
Kiwi Co-operative Dairies Limited

Ocean Outfall

A CASE STUDY IN CONSULTATION WITH IWI UNDER THE RESOURCE MANAGEMENT ACT

with thanks to Ngati Ruanui, Kiwi Co-operative Dairies and Taranaki Regional Council

BACKGROUND TO THE CASE STUDY

Case study method

The case study is a real-life example of consultation with iwi as told by the key participants.

This case study was prepared by interviewing three key people from the Taranaki Regional Council (Fred McLay, Consents Manager), Kiwi Co-operative Dairies Limited (Karen Leov, Environmental Manager) and Ngati Ruanui Iwi Authority (Spencer Carr, Chief Executive). Transcripts of the interviews were used as the basis for constructing the case study. The draft case study was checked by the above participants. Further editing has occurred since.

The editorial commentary on the case studies in the left hand margin has not been checked by the above parties.

The willing and open contribution of the parties is gratefully acknowledged.

The purpose of the case study and the editorial commentary is to provide meaningful real-life examples of consultation with iwi, and to identify the lessons that can be learnt from the case studies. The case studies are directed at resource management practitioners but may also be helpful to applicants and to educational institutions.

The Proposal

Kiwi Dairies was the 5th largest company in New Zealand with its largest site just outside Hawera in Taranaki. It is now merging to be part of GlobalCo.

Kiwi Co-operative Dairies Limited (Kiwi Dairies) has seven manufacturing sites throughout the country and is New Zealand's 5th largest company based on its annual turnover of close to \$3.6 billion (as at the time of the interviews).

Kiwi Dairies has been processing whole milk at the Whareroa Dairy Factory Complex, Hawera, Taranaki since 1973 and wastewater

from the operation has been essentially discharged to the Tasman Sea since that time.

The Company was first granted consent for the discharge to the Tasman Sea via a small coastal stream in 1980. This consent was renewed in 1983, as a result of which an outfall was constructed in 1989. In 1992, the Company applied to increase the discharge volume as a result of the merger with Moa Nui Co-operative Dairies Limited. Following submissions and a pre-hearing process, the increase was granted and additional requirements incorporated into the consent. In 1994, Kiwi Dairies applied to renew coastal permits for the ocean outfall and the discharge from it. The outfall volume applied for was 18,500 cubic metres/day. This is the subject of this case study.

The marine discharge was characterised as high volume, low strength. Organic material, comprising any product that has been lost, and chemicals (mainly caustic based) that are used at one to two percent strength for the purpose of cleaning, are combined with washwater.

Approach taken by Taranaki Regional Council to iwi

Identification of iwi in a statutory document has value but cannot be regarded as "set in concrete".

Taranaki Regional Council officially deals with eight Iwi authorities including the Ngati Ruanui Iwi Authority. Tangata whenua are recognised in the Regional Policy Statement.

It is good practice for councils to have formal understandings and protocols in place with iwi to facilitate RMA consultation. While a special committee may have considerable value it will not necessarily supplant direct consultation with iwi.

Te Putahitanga o Taranaki is the standing committee of the Taranaki Regional Council. The Committee is in abeyance, having not met for more than one year due to a number of reasons, including the non-completion of a wananga (review) of the Committee by its members, pressures of the Treaty settlement process and dissatisfaction with the powers, functions, and duties of the Committee.

Relationships between iwi representatives and Councils should occur at all levels - and not just be left to specialist officers.

The Regional Council's Iwi Liaison Officer position was vacant at the time of the interviews, with Fred McLay, Consents Manager of Taranaki Regional Council, and the Planning Manager playing this bridging role. Fred McLay and the Planning Manager liaise with Iwi by contacting tangata whenua in relation to resource consent applications and in the preparation, implementation and monitoring of policy and planning documents.

Councils, including councillors, staff and their consultants, need to have specific understanding of the Treaty of Waitangi and tikanga Maori.

Council staff have visited marae on several occasions to learn about Maori protocols and areas of environmental concern from Mana Whenua perspectives. Staff have also attended training about the Treaty of Waitangi. More recently, staff have been sent on te reo Maori courses. The importance of training, practical guidelines, and induction programmes for new Regional Council staff was also noted. Visits to other regional councils to learn how they maintain and manage iwi relationships have also been instructive.

Taranaki Regional Council is keenly aware that an improved relationship between Iwi and the Regional Council in the area of natural and physical resource management is achievable in the post-

Treaty settlement phase.

IWI CONSULTED

All parties must recognise that tangata whenua have a special status under the RMA, and are not merely another affected party. Early discussions with applicants are a good opportunity for the council to discuss this.

Kiwi Dairies sought advice from the Taranaki Regional Council as to which Maori groups to consult with. In the context of a pre-application meeting, the Taranaki Regional Council advised that all persons and groups with an interest should be involved. The Taranaki Regional Council then assisted Kiwi Dairies to establish which Iwi representatives to contact. Ngati Ruanui were identified as the tangata whenua.

Another iwi - Tangahoe - made contact directly with Kiwi Dairies and requested a meeting.

It is a good practice for applicants to seek advice from Councils to ensure that they are consulting with the appropriate iwi and appropriate people of the iwi. This will not preclude other Maori groups identifying that they should be also be consulted. This may be specific hapu or an iwi with influence or interest in an area.

The reasons for Kiwi Dairies' decision to consult with Ngati Ruanui can be summarised as including, but not limited to, the Company's acknowledgement of the strong relationship between Ngati Ruanui and the local reefs, and of Ngati Ruanui's ongoing interest in the Whareroa Dairy Factory Complex. Ngati Ruanui was recognised by the Crown as having mana whenua status for the land and coastal area in the vicinity of the outfall and Tangahoe Iwi has challenged this status through an application to the Waitangi Tribunal.

Ngati Ruanui Iwi recognised that Tangahoe Iwi would have concerns and were supportive of Kiwi Dairies consulting widely. In particular, it was felt that the subject matter of the consultation was the sea and pollution, rather than who has rights of Mana Moana and Mana Whenua over the area that the application covered.

Kiwi Dairies convened a meeting with Tangahoe Iwi representatives on 12 April 1996 to discuss the proposal. Since that meeting, efforts to continue contact with Tangahoe Iwi have been unsuccessful.

ISSUES OF SIGNIFICANCE TO IWI

While an applicant does not have a legal obligation to consult with iwi on a resource consent, it is good practice to carry out consultation where the application raises matters of concern to iwi. In some circumstances it may be more appropriate for reporting officers to carry out consultation.

Of special concern to Ngati Ruanui was the adoption of the precautionary principle, which requires that decision-makers act in advance of scientific certainty to prevent harm to humans and the environment. Ngati Ruanui noted past mistakes in managing discharges to the Taranaki Bight, and the loss of maataitai from the Pukeroa Reef and the sea around it in less than a generation. At the time of the consultative process, Ngati Ruanui not only suggested that kaimoana was in short supply on the reef, but also felt that any present had an unacceptable dairy taint.

This application raised matters of great significance to iwi.

There was concern that an important taonga was being lost, and with it, the ability of the Ngati Ruanui and others to meet their domestic and marae hospitality needs, resulting in a reduction of the mana of the Iwi. Spencer Carr talked of the importance to the Iwi of being able to collect kaimoana from the reefs and to exercise kaitiakitanga in relation its reefs. The importance of considering

the reefs in terms of kaimoana (seafood) was emphasised, and it was noted that the Iwi had raised concerns about the impacts of the proposal on nearby taunga ika, kaimoana and mahinga kai (fishing reefs, seafood and seafood resource access).

Given that Ngati Ruanui had expressed its desire for an assessment of effects from a Tikanga Maori perspective, there was also a general concern about the less tangible matter of Regional Council processes and decisions regarding Maori values. There is a cluster of indicators that Ngati Ruanui uses as guidelines for spiritual wellness. This cluster is not exhaustive and can cover sensory and tactile perception, intuitive and experiential phenomena, temporal and spatial dynamics, and objective and subjective assessment. A term regularly used is a holistic approach to spiritual wellness, which intertwines with the physical wellness of the resource.

METHODS USED FOR THE CONSULTATION

The Council's general approach

The provision of written material for applicants may greatly assist in explaining the need for and way in which consultation should be carried out. Councils should maintain up-to-date contact lists for iwi, including preferred means of initial communication.

Where a consultation process is problematic some timely and sensitive intervention by council officers may address and correct misunderstandings.

Taranaki Regional Council offers guidance on who should be consulted. The Council's advice on undertaking consultation is set out in pamphlets and specific details are discussed with applicants. Applicants are encouraged to consult as early as possible in the process, to consult personally with Iwi, and to avoid relying on scientific, legal, engineering and/or planning reports to communicate with tangata whenua - but to have this data at hand should it be requested. Generally, the question of payments to tangata whenua for their various contributions into the resource consent process is left for applicants to decide. The Regional Council does not generally participate in the consultation process unless invited to.

The initial consultation carried out

Applicants should commence consultation with iwi as early in the process as possible. Iwi will typically have regularly scheduled meetings and may also need to refer matters to specific marae or hapu. This may take time.

This is a good example of starting consultation at a time when the key decisions have not been made, so that the results of consultation can affect the outcome.

For major projects raising issues of significance to iwi, consultation may have to take place over some time. It is a good practice to discuss timetables, and how best to consult,

Kiwi Dairies contacted Ngati Ruanui about the proposal by letter and telephone. Spencer Carr, Chief Executive of the Iwi Authority, was the key contact person. At this initial stage, the Company spoke of the project in terms of the studies being undertaken, rather than describing the project outline. The objective of this initial consultation was understanding Iwi concerns so that all reasonable planning options could be carefully considered and explored at an early stage. A second objective was to move positively forward, in recognition that a relationship of partnership based on mutual trust did not exist between Kiwi Dairies and Ngati Ruanui.

Consultation in earnest was initiated approximately six months prior to lodgement of the application for consents. Prior to this, information in respect of the proposal had been provided to the Taranaki Regional Council, who then forwarded copies to those persons interested in, or affected by, the proposal.

at the outset.

The status of those carrying out the consultation should respect the mana of the iwi being consulted. The presence of the most senior staff and governors of the Company showed commitment to consultation and enabled decisions on matters raised to be made as the consultation progressed (on the spot).

It is a principle of sound consultation that sufficient time must be allowed. This includes an understanding of the possible need for iwi representatives to consult widely within the iwi. Representatives at consultation meetings do not always have a mandate to express iwi views.

While a pre-hearing meeting is convened by the council and is not a formal part of consultation, it may be a useful way to discuss and verify options, possible conditions of consent and other matters which have arisen during consultation.

persons interested in, or affected by, the proposal.

Kiwi Dairies focused on a range of options for the consultation. In discussing alternative methods of disposal, Kiwi Dairies discussed their view that land-based treatment could not be made to work in Hawera for reasons of land availability. Kiwi Dairies advised that something like one thousand hectares of land would be required because of the size of the site and the discharge volume applied for. Problems due to the high rainfall resulting in run-off to streams and coastal erosion were also highlighted.

Kiwi Dairies' staff and Directors carried out the consultation with Iwi. The involvement of consultants was, to a large extent, limited to the preparation of various supporting reports. Those involved included the Whareroa site's Environmental Manager, the Technologies Manager, and the Group General Manager of Operations, all of whom had the authority to make commitments on behalf of the Company in terms of the application - depending on the circumstances. Others, such as the Chairman of the Board of Directors and the Chief Executive of the Company, were often in attendance.

Consultation took place at the convenience of Ngati Ruanui, at their offices. Ngati Ruanui operates to a 40-hour week from its offices and is often contacted by developers for advice and input regarding resource consents. The Iwi deliberately conducts its meetings in a conventional Pakeha format in acknowledgement that those persons party to communications represent the Iwi in a commercial as well as a cultural sense. The use of Pakeha meeting protocols assisted Kiwi Dairies in their consultation process and established the Iwi's approachability.

Outside of these meetings with Kiwi Dairies, Ngati Ruanui used marae consultation systems in relation to the Whareroa Dairy Factory Complex. In particular, it was noted that there had been debate and discussion within the Iwi subsequent to each meeting with the representatives of Kiwi Dairies. It was felt this process had been necessary given not only the technical nature of the information provided, but also the significance of the issues raised for Ngati Ruanui and their position that the preferred option was land-based treatment.

Pre-hearing meeting

A pre-hearing meeting relating to the Whareroa Dairy Factory Complex marine discharge and outfall structure was held on 17 March 1995. This meeting was held at the factory site so that an inspection of the outfall could take place. Taranaki Regional Council staff, submitters, and the Chairman of the Company and Board representatives attended the pre-hearing meeting. Tangahoe Iwi indicated they would not be in attendance.

Informal discussions took place between the Taranaki Regional Council and Company representatives following the pre-hearing meeting. As a result of these discussions, a revised waste

management strategy was developed which was designed to address submitters, community and Regional Council concerns.

A draft Officers' Report setting out the revised waste management strategy was circulated to all parties, and then revised slightly on the basis of comments from submitters. Following this, DOC, Maruia Society, and Ngati Ruanui all withdrew their requests to be heard.

Annual meeting

Consultation is ongoing. The Company and Taranaki Regional Council staff meet once a year with representatives of Ngati Ruanui, other submitters to the consent and any other interested party, to discuss the marine discharge and ocean outfall structure. The Regional Council pre-circulates its annual monitoring reports in respect of the discharge through the outfall prior to these meetings. Although a condition of consent in relation to the discharge, these annual meetings are seen by Kiwi Dairies as an opportunity to build more productive partnerships with both Maori and non-Maori.

At the time of the interviews, three annual meetings with submitters to the discharge consent had been held.

CHARGES FOR CONSULTATION

Councils and applicants should recognise that consultation places significant demands of resource and money on iwi and that this is not fairly carried entirely by iwi.

Councils should provide applicants with some forewarning as to whether there may be a consultation charge, so that applicants are not surprised.

Where iwi make a charge for the costs of consultation, this should be explained to applicants at initial contact.

Charges should be based on actual and reasonable costs, and provide transparency as to the basis of the costs. Consultation with councils may assist in determining an appropriate regime and ensure conformity with any grants made by the local authority.

Upon agreeing to the consultation process Ngati Ruanui suggested an hourly rate plus disbursements to Kiwi Dairies. Kiwi Dairies were surprised by this and sought the advice of the Regional Council who gave reassurance that both the system of charging and the amount sought were typical.

After discussion with the Council and the Iwi Authority, Kiwi Dairies were happy to meet the costs. The amount billed was considered reasonable given venue and catering costs. Karen Leov, the Environmental Manager, remarked that the cost of consultation was "very very small" compared to the many thousands spent on the various commissioned reports.

Spencer Carr reported that while Ngati Ruanui charges applicants and Councils for input on Iwi matters, the remuneration sought only covers a fraction of the true cost.

Fred McLay of the Regional Council considers that the rates charged by Ngati Ruanui are reasonable and consistent, and that developers generally have no problem with paying. As he stated

"It's not a blank cheque. If the applicant is worth \$10 million, you don't get \$10,000; it's so much an hour."

The cost of the Regional Council's tailored monitoring programme to Kiwi Dairies for 2000/2001 was \$67,469 plus GST. This figure

is for the monitoring of all those resource consents relating to the Whareroa Dairy Factory Complex and includes an air consent monitoring component. Ongoing payment to Ngati Ruanui for their role in the monitoring programme was determined in consultation with Iwi and is apportioned from the Regional Council's costs of monitoring charges.

OUTCOME OF THE CONSULTATION ON THE PROPOSAL

Karen Leov reported that Kiwi Dairies had been unaware of the importance of the reefs to the people of Ngati Ruanui prior to undertaking the consultative process, and noted that once the Company was aware of the Iwi's concerns, it undertook steps to address those issues. This included commissioning a report to address the environmental effects of the discharge on the reefs and foreshore areas. Ngati Ruanui was provided with this report.

Spencer Carr reported that Ngati Ruanui had been successful in negotiating a 500-metre extension of the outfall structure. He also suggested that Ngati Ruanui was satisfied with Kiwi Dairies' response on this matter. The outfall is now 1,845 metres from the toe of the cliff.

Ngati Ruanui requested that if consent was granted to the proposal, the group be involved in an 'active participation' role through monitoring of the resource consent. A joint programme of monitoring of the Kiwi Dairies outfall has now been implemented. Spencer Carr indicated however that Ngati Ruanui people act largely as observers, with the monitoring of the resource consents and the interpretation and reporting of those results being carried out by the Regional Council. This was effectively the view of Fred McLay. He noted that Iwi are invited to attend the Regional Council's biannual surveys and that Ngati Ruanui had initially expressed concern as to the impartiality of the Regional Council in interpreting monitoring results. Yet the idea of having the Regional Council's work independently audited has not been pursued - while expressing a desire to be more involved in the monitoring, Ngati Ruanui acknowledged that the video monitoring evidence of the Kiwi Dairies outfall discharge shows significant environmental improvement.

VIEWS ON THE EFFECTIVENESS OF THE CONSULTATION IN TERMS OF PROCESS AND OUTCOME

Effectiveness of Process

Kiwi Dairies was aware that there was a perception at the time of the proposal that the Company was not, nor had ever been, adequately responsible for the effects of its activities. Karen Leov

conceded that there had been unauthorised discharges, but felt that negative publicity surrounding a major break in the Whareroa pipeline, which had necessitated that the Complex be shut down in order for repairs to the pipe to be undertaken, had heightened this perception. Kiwi Dairies emphasised that accidental discharge is not in the Company's interests. A contingency plan outlining all procedures to be undertaken in the event of an accidental discharge had been in place at the time of the pipe breakage.

Fred McLay considered that the Regional Council had been a driver for Kiwi Dairies' improved wastewater management, describing the Regional Council as having been "...on their back over the last 20 years to move them from what the public described as 'the waterfall over the cliff' to an acceptable solution". Fred McLay commented that Kiwi Dairies had accepted the Regional Council's concerns and that all parties had, therefore, bought into a longer consultation process.

Applicants need to consider the needs of the audience, and present information in a way which is readily understood by iwi. Assumptions should not be made here. Iwi may or may not have qualified resource management advisors. Discuss what will assist. In all cases, however, matters of concern to iwi should be identified.

Ngati Ruanui felt that full information was not always forthcoming from Kiwi Dairies and suggested that more accurate accounts of what was happening at the Dairy Factory Complex were provided by tanker drivers and site workers. Spencer Carr also commented on the difficulties in understanding the resource consent application, given that a considerable amount of scientific information was provided. In particular, there was a perception that Kiwi Dairies "blinded" the Iwi with science.

It is a principle of sound consultation that those consulted be adequately informed so as to enable intelligent and useful responses. This is a good example of finding a means of communicating the issues apart from lengthy and technical reports.

Karen Leov acknowledged that communication about technical issues was problematic, but suggested that the inspection of the site had, in some ways, complemented the scientific information advocated and used by Kiwi Dairies - namely, through affording Iwi members the opportunity to see and touch much of the Whareroa establishment. Karen Leov noted that this opportunity had been highly valuable in terms of correcting misperceptions of the Complex. Fred McLay largely endorsed these views.

It is a principle of sound consultation that those consulting listen with an open mind and respond to the issues raised.

All three parties felt that consultation had been an active process. Spencer Carr reported that the nature of consultation had been a reality - that Kiwi Dairies had listened to what Ngati Ruanui had to say before deciding what would be done. Fred McLay similarly indicated that Kiwi Dairies had understood the significance of the consultation. Nonetheless, Ngati Ruanui had found it novel that there had been a genuine intention on the part of an applicant to elicit the Iwi's views and respond to them. In light of the general issue of lack of consultation with Maori, the comment was made that, rightly or wrongly, Ngati Ruanui had considered it a privilege that consultation was a two-way process. Spencer Carr also commented that Ngati Ruanui had not taken the full cost of consultation into account and that an itemised consultation framework would have been beneficial in this respect.

The Company kept a written record of the consultation and feels that a reasonable amount of time was allowed for consultation to take place. Furthermore, the effort put into consultation and

engagement with Iwi, particularly in terms of involving senior Kiwi Dairies staff, is considered to have been beneficial from the Company's perspective. On reflection Karen Leov considered that consultation should have been undertaken with Ngati Ruanui at an earlier stage, commenting that "you can never start consultation early enough". Fred McLay did not consider that there had been any time delays however, adding, "You don't rush things. If you rush, people get suspicious. Everything's a judgement call, but that's the old time factor again."

It should also be noted here that the Ngati Ruanui member interviewed felt that business and Western scientific models held more sway over the Hearing Committee than 'Maori spiritual values'. Notwithstanding, Fred McLay suggested that there had been a willingness to explore some of the more qualitative parameters in monitoring - and that the issue is still on the table.

Effectiveness of Outcome

Iwi need to recognise that consultation does not necessarily lead to agreement. However consultation is not to give a right of veto, and failure to achieve agreement does not necessarily invalidate consultation. Consultation is a two-way process and requires time and commitment from iwi as well as applicants.

Ngati Ruanui sought to maintain the purity of the coastal marine environment and remains of the opinion that Kiwi Dairies' application to discharge up to 26,000 cubic metres/day of dairy factory waste from the Whareroa Dairy Factory Complex via a marine outfall into the Tasman Sea should not have been approved. Ngati Ruanui argues that granting the application for the marine discharge is in contravention of the Iwi's cultural beliefs. As discussed above, Ngati Ruanui assert rights of Mana Moana and Mana Whenua over the area to which Kiwi Dairies' resource consent relates. It is in this context that Ngati Ruanui believes it has borne the greatest cost of the Regional Council granting Kiwi Dairies consent for the marine discharge. Any pollution of the sea could affect a part of the sea god Tangaroa and thereby the entire 'body'. Iwi consider this unacceptable. Accordingly, Spencer Carr believes that had Ngati Ruanui had the financial resources to proceed to a hearing, that the Regional Council would have had no option but to have declined Kiwi Dairies' application.

Karen Leov stated that there has been a progressive improvement in wastewater management over the years and that the current situation is to the general public's satisfaction. While the issue of the marine discharge was not resolved to the satisfaction of Ngati Ruanui, the relationship between Kiwi Dairies and Ngati Ruanui had improved at the time of the interviews.

Discharge consents expire and so consultation with iwi will start over again. The ongoing involvement of iwi in monitoring and improved relationships should assist consultation when a new application is made.

Notwithstanding, Karen Leov recognised that Ngati Ruanui's spiritual, cultural, and physical expectations are that the water sustaining mahinga maataitai be pristine. Thus, Kiwi Dairies accepts that the Iwi will continue to raise concerns in respect of the Whareroa Dairy Factory Complex marine discharge. At the same time, it was noted that the inclusion of Ngati Ruanui in the monitoring programme had been a very substantial step forward in terms of showing considerable improvement in the health of foreshore areas after the new outfall was commissioned. In this respect, Karen Leov acknowledged the strategic importance of

Ngati Ruanui being party to the monitoring of the discharge, commenting that the group's involvement in monitoring the exercise of Kiwi Dairies' resource consent was the best practical outcome achieved. Fred McLay similarly felt that the joint monitoring provided a forum for ongoing involvement and for developing the relationship between the Regional Council, Kiwi Dairies and Ngati Ruanui - and that time allows people to judge performance against the deliverables promised. He also felt that Ngati Ruanui, although reserving their judgement as to the performance of the marine discharge and outfall structure, were "reasonably satisfied" regarding the processes and approaches followed by Kiwi Dairies.

For their part, Ngati Ruanui acknowledged that there had been a notable improvement in the health of foreshore areas since the new outfall had been commissioned. After almost 90 years, Iwi members were confident of the quality of mahinga maataitai or food gathering areas and had again begun to collect kaimoana from the reefs.

The benefits of good consultation can be improved and ongoing relationships with iwi - who should be regarded as permanent "stakeholders" in the activities of resource users.

Fred McLay endorsed the viewpoint of Karen Leov that consultation helped the parties to understand each other's position and that Kiwi Dairies' acknowledgement of the mistakes of the past, together with the Company's resolve to be more environmentally responsible, has provided an increasing level of trust between the parties. In addition, he noted that the willingness of all the parties to be practical had facilitated a constructive "living" relationship. By way of illustration, he highlighted that the joint monitoring arrangement had been sealed with a handshake at a pre-hearing meeting. The agreement is now formalised in a monitoring programme.

Karen Leov was also positive about the consultation in terms of process and outcomes. Despite the extent of the consultation and investigations required, she made the comment that "at the end of the day, it all came together quite well".

Transit New Zealand

Ruby Bay Bypass

A CASE STUDY IN CONSULTATION WITH IWI UNDER THE RESOURCE MANAGEMENT ACT

with thanks to Ngati Rarua, Ngati Tama, Transit NZ and Tasman District Council

BACKGROUND TO THE CASE STUDY

Case study method

The case study is a real-life example of consultation with iwi as told by the key participants.

This case study was prepared by interviewing four key people: Jack Andrew, Consents Manager from the Tasman District Council, Karen Warren (a consultant with Opus International Consultants Limited) for Transit New Zealand, Barney Thomas of Ngati Rarua and the late Keri Stephens of Ngati Tama. Transcripts of the interviews were used as the basis for constructing the case study. The draft case study was checked by the above participants. Further editing has occurred since.

The editorial commentary in the left hand margin has not been checked by the above parties.

The willing and open contribution of the parties is gratefully acknowledged.

The purpose of the case study and the editorial commentary is to provide meaningful real-life examples of consultation with iwi, and to identify lessons that can be learnt from the case studies. The case studies are directed at resource management practitioners but may also be helpful to applicants and to educational institutions.

The proposal

The case study involved a major new section of a state highway in an area of great

In October 1999, Transit New Zealand (Transit) gave notice of a requirement, pursuant to Section 168 of the Resource Management Act 1991, for a designation for "Proposed State Highway Limited Access Road". The Notice of Requirement sought a designation for the

significance to iwi.

Notice of Requirement sought a designation for the construction, operation and maintenance of the Ruby Bay Bypass. This involved realigning an existing section of State Highway 60 (SH 60) and constructing a new alignment.

The designation was required to overcome problems associated with the existing poor alignment, poor safety record and coastal erosion and to cater for increased traffic flows in the future.

SCOPE OF TRANSIT CONSULTATION PROGRAMME

General programme

The objectives of the Transit consultation programme reflect and accord with established principles of sound consultation.

A wide-ranging public consultation programme was undertaken as part of the investigation to identify the preferred alignment for the bypass. Core consultation in relation to the final assessment of the bypass options occurred between October 1998 and March 1999.

The objectives of the public consultation programme undertaken in relation to the proposed work were to ensure that it:

- was undertaken in a manner which informed interested parties;
- provided sufficient time for the public to respond;
- obtained useful responses;
- provided opportunities to consider the information gathered and to make modifications to the proposal as appropriate; and
- provided an accurate record of the consultation undertaken, including a record of respondents to those consulted.

The key factors were:

- to inform affected parties of the proposal;
- to identify issues and constraints; and
- to identify potential measures to avoid, remedy or mitigate adverse effects.

Opus International Consultants Limited (Opus) were engaged by Transit to consult and engage with parties likely to be affected by the designation, including iwi..

Applicant's obligation to consult iwi

In addition to Resource Management Act requirements, Transit has direct responsibility to consult tangata whenua under its own Act. Section 42L (which repealed Section 27) of the Transit Act 1989 requires that Transit undertake consultation with iwi concerning road programmes, and Section 60 requires consultation with iwi

concerning declaration of any state highway.

IWI CONSULTED

It is good practice for applicants to seek advice from councils to ensure that they are consulting with the appropriate iwi and appropriate people of the iwi.

Opus consultants made initial contact with the Tasman District Council to identify the Maori groups with whom consultation should take place. Transit was advised to approach Iwi advisory committees at the earliest possible stage. No other advice was given because Council considered that Opus had a good working relationship with Tangata Whenua.

The use of a combined committee for all iwi is a useful and helpful means of operation for applicants, as they can go to “the horse’s mouth” to ensure the right iwi and people are being consulted.

Advisory committees operate monthly in the Nelson area and Motueka, in accordance with the different rohe of the Iwi in Nelson-Marlborough. Iwi represented are Ngati Toa Rangitira, Ngati Koata, Ngati Kuia, Ngati Rarua, Ngati Tama and Te Ati Awa. At the time of the interviews, Ngati Kuia had not attended the monthly advisory meetings in the Nelson area.

Barney Thomas, Trustee of the Ngati Rarua Atiawa Iwi Trust, undertook consultation on behalf of Ngati Tama, as the concerns of Ngati Rarua and Ngati Tama in relation to the bypass were very similar.

ISSUES OF SIGNIFICANCE TO IWI

Prior to the arrival of European settlers, Maori occupied much of the coastal margin of Nelson and Tasman Bay. Iwi know that there are burial sites, occupation sites, and significant locations within these coastal areas. The route of the Ruby Bay Bypass is in an area where there were known Maori communication routes and links.

This is a good example of past consultation helpfully informing a project.

There was a high awareness of these issues, based, in part, on the consultation undertaken over the Stoke Bypass.



Iwi representatives had not identified any waahi tapu along any of the proposed route options. However, a special concern was the encountering of cultural or archaeological material during the bypass construction.

Concerns were raised with respect to native flora and fauna, including the planting of specific native plants, and that surface water should not be discharged to the marshy areas of the inlets.

The ability of the bypass to enable development remains an issue. Iwi groups are concerned that subdivisions will have an adverse effect on the environment and that works may be permitted without a level of monitoring appropriate to the area. The effects of stormwater discharges on the estuarine environment and with regard to sustaining mahinga maataitai or food gathering areas were cited as examples that would invariably affect the cultural wellbeing of Ngati Rarua. By way of illustration, it was noted that the cultural beliefs of Ngati Rarua relate to the kotuku, a bird whose presence not only heralds a bountiful supply of food but also indicates the

resting place of deceased Iwi members.

Also of concern were the recommendation and decision procedures for Transit's Ruby Bay Bypass Project. A requiring authority makes its own decision on a notice for requirement. It was felt that this would give the requiring authority the "upper hand".

Karen Warren agreed that the above concerns had been raised. Both she and Jack Andrew were of the opinion that the Iwi groups' main concern had been the procedures for handling any Maori artifacts or human remains encountered during the project.

METHODS USED FOR THE CONSULTATION

Applicants should commence consultation with iwi as early in the process as possible. As in this case, iwi will typically have regularly scheduled meetings and, as in this case, may also need to refer matters to the marae.

Initial consultation with the Iwi groups was by letter in November 1998, describing the 1998 assessment carried out by Opus to determine the most appropriate bypass alignment. Opus staff subsequently attended the December advisory meeting for the Nelson area to canvass Iwi concerns and priorities. Maps and plans were perused. The monthly advisory meetings provided a starting point for answering the question of who to consult and were used in addition to letters in the mail.

For major projects where there may be consultation over some period, it is good practice for applicants and iwi to discuss the most appropriate means of carrying consultation, agreeing on programmes and the like.

Keri Stephens stated that advisory meetings are not consultation, as some of the attendees do not have the appropriate level of mana to make commitments. He saw the process of reporting back to the wider Iwi as consultation, stating, "Consultation is Iwi to Iwi".

The advisory group appears to perform an invaluable role in Nelson in assisting in managing inter-tribal matters which commonly spill into RMA matters.

Transit consulted with the Iwi groups separately where requested. Despite overlapping boundaries of closely related tribes, Barney Thomas and Keri Stephens reported little fragmentation and tension among the Iwi groups whose rohe fall within the Nelson-Marlborough region. Where differences between the groups' aspirations arise, discussions are held behind closed doors.

The various Iwi often support one another's involvement in the planning process. Barney Thomas attended the Iwi advisory meeting held in Motueka to support the Iwi groups in the Motueka rohe and to facilitate Iwi co-ordination. He also felt that his attendance placed pressure on Transit to be consistent in the information presented.

The first levels of engagement with Iwi groups resulted in a site discussion with several representatives.

Tikanga Maori was followed at advisory meetings and meetings held at marae. Key protocol included mihi and karakia. As people engaging with the Iwi at these meetings sometimes had limited knowledge of the Maori world, in particular te reo and tikanga Maori, an Iwi representative provided explanations of what was said. Barney Thomas felt strongly nonetheless that tribal process should be recognised, saying, "When in Rome, one should do as the

Romans do.”

Iwi representatives, as well as a rongoa person, a botanist and the project archaeologist, attended a walkover of the route.

Council staff attended monthly advisory meetings and also met with Barney Thomas after a submission opposing Transit’s Notice of Requirement was lodged by Iwi. The outcome of that meeting was the withdrawal of the submission, which had been conditional upon the preparation of protocol and procedures for the Ruby Bay Bypass.

Council was provided with a written record of the monthly advisory meetings and consultation undertaken.

COSTS OF AND CHARGES FOR CONSULTATION

Where iwi make a charge for consultation, this should be explained to applicants at initial contact including the methods of charging.

General systems are in place for advisory committee work. Developers usually make a booking to attend. Charges, including an hourly rate of \$50 per hour per Iwi, are then set out in a letter of confirmation.

Councils and applicants should recognise that consultation places significant demands of resources and money on iwi and that this is not fairly carried entirely by iwi.

Barney Thomas and Keri Stephens were concerned that their expertise not be taken for granted. Further, they emphasised that Iwi do not have the time to participate fully in all the project development and consent processes that come to them, and that consent processes represent a small segment of Tangata Whenua groups’ interests. Both also felt that the genuine cost of Iwi input, for example in terms of hui and meetings, is often not appreciated.

In some cases commissioned reports from iwi are agreed and these should be placed on a business footing to avoid later disagreement.

Barney Thomas reported that Transit considered the fee charged for the identification of rongoa (plants traditionally used for medicinal purposes) unreasonable, and that Transit put too low a value on tikanga and traditional knowledge. He emphasised that the Company paid extensive fees for scientific and engineering reports yet was reluctant to accept the value of equivalent Iwi specialist services.

Karen Warren noted that the question of Iwi resourcing arose during 1999/2000. At the time of the interviews in late 2000, systems for paying Iwi were being worked through by senior management within Transit.

It is good practice for Councils to have formal understandings and protocols in place with iwi, including financial compensation, to facilitate RMA consultation.

Council’s resourcing of Iwi participation was limited and infrequent, but nevertheless, Council does appear to be sympathetic to the Iwi case for resourcing. At the time of the interviews, Council was developing formal protocols with regard to consultation and engagement with Maori.

OUTCOME OF THE CONSULTATION ON THE PROPOSAL

Walkover

Specific native plants were identified and appropriate means for the conservation of native flora and fauna agreed to between Transit and Iwi. Pukeko, for example, were relocated to avoid being run over.

Cultural heritage protocol and procedures

Transit and the six Iwi with interests in the area of the Ruby Bay Bypass agreed upon protocols setting out:

- the procedures for monitoring of the construction by Iwi;
- the procedures to be followed should any Maori cultural or archaeological material be encountered during construction; and
- participation of Iwi when cultural or archaeological material of Maori origin is encountered, including appropriate protocols for ceremonies.

Written approval was obtained from the Iwi groups following iterative amendments to the document.

Transit are to employ and fund an Iwi Liaison Officer (or representatives) for the duration of construction of the Ruby Bay Bypass. Iwi are to provide people to monitor and assist in recording any archaeological features (both Maori and non-Maori). Transit undertook to provide the Iwi Liaison Officer with sufficient resources for the functions outlined in the protocol document. Issues concerning archaeological finds and Iwi matters will be addressed during the construction period through regular meetings and the keeping of a log. The document includes a review mechanism. Other parties with whom Transit has a contractual obligation will also be bound by the protocol.

VIEWS ON THE EFFECTIVENESS OF THE CONSULTATION IN TERMS OF PROCESS AND OUTCOME

Process

Keri Stephens believed that the consultation process precipitates what outcomes can be achieved. He also considered that with larger projects the Council could do more in terms of initiating, facilitating and monitoring the consultation process, and in exploring how Iwi concerns might be responded to and accommodated in the context of realistic planning

options. Neither Barney Thomas nor Keri Stephens was aware of the District Council having contacted Tangata Whenua to establish that consultation had taken place over the bypass. Council accepts that it may need to do more so Iwi better understands the role of Council as regulator versus community advocate.

Well over 1,000 hours of public consultation was undertaken. Karen Warren suggested that the Iwi component comprised 10 percent of this figure and reported a positive working relationship with a number of Iwi. The preparation of the Stoke Bypass protocol in 1996 was an initial step in an evolving relationship with Tangata Whenua. It has served as a model of how consultation is to be conducted and on what matters interaction should take place.

The status of those carrying out the consultation should respect the mana of the iwi consulted. This is a good example of an appropriately senior applicant representative being present, although consultants were used.

Barney Thomas and Keri Stephens held that as a Crown entity, Transit rather than its consultants should have consulted and engaged with Tangata Whenua. However they acknowledged that a representative of sufficient rank within Transit had been a participant in the consultation and that the Opus consulting had been “reasonably good”.

Keri Stephens also commented that the tender specifications and purchase orders for projects should include a budget for Tangata Whenua consultation. It should be noted here that Transit, in conjunction with Iwi groups across the country, is presently developing a memorandum of understanding to set the ground rules for interaction between the parties. The memorandum of understanding will formalise policies on interaction, including details about resources or assistance provided to Iwi, and provisions to change and review the document. Rather than draw up formal contracts for projects, Transit believe that establishing a memorandum of understanding is a more efficient way for Transit and Tangata Whenua to formalise or develop a relationship.

All parties saw the monthly advisory meetings as benefiting the applicants, as advice could be sought from official representatives of Iwi groups. In spite of this Karen Warren indicated that face-to-face discussions with Iwi had been somewhat constrained by the monthly meeting programme.

Barney Thomas reported that on two occasions Iwi had been consulted after directions were set, so they were being asked to accept a fait accompli. As the situation had arisen as a result of meetings held between Transit and affected private property owners, including businesses, he felt that a mechanism for greater information exchange between the key affected parties

would have been beneficial.

All parties agreed that Transit and Iwi had sought, and will continue to seek, to work in partnership to provide the bypass for the community and to protect Maori historical and cultural heritage of the area through which the bypass is to be constructed.

Outcome

Jack Andrew reported that the cultural heritage protocols and procedures developed in conjunction with Iwi groups clearly demonstrated that consultation had been a reality, not a charade. Transit's understanding of the need for protocols and procedures should earthworks be undertaken, and its willingness to accommodate Tangata Whenua concerns, gave Iwi the confidence to withdraw their submission at a time when the protocol had not yet been finalised and ratified. Iwi felt comfortable enough about Transit's commitment to the development of the protocol not to attend the hearing.

The refined route of the Ruby Bay Bypass was the option preferred by the Iwi groups. Karen Warren considered that beginning consultation early in the process, the ability of the applicant to be flexible to feedback received, and its preparedness to vary or refine the route and undertake appropriate mitigation measures, had been instrumental in achieving a win-win outcome for all parties.