and we are expected to measure our relationship against the environment as it is today. Going to the supermarket to buy kaimoana does not educate our mokopuna to live with the fish and snails that frequent the river or pipi spat that clings to the eelgrass or understand the fragility of seahorses and other creatures in the estuary. Impossible as it may seem, our aim is to see the health of the river and estuary restored so they can once again become living productive and enjoyable places.

Relationships - Treaty of Waitangi

The treaty relationship is another theme raised in the decisions. The treaty is regarded as a sacred covenant signed in 1840 between our ancestors and Queen Victoria's representatives. According to Barns (1988) tangata whenua have a right under section 8 of the RMA to active protection and to "self government in respect of resource management legislation if government is serious about its commitment to the Treaty and/or aboriginal rights" (1988 para 2.400). This comment was made prior to the RMA being drafted in an advice paper submitted by Barns on the place of the Treaty of Waitangi in resource management. His views confirm our understanding of the agreements made by our ancestors, which affirmed tino rangatiratanga, or the full exclusive undisturbed possession of our lands. Such a status would allow Tainui opportunities to exercise more influence over decisions affecting hapū lands and waterways. This position says Janet Stephenson is supported by looking

for a new set of arrangements which will recognise rangatiratanga is possible on Māori owned land (Stephenson 2000).

While Tainui receive information and have an opportunity to comment on some consent applications and plans by way of submissions, we are not the decision makers. In the history of WDC the vast majority of councillors making decisions have been farmers, usually retired pakeha men. While the makeup of committees and councils may have changed slightly, the fact remains that it is councillors who wield power in the planning hierarchy and make decisions that adversely affect and cost Tainui not only financially but socially, emotionally, spiritually and culturally. One of the excuses made is that relationships under te Tiriti o Waitangi binds the crown and not councils.

Councils exercise delegated power through the RMA to effect decisions which affect the relationships of Tainui with our land and other taonga. Within the context of planning, it is not just tangata whenua who are affected by uneven power sharing, but communities who are represented by such organisations, a position supported by Sharif Aziz (2004) in his research at Marsden Point:

> Power in the planning process is uneven, limited and controlled by the hegemony of councils and developers. Thus resulting in those with power controlling and dominating others (Aziz 2004 112).

Wastewater

In the lead up to the 2004 case, Tainui spent hours explaining our cultural beliefs and obligations to Whaingaroa to council. Kaumatua recounted the environmental changes that had occurred since the ponds were constructed and the impact the wastewater system had had on our lives, we raised concerns about development to the East of Raglan and the extra point source discharges that were affecting the harbour. We

suggested that WDC needed to develop a structure plan for infrastructure to service the growth they were encouraging.

In June 2010, WDC will release a Structure Plan. It will contain rules that will determine how all remaining Tainui owned land in Whaingaroa will be managed. I am presuming that regardless of what we say in our plan, it will retain the wastewater system as a blot on our cultural landscape and a permanent fixture to remind us that colonialism is not dead. The colonists have once again appropriated Māori land and subjugated Māori culture and beliefs in the process.

A three million dollar investment has secured for WDC the right to discharge increasingly more effluent into the moana beyond my lifetime. WDC deem their needs and desires to grow the town more important than developing respectful relationships with Tainui and the environment. Regardless of science based dilution theories, Tainui continue to oppose the practice of discharging 3400 cubic metres of human effluent into Whaingaroa moana three times a day, because the interdependent and interconnected relationship we have means polluted water enters the water cycle which then rains down into the rivers which provides the water we need to live.

Our concerns about cumulative effects and risks to people and the harbour are deemed mere '*perceptions*'. It seems that our future generations will inherit a legacy of monitoring a breach of tikanga as long as the wastewater enters the harbour. Tainui have 30 houses at Te Kopua which don't' add to the waste stream and stress on the harbour. While we use land based systems, we are aware that the town intends to grow. The trickle will eventually become a torrent and our grandchildren will carry on the war of words.

Who benefits and who pays? Bullard (1998) would say that this is an example of environmental racism. Tainui is not being treated equally, but has been exposed to unnecessary health risks because the township has built their waste facilities near the marae and closest to a Māori

community. Such practices and the extension of a discharge right for another 15+ years illustrates that once again the councils are not honouring their obligations to Tainui under the RMA.

TV3

In the TV3 Network Services case, the significance of Horea and its relationship to Tainui was enough to cause the Environment Court to overturn the application for a translator because it would *"offend the relationship of Tainui with their ancestral sites and waahi tapu"*(Sheppard 2004). Although the RCB and WDC were aware through discussions with hapū that placing a mast on Horea was opposed by Tainui the application was lodged and approved by WDC with the support of RCB. This case became a contest between technology and better television reception, and the impact of a dominant translator on a significant wāhi tapu and Māori cultural site. The erection of such a translator would have been a continual reminder that tangata whenua, values, history and beliefs are less important than improved television reception. As was cited by Tuaiwa Rickard in the case(1996), *what is the most important thing in the world today, television, television, television*? In the Māori world the answer has always been people, people, and people.

Marine Farm

In terms of the Paritata case, once again tangata whenua relationships to space were not recognised but made invisible. Paritata, an ancient place of hapū descended from Tamainupo, Kotara and Te Huaki, was viewed by council as *'unused'* space, almost like 'terra nullius' or empty land waiting for someone to discover, occupy, colonise, claim and develop it. The fact that the farm was going to take over a traditional fishing area should have alerted WRC to their obligations under the Act. Council failed under section 6(e) and 8 to fulfil its obligations under the RMA. In terms of 7(a) kaitiakitanga, the tribunal was face with arguments that they obviously took on board but were unable to Act upon. While the law at the time recognised councils as being able to exercise kaitiakitanga, we were not

prepared to accept that argument in our harbour. I argued that only tangata whenua who had inherited obligations to the harbour and were familiar with its species, its seasons and the rules to live by could be kaitiaki. I also suggested that the definition used by the court was wrong. Judge Treadwell in the case said:

> The Tribunal is not a legislative body but a court of record charged with the administration of the Resource Management Act 1991...in accordance with the meaning and intention of the statute, such meaning and intention being derived from the words used by Parliament in formulating the sections of that statute. In so doing, the Tribunal must pay regard to the other statutes and concepts as directed by parliament (Greensill v Waikato Regional Council 1995).

While there was some acceptance by the court of our interpretation for kaitiakitanga being a Māori term for the practice of managing our resources as tangata whenua, the judge spelt out the position of the court has an administrator and interpreter of the laws passed by Parliament. His role was to clarify the law, not make it. This is an interesting point given that words frequently used in court cases I have attended and participated in have not been mentioned in statutes but become established as law through reliance on judicial precedents established through case law.

One of the benefits of taking the Pacific Oyster case to the Environment court was to oppose the grant of that area because it was ‘unused’. The other was that Māori staff at the Ministry for the Environment alerted their Minister to the inadequacy of the definition in the act and suggested on that would truly reflect the practice of kaitiakitanga as understood by tangata whenua. Within three months, an amendment to the act was made stating *“kaitiakitanga is the exercise of guardianship by the tangata whenua of an area in accordance with tikanga”*. The issue of defining Māori concepts is fraught with difficulty and is a topic that deserves further research.

Themes

As well as the comments related specifically to the provisions of the RMA there were some themes identified which traversed all cases. Those themes were:

- Colonial thinking and racism
- Planning officers
- Western trained 'experts'
- Veto
- Economic or environmental
- Rhetoric and reality of the RMA

Colonial Thinking and Racism

I began this thesis by positioning myself as a Tainui person on my turangawaewae in my landscape at Whaingaroa. My thoughts then turned to a different whakapapa, - that of planning as an institution imbued with ideologies that are not of this land but of Europe, especially Britain. The belief in the superiority of Europe and the bringing into existence of the lower classes are two of the key tenets of colonialism (Hobson 1902).

Ideas including patriarchy, western hegemony, power, racism, progress, modernisation, irrationality and others, were brought from Europe and remain firmly ensconced in Aotearoa. Eurocentric ideas determine how resources are viewed while relationships that are born of the land are subordinated. Attempts to counter "western hegemony, patriarchy and colonialism" are ongoing (Hutchings 2002 38).

A major theme in all three cases is colonial thinking and racism, an element of which is the appropriation of space for others to use, or the abuse of spaces that have meaning for Tainui. Dominating a wāhi tapu with a translator or declaring a traditional fishing area as unused land is another example of racism. In the case of the wastewater site, the reluctance of WDC to leave a known wāhi tapu area and its refusal to seriously consider land based systems for wastewater disposal speaks

volumes to tangata whenua about council attitudes towards our culture, people and beliefs. The continuing discharge into the harbour is viewed as disrespectful and its effects are akin to cultural genocide as its presence has eliminated customary practices in the area.

Colonial ideas are present and yet hidden in the planning documents, legal arguments, and hearing decisions. Sometimes actions speak louder than words but the influence of the words is powerful. I am disturbed by the resilience of colonial discourses over the years. Perhaps this is not so surprising given the dominance of the English language which carries concepts of colonialism into classrooms of countries colonised by Britain, every day.

> Europeans are seen as the 'makers of history'. Europe eternally advances, progresses, modernizes. The rest of the world advances more sluggishly, or stagnates; it is 'traditional society'. Therefore the world has a permanent geographical centre and a permanent periphery: an inside, an outside. Inside leads, outside lags, Inside innovates, outside lags (Blaut 1993 1)

I argue that there a gaps between the inside and the outside which allow boundaries to be crossed, centres to be infiltrated, and a vying for positions to create change which allows leadership to occur unobserved from within and without.

Planning Reports

Councils approved all three consents, reflecting recommendations and conditions contained in planners' reports. Those reports are usually written by council employees or consultants based on the application, the submissions received on the application and the planning policies, objectives and rules which apply to the activity sought. In all cases the planners recommended that the activities be approved with conditions. The only case that questioned the planners report and altered conditions was the wastewater case dealt with by the WRC. While reliance on

planners' reports is common with councillors, the planning documents they rely on are political instruments designed by council to carry out political agendas which often conflict with tangata whenua aspirations.

Tainui are a minority in Whaingaroa however our lands containing surf beaches, kaimoana areas, natural landscape, and coastal native forest are the dominant feature contributing to Raglan's appeal as a tourist destination. The ongoing attempts by councils to appropriate more land for roads, that benefit the public are issues that have stalled in the Māori Land Court as owners resist 21st century attempts to take more Māori land. While Tainui have a preference to live on our ancestral lands unencumbered, councils continue to cross our borders, to dictate through rules and political pressure how our lands will be used to benefit the public, a term that has rarely included Māori.

Nicholas Low (1994) has argued that planners should work actively to achieve a better deal for the poor and the vulnerable. While we are sitting at the table, writing our plan, its interpretation into rules is left to planners who have no history or knowledge of our place, or of our unique status as tangata whenua and descendants of treaty signatories in Whaingaroa. Some come from the lands of the coloniser and the attitudes can be seen in their determination to hold the council line despite Tainui opposition.

Western Trained 'Experts'

Institutional racism comes in many forms. In the field of planning, Tainui have appeared many times before hearing committees and courts. In each case the evidence of kaumatua who has an intimate knowledge of the environment is given less weight than that provided by a university trained 'expert'. Tangata whenua knowledge should be given no less weight than that provided by experts and more weight where kaumatua as the repositories of specific knowledge are giving evidence on that subject. Often the only expert in the room on the subject is the kaumatua.

Council hearings committees are now trained as commissioners to listen, weigh up evidence, and make decisions in resource consent hearings. Within the guidelines, “Making Good Decisions” (Ministry for the Environment and the University of Auckland 2007 147), Commissioners are directed to give more weight to experts rather than lay people. ‘Lay’ people include those who have no degrees or those who prefer not to label themselves as experts.

> Lay witnesses can present facts and observations but they cannot provide opinion. It is possible to put the facts and observations of lay witnesses to experts for explanations or opinions (2007 147).

This thinking is flawed and needs to be addressed in future training.

An expert is expected to present evidence from a neutral objective perspective to help the decision makers. It is interesting to note however, that in cases I have observed experts are paid by one of the parties usually the applicant or respondents to give evidence. Tainui do not have the resources to hire expert witnesses and are disadvantaged in that respect. In my view, a conflict of interest exists which needs to be properly addressed before hearings commence. While experts look at fragmented parts of a consent application using a linear approach, Tainui looks at the circular holistic approach, and provides evidence accordingly.

Veto

The word seems to have been used in a 1994 case and referred to ever since by councils and courts throughout the country to ensure that tangata whenua rights are subjugated. The idea that Māori have a veto is one example of language being used to perpetuate an impression that somehow Māori are privileged under the RMA. Whenever issues of conflict arise between tangata whenua, councils and developers, arguments focusing on words and phrases appear and must be dealt with by the court when inferences are made about Māori having a veto.

Councils and courts being in superior positions of power in the planning hierarchy retain for themselves the privilege of veto over all resource use

including ancestral Māori land still occupied by the original families under tino rangatiratanga. While accusing Tainui of wanting to veto the granting of resource consents over our fishing grounds, wāhi tapu and other significant sites, councils have conveniently forgotten, that Tainui have a special relationship as a treaty partner with the Crown and therefore do have rights to determine what happens with resources on our own lands. Councils fail to reflect on their own positioning, for it is they who exercise the veto over tangata whenua who have treaty rights recognised by the Crown but ignored by those who have delegated power like councils.

While ownership of a resource includes the right to manage it, this right is constrained through laws like the RMA. Stephenson (2000) points out that one way to recognise rangatiratanga is to allow Māori autonomy to manage those lands that remain in their hands. A mere 6% of Aotearoa is held in Māori title, 10% of which is the foreshore and seabed affected by laws currently undergoing repeal. Tainui lands are affected by these changing laws. While councils are delegated power to manage land and other resources, Tainui who have retained rangatiratanga over coastal lands should also have that privilege. Tools such as section 33 of the RMA could be used by councils to transfer power to Tainui to manage our own lands. In the 19 years under the RMA, no lands have been transferred not even a wāhi tapu reserve. In the cases discussed I see no evidence of the principles of the Treaty of Waitangi such as the principle of active protection or redress for damages being taken into account.

Economics or Environment?

Tainui have made a concerted effort to retain reserves secured by our ancestors' in 1855. Our lands contain empty uninhabited areas by design. These are the places where we find peace in an incredibly noisy and busy world. When visitors wander into our lands they usually seek to purchase a piece of paradise before moving on. Empty or undeveloped places attract ideas of development or protection. When the courts weighed up the evidence they had to weigh up the social and cultural benefits and

costs of the community. The dominant eurocentric view of multiply-owned Māori land is that it is idle, empty spaces that need to be used. An empty hill needs a television mast, a police radio mast or a wind turbine, or maybe it needs to be mined.

The Raglan community is no longer just tangata whenua, pakeha descendants of soldiers and missionaries. Today the majority are immigrants or retiree's who have arrived in Whaingaroa and stayed. In weighing up the evidence in the three cases, courts had to decide whether to allow an economic outcome over Māori relationships to the environment. Words like 'perception' are used frequently to diminish concerns raised by tangata whenua. A television translator would improve television reception for the township but would be culturally debilitating to tangata whenua. The possibility that this issue will surface again as new people arrive to retire in the town is likely given the permissive rules in the plan that facilitates such developments.

In the case of Paritata, the water space in the bay was perceived as 'unused' and available for a business that would employ three people. Council approved the application which could have sent a message to other developers to occupy space that is already utilised by tangata whenua, the community and visitors. Several local businesses depend on having a harbour that is unimpeded by structures, a situation that suits tangata whenua aspirations and local businesses alike.

Rhetoric and Reality of the RMA

Councils are obliged to honour their obligations outlined in sections 6(e) 7(a) and 8. Sometimes words and meanings are constructed in a way that meanings become blurred and need to be re-negotiated and redefined. For example, the expectation that kaitiakitanga meant whanau and hapū were responsible for looking after their areas of the harbour according to tikanga, was found to be at variance with the RMA definition in the Greensill case. Arguments at that time saw amendments made later to better reflect and meet Māori concerns.

Over the years Māori have expected to play a greater role as kaitiaki in our respective areas, but to date responsibilities to manage areas have not been delegated by councils under section 33 of the RMA. What is written in the act, how it is interpreted and implemented in practice has not met the expectations of Tainui. In all three cases the council hearing committees failed to recognise and provide for Tainui culture, traditions and relationships to lands, water, sites, wāhi tapu, and other taonga, hence the appeals to the Environment court. My findings show that the rhetoric and the reality of environmental planning outcomes for Tainui under the Resource Management Act 1991 are still poles apart and in need of rapid improvement.

Limitations or Opportunities

The fact that I looked historically rather than futuristically into Tainui experiences may be viewed by some as a limitation however in Te Ao Māori the past is always before you. In order to understand the present, one needs to know the past. When I began writing my thesis I began by acknowledging Karioi the most permanent feature in the Whaingaroa area. From this vantage point I could move easily through the years, greeting ancestors who had lived and contributed to Tainui culture, traditions and history. I captured some particular moments in history and identified further research opportunities for improving future decisionmaking.

By revisiting colonialism and critically engaging with legal facts and case law I was able to identify key colonial ideas that are still present in contemporary decision making. Acknowledging the influence of colonialism on planning matters affecting Tainui assists one to understand how the council, actually engages.

My research focused on three sections of the RMA. I applied those sections to three out of seven council decisions which Tainui appealed to the Environment court. The other cases are either awaiting court decisions or would have provided repetitious content already covered in the three

cases. Other cases that could have been referred to have been left for further publications following the Waitangi Tribunal hearings. While I originally intended to critique some 2010 cases as well, as stated earlier, that was impossible to do as the Environment Court case decisions have yet to be released. The cases I chose provided a brief insight into the experiences of Tainui working inside and against the RMA over the last 19 years.

In hindsight I could have spent more time on positive sections like section 33, but since no council has used this provision in 19 years there seemed to be no point. The other section which encourages hapū and iwi to produce Iwi management plans could also have been mentioned as a positive way for hapū and iwi to become involved in planning processes. However limited resources to undertake this work means that in 19 years less than 20 plans are in existence. This matter could be addressed if resourcing by councils in the form of skilled paid staff was made available to hapū. The three provisions I chose have been frequently used by Māori to assess whether applications deliver positive outcomes.

Because I took a mainly autobiographical approach, I saw little point in interviewing hapū members as I had access to their written submissions and evidence that had been prepared for the cases examined here. Most of those involved are now kaumatua with little time to sit and participate in interviews. Obligations to monitor customary fishing, attend Hui and earn a living are their priority.

Relevance.

My research has identified weaknesses in the RMA that result in bias against Māori, a position that is inconsistent with sections 5, 6, 7, 8 of the RMA and with the Treaty of Waitangi. It identifies breaches of the treaty in areas of compliance which will be presented to the Tribunal and government at some future date.

Further Research.

Opportunities exist for further research in a number of areas. A list of those is included here:

- Although the research was limited to Tainui experiences of the RMA in Whaingaroa over the last 19 years, there are opportunities for further research to be done in legal and cultural geographies mainly looking at how the law shapes Māori relationships to land today.
- A comparative study could be carried out with other coastal hapū and may produce outcomes that are more positive.
- The nature/culture divide needs to be revisited given the fact that the word 'Māori' means 'natural' and as such Māori consider it natural to be tangata whenua, part of and connected to the land and natural landscape.
- An opportunity to look into culturally appropriate treatment and disposal options that protect water resources needs to occur urgently. An article entitled "Too hot for Humans in 300 years" on page 12 of the Waikato Times (5 May 2010) drew my attention to the fact that we need to begin having a more respectful relationship with the planet that supports and sustains us. Stopping the contamination of waterways is an area that needs urgent global attention.

CHAPTER 7
CONCLUSION

"Māori expected to be a key participant in the resource management process when this Act came into force. The Reality is quite different" (Kapua 2007 136).

Introduction

Kapua has succinctly summarized the expectations that Tainui have had for 19 years. She is right. The rhetoric and reality are two different things. In this concluding chapter I retrace my steps, reflect on where I have come from, where I am now, and whether the method I used to complete this thesis worked. I then provide some concluding remarks.

The Beginning

Initially the idea for a thesis topic germinated in 2006 as Malibu Hamilton and I were preparing submissions against the rules in the Proposed Waikato District Plan. Some of the provisions in the plan were overly prescriptive and the proposed rules appeared to benefit the 'public' at the expense of Tainui landowners of coastal bush covered hapū land in the Karioi Native Reserve. For example landscape and coastal policy areas were imposed over our lands making it difficult for our hapū members, who had lived on our lands and in the bush on and off, for generations from getting permits to build homes because the houses weren't in pa zones or residential subdivisions. Our lands are not subdivided but multiply-owned and so rules governing their use needed to be tailored to meet collective whanau needs.

Despite our objections WDC continued to pursue its vision, which again forced us to lodge an appeal challenging rules affecting Tainui lands in the Karioi Native Reserve in the Environment Court. WDC's vision constrained our aspirations to live on our lands as extended whanau, something we

have been doing informally for generations. Under the proposed plan birds, lizards, insects and other creatures who reside with us, are given priority because they are a part of the unique biodiversity in our area and apparently need to be protected. Aren't Tainui doing that? DOC has recently discovered a particular bird in our reserve, a fact known to the Hounuku whanau who have culturally harvested them. As the discoverers DOC will DNA profile each bird treat it as unique and endangered and appropriate it. The birds exist because they are watched over after by the Hounuku whanau.

In 2010, as I write this final chapter, we are once again in court dealing with provisions that should have been agreed to before we ended up in litigation. The impasse is caused because we want to live on our lands where our tupuna lived, but councils want to preserve the amenity, biodiversity and landscape values for the public to enjoy. The court has ordered us to talk. We mediate, work through sections of the plan with WDC planners and come to agreements which are then taken to the Environment Court in a piecemeal fashion and rubber stamped.

It is amazing how much progress is made once the court intervenes. Environmental decisions won under the RMA over the past nineteen years have made the struggle for justice worthwhile. To keep our sanity, the monthly marae hui has provided a sympathetic sounding board and space for airing frustrations about having to take WDC to court again, and for reporting back progress made over several months. It has also been a safe space for WDC and Tainui to engage so outstanding matters of cultural concern can be presented and hopefully understood.

My thesis

I have argued that Waikato councils failed to honour their statutory obligations to the Tainui hapū of Whaingaroa under the RMA. To support my claim I embarked on a journey that began at Karioi maunga and ended in my supervisor's office in the Geography Department at the University of Waikato, Hamilton.

I began, not in the usual way with an introduction to my topic but with a pepeha that established my whakapapa link from Karioi maunga to the sea as the foundation upon which to build a picture about Tainui, our laws and relationships to Whaingaroa, the case study area. I acknowledged the importance of Karioi, the silent witness to the changes that have occurred in Whaingaroa over time. I then added another layer of whakapapa, that of the settler government, a whakapapa that begins in Europe. The history lesson provided an insight into Tainui life under colonial rule when racism and domination over 'the other' was overt and rampant. Those ideas seep into our contemporary lives, influencing the positions councils take on matters affecting their area of jurisdiction. In Chapter 2. I introduced my thesis, indicated how I would structure the chapters and commented on the planning processes currently in place. One of the issues that needs to be addressed is the lack of robust monitoring of consents once they are operative. Thousands of consents are approved annually, but the lack of resources prevents the effects of those decisions being adequately monitored by councils. These deficiencies rather than promoting sustainable use result in degrading our environment, and affecting our relationship with it. In Chapter 3 **I** introduced theoretical ideas like kaupapa Māori that influenced my positioning as a wahine Māori of Tainui descent, writing for Tainui, about RMA experiences of the Tainui hapū who exist between two worlds, Te Ao Māori and Te Ao Pakeha. I introduced theories such as positivism, and modernity, which I argue influence council approaches to planning. The presence of conflicting theories may appear ambiguous but because planning is sourced from these ideas, I felt comfortable including them in my theory chapter. The biggest challenge was using multiple methods to identify relevant material, and to write in an unfamiliar, yet familiar story telling way. The autobiographical approach gave me the flexibility and freedom to relay personal experiences and to write in a manner that would be easily understood by hapū and communities who live with the realities of resource management processes every day. I am aware that at times my colonised self surfaced, ever ready to take over and get me back on track to stop writing subjectively. I found myself trapped within the legal

framework of the RMA taking a clinical descriptive approach rather than pursuing the emotional painful journey, generations of Tainui have endured. Spaces are opening up for emotions and stories to be shared but sometimes with the constraints of time and topic, it is better to avoid some issues and move on. I think I did that. While I am capable of writing reports and court documents, that are perceived as objective, repeatable, verifiable evidence that meet the criteria of academic rigour, in this instance I chose to move outside my own comfort zone to support the claims I make.

Writing autobiographically in a way that captures the emotions can lead one off in many directions. That happened to me. Collecting data was the easy part, but choosing material from 19 years of words to include was difficult. What should I include and what should I leave out? Obviously anything that proves the claim is useful, but I had too much material. I went through a submission sorting exercise. My mother's words and image came alive on a page. It related to the wastewater case. I kept my anger and tears in check as I eliminated one, bad, time wasting experience after the other until I had 5 cases. The two cases that I haven't covered in the thesis are still awaiting judgments. I will write about them at another time because the issues they raise should never have taken 10 days of court time. The three cases and submissions I chose were all commented on by the media when the decisions were released.

I often felt drained after reading through heartfelt submissions which in the end made no difference to the council's decisions. I asked myself why bother? Then I remember with humility the strength, persistence, courage and sheer determination of my mother and others who sacrificed years writing letters in the fight against injustice, not just to the government and councils but to the Queen. It just happens to be my turn to carry on.

Taking cases is taxing, especially when there are no resources to employ lawyers. I trained in law so I could understand and use the tools to protect our remaining lands and rights. Unfortunately there is nothing in the RMA to protect Tainui from decisions that destroy our culture and beliefs. The

only way to counteract is to have the truth, evidence, the hapū, some help from the spiritual domain, a pro bono lawyer and faith.

The Whaingaroa case study provided ample material to reflect on and focussed attention on the realities for Tainui who are planned for, planned over, but rarely planned with, unless directives come from the courts above. When Tainui have attempted to work with councils it is obvious that the plan is the driver of decision making, not the desire to form lasting relationships built on good faith where mutual agreements can be made to benefit the environment.

Further Insights

My research found that the decisions made by councils did not give due weight to tikanga and Tainui views. Councils failed to honour their obligations to Tainui under the RMA. Other shortcomings were the:

- failure to recognise Māori relationships in a meaningful way.
- loss of the use of Māori land through compulsory acquisition or imposed zonings and rules.
- eurocentric institutions and systems of planning
- ignoring Māori cultural and spiritual matters
- ignoring rangatiratanga recognised in te Tiriti o Waitangi.

Since beginning this thesis four years ago, changes have taken place however the outcomes to date are still the same. During that time the RMA has been amended, producing potential both gains and losses for the environment. My own success in getting a clause accepted by the Environment court this year, for inclusion in the WDC proposed plan recognising Māori as part of the natural landscape in the Whaanga area was a coup for the hapū. Some landscape architects, 'experts', however will feel threatened. I fear the words and concepts will once again become distorted and misinterpreted as happened with 'kaitiakitanga'.

Some of the deficiencies in council processes may be traced to a lack of staff who can quickly develop trust and a rapport with hapū. I have lost count of the number of planners I have dealt with over the last two

decades, a situation that does not bode well when working relationships need to be established and maintained. Other concerns can be traced to different cultures, visions, expectations and lack of understanding about recognising and providing for treaty relationships in Aotearoa.

The relationship between councils and tangata whenua is one that is evolving and hopefully in the new climate of co-management currently being promoted by this government in the treaty settlement area, opportunities will be taken by councils, tangata whenua and communities to listen and work together more closely when deciding how to use resources in the spaces and places we occupy.

Tainui have delayed our development plans for years, waiting for Council to get serious about addressing outstanding environmental issues such as sewage disposal into the sea. One day we will develop our conference centre, health centre, various business ventures and family camping area to help our hapū find employment. In the mean time life goes on, and council elections are just around the corner.

Throughout the country at this time there are whanau, and hapū getting ready to take on the local councils, with no finance but with a knowledge that what they are doing is right. What I have attempted to do is introduce cases and legal frameworks which highlight how councils use the RMA to influence and shape Māori geography rather than abiding by obligations, they are required to honour.

Concluding Remarks

This thesis is a mere vignette of the more complex Tainui story that has yet to be told. I hope that the reflective approach used creates niches for others to explore when they consider 'doing a masters' and telling their own hapū stories. As stated at the outset, I cannot do justice to Whaingaroa, its many nuances and complexities at this time. That work remains to be done at some future date by Tainui as a whole. All I have attempted to do is prove that councils have failed to honour their obligations to Tainui under the RMA using an autobiographical, case study, kaupapa Māori critical approach.

As I complete this work, another battle looms on the horizon. My friend and colleague Malibu has been holding the fort, preparing for the impending attack. Chequebook resource management is the new weapon. Communities are promised thousands of dollars by developers for their support on major projects. At $20,000 or more per turbine site, farming the wind is certainly more lucrative then farming the land.

We are opposing the impending destruction of our ancestors' pa and associated cultural sites on the Te Akau block north of Whaingaroa Harbour. Our intergenerational obligations to our tupuna and to future generations armour us as we prepare for what will be a long drawn out process which we will have difficulty winning. Our cultural landscape is destined to be replaced with a 180-turbine wind farm. Once destroyed, there are no more sites. These are finite taonga. Who said colonialism was dead!

So far we have saved 40 sites by taking those who authorised the potential destruction to court. The developer has remapped the area and can now apparently avoid most sites. The fact Tainui has three appeals pending in the Environment court and has just completed one ten day hearing is however a concern given the small number of appeals nationally that reach the Environment court.

As I write these concluding sentences, I breathe a sigh of relief. It hasn't been easy to complete because I have inherited hapū obligations, which seem to have increased, with age. My role is to look after the environment and prepare the next generation of kaitiaki. The sun will set on my life in about 30 or so years leaving obligations to be fulfilled in the capable hands of the kaitiaki who will follow. I wish them well.

My thesis. It's finished! It is not quantitative, rational or objective but that was not my intent. My intent was to invite you into a world that most people will rarely experience. The decisions used can be easily verified by reading the case law and documents. The inside story belongs to the key

players who participated in this struggle. All I have provided is a window into a Tainui world where caring for the environment is an obligation some of us still take seriously.

I leave the final words to Sean Ellison, a scholar, whanaunga and friend of Whaingaroa. This was part of his evidence given in court against the wastewater consent.

> We are the ocean that murmurs here, we are the mountain that stands here.
>
> If someone defecates in the sea, they defecate on the people.
>
> When sewerage and pollution is released into the water, the water becomes polluted, and that pollution spreads to all things within the water – physically, spiritually and energetically.
>
> Water is the medium we use to wash our bodies, and to cleanse our souls and our minds.
>
> If the water is polluted how can we wash, cleanse and purify ourselves? What about the seafood and fish, the food storehouse of Tangaroa and Hinemoana?
>
> We are related to, and interconnected with, all things throughout the universe.
>
> If one thing is polluted or sullied, we too are polluted and sullied.

Figure 13: The Storehouse of Tangaroa and Hinemoana

GLOSSARY

Sources include Ngata (1993) and Māori Dictionary (2005);

Māori Word	Meaning
ahikāroa	Long burning fires of occupation
Aotearoa	Land of the long white cloud
atua	god(s)
hapū	pregnant, extended kin group of many whanau
harirū	to shake hands
Haukainga	home people
Heahea	A beach on west coast north of Whaingaroa
hongi	Press noses in greeting, smell, sniff
Horea	an old village opposite Raglan
Hounuku	A Tainui ancestor
Hui	meeting
kaimoana	food of the sea
kainga	home
kaitiaki	guardian
Kaitiakitanga	To preserve, conserve, foster, protect and keep watch over, the exercise of guardianship by tangata whenua of an area in accordance with tikanga Māori in relation to natural and physical resources
Kakati	An ancestor
Kanohi ki te kanohi	Face to face
Karioi	Tupuna mountain, south of Whaingaroa harbour
Karikari	Place name

kaumātua	adult, elder
kaupapa Māori	Māori principle
kawa	Custom, protocol
Kawerau	Place name
Kiripaka	Place name
Kohanga Reo	Language nest
koiwi	bones
kōrerorero	Discussion
Kotahitanga	fraternity, solidarity, unity
kuia	elderly women
kumara	sweet potato
kura	school
kutai	mussels
mahi	work
mahinga kai	Places where food and other resources are traditionally gathered, and the gathering and management of those resources
mana	Authority, control, influence, prestige, power, psychic force,
manaaki	helpfulness, reception
manaakitanga	homage, hosting,
Mangakahia	Place name
Manukau	Place name
marae	Meeting place, area in front of meeting house
maramataka	calendar
matauranga Māori	traditional knowledge of Māori people
maunga	mountain
Mauri	Life principle, source of emotions, a material symbol of the hidden principle protecting

	vitality, mana,
Miria te Kakara	Meeting house at Te Kopua
moana	Sea harbour
mokopuna	grandchild
Motunui	Place name
ngā mokopuna a Whaingaroa Kohanga Reo	Preschool children at the Whaingaroa Māori language nest
ngā taonga tuku iho	valued resources, assets, prized possessions both material and non-material (passed down from the ancestors and the gods)
Ngā wahine tiaki o te ao	A Māori woman's collective who care for the environment
ngahere	forest
ngarunui	Big waves, a beach in Whaingaroa
pa	stockaded village, stockade
pakiwaitara	legend, narrative, story
Papamoana	Seabed
Papatuanuku	Earth mother
Pepeha	quotation, saying, proverb
pupu	estuarine snail
pūrākau	Story
Rakaupukupuku	A Tainui ancestor
rangatiratanga	rights of autonomous self-regulation, the authority of the iwi or hapū to make decisions and control resources
raupatu	confiscation
riwai	potato
rohe	geographical territory of an iwi or hapū,

	district, region, territory, area,
rōpu	group
taihauāuru	west
Tainui	A hapū in Whaingaroa
Tainui o Tainui ki Whaingaroa	The Tainui hapū of Tainui waka in Whaingaroa
takiwa	geographical territory of an iwi or hapū
Tama te Rā	the sun
Tangaroa	Guardian of the sea
tāngata	people
tāngata maoli of Hawaii	Indigenous people of Hawaii
tāngata whenua	people born of the land, who have authority over a tribal area through genealogy and whanau/hapū links.
Taonga	Treasure or prized possession having tangible or intangible value and being irreplaceable in a spiritual sense
Taonga tuku iho	Treasures handed down, natural resources
tapu	Under religious restriction; sacred, quality, or condition of being subject to some restriction.
te ao Māori	the Māori world
te ao marama	the world of light
te ao Pakeha	the Pakeha world
te ao tūroa	The environment
te awa	The river, stream, creek,
Te Kopua	Place name in Whaingaroa
Te Ikaunahi	A Tainui ancestor
Te Pae Akaroa	A place name in Whaingaroa
te reo Māori	the Māori language
te reo me ona tikanga	The language, laws and custom

Te Rua o Te Ata	The domain of Te Ataiorongo
Te Taiao	The environment
Tihei Mauriora	Sneeze of life; claim the right to speak
Tikanga	law, rule, plan, method, custom, habit, reason, meaning, correct ways of doing things, traditional protocols.
tīmatanga	introduction
tino rangatiratanga	independence
Tiriti o Waitangi	Treaty of Waitangi
Tohu	Sign, symbol, guide, instruct
Tokerau	Place name north
tuna	various types of eel
tupuna	Ancestor
turangawaewae	A standing place where one can exercise rights through whakapapa
tūtae	shit, turd,
ūkaipō	breast
wahine	woman, female
wāhi tapu	special and sacred place
waiata	song
Waikeri	place name
Wainui	place name
wananga	place of education and research, university
whaea	mother
whaikorero	formal speeches
Whaingaroa	harbour and Māori place name for Raglan
Whakapapa	

whakatauki	proverb
Whanau	family
whanaungatanga	the concept of family extended beyond immediate blood lines;
Whareiaia	An ancestor
Wharenui	Meeting house , large house
Wharekai	Dining hall

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