

BEFORE THE ENVIRONMENT COURT

Decision No. [2014] NZEnvC 239

IN THE MATTER an appeal under Clause 14 of the First
Schedule of the Resource Management Act
1991 Act (**the Act**)

BETWEEN MOTITI ROHE MOANA TRUST
(ENV-2013-AKL-000069)

Appellants

AND BAY OF PLENTY REGIONAL
COUNCIL

Respondent

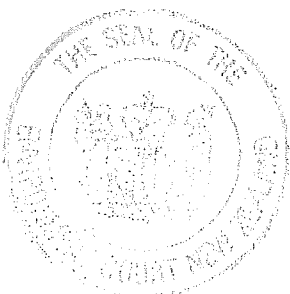
AND LOWNDES ASSOCIATES
MATAATUA DISTRICT MAORI
COUNCIL
MOTITI AVOCADOS LIMITED
RANGIWAEA MARAE COMMITTEE
ON BEHALF OF TE WHANAU A
TAUWHAO

Section 274 parties

Held: At Mount Maunganui, 13 November 2014 at 2:15 p.m.

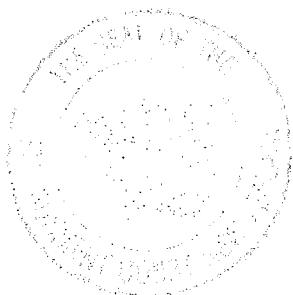
Court: Environment Judge J A Smith
Environment Commissioner S K Prime
Environment Commissioner J A Hodges

Participants: Mr R Enright for Motiti Rohe Moana Trust and Mataatua District
Maori Council (**Moana Trust** and **Maori Council**)
Ms S Wooller for the Bay of Plenty Regional Council (**the Regional
Council**)
Mr S Ryan for Lowndes Associates – Section 274 party (**Lowndes**)
Mr N Swallow for Motiti Avocados Limited – Section 274 party
(**Motiti Avocados**)
Mr J Gear for Rangiwaia Marae Committee on behalf of Te Whanau a
Tauwhao – Section 274 party



ORAL DECISION OF ENVIRONMENT COURT

- A. Map 21a of the Regional Policy Statement as shown in Annexure A hereto is to be amended:
1. The note "*The classification of islands, toka and waters surrounding Motiti Island remain subject to appeal ENV-2013-AKL-000069*" is to be removed; and
 2. To avoid dispute, Motiti and its surrounds has already been subject to a decision of the Court. The three reefs the subject of appeal before the Court are confirmed as *outstanding natural character*. The waters around Motiti shown in the Plan are *high natural character*.
- B. The parties have yet to finalise the attributes in relation to the reefs and the waters identified as *high natural character*.
1. Motiti Rohe Moana is to provide its draft *attributes*, generally in accordance with those confirmed by the Court in the *Ngati Makino* decision [2014] NZEnvC125 within 10 working days (28 November 2014);
 2. The parties should provide comments on the same within a further 10 working days (12 December 2014);
 3. The Regional Council is to assemble the comments, prepare its proposed attributes and file those with the comments of the parties and its responses with the Court by 24 December 2014; and
 4. The Court will consider the appropriate final attributes to be included within the Plan, or whether to convene another telephone conference or hearing.



REASONS FOR DECISION

Introduction

[1] This is the last of the outstanding appeals in relation to the now Change 1 to the Operative Regional Policy Statement. The balance of the Policy Statement was made operative in October 2014, with only two appeals remaining.

[2] Both of these appeals related to questions of outstanding natural character in the coastal area and the attributes relevant to those. The other appeal, Ngati Makino, has now been resolved and is the subject of separate decision.

Process

[3] The matter relating to the Rohe Moana Trust was set down to proceed today. However, at commencement, the parties advised that they had reached an accommodation.

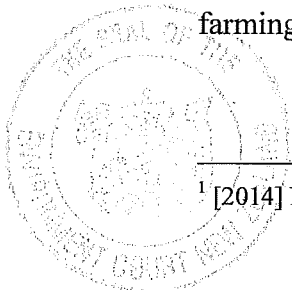
[4] We keep in mind the earlier decision of this Court¹ which, amongst other things, confirmed that the fringe of Motiti Island and a distance offshore is *high natural character*. The confirmation by the parties now of the surrounding waters as *high natural character* does not change the status which was already recognised for all open waters as *high*. What it does is that within that area of containment identifies that particular attributes may be applicable.

The Issues

[5] It was clear from the evidence that we have pre-read in this case is that there is a natural feature underlying both Motiti Island and moving out to Astrolabe Reef which surfaces in several places and also results in a number of reefs. Several of those surface areas are already identified as outstanding.

[6] The island itself has been occupied for a significant period of time and has farming activities upon it. In the end, the Court concluded that its character was *high*,

¹ [2014] NZEnvC125



but recognised that it lay within the context of a wider area. That was recognised in the offshore delineation, but preserved the argument to be considered as to whether or not a wider area should be included, together with toka, reefs and other features.

[7] Given the conclusion that the Astrolabe Reef was outstanding, notwithstanding the Rena wreck, it followed that the Regional Council has reconsidered its position in respect of the areas, the subject of appeals.

[8] It appears to us within the scope of conclusions that could be reached that all those reefs could be regarded as outstanding, very high, or high in natural character. The judgment in the end is one of a comparative nature with other similar features. Given the Astrolabe Reef was an exemplar in the sense that it was found to be outstanding, notwithstanding the wreck of the Rena, it seems that other reefs that have not been subject to the same effect might also be considered in the same way.

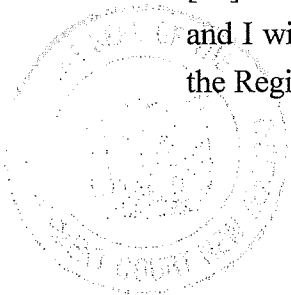
Consideration

[9] Accordingly, the Court are unanimous in our agreement that the identification of these other features as outstanding is within scope of this appeal, and is an appropriate solution in terms of Part 2 of the Act. These clearly are natural features, and their recognition in this way also enables identification of their unifying features. In other words, that they are in fact part of a group associated with Motiti and Astrolabe Reef.

[10] Furthermore, this is reflected in the wider area of special interest, identified in Map 21(a) and accordingly follows from our conclusion as to the association of the reefs given the underlying structure that the area now identified as of high natural character and as the Motiti natural environment, recognises that connectness between these feature. This is confirmed in evidence that was given to us showing bathometric contours and also corresponds with an area of significant interest by those who relate to Motiti.

[11] I note that the island is identified as *Moti* in the Plan, and I was told that was shorthand. We direct that the Plan be amended to read *Motiti*.

[12] I note that there was a complaint by Mr Matehaere as to the spelling of Motiti, and I wish to clarify that – there are no macrons or extended vowels. I also direct that the Regional Council is to ensure that the RPS reflects that.



[13] Mr Enright also asked the Court to note at [53] to [55] of its decision² which relates to the relationship of cultural aspects of Policies 13 and 14 of the NZCPS. I quote these paragraphs:

[53] Thus, Mr Cooney for the Regional Council conceded that they may very well face arguments at the Regional Coastal Policy Plan stage about the relationship of cultural aspects to Policy 13 and 14 of the NZCPS.

[54] Similarly, issues of co-management are clearly live matters at each stage, and I acknowledge that these matters are not lost simply because they were not included in the submissions. These are matters that can properly be taken into account and incorporated at the Regional Coastal Policy level. As noted by the Court in the previous decision⁷ it is probably more appropriate that these type of recognitions and relationships are included at the Regional Plan level rather than the broader scope of the Policy Statement.

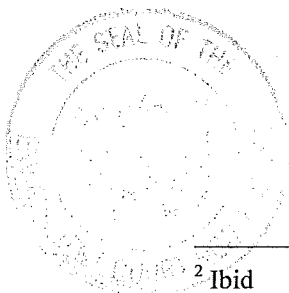
[55] It would be fair to say that the NZCPS as a whole contains a significant number of provisions relating to cultural matters, and that the additions by way of Variation 1 did not derogate from those provisions and may have in fact strengthened them.

I do not consider any further explanation, or that any addition needs to be made to the statement, but it relates to the same area as Motiti Island.

Conclusion

[14] We have concluded that Map 21a with the amendment to the spelling of Motiti, and classification comments, are appropriate. We made directions in respect of the finalisation of attributes as follows:

- [a] Motiti Rohe Moana is to provide its draft attributes, generally in accordance with those confirmed by the Court in the *Ngati Makino* decision³ within 10 working days (28 November 2014);
- [b] The parties should provide comments on the same within a further 10 working days (12 December 2014);
- [c] The Regional Council is to assemble the comments, prepare its proposed attributes and file those with the comments of the parties and its responses with the Court by 24 December 2014; and



² Ibid

³ Ibid

[d] The Court will consider the appropriate final attributes to be included within the Plan, or whether to convene another telephone conference or hearing.

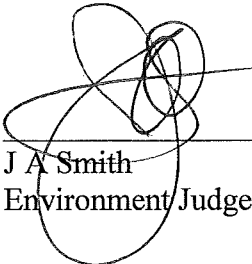
[15] I encourage the parties to reach an accommodation on the appropriate attributes. It appears to me that Ngati Makino provides an exemplar. The parties only need to consider whether there are any particular attributes that should be deleted or whether any others need to be added to reflect the inter-generational fishing experience and any other experiential elements of gathering kai moana.

Costs

[16] The parties have indicated that there is no issue as to costs, and I make no costs order to this stage of the proceedings, and anticipate that the parties should be able to reach a consent position before Christmas 2014.

DATED at AUCKLAND this 14th day of November 2014

For the Court:



J A Smith
Environment Judge



