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Cultural Conflicts in Resource Management: the case of Ngāti Kahungunu and Ahuriri Estuary

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Abstract

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Cultural Conflicts in Resource Management: the case of Ngāti Kahungunu and Ahuriri Estuary

by M H Palmers

The accommodation of cultural values appears to be implicit in the *Resource Management Act 1991*. However, cultural values have been identified as a cause of tension in making decisions about *taonga*/natural resource use. To understand how culture affects resource management I asked the question: "Can there be an accommodation of different cultural values in the management of *taonga*/natural resources?" The case of *Ngāti Kahungunu* and *Te Whanganui-a-Orotu/Ahuriri* Estuary, Napier (subject to a Waitangi Tribunal claim), provides an example of cultural conflict over both the management and ownership of the resources within *Ahuriri* Estuary.

Through the use of qualitative research methods the following influences on resource management were identified: cultural paradigms; resource-use rights; and what constituted the 'common good'. First, working from a premise that resource management is influenced by cultural beliefs, *tikanga Māori* and Western resource management start from different philosophical bases. The 'secular Western paradigm'(henceforth SWP), as a point on the sacred/secular continuum, influences territorial authorities to consider *Māori* values as inappropriate for managing natural resources. Second, resource-use rights are based on a cultural construction of property rights. The SWP tends to favour private and Crown property rights over a community-based approach to the management of common resources. Third, the SWP also holds the doctrine of 'common good' to be have priority over *Māori* values. *Tino rangatiratanga* is important to *Ngāti Kahungunu* and the issue of resource ownership has yet to be resolved because the second article of the Treaty has been ignored.

The conclusion is reached that *Ngāti Kahungunu* participation, as Treaty partners, in *taonga*/natural resource management may increase but within the constraints of a SWP. One way forward is for *Ngāti Kahungunu* and Crown to have 'joint management' of *taonga*/natural resources. Joint management would give both Treaty partners equal regulatory control. Such an arrangement would clarify usufruct rights to common resources and would incorporate *Māori* cultural values into resource management.

Key words

Ahuriri Estuary, cultural values, joint management, *kāwanatanga*, *Ngāti Kahungunu*, property rights, qualitative research, *rangatiratanga*, *taonga*/natural resources

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To *Ngāti Kahungunu* and *Te tangata o Tangoio marae*, thank you for your hospitality. Without your blessing, consent and assistance this work would not have been possible. I know you have so many demands on your time. Thank you to Hirini Matunga, and Reverend Jim Biddle, of the Centre for *Māori* Studies and Research, Lincoln University, who introduced me to *Ngāti Kahungunu*.

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Thank you all for your confidence and support of this work. You have helped perhaps to make a perhaps small, but hopefully, significant contribution to bridges between *Māori* and *Pākehā* worlds, and provide in some small way a more positive future for *Aotearoa*/New Zealand.

Quotation Note

Respondent confidentiality is protected by the use of pseudonyms. One problem created by this strategy is that the readers interpretation of the statement is removed from the 'context'. To overcome this I have used one of the following symbols with each quote to provide an overall context and the respondent's group affiliation.

Ngāti Kahungunu: ●
Official: ■
Other: ▸

This simplification of group classification was used for ease of interpretation. I accept that it does not provide for the diversity of opinion that might be encountered in each group. 'Officials' were staff or councillors from the territorial authorities which had legislative responsibility for *Te Whanganui-a-Orotu/Ahuriri* Estuary. The '*Ngāti Kahungunu*' group also includes the expert witnesses (*Māori* and *Pākehā*) who supported the tribe's Waitangi Tribunal claim.

The pseudonyms and their affiliations are:

Adam: ● Waitangi Tribunal expert witness, a *Pākehā*
Alan: ● *Ngāti Kahungunu kaumātua*, *Taiwhenua* committee member
Anne: ■ Napier City Council (henceforth NCC)
Dave: ● Ahuriri Executive Committee, New Zealand *Māori* Council
Doug: ■ Department of Conservation (henceforth DoC)
Earl: ■ Napier City Council
Eric: ● Hawke's Bay Regional Council (henceforth HBRC)
Fred: ● *Tikanga Māori* expert
Gary: ■ Hawke's Bay Fish and Game Council
Harry: ● Department of Conservation, HBRC *Māori* Committee member
Henry: ■ Hastings District Council (henceforth HDC)
Jane: ■ Ahuriri Protection Society - conservation interest group
Luke: ▸ Past Catchment Board member
Mary: ▸ *Ahuriri* Estuary resource user
Mike: ■ Hawke's Bay Regional Council
Paul: ▸ *Ahuriri* Estuary resource user
Ray: ■ Hastings District Council
Sean: ● Waitangi Tribunal expert witness
Steve: ● Hastings District Council, *Taiwhenua* Committee member
Ted: ▸ Although *Māori* he was not *tangata whenua*

For quick reference, this list is included at the end of the dissertation, in fold-out form (see p89).

Foreword

Historical contexts and cultural paradigms are important in understanding a people's association with, and use of, particular natural resources. For this reason it was necessary to provide a brief discussion of *Aotearoa*/New Zealand history and to outline the antecedents of the secular Western paradigm to present the context of this research. Looking into *Ngāti Kahungunu* values provides the other side of this context.

Te Tiriti o Waitangi is a covenant signed by our *Māori* and *Pākehā* ancestors. The phrase '*Aotearoa*/New Zealand' denotes a country which has been settled by *Māori* and *Pākehā*, who have a relationship based on the Treaty. All too quickly this Treaty was set aside by generations of settlers. Today, past injustices need to be resolved fairly and in good faith for effective reconciliation. This reconciliation might have the potential to usher in an equal partnership between the Crown and *tangata whenua*. To avoid perpetuating any further injustices, or ecological degradation, and to honour the Treaty, there is a need for Treaty claims to be settled and a joint environmental management strategy implemented.

As a *Pākehā* New Zealander I accept that the physical cosmos is an expression of a spiritual reality. Spirituality is at the heart of the *Ngāti Kahungunu* culture and it imbues their language. *Te Reo* is an expression of *mana motuhake* and is considered a *taonga*. Therefore italics are used for *Māori* words. Also the phrase '*taonga*/natural resources' is cognisant of the cultural nuances in meaning attributed to the land, water, flora and fauna. The earlier name '*Te Whanganui-a-Orotu*' (on maps *circa* 1850) is used for *Ahuriri* Estuary, although it was 'lost' through colonisation. Likewise *Ngāti Kahungunu* lost control of their resources.

This dissertation considers the provision for cultural and spiritual concepts in the *Resource Management Act 1991*. All interpretations expressed in this paper, except those quoted, are those of the author as are any mistakes and omissions. I hope that this discussion provides the basis for seeking an equal partnership between the Crown and *tangata whenua*.

A glossary of *Māori* terms used in this dissertation is attached below.

Glossary of *Māori* Terms used in Text

Atua	deities
awa	river
hapū	sub tribe
hui	gathering, meeting
Io	the creator God
iwi	people, tribe
kai moana	resources from the sea
kaitiaki	guardian of treasures
Kaitiakitanga	stewardship responsibility for resources
kāumātua	elder
kāwanatanga	governance
mahinga kai	food resource gathering area
mana	authority, ability, sovereignty
mana Māori motuhake	*Māori* sovereignty
Māori	indigenous, ordinary
Māoritanga	essence of being *Māori*
maunga	mountain
mauri	life principle, spirit
mauriora	human life principle
mihi	greeting
Moko	facial tattoo
Ngāti Kahungunu	East coast/Wairarapa tribe [third largest tribe]
pā	a fortified place
Pākehā	stranger and non *Māori*, European
Papatūānuku	deity - earth mother
Ranginui	deity - sky father
tangata whenua	occupants of an area
taonga	treasures
Te Reo	the *Māori* language
tikanga	customs
Tino rangatiratanga	highest chieftainship
tupuna	ancestors
tūrangawaewae	acknowledged place of birth
wairua	soul, spirit

(Sources: Biggs, 1992; Ngata, 1993; Barlow, 1994)

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Ko Tukituki taku awa
Ko Tatimana Pākehā iwi kianga
no Havelock North au
tena koutou tena tātou katoa

As a first generation New Zealander growing up within two cultures, I discovered how culture affects the way people see and do things. This led me to consider how *Aotearoa*/New Zealand's biculturalism affects the management of natural resources. Today we have a nation (geo-political) that is made up of two nations (*ethnie*[1]) bound by the *Declaration of Independence*[2] (1835) and *Te Tiriti O Waitangi*[3] (1840) as the constitutional foundations of *Aotearoa*/New Zealand (Brookfield, 1989). These constitutional foundations will affect resource management processes.

Introduction

Kawharu (1989) states that the Treaty of *Waitangi* lacks a conceptual framework to accommodate two cultures or to devise policies. If the conflict over land and resources (Kawharu, 1989; M^{c}Hugh, 1991) between *Māori* and *Pākehā* is to be resolved then there is a need to understand why this tension exists and to develop a suitable procedure to remove the source of conflict. Part of the tension is explained by the historical facts of land confiscation and resource alienation (Orange, 1987; Binney, 1990; Kelsey, 1990, Sharp, 1991). The reason for the tension has had much exploration and is taken as given. There may be another reason for such tension, however. I believe that, due to cultural factors, there is a fundamental difference in how *Māori* and *Pākehā* 'view' natural resources. A people's resource management system is based on values derived from both a world view and experiences. These constitute a 'paradigm'. Tension potentially exists when more than one cultural paradigm is involved in decisions about the use and allocation

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[1] *Ethnie* (French) technically refers to a group that is a community with a sense of a common past and culturally specific beliefs (Sharp, 1990:24). Also, describing *Aotearoa*/New Zealand as a multicultural society, while demographically correct, mitigates the Treaty and the Declaration of Independence.

[2] *He Wakaputanga o te Rangatiratanga o Nu Tireni*

[3] The Treaty of *Waitangi*

of resources.

I wanted to examine whether the *Resource Management Act 1991* (henceforth *RMA*) framework has the potential to resolve cultural conflicts over natural resources. This dissertation, a case-study of *Te Whanganui-a-Orotu/Ahuriri* Estuary (Napier) and *Ngāti Kahungunu*, is only one study that explores how cultural values are understood and possibly included in natural resource planning. Observing the interaction between *Ngāti Kahungunu* and the Local Authorities (henceforth LAs[4]) in regard to resource management provided me with an opportunity to explore the issue of how cultural values may affect resource management. The case-study considers one specific application of the wider debates of *Māori* sovereignty and their access to, protection of, and rights of traditional use of natural resources. Hopefully, it also gives an insight into the philosophical, and therefore historical, differences between *Māori* and *Pākehā* environmental values. My deeper focus has been to discern whether there is a value change in *Aotearoa*/New Zealand society from the secular Western Paradigm (henceforth SWP) to a new paradigm that includes cultural/spiritual values in natural resource decision making. I hope the analysis of this case will be useful to resource managers and other participants in the resource management process by providing a small stone in the bridge between *Māori* and *Pākehā* understandings.

Part One provides the case-study's geographical and historical context. In Chapter One I describe the case-study area of *Te Whanganui-a-Orotu/Ahuriri* Estuary and the association of the *Ngāti Kahungunu* with it. Chapter Two then examines the literature about *Te Tiriti O Waitangi* and the Declaration of Independence to show that the need for a common law between settlers and *Māori* that guaranteed *Māori* control of their natural resources is not a new issue (Hackshaw, 1989; Kawharu, 1989; Binney, 1990; Kelsey, 1990; Sharp, 1991). Today it is within the sphere of implementing the *RMA* that these historical issues need to be re-addressed. The enactment and purpose of the *RMA* operates as a common law that recognises *Te Tiriti O Waitangi* and cultural values. For this reason, Chapter Three examines the *RMA* provision for the cultural perspective in resource management.

Part Two (Chapter Four) provides a discussion of the methodology employed in this study.

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[4] In the *RMA Sect. 2*; '"Local authority" means a regional council or territorial authority (as defined by the *Local Government Act 1974 Sect. 2(1)*)'. In this case, the Hawke's Bay Regional Council, Napier City Council and Hastings District Council have interests in *Te Whanganui A Orotu/Ahuriri* Estuary.

Part Three presents the results of the case-study and conclusions. My analysis identifies three themes as significant to the case of *Te Whanganui-a-Orotu/Ahuriri* Estuary; these are presented in Chapters Five to Seven. Chapter Five addresses the question 'Do the *Māori* and *Pākehā* cultures provide different paradigms through which the world is viewed and as such, appreciate natural resources differently?'. If cultural factors alter the perception of natural resources then it may also alter how natural resources, as 'common property', need to be managed. This is the theme of Chapter Six.

Differences in cultural perceptions of natural resources and the associated differences regarding their management raises the issue of which cultural view should be granted priority. This related theme is dealt with in Chapter Seven. This chapter discusses the tension between *tino rangatiratanga* and *kāwanatanga* (M'Hugh, 1989) in response to the question: 'How might *Māori* protect natural resources that are culturally important to them when this may conflict with other resource uses?'. A suggestion for 'joint management' (Wickliffe, 1994) as a 'third order of government' (M'Hugh, 1989), separating the issues of natural resource ownership from issues of management, is presented in Chapter Eight. Chapter Nine presents my conclusions. The appendices provide: the text of *Te Tiriti O Waitangi*; excerpts from the *RMA*; maps of *Te Whanganui-a-Orotu/Ahuriri* Estuary showing how the area is divided up between LAs; and the research questions used in the interviews.

Part One: Setting the Scene
Cultural Conflicts in Resource Management

There is a lack of research into the cultural aspects of resource management (M^{c}Neely and Pitt, 1985; Berkes, 1989). The vague concept of 'culture' incorporates what is collectively believed about events, places and people. Each culture affects human behaviour and the way a society perceives and treats the natural environment according to its own distinctive paradigm. When managing natural resources, conflict arises when there is opposition to, or mis-understanding of, a particular group's culturally-derived value paradigm concerning a particular natural resource. In *Aotearoa*/New Zealand, a primary research question that has not been sufficiently addressed is: 'Can the implementation of the *RMA* incorporate two cultural perspectives for managing *taonga*[5]/natural resources?' This raises secondary research questions:

* Do *Pākehā* managers understand *Māori* perceptions of natural resources so that they can meet the *RMA's* cultural mandate?
* How do resource managers respond to *Māori* cultural values?
* What protection for *Māori* values is provided by the LAs under the *RMA*?

The aim of the preceding questions was to assess whether both *tangata whenua* and *Pākehā* values have been accommodated equitably in the resource planning process. Their aim was also to determine the effectiveness of the methods used to include *Māoritanga* and *tikanga* in the resource management process used by the LAs which have statutory responsibility for *Te Whanganui-a-Orotu/Ahuriri* Estuary. The issue of acknowledging and understanding the *tangata whenua* perspective is addressed by the first question. How resource managers perceive and relate to the *tangata whenua* is the focus of the second question, and the third and fourth questions consider how LAs apply the *RMA* to *tangata whenua*. These questions attempt to uncover the underlying tension between the *tangata whenua* and resource managers' Western cultural paradigms. If this tension exists then it is important to know if it is being addressed by resource managers in LAs. The response of LAs to *tangata whenua* cultural values will affect the allocation of natural resources.

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[5] This discussion is concerned with only the *taonga* that are generally described as natural resources, the land, water, flora and fauna of *Aotearoa*/New Zealand.

Chapter One:
The History and Description of *Te Whanganui-a-Orotu/Ahuriri* Estuary

1.0 Introduction

Chapter One describes the case-study area and its history. This provides the local context of the research before a description is given of the wider context of the history of *Aotearoa*/New Zealand and the *RMA*'s inception. From this backdrop, the interaction between culture and resource management emerges. *Te Whanganui-a-Orotu/Ahuriri* Estuary is located in Hawke's Bay between Napier City and its airport (Figure 1). The *Māori* tribe which used and inhabited this area prior to European settlement was *Ngāti Kahungunu*.

1.1 *Māori* Habitation of *Te Whanganui-a-Orotu*

Ngāti Kahungunu have inhabited *Te Whanganui-a-Orotu/Ahuriri* Estuary for about 1100 years (Appendix 1). There is much evidence of *pā* settlements on the headlands and shell-filled middens above the shore line of the original beaches (Best, 1982; Parsons, 1994). The abundant supply of *kai moana* and its favourable climate, along with the natural defense afforded by the topography of the area, made this an attractive place for *Māori* to settle. The following *hapū* consider *Te Whanganui-a-Orotu* to be their *tūrangawaewae*: *Ngāti Parau, Ngāti Hinepare, Ngāti Tu, Ngāti Mahu, Ngai Tawhao, Ngai Te Ruruku and Ngāti Matepu* (Dick, 1992; Parsons, 1994). *Ngāti Kahungunu*, in pre-European times, managed *Te Whanganui-a-Orotu* to ensure a continued supply of *kai moana* and crops. They controlled the lagoon's water level with a temporary opening to the sea so that they could crop the lagoon's fertile perimeter (*Wai 55*[1]). McLean[2], in 1851, bought the land around *Te Whanganui-a-Orotu*, but *Ngāti Kahungunu* never sold the lagoon (*Wai 55*).

1.2 *Ahuriri* Estuary Today

Today, *Ahuriri* Estuary forms the northwest edge of Napier City, which is the remnant of *Te Whanganui-a-Orotu*. The 1931 earthquake and subsequent land reclamation has modified this coastal wetland, reducing it from 3,840 hectares to 275 hectares. Drainage

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[1] Numbering refers to the Waitangi Tribunal case and evidence references.

[2] Donald McLean was the native secretary and chief land purchasing commissioner

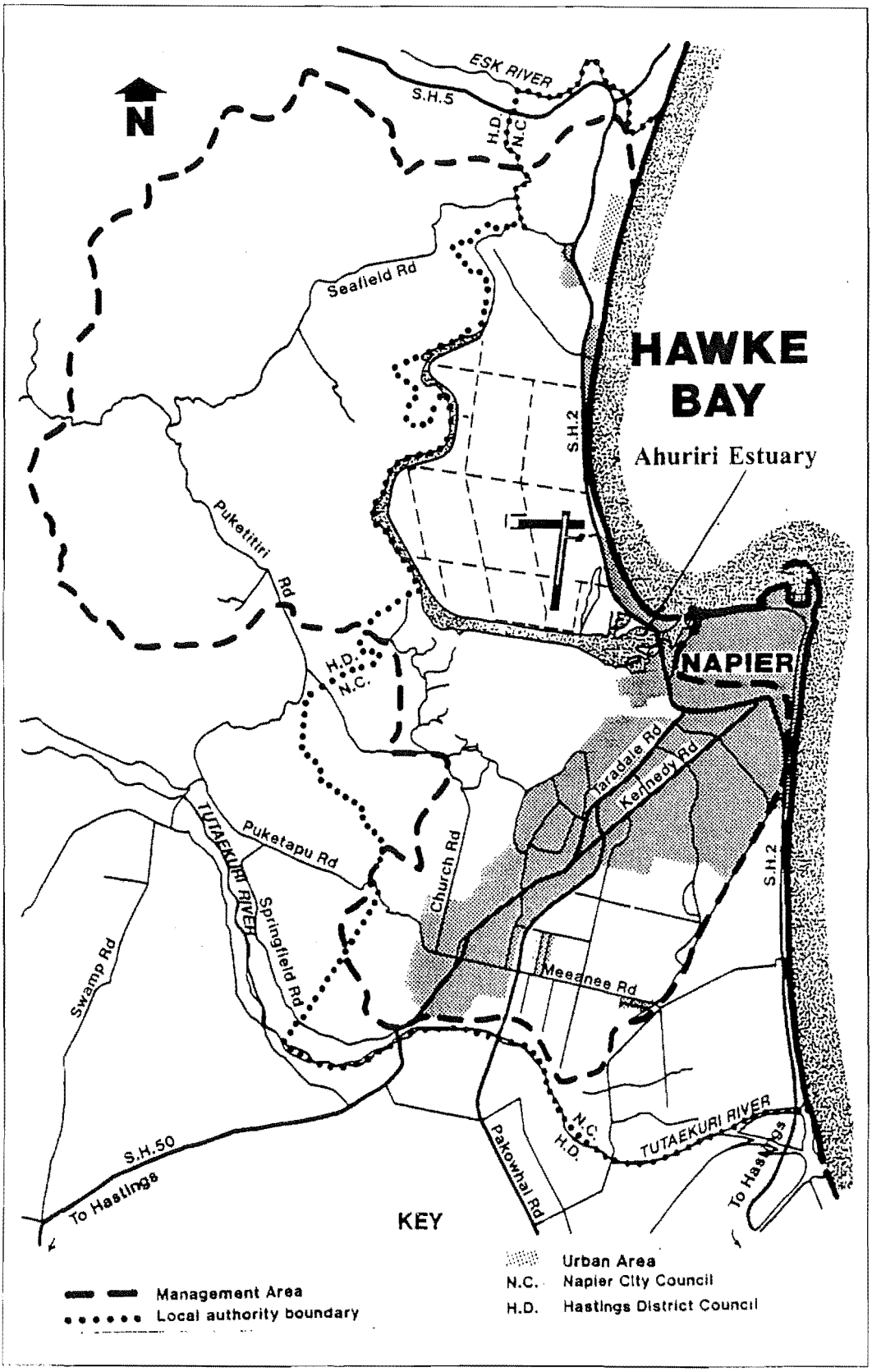

Figure 1 The location of *Te Whanganui-a-Orotu*.

works included re-routing the *Tutaekuri* (river) directly into the sea, thus reducing water flow into the estuary and affecting estuary tidal processes (Knox, 1978). Williams (*Wai 55*) submitted to the Waitangi Tribunal that if the lagoon were not subjected to stop-banks, drainage works or pumped 24 hours a day, it would have remained much larger.

To manage *Te Whanganui-a-Orotu/Ahuriri* Estuary, the LAs have divided it into three areas: the lower, the middle and the upper estuary (Appendix Two). The estuary entrance is the 'Inner Harbour' that provides berths for yachts, commercial fishing boats and a slipway. This area is flanked on the southern shore by warehouses and commercial development and the northern shore is predominantly residential. Further to the south-west, along the middle estuary, is the industrial development of Onekawa. Much of the reclaimed land is grazed and used for the Napier airport (Appendix Three). The remaining wetland areas have significant wildlife values, part being gazetted as a wildlife refuge in 1958. The wildlife refuge, being a sheltered site, is in demand for active water-based recreation (*Ahuriri Estuary Draft Management Plan Submissions*, 1993), because Napier is a popular summer holiday and weekend destination. Most active recreation occurs around Pandora Pond, an area that was dredged and protected from the tides by a constructed rock wall. Pandora Pond has recreational facilities and businesses located on its southern shore. The upper reaches of the estuary are flanked by farmland and are used for duck-shooting. *Ahuriri* Estuary is enclosed by pasture covered hills along the western side, and takes the water from this catchment.

1.3 Why use *Ahuriri* Estuary and *Ngāti Kahungunu* as a case-study?

The research focuses on an estuarine area for the following reasons: first, estuaries are often ecologically degraded; secondly, much of *Aotearoa*/New Zealand's urban development has occurred in proximity to such wetlands; thirdly, for many years wetlands were regarded by Europeans as 'waste' places to be filled in (however, there is an increasing awareness of the importance of these areas); and fourthly, many remnant wetlands are important to *tangata whenua* (Rennie, 1993; Ward and Scarf, 1993). The case of *Te Whanganui-a-Orotu/Ahuriri* Estuary encompasses the issues of conflicting cultural values and resource use, as well as dispute over the ownership of the resources contained within the estuary, thereby highlighting Treaty issues. Estuaries are locations of high potential conflict because of the contrasting values ascribed to them, the diverse uses that might be made of them, and the changing attitudes towards them. Consequently, some Waitangi Tribunal claims are about wetland areas, including *Ahuriri* Estuary.

Chapter Two:
Aotearoa/New Zealand History

2.0 Introduction

Having described *Te Whanganui-a-Orotu/Ahuriri* Estuary, I will now present a brief summary of *Aotearoa*/New Zealand history. This will illustrate how *Māori* cultural values, relating to *taonga*/natural resources, have been disregarded by the Crown.

2.1 The Declaration of Independence of 1835

Growing international trade, and perceived military threats, increasing settler numbers and the need for *Māori* unity precipitated the Declaration of Independence in 1835. The commissioning of an *Aotearoa*/New Zealand flag[1] was prompted by a need to ensure commercial and legal protection for ships which were being confiscated when they arrived in New South Wales (Binney, 1990). James Busby (the British Resident) is credited with the idea of a flag and linking 'the problem of registration with the notion of creating a settled form of *Māori* government' (*ibid.*:29). The raising of a flag for commercial reasons, the need for a common law by which to govern *Māori* and *Pākehā* to aid European settlement, plus the threat of French annexation, provided a political opportunity for the *Māori* Declaration of Independence on 28 October 1835[2]. For *Māori* the acceptance of their flag and Declaration of Independence was a recognition of their *mana*, and sovereignty over the land by the British Crown - "*Ko te Kingitanga ko te mana i te wenua* (sic)" (Binney, 1990:31). Five years after the Declaration of Independence, a treaty was signed at a *hui* in *Waitangi* which guaranteed Crown protection of *Māori* interests as the protectorate of *Māori* sovereignty and independence.

2.2 *Te Tiriti O Waitangi*/The Treaty of *Waitangi*

The signing of a treaty was motivated by the differing desires of *Māori*, missionaries, settlers and Crown. *Māori*, in response to missionary advice (Williams, 1989), were looking for the protection of their sovereignty by the British and the provision of one law for themselves and the settlers (Ngata, 1922 translated by Jones n.d., cited in Biggs, 1989), with the ensuing trade benefits. *Māori* understood that a dual sovereignty would operate

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[1] The flag design was chosen by 34 Northern Chiefs on 20 March 1834.

[2] Busby initially collected 34 signatures, from the United Tribes of *Aotearoa*/New Zealand, in Northland, and continued to obtain signatures until 1839 (Binney, 1990).

with the assurance that the Chiefs' authority would not be diminished by a treaty, and that their Chieftainship was intact and the land was theirs (Binney 1990; Kelsey, 1990; M'Hugh 1994). The March 1840 eye-witness account of Father Louis-Catherin Servant, a French Catholic priest, suggests that both *Māori* and *Pākehā* understood that:

> *The governor proposes to the tribal chiefs that they recognise his authority: he gives them to understand that his authority is to maintain good order, and protect their respective interests; that all the chiefs will preserve their powers and their possessions* (Binney, 1990:77).

The missionaries had sought a treaty for the following reasons: their perceived need for British protection because of their tenuous position of reliance on *Māori* goodwill; the rumoured French 'invasion'; an increasing Roman Catholic presence; and their concern for *Māori* welfare (Kelsey, 1984).

Governor Hobson may have been influenced by the Church Missionary Society's humanitarian pleas. He was aware that militarily and politically the power was with the *Māori* people (Williams, in Kawharu, 1989). The British Crown was, however, ambivalent in its support for the annexation of *Aotearoa*/New Zealand or the use of a treaty for such a purpose (Sinclair, 1980; Kelsey, in Spoonley *et. al.*, 1984). The Crown was unwilling to finance colonisation or to maintain a strong military presence. For these reasons, Governor Hobson instituted a treaty with *Māori*. Hobson also instigated the Crown's sole right of pre-emption to purchase land from *Māori* for subsequent resale to settlers as a way to finance colonisation (Bassett, 1990). These arrangements did not sit well with the settlers.

Some prominent settlers criticised the Government's making of, and reliance upon, a Treaty (Williams, 1989). They saw the Crown's doctrine of pre-emption as hindering their acquisition of land. They argued that it made the Treaty's Third Article a fraud because *Māori*, as British subjects, had the right to sell land to whomever they chose (Bassett, 1990). By the mid-1840s the first wave of natural resource extraction, whale, seals, kauri timber and gum, copper ore and some coal, was almost over and settlements were in decline (*ibid.*); the first settlers needed to attract other colonists so they could profit from land sales. The settlers, in time, also dismissed the Treaty as being of no significance to them. With increasing numbers they developed sufficient political and military strength to ignore the *Māori* people. This removed any protection of *tangata whenua* resources which the Treaty, or *rangatiratanga*, (Brookfield, 1989; Kelsey, 1990) might have provided.

2.2.1 Translating *Te Tiriti O Waitangi*

English translations of *Te Tiriti O Waitangi* (for the full texts see Appendix Four) do not match the *Māori* translation (Figure 2). Sharp (1991) questions the wisdom of trying to reinterpret the meaning of a historical event and its documents because history cannot be recreated, but he affirms the Waitangi Tribunal findings that *Māori* never ceded their sovereignty. Spoonley (1984) also emphasises that *Pākehā* need to understand what *Te Tiriti O Waitangi* means to *Māori*. Hence both culture and era affect the interpretation of *Te Tiriti O Waitangi*.

The language used in the Treaty is more than the written words (Williams, 1989). *Māori* Chiefs used *Moko* inscriptions as their signatures, so the essence of their *mana* was inscribed into the Treaty document (Binney 1990; Glen, 1992). Sir Ngata Apirana (1922, cited in Biggs, 1989) called the Treaty articles 'covenants'; an agreement, made with God as witness, that are irrevocable unless both parties mutually agree to amend them. 'It bound both parties because it was an oath in the sight of God' (Sharp, 1991:97). *Te Tiriti O Waitangi* was written in 'missionary *Māori*' because the author was Rev. Henry Williams, and *Māori* had learnt English from the Bible (Biggs, 1989; Williams, 1989). The use of 'religious' language fitted the *Māori* world view of making no distinction between the sacred and secular (see Chapter Five). The Waitangi Tribunal's scrutiny of the history and *Māori* interpretation of *Te Tiriti O Waitangi* concludes that the Treaty is imbued with *wairua* that transcends the literal interpretation of the text (Waitangi Tribunal, 1983).

Māori relied on Henry William's oral arguments in giving their consent to the Treaty (Sorrenson, 1989). This Treaty is a *Magna Carta* (M^{c}Hugh, 1991; Williams, 1989) because the *Māori* version of it legally defines *tangata whenua* rights, and *Māori* expected the Crown to honour it. The mixture of motives, expectations, and poor translation, however, led to *Te Tiriti O Waitangi* being ignored by *Pākehā*.

Article 1 - what is being given by the *Māori* to the Crown?

Māori text	*Young Translation*	*Kawharu Translation*
te kawanatanga katoa	all the government	the government complete

English Text	*Young Translation*	*Ngata 'Explanation'*
all the rights and powers of Sovereignty	*nga tikanga me nga mana katoa o te Rangatiratanga*	*te tino mana, te mana rangatira*

Article 2 - what was the Crown's guarantee to the *Māori* in respect of their land etc.?

Māori text	*Young Translation*	*Kawharu Translation*
te tino rangatiratanga	the full chieftainship	the unqualified exercise of their chieftainship

English Text	*Young Translation*	*Ngata 'Explanation'*
full exclusive and undisturbed possession	*te tino tuturutanga*	*te whakapumautanga*

Figure 2 Key *Māori* and English translation discrepancies in the First and Second Articles of *Te Tiriti o Waitangi* (from Williams in Kawharu, 1994:78).

2.2.2 *Te Tiriti O Waitangi* and the *RMA 1991*

Within the framework of the *RMA* the management of natural resources cannot be separated from *Te Tiriti O Waitangi* (Appendix Four) or what it means to *Māori*. The history of legislation in *Aotearoa*/New Zealand is imbued with the Crown's response, or lack of it, to *Te Tiriti O Waitangi* (Kelsey, 1984). An outcome of the *Māori* cultural renaissance is an increasing understanding of the importance of *Te Tiriti O Waitangi* (Spoonley *et al.*, 1984; Kelsey, 1984; Orange, 1987; Walker, 1987; Tauroa, 1989; Kawharu 1989; Kelsey, 1990; Binney, 1990; Sharp, 1991; M^{c}Hugh, 1991). *Te Tiriti O Waitangi* has passed from being declared a legal 'nullity' in 1877 (the "Prendergast decision") (Orange, 1987) to being legislated for in the *Treaty of Waitangi Act 1975* and endorsed in the Waitangi Tribunal's formation and reform (Sharp, 1991). Treaty 'clauses'[3] are also incorporated into the *RMA* sections 6(e), 7(a), and 8 (see Appendix Five). The interpretation of these sections, and the priority they are given, will reflect the Crown's commitment to its Treaty obligations.

The Waitangi Tribunal's work is to consider independently the history and the processes by which *Māori* may have been illegitimately alienated from their *taonga*/natural resources. The Tribunal's recommendations bear directly on how *taonga*/natural resources might be administered and who owns them. Hughes (1988:19), on the basis of Waitangi Tribunal findings, described the relationship between the *Te Tiriti O Waitangi* First and Second Articles as 'the essential bargain'. The Crown's right to govern, *kawanatanga*, is dependent upon the protection of *Māori* sovereignty, *tino rangatiratanga*, in the access to and use of *taonga*/natural resources. It is on this understanding that *Ngāti Kahungunu* agreed to a partnership of dual sovereignty, a sharing of power (Kawharu, 1989), based on *Te Tiriti O Waitangi* (see Chapter Seven).

2.2.3 *Te Tiriti O Waitangi* and the Role of the State

During the mid-to-late 1980s, *Māori* were caught up in the redefinition of the role of the state and how government related to *iwi* (*Runanga Iwi Act 1990*; Fleras, 1991; M^{c}Gregor, 1993). The Treaty of Waitangi became the central document by which the relationship between Crown and *Māori* was defined (Kelsey, 1990; Fleras, 1991). The crux of the

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[3] Other environment/resource legislation that also include Treaty clauses are the; *Environment Act 1986*, *Conservation Act 1987*, and *Te Ture Whenua/Māori Land Act 1993 s2* which states that the *Māori* version of *Te Tiriti O Waitangi* prevails over the English version.

changes in administering the Crown's relationship with *tangata whenua* was to make *iwi* central to the delivery of government services to *Māori* and keep *iwi* accountable. The question of state control and the ambiguity of devolution was of critical concern to *Māori* (Fleras, 1991; M^{c}Gregor, 1993) who argued for 'repossession of resources and restoration of power and the reclamation of *mana*' by *tangata whenua hapū/iwi* as co-signatories of *Te Tiriti O Waitangi* (Fleras, 1991:186). Herein is the link between *Māori* aspirations to have *Te Tiriti O Waitangi* honoured and to be involved directly in the management of *taonga*/natural resources.

It was not long before *kawānatanga* came into conflict with *tino rangatiratanga* (Binney, 1990). The land (sovereignty) wars in the 1860s and the expulsion of *Māori* leaders was a military invasion of *Aotearoa*/New Zealand by the British Crown (Brookfield, 1989; Binney, 1990). In the 1870s and 1880s the Repudiation movement had the explicit aim of repossessing alienated lands on the basis that 'full chieftainship of their territories' (Binney, 1990:157) had been promised. Initially the Repudiation movement worked with lawyers and parliamentarians but this was to its detriment. The response was to establish a pan-*Māori kotahitanga* (Parliament), which was founded by *Ngāti Kahungunu*, who had been loyal to the Crown. In 1886 *Ngāti Kahungunu* called a *hui* to discuss new land legislation with the Crown. The ensuing legislation also ignored the need for *Māori* control of their land (*ibid.*). During the 1880s and 1890s the hope for unity, amongst *iwi*, was supplanted by the power struggles between *kotahitanga* and *kingitanga* and the various visionary leaders who held sway over different regions and *hapū*. These were difficult times for many *iwi*. *Ngāti Kahungunu* had supported the colonial authorities and lost their land whilst doing so (Binney, 1990; Morgan and Falloon, 1993; Parsons, 1994).

Māori understood that under *Te Tiriti O Waitangi* power was to be shared, but the Crown saw it as a transfer of power with *Māori* becoming subjects (Kawharu, 1989) (see Chapter Seven). Binney (1990) concludes that the *Pākehā* feared separatism and so were not prepared to allow any form of power-sharing or to let *Māori* control their own land and refused to acknowledge the legitimacy of *Māori* grievances. Such *Pākehā* attitudes alienated *Māori* leadership and have 'sown the seeds of a discord which has lasted to the present' (*ibid.*). The *Māori* call for sovereignty is at the heart of *Aotearoa*/New Zealand history. The Crown had imposed its own political and legal mechanisms (Brookfield, 1989; Binney, 1990; Kelsey, 1990) by which it ensured access to resources for the settlers' economic development. The authority to regulate *taonga*/natural resource use is a powerful

mechanism for controlling people and their aspirations.

The Fourth Labour Government's (1984-1990) restructuring of its own departments and local government authorities affected *Ngāti Kahungunu* and the management of *Te Whanganui-a-Orotu/Ahuriri* Estuary. There were changes in *Ahuriri* land ownership through the privatisation of the Harbour Board into a Port authority and the creation of new LA through local government restructuring and amalgamation. The impact of government restructuring in the case of *Ngāti Kahungunu* included issues of devolution and resource management under the *Runanga Iwi Act 1990*. *Ngāti Kahungunu* had to deal with the demands of consultation (Kerins, 1992; Waaka, 1992) with these newly created agencies. The restructuring, which preceded the *RMA*s enactment, also changed how the LAs would be required to respond to *Ngāti Kahungunu* cultural values, because of the increasing use of 'Treaty clauses' in new legislation.

Before considering how the *RMA* deals with the cultural aspects of environmental planning, it is necessary to outline the political context in which the *RMA* developed.

Chapter Three:
The Enactment and Purpose of the *Resource Management Act 1991*

3.0 Introduction

The Fourth Labour Government implemented policies which were based on a free market ideology and aimed at reducing the 'role of the state' (Boston and Holland, 1987; Bührs and Bartlett, 1993). This change was promoted by Treasury (*ibid.*). It led to the restructuring of local government to provide a consistent co-ordination of policy to fit the 'New Right' ideology (Bührs and Bartlett, 1993). In response to Treasury ideology, business interests and environmental concerns, the Fourth Labour Government also set about reviewing and reforming environmental legislation and administration, leading to the *Resource Management Bill 1990* which preceded the *Resource Management Act 1991* (Bührs and Bartlett, 1993; Memon and Perkins, 1993; Rainbow, 1993).

3.1 The Enactment of the *Resource Management Act 1991*

The *RMA* was designed to enable LAs to develop environmental policy in ways that were consistent with the Treasury's *laissez-faire* market philosophy. This philosophy deemed that the market would also be able to determine environmental outcomes if bureaucratic control was minimised and urban planning was curtailed (Bührs and Bartlett, 1993). Treasury's proposals paralleled business' concerns that existing legislation was too bureaucratic, uncoordinated and hindered economic development (Wheeler, 1987; Rainbow, 1993). Subsequently, the *RMA* streamlined development bureaucracy by providing a 'one-stop-shop' for all resource allocation and planning.

Environmental groups, unlike Treasury and business interests, wanted the state to be more proactive in environmental protection and conservation (Rainbow, 1993). Environmentalists also saw a lack of cohesion in the plethora of environmental legislation (*ibid.*). They argued that the state perpetuated environmental degradation because of conflicting mandates within existing departments; that of environmental protection and that of resource development (Bührs and Bartlett, 1993). Treasury also wanted a clear separation of mandates. Treasury then went one step further and advocated the separation of policy design and policy implementation. The separation of mandates, policy design and

implementation led to the demise of some departments, the creation of new ones[1] and the establishment of State Owned Enterprises. The environmentalists' advocate for conservation became newly established in the Department of Conservation (*Conservation Act 1987*). The Parliamentary Commissioner for the Environment is the environmental policy 'watchdog' and could investigate issues, but has no decision-making power (*ibid*). The Ministry for the Environment develops environmental policy, and the LAs become environmental policy implementors. The massive government restructuring, on the basis of a *laissez-faire* market philosophy, reinforced private property rights (Chapter Six), and down played *Māori* Treaty claims

3.2 The Purpose of the *Resource Management Act 1991*

The *RMA Purpose and Principles Part II Section 5(1) and (2)* (Appendix Five) gives priority to the sustainable management of natural resources (excluding minerals), and becomes an ecological "bottom line" (Rainbow, 1993). While the *RMA* also has the objective of sustaining the social, economic and cultural wellbeing of communities, there is no definition of sustainability in regard to urban and social process (Memon, 1993). The *RMA* does not fit the free market philosophy because it also promotes community-based resource management decision making (Rennie, 1993). Herein is the dilemma of protecting the bio-physical world whilst utilising it to maintain/develop the welfare of people (Bührs, 1993). Consequently, there is an allowance for traditional *Māori taonga*/natural resource management practices, but protection of the bio-physical environment takes priority. However, the United Nations Conference on Environment and Development (Rio de Janeiro, June 1992) advocated that traditional indigenous knowledge and practices have a vital role in managing natural resources. The lack of definition of cultural sustainability and hesitancy to consider alternative management strategies may hinder the inclusion of cultural wellbeing in implementing the *RMA*.

3.3 Interim Summary

Part One introduced the case-study area of *Te Whanganui-a-Orotu/Ahuriri* Estuary, the history of *Aotearoa*/New Zealand and the *RMA's* enactment and purpose. This provided a background to the cultural values conflict over the management of *taonga*/natural resources. In Part Two, I will explain how I conducted the research. This will help the reader to understand how the data were gathered and analysed.

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[1] The Department of Lands and Survey, New Zealand Forest Service, and the Ministry of Works were abolished (Memon, 1993). The Department of Conservation, Forestry Corporation, Landcorp, Department of Lands and Survey Information, Ministry for the Environment were created.

Part Two: Obtaining the Evidence

Chapter Four: Methodology

4.0 Introduction

My aim in this chapter is to describe how I collected and analysed the data in the case of *Ngāti Kahungunu* and the management of *Ahuriri* Estuary. I first outline the reasons why I used a qualitative methodology. Then I will discuss how I did the research and how I resolved some of the research problems I experienced.

My examination of resource management literature, the *Ahuriri Draft Management Plan* and the *RMA's* purpose led me to consider; "How important is the issue of cultural values when managing natural resources?". To gain an understanding of how culture and resource management are linked, I started by considering the Treaty of *Waitangi* and *Aotearoa*/New Zealand's history. I then decided that a case-study might be helpful to provide a 'living' perspective of the issues. This then meant deciding on a location, gaining *iwi* consent and choosing an appropriate research methodology. I chose to use qualitative research methods.

4.1 Why use Qualitative Research Methods?

I used qualitative research methods for the following reasons. First, *Māori* culture functions through oral traditions and personal relationships, therefore the use of written questionnaire formats was inappropriate. Second, I believed that the nuances of cultural meanings attributed to natural resources and their management would not be easily quantified. Third, the limited public knowledge of how cultural values influence *taonga*/natural resource management decisions requires an approach to research which is flexible and orientated towards 'discovery' rather than 'validation' (Rudner, 1966).

Qualitative research aims to discover reality through the consensus and conflicts in the stories being told by different participants (Lofland and Lofland, 1984). Those involved have their own agendas and values which influence their perceptions and actions. The researcher, through observation and/or participation, seeks to understand what is happening and why. When exploring social/political settings, qualitative data are the "best and richest" (Glaser and Strauss, 1967:17).

4.2 How the Research was Done

My research role was that of an 'outside researcher' (Lofland and Lofland, 1984) for whom knowledge, connections, accounts and courtesy would facilitate access into the research field (*ibid.*). Having some understanding of *Te Whanganui-a-Orotu/Ahuriri* Estuary's geography, I set out to familiarise myself with its history and the *Ngāti Kahungunu* Waitangi Tribunal claims. I needed to be conversant with: resource management issues, LAs functions under the *RMA* and the political nature of cross-cultural research. Getting into the field required identifying and gaining the support of 'key players' involved in the management of *Te Whanganui-a-Orotu/Ahuriri* Estuary.

Contact with *Ngāti Kahungunu* was assisted by the Centre for *Māori* Studies and Research, Lincoln University, which provided an opportunity to present my research proposal to a *Ngāti Kahungunu* representative. Developing relationships, reciprocity and place of origin are important to *Māori*. So, in part, gaining informed consent for the research was the result of discussing their research needs. During this process a specific research focus developed (Shaffir and Stebbins, 1991) in light of a concern that;

Harry ● *... Māori values and views regarding resource management must be considered as valid in the planning system.*

The *Ngāti Kahungunu* requirement, that *tikanga Māori* be part of *taonga*/natural resource management, overlapped with my proposed research into how LAs accommodate cultural values when implementing the *RMA*. Research involving *tangata whenua* would have to be based on goodwill, reflecting the 'partnership spirit' of *Te Tiriti O Waitangi*. Therefore *Ngāti Kahungunu* formed an "informal contact group" (in *Pākehā* terms) to act as a primary point of contact during the research. This assisted me in relating to *Ngāti Kahungunu* and clarifying their perspective. Section 4.3 discusses the implications of *Ngāti Kahungunu* involvement.

A 'plain English' account of the research was presented to all potential informants, explaining the research purpose and how it would be carried out, making the study process explicit. The aim was to gain informed consent and support from 'gate keepers' (Lofland and Lofland, 1984). Key informants were identified through networking strategies. Their potential for contribution to the research was based on the following criteria: others' recognition of their involvement; position within an organisation; access to information; expertise/experience in resource management and/or *Ahuriri* Estuary.

For pragmatic reasons, the informants were divided into three groups based on ethnicity and organisational affiliation. The first group was composed of *tangata whenua* representatives from the *Te Whanganui-a-Orotu* and *Heretaunga Taiwhenua* committees, members from the *Ahuriri* Executive Committee, and the New Zealand *Māori* Council. Also included were the *Ngāti Kahungunu* expert witnesses at the Waitangi Tribunal hearings. Another group of contributors were the resource management planning and policy staff and *iwi* liaison personal from the Hawke's Bay Regional Council (HBRC), Hastings District Council (HDC), Napier City Council (NCC), and Department of Conservation (DoC). These agencies have statutory obligations for the management of *Te Whanganui-a-Orotu/Ahuriri* Estuary and had formed a joint committee to produce a management plan for *Te Whanganui-a-Orotu/Ahuriri* Estuary in 1992. The third group consisted of informants from the Ahuriri Protection Society and the Hawke's Bay Fish and Game Council, who have an environmental interest in the management of *Te Whanganui-a-Orotu/Ahuriri* Estuary.

The field-work was carried out during two trips to Napier. The first visit was from December 1993 to January 1994, the second in April 1994. The first visit included attending a Waitangi Tribunal hearing (11-14 December 1993) on *Te Whanganui-a-Orotu/Ahuriri* Estuary. This hearing included a field trip to *Otatara pā* at the original south-western end of *Te Whanganui-a-Orotu*. In January 1994 I visited the Waitangi Tribunal offices in Wellington to search the case documents. This provided a fuller picture of the customary use of *Te Whanganui-a-Orotu/Ahuriri* Estuary, the history of the estuary, and what *Te Whanganui-a-Orotu/Ahuriri* Estuary means to *Ngāti Kahungunu*. During this trip I interviewed *Ngāti Kahungunu* informants, Waitangi Tribunal members and the claimants' expert witnesses.

I used the *Herald Tribune* (Hastings) and *Daily Telegraph* (Napier) newspapers as other sources of information. The articles and letters to the editor in regard to Treaty claims or *Ahuriri* Estuary published at the time of my field work revealed some common perceptions about *Māori* and their claims. Past editions of the *Kahungunu iwi* newspaper provided particular *Māori* points of view. The *Ahuriri Estuary Draft Management Plan - Submissions Summary* (February 1993) was also used to identify the range of concerns and the reactions of various community sectors that had an interest in *Te Whanganui-a-Orotu/Ahuriri* Estuary. Environmental concerns were identified from the information held at the Environment Centre in Napier. The period between the two visits was spent on

preliminary analysis and developing interview questions which would clarify the data given by *Ngāti Kahungunu* and provide a basis for interviewing LA staff.

During the second trip I attended a HBRC *Māori* Committee meeting to observe the council's relationship with *Ngāti Kahungunu*. The field-work concluded with observing a *hui* at *Tangoio marae* which discussed the Charter between the HBRC and their *Māori* committee. These observations clarified the HBRC's interaction with *Ngāti Kahungunu*. A local historian showed me historical photographic material during a guided tour of the original estuary adjacent to *Poraiti*. This provided further insight into the history and *Ngāti Kahungunu* settlement of *Te Whanganui-a-Orotu/Ahuriri* Estuary. During this second trip I concentrated on interviewing the planners and policy makers and *iwi* liaison staff of the LAs associated with *Te Whanganui-a-Orotu/Ahuriri* Estuary, and re-interviewing some *Ngāti Kahungunu* informants. Both field trips included observing the activities of people at *Te Whanganui-a-Orotu/Ahuriri* Estuary. I used a diary to record events, thoughts, observations, information, and names, which helped my recall when I started the writing-up phase of my research.

During the interviews I used an interview schedule (Appendix Six) as a framework and then followed up the lines of enquiry as they arose. The initial questions were developed from issues raised in the *Ahuriri Draft Management Plan* and the Waitangi Tribunal hearing. The themes, discussed in later chapters, arose from responses to the interview questions. Often the first interview with a *Māori* informant was not recorded on audio tape. This helped to build a rapport with the informant. Most *Pākehā* informants preferred to have one meeting that included the account and an interview recorded on audio tape. Interviews were from one to four hours long.

I began transcribing the tapes in the field and completed this by late July 1994. This was time consuming but it provided another opportunity to become intimate with the data, and to 'relive' the interview. To ensure confidentiality I encoded all names and used file pass-words. NUDIST (Non-numerical Unstructured Data Indexing, Searching and Theorising) software was used for analysing the document and interview data. This software made data management and manipulation easier. The text search facility was used to provided data for the preliminary conceptual categories from which the themes of 'spirituality', 'property' and '*mana*/sovereignty' emerged.

4.3 Overcoming Research Problems

During the case-study I encountered several problems. The most important related to the ongoing debate within social science about "who ought to research whom" (Te Awekotuku, 1991; Tcariki, Spoonley, with Tomoana, 1992; Jackson, 1993; M^{c}Combs, 1993). This debate relates to intellectual property rights. *Ngāti Kahungunu* are often inadequately resourced and their representatives are over-worked by consultation and research demands without the benefit of tangible outcomes (Kerins, 1992; Teariki, 1992; Waaka, 1993). *Ngāti Kahungunu* wariness of research meant that I had to consult carefully and clearly define my role as a researcher. Having gained informed consent from *Ngāti Kahungunu*, the issue was resolved in this case, but another potential problem then arose, that of being co-opted into 'advocacy research' on behalf of *Ngāti Kahungunu* (Drake, 1989). I mitigated this problem by ensuring that I maintained access to all groups associated with *Ahuriri* Estuary.

Part Three: Results and Discussion

Part Three is divided into four chapters. Chapters Five, Six and Seven discuss the results and Chapter Eight, as a concluding chapter, presents a bi-cultural 'joint management model'. The discussion explores major themes arising from the data. These themes are: the difference in paradigms from which *Māori* and *Pākehā* values are derived (Chapter 5); the management and use of common property/resources (Chapter 6); and the issue of sovereignty (Chapter 7).

In the past, environmental planning focused on land use classification, minimising the cultural aspects of resource management (Memon *et al.*, 1993). The *RMA* tends to echo the *Town and Country Planning Act 1977* by defining the environment in bio-physical terms: land, water, air, soil, and ecosystems. However, the governing principles found in Sections 6(e), 7(a), 8, (see Appendix Five) and the *Third Schedule Water Quality Class C* of the *RMA* potentially accord a unique position to *tangata whenua* in regard to the management of *taonga*/natural resources. This may provide for *tikanga Māori* to be accommodated in *taonga*/natural resource management, a point developed further in Chapter Eight.

Chapter Five:
Māori Spirituality and Secular Western Paradigms

5.0 Introduction

The data presented in this chapter show a fundamental difference between the way *Māori* and *Pākehā* perceive, and therefore relate to, *taonga*/natural resources given their different cultural paradigms. The interviews I conducted support an interpretation that this hinders the acceptance of the validity of *tikanga Māori* by councils.

Earl ■ *The councils talk bureaucratic and agendas, and the Māori people talk about consultation and the wahi tapu and the spiritual elements, and they go whoosh (gestures hands passing by each other).*

Communication between *tangata whenua* and LAs is affected by philosophical differences between *Pākehā* and *Māori*. In this chapter I will first explain what is meant by paradigms. I will then present the data that show differences between *tikanga Māori* and Western paradigms. I will outline the antecedence of cartesian dualism that dominates the Western paradigm and show how cultural paradigms bear upon the *RMA*s implementation.

Paradigms are collective conceptual frameworks for explaining the cosmos and how it functions. Paradigms have also been described as *cultural filters* (Jeans, 1974 cited in Pepper, 1984) (Figure 3), because they are the ways of thinking that seem natural and certain within a particular culture. Paradigms shape how a society's members perceive and relate to the natural environment. Truth and reality are defined within the limits of a cultural paradigm.

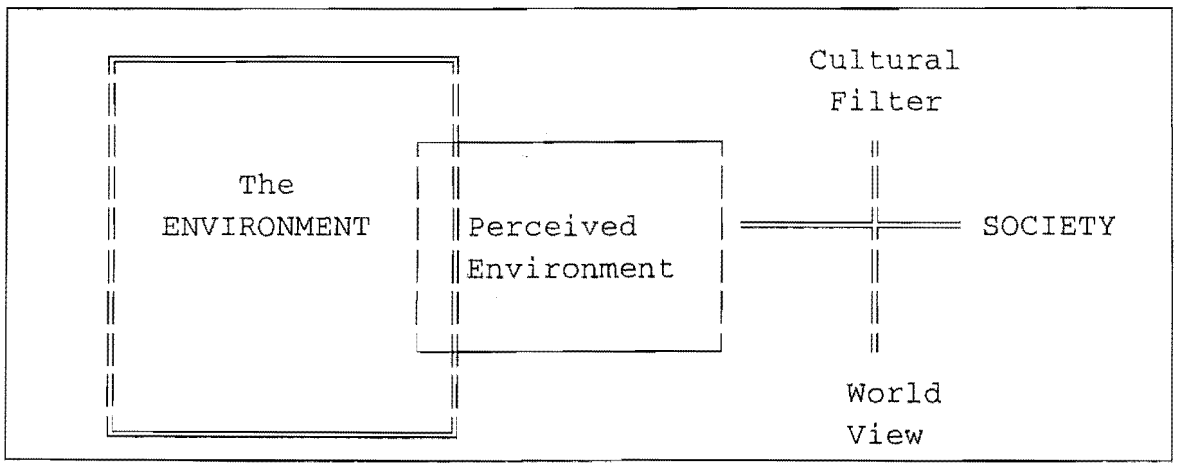

Figure 3 How 'Cultural Filters' influence perceptions (adapted from Jeans, 1974)

Paradigms may change from time to time within a society. When this change occurs it is referred to as a paradigm shift (Rainbow, 1993). Rebuilding a cultural filter establishes a new paradigm by which to assess knowledge about the cosmos. Differences between the *Pākehā* and *Māori* paradigms are evident in the values ascribed to, and knowledge about, *taonga*/natural resources. The conflicting 'ways of knowing' became evident during the interviews I conducted. The theme of spirituality was prominent.

5.1 The *Pākehā* Respondents' Paradigm

This section presents the views expressed by *Pākehā* LA staff and environmental group members who had a preference for using Western scientific knowledge and methods to manage *taonga*/natural resources. Environmental interest group respondents, who wanted *Te Whanganui-a-Orotu/Ahuriri* Estuary protected, tended to focus on issues of resource control, pollution, public access and habitat protection. They assumed that *tangata whenua* also wanted to protect the resource, so they saw little difference between themselves and *Māori* in cultural values associated with *Te Whanganui-a-Orotu/Ahuriri* Estuary.

Jane ■ *The iwi also wants to see it preserved. So our cultural perceptions aren't very different. We believe it should be a shared resource open to all.*

Some informants understood that there was a clear difference in cultural values associated with *Te Whanganui-a-Orotu/Ahuriri* Estuary. Adam explained how Western culture separates the physical and the spiritual.

● *... we've actually taken that Descartian pathway which separates head and heart... spiritual element. Some people might feel more comfortable with the term aesthetic.*

Adam went on to say that there was a conflict between intrinsic values and science, and that scientists are not expected to hold to spiritual values.

They [scientists] are not allowed to say those things [spiritual].

A DoC manager clearly saw that the concept of intrinsic values was a guise for anthropocentrism. This meant that people, even if they try to be 'eco-centric', are in the final analysis still centred on themselves.

Doug ■ *Inevitably once it's [intrinsic value] defined by people,... we like to think that we are coming from an eco-centric point of view in saying it,... it sounds anthropocentric.*

Doug also understood that he was operating within a Western paradigm that separated people from the natural world:

■ *I'm coming from a Pākehā value base.... people separating themselves from nature and saying nature is there for us to use.*

Mike shared this point of view

■ *I mean it's fundamentally part of their [Māori] culture and their traditions. I think as Pākehā we tend to view the environment as something disjoint from ourselves. Whereas my understanding of the Māori cultural traditions is that it's very much apart of their whole being. Therefore that's why it's so important to not desecrate those toanga, right. So that's why human sewerage into the sea is a no no, even though you treat it and you can probably drink it, you still shouldn't put it into the sea because of that. That sort of almost desecration of that relationship. So my impression is that they very much view themselves as part of that environment as opposed to Pākehā who see themselves living in the environment. That's the difference.*

Doug believed that members of his department best understood *taonga*/natural resource management because of their scientific work. So their responsibility was to inform *Māori* about good resource management practices.

■ *... the Crown must inform tangata whenua.... we have scientists... we shouldn't keep all that knowledge to ourselves.*

The preference for resource management to be based on Western science was prevalent amongst *Pākehā* respondents. Western science was seen as the only valid way in which to manage *taonga*/natural resources.

Gary ■ *[T]he main thing is making sure that the resource is preserved... scientific evidence to support any rules and regulations.*

Mike ■ *So when processing a resources consent if there's obvious impacts on iwi cultural values that are being clearly articulated.... But at the end of the day it doesn't have preeminence.... Because on the other hand you have readily quantifiable scientific and environmental impacts.*

Doug put it this way:

■ *...there is a deep spiritual side of Māoridom that is clearly not part of a Pākehā.*

Nominal spiritual values, anthropocentrism and Western scientific methods which are part of the *Pākehā* respondents' paradigm will be described as the 'Secular Western Paradigm'.

5.2 The *Ngāti Kahungunu* Respondents' Paradigm

Most *Ngāti Kahungunu* respondents spoke about *taonga*/natural resources in a relational and spiritual way. In their world view the physical elements are inseparable from the spiritual dimension. As explained by Fred:

- *I'm talking about Māori perception, you have one God, the creator. Then you have your father Ranginui. This is a universal father, the all inclusive realm of the unseen. You don't see the father, you feel him in the wind, you feel him in the warmth of the sun.... Then you have your mother, that's Papatūānuku, who provides every earthly material, things you can see and feel, you can eat and touch, even desecrate....*

So, for this respondent, to know reality is to experience the spiritual realm contained within the environment.

- *... one must become immersed in nature to find the answers.... 'if I'm to know what the land is saying to me I must go to the land'.... hey that's the wairua you can't suppress that... but that's alien to a lot of Pākehā.*

The philosophical basis of the *Ngāti Kahungunu* paradigm is founded on the concepts of *tikanga* and *taonga* (*HBRC, Regional Policy Statement, 1994*). *Tikanga* is comprised of three 'kits' of knowledge, which are essential to understanding *Ngāti Kahungunu* cosmology. The first kit, *mātauranga*, is the scientific knowledge of humanity and natural phenomena. The second kit, *whakāro*, is comprised of the information about *Ngāti Kahungunu* origins and their place in the cosmos (*whakapapa*). These two kits make up the notion of *tikanga*, contained in the third kit. This kit consists of the rituals and customs that accompany actions/events to ensure spiritual blessing from *atua*, the *Ngāti Kahungunu* customs that determine the structure of *Ngāti Kahungunu* society and decision-making processes for using *taonga*/natural resources. *Iwi* trace their *whakapapa* from *atua*, through *tūpuna*, who are embodied in the features of the natural world, (rivers, mountains) that the *iwi* inhabits. So their identity is with the mountain and river of the place of their habitation, their *tūrangawaewae*. This provides a continuity of the past into the present (Barlow, 1994). Alan explained that all this provides a spiritual imperative for the wise use of *taonga*.

- *For the harvesting of all species there was the appropriate tikanga.*

In *tikanga Māori* the concepts of *mauri* and *whakapapa* are fundamental and appear to have no equivalent in the Secular Western Paradigm (henceforth, SWP).

> *In the traditional Māori view, everything in the natural world possess mauri (the physical life force) which is protected by kaitiaki (spirit guardian) or atua (deity). Humans possess mauriora, which is of a higher order then of mauri but confers on humans a certain responsibility towards other living things. Preservation of the mauri of any element of the natural world is essential for survival* (*Manatū Māori*, 1991).

This is manifest in how *Ngāti Kahungunu* relate to the natural world as *kaitiaki*. *Ngāti Kahungunu* see their responsibility as *kaitiakitanga* for *Te Whanganui-a-Orotu/Ahuriri* Estuary involving more than maintaining utilitarian or intrinsic values. Thus *kaitiakitanga* is a spiritual act expressed through *taonga*/resource use and protection. Furthermore, each *taonga* has its own protective spiritual guardian, who will warn the people to correct any inappropriate treatment of *taonga*.

> *Modern European views of the natural world and natural resources are essentially scientific. For the purpose of study and research scientists divide the whole into its component parts and classify the parts. In other words they do not share the Maori (sic) view of unity of people and the treasures they produce with the land and the cosmos. Nor do they share the Maori (sic) view that "Names, knowledge, ancestors, treasures, and the land are so closely intertwined... that they should never be separated"* (*Te Roroa* Waitangi Tribunal report, *Wai 38*:211).

In the relationship between people and the environment, people are to be responsible caretakers of *taonga*/natural resources in respect for *Atua* and *tupuna*. *Māori*, as *kaitiaki*, are to use and sustain the *taonga*, gifted to the people by the *Atua*, for current needs and for future generations (Waitangi Tribunal, 1988). Therefore the *Ngāti Kahungunu* paradigm is cognisant of an inherent spirituality in all *taonga*/natural resources. *Tikanga Māori* places the value of *taonga* outside of human ascription, it is *Io* (supreme God creator) who has determined the value because the gift is the work of his hands. It would be sacrilegious to spurn such a gift by abusing it, or to devalue it, because this would be an offense against *atua* and *tupuna*. *Ngāti Kahungunu* responsibility as *kaitiakitanga* for *Te Whanganui-a-Orotu/Ahuriri* Estuary cannot be negated by secular methods of resource management. For *Ngāti Kahungunu*, the pollution and degradation of *Te Whanganui-a-Orotu/Ahuriri* Estuary is not just about the loss of species and demise of an ecosystem but the insult and abuse of their *tupuna* and loss of *mahinga kai*. This has reduced their *mana* also. That is why *Te Whanganui-a-Orotu/Ahuriri* Estuary is more than just an estuary to the *Ngāti Kahungunu hapū* who are *tangata whenua*. The following part of the *waiata* (pre 1840) of the *Ngāti Mahu* ancestress *Te Whata* expresses the value *Ngāti Kahungunu* place on *Te Whanganui* as a *mahinga kai*.

"Kia horo te haere
Nga taumata ki Te Poraiti
Ko te kainga i pepehatia o tipuna
He kainga to te ata
He kainga ka awatea
He kainga ka ahiahi...."

'Go quickly to the heights at Te Poraiti
That is the land in a proverb of our ancestors
The store house that never closed
Te Whanga
A meal in the morning
A meal in the afternoon
A meal in the evening'
(R H Hiha, *Kaumātua*)

The relationship of *Ngāti Kahungunu* to *Te Whanganui-a-Orotu/Ahuriri* Estuary is also shown in the carved totems (Figure 4) that are located within *Te Whanganui-a-Orotu/Ahuriri* Estuary.

Figure 4 Carvings at *Te Whanganui-a-Orotu* (Photograph by M H Palmers).

The contrast between the two sets of respondents' paradigms led me to consider the antecedence of the SWP. Rather than being dichotomous, the two paradigms are at different points on the sacred/secular continuum. In *Aotearoa*/New Zealand the point at which people are at on the sacred/secular continuum differs both inter and intra culturally (Pyle, 1992; James, 1993). The SWP influenced the settler's perceptions of both *taonga*/natural resources and indigenous peoples, more than any specific treaty.

5.3 Foundations of the Secular Western Paradigm

To follow a chronological order, Greek thought will be discussed first. Greek thought influenced Western thinking during the 15-18th century era of the Renaissance, Reformation and Enlightenment, an era which culminated in a secular-materialist paradigm (Schumacher, 1973 and Capra, 1983 in Pepper, 1984; Barnes, 1985). This world view provided a rationale for the processes of industrialisation and colonisation. (The Church's culpability in resource exploitation and the colonisation of *Aotearoa*/New Zealand will also be considered.)

5.3.1 Greek Thought about Matter and Spirituality

In Greek thought, the material (body and matter) is separate and independent of the spiritual (if indeed it existed). This position is called 'dualism' and is expressed in a number of ways. First, much of Greek philosophy saw the material as evil and the spiritual as pure (Luce, 1989). The terrestrial and temporal was constrained to this life, and being seen as evil it was of no eternal or spiritual significance (Thomas, 1984). Secondly, if immortality existed it was not connected to physical matter (Luce, 1989). Thirdly, some Greek philosophers argued that only matter existed, so neither gods or a spiritual dimension to the cosmos existed. They considered the mind/soul to be matter also, thus circumventing the whole dualistic argument about the division of matter and spirit (Luce, 1989).

The work of the Greek philosopher Socrates (470-399 B.C.) focused on human conduct and ethics and marked a turning point in Greek thought. A focus on another world, through the inner (spiritual) life, became important. Here dualism is found in pursuing after-life rewards separate from this physical world. Splitting the spiritual and the material worlds in this way provides the underpinnings of scientific enquiry, which concerns itself with the physical world alone (*ibid.*).

Another Greek philosopher, Epicurus (342-270 B.C.), emphasised the senses and reason as the basis for obtaining knowledge and organising experiences. Epicurus based his philosophy on the *atomist*[1] view of the world (Luce, 1989). Here is the basis of what has been declared as the 'objectivity' of science: a science based on observation which can be understood through reason (Barnes, 1985). From dualistic philosophy emerged the idea that observation and experience (including experiments) can be used to understand the whole cosmos. The Cartesian/Newtonian scientific method follows this tradition. Only things which can be shown to exist are real and exist (Sorell, 1987). As already indicated, Greek thinking influenced the philosophers, of the Renaissance (15-16th Centuries) and Enlightenment (18th Century) periods (Lacey, 1982).

5.3.2 The Western Renaissance and Enlightenment

Francis Bacon (1561-1626) denounced Greek philosophy because he argued that it had corrupted Christian thought. Yet Bacon criticised the Church's suspicions of advances in knowledge, because this hindered scientific endeavours (Farrington, 1964). His driving concern was for the welfare of humanity and its relief from poverty (Farrington, 1964). Advocating a quest for knowledge that was independent of religion has profoundly affected Western history (Barnes, 1985). In England, the philosophers of the Enlightenment period tended to rely more on the use of the senses rather than intuition, and so promoted empiricism (Gilmour, 1989). Empiricist explanations and 'scientific objectivity' replaced spiritual understandings of how the cosmos functioned. It was Bacon's contemporary, Descartes, who utilised his critique of religious control to change the course of Western thinking.

Descartes (1596-1650) is considered the father of modern Western philosophy because he

> ... *tried to show that scientific knowledge of the physical world depended on the existence of a mind or soul distinct from the body* (Sorell, 1987:37).

Descartes comprehended three ways of knowing: intuition, sense perception, and reason. He promoted a scientific methodology that relied on intuition and reason rather than the senses. He thought that senses originated in the mind (Sorell, 1987), because he understood that if the mind/soul were separate from the world we could discern the truth

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[1] A view in which the universe, as a material world, is a mechanical system from which the gods are totally detached.

about the objective natural world. This 'rationalist' approach was followed on the European continent and was encapsulated in Nietzsche's philosophy.

Friedrich Nietzsche (1844-1900) a German philosopher espoused a materialist view of the world. Nietzsche argued that to think otherwise was to be deluded and irrational.

> *God whom I created was human work and human madness, like all gods! A man was he and only a poor fragment of man and ego. Out of mine own ashes and glow it came unto me, that phantom* (Nietzsche, translated by Common, n.d.).

Nietzsche's materialist philosophy arose from Greek thought, and the existential philosophy of Descartes. Nietzsche's concern about the devaluing of the physical world by focusing on a spiritual dimension is a two-edged sword. The first edge, which he clearly saw, is an emphasis on a spiritual future which devalues the present world in hope of a new paradise. The physical world is treated with contempt, being something to struggle against and conquer (Thomas, 1984). Or, alternately, the physical world is seen as a cosmic accident. This view lacks a sense of awe for the natural world and alienates the physical from the spiritual. For some, this involves a denial of the existence of a spiritual world (Thomas, 1984; Barnes, 1985; Fox, 1990). So the natural world could only be defined and understood in materialistic and mechanistic terms on the basis of scientific knowledge (Barnes, 1985). Pyle (1992) also adds that the 'reductionist' approach separated people from nature and focused on utility values in nature. With respect to environmental values this paradigm shift, based on the success of the scientific method and the need to improve living conditions (Barnes, 1985), exacerbated the exploitation of *taonga*/natural resources (Thomas, 1984).

Pepper (1984) also identifies factors from the 19th century that account for anti-environmental values. These are: the *Evolution* rationale which provided concepts of competition, natural selection and survival of the fittest (justifying eugenics and calling non-European peoples primitive); the *Marxist* belief in the materialist base of history (the accumulation of capital which devalued the natural world, not a spiritual insensibility) (Thomas, 1984); the *Freudian* psychological emphasis on the individual which reduced the sense of community and collective responsibility (Fox, 1990); and the pre-eminence of a *Scientific Philosophy* that 'valid' knowledge can be attained only through the scientific method within the Cartesian/Newtonian paradigm. The next section shows how this was encapsulated in the impact of the industrial revolution (Barnes, 1985).

5.4 Industrialisation, Resource Exploitation and the Church

Western economic systems, in conjunction with the industrial revolution and the development of new political systems, reinforced a lack of concern for the environment (Fox, 1990; Tisdell, 1990). Bacon's utilitarian view of the natural world, and the effectiveness of Western science and technology, meant that the exploitation of *taonga*/natural resources became normative for improving living standards. The 'wild and waste' places were to be tamed, ruled over and made useful to humanity (Thomas, 1984).

The Western Church, as a part of the Western culture, believed that it was reestablishing God's order over the 'fallen creation' (Thomas, 1984; Fox, 1990). The Church was also influenced by the ethnocentric superiority (Hackshaw, 1989) of Western science and theology (Bosch, 1991) over other cultures (Thomas, 1984), having been captured by the 'spirit of the age' (Cockshut, 1964). Subsequently the church has been criticised for its part in Western colonisation and its indifference to the natural world (White, 1973; Fricker, 1994).

The Church's control of knowledge was a major concern of both Bacon (Farrington, 1964) and Descartes (Sorell, 1987). They wanted scientific endeavour to provide an independent understanding of the world, beyond the interference of the Church (Barnes, 1985). Consequently the influence of the Church declined in regard to science and industry, as did the perceived relevance of the spiritual values that it held (Barnes, 1985). For these reasons Judaeo-Christianity had a limited influence (*ibid.*) in the SWP and did not provide an effective alternative for managing *taonga*/natural resources, or colonisation. Thus to place all the blame at the Church's door would be to overstate the case against Christianity (Pepper, 1984; Thomas, 1984).

One aspect of Judaeo-Christian thought, like *Ngāti Kahungunu*, saw natural resources as gifts from a creator God to be looked after (stewardship), rejecting the Greek and Descartian view of a mechanistic world (Thomas, 1984; Pyle, 1992). Such stewardship was not fostered by Western society (Daly, 1980; Tisdell, 1990). The result is a tension between Western knowledge and indigenous knowledge about the world (Berkes, 1989). No thought was given to the spiritual values of other cultures, as will be seen in the concerns voiced by the Church Missionary Society with regard to the colonisation of *Aotearoa*/New Zealand.

5.5 Christianity and the Colonisation of *Aotearoa*/New Zealand

The first experience of Christianity by *Māori* came via European whalers, sealers and traders before the end of the 18th century (Henare, 1992). Consequently, when the Church Missionary Society (CMS) sent missionaries to *Aotearoa*/New Zealand, some *hapū*/*iwi* had some experience of Christianity. Whilst the CMS promulgated the Christian gospel, it feared that colonisation would have a major negative effect on *Māori* (Davidson and Lineham 1987; Glen, 1992). These concerns were communicated to the British Crown but there was no effective response (Binney, 1990).

Trade opportunities, poor living conditions and unemployment resulting from economic depression in the United Kingdom, became significant push factors for colonising *Aotearoa*/New Zealand (*pers. com.*, M^{c}Aloon, 1995). Missionaries were perceived by settlers and *Māori* to provide a stabilising influence. *Hapū* sought prestige by having their own missionary in residence (Binney, 1990; Glen, 1992). They presumed that through such arrangements, trade would prosper and a common law would be administered which would control the activities of the settlers (Binney, 1990). *Māori* understood there to be an operational association between English laws and the settlers' beliefs, that is, the Christian faith as taught by the missionaries (Henare, 1992). The settlers expected the civilisation and assimilation of native peoples to smooth the path for their own economic ends. Thus the Church became a cog in the colonial machine despite some missionary protest (Glen, 1992; Davidson, 1987). Colonial paternalism and Euro-centric perception of reality also infused the Church. There were few attempts to understand the world view of other peoples since they were described as pagan and in need of civilising (Henare, 1992). In due time the Church was dominated by settlers, and this alienated *Māori* converts (*ibid.*).

The SWP, England's industrialisation and advanced technology and the colonisation of *Aotearoa*/New Zealand with the use of armed force, all exacerbated the exploitation of *tangata whenua* and their resources. Despite this, the missionaries have left a significant legacy, *Te Tiriti O Waitangi*. The Treaty requires an understanding of *tikanga Māori* if there is to be an effective partnership in *taonga*/natural resource management. The partnership is affected by the interpretation and implementation of the *RMA*.

5.6 Paradigms and the *Resource Management Act 1991*

A society's dominant paradigm determines which culture's 'science' will be considered valid. This is a core issue in attempting to integrate Western resource management science with traditional *Ngāti Kahungunu tikanga*. Fred used the following metaphor to illustrate that you can not just merge two very different paradigms

● *You've got the assumption that you can have an apricot tree and an apple tree and you chop them in half and glue 'em together and stick 'em in the ground and they'll bear fruit.*

Yet the *RMA* gives cultural values a legal precedence (Treadwell, 1994). This precedence is seen to be important in helping to change attitudes toward other cultures.

Earl ■ *'Hey who cares about this group [Māori]. They're just another group in the community'. There is still some of that attitude but it is tempered 'never-the-less the law says'. People say 'hey the law can't change attitudes', it can. The law makes it respectable to comply 'we have to do it'.*

Earl went on to say that the LA staff operate judiciously according to the political climate and the law.

■ *It's the political climate. All it requires is a lawyer to say 'look I represent the tangata whenua they have not been fully consulted on this', and you can't produce evidence, you're shot!.*

Yet Earl also talked about the hegemony of the *status quo* and said that;

■ *The big divide is between staff policy planners and our councillors. Our councillors are on average somewhat over 60 years old, white, male, middle class and it is difficult for many of them to come to terms with it [Māori values].*

This was reiterated by Ray, who said that recognition of the Treaty affects the law, so that in time the dominant paradigm is challenged.

■ *... to be honest it's really only theory at this stage, you have to recognise that there are different cultural and spiritual values associated to that land. And the Treaty is making us recognise that.... one dominant philosophy for the use of land we're having to go away from.... the Treaty has come through the RMA much more strongly than in the Town and Country Planning Act.... The nature of paradigms shifts.... a different world view, and it takes time to become accepted.*

Never the less Ray also had a preference for the Western paradigm.

■ *... the rationale that we use for sustainable management is the same for one cultural group potentially as it is for another. If the whole concept of sustainable management is effects based.*

The physical effects of resource use are more generally measurable, often visible, and therefore potentially quantifiable. These tend to over-ride the consideration of non-measurable, 'meta physical', impacts, even though the *RMA* specifically includes cultural values as an important component in the sustainable management of *taonga*/natural resources. As argued, spiritual values are important to *Ngāti Kahungunu* but often were seen as been peripheral to 'real' *taonga*/natural resource management

Earl ■ *... spirituality, hey you know, warm fuzzies we can cope with that.*

The issues of *kaitiakitanga*, *wahi tapu*, are therefore reduced to a mere 'cultural metaphysical' component of resource management. In this way the SWP does not accommodate *tikanga Māori* (Kirkwood, 1993). Resource management is

> *eventually driven back to basic philosophy or philosophies in our attempt to grapple with resource issues.... policy prescriptions are based upon general philosophical preconceptions* (Tisdell, 1990:162).

In this case study, the 'general philosophical preconceptions' (Tisdell, 1990) of respondent groups (*Ngāti Kahungunu*, LAs and Crown resource managers, and environmental interest groups) about the management of *taonga*/natural resources, reflected cultural secular/spiritual differences. The Cartesian separation of the spiritual and the secular, intrinsic to the SWP but never to *tikanga Māori*, has perpetuated the misunderstanding between *Māori* and *Pākehā* as to what *taonga*/natural resources are and thus how they ought to be cared for (Shearer, 1986). The 'sacred/secular dichotomy is foreign to *Māori* thinking and indeed it has been vigorously challenged' (Williams, 1989:79).

For *Ngāti Kahungunu*, unlike Nietzsche, the origin of the physical is perceived to be in the spiritual. That is, *Io* does not exist because of people, but rather people exist because of *Io*. For *Ngāti Kahungunu*, the spiritual world has an active expression in the material world and both can be experienced by people (Best, 1982). The spiritual is no less known than the physical elements that surround us (*Manatu Māori*, 1991; Barlow, 1994). The *Māori* view of the cosmos could be defined as 'dualistic' in that it is cognisant of both the material and the spiritual elements (Schrempp, 1992). This dualism is expressed in

Māoritanga as the concept of *mauri*. *Mauri* is the life essence in all created beings, rocks, water, plants, animals and people (Barlow, 1994). The essence of life comes from *Io*. At death *mauri*, which binds the spiritual to the physical, leaves the physical being and returns to the spiritual realm from where it originated (Barlow, 1994). Since *mauri* imbues all beings, this is what is affected through inappropriate and deleterious use of natural resources. Therefore, whilst Cartesian dualism treats the physical and spiritual as being mutually exclusive, *Māori* dualism is cognisant of a unity between the physical and spiritual. This does not fit the SWP.

5.7 Conclusion

It has been shown that LAs and *Ngāti Kahungunu* have different cultural filters through which they perceive *Te Whanganui-a-Orotu/Ahuriri* Estuary. *Pākehā* resource managers rely upon Western science and tend to be dismissive of *Ngāti Kahungunu* spiritual values. Environmental groups also tend towards Western resource management practices. The materialist secular world view has been dominant in the Western system of *taonga*/natural resource management (Shearer, 1986; Kenchington, 1990), but there are indications of a tentative change to this approach to *taonga*/natural resource management. Perhaps these are the beginnings of a paradigm shift. For some, e.g., Rainbow (1993) a paradigm shift is implicit in the *RMA*, with its requirement to consider cultural values.

The next chapter will consider how cultural paradigms influence perceptions of property, which also affect how the *RMA* is implemented.

> *One of the major issues in common property resources is how to integrate scientific management with traditional knowledge and management* (Berkes 1989:89).

Chapter Six:
Property Rights and Common Resources

6.0 Introduction

In Chapter Five I discussed the concept that *taonga*/natural resources are seen through cultural filters. For *Ngāti Kahungunu* spiritual elements infuse all *taonga*/natural resources, but the SWP foregoes any such infusion. I will now focus on another significant theme to arise from the data, how culture also structures property rights.

I will use evidence from the data to present a *Pākehā* understanding of common resource use rights. These make up part of the SWP. *Ngāti Kahungunu* believe that there are responsibilities associated with any 'right' to use common resources. After defining common resource regimes, I will focus on the potential of the *RMA* to take into account the use of non-Western common resource regimes, like that of the *Ngāti Kahungunu* system, for resource allocation and use.

6.1 The Secular Western Paradigm and Common Resource Regimes

A common view amongst *Pākehā* informants was that areas of open space and of significant ecological importance, like *Te Whanganui-a-Orotu/Ahuriri* Estuary, were there for all citizens to use and enjoy. There was an underlying theme that common resources were for the common good and should be managed under one law. This could be seen as the rationale for the Crown and LAs to own, manage and therefore control common resource use, like those found in *Te Whanganui-a-Orotu/Ahuriri* Estuary. Where private property rights do not exist, the resource is considered to be common property. *Pākehā* informants generally thought that no one had the right to exclude others from access to, or use of, a common resource. No one should pay another individual for accessing or using common resources. As one informant said

Gary ■ *Say a farmer had a boundary along a good fishing river um... he would then be able to charge access and fishing rights and all that sort of thing.... that is why there is so much talk about this 'Queens chain'*[1].

[1] The 'Queens Chain' is a colloquial term for riparian land in crown ownership or control, usually being 20 meters wide and allowing for conservation, recreation and access. Esplanade Reserves are administered under the *Reserves Act 1977*. Esplanade Strips are a product of the *RMA* and change with the shore line (see the *RMA 1991 section 229-237*) (Milne, 1993).

Gary was concerned that there should be continued access which could be guaranteed by a 'Queens chain', so that all could enjoy fishing and shooting. He did not think that paying for licences was an imposition on these common rights. Rather he saw the fees as a resource rental to ensure that there were sufficient funds for the continued management of the wildlife resources.

■ *...[Fish & Game Councils] paid the Government levies to assist their research scientists.*

The wrongness of commercialising natural resources was also voiced by Jane.

■ *there's some things that are just beyond and above the market... we've just got to look after these natural resources... not exploit them all, you mustn't see dollars in them all. Very wrong if we do.*

There were concerns about commercialising natural resources and about the threat of being excluded from the use of certain resources. These respondents did not consider that *Māori* had prior claim to the resources. Gary related some anecdotal evidence of people relinquishing their catch to local *Māori*, which he thought was wrong.

Gary ■ *They said [local Māori] 'they're our fisheries and that's our fish' and he had to give them four fish you see.... Everybody should have the right [to fish]. To be able to go deer stalking and that, well now they're not allowed on that Māori land so... there's a few hard feelings around.*

The general consensus was that the LAs were responsible to manage all common resources for the benefit of all, through a common law.

Jane ■ *Yes, at the risk of being very, very controversial I think that those claims [Waitangi Tribunal claims] should be overridden by the wider claims for the good of the whole of the people, everyone. If it's of high conservation value... I think that the wider good must prevail.*

She did realise that this was not always so easy to do because of earlier *Māori* habitation, and immediately said that

■ *It's not much good for me to say, 'well the Māori want - they claim this, lets give them something else.' That's a very difficult situation, they may say 'this is our particular burial ground for instance, or our sacred place.' Big conflicts.*

The conflict intensifies because the traditional resources and ancestral lands of *Ngāti Kahungunu* have been 'lost' into private ownership which, currently, makes them

unavailable for returning to *Ngāti Kahungunu*[2]. This means that today there is a lack of resources over which to negotiate an exchange to settle the Treaty claim. Added to this, the view that common resources owned by LAs should be administered by LAs for the benefit of everyone (Stone, 1988) also hinders *Ngāti Kahungunu* aspirations for ownership of the lagoon. In general, the LA staff saw that their mandate to manage common resources came through the *RMA*.

Mike ■ *Under the law the Crown own resources, I mean the guardians are really the regulatory authorities who have the power to say 'yay or nay' as to the use of those resources.*

The claims by *Ngāti Kahungunu* for sharing resource regulation and control have given the LAs some difficulties because they do not know how to include them. As Mike said

Mike ■ *... so it's quite hard for us, as a regulatory body, to say; 'Okay we have to manage those resources; but then there's another group [Ngāti Kahungunu] that has stewardship over them. How do the two meet and mingle and how does it work in practical terms?*[3].

One planner did say that the *RMA* will allow for *iwi* to have power in the planning process, but at present this was not happening. He thought that for *iwi* to be effectively involved they need to have private property rights to legitimise their stake in the resource management process.

Ray ■ *The Act [RMA] allows us [LAs] to devolve planning powers down to local iwi groups... The RMA has allowed the development of that concept. Whether authorities are close to recognising that, or bringing themselves to that point, is another matter.... probably best being embodied in terms of [private] property [rights].*

It seems that the only way (irrespective of what the *RMA* may allow) that *Ngāti Kahungunu* will have an effective voice in the management of *Te Whanganui-a-Orotu/Ahuriri* Estuary is to have private property rights over the land. *Ngāti Kahungunu* do not own the *Ahuriri* Estuary resources, their case is reduced by the Crown to one of "interest" and "use" values (see Chapter Seven) because common resources are seen as 'public goods'.

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[2] If the Treaty had been honoured and M'Lean had advised *Ngāti Kahungunu* that British common law deemed the bed of the lagoon to be Crown land then it is doubtful that the sale of the land around the lagoon would have proceeded. From this common law presumption and the lack of consultation with *Ngāti Kahungunu* as to the development of the port and Napier township, with supporting acts of parliament, the whole of *Te Whanganui-a-Orotu/Ahuriri* Estuary was alienated from its legitimate owners (*Wai 55*).

[3] An option for how the Crown and LAs might deal with this is discussed in Chapter Eight.

In the SWP there is a tension between the administration of common resources and private property rights. This is partly because of the division that separates a person's private affairs from the public arena. Western resource-user rights, based on ownership, are founded on individualism which includes the right to private, and transferable, property rights determined by market mechanisms (Tisdell, 1990). Lino Grima and Berkes (1989:46) make the point that the individualism inherent in a *laissez faire* economic ethos arises from thinking that the 'survival of the fittest is normative'. Individualism could also be used to justify how one chose to use what they owned.

Henry ■ *If Māori own the land and that is how they want to use it, how can you intercede in that. It's their business, I think.*

Mike also acknowledged that multiple ownership of land resources created problems because it did not fit with the individualism that is associated with property rights.

■ *The multiple ownership of Māori land means it's very hard to generate the resources to manage land sustainably.... [Also] to sell it, or just lease it, that's quite a complicated process.... It tends to be under utilised and therefore its not generating the revenue that can then be reinvested in the resource.*

Resource access and allocation often are an integral part of the Western economic milieu with the market determining the current utility worth of each resource. The institutional arrangement of private property rights protects the individual's pecuniary advantages in the access to, and use of a resource, by excluding others from that resource. This solution arises because it seems that the only way, in the SWP, to reconcile *Ngāti Kahungunu* usufruct[4] rights over *Te Whanganui-a-Orotu/Ahuriri* Estuary is to treat the resources as privately owned (see Chapter Eight for an alternative). The concern appears to be that if *Ngāti Kahungunu* 'own' the common resources then they will apply the Western concepts of private property rights to what have been used and abused, by Europeans, as common resources since the 1850s (*Wai 55*).

Ngāti Kahungunu had allowed the first settlers to take *kai moana* from the estuary, but they had not expected this to lead to loss of control over their *taonga*. In the words of a *kaumātua*

> *the offer to share a meal is not a license to eat the whole feast* (*Wai 55*).

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[4] Usufruct is a Western legal term to try and describe *Māori* customary rights to use a resource that is not the same as ownership (private property) of the resource (M'Hugh, 1994).

6.2 A *Ngāti Kahungunu* View of Common Resources

Ngāti Kahungunu use of *taonga*/natural resources is based on the understanding that they are part of the natural world, and that *Ngāti Kahungunu* do not own, as property, any part of the natural world. Their role is to 'wisely manage', as guardians, the *taonga*/natural resources that they use. *Ngāti Kahungunu* also understood that they had usufruct rights to *taonga*/natural resources not personal and private ownership. This meant that personal 'ownership'[5] of *taonga*/natural resources was not part of the *Ngāti Kahungunu* way of managing common resources.[6]

Taonga/natural resources are seen as gifts from *Atua*. The *Atua* gave the people gifts of *mana*, *wairua*, *tikanga* and *reo* to assist them as *kaitiaki*. These gifts gave *Ngāti Kahungunu*: the power to be the representative guardians of the *taonga*/natural resources, a spiritual link with their *taonga*/natural resources, plus the values and beliefs and language to aid them in their role as *kaitiaki* (HBRC Regional Policy Statement). Therefore *Ngāti Kahungunu*, like all *iwi*, would never have given away their *mana*[7] over the land (Sorrenson, 1989; Binney, 1990). The term '*tangata whenua*' refers to the relationship between the people and the land, and recognises that people belong to particular places. *Mana whenua* is the power associated with the possession of land and its productive capacity to sustain the *iwi*/*hapū*.

> *Mana whenua thus differed greatly from the idea of "ownership" in the European sense. Even when this notion was introduced with colonisation it remained alien to Maori (sic) people* (*Wai 38*:13).

The *Muriwhenua Fisheries Report* said that

> *[T]he division of properties was less important to Māori than the rules that governed their use.... [and] a distinctive economic ethic of reciprocity* (Waitangi Tribunal, 1988:179).

In part, the *mana* of *hapū*/*iwi* is linked to their ability to develop and maintain relationships on the basis of their *taonga*/natural resources. It is due to this relationship that the treatment of *taonga*/natural resources is important (Dick, 1992). One reason for communal

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[5] Not so much ownership or possession as the right to use and control which I will explain latter.

[6] See Asher and Naulls (1987) and Patterson (1992) for further discussion of *Māori* land tenure.

[7] *Mana* is a combination of both genealogy and performance. Having the right *whakapapa* is no guarantee of *mana*. The primary elements of *mana* (*atua*, *tupuna*, and *whenua*) are counterbalanced by (in)action as judged by the *iwi*/*hapū* (Kawharu, 1988; Barlow, 1994; *pers. com.*, Tomoana, 1994).

ownership of *taonga*/natural resources is that *hapū*/*iwi* identity and status is affected by the physical condition of their *taonga*/natural resources. Another reason that *iwi*/*hapū* protected the natural resources was so that they could be judiciously traded to benefit the *hapū* (Parsons, 1994).

Alan ● *This trade was not done at the expense of leaving the resource in such a depleted state that it would not support the tangata whenua. The resources are selected for a specific use. For example a hapū needing a tohunga and going to another hapū with a koha made up of a selection of their natural resources as payment for the services of the tohunga.*

Another informant also described how *hapū* from around *Te Whanganui-a-Orotu*/*Ahuriri* Estuary would trade fish etc., with inland *iwi*, for produce from the forest.

Sean ● *They [Ngāti Kahungunu] would exchange their shell fish with other tribes that had access to different foods, like birds. This would give them food during when they didn't harvest the fish.*

Such trade was part of common resources being in collective ownership. To deplete the resources by unsustainable use would result in the loss of *mana*. The people would suffer if they did not have the ability to sustain themselves or reciprocate gifts with other *iwi*/*hapū*. For the above reasons, *Ngāti Kahungunu* did not traditionally let common property pass into individual ownership. One informant stated that natural resources are for the collective sustenance of people.

Fred ● *What is the land there for? For the sustenance of the people.*

In regard to tribal fishing zones within *Te Whanganui-a-Orotu*/*Ahuriri* Estuary, there was a distinction between those areas directly associated with each *hapū* and other areas that where for communal use.

> *Most... gathered food in areas where their ancestral tribal lands bordered Te Whanganui-a-Orotu. There were however communal zones where various hapū with ancestral and occupational rights all gathered food freely. One such area was near the present Iron Pot and Inner Harbour* (Hiha, 1992:14).

Thus the *hapū* around *Te Whanganui-a-Orotu*/*Ahuriri* Estuary had zoned the area in establishing collective resource sharing arrangements. This would have allowed for the exclusion of people who did not have ancestral and occupation rights, and had not participated in the maintenance and care of *Te Whanganui-a-Orotu*/*Ahuriri* Estuary.

6.3 Defining Common Resources

The preceding discussion shows a significant difference in the way that Western and *Māori* cultures allocate and manage common resources. The difference reflects the cultural paradigm and the different meanings attached to *taonga*/natural resources. To help understand the implications of this difference, it is necessary to have a operative definition of common resources.

Property, by definition, is a concept that arises out of (the concept of) ownership. Through ownership people have the right to use their property and to exclude others from using it. This concept of property fits the regime of private property rights. The counterpart to private property is common property. Common property includes those resources which are perceived to be in common ownership for the use and benefit of all members of a community or state. Berkes (1989) states that common property resources have two essential problems. First, the inability to control people's access (exclusion) to the resource; second, a 'free rider' problem in that each user can subtract from the welfare of other users. These problems with common resources lead to defining common property resources as: a class of resources for which exclusion is difficult and joint use involves subtraction from others (Ostrom, 1986; Fortmann and Bruce, 1988).

There have been two Western responses to resolve the 'access' and 'free rider' problems associated with common resources (Hide, 1987, 1988; Berkes, 1989). One response is to make the resource commercial (private property) and access to it contestable, such as the quota system for commercial fishing (Rennie, 1993). The second response is to establish the state's private property right over the resource. The state retains all ownership and regulatory control over people's access to and use of the resources, whereas traditional indigenous communities have rituals and rules.

The indigenous communities' alternative to resolve the problems of 'uncontrolled access' and 'free riders' was to establish communal property regimes. Communal property regimes enable fulfilment of the following functions which benefit the community. The primary function amongst community members is to avoid conflict over resources. The minimisation of resource-use conflicts helps to secure a livelihood for all community members by co-operative participation in meeting basic needs. The protection of livelihoods is a function of a communal property regimes because it creates some security and certainty. Communal resource regimes provide rules and rituals for resource use and

access as well as the conservation and protection of the resources (Tisdell, 1990). These mitigate against individual gain and the personal accumulation of surplus, and conversely, against wasting resources. Traditional communal property regimes often functioned in such a way that a more ecologically sustainable use of resources resulted compared to Western regimes (Berkes, 1989).

Open access	Free-for-all; resource-use rights are neither exclusive nor transferable, these rights are owned in common with open-access for everyone (property to no one).
State property	Ownership and management control is held by the nation state or crown; including resources to which use and access rights may(not) be specified.
Communal property	Use-rights for the resource are controlled by an identifiable group. Resources are not privately owned nor managed by the state. The community decides who, and how the resource should be used. The resources are common property to the community only and outsiders are excluded.

Figure 5 Idealized types of property rights regimes relevant to common resources (from Berkes, 1989:10).

Common property is either considered as free for all (Open Access), or owned by the state (State Property) (Figure 5). The Crown controls resource use through regulation. Individuals or companies may negotiate with the state for concessions (property rights) to use common resources, thereby gain use or control of particular *taonga*/natural resources (Figure 5). This is particularly so with the coastal zone, which is substantially un-allocated Crown-owned land (Rennie, 1993). Coastal water is defined as a common resource (State owned and managed), a free good that belongs to everyone, so access is open and freely available to all citizens. This explains why there was no apparent conflict, initially, with *Ngāti Kahungunu* continued customary use and existing fishing rights, so long as the settlers could fish also. Today the Crown controls the use of the remnant open space of *Te Whanganui-a-Orotu/Ahuriri* Estuary for the benefit of 'all New Zealanders' but the remainder is in private ownership. Common resources, in this case, are the resources that remained after the use of market mechanisms to allocate private property rights to the land surrounding the lagoon.

6.4 Managing Common Resources and Cultural Paradigms

Cultural paradigms are also expressed in the systems of *taonga*/natural resource access and allocation (Rennie, 1993). Grima and Berkes (1989:37) point out that

> *[C]ultural relativity operates not only with the definition of resources, but also what constitutes a workable arrangement for the sustainable management of resources.*

As the case of *Ngāti Kahungunu* and *Te Whanganui-a-Orotu/Ahuriri* Estuary has shown, Western resource management tends to utilise state regulation and market mechanisms (individual and private property rights) as the 'workable arrangements' for managing common resources, rather than a local collective communal property regime. Therefore there is an inherent difference between the SWP and the *Ngāti Kahungunu* systems for managing *taonga*/natural resources. The factors of resource ownership and resource access affect how common resources are managed. The relationship between resource ownership and resource access is presented in Figure 6.

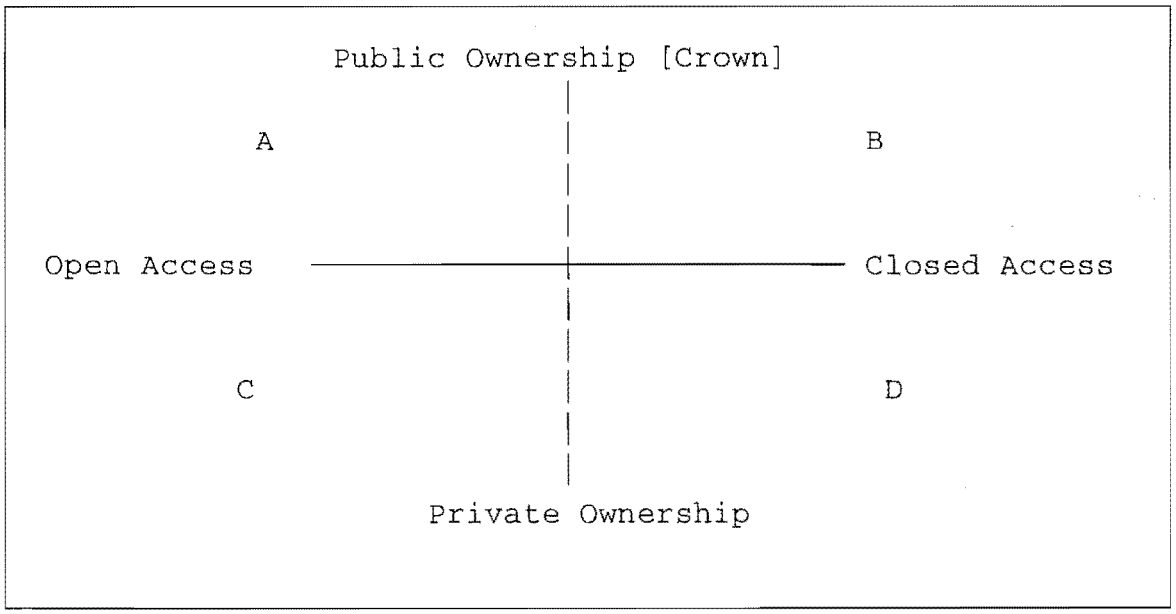

Figure 6 Property ownership and access (adapted from Berkes, 1989).

Access to an area can be limited (closed access) to a few "authorised" personnel, for example, parts of the Napier Airport. These areas can provide a significant open space zones. Private ownership tends to close off access (Figure 6, point 'D'). Unlimited access, for example, would be the Pandora Pond area of *Te Whanganui-a-Orotu/Ahuriri* Estuary for recreational use (Figure 6, point 'A'). Some resource uses could be restricted even though the resource is owned by the Crown (Figure 6, point 'B'), for example, prohibiting

power boats from the Pandora Pond area. This is necessary to protect the resource and minimise resource use conflicts. There are multiple ways in which the permutations between resource use and resource ownership can be arranged to minimise conflicts. This is only possible if resource ownership is treated as separate from resource access and use. (This is explored further in Chapter Seven.)

A common assumption is that much of *Aotearoa*/New Zealand's conservation estate and coastal zone, and the *taonga*/natural resources contained in them, are considered common property (Rennie, 1993). Therefore, groups like Public Access New Zealand (PANZ) base their rights to use these resources on an 'open access' and 'public ownership' view of common property. There is the expectation that the Crown's common property is administered to provide open access for all New Zealanders for the common good (point 'A' in Figure 6). This is the closest scenario that might emulate Hardin's (1968) 'Tragedy of the Commons'. The tragedy of exploitation is due to a potential lack of control of resource extraction because there is no ownership of the resource (Grima and Berkes, 1989). The case of Hardin's 'commons' appears to be hypothetical, because the use of common resources is often regulated by the State or a local community. Common *taonga*/natural resources can be managed under a number of different property rights regimes (Ostrom, 1986). In the words of one informant, although he did not articulate it as such, there was a link between resource ownership, property rights and sovereignty.

Ray ■ *It's hard, in my mind, to separate property from ownership I suppose. Um... with the ownership of that land comes some sort of right of use. And yet that in itself is governed by a set of rules that are value packed. How that relates perhaps to a Māori perspective of sovereignty I'm not sure.*

The fundamental difference between the administrators of the *RMA* and *Ngāti Kahungunu* is that

> *In many Western societies, the individual self-interest is supreme. In many other societies ... the individual is not the dominant locus of choice; the community is the relevant decision-making unit* (Grima & Berkes, 1989:37).

The common resource regimes highlight the contrast between the collective communal locus of *tikanga Māori* and the individualism, and profit motive, inherent in the SWP,

> *... [which] created [a] tension between community-level resource-use rules and state-level rules, and between communal-level interests and economic development interests* (Baines, 1989; cited in Berkes, 1989:12).

Therefore

> *Much resource management thinking - for example the 'tragedy of the commons' model (Hardin, 1968) - is Western ethnocentric, emphasizing competition rather then cooperation and assuming the supremacy of individualism rather than communitarianism.... [this] model over emphasises the solutions of privatization and central administrative controls at the expense of local-level controls and self-management* (Berkes, 1989:2).

Herein lies the need to consider a community-based approach to the management of *taonga*/natural resources. The incorporation of *tikanga Māori* as an alternative to current 'workable arrangements' for resource management needs to be explored (see Chapter Eight). *Ngāti Kahungunu* traditionally operated a communal property regime (similar to that in Figure 5) based on a collective societal structure (Binney, 1990). As a collective society with a culture of *intra*-tribal cooperation rather than competition, common resources are not privately owned. Rather the sense of "ownership" is one of having a relationship with the resource and a responsibility to ensure that the resource's integrity is sustained (Baines, cited in Berkes, 1989). Such resource "ownership" is characterised by the group's usufruct rights, not exclusive personal use rights. A communal resource regime enabled *Ngāti Kahungunu* to fulfil the multiple functions required of common resources, while avoiding the problems of common property regimes.

6.5 Common Resource Regimes and the *Resource Management Act*

Resource management in *Aotearoa*/New Zealand does not occur within the context of communal property regimes but is embedded in a common property regime that is often state controlled. One intent of the *RMA* is to enable LAs to facilitate a community approach to *taonga*/natural resource management (Rennie, 1993). This is evident in the *RMA* requirements for sufficient consultation in regard to regional plans. The process is an attempt to define clear rights to use a particular resource through the instruments of plans and resource consents. The *RMA* does not address the issue of resource ownership beyond considering resource consents to be non-transferable private property rights that are attached to resource use rights (*RMA Section 122 (2)(c)*; and *Sections 134-137*) for a maximum period of 35 years (*RMA Section 123*). This reflects a Western view of individual private property rights, within a Western economic system. The *RMA* is used to mediate between private property rights and the effects of using a resource on 'third parties' who are an important factor in resource management. At present, *Māori* interests appear to be given little more weight than those of other 'third parties'.

6.6 Conclusion

Pākehā respondents tended to support an approach to common resource property rights that was more reliant on state control. This was on the basis that common resources were for the common good of all citizens. Likewise they down-played the second article of the Treaty in regard to *Ngāti Kahungunu* use of natural resources. *Ngāti Kahungunu* argue that their rights to resource use and management have been negated. *Ngāti Kahungunu* have a communal arrangement for common resource property rights. They base this on their cosmology that relates them to the resource and the spiritual importance of maintaining the quality of the resource. This ensures their survival and increases *mana*. Therefore, the primary assumptions made in Western and traditional views about what constitutes common property and the institutional arrangements for its management are in conflict.

It appears that the *RMA* allows a community approach to *taonga*/natural resource management. The question of resource ownership, or for *Ngāti Kahungunu* the issues of priority of right to manage a resource, have not been settled. For *Ngāti Kahungunu* both resource ownership and priority of use are guaranteed in *Te Tiriti O Waitangi (Article II)*. Property rights, within the framework of the SWP, potentially exclude any collective and cooperative community structures for the management of *taonga*/natural resources. Western private property rights therefore do not accommodate *tikanga Māori* nor allow for *Ngāti Kahungunu* systems of care for *taonga*/natural resources. In *Aotearoa*/New Zealand, common resources are often defined as being publicly owned with open access for all. Unrestrained open access is illusionary. The Crown, by regulation, controls access to common resources. In Chapter Seven, I consider who has the 'priority-of-right' to use the 'common resources' of *Ahuriri* Estuary. Priority-of-right to use *taonga*/natural resources is defined by the chosen property-rights regime and who has ownership of the resource. In the case of *Ngāti Kahungunu* and *Te Whanganui-a-Orotu/Ahuriri* Estuary the issue of resource ownership and management is an integral part of settling the issue of sovereignty.

Chapter Seven:
Treaty Limits on Crown Sovereignty

7.0 Introduction

In this chapter I argue that the Crown does not have the exclusive and exhaustive right to control the use of all *taonga*/natural resources. I contend that Crown sovereignty is limited by the Treaty that guaranteed *Ngāti Kahungunu* the right to 'undisturbed possession' of their *taonga*/natural resources. I will first present the *Ngāti Kahungunu* case for ownership of their *taonga*/natural resources and then the responses of the LA and environmental group respondents. *Ngāti Kahungunu* sovereignty, through restored resource use, will give them control over their customary resources and it will limit Crown sovereignty.

Sovereignty can vary in its scope and type (M^{c}Hugh, 1989; Sharp, 1991). Sovereignty is the authority to regulate people and their activities within a specific territory. The ownership and control of common resource use is mediated by processes of 'human territoriality' (Sack, 1986; Agnew and Duncan, 1989). Sites (1973:2[1]) notion that, 'control is the basis of social order', also helps explain the Crown's control of common resources.

7.1 *Ngāti Kahungunu* Loss of *Taonga*/Resources

Māori land and resource alienation often occurred through legal processes (Orange, 1987; Kelsey, 1990). Binney (1990) provides the following insights into how *Ngāti Kahungunu* lost land and resources through the decisions of the Native Land Court. Binney describes the Heretaunga land transaction as notorious and illegal at the time. Parcels of *Māori* land greater than 5,000 acres, by law, were to stay in *Māori* tribal ownership - the Heretaunga block, in Hawke's Bay, was 19,000 acres (*pers. com.*, Tomoana, 1994). Instead, in 1867, this land went to ten chiefs, as trustee-owners, representing sixteen *hapū*. These chiefs sold much of the land to repay debts, including costs incurred whilst fighting for the Crown against Te Kooti. Through such 'land law', *Ngāti Kahungunu* were trapped into a Western system of individualised resource ownership that was hostile to their communal system of managing common resources. The Crown's manipulation of the judicial system also divested *Ngāti Kahungunu* of *Te Whanganui-a-Orotu/Ahuriri* Estuary *taonga*, contravening *Te Tiriti O Waitangi Article Two*. The lack of conquest by any other tribes (Parsons, 1994;

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[1] See the texts cited for a fuller discussion of the theories of 'control' and 'human territoriality'.

Hiha, 1994; Waaka, 1994) and the advantages of shelter, defensibility, good habitation and a ready food source, indicate that the Estuary was very important to *Ngāti Kahungunu*. *Ngāti Kahungunu* do not consider *Te Whanganui-a-Orotu/Ahuriri* Estuary as part of the deed of sale of land to M^{c}Lean in 1851 (*Wai 55*). The settlers had used the

> *Native Land Court to give individual title to some Māori, so as to detach them from 'tribal or national interest' and to allow those individuals to avail themselves to competitive prices. They would then dispose of their 'surplus lands' to the settlers. Then, as now, the market economy worked against Māori interests* (Binney, 1990:144).

There has been a long history of a *Ngāti Kahungunu* response to the loss of their guaranteed ownership of *Te Whanganui-a-Orotu/Ahuriri* Estuary (Binney, 1990; Parsons, 1994). *Te Whanganui-a-Orotu/Ahuriri* Estuary was seen, by the settlers, as un-allocated land that the Crown owned.[2] Much of the bed of the lagoon (Appendix One) is reclaimed land. Land reclamations started in the 1850s. The 1931 earthquake provided the Napier Harbour Board with surplus land to lease to the Napier Borough Council for urban expansion in the 1930s and 40s. Through land reclamation, the earthquake, the application of British common law, and ignoring *Ngāti Kahungunu* petitions to Parliament (Morgan and Falloon, 1993) and court claims of ownership, the resources of *Te Whanganui-a-Orotu/Ahuriri* Estuary were now firmly in the hands of the European community (*Wai 55*). The history of *Te Whanganui-a-Orotu/Ahuriri* Estuary shows that European commercial interests were firmly established through free market mechanisms, having alienated *Ngāti Kahungunu* from their communal-economic base. All of the development around, and modification to, the estuary was done without *Ngāti Kahungunu* consent (Parsons, 1994).

The loss of *Te Whanganui-a-Orotu/Ahuriri* Estuary resources has meant the diminishing of *mana* due to a reduced ability to reciprocate in the exchange of goods with other *iwi*. The earthquake in 1931, which meant the advantages of more land for the LAs, was an indescribable loss to *Ngāti Kahungunu*. The remains of their spiritual, social and economic base was desecrated by pollution from industrial discharges, raw sewage, meat works and hospital effluent. The exclusion of *Ngāti Kahungunu* from the commercial benefits, which others have gained (Hiha, 1992) from the use of the Estuary, has exacerbated their loss.

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[2] The lagoon was alienated from *Ngāti Kahungunu* and divided up between the public authorities as follows: Hawke's Bay Airport Authority; Napier Harbour Board now the commercial Port of Napier Ltd.; Department of Lands and Survey was divided, after corporatisation in 1987, and now trades as Landcorp Farming Ltd. and the balance is part of the Department of Conservation (DoC) estate (*Wai 55*); the Hawke's Bay Regional Council and Napier City Council have shares in the Port of Napier Company Ltd and so own land that was owned by the defunct Napier Harbour Board.

Ngāti Kahungunu loss of resource ownership meant that the LAs and companies have been able to make substantial financial gains through selling and leasing property. M^{c}Lean saw the 'danger' of *Ngāti Kahungunu* leasing the land to settlers because they would soon appreciate the new economic value of the land and not sell it, hindering settler progress (*Wai 55*). *Ngāti Kahungunu* respondents spoke about the loss of ownership and lack of control of their own resources, and how LAs had assumed the right to manage the resource for everybody - for the common good. The Crown's control of their resources was seen as a unilateral decision

Harry ● *the crown gives the role of control of property rights to itself.*

Another informant was more specific about the conflict over resource ownership

Fred ● *... [Ngāti Kahungunu] as the mana whenua.... the rights of ownership. It's one of the major conflicts.... We're tangata whenua and now the government... Conservation Department and maybe even historic societies.... then we hear the Regional Council is in charge of that place.*

Alan ● *The resource management legislation excludes us [Ngāti Kahungunu] from any commercial aspects of owning the Estuary.*

The estuary remnant is currently managed as a common resource for its recreational and conservation values. The existing developments and land reclamations continue to provide an economic return for their owners who have an economic base built on resources which *Ngāti Kahungunu* did not sell. Even if the remnant of the estuary is returned to *Ngāti Kahungunu* ownership it is unlikely that they will be able to derive a significant economic base from it. The estuary is seen as a 'common resource' and there will be political pressure to retain the existing uses which may conflict with *Ngāti Kahungunu* aspirations, or hinder the tribe from developing its own economic base. Adam made a link between the treatment of the estuary and *tangata whenua.*

Adam ● *How many institutions have actually taken a deep breath and said, 'look we haven't done a particularly good job ourselves in this particular landscape, why don't we let the tangata whenua have a go at managing it, even in partnership with ourselves, let them be the chairperson for a while'. I don't think we could do much worse when you look at Te Whanga, and that's probably [being] patronising.... It really is appalling the way we've treated it [Ahuriri Estuary] and the way we've treated the tangata whenua... no wonder tangata whenua talk about them being one with the landscape. I mean the two are interchangeable, abuse one you've abused the other.*

7.2 Responses to *Māori* Resource Control

The issue of limiting the Crown's role in resource control[3], as a way for *iwi* to exercise *rangatiratanga*, was a complex one for informants to address. There was no one clear answer. A number of LA staff explicitly said that they were expressing personal views in regard to the issue of sovereignty and resource control. For example

Mike ■ *I think they'll [Councils] consider it [giving control to iwi] but not for very long. That's just my personal view. I mean iwi ceded kāwangatanga to the Crown and so they recognise the right of the Crown to make laws. And in return the Crown reserved under them rangatiratanga over their toanga. The Crown, through its kāwangatanga role, passed laws that stripped rangatiratanga from the iwi and assigned it to its own statutory agencies. And that's where the problem lies. Either pass the ownership of the resources back or pass the regulatory functions back [to iwi].*

The informant gave the two options of returning resources or regulatory functions to *iwi* as a way to reinstate *rangatiratanga*. The Crown argues that as sovereign, it holds both ownership and regulatory interests, *Māori* do not (Woods and Gordon, 1994). A number of informants also spoke of the Crown as having absolute ownership.

Mike ■ *Now in relation to Treaty of Waitangi claims our position is that those resources are Crown owned till such time that government deems otherwise...through statute.*

Some LAs were starting to explore ways of involving *tangata whenua* in resource management, although the issue of who owns the resources is non-negotiable.

Doug ■ *One of the big challenges for the Department [DoC] is to try and to become more bicultural. To work towards establishing what the iwi conservation ethic is.*

Doug explained that bi-culturalism creates tensions for DoC because the department is caught between Treaty obligations and the values expressed by *Pākehā* conservationists.

Doug ■ *[Some] within iwi would argue that the Pākehā value system is taking precedence. Historically that may have some truth... [but in] Pākehā conservation groups you may well hear the opinion voiced that this department is giving undue weight to Māori value systems in regard to conservation. So that's a tightrope we are walking... to maintain credibility and faith with tangata whenua... [and] Pākehā community.*

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[3] Settlers distrusted any form of '*Māori* authority over their own land' (Binney, 1990:162).

Conservationists are concerned about environmental degradation, and public access (Wood and Gordon, 1994), should *Māori* get control of common resources. Continued public access was seen as essential and therefore the Crown needed to retain control. There was a suspicion that claims for *kaitiaki* maybe a cover for commercial exploitation of the resource.

Jane ■ *I don't want to see natural areas, like out national parks, handed over. They [Māori] will say they want kaitiaki.... They should be administered by the Crown for the benefit of everyone... because they have an intrinsic value.... I don't want to see someone saying at the gate way 'you've got to pay so much before you can even come in.'*

Progress has been made in some LAs in recognising that *Ngāti Kahungunu* may want to do things differently than is permitted under current planning rules.

Ray ■ *In our district plan [HDC] we have controls for what we call 'marae localities' to provide certain rights and uses within those zones. But [HDC] put fairly onerous demands on that community to reach the threshold where we suddenly give them the power... this is early policy development, trying to start the hands-off approach that recognises sovereignty through either ownership or classification [of land] under the Māori Land Courts... Māori land under this particular tenure stays with the hapū... we will try and recognise some of the cultural aspirations for that land by taking some of our planning controls off it.*

The right to express *rangatiratanga* is therefore granted by the LA, but *hapū* must prove they are responsible before they are given any planning concessions. This seems to be a rather paternalistic approach where the power is held by the LA, which sets the conditions that have to be met. There is also the problem of LAs having to deal with the public, and councillors, who might not be fully familiar with Treaty issues. In response to the suggestion of an *iwi* management plan, a spokesperson for an environmental group said that

Jane ■ *It would only be a wish list, wouldn't it. While there's all these bodies [LAs] involved. We would like to see it declared an estuarine park, and one authority managing it.... We thought perhaps when the Department of Conservation was set up that it would be one authority... it hasn't resolved anything really... to see that it remains an open space accessible to everyone.*

The public perception of the Treaty, complexity of local government and *Pākehā* conservation interests, all work to maintain existing political barriers to any exercise of *Ngāti Kahungunu* sovereignty, or control over *Te Whanganui-a-Orotu/Ahuriri* Estuary.

Ray ■ *No matter whether you like the Treaty or not, we are partners, we do have those obligations.... I don't know if it [the Treaty] is accepted by them [the public].... there is a grudging recognition that they have to. But they don't welcome it with open arms.*

Mike ■ *You'd have some residual reluctance at a political level to transfer decision-making to iwi. Not only in this council, it's just not the way they think.*

The way councils 'think' (SWP) is linked to how they might perceive sovereignty and the Government's right to rule. If sovereignty is absolute and exclusive then there is no potential for partnership between *Ngāti Kahungunu* and the Crown.

7.3 Types of Sovereignty

Five different types of sovereignty (Awatere, 1984; McHugh, 1989; Sharp, 1991) have been identified, namely: absolute sovereignty in which the subjects have ceded everything to the ruler (see Hobbes, 1651, *Leviathan*); ecclesiastical sovereignty, through the separation of church and state; political/civil sovereignty where the state has the public's mandate to act; legal sovereignty which is the a-political autonomy of the justice system; and finally, dual sovereignty where power is shared, or some authority is ceded to another group that is not the state. Dual sovereignty may be self-rule, self-management, self-government, or a partnership (Chapter Eight).

The British Crown initially treated *Māori* as sovereign (Kingsbury, 1989) for at least four reasons. First, *Māori* had their own laws and customs. Second, aboriginal rights were recognised, initially. Third, there was the recognition that contractual theory would apply. Fourth, voluntary consent was needed in the making of treaties (McHugh, 1989), meaning that the Crown would have no sovereignty over tribes that did not sign the Treaty or if the signatories had an 'imperfect knowledge of its consequences' (Swainson[4], cited in McHugh, 1989:41). McHugh (1989:33, citing Dicey, 1885) distinguishes between legal sovereignty and political sovereignty.

> *Legal sovereignty is the constitutional authority vested in the Crown in its executive, legislative and judicial capacities. Political sovereignty however describes the relationship between Crown and subject.*

Political sovereignty is related to the will of the people and requires public consent to provide the Crown with a mandate to govern (representative democracy). This controls and

[4] William Swainson was the first Attorney-General of New Zealand.

limits the power of government. In contrast, the judicial system (legal sovereignty) knows nothing of the will of the people (Dicey, 1885 cited in McHugh, 1989). The relationship between legal and political sovereignty is defined as legitimacy (*ibid.*).

Rangatiratanga is a call to share the Crown's political sovereignty with *tangata whenua*, but present constitutional structures make such arrangements almost impossible (McHugh, 1989; Sharp, 1991; Kerins, 1992). This has given *Te Tiriti O Waitangi*, and aboriginal rights[5], no legal relevance or enforceability under the law and makes them a matter of politics (Hackshaw, 1989). Yet Sorrenson (1989), pointing to Waitangi Tribunal conclusions, states that future legislation and policy will be appraised by the spirit of *Te Tiriti O Waitangi*. Sovereignty is not as clear cut as the Crown's case for absolute authority.

Māori chiefly authority has long been seen as a threat to Crown sovereignty and *Pākehā* progress (Binney, 1990). There is an aversion to *Māori* communal land tenure because it hindered land purchase and subverted individual rights and private property rights (*ibid.*). *Māori* sovereignty (*mana Māori motuhake*) is the

> *restoration and retention of tribal resources under tribal control where Māori customary law is the governing code* (McHugh, 1989:25).

The Crown needs to recognise the doctrine of aboriginal rights and the independent control over particular areas (territory) because

> *a society was sovereign where it governed itself by its own laws and authority* (McHugh, 1989:28).

This is a constitutionalist's view of sovereignty (Vattel, 1758, cited in McHugh, 1989), in which there is law and the voluntary submission of subjects. *Māori* society was tribal in its political organisation, and it functioned with customary laws, *rangatiratanga*. Thus *iwi* can be considered as sovereign. While the concept of *tino rangatiratanga* is often equated with *Māori* sovereignty it does not appear to be considered as politically feasible by many *Pākehā* (Cassidy, 1992). The government's current view of sovereignty as exhaustive, exclusive and indivisible, extinguishes any indigenous political or legal sovereignty. The government argues that *Ngāti Kahungunu* are limited to only having 'use interests' and 'value interests' in *Te Whanganui-a-Orotu/Ahuriri* Estuary and neither 'regulatory interests'

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[5] The term 'aboriginal' denotes a claim to the original occupation and use of a territory (Hackshaw, 1994:117)

nor 'ownership interests' (Office of Treaty Settlements,[6] 1994) (see Chapter Eight). The Crown's sovereignty is maintained by the use of territoriality.

7.4 The Control of Common Resources Through Territoriality

Sites (1973) argues that through socialization, individuals internalise the group's values as part of their identities. A collective identity gives the group sufficient cohesion to interact with other groups in society. Possible strategies to control other groups are challenges, cooperation, alliances, assimilation or the elimination of the opposition. The chosen control strategy depends upon the group's size, resources, power and perception of threat relative to the group that they it wishes influence. Groups, when dealing with each other, have to consider if, when and how they will respond. Intergroup relationships seldom reach open conflict, but a group may not accept the legitimacy of the regulations that constrain it (*ibid.*).

Sack's (1986) theory of human territoriality attempts to integrate the concepts of sovereignty, property and jurisdiction into a synergistic whole. He rejected the animal behaviourist approach, which described human territoriality as an instinct. Sack (1986) referred to territoriality as a basis of power in institutional arrangements. Governments can utilise a variety of legal and political control strategies to maintain sovereignty over their territories. Thus, government agencies are able to control various non-government groups and minimise their control over common resource territory. Common resources are often contained within public territories over which various government agencies have legal jurisdiction. The control of common resource use and access can be explained by the theory of human territoriality.

The use of territoriality depends on at least two factors: namely, who is influencing and controlling whom and the geographical context of space, place and time. Territoriality is intimately related to how people use the land, how they organise themselves in space and how they give meaning to place (*Ibid.*). Territoriality is defined as

> *the attempt by an individual or a group to affect, influence, or control people, phenomena, and relationships, by delimiting and asserting control over a geographic area.... [Therefore the construction of territories] takes an act of will and involves multiple levels of reasons and meanings.... [with] normative implications.... Territoriality points to the fact that human spatial*

[6] This document is often called the 'Fiscal Envelope'.

> *relationships are not neutral.... [they] are the results of influence and power... in order to affect, influence and control the ideas and actions of others and their access to resources* (Sack, 1986:19,26).

Any place becomes a territory when its boundaries are delimited and constant effort is required to maintain control over access to the area. This affects and moulds people's behaviour and their relationship to the area. Therefore, human territoriality includes the controllers and those controlled within the context of human motives and aspirations (Sack, 1986). On the basis of human territoriality, people act to classify an area, then communicate the boundaries of the area and, finally, enforce their control to restrict access and use of the area (*ibid.*). Sovereignty is the right to control the people, events and resources within a territory.

Sack (1986) identified the following characteristics in indigenous people's expressions of territoriality. Collectivist indigenous societies tend to be small with a low population density; they are often based on kinship ties, with mythological links to their place of habitation, which they were given by the gods; they have an economy based on reciprocity, which is intimate and there is a mutual economic dependence on others; and the technology of production is widely available. Much of this fits the traditional society of *Ngāti Kahungunu*. Territoriality for *Ngāti Kahungunu* is classified in terms of social relationships - their relationship to the land, kin and gods. This prevents non-community members from having access to common resources. In this way, territoriality promotes the union of people, place and events. The hierarchy of *Māori* society is spiritually based. Its origin is in the acts of *Io*, the *atua* and their *tupuna* (Barlow, 1994). *Iwi/hapū/whānau* are the basic sovereign (political and legal) units upon which *Māori* society functioned. The access to and use of *taonga*/natural resources was based on this religio-social order.

The traditional *Māori* territories have been fragmented by colonisation and urbanisation (Barlow, 1994) which have exacerbated *iwi/hapū* alienation from their *taonga*/natural resources. It has also meant that continued occupation of tribal areas (*ahi kā*) has not always been possible, nor have tribal resource allocation zones matched the LAs administrative zones. Western classification of territories is more abstract than in indigenous societies, because people, events and objects can be moved in and out of different territories (Sack, 1986). There is little sense of long-term relational continuity with the physical landscape of the territories. In Western societies, territorial control is often directly related to resource ownership; private ownership gives individuals property

rights and privileges of control based on commercial law rather than communal relationships and spiritual factors.

Western nation-state political hierarchy is secular, with absolute legal sovereignty (Hackshaw, 1989; McHugh, 1989). Everything, except private property, that is contained within the territory is owned by the state. *Aotearoa*/New Zealand's sovereign hierarchy starts with the Crown/Parliamentary executive, then Government Ministries and their departments, then local territorial authorities, and finally local communities and various interest groups. In this political hierarchy *Ngāti Kahungunu* have been relegated to the bottom as an 'interest' or 'lobby' group. The *RMA* makes explicit which LAs control various *taonga*/natural resources. Territories are delimited through statute and the use of plans and the regulation of activities within those territories. DoC, NCC, HBRC, Napier Airport Authority, Land Corporation Farming Ltd., and the Port of Napier all control zones within *Te Whanganui-a-Orotu/Ahuriri* Estuary. The HDC has control of the pastoral catchment area westward of *Te Whanganui-a-Orotu/Ahuriri* Estuary included in the *Ahuriri* Estuary Management Area (Appendix Three). Sack's (1986) definition of human territoriality, and Sites' (1973) theory of control show that the 'workable arrangements' for common resource regimes are not neutral. The 'workable arrangements' are the result of political and legal power to assert Crown ownership and control over common resources.

7.5 The *RMA* and *Tino Rangatiratanga*

The *RMA* makes no reference to *rangatiratanga*. This is consistent with the Crown's view of one sovereign (Brookfield, 1989). Wickliffe (*Wai 55*) as counsel for *Ngāti Kahungunu* argued that the *RMA Section 8* is too weak and does not give *tangata whenua* equal partnership. She also stated that it was most unlikely for LAs to consider using *Section 33* of the *RMA*. The Crown has separated the issue of sovereignty and resource ownership from resource allocation. This is in essence the omission of *Article II* of *Te Tiriti O Waitangi* from the *RMA* which guarantees *tangata whenua* undisturbed possession of their *taonga*/natural resources. The implication of this omission is that the *RMA*'s provisions for *cultural well being* (*RMA* Sect. 5) will be weakened. The weaker application of the cultural principles provided for in the *RMA* may not enable *Ngāti Kahungunu* to be an effective partner in the management of *taonga*/natural resources. Neither will this ensure that *Ngāti Kahungunu* cultural values are accommodated in environmental planning.

Te Whanganui-a-Orotu/Ahuriri Estuary includes common resources to which the public has enjoyed recreational access for many years. The LAs have also used the area for farming and transport infrastructure, although they never consulted *Ngāti Kahungunu* about any of the developments. I asked informants, 'did they see any way around the potential conflict between *Ngāti Kahungunu* aspirations and the public's 'right' to use the area or resource?'. The response was based on the need to consult and find a compromise.

Henry ■ *I think the only way you can work through those issues... it comes back to the process of consultation how effectively parties work through the issues together and find compromises themselves.*

Jane ■ *We're not at all opposed to the iwi having their rights to fish to take kaimoana from in there, not at all. Provided there is regulations that mean it's not fished out. I think you have to do that with any resource, otherwise there's no resource left.*

Relying on the consultation merry-go-round and Western concepts of appropriate use of common resources does not deal with the fundamental question of resource ownership. The consultation process and common-resource management arrangements are strategies for the existing owners to maintain territorial control because they exclude *Ngāti Kahungunu* from direct management of their *taonga*/natural resources. This is reinforced by *Ngāti Kahungunu* lack of resources to challenge the *status quo* (Kerins, 1992).

7.6 Conclusion

Territoriality helps to maintain the SWP and Western common resource regimes. Here, too, there is little inclusion of *Ngāti Kahungunu* social and environmental values. The use of territoriality is also culturally defined. Through the SWP, common resources are defined and managed on the basis of Western science and political structures. *Ngāti Kahungunu* do not perceive the resources in the same way, nor do they find Western systems of resource management in keeping with their traditions. To overcome these barriers there is a genuine need for *Ngāti Kahungunu* to be much more involved in the management of *Te Whanganui-a-Orotu/Ahuriri* Estuary. The use of a 'joint management' approach would be one way of ensuring their participation as equal partners and the restoration of their territoriality over *Te Whanganui-a-Orotu/Ahuriri* Estuary. I will address this in the next and final chapter.

Chapter Eight:
A Bi-cultural Joint Management Approach to Common Resources

8.0 Introduction

The argument for dual sovereignty was presented in Chapter Seven. The next step is to outline a possible Treaty partnership model which will enable *Ngāti Kahungunu* values to be part of the planning process. So that *Ngāti Kahungunu tikanga* may be incorporated into decisions about the protection and use of *Te Whanganui-a-Orotu/Ahuriri* Estuary.

8.1 The "Essential Bargain"

The spirit of *Te Tiriti o Waitangi* relies upon a *Māori* understanding of the terms *kāwanatanga* (government - law and order) and *tino rangatiratanga* (chiefly ownership and use rights to *taonga*/natural resources). The partnership between *kāwanatanga* and *rangatiratanga* is what Hughes (1988) defines as the "essential bargain". The "essential bargain" is the ceding of *Ngāti Kahungunu* legal sovereignty to the Crown for protection of their political sovereignty (McHugh, 1989). *Ngāti Kahungunu*, as Treaty partners, want shared sovereignty. The Treaty (First and Third Articles) gives the Crown the right to make laws that will govern all citizens, both *Māori* and *Pākehā*. The Second Article guarantees *Ngāti Kahungunu* the right to be sovereign over the allocation and use of *Te Whanganui-a-Orotu*/Ahuriri Estuary. The Treaty Preamble is a Crown promise to protect *Ngāti Kahungunu* property rights. The "essential bargain" means that the Crown's legal sovereignty is limited by *Ngāti Kahungunu* political sovereignty. *Iwi* would have powers delegated to them in recognition of their ownership of *Te Whanganui-a-Orotu/Ahuriri* Estuary - a limited territorial sovereignty. McHugh (1989:41) has described this arrangement as a 'third order of Government' in that the Crown's Treaty obligations extend to LAs

> *The Treaty of Waitangi is not relevant to central Government alone; it... requires that there be deliberate effort towards partnership with tribes as new devolved structures take shape. If Māori enthusiasm for central Government's ability to establish a partnership was somewhat guarded, there is even less confidence that local bodies will be able to act as partners with Māori, resisting calls for simple 'majoritism' and demands for economic progress that may severely disadvantage local tribes* (Durie, 1989).

Ngāti Kahungunu aspirations for their cultural values to be accommodated in the planning process are hindered in the following ways. First, the Government is unwilling to discuss sovereignty because it holds the view that sovereignty cannot be shared; it is the owner of all common resources and it alone has the power to make regulations. This means that *Ngāti Kahungunu* interest in *Te Whanganui-a-Orotu/Ahuriri* Estuary are limited to "use" and "value" interests only (Office of Treaty Settlements, 1994[1]). Second, the HBRC lacks an effective partnership with *Ngāti Kahungunu* (Kerins, 1992). LAs have the propensity to act on the basis of public majority views and economic progress which disadvantaged *Ngāti Kahungunu*. LAs do not regard *Ngāti Kahungunu* to be the owners of *Te Whanganui-a-Orotu/Ahuriri* Estuary. Third, *Ngāti Kahungunu* use rights and ancestral links with *Te Whanganui-a-Orotu/Ahuriri* Estuary have been reduced to being of no more significance than the values held by other citizens. Fourth, *Ngāti Kahungunu* responsibility to *Te Whanganui-a-Orotu/Ahuriri* Estuary as *kaitiaki* does not fit the planning process which is based on SWP models of property rights and science. These all amount to the lack of affirmative action needed to reestablish *Ngāti Kahungunu* sovereignty.

8.2 The Basis for a Crown *Iwi* Partnership

The Government has a mandate and responsibility to govern; *Te Tiriti o Waitangi* makes this explicit. It has a dual responsibility to settle valid Treaty grievances fairly and to ensure that the environment is protected (Hughes, 1994). Alongside, but not subservient to the Crown's governance, is the *tangata whenua* right to control their *taonga*/natural resources and have direct participation in decision making at regional level. One way to fulfil Treaty obligations and positive environmental outcomes is to accord *Ngāti Kahungunu* their rightful place in the planning process, as an equal partner. *Māori* are not given priority of right to use natural resources (Wickliffe, 1994) and the *RMA* does not adequately accommodate *tikanga Māori* in managing natural resources. Instead there has been a steady transfer of power and responsibility from *iwi* to the State.

> *That process has been particularly obvious in the control of land and other physical resources* (Durie, 1989:292).

Durie (1989) goes on to say that national priorities and the desire for homogeneity in society has also led to the professionals and bureaucrats eroding *iwi* authority.

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[1] The 'Fiscal Envelope' documents identify four main types of interest in natural resources. The Crown alone has *Ownership* and *Regulatory* interests, whereas *Use* and *Value* interest are the limits of interest placed on *iwi*. Use interest is limited to specific uses of a resource as at 1840, and that any (non *Māori*) existing property rights or future commercial interests will limit the claim settlements.

Wickliffe (1994) compared the Australian, Canadian and American processes for dealing with indigenous peoples' resource claims. A number of important features for any treaty claim settlement process were identified (Table 8.1).

*	**No national generic settlements** like the fiscal envelope
*	**Consensus settlements** fair to *Māori* and third parties
*	**Representation and Self Government** the principle of "First Nations'" rights, a constitutional basis for the sovereignty of indigenous peoples
*	**Indigenous Ownership** of natural resources needs to be a feature of claim settlements
*	**Priority of use/take/access** for indigenous peoples as a legal principle [Courts in USA, Canada and Australia accept this].
*	**Joint Management** after the issue of resource title and ownership are resolved [for example, by the *Waitangi* Tribunal].

Table 8.1 Important features to be included in the Treaty-claim settlement process (Wickliffe, 1994:95).

The features in Table 8.1 need to be part of the *Aotearoa*/New Zealand Treaty claim settlement process because they help to secure a durable and fair settlement of claims. *Ngāti Kahungunu*, as management partners with LAs, would be able to bring their expertise and experience to the environmental decision making process. This would ensure culturally appropriate public access and protection for indigenous species and habitats. This would help to calm environmentalists' fears of environmental degradation and loss of access.

8.3 Local Authority Barriers to Partnership

The main options for resource management and control when Treaty claims are settled are to reinstate *iwi* resource ownership; to compensate *iwi* for the loss of resources; change the management objective and/or use of the resource; change who manages/administers the resource without changing management structures or objectives to maintain the benefits for existing resource users (Wickliffe, 1994). Resource ownership, property rights, appear to have been separated from the management of the resource in regard to *Māori* claims.

Mike ■ *So we [HBRC] refuse to get involved in resource ownership conflicts... [and] compensation issues relating to land or resources under claim.... 'not our deal, not our function'.*

Western systems of resource tenure do not normally separate resource ownership and the right to manage the resource, except in that the state has the power to regulate the actions of property owners. The LAs disclaim ownership of *Te Whanganui-a-Orotu/Ahuriri* Estuary but retain management control of the resources. This situation arises because LAs, particularly the HBRC, reject the claim that they are Crown agents. They see themselves as being created by statute to regulate resource use without owning the resources. The LAs' level of control gives them resource ownership, as agents of the Crown. Government policy does not separate resource ownership from resource regulation, it holds onto both.

Mike ■ *What council says is that we're not the Crown, and we're not even an agent of the Crown.... elected representatives that have been charged with making decisions and they exercise autonomy in making those decisions. So the only way we can take Treaty of Waitangi issues is through the provisions of the laws we operate under.... and weigh up them and take them into account in policies and consents. But in terms of some of the wider matters that are under the Treaty itself, part two of the Treaty... the council is struggling with that.*

Until the Government addresses the issue of sovereignty for *Ngāti Kahungunu* and their ownership rights, *Ngāti Kahungunu* will be constrained to working within LA structures to manage their *taonga*/natural resources. The question of resource ownership lies outside the *RMA*'s scope so I will only consider the option of changing the administration over the resource. Without changing the ownership of natural resources there are two options: one, management to be taken over by *iwi/hapū*; or two, a joint management regime between *iwi/hapū* and the LAs acting as a Crown agents. This is not how LAs operate at present. Changes to the management of *Te Whanganui-a-Orotu/Ahuriri* Estuary will require the LAs to be willing to implement *RMA Section 33* which allows the LAs to transfer powers to other authorities, including *iwi*. LAs are most reluctant to consider a transfer of power.

Mike ■ *I don't think such transfer of power [to iwi] would meet the criteria of section 33 of the RMA.... we can only transfer power and functions to a public authority.... it would have to be demonstrated that it was in the interest of the community to do that.... not only the Māori community. The iwi would have to have the technical expertise to undertake that function, and it would have to be more efficient... [decrease] transaction costs for resource users.... at the end of the day even if you transfer the function the council remains responsible... we would want it to be wrapped up pretty tightly.*

Mike gave many reasons for opposing the transfer of any authority to *iwi* based on the requirements of the *RMA Section 33*: the *iwi* might not be a public authority; it might limit wider community interests; there is a lack of technical expertise (see Chapter Five) to manage resources; there might be increased costs to resource users; and the HBRC does not want to take the risk because *iwi* are not legally responsible. There is no potential for equal partnership in such an environment. The council still retains the power, their policies, their statutory position and the resources. Yet the transfer of powers would ensure that the function of *kaitiaki* is more than a metaphysical exercise - a cultural caring for the resource. *Iwi/hapū* would have the authority - *rangatiratanga* - to exercise the second article of the Treaty over their *taonga*. Once again *Ngāti Kahungunu* would be in control of their *taonga*/natural resources. The HBRC does what is required by law and thereby controls the role of *Ngāti Kahungunu* in resource management.

The reluctance to give *Ngāti Kahungunu* any sphere of responsibility; the assumption that current actions are more than what is required by statute; the concern that they might get it wrong; and the games of one-up-man-ship, have no place in such a crucial issue as the management of natural resources when dealing with the aspirations of *Ngāti Kahungunu*. Such attitudes and actions are barriers to *Ngāti Kahungunu* being seen to have a legitimate role in resource management. The management of the 'conservation estate' through Western ethnocentric common property regimes, has current priority over the development of a *Pākehā* and *Māori* partnership for *taonga*/natural resource management based on *Te Tiriti O Waitangi* (Woods & Gordon, 1994). The next two quotes illustrate the reluctance of the HBRC and NCC to get involved beyond the minimum of their legal mandates.

Mike ■ *Now councillors and staff will talk about a partnership. But all that is, we're obliged to do that under statute. I guess the Māori committee, which is a discretionary thing, council didn't have to do that, I guess that goes some way towards establishing a partnership.*

Another problem was that some LAs were reluctant to enter into a relationship with *iwi*

Earl ■ *There is a tendency to sit on the side lines, because there is a mine field of these things, and say 'I'd like somebody else to come up first and say what is sovereignty and governorship and what these mean in practice'. Hey big copout.... these Māori issues, let somebody else take the lead and we can laugh at them if they get it wrong.*

The HBRC and NCC need to change their attitudes and not ignore *Ngāti Kahungunu* aspirations. The LAs reluctance to give *Ngāti Kahungunu* greater involvement in the

management of common resources could be overcome through a joint management strategy.

8.4 The Use of a Joint Management Strategy

Joint management between indigenous people and Crown agents is an option for managing natural resources, particularly where there is public access. Joint management has been defined as

> *[T]he sharing of control of an area by two or more different groups. It aims to provide for... conservation... to maintain... the traditional owners [values[.... [and] attempt[s] to recognise the interests of two cultures within the constraints imposed by the goal of ecosystem preservation. The model institutionalises co-operation in both long-term planning... and day to day [operations]* (Craig, 1992).

Joint management is a negotiated shared management of *taonga*/natural resources through Treaty claim settlements. This would incorporate *tikanga Māori* because *iwi* management plans would have statutory weight. Environmental outcomes become the responsibility of both LAs (Crown agents) and *tangata whenua*, a partnership of dual sovereignty.

8.5 Comparing Examples of Joint Management

I will outline examples[2] from Australia and Canada of joint management because their 'jurisdictions and populations are comparable New Zealand's' (Wickliffe, 1994:8). The Waimakariri District Council, DoC and *Ngai Tahu* will use a joint management approach for *Tutae Patu* lagoon and the coast from *Kairaki* Pines north to *Waikuku* Beach.

In Australia the Hawke Government (1980s) said that: Aboriginal land is inalienable and the land lost must be compensation for; Aboriginal sites must be protected; Aborigines should control mining on their land and be paid royalties. This was rejected until the *Mabo* decision [*Mabo v State of Queensland* (1992) 66 ALR 408 cited in Wickliffe, 1994] which 'recognised the doctrine of aboriginal title and rejected the concept of *terra nullius* (land belonging to no-one) as the basis for colonial settlement' (Wickliffe, 1994:14). Native land title had not been extinguished by colonisation. The outcome has been to use legislation to limit native title to protect existing interests in natural resources (*ibid.*).

Another result of changed legislation has been to attempt joint management regimes to ensure effective Aboriginal involvement in resource management and the identification of

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[2] The examples and information are from Wickliffe (1994) and Woods and Gordon (1994).

cultural sites. Joint management is used in the world heritage parks of Kakadu and Uluru (Ayers Rock). The land title was returned to the Aborigines and then leased (99 years) by the Crown. Management plans are prepared by a board that has a majority of members nominated by the Aboriginal owners. Joint management helps to: reconcile competing interests; allocate resources (Aboriginal owners have priority); facilitate public understanding; set aside of areas that have significant spiritual values; promote Aboriginal management and control; and provide for conservation and public access.

Canada, in contrast to Australia, uses consultation and the pursuant legislation validates the agreements reached. In Canada, the joint management model is based on a comprehensive agreement between the Crown and Inuit after direct negotiation and input from third parties. The Canadian Government set out to clarify resource ownership and use. They wanted Inuit to participate in resource management, conservation (Inuit have priority of use) and economic developments, to foster Inuit self-reliance.

The Nunavut agreement will serve as an example. The main features of the Canadian Government's final agreement with Nunavut are: all laws still apply in the settlement area (a new self-governing territory) unless they are inconsistent with the agreement, in which case the agreement prevails; financial compensation for past losses; Nunavut ownership of the territory and self-government; protection of resource rights (including mineral and water) with any negative effect on those rights being subject to compensation; priority of resource use based on wildlife management systems; resource royalty sharing; public access for travel and recreation is ensured, in addition there is a 30.5 metre 'Queens Chain'; existing third party rights are protected; and the Government retains ultimate responsibility for conservation and wildlife management. The Nunavut people share political and legal sovereignty within their territory with the Crown. In regard to wildlife management, the Nunavut are given a significant role with the establishment of the Nunavut Wildlife Management Board (henceforth, NWMB).[3] The NWMB has the authority to manage wildlife in the settlement area with the appropriate Minister being notified of decisions for approval or modification.

[3] The NWMB, within the Northwest Territories, has four Nunavut representatives, one member who lives in the Nunavut Settlement Area, a member appointed by the Commissioner-in-Executive Council, the public and Minister for the Canadian Wildlife Service have one representative each, plus a chairperson appointed on members recommendation.

Within *Aotearoa*/New Zealand there is the claim of *Ngai Tahu* over *Tutae Patu* lagoon. *Ngai Tahu* are concerned about the environmental quality of this area. The Waimakariri District Council, DoC and *Ngai Tahu* agreed to a joint management plan for the lagoon and the coast from *Kairaki* Pines north to *Waikuku* Beach under the *Reserves Act 1977*. It is proposed that *Ngai Tahu* get ownership of *Tutae Patu*. The Minister of Conservation would have to be sure that conservation and wildlife management objectives were met regardless of ownership. The Canterbury Conservation Board favoured transfer of ownership because it was a low priority area and they were unlikely to increase or improve the management of it in the near future. This would be in 'best interests of the site' (Woods and Gordon, 1994:74). Special legislation is required to make these changes and *Ngai Tahu* would need to produce a management plan. Interest groups and the public would need to be consulted because such changes have implications for conservation, recreation and public access in the area. *Ngai Tahu* would maintain existing public access. This case is much less complex than that of *Ngāti Kahungunu* and *Te Whanganui-a-Orotu/Ahuriri* Estuary but it shows that there are structures in place to pursue a joint management approach to coastal resources. Issues of who is responsible for public education, consultation and resourcing the process need to be dealt with.

Australia had, until the *Mabo* decision, used the doctrine of *terra nullius*. In Canada only the Crown could alienate land from native peoples (Like the Crown's right of pre-emption in *Aotearoa*/New Zealand). Australia reinstated Aboriginal ownership over two important sites, Kakadu and Uluru (Ayers Rock)' which formed a foundation for the joint management of them. Canada also resolved the issue of land ownership and returned to Nunavut a political territory of '350,000 square kilometres of land of which 36,000 will include mineral rights' (Wickliffe, 1994:105). Canada has 'advanced leaps and bounds ahead' of *Aotearoa*/New Zealand in the negotiation and settlement of indigenous peoples claims to ownership or natural resources and has focused on 'consensus settlements' (Wickliffe, 1994:8). *Aotearoa*/New Zealand, unlike Canada[4], 'has no constitutional protection for Maori treaty (sic) and aboriginal rights' (*ibid.*). *Te Tiriti o Waitangi* is recognised as 'legally unenforceable' (*ibid.*) but it does have moral force. In Canada, treaties are recognised as mutually binding obligations and ambiguities are to be construed in favour of native peoples as part of the Crown's fiduciary obligation - a relationship of

[4] In Canada the Supreme Court recognises that aboriginal title (customary use and occupation) is an independent legal right to resource ownership that is more than a personal and usufructuary right. These aboriginal rights can only be extinguished by unambiguous means.

trust. Further to this, Inuit are given priority of interest and use in the allocation of limited natural resources. At the same time the need to respect and deal equitably with the lawful rights of others, public and third parties, is recognised.

Australian and Canadian Governments returned land to indigenous people and use joint management, as the result of major legislative changes due to continued pressure from indigenous peoples. The *Aotearoa*/New Zealand Government has been under similar pressure due to Waitangi Tribunal findings in favour of *Māori* people. The challenge is for *Aotearoa*/New Zealand to return resources and land that were illegitimately alienated from *tangata whenua*, thereby giving *Māori* ownership of their resources and the ability to be directly involved in the management of natural resources with LAs. I agree with Wickliffe (1994:10) that

> *[T]he use of joint management regimes appears to be a useful and workable strategy for ensuring indigenous participation in, and therefore responsibility for, sound environmental outcomes in the negotiation and settlement of claims, and for the future management of natural resources under negotiation.*

8.6 Conclusion

The acknowledgment of indigenous "ownership" of *taonga*/natural resources based on *Te Tiriti O Waitangi* would provide *Ngāti Kahungunu* with opportunities to ensure that their cultural values are accommodated in environmental planning. This would form a good foundation for *Ngāti Kahungunu* and LAs to share the management of common resources. Until such time as *Ngāti Kahungunu* ownership is recognised, the use of a joint management strategy for managing *Te Whanganui-a-Orotu/Ahuriri* Estuary may be appropriate. Joint management is not dependent on who has ownership of the resources. Joint management would take *Ngāti Kahungunu* involvement beyond the process of consultation. The *RMA Section 33* does provide the potential solution to the integration of traditional and Western scientific paradigms for resource management. It will, however, take much negotiation because there are major differences between the *Ngāti Kahungunu* paradigm and the SWP. As Ted stated

- *... they [Māori] should have a say in how their society [New Zealand] is operating because until now they can rightfully say they haven't.*

Chapter Nine:
Conclusions

The management of natural resources is often plagued with conflicts. In this case the conflict considered was that of cultural values. The values held by the LAs differed from those of *Ngāti Kahungunu*. The original research question was 'Can the implementation of the *RMA* incorporate two cultural perspectives for managing *taonga*/natural resources?' After examining the case of *Ngāti Kahungunu* and *Te Whanganui-a-Orotu/Ahuriri* Estuary, the answer is 'only partially'. The *RMA* sections that would allow greater input by *Ngāti Kahungunu* into resource management are constrained by a 'secular Western paradigm'. This paradigm dominates resource management values and the current reliance on Western knowledge, while down-playing indigenous knowledge and values. As a result of the unwillingness of the Crown and LAs to give *Ngāti Kahungunu* an equal partnership in resource management and to accommodate their cultural values, the RMA does not accommodate different cultural values that could be part of resource management.

The *Māori* spiritual paradigm and the secular Western paradigm are fundamentally different. The outcome is that there are minimal similarities in meaning attached to natural resources or the 'workable arrangements' for the allocation of resources. Therefore, the common property regime found in collective societies, like *Ngāti Kahungunu*, is based on the view that common resources are *taonga* gifted by *atua*. *Iwi/hapū* do not presume to own these resources, rather they are trustees chosen by the *atua* to be the *kaitiaki* of the *taonga*/natural resources. *Iwi/hapū* controlled the access to and use of these resources for communal benefits, in gratitude to and respect for *atua* and their *tupuna*. This strong spiritual dynamic differs from the SWP which considers common resources to be free and accessible for all people. One exception is when common resources, for protection (for example, the Conservation estate), are vested into the State's ownership and control for all the citizens' benefit. Many *Pākehā* respondents thought that all common resources should be managed, by 'one law' for the 'common good'. This was understood to be the role of LAs and the Crown, and a reason why *Ngāti Kahungunu* ought not have too big a stake in resource management.

The second factor that constrains the accommodation of *Ngāti Kahungunu* values in resource management is the issue of *rangatiratanga* and limited sovereignty. The Crown's stance of absolute indivisible sovereignty assumes both ownership and regulatory interests

of all resources and only grants value and use interest of resources to *Ngāti Kahungunu*. The unilateral management of *taonga*/natural resources in *Aotearoa*/New Zealand is untenable because *Māori*, as a Treaty partner, will continue to put pressure on the Crown to involve them in resource management beyond current levels.

There has been an increasing level of LA consultation with *Ngāti Kahungunu* and the incorporation of *Ngāti Kahungunu* values, as statements, in LA statutory plans. This appears to have reduced the conflict, but it has not resolved it. Consultation has occurred because it is a legal requirement not because of any obligation to honour the Treaty. Neither has this produced an effective Treaty partnership in which *Ngāti Kahungunu* cultural values are accommodated in the daily management of *taonga*/natural resources. This is because there has been no change in the fundamental arrangements of Crown resource ownership or regulation.

Ray ■ *Our judicial and legislative procedures are based on European systems.... our whole focus is commerce.... a European concept, property and ownership. How the Treaty of Waitangi - particularly Article II - is understood is the essence of the debate about which cultural values have priority.*

Through the European colonisation of *Aotearoa*/New Zealand and subsequent 'land sales' (Chapters One and Two), *Ngāti Kahungunu* lost their *taonga*/natural resources, and with it their economic base. The subsequent domination of a SWP has exacerbated the lack of accommodation of *Ngāti Kahungunu* cultural values (Chapter Five) in the management of their *taonga*/natural resources. European colonisation also led to fundamental changes in the administration of resource rights and property ownership (Chapter Six). Today the regulation and ownership of common resources is deemed to be the Government's role (Chapter Seven). This too, I have argued, has undermined *Te Tiriti o Waitangi*, particularly *Article II*. The "essential bargain" of the Treaty means that the recognition of dual sovereignty is ultimately the only way forward in forming a partnership between *Ngāti Kahungunu* and LAs, as Crown agents. Chapter Eight then suggested one way forward, with a 'Joint Management Model' for the management of *taonga*/natural resources in *Aotearoa*/New Zealand.

Ngāti Kahungunu have a history of trying to work with the Crown; the failure in Treaty partnership has not been from their lack of effort. The *Ngāti Kahungunu* claim for *Te Whanganui-a-Orotu/Ahuriri* Estuary is based solidly on their historical and cultural

associations with the area. *Ngāti Kahungunu*, as the first occupants, have aboriginal title and sovereignty. For these reasons *Ngāti Kahungunu*, should be given priority of use and access to *Te Whanganui-a-Orotu/Ahuriri* Estuary. This would restore their *mana whenua* and enable them to exercise *rangatiratanga*. They had also been promised exclusive and undisturbed possession of their lands, waters and forests in *Te Tiriti O Waitangi Article II*.

Today the SWP is being challenged, involving a potential shift in values to accommodate *tikanga māori* in resource management. But there is still a long way to go. One of the greatest barriers is that LAs do not consider themselves as Crown agents and expect the Government to set the stage for how they might accommodate *Ngāti Kahungunu* in their environmental planning. Possible solutions might be for the LAs to provide better public information about the Treaty; to employ *Ngāti Kahungunu* consultants (and to pay for the expertise); and, to provide educational and training sponsorship to equip *Ngāti Kahungunu* as resource managers. These strategies would enable *Ngāti Kahungunu* to participate more effectively in resource management. In the long term it would reduce the costs of consultation because, as partners, both *Ngāti Kahungunu* and the HBRC, NCC, HDC and DoC would be moving in the same direction. There will be a need for compromise.

This case study was limited in its scope and has identified some further areas for research. There is a need for research by *Ngāti Kahungunu* into their own systems of environmental stewardship and how it might be applied in today. How the sacred/secular continuum relates to the environmental values held by different ethnic groups within *Aotearoa*/New Zealand needs to be researched. The relationship between environmental philosophy and *Māori* environmental thought needs more exploration.

The results of this, and subsequent, research would need to be acted on in a partnership between the Crown and *hāpu/iwi*. The HBRC, NCC, HDC and DoC, as Crown agents, will need to consider other means of facilitating resource management partnerships, since the objections to using *Section 33* of the *RMA* to transfer powers to *Ngāti Kahungunu* need to be overcome. This too will need research.

Bibliography

Ackroyd, P., (July 1991) *Community-based Institutions for Sustainable Land Management: A Review and Critique.* Unpublished Report for the Ministry for the Environment, Centre For Resource Management, Lincoln University, Canterbury, N.Z.

Agnew, J.A., Duncan, J.S., (1989) (eds.) *The Power of Place: Bringing Together Geographical and Sociological Imaginations.* Unwin Hyman, Boston.

Ahuriri Estuary Draft Management Plan (December 1991) Jointly prepared by Hawke's Bay Regional Council, City of Napier, Department of Conservation/*Te Papa Atawhai*, Hastings District Council.

Ahuriri Estuary Draft Management Plan - Submissions Summary (February 1993).

Appleton, D., (1992) 'The Ahuriri Estuary: The Story of an Urban Wetland'. In *Forest and Bird Vol. 21(3)*:36-37. Royal Forest and Bird Protection Society of New Zealand.

Awatere, D., (1984) *Māori Sovereignty.* Broadsheet Publications, Auckland.

Baines, (1989) cited in Berkes, F., (1989) *Common Property Resources: Ecology and Community-Based Sustainable Development.* Published in association with IUCN, Belhaven Press, London.

Barlow, C., (1994) *Tikanga Whakaaro: Key Concepts in Maori Culture.* Oxford University Press, Auckland, New Zealand.

Barnes, B., (1985) *About Science.* Basil Blackwell Ltd., Oxford, U.K.

Bassett, J., (1990) 'The English Island, 1860-1870'. In Binney, J., Bassett, J., Olssen, E., (1990) *The People and the Land / Te Tangata me Te Whenua: An Illustrated History of New Zealand 1820-1920.* Allan and Unwin, Wellington.

Berkes, F., (1989) *Common Property Resources: Ecology and Community-Based Sustainable Development.* Published in association with IUCN, Belhaven Press, London.

Best, E., (1982) *Maori Religion and Mythology: Being an Account of the Cosmogony, Anthropogeny, Religious Beliefs and Rites, Magic and Folk Lore of the Maori Folk of New Zealand.* Part 2. Dominion Museum Bulletin No. 11 prepared for publication by French and McFadgen-Richardson. P.D. Hasselberg, Government Printer, Wellington.

Biggs, B., (1992) *English-Maori/Maori-English Dictionary.* Auckland University Press. Auckland, New Zealand.

Biggs, B., (1989) 'Humpty-Dumpty and the Treaty of Waitangi' in Kawharu, I.H., (1989) (ed.) *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi.* Oxford University Press, Auckland, New Zealand.

Binney, J., Bassett, J., Olssen, E., (1990) *The People and the Land / Te Tangata me Te Whenua: An Illustrated History of New Zealand 1820-1920.* Allan and Unwin, Wellington.

Bosch, D.J., (1991) *Transforming Mission: Paradigm Shifts in Theology of Mission.* Orbis Books, Maryknoll, New York.

Boston, J., and Holland, M., (1987) *The Fourth Labour Government: Radical Politics in New Zealand.* Oxford University Press, Auckland.

Brookfield, F. M., (1989) 'The New Zealand Constitution the search for legitimacy'. In Kawharu, I. H., (1989) (ed.) *Waitangi: Māori & Pākehā Perspectives of the Treaty of Waitangi.* Oxford University Press, Auckland.

Brownlie, I., (1991) 'Robb Lectures 1991'. In Brookfield, F.M., (1992) (ed.) *Treaties and Indigenous Peoples.* Oxford University Press, Auckland.

Bührs, T., Bartlett R.V., (1993) *Environmental Policy in New Zealand; The Politics of Clean & Green?* Oxford Readings in New Zealand Politics: No.3 (ed. Martin Holland), Oxford University Press, Auckland.

Capra, (1983) cited in Pepper, D., (1984) *The Roots of Modern Environmentalism.* Groom Helm, London.

Cassidy, M.K., (1992) *Taiapure - recognition of Rangatiratanga?* Unpublished Master of Science Thesis, Centre for Resource Management, Lincoln University.

Cockshut, A.O.J., (1964) *The Unbelievers: English Agnostic Thought, 1840 - 1890.* Collins, London.

Conservation Act 1987 New Zealand Government, Wellington.

Craig, D., (1992) 'Environmental Law and Aboriginal Rights: Legal Framework for Aboriginal Joint Management of Australian National Parks'. In Birckhead, J., De Lacy, T., Smith, L.J., (1992) (eds.) *Aboriginal Involvement in Parks and Protected Areas.* Australian Institute of Aboriginal Studies Report Series, Canberra. Quoted in Wickliffe, C., (1994) *Indigenous Claims and the Process of Negotiation and Settlement in Countries with Jurisdictions and Populations Comparable to New Zealand's: Background report for; Environmental Information and the Adequacy of Treaty Settlement Procedures.* p. 28. A report Prepared for the Parliamentary Commissioner for the Environment.

Croll, E., Parkin, D., (1992) (eds.) *Bush Base: Forest Farm. Culture, Environment and Development.* European Inter-varsity Development Opportunities Study Group (EIDOS). Routledge, London.

Daly, (1980) *Economics, Ecology, Ethics: Essays Toward a Steady State Economy.* W.H. Freeman, San Francisco.

Davidson, A.K., Lineham, P.J., (1987) *Transplanted Christianity; Documents Illustrating Aspects of New Zealand Church History.* College Communications, Auckland.

Dicey, Quoted in M'Hugh, P., (1989) 'Constitutional Theory and Maori Claims'. In Kawharu, I.H., (1989) (ed.) *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi.* Oxford University Press, Auckland, New Zealand.

Dick, (1992) *Whatu ngarongaro te tangata, Toitu te whenua.* In New Zealand Planning Institute Conference, Napier, 8-10 April 1992: pages 1/13-1/15.

Drake, H. M., (1989) 'Using Stakeholders in the Research Process: A Case Study in Human Services'. In Van Willigen, J., Rylko-Baver, B., McElroy, A., (eds.) (1989) *Making Our Research Useful: Case Studies in the Utilization of Anthropological Knowledge.* Westview Press, San Francisco.

Durie, M.H., (1989) 'The Treaty of Waitangi - Perspectives on Social Policy'. In Kawharu, I. H., (1989) (ed.) *Waitangi: Māori & Pākehā Perspectives of the Treaty of Waitangi.* Oxford University Press, Auckland.

Energy and Natural Resources Law Association of New Zealand Inc. (1988) *Natural Resource Management: A series of occasional essays.*

Farrington, B., (1964) *The Philosophy of Francis Bacon: An essay on its development from 1603 to 1609 with new translations of the fundamental texts.* Liverpool University Press.

Fleras, A., (1991) '"Tuku Rangatatiratanga": Devolution in Iwi-Government Relations'. In Spoonley, P., Pearson, D., Macpherson, C., (1991) *Nga Take: Ethnic Relations and Racism in Aotearoa/New Zealand.* Dunmore Press Ltd., Palmerston North.

Fortmann, I., and Bruce, J.W., (1988) (eds.) *Whose Trees? Proprietary Dimensions of Forestry.* Westview Press, London.

Fox, W., (1990) *Toward a Transpersonal Ecology; Developing new foundations for Environmentalism.* Shambhala Publications, London.

Fricker, A., (1994) Science needs a new paradigm for a sustainable future. In Selsky, J.W., Morgan, R.K., and Memon, A., (1994) (eds.) *Environmental and Resource Management in New Zealand: Proceedings of a Conference on Current and Future research*, p. 43-51. Environmental Policy and Management Research Centre, Publication No. 5, University of Otago, New Zealand.

Gilmour, P., (1989) (ed.) *Philosophers of the Enlightenment.* Edinburgh University Press

Glaser, B., and Strauss, A.L., (1967) *The Discovery of Grounded Theory: Strategies for Qualitative Research.* Aldine Publishing, Chicago.

Glen, R., (ed.) (1992) *Mission and Moko; Aspects of the work of the Church Missionary Society in New Zealand 1814 -1882.* Latimar Fellowship of New Zealand, Christchurch.

Hackshaw, F., (1989) 'Nineteenth Century Notions of Aboriginal Title and the Influence on the Interpretation of the Treaty of Waitangi'. In Kawharu, I. H., (1989) (ed.) *Waitangi: Māori & Pākehā Perspectives of the Treaty of Waitangi.* Oxford University Press, Auckland.

Hardin, G., (1968) *The Tragedy of the Commons.* Science Vol. 162, pp 1243-1248.

Hardin, G., Baden, J., (1977) (eds.) *Managing the Commons.* W.H. Freeman, San Francisco.

Hawke's Bay Regional Council (May 1994) *A Charter between the Hawke's Bay Regional Council and the Maori Committee of Council.*

Hawke's Bay Regional Council (1994) *Regional Policy Statement; The Maori Dimension.*

Hawke's Bay Regional Council (September 1994) *Proposed Regional Coastal Plan.*

Hawke's Bay Regional Council (February 1995) *Summary of all decisions requested by persons making submissions on the proposed regional coastal plan; arranged by submitter.*

Henare, Manuka (1988) *Nga Tikanga Me Nga Ritenga o Te Ao Maori:* Standards and Foundations of Maori Society in *Report of the Royal Commission on Social Policy,* vol. III, Part one, Wellington, The Royal Commission on Social Policy.

Hide, R. P., (1987) *Property Rights and Natural Resource Policy.* Centre for Resource Management, Lincoln College, Canterbury.

Hide, R. P., (1988) *Property Rights and Land Management.* Centre for Resource Management, Lincoln College, Canterbury.

Hiha, H., (1992) *Ahuriri Estuary's Importance to the Maori.* In Planning Quarterly Vol. 107:14-15

Hobbes, T., (1651) *Leviathan.* Macpherson (1968) (ed.) Harmondsworth, Penguin.

Hughes, H., (1988) *Environmental Management and the Principles of the Treaty of Waitangi: Report on Crown Responses to Recommendations of the Waitangi Tribunal 1983-1988.* Parliamentary Commissioner for the Environment, New Zealand Government, Wellington.

Jackson, Moana.,(November 1993:2-8) Association of Social Science Researchers News, *The Definitions of, and Dangers to, the Concept of Indigenous Intellectual Property.*

James, B., (1993) *The Determinants of Environmental Attitudes: A Review of the Literature.* General Report No. WRC/PP-G-93/13, Wellington Regional Council.

Jones, M.R., (1922) (Translated into English) *The Treaty of Waitangi: An Explanation by Sir Apirana Ngata.*

Kawharu, I.H., (1989) (ed.) *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi.* Oxford University Press, Auckland, New Zealand.

Kelsey, J., (1984) '' In Spoonley, P., Pearson, D., Macpherson, C., Sedgwick, C., (1984) (eds.) *Tauiwi: Racism and Ethnicity in New Zealand.* Dunmore Press Ltd., Palmerston North.

Kelsey, J., (1990) *A Question of Honour? Labour and the Treaty 1984 - 1989.* Allen and Unwin, Wellington, New Zealand.

Kenchington, R.A., (1990) *Managing Marine Environments.* Taylor and Francis, New York, U.S.A.

Kerins, S.P., (1992) *Relations Between The Hawke's Bay Regional Council and Ngati Kahungunu.* Unpublished M.A. Anthropology Thesis, Auckland University.

Kingsbury, B., (1989) 'The Treaty of Waitangi: Some International Law Aspects'. In Kawharu, I. H., (1989) (ed.) *Waitangi: Māori & Pākehā Perspectives of the Treaty of Waitangi.* Oxford University Press, Auckland.

Kirkwood, C., (1993) 'Exercising Rangatiratanga: An Iwi Perspective on Using Marine Resources' In New Zealand Conservation Authority/*Te Whakahaere Matua Atawhai O Aotearoa* (1993) *Marine Conservation and Wildlife Protection.* Conference Proceedings (1-3 May 1992) Published by The New Zealand Conservation Authority, Wellington.

Knox, G.A., Bolton, L.A., Sagar, P., (1978) *The Ecology of Westshore Lagoon, Ahuriri Estuary, Hawke's Bay.* Estuarine Research Unit, Department of Zoology, University of Canterbury, Christchurch.

Lacey, A.R., (1982) *Modern Philosophy: An Introduction.* Routledge & Kegan Paul, London.

Lino Grima, A.P., & Berkes, F., (1989) 'Natural Resources: Access, Rights-to-Use and Management'. In Berkes, F., (1989) *Common Property Resources: Ecology and Community-Based Sustainable Development.* Published in association with IUCN, Belhaven Press, London.

Lofland, J., and Lofland, L.H., (1984) *Analyzing Social Settings: A Guide to Qualitative Observation and Analysis.* Wadsworth Publishing Company, Belmont, California.

Luce, J.V., (1992) *An Introduction to Greek Philosophy.* Thames and Hudson Ltd, London.

Manatu *Māori* (1991) *Māori Values and Environmental Management.* Prepared by: The Natural Resources Unit of Manatu Maori as a contribution to the Preparatory Conference No. III for the United Nations Conference on Environment and Development.

Magill, R., (1992) *Ahuriri Estuary* in Terra Nova Vol. 19:10-11

M^{c}Aloon, J., (1995) *Personal Communication.*

M^{c}Combs, B., (May 1993:2-9) Association of Social Science Researchers News, *Changing Responsibilities - Stage Two.* A Report from the Working Group

M^{c}Glone, M.S., (1989) *New Zealand Journal of Ecology. Vol 12:115-127*

M^{c}Gregor, H.O., (1993) *Perceptions of the Runanga Iwi Act (1990) and its Effects Upon Tairawhiti Maori Tourism Development.* Unpublished Master of Applied Science Thesis, Lincoln University, Canterbury.

M^{c}Hugh, P., (1989) 'Constitutional Theory and Māori Claims'. In Kawharu, I.H., (1989) (ed.) *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi.* Oxford University Press, Auckland, New Zealand.

M^{c}Hugh, P., (1991) *The Maori Magna Carta: New Zealand Law and the Treaty of Waitangi.* Oxford University Press, Auckland.

M^{c}Neely, J.A., and Pitt, D.C., (1985) (eds.) *Culture and Conservation: the human dimension in environmental planning.* Groom Helm, London.

M°Veagh, M°Kenzie, Bartleet & Co (1994) 'The Crown's Obligations to Consult in Negotiations with Maori Under the Treaty of Waitangi: Opinion Prepared for the Parliamentary Commissioner for the Environment'. Appendix 1 In Woods, K., Gordon, B., (1994) (Investigators) *Environmental Information and the Adequacy of Treaty Settlement Procedures.* A report Prepared for the Parliamentary Commissioner for the Environment. Memon, P.A., Perkins H.C., (eds.) (1993) *Environmental Planning in New Zealand.* The Dunmore Press, Palmerston North.

Milbrath, L.W., (1989) *Envisioning a Sustainable Society: Learning Our Way Out.* State University of New York Press, Albany, N.Y.

Milne, D.A., (1993) (ed.) *Handbook of Environmental Law.* Royal Forest and Bird Protection Society of New Zealand Inc., Wellington.

Morgan, E., Falloon, J., (1993) (compilers) *Material by Maori: from the Appendices to the Journals of the House of Representatives, 1860-1869.* Waitangi Tribunal occasional publication, 1172-3211; no. 2. Waitangi Tribunal, Dept. of Justice, Wellington.

New Zealand Government (1985) *Principles for Crown Action on the Treaty of Waitangi.*

New Zealand Planning Institute (1992) *NZPI Conference, Napier, 8th - 10th April, 1992*

Ngata, H.M., (1993) *English-Maori Dictionary.* Learning Media Ltd. for Ministry of Education, Wellington, New Zealand.

Nietzsche, F., (Translated by Thomas Common, n.d.) *Thus Spake Zarathustra.* Random House, New York, U.S.A.

Office of Treaty Settlements, Department of Justice (1994) *Crown Proposals for the Settlement of Treaty of Waitangi Claims: Detailed Proposals.* New Zealand Government, Wellington.

Office of Treaty Settlements, Department of Justice (1994) *Crown Proposals for the Settlement of Treaty of Waitangi Claims: Summary.* New Zealand Government, Wellington.

Ogle, G.B., for Ministry of Agriculture and Fisheries/*Te Manatu Ahuwhenua Ahumoana* Technical Paper 91/8 (January 1993) *The Waitangi Tribunal and Maori Land Claims; Part 1: The Issues; Part 2: The Crown.* Executive Officer, MAF Policy, Wellington.

Oliver, W.H., (1991) *Claims to the Waitangi Tribunal.* Dept. of Justice (Waitangi Tribunal Division), Daphne Brasell Associate Press, Wellington.

Orange, Claudia, (1987) *The Treaty of Waitangi.* Allan & Unwin, with assistance from the Historic Publications branch, Dept of Internal Affairs, Wellington.

Orange, Claudia, (1990) *The Story of the Treaty.* Allan & Unwin/Port Nicholson Press, Wellington, N.Z.

Ostrom, E., (1986) 'Issues of Definition and Theory: Some Conclusions and Hypotheses.' In *Proceedings of the Conference on Common Property Resource Management.* National Academy Press, Washington, D.C. pp 597-615.

Parsons, P., (1994) *A Harbour Lost* in New Zealand Historic Places Vol. 45:19-23

Pearson, D., (1990) *A Dream Deferred: The origins of ethnic conflict in New Zealand.* Allan and Unwin New Zealand Ltd., Wellington.

Pepper, D., (1984) *The Roots of Modern Environmentalism.* Groom Helm, London.

Poutu Te Rangi (March 1992:12-13) *Relations Between The Hawke's Bay Regional Council and Ngaati Kahungunu.*

Pyle, E., (1992) *Sustainable Water Management: An approach based on the Gaia Hypothesis and the traditional Maori worldview.* Master of Applied Science Thesis, Lincoln University, Canterbury.

Rainbow, S., (1993) (Spoonley, P., ed.) *Critical Issues in New Zealand Society 5: Green Politics.* Oxford University Press, Auckland.

Rennie, H.G., (1993) 'The Coastal Environment'. In Memon, P.A., and Perkins, H.C., (1993) (eds.) *Environmental Planning in New Zealand.* Dunmore Press, Palmerston North.

Reserves Act 1977, New Zealand Government, Wellington.

Resource Management Act 1991, New Zealand Government, Wellington.

Rudner, R., (1966) *Philosophy of Social Science.* Prentice Hall, New Jersey, U.S.A.

Runanga Iwi Act 1990, New Zealand Government, Wellington.

Sack, R.D., (1986) *Human Territoriality, Its Theory and History.* Cambridge University Press, London.

Schrempp, G., (1992) *The Magical Arrows: The Māori, the Greeks and the Folklore of the Universe.* University of Wisconsin Press, U.S.A.

Schumacher, E.F., (1973) *Small is Beautiful: A study of Economics as if People Mattered.* Blond & Briggs, London.

Shaffir, W.B., and Stebbins, R.A., (1991) (eds.) *Experiencing Fieldwork: An Inside View of Qualitative Research.* Sage Publications, London.

Sharp, A., (1991) *Justice and the Māori: Māori Claims in New Zealand Political Argument in the 1980s.* Oxford University Press, Auckland

Shearer, (1986) *Between Two Worlds: Maori values and environmental decision-making.* Unpublished Thesis, Master of Science, University of Canterbury.

Sinclair, k., (1980) *A History of New Zealand.* Penguin

Sinclair, K., (1991) *Kinds of Peace: Māori People After the Wars 1870-85.* Auckland University Press, New Zealand.

Sissons, J., (1991) *Te Waimana, The Spring of Mana: Tuhoe History and the Colonial Encounter.* Te Whenua Series NO.6 Pacific People, Land and Literature. University of Otago Press, Dunedin, New Zealand.

Sites, (1973) *Control the Basis of Social Order.* Dunellen Publishing Co., N.Y.

Sorell, T., (1987) *Descartes.* Oxford University Press, Oxford.

Sorrenson, (1989) 'Towards a Radical Reinterpretation of New Zealand History: The Role of the Waitangi Tribunal'. In Kawharu, I.H., (1989) (ed.) *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi.* Oxford University Press, Auckland, New Zealand.

Spoonley, P., Pearson, D., Macpherson, C., Sedgwick, C., (1984) (eds.) *Tauiwi: Racism and Ethnicity in New Zealand.* Dunmore Press Ltd., Palmerston North.

Spoonley, D., Hirsh, W., (1990) (eds.) *Between the Lines: Racism and the New Zealand Media.* Heinemann Reed, Auckland.

Spoonley, P., Pearson, D., Macpherson, C., (1991) *Nga Take: Ethnic Relations and Racism in Aotearoa/New Zealand.* Dunmore Press Ltd., Palmerston North.

Stone, D.A., (1988) *Policy Paradox and Political Reason.* Scott, Foresman and Co., London.

Tauroa, Hiwi, (1989) *Healing the Breach; One Maori's Perspective on the Treaty of Waitangi.* Collins, New Zealand.

Te Puni Kokiri, (1993) *Nga Kai O Te Moana - Kaupapa Tiakina - Customary Fisheries: Philosophy and Practices, Legislation and Change.* Crown Copyright, Wellington

Te Puni Kokiri, (1993) *Maurioro Ki Te Ao: An Introduction to Environment and Resource Management Planning.* Crown Copyright, Wellington

Te Awekotuku, N., (1991) *He Tikanga Whakaaro: Research Ethics in the Maori Community.* Wellington, Manatu Maori

Te Maire Tau, Anake Goodall, David Palmer, *Rakiihia Tau* (1990) *Te Whakatau Kaupapa: Ngai Tahu Resource Management Strategy for the Canterbury Region.* Aoraki Press, Wellington, N.Z.

Teariki, C., Spoonley, P., (with Ngahiwi Tomoana) (May 1992) *Te Whakapakari Te Mana Tangata. The Politics and Process of Research for Maori.* Department of Sociology, Massey University, New Zealand.

Thomas, K., (1984) *Man and the Natural World: Changing Attitudes in England 1500-1800.* Penguin Books, England.

Tisdell, C. A., (1990) *Natural Resources, Growth and Development: Economics, Ecology and Resource-scarcity.* Praeger Publishers, U.S.A.

Treadwell, His Honour Judge (1994) *Decision No. W19/94 - In the matter of the Resource Management Act 1991 and In the matter of and appeal under s120 of the Act; Between Cook Island Community Centre Society (HB) Inc (Appeal: RMA 503/93) and Hastings District Council.* New Zealand Planning Tribunal.

United Nations (1992) *United Nations Conference on Environment and Development, 3-14 June, 1992, Rio de Janiero, Brazil: Outcomes of the conference.* Ministry for the Environment.

Waitangi Tribunal (1988) *Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim (Wai 22).* Wellington, New Zealand.

Waitangi Tribunal; Department of Justice (1989) (2nd ed.) *Report of the Waitangi Tribunal on a Claim by J P Hawke and others of Ngati Whatua Concerning the Fisheries Regulations (Wai 1).* Government Print Office, Wellington, New Zealand.

Waitangi Tribunal (1992) *Te Roroa Report (Wai 38).* Brooker and Friend, Wellington.

Walker Ranginui, (1987) *Nga Tau Tohetohe: Years of Anger.* Penguin Books, Auckland.

Ward, J., and Scarf, F., (1993) 'Water Resources'. In Memon, P.A., Perkins H.C., (eds.) (1993) *Environmental Planning in New Zealand.* The Dunmore Press, Palmerston North.

Wheeler, P.B., (1987) *Town and Country Planning Reform, Wellington.* Economic Development Commission, Wellington.

White, L., (1973) The Historical Roots of our Ecological Crisis. In Grounds, V., (1988) (Ed.) *Ecology and Life: Accepting our Environmental Responsibility*, p. 125-137. Word Books, Texas, U.S.A.

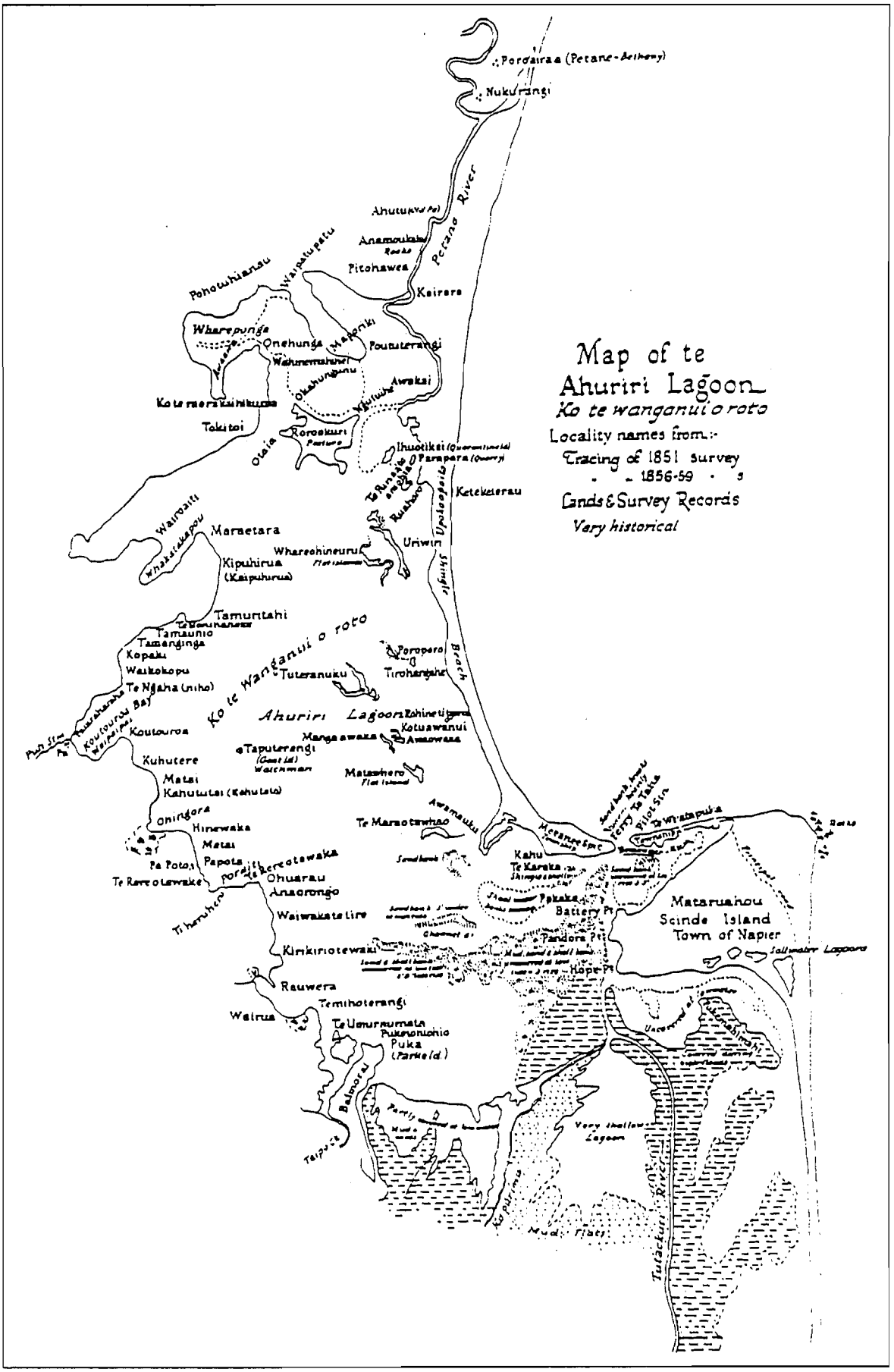
Wickliffe, C., (1994) *Indigenous Claims and the Process of Negotiation and Settlement in Countries with Jurisdictions and Populations Comparable to New Zealand's: Background report for; Environmental Information and the Adequacy of Treaty Settlement Procedures.* A report Prepared for the Parliamentary Commissioner for the Environment.

Williams, D.V., (1989) 'Te Tiriti o Waitangi - Unique Relationship Between Crown and Tangata Whenua?' In Kawharu, I.H., (1989) (ed.) *Waitangi: Maori and Pakeha Perspectives of the Treaty of Waitangi.* Oxford University Press, Auckland, New Zealand.

Woods, K., Gordon, B., (1994) (Investigators) *Environmental Information and the Adequacy of Treaty Settlement Procedures.* A report Prepared for the Parliamentary Commissioner for the Environment.

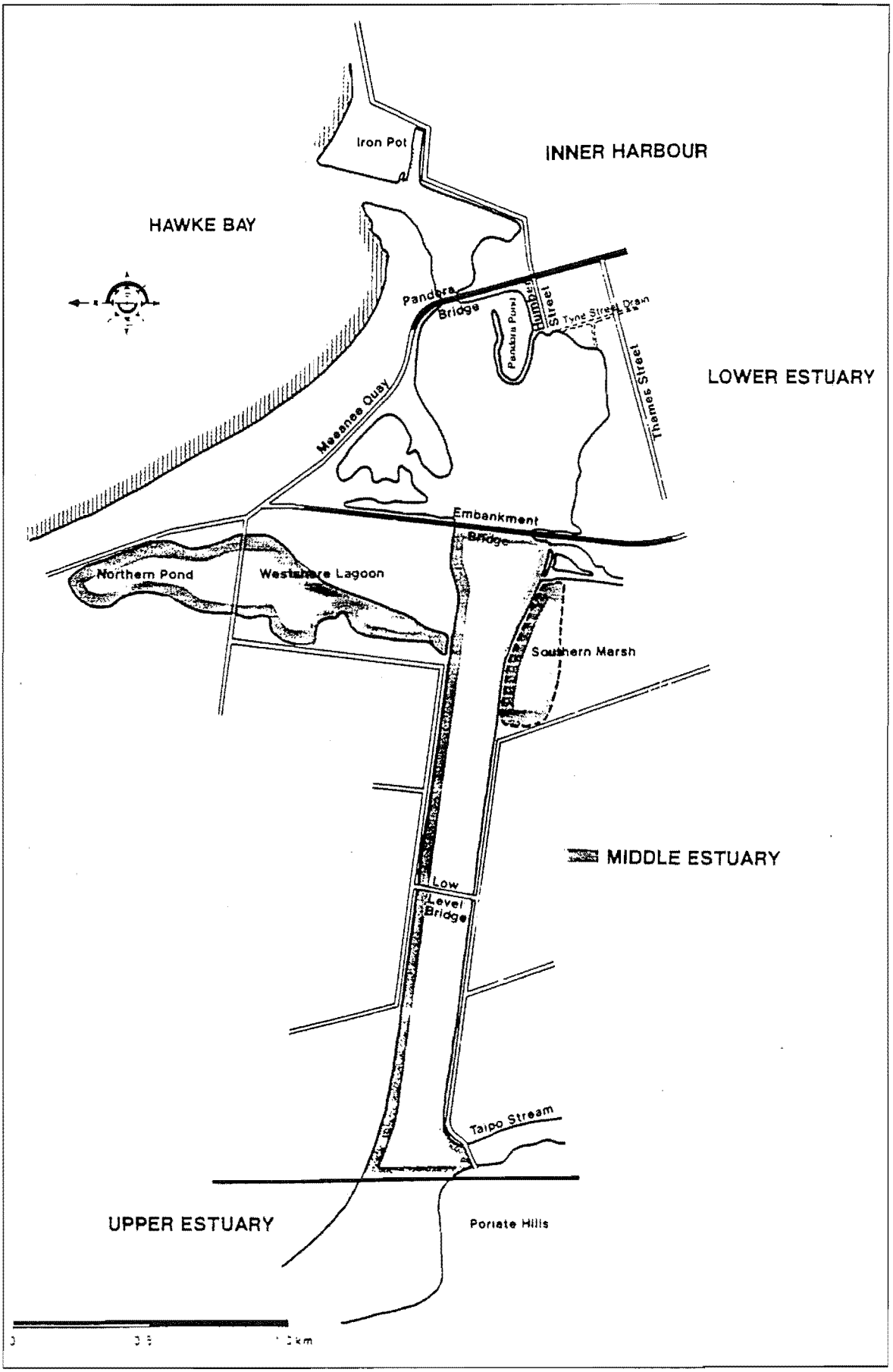
Appendix One: Historic Map of *Te Whanganui a Orotu/Ahuriri* Estuary

(Ahuriri Estuary Draft Management Plan 1991)



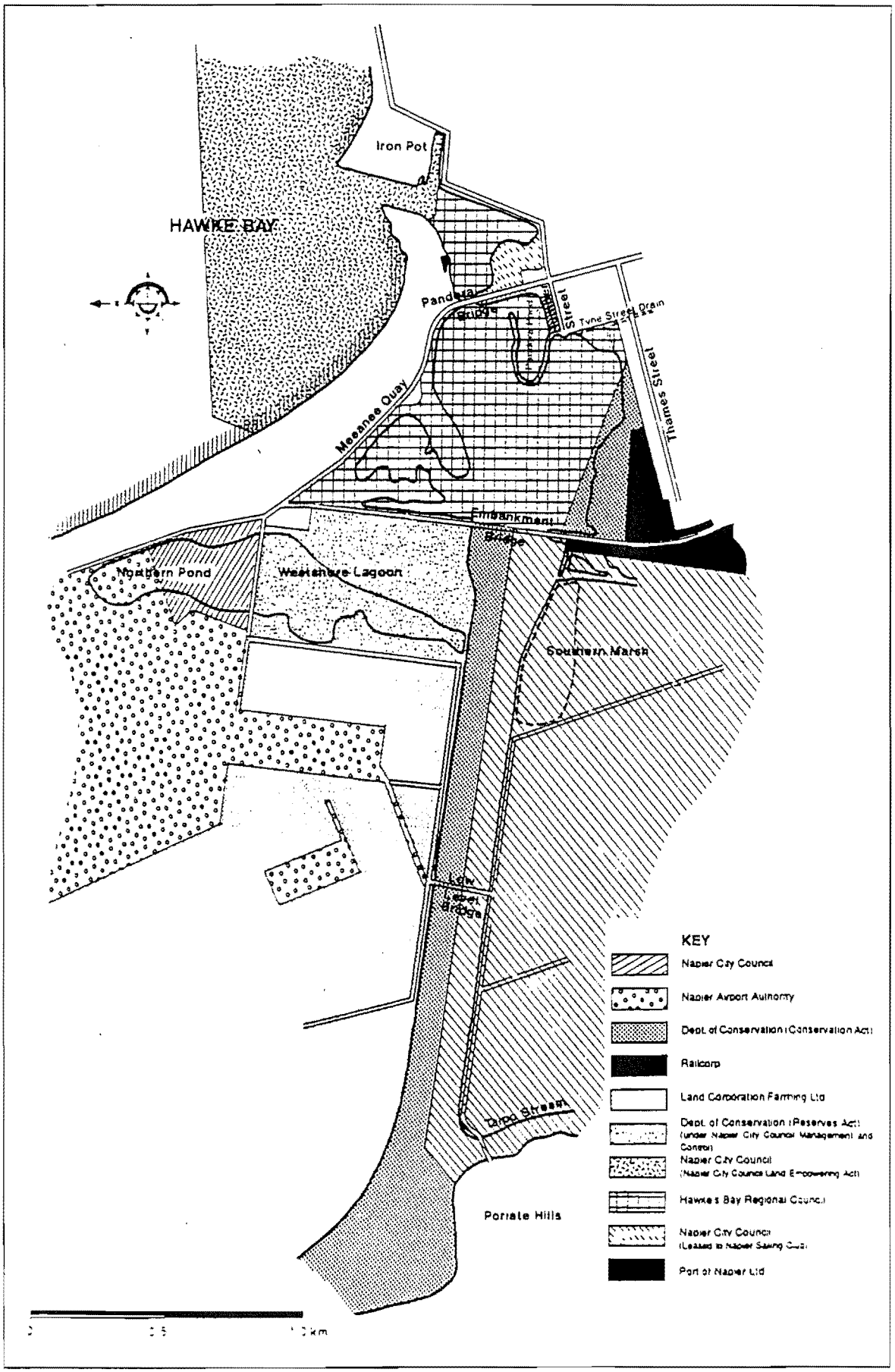
Appendix Two: Ahuriri Estuary Management Areas

(Ahuriri Draft Management Plan 1991)



Appendix Three: Status of Ownership and Control within *Ahuriri* Estuary

(Ahuriri Estuary Draft Management Plan 1991)



Appendix Four: Texts of *Te Tiriti o Waitangi* (from Kawharu, 1994:316)

The Text in English

Her Majesty Victoria Queen of the United Kingdom of Great Britain and Ireland regarding with Her Royal Favour the Native Chiefs and Tribes of New Zealand and anxious to protect their just Rights and Property and to secure to them the enjoyment of Peace and Good Order has deemed it necessary in consequence of the great number of Her Majesty's Subjects who have already settled in New Zealand and the rapid extension of Emigration both from Europe and Australia which is still in progress to constitute and appoint a functionary properly authorized to treat with the Aborigines of New Zealand for the recognition of Her Majesty's Sovereign authority over the whole or any part of those Islands-Her Majesty therefore being desirous to establish a settled form of Civil Government with a view to avert the evil consequences which must result from the absence of the necessary Laws and Institutions alike to the native population and to Her subjects has been graciously pleased to empower and to authorize me William Hobson a Captain in Her Majesty's Royal Navy Consul and Lieutenant Governor of such parts of New Zealand as may be or hereafter shall be ceded to Her Majesty to invite the confederated and independent Chiefs of New Zealand to concur in the following Articles and Conditions.

Article the First

The Chiefs of the Confederation of the United Tribes of New Zealand and the separate and independent Chiefs who have not become members of the Confederation cede to Her Majesty the Queen of England absolutely and without reservation all the rights and powers of Sovereignty which the said Confederation or Individual Chiefs respectively exercise or possess, or may be supposed to exercise or possess, over their respective Territories as the sole Sovereigns thereof.

Article the Second

Her Majesty the Queen of England confirms and guarantees to the Chiefs and Tribes of New Zealand and to the respective families and individuals thereof the full exclusive and undisturbed possession of their Lands and Estates Forests Fisheries and other properties which they may collectively or individually possess so long as it is their wish and desire to retain the same in their possession; but the Chiefs of the United Tribes and the individual Chiefs yield to Her Majesty the exclusive right of Preemption over such lands as the proprietors thereof may be disposed to alienate at such prices as may be agreed upon between the respective Proprietors and persons appointed by Her Majesty to treat with them in that behalf.

Article the Third

In consideration thereof Her Majesty the Queen of England extends to the Natives of New Zealand Her royal protection and imparts to them all the Rights and Privileges of British Subjects.

(Signed) W Hobson Lieutenant Governor

The Text in Maori

Ko Wikitoria te Kuini o Ingarani i tana mahara atawai ki nga Rangatira me nga Hapu o Nu Tirani i tana hiahia hoki kia tohungia ki a ratou o ratou rangatiratanga me to ratou wenua, a kia mau tonu hoki te Rongo ki a ratou me te Atanoho hoki kua wakaaro ia he mea tika kia tukua mai tetahi Rangatira-hei kai wakarite ki nga Tangata maori o Nu Tirani - kia wakaaetia e nga Rangatira maori te Kawanatanga o te Kuini ki nga wahikatoa o te Wenua mei me nga Motu - na te mea hoki, a e haere mai nei.

Na ko te Kuini e hiahia ana kia wakaritea te Kawanatanga kia kaua ai nga kino e puta mai ki te tangata Maori ki te Pakeha e noho ture kore ana. Na, kua pai te Kuini kia tukua a hau a Wiremu Hopihona he Kapitana i te Roiara Nawi hei Kawana mo nga wahi katoa o Nu Tirani e tukua aianei, amua atu ki te Kuini, e mea atu ana ki nga Rangatira o te wakaminenga o nga hapu o Nu Tirani me era Rangatira atu enei ture ka korerotia nei.

Ko te tuatahi

Ko nga Rangatira o te wakaminenga me nga Rangatira katoa hoki ki hai i uru ki roto ki te wakaminenga ka tuku rawa atu ki te Kuini o Ingarani ake tonu atu - te Kawanatanga katoa o o ratou wenua.

Ko te Tuarua

Ko te Kuini o Ingarani ka wakarite ka wakaae ki nga Rangatira ki nga hapu - ki nga tangata katoa o Nu Tirani te tino rangatiratanga o o ratou wenua o ratou kainga me o ratou taonga katoa. Otira ko nga Rangatira o te wakaminenga me nga Rangatira katoa atu ka tuku ki te Kuini te hokonga o era wahi wenua e pai ai te tangata nona te Wenua - ki te mahara o te utu e wakaritea ai e ratou ko te kai hoko e meatia nei e te Kuini hei kai hoko mona.

Ko te Tuatoru

Hei wakaritenga mai hoki tenei mo te wakaaetanga ki te Kawanatanga o te Kuini - Ka tiakina e te Kuini o Ingarani nga tangata maori katoa o Nu Tirani ka tukua ki a ratou nga tikanga katoa rite tahi ki ana mea ki nga tangata o Ingarani.

(Signed) W. Hobson
Consul and Lieutenant Governor

Appendix Five: Excerpts from the *Resource Management Act 1991* (emphasis added).

Some of the sections of the RMA that apply specifically to *Māori.*

5. Purpose -(1) The purpose of this Act is to promote the sustainable management of natural and physical resources.

(2) In this Act, "sustainable management" 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....

6. Matters of national importance - 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 recognise and provide for the following matters of national importance:

(e) *The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.*

7. 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

(e) Recognition and protection of the heritage values of sites, buildings, places, or areas.

8. Treaty of Waitangi - 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 take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

33. Transfer of powers -(1) A local authority that has functions, powers, or duties under this Act may transfer any one or more of those functions, powers, or duties to another public authority in accordance with this section, except that it may not transfer any of the following:

(a) The approval of a policy statement or plan or any changes to a policy statement or plan:

(b) The issuing of, or the making of a recommendation on, a requirement for a designation of a heritage order under Part VIII:

(c) This power of transfer.

(2) For the purpose of this section, "public authority" includes any local authority, iwi authority, Government department, statutory authority, and joint committee set up for the purposes of section 80.

(3) A local authority that transfers any function, power, or duty under this section shall continue to be responsible for the exercise thereof.

(4) A local authority shall not transfer any of its functions, powers, or duties under this section unless -

(a) It has used the special consultative procedure specified in section 716A of the Local Government Act 1974; and

(b) Before using that special consultative procedure it serves notice on the Minister of its proposal to transfer the function, power, or duty; and

(c) Both authorities agree that the transfer is desirable on all of the following grounds:

(i) The authority to which the transfer is made represents the appropriate community of interest relating to the exercise or performance of the function, power, or duty;

(ii) Efficiency:

(iii) Technical or special capability or expertise.

Appendix Six: Interview Questions

Background Data

What is your connection with *Ahuriri* Estuary? How did you get involved? Why? How is(are) the(se) organisation(s) involved in the management *Ahuriri* Estuary? What is your role in the(se) organisations?

History and Management of *Ahuriri* Estuary

What does (do you think) *Ahuriri* Estuary mean(s) to *Ngāti Kahungunu*?

If *Ahuriri* Estuary is important to *Ngāti Kahungunu*, then how might you (they) be able to protect your (their) *toanga* in public spaces? Is it possible for *Ngati Kahungunu* to practice *kaitiakitanga* today? If so, how? If not, what needs to change?

What is the *Māori* involvement in the management of *Ahuriri* Estuary? Do you think this is appropriate? Should *Ngāti Kahungunu* have more say?

Priority of right to use *Ahuriri* Estuary

Should *Māori* values have precedence over *Pākehā* values in regard to resource management?

Ngāti Kahungunu Participation in Resource Management

How are *Ngāti Kahungunu* able to participate in resource management?

Do you think that it is ever appropriate for *Māori* to have exclusive use of a natural resource, like *Ahuriri* Estuary? Would this be the only way to ensure *tino Rangatiratanga*?

On the basis of the second article of the Treaty, how do you think *Ngāti Kahungunu* can ensure the protection and possession of their resources?

What is the traditional decision making process for *Ngāti Kahungunu*? Can you give me some examples? How does this affect the management of natural resources, your *taonga*?

How do you think the Waitangi Tribunal claims being heard in regard to *Ahuriri* Estuary should be decided? How ought *Ahuriri* Estuary be managed in the future? Should *Ngāti Kahungunu* have the final say as to how the area is managed?

The Meaning of *Māori* Terms

What do you understand the following *Māori* terms to mean; *tino rangatiratanga, kaitiakitanga, wāhi tapu, mahinga kai, mana*?

Is there anyone else that you know who I could talk to about this?

Appendix Seven: Fold-Out Pseudonym List

The pseudonyms and their affiliations are:

Adam: ● Waitangi Tribunal expert witness, a *Pākehā*
Alan: ● *Ngāti Kahungunu kaumātua, Taiwhenua* committee member
Anne: ■ Napier City Council (henceforth NCC)
Dave: ● Ahuriri Executive Committee, New Zealand *Māori* Council
Doug: ■ Department of Conservation (henceforth DoC)
Earl: ■ Napier City Council
Eric: ● Hawke's Bay Regional Council (henceforth HBRC)
Fred: ● *Tikanga Māori* expert
Gary: ■ Hawke's Bay Fish and Game Council
Harry: ● Department of Conservation, HBRC *Māori* Committee member
Henry: ■ Hastings District Council (henceforth HDC)
Jane: ■ Ahuriri Protection Society - conservation interest group
Luke: ▸ Past Catchment Board member
Mary: ▸ *Ahuriri* Estuary resource user
Mike: ■ Hawke's Bay Regional Council
Paul: ▸ *Ahuriri* Estuary resource user
Ray: ■ Hastings District Council
Sean: ● Waitangi Tribunal expert witness
Steve: ● Hastings District Council, *Taiwhenua* Committee member
Ted: ▸ Although *Māori* he was not *tangata whenua*