Resource Management Act 1991

Citation: No 69
Date of Assent: 22 July, 1991
Commencement: Majority of Act to come into force 1 October, 1991.

Repeal: Still in Force
Amendments: **1993, No 65:** *s2* amends *s2* – definition of "bed".
s159 amends *s354*
s160 amends *s355*
s199 inserts new *s417A* – uses of lakes and rivers.
s204 inserts new *s425A* – functions and powers in respect of activities on or in Lake Taupo.
1994, No 105.
1994, No 113.
Type of Legislation: Public
Subject: Other Resource Issues
ToW/ Principles of ToW reference
Lakes, Rivers, Beds, Foreshores etc
Fisheries
Wahi Tapu & Non Tangible Resources

Relevant Sections:

PART I Interpretation and Application

s2: "Kaitiakitanga" means the exercise of guardianship, and in relation to a resource includes the ethic of stewardship based on the nature of the resource itself,
"Maataitai" means food resources from the sea,
"Mana Whenua" means customary authority exercised by an iwi or hapu in an identified area,
"Tangata Whenua" means the iwi or hapu that holds mana whenua over a particular area of land,
"Taonga raranga" means plants which produce material highly prized for use in weaving,
"Tauranga Waka" means canoe landing sites.

s5: The purpose of the Act is to promote the sustainable management of natural and physical resources.

PART II Purpose and Principles

s6: In achieving the purposes of this Act, all persons exercising functions and powers shall provide for the following matters of national importance, including e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

Relevant Sections continued over page

s7: All persons exercising functions shall also have particular regard to a) kaitiakitanga.
s8: All persons exercising functions in relation to managing the use, development and protection of natural and physical resources shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi).

PART III Duties and Restrictions

s12: No person may reclaim or drain any foreshore or seabed, unless expressly authorised to do so by a rule in a regional coastal plan or a resource consent.
s13: Restriction on certain uses of beds of lakes and rivers.
s14: No person may take, use, dam or divert any water or heat or energy from water except in specified circumstances. In the case of geothermal water, the water, heat or energy may be taken if it is used in accordance with tikanga Maori for the communal benefit of the tangata whenua of the area and does not have an adverse effect on the environment.

PART IV Functions, Powers and Duties

s33: Makes provision for transfer of functions, powers or duties from a local authority to "another public authority" which may be an iwi authority.
s39: In determining the appropriate procedure for hearings, the local authority shall recognise tikanga Maori where appropriate and receive evidence written or spoken in Maori and the Maori Language Act 1987 shall apply accordingly.
s42: A local authority may make an order to protect sensitive information where it is satisfied that the order is necessary to avoid serious offence to tikanga Maori or to avoid the disclosure of the location of waahi tapu.

PART V Standards, Policy Statements and Plans

s45: In determining national policy statements the Minister shall have regard to anything which is significant in terms of *s8* (the Treaty of Waitangi).
s58: New Zealand coastal policy statement may state policies about the protection of the characteristics of the coastal environment of special value to the tangata whenua, including waahi tapu, tauranga waka, mahinga maataitai and taonga raranga.

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s61: Regional council preparing or changing a regional policy statement to act in accordance with Part II, and shall have regard to any relevant planning document recognised by an iwi authority having a bearing on resource management issues of the region.
s65: Regional council may prepare a plan covering any significant concerns of tangata whenua for their cultural heritage in relation to natural and physical resources.
s66: Regional plans to be prepared and changed in accordance with Part II and having regard to any planning document recognised by an iwi authority.
s74: District plans to be prepared and changed in accordance with Part II. In preparing district plans, authorities shall have regard to any planning document recognised by an iwi authority.

PART VI Resource Consents

s93: Once a consent authority is satisfied that it has received adequate information it shall ensure that notice of every application for a resource consent has been served on such local authorities, iwi authorities and other persons and authorities as it considers appropriate.
s104: When considering a resource consent application, consent authorities are to have regard to Part II.
s140: In considering whether a proposal is of national significance the Minister may have regard to relevant factors including whether the proposal is, or is likely to be, significant in terms of *s8* (the Treaty of Waitangi).

PART VI Coastal Tendering

s154: The Minister shall cause a copy of every Order in Council concerning coastal marine areas to be served on the tangata whenua of that region, through iwi authorities and tribal runanga.

PART VII Designations and Heritage Orders

s187: Minister of Maori Affairs or local authority may act as heritage protection authority either on their own motion or on the recommendation of an iwi authority.
s189: A heritage protection authority may give notice for a heritage order for the purpose of protecting any place of special interest, character, intrinsic or amenity value or visual appeal, or of special significance to the tangata whenua for spiritual, cultural or historical reasons.

Relevant Sections continued over page

PART IX Water Conservation Orders

s199: A water conservation order may provide for the protection of any water body considered outstanding for historical, spiritual, or cultural purposes, or of significance in accordance with tikanga Maori.

s204: Iwi authorities to be notified of applications to special tribunal under *s202.*

PART X Subdivision and Reclamations

s235: Vesting in Crown of ownership to land below mean high water springs of the sea and the bed of lakes and rivers unless vesting is waived by the Minister of Conservation.

ss245 - 246: Reclamations.

PART XI Planning Tribunal

s249: Alternate Planning Judge may be a Maori Land Court Judge.

s250: Governor-General to appoint Planning Judges on the recommendation of the Minister of Justice after consultion with Minister of Maori Affairs.

s253: The Minister of Justice shall ensure that the Planning Tribunal possesses a mix of knowledge and experience in matters including matters relating to the Treaty of Waitangi and kaupapa Maori.

PART XIV Miscellaneous

s353: Service of notices to, and obtaining consents in relation to Maori land from, nominees of owners, secretary of iwi authority or Registrar of Maori Land Court.

s354: Crown's existing rights in geothermal, coal and other resources to continue.

s355: Vesting of reclaimed land.

PART XV Transitional

s387: Existing geothermal licenses and authorisations deemed to be water permits under this Act.

s418: Certain existing uses may continue in certain circumstances, eg heat or energy from geothermal water.

FIRST SCHEDULE ***Preparation of Policy Statements and Plans***

cl 2: Proposed regional coastal plan to be prepared in consultation with iwi authorities.

cl 3: Requires local authorities preparing policy statements or plans to consult the tangata whenua through iwi authorities and tribal runanga.

Relevant Sections and Commentary continued next page

cl 5: Local authority to provide copy of proposed policy statement or plan to tangata whenua through iwi authorities and tribal runanga.
cl 20: Local authority to provide copy of operative policy statement or plan to tangata whenua through iwi authorities and tribal runanga.
SECOND SCHEDULE ***Matters in Policy Statements and Plans***
Part I
cl 4: Matters to be provided for in regional policy statements and plans include cultural heritage sites, waahi tapu.
Part II
cl 2: Matters to be provided for in district plans include cultural heritage sites, waahi tapu.

Commentary:

Introduction

The Resource Management Act 1991 contains a greater emphasis on recognition of Maori cultural issues than the previous *s3(1)(g)* of the Town and Country Planning Act 1977. It contains a variety of sections which refer to the Treaty of Waitangi and which may be seen as an attempt to begin to redress what has been an imbalance in the legal approach to the Maori use of resources. In the introducing the Bill, Upton said that the purpose of the Act, which followed a major law reform consultative process, was "to promote the sustainable management of natural and physical resources".

The management of resources has an integral part to play in the ongoing relationship of Maori with the Crown. It should be noted that the Waitangi Tribunal has found on two occasions that the provisions of the RMA fail to comply with the Crowns obligations pursuant to the Treaty of Waitangi (Wai 304 and Wai 153). In the Ngawha report the Tribunal said "As Part II of the Resource Management Act is presently worded, those exercising powers and functions which may impact on Maori natural resource taonga are not required to ensure that Maori treaty rights are accorded their appropriate standing." When the Bill was introduced to Parliament Whetu Tirakatene-Sullivan said that Maori felt that the Treaty of Waitangi was being subordinated by the Bill as it was "lumped in" with other considerations and no active protection was provided for tangata whenua interests because decisions are in the hands of local authorities and not Maori.

Commentary continued over page

It is important to note that the RMA 1991 contains a partial incorporation of tikanga Maori (custom law). A number of terms and concepts in the Act are not fully defined and can only be properly understood in terms of tikanga Maori. For example, *s6(e)* referring to waahi tapu and other taonga, *s 7(a)* referring to kaitiakitanga, *s14(3)(c)* referring to tikanga Maori and tangata whenua.
No provision is made, however, for a Maori interpretation of how these terms should be applied in practice.

Part II – Purposes and Principles

Part II of the Act *(ss5 - 8)* sets out the purposes and principles which are to govern the interpretation of the Act and its implementation. Section 8 specifically refers to the Treaty of Waitangi (Te Tiriti o Waitangi) and requires all people exercising functions and powers under the Act to take into account the principles of the Treaty. Section 6 requires all people exercising powers under the Act in relation to the management and development of natural and physical resources, among other things, to provide for the relationship of Maori and their culture with ancestral lands, water sites, waahi tapu and other taonga. In *s7*, first among a list of other matters which people exercising powers under the Act are to have particular regard to, is the matter of kaitiakitanga. This is defined in *s2* as the exercise of guardianship. Although kaitiakitanga is a Maori concept, the ethic of stewardship is not confined to Maori specifically and indeed the Planning Tribunal has since held it to be a wider concept.
The Waitangi Tribunal's main criticism of the Act focused on Part II. The Tribunal saw the placement of the Treaty as only one factor among a list of factors to be balanced, constituted a failure of the Crown to carry out its duty of active protection under the Treaty by failing to accord Maori interests an appropriate priority.

Methods of Management

The RMA 1991 sets out a variety of methods which enable Maori to participate in the management of resources they have an interest in and which allow tikanga Maori to be addressed as part of the resource management process. For example, *s58* requires the New Zealand coastal policy statement to state policies which are of special value to the tangata whenua. Section 93 requires consent authorities to ensure that notice of every application for a resource consent has been served on iwi authorities as considered appropriate.

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Although the aim of these procedures is to enable Maori to have more say in the resource management process, it should be noted that they are either at the discretion of the consent authority or a provision merely for a consideration of Maori views. The only compliance Maori are able to enforce is under *s316* which enables them to apply for an enforcement order where a consent authority has failed to observe its duties under the Act.

Consents

The RMA 1991 prevents certain restricted activities from being carried out without a resource consent. Section 104 sets out the principal matters which any consent authority must have regard to when considering an application for consent. There is no requirement for any consent authority to have regard to matters of significance to tangata whenua. In this way, Maori interests will be specifically protected only where they are dealt with in regional policy statements and plans. In a wider sense, *s104* is subject to Part II as discussed above, however Part II does not contain a mandatory consultation duty on the Authority. It requires no more than an obligation on the Authority to have regard to certain Maori issues.

There are a number of aspects of the consent process which are of importance to Maori. In particular, there is the question of whether an application for consent is notified. If such an application is required to be publicly notified, the consent authority is required to serve the notice on the appropriate iwi authority under *s93*. If this does not take place, the notification will be defective. Section 94 deals with non-notified resource consents. Important issues may arise if an authority decides to grant a non-notified consent (which has no requirement to be notified to members of the public). The section does require the written approval of every person who may be adversely affected. Consents may be contentious, therefore, if tangata whenua have not been asked to give written approval.

Consent Authorities are required to recognise tikanga Maori where appropriate in relation to consent hearings. These powers and duties are detailed in *ss39 - 42*.

Consent authorities would be well advised to consider themselves under a duty to consult with Maori, first as part of the implicit obligations imposed under the Act, and secondly as an obligation arising under the Treaty of Waitangi which all persons exercising powers under the Act must take into account under *s8*.

Commentary continued over page

Water Sites

The RMA 1991 specifically mentions the relationship of Maori with their "... water sites" as a matter of national importance *(s6)*. This section means that Maori can no longer be prevented from objecting to the granting of water rights by using evidence relating to spiritual or metaphysical matters.

Maori are given greater input into the management of water resources in a variety of sections of the Act. Local authorities are required to consult with tangata whenua when preparing policy statements. This is detailed in sections 60, 65 and 73. In addition, regional councils are required to have regard to relevant planning documents recognised by an iwi authority. The preparation of such documents, a considerable part of which often relates to water resources, enables Maori to implement forms of self management and planning. In this respect, *s33*, which enables a local authority to transfer to an iwi authority the management of certain resources, could be particularly appropriate for the management of lakes and rivers.

Geothermal Resources

The RMA 1991 repeals much of the former legislation dealing with geothermal energy. In this way, geothermal resources are placed under the same framework as that used to control water resources, ie the control of geothermal resources is vested in regional councils. Section 2 of the Act defines water as including "geothermal water". Although the Act treats geothermal resources essentially as a form of water resources, section 30 vests the control and use of geothermal energy in regional councils. This anticipates that the primary method of management for geothermal resources are regional policy statements and regional plans.

The scope for Maori involvement in geothermal management planning is limited. It may occur under the general obligation to consult with Maori as part of the the preparation of regional policy statement plans. Otherwise, it may be included in an iwi planning document which the council is required to have regard to, if it exists.

Cross Reference continued next page

Cross Reference:

NZPD vol 514 (1991) 1874 - 1883

NZPD vol 516 (1991) 3017 - 3040

Waitangi Tribunal ***Preliminary Report on the Te Arawa Representative Geothermal Resource Claims*** Wai 153 (Brooker & Friend, Wellington, 1993) 23, 27

Waitangi Tribunal ***Ngawha Geothermal Resource Report*** Wai 304 (Brooker & Friend, Wellington, 1993) 143 - 147, 155

Waitangi Tribunal ***The Mohaka River Report*** Wai 119 (Brooker & Friend, Wellington, 1992) 68

Waitangi Tribunal ***The Te Roroa Report*** Wai 38 (Brooker & Friend, Wellington, 1992) 103 - 106, 183, 256 - 257, 294

Ministry for the Environment ***People, Environment, and Decision Making: the Government's Proposals for Resource Management Law*** Reform (Wellington, 1988).