

BEFORE THE ENVIRONMENT COURT

Decision No. [2016] NZEnvC 190

IN THE MATTER of the Resource Management Act 1991
AND
IN THE MATTER of an appeal pursuant to Clause 14 of
Schedule 1 to the Act
BETWEEN MOTITI ROHE MOANA TRUST
(ENV-2015-AKL-000134)
Appellant
AND BAY OF PLENTY REGIONAL COUNCIL
Respondent

Court: Environment Judge JA Smith (chair)
Environment Judge DA Kirkpatrick

Hearing: at Rotorua on 13 September 2016

Appearances: RB Enright for the Motiti Rohe Moana Trust
PH Cooney and RB Boyte for the Bay of Plenty Regional Council
JM Pou and AM Neems for Ngāti Makino Heritage Trust (s 274 party)
S Ryan for Lowndes (s 274 party)
VJ Hamm and AG Godinet for Motiti Avocados Limited (s 274 party)

Date of Decision: 30 SEP 2016

Date of Issue: 30 SEP 2016

Opening Karakia by Mr Hoete

DECISION OF THE ENVIRONMENT COURT ON AN APPLICATION FOR
STRIKEOUT UNDER SECTION 279(4) OF THE ACT



A: The Court refuses to strike out the appeal at this stage.

Some aspects of the appeal may be beyond jurisdiction, particularly potential incorporation of a prohibition of activities within the entire management area. However, any issues as to appropriate provisions can be addressed both in the evidence at the hearing and in any decision by the Court.

The Court is satisfied that the usual methods of control of the scope of hearing, through the hearing and decision process, are adequate in the circumstances and a strikeout is not appropriate.

B: Costs are reserved and may be pursued independently of the outcome of the hearing. The Court does not require any submissions on this issue until the substantive hearing is resolved.

REASONS

Introduction

[1] The Motiti Rohe Moana Trust ("**the Trust**") filed a wide-ranging appeal in respect of the Regional Coastal Environment Plan particularly relating to the rohe of the Trust and the Motiti natural environment.

[2] The area affected was described by a diagram in the Trust's original submission and is annexed hereto as **A** for clarity. It can be seen that it includes not only the immediate environs of Motiti Island but also the offshore Tokau Reefs and other features, including, importantly, the Astrolabe Reef/Otaiti.

[3] Subsequently the parties attended mediation and there were several discussions relating to the scope of the remedies sought by the Appellant.

[4] Given that the Application relates to the scope of the original submission and the appeal as filed, it is necessary to annex hereto both the original submission (marked **B**) and the second amended appeal (marked **C**). Although there was a first amended appeal, its production here is not critical for the purpose of determining the scope of the appeal.



The application for strikeout

[5] The Regional Council has taken the unusual step of applying to strikeout the entire appeal on the basis that:

...the relief the Trusts seek which is an integrated spatial planning management area around Motiti with specific provisions applying to it, was not within the foreseeable contemplation of those who are likely to be directly or potentially affected by those outcomes.

That relief was not fairly and reasonably raised in the submission. The relief raised in the submission and that now raised in the appeal is also not on the Coastal Plan.

[6] In closing, Mr Cooney confirmed that the Council's submission was that the Trust had never filed a valid submission; accordingly there could be no valid appeal and therefore the proceedings needed to be struck out as an abuse of process under s 279(4) of the Act. Mr Cooney readily admitted that the Council had received the submission, progressed it through the hearing stage, and issued a decision in respect of it. He also acknowledged that the submission seeking a marine spatial plan was one reflected in a number of other submissions, all of which were accepted and dealt with by the hearings process. Nevertheless, we accept that the question of whether a submission is valid or not is a question of law and the Council's acceptance of it and dealing with the matter as a submission does not make it lawful.

The Court's approach

[7] We consider that we first need to determine whether or not there was a valid submission. If there was a valid submission, the question then is whether this was reduced in any of the notice of appeal documents that have subsequently been filed. To the extent it has been so reduced those submission points and any relief based on them are no longer available to the appellants.

[8] For practical purposes we can regard the submissions and the original notice of appeal as having the same content. The notice of appeal itself simply refers to the original submission. It was acknowledged by all parties that there had been no reduction in the scope of the submission in the original notice of appeal (**Original Appeal**).



Expansion of an appeal

[9] Mr Enright for the Trust submitted that he had not attempted to extend the appeal in either the second or third notices of appeal, but rather to clarify the outcome sought in response to requests of the parties, particularly the Regional Council.

[10] No party argued before us that it was possible to extend a submission on appeal, or extend the scope of the remedies that might be sought.¹ This position was elaborated by the High Court in *General Distributors Ltd v Waipa District Council*:²

[54] ... To this end the Act requires that public notice be given by a local authority where it promulgates or makes any changes to its plan. There is the submission/further submission process to be worked through. A degree of specificity is required in a submission – cl 6 of the First Schedule and Form 5 of the Regulations. ... There is a right of appeal to the Environment Court, but only if the prospective appellant referred to the provision or the matter in the submission – cl 14(2) of the First Schedule.

[55] One of the underlying purposes of the notification/submission/further submission process is to ensure that all are sufficiently informed about what is proposed. Otherwise the plan could end up in a form which could not reasonably have been anticipated, resulting in potential unfairness.

[56] There is of course a practical difficulty. As was noted in Countdown Properties at 165, councils customarily face multiple submissions, often conflicting, and often prepared by persons without professional help. Both councils, and the Environment Court on appeal, need scope to deal with the realities of the situation. To take a legalistic review and hold that a Council, or the Environment Court on appeal, can only accept or reject the relief sought in any given submission would be unreal.

[11] This is expounded further by the High Court in *Royal Forest and Bird v Southland District Council*:³

...It is important that the assessment of whether any amendment was reasonably and fairly raised in the course of submissions, should be



¹ *Countdown Properties Northland Limited v Dunedin City Council* [1994] 1ELRNZ 150 at 171, HC. (2008) 15 ELRNZ 59 (HC).

³ [1997] NZRMA 408 (HC) at 413.

approached in a realistic workable fashion rather than from the perspective of legal nicety.

[12] Finally, the Court holds no particular powers to broaden the scope of an appeal (see s 278 of the Act and Rule 1.12 of the District Court Rules, 2014).⁴

[13] Accordingly, it is the argument of the applicant Council here, supported by Motiti Avocados Ltd (a s 274 party), that in the second amended notice of appeal the appellant has gone beyond the scope of any submission it made. It is thus submitted that the entire submission (and appeal) is therefore to be struck out as an abuse of process.

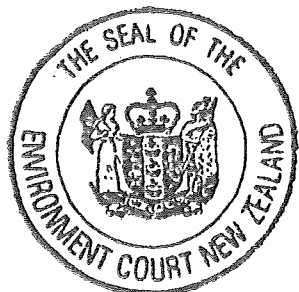
[14] There appears to be an inherent difficulty with this argument, which is that if the appellant has gone too far in the remedies it seeks, it is difficult to see the basis on which it precludes the remedies which are in scope. Given the very broad powers of the Court to decide outcomes between those stated in the plan and those sought by the appellant, such issues of scope are particularly difficult to determine at this stage. It is on this basis that Mr Cooney eventually reverted to an argument that the submission made was invalid and was never “on” the proposed plan.

The Trust's submission

[15] The Trust's submission to the Council started from the proposition that it supported parts of the proposed plan and sought amendments to others to reflect the principles of the Treaty of Waitangi and the status and role of the Trust as kaitiaki of the islands of Motiti and the surrounding waters, islands and reefs. It noted in particular its whakapapa to the island, and before this Court it was acknowledged that they represented a party with a proper interest in this matter.

[16] The format of the submission has adopted the approach of the plan rather sought to dictate its own approach. That is helpful in that it enables us to understand better the particular parts of the plan that are being addressed. It can be seen under general themes that there was concern about active protection of taonga and failure to give effect to Part 2 of the Act and NZCPS and the objectives and policies of the Regional Policy Statement.

⁴ *Transit NZ v Pearson* [2002] NZRMA 318 (HC) at [48].



[17] Under "relief sought" the Trust seeks:

- (a) to be proactive in respect of active protection and redress, the implementation of Treaty principles in settlement outcomes for Motiti;
- (b) amendment of implementation methods to include cultural dimensions;
- (c) memoranda of understanding;
- (d) policies to partner with the Trust to maintain and enhance coastal values in this area;
- (e) implementation methods to advocate for Mataiti and Taiapure reserves; and
- (f) clarification of policies for greater certainty of sustaining kai moana and eco systems, avoiding degradation of natural character and biodiversity, measuring baselines and, in particular, provide an expanded network of restored island and marine protected areas where ecological health and indigenous biodiversity will be protected and enhanced.

[18] Under implementation it added:

- (a) for cultural advisors to assist with applications;
- (b) to add content to objectives and policies, amending or refining as required to integrate mataurangi Māori into the plan and to provide the Māori worldview of their existence; and
- (c) management and decision-making to take into account various historic cultural and spiritual relationships.

[19] Under the second heading of Matauranga Māori they supported that process, but sought in particular:

- (a) a marine spatial plan for Motiti rohe moana and whenua incorporating matauranga Māori in collaboration with the Trust; and
- (b) the application of Māori attributes of mana, mauri and tapu to assist with natural character.



[20] Under the third heading of Integrated management they sought integrated management of fisheries resources and, in particular, to give effect to Objective 1 of the NZCPS.

[21] Under the fourth heading of Marae based aquaculture, they sought to expand Issue 35 to include Motiti rohe moana and to provide for non-commercial Marae-based aquaculture.

[22] In relation to Part C, under "Integrated Management" they sought an integrated methodology for the marine environment similar to the use of structure planning, spatial planning or integrated whole of catchment management. They sought that the fishery resources and marine management be integrated, in particular in collaboration with tangata whenua

[23] Under "Natural Heritage" they sought greater involvement and participation in decision-making. They identified that the restoration of biodiversity is an issue of significance to mana whenua.

[24] In respect of "Iwi Resource Management" they noted the need to reframe the issues and objectives and policies to provide for the protection of biodiversity and natural heritage.

[25] Under "Activities in the coastal marine area" they sought to add objectives and policies to provide for marine spatial planning over the Motiti Rohe Moana.

Evaluation of submissions

[26] We have cited these provisions at some length because it is clear to us that they do specifically include matters of marine spatial planning, integrated management including fisheries, flora and fauna, and the protection of at least various areas within the Rohe area as well as restoration of other areas.

[27] In simple parlance, Mr Cooney's proposition that spatial planning management around Motiti was not within contemplation is not borne out by reference to the submission. We have concluded that any reasonable person reading these provisions would immediately ascertain that the Trust had an interest in the waters, reefs, toka, and islands and other features around and including Motiti, and that it sought to



maintain various forms of control – particularly to protect the fisheries, flora and fauna of that area and cultural matters including Taonga. Exact places where various controls were sought is not set out, but it is intended to reflect a spatial planning regime.

Is such a submission on the plan?

[28] There was a great deal of submission made to this Court about the case law applying to whether various submissions or appeals were “on” variations or plan changes. The distinction between a plan change/variation and a full plan review has not been addressed in any of the cases which were put to this Court. We think it is important to analyse the distinction between a full plan review and a plan change or variation to understand how the issues discussed in the cases concerning a provision being “on” plan change and variation come to the fore.

A full plan review

[29] Schedule 1 provides essentially for the preparation, change and review of policy statements and plans (see clause 1 and 2). Clauses 1-15 deal with the preparation of proposed policy statements or plans. Clauses 16 and 16(a) deal with amendment to a policy statement or plan or a variation to the same. It is clear that the words of Clause 16 provide for amendments to a plan which can be made without utilising the process in the First schedule.

[30] Clause 1(4) specifically refers to a request for a plan change and Clause 16(a) deals with variation of a proposed policy statement or plan. We conclude it must be assumed that the word “proposed” applies to both the policy statement and the plan, as well as a change.

[31] The wording of Schedule 1 is such that the distinctions between a variation, a change and a review are not as clear as they might be. However, we conclude that the intention of these phrases is well-established both through practice and through case law. A review in relation to a regional plan consists of a new plan intended to replace the operative plan, and substitute provisions in full. In short, when the plan review becomes operative the existing plan ceases to operate.

[32] In respect of a change, this anticipates that there may be changes to an operative plan, which are less than replacing the whole plan. There appears to be no



particular limit to such a change, but in practice these have tended to replace *parts of* an operative plan only. We conclude that it would be inconsistent if a change could replace an entire plan, as this would be classified as a review.

[33] A variation consists of changes that can occur while the Schedule 1 process is under way. Although the word “proposed” precedes only the words “policy statements”, it must by interpretation apply also to the word “plan”, ie “proposed plan”. Accordingly, it is intended that the variations provision allow alterations to occur during the Schedule 1 process of either a review or a change.

[34] The distinctions between these types of alteration to a plan represent significant differences in approach to the application of Schedule 1, particularly the submission process. For current purposes it is clear the proposed Regional Coastal Environment Plan is intended to replace the operative Coastal Environment Plan in due course. There is little doubt that it constitutes a review of the entire plan, and is intended to provide a comprehensive framework to meet the Council’s obligations in respect of the coastal environment.

[35] There have been, from time to time, variations and/or changes to regional plans – including in the Bay of Plenty. These are clearly noted as such both in notification and during processing. The issue in respect of a change or variation is that it may deal with a substantially narrower range of issues and not meet all of the obligations of the authority under the Resource Management Act.

The plan process

[36] The obligations for a regional council are set out not only in section 30, but also in sections 67-70 of the RMA. The first issue is that the Regional Council has the power to provide more than one plan covering all of its obligations under s 30. In this case there is no dispute that the Regional Council has elected to deal with the regional coastal environment in a separate plan.

[37] This is not unusual, but it is clear that there is going to be a question of whether a particular issue is within the subject matter that the Regional Council may address in such a regional coastal plan. For example, the extent of land-based activities that might be controlled in such a plan, or discharges to air. In this particular case, however, there is no doubt that the proposed Regional Coastal Plan (reflecting



ss 67-70), and the Regional Policy Statement, are intended to address the coastal marine area including the waters of the Bay of Plenty within territorial limits.

[38] For current purposes there is no doubt that the Regional Policy Statement acknowledged and addressed Motiti Island, the toka, reefs and sea waters as having particular values. Those were the subject of disputes before and decisions of the Court.

[39] Section 66 requires the Regional Council to prepare regional plans in accordance with the provisions of ss 66 (1) and (2) and it is clear under subsection (2) that it must have regard to the Regional Policy Statement in preparing that plan.

[40] Section 66(2)(a) requires the Regional Council to take into account:

any relevant planning document recognised by an iwi authority; and

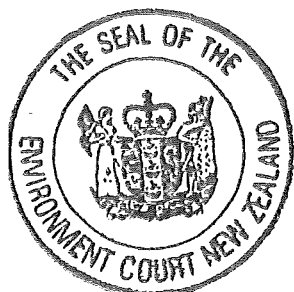
any planning document prepared by a Customary Marine Title Group under s 85 of the Marine and Coastal Area Takutai Moana Act 2011.

[41] In preparing the Plan, there are also requirements under s 67 to give effect to any national policy statement (including the NZ Coastal Policy Statement) and the regional policy document.

[42] In relation to a full plan, we have concluded that the parameters of the obligations of the Regional Council in preparing the plan also constitute generally the parameters of the submissions that may be made on the plan.

Scope on a review

[43] We accept that *Motor Machinists*⁵ represents a clear statement of an analysis which must occur where there is a plan change or variation dealing with a narrower range of issues in respect of the Council's obligations. Nevertheless, where the Council is fulfilling its statutory functions under s 30 and ss 66 and 67 of the Act, it must be open to a party to argue that the Council has failed to meet any of those obligations, or that these could be better met by altering the provisions of the plan.



⁵ *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290, HC.

[44] It is well established that on appeals about proposed planning instruments there is no presumption in favour of the planning authority's policies or the planning details of the instrument challenged or the authority's decisions on submissions: each aspect stands or falls on its own merits when tested by submissions and the challenge of alternatives or modification.⁶

[45] In this particular case, we conclude that the submission made by the Trust was well within the framework of the Regional Coastal Plan dealing with issues raised in both the Regional Policy Statement and the NZ Coastal Policy Statement, as well as addressing matters under Part 2 of the Act. This is explicit within the submission, and forms the basis of the submission for a marine spatial plan. In short, the submission is clearly within the scope of the Plan review.

Can a lack of precision defeat a submission "on" the plan review?

[46] The significant submission of Mr Cooney was that there had been a failure to properly identify the changes that were sought to the proposed Regional Coastal Plan. The level of precision required during a plan review process is a matter of some complexity. Not unnaturally, parties are concerned that if they suggest outcomes with too much precision at an early stage they are not able to adapt that submission if Council decides to adopt an alternative approach. On the other hand, Councils are concerned to properly identify the range of outcomes that are sought so that the public notice provisions adequately inform the public of the issues that are raised. We note the discussion in *Motor Machinists*⁷ as to amendments made to the Resource Management Act in relation to submissions and further submissions. Although in the context of a plan change a similar approach applies in respect of reviews.

[47] In respect of plan reviews, it must follow that there can be a wide range of potential submissions, and the notification only of a summary of those issues reflects a limited intent for public participation. Nevertheless, in this case we are advised, and accept, that a number of parties made submissions seeking marine spatial plans, and that several further submissions were made to the Trust's submission in relation to the marine spatial planning issue (among other things).



⁶ *Leith v Auckland City Council* [1995] NZRMA 400 at [408]-[409]
⁷ *Motor Machinists*, above fn 5 at [43].

[48] Given the clear reference to protection, management of fisheries and marine spatial planning, we are in no doubt that any party reading the submission as a whole (rather than just a summary provided by the Council) would be in no doubt of the potential ramifications of the provisions sought. Moreover, this needs to be understood in the context that the Trust had already raised similar issues in respect of the Regional Policy Statement and that other parties, including Ngāti Makino before this Court, had raised issues relating to co-management of waterways.

[49] We acknowledge that this submission is also in the context of the sensitivity of the population to issues surrounding Motiti Island and the wreck of the MV Rena that occurred in 2011 and its aftermath. This includes the processing of the application for resource consent and the comprehensive hearing of that application which was required by Commissioners. Given that the submission raised, specifically, issues under ss 30, 66 and 67 of the Act – particularly relating to Regional Policy Statement, the New Zealand Coastal Policy Statements and Part 2 of the Act – we conclude that there was clear notice of the concerns of the parties in relation to the coastal plan as it affected the Motiti rohe area.

[50] As to the degree of specificity, we are satisfied that it was sufficiently specific to identify that there could potentially be:

(a) aquaculture areas

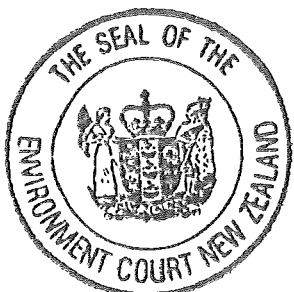
areas of restriction for cultural and natural environment reasons;

areas of control including over spatial areas and fishery areas; and

issues of co-management and cultural constraints, including upon land-based coastal areas.

[51] However, there is nothing in the submission as filed that would suggest that the area of effect of the plan was to be wider than that notified. In other words, any landward areas not included within the regional plan were not raised as specific issues in the Trust's submission.

[52] Overall, we have concluded that not only was the submission dealing with issues required to be dealt with under the Act in the review of the Regional Coastal Plan, but was sufficiently specific to alert members of the public to the potential



outcomes sought – including potentially controlling coastal parts of Motiti Island and the area around it for protection, management and aquaculture activities. However there was nothing in the submission which sought to affect the area inland of the coastline of Motiti Island itself.

Alternative analysis as to whether a submission is on the review

[53] In case we are wrong in looking at this matter on a broader basis for a full Plan review, and accepting that the approach in *Motor Machinists* may also be appropriate for reviews, we ask ourselves the following key questions, based on the analysis in that case:

- Should the s 32 report have dealt with the issues raised in the submission?
- Are there third parties who would be affected, who did not have an opportunity to participate?

[54] As to the s 32 report, most of the matters raised by the Trust relating to the application of the Regional Policy Statement and Coastal Policy Statement as well as Part 2, are matters required to be assessed as part of any s 32 Report. It would seem unreal to suggest that the obligations under s 30 and ss 66-70 were not part of an evaluation of the most appropriate way to achieve the purpose of the Act.

[55] To that extent the NZ Coastal Policy Statement is referred to in the latter sections, as is the Regional Coastal Policy Statement. For our part, we cannot see how a s 32 report could not address issues of marine spatial management, even if these were eventually discounted; nor, for example, issues under s 66(2) and (2a).

[56] We acknowledge, as Mr Cooney says, that the Council may properly, after evaluation of all those matters, elect to adopt another management method. However, in our view, two issues arise:

- (i) Clearly, the question of whether there should be marine spatial management is a matter which arises under various provisions of the Act and should be addressed in the s 32 report;
- (ii) as discussed above, it is well established that it is open to a party to submit that another approach is more appropriate in the Plan.



[57] We note in this case that the Trust essentially has agreed with the Council's general approach save for the submission of including the marine spatial plan for this rohe. Mr Cooney's argument in this regard was that the Council had not provided one, and had dealt with most of the marine area by overall controls. He however then acknowledged that there were several areas where specific controls had been adopted and a more spatial approach had been utilised, such as the Port of Tauranga.

[58] In other words, we have not been advised of anything that would be entirely inconsistent with adopting a marine spatial plan for this area if the rest of the Regional Coastal Environment Plan was to be adopted. Given that this argument was at a high level, it may be that there are such provisions, and these could be properly considered at a full hearing.

Has the submission been narrowed?

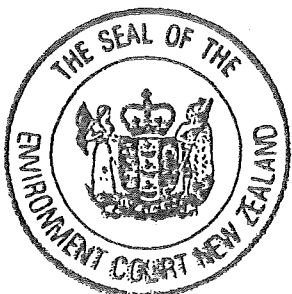
[59] Ms Hamm's primary submission to this Court on behalf of Motiti Avocados Limited was that the appeal as filed had subsequently been changed by the two further notices to such an extent that there was no proper matter for consideration by the Court. In that regard she acknowledged that the notice of appeal essentially repeated the matters of submission (in fact attached the submission as its grounds) and, accordingly, that there was no narrowing of the appeal at that point.

The first amended statement of claim

[60] All parties agree that the first amended notice of appeal simply narrowed some of the specific grounds of appeal. In the first amended notice of appeal, the changes were relatively minor, but made certain deletions, one clarification, and also confirmed that the appeal did not seek any relief which opposes (directly or indirectly) the leaving of the Rena wreck, its equipment cargo and associated debris on Otaiti/Astrolabe reef. In particular no relief was sought in relation to maritime incidents in the proposed plan 3.3, or recognition of the wreck in ONFL 44 (see paragraph [32] of the first amended notice of appeal).

The second amended notice of appeal

[61] Ms Hamm submitted that the second amended appeal considerably expanded the remedies sought in the notice of appeal. Mr Cooney took the same view. Both



were of the opinion that the expansion sought was so significant that the appeal should be struck out as a whole. Two issues arise:

- Was there an expansion of the appeal in the second amended notice of appeal?
- If there was, does this vitiate the remedies sought encapsulated within the original appeal and first amended appeal?

Was there an expansion of the appeal?

[62] Mr Enright's primary position was that, with one exception and one clarification, the second amended appeal merely sought to respond to a mediation agreement to provide greater clarity, and was not intended to expand the appeal. He acknowledged that the landing point at Te Hurihuri was a matter beyond the scope of the original submissions or appeal, and therefore asked for that to be removed. We do so.

[63] The Trust also had reached agreement with Lowndes (a s 274 party) that the consent for the wreck of the MV Rena was independent of any changes sought to the proposed Regional Coastal Plan. The Court has issued a memorandum in respect of this issue that can be referred to for greater clarification.

The changes in the second amended notice of appeal

[64] As can be seen from attachment C, many of the provisions are essentially insertions of an explanatory nature, or expanding grounds for the marine spatial control sought. It is difficult to see that any of those would expand the original submission, particularly given the subsequent agreement which is included within the annexures (marked D), and particularly given the discussion in relation to the Rena and Issue 55 is removed, as is the discussion at 12.1.1(1)(a) in relation to Hurihuri Point landing.

[65] Even the objectives at 2.11, 50, 51 and 52 are clearly an attempt to put in clearer wording the original submissions made by the Trust in relation to the Motiti Natural Environment Area.

[66] Part 4 is clearly intended to create a new management area through new provisions to be inserted as Section 12. This, in our view, is consistent with the marine



spatial planning issue. It then goes on to deal with the content of that. Some wording, such as policy MNEMA1:

- (a) discusses rahui conservation management area; and
- (b) discusses preventing removal, damage or destruction of indigenous flora or fauna, including taonga species.

[67] Proposed section 12.2 discusses aquaculture as a controlled activity and MNEMA2, under that, discusses the rahui.

[68] Ms Hamm strongly makes the point that there was no discussion in the original submission of rahui, and Mr Enright concedes this. On the other hand, he says that the question of management and protection are both explicitly discussed, including management of fisheries and flora and fauna through marine spatial planning.

Evaluation of second amended notice

[69] The difficulty for this Court in assessing these type of provisions at this stage is that it has not heard the evidence supporting them. A form of restriction or rahui is a significant outcome, and generally there would have to be clear reasons and both objectives and policies to support it. It may or may not amount to a prohibition under the Act, depending on the context. Questions then arise as to the spatial extent of any such rahui, any periods for which it might apply, and any conditions that might then apply.

[70] In short, it is difficult for this Court to conclude that these outcomes are beyond the scope of the originally worded submission and appeal until it has heard evidence. Clearly, any form of blanket prohibition is beyond the appeal and submission, and unlikely to be supported by the proposed Regional Coastal Plan provisions that are not under appeal.

[71] In fact the Trust's own submission sought that "areas" might be subject to various controls. This indicates to us that the intent was that there would be a marine spatial plan with various provisions applying in different places. This appears entirely consistent with the discussion about high value areas and areas of particular cultural value.



[72] I acknowledge Mr Cooney's and Ms Hamm's concerns that the wording as currently sought goes too far. However, a court assessment would need to be made in the context of the evidence and with a close consideration as to the actual remedy sought in relation to each of the grounds of appeal and submission. Mr Enright himself accepts that the wording in the second amended appeal is the Trust's optimum outcome, and issues as to the scope of that wording (and refinement thereof) and the spatial extent of it are matters that will be subject to further refinement through the evidence and hearing process.

Is strikeout an appropriate remedy for amendment that goes beyond the submission?

[73] We have concluded that there are clearly remedies within the scope of the submissions that can be addressed in the appeal if a marine spatial plan is sought. This might impose some form of constraint or restriction, such as requiring resource consents for certain activities. It might include other methods, objectives or policies which are sought to implement a marine spatial plan or conditions sought in the submission and appeal. In practical terms, it is far too early in the case to say whether any of the remedies sought in the second amended statement of claim would be appropriate or better in the circumstances of this case.

[74] The parties will be aware that the general practice of the Court in such complex cases is to issue an interim decision and then give the parties an opportunity to consider the appropriate approach that should be adopted if it considers that there is some merit to the appeal.

[75] Inevitably in the course of a hearing parties refine the remedies sought and the Council and parties offer iterations of the plan which each considers might address the particular concerns of the appeal. This is why the Court refers to the hearing process as an iterative one, and it is one of constant refinement from the time of the original submission until the time when the matter is finally disposed of by the Court. Once evidence is circulated the parties will have further opportunities to refine remedies on the basis of the evidence available, and in consideration of the evidence for the remaining parties. Often this position is further elucidated through cross-examination, where alternatives are explored with witnesses. It is not uncommon for an appropriate approach or even a resolution to appear during the course of a hearing. This is in the nature of the public and participatory planning context in which this matter is being heard.



Conclusion

[76] For the reasons we have given in detail, we consider it is premature to conclude that the potential outcomes under the plan are an abuse of process. Clearly, any remedy sought must be within the scope of the submissions filed and must relate to matters which the proposed Regional Coastal Plan addresses under the Act, Coastal Policy Statement and New Zealand Coastal Policy Statement. Given that many of the objectives and policies of the plan are also not in dispute, it would need to be consistent with the settled elements of the plan. However it is not possible for the Court at this stage to say that the particular remedies sought may not be available to any degree at all.

[77] Some remedy between that currently contained within the plan and that sought by the appellant might be considered to be appropriate after a full hearing. In such an event there are a range of possibilities open to the Court, including the potential to require either a plan change or to direct notification of any new provisions. A more common approach adopted by the Court would require the parties to see if they can resolve the issues in light of the Court decision and agree on wording to be incorporated into the plan. Such an evaluation can only be undertaken after hearing full evidence.

[78] It is clear that under s 279(4) of the Act that there is a high threshold to establish an application to strike out.⁸ The issues in this case are ones well known to the Regional Council (and other authorities) through the RPS process, the Rena consent and other matters (including resource consents and a district plan). The Court can see no basis to say that the Trust has no valid interest in the matters which are the subject of this plan or that they did not properly raise issues of concern to them within the scope of the plan review being undertaken. Certainly no wrongful actions or process are alleged. After all, the second amended notice of appeal is an attempt to clarify the issues for the parties. If it does not help then it is difficult to see why the appeal should be struck out. Evidence in relation to the concerns and the appropriate response to achieve the purposes of the Act are matters that can only take place on a full evaluation of the evidence and submissions.


[79] Accordingly the application for strikeout is declined.

⁸ *Hurunui Water Project v Canterbury RC* [2016] NZRMA 71 at [84]-[86].



[80] Costs are reserved and may be pursued independently of the outcome of the hearing. The Court should not require any submissions on this issue until the substantive hearing is resolved.

For the court:



JA Smith
Environment Judge



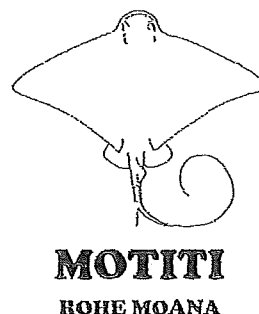
MOTITI ROHE MOANA TRUST

Nga Hapu o Te Moutere o Motiti

Rohemoana@gmail.com

21 August 2014

The Chief Executive
Bay of Plenty Regional Council
PO Box 364
Whakatāne 3158
email: coastal.plan@boprc.govt.nz

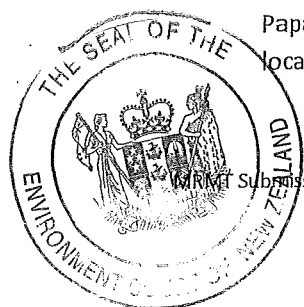


Tena koutou

MOTITI ROHE MOANA TRUST SUBMISSION TO THE PROPOSED BAY OF PLENTY COASTAL ENVIRONMENT PLAN

A INTRODUCTION

1. This is the submission of Motiti Rohe Moana Trust (the Trust) to the Proposed Bay of Plenty Coastal Environment Plan (the Plan). The submission seeks retention of those parts of the Plan that support the Trust's aspirations and outcomes and seeks consultation in accordance with the principles of Te Tiriti o Waitangi and the status and role of the Trust as kaitiaki of the island of Motiti and surrounding waters, islands and reefs in respect to all matters relating to Motiti Rohe and seeks amendments or removals to other parts of the Plan to address our concerns with the Plan.
2. The submitter is the Motiti Rohe Moana Trust established in 2009. Trustees are kaumatua born and raised on Motiti Island. Among other things the Trust's purpose set out in the Trust deed is to act on behalf of Nga Hapu o Te Moutere o Motiti for the purposes of resource management, fisheries, aquaculture and other matters within the Motiti Rohe Moana. The rohe is shown in the map in attachment 1.
3. The Trust advocates for ahi ka Maori on Motiti Island and all who whakapapa to Motiti Island and surrounding reefs, islets and waters.
4. Te Moutere o Motiti is a taonga. Te Tau o Taiti is a taonga and so too are Te Porotiti, Te Papa, Okarapu, Motuhaku, Motunau, Tokeroa and the coastal waters in which they are located.



- 5. This submission is in three parts. Part A is the introduction. Part B sets out the general themes of the submission; challenges the process by which the plan has been prepared and opposes the Plan in general terms as it has not been prepared in accordance with the principles of the Treaty, does not apply matauranga Maori, and has not engaged with Motiti ahi ka or those who whakapapa to Motiti and its waters. The general themes of the submission pick matters that were not addressed in the Proposed Regional Policy Statement or its Variation 1. Part C identifies more specific submissions and the relief sought.
- 6. The Trust signals at this stage its position set out in its original submissions to the proposal by the Council to prepare a variation to the proposed regional policy statement and a proposed regional coastal environment plan. It reiterates the need for the Regional council to engage in consultation with the Trust and encourages the use of collaborative approach to developing appropriate plan provisions for the coastal environment within the rohe of the Motiti Rohe Moana.
- 7. The Trust is mindful of the recent Supreme Court Decision

"Moreover, the obligation in s 8 to have regard to the principles of the Treaty of Waitangi will have procedural as well as substantive implications, which decision-makers must always have in mind, including in giving effect to the NZCPS."
 (SC 82/2013 [2014] NZSC 38 EDS v King Salmon, para [88]).

B. SUBMISSIONS & RELIEF SOUGHT

General themes issues & relief sought to the Plan as a Whole

- 1. Provide active protection of taonga within the costal environment of Motiti Island and coastal waters in partnership with the Trust.

Issue:

Failure to give effect to Part II Resource Management Act 1991 (RMA), New Zealand Coastal Policy statement (NZCPS) Objective 3 and Policy 2 in particular, and relevant provisions of the Proposed Bay of Plenty Regional Policy Statement provide for exercise of

- tino rangitiratanga
- kaitiakitanga
- customary values
- application of matauranga maori
- tikanga
- active protection of taonga

in respect to Motiti Rohe Moana

Relief sought:



- a. Engage with the Trust to ensure Treaty of Waitangi are observed; to be proactive in respect of active protection and redress; and to recognise and to ensure RMA Part II & PRPS framework is implemented so that Treaty principles and settlement outcomes are delivered in the for Motiti Island and Motiti rohe moana
- b. Amend to provide implementation methods directed at providing reports mandated by the Trust and including cultural dimensions applying matauranga Maori.
- c. Enter into memoranda of understanding with the Trust.
- d. Add policies for regional council to partner with the Trust to maintain and enhance coastal values of Motiti Rohe Moana and Whenua.
- e. Provide implementation methods to advocate for Mataiti and Taiapure reserves in partnership with the Trust
- f. Add, refine or clarify policies to Work with tangata whenua to establish ecological bottom line or agreed target for managing the natural (character and biodiversity)and cultural resources of Motiti Rohe Moana and Whenua which will:
 - provide greater certainty in sustaining *kai moana* and ecosystem services
 - avoid degradation of natural character and biodiversity
 - better measure success of protection and enhancement measures implemented
 - establish a baseline for monitoring changes
 - provide an expanded network of restored island and marine protected areas where ecological health and indigenous biodiversity will be protected and enhanced
 - Add Implementation Methods for Plans:
- g. Add implementation Methods for all applications for resource consent policy or plan changes or variations are to be reported on by cultural adviser(s) mandated by tangata whenua of Motiti with costs to be borne by proponents.
- h. Add content to Objectives and Polices amending or refining as required to integrate matauranga Maori into the Plan to provide the Maori world view of their existence and why they live their lives in the way they do including *Ngakau Maumaharatanga mo ake ake* as it applies to Motiti rohe moana and whenua.
- i. Management and decision making to take into account historic, cultural and spiritual relationships of Tangata Whenua with the island and waters of Motiti and the ongoing capacity to sustain these relationships.

2. Matauranga Maori

Issue:

We strongly support the inclusion of matauranga Maori in integrated management process. However, we consider there needs to be specific provisions for its implementation

Relief sought



A₄

- a. Marine spatial plan for Motiti rohe moana and whenua incorporating matauranga Maori in collaboration with the Trust.
- b. Apply Maori attributes of mana, mauri and tapu to assessment of natural character in particular to the island reefs and waters of Motiti rohe moana and whenua.

3. Integrated management – coastal marine area

Issue:

The purpose of the RMA and PRPS is to achieve integrated management. Methods need to be implemented to achieve integrated management for the marine environment. The integrated management of fisheries resources in terms of an ecological management approach has been developed in the international context and must be applied to the Motiti rohe moana to give effect to Objective 1 of the NZCPS.

Relief sought:

Integrated marine management implemented through integrated management of fisheries resources.

4. Marae based aquaculture

Issue: More specific provision is needed for non commercial marae based aquaculture. Objective 34 is supported as far as it goes.

Relief Sought:

- a. Expand issue 36 to include Motiti rohe moana. Recognise that water quality is not an issue in this location and that Oceanic aquaculture carried out by Motiti marae within customary waters is worthy of investigation and implementation if proven feasible.
- b. Expand Objective 35 to also provide for non commercial marae based aquaculture.

PART C SUBMISSIONS & RELIEF SOUGHT

Specific

- 1. Integrated management issue objectives and policies are supported as far as they go. There is a need to provide integrated methodologies for the marine environment similar to the use of structure planning, spatial planning or integrated whole of catchment management applied on land.

Relief sought:

Add Issues, Objectives Policies and Methods that implement Objectives 1 and 3 of NZCPS.

Add

Issue: Fisheries resources to be a management focus so that marine management can be integrated in a manner similar to integrated catchment management for land. Objective:



Develop methodologies for management of fisheries resources in collaboration with tangata whenua and management agencies.

Policy: A methodology for integrated management of fisheries resources will be developed for the Motiti Rohe moana and whenua through collaboration with the Trust and stakeholder groups.

Policy: Methodologies developed will be implemented by plan change or variation

- 2. Natural Heritage issue objectives and policies do not go far enough in recognising issues of significant to Mana Whenua and Mana moana participation and decision making in regard to natural heritage and biodiversity or in identifying locations which require restoration and the linkage between natural and cultural heritage.

Relief Sought:

Add Issues Objectives Policies and Methods to give effect to Objective 2, 3 and 7 and Policies 2, 13 and 15.

Reword issues and objectives to include recognition that natural heritage and restoration of biodiversity is an issue of significance to Mana Whenua and Mana Moana and their participation and decision making is provided for in regard to indigenous biodiversity and natural heritage.

- 3. Iwi Resource Management issues objectives and policies are supported as far as they go and need to be reworded and extended.

Relief sought: Reword issues objectives and policies:

- a. to provide for Mana Whenua and Mana Moana rather than "iwi";
- b. to extend issue 20 for example to recognise and provide for Mana Whenua and Mana Moana to be able to develop and utilise their land and waters,
- c. reframe the issues objectives and policies to provide for protection of biodiversity and natural heritage as a focus for achieving appropriate fisheries management.

- 4. Activities in Coastal Marine Area is supported in part and opposed to the extent it does not provide for matters of significance to Mana whenua and Mana moana.

Relief sought:

- a. Add Objectives and policies to provide for marine spatial planning over the Motiti Rohe Moana

We wish to be heard in oral submission.

Umuhuri Matehaere
CHAIRMAN
MOTITI ROHE MOANA TRUST

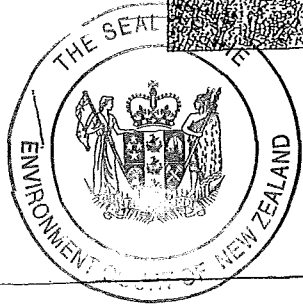
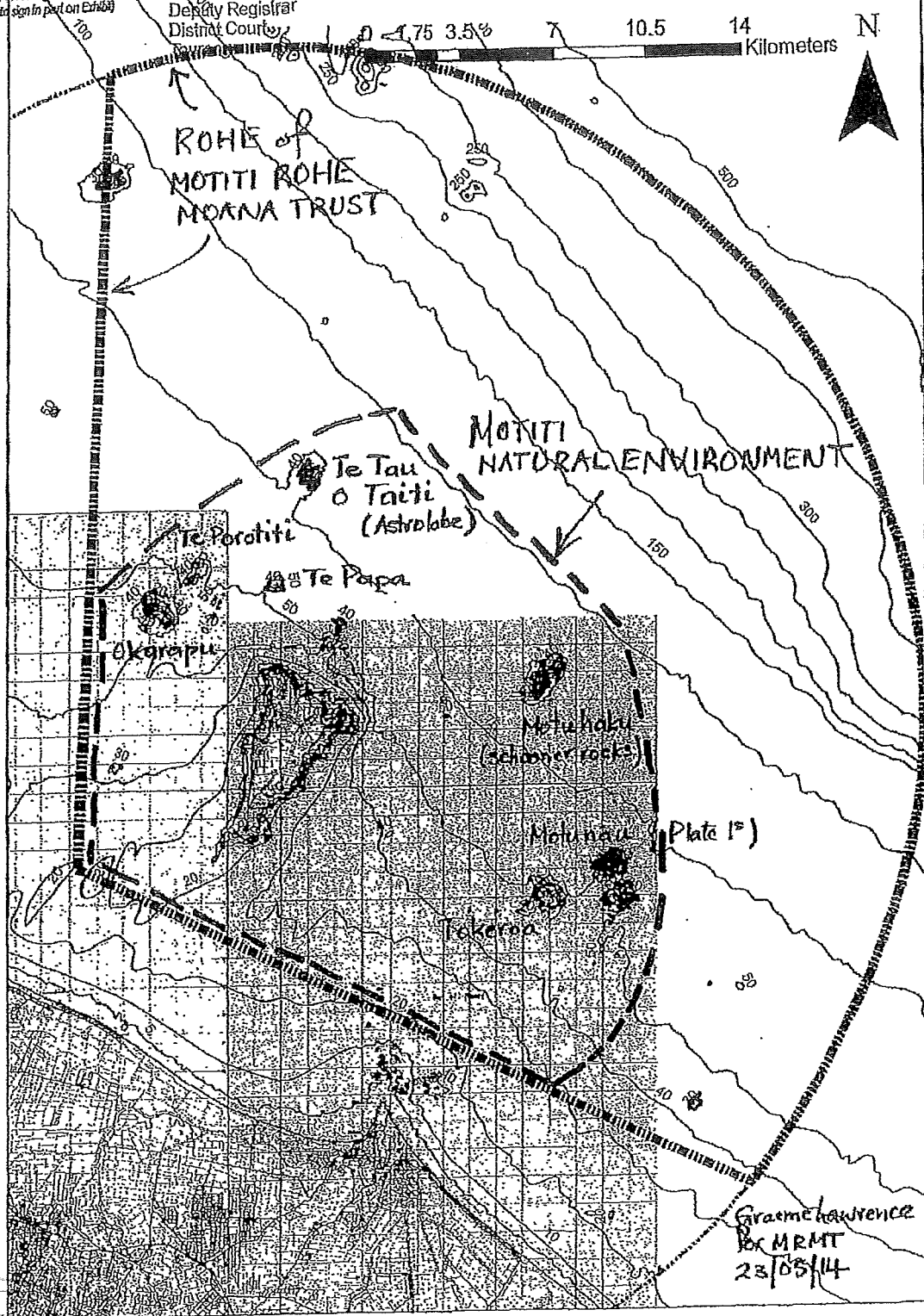


This is the signature marked B referred to in the annexed affidavit of Graeme James Lawrence "B"

which was sworn at Tauranga this 20th day of May 2014 before me

Signature: [Signature]
Marge Dawson
Deputy Registrar
District Court

MOTITI COASTAL PLAN



**BEFORE THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

UNDER the Resource Management Act 1991

BETWEEN **UMUHURI MATEHAERE, GRAHAM HOETE AND KATARAINA KEEPAA AS
TRUSTEES OF THE MOTITI ROHE MOANA TRUST**, with its registered office at
20 Matapihi Station Road, RD5, Tauranga

Appellant

AND **BAY OF PLENTY REGIONAL COUNCIL** a consent authority under the Act with its
principal offices at 5 Quay Street, Whakatane

Respondent

**FIRST AMENDED NOTICE OF APPEAL BY THE TRUSTEES OF MOTITI ROHE MOANA TRUST IN
RELATION TO THE PROPOSED BAY OF PLENTY REGIONAL COASTAL ENVIRONMENT PLAN**

Dated this 23rd day of November 2015

Instructing Solicitor
Wackrow Williams & Davies Ltd
Attention: Te Kani Williams
E: tekani@wwandd.co.nz
T: 09 379 5026

Counsel
Rob Enright
Level 1 Northern Steamship
122 Quay Street
Britomart
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To the Registrar
 Environment Court
 Auckland

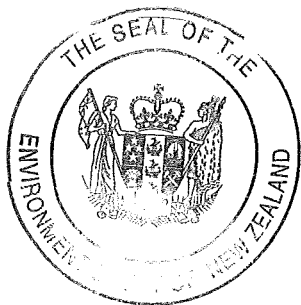
- 1 The Trustees of the Motiti Rohe Moana Trust (**MRMT**) appeal against the decision of Bay of Plenty Regional Council on the following Plan Change:
 - The Proposed Bay of Plenty Regional Coastal Environment Plan (**Proposed Plan**)
- 2 MRMT made a submission on the Proposed Plan. MRMT was a primary and further submitter. It was assigned primary submission number 083 and further submitter FS12.
- 3 MRMT is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991 (**RMA**).
- 4 MRMT was established in 2009. Trustees are kaumatua born and raised on Motiti Island. The Trust's purpose stated in the Trust Deed is to act on behalf of Nga Hapu o te Moutere o Motiti for environmental and other kaitiaki roles. This includes ahi ka Maori on Motiti Island and those who whakapapa to Motiti Island and surrounding reefs, islets and waters. MRMT is directly affected by an effect of the subject of the appeal that— (a) adversely affects the environment; and (b) does not relate to trade competition or the effects of trade competition.
- 5 MRMT received notice of the decision on or about 01 September 2015. The decision was made by Bay of Plenty Regional Council (**Council**). The decision that MRMT is appealing is described below.
- 6 Reasons for the decision are stated in the Commissioners Report; with Appendix B providing responses to submission points where Hearing Commissioners disagreed with Council Officer recommendations. Appendix D provides revised wording, adopted by Council as the Decisions Version of the Proposed Plan ("**Decision**"). At Appendix B, the Decision states:

"Appendix B: Recommendations on Submission Points

This Appendix sets out the Hearing Committee's recommendations on submission points where those recommendations differ from the officer's written recommendations that were contained in the following two section 42A reports:

- Proposed Regional Coastal Environment Plan Staff Recommendations on Provisions with Submissions and Further Submissions, 6 March 2014 (otherwise referred to as the "**1193 page 542A Report**"); and
- Proposed Regional Coastal Environment Plan 2014, Supplementary Report on Submissions to the Proposed Regional Coastal Environment Plan 2014, **Jo Noble, 11 May 2015**, File Reference 7.00399).

If a submission point is not listed in this Appendix then the Hearing Committee



has adopted the officer's recommendations and reasons contained in the above section 42A reports without further change." [Emphasis Added]

- 7 MRMT's primary and further submission points are not listed in Appendix B and not addressed in the Jo Noble Report dated 11 May 2015. Accordingly Council's decision on MRMT's submission points is as stated in the **1193 page S42A Report**.
- 8 The 1193 pages s42A Report has not listed submission points by submitter and these are not listed sequentially.¹ Subject to [11] below, this Appeal relates to the following decisions and recommendations made in relation to MRMT's primary submission (083) and further submission FS12:

- Pages 2-3 of 1194
- Pages 18-22 of 1194
- Page 54 of 1194
- Page 140 of 1194
- Page 176 of 1194
- Page 300 of 1194
- Page 429 of 1194
- Page 686 of 1194

- 9 This Appeal is limited to creation of a marine spatial planning framework for the Motiti Natural Environment Area. Scope of relief is identified by the following submission points made by MRMT in its primary submission:

Submission Point 083-2:

"a. Marine spatial plan for Motiti rohe moana and whenua incorporating matauranga Maori ~~in collaboration with the Trust.~~ [delete words in strikethrough]

b. Apply Maori attributes of mana, mauri and tapu to assessment of natural character in particular to the island reefs and waters of Motiti rohe moana and whenua."

Submission Point 083-6:

"1. ~~Integrated management~~ issue objectives and policies are supported as far as they go [sic]. There is a need to provide integrated methodologies for the marine environment similar to the use of structure planning, spatial planning or integrated whole of catchment management applied on land.

Relief Sought:

Add Issues, Objectives, Policies and Methods that implement Objectives 1 and 3 of NZCPS."

Submission Point 083-10:

"Add objectives and policies to provide for marine spatial planning over the Motiti Rohe

¹ MRMT notes that the 1194 page Officer Report is not user-friendly meaning that it is difficult to ensure that all relevant page numbers and cross-references are correctly recorded.



Moana.”

- 10 This Appeal relies upon all submission points in 083 and further submission FS12 but only to the extent that these submission points support the relief for marine spatial planning for the Motiti Natural Environment Area as stated in [9] above.
- 11 This Appeal expressly excludes the matters arising from the submission and further submission of Lowndes (submitter # 113, and FS30) as it relates to management of maritime incidents including the wreck of the MV Rena (and its equipment and cargo and associated debris field) on Otaiti/Astrolabe Reef and any associated debris or discharge.
- 12 Council was wrong to reject or reject in part MRMT’s submission 083 and further submission FS12 seeking introduction of marine spatial planning for Motiti Natural Environment area. To the extent that Council accepted some of MRMT’s primary and further submission points, MRMT does not challenge “acceptance” but appeals against the wording adopted in the Proposed Plan ² to convey “acceptance” of these submission and further submission points. The decisions identified at [8] are therefore appealed for the following reasons:
- 12.1 Relief sought by MRMT was within jurisdiction of the RMA and within scope (“remit”) of the Proposed Plan. Part 2 RMA, and higher order policy instruments, such as the NZCPS and Regional Policy Statement, require or envisage use of marine spatial planning as a method to implement Objectives and Policies for nationally important outcomes. On *King Salmon* principles s8 RMA is relevant, even if the NZCPS otherwise covers the field, to coastal methods that address Te Tiriti and partnership obligations.
- 12.2 Marine spatial planning is required to implement a Customary and Biodiversity effects management area within the footprint of the Motiti Natural Environment Area. Cultural effects include s6(e), s6(f), s7(a) and s8 RMA values; mana whenua / mana moana considerations; matauranga Maori principles; and the interrelationship of the biophysical and metaphysical world. Relief sought by MRMT expressly sought marine spatial planning outcomes for Motiti Rohe Moana. It was wrong for Council to reject these outcomes on the basis that “..a successful marine spatial planning exercise needs collaboration from a broad spectrum of parties, and would require political support and the allocation of resources.” (pp3 of 1194).
- 12.3 The Proposed Plan process is a fully notified public process involving input from a broad spectrum of stakeholders. It is irrelevant consideration to require a separate extra process on the basis that it requires “political support” and “allocation of resources”. Council had regard to irrelevant matters and fell into error by its determination that marine spatial planning cannot be undertaken within the Proposed Plan itself. It is the correct process and Council should not defer consideration of an essential issue that involves nationally important values in relation to Motiti Rohe Moana.³
- 12.4 The decisions do not give effect to Part 2 RMA including s5 cultural and social wellbeing,

² Whether by way of Issues, Objectives, Policies or Methods.

³ The Decision at [90] identified that “..in response to other submitters we have amended the issues and objectives to refer to possible future maritime spatial planning..”



nationally important values in s6(a), s6(b), s6(d), s6(e), s6(f), matters for particular regard including s7(a), s7(c), s7(d), s7(f), s7(g) and Te Tiriti principles in s8 RMA.

- 12.5 The decisions do not give effect to relevant provisions in the NZ Coastal Policy Statement and Regional Policy Statement; do not address relevant statutory functions and tests in ss30, 32, 32A, 32AA, requirements for Regional Plans in ss63-70 and 1st Schedule RMA; and fails to adopt Objectives, Policies, Methods to introduce marine spatial planning and related relief sought by MRMT in its primary and further submissions within the Motiti Natural Environment Area (Motiti Rohe Moana).
- 12.6 The decisions do not give reasons for rejecting a number of MRMT's submission points. The decisions do not address the issues and reasons stated in MRMT's primary submission and further submission. Relief sought by MRMT falls within jurisdiction and is effects based.
- 13 I seek the following relief:
- 13.1 The relief stated in [9] above.
- 13.2 For clarity, this appeal does not seek any relief which opposes either directly or indirectly the leaving of the wreck of MV Rena (and its equipment and cargo and associated debris field) on Otaiti/Astrolabe Reef and any associated debris or discharge. In particular no relief is sought in relation to:
- a. maritime incidents in the proposed plan (3.3), or
 - b. recognition of the wreck of MV Rena in ONFL 44.
- 14 The following documents were attached to the Notice of Appeal dated 13 October 2015:
- a. MRMT Submission #083
 - b. MRMT Further submission #FS12
 - c. Final Decisions Committee Report September 2015

Dated this 23rd day of November 2015



Umuhuri Matehaere
Trustee & Chairman, Motiti Rohe Moana Trust



ATTACHMENT ONE: AMENDED RELIEF TO APPEAL

Part One Purpose, content, planning framework

Amend 5. Plan Mechanisms at 5.2 to provide for "Management Areas" as a plan mechanism by amending the heading and adding a new paragraph follows:

"5.2 Zoning, and Overlays and Management Areas"

The Motiti Management Area adopts a spatial planning approach to the Motiti Natural Environment Management Area, identified in the Regional Policy Statement. The Management Area has multiple values and requires an integrated approach to protect and enhance these values.

Part Two Issues and objectives for the coastal environment

Add a new item 12 to the list of topic headings to provide for the Motiti Natural environment Management Area as follows:

12. Motiti Natural Environment Management Area (MNEMA)

Under 1. Issues

Add a new set of issues to address an additional discrete spatial area within the coastal environment, namely the Motiti Natural Environment Area, following on from 1.10 Harbour Zone and 1.11 Port Zone, by inserting a new 1.12 Motiti Natural Environment Management Area and issues as follows:

1.12 Motiti Natural Environment Management Area

Issue 53 Motiti Island is the only continuously occupied offshore island in the region. It is the most developed of all offshore islands. Tangata whenua have a lengthy history of traditional and continuing cultural relationships with the coastal environment of the Motiti Natural Environment Management Area where tangata whenua have lived and fished for generations. Motiti is physically and spiritually linked to Otaiti as well as toka, reefs and other features identified in the Motiti Natural Environment Management Area. Otaiti is both anchor (haika) and umbilical cord (pito) for Motiti Island (Topito o te Ao).

Issue 54 For tangata whenua of Motiti, Te Moutere o Motiti is a taonga. Te Tau o Taiti (Astrolabe reef) is a taonga, and so too are identified features and named toka (rocks) including Te Porotiti, Te Papa, Okarapu, Motukau, Motunau, Tokeroa and the coastal waters in which they are located.

Issue 55 *He Aitua*

The *MV Rena* grounding on Te Tau o Taiti (Otaiti) Astrolabe reef on 5 October 2011 was a significant maritime incident with profound impacts on the marine environment and customary fisheries of the Motiti Rohemoana.

Rahui

Tangata whenua of Motiti issued a rahui under customary authority, kaitiakitanga and tikanga to manage, maintain and protect Otaiti for the duration that the *MV Rena* wreck remains in situ. The rahui seeks to restore the mauri of Otaiti as a



taonga. For restoration to occur, an integrated approach is required to address tangible and intangible values including natural heritage, natural character, biodiversity, cultural and taonga species. The rahui expresses the matauranga Maori of Motiti tangata whenua for protection of Otaiti and management of the Motiti Natural Environment Management Area.

Under 2 Objectives

Add new objectives for the Motiti Natural Environment Management Area under a new Section 2.11 as follows:

2.11 Motiti Natural Environment Area (see Part Seven Map Series 43 and 44)

Objective 50 Protect, restore and rehabilitate the natural and cultural heritage characteristics that are of special value to the tangata whenua of Motiti including:

- (a) Mauri o te wai; and
- (b) Kaimoana resources; and
- (c) Landforms and features; and
- (d) Taonga including Otaiti.

Objective 51 Recognise the ongoing and enduring relationship of the tangata whenua of Motiti with the coastal environment of MNEMA. Recognise and implement the rahui for Otaiti in order to sustainably manage the multiple values that exist within the Rahui Conservation management area.

Objective 52 In taking into account the principles of the Treaty of Waitangi and kaitiakitanga, protect and enhance the Motiti Natural Environment Management Area as taonga.

Part Four Activity Based policies and rules

Add a new item 12 to the list of topic headings to provide for the Motiti Natural environment Management Area activities as follows:

12. Motiti Natural Environment Management Area activities (MNEMA)

Add a new Policies & Rules Section 12 as follows:

12. Motiti Natural Environment Management Area (MNEMA)

12.1. Policies

12.1.1 General Policies for the Motiti Natural Environment Management Area

- 1. Also refer to the following policies in other sections of this Plan where relevant to a proposed activity.
 - (a) All policies in Part 3 –Natural heritage

With the exception that the reference in NH5(a) (ii) to activities in Schedule 15 being appropriate in certain circumstances does not include activities and structures associated with boat launching,



retrieval and mooring areas identified as Te Huruhi Point Landing Area on Map 4 of the Motiti island Environmental Management Plan Operative May 2016.

(b) All policies in Part 3 - Iwi Resource management

(specific references to be added)

Policy MNEMA 1 Incorporate matauranga Maori for the Motiti Natural Environment Management Area by:

(a) identifying a Rahui /Conservation Management Area incorporating Otaiti and the waters associated with Otaiti for protection of natural heritage, cultural values and taonga species, for restoration and enhancement of natural character.

(b) Give effect to a customary rahui preventing removal, damage or destruction of any indigenous flora or fauna including taonga species within the Rahui/Conservation Management Area and preventing occupation of space for that purpose, unless for the purpose of scientific, state of the environment or resource consent monitoring.

Policy MNEMA 2 Achieve integrated management of the Motiti Natural Environment Management Area by regular mauri monitoring in collaboration with tangata whenua of Motiti.

12.2 Rules

Rule MNEMA 1 Controlled

Motiti marae based aquaculture that is not located within the Rahui/Conservation Management Area and is subject to Rule AQ 2.

Rule MNEMA 2 Prohibited

Breach of the Rahui by:

a. Removal, damage or destruction of any indigenous flora or fauna including taonga species, unless for the purpose of scientific or resource consent monitoring; or

b. Structures or Occupation (whether temporary or permanent) of the Rahui /Conservation Management Area for the purpose of removal, damage or destruction of any indigenous flora or fauna including taonga species, unless for the purpose of scientific or resource consent monitoring.

Part Five Methods

Add Consequential Amendments

Part Six

Update Schedule 6 ASCV.

Add a new Schedule 6A to identify the attributes values and tangata whenua aspirations to include the following:

The cultural landscape extends from the sea floor to the ocean surface and is integrated with land within the Motiti Natural Environment Area.



B. Taonga species include [taken from the RPS Appendix J]:

- Hapuku;
- Tamure (snapper);
- Kahawai;
- Maomao
- Tarakihi;
- Moki
- Araara (trevally)
- Parore;
- Haku (yellow-tail Kingfish)
- Aturere (tuna)
- Kuparu (John Dory)
- Kumukumu (gurnard)
- Patikirori (sole)
- Mango (sharks)
- Wheke (octopus)
- Koura (crayfish)
- Paua (abalone)
- Kuku (mussels)
- Tipa (scallops)
- Tio (oysters)
- Kina (urchins)
- Rori (sea cucumbers)
- Karengo (seaweeds).

C. Schedule 2 – Indigenous Biological Diversity Area:

- IBDA A75 Motiti Island
- IBDA A76 Astrolabe Reef
- IBDA A77 Motunau (land)
- IBDA A78 Motunau (marine area)
- IBDA A79 Motuputa Island
- IBDA B132 Motiti Islets

C. Schedule 3 – Outstanding Natural Features and Landscapes

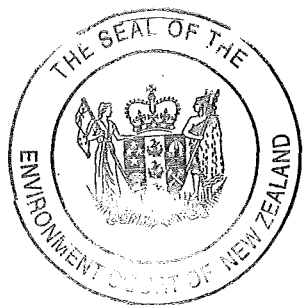
- ONFL 44 Motiti Island margin and associated islands, reefs and shoals

D. Schedule 5 – Regionally Significant Surf Breaks

- 12 Motiti Island (east side)

E. Schedule 6 – Areas of Significant Cultural Value

- ASCV 25 Motiti Island and associated islands, reefs and shoals



The Natural Heritage (NH), Iwi Resource Management (IW) and Recreation, public access and open space (RA) policies contained in Part 3 contain additional policy direction on managing effects on A- E above

Tangata whenua aspirations

Motiti Natural Environment Area

- Marae based aquaculture.
- Restoration of natural heritage and cultural values.
- Protection of biodiversity, particularly indigenous flora and fauna, in order to establish, maintain and enhance the habitat of taonga species.
- Protection and restoration of the mauri and mana
- Use and development of coastal environment of Motiti Island supports the values and attributes of identified natural and cultural heritage values.
- Maori customary activities, public access, educative and experiential opportunities are able to be undertaken.

Otaiti Rahui Conservation Area

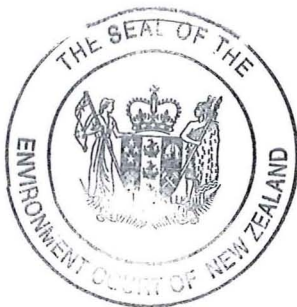
- Protection of natural heritage, cultural values and taonga species
- Restoration and enhancement of natural character
- Avoid taking, removal, damage or destruction of any indigenous flora or fauna including taonga species unless for the purpose of scientific or resource consent monitoring

Amend Schedule 15 to remove reference to Te Huruhi Point Landing Area on Map 4 of the Motiti Island Environmental Management Plan Operative May 2016.

Part Seven

Provide additional maps and amendments to the existing suite of maps 43 and 44:

- to identify and provide for the Motiti Natural Environment Management Area based on the RPS Appendix I Map 21a and
- to show the Rahui Conservation Management Area identified in MNEM Policy 1
- to incorporate Motunau Island Rocks and Reefs including Tokeroa within MNEMA
- providing for Motiti Island within MNEMA



AMENDED RELIEF TO APPEAL - [ENV-2015-AKL-134](#)

Part One Purpose, content, planning framework

The parts of the Plan relating to the spatial planning approach to the Motiti Natural Environment Management Area and any amendments made to other parts of the Plan as a result of appeal ENV-2015-AKL-000134 (including [to specify] [5.2] [spatial planning approach for the Motiti Natural Environment Management Area], Issues 53 – 55, Objectives 50 – 52, Policies MNEMA 1 and 2, and Rules MNEMA 1 and 2) shall not come into effect or become operative until a date after final resolution of the appeals and other challenges (if any) against the grant of consents to The Astrolabe Community Trust relating to the remains of the MV Rena on Otaiti, with the intent that these provisions shall have no effect on the resolution of those resource consents.

Amend 5. Plan Mechanisms at 5.2 to provide for "Management Areas" as a plan mechanism by amending the heading and adding a new paragraph follows:

"5.2 Zoning, and Overlays and Management Areas

The Motiti Management Area adopts a spatial planning approach to the Motiti Natural Environment Management Area, identified in the Regional Policy Statement. The Management Area has multiple values and requires an integrated approach to protect and enhance these values.

Part Two Issues and objectives for the coastal environment

Add a new item 12 to the list of topic headings to provide for the Motiti Natural environment Management Area as follows:

12. Motiti Natural Environment Management Area (MNEMA)

Under 1. Issues

Add a new set of issues to address an additional discrete spatial area within the coastal environment, namely the Motiti Natural Environment Area, following on from 1.10 Harbour Zone and 1.11 Port Zone, by inserting a new 1.12 Motiti Natural Environment Management Area and two issues as follows:

1.12 Motiti Natural Environment Management Area

Issue 53 Motiti Island is the only continuously occupied offshore island in the region. It is the most developed of all offshore islands. Tangata whenua have a lengthy history of traditional and continuing cultural relationships with the coastal environment of the Motiti Natural Environment Management Area where tangata whenua have lived and fished for generations. Motiti is physically and spiritually linked to Otaiti as well as toka, reefs and other features identified in the Motiti Natural Environment Management Area. Otaiti is both anchor (haika) and umbilical cord (pito) for Motiti Island (Topito o te Ao).

For tangata whenua of Motiti, Te Moutere o Motiti is a taonga. Te Tau o Taiti (Astrolabe reef) is a taonga, and so too are identified features and named toka



(rocks) including Te Porotiti, Te Papa, Okarapu, Motukau, Motunau, Tokeroa and the coastal waters in which they are located.

Issue 55

He Aitua

~~The MV Rena grounding on Te Tau o Taiti (Otaiti) Astrolabe reef on 5 October 2011 was a significant maritime incident with profound impacts on the marine environment and customary fisheries of the Motiti Rohe moana.~~

Rahui

Tangata whenua of Motiti issued a rahui under customary authority, kaitiakitanga and tikanga to manage, maintain and protect Otaiti ~~for the duration that the MV Rena wreck remains in situ~~. The rahui seeks to restore the mauri of Otaiti as a taonga. For restoration to occur, an integrated approach is required to address tangible and intangible values including natural heritage, natural character, biodiversity, cultural and taonga species. The rahui expresses the matauranga Maori of Motiti tangata whenua for protection of Otaiti and management of the Motiti Natural Environment Management Area.

Under 2 Objectives

Add new objectives for the Motiti Natural Environment Management Area under a new Section 2.11 as follows:

- 2.11 Motiti Natural Environment Area (see Part Seven Map Series 43 and 44)
- Objective 50 Protect, restore and rehabilitate the natural and cultural heritage characteristics that are of special value to the tangata whenua of Motiti including:
- (a) Mauri o te wai; and
 - (b) Kaimoana resources; and
 - (c) Landforms and features; and
 - (d) Taonga including Otaiti.
- Objective 51 Recognise the ongoing and enduring relationship of the tangata whenua of Motiti with the coastal environment of MNEMA. Recognise and implement the rahui for Otaiti in order to sustainably manage the multiple values that exist within the Rahui Conservation management area.
- Objective 52 In taking into account the principles of the Treaty of Waitangi and kaitiakitanga, protect and enhance the Motiti Natural Environment Management Area as taonga.

Part Four Activity Based policies and rules

Add a new item 12 to the list of topic headings to provide for the Motiti Natural environment Management Area activities as follows:

12. Motiti Natural Environment Management Area activities (MNEMA)

Add a new Policies & Rules Section 12 as follows:



12. Motiti Natural Environment Management Area (MNEMA)

12.1. Policies

12.1.1 General Policies for the Motiti Natural Environment Management Area

1. Also refer to the following policies in other sections of this Plan where relevant to a proposed activity.

(a) All policies in Part 3 –Natural heritage

~~With the exception that the reference in NH5(a)(ii) to activities in Schedule 15 being appropriate in certain circumstances does not include activities and structures associated with boat launching, retrieval and mooring areas identified as Te Huruhi Point Landing Area on Map 4 of the Motiti island Environmental Management Plan Operative May 2016.~~

Deleted

(b) All policies in Part 3 - Iwi Resource management

(specific references to be added)

Policy MNEMA 1

Incorporate matauranga Maori for the Motiti Natural Environment Management Area by:

(a) identifying a Rahui /Conservation Management Area incorporating Otaiti and the waters associated with Otaiti for protection of natural heritage, cultural values and taonga species, for and enhancement of natural character.

(b) Give effect to a customary rahui preventing removal, damage or destruction of any indigenous flora or fauna including taonga species within the Rahui/Conservation Management Area and preventing occupation of space for that purpose, unless for the purpose of scientific, state of the environment or resource consent monitoring.

Policy MNEMA 2

Achieve integrated management of the Motiti Natural Environment Management Area by regular mauri monitoring in collaboration with tangata whenua of Motiti.

12.2

Rules

Rule MNEMA 1

Controlled

Motiti marae based aquaculture that is not located within the Rahui/Conservation Management Area and is subject to Rule AQ 2.

Rule MNEMA 2

Prohibited

Breach of the Rahui by:

- a. Removal, damage or destruction of any indigenous flora or fauna including taonga species, unless for the purpose of scientific or resource consent monitoring; or

