The Hauraki Gulf Marine Park Act 2000

Introduction

The Hauraki Gulf Marine Park Act 2000 received the royal assent on 27 February 2000 and came into force on that date. The original Bill was introduced in November 1998, and had a turbulent history in the parliamentary debates. Although supported in general by the major parties, it was opposed vigorously by several minor parties. In submissions, it was opposed by Hauraki Iwi who were presently pursuing a claim to ownership of the Gulf bed and waters through the Waitangi Tribunal. There was also opposition in relation to inadequate representation of Iwi on the proposed Hauraki Gulf Forum. Some private farmers of land adjoining the water areas opposed the Bill as likely to impose higher compliance costs in relation to farm management and rating levies. Commercial fishing operators in the Gulf were opposed, fearing restrictions on operations, whereas environmental groups and recreational users supported the concepts and objectives.[1]

The Bill was reported back to the house from the Transport and Environment committee in July 1999. Following further debate it appeared that the necessary majority might not be available for enactment prior to the general election and that enactment could prejudice the return of several rural members of Parliament. Upon the election of the new Labour Government coalition, the Bill was enacted in February 2000 with support from the former government members. The impact of the Act requires comment in light of the controversies outlined.[2]

Preamble and Interpretation

The Act is notable for the lengthy preamble detailing the history of human settlement, and espousing the values and qualities of the Gulf. The declared purpose is to integrate the management of the Hauraki Gulf, its island and catchments, to establish the Hauraki Marine Gulf Park, to establish management objectives, to recognise relationships with tangata whenua and to establish the Hauraki Gulf Forum.[3]

1 NZPD, Vol 579 (1999) 18669–18681, Vol 581 (2000) 633–677, 729–747.
2 Ibid. The Bill was opposed in voting by the ACT New Zealand and New Zealand First parties.
3 Hauraki Gulf Marine Park Act 2000, s 3.

The interpretation section defines the term "catchment" to mean "any area of land where the surface water drains into the Hauraki Gulf".[4] This definition provides a pointer to the opposition by farmers with properties coming under the catchment either sited on the mainland or within the Gulf islands. The "Hauraki Gulf" is defined as a coastal marine area comprising foreshore, seabed and coastal water and air space above the water. A map is included in the legislation to indicate both the coastal marine area and the assumed catchment area upon the mainland and islands.[5] In particular, in the Firth of Thames the land catchment extends a considerable distance south encompassing Matamata township and the surrounding land.

Treaty of Waitangi Recognition

Regarding the Treaty of Waitangi (Te Tiriti o Waitangi), a Treaty section provides an elaboration upon the equivalent provision in the Resource Management Act 1991.[6] The provision requires the part relating to the Park are to be interpreted and administered *to give effect* to the principles of the Treaty. However, the positive obligation does not apply in respect of any area of the Park that is "foreshore, seabed, private land, taia pure-local fishery, or mataitai". Also, the duty does not limit or extend the obligations any person has in respect of the principles of the Treaty under 21 other enactments listed in the Act.[7] The practical effect of the Treaty section is not entirely clear as to the implementation of the principles. The principles remain undefined. However, in relation to discharges affecting water quality, and water access and utilisation permits, greater recognition ought to be given to claims of cultural or ancestral significance.

Management of the Hauraki Gulf

Important objectives and principles concerning the Hauraki Gulf, its islands, and catchments are stated in ss 7 and 8. Section 7 recognises the national significance of the relationship of the Gulf to sustain the life-supporting capacity of the

4 Ibid, s 4.
5 Ibid, s 50, schedule 3.
6 Ibid, s 6. The Resource Management Act 1991, s 8 states: "In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi".
7 Hauraki Gulf Marine Park Act 2000, s 6, schedule 1 (listed Acts). Infra note 13.

environment.[8] The capacity includes provision for recognition of historical and spiritual relationships of tangata whenua, and the social, economic, recreational, and cultural well-being of people and communities. Further capacities noted are the use of resources "for economic activities and recreation", and the maintenance of soil, air, water and ecosystems. Section 8 sets out a similar raft of management objectives aimed at protection, maintenance and enhancement of the resources.[9]

The implementation of the recognition of national significance and management objectives is substantially facilitated under s 9 which deals with the relationship to the Resource Management Act 1991. A regional council must ensure that any part of the regional policy statement or a regional plan applying to the Gulf, its islands or catchments does not conflict with ss 7 and 8. A similar obligation applies to a territorial authority (13 territorial authorities are affected). Changes could be required to the regional policies and plans in dealing with catchment management and with water and waste discharge consents. Sections 7 and 8 are to be applied as if they were a "national policy statement" and that status may lead to policy and plan changes within a five-year period. Consent authorities must have regard to the provisions in respect of resource consent applications.[10]

The notional status of a national policy statement is complemented under s 10, by the recognition of ss 7 and 8 "as a New Zealand coastal policy statement" issued under the Resource Management Act. Where there is a conflict with a New Zealand coastal policy statement issued under the RMA, the latter prevails.[11] Again, an obligation may fall upon local authorities to amend plans and policies within the five-year period. A compliance cost could be imposed on local authorities to alter policies and plans to become compatible with the new legislation.

In relation to other legislation, s 11 decrees that ss 7 and 8 are to be statements of policy under specified sections of eight listed statutes dealing with natural resources.[12] Section 13 requires all persons exercising powers and carrying out

8 The term "national significance" is to be distinguished from the generic recognition of "matters of national importance" under RMA, s 6.

9 Protection may include positive development consistent with conservation objectives: *South Lakeland District Council v Secretary of State for the Environment* [1992] 2 AC 141.

10 Hauraki Gulf Marine Park Act 2000, s 9.

11 The New Zealand Coastal Policy Statement 1994 (NZCPS), prepared under the RMA, was issued by notice on 5 May 1994. This single operative statement has not been otherwise amended. The effect of the NZCPS has been considered in various court decisions, including *Auckland Regional Council v Arrigato Investments Ltd*, High Court, Auckland, AP 138/99, 14 September 2000, Chambers J (concerning the weight to be given to policy statements in determining a resource consent application).

12 The statutes comprise the Wildlife Act 1953, s 14C; Marine Reserves Act 1971, s 6; Reserves Act 1977, s 15A; Wild Animal Control Act 1977, s 5; Marine Mammals Protection Act 1978, s 3B; National Parks Act 1980, s 44; Conservation Act 1987, s 17B; New Zealand Walkways Act 1990, s 4.

functions in relation to the Gulf under an expanded list of 21 Acts in schedule 1 to have particular regard to the provisions of ss 7 and 8. To the extent that some of the related statutes do not specifically provide for tangata whenua interests (eg, Marine Farming Act 1971 or the Wildlife Act 1953), the new Act should have a positive consequential effect on harmonising and integrating policies and administration.[13]

Resource Consent Applications

In relation to resource consent applications, the reference to "life supporting capacity" in s 7 includes the use of the resources of the Gulf for "economic activities and recreation". The term "economic activities" is defined to include "marine commerce". As a consequence the traditional use of the Gulf for maritime shipping movements and port operations is likely to be largely unaffected by the other objectives, and the activities will retain a type of existing use entitlement.

With reference to new marine developments, a decision of the Environment Court in *In Tandem Marine Enhancement Ltd v Waikato Regional Council*[14] has given significant weight to ss 7 and 8. The applicant company applied for consent to sink a ship of frigate size in the seabed off Mercury Bay to establish an underwater diving attraction. The applicant sought an exclusive occupation right to the seabed and the water above within a radius of 100 metres from the vessel's footprint. This right would be held for a 35-year term and the operators would obtain remuneration from recreational divers visiting the facility. The regional council and the Ngati Maru Iwi Authority opposed the application. On appeal, the Court was concerned about the exclusive grant of a 6.6 ha water column occupation area to a commercial operator and placed much weight upon opposition by Iwi. Sections 7 and 8 of the Act were quoted in the decision. The consent was refused.

In the future, where resource consent applications are made that affect the qualities of the Gulf, its islands and catchments, a reference to the Act is likely to be a mandatory consideration. The attitude of Iwi may be significant. The identification of the land-based drainage catchment on the statutory map and recognition of the objectives of ss 7 and 8 could be important to assessing applications for discharge consents within the catchment.

13 The additional statutes are the Biosecurity Act 1993, part V; Fisheries Act 1983; Fisheries Act 1996; Foreshore and Seabed Endowment Revesting Act 1991; Harbour Boards Dry Land Revesting Act 1991; Historic Places Act 1993; Local Government Act 1974; Marine Farming Act 1971; Native Plants Protection Act 1934; Queen Elizabeth the Second National Trust Act 1977; Resource Management Act 1991; Soil Conservation and Rivers Control Act 1941; Trade in Endangered Species Act 1989 (and the statutes listed in note 12).

14 Environment Court, A58/2000, 10 May 2000, Judge Bollard presiding.

Hauraki Gulf Forum

Part 2 of the Act establishes the Hauraki Gulf Forum and states the purposes. The Forum has purposes to integrate and promote the management and conservation in a sustainable manner of the natural, historical and physical resources of the Gulf, its islands and catchments, facilitate communication, and recognise relationships with tangata whenua.[15] The forum comprises 23 appointed representatives. Six persons represent tangata whenua and one other member is appointed by the Minister of Maori Affairs.[16] This representation proved controversial during the submissions and debate on the Bill.[17]

The Forum, which has been constituted, is required to prepare a list of issues and determine priorities for developing policies and input. Specifically, the Forum must have regard to the relationship of tangata whenua with the Gulf, its islands and catchments.[18] The Forum may not appear as an individual submitter or party in court or tribunal proceedings, but may appear as a witness for other parties.[19] Costs are to be shared among the public bodies equally unless otherwise agreed. An exception relates to tangata whenua representatives. These costs are to be met through the Minister of Conservation. By agreement with the Minister, the costs may extend to reasonable communication and consultation expenses in the course of work as tangata whenua representatives.[20]

Hauraki Gulf Marine Park

The Hauraki Gulf Marine Park is constituted with particular purposes which mirror the objectives in ss 7 and 8. The purposes are to recognise and protect in perpetuity the international and national significance of the land and the natural and historical resources within the park. The purposes are similar to those applicable to a national park.[21] The park is constituted to include all public lands in the nature of conservation areas or reserves, all foreshore and seabed owned

15 Hauraki Gulf Marine Park Act 2000, s 15.
16 Ibid, s 16.
17 NZPD, supra note 1. The number of recognised iwi exceed the available places, and iwi differ in population. The attribution of places among tangata whenua enables recognition of "urban Maori" groups not attached to an iwi or tribe.
18 Hauraki Gulf Marine Park Act 2000, s 17. The Forum must have regard to the principles of the Treaty of Waitangi: s 6(3).
19 Ibid, s 18. The Forum could recommend that members instigate action through local authorities.
20 Hauraki Gulf Marine Park Act 2000, ss 19, 20, 29. Members are protected from civil liability for acts done in good faith: s 30.
21 Ibid, s 32. Cf National Parks Act 1980, s 4. Intrinsic values would include views of the seascape and landscape: *Summit Road Society Inc v Minister of Conservation* (1990) 14 NZTPA 217 (HC).

by the Crown and all seawater within the Gulf. The inclusion of seawater does not give the Crown ownership of the water or affect responsibilities of a regional council in the coastal marine area. Other public land can be included with consent of the owner and administering body.[22]

Private land

Certain private land held under conservation covenants may be included with the consent of the owners. Maori fishing reserves may be included with consent of the management committees or tangata whenua.[23] In this event, the person responsible for the land included in the park must recognise and give effect to the objectives. However, nothing is to affect land not specifically within the park establishment and nothing changes otherwise the ownership or management of areas of land, foreshore, seabed, or waters.[24] Various provisions relate to entries on land titles and survey plans to show the inclusion of land or areas in the park or their removal.[25]

Deeds of Recognition with tangata whenua

Provision is made for the Crown or a local authority to enter into a "Deed of Recognition" with tangata whenua in respect of the land, foreshore or seabed. The deed may not relate to any water nor to any private land included in the park. The deed may record the Crown or local authority acknowledgment of historic and cultural relationships of tangata whenua with any land, foreshore, or seabed in the park.[26] The purpose of the deed is "to identify opportunities for contribution by tangata whenua to the management of an area by the Crown or a local authority".[27] Except in relation to contributions to the management, the deed does not have consequences for the administration and does not affect the lawful rights of any person.[28] The provisions appear to give statutory recognition to recent practices of local authorities in entering similar documents with tangata whenua.[29]

22 Ibid, ss 33, 34.
23 Ibid, ss 35, 36.
24 Ibid, s 37. Land may be removed from the park by Order in Council or Gazette notice.
25 Ibid, ss 42, 43.
26 Ibid, s 44.
27 Ibid, s 45.
28 Ibid, ss 46–48.
29 See Grant Hewison, "Agreements Between Maori and Local Authorities" (2000) 4 *NZJEL* 121 (supra).

Conclusion

In relation to land and sea activities, the Act is likely to have a long-term incremental impact concerning resource management. The objectives are binding upon the administration of regional and district plans, and may be relevant to resource consent applications. The *Tandem Marine* decision indicates the provisions could, in individual cases, be very significant.[30] Applications for discharge consents for wastes into water within the Gulf or the catchments will require assessment having regard to the Act. In practice, the outcomes may not to be significantly different from those predicated under the Resource Management Act and existing policy statements and plans.

Some submissions opposed the Bill on the ground that it was an unnecessary addition to the legal encyclopedia. However, the new Act is consonant with advancing the standards of integrated resource management. Historically, the first matters of national importance were introduced in 1973 to assist the protection of the natural character of the coastal environment of the Coromandel Peninsula in particular against unnecessary urban development.[31] The Hauraki Gulf Marine Park Act provides a broader focus upon the outstanding attributes of the Gulf and the ability to protect these assets into the foreseeable future.

The innovative Forum is a creative response to ensuring consultation within the main administrative bodies and tangata whenua. It has elements of the former provincial government in overlaying the eastern seaboards of the Auckland and Waikato regions. A constructive and unified dialogue towards the resource management goals and priorities should be the outcome.

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30 Supra note 14. The purposes relating to the protection of the catchment and Gulf islands could be relevant to the assessment of resource consent applications for development: *Arrigato* case, supra note 11.

31 Town and Country Planning Act 1953, s 2B (inserted 1973).

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