There were also some clear messages about what the office should not become in the future; for example, the PCE should not be a decision-maker of last resort for any level of government.

4 FUTURE DIRECTIONS

The consultation process, combined with analysis of environmental management monitoring data, citizens' concerns and data derived from investigations, form the basis for orientation of and proposed content of the future work of the PCE.

4.1 PCE orientation

It is concluded that for the Commissioner to make a significant contribution to the vision and reality of a healthy environment, then the core business has to emphasise two primary roles:

Firstly, the **"environmental systems guardian"** role. The environmental system guardian role would extend across central government, local government and other interested parties, ie research and business organisations to monitor and report on environmental systems and outcomes. The Parliamentary Commissioner for the Environment is unique in having such a broad jurisdiction.

Secondly, an **"environmental ombudsman"** role whereby the PCE could address citizens' concerns and information on environmental management, particularly if they show up instances of system failures. These concerns are a unique source of information on environmental management issues that is often not readily available to government agencies. This is a key role which needs recognition for its importance to the functioning of the office by interested parties.

These roles would be supported by:

- an "environmental auditor" role whereby the Parliamentary Commissioner for the Environment checks the performance of central government's agencies with environmental management responsibilities. From time to time, an assessment of the environmental management performance of local government may be necessary.

- an information provider/facilitator role whereby the Parliamentary Commissioner for the Environment raises environmental management issues and disseminates information on environmental management arising from investigations together with ensuring that interested parties can access information from other sources.

- monitoring of environmental management issues and reporting on these to Parliament.

4.2 The Focus

The major trends in environmental management, and hence the potential priority areas for investment of resources by the Parliamentary Commissioner for the Environment over the next five years, are discussed in this section. All the areas pose some highlighted strategic risk to New Zealand, now and in the future.

The significant areas identified are:

- Ecosystems
  - the urban environment;
  - the marine environment;
- Management Systems
  - conservation management;
  - public participation in resource management; and
  - the provision of information for environmental management, including education and research.

These are clearly very broad topic areas within which there are potentially a plethora of environmental management challenges. The intention is to undertake overview studies of several of the areas to better define critical environmental management needs. Some of these will then be addressed, over the next five years, by specific investigations.

The economic and social environment in New Zealand will have an impact on, and be impacted upon, the quality of environmental management. Not only are there increasing demands for economic efficiency and reduction in compliance costs of regulatory regimes in the New Zealand public sector but also a growing demand for higher levels of environmental management among some sectors of New Zealand society and our global food and fibre customers, including visitors to the country.

The linkages between social, economic and environmental policy have not been well developed. The strategic importance of environmental management for ensuring that the New Zealand economy continues to be sustainable should be recognised in the future. Environmental accounting initiatives and modification of national accounts, eg Green Gross Domestic Product (GDP), may become more important, particularly as industry responds to international market pressures to make environmental performance information more readily available and develop audited environmental quality assurance systems for New Zealand products.

Because of the stronger environmental focus of the RMA, it is unclear to what extent social effects and effects on communities, including economic effects, will be considered and addressed by this legislation or whether other means will have to be used. Social and environmental effects were addressed in the past through the application of the Environmental Protection and Enhancement Procedures (EP&EP)

for major government projects. Although the EP&EP are still operative, their use and effectiveness has significantly declined.

New Zealand's image as a "clean and green" place will have to be earned in the future. We are fortunate to have a small population, isolated borders, diverse ecosystems, scattered large industry, and resourceful people. However, the country's young geology, the major modification of indigenous ecosystems, the past ethic of production from the land, and increasing urbanisation present challenges to maintaining and enhancing environmental qualities.

Despite significant diversification in the source of New Zealand's import receipts, the country is still, and will continue to be, highly dependent on maintaining the health of its natural resources to meet social and economic goals. Our resources of land and sea, renewable energy, quality of water and air, and diverse biota are all key components of wealth creation and maintenance for enterprises and communities well removed from the traditional view of resource users ie farmers, foresters and fishers. The tourism industry is one example, and advanced pharmaceutical industries requiring high environmental qualities is another.

4.3 Rationale for the focus

4.3.1 Ecosystems: The urban environment

Although average population growth over the next five years may continue the trend of an average annual growth of 1.4 per cent over the past five years, the growth will be unevenly distributed with people moving to particular urban areas. The Auckland region recorded the fastest growth of 13.2 per cent over the 1991-1996 Census period,[12] with the Tasman region recording 11.6 per cent, and the Nelson region recording 10.5 per cent. The Tauranga district has increased population by 17.1 per cent since 1991 and the Queenstown Lakes district by 43.1 per cent since 1991. Urban growth in many places will have to be accommodated by making better use of existing urban land rather than extending urban boundaries with urban sprawl. The population will continue to age and housing will be required for smaller households of one or two people.

The urban infrastructure to support the greater population will come under increasing stress. Minimal or no long-term maintenance of drains, sewers and water mains has left many councils with a legacy that will be expensive to upgrade. An adequately funded and sustainable transport system is a top priority of local government with new initiatives needed to improve public transport. The development of the land transport strategy and the land transport pricing study should lead to reforms in the transport sector. Management of urban amenity values will be an ongoing challenge.

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12 1996 Census information. Government Statistician.

4.3.2 Ecosystems: The marine environment

As an island nation, we are dependent on our marine environment for recreation, fishing, industry and tourism. Globally, the prognosis for the maintenance of fish stocks is not good. The global fish harvest increased steadily until 1989 and has since dropped about 7 per cent despite an increased fishing effort.[13] An ecosystem approach to the marine environment has not been promoted nor recognised as necessary by some of the interested parties. The level of knowledge about the marine environment and its various interactions is insufficient to assess progress towards sustainable management of this ecosystem, where economic use and conservation management are balanced.

Changes in fisheries legislation and the need to assess the sustainability of the commercial, traditional/customary and recreational fishing sectors will continue. The indications from other countries are that commercial fishing in many places is not truly sustainable. The funding and delivery of fisheries research has changed over recent years. The new regime under which the fishing industry pays for most of the research is increasing the industry's influence over the type and extent of research. The effectiveness of research under this new regime for the overall management of the marine environment has to be assessed.

Both the coastal environment and the exclusive economic zone (EEZ) are managed by more than one agency. The effectiveness of these management regimes and the links between coastal and land management are key issues. For example, the most significant impact on coastal waters is contaminants derived from rivers. There may be a need for coastal management law reform. The rapid development of aquaculture in the coastal environment may be in conflict with other uses and values of the marine environment.

4.3.3 Management systems: Conservation

Most of the current controversies in conservation management reflect the ongoing and significant tension between protection/preservation and use of resources. This tension is reflected in the different roles and priorities held by the various agencies with responsibilities for, or interest in, conservation management, including central and local government, tangata whenua, NGOs and industry.

The responsibilities of local government (both regional and territorial) in managing for conservation are significant. However, local authorities are only gradually taking up those responsibilities. Territorial authorities often highlight the difficulties they face balancing their RMA regulatory role with a development/promotion role that the communities they serve expect.

Conservation management of marine ecosystems is a significant challenge. Relative to terrestrial ecosystems the marine environment has been overlooked in terms of conservation management. However, with growing demands on marine resources the need to examine the systems in place for their management, use and

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[13] Talbot LM. 1996. "Living Resource Conservation: An International Overview". Marine Mammal Commission, Washington DC.

protection will become increasingly pressing. Progress towards developing a rational and accepted basis for the establishment of marine reserves, and for implementation and management of such reserves, lags far behind terrestrial environments.

The role of the Department of Conservation as a large central government agency with a primary focus on land and asset management is now unique in New Zealand and in a global context. The current restructuring of the department will take time to be fully implemented. It is important that sufficient time is allowed and equally important that its contribution to better conservation management in New Zealand is assessed, along with other contributors in the future, given the importance of conservation management to overall environmental management in New Zealand.

Biodiversity concerns are currently being addressed to some extent through the preparation of the New Zealand Biodiversity Strategy in response to the Biodiversity Convention 1992 (United Nations Conference on Environment and Development). However, this process is protracted and it is not clear how committed the parties involved are to the strategy, nor how the strategy will be implemented.

Other important conservation management issues will be:
- the protection for some ecosystems eg wetlands;
- how to address conservation of natural resources on private land;
- improved participation of iwi and hapu in conservation management;
- the customary use of natural resources by tangata whenua;
- environmental effects of visitors on New Zealand's natural resources;
- the protection of indigenous and managed ecosystems from pests and weeds;
- the effectiveness of new biosecurity arrangements; and
- the exploitation of natural biological resources for commercial and pharmaceutical uses.

4.3.4 Management systems: Public participation

The ability of the community to participate in environmental management processes may be limited by a number of factors:
- the amount of time people have to devote to involvement;
- the ability to access information;
- the ability to fund expert assistance;
- a reluctance by affected parties to risk the awarding of costs by appealing resource management decisions to the Environment Court; and
- decisions by consent authorities not to notify consent applications.

The inability of the public and tangata whenua to participate undermines the ability of decision makers to make decisions with the benefit of full information and may not achieve sound environmental management.

There appears to be a reluctance by some resource users to consult with tangata whenua and other people who may be affected by a proposed development as the length of time needed for public consultation creates uncertainty as to when resource consent applications will be considered. However, inadequate

consultation can also cause delays in resource consent processes. There are times when affected parties unreasonably withhold their approval to a proposed development and when "compensation" in order for people to give their approval is demanded. Conversely, there are also occasions when affected parties are harassed into giving approval or their approval is purchased. These kinds of distortions in the public participation process could threaten the ability of the RMA to deliver sound environmental management outcomes.

4.3.5 Management systems: The provision of scientific information for environmental management

Environmental managers will need to recognise that scientific information is a necessary part of environmental effects information for some resource consent applications. Scientific information to support the development and the monitoring of the effectiveness of policies and plans will be required by local government and central government for decision-making.

The Public Good Science Fund (PGSF) is the government's major investment in strategic science and technology. Long-term priorities for the PGSF have been developed in terms of the contribution of research to environmental, economic and social goals. There are seventeen PGSF research areas (or outputs) to which funding is allocated by the Foundation for Research Science and Technology (FORST). Environmental management research is not confined to one output class. This means there is limited scope, despite efforts by different agencies, for cross-output environmental management research and cooperative research among different organisations.

One initiative to address cross-output research is the establishment of national science strategy committees. Three strategies have been developed to address climate change, possum and Tb control, and sustainable land management. Sustainable management of land was addressed via a substantive review in 1995.[14] The review recommended a new research agenda that:

- was a long-term perspective;
- is multi-disciplinary and systems based;
- incorporates local knowledge;
- adopts a precautionary approach;
- incorporates equity issues; and
- embraces participation and partnership.

Research to support environmental management issues in the urban environment is not well catered for. The future allocation policies of FORST will be crucial to the long-term management of the environment.

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[14] Science for Sustainable Land Management; Towards a New Agenda and Partnership. Ministry of Research Science and Technology. 1995.

4.3.6 Management systems: Environmental education

Environmental education, and education training, remains a vexed issue. A draft document providing guidelines for environmental education has been prepared by the Ministry of Education but has, as yet, not been implemented.

In late 1996 the Ministry for the Environment released a discussion document entitled "*Learning to Care for our Environment*". To date, New Zealand has no graduate or postgraduate degrees in environmental education although several universities provide courses on environmental science. This, however, does not constitute a specific training in the teaching of environmental studies. This is in sharp contrast to many of our Asia/Pacific neighbours who offer both masters and doctoral degree programmes in environmental education.

In an effort to address some of the gaps in environmental education, various sector groups (eg forestry and agriculture) have produced resource kits on environmental issues and distributed these to schools.

The paucity of environmental education will mean society has little appreciation of the ecological context within which decisions on resource allocation and use will be made in the future. There is still widespread confusion that environment equates to conservation and the concepts of sustainable management are not well understood.

4.4 Additional considerations

4.4.1 Environmental legislation and strategies

During the next five years the implementation of significant resource management legislation such as the Hazardous Substances and New Organisms Act 1996 and the Fisheries Act 1996 will lead to a need to evaluate whether the intent of the legislation is being realised. The extent of practical guidance provided at the implementation stages will be crucial to future success if experiences with the RMA is our guide. Although the Resource Management Act 1991 has been in place for five years, there continues to be a need to provide practical guidance to local government in the implementation of the Act. An existing mechanism to give guidance, national policy statements, has been used only once since the enactment of the RMA, and that was for the mandatory national coastal policy statement. Incomplete use of some key instruments within legislation may significantly reduce the full intent of the legislation being realised.

Questions have been raised about the ability of the RMA to promote sustainable management. There is some anxiety that the RMA may not deliver or that delivery of the desired outcomes will take too long and be too costly. In part this stems from the tension between the concepts of sustainable development and preservation or conservation of the natural systems. Sustainablilty is not the same as conservation. Conservation is a component of the broader concept of sustainable development. Decisions on these questions will be made through the interaction of the political and legal processes applicable in New Zealand.

The need to understand, measure and manage the cumulative effects of the use of natural and physical resources as required under the RMA remains acute. Gradual erosion of environmental values by incremental development and changes in use suggests that there is a need to address how the measurement and management of cumulative effects, sooner rather than later.

It is anticipated that under the MMP Parliamentary system there may be more use made of regulation-making powers under current environmental management legislation rather than the introduction of new legislation.

The government's *Environment 2010* strategy sets out eleven priority issues for the New Zealand biophysical environment and an Agenda for Action. Monitoring implementation of these goals will be an important task over the next five years as will the development of national environmental indicators.

The use of market mechanisms to achieve environmental management goals has been advocated but uptake is slow and overseas evidence indicates there are constraints to effectiveness in achieving the outcomes.

4.4.2 Tangata whenua

There will be changes in environmental management due to tangata whenua's access to, and use of, natural resources resulting from both Treaty of Waitangi settlements of claims and from other processes. The development of co-management regimes between iwi groups and central or local government for specific natural resources is encouraged in the RMA and may become more widely used in the future. The issue of intellectual property and ownership of indigenous flora and fauna will be canvassed through a claim to the Waitangi Tribunal (Wai 262) and the resulting recommendations of the Tribunal could have a major impact on natural resource management in New Zealand.

The legislative requirement to consult with tangata whenua often does not result in effective participation and responses from iwi and hapu. There are a number of factors including:

- recognition of Kaitiakitanga, tikanga Maori, and traditional expertise and knowledge, and the contributions that iwi and hapu can make;
- resourcing for tangata whenua including training in Pakeha processes and systems: and
- acknowledgement and use of the policies already prepared by many iwi for management of natural resources and other taonga in their area.

4.4.3 International environmental management obligations

The ability to assess whether New Zealand is proceeding along the path of sustainable management is going to become increasingly important. Not only will Parliament want to know about progress but so also will *the international community* and our trading partners. The ability of New Zealand to meet its international environmental management obligations will need to be demonstrated.

New Zealand has international obligations under the Framework Convention on Climate Change. A central element of the government's 1994 climate change policy is the reduction of carbon dioxide levels with a planned 80% of gross reductions through absorption and 20% by reducing emissions. The policy is designed to minimise the impacts and risks to economic growth with an economic instrument to reduce emissions the favoured approach.
New Zealand is unlikely to achieve the target of stabilising carbon dioxide emissions at 1990 levels by the year 2000. CO_2 emissions are set to rise 60% between 1990-2000 due to increases and uncertainties in monitoring and calculations of the amount of carbon stored in sinks.[15]

The government has decided to defer until early 1998 the decision on whether to introduce a low level carbon charge. The timing and adequacy of the government response is of concern to some parties. New Zealand appears to be waiting for a more coordinated global response such as global tradeable permits with individual national targets.

There are significant implications for New Zealand's position as a world environmental leader and for our clean-green image if the government does not address or is seen to not address climate change. Additional benefits from a range of climate change measures may also include a reduction in air pollution, improved energy efficiency and additional forest cover.

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15 Working Group on CO_2 Policy Report. 1996.

5 CORPORATE STRATEGIES

For the future role of the office to focus on the "environmental systems guardian" role and the "environmental ombudsman" role, aspects of the office's resources and capabilities need reassessing.

Even though the office comprises 14 people, the same level and quality of administrative systems as would be found in a large organisation are required.

The office has carried out a SWOT analysis as part of the strategic planning process to identify where there are strengths and gaps in capabilities and administrative systems.

As a result of that analysis, some administrative systems have been identified as requiring revision, viz

- human resource management;
- financial management; and
- capital management.

There are other strategies that are also required to reflect the realignment of roles and functions of the office. They are:

- a communications strategy; and
- an information management strategy.

5.1 Human resource management

The identification of the significant areas for the office to focus on means that the office needs capability in these areas, either through recruitment or through strategic secondments. The performance management system needs to be revised.

To achieve the focus on the two primary roles of the office requires an organisational structure that aligns with the strategic direction. The proposed structure is

to be included in the final document

5.2 Financial and capital management

The office has been constrained in its ability to replace equipment needed to produce its outputs. This has led to the rundown of some key assets. This will be addressed through the development of a long term capital management plan.

A new financial management software system will be required in order to continue the high level of financial reporting required by statute and to ensure that high

quality financial information is available to the Commissioner for management purposes.

5.3 Information management strategy

The information management systems in the office have been improved in past years but the ability to analyse the information flowing into the office is now inadequate to support the two primary roles for the office and the strategic directions identified in this plan.

An information strategy will be prepared and priorities set for implementation of systems to support the roles and functions of the office.

5.4 Communications strategy

The office has communicated in the past primarily with Parliament, central and local government whereas the significant areas identified in this strategic plan will mean some changes in who are the key interested parties. A revision of the communications strategy is timely in order to ensure that the office is communicating with and the findings and advice are being disseminated to all the key stakeholders using the most effective means.

5.5 Staff profiles

to be included in the final document

Appendix Section 16. Environment Act 1986 Functions of Commissioner

(1) The functions of the Commissioner shall be-

a) With the objective of maintaining and improving the quality of the environment, to review from time to time the system of agencies and processes established by the government to manage the allocation, use, and preservation of natural and physical resources, and to report the results of any such review to the House of Representatives and to such other bodies or persons as the Commissioner considers appropriate:

b) Where the Commissioner considers it necessary, to investigate the effectiveness of environmental planning and environmental management carried out by public authorities, and advise them on any remedial action the Commissioner considers desirable:

c) To-

(i) Investigate any matter in respect of which, in the Commissioner's opinion, the environment may be or has been adversely affected, whether through natural causes or as a result of the acts or omissions of any person or body, to an extent which the Commissioner considers warrants investigation; and

(ii) Advise, where necessary, the appropriate public authority and any other person or body the Commissioner thinks appropriate of the preventive measures or remedial action which the Commissioner considers should be taken; and

(iii) Report the results of the investigation to the House of Representatives:

d) At the request of the House of Representatives or any select committee of the House of Representatives, to report to the House or committee on any petition, Bill, or other matter before the House or committee the subject-matter of which may have a significant effect on the environment:

e) On the direction of the House of Representatives, to inquire into any matter that had or may have a substantial and damaging effect on the environment:

f) To undertake and encourage the collection and dissemination of information relating to the environment:

g) To encourage preventive measures and remedial actions for the protection of the environment.

(2) For the purposes of any inquiry held under subsection (1) (e) of this section, the Commissioner shall have the same powers as are conferred on Commissions of Inquiry by section 4 and sections 4B to 9 of the Commissions of Inquiry Act 1908; and those sections shall apply to all persons involved in any capacity in any such inquiry as if it were an inquiry conducted by a Commission under that Act.

(3) The Commissioner shall have, in relation to any such inquiry, and any report on the results of the inquiry, the same immunities and privileges as are possessed by a District Court Judge in the exercise of the Judge's civil jurisdiction.

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10 July, 1994

Helen Hughes
Parliamentary Commissioner for the Environment
Box 10-241
Wellington.

Dear Helen,

TREATY ISSUES AND CONSERVATION

Kevin Smith tells me your Office has been heared by the PM's Department as well as the Minister of Justice's Office.

That does not surprise me because there is considerable evidence to show that Government is using the Conservation Estate and natural resources as a cheap means of both settling Treaty issues, and of privatising the resource.

I enclose an article I have researched on the Codfish/Crown Titi Islands, off Stewart Island. This is a classic example of the dubious Treaty Claim process. I can supply the base resource documents if you dont believe this is what happened.

We met with Doug and Denis last Thursday, to suggest that if their newly announced policy "estate not readily available for treaty claims", and "managed by the Crown on behalf of all NZers" meant anything they would have to revisit the privatisation of Crown Titi Islands. But what amazed us was that neither of them had been briefed on the outstanding conservation values of these islands. So I sent the enclosed letter to both of them on Friday. Kevin, Bryce and I are meeting Denis to discuss the issue next Thursday.

I also enclose a Christchurch Press clepping on Bruce Mason's address to the Deerstalkers. DOC's "holy crusade" means their main objective is now privatisation to Iwi. I enclose their latest definition of Wahi Tapu from their Bay of Plenty "Strategy".

Keep up the struggle, in the interests of democracy

Yours Bar
President.

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NEWS SHEET

From the Office of the

PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT

Te Kaitiaki Taiao a Te Whare Pāremata

ISSN 0114 - 7684

September 1994

PURPOSE OF THIS NEWS SHEET

This News Sheet aims to keep Members of Parliament and representatives of local government informed about environmental matters which have been brought to my attention.

POSSUM CONTROL

Possums in New Zealand pose serious risks to native ecosystems and the control of bovine tuberculosis. Control agencies rely heavily on 1080 to reduce possum populations, but public opposition to this poison continues. I received requests from both the public and control agencies to review the safety of 1080, but chose to look at the wider context of possum management in New Zealand.

On 26 May 1994, I tabled my report in the House. Major conclusions are:

- Possums cannot be eradicated and ongoing control over more than a third of New Zealand will be essential.
- Long-term research might develop an effective possum-specific biological control in 10-15 years.
- For control over very difficult terrain, a more cost-effective method than aerial-1080 is not available. However, cost-effective possum control *can* be achieved by possum hunters operating under *performance contracts* in some areas.
- 1080 is biodegradable over time and the risk of significant contamination of human water supply from aerial 1080 use is very low. 1080 risks to ecosystems must be compared with those posed by possums.
- Continuing heavy reliance on 1080 is not advisable over the long term. Even if other environmental risks from 1080 use are not significant, on balance the risk of developing bait- and poison-shy populations may be.
- All control poisons (e.g. 1080, cyanide, brodifacoum, phosphorus) can be considered *'contaminants'* under the Resource Management Act 1991.
- Landholders should be allowed to control possums in their own way if 1080 or other methods preferred by control agencies are unacceptable, as long as required levels of control are achieved.
- Other pests also threaten conservation values. Different wild vectors of Tb and livestock management are major influences on Tb risk. If these are not also addressed, possum control alone will not achieve the desired result.

A four-page summary of the report is available free on request and the full report (196 pp.) is available from Bennetts Government Bookshops for $24.95.

BLENHEIM TIMBER TREATMENT

Residents near two timber treatment sites on the outskirts of Blenheim are concerned that there may be soil and groundwater contamination in the vicinity. I examined the environmental management undertaken by public authorities.

I found that the extent of any possible contamination of soil and groundwater from the use of timber treatment chemicals at both sites has not been fully established. The Marlborough District Council had, however, initiated a review of water quality data associated with the two sites and had undertaken an intensive groundwater monitoring programme to assist the assessment of possible off-site effects. I recommended that the council give high priority to the identification of potentially contaminated sites and that with Nelson-Marlborough Health it formulate a monitoring programme for groundwater supply.

PROPOSED PORT TERMINAL MARSDEN POINT

A technical review panel has been established at the request of consent agencies in Northland to evaluate the EIA documentation for a proposed forestry port. The first stage of the review scrutinised the hydrodynamic aspects of the port proposal and resulted in further information being required from the Northland Port Corporation.

Whangarei was visited in late July to consult with affected parties to determine whether the information provided on other aspects in the EIA is adequate and accurate and whether adequate public consultation has occurred.

Provided further information is supplied by the Port Corporation, the review is expected to finish by September.

POSSUM CONTROL ON MT.KARIOI, RAGLAN

Following the May 1994 report on possum management, I had requests from local residents in Raglan (Mt Karioi), Marlborough (Tennyson Inlet), and Kaitaia (Maungataniwha Range) to investigate proposals by the Department of Conservation to aerially drop 1080 in areas the residents considered adequately accessible for ground control methods. I undertook to review the Karioi proposal in the hope that some generic guidelines could be provided.

In the Raglan case, DOC consulted early with adjacent landholders, but underestimated the need in an apprehensive host community for wider community consultation, and failed to release environmental impact assessment information early or widely enough.

Funding allocated to the Waikato Conservancy is adequate for aerial but not ground control operations when a one possum per hectare target is sought. DOC's primary job under statute is estate protection, not training a workforce to undertake trapping which was what the community was primarily seeking. A recommendation has gone to the Ministers of Conservation, Labour, Education, Youth Affairs, and Finance to jointly address the adequacy of funding for possum control training in Taskforce Green, the Conservation Corps and the Training Opportunities Programme.

Generic guidelines were produced, focusing on ways to enhance community involvement, understanding, and support. Copies are available on request.

BALLAST WATER

Understandable concern among several regional councils as to the risks imposed by discharge of ships' ballast water has focused attention on the Biosecurity Act 1993. At present there are limited skilled resources available to check that ballast water is of an acceptable standard. I have suggested there may be merit in a number of councils with water areas at risk from organisms such as toxic dinoflagellates liaising with the Ministry of Agriculture and Fisheries (MAF).

Both MAF and regional councils have responsibilities in respect of ballast water discharge. Under the Resource Management Act 1991 regional councils, in conjunction with the Minister of Conservation, are responsible for controlling discharges in the coastal marine area.

Both the Resource Management Act and the Biosecurity Act impose monitoring duties on regional councils. Under s. 27 of the Biosecurity Act, MAF is required to control the entry of risk goods into New Zealand. Requirements under both Acts could be met efficiently, I suggest, if the regional councils' monitoring of the coastal marine environment was transferred to MAF, under s.33 of the Resource Management Act. The regional councils would remain responsible for ensuring monitoring is carried out. Involving MAF, which currently has jurisdiction over both NZ and foreign vessels, would facilitate an integrated approach to the management of ballast water discharge in the coastal marine area.

MARLBOROUGH SOUNDS FORESTRY

Concern about the effect of logging operations in the Marlborough Sounds has prompted scrutiny of the district council's Land Disturbance Plan. The plan is ostensibly an interim one until a specific one is drafted for the Sounds. I was disturbed to find that it allows most forestry operations as a permitted use. Given the unstable nature of some of the Marlborough hill country, and the high values placed on water quality in the Sounds, making forestry a permitted use does not appear to have been a wise decision. It does not promote sustainable development, since it permits inevitable degradation of water quality in the Sounds, caused by erosion.

It is essential that where there is a conflict between different uses of resources, as between forestry and aquaculture or tourism, due consideration be given to how adverse effects will be mitigated. It also means assessing how monitoring can be carried out to ensure there is compliance with any conditions placed on resource consents.

WELLINGTON AIRPORT REVIEW PANEL

In July the Wellington Airport Independent Review Panel released its final report on the redevelopment plans for Wellington Airport. The Panel which was retained throughout a two-year period ensured the Airport Company carried out an adequate environmental assessment and appropriate community consultation. The Panel, however, identified that the airport noise issue still needs to be resolved by the Wellington City Council's District Plan process.

AVOIDING THE PLANNING TRIBUNAL

A number of potentially divisive situations in New Zealand have been resolved through cooperative agreements between a business company and objectors rather than both sides meeting before the Planning Tribunal. Various forms of these agreements have been negotiated in Canterbury, Gisborne and the Waikato and probably elsewhere.

I recently visited the Five Star Beef Company near Ashburton and nearby residents to check on their agreement.

A heads of agreement between Five Star Beef Limited and objectors to the company's resource consent applications has provided a means of resolving environmental concerns about water quality, smell and traffic.

The agreement gives the community access to monitoring results. The civil contract was assisted by the Hearings Committee recommending that Canterbury Regional Council staff should arrange an annual meeting of the company and objectors to explain the results of water right compliance monitoring.

An improvement to the negotiated agreement would have been to also involve the Ashburton District Council. This could have led to greater commitment to exchange information and implement measures to improve traffic flow. Nevertheless both residents and the company consider the agreement has been a success in fostering better relations.

ENVIRONMENTAL INFORMATION AND THE ADEQUACY OF TREATY SETTLEMENT PROCEDURES

Public concern about a perceived failure by Government to consider the environmental implications of settling Treaty of Waitangi claims, particularly when conservation lands are involved, prompted an investigation into the adequacy of Treaty settlement procedures.

Procedures for settling Treaty claims are evolving but there is a lack of public understanding about the stages in the process, the precise role of public authorities and the information provided to decision makers.

The major options available for the settlement of Treaty claims to natural resources are:

- change in who manages, but no change in management objectives or who benefits from management;
- change of ownership;
- change of management objective/use;
- compensation through substitution or finance.

Each option requires information to be fully analysed.

There are three stages in the Treaty settlement process where environmental information may be required. The stages are:

1 validation or acceptance of a claim;
2 negotiation or mediation of a settlement;
3 implementation of the settlement.

I consider the present Treaty settlement process would be enhanced by procedures for ensuring:

- public disclosure of the Crown's acceptance of a claim or grievance;
- clear identification of Crown roles;
- public announcement of negotiators with appropriate mandate;
- introduction of an environmental assessment process by the Crown to obtain relevant information from the public/interest groups on possible options;
- identification of the preferred option based on full environmental information;
- identification of statutory or legislative requirements for implementing a preferred option.

An independent "keeper of the process" could assist in ensuring that the negotiating parties have all relevant information at key stages and that the public is adequately informed about the process being followed and progress being made.

A four-page summary of the report is available on request and the full report is available from Bennetts Government Bookshops

SCOPE OF PCE INQUIRIES

Recently the scope of some of the investigations carried out by my Office has come into question. To a certain extent this is related to a common perception that the environment means only 'the birds, the bees and the trees'. It comes as a surprise to many that the definition of 'environment' in the Environment and Resource Management Acts includes the social, economic, aesthetic and cultural conditions which affect the environment or which are affected by changes to the environment. This means that in the exercise of my powers and functions, I am concerned to give consideration to the effects of any activity on people.

Surprise has also been expressed when an investigation is being carried out under more than one function authorised by the Environment Act. I have always recognised that it was inevitable that more than one function will be addressed in any investigation. A review of a Government system of agencies and processes established to manage the allocation, use and preservation of natural and physical resources will always involve consideration of the environmental planning and environmental management carried out by the public authority. Any claim that the environment may be adversely affected results in both the system and the performance of public authorities being addressed.

Having investigations based on only one function would severely restrict my ability to hold public authorities accountable for actions affecting the quality of the environment and to provide advice on remedial action.

REGISTER OF CONCERNS

In the first two months of this financial year (i.e. July and August 1994) the Parliamentary Commissioner for the Environment received 117 requests for assistance of which 81 were accepted, 5 were declined and 31 are still under consideration. Of the requests accepted 77 (95%) had been actioned at 31 August 1994.

I shall endeavour to maintain these records as the financial year proceeds.

Helen R. Hughes

Helen R Hughes
Parliamentary Commissioner for the Environment

News Sheet distribution is through the Parliamentary Service, the Local Government Association and the Environment and Conservation Organisations' (ECO) network. No individualised mailing list is kept.

EMBARGOED

UNTIL TUESDAY

2PM 6 SEPT '94

ENVIRONMENTAL INFORMATION AND THE ADEQUACY OF TREATY SETTLEMENT PROCEDURES

In 1992 concerns were expressed to the Parliamentary Commissioner about a perceived failure of Government to consider the environmental implications of settling Treaty of Waitangi claims. Most concern has focused upon the potential use of areas of Crown land, or resources which are publicly owned, in the settlement of claims.

With the purpose of maintaining and improving the quality of the environment, the Commissioner investigated the adequacy of procedures used by the Crown and government agencies to manage the allocation, use and preservation of natural and physical resources in the context of Treaty claims settlements.

Procedures for settling Treaty claims are evolving and recent announcements by the Government have identified criteria for making decisions on the use of conservation land. Procedures to be used in making decisions on the use of pastoral leases have been identified. However it is not entirely clear in all cases how environmental information will be provided and assessed before decisions are made by the Crown and Maori in the settlement of specific claims.

This pamphlet summarises the findings of the Commissioner's investigation.

Office of the
PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT
Te Kaitiaki Taiao a te Whare Pāremata

PO Box 10-241, Wellington

September 1994

SUMMARY OF FINDINGS

ADEQUACY OF PROCESS

★ Any process for the allocation, use and preservation of natural and physical resources in the context of Treaty claims settlements must ensure that the Maori Treaty partner and the general public are confident that the environmental implications of settlement proposals have been thought through and addressed. To this end:

- Any process for resolving Treaty claims which relate to natural and physical resources must have regard to maintaining and improving the quality of the environment.
- Any process must be clear and well understood and in particular must aim to ensure that decision makers have the relevant environmental information before key decisions are made.

The adequate identifying and addressing of environmental implications through those processes should help make the resolution durable and also acceptable to Maori and the general public alike.

CROWN ROLES

★ The Crown has accepted that Treaty grievances should be addressed and that it is in the public interest that they are. The Crown as partner to the Treaty has a duty to conduct its business, giving due consideration to the principles of the Treaty and resource administration agencies such as the Department of Conservation and local authorities have a statutory obligation to do so.

★ There is potential for confusion in the understanding of the public over the various Crown roles:

a) the role of the Minister of Justice in coordinating all relevant information from a range of Ministers and government agencies in order to formulate options for settlement of a claim;
b) the role of a Minister with resource management responsibilities as a final decision-maker in negotiations; and
c) the role of Ministers and their departments as providers of information to the negotiations.

UNDERSTANDING THE PROCESS

★ Except where a Treaty claim is validated by the Waitangi Tribunal after full hearing and where Parliament passes new legislation required after the negotiating process is over, the public are ill informed about the nature of Maori interests, including those subject to Waitangi Tribunal claims or the environmental implications of possible options for addressing those interests.

★ The distinction between validation or acceptance of a claim by the Crown and procedures for settling the claim can become confused, particularly in cases where claims are referred for direct negotiation or mediation without having been validated by the Tribunal. If details of a claim accepted by the Crown are not made clear then claim issues can become confused with the negotiation or mediation process. When the public does not understand the validity of a claim, problems will arise later in the process at whatever stage they may become involved. This does not promote sound environmental decisions.

Confidentiality

★ To allow free exchange of views, it is fair and reasonable in negotiations between Treaty partners, Crown and Maori, that detailed information and negotiating positions are confidential. However, a lack of information on the effects of proposals on the environment may contribute to fear and distrust, misinformation and reduced harmony between Maori and the wider community.

SUMMARY OF FINDINGS

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★ The confidentiality of the negotiating process can still be protected while improving procedures for maintaining and enhancing the quality of the environment. The procedures should identify:

- issues relevant to the negotiation and why they must be addressed
- what the steps of the process will be
- roles of public authorities involved
- what public resources may be involved in options under consideration
- whether environmental information will be sought by the Crown from its constituents and if so how
- the final outcome of negotiations or mediation and how this meets Crown obligations under the Treaty.

ENVIRONMENTAL INFORMATION

★ Government procedures for environmental assessment have been available since the early 1970s, through promulgation of the Environmental Protection and Enhancement Procedures (1973, revised 1987) and passage of the Environment Act 1986, Conservation Act 1987 and Resource Management Act 1991.

★ The Resource Management Act has recognised the interests of the wider community in the management of natural and physical resources and that relevant information on effects may be obtained from the wider community. The same principle applies in the Treaty claims settlement context; some special interest groups and individuals may have information required by decision-makers to ascertain the effects of proposed settlement options and a process is therefore required to provide this information to Crown and Maori decision-makers *before* key decisions are made.

★ There are three stages in the Treaty claims settlement process where environmental information may be required:

a. *validation or acceptance of Treaty claims*
b. *negotiation or mediation of validated or accepted claims*
c. *implementation of negotiated settlement package*

★ There is no specific provision for environmental assessment early in the negotiation or mediation phase. While statutory provisions for implementation provide for a certain level of information to be obtained, the nature and timing of those procedures are insufficient to ensure that timely and appropriate information is provided before decisions between settlement options are made. In addition statutory provisions are discretionary, and will relate only to the objectives of the relevant Act (eg Conservation Act, Reserves Act). Where special legislation is proposed to implement a settlement, a select committee process, through which information may be obtained, cannot be guaranteed.

Consultation and information

★ In a strict legal sense the public at large, (and, more specifically, environmental groups) have no general entitlement to be consulted in the context of Treaty settlements except where that entitlement is provided for in statutes that govern the management of the relevant resources. However, this does not preclude the Crown from conducting whatever consultation is required to fully inform itself about the resources being considered in the negotiation or mediation process, including the values held by stakeholders and the wider public.

★ Consultation with members of the public or environmental groups by the Crown should not be confused with directly including such groups in negotiation or mediation between Crown and Maori as Treaty partners. Members of the public are not negotiating parties in their own right.

STATUTORY CONTROLS OVER SETTLEMENT OUTCOMES

★ The major options available for the settlement of Treaty claims to natural resources are:

a. change in who manages, but no change in management objectives or who benefits from management;
b. change of ownership;
c. change of management objective/use;
d. compensation through substitution or finance.

★ In general, where there is no change in ownership, the resource will continue to be managed by the relevant statute (e.g., Conservation, Reserves, Fisheries Acts). Even if there is a change in the adminstration or management of the resource, either by the management being taken over by iwi or by joint management regimes being established, statutory compliance provisions still apply and in the final analysis the relevant Minister has ultimate responsibility. Additional protective covenants may also be subject to negotiation if appropriate.

★ Where a change to the status of a resource is proposed (as by removing the reserve status from an area and returning the land to the claimants in fee simple title), the provisions of the Resource Management Act will generally apply to any future activities the claimants may wish to carry out.

AN OVERSEAS MODEL: Keeper of the Process

★ The establishment of an independent body in British Columbia, Canada, serves, amongst other things, to provide a check of what information is provided and to whom it should be provided. The establishment of a similar mechanism in New Zealand may enhance the Treaty settlement process.

AN IMPROVED PROCESS

★ The present Treaty settlement process would be enhanced by:

- public disclosure of the Crown's acceptance of a claim or grievance;
- clear identification of Crown roles;
- public announcement of negotiators with appropriate mandate;
- introduction of an environmental assessment process by the Crown to obtain relevant information from the public/interest groups on possible options;
- identification of the preferred option based on full environmental information;
- identification of relevant statutory or legislative requirements for implementing a preferred option.

★ An independent "Keeper of the Process" could assist in ensuring that the negotiating parties have all relevant information at key stages and that the public is adequately informed about the process being followed and progress being made.

These findings are taken from a full report which includes:

- summary of the present treaty claims settlement process established by the Crown
- description of three case studies
- legal rights for public involvement in the Treaty claims settlement process
- provisions for public involvement and environmental assessment in legislation
- description of the British Columbia model for aboriginal claims settlement

The full report is available from Bennetts Government Bookshops and GP Publications.

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Office of the
PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT
Te Kaitiaki Taiao a Te Whare Pāremata

PRESS RELEASE -- **EMBARGOED UNTIL 2.00 PM, TUES. 6 SEPT. 1994**

ENVIRONMENTAL INFORMATION AND THE ADEQUACY OF TREATY SETTLEMENT PROCEDURES

The Treaty settlement process and how it deals with environmental concerns is complex and not clear to the public. This is the conclusion reached in a report entitled *Environmental Information and the Adequacy of Treaty Settlement Procedures* released by Helen Hughes, Parliamentary Commissioner for the Environment today.

"When the public does not understand what is happening; when the precise role of public authorities is unclear and when not all information is provided to decision makers, people get suspicious and, in some cases, angry. This is precisely what has happened over recent years" said Mrs Hughes.

"The Government has recently clarified criteria for managing the allocation of conservation lands under claim and will shortly release a booklet on settlement policies. I hope that my independent report released today will further assist the public to understand the stages and the procedures of the Treaty settlement process.

"It is not entirely clear in all cases how environmental information will be provided and assessed before decisions are made by the Crown and Maori in the settlement of specific claims. In this regard I believe procedures can be improved. Members of the public consider they have a role in providing information on public land, particularly conservation land, which may be used to settle a legitimate claim. I believe that in order to make the best use of that information, it should be provided in a focused manner early in the process.

11th Floor, Reserve Bank, 2 The Terrace, Wellington
PO Box 10-241, Wellington, New Zealand
Telephone: 0-4-471-1669
Fax: 0-4-471-0331

"It is time that Government once again recognised that the Environmental Protection and Enhancement Procedures could provide that focus. An assessment of the environmental effects of proposed settlement options can benefit all parties.

"It is essential that the public understands all the steps in the process. In so doing, while members of the public may have valuable information to contribute, they need to understand that they are not parties to negotiations between the Crown and Maori.

"After a visit to Canada earlier this year I became aware that the public and claimants, might be more supportive of the process were it to include an independent person or body who would ensure that at each stage of the process appropriate procedures are followed.

"British Columbia has established a British Columbia Claims Commission which is described as the "Keeper of the Process". New Zealand could consider a similar agency with similar responsibilities.

"Claims need to be settled. It is highly desirable that they be settled with the full support of the people of New Zealand", Mrs Hughes concluded.

- ends -

Contacts:

Mrs Helen Hughes, Parliamentary Commissioner for the Environment
(04) 471-1669(w) (04) 388-6991 (h)

Ms Kirsty Woods, Investigating Officer
(04) 471-1669 (w)

Further information available:

Summary:	4 pages	(can be faxed on request)
Full report:	148 pages	(available from PCE or Government Print)

Office of the
PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT
Te Kaitiaki Taiao a Te Whare Pāremata

5 September 1994

Mr Bruce Mason
Spokesperson
Public Access New Zealand Inc
PO Box 5805
Moray Place
DUNEDIN

Dear Mr Mason

ENVIRONMENTAL INFORMATION AND THE ADEQUACY OF TREATY SETTLEMENT PROCEDURES

I enclose for your information an advance copy of my report "Environmental information and the adequacy of Treaty settlement procedures", copies of a summary of my findings and my press release. The report will be tabled in Parliament at 2.00 pm on 6 September 1994 and until then I must ask you to keep all three documents **confidential**.

Copies of the full report will be available through Bennetts Government Bookshops and GP Publications. Should you wish to distribute copies of the summary you are welcome to request further copies from us, or alternatively, to copy them yourselves.

I would like to take this opportunity to thank you for the assistance you have given my office during this review. Your input was most helpful in our research of this complex issue.

Yours sincerely

Helen R. Hughes

Helen R Hughes
Parliamentary Commissioner for the Environment

11th Floor, Reserve Bank, 2 The Terrace, Wellington
PO Box 10-241, Wellington, New Zealand
Telephone: 0-4-471-1669
Fax: 0-4-471-0331

Office of the
PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT
Te Kaitiaki Taiao a Te Whare Pāremata

2 May 1994

Mr Bruce Mason
Spokesperson and Trustee
Public Access New Zealand Inc
PO Box 5805
Moray Place
DUNEDIN

Dear Bruce

INVESTIGATION INTO PROCEDURES FOR MAINTAINING THE QUALITY OF THE ENVIRONMENT IN THE SETTLEMENT OF TREATY CLAIMS

Thank you for your comments on the revised terms of reference for my study.

A number of your concerns can be answered as follows. The primary focus of my study is the extent to which current processes for resolving Treaty claims provide for an assessment of the environmental implications of settlement options. Such implications must take into account the definition of "environment" as set out in the Environment Act, and also the long title of the Act, which aims, amongst other things, to ensure that in the management of natural and physical resources, full and balanced account is taken of:

(i) The intrinsic values of ecosystems; and
(ii) All values which are placed by individuals and groups on the quality of the environment; and
(iii) The principles of the Treaty of Waitangi; and
(iv) The sustainability of natural and physical resources; and
(v) The needs of future generations.

The issue of consultation with affected parties must be assessed primarily from that point of view, bearing in mind the limits to my jurisdiction.

The issues listed in my draft terms of reference were designed to assist me to understand the content of debate over the use of public lands in the settlement of claims and thus to assess where my efforts were best directed. While many of them will continue to have a bearing on my final report, they will not constitute its main focus.

However given the scope of my final report, any suggestions for addressing problems that you have identified will be carefully studied.

Yours sincerely

Helen R. Hughes

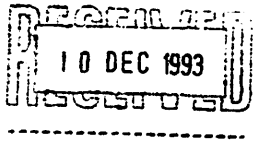
Helen R Hughes
Parliamentary Commissioner for the Environment

Copied to: Law Commission

PO Box 10-241, Wellington, New Zealand *Telephone: 0-4-471-1669 Fax 0-4-471-0331*

Office of the
PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT
Te Kaitiaki Taiao a Te Whare Pāremata

JS 50-1



7 December 1993

Bruce Mason
Public Access New Zealand
P O Box 5805
Moray Place
DUNEDIN

Dear Mr Mason,

INVESTIGATION INTO TREATY OF WAITANGI NEGOTIATIONS AND THE INVOLVEMENT OF AFFECTED PARTIES

On the Frontline programme which screened on Monday 30 November, I saw an interview with you on issues relating to the use of conservation areas in the settlement of Treaty claims. You may be aware that the Parliamentary Commissioner for the Environment has decided to begin an enquiry into processes for settling Treaty claims and the way the interests of affected parties are managed. We would welcome your further comments on the issues set out below.

One of the main complaints made by public interest groups such as yourselves is that the Government is not consulting affected parties on options for settlement. Alternatively, we are well aware that other views hold that the Treaty is between Maori and the Crown, not the public.

It seems that there are a number of issues surrounding the settlement of Treaty claims, particularly where "Crown" land is concerned. These include:

1. The identity of the Crown and the role of the Government.
2. The Crown's responsibility to Maori under the Treaty.
3. Accountability of the Government to the public.

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4. The achievement of durable settlements in an environment where many members of the public are not well informed on Treaty matters or Maori values.
5. The apparent conflict in values between influential public interest groups and Maori, for example preservation in perpetuity vs sustainable use.
6. Public distrust of "secret deals".
7. Maori distrust of some public interest groups.
8. The requirement under statute (for example the Conservation Act) to consult the public over the management of public lands.
9. The adequacy of existing legal frameworks to reflect the interests of both the public and Maori in new joint management arrangements for Crown or public lands.

While the Commissioner has yet to agree on final terms of reference for the investigation, we have drafted a terms of reference, based on the above issues, to guide the investigation in the initial stages. Please note that these are intended as a basis for discussion only and that they are subject to change.

DRAFT : Terms of Reference

1. To consider the adequacy of processes established by the Crown to manage the interests of parties affected by the Crown's relationship with Maori under the Treaty of Waitangi; and
2. To report on:
   (a) the ability of the Crown to represent the public interest in the protection and enhancement of the environment;
   (b) processes used in three negotiations between the Crown and Maori involving the allocation, use and/or protection of publicly owned land, including:
      (i) the establishment of grounds for negotiation;
      (ii) negotiation of options for settlement;
      (iii) the involvement of other stakeholders;
      (iv) outcomes of negotiation and settlement.

3. To provide advice on remedial action where appropriate.

We have yet to identify which examples will form the basis of the investigation. It is likely that they will involve:

(a) the Crown estate;

(b) a strong public interest (for example conservation or economic interests);

(c) variety of negotiation process.

We will be approaching any relevant claimants before making a final choice.

Any comments you wish to make are welcome.

Yours sincerely

Kirsty Woods
for Parliamentary Commissioner for the Environment

Office of the
PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT
Te Kaitiaki Taiao a Te Whare Pāremata

10 March 1994

INVESTIGATION INTO PROCEDURES FOR MAINTAINING THE QUALITY OF THE ENVIRONMENT IN THE SETTLEMENT OF TREATY CLAIMS

Following my preliminary inquiries into involvement of affected parties in the Treaty settlement process, I confirm the following as terms of reference for my investigation:

Terms of Reference

(i) With the purpose of maintaining and improving the quality of the environment, to inquire into and report on the adequacy of processes used by the Crown and government agencies to manage the allocation, use and preservation of natural and physical resources in the context of Treaty negotiations;

(ii) To provide advice on remedial action as appropriate.

This investigation was initiated as a result of concerns expressed by public interest groups as to the potential effects of Treaty settlements on the environment, and more specifically, that consultation with the public during the process of settlement is inadequate.

I intend to examine the issue of consultation with reference to the obligations of the Crown/Government both to Maori as a treaty partner and to the public in the context of Crown owned resources administered under different statutes, for example the Land Act 1948, the Reserves Act 1977 and the Conservation Act 1987. I also expect to compare current practice with similar procedures operating in North America.

Before any findings are made public, my report will be refereed by the Law Commission.

Helen R Hughes
Parliamentary Commissioner for the Environment

11th Floor, Reserve Bank, 2 The Terrace, Wellington
PO Box 10-241, Wellington, New Zealand
Telephone: 0-4-471-1669
Fax: 0-4-471-0331

Public Access New Zealand

INCORPORATED

P O Box 5805 Moray Place Dunedin New Zealand Phone & Fax 64 3 476 1544

16 December 1993

Parliamentary Commissioner for the Environment
P.O. Box 10-241
Wellington.

Attention: Kirsty Woods.

Many thanks for your invitation of 7 December (ref. JS 50-1) to contribute comment on the terms of reference for your investigation of Treaty settlement processes.

I do intend to comment substantially as soon as possible, however I thought that I should first submit the enclosed paper for your consideration - I feel that there are some 'base' issues that need review first.

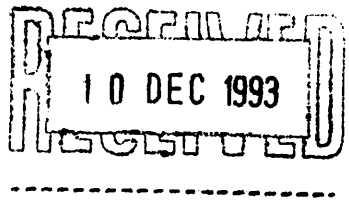
Any comments on my paper would be appreciated.

Many thanks,

Bruce Mason
Trustee

Office of the
PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT
Te Kaitiaki Taiao a Te Whare Pāremata

JS 50-1



7 December 1993

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Public Access New Zealand
P O Box 5805
Moray Place
DUNEDIN

Dear Mr Mason,

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One of the main complaints made by public interest groups such as yourselves is that the Government is not consulting affected parties on options for settlement. Alternatively, we are well aware that other views hold that the Treaty is between Maori and the Crown, not the public.

It seems that there are a number of issues surrounding the settlement of Treaty claims, particularly where "Crown" land is concerned. These include:

1. The identity of the Crown and the role of the Government.

2. The Crown's responsibility to Maori under the Treaty.

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5. The apparent conflict in values between influential public interest groups and Maori, for example preservation in perpetuity vs sustainable use.

6. Public distrust of "secret deals".

7. Maori distrust of some public interest groups.

8. The requirement under statute (for example the Conservation Act) to consult the public over the management of public lands.

9. The adequacy of existing legal frameworks to reflect the interests of both the public and Maori in new joint management arrangements for Crown or public lands.

While the Commissioner has yet to agree on final terms of reference for the investigation, we have drafted a terms of reference, based on the above issues, to guide the investigation in the initial stages. Please note that these are intended as a basis for discussion only and that they are subject to change.

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2. To report on:

   (a) the ability of the Crown to represent the public interest in the protection and enhancement of the environment;

   (b) processes used in three negotiations between the Crown and Maori involving the allocation, use and/or protection of publicly owned land, including:

      (i) the establishment of grounds for negotiation;

      (ii) negotiation of options for settlement;

      (iii) the involvement of other stakeholders;

      (iv) outcomes of negotiation and settlement.

3. To provide advice on remedial action where appropriate.

We have yet to identify which examples will form the basis of the investigation. It is likely that they will involve:

(a) the Crown estate;

(b) a strong public interest (for example conservation or economic interests);

(c) variety of negotiation process.

We will be approaching any relevant claimants before making a final choice.

Any comments you wish to make are welcome.

Yours sincerely

Kirsty Woods
for Parliamentary Commissioner for the Environment

FEDERATED MOUNTAIN CLUBS OF NEW ZEALAND (Inc.)
P.O. Box 1604, Wellington.

Ph & Fax 233-8244

11 April 1994

Sir Kenneth Keith
President
NZ Law Commission
PO Box 2590
WELLINGTON

Dear Sir Kenneth

RE: **TREATY ISSUES**

We have some concerns about just what it is the Parliamentary Commissioner for the Environment intends to do in her investigation into "Procedures for Maintaining the Quality of the Environment in the Settlement of Treaty Claims".

The initial request from NGO's was triggered by concern at the late and marginalised involvement of non-Maori stakeholders and the biased approach of Government, departments and agencies, and their apparent ability to do whatever they like in terms of process. Mt. Hikurangi, where the consultation requirements of the Conservation Act were evaded, is a case in point. Whether the Parks, Reserves, and Conservation Lands shouldd be traded at all, given Government has an obligation to preserve them in perpetuity in public ownership, is another. It is unclear to us that Mrs Hughes' investigation will address either of these issues.

Our concern was over equity, sovereignty, and process.

The Parliamentary Commission now appears to be targeting "environmental quality". Whether or not Iwi would be better or worse managers of Public Conservation Lands is a significant issue, but our concerns were not primarily with this when we approached the Commissioner. The Commissioner has stated that your Commission will be involved in refereeing her report. We therefore copy to you our letter expressing our concerns about both the vague and apparently different Terms of Reference she has now proposed.
I also enclose a copy of Bruce Mason's response to the Commissioner's original invitation which is valuable in highlighting many of our concerns.

Yours sincerely

Barbara Marshall
Secretary
Enc

Office of the
PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT
Te Kaitiaki Taiao a Te Whare Pāremata

10 March 1994

INVESTIGATION INTO PROCEDURES FOR MAINTAINING THE QUALITY OF THE ENVIRONMENT IN THE SETTLEMENT OF TREATY CLAIMS

Following my preliminary inquiries into involvement of affected parties in the Treaty settlement process, I confirm the following as terms of reference for my investigation:

Terms of Reference

(i) With the purpose of maintaining and improving the quality of the environment, to inquire into and report on the adequacy of processes used by the Crown and government agencies to manage the allocation, use and preservation of natural and physical resources in the context of Treaty negotiations;

(ii) To provide advice on remedial action as appropriate.

This investigation was initiated as a result of concerns expressed by public interest groups as to the potential effects of Treaty settlements on the environment, and more specifically, that consultation with the public during the process of settlement is inadequate.

I intend to examine the issue of consultation with reference to the obligations of the Crown/Government both to Maori as a treaty partner and to the public in the context of Crown owned resources administered under different statutes, for example the Land Act 1948, the Reserves Act 1977 and the Conservation Act 1987. I also expect to compare current practice with similar procedures operating in North America.

Before any findings are made public, my report will be refereed by the Law Commission.

Helen R. Hughes

Helen R Hughes
Parliamentary Commissioner for the Environment

11th Floor, Reserve Bank, 2 The Terrace, Wellington *Telephone: 0-4-471-1669*
PO Box 10 241 Wellington New Zealand

Office of the
PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT
Te Kaitiaki Taiao a Te Whare Pāremata

18 March 1994 JS 50-1

Mr Bruce Mason
Public Access NZ
PO Box 5805
Moray Place
DUNEDIN

Dear Mr Mason

INVESTIGATION INTO PROCEDURES FOR MAINTAINING THE QUALITY OF THE ENVIRONMENT IN THE SETTLEMENT OF TREATY CLAIMS

Thank you for your letter of 10 March containing comments on issues raised in earlier correspondence.

I attach for your information the Parliamentary Commissioner for the Environment's revised terms of reference upon which further investigation will be based.

Before finalisation of the report, we may need to confirm that we have understood your comments correctly and to clarify any further issues that may arise.

In the meantime, thank you for the comments you have already given us.

Yours sincerely

Kirsty Woods
for Parliamentary Commissioner for the Environment

11th Floor, Reserve Bank, 2 The Terrace, Wellington
PO Box 10-241, Wellington, New Zealand
Telephone: 0-4-471-1669
Fax: 0-4-471-0331

NEW ZEALAND FISH & GAME COUNCIL

28 March 1994

Helen Hughes
Parliamentary Commissioner for the Environment
P O Box 10-241
WELLINGTON

Dear Helen

PUBLIC INVOLVEMENT IN TREATY CLAIM SETTLEMENT PROCESS

As you know the manner in which the Crown has endeavoured to negotiate and settle Treaty claims is attracting increasing attention - primarily from conservation and recreation groups, and farmers, but now also from the general public.

Todate Maori have made it abundantly clear they want the negotiation and settlement process to be a two-party event - in their view, in recognition of the historical fact that it was the British Crown and Maori who signed the Treaty of Waitangi in 1840. Third parties to the debate have been actively discouraged, and even abused, by some Maori speakers, and the Crown/Government has increasingly found itself in 'no-mans-land', within a constitutional dilemma of not knowing with any certainty and confidence just what to do.

It should now be apparent to all parties - the Crown, Maori and the rest of New Zealand - that the need to move to a more public process is now not only essential, but unavoidable. Indeed with a one seat majority and the certainty of an MMP electoral system for the next election the Government effectively has no choice but to move towards a Treaty settlement procedure that provides for the involvement of that 85% of the New Zealand population who are not Maori.

The report you have undertaken to prepare on this matter therefore now has a far greater prospect of causing real change than it would have under the parliamentary situation that existed prior to the general election.

W B Johnson
Director

2 Jarden Mile, Ngauranga, Wellington
P.O. Box 13-141, Wellington, 4
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It is against this background that I thought I should bring to your attention the outcome of a recent meeting I attended in Queenstown. This meeting was called by the Department of Conservation to discuss the adequacy and accuracy of a report it has prepared on the conservation and recreation values of three pastoral runs being sought by Ngai Tahu for the part-settlement of its Treaty claim. In brief, this primary purpose of the Queenstown meeting was concluded quite quickly with practically all speakers generally endorsing the DOC report as a document that had met its intended (albeit narrow) purpose.

The remainder of this meeting was spent discussing the Treaty negotiation and settlement process, specifically as it should apply to the Ngai Tahu case, but with national level representatives such as myself present also generally, as it might apply to all claim settlements.

During the debate it became apparent that a three step procedure could perhaps provide the basis of a Treaty claim settlement process that might provide for the aspirations of all parties with an interest in such matters, and provide the germ of a solution to the rising dilemma confronting the Government - which on the one hand wants to respect the wishes of Maori and on the other provide a mechanism for public involvement, all within the overall goal of obtaining popular and durable solutions to Treaty claims.

The proposal that emerged from the Queenstown meeting involves the following three steps:

(i) The preparation by Government of a 'resource report', in accordance with the same procedure now used for the reclassification (and potential freeholding) of pastoral lease lands, that identifies all the existing and potential values. This is a public process involving submissions etc., and should result in a document that accurately describes all relevant values and opportunities for any specified area of land/water. The final report would be a matter of public record, and form the basis for the remaining two steps.

(ii) Government would then take this final report and generate a range of Treaty claim settlement options, which would be released publicly with an invitation for public comment. Public submissions would be summarized and the summary released for public information, but the Crown/Government would not indicate its preferred option, although it would have a clear indication of public opinion on each of them - as would the public. The Crown would then enter into negotiations with Maori, with the public not knowing the Crown's opening position, but knowing the range of options being considered and the weight of public opinion in respect of each of them.

(iii) Once a proposed settlement had been achieved through negotiation the Government would refer an appropriate report on the proposal to a Select Committee (being a committee of Parliament, as distinct from a committee of the Government) for public submissions - in exactly the same way, and for the same constitutional reasons, as draft legislation is handled. The Select Committee would hear submissions and ultimately report back to Parliament, following which the Government of the day would resume control of the process and make final decisions - for which it would then become accountable through the normal triennial electoral process.

Such a three step process should therefore have the effect of causing informed and potentially popular settlement decisions; with the general public having an opportunity to take part in the various stages and, most importantly, to emerge from them with some sense of ownership in the outcome - so important if the decisions are to remain durable over time, and maintain racial harmony.

Furthermore, the process involves elements that the public are already familiar with, and in which they presently have considerable confidence. This latter aspect is a key factor in the potential acceptability and success of such a process.

I would appreciate an opportunity to discuss this process further with you and your staff.

Yours sincerely

Bryce Johnson

W B Johnson
DIRECTOR

NEW ZEALAND FISH & GAME COUNCIL

28 March 1994

Helen Hughes
Parliamentary Commissioner for the Environment
P O Box 10-241
WELLINGTON

Dear Helen

TREATY CLAIM SETTLEMENT PROCESS - TERMS OF REFERENCE

Thank you for sending me a copy of the Final Terms of Reference for your investigation into procedures for maintaining the quality of the environment in the settlement of Treaty claims.

In particular I note and support your wish to conduct this review with the purpose of not only maintaining, but also improving, the quality of the environment - and in this latter regard I assume you are referring to the natural environment.

However I also note that the primary focus of the Terms of Reference is to inquire into the ..."adequacy of the processes"... used by the Crown and government agencies etc. [point (i), line two]. While that is indeed the proper focus to have it requires the prior determination, precise definition and inclusion in the report, of some standard against which the proposed assessment of 'adequacy' can be measured. Any written assessment of adequacy that does not include the benchmark against which it has been determined is in fact no valid assessment at all.

With this in mind, could I suggest that you consider dividing your inquiry into two parts - the first to determine the standard against which 'adequacy' will be measured, and the second to carry out the actual assessment of adequacy of the present process and make recommendations. To ensure that this separation is explicitly noted I believe the Terms of Reference should be amended accordingly.

W B Johnson
Director

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Finally, the determination of a baseline standard would require some analysis of the views of all interested parties - all of whom have opinions on, and expectations for, this process. Having said that I do not think it would be too difficult to assemble a brief schedule of 'principles' that were acceptable to all parties with an interest in Treaty matters. Essentially, these would focus on considerations of equality, popularity and durability of decisions and real public involvement in the settlement process.

Yours sincerely

Bryce Johnson

W B Johnson
DIRECTOR

FEDERATED MOUNTAIN CLUBS OF NEW ZEALAND (Inc.)
P.O. Box 1604, Wellington.

Ph & Fax 233-8244

COPY

11 April 1994

Helen Hughes
Parliamentary Commissioner for the Environment
PO Box 10-241
WELLINGTON

Dear Helen

RE: **TREATY OF WAITANGI NEGOTIATIONS**

Thank you for your letter of 18 March 1994, in which you set out the Terms of Reference for your study. I note with concern that the original intention of the investigation, namely to investigate the involvement of third parties in Treaty of Waitangi negotiations has been changed in favour of much narrower and vaguer terms of reference.

The major concern of Federated Mountain Clubs is the arbitrary allocation to Iwi by Government of private property rights to public resources that belong to all New Zealanders. I request to know whether your "investigation" intends to address this issue. It has always been understood in New Zealand that the National Parks and Reserves belong to the people. Witness David Thom's great book "Heritage - the Parks of the People", published to commemorate the Centennial of Tongariro National Park. Witness too, Queen Victoria's 1840 proclamation on the Queen's Chain and other Reserves. There is also the Crown Land Carve Up of 1987, where commercial land went to the State-Owned Enterprises and Conservation Land went to the Department of Conservation. Will you be addressing this issue that these conservation lands should not be traded?

We find your Terms of Reference as set out unsatisfactory, and request a more detailed description of what you intend. We also request, under the Official Information Act, the names of the staff and/or consultants that will be undertaking this study.

We therefore seek your assurance that your investigation will address

(a) whether the purported "Partnership" of Government and Iwi under the Principles of the Treaty is being used to avoid public consultation and adhering to the laws of the land, i.e. whether Article 2 is over-ruling Articles 1 and 3.

(b) conflict between Department of Conservation's statutory responsibilities and s4 of the Conservation Act

(c) the role of Maori staff within the bureaucracy and the conflict of interest created between them being advocates for Maoridom, rather than for the Department, and its statutory responsibilities, or the public interest.

(d) the inadequacy of Government's consultation process on the Greenstone-Caples-Elfin Bay pastoral lease purchase, where Doug Graham sees himself being shielded by Doc from direct consultation with the public.

(e) what procedures are to be followed when Government enters into secret negotiation or mediation, (which avoid the need for public hearings before the Waitangi Tribunal) to

(i) prove the Crown's guilt

(ii) allow the public an opportunity to present evidence

e.g. the Stephens Island case (mediation); Tainui case (secret negotiation).

It is of major concern to us that Government has stated it intends largely to dispense with Tribunal hearings in future.

(f) why the Crown is neglecting its responsibilities to preserve in perpetuity the Public Conservation Lands, as it is required to do under the Conservation Acts, when it uses these lands in Treaty Claim settlement e.g. Mt Hikurangi, Stephens Island, Codfish Island, Crown Titi Islands.

I note that Bruce Mason of Public Access New Zealand wrote to you on 10 March on PANZ views on your previous list of nine issues, and an invitation to respond to his booklet on the "Principles of Partnership". He has made a good start to identifying some of our concerns, and we would be interested in your response, especially on "Partnership".

It seems highly unlikely that your own staff have experienced the one-sided approach of many agencies in dealing with Treaty claims and principles, and their sneering approach to the non-Iwi public. We therefore ask what process of public consultation with NGO's you intend to follow during this study.

I am surprised that you intend to investigate current practice with North America. North America, like Australia, has vast tracts of land, and has indigenous peoples still living in them. This is not the case in New Zealand, where Iwi have never lived in the mountainous and remote lands that are now the major part of the Public Conservation Estate.

We suggest that, as Parliament's agent, rather than the Government's, it should be a fuller and frank process on your part. Perhaps a model for what Government Departments should be doing on Treaty Claims.

I await your reply with interest. I am also forwarding a copy of this letter to the Law Commission, given your involvement of them in the study.

Yours sincerely

Hugh Barr
President

cc Bryce Johnson, Kevin Smith, Bruce Mason, NZ Law Commission

Public Access New Zealand

INCORPORATED

P O Box 5805 Moray Place Dunedin New Zealand Phone & Fax 64 3 476 1544

COVER SHEET

Date 14/4/94

Page 1 of 1

To Bryce.

Re 'Settlement' Process draft.

Pg 2: 2nd para. Italicise 'proven before the W. T' for emphasis. Re may this paragraph is marked ✱ leaves ✱ open for improver claims to bypass the 3-step consultation process. Should add something about all claims must be submitted to and heard by the W. T. before Govt. will negotiate settlements.

Under step (1) 'This range of assetts ---.(to) --- by declaration of recognition etc.' confuses step one which is supposed to be a resource document. Better to shift above into step #2 - Options.

My limited thoughts here end.

Niall & myself are away up to Queenstown tonight to be interviewed on Holmes Show tomorrow re Queenstown Chairs (& tables)

Bruce M.

ODT 7/9/94

Too little talking on Greenstone

By Pete Barnao

Confusion over Crown procedures has unneccessarily led to media clashes between Ngai Tahu and conservation groups over the future of the Greenstone Valley, the Parliamentary Commissioner for the Environment Helen Hughes says.

In a report tabled in Parliament yesterday, Mrs Hughes suggested the Government had made inadequate provision for public consultation on possible use of the area after settling the tribe's land claim.

The purpose of the settlement process was unclear and did not provide distinct ways for the Crown to seek environmental information from the public, she said in a report titled "Environmental Information and the Adequacy of Treaty Settlement Procedures".

Mrs Hughes said Ngai Tahu had debated issues surrounding the Greenstone with interest groups, when it was the Crown that should deal with the public.

"There is a danger in the negotiation phase that claimants and their respective hapu and iwi will be insufficiently resourced to respond to well organised interest groups. . . . The public must be aware that they are not negotiating with Maori but are providing information to the negotiations."

Greenstone, Elfin Bay and Routeburn stations to Ngai Tahu was one of three case studies undertaken by the commissioner to investigate settlement procedures.

Her 148-page report, which contained no recommendations, said the public had not understood the procedures. Debate over the use of land with conservation values to settle Treaty of Waitangi claims had aroused anxiety and anger.

The report followed complaints about a perceived failure of Government to consider the environmental implications of settling claims.

The Government had recently announced criteria to govern use of the conservation estate in claim settlements. "It is, however, not clear how the process carried out in each case will ensure that those criteria will be met."

She hoped a soon-to-be-released government booklet on settlement policies would help clarify the issues.

The Crown could improve the settlement process by:

- Publicly disclosing its acceptance of a claim or grievance.
- Clearly identifying Crown roles.
- Introducing an environmental assessment process to get information from the public on possible options.
- Identifying the preferred settlement option based on full environmental information.
- Identifying relevant legal requirements for implemen-