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PARTNERSHIP IN PARKS

A FRAMEWORK FOR KAI TAHU PARTICIPATION
IN NATIONAL PARK POLICY AND PLANNING

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ABSTRACT

The current opportunities for Kai Tahu to participate in national park policy and planning are, in the opinion of most Kai Tahu, inadequate. Kai Tahu are often consulted by the Department of Conservation (DOC) but their advice and comments are usually sought at a late stage in the decision making process. The Court of Appeal has said that the Treaty of Waitangi requires a partnership between Maori and the Crown. The present arrangements for representation and consultation do not provide a basis for a partnership between the Crown and Kai Tahu in policy and planning for national parks.

This study proposes an institutional framework based on a negotiated partnership between the Crown (ie DOC) and Kai Tahu in policy and planning for national parks. Under this framework, the future Iwi Authority of Kai Tahu and the DOC would be required to negotiate with one another over matters of mutual concern. Both parties would have recourse to a tribunal which would be guided by the principles of the Treaty of Waitangi.

The outcome of such an approach is difficult to predict because it would be very dependent on the initial negotiations and the roles, rights and obligations assigned to each partner. The outcome of partnership is also likely to be influenced by the nature of any remedy Kai Tahu receive, or hope to receive from their claim to the Waitangi Tribunal. However, some general comments can be made. Such an approach would have implications for the funding of both Kai Tahu and the DOC, the role of the Conservation Boards and for park interpretation. The day to day management of the parks could be expected to remain much the same.

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GLOSSARY OF MAORI WORDS

AOTEAROA	New Zealand
HUI	meeting
IWI	tribe
KAITIAKI	guardian
KAITIAKITANGA	guardianship
KAWANATANGA	governance
MANA	prestige, authority
MAUKA	mountain
PAKEHA	New Zealander of European descent
RAHUI	temporary protection
RANGATIRATANGA	chieftainship
ROHE	boundary, tribal territory
TAONGA/TAOKA	prized possession
TAPU	sacred, restricted
TIKANGA	law, custom

CHAPTER I

INTRODUCTION

Kai Tahu¹ have more national parks within their rohe than any other Maori tribe. The land contained in these national parks includes many areas of spiritual significance, and prominent features that are symbols of Kai Tahu tribal identity. The parks now include areas once prized for their food and other resources. They also include mountain passes that were once pathways for overland travel. Most of our South Island national parks were a part of Kai Tahu territory; a part of the group identity, and part of the primary land resource.

National park management in New Zealand has followed the "Yellowstone model". This approach to management sees people as external to the park environment and therefore potentially harmful to it. While New Zealand national parks legislation has preserved many areas of land and features important to Maori, Maori authority over, and use of traditional

¹ In deference to the Kai Tahu dialect, I use K rather than Ng for most Maori words. I use the form Ngai Tahu when referring to the tribe's claim to the Waitangi Tribunal as that is the spelling used in that claim. Quotations retain their original spelling.

resources in the parks has been restricted by the designation "national park". Pakeha have emphasised the "wilderness" values of our national parks and have tended to forget, or ignore, the spiritual, cultural and historical significance that the parks have for Maori.

Today's national parks largely fail to reflect the values, attitudes and needs of Maori. Although the Department of Conservation (DOC), in its consultations with Maori people over the management of the conserved estate, has shown a moderate level of commitment to Maori interests and concerns, the current arrangements for Maori participation in national park policy and planning are, in the opinion of most Kai Tahu, inadequate. The objectives of this study are (i) to identify the issues that concern Kai Tahu with respect to national park policy and planning, (ii) to propose an institutional framework based on a partnership (between the Crown and Kai Tahu) that could enable Kai Tahu to be actively involved in national park policy and planning and (iii) to consider and report on the implications of such an approach.

The national parks within the Kai Tahu rohe form a considerable part of the Ngai Tahu claim to the Waitangi Tribunal. Kai Tahu want to be involved directly and as of right in the future administration

of these parks. This has most often been stated as wanting a partnership with the Crown (ie DOC) in national park policy and planning as a means of reconciling the rights of Kai Tahu with national park interests.

This is not a discussion of national park ownership. The issues revolve around rights of control and authority which are independent of ownership. As the Waitangi Tribunal stated in the Manukau report, ownership and control (that is management) "are properly severable" (Waitangi Tribunal 1985:103). The obligation to protect rangatiratanga can be met through such means as providing tribes with greater authority, without a transfer of ownership. I have assumed for the purposes of this study that, whatever the findings of the Waitangi Tribunal with respect to the Ngai Tahu claim, the national parks included in the claim will remain Crown land managed by the DOC.

Partnership between Kai Tahu and the DOC in national park policy and planning is argued for here as a Treaty right (independent of the Ngai Tahu claim). However, it is recognised that the nature and implications of this partnership could depend very much on the position in which Kai Tahu find themselves as a result of their claim. For example, if Kai Tahu receive, through remedy of their claim, some business

opportunities associated with the parks, this could be expected to influence Kai Tahu perspectives on policy concerning business opportunities.

Information for this study has come from many sources including discussions with Kai Tahu elders and DOC Maori Liaison Officers. From these people I have learnt something of the spiritual, historical, and cultural significance that the southern national parks have for Kai Tahu.

Chapter II presents a brief history of national parks in New Zealand and compares Maori and Pakeha perspectives of the parks in order to explain why Maori and Pakeha sometimes have different priorities for park management. Chapter III considers the implications of the Treaty of Waitangi for national park policy and planning and describes the concerns Kai Tahu have with current park policies and their frustrations with the present opportunities for participation. In chapter IV, a framework based on a negotiated partnership between Kai Tahu and the DOC is proposed and the implications of such an approach are discussed. Chapter V presents the conclusions of this study.

CHAPTER II

THE SOUTHERN NATIONAL PARKS

1. TE WAKA O AORAKI

Aoraki is the mountain
Waitaki the river
Tahupotiki the man
Kai Tahu the people

(traditional motto)

In the Waitaha tradition preserved by Kai Tahu, the South Island is Te Waka o Aoraki (The Canoe of Aoraki). From the Marlborough Sounds where the carvings on the bow of the canoe dropped off, to the stern post at Bluff Hill, the South Island is one big canoe stranded on a reef and tilted to one side. Aoraki and his brothers remain there to this day, as the Southern Alps, perched along the side of the wreckage, frozen by the south wind and turned into stone.

After the wreckage of Te Waka o Aoraki, Tu-te-Rakiwhanoa the son of Aoraki came looking for his father. He tidied up the wreckage in order to make it fit for people to come and live in. He made the peninsulas and shaped the valleys and fiords. The last and greatest of his works was Piopiotahi or Milford Sound. So it was, according to tradition, that the South Island and its national parks with their rich

diversity of landscape came to be shaped. The prominent features of the South Island landscape are symbols of Kai Tahu identity for it is by their mountain, land and rivers that the Kai Tahu are known.

Kai Tahu have more national parks within their rohe than any other Maori tribe (Figure 1)². Each of the parks is significant to Kai Tahu in its own way. Some are areas of particular spiritual significance, some are in areas once prized for their food and other resources. Some parks contain passes that were used for overland travel.

For example, Aoraki (Mount Cook) in Mount Cook National Park is the centre of the Waitaha creation story of the South Island. In this Waitaha tradition inherited by Kai Tahu, Aoraki is not just a mountain, he is also a god.

Te Waka O Aoraki is the ancient name of this island later to be called Te Waka o Maui and now known as Te Wai Pounamu - the glistening waters of greenstone or the place of greenstone. It is the repository of nga taonga o nga tipuna (the treasured land of the ancestors). But Aoraki towers majestically as the sacred alter to the gods. The shadow of Aoraki is the ethos of this land. Aoraki mauka tapu (Gray 1989).

²Note that the position of the northern boundary of the Kai Tahu rohe is disputed by the Rangitane tribe of the Blenheim area who claim a substantial part of the area that Kai Tahu consider to be their traditional territory.

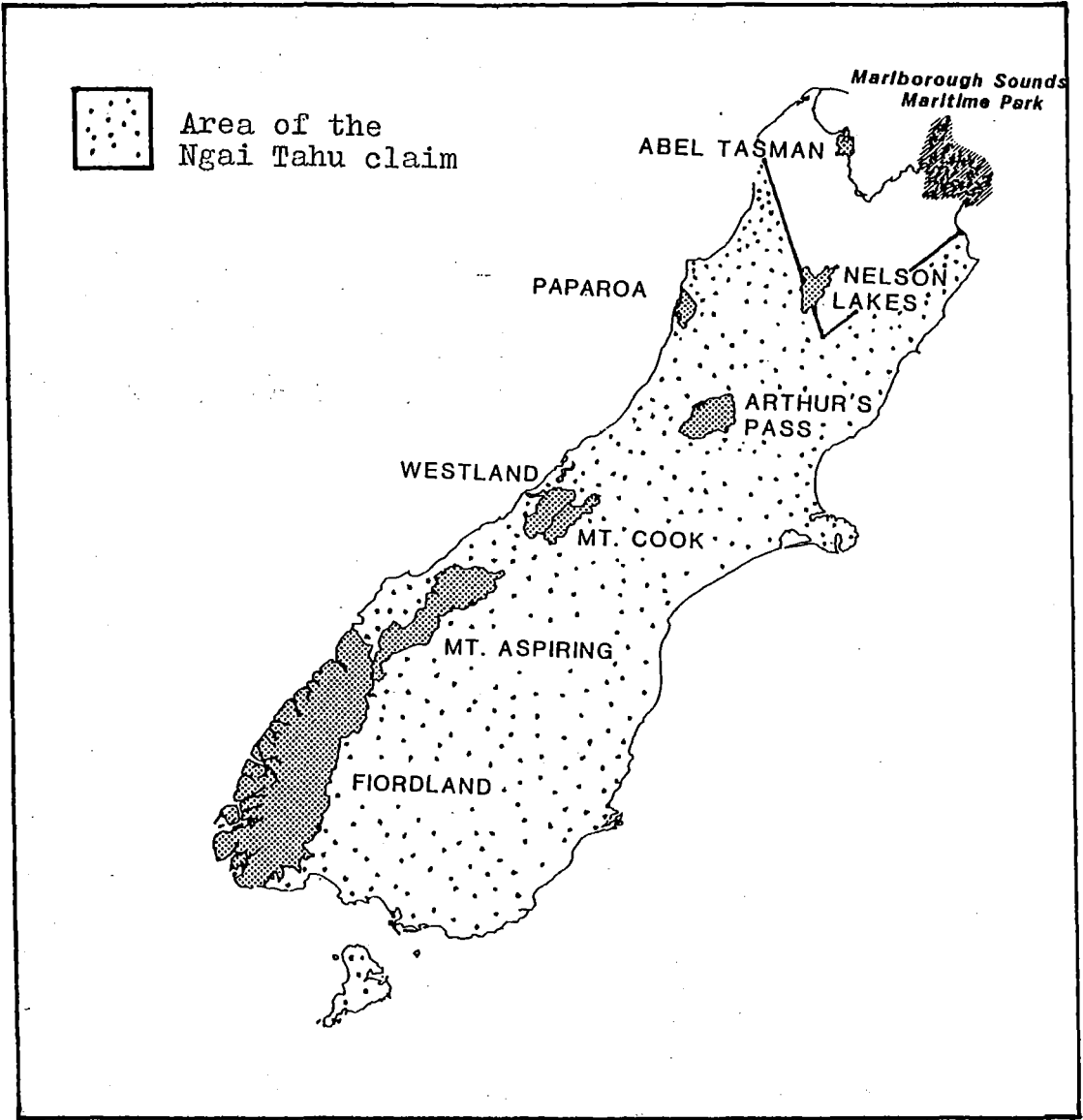


FIGURE 1 :
National Parks included in the Ngai Tahu Claim.
SOURCES: DOC and Ngai Tahu Trust Board.

Of Fiordland, Paul Temm (senior legal counsel for the tribe) is reported as saying (to the Waitangi Tribunal), "Fiordland is ... one of the great cradles of Ngai Tahu mythology and tradition. It is an area with a history as impressive as its landscape..." ("The Press" 17/8/1989:5). In pre-European times, Maori went to Fiordland for months at a time on seasonal rounds. The main attractions on the coast were seals, birds, fish and shellfish and inland, particularly around the large lakes there were moa to hunt.

Although areas now contained in national parks are renowned for their wild character and isolation, the first Maori inhabitants would not have considered them as "wilderness". Such areas would have been simply part of their territory; part of their personal and group identity and part of the primary land resource. There was no need for parks in a land still relatively "untamed".

2. A PHILOSOPHY OF WESTERN NATIONAL PARKS

With the establishment in 1872 of Yellowstone National Park, an approach to national park management was initiated that would be emulated in many countries. "Here at last was a park, set aside to be preserved in its natural state for all people to enjoy and appreciate - an American idea that other nations were

to follow" reads a National Park Service sign at Yellowstone National Park (Lucas 1973).

This management approach, often called the "Yellowstone model" views national parks as "wilderness preserves with no place in them for people other than as visitors" (Stevens 1986). Humans are seen as external to the park environment and therefore potentially harmful to it. National Parks in New Zealand have largely followed this model.

We in New Zealand share with Canada and the United States perhaps the 'purest' form of national park system, where the landforms and indigenous biota are protected from man-induced change...from the beginning of parks in this country it has been policy to protect all indigenous plants and animals...(Rennison 1972)

While New Zealand national parks preserve many areas of land and features important to Maori, Maori authority over and traditional use of these areas is restricted. This approach contrasts sharply with national parks elsewhere in the world where humans are considered part of the park. For example, in Australia, Sweden, Norway and elsewhere indigenous peoples are guaranteed rights to hunt and/or to herd.

3. NATIONAL PARKS IN NEW ZEALAND

With European settlement came the parcelling of land for sale, private use and profit. It was concern over the use of outstanding natural areas for private profit that led to the establishment of the first and subsequent national parks in New Zealand. In 1886, at a Native Land Court sitting to consider the fate of the mountains Tongariro, Ngauruhoe and Ruapehu; Te Heuheu IV Tukino, paramount chief of the Ngati Tuwharetoa, said to Lawrence Grace his son-in-law and son of the pioneer missionary of Taupo:

If our mountains of Tongariro are included in the blocks passed through the courts in the ordinary way, what will become of them? They will be cut up and perhaps sold, a piece going to one pakeha and a piece to another.....I cannot consent to the Court passing these mountains through in the ordinary way. After I am dead, what will be their fate?

Grace replied "Why not make them a tapu place of the Crown, a sacred place under the mana of the Queen?... Why not give them to the Government as a reserve or park, to be the property of all the people of New Zealand" (Lucas 1973). The New Zealand national park system had its genesis in 1887 when Te Heuheu Tukino and other Maori chiefs presented to the Crown, land which formed the nucleus of Tongariro National Park.

Tongariro National Park was formally constituted by Act of Parliament in 1894. Egmont National Park followed in 1900 with another special Act. Fiordland became a public reserve "for a national park" in 1905 (Lucas 1973). It was the first park to be established in traditional Kai Tahu territory.

New Zealand had national parks, but no coordinated national park system or policy until the enactment of the National Parks Act 1952. The National Parks Act 1952 defined its purpose as:

...preserving in perpetuity as national parks, for the benefit and enjoyment of the public, areas of New Zealand that contain scenery of such distinctive quality or natural features so beautiful or unique that their preservation is in the national interest.

This Act also established a central body, the National Parks Authority which brought a greater degree of conformity to the National Park Boards.

The National Parks Act 1980 established a National Parks and Reserves Authority (NPRA), with responsibilities for reserves as well as national parks. There are twelve national parks and reserves boards. Their main functions are to prepare, review, and amend management plans for the national parks within their jurisdiction and give advice on the interpretation of management plans.³ They also have an

advisory and reviewing role in relation to reserves. The day to day administration of national parks and reserves and the provision of staff is the responsibility of the Department of Conservation (DOC).

Today, the national park network of twelve natural areas protects large tracts of indigenous forest, lakes, rivers, mountains and coastline and the indigenous flora and fauna they contain. Nationwide, they cover more than ten percent of the country. Three of these parks, Fiordland, Mount Cook and Westland have been designated World Heritage Sites in recognition of their outstanding universal value. They form an essential part of the proposed South West New Zealand World Heritage area. These parks and other land within the proposed South West New Zealand World Heritage area are all within the Kai Tahu rohe.

In addition to their conservation, scientific and education value, national parks also provide opportunities for recreation. Activities range from picnicking, walking and swimming to tramping, mountaineering, skiing and scenic flights.

³In practice, the Department of Conservation prepares management plans which must then be approved by the local National Parks and Reserves Board.

National parks are central to the tourism industry which earns more than one billion dollars annually. For example, the Mount Cook National Park Management Plan reports that an economic study of Mount Cook National Park estimated that some 190,000 people visited Mount Cook National Park in 1984, spending a total of \$9.9 million in the Mackenzie Region. Approximately 30% of those visitors were from New Zealand while the remaining 70% were from overseas (Aorangi National Parks and Reserves Board 1986).

4. THE SOUTHERN NATIONAL PARKS AND THE NGAI TAHU CLAIM

The land contained in Fiordland, Mount Cook, Mount Aspiring, Westland, Arthurs Pass and Paparoa National Parks, and in part of Nelson Lakes National Park, is part of the Ngai Tahu land claim to the Waitangi Tribunal. The claim is filed against all Crown land within the traditional rohe of Kai Tahu (Figure 1).

Claim to all Crown land in the Kai Tahu rohe was provoked by the State Owned Enterprises legislation of 1986. The proposal to transfer Crown assets into the State Owned Enterprises was seen by Kai Tahu as limiting the Crown's capacity for remedy of their claims. Kai Tahu filed its claims against all Crown land within its traditional rohe to prevent the Crown

disposing of assets which might subsequently be ruled to belong to Kai Tahu.

For some parks, the claim involves disputes over the boundaries of specific land purchases. For example, Fiordland is argued by the Crown to have been included in the Murihiku purchase of 1853 but Kai Tahu claim that that agreement extended westward only as far as the Waiiau River. Likewise, Mt Cook National Park is in the disputed "Hole in the Middle" of the 1848 Kemp Purchase. Kai Tahu claim that the Kemp purchase extended from the east coast, inland only to the foothills. The Crown argues that the Kemp purchase extended all the way to Arahura on the West Coast. Other parks are under claim simply because they are Crown land.

5. MAORI AND PAKEHA PERSPECTIVES OF NATIONAL PARKS

When Europeans first arrived in Aotearoa, the Maori way of life was not seriously threatening the natural environment. Over their thousand years of settlement, Maori had gradually adopted practices such as rahui to ensure that resources were sustained. This development of a conservation ethic is reflected in traditional spiritual beliefs.

Maori closeness to nature and the immediacy of their dependence upon it, their intimate and profound knowledge of plants, animals and landscape, led to a view of the world which recognised the sacredness of other life forms and the landscape itself. By seeing themselves in the natural world and thus personifying all aspects of the environment, they acquired a fellow-feeling for the life forms and other entities that surrounded them, and they saw a kinship between all things (Murton 1987:107).

Conservation had become the first priority for all resources. Within this limit however, Maori used all the natural resources that their land could provide. It was not necessary to permanently remove from use an area of land or coast for preservation purposes. Conservation was happening everywhere.

European settlers had different values and priorities. Land was generally seen as a commodity that could be bought, sold, and developed for profit. Conservation was rarely a consideration. It was only after extensive forest clearance and privatisation of land that the need for national parks and reserves was recognised. Land was then compartmentalised. Most was available for exploitation; and, at the other extreme, some was set aside to be preserved in its natural state. Writing of national parks and other reserves O'Regan (1988) points out that "they are Pakeha responses to the Pakeha problem in the same sense as the Maori conservation principle was a Maori answer to a Maori imported problem".

Differing perspectives toward land and resources may be reflected in the attitudes different cultures have toward national parks. As Devlin (1987) has noted:

Park systems are a product of the traditions and values of Western civilisations and it should not be surprising to us that groups whose value systems differ markedly from these, should see parks differently.

While it is recognised that not all Maori hold to traditional Maori views, and that some Pakeha may think of national parks in ways similar to those traditional Maori views, it is possible to make some general comments about differing Maori and Pakeha attitudes toward national parks.

Maori may identify more strongly with particular parks because of their tribal associations with those places. Lomax (1988) conducted a survey of Maori use and non-use of national parks. Lomax found that although a large proportion of her Maori sample appreciate the national parks in much the same way as the general population, and so relate to them for their natural beauty and as a place to escape from city life, there is also an important part of the sample who identify with the parks in more traditional Maori ways. Respondents from this group appeared to identify more strongly with particular parks. For example, Tuhoi

attitudes to the Urewera and Tuwharetoa attitudes to Tongariro reflect tribal associations with these places. In contrast, Pakeha are likely to identify most strongly with those parks they have greatest experience of or that provide the leisure opportunities that an individual prefers.

A workshop at the National Parks Centenary Seminar discussed Maori relationships to national parks. The report from that workshop suggests that Maori people do not go to a park for the natural interests so much as for the experience of "being part of the place where your bones come from", and that Maori are more interested in their own tribal area than in national parks per se (The Maori Challenge to Management Workshop Participants 1987). This reflects the strong affection for and attachment to ancestral land. It just so happens that many of the national parks contain mountains, lakes and rivers that are central to the identity of particular tribes.

Devlin (1987) notes that Maori people are under-represented as national park users. There may be several factors contributing to this. First, there are often financial and time constraints which limit national park use among lower socio-economic groups, and Maori are over-represented in lower socio-economic groupings. Second, preferred leisure activities may

contribute to the under-use of national parks by Maori. For example, some people have suggested that Maori people spend more of their available leisure time visiting family than do Pakeha and so are less likely to use their leisure time visiting parks.

Devlin (1987) suggests that Maori under-use of national parks may be related to the traditional Maori view of nature which sees people and nature as related. He says "it is hardly surprising that Maori people find no need to return to nature. They have never been cut off from it!". Although Maori do not use national parks to the same extent as Pakeha, this does not mean that the parks are unimportant to Maori. Rather, they are important in a different way.

In the Maori view of the natural world, all life forms, land and water are related because they are all descended from Ranginui the "sky father" and Papatuanuku the "earth mother". The land and its people are therefore interrelated and inseparable.

Whaitiri (1988) explains the Maori relationship to land in this way:

At teenage status the child was taken to the boundaries and shown the boundaries of the tribal domain. Having been severed from his natural mother the child was returned to the earth mother. Wherever the child trod the boundaries of the tribal domain that was where the child belonged. We belonged to the land. This is what turangawaewae means. We do not own the land, we belong to it.

It is this relationship to the land contained in the national parks that is most important to Maori. This relationship to, and concern for, ancestral land is not dependent on visiting the parks that now contain that land.

There are also differences in how the resources within national parks are perceived by Maori and Pakeha. Many Maori view national parks as potential sources of important cultural resources such as kiekie and flax. Pakeha conservationists on the other hand are more likely to view national parks as sacrosanct areas that should be preserved from all extractive resource use.

O'Regan (1988) summarises these differences well:

I believe most Maori who have thought about it with any degree of information or experience place a high value on the contents of the heritage estate. They approach it, however, from a philosophical basis which is different in kind from that of many Pakeha conservationists. They see values and resources which are treasured for reasons which are frequently different. The net result is, though, that for whatever reason they want that estate conserved...As much as anything it's a matter of the ancestral heritage of two different cultures. Like it or not, there's only one environment for them to treasure and there's no option but for them to treasure it together - in their different ways.

The present concern of Kai Tahu is that the national parks largely fail to reflect the values, attitudes and needs of both Maori and Pakeha culture. Chapter III will examine some of the concerns that Kai Tahu have with present national park policy, planning and management.

CHAPTER III

KAI TAHU PARTICIPATION IN NATIONAL PARK
POLICY AND PLANNING

1. THE LEGAL FRAMEWORK

Until recently, legislation affecting national parks has paid little attention to matters of concern to Maori. The National Parks Act 1980 makes no reference to Maori except with respect to representation on the Tongariro/Taupo and Taranaki National Parks and Reserves Boards. Park management plans prepared under this Act have, until recently, made only scant reference to historical Maori associations with the parks.

The new environmental legislation (Environment Act 1986 and the Conservation Act 1987) that accompanied government restructuring in the mid 1980s contains references to the Treaty of Waitangi and other matters of concern to Maori. Of particular significance to this study are the provisions of the Conservation Act 1987.

The Conservation Act 1987 established the Department of Conservation (DOC) which has, as one of its functions, the administration of the National Parks Act 1980. Section 4 of the Conservation Act states

that "this Act shall be so interpreted as to give effect to the principles of the Treaty of Waitangi", placing an obligation on the DOC to act in accordance with those principles.

The DOC has addressed this obligation in its 1989/90 Corporate Plan which states that "shaping internal policy formulation procedures and consultation arrangements to ensure full account is taken of Treaty of Waitangi issues" is one of a number of issues that will, where necessary, take precedence over normal business. That Corporate Plan also lists as one of the Department's objectives:

To manage, and sustain where possible, the sensitive use of natural resources including minerals, plants and animals and those traditionally used by Maori" (emphasis mine) (Objective 2.2).

The scope of this objective includes "provision of cultural materials and products and the maintenance of Maori interests in conservation and in natural resource uses consistent with the Treaty of Waitangi" and development of liaison with Maori.

Objective 3.1 of that Corporate Plan which is "to raise public awareness of New Zealand's heritage through education and information and to advocate its protection" includes in its scope the education of

staff about tikanga Maori and the implications of the Treaty of Waitangi. The establishment of a Maori unit to provide advice and assist with liaison requirements is also envisaged.

It is uncertain whether Section 4 of the Conservation Act necessarily applies to the self-contained National Parks Act which does not itself contain any reference to the Treaty of Waitangi.⁴ However, Government policy directives such as Te Urupare Rangapu (Minister of Maori Affairs 1988), which makes chief executives accountable for getting a Maori input into corporate planning and policy, clearly indicate the Government's intention that Maori concerns be taken account of in all work of Government Departments. Also, all the DOC staff with whom I have discussed this matter consider that the Department's obligations under the Treaty do extend to national parks.

The present National Parks and Reserves Authority (NPRA) and the National Parks and Reserves

⁴Alty (1987) considers that except where any clear inconsistency arises, the National Parks Act 1980 is to be administered so as to give effect to the Treaty of Waitangi. Round (1987) considers that the references to the principles of the Treaty of Waitangi contained in the Conservation Act 1987 do not apply to the self-contained National Parks Act.

Boards (NPRBs) may not be bound to observe the principles of the Treaty of Waitangi since the National Parks Act 1980 under which they are established makes no reference to either the Treaty or the principles of the Treaty. However, the impending New Zealand Conservation Authority and the local Conservation Boards will be established by an amendment to the Conservation Act 1987 and will, therefore, be required to give effect to the principles of the Treaty of Waitangi.

2. THE TREATY OF WAITANGI AND THE PRINCIPLES OF THE TREATY OF WAITANGI

On the assumption that national parks are to be managed in accordance with the principles of the Treaty of Waitangi, it is now necessary to consider what those principles are and what they mean for national parks.

The Treaty of Waitangi contains three Articles. In Article I, Maori ceded the authority to govern to the Crown. In Article II, the Crown guaranteed to Maori the "...full, exclusive and undisturbed possession of their lands, estates, forests and fisheries and other properties". In Article III, Maori were accorded royal protection and all the rights and privileges of British subjects.

The practical significance of the Treaty and how it is to be applied is currently being discussed and debated across many sectors from health, education and social welfare to natural resource management at all levels of government. Guiding these attempts to address the Treaty are the Treaty "principles". The principles of the Treaty follow from the text of the Treaty itself. As the Waitangi Tribunal has commented "...the words are most important, of course: but they are essential, not because they define the right but because they describe the principle that gave rise to it" (1988:213). The principles of the Treaty of Waitangi are not fixed. They are subject to reinterpretation as new principles continue to evolve. Principles of the Treaty of Waitangi have been defined by the Waitangi Tribunal, the Court of Appeal (in the 1987 New Zealand Maori Council case), the New Zealand Maori Council and the Crown (in that same case) and the Government.

Table 1 gives those principles defined so far by the Waitangi Tribunal and the Court of Appeal. Principles defined by the Waitangi Tribunal are not binding in New Zealand law as the Tribunal's powers are recommendatory only. Those defined by the Court of Appeal which has interpreted references to Treaty "principles" included in statute are now embodied in case law. I will draw on the findings of the Court of

Waitangi Tribunal	Court of Appeal
<p>THE ESSENTIAL BARGAIN</p> <p>The exchange of the right to make laws for the obligation to protect Maori interests.</p>	<p>The acquisition of sovereignty in exchange for the protection of <i>rangatiratanga</i>.</p>
<p>PARTNERSHIP</p> <p>The Treaty implies a partnership, exercised with utmost good faith.</p> <p>The Treaty is an agreement that can be adapted to meet new circumstances.</p> <p>The needs of both Maori and the wider community must be met, which will require compromises on both sides.</p> <p>The courtesy of early consultation.</p> <p>The principle of choice: Maori, Pakeha, and bicultural options.</p>	<p>The Treaty requires a partnership and the duty to act reasonably and in good faith (the responsibilities of the parties being analogous to fiduciary duties).</p> <p>The freedom of the Crown to govern for the whole community without unreasonable restriction.</p> <p>Maori duty of loyalty to the Queen, full acceptance of her Government through her responsible Ministers, and reasonable cooperation.</p>
<p>ACTIVE PROTECTION</p> <p>The Maori interest should be actively protected by the Crown.</p> <p>The granting of the right of pre-emption to the Crown implies a reciprocal duty for the Crown to ensure that the <i>tangata whenua</i> retain sufficient endowment for their foreseen needs.</p> <p>The Crown cannot evade its obligations under the Treaty by conferring its authority on some other body.</p> <p>The 'taonga' to be protected includes all valued resources and intangible cultural assets.</p>	<p>The duty of the Crown is not merely passive but extends to active protection of the Maori people in the use of their lands, and other guaranteed <i>taonga</i> to the fullest extent practicable.</p> <p>The obligation to grant at least some form of redress for grievances where these are established.</p>
<p>TRIBAL RANGATIRATANGA</p> <p>The Crown obligation to legally recognise tribal <i>rangatiratanga</i>. <i>Tino rangatiratanga</i> includes management of resources and other <i>taonga</i> according to Maori cultural preferences.</p>	<p>Maori to retain chieftanship (<i>rangatiratanga</i>) over their resources and <i>taonga</i> and to have all the rights and privileges of citizenship.</p>

TABLE 1:
Summary of Principles of the Treaty of Waitangi defined by the Waitangi Tribunal and the Court of Appeal.

SOURCE: Parliamentary Commissioner
for the Environment, 1988.

Appeal and the Waitangi Tribunal in discussing the significance of the principles of the Treaty for national park policy and planning.

(1) The Essential Bargain

The "essential bargain" of the Treaty of Waitangi is the exchange of the right to make laws for the obligation to protect Maori interests. The Waitangi Tribunal has observed that the cession of kawanatanga gives power to the Crown to legislate for all matters relating to "peace and good order" and that that includes the right to make laws for conservation control. However, this does not give the Crown the right to disregard the authority of the tribes to exercise a control (Waitangi Tribunal 1988:232). The Crown cannot generally make laws which override rangatiratanga, but can when the need arises; for example, to make conservation laws in the interests of all persons. I consider that this "essential bargain" gives the Crown the power to legislate for national parks.

(2) The Partnership Principle

The Court of Appeal has said that the principles of the Treaty of Waitangi "require the Pakeha and Maori partners to act towards each other reasonably and with the utmost good faith" (Cooke 1987:373) (emphasis

mine). The practical meaning of this partnership is yet to be resolved.

Partnership can be equal, 50:50, or unequal with one partner having greater control. It is my view however that increased consultation with no change in decision making power does not constitute partnership. Implementation of partnership under the Treaty of Waitangi must involve some greater share by Maori people in decision making.

(3) The Principle Of Active Protection

The Court of Appeal has also said that "the duty of the Crown is not merely passive but extends to active protection of Maori people in the use of their lands and waters to the fullest extent practicable" (Cooke 1987:370). The Waitangi Tribunal has noted in several of its reports that the "taonga" (taoka in the Kai Tahu dialect) to be protected includes all valued resources and intangible cultural assets. There are many resources such as kiekie, pingao and berries within national parks that are considered taoka by Kai Tahu. Access to, and authority over, these taoka is a concern that has been frequently mentioned in my discussions with Kai Tahu people. That concern has also been voiced at several hui. It is my view that the principle of active protection obliges the DOC to

make every effort to provide for access to resources for traditional purposes.

(4) The Principle Of Tribal Rangatiratanga

The Court of Appeal considers that

"rangatiratanga", as written in the Maori text of the Treaty, means that Maori are to retain chieftainship over their resources (Bisson 1987:380). Likewise, the Waitangi Tribunal has stated that "te tino rangatiratanga" in the Treaty means "full authority status and prestige with regard to their possessions and interests" (Waitangi Tribunal 1985:90).

Recognition of Kai Tahu rangatiratanga over their traditional resources in national parks would therefore mean recognising Kai Tahu authority to manage them or have them managed in a way that Kai Tahu consider appropriate.

Language and culture are also "taoka".

Recognition of rangatiratanga must acknowledge the right of Kai Tahu to control the use of their own language and culture. This has implications for the interpretation of Maori culture and history in national parks and for the naming of park features both of which are matters of concern to Kai Tahu.

As the concerns outlined in the next section show, Kai Tahu are not entirely satisfied that the

principles of the Treaty of Waitangi are being followed in present national park policy, planning and management.

3. ASPECTS THAT CONCERN KAI TAHU

Kai Tahu people stress that because of their traditional role as kaitiaki they still have a responsibility for the land and resources within national parks even though they are now owned by the Crown. As Nottingham (1986) notes:

Kaitiakitanga does not cease for the traditional guardians of the land when some outside body takes it under its protection however well-intentioned such protection may seem. Those who are kaitiaki have no say or option in the matter; their responsibility is as ineradicable as their whakapapa.

There are several aspects of national park policy, planning and management that are of particular concern to Kai Tahu. These are discussed below.

(1) Authority Over The Use Of Traditional Resources

The national parks contain many natural resources that are or were used by Maori. Opportunities to gather plants for arts, food and medicines have diminished with the clearance of land and, as a consequence, access to these resources in the remaining natural areas contained in national parks and

reserves is important to many Kai Tahu. Section 30 (2) of the Conservation Act 1987 allows for plants intended for traditional Maori purposes to be taken from a conservation area if authorised by the DOC. Although the DOC is generally sympathetic to requests by Kai Tahu to harvest traditional resources, from the point of view of many Kai Tahu, there are problems with these current arrangements which they believe to be overly bureaucratic and too slow.

Many Kai Tahu consider that the DOC lacks the knowledge to manage resources of importance to Maori and that Kai Tahu should in any case be able to control their own use and distribution of their traditional resources. Kai Tahu want these resources to be available to them as of right, and subject only to conditions necessary for resource conservation, rather than at the discretion of the DOC. Most Kai Tahu with whom I have discussed this believe that legislative change is required to guarantee access to these resources.

(2) Development Within Parks

Since the national parks contain many areas and natural features of spiritual and cultural significance to Kai Tahu, Kai Tahu wish to ensure that development within the parks does not impinge on those areas and features.

(3) Interpretation in Parks

Writing of the Ngai Tahu claim over the southern national parks, O'Regan (1989) says that "above all the tribe has stated its desire to exercise absolute authority in the Maori historical and cultural interpretation of the parks to the public". Many Kai Tahu regard their traditions in a proprietary way and believe that most Department of Conservation staff are not competent to explain and interpret these traditions to park visitors. Kai Tahu believe that park staff need to be better trained in tikanga Maori, and that they, Kai Tahu, have the right to control such training programmes. In addition, they argue that they have the right to determine the information that should and should not be communicated to the public.

Kai Tahu want to see the "Maori dimension" become an integral part of park interpretation. In the interpretation of the geology, landforms, flora and fauna of the parks, the importance of these things to Kai Tahu should be reflected in the information provided to the public. Interpretation of park history should explain the relationship of Kai Tahu to this their ancestral land.

The naming of features within the parks is a matter of contention. The neglect of older Maori names does nothing to reflect the earliest histories of the

parks and wastes an opportunity to communicate to park visitors the significance that the parks have for Maori. Some Kai Tahu also think that the use of Maori place names would give a greater impetus to Maori use of parks and identification with them.

The national parks are an opportunity to present our natural and cultural heritage to visitors. As such, Kai Tahu argue for greater recognition of their culture as an important feature of the parks. For many Maori, parks are places where their culture can be presented to the rest of the world.

Although the DOC is becoming more responsive to Kai Tahu concerns over interpretation, this has had little "downstream" effect on the information provided by the tourism industry. This is evident in the continued use of the misnomer "cloud piercer" given as a translation for Aoraki.

(4) Administrative Boundaries

Figure 2 shows that DOC regions do not reflect traditional Kai Tahu boundaries. This means that for Kai Tahu there are several DOC regions with whom they have to consult. In the DOC Nelson/Marlborough region, there are Kai Tahu and other tribes whose rohe are wholly or partly contained within that region. Most Kai Tahu with whom I have discussed this issue have

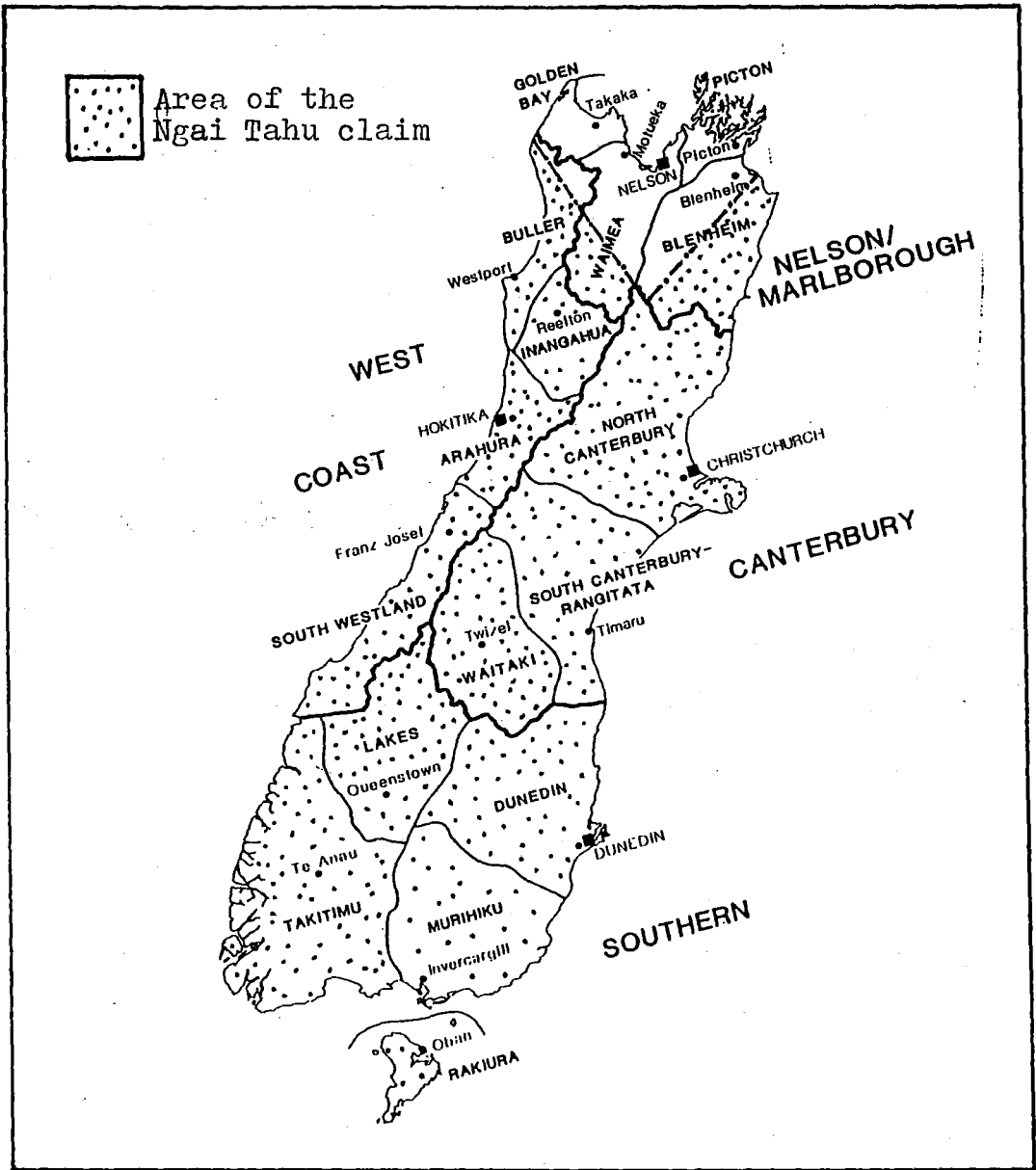


FIGURE 2 :

Department of Conservation regional boundaries.

SOURCES: DOC and Ngai Tahu Trust Board.

commented that liaison between Kai Tahu and the DOC would be easier if the DOCs boundaries corresponded with the traditional Kai Tahu boundaries.

(5) Opportunities For Participation In Decision Making

(a) Present Opportunities For Participation.

The present extent of formal Kai Tahu involvement in national park management is via representation on local NPRBs. There is also the opportunity to influence regional DOC policy through the Maori Liaison Officers. Under Section 47 of the National Parks Act 1980, there is also the opportunity to make suggestions for proposed management plans and to comment on draft plans. It should be noted however, that the management plan structure under the National Parks Act does not provide for a formal objection process.

Many Kai Tahu believe that up to now, their representation on NPRBs has been less than effective. Several reasons are given for this. First, Kai Tahu can only have one representative on each of the boards so it is easy for Kai Tahu concerns to be overridden. Second, most of those with whom I have discussed the NPRBs consider that the boards themselves have little real power to influence park management since the DOC controls the day to day management of the parks. Lastly, Kai Tahu representatives on the boards are

expected to take part in the whole gamut of board business. The difficulty that this presents for Kai Tahu is that there are only a limited number of Kai Tahu people qualified and able to serve on boards and committees. For Kai Tahu, spending time on the trivia of park management is not a good use of their limited human resource.

(b) Conservation Law Reform. The NPRA and the local NPRBs are soon to be abolished and will be replaced by the New Zealand Conservation Authority and local Conservation Boards. The Conservation Law Reform Bill (August 1989) provides for at least two Maori representatives on the national authority but makes no guarantees concerning the appointment of Maori representatives to the local Conservation Boards other than for the boards whose areas of jurisdiction will include Tongariro, Egmont or Whanganui National Park. Because of this, and because the New Zealand Conservation Authority and the Conservation Boards will be required to take on more functions than those performed by the present Authority and Boards, Kai Tahu input into national park policy and planning via this channel can expect to be no more influential than at present.

(c) Objectives For Involvement. The objectives Kai Tahu have for participation in national park policy

and planning are (i) to contribute to the management of their traditional areas in keeping with their traditional responsibilities as kaitiaki, (ii) to obtain some cultural and economic benefit and (iii) to ensure that their culture is portrayed to park visitors in an authentic manner. Kai Tahu do not seek the co-responsibility of running the parks on a day to day basis, but rather a joint policy and planning role in partnership with the Crown so that the parks will be run in accordance with their wishes and concerns.

4. FORMS OF PARTICIPATION

Weaver (1984) recognised that real Australian Aboriginal involvement in parks must include involvement in policy making. She suggested that a measure of true Aboriginal involvement in parks is the extent to which Aborigines are involved in policy, planning and management of the park estate. Her definitions of policy, planning and management are helpful in considering the levels at which Kai Tahu wish to be involved and the influence they hope to have.

Weaver defines policy as "the selection and allocation of values which guide the future actions of park agencies and governments". Planning is where policy is translated into more specific objectives,

priorities and guidelines, usually in a management plan. Plans of management help reconcile competing interests and identify priorities for the allocation of available resources. Therefore, says Weaver, it is essential that traditional owners are involved in the preparation of management plans. Management is the day to day operation of the park. Weaver argues that real Aboriginal involvement requires "joint mechanisms", meaning formal power sharing between government agencies and Aborigines in policy, planning and management. This is the sort of involvement that is sought by Kai Tahu, especially at the policy and planning levels.

Participation by non-government groups in the processes of government decision making takes a variety of forms depending to a large extent on the degree of influence government bodies are prepared to accept over their decisions and actions. Arnstein (1969) has developed a "Ladder of Citizen Participation" that illustrates the significant gradations of citizen participation. This is a useful model to have in mind when considering both current and proposed levels of Kai Tahu involvement.

Arnstein's ladder is shown in Figure 3. Levels 1 and 2 do not provide genuine participation. Levels 3

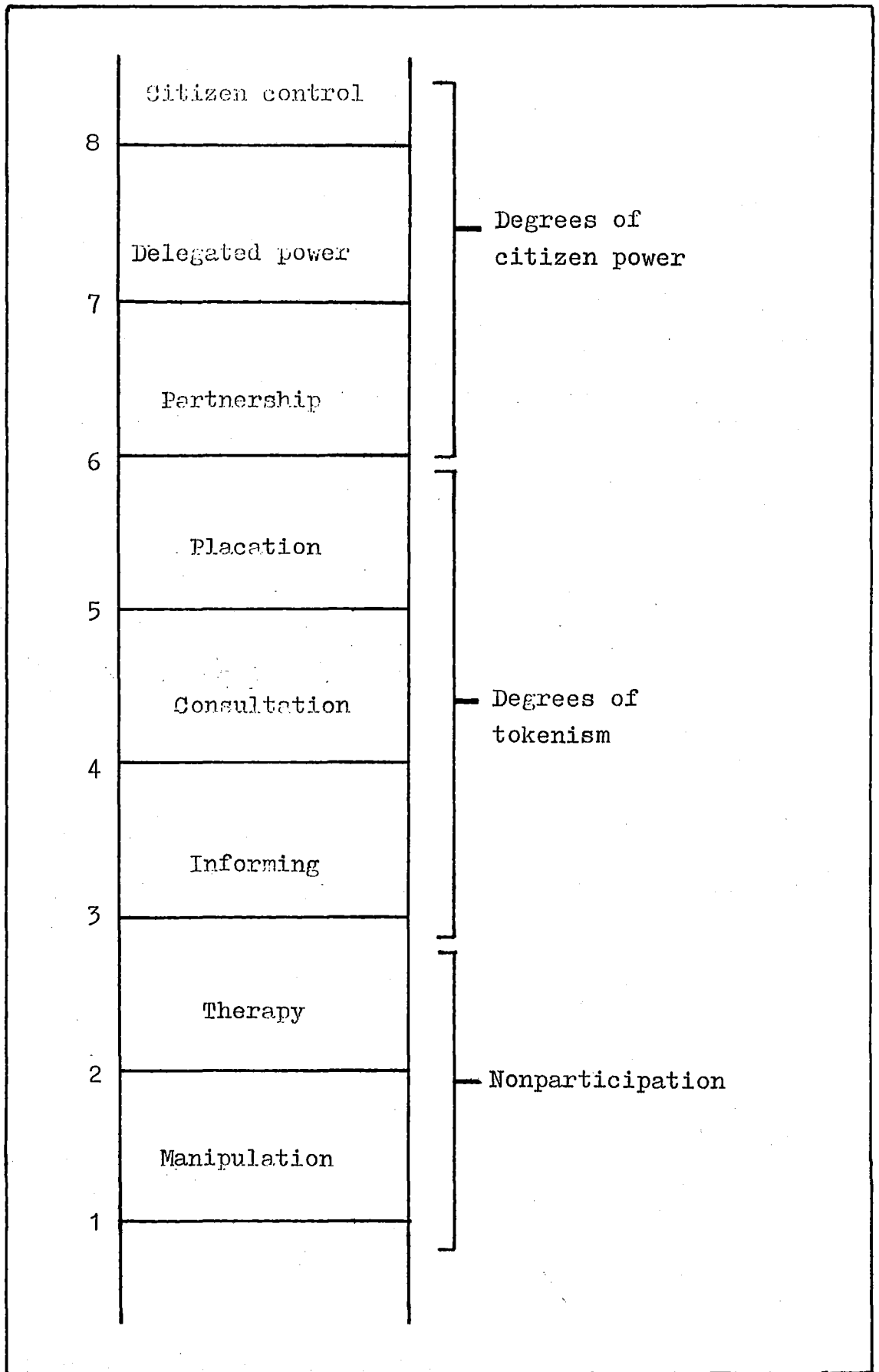


FIGURE 3 :
 Eight Rungs on a Ladder of Citizen Participation.
 SOURCE: Arnstein, 1969.

and 4 allow the public to listen and have a voice. According to Arnstein, public participation can have no effect on the decision if it ends there, for the public gives advice only and cannot monitor the effect of its advice on the decision. Arnstein does not consider consultation by itself to be a form of participation. For consultation to constitute a form of participation, it must include monitoring and follow-up. Level 5 can include the placing of sole representatives on boards and committees. Because citizen representatives are then easily outvoted, this still leaves decisions in the hands of the authorities.

Further up the ladder are levels of citizen participation with increasing degrees of decision making power. At the partnership level, power is redistributed through negotiation between citizens and power holders. They agree to share planning and decision making responsibilities through such structures as joint policy boards and mechanisms for resolving impasses. At level 7, power is delegated to citizens. Citizens either hold a majority of seats on decision making bodies, or they receive veto power. Full citizen control occurs at level 8 on Arnstein's scale. At this level, a corporation with no intermediaries between it and the source of funds is the model most frequently advocated.

On Arnstein's scale, the present level of Kai Tahu involvement in national park policy and planning is largely at levels 4 and 5. Kai Tahu are consulted and represented, but the decision making rests with the DOC and the majority vote of members on the NPRBs. Kai Tahu seek to participate at a level that would equate with level 6 on Arnstein's scale. They seek a partnership with the Crown that permits negotiation and bargaining and that allows them to initiate negotiation on matters important to them.

Over recent years, such partnership arrangements between Australian Aborigines and park management authorities have been evolving in some Australian Northern Territory national parks. Butler and Morgan (1985) discuss this evolution of fuller Aboriginal involvement in the Northern Territory parks. Overall, there has been a move from informal consultation and an advisory role for Aborigines; to formal, authoritative roles on boards of management with policy and planning functions. The policy of consultation at Kakadu, the first major Territory park to have officially recognised Aboriginal involvement, has been improved upon by the later Gurig and Uluru National Parks with formal boards of management.

This is because the effectiveness of consultative arrangements is so dependent on the

receptiveness of park authorities to Aboriginal input. For example, Hill (1985) considers that the effectiveness of consultative arrangements at Kakadu is dependent on the Australian National Parks and Wildlife Service having the "right" people in the Park and in other key positions who are sympathetic to the Aboriginal viewpoint. The more recent Uluru and Gurig "models" with their boards of management are considered better able to guarantee that Aboriginal interests are taken account of. Consequently, a board of management for Kakadu is now being considered to ensure that the traditional owners have real decision making power (Hill 1985, Australian National Parks and Wildlife Service 1986).

By applying what has been learnt in this chapter concerning (i) the principles of the Treaty of Waitangi, (ii) the issues that concern Kai Tahu, (iii) the frustrations that Kai Tahu have with the current processes and (iv) the forms effective participation can take; Chapter IV proposes an institutional framework based on a negotiated partnership between Kai Tahu and the Crown for national park policy and planning.

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CHAPTER IV

A FRAMEWORK FOR A PARTNERSHIP BETWEEN KAI TAHU AND THE DOC IN NATIONAL PARK POLICY AND PLANNING

1. THE STATUS QUO

A schematic representation of the existing opportunities for Kai Tahu to be involved in national park policy and planning is shown in Figure 4. With respect to formal opportunities for Kai Tahu to participate in national park policy and planning, the impending New Zealand Conservation Authority and local Conservation Boards will maintain the status quo. It is apparent from the concerns outlined in Chapter III of this report that the existing framework is not providing Kai Tahu with the partnership in national park policy and planning that is their right under the Treaty of Waitangi.

Several factors currently limit the opportunities for, and effectiveness of, Kai Tahu participation in national park policy and planning, and that do, or could, limit the extent of changes that Kai Tahu can effect. These factors include:

- (1) The token representation on the current NPRBs and on the future Conservation Boards.

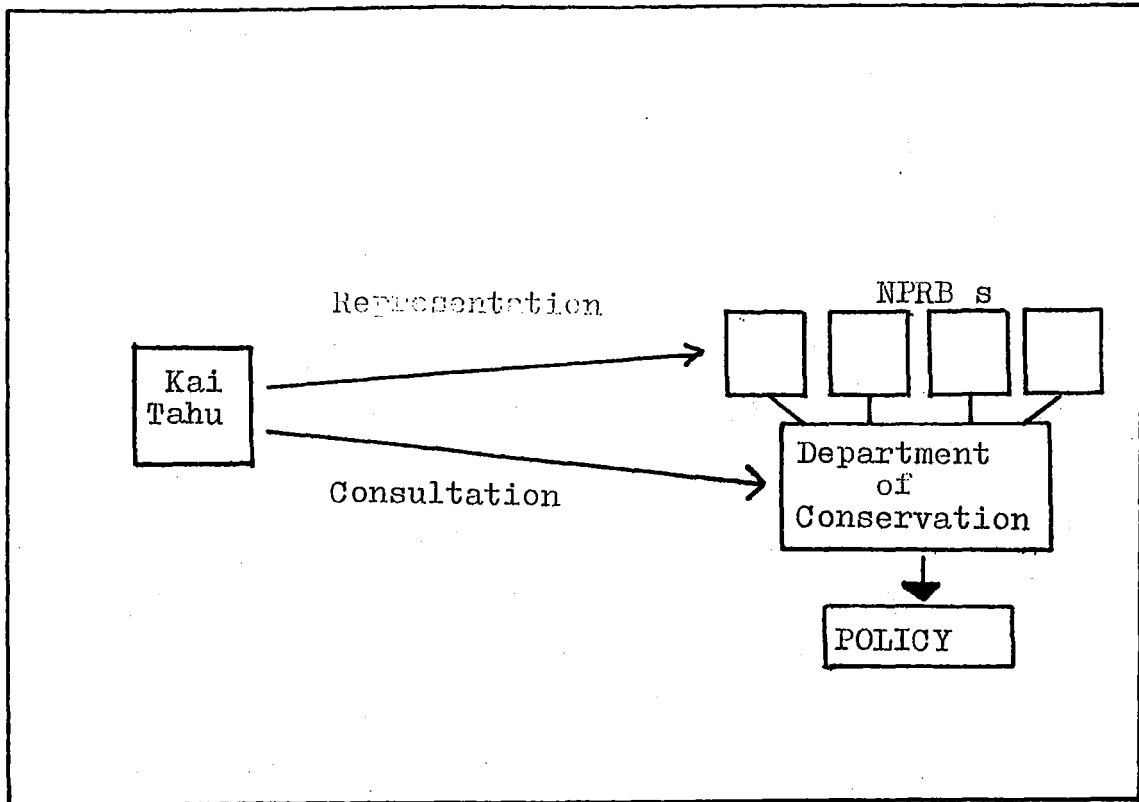


FIGURE 4 :
Existing opportunities for Kai Tahu participation.

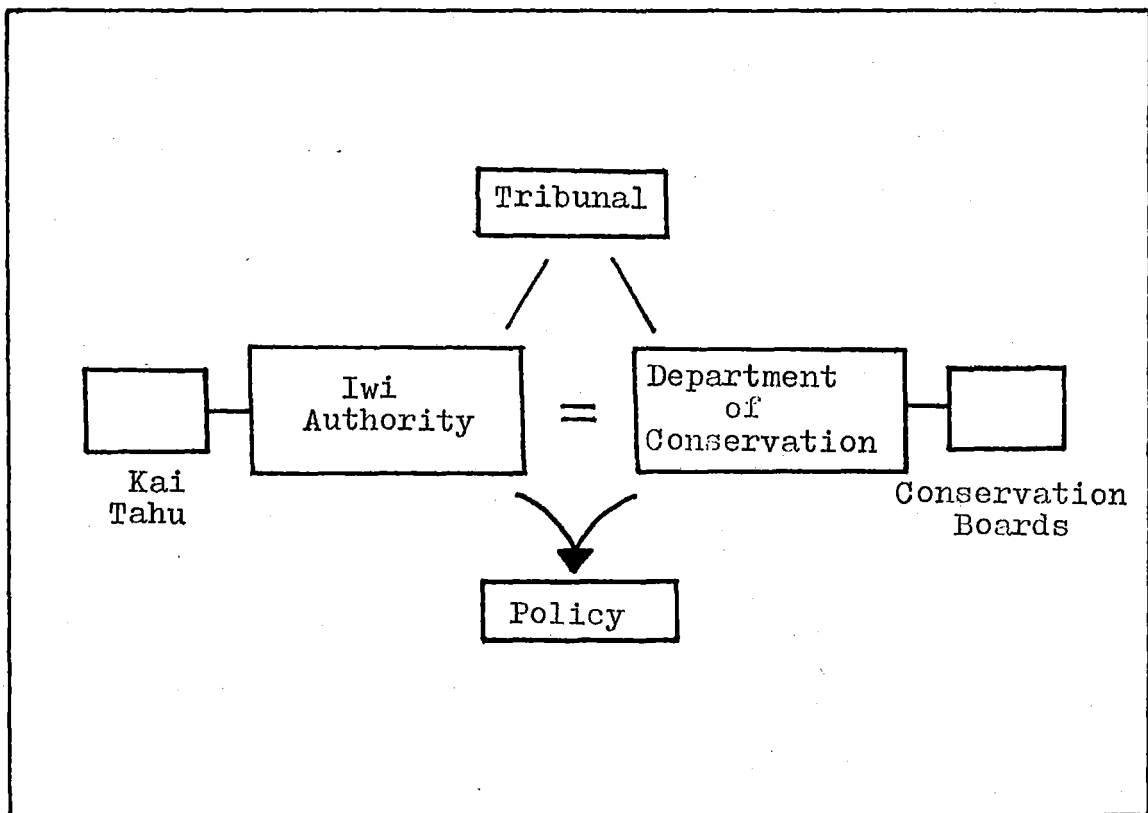


FIGURE 5 :
A framework based on partnership.

(2) These boards must consider a whole range of issues which make demands upon representatives time.

(3) The DOC has difficulty funding its Maori liaison operations. There are only a few Maori Liaison Officers employed by the DOC and these few staff are responsible for establishing liaison networks and implementing staff training programmes in tikanga Maori. There is a limit to how quickly this can be done.

(4) Since Kai Tahu are seeking more involvement in decision making in many sectors and are now being asked to participate more often, the input Kai Tahu is able to have in national park policy and planning is also restricted by their own lack of resources - particularly people.

(5) Kai Tahu have several DOC regions within their rohe. This complicates communication.

(6) The emphasis placed on preservation in the National Parks Act, the discretionary power of the DOC to restrict use of resources traditionally used by Maori, or the anomaly that the National Parks Act may not actually be subject to the principles of the Treaty of Waitangi, could at some time in the future further restrict access to traditional resources in

national parks. (At the present time, the DOC is generally sympathetic to the harvesting of traditional resources.)

2. A MODEL BASED ON PARTNERSHIP

The "public" holds a variety of views, all of which deserve consideration in the policy, planning and management of the southern national parks. However, as a partner of the Crown under the Treaty and as the traditional owners of the land contained in the parks, the views held by Kai Tahu deserve special recognition.

The one principle of the Treaty of Waitangi that comes through most clearly is "partnership" between Maori and the Crown. This principle recognises that the Maori right to participate in decision making is greater than the right to participate that is attributed to the general public. A partnership between the Crown and Kai Tahu in national park policy and planning therefore requires greater power for Kai Tahu than that available to interest groups. Also, a partnership requires that that power be "redistributed through negotiation" (Arnstein 1969).

Gray (1988) has proposed a model for Maori participation in resource management. There are three complementary and mutually reinforcing components of

the model that are expected to ensure effective Maori participation in resource management. These are:

- (i) Maori Resource Management Department / Tribunal;
- (ii) Guiding principles in legislation; and
- (iii) Maori representation on controlling bodies.

Gray considers that creation of the Iwi Authorities is fundamental to the success of Maori participation in resource management. Iwi Authorities are to take on the responsibilities of the Maori Affairs Department and will be given statutory status under an Iwi Empowering Act. The Resource Management Law Reform (RMLR) assumes that the Iwi Authorities will be the institutions representing Maoridom in the area of resource management.

Gray proposes that as well as the bodies created within the Iwi Authorities for the delivery of Government programmes and for development and industry, there should also be bodies that will have some control and authority in resource management. The role of the "Resource Management Department" of each iwi would be to ensure that within the rohe of that iwi, the management of natural resources is not contravening the principles of the Treaty of Waitangi.

Attached to the iwi Resource Management Departments, there would be a pan-Maori Resource

Management Tribunal. The Tribunal would come together when required in order to check that resource management is not contravening Maori values, and to give advice on any contravention should it arise. The Tribunal would be able to offer positive suggestions as to how conflicts with Maori values could be avoided, or, where appropriate, suggest a compromise solution. Gray considers that the Tribunal's advice and decisions should be binding but with the right to appeal to a higher authority. Gray does not say what this higher authority should be.

Guiding principles would be established within the relevant legislation. This legislation would provide for the protection of Maori customs and values and that the granting of any use of a resource should not prejudicially affect Maori customs and values. Maori values in legislation should be protected in the first instance and departed from only in certain exceptions.

The legislation would advise that Maori values must be protected, but identification of them is a different matter. Maori representation on general resource management bodies would continue in order to provide controlling authorities with a Maori perspective. Representation on general resource management bodies would not be intended so much for the

decision making process which would, it is hoped, be influenced by the iwi Resource Management Departments, the Tribunal and by the legislation. Rather, representation would act as a "spotting device" to identify problems more quickly.

Within the scope of his paper, Gray could not consider these proposals in the context of any particular natural resource or resource management legislation. In the next section, I apply my understanding of Gray's model to the southern national parks and consider the opportunities that such a framework would provide for Kai Tahu to participate in national park policy and planning. The model is evaluated by considering (i) whether it would give effect to the principles of the Treaty of Waitangi, (ii) whether it would allay the concerns that Kai Tahu have with respect to national park policy and planning and (iii) how it equates with levels of real citizen power as discussed by Arnstein (1969) and the forms of Aboriginal participation found to be effective in the Australian Northern Territory. As a consequence of the evaluation according to the principles of the Treaty of Waitangi, I suggest adjustments to the tribunal proposed by Gray.

3. GRAY'S MODEL AS A FRAMEWORK FOR KAI TAHU
PARTICIPATION IN NATIONAL PARK POLICY AND PLANNING

(1) The Iwi Resource Management Department And Tribunal

Kai Tahu must determine their own Iwi Authority structure and how the Iwi Authority will be organised for the functions it will ^{perform} perform. I do not presume to make any comments about how the Iwi Authority should be organised. However, I have assumed that within the Iwi Authority, there will be a body set up to deal with natural resources and that this body would, as one of its functions, participate in national park policy and planning on behalf of Kai Tahu. In respect of national parks, this body would liaise primarily with the DOC.

The Resource Management Tribunal would be called on to decide specific issues unresolved by negotiation between the Resource Management Department of Kai Tahu and the DOC. The tribunal would consider applications, management plans and so forth in terms of their affect on the cultural values held by Kai Tahu. The tribunal could consent, issue a conditional consent, refuse an application, or order a revision of a management plan. This process would apply only where Maori values as protected in legislation are affected.

(2) Legislation

The Conservation Act 1987 would be amended to require that the DOC and Iwi Authorities negotiate with one another over matters of mutual concern in the formulation of regional management strategies and conservation management plans (as contemplated by the Conservation Law Reform Bill), national park and reserve management plans, park interpretation programmes or any other policy and planning matters. The relationship between the DOC and the Iwi Authority of Kai Tahu could proceed in a number of ways. The important thing is that the DOC and Kai Tahu would be required, by legislation, to negotiate joint policy and planning arrangements.

The National Parks Act 1980 would be amended to ensure that it is indeed subject to the principles of the Treaty of Waitangi. The Conservation and National Parks Acts would both be amended to expressly provide for the protection of Maori customs and values. The legislation would state that, as a general rule, management, interpretation and use of national parks should not in any way prejudicially affect Maori customs and values. It is my view that the legislation should also acknowledge Maori authority over traditional resources on conservation land including national parks. The management of these traditional resources would be one of the aspects of park policy

and planning determined by negotiation between an Iwi Authority and the DOC.

Under these procedures, Kai Tahu could take to the Tribunal any situation or proposal that Kai Tahu considered to be incompatible with their Maori values. An application by Kai Tahu for use of a park would proceed in the normal manner and would be subject to the same constraints as other applications.

(3) Kai Tahu Representation

Kai Tahu representatives on those Conservation Boards with jurisdiction over national parks and reserves within the Kai Tahu rohe would provide the Boards with a Kai Tahu perspective and assist them in identifying possible conflicts with Maori values. In addition, Maori Liaison Officers within the DOC have a vital role in facilitating communication between the DOC and Kai Tahu.

4. AN ASSESSMENT OF THE PARTNERSHIP FRAMEWORK

(1) The Principles Of The Treaty Of Waitangi

Chapter III discussed the principles of the Treaty of Waitangi and their significance for national park policy, planning and management. In my view, the framework proposed by Gray would satisfy the principles of "the essential bargain", "active protection" and

"tribal rangatiratanga" but would not provide a basis for partnership.

One law governing both Maori and Pakeha in the matter of national parks recognises the right of the Crown to make laws for conservation purposes (part of the "essential bargain"). Protecting through legislation Maori cultural values and authority over traditional resources would recognise the principles of active protection and tribal rangatiratanga. The requirement that the DOC and Iwi Authorities negotiate with one another over policy and planning for national parks would go a long way toward providing a suitable framework for partnership.

However, the framework does not provide both parties with recourse to a higher authority. I consider this is to be essential for genuine partnership. The Tribunal proposed by Gray (1988) could only consider affects on Maori values as protected under law. It is my view that both parties require recourse to a higher authority with the power to decide disputes over both Maori values and other matters, for example dissatisfaction with the negotiation process itself. This body should comprise of representatives of both Maori and the Crown. In place of the Tribunal proposed by Gray, I suggest a Tribunal to which both parties could have recourse.

This Tribunal would be guided in its activities by the principles of the Treaty of Waitangi. This basis for recourse would, through the principle of active protection, encompass possible disputes over the Maori values protected in legislation. Difficulties with the negotiation process could be brought to the Tribunal under the principle of partnership. A schematic representation of this arrangement is shown in Figure 5.

Both parties would be bound by decisions and recommendations of the Tribunal. Members of the Tribunal would, of course, be authorities on the Treaty of Waitangi and Maori values. Therefore, generally speaking, there would be no need for a higher authority with the power to reconsider the merits of a case. There should naturally be a right of appeal to the High Court on matters of law, and a right of review under the Judicature Amendment Act 1972.

As has already been discussed, the principle of partnership requires that the Treaty partners act reasonably and in good faith. It is crucial that the opportunities and obligations that the partners have to negotiate with one another and to have recourse to a higher authority, do not produce incentives for either party to jeopardise basic park management. It is inevitable that a partnership arrangement would be more

time consuming than the present consultative arrangements. In order to prevent deliberate delaying tactics, negotiations should have a fixed time limit, after which a matter could be referred to the Tribunal or perhaps to mediation. The DOC, as the park managers, must have autonomy to make decisions necessary for the day to day operations of the parks.

(2) Aspects That Concern Kai Tahu

Chapter III described some of the aspects of national park policy, planning and management that concern the Kai Tahu people. Under the framework outlined above, Kai Tahu authority over traditional resources would be recognised and they would have the opportunity to negotiate the way in which they are managed. The DOC would be required by law to negotiate with Kai Tahu over the Maori historical and cultural component of interpretation programmes within the Kai Tahu rohe, over staff training in tikanga Maori, and over developments within the parks.

The concern that Kai Tahu has over administrative boundaries would not be resolved by these arrangements alone. This issue could only be resolved by adjustments to the DOC boundaries. This would have various implications for the DOC, consideration of which are outside the scope of this report.

Opportunities for Kai Tahu to participate in decisions concerning national park policy and planning would be greatly enhanced using this framework. The right of Kai Tahu to be involved in decision making would be guaranteed by legislation. Both parties would be able to appeal to the Tribunal over disputes arising from the principles of the Treaty of Waitangi including difficulties with interpretation of those principles and the process of negotiation. Kai Tahu and the DOC would determine through negotiation the nature of their future relationship.

(3) Comparison With Aboriginal Involvement And Arnstein's Scale

Weaver (1984) recognised that real Australian Aboriginal involvement in national park decision making must include "joint mechanisms" for formal power sharing between government agencies and Aborigines in policy making, the preparation of management plans and the day to day operation of the park. Involvement in the day to day management of national parks is obviously of considerable importance to Aborigines because they still reside in the parks. Kai Tahu however are mainly concerned with participation at the policy and planning levels.

The Australian Northern Territory response to "partnership" has been to form joint Aborigine/park management authority boards of management in Aboriginal

owned national parks. This approach is not suitable in the New Zealand context for the reasons outlined below.

New Zealand has moved away from the individual park boards of the early park system toward the present situation of the impending New Zealand Conservation Authority and local Conservation Boards. These will have several other functions besides those related to national parks. Our "park boards" are no longer the national park managers. Nor it could be argued, are they the primary policy makers since the DOC compiles the national park management plans which the boards only approve.

Rather, the boards serve a different function of providing for public input into policy and planning for the conserved estate. Hence the representation of tourism, conservation and scientific interests as well as Maori interests on the boards. The boards can be seen as providing public input into the Crown side of the Treaty partnership, just as an Iwi Authority may have advisors with input into the Maori side of the partnership. The proper partner for Kai Tahu in the policy and planning of national parks is the DOC who are representatives of the Crown.

In the absence of the Northern Territory type of national park management board, a different "joint

mechanism" is required. It is my view that the above framework would provide a formal but flexible policy and planning mechanism appropriate to the Kai Tahu situation. In my opinion, the framework equates with level 6 (partnership) on Arnstein's scale and would provide Kai Tahu with real power in the decision making process.

This is a very general framework for Kai Tahu involvement in national park policy and planning. Many refinements would no doubt be required. However, according to the above "measures", this framework could be expected to provide an effective means of achieving partnership between Kai Tahu and the Crown in national park policy and planning. The framework would also serve to formalise the relationship that is already developing between Kai Tahu and the DOC.

As discussed at the beginning of this chapter, the shortage of financial and human resources for both the DOC and Kai Tahu is currently limiting the scope and effectiveness of the Department's Maori liaison work. Considering the cost and funding of alternative participation frameworks is outside the scope of this report. However, it is important to recognise that although a framework such as that outlined above can provide more opportunities for Kai Tahu to be involved in national park decision making, it can not guarantee

that Kai Tahu will be able to participate as fully as they would like. Participation is not limited only by access to the process but also by time and financial resources.

5. THE IMPLICATIONS OF PARTNERSHIP

It is difficult to predict what the implications of a partnership between the DOC and Kai Tahu in national park policy and planning would be. This is because the outcomes of such a partnership would be very dependent on the initial negotiations and the roles, rights and obligations assigned to each partner. Also, in the future, the nature of the advice Kai Tahu proffer concerning national park policy and planning could be influenced by the type of remedy Kai Tahu receive, or hope to receive from their claim. However, despite these uncertainties, there are some general points that warrant discussion.

(1) Implications For Kai Tahu

In the current discussions surrounding Iwi Authorities, the emphasis has been very much on the delivery of Government programmes and tribal development. Little attention has been paid to the expectation in the RMLR that Iwi Authorities will be the institutions representing Maoridom in the area of resource management. It may be most efficient for Kai Tahu if their authority and obligations with respect to

the conserved estate are administered by the same body as that which they form for resource management generally. There needs to be more attention paid to the anticipated resource management functions of the Iwi Authority in order to ensure that the resultant structure is appropriate for these functions as well as the delivery of Government programmes.

In order for Kai Tahu to participate effectively in the framework that has been outlined (or indeed in any framework that is proposed for their participation in national park policy and planning), it is important that Kai Tahu develop a tribal organisation that has the support of the wider tribe and the mana to speak on behalf of the tribe. It is regrettable but inevitable that in the absence of a unified Kai Tahu "voice", those obliged to seek Kai Tahu input into decision making will pay most attention to either the loudest Kai Tahu voice or the one that agrees most with their own ideas.

(2) Implications For The Crown

A partnership between the DOC and Kai Tahu in national park policy and planning cannot be without cost in both time and resources. As has been argued here, and in many other instances, the Crown has an obligation under the Treaty of Waitangi to protect Maori values. Therefore, the Crown also has an

obligation to provide Maori with the resources to participate in decisions that affect these values.

A partnership between the DOC and Kai Tahu in national park policy and planning would also mean that the DOC must spend more time and money liaising with Kai Tahu. The Crown, as well as its obligation to ensure that Kai Tahu have the means to negotiate with the DOC, also has an obligation to ensure that its agent the DOC has adequate resources to perform its Maori liaison functions. It is of little use implementing a partnership framework if the DOC can not fund its side of the partnership, or is unable to implement jointly made decisions. There is already concern and some resentment within the DOC that increased Maori participation and liaison work may mean that other DOC work will suffer. The Government must resource the DOC sufficiently to carry out the Crown's Treaty of Waitangi obligations.

(3) Implications For The Conservation Boards

Under the above framework, it would of course be appropriate for the Conservation Boards to advise the DOC of the public interest with respect to national park policy and planning. It would, however, be quite inappropriate for the boards to retain their authority over the approval of management plans negotiated by the DOC and Kai Tahu.

(4) Implications For The Park Resource

So long as there are mechanisms in place to ensure that park management is not jeopardised by the time required for negotiation procedures, and new arrangements are not financed at the expense of other park activities, I do not think that the implementation of partnership would have any significant implications for the maintenance of the national park resource.

(5) Implications For Tourism And Visitors

It is difficult to predict what effect a partnership between the DOC and Kai Tahu could have on park related tourism. On the one hand, Kai Tahu wish to ensure that tourism enterprises do not over-exploit the national parks or go against cultural values. On the other hand, Kai Tahu see some benefit for themselves in being involved in the tourism industry associated with the parks. It could be that the emphasis of park related tourism would change. It may be that we would see more "cultural" tours and guided walks and a more stringent control on such things as helicopter flights and ski field developments.

Visitors to New Zealand's southern national parks could expect some changes to the cultural interpretation that they receive. The Australian Northern Territory experience has shown that park

visitors do want to learn about the indigenous culture and the significance of the parks to the Aboriginal people. Visitors have been very appreciative of the efforts that have been made to interpret these aspects for them. Kai Tahu will be endeavouring to ensure that visitors to New Zealand's southern national parks receive an accurate, culturally appropriate insight into the Kai Tahu history and tradition associated with each park.

Under the above framework, the day to day management of the southern national parks could be expected to remain much the same. A partnership between the DOC and Kai Tahu in policy and planning for national parks would not be expected to have any effects on the physical resource, but could be expected to enhance the cultural experience of visitors.

CHAPTER V

CONCLUSIONS

The main objectives of this study were (i) to propose an institutional framework based on a partnership (between the Crown and Kai Tahu) that could enable Kai Tahu to be actively involved in national park policy and planning and (ii) to consider the implications of such an approach.

In order to consider such a framework, it has been necessary to make some assumptions concerning the rights and authority in national parks that may, at some future time, be granted to Kai Tahu. In the end, Parliament or the Courts will define the rights of Kai Tahu in the national park resource and new institutional arrangements will proceed from there. Until the position is clarified, it is only possible to guess at the functions new institutional arrangements will be required to perform. This study has considered an arrangement designed to fulfil a partnership function based on the assumptions (i) that the southern national parks will remain Crown land managed by the DOC and (ii) that Kai Tahu will have the right to negotiate with the DOC over national park policy and planning.

A model of Maori participation in resource management proposed by Gray (1988) was assessed for its suitability for Kai Tahu participation in national park policy and planning. It was found that this model could not provide the Crown and Kai Tahu with a genuine partnership because the Tribunal proposed by Gray could only consider affects on Maori values as protected under law. No recourse would be available to either party on other issues.

I have suggested a framework based on Gray's model but that allows both parties recourse to a Tribunal on matters arising from the principles of the Treaty of Waitangi. This framework could provide the basis for a negotiated partnership between the Crown (ie the DOC) and Kai Tahu in policy and planning for the national parks within the Kai Tahu rohe. The eventual form of this relationship would be influenced by the initial parameters under which it was established.

Under the proposed arrangements, visitors to New Zealand's southern national parks could expect favourable changes to the cultural interpretation that they receive. The day to day management of the southern national parks would be expected to remain much the same. This does not mean that improved opportunities for Kai Tahu to participate in national

park policy making and planning are not required. The right of Kai Tahu to be involved is not dependent on the extent of the changes they wish to initiate.

This framework has not been compared with other possible arrangements. Further research in this subject area could consider other options for Kai Tahu participation in national park policy and planning. Although the framework proposed here is considered to be an improvement on the status quo, it is only by considering a range of options that a "best" model could be identified. Options for the financing of participation also need research.

There are implications of this study for policy and planning in the rest of the conserved estate within the Kai Tahu rohe. As well as national parks, Kai Tahu also claim other categories of conservation land, waterways and coastline managed by the DOC. A subject for future research is the nature of the Kai Tahu relationship with the DOC for these other areas and aspects of the conserved estate.

Maori participation in national park policy and planning nation wide also needs to be addressed. Although a set of arrangements may be appropriate for the relationship between Kai Tahu and the DOC, that set of arrangements is not necessarily appropriate for the

relationship between the DOC and another tribe. Kai Tahu have a large rohe, much of which is managed by the DOC. Kai Tahu must therefore be most concerned with negotiating broad policy for the national parks and other conservation. In contrast to Kai Tahu, other tribes would have only one national park within their rohe and their relationship with the DOC could therefore concentrate on more specific aspects of park management. Participatory arrangements suited to other tribes is another topic for future research.


This study raises the wider question of where the Treaty of Waitangi and Maori concerns should be addressed; in policy or in law. Currently, New Zealand relies heavily on departmental policy to address Treaty issues and Maori concerns. However, as this study has shown, it is essential that Maori rights and values and the principles of the Treaty of Waitangi be explicitly stated⁵ in legislation in order that both Kai Tahu and the DOC have a frame of reference on which to base their partnership. Maori rights and values and the principles of the Treaty of Waitangi need to be made explicit in all resource management legislation in order to provide a frame of reference for the management of resources.

⁵ The continuing evolution of Treaty principles must also be recognised, and new interpretations provided for within the legislation.

This study has shown that for national park policy and planning, the implications of the Treaty of Waitangi are far reaching. The Court of Appeal has said that implementation of the Treaty requires a partnership. At the present time, opportunities for participation do not provide a suitable basis for partnership between Kai Tahu and the Crown in policy making and planning for the southern national parks. Implementation of the Treaty requires no less than a reorganisation of participatory arrangements and the redistribution of authority.

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