



Office of the
Minister of Conservation

PARLIAMENT BUILDINGS, WELLINGTON, NZ PHONE (04) 471 9978 FAX (04) 473 3446

Bruce Mason
Convenor
Public Access New Zealand
PO Box 5805
Moray Place
DUNEDIN

Dear Mr Mason

Thank you for your letter of 26 November 1992 in which you provide further information about the material you are seeking under the Official Information Act.

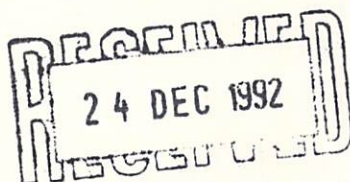
I take it from your letters that what you now require are copies of all relevant parts of official publications from my office, the Department of Conservation, or the New Zealand Conservation Authority, concerning Maori land claims, the Treaty of Waitangi, and the transfer of conservation areas/national parks/reserves to Maori ownership, management or co-ownership. I also take it that by "publications" you mean not only what is implied by that word, but also press statements and speech notes.

The New Zealand Conservation Authority does not generate publications of the type referred to. The only relevant departmental publication is Conservation Review (Issue No 13), a copy of which is enclosed.

From my office the following is provided: A press release of 8 September 1992, an address I delivered to the Wanganui Branch of the Royal Forest and Bird Protection Society, a letter in which I replied to criticisms aired in the Christchurch Press, and speech notes for an address to the RFBPS AGM.

This comprises all the material available under the requested headings.

In view of the narrowed scope of your enquiry and the relative ease of retrieving the material it will not be necessary in this instance to levy a charge in terms of the OIA.



I therefore return your cheque.

Yours sincerely



Denis Marshall
Minister of Conservation

encl

DEPARTMENT OF
JUSTICE
NEW ZEALAND

Head Office

In reply, please quote

Charles Fergusson Building
Bowen Street
Private Box 180
Wellington
Telephone: (4) 472-5980
Fax: (4) 499-2295

10 August 1993

Mr Bruce Mason
PO Box 5805
DUNEDIN

Dear Mr Mason

Thank you for your letter of 4 August 1993 in which you request advice as to the Government's review of the current standing of the Principles for Crown Action on the Treaty of Waitangi, information on any changes there may be to Government policy, a copy of the comments on the Principles being developed by the Treaty of Waitangi Policy Unit as outlined in the State Services Booklet of July 1989 and other related papers.

Although there has been some discussion within Government on the five Principles outlined in the booklet, the Government has yet to endorse these Principles. There has not been any decision at the present time to change the current Government policy in this area. Therefore, it should not be assumed that the five Principles are current Government policy.

The papers you request are withheld pursuant to section 9(2)(g) of the Official Information Act 1982 on the grounds that to release the information would prejudice the free and frank exchange of opinions between Ministers of the Crown. The material withheld relates to ongoing development of Government policy. Ministers are entitled to an undisturbed consideration of policy matters currently under development.

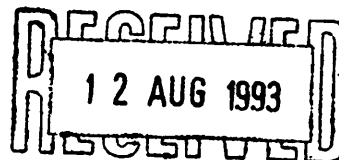
You have the right, under section 28(3) of the Act, to complain in writing to an ombudsman to seek a review of the refusal to release the information. The address is:

The Chief Ombudsman
Office of the Ombudsman
PO Box 10.152 (163-165 The Terrace)
Wellington (Telephone 473.9533)

Yours sincerely



Neil Martin
Divisional Manager
Treaty of Waitangi Policy Unit



p. 3 Three essential elements, without which a partnership cannot exist -

- (1) There must be a business
- (2) It must be carried on with a view to profit
- (3) It must be carried on by or on behalf of the alleged partners.

Look at Matrimonial Property Act for partnerships. - nothing

Special partners analogous to sleeping partners.

Law No/267/3019/1984.

102 The fiduciary relationship.
Guidelines to Partnership Law. 2nd Ed. Baxt, Bialkower + Morgan. 1984.
Ordinary partnerships are by law assumed & presumed to be based on the mutual trust & confidence of each partner --

204 Partnership & other relationships

"Partnership may be compared & contrasted with a number of other relationships which, on the surface, look like a partnership but which in fact are not. Generally speaking the courts will distinguish the relationship from a partnership on the grounds that the parties are not carrying it on in common, ^{either} in business or alternatively that they are not carrying it on."

Less frequently the courts turn to the third element in the definition of a partnership, namely the element of profit, to find whether a partnership exists."



OFFICE OF THE

MINISTER OF JUSTICE

WELLINGTON 1

26 November 1992

Mr B Mason
PO Box 5805
DUNEDIN

Dear Mr Mason

Request for Official Information

Thank you for your letter of 28 October 1992 requesting press statements and speech notes concerning Maori land claims.

Please find enclosed all relevant documents.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Doug Graham'.

Douglas Graham
Minister of Justice

In 1988 the Commissioner for the Environment wrote that "the one principle of the Treaty that comes through most clearly is 'partnership', yet the practical meaning of this partnership has yet to be fully explored. Some may view this as a 50:50 partnership, others as a 80:20 partnership, still others as increased consultation but no change in who makes decisions or reaps the benefits." Environmental Management and the Principles of the Treaty of Waitangi: Report on the Crown Response to the Recommendations of the Waitangi Tribunal 1983-1988. 1988. Parliamentary Commissioner for the Environment at page 18.

Hon D A M Graham. Wellington Division of National Party, at Porirua 6 June 1992

"Not all (Maori) grievances are valid...

Some grievances are based on a misconception of what happened in the past and when the evidence was researched properly its proved to be quite wrong. It didn't happen like that at all.

"Can I tell you one or two grievances so that you have some idea for those of you who have not had time to look into them. Some of them really haven't got much to do with the Treaty at all."

How could Maori claimants be accommodated?

If the objectives of Maori claims are confined to the re-establishment of mana and ensuring proper presentation and management of areas of special cultural significance, this is possible without obtaining title and within the terms of the existing provisions of the National Parks Act. Section 4(2)(c) requires preservation as far as possible of archeological and historical sites. Therefore all that is required is the identification of the sites and changes in management plans if necessary.

Specially protected areas can also be created with entry by permit only (sections 12, 13). This has already been done for Maori cultural reasons over a nephrite (greenstone) area in the Mount Aspiring National Park.

If direct tribal input to management of particular parks is desirable, this can be done by extending the membership of conservation boards. This is already the case for Tongariro and Egmont National Parks (section 32) and would only require slight legislative amendment to include other parks.

To satisfy Ngai Tahu economic aspirations the Government has considerable assets in the form of SOE's to consider as forms of settlement, if it wishes, without jeopardising the founding precepts of our national parks, reserves and conservation areas.

Due to the trust under which they are held, public estate such as our parks and reserves require greater protection from claimants than replaceable assets held by government.

In general, loss of public benefit from disposal of government commercial enterprises would be shared more equitably across the community. They are also capable of re-creation in the future if a government so desired. In any event government has stated its intention to dispose of SOE's to the private sector. It is therefore mainly a matter of which private interests end up with ownership or shareholdings, and the monetary returns government wishes to receive. Landcorp and Forestcorp land holdings have the potential to satisfy in whole or in part many claims. Government could also purchase private land on the open market to meet its obligations to Maori claimants, or to provide cash settlements for claimants to purchase private land if they so wish.

Unlike Government's assurances to private land owners that private land is sacrosanct, no such assurances have been obtained from Government that it has binding obligations to protect conservation lands. Both the Ministers of Justice and Conservation have refused to give any assurance that Parks are sacrosanct, or that the pernicious Section 436 of the Maori Affairs Act, which overrides all other legislation (see 'Conservation Areas'), will not be used to ram through any settlement of land claims.

Why is public ownership necessary?

Free-market notions are currently in vogue within government and even for a few people within the conservation movement. In relation to the management of land (and water) the basic premise is that the state has no useful or beneficial role in its management—private market forces and ‘market instruments’ are better able to identify needs, remedies, and opportunities for investment and therefore satisfy social goals. The ‘trickle-down’ theory is that if private interests benefit then the rest of the community also benefit. In relation to natural lands *held for public use and enjoyment* such notions are a complete fallacy as even the most cursory reflection on human behaviour and history shows—

1. Inherent conflicts of interest exist between the self-advancement aspirations of individuals, and the community purposes of areas held as public reserves. These areas are primarily spiritual, recreational and natural places, not manageable solely in dollar terms, or for private benefit.
2. Through hard-won and often bitter experience most human societies structure themselves so as to vest separate and potentially conflicting powers in separate institutions or people.
3. The availability of natural and recreational areas for public use has to be beyond the fickle or capricious control of private individuals who may ration or exclude segments of public use. This is the basic rationale behind Queen Victoria’s instructions to Governor Hobson. It is a timeless notion that remains valid.
4. Community ownership and public management of a natural resource, in a democratic society, requires direct political accountability for its administration. This is a slow and cumbersome process. Because of this, and the legislative framework under which it operates, it provides the best assurance of protection from exploitation of either the natural resource or the people wishing to use and enjoy it.
5. Public ownership, without property rights being conveyed to vested interests, allows maximum flexibility to amend resource management to adapt to ecological, social, and recreational needs. This is within the objectives set by legislation. If there is a pressing enough need to change the rules/law this is by public process with checks and balances built in between public and private interests.
6. In use of land by propertied interests there is often a major gulf between land occupiers’ behaviour or practices and their knowledge or awareness of conservation techniques and needs. Short term imperatives, often dictated by financiers, usually prevail. As well, exceedingly few groups or vested interests are successful at self regulation, particularly for purposes of little or adverse benefit to themselves. Direct state policing and regulation is still very necessary to serve community purposes.

Mount Hikurangi

In the last issue we commented on the vesting of ownership of approximately 5000ha of the Raukumara Forest Park in the East Cape to Ngati Porou. This became Maori freehold. In return a conservation covenant over that area and part of the adjoining Pakihiroa Station was entered into.

The Hikurangi deal did not arise out of a claim before the Waitangi Tribunal but was entered into to “give effect to the principles of the Treaty of Waitangi” in terms of s 4 of the Conservation Act.

The Maori Land Court agreed to the vesting of ownership in January 1991. DOC officer Andy Chapman was reported as saying in *The Gisborne Herald* on 6/4/91 —“the covenant has received the Maori Land Court stamp meaning it is now a legal document. It was an agreement between Ngati Porou runanga as representatives of their tribe and the Department of Conservation representing the Crown.”

The following is the text from part of the official pamphlet heralding this as a ‘legacy to New Zealand’—

Message from the Minister of Conservation

“ ‘Hikurangi te maunga, Waiapu te awa, Ngati Porou te iwi.’ (Hikurangi is the mountain, Waiapu is the river, Ngati Porou are the people).

The revestment of Mt Hikurangi with the people of Ngati Porou, heralds a most significant occasion in the development of New Zealand’s heritage. As the first place in the southern hemisphere to see the sun, the mountain has a special importance for all New Zealanders, but particularly so for Ngati Porou for whom Mt Hikurangi represents their unifying spiritual and cultural identity.

This special relationship has long been given life through the waiata, haka, whakatauki and karakia of Ngati Porou. Now the revestment gives life once again to the mana of the mountain as it is returned to its rightful place with the tangata whenua.

Whilst the cultural and spiritual significance to the people of Ngati Porou cannot be understated, a clear signal has been given to all peoples of New Zealand, that it was the spirit of partnership between Ngati Porou and the Crown, through the Department of Conservation, Te Papa Atawhai, which allowed this to happen.

This partnership resulted in the signing of an agreement which enabled the mana of Mt Hikurangi, and its spiritual and cultural integrity, to be revested with the people of Ngati Porou through return of the mountains ownership to them.

The agreement also provided for the outstanding ecological values of the area to be fully protected in perpetuity, through the placement of a conservation covenant over the entire mountain, under the joint management of the Department of Conservation and Te Runanga O Ngati Porou.

The right of access to experience Mt Hikurangi’s special values, has been secured for all future generations of New Zealanders, through the establishment of a walkway onto its slopes.

The agreement that has been reached exemplifies the tremendous value of using honest and open partnership as a means to resolve outstanding issues and concerns, as a way in which all parties involved can benefit, and which truly embodies all the essential ~~principals~~ [principles] of the Treaty of Waitangi. This perhaps, is Mt Hikurangi’s legacy to New Zealand.

The Honourable Denis Marshall Minister of Conservation”

Mt Hikurangi — The Agreement

“The terms of the Agreement reached between Te Runanga O Te Ngati Porou and the Department of Conservation with regard to the future ownership and management of Mt Hikurangi are:

- The Crown will transfer ownership of Hikurangi to Ngati Porou.
- Ngati Porou will enter into a conservation covenant with the Crown in perpetuity over the mountain (excluding the farmland), with the key objectives of:
 - Protecting the ecological values of Mt Hikurangi.
 - Enhancing the cultural and spiritual integrity and values of Hikurangi.
 - Embodying the principles of the Treaty of Waitangi in a practical working partnership between the Crown and the iwi.
- The public will have a free right of foot access to the mountain secured by an easement under the New Zealand Walkways Act 1990.
- A joint management committee will oversee management of the covenant area and be responsible for the preparation of a management plan. The management committee will comprise of three

representatives from Ngati Porou and three from the Department of Conservation. Decisions of the Committee will be made by consensus.

- Protection of wahi tapu will be the responsibility of Ngati Porou.
- The authorisation of any commercial operations will be the responsibility of Ngati Porou, subject to consultation with the Department of Conservation to ensure the protection of conservation values.
- The Department of Conservation will be responsible for wild animal control and, primarily, for weed control. Any net income from commercial hunting will go to Ngati Porou.
- The Minister of Conservation will use his best endeavours to have the area closed to mining.
- The Department of Conservation accepts liability for payment of any rates levied on the covenant area and will share maintenance costs for boundary fencing between the covenant and Pakihiroa Station.

Maori Land Court Judge, James Rota approved the reversion of ownership of Mt Hikurangi in Te Runanga O Ngati Porou as trustees in perpetuity for their iwi, contingent upon the terms of the above agreement.”

Note: In addition to the Walkway provision the conservation covenant provides for the public’s recreational use and enjoyment of Hikurangi only to the extent of being consistent with the above ‘key objectives.’

It appears that the agreement between the Crown and Ngati Porou has ‘fallen over’ (see Public Notice).

In view of what appears to be a clear breach of the terms of the agreement, PANZ asked the Regional Conservator of DOC what official efforts were made to ensure compliance with the deed. He replied that although a “legally binding agreement” it “has not yet been fully implemented.” Access is “at the pleasure of Ngati Porou.”

The Hikurangi model fits with the kind of arrangements that Doug Graham and Denis Marshall have been talking about for Ngai Tahu and other settlements. This is an early indication of the fallacy behind Government assurances that there is nothing to fear.

Those who have been expressing concern about the wisdom of the Government’s approach have had to suffer put-downs such as this—

“Some normally sensible and progressive conservationists seemed in danger of losing their perspective over this issue and had departed from their normal highly analytical and constructive approach to launch public attacks which distanced them even further from Maori claimants.

A few conservationists seemed to prefer confrontational tactics to the politics of quiet persuasion, getting alongside (Ngai Tahu) and discussing differences in a rational manner. Such conservationists were in danger of being seen as the last bastion of conservatism.”

Denis Marshall, Conservation Review No 13 September 1992

[box]

The origins of Crown lands and public reserves in New Zealand

Since the beginning of ^{British} European colonisation official efforts have been made to provide public reserves, and public access to lands adjacent to waterways. The Royal Charter under the New Zealand Act 1840 authorised the Governor to dispose of lands in New Zealand under a duty of trust to "...any persons, bodies politic or corporate, in trust for the public uses of our subjects there resident, or any of them."

Queen Victoria's Instructions attached to the Charter required lands in the colony to be reserved and surveyed for several public purposes (see Appendix Two).

The Royal instructions of 1840 contain a specific command to prevent alienation to private interests of lands reserved for public purposes. They also formed the basis upon which subsequent legislation was enacted to create reserves, thus ensuring the preservation of public access to public reserves and waters. Legislative action was first seen in the Land Claims Ordinance 1841. Section 2 provided that the sole and absolute right of pre-emption over lands in the colony was vested in the Crown, and that all existing, or claimed titles, were null and void unless allowed by the Crown. Section 6 specifically recognised the public interest as it provided that no grants of land were to be made within 100 feet of high-water mark of the sea shore. Similarly no other areas required for town reserves or any other public purposes were to be granted to private interests.

The first general legislation providing for the administration of public reserves was the Public Reserves Act 1854. This was the first of a succession of reserves, conservation, and national park Acts to the present day. ~~This is confirmation of the fact that the settlers were determined to get away from the class based privileges and restrictions of English society. It is these principles behind our legislative and social history as a nation that the campaign embraces.~~

**Application of the 'Principle of Partnership' under the
Treaty of Waitangi—
Implications for the public estate.**

We fear that Government is attempting to disguise fundamental changes to the founding 'preservation-with-use' philosophy for the conservation estate. This is based on possibly flawed interpretations of Treaty 'principles'. In particular the notion of (equal) partnership between the Crown and Maori requires close examination. The intention within DOC to divest public ownership, and instigate 'co-management', is independent of and probably more pervasive than land claims through the Waitangi Tribunal. There could be profound impacts on the nature of 'public' lands and how they are managed.

Possible implications for public access and conservation of giving effect to the 'principles' of the Treaty of Waitangi is subject to research by PANZ. We intend reporting next issue.

References

Express Reference to the Treaty

Fish Protection Act 1877, s 8)

Fisheries Act 1983, s 54A.

Maori Language Act 1987, Preamble.

Maori Fisheries Act 1989, RS 27, Long Title.

Express Reference to the 'Principles' of the Treaty

Note: None of the legislation defines the principles.

✓ Treaty of Waitangi Act 1975, ss 5, 8A-8H.

State-Owned Enterprises Act 1986, s 9.

New Zealand Maori Council v Attorney-General. [1987] 1 NZLR
641-719. CA.

Environment Act 1986, Long Title.

Conservation Act 1987, s 4.

Crown Forest Assets Act 1989, Long Title.

Education Act 1989, s 181(b).

Runanga Iwi Act 1990, s 4.

Resource Management Act 1991, ss 5(e), 6.

Crown Minerals Act 1991, s 4.

Principles of the Treaty as defined by

Note: There are three main sources:

Court decisions: eg. *New Zealand Maori Council v Attorney-General*

- ✓ *General Principles of Environmental Management and the Principles of the Treaty of Waitangi: Report on the Crown Response to the Recommendations of the Waitangi Tribunal 1983-1988* 1988
Parliamentary Commissioner for the Environment.
- ✓ Reports of the Waitangi Tribunal: eg *Muriwhenua Report (Wai 22)* June 1988.
- ✓ Statements by the Government: *Principles for Crown Action on the Treaty of Waitangi*. 1989, The Prime Minister/Department of Justice.

Principles as discussed/applied by—

- ✓ O'Reilly, L M 26 May 1992. Application of the Principles of the Treaty of Waitangi within the Department of Conservation.
Seminar Conference: Legal Conference May 1992.
- ✓ Palmer, G. *The Treaty of Waitangi: Principles for Crown Action* (1989) 19 VUWLR 335.
- ✓ Kenderdine, SE. *Legal Implications of Treaty Jurisprudence* (1989) 19 VUWLR 347, 369-372.

Nature of the Obligation

- To use the words of Bisson J in *A-G v New Zealand Maori Council* [1991] 2 NZLR 129 (CA) at p 144, a failure to have regard to the principles of the Treaty "would be a failure in the process of decision-making to take into account relevant considerations." But Treaty principles will not necessarily be the overriding consideration. To adopt the words of Cooke P in the same decision at p 135: "If the [decision-maker], giving due weight to the Treaty principles, elects between the available options reasonably and in good faith, it seems to me that the Treaty is complied with." Source: Brooker and Friend, *RMA Purpose and Principles*.

Who must take into account the principles—

Resource Management Act 1991: all persons exercising functions and powers.

State-Owned Enterprises Act 1986: the Crown.

Environment Act 1986: Minister, Ministry, Parliamentary Commissioner.

Conservation Act 1987: DOC (and F&G?).

Other Statutes

- Fisheries Act 1908, s 77(2).
- Fisheries Act 1983, s 88(2).
- ✓ Lake Waikaremoana Act 1971.
- Land Titles Protection Act 1902, s 2.
- ✓ Maori Affairs Act 1953, s 155.
- Maori Reserved Land Act 1955 RS 8
- Maori Vested Lands Administration Act 1954 RS 8
- Native Land Act 1909, s 84.
- ✓ Partnership Act 1908.
- Rununga Iwi Repeal Act 1991 No 34
- Sea-fisheries Act 1894, s 72.
- Sea-fisheries Amendment Act 1903, s 14.
- ✓ Shortland Beach Act
- State Sector Act 1989.
- Te Rununga O Ngati Awa Act 1988 No 227
- Te Rununga O Ngati Porou Act 1987 No 182
- ✓ Te Rununga O Ngati Whatua Act 1988 No 231
- ✓ Treaty of Waitangi (State Enterprises) Act 1988
- ✓ Treaty of Waitangi Amendment Act 1985
- ✓ *Treaty of Waitangi Amendment Bill 1993*

Case Law

Attorney-General v New Zealand Maori Council (CA 247/99) Radio spectrum).

M R R Love v Attorney-General unreported judgement, 1988. (petrocorp).

✓ New Zealand Maori Council v Attorney-General. [1987] 1 NZLR 641-719. CA. (SOE Lands)

✓ New Zealand Maori Council v Attorney-General. [1989] 2 NZLR 142. (Forestry).

✓ New Zealand Maori Council v Attorney-General. [1992] 2 NZLR 576. (Broadcasting assets).

Royal Forest and Bird Protection Society (Inc) v W A Habgood Ltd. (1987) 12 NZTPA (HC) 76. re meaning of 'ancestral land.'

Tainui Maori Trust Board v Attorney-General [1989] 2 NZLR 513 (Coal Corporation).

✓ Te Heuheu Tukino v. Aotea District Maori Land Court. [1939] NZLR 107. SC.

✓ Te Heuheu Tukino v. Aotea District Maori Land Court. [1941] NZLR 590. PC.

Te Runanga O Muriwhenua Inc v Attorney-General (CA 110/90 (Fisheries)).

✓ Te Weehi v. Regional Fisheries Officer. [1986] 1 NZLR 680. HC.

"The Court of Appeal has treated the Treaty as a living instrument that has to "be applied in the light of developing national circumstances." [Memo for Cabinet Committee].

Case Law

- Attorney-General v New Zealand Maori Council (CA 247/99) Radio spectrum).
- M R R Love v Attorney-General unreported judgement, 1988. (petrocorp).
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 - ✓ Te Heuheu Tukino v. Aotea District Maori Land Court. [1941] NZLR 590. PC.
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Waitangi Tribunal Reports

✓ Wai 22 Muriwhenua Fishy ^{Report} ~~Glama~~ 1988.

Official Publications

- ✓ Consultation with Tangata Whenua. A guide to assist local authorities in meeting the consultation requirements of the Resource Management Act 1991. Ministry for the Environment.
- ✓ Environmental Management and the Principles of the Treaty of Waitangi: Report on the Crown Response to the Recommendations of the Waitangi Tribunal 1983-1988. 1988. Parliamentary Commissioner for the Environment.
- Ministry of MA. 48 Mulgrew St ✓ Partnership Dialogue—A Maori Consultation Process. Responsiveness Unit, State Services Commission. 1989.
- Partnership Perspectives (He Tirohanga Rangapu): A Discussion Paper on Proposals for a New Partnership: Minister of Maori Affairs. 1988.
- Partnership Response (He Tirohanga Rangapu): A Discussion Paper on Proposals for a New Partnership: Minister of Maori Affairs. 1988.
- ✓ Principles for Crown Action on the Treaty of Waitangi. 1989, The Prime Minister/Department of Justice.
- ✓ Resource Management Law Reform. A Treaty Based Model – The principle of active protection. Working Paper No. 27. Ministry for the Environment. 1988.
- ✓ Resource Management Law Reform. The Treaty of Waitangi and its significance to the reform of resource management laws. Working Paper No. 8. Ministry for the Environment. 1988.
- ✓ Taking Into Account the Principles of the Treaty of Waitangi. Ideas for the Implementation of Section 8 Resource Management Act 1991. Dianne Crengle. Ministry for the Environment.
- ✓ Te Roopu Whakamānā I Te Tiriti o Waitangi. A guide to the Waitangi Tribunal. Department of Justice.
- ✓ The Approach to the Treaty of Waitangi. Department of Justice.
- ✓ The Report of the Waitangi Tribunal. Department of Justice.
- ✓ The Direct Negotiation Process. Waitangi Policy Unit for the Crown Task Force on Treaty of Waitangi Issues.
- The Principles of the Treaty of Waitangi. EJ Kelsey. 1990. Unpublished Report for Ministry for the Environment, Centre for resource Management, Lincoln University.
- ✓ The Resource Management Act. Kia Matiratira. A Guide for Maori. 1992. Ministry for the Environment.
- The Treaty of Waitangi and Social Policy: Discussion Booklet No. 1. 1987. Royal Commission on Social Policy.

- ✓ ~~The Direct Negotiation~~ Structures for the resolution of TOP w grievances. Cabinet Paper. 1991
- ✓ Repeatan Comment & Proposed Govt. approach & structures for the resolution of TOP w grievances. Cabinet Committee Memo.

Ministerial Statements

Treaty Viewpoints

- ✓ The Treaty of Waitangi. Claudia Orange. 1988. Allen and Unwin.
- ✓ Nursery of dispute: not a 'security for peace'. Waitangi seen against its circumstances. Gordon Parsonson. Otago Daily Times, 8 July 1988.

Maori Values

Bowden, Ross, Tapu and Mana: ritual authority and political power in traditional Maori society. The Journal of Pacific History, XIV, 1 (1979), pp 50-61.

Issues

The nature of the Crown:

The Crown of 1840 effectively changed in 1857 when the Constitution Act ? established NZ's first House of representatives.(WBJ).

"Although local government often argues that it is not part of the Crown with regard to the Treaty, It is nevertheless a form of kawanatanga (government) and is thereby covered by Article II of the treaty as well as section 8 of the Resource Management Act 1991." Helen Hughes News Sheet August 1992.

The partnership view verses the equal citizenship view.

Partnership quotes

Rt Rev Manuhuia Bennett: Bishop Bennett has been active in the Anglican Church's bicultural programme, developing the partnership concept which he regards as 'fundamental to any bicultural programme—I took the concept from the principles of the treaty'. The concept of partnership has subsequently been enshrined in the 1987 Court of Appeal decision. *Te Roopu Whakamana I Te Tiriti O Waitangi*. A guide to the Waitangi Tribunal. 1992. Waitangi Tribunal Division, Department of Justice.

Court of Appeal

The Treaty requires a partnership and a duty to act reasonably and in good faith.

The responsibilities of the parties are analogous to fiduciary duties.

The Treaty does not authorise unreasonable restrictions on the Crown's right to govern.

Waitangi Tribunal

The Treaty implies a partnership, exercised with utmost good faith.

The Treaty is an agreement that can be adapted to meet new circumstances.

The courtesy of early consultation is a partnership responsibility.

The needs of both Maori and the wider community must be met, which will require compromise on both sides.

"The role of...the newly appointed iwi liaison manager to the Otago Regional Council...reflected the ideals of partnership where both parties had the same standing and input into the management of the region's resources." Maori Community News. Dunedin Star Weekender. 7 February 1993.

"Maoris want joint management of reserve. Otago and Southland Maoris could not support a marine reserve at the Nuggets unless it was managed jointly by the Department of Conservation and the local Maori community. This was the message that DOC was given at a meeting held at Kaka Point this week to allow exchange of views between Maori representatives and the department." ODT 28/1/93.

Taking Into Account...

Principle Three: The Treaty Relationship—
 Partnership and Mutual Compromise
 Partnership and Balance
 Partnership and the Status of Tangata Whenua
 Partnership and Power Sharing
 Partnership and Good Faith
 Partnership and Consultation

Legal Viewpoints/Interpretations

Maori Claims to Certain North Island Lakes. Te Wananga, 1, 2
 (December 1929).

Papers from a Seminar on the Treaty of Waitangi. Wellington
 District Law Society. 1986.

✓ The Impact of the Treaty of Waitangi on Government Agencies.
 1990. Brooker and Friend Ltd.

✓ Treaty of Waitangi: Papers from New Zealand Law Society
 Seminar. 1989.

Law/ + KM/78/NH 33 Part ✓ The Treaty of Waitangi. 1989 NZ Law Society Seminar Papers

Taking Into Account...

- Principle Three: The Treaty Relationship—
- Partnership and Mutual Compromise
- Partnership and Balance
- Partnership and the Status of Tangata Whenua
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✓ Treaty of Waitangi: Papers from New Zealand Law Society Seminar. 1989.

Law/ KM/78/NH 33 Part ✓ The Treaty of Waitangi. 1989 NZ Law Society Seminar Papers

130 5150 ~~hr~~ subsidy.

Chambers everyday dictionary, 1975

'fiducial', fī-dū'shi-āl, adj. showing confidence or reliance: of the nature of trust: serving as a standard of reference (in surveying, &c.; fiducial line, point) - adv. fiducially
-adj. fiducially, of the nature of trust.

'partner', a sharer: one engaged with another, an associate in business: one who plays on the same side with, and along with, another in a game

'partnership', state of being a partner: a contract between persons engaged in any business

'treaty' 'a formal agreement between states'

p. 673 "a relationship analogous to a fiduciary duty".

the law of treaties

SOE leads (not under DPL or RLF) can be resumed
by lady rec. of Trib.

- where funds - - -

But Crum can get SOE leads exempt from ^{claims} for the claims
- get protection from WP's!

outline linked TO W (SOE) Act.

Claims against Crum ; (all?) Crum's assets liable
to be required for settlement.

Question: special status of public leads held in Trust?

Study of Commission of Inquiry versus Court
our partnership laws (the settled principles of equity)
(the law of partnership)

- research its competency.

Taking Into Account...

Principle Three: The Treaty Relationship—
 Partnership and Mutual Compromise
 Partnership and Balance
 Partnership and the Status of Tangata Whenua
 Partnership and Power Sharing
 Partnership and Good Faith
 Partnership and Consultation

Legal Viewpoints/Interpretations

Maori Claims to Certain North Island Lakes. Te Wananga, 1, 2
 (December 1929).

Papers from a Seminar on the Treaty of Waitangi. Wellington
 District Law Society. 1986.

✓ The Impact of the Treaty of Waitangi on Government Agencies.
 1990. Brooker and Friend Ltd.

✓ Treaty of Waitangi: Papers from New Zealand Law Society
 Seminar. 1989.

Law/4 KM/78/NH 33 Part ✓ The Treaty of Waitangi. 1989 NZ Law Society Seminar Papers

Legal Journals

- ✓ Batchelor, Michael. 1990. Consider the Treaty, Lawlink 5 (2) June 1990.
- ✓ Chapman, Guy. 1991. The Treaty of Waitangi – fertile ground for judicial (and academic) myth-making. NZLJ July 1991, p 228.
principles/partnership.
- on reserve ✓ Frame, Alex. 1990. A State Servant Looks at the Treaty. [1990] 14 NZULR No 1, p 89.
- ✓ Gerritsen, Nick. 1991. The Treaty of Waitangi: "Do I dare, Disturb the universe?". NZLR April 1991, pp 138-140.
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- ✓ Haughey, E J. 1966. Maori Claims to the Lakes, river beds and the Foreshore, NZULR 2 (1966) pp 29-42.
- ✓ McHugh, P G. 1988. The Legal Basis for Maori Claims Against the Crown, (1988) 18 VUWLR p 1.
- ✓ McHugh, Paul. 1984. The legal status of Maori fishing rights in tidal waters. VUWLR XIV (1984) p 247.
- McHugh, Paul. 1987. Aboriginal title returns to the New Zealand Courts. New Zealand Law Journal. February: 39-41.
- ✓ McHugh, Paul. 1991. Constitutional myths and the Treaty of Waitangi. NZLJ September 1991, p 316.
principles/partnership.
- ✓ McHugh, Paul. 1991. The Maori Magna Carta. Oxford University Press. Review by Nigel Jamieson NZLJ March 1992.
- ✓ McHugh, PG. 1992. Sealords and sharks: The Maori Fisheries Agreement (1992). NZLJ, October 1992, p 354.
- McNair, Lord. 1961. The law of treaties. Oxford University Press, Oxford.
- ✓ Rikys, Pita. 1991. Trick or Treaty. NZLJ October 1991, p 370.
- Slattery, B. 1987. Understanding aboriginal titles. Canadian Bar Review 66: 727-783.
- ✓ Williams, Joe. 1991. Chapman is wrong. NZLJ October 1991. p 373.
principles/partnership.
- ✓ *Boast RP. 1989. The T of W: A Statement for Resource Management Law. NZ Planning Council & VUWLR. (Monograph 1)*
NZPC Report (1989) 19 VUWLR Monograph 1.

Environmental Values

Maori Values and Environmental Management. Manutu Maori.
1991.

Tau, M T et al 1990: Te Whakatau Kaupapa – Ngai Tahu Resource
Management Strategy for the Canterbury Region. Aoraki Press,
Wellington.

compact:

Definitions:

bicultural: having or combining two cultures. The Concise Oxford Dictionary 7th Edition.

compact: agreement or contract between two or more. The Concise Oxford Dictionary 7th Edition.

charter

covenant

pledge

fiducial: adj. showing confidence or reliance: of the nature of trust: serving as a standard of reference. Chambers Everyday Dictionary. 1975

fiduciary estate: the estate or interest in lands or money, as opposed to the beneficial interest or enjoyment thereof. Source Law Law?

joint: held or done by, belonging to 2 or more persons in conjunction; sharing (possession). The Concise Oxford Dictionary 7th Edition.

partner: a sharer: one engaged with another, an associate in business: one who plays on the same side with, and along with, another in a game. Chambers Everyday Dictionary. 1975

partnership is the relation which subsists between persons carrying on a business in common with a view to profit. s 4 Partnership Act 1908.

partnership: state of being a partner: a contract between persons engaged in any business. Chambers Everyday Dictionary. 1975

partnership: joint business; sharer with (person); shares risks and profits; one who engages jointly. The Concise Oxford Dictionary 7th Edition.

treaty: a formal agreement between states. Chambers Everyday Dictionary. 1975

treaty: a negotiation; a compact between nations. The Concise Oxford Dictionary 7th Edition.

the law of partnership

duty

party

title (6) That which justifies or substantiates a claim; a ground of right, hence an alleged or recognised right

(7) spec. law. legal right to the possession of property (esp. real property); the evidence of such right; title-deeds. An assertion of right; a claim. Stanley Oxford Dictionary. 6th Ed.

(principles) Fundamental motive or reason for action Stanley Oxford Dict.
Fundamental truth as basis of reasoning etc. Concise " "
general law as guide to action. " " "

Public Access New Zealand

INCORPORATED

P O Box 5805 Moray Place Dunedin New Zealand
Monday, February 15, 1993

Director-General of Conservation,
Department of Conservation,
P O Box 10-420,
WELLINGTON

Dear Sir,

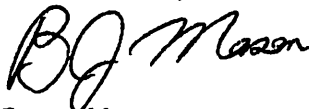
Request for Official Information

This is a request for Official Information in terms of section 12 Official Information Act 1982.

Please supply all advice, background papers, and instructions circulated from your office since June 1991 to Regional Conservators concerning giving effect to the principles of the Treaty of Waitangi or to the Treaty.

Without limiting the scope of this request, the subject matter includes the involvement of Maori in the management or control of any areas within the jurisdiction of the department; the vesting of ownership in whole or in part to Maori interests, and interpretation as to the meaning of the treaty and of treaty principles.

Yours faithfully,

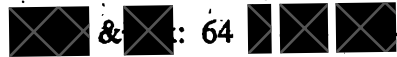


Bruce Mason,
Trustee

Public Access New Zealand

INCORPORATED

P O Box 5805 Moray Place Dunedin New Zealand



12/5/93

Wednesday, April 21, 1993

Director-General of Conservation,
Department of Conservation,
P O Box 10-420,
WELLINGTON
Fax (04) 471 1082

*Please reply urgently to
this request*
BQ Mason

Your ref WIT-0002

Dear Mr Mansfield,

RE EARLIER INFORMATION REQUEST REGARDING GIVING EFFECT
TO PRINCIPLES OF THE TREATY OF WAITANGI

Thank you to you reply of 12 March.

I have followed up on your request to the Regional Conservator,
Otago, to give me access to the department's manuals.
Unfortunately all their copies of the 'Conservation Management &
Procedure Manual' were incomplete and do not contain the
relevant sections.

As I wish to use the requested information in the very near
future could you please supply copies of the following sections—

- 1.8 Wahi Tapu on Protected Areas
- 2.6 Cultural Harvesting (parts 2.6.1 to 2.6.4)
- 3.11 Marine Fisheries (including 3.11.1 Taiapure)

I would appreciate it if you could attend to this as soon as
possible.

Thanking you,

Bruce Mason
Trustee

[1998] U202 R 14

✓ Introduction [To Waitangi Issue] Cooke, The Rt Hon. Sir Robin p. 1.

✓ The Constitutional Status of the Treaty of W: An Historical Perspective.
David V. Williams, p. 9.

✓ The Treaty of W. in the Courts. Sir Kenneth Keith.
p. 37.

✓ The Role of the W. Trib & the dev. of a bicultural jurisprudence
p. 62. E. Tai Murei Dorie & Gordon S. Orr.

✓ A State Servant looks at the Treaty. Alex Frame p. 82.



CONSERVATION
TE PAPA ATAWHAI

13 May 1993

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

Dear Mr Mason,

Tena koe. Mr Bill Mansfield has requested that I respond to your letter of 21 April 1993 (and repeated on 5 May 1993) in which you sought access to departmental procedures on: Wahi Tapu; cultural harvest and taiapure issues. These sections are not yet compiled and I can give no indication when they will be completed and available for access. As taiapure regulations are a Ministry of Agriculture and Fisheries lead agency responsibility, we await their directions on the preparation of Taiapure (3.11.1) guidelines.

As a matter of due process, these sections will be forwarded to all conservancies when finalised and you may care to address future enquiries to the Dunedin regional office. Kia ora.

Eru Manuera
Manager, Maori Policy

Treaty of Waitangi

Law + KM / 78 / NH 33 NZ Law Soc. Seminar

Law KM / 303 / T862 The W. Tribunal

KM / 78 / 662 Crisis to the W.T.

Partnership & Peace: essays on biculturalism 1990

Dynix # 164424

HOC DU / 461 / P835

Law + KN 80 / 272 M for E Working Paper # 8.

Law + KN / 80 / 272 Mike Barnes M for E. Pyren # 20.

Law + KM / 78 / D455 Durie

Law KM / 78 / M392 McHugh.

Law + KN / 88 / NH 336 Parl. Commission

Law + KN / 180 / 27 / NH 33 Royal Commission on Social Policy 1988.

Law + KG / 348 / W3 Muri Whenua claim.

Gen. + HT / 395 / N52 / Principles of TOW
B33