

BEFORE THE ENVIRONMENT COURT
Auckland Registry

ENV 2015 AKL 0000134

IN THE MATTER of the Resource Management Act 1991
AND of an appeal under Clause 14 of the
First Schedule of the Act
BETWEEN **TRUSTEES OF MOTITI ROHE MOANA
TRUST**
Appellant
AND **BAY OF PLENTY REGIONAL
COUNCIL**
Respondent

**STATEMENT OF EVIDENCE OF HUGH GRANT SAYERS ON BEHALF OF
MOTITI ROHE MOANA TRUST**

25th October 2017

Counsel Acting
RB Enright
Barrister
Level 1, Stanbeth House
28 Customs St East
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Ka tangi te titi

Ka tangi te kaka

Ka tangi hoki ko au

- 1 My name is Hugh Grant Sayers.
- 2 I am the Project Manager of the Motiti Rohe Moana Trust (MRMT/ the Trust) and make this Statement at the request of the trustees.
- 3 I have been engaged by the MRMT on various projects since 2009, including assisting facilitation of the Trust's involvement in the Motiti Proposed District Plan and Bay of Plenty Regional Policy Statement and Regional Plan Coastal appeals.
- 4 My evidence at this stage of proceedings is to re-produce for the Court my evidence filed in previous related hearings; I confirm this evidence as true and correct:
 - (a) Coastal Plan Strikeout hearing, September 2016¹ (**Annexure A**);
 - (b) Declaration hearing, November 2016² (**Annexure B**);
 - (c) Iwi resource management topic hearing, January 2017³ (evidence from Declaration hearing, November 2016 attached as **Annexure B**).
- 5 Further evidence may be provided in response to Respondent and Crown evidence.

Kia ora

Dated this 25th day of October 2017

Hugh Sayers

Project Manager for Motiti Rohe Moana Trust

¹ Decision [2016] NZEnvC 190.

² Decision [2016] NZEnvC 240.

³ Decision [2017] NZEnvC 072..

**BEFORE THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

ENV-2015-AKL-000134

UNDER the Resource Management Act 1991

AND

IN THE MATTER of appeals against the Proposed Bay of Plenty Regional Coastal
Environment Plan

BETWEEN Trustees of the Motiti Rohe Moana Trust

Appellant

AND Bay of Plenty Regional Council

Respondent

AFFIDAVIT OF HUGH GRANT SAYERS ON BEHALF OF MOTITI ROHE MOANA TRUST

Sworn 6th September 2016

Rob Enright
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I, HUGH GRANT SAYERS, Project Manager of Taurānga, swear:

I paṅuku, I pariēke; kā nukunuku, kā nekeneke

Mena ka kite koē i nga tai o te Moana e hora nei

Me he Pipiwharauora kei tua –

Ka takoto te pāi, ka takoto te pai.

Tihe mauri ora!

I whanau mai au i Ngaruawahia, a i tipu ake ai au i Miropiko i roto i nga karu o Tainui,

I te taha o te Awa o Waikato, he piko, he taniwha.

I karāina au i te Kura o Tīpene, me nga Whare Wānanga o Otakou me Tamaki Makaurau.

INTRODUCTION

Tokotōru aku tamariki, tokorima aku mokopuna; he uri āno ratou na te Haupapa Kohatu, ara te Moutere o Motiti.¹

1. I am the Project Manager of the Motiti Rohe Moana Trust (MRMT/ the Trust). I have been engaged by the MRMT on various projects since 2009, including assisting facilitation of the Trust's involvement in the Motiti Proposed District Plan and Bay of Plenty Regional Policy Statement and Regional Plan Coastal appeals. I am familiar with the Trust's records and am authorised by the chairman to provide this affidavit. My evidence is of matters within my knowledge or personal experience.
2. I refer to the further affidavit of Joanne Noble, dated 12 August 2016.
3. Ms Noble has produced submissions made by 3rd parties on a different statutory process (s186A application to Ministry of Primary Industries). My understanding is that these submissions are not relevant to the proposed Regional Coastal Environment Plan. If relevant, then I note that the overwhelming majority of submissions supported the s186A closure (a fact not mentioned by Ms Noble).

¹ [Translation] I was born in Ngaruawahia and raised at Miropiko under the gaze of Tainui on the banks of the Waikato river. I was educated at St Stephens School and went on to study at Otago and then Auckland University. I have 3 children and 5 grandchildren who trace their descent from Te Haupapa Kohatu of the Island of Motiti.

 2. 

4. Ms Noble has produced a public notice (disclaimer) from the Motiti Island Marae Committee. It is unclear whether Council is attempting to challenge the standing of MRMT Trustees in relation to resource management matters that affect Motiti. Any such suggestion is refuted.
5. For seven years, the Trust has been actively advocating for the recognition and protection of customary rights and interests for Motiti tangata whenua in the Mōtiti Rohemoana. The MRMT has engaged in a number of processes to ensure the rohemōana is managed sustainably and in line with the tikanga of the people of Motiti, including:
- (a) Initial application to Attorney General in January 2010 for recognition of customary rights under the Foreshore and Seabed Act 2004 ("the F & S Act");
 - (b) Engagement with the Maori Land Court in relation to applying for a Customary Rights Order under the F & S Act on behalf of Nga Hapu o Te Moutere o Motiti.
 - (c) On 13 February 2012, the Trust submitted an application for customary marine title ("CMT") under the Marine and Coastal Area (Takutai Moana) Act 2011. This application is now currently before the High Court [CIV-2015-485-767].
 - (d) The Trust has also been actively involved in the District and Regional Plans for the area, and has applied for Declarations for recognition of Rahui as a resource management method [ENV-2016-AKL-173]. It is also involved in several Waitangi Tribunal inquiries.
6. MRMT had an expectation that Council would adopt a collaborative approach to support resolution of spatial planning matters raised by MRMT during the proposed Regional Coastal Plan process. Spatial planning of the Motiti Natural Environment Management Area was originally raised during the proposed RPS process. Annexure "A" is the Environment Court decision in [2014] NZEnvC 239 which stated:

"[13] Mr Enright also asked the Court to note at [53] to [55] of its decision [2] 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 decision 7 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 NZCP5 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."

- 7 Annexure "B" is an affidavit by Ms Noble dated 25 February 2014. At paragraphs [28] – [40], Ms Noble noted that matters raised relating to cultural attributes for the Motiti Natural Environment Management Area should be addressed through the proposed Regional Coastal plan process. At [31] she stated:

"[31] I can see no justifiable planning reason for the PRPS to direct development of Management Plan framework specific to the Motiti Rohe Moana. This would appear to be a matter better addressed by the RCEP and any Iwi Management Plans prepared for area, [sic] such as the Motiti Island Native Resource Management Plan – prepared by the Patuwai Trust and lodged with the Regional Council on 22 November 2012, with the support of Ngāti Awa as Iwi authority."

- 8 MRMT relied upon Council's indication that a spatial planning framework to address cultural values was better located in the proposed Regional Coastal plan. This is reflected in Annexure B where Ms Noble stated:

"[32] As part of development of the draft RCEP the Regional Council has spatially identified various values and uses in the coastal environment, including areas of indigenous biodiversity value; outstanding natural features and landscapes; areas of significant cultural value; historic heritage sites; regionally significant surf breaks; mooring areas; personal watercraft areas and ski lanes. This is in addition to the recent natural character mapping included in the PRPS.


[35] MRMT also seeks the addition of policies to the RPRS that provide for the active protection of Motiti Island and the surrounding coastal marine area.

[36] In my opinion these matters are inappropriate for inclusion in an overarching regional planning document such as the PRPS, which is necessarily concerned with resource management issues that require regional direction rather than local or district matters. This is why these matters were not included in Variation 1. They are however matters that have been spatially identified as various values and uses in the coastal environment as part of the new RCEP project, because this regional plan does deal with that level of specificity."

- 9 References by Ms Noble to spatial identification to provide for "various values and uses in the coastal environment" reflects MRMT's understanding of the common meaning of spatial planning. Spatial planning allows areas like the Motiti coastal environment to be identified

and its values protected. Rahu is a form of protection because it involves avoidance of adverse impacts to Maori customary values and taonga.

SWORN at Tauranga)
this 6th day of)
September 2016)
before me)



HUGH GRANT SAYERS



SUSAN RUTH HENDERSON

Deputy Registrar / A Solicitor of the High Court of New Zealand

W
A

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 MOTIHI ROHE MOANA TRUST
(ENV-2013-AKL-000069)

Appellants

**BAY OF PLENTY REGIONAL
COUNCIL**

Respondent

AND

**LOWNDES ASSOCIATES
MATAATUA DISTRICT MAORI
COUNCIL
MOTITI AVOCADOS LIMITED
RANGIWABA 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 Woolter 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 Rangiwaea Marae Committee on behalf of Te Whanau a
Tauwhao – Section 274 party

This is the decision marked A referred to in
the annexed affidavit of Push Lene Hayes
sworn at Palmyra this 13 day
of September 2014 before me.

A Solicitor of the High Court of New Zealand

AND

SUSAN RUTH HENDERSON



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 delimitation, 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

ibid
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.

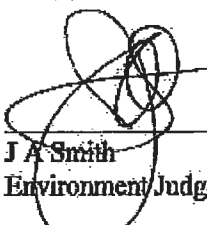
[15] I encourage the parties to reach an accommodation on the appropriate attributes. It appears to me that Ngati Māhino provides an exemplar. The parties only need to consider whether there are any particular attributes that should be deleted or whether any others need to be added to reflect the inter-generational 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 March 2014

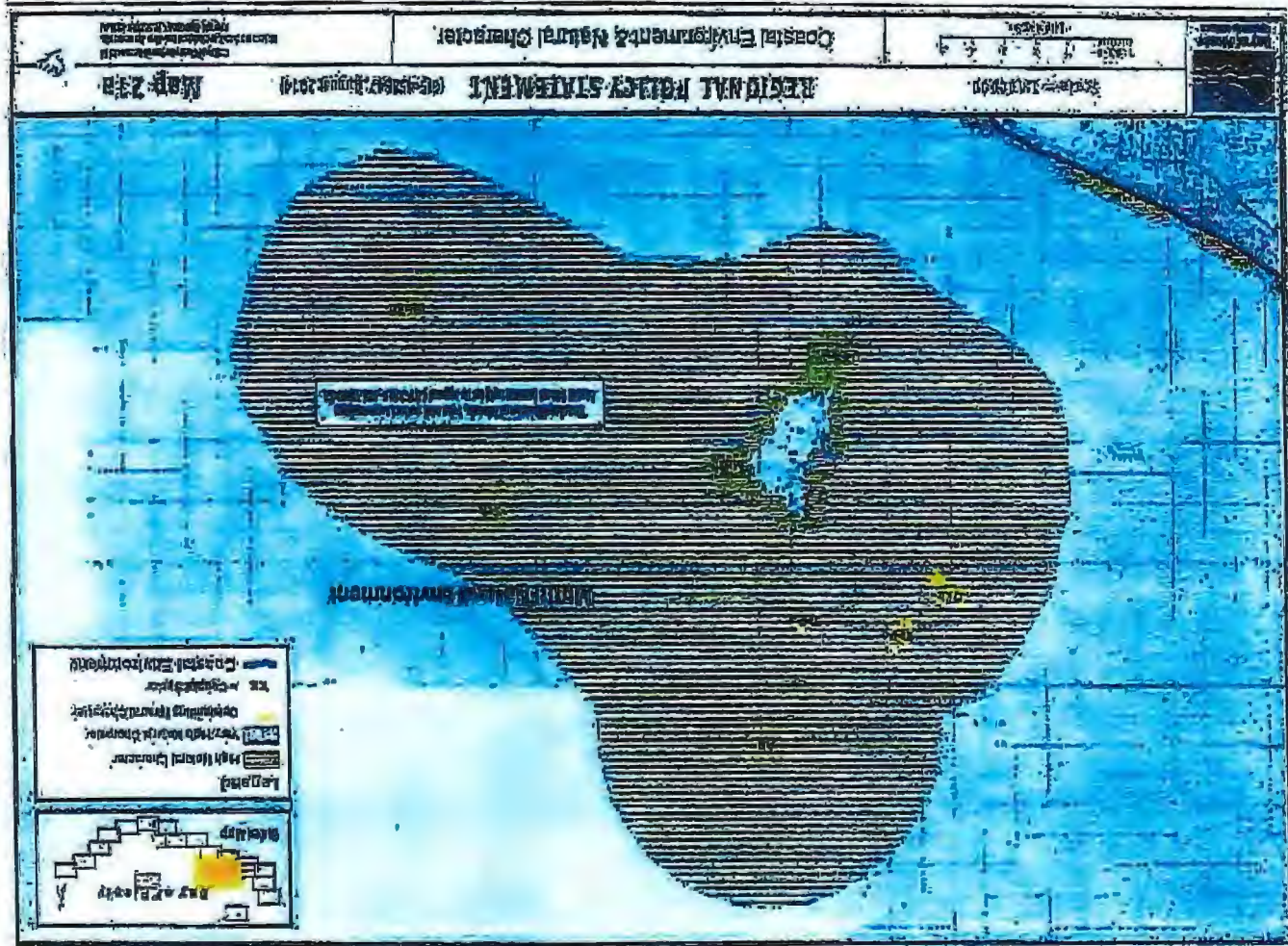
For the Court:



J A Smith
Environment Judge



Annexure A



" B "

BEFORE THE ENVIRONMENT COURT
AUCKLAND REGISTRY

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER: of Applications to strike out appeals and interested party notices

AND

Appeals filed pursuant to clause 14 of the First Schedule to the Act to Proposed Variation 1 (Coastal Policy) to the Proposed Bay of Plenty Regional Policy Statement

BETWEEN

NGĀTI MĀKINO HERITAGE TRUST
(ENV-2013-AKL-000068)

MŌTITĪ ROHE MOANA TRUST
(ENV-2013-AKL-000069)

AND

BAY OF PLENTY REGIONAL
COUNCIL

AND

LOWNDES ASSOCIATES
(Applicants)

AFFIDAVIT OF JOANNA BARBARA NOBLE DATED 25 FEBRUARY 2014 IN SUPPORT
OF STRIKE OUT APPLICATIONS

This is the Affidavit made by S related to the
the annexed exhibit of LUCKY GRANT SPEYERS
being filed at the High Court of New Zealand
of the 25th day of September 2016

Susan Ruth Henderson
A Solicitor of the High Court of New Zealand

SUSAN RUTH HENDERSON

CooneyLeesMorgan

3rd Floor, ANZ Centre
247 Cameron Road
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Telephone: (07) 578 2099
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Partner: PH COONEY
Associate: S E WOOLER

I, Joanna Barbara Noble swear:

1. I am employed by the Bay of Plenty Regional Council as a Senior Planner. Prior to this I worked as a Senior Resource Advisor for Wellington Regional Council for four years.
2. I have the following qualifications: BSc(hons) specialising in Zoology from the University of Durham and a MSc specialising in Aquatic Resource Management from the University of London.
3. I make this affidavit in support of:
 - (i) an application for Strike Out of the Appeal of the Appellant Motiti Rohe Moana Trust [ENV-2013-AKL-000069] [MRMT] and of interested party notices filed by Motiti Rohe Moana Trust and the Mataatua District Maori Council against the following appeals:
 - a. Lowndes Associates (ENV-2013-AKL-000082)
 - b. Motiti Avocados Ltd (ENV-2013-AKL-000074); and
 - c. Ngati Makino Heritage Trust (ENV-2013-AKL-000086).
 This application dated 17 February 2014 was filed by the Bay of Plenty Regional Council on 17 February 2014; and
 - (ii) An Application for Strike Out of the Appeal of the Appellant Ngati Makino Heritage Trust (ENV-2013-AKL-68) dated 5 February 2014 filed by Lowndes Associates; with respect to paragraph 7 of that application: that "Relief seeking the inclusion of "cultural considerations" in the natural character attributes is beyond the scope of Variation 1 which is limited to the identification and mapping of "natural character", not "natural features and landscapes".
4. I am aware of and bound by the Court's requirements for expert witnesses. I acknowledge that I have read the Practice Note Expert Witnesses Code of Conduct, agree to comply with it, and have not omitted to consider material facts that may alter or detract from the opinion expressed. The opinions that I give in this affidavit are within the ambit of my area of expertise.
5. I have reviewed the issue of whether Natural Character assessment includes assessment criteria and methodology such as that sought by the Appellants; including:
 - (i) MRMT: "*layered bi-cultural approach...to determine the quality of the natural character and landscape (including seascape) of Motiti.*" [1st amended appeal, relief page 4 Lawrence]; and

(ii) Ngāti Makino: "to have regard to cultural considerations (mātauranga Māori, Māori cultural values or Māori cultural attributes) when determining the natural character classification of places in the coastal environment" [(4)(g)(iii) of the Appeal; and 6(e) of the clarification dated 24 January 2014],

and whether such relief is beyond the scope of Variation 1 to the Proposed Regional Policy Statement.

6. I have also reviewed the relief sought by the Appellant MRMT in the 1st amended Appeal dated 14 February 2014 in terms of whether such relief is in general outside of the scope of Variation 1 to the Proposed Regional Policy Statement; and/or not justiciable.

7. In this affidavit I:

(a) Outline my role with regard to the new Regional Coastal Environment Plan (RCEP), including what relationship this (draft) RCEP has with Variation 1 to the Proposed Regional Policy Statement;

(b) Explain why particular relief sought by the Appellants is in my opinion out of scope of Variation 1, with particular reference to the natural heritage and iwi resource management sections of the RCEP and comment on other planning processes where relevant.

8. My role as Senior Planner includes the Project Management of the new RCEP.

9. In undertaking this role I worked alongside other planners at the Regional Council including Senior Planners Nassah Steed and James Low.

10. I agree with the opinion expressed by those Senior Planners that:

(i) Variation 1 is limited in scope to updating the Proposed Regional Policy Statement (PRPS) that was notified in November 2010; prior to the New Zealand Coastal Policy Statement (NZCPS) 2010 coming into effect in December 2010.

(ii) Its purpose was to ensure the PRPS gave full effect to the new version of the NZCPS.

(iii) The main areas updated were to bring in the spatial identification of the coastal environment and outstanding natural character, and update policies.

(iv) The recognition and provision for cultural values and mātauranga Māori stems from the provisions of the Proposed Regional Policy Statement that relate to iwi Resource Management and Matters of National Importance and that these

4.

matters were not the subject of Variation 1, but were otherwise addressed in the original review of the Operative Regional Policy Statement; and

- (v) That aspects of the relief sought are matters that are relevant to the Regional Coastal Environment Plan Review and that is the appropriate forum for addressing these concerns.

11. To the extent that it is relevant to the Applications for Strike-Out, I now note the process for reviewing and developing the RCEP. This is in order to show that although the appeal points are considered out of scope and not able to be progressed via the Variation 1 process, they are matters that the Regional Council has addressed or is in the process of addressing in other planning documents. In particular some of the relief sought by MRMT is very specific and detailed, and is appropriately dealt with in lower level regional planning documents rather than the RPS. Variation 1 did not cover such detailed matters of planning implementation.

Review of Operative RCEP

12. I was responsible for the full review of the operative RCEP, which was completed in April 2012. The review looked at how well the RCEP is working and what changes are needed to address the current issues facing the Bay of Plenty's coastal environment. Meetings were held with iwi authorities, hapū and other tangata whenua groups, including the Mōiiti Rohe Moana Trust, with feedback obtained used in the review.

13. The review found that overall the operative RCEP has worked well, but there is room for improvement; for example enhancement of water quality in some of our estuaries and harbours, recognition and provision for cultural values and matauranga Maori, and management of our coastal margins, which are vulnerable to damage. In addition, there have been changes to legislation and national policy that need to be reflected in the Plan. Most notable is the New Zealand Coastal Policy Statement 2010. The requirements of the new Proposed Regional Policy Statement also need to be given effect to in the new RCEP.

New RCEP

14. Development of the new RCEP formally commenced when the Strategy, Policy and Planning Committee of the Regional Council resolved to replace the existing RCEP at their 1 May 2012 meeting.

15. Extensive engagement with iwi and hapū was undertaken between November 2012 and February 2013, a summary of engagement undertaken is attached and marked as Exhibit 1. Hui focussed on:

- a. Issues raised during the initial Plan review process;
- b. Iwi Management Plans (IMPs) -- and how these can be taken into account in the new Plan; and
- c. Culturally Significant Sites -- how these can be identified and protected in the new Plan.

16. Following the engagement, a draft version of the new RCEP was released for public consultation on 10 May 2013. All technical reports accompanying the draft Plan (including an assessment of Outstanding Natural Features and Landscapes in the coastal environment) were made available on the Regional Council website.

17. The closing date for feedback to be submitted was 28 June 2013. MRMT and Ngāiwi Māhino were amongst those parties directly notified of the availability of the draft Plan.

18. The draft RCEP cannot be finalised and publicly notified as a proposed RCEP until the outstanding appeals on variation 1 to the PRPS are resolved. I acknowledge that a second variation to the PRPS specific to Natural Hazards is underway ("variation 2"). However, given that Variation 2 is in its early stages (and has not been publicly notified) it is appropriate to progress the new RCEP and revisit the policies specific to coastal hazards at a later date if required.

What the RCEP covers:

19. The policies contained in the draft RCEP provide specificity to the legislative and policy directions of the RMA and higher level policy documents (NZCPS and RPS) and provide more certainty on how the policy direction contained in the higher level documents can be achieved in the coastal environment.

20. The draft RCEP recognises and provides for cultural values and matauranga Māori. Key provisions are the Natural Heritage and Iwi Resource Management provisions. The policies are found in Part 3: Integrated Management of the draft RCEP (and apply to any activity, unless precluded by the activity status).

21. The Iwi resource management policies were developed to meet statutory obligations under Part 2 of the RMA; to give effect to the PRPS (in particular the settled Iwi Resource Management policies); the NZCPS 2010 (with particular emphasis on Policy 2); objectives and policies contained in IMPs were also taken into account, as was the feedback received during the RCEP review process and engagement during development of the new RCEP.

22. Development of the natural heritage provisions was guided by the NZCPS-2010 (with particular emphasis on Policies 2, 6, 11 and 13-15) and the Matters of National Importance and Coastal Environment policies of the PRPS.
23. The draft RCEP also identifies Outstanding Natural Features and Landscapes and Areas of Significant Conservation Value. These areas are spatially identified in the maps contained in volume 2 of the draft RCEP.
24. The Outstanding Natural Features and Landscapes (ONFL) contained in Schedule 3 were assessed using the Set 2 (Natural Features and Landscapes) criteria contained in *Appendix F – Criteria for assessing specified matters in the Bay of Plenty region of the proposed RPS*. Māori values are specifically provided for in criterion 2.12 *Natural features and landscapes are clearly special or widely known and influenced by their connection to the Maori values inherent in the place*. So while the Appellants seek that Natural Character maps these matters in the RPS, they have already been incorporated in the assessment of natural features and landscapes in the RCEP.
25. Examples of this incorporation to the RCEP are: Ōkurei Point (the coastal edge and point of the Maketū headland) is identified as ONFL-12 and Mōtiti Island and associated islands/reefs and shoals (including Astrolabe Reef) as well as subtidal context as ONFL-44.
26. The Areas of Significant Cultural Value (ASCV) include ASCV-7: Ōngātoro/Maketū Estuary, Waihi Estuaries and Ōkurei Point and ASCV-25: Mōtiti Island. The draft RCEP proposes that Otaiti (Astrolabe Reef) be added to ASCV-25.
27. The amended notice of appeal provided by MRMT refers in paragraph 8 to Annex A, the report by G Lawrence, to specifics on the relief sought by the appeal. As discussed in the affidavits of Mr Low and Mr Steed the amended appeal lodged by MRMT raises a number of matters that appear to be outside the scope of variation 1 of the PRPS.
28. In my opinion, the new RCEP is the appropriate place to deal with much of the relief sought in the amended MRMT appeal. The paragraphs below set out some further examples that support this opinion.
29. MRMT contends that the PRPS fails to acknowledge, recognise and provide for customary rights and interests.

30. The draft RCEP provides a regulatory framework for decision-making under the RMA in relation to the coastal marine area. The objectives and policies of the draft RCEP give effect to the NZCPS 2010 and PRPS and as such provide for cultural values, restoration of indigenous biodiversity, outstanding natural features and landscape natural character and customary activities, along with other matters of national importance such as public access to and along the coastal marine areas.

31. I can see no justifiable planning reason for the PRPS to direct development of a Management Plan framework specific to the Mōtiti Rohe Moana. This would appear to be a matter better addressed by the RCEP and any Iwi Management Plans prepared for area, such as the Mōtiti Island Native Resource Management Plan – prepared by the Patuwai Trust and lodged with the Regional Council on 22 November 2012, with the support of Ngāti Awa as iwi authority.

32. As part of development of the draft RCEP the Regional Council has spatially identified various values and uses in the coastal environment, including areas of indigenous biodiversity value; outstanding natural features and landscapes; areas of significant cultural value; historic heritage sites; regionally significant surf breaks; mooring areas; personal watercraft areas and ski lanes. This is in addition to the recent natural character mapping included in the PRPS.

33. As appropriate for a regional planning document, this mapping encompasses the entire coastal environment of the Bay of Plenty region (including the Mōtiti Rohe Moana). This work has identified the coastal marine area around Mōtiti Island as significant, and the draft RCEP recognises and provides for these values.

34. In particular, Mōtiti Island and the surrounding coastal marine area has been identified as having the following values/attributes:

- i. Outstanding Natural Feature and Landscape
- ii. Area of Significant Cultural Value
- iii. Area of Indigenous Biodiversity Value
- iv. Regionally Significant Surf Break

35. MRMT also seeks the addition of policies to the RPRPS that provide for the active protection of Mōtiti Island and the surrounding coastal marine area.

36. In my opinion these matters are inappropriate for inclusion in an overarching regional planning document such as the PRPS, which is necessarily concerned with resource

management issues that require regional direction rather than local or district matters. This is why these matters were not included in Variation 1. They are however matters that have been spatially identified as various values and uses in the coastal environment as part of the new RCEP project, because this regional plan does deal with that level of specificity.

37. Another example of active protection is that areas of the coastal environment that have significant indigenous biodiversity value are identified in Schedule 2 of the draft RCEP¹. Biodiversity sites are classed as Indigenous Biodiversity Areas (IBDA) A or B. Sites that fall within an IBDA A are particularly vulnerable to modification, and the NZCPS contains a strong policy direction to avoid adverse effects on such areas, which is reflected in the policies of the draft RCEP.
38. Likewise, in the draft RCEP the coastal fringe of Mōtiti Island (incorporating the Pohutukawa forest and treeland, coastal cliffs, and sandfields) and Astrolabe Reef are identified as being regionally significant and meets a number of the criteria set out in Policy 11(a) of the NZCPS 2010. Both these sites are assessed as being IBDA A. The Mōtiti Islets (incorporating Coastal herbfields, pohutukawa-karo treeland, and coastal rockland) are identified in the draft RCEP as an IBDA B, and the policy direction for this site is to avoid significant adverse effects.
39. The remainder of the detailed relief sought in relation to 'active protection' refers to very specific local matters (esplanade reserves, a joint plan for Mōtiti Island and restrictions on the number of island access points) that fall under the ambit of the District Plan being prepared for Mōtiti Island by the Department of Internal Affairs, which has been the subject of recent Environment Court hearings and court directed mediation. The appeal points made by MRMT appear to attempt to 'undo' or second guess some of the progress made toward resolving these appeals and providing certainty to those living and working on Mōtiti Island.
40. The final broad appeal point refers to a change in methodology of assessment of natural landscape quality. I agree with the opinion of Ms Rebecca Ryder (affidavit dated 24 February 2014) that the assessment natural character does not require consideration of cultural values.

¹ Sites have been assessed using the criteria contained in the PRPS (Set 3 Indigenous Vegetation and Habitats of Indigenous Fauna) and Policy 11 of the NZCPS 2010. This gives effect to Policy CC 6A and method 53A of the PRPS, which direct the regional council to use the criteria in Policy 11 of the NZCPS 2010 to identify and protect areas of indigenous biological diversity in the coastal environment.

41. Assessment and identification of natural features and landscapes should incorporate consideration of cultural values, as determined by case law and the criteria contained in the operative and proposed RPS. This consideration has been undertaken in the development of the draft RCEP as set out above in this affidavit.

SWORN at [redacted] by the said JOANNA BARBARA NOBLE)

this [redacted] day of [redacted] 2014)
before me:)

[redacted signature]

Judith Lorraine Wilson
Solicitor
WHAKATANE

A Solicitor of the High Court of New Zealand

UNDER the Resource Management Act 1991 (the Act)

IN THE MATTER OF appeals against to the Bay of Plenty Regional Council Proposed Coastal Environment Plan

BETWEEN Ngati Makino Heritage Trust
ENV-2015-AKL-000140

AND Various
Section 274 RMA Parties

AND **BAY OF PLENTY REGIONAL COUNCIL**

Respondent

**STATEMENT OF EVIDENCE OF HUGH GRANT SAYERS
ON BEHALF OF MOTITI ROHE MOANA TRUST**

Dated 24 November 2016

*I panuku, I paneke; ka nukunuku, ka nekeneke
 Mena ka kite koe i nga tai o te Moana e hora nei
 Me he Pipiwharaua kej tua –
 Ka takoto te pai, ka takoto te pai.
 Tihē mauri ora!*

I whanau mai au i Ngaruawahia, a i tipu ake ai au i Miropiko i roto i nga karu o Tainui,
 i te taha o te Awa o Waikato, he piko, he taniwha.

I kuraina au i te Kura o Tipene, me nga Whare Wananga o Otakou me Tamaki
 Makaurau.

Tokotoru aku tamariki, tokorima aku mokopuna; he uri ano ratau na te Haupapa
 Kohatu, ara te Moutere o Motiti.¹

1. My name is Hugh Grant Sayers.
2. I am the Project Manager of the Motiti Rohe Moana Trust (MRMT/ the Trust).
3. My Executive MBA thesis *Hei Taura mo te Iwi – An Example for the People: A guide in our Hands*, University of Auckland (1994) focused on strategic planning, quality management and operational service delivery.
4. I have undertaken many issue driven, people driven and outcome driven action-research studies and projects, particularly involving cross-cultural implications and change management.
5. I have been engaged by the MRMT on various projects since 2009, including assisting facilitation of the Trust's involvement in the Motiti Proposed District Plan and Bay of Plenty Regional Policy Statement and Regional Plan Coastal appeals. I am familiar with the Trust's records and am authorised by the MRMT trustees to provide this statement. My evidence is of matters within my knowledge or personal experience.

INTRODUCTION

¹ [Translation] I was born in Ngaruawahia and raised at Miropiko under the gaze of Tainui on the banks of the Waikato river. I was educated at St Stephens School and went on to study at Otago and then Auckland University. I have 3 children and 5 grandchildren who trace their descent from Te Haupapa Kohatu of the Island of Motiti.

6. I have previously given evidence before the Environment Court, including in interlocutory proceedings² as part of these proposed Regional Coastal Environment Plan (pRCEP) appeals.
7. My evidence is in support of the Statement of Evidence of Umuhuri Matehaere on behalf of MRMT dated 6 November 2016.
8. MRMT has been an appellant and s274 party in the pRCEP appeals and attended multiple Court-facilitated workshops and mediations throughout the year, and MRMT retains an interest in the wider topics including matters transferred from other topics like natural heritage, and matters under the Act not identified or addressed by BOPRC in the preparation of the pRCEP, or deemed to be "not on the Plan" by Council.
9. Mr Matehaere has succinctly stated the Trust's position in relation to the Iwi resource management (IRM) topic, now combined into the ENV-2015-AKL-140 Ngati Makino Heritage Trust appeals. The MRMT-specific appeals relating to the Motiti Rohemoana Natural Environment Management Area (MNEMA) will be subject to a merits hearing in mid-2017 next year, however the general points of the MRMT appeal are now bundled into the IRM topic.
10. MRMT relies on the 'track record' of previous proceedings in this Court and the Waitangi Tribunal and adopts those Decisions and Reports and the evidence produced by MRMT in those cases.

SCOPE

11. My evidence expands on Mr Matehaere's paragraph 12 and will address
 - a. process issues;
 - b. equality of treatment between hapu / iwi;
 - c. attempts to collaborate and engage in co-management and partnership arrangements.
12. The timeline of Motiti Island events is well-known to the Court since Judge Bollard Decisions 20 years ago and was well-compiled in the Motiti District Plan Interim

² Decision No. [2016] NZEnvC 190 - BOPRC v MRMT Strikeout, dated 30 September 2016.

Decision³ dated 20 December 2012. Also relevant are the interlocutory (Strikeout) and subsequent Decisions in the Bay of Plenty Regional Policy Statement (RPS) appeals.

13. A fundamental observation is that these complex legal proceedings are all at a very high level and require considerable capacity and effort to engage in, yet Motiti tangata whenua are unresourced and are entirely reliant on voluntary efforts of the trustees, supporters, whanau and professional experts and in many cases *pro bono* representation or dependence on a risky prospect of MfE Environmental Legal Assistance (ELA) grant towards partial legal costs, which now is not being determined until after hearings have completed. This is an unreasonable burden on tangata whenua whanau and an impediment to effective participation often leaving Maori submitters in an impossible situation.
14. The excessive stress is exemplified by interminable pressure of the well-resourced Council excluding Maori from early input into Plan development and then draining meagre tangata whenua capacity through the time-consuming and costly formal processes, and taking an adversarial and dismissive approach against well-intentioned kaupapa principles and purposes.
15. It is notable that MRMT submissions on the pRCEP were rejected by Council officers and the BOPRC planning sub-committee and the Commissioners (the same as in the *Matata* case).
16. The short point is that Council's approach to preparation of the pRCEP was a 'top down' we are the experts, broad brush-strokes desktop rollover of the previous plan and repetition of RPS provisions, and disregarded the very most-affected community who lives and has ancestral connections on Motiti Island in the middle of the BOP territorial sea and wholly within the coastal environment. MRMT trustees are kaumatua and kujā 'born and bred' on Motiti with lifetimes of experience of a unique off-shore island and oceanic culture and have genuinely and sincerely endeavoured to engage in management of marine resources within their customary and traditional rohe moana.

³ Decision No. [2012] NZEnvC 282 - Hoete v Minister of Local Government (MPDP)

17. From the outset of the review of the Coastal Plan (pRCEP) and then concurrent RPS Variation 1: Coastal, the Council repeatedly rejected and denied these unquestionable interests of Motiti tangata whenua. Two examples are produced as Annexure HS1:

a BOPRC File note dated 7 March 2012 stating Council considered it premature to engage with MRMT; and

b Letter from BOPRC Chief Executive Mary-anne Macleod dated 2 May 2012

Significantly Ms Macleod stated in her concluding paragraph:

The Trust has raised a wide range of matters, the majority of which are pertinent to the Coastal Plan review process . .

We do not consider it necessary to engage the Trust to prepare a brief on its position with regard to the Plan.

18. This approach taken at the early stages of preparation of the pRCEP has been repeatedly asserted by Council, including since the Supreme Court *King Salmon* Decision in April 2014, and in disregard of the operative RPS Method 33

Method 33: Take a collaborative approach to the management of the coastal environment.

19. The afore-mentioned ~~strikeout~~ proceedings by BOPRC in May 2014 (RPS variation 1: Coastal) and again recently in September 2016 in these appeals highlight Council's high-handed and arbitrary approach including determining that MRMT submissions on Plan changes are not within scope or 'on the Plan'. Rather than repeat the latest experience, I adopt my affidavit evidence sworn 6th September 2016, produced as Annexure HS2.

20. The Council's way of doing things is that they have the information; they make the decisions; they know best. In doing so they express contempt for values of our community and disregard of best-practice.

21. What is required are clear methods, and other ways and tools, to engage with community groups other than Council's hand-picked chosen-few.

22. MRMT experience is a good example, as is the Matata Lot 6A experience⁴. Council has disregarded tangata whenua with the closest connections and relationship with the affected places and dismissed the values of our communities. These expensive and time-wasting experiences demonstrate conclusively that "Iwi" entities are **not** a proxy for "Maori" as provided in s6(e) and s8 in regard to the Treaty of Waitangi, nor a proxy for "kaitiaki" in s7(a) in the Act.
23. Court-facilitated mediation has agreed that the term *tangata whenua* be used throughout the pRCEP to avoid implied preference of "Iwi" over all Maori including whanau and hapu and especially ahi ka tangata whenua.
24. There are other examples of Council decision-making in the coastal marine area (cma) where BOPRC disregarded tangata whenua rights and interests including granting non-notified resource consents for exclusive private occupation and use of the foreshore and seabed.
25. MRMT has made efforts to engage BOPRC in discussions around mechanisms to address legitimate concerns. One example followed MRMT submissions to the full Council Annual Plan hearing and a meeting was set up on 16 May 2014 between trustees and MRMT planning advisor and BOPRC senior management and planners to discuss a relationship agreement and process to resolve issues including the RPS appeals. The following week Council proceeded with Strike-out proceedings, and has confirmed its dismissive view of Treaty obligations in subsequent communications.
26. BOPRC written responses to MRMT on s8 RMA matters include the following examples produced as Annexure HS3:
- a "Regional Council's obligations to Motiti tangata whenua", Letter from Eddie Grogan, deputy CE, dated 15 July 2014;
 - b BOPRC response to MRMT RPS appeals dated 15 October 2014.
27. BOPRC legal counsel also stated Council's views directly to the Waitangi Tribunal.⁵ MoC dated 28 June 2013 is produced as Annexure HS4.

⁴ Decision No [2015] NZEnvC.90 - *Matata* case, dated 12 May 2015

⁵ WAI 2391, #3.1.13, 28 June 2013 - Memorandum of Counsel for BOPRC

28. The *WAI 2391-Motiti Island-MV Rena Report* dated 28 November 2014 made specific findings of relevance to these pRCEP appeals. These included relevant Treaty principles and duties in the circumstances, and included specific findings in relation to the RMA and particularly to the Minister of Local Government as territorial local authority for Motiti and off-shore islands. MRMT believes these findings and recommendations are relevant to BOPRC under RMA and LGA, notwithstanding the stated dismissals by the Council.
29. The current BOPRC approach to engagement with tangata whenua is to respond to requests for information by highlighting the "charges" for providing information services and disavows any responsibility to maintain a register of Court Decisions involving Council. My email to BOPRC Chairman dated 21 July 2016 and letter in reply from Fiona McTavish, General Manager Strategy and Science dated 28 July 2016 are produced as Annexure HS5a and b (Note page3).
30. The Council's frameworks and processes are not participatory or meaningful to tangata whenua. There is no effective collaboration in practice providing for engagement, rather than creating conflicts among Maori who have special relationships with traditional places of cultural significance. MRMT and Matata experience indicates the pRCEP requires clear directions and prescriptions.
31. It is not sufficient to make provision at iwi level; Council needs to engage with hapu meaningfully. MRMT is therefore seeking changes to methods, directing Council to engage with tangata whenua, with specified timeframes to ensure meaningful outcomes. This will set the basis for a constructive partnership arrangement, including consideration of co management or the opportunity for co governance. Council may have statutory duties in relation to some iwi arising from Treaty settlements, and it should respect those obligations, but it should not be able to pick winners. MRMT relies on the rebuttal evidence of Graeme Lawrence, which will recommend additional amendments to the pRCEP framework. Annexure HS6 is an example of different types of methods being considered for the Kermadec Coastal plan, which may have relevance to the pRCEP.

32. I support the evidence of Umuhuri Matehaere and others on behalf of MRMT.

Ko te pari o te Rawahirua

Ki te moana o Tuhua⁶

Ko te raranga ki muri⁷

Dated this 24th day of November 2016

Hugh Grant Sayers

Project Manager, Motiti Rohe Moana Trust

⁶ Tuhua - O' tu nga hua (abundance of the sea; bay of plenty)

⁷ Raranga ki muri (setting of the Sun)

FILE NOTE

File Note From: Jo Noble
Senior Planner

File Reference:

Date: 9 March 2012

Subject: Meeting to discuss the application made by Mōtūi Rohe Moana Trust under the Marine and Coastal Area (Takutai Moana) Act 2011

Meeting Date: 7 March 2012, 15:00

Attendees: Jo Noble (Senior Planner – Planning Frameworks, Stephen Lamb (Principal Advisor/Executive Advisor to the CEO), Kataraina Belshaw (Manager – Māori Policy Team), Helen Creagh (Manager – Consents), Reuben Fraser (Senior Consents Officer, Jane Waldon (Māori Policy Advisor

Apologies: David Phizacklea (Manager – Planning Frameworks)

Purpose: To discuss the recent application made by the Mōtūi Rohe Moana Trust seeking Customary Marine Title under the Marine and Coastal Area Act 2011, and the offer made by the Trust to prepare a briefing scope

Notes:

- Kataraina Belshaw has been discussing application with Tom White (Office Treaty Settlements) – Tom advised that the application might take 1-2 years to process once lodged
- Potential four other current applications in our region (transferred from Foreshore and Seabed Act) – Kataraina to ask OTS to confirm locations
- Map provided by OTS to us is from MFish showing proposed (but not confirmed) Rohe Moana and Mataitai boundaries. It is unclear whether the fisheries map is also the CMT Application boundary – Kataraina Belshaw to follow up with OTS and request a copy of the application
- Consents team – aware of the application and the requirement for applicants applying for resource consent within the CMT application area to notify CMT Applicant and to seek their views. Note that any resource consent application would need to describe the consultation undertaken and any response to the views of the CMT Applicant (schedule 4 RMA). No applications have been received in the Mōtūi area since the CMT application was lodged.
- No effect on regional planning documents until the CMT is granted and a planning document is produced under s85 of the MACAA. Process set out in the MACCA for how the regional council should recognise and provide for this planning document.
- Given that the CMT application may take up to 2 years to process and that a planning document would need to be drafted it would not be the best use of resources to commission a briefing scope from the Mōtūi Rohe Moana Trust at this time.

Objective ID: A1058243

Your Ref:
Our Ref:



2 May 2012

Motiti Rohe Moana Trust
By email: Rohemoana@gmail.com

Telephone: 0800 884 880
Facsimile: 0800 884 882
Email: info@boprc.govt.nz
Website: www.boprc.govt.nz
Pollution Hotline: 0800 884 883
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Tēnā koe Umuhuri.

Submission on the Reviews of the Regional Policy Statement & Regional Coastal Environment Plan

Thank you once again for the time that the Rohe Moana Trust has taken to provide input to the Regional Coastal Environment Plan (the Plan) review. At the end of your submission letter, the Trust requests that we advise when and how we will deal with the matter raised. Section 1 of this letter provides a general overview of the Plan review process, section 2 sets out our response to the matters raised in your letter.

1 Update on Plan review process

The initial stage of the review process has been completed and the review findings indicate that changes to the current Plan are required. A report on the review process and recommendations will be presented to the Regional Council's Strategy Policy and Planning committee seeking direction on whether to develop a new Regional Coastal Environment Plan.

Assuming that the committee decides that a new Regional Coastal Environment Plan is required, we will work in consultation with tangata whenua, stakeholders and the community to develop a draft Plan by the end of 2012.

2 Response to Matters Raised

2.1 Over-riding Environmental Principles

- (a) **Article 192 of the UN Convention on the Law of the Sea (UNCLOS)** – obligation to protect and preserve the marine environment. Protection and preservation of various aspects of the coastal environment is the basis of many of the objectives and policies in the current Plan.
- (b) **Provision of a marine policy statement** – the Regional Policy Statement (RPS) applies to the whole region – including the coastal marine area – and the Regional Coastal Environment Plan (the Plan) sets out the objectives, policies and rules governing the coastal marine area in our region. The purpose of the Plan is to assist the sustainable

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management of coastal environment as required by the RMA. Accordingly we do not intend to develop an additional marine policy document.

The preparation of national level policy sits with central government. Development and implementation of legislation for the Exclusive Economic Zone (EEZ) is a priority for the current government. There may be some cross-boundary issues arising from this legislation.

- (c) **Precautionary principle to be applied in favour of the environment; not economic development**

'Precautionary principle' is not a term that is defined in the RMA, NZCPS 2010 or the current Plan; however, the use of precaution is implicit in the way that the RMA is implemented. Policy 3 of the NZCPS 2010 requires adoption of a precautionary approach towards proposed activities when effects are uncertain, unknown or little understood, but potentially significantly adverse, and in particular with regard to coastal resources vulnerable to climate change.

The current Plan uses a precautionary approach with regard to a number of activities that may occur in the coastal marine area. The precautionary approach is applied in the Plan to ensure that the potentially adverse effects of activities are fully considered through the resource consent process. Changes are required to the Plan to apply the precautionary approach to the "use and management of coastal resources potentially vulnerable to effects from climate change" and fully give effect to NZCPS Policy 3.

- (d) **Information and disclosure - open and transparent process - we fully support this principle.**

2.2 Issues

As a general comment, the majority of issues raised are relevant to the Plan. I have attached a table to this letter that comments on the relevance of each issue and identifies where changes to the Plan will be considered during the review process. We will be consulting with tangata whenua and other stakeholders during the development of changes to the Plan, and welcome feedback on how the issues that the Trust has identified could be better addressed.

2.3 Applications for Marine Consent

The ninth schedule of the Plan sets out information requirements for coastal permit applicants. The current schedule addresses points a), b) and d) of your letter. The schedule does not require that an environmental management plan be submitted with every application as not all activities warrant such a document. More policy guidance could be included within the Plan around when this type of document is necessary.

Point c) *fully describe the past record and capabilities of the applicant to safely undertake the proposal* is also not required by the current schedule. This is not something we can legally take into consideration when deciding whether or not to grant a consent application; however, we can impose a bond as a condition of consent to secure the ongoing performance of conditions that relate to long-term effects.

Case law has established that an applicant's past record of being unresponsive to effects on the environment is a relevant consideration when deciding upon a term of consent. We are able to obtain this information from our own records.

2.4 Notifications and Decisions

- (a) **Notification requirements:** The consents team has advised that they will notify the Trust of all consent applications in the area subject to the application for Customary Marine Title.
- Sections 95A-95F of the RMA set out the statutory requirements for notification of resource consent applications. Public notification is mandatory in certain circumstances (set out in s95A(2) RMA). A consent authority does have the discretion to publicly notify an application; however public notification incurs significant costs to the applicant, the consent authority and submitters (in terms of resources and time taken to reach a decision) and is only undertaken when full public participation in the decision-making process is appropriate.
- (b) **Spatial identification:** The current Plan identifies areas that have high ecological, cultural and landscape values and require protection. Additional work has recently been undertaken to identify natural character areas. The Plan review process will consider how best to identify these areas and what rules and policies should apply to such areas to provide appropriate management.
- (c) **Preservation of biodiversity and tikanga:** Biodiversity and tikanga are important considerations as recognised by section 6 of the RMA (matters of national importance) and the policies of the current Plan. However, when making a decision on a consent application, the preservation of biodiversity and tikanga has to be weighed against the other requirements of the RMA, and its overall purpose of sustainable management.
- (d) **Convention on Biodiversity –** New Zealand is meeting its obligations under this convention through the implementation of the New Zealand Biodiversity Strategy (NZBS). Sections 3, 5 and 6 of the NZBS are particularly relevant to the Regional Coastal Environment Plan. The NZCPS 2010 is consistent with the NZBS. The Plan review process has identified some parts of the Plan that require changes to ensure that we have given effect to the biodiversity provisions of the NZCPS 2010.

The government is also working on a National Policy Statement for Biodiversity (NPS) – this will provide further guidance on how biodiversity should be managed, and regional plans will be required to give effect to this NPS.

The Trust has raised a wide range of matters, the majority of which are pertinent to the Coastal Plan review process; ongoing dialogue during development of a new Regional Coastal Environment Plan will enable full consideration of these matters.

We do not consider it necessary to engage the Trust to prepare a brief on its position with regard to the Plan.

Thank-you once again for the time the Trust has taken to comment on the Regional Coastal Environment Plan.

Yours sincerely

Mary-Anne Macleod
Chief Executive

Attachment 1: Table summarising the issues raised by Mōiiti Rohe Mōana Trust and Regional Council response

Attachment 2: Response to matters specific to Mōiiti Island

Objective ID: A1108761

Table 1: Table summarising the Issues raised by Mōtiti Rohe Moana Trust and Regional Council response

Issue	Response
Resolution of conflicts and issues between CMA (RMA) and MCA (MACA Act).	<p>The interface between the MACAA and RMA will be outlined in the Plan to assist resource users and decision makers.</p> <p>The Marine and Coastal Area Act prescribe how planning documents prepared under the s86 of the MACAA shall be provided for in regional planning documents. This process will be followed by the regional council once planning documents are registered under s86 of the MACAA.</p>
Overriding principles of environmental sustainability, preserving the health and viability of natural systems for future generations.	<p>This is one of the underlying principles of sustainable management set out in s5 of the RMA.</p> <p>The purpose of regional plans is to assist a regional council to carry out its functions in order to achieve the sustainable management purpose of the RMA.</p> <p>The current Plan and any proposed changes must be consistent with section 5 of the RMA.</p>
Preparation of marine spatial plans and identification of sensitive ecological areas, cultural areas, and natural systems in need of protection, and areas suitable for different activities, and clarity about 'jurisdiction' over the seabed.	<p>Areas of cultural, ecological and landscape significance are identified in the current Plan; however we know that this information needs to be updated. We also need to incorporate and/or reference the recent work undertaken to assess natural character in the coastal environment.</p> <p>A marine spatial plan hasn't been prepared to date – the use of spatial planning in our region is currently being investigated by the regional council. The existing Plan uses zoning to indicate the appropriateness of activities in a given area. The appropriateness of the current zoning tools will be considered as part of the Plan review.</p> <p>The current Plan does provide some guidance on jurisdictional responsibilities in the coastal environment; however this information requires updating.</p>
Clarification of navigation routes and access rights and extent or limitations of commercial	The regional council undertook constraints mapping of the coastal marine area (in relation to aquaculture) in 2004. This work identified

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Submission on the Reviews of the Regional Policy Statement & Regional Coastal Environment Plan

6

and recreational maritime activities.	navigation routes, and the location of commercial and recreational maritime activities. We will be considering the extent to which this information should be included in the Plan as part of the review process.
Clarity around use rights in the coastal marine area and occupation rights and entitlements, including rights to exclude, possess, use and transfer.	Rules and policies regarding occupation of the coastal marine area are contained in chapter 12 of the Plan. The review process has identified that these provisions need altering to provide more guidance on efficient use of space in the coastal marine area.
Definition of maximum sustainable yield (MSY) for fisheries in the territorial sea.	This is a function of the Ministry of Agriculture and Forestry.
Assessment of environmental effects of activities.	The Plan contains policies that guide the assessment of environment effects during the resource consent process. Each resource consent application is required by the RMA to include an assessment of environment effects.
Identification of risks of causing irreversible environmental damage.	
Protection of threatened or endangered species and fragile ecosystems and habitats - science-based and peer review.	These matters are addressed in the policies and rules of the current Plan – in particular in chapters 4, 5 and 6. We are interested to hear any more specific comments you may regard these issues.
Prevention of degradation of the natural environment.	
Protection of biological diversity to maintain the integrity, resilience and healthy functioning of marine species, ecosystems, and processes.	
Assessment of the risks and consequences of activities causing adverse environmental effects through accidents and other unplanned events, and provision of operational procedures to minimise risks.	These are matters considered during the resource consent process. More guidance could be provided in the Plan regarding the scope of this assessment – for example a policy requiring Environmental Management Plans for certain types of activity.
Prescribed standards, methods or requirements.	The Plan currently contains water quality standards (schedule 13). These have been identified as requiring amendment – this will be undertaken as part of the review process. Technical standards, methods and requirements are set in the form of regulations (National Environmental Standards) at a

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	<p>national level. Of the National Environmental Standards (NES) currently in effect, the only one relevant to the Plan is the NES for Electricity Transmission Activities.</p>
<p>Monitoring and reporting on the implementation and effectiveness of the RCEP, and five-yearly review to keep the coastal planning framework current and to incorporate local changes and requirements (eg new MACA MCTs or Mataitai areas) and international best practices.</p>	<p>The regional council is required by s35 RMA to monitor the effectiveness and efficiency of its plans and to report on the findings of this monitoring at least once every 5 years.</p>
<p>Undertake baseline monitoring prior to commencing an activity.</p>	<p>Baseline monitoring is appropriate in some circumstances, but not for every activity that occurs in the coastal environment.</p> <p>The current Plan does not specifically require this to occur, however baseline monitoring requirements are required by way of consent conditions when warranted.</p> <p>More policy guidance could be provided in the Plan regarding when baseline monitoring is required, and we welcome any suggestions in this regard.</p>
<p>Provision of bonds and public liability insurance sufficient to cover likely costs of any accident or incident requiring clean-up.</p>	<p>Bonds can be imposed as part of a resource consent requirement (s108A sets out the circumstances under which this is appropriate). The Plan is not able to impose such requirements on activities that are not under the jurisdiction of the RMA and do not require a resource consent (such as shipping activities).</p> <p>Changes could be made to the Plan to provide more guidance on when bonds should be required as a condition of consent and how bond amounts should be calculated. This will be considered during the plan review process.</p>
<p>Provision for Observers to monitor the activity authorised by a consent and its effects on the environment.</p>	<p>There is scope to include a tangata whenua role in consent monitoring - and this has occurred in relation to large scale activities across New Zealand. The Plan does not currently provide any guidance on when this is appropriate and what matters should be considered when considering imposition of such requirements. The potential to include such a policy direction will be considered as part of the review process in consultation with tangata whenua and others.</p>

Objective ID: A1108761

Availability of records relating to a consented activity for audit.	<p>Any records held by the regional council in relation to a consented activity are accessible to the public, unless there is a genuine reason to withhold information under the Local Government Official Information and Meetings Act. (LGOIMA).</p> <p>Records kept by consent holders are audited by compliance officers of the regional council.</p>
Review of conditions and duration of consents.	<p>Reviews of consent conditions are provided for by sections 128-130 of the RMA. The regional council has some discretion regarding the duration of a consent – case law has established 'principles' for determining an appropriate duration, which are considered during the consent process. It is possible to provide policy guidance on appropriate consent terms for specific activities - and we welcome any suggestions in this regard.</p>
Provisions for aquaculture areas to include impacts, effluent mitigation, water discharge, and variations to consents.	<p>The review has identified that lack of specific aquaculture provisions as a gap that needs filling. We will be working with the community to draft suitable policy and rules around aquaculture.</p>
Provide for co-management arrangements with tangata whenua customary rights holders within the RCEP.	<p>Co-management arrangements are usually provided for under the Treaty settlement process.</p>

Matters specific to Mōtiti Island

- (a) **Coastal Environment:** Recognition of Mōtiti Island as being in the coastal environment – the draft variation to the proposed RPS includes maps that identify the island as part of the coastal environment. The extent to which changes are required to the proposed Mōtiti District Plan to give effect to the NZCPS 2010, and proposed RPS will be considered during the appeal process. The extent to which changes can be made to the proposed District Plan is limited by what was originally notified and the scope of submissions.
- (b) **Natural Character:** The draft variation to the proposed RPS includes maps that identify Mōtiti Island as having moderate natural character and the surrounds as having outstanding natural character. This classification is based on technical work undertaken by Boffa Miskell in accordance with a nationally consistent methodology for assessing natural character. I have forwarded your comments to the RPS project team for their consideration – it is likely that the variation will be publicly notified in May 2012.

Changes will be required to the Plan to either include or make reference to the natural character assessment work, and to ensure that the policies of the Plan give effect to the NZCPS 2010.

- (c) **Outstanding Natural Feature and Land and Seascape:** Mōtiti Island and the surrounding area are already identified as a significant natural feature and landscape in the Plan (site S12 in Schedule 4 of the Plan). A 2006 assessment of outstanding natural features and landscapes of the Bay of Plenty Coastal Environment confirmed that all the sites identified in schedule 4 of the Plan are worthy of 'outstanding' status. This work also proposed that the seaward boundaries of all sites be extended by 200 metres offshore to capture the intertidal and immediate subtidal area. These recommendations will be incorporated during the Plan review process.
- (d) **Significant Indigenous Habitat:** The current Plan identifies the following sites on and around Mōtiti Island:

SITE NAME: MOTITI SITE NO: SSL-103

This site contains the largest remaining example of indigenous vegetation in the Motiti ecological district and is virtually the only example of indigenous vegetation remaining on Motiti Island. A yellow flowered pohutukawa tree occurs on Motiti Island.

SITE NAME: MOTUPUTA ISLAND SITE NO: SSL-104

*Motuputa Island is a small island to the east of Motiti. It contains a small population of *Lepidium oleraceum*, classed as rare. No introduced animals live on the island.*

SITE NAME: MOTITI ISLETS (Motukahakaha Island, Turitea Island, Motupatiki Island)

SITE NO: SSL-105

These small islets together contain good quality small examples of coastal vegetation characteristic of the Motiti ecological district. No introduced animals have been recorded from these islands.

SITE NAME: TAUMAIHI ISLAND SITE NO: SSL-106

*Taumaiahi Island is a small island to the south of Motiti Island. It contains a small population of *Euphorbia glauca*. Kiore are the only introduced animals living on the island.*

Wildland Consultants is currently undertaking some technical work to re-evaluate the sites identified in the Plan in light of more recent knowledge and the requirements of the NZCPS 2010. This work is still being progressed, but early indications are that the site currently identified as SSL-103 (a narrow strip around the margins of Mōtiti Island and some areas in gullies that extend to the coast) provides regionally significant indigenous habitat. Mōtiti Islets (currently site SSL-105) are also regionally significant.

The technical work is not likely to change the extent of areas identified as being significant for biodiversity reasons, but will provide more information on the values of these areas. This work and the need for policy changes to ensure biodiversity values are afforded appropriate protection will be incorporated in the Plan review process.

- (e) **Outstanding natural features and landscapes and views:** As discussed under point (c), the whole island is already identified as an outstanding natural feature and landscape. Schedule 5 of the Plan contains Guidelines for Natural Features and Landscapes. Section 5 of the Plan contains policies intended to maintain the quality of ONFLs.
- (f) **Historic and cultural heritage:** The Island is identified in schedule 14 of the Plan as being of cultural significance (ASCV-25). Specific provisions relating to subdivision and development of the island would be more appropriately located in the District Plan.
- (g) **Identification of Direct landing areas:** This is possible through the Plan, but would require further consultation with all landowners on Mōtiti Island, other tangata whenua and consideration of the proposed District Plan.
- (h) **Identify coastal resources and values of the Mōtiti Rohe Moana –** identification and assessment of coastal resources has been undertaken on a region-wide basis.
- (i) **Protection of indigenous biodiversity –** this is currently addressed by section 6 of the Plan. This section requires some changes to ensure the Plan gives full effect to the NZCPS 2010.
- (j) **Provide for co-management of the Mōtiti Rohe Moana –** co-management arrangements are more appropriately established through the Treaty settlement process or outside the RMA planning and consenting process – although changes may then be required to the Plans to give effect to co-management arrangements.
- (k) **Provide for customary interests, Treaty of Waitangi and Kaifakiatanga –** chapter 8 of the current Plan specifically addresses Tangata Whenua interests. The review process has identified that a number of changes are required to this section of the Plan to provide more guidance to decision makers. Further consultation will be undertaken with tangata whenua on these provisions.
- (l) **Provide for recognition of Customary Marine Title (CMT) management plans –** this is required by the MACAA, which sets out a process for recognising and providing for CMT planning documents in regional plans. At the current time no applications for CMT have been granted in our region. Advice from the Office of Treaty Settlements is that current applications will take at least 1-2 years to be processed and a decision made. If CMT is granted for an area, legislation is required to be passed before the CMT is given effect.
- (m) **Ensure BOPRC does not adversely affect the guiding principles of the MACAA –** we will remain in contact with the Office of Treaty Settlements to ensure that this does not occur.
- (n) **Ensure BOPRC does not adversely affect the customary rights and interests of Mōtiti tangata whenua and the lawful purposes of the Trust –** any changes to the Plan will be developed in consultation with tangata whenua.

**BEFORE THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

ENV-2015-AKL-000134

UNDER

the Resource Management Act 1991

AND

IN THE MATTER

of appeals against the Proposed Bay of Plenty Regional Coastal
Environment Plan

BETWEEN

Trustees of the Motiti Rohe Moana Trust

Appellant

AND

Bay of Plenty Regional Council

Respondent

AFFIDAVIT OF HUGH GRANT SAYERS ON BEHALF OF MOTITI ROHE MOANA TRUST

Sworn 6th September 2016

Rob Enright
Barrister
Level 1, 122 Quay St
Britomart
Auckland 1010
e: rob@publiclaw9.com
m: +64 21 276 5787

I, HUGH GRANT SAYERS, Project Manager of Tauranga, swear:

I pāhuku, I panēke; ka nukūnuku, ka hēkeneke

Menā ka kite koe i nga tāi o te Moana e hōra nei

Me he Pipiwharaurou kei tua –

Ka takoto te pai, ka takoto te pai.

Tihē māuri brā!

I whānau mai au i Ngaruawahia, a i tipu ake ai au i Miropiko i rōto i nga kāru o Tainui,

I te tāhū o te Āwa o Waikato, he piko, he taniwha.

I kuraina au i te Kura o Tipene, me nga Whare-Wananga o Otākou me Tamaki Makaurau.

INTRODUCTION

Tokotoru aku tamariki, tokorima aku makopuna; he urī ano ratou na te Haupapa Kohatu, āra te Moutere o Motiti.¹

- 1 I am the Project Manager of the Motiti Rohe Moana Trust (MRMT/ the Trust). I have been engaged by the MRMT on various projects since 2009, including assisting facilitation of the Trust's involvement in the Motiti Proposed District Plan and Bay of Plenty Regional Policy Statement and Regional Plan Coastal appeals. I am familiar with the Trust's records and am authorised by the chairman to provide this affidavit. My evidence is of matters within my knowledge or personal experience.
- 2 I refer to the further affidavit of Joanne Noble, dated 12 August 2016.
- 3 Ms Noble has produced submissions made by 3rd parties on a different statutory process (s186A application to Ministry of Primary Industries). My understanding is that these submissions are not relevant to the proposed Regional Coastal Environment Plan. If relevant, then I note that the overwhelming majority of submissions supported the s186A closure (a fact not mentioned by Ms Noble).

¹ [Translation] I was born in Ngaruawahia and raised at Miropiko under the gaze of Tainui on the banks of the Waikato river. I was educated at St Stephens School and went on to study at Otago and then Auckland University. I have 3 children and 5 grandchildren who trace their descent from Te Haupapa Kohatu of the Island of Motiti.

 2 

- 4 Ms Noble has produced a public notice (disclaimer) from the Motiti Island Marae Committee. It is unclear whether Council is attempting to challenge the standing of MRMT Trustees in relation to resource management matters that affect Motiti. Any such suggestion is refuted.
- 5 For seven years, the Trust has been actively advocating for the recognition and protection of customary rights and interests for Motiti tangata whenua in the Motiti Rōhemoana. The MRMT has engaged in a number of processes to ensure the rōhemoana is managed sustainably and in line with the tikanga of the people of Motiti, including:
- (a) Initial application to Attorney General in January 2010 for recognition of customary rights under the Foreshore and Seabed Act 2004 ("the F & S Act");
 - (b) Engagement with the Māori Land Court in relation to applying for a Customary Rights Order under the F & S Act on behalf of Ngā Hāpu o Te Moutere o Motiti.
 - (c) On 13 February 2012, the Trust submitted an application for customary marine title ("CMT") under the Marine and Coastal Area (Takutai Moana) Act 2011. This application is now currently before the High Court [CIV-2015-485-767].
 - (d) The Trust has also been actively involved in the District and Regional Plans for the area, and has applied for Declarations for recognition of Rahui as a resource management method [ENV-2016-AKL-173]. It is also involved in several Waitangi Tribunal inquiries.
- 6 MRMT had an expectation that Council would adopt a collaborative approach to support resolution of spatial planning matters raised by MRMT during the proposed Regional Coastal Plan process. Spatial planning of the Motiti Natural Environment Management Area was originally raised during the proposed RPS process. Annexure "A" is the Environment Court decision in [2014] NZEnvC 239 which stated:

"[13] Mr Enright also asked the Court to note at [53] to [55] of its decision [2] 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 decision 7 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."

- 7 Annexure "B" is an affidavit by Ms Noble dated 25 February 2014. At paragraphs [28] – [40], Ms Noble noted that matters raised relating to cultural attributes for the Motiti Natural Environment Management Area should be addressed through the proposed Regional Coastal plan process. At [31] she stated:

"[31] I can see no justifiable planning reason for the PRPS to direct development of Management Plan framework specific to the Motiti Rohe Moana. This would appear to be a matter better addressed by the RCEP and any Iwi Management Plans prepared for area, [sic] such as the Motiti Island Native Resource Management Plan – prepared by the Patuawai Trust and lodged with the Regional Council on 22 November 2012, with the support of Ngati Awa as iwi authority."

- 8 MRMT relied upon Council's indication that a spatial planning framework to address cultural values was better located in the proposed Regional Coastal plan. This is reflected in Annexure B where Ms Noble stated:

"[32] As part of development of the draft RCEP the Regional Council has spatially identified various values and uses in the coastal environment, including areas of indigenous biodiversity value, outstanding natural features and landscapes; areas of significant cultural value; historic heritage sites; regionally significant surf breaks; mooring areas; personal watercraft areas and ski lanes. This is in addition to the recent natural character mapping included in the PRPS.

"[35] MRMT also seeks the addition of policies to the PRPS that provide for the active protection of Motiti Island and the surrounding coastal marine area.

"[36] In my opinion these matters are inappropriate for inclusion in an overarching regional planning document such as the PRPS, which is necessarily concerned with resource management issues that require regional direction rather than local or district matters. This is why these matters were not included in Variation 1. They are however matters that have been spatially identified as various values and uses in the coastal environment as part of the new RCEP project, because this regional plan does deal with that level of specificity."

- 9 References by Ms Noble to spatial identification to provide for "various values and uses in the coastal environment" reflects MRMT's understanding of the common meaning of spatial planning. Spatial planning allows areas like the Motiti coastal environment to be identified

and its values protected. Rāhui is a form of protection because it involves avoidance of adverse impacts to Māori customary values and taonga.

SWORN at Tauranga)
this 6th day of)
September 2016)
before me)



HUGH GRANT SAYERS



SUSAN RUTH HENDERSON

Deputy Registrar / A Solicitor of the High Court of New Zealand

"A"

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
(BNV-2013-AKL-000069)

Appellants

This is the decision marked A referred to in the annexed affidavit of Susan Ruth Henderson sworn at Auckland on the 11th day of November 2014 before me.
A Solicitor of the High Court of New Zealand

AND

BAY OF PLENTY REGIONAL COUNCIL

Respondent

SUSAN RUTH HENDERSON

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 Mangamui, 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 Woolter 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 Rangiwaea 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, loka 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*,

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 toku, 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 Marchacre 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 Bright 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.

[65] 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 Mahino* 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.

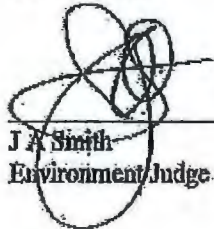
[15] I encourage the parties to reach an accommodation on the appropriate attributes. It appears to me that Ngati Māhino provides an exemplar. The parties only need to consider whether there are any particular attributes that should be deleted or whether any others need to be added to reflect the inter-generational 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 March 2014

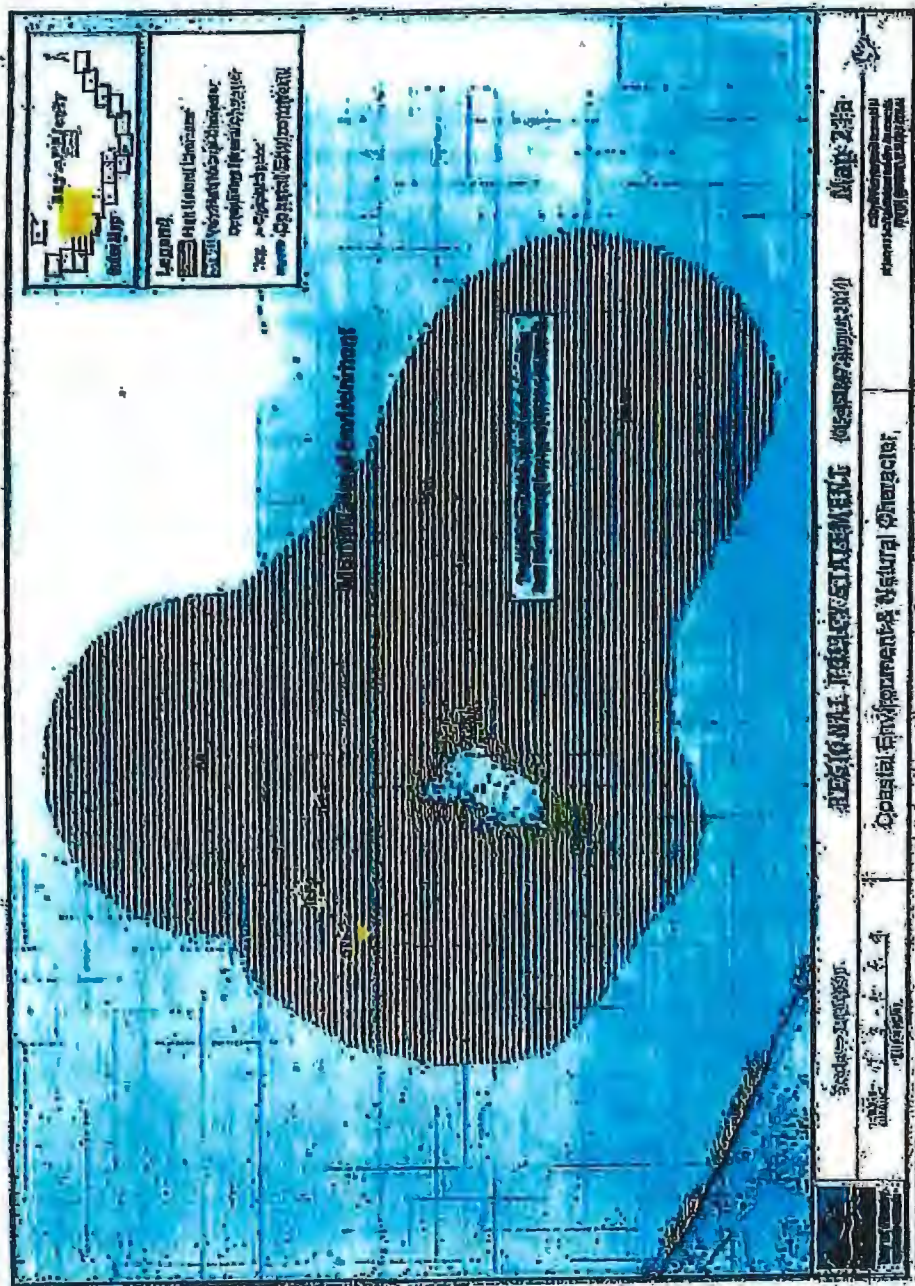
For the Court:



J.A. Smith
Environment Judge



Annexure A



B

**BEFORE THE ENVIRONMENT COURT
AUCKLAND REGISTRY**

IN THE MATTER of the Resource Management Act 1991

A N D

IN THE MATTER: of Applications to strike out appeals and interested party notices

AND Appeals filed pursuant to clause 14 of the First Schedule to the Act to Proposed Variation 1 (Coastal Policy) to the Proposed Bay of Plenty Regional Policy Statement

BETWEEN **NGĀHI MĀKINO HERITAGE TRUST**
(ENV-2013-AKL-000068)

MŌTITI ROHE MOANA TRUST
(ENV-2013-AKL-000069)

AND **BAY OF PLENTY REGIONAL COUNCIL**

AND **LOWNDES ASSOCIATES**
(Applicants)

AFFIDAVIT OF JOANNA BARBARA NOBLE DATED 25 FEBRUARY 2014 IN SUPPORT OF STRIKE OUT APPLICATIONS.

This is the *affidavit* of *S* related to the proposed decision of *JUDITH GRANT JUDGES* determined at *Tauranga* on *25 day of February 2016* of the *Environment Court*.
[Signature]
A Solicitor of the High Court of New Zealand

SUSAN RUTH HENDERSON

CooneyLeesMorgan

3rd Floor, ANZ Centre
247 Cameron Road
P O Box 143
TAURANGA
Telephone: (07) 578 2099
Facsimile: (07) 578 1433
Partner: PH COONEY
Associate: S E WOOLER

I, Joanna Barbara Noble swear:

1. I am employed by the Bay of Plenty Regional Council as a Senior Planner. Prior to this I worked as a Senior Resource Advisor for Wellington Regional Council for four years.
2. I have the following qualifications: BSc(hons) specialising in Zoology from the University of Durham and a MSc specialising in Aquatic Resource Management from the University of London
3. I make this affidavit in support of:
 - (i) an application for Strike Out of the Appeal of the Appellant Mōtiti Rohe Moana Trust [ENV-2013-AKL-000069] [MRMT] and of interested party notices filed by Mōtiti Rohe Moana Trust and the Mataatua District Maori Council against the following appeals:
 - a. Lowndes Associates (ENV-2013-AKL-000082)
 - b. Mōtiti Avocados Ltd (ENV-2013-AKL-00074); and
 - c. Ngāti Mākiino Heritage Trust (ENV-2013-AKL-00086).
 This application dated 17 February 2014 was filed by the Bay of Plenty Regional Council on 17 February 2014; and
 - (ii) An Application for Strike Out of the Appeal of the Appellant Ngati Makino Heritage Trust (ENV-2013-AKL-68) dated 5 February 2014 filed by Lowndes Associates; with respect to paragraph 7 of that application: that "Relief seeking the inclusion of "cultural considerations" in the natural character attributes is beyond the scope of Variation 1 which is limited to the identification and mapping of "natural character", not "natural features and landscapes".
4. I am aware of and bound by the Court's requirements for expert witnesses. I acknowledge that I have read the Practice Note Expert Witnesses Code of Conduct, agree to comply with it, and have not omitted to consider material facts that may alter or detract from the opinion expressed. The opinions that I give in this affidavit are within the ambit of my area of expertise.
5. I have reviewed the issue of whether Natural Character assessment includes assessment criteria and methodology such as that sought by the Appellants; including:
 - (i) MRMT: "layered hi cultural approach...to determine the quality of the natural character and landscape (including seascape) of Mōtiti;" [1st amended appeal, relief page 4 Lawrence]; and

(ii) Ngāti Makino: "to have regard to cultural considerations (mātauranga Māori, Māori cultural values or Māori cultural attributes) when determining the natural character classification of places in the coastal environment" [(4)(ii) of the Appeal; and 6(a) of the clarification dated 24 January 2014], and whether such relief is beyond the scope of Variation 1 to the Proposed Regional Policy Statement.

6. I have also reviewed the relief sought by the Appellant MRMT in the 1st amended Appeal dated 14 February 2014 in terms of whether such relief is in general outside of the scope of Variation 1 to the Proposed Regional Policy Statement; and/or not justiciable.

7. In this affidavit I:

- (a) Outline my role with regard to the new Regional Coastal Environment Plan (RCEP), including what relationship this (draft) RCEP has with Variation 1 to the Proposed Regional Policy Statement;
- (b) Explain why particular relief sought by the Appellants is in my opinion out of scope of Variation 1, with particular reference to the natural heritage and iwi resource management sections of the RCEP and comment on other planning processes where relevant.

8. My role as Senior Planner includes the Project Management of the new RCEP.

9. In undertaking this role I worked alongside other planners at the Regional Council including Senior Planners Nassah Steed and James Low.

10. I agree with the opinion expressed by those Senior Planners that:

- (i) Variation 1 is limited in scope to updating the Proposed Regional Policy Statement (PRPS) that was notified in November 2010, prior to the New Zealand Coastal Policy Statement (NZCPS) 2010 coming into effect in December 2010.
- (ii) Its purpose was to ensure the PRPS gave full effect to the new version of the NZCPS.
- (iii) The main areas updated were to bring in the spatial identification of the coastal environment and outstanding natural character, and update policies.
- (iv) The recognition and provision for cultural values and mātauranga Māori stems from the provisions of the Proposed Regional Policy Statement that relate to Iwi Resource Management and Matters of National Importance and that these

matters were not the subject of Variation 1; but were otherwise addressed in the original review of the Operative Regional Policy Statement; and

- (v) That aspects of the relief sought are matters that are relevant to the Regional Coastal Environment Plan Review and that is the appropriate forum for addressing these concerns.

11. To the extent that it is relevant to the Applications for Strike Out, I now note the process for reviewing and developing the RCEP. This is in order to show that although the appeal points are considered out of scope and not able to be progressed via the Variation 1 process, they are matters that the Regional Council has addressed or is in the process of addressing in other planning documents. In particular some of the relief sought by MRMT is very specific and detailed, and is appropriately dealt with in lower level regional planning documents rather than the RPS. Variation 1 did not cover such detailed matters of planning implementation.

Review of Operative RCEP

12. I was responsible for the full review of the operative RCEP, which was completed in April 2012. The review looked at how well the RCEP is working and what changes are needed to address the current issues facing the Bay of Plenty's coastal environment. Meetings were held with iwi authorities, hapū and other tangata whenua groups, including the Māori Rohe Moana Trust, with feedback obtained used in the review.

13. The review found that overall the operative RCEP has worked well, but there is room for improvement; for example enhancement of water quality in some of our estuaries and harbours, recognition and provision for cultural values and matauranga Māori, and management of our coastal margins, which are vulnerable to damage. In addition, there have been changes to legislation and national policy that need to be reflected in the Plan. Most notable is the New Zealand Coastal Policy Statement 2010. The requirements of the new Proposed Regional Policy Statement also need to be given effect to in the new RCEP.

New RCEP

14. Development of the new RCEP formally commenced when the Strategy, Policy and Planning Committee of the Regional Council resolved to replace the existing RCEP at their 1 May 2012 meeting.

15. Extensive engagement with iwi and hapū was undertaken between November 2012 and February 2013, a summary of engagement undertaken is attached and marked as Exhibit 1. Hui focussed on:

- a. Issues raised during the initial Plan review process;
- b. Iwi Management Plans (IMPs) – and how these can be taken into account in the new Plan; and
- c. Culturally Significant Sites – how these can be identified and protected in the new Plan.

16. Following the engagement, a draft version of the new RCEP was released for public consultation on 10 May 2013. All technical reports accompanying the draft Plan (including an assessment of Outstanding Natural Features and Landscapes in the coastal environment) were made available on the Regional Council website.

17. The closing date for feedback to be submitted was 28 June 2013. MRMT and Ngāi Māhino were amongst those parties directly notified of the availability of the draft Plan.

18. The draft RCEP cannot be finalised and publicly notified as a proposed RCEP until the outstanding appeals on variation 1 to the PRPS are resolved. I acknowledge that a second variation to the PRPS specific to Natural Hazards is underway ("variation 2"). However, given that Variation 2 is in its early stages (and has not been publicly notified) it is appropriate to progress the new RCEP and revisit the policies specific to coastal hazards at a later date if required.

What the RCEP covers:

19. The policies contained in the draft RCEP provide specificity to the legislative and policy directions of the RMA and higher level policy documents (NZCPS and RPS) and provide more certainty on how the policy direction contained in the higher level documents can be achieved in the coastal environment.

20. The draft RCEP recognises and provides for cultural values and matauranga Māori. Key provisions are the Natural Heritage and Iwi Resource Management provisions. The policies are found in Part 3: Integrated Management of the draft RCEP (and apply to any activity, unless precluded by the activity status).

21. The Iwi resource management policies were developed to meet statutory obligations under Part 2 of the RMA; to give effect to the PRPS (in particular the settled Iwi Resource Management policies); the NZCPS 2010 (with particular emphasis on Policy 2); objectives and policies contained in IMPs were also taken into account, as was the feedback received during the RCEP review process and engagement during development of the new RCEP.

22. Development of the natural heritage provisions was guided by the NZCPS 2010 (with particular emphasis on Policies 2, 6, 11 and 13-15) and the Matters of National Importance and Coastal Environment policies of the PRPS.
23. The draft RCEP also identifies Outstanding Natural Features and Landscapes and Areas of Significant Conservation Value. These areas are spatially identified in the maps contained in volume 2 of the draft RCEP.
24. The Outstanding Natural Features and Landscapes (ONFL) contained in Schedule 3 were assessed using the Set 2 (Natural Features and Landscapes) criteria contained in Appendix F – *Criteria for assessing specified matters in the Bay of Plenty region of the proposed RPS*. Māori values are specifically provided for in criterion 2.12 *Natural features and landscapes are clearly special or widely known and influenced by their connection to the Māori values inherent in the place*. So while the Appellants seek that Natural Character maps these matters in the RPS, they have already been incorporated in the assessment of natural features and landscapes in the RCEP.
25. Examples of this incorporation to the RCEP are: Ōkurei Point (the coastal edge and point of the Maketū headland) is identified as ONFL-12 and Mōtiti Island and associated islands/reefs and shoals (including Astrolabe Reef) as well as subtidal context as ONFL-44.
26. The Areas of Significant Cultural Value (ASCV) include ASCV-7: Ōngātoro/Maketū Estuary, Waihi Estuaries and Ōkurei Point and ASCV-25: Mōtiti Island. The draft RCEP proposes that Otaiti (Astrolabe Reef) be added to ASCV-25.
27. The amended notice of appeal provided by MRMT refers in paragraph 8 to Annex A, the report by G Lawrence, to specifics on the relief sought by the appeal. As discussed in the affidavits of Mr Low and Mr Steed the amended appeal lodged by MRMT raises a number of matters that appear to be outside the scope of variation 1 of the PRPS.
28. In my opinion, the new RCEP is the appropriate place to deal with much of the relief sought in the amended MRMT appeal. The paragraphs below set out some further examples that support this opinion.
29. MRMT contends that the PRPS fails to acknowledge, recognise and provide for customary rights and interests.

30. The draft RCEP provides a regulatory framework for decision-making under the RMA in relation to the coastal marine area. The objectives and policies of the draft RCEP give effect to the NZOPS 2010 and PRPS and as such provide for cultural values, restoration of indigenous biodiversity, outstanding natural features and landscape natural character and customary activities, along with other matters of national importance such as public access to and along the coastal marine areas.

31. I can see no justifiable planning reason for the PRPS to direct development of a Management Plan framework specific to the Mōtiti Rohe Moana. This would appear to be a matter better addressed by the RCEP and any Iwi Management Plans prepared for area, such as the Mōtiti Island Native Resource Management Plan – prepared by the Patuwaī Trust and lodged with the Regional Council on 22 November 2012, with the support of Ngāi Awa as iwi authority.

32. As part of development of the draft RCEP the Regional Council has spatially identified various values and uses in the coastal environment; including areas of indigenous biodiversity value; outstanding natural features and landscapes; areas of significant cultural value; historic heritage sites; regionally significant surf breaks; mooring areas; personal watercraft areas and ski lanes. This is in addition to the recent natural character mapping included in the PRPS.

33. As appropriate for a regional planning document, this mapping encompasses the entire coastal environment of the Bay of Plenty region (including the Mōtiti Rohe Moana). This work has identified the coastal marine area around Mōtiti Island as significant, and the draft RCEP recognises and provides for these values.

34. In particular, Mōtiti Island and the surrounding coastal marine area has been identified as having the following values/attributes:

- i. Outstanding Natural Feature and Landscape
- ii. Area of Significant Cultural Value
- iii. Area of Indigenous Biodiversity Value
- iv. Regionally Significant Surf Break

35. MRMT also seeks the addition of policies to the PRPS that provide for the active protection of Mōtiti Island and the surrounding coastal marine area.

36. In my opinion these matters are inappropriate for inclusion in an overarching regional planning document such as the PRPS, which is necessarily concerned with resource

management issues that require regional direction rather than local or district matters. This is why these matters were not included in Variation 1. They are however matters that have been spatially identified as various values and uses in the coastal environment as part of the new RCEP project, because this regional plan does deal with that level of specificity.

37. Another example of active protection is that areas of the coastal environment that have significant indigenous biodiversity value are identified in Schedule 2 of the draft RCEP. Biodiversity sites are classed as Indigenous Biodiversity Areas (IBDA) A or B. Sites that fall within an IBDA A are particularly vulnerable to modification, and the NZCPS contains a strong policy direction to avoid adverse effects on such areas, which is reflected in the policies of the draft RCEP.

38. Likewise, in the draft RCEP the coastal fringe of Mōtiti Island (incorporating the Pohutukawa forest and treeland, coastal cliffs, and sandfields) and Asfrolabe Reef are identified as being regionally significant and meets a number of the criteria set out in Policy 11(a) of the NZCPS 2010. Both these sites are assessed as being IBDA A. The Mōtiti Islets (incorporating Coastal herbfields, pohutukawa-karo treeland, and coastal rockland) are identified in the draft RCEP as an IBDA B, and the policy direction for this site is to avoid significant adverse effects.

39. The remainder of the detailed relief sought in relation to 'active protection' refers to very specific local matters (esplanade reserves, a joint plan for Mōtiti Island and restrictions on the number of island access points) that fall under the ambit of the District Plan being prepared for Mōtiti Island by the Department of Internal Affairs, which has been the subject of recent Environment Court hearings and court directed mediation. The appeal points made by MRMT appear to attempt to 'undo' or second guess some of the progress made toward resolving these appeals and providing certainty to those living and working on Mōtiti Island.

40. The final broad appeal point refers to a change in methodology of assessment of natural landscape quality. I agree with the opinion of Ms Rebecca Ryder (affidavit dated 24 February 2014) that the assessment natural character does not require consideration of cultural values.

¹ Sites have been assessed using the criteria contained in the PRPS (Set 3 Indigenous Vegetation and Habitats of Indigenous Fauna) and Policy 11 of the NZCPS 2010. This gives effect to Policy CE 6A and method 53A of the PRPS, which direct the regional council to use the criteria in Policy 11 of the NZCPS 2010 to identify and protect areas of indigenous biological diversity in the coastal environment.

41. Assessment and identification of natural features and landscapes should incorporate consideration of cultural values, as determined by case law and the criteria contained in the operative and proposed RPS. This consideration has been undertaken in the development of the draft RCEP as set out above in this affidavit.

SWORN at [redacted] by the said JOANNA BARBARA NOBLE)

this [redacted] day of [redacted] 2014)
before me:)

[redacted signature]
A Solicitor of the High Court of New Zealand

Judith Louaine Wilson
Solicitor
WHAKATANE

Your Ref:
Our Ref: 6.00742

25 July 2014



Umuhuri Matehaere
Chairman
Mōtiti Rohe Moana Trust
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Tēnā koe Umuhuri

In response to your email to Mary-Anne Macleod dated Wednesday 23 July 2014:

- (a) You ask "what are the Regional Council's obligations to Mōtiti tangata whenua and, in particular, to the Wai 2391 claimants" in light of the Waitangi Tribunal Interim Report.

The Waitangi Tribunal Interim Report focuses on the Crown's conduct in relation to the signing of Deeds with the Rena owner. The Report does not involve the Regional Council or make any recommendations in respect of the Regional Council. The Regional Council therefore has no special obligations to Mōtiti tangata whenua as a result of the Interim Report.

- (b) You ask "what meaningful engagement and active support does BOPRC intend to provide the Mōtiti Rohemoana Trust before the closing of submissions on the MV Rena Resource Consent on 8 August 2014".

The Regional Council will not be providing active support to the Trust before the closing of submissions. The Interim Report recommends that the Crown, not the Regional Council, should consider how the Crown can assist Māori make their own submissions on the Rena consent application.

In its role as consent authority, the Regional Council cannot treat any potential submitter differently from any other potential submitter. Council needs to remain independent and impartial in processing the Rena consent application and making any recommendations in a comprehensive report to the decision maker to assist the decision maker to make an informed decision on the application. The issues and concerns of the Trust will be fully considered by the Reporting Officer in the report to the decision maker.

- (c) You ask "What active steps has BOPRC taken to build trust and confidence since the high-level meeting held on 16 May 2014?"

The meeting in May outlined the importance of good engagement and was a catalyst for designing something that all Māori could have access to. We discussed, as a next step, development of an engagement document for us to consider and finalise.

25 July 2014

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A draft Māori engagement charter was developed and emailed to Mr Hughes in June for consideration. We are not aware of any feedback from Mr Sayers. We view this document as a positive step and hope it will improve and enhance the way we engage in the future.

Ms McTavish and her staff have an open door policy with respect to meeting, engaging and providing information to the RMT and any other entity.

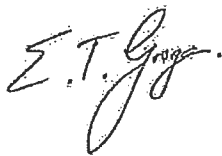
- (d) You ask "What support has BOPRC provided to the Trust to effectively engage in and resolve the multiple issues between the Council and the Trust, including the Regional Policy Statement (RPS), the proposed Motiti Island Environmental Management Plan (MIEMP), and the proposed Regional Coastal Environment Plan (RCEP)?"

Regional Council planning staff wish to continue to work with the Mōtiti Rohe Mōana Trust to resolve the Trust's remaining RPS appeal matter, concerning the natural character area for Mōtiti Island and surrounding waters and toka. The consent order issued by Judge Smith of 15 July 2014 clearly identifies this matter as still needing to be resolved. I understand that Hugh Sayers has recently advised James Low that the Trust's current focus is on the Rēna resource consent application. We look forward to engaging again as soon as the Trust is in a position to do so. I understand good progress was made on this matter during and immediately after our 16 May high-level meeting.

Submissions to the Proposed Regional Coastal Environment Plan close on 22 August 2014. I reiterate an earlier offer for staff to meet with the Trust (or its representative) to go through the plan to assist the Trust in making a submission.

Bay of Plenty Regional Council is a section 274 party to the appeals against the Proposed Mōtiti Island District Plan. As advised at the recent pre-hearing conference held on 11 July with Judge Smith, the issues raised by the Regional Council are now resolved through the past several years of Court hearings, expert caucusing and direct discussions. This is reflected in the latest version of the Mōtiti Environmental Management Plan. Regional Council does not therefore intend to call evidence at the upcoming Court hearing, but reserves the right to do so depending on what other parties are seeking.

Yours sincerely



Eddie Grogan
Deputy CE & GM Regulatory and Customer Service

Your Ref:
Our Ref: 7.00113

15 October 2014



Graeme Lawrence
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Dear Graeme

Motiti Rohe Moana Trust Appeal on Proposed RPS Variation 1, Response to Offer of Settlement

Thank you for your letter dated 9 October 2014 proposing on behalf of the Motiti Rohe Moana Trust ways in which the above appeal could be settled.

Please consider this response as "without prejudice".

The Regional Council is aware that at least two section 274 parties (Lowndes Associates and Mataatua Māori District Council) are expected to file evidence on this appeal, as both have been actively seeking due evidence dates and directions from the Court. Whatever agreement may be reached between the Council and the Trust cannot stop this matter being heard, as those parties also have the right to be heard by the Court, including on any proposed consent documents. As the Court must now determine this matter I urge you to encourage the Trust to present evidence to allow the judicial process to run its course and give the Judge the benefit of its evidence. At this time, the Regional Council has no way of bringing proceedings to a halt, notwithstanding your offer.

The Regional Councils' (without prejudice) position in response to the offer of settlement is as follows:

(a) Council is not opposed to renaming the proposed "Motiti Natural Environment" to "Motiti Rōhemoāna Natural Environment" to be shown on Map 21a.

However, Council is unable to confirm agreement to the changed boundaries for lack of information on their origin or basis. The area is different to that previously discussed (James Low, Graeme Lawrence) and now included in evidence submitted to the court. It is also inconsistent with the Bay of Plenty Regional Coastal Environment Plan which defines a different Area of Significant Cultural Value around Motiti Island (though we note the Trust submission to that plan includes a map showing a similar area to that now proposed).

(b) Council is not opposed to modifying the natural character attributes and Appendix J table, but as outlined in evidence (now before the Court) takes a narrower view of what can be included. In paragraph 39 of my evidence I state:

39. In relation to 'cultural' attributes, and in planning terms, I am not comfortable assigning unqualified terms like 'mana' or 'tapu' to these additional reefs (or any other features), although accept the importance of these values in their own right. However, within the context of the RPS and NZCPS, the purpose of the attributes table is to assist with decision-making on activities that might affect natural character and, unqualified, these terms do not help that task. For example, I understand the equivalent of the term 'mana' is 'prestige' or 'status'. This term alone does not help understand natural character. Similarly the unqualified term 'tapu' – which to my mind means 'restriction' or 'prohibition' and has spiritual connotations – does not advance our ability to make decisions in relation to the natural character of these important features when applying the RPS, or when District Plans are giving effect to it. I do not challenge the opinion of the appellants that the features are taonga, and have mana, tapu, wairua and mauri as statements of fact in themselves. I have no evidence to the contrary, or any way to differentiate between those qualities.

Accordingly, it is Council's position that any modification to the attributes table must tie otherwise broad descriptors like "taonga", "mana" and "tapu" to particular biophysical or coastal experiential matters. Those included in your revised table do not do that and thus will not greatly assist with decision-making and are opposed (in terms of natural character attributes).

Council opposes inserting a new "Marine Experiential" column. There is no scope to do this given the Court's previous decision. As previously advised, Council has no opposition to including marine and terrestrial perceptual and experiential matters in the one column. While it may be possible to insert an additional column without affecting other parties we see no need with text within the column being able to distinguish marine and terrestrial considerations.

Council opposes the request for additional notes (page 3 of your letter) explaining the attributes table is lacking a consideration of matauranga Māori. There is a lack of scope to include so broad a statement in the RPS and lack of clarity about what is required by way of remedy and potential impacts. As noted above, Council is not opposed to the inclusion of suitably qualified attributes which, if known, should be advised.

Council refutes the suggestion at the bottom of page three that natural character should be assessed in accordance with Iwi Resource Management Issues, Objectives, Policies and Methods. While (introductory) section 2.6 of the plan notes the importance of this alternative approach there is nothing here or elsewhere in the RPS requiring or even suggesting a requirement to undertake assessments in this way. My and Rebecca Ryder's evidence do not discount the inclusion of such methods and, in principle, we see a merging of approaches bringing long-term benefits. However, this should be seen in the context of an NZGPS requirement to reliably and accurately position natural character on somewhere on a spectrum from poor to outstanding.

(c): Council is unable to support through resolution of this appeal developing a matauranga Māori protocol. The RPS contains (*Appendix F – Criteria for assessing matters of national importance in the Bay of Plenty region, Sets 1 & 4*) methodologies for assessing Natural Character and the significance of Māori Cultural and Traditions. The Iwi Resource Management provisions of the RPS have been acknowledged as leading the way in these matters and, when read as a whole, provides much of what the Trust seeks. This appeal has required Council to move its viewpoint – informed in part by the RPS itself, but not so far as to require the development of the protocol you request.

Motiti Rōhe Moana Trust Appeal on Proposed RPS Variation 1. Response to Offer of Settlement

15 October 2014

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(d): Council does not support the establishment of a working group to commit to marine spatial planning within the context of the Regional Coastal Environment Plan and in formulating the forthcoming air plan. This matter is unrelated to the current appeal and in relation to marine spatial planning has been considered in the recent annual plan process.

James Low



**Senior Planner
for General Manager Strategy**

OFFICIAL**Wai 2391, #3.1.13
Wai 2393, #3.1.14****BEFORE THE WAITANGI TRIBUNAL
WELLINGTON****WAI 2391 & 2393****CONCERNING: THE TREATY OF WAITANGI ACT 1975****A N D: an application for urgent hearing by
Graeme Hoete, Umuhuri Matahaere,
Jacqueline Taro Haimona and Gletus
Maahu Paul****A N D: an application for an urgent hearing by
Eiaina Butler on behalf of Ngai Te Hapu
Incorporated Society**

MEMORANDUM OF COUNSEL FOR THE BAY OF PLENTY REGIONAL COUNCIL

RECEIVED

Waitangi Tribunal

28 June 2013Ministry of Justice
WELLINGTON**CooneyLeesMorgan**
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Partner: PH COONEY
Solicitor: RC ZAME

MEMORANDUM OF COUNSEL FOR THE BAY OF PLENTY REGIONAL COUNCIL

May it please the Tribunal:

1. We refer to the Memorandum-Directions of the Tribunal dated 19 June 2013¹ requiring counsel for the Bay of Plenty Regional Council ("Regional Council") to file submissions by Friday 28 June 2013 in response to the urgency applications².
2. The purpose of this Memorandum is to explain briefly the Regional Council's interest in the proceedings and to respond to the urgency applications and statements made by the Claimants³ regarding the Regional Council's actions.

The Regional Council

3. Local authorities are creatures of statute. They are created, governed and constrained by the legislation under which they operate. The Regional Council is a Body Corporate constituted under the Local Government Act 1974. Two principal statutes it operates under are the Local Government Act 2002 ("LGA 2002") and the Resource Management Act 1991 ("RMA"). It also exercises functions, duties and powers under a number of other statutes at a regional level. Its responsibilities under the RMA relate primarily to the integrated management of natural and physical resources within its region, including the coastal marine area out to the 12 nautical mile jurisdiction limit.
4. The Regional Council is the local authority having planning and resource management responsibility for Motiti Island and other offshore islands within its jurisdiction. The Minister of Local Government is the territorial authority having district planning responsibilities for Motiti Island, as it does not form part of the district for the territorial authorities in the area. As the Astrolaba Reef (Olall) is below the level of mean high water springs, it is not part of any territorial district.
5. The Crown does not represent the interests of the Regional Council in these proceedings. Under the Treaty of Waitangi Act 1975, local government is not considered an agent of the Crown. Local authorities are not a Treaty partner. The extent to which they are legally

¹ Wai 2391, #2.5.2; Wai 2393, #2.5.2

² Wai 2393, #1.1.1; Wai 2391, #1.1.1 and #3.1.1

³ Statement of Claim (Wai 2391 #1.1.1) and accompanying Memorandum of Counsel (Wai 2391, #3.1.1) and affidavit (Wai 2391, #A1), filed by Graham Hoete, Umuhuri Matehaere and Jacqueline Taro Haimona on behalf of themselves and Motiti Rohe Moana Trust and Maanu Paul on behalf of himself and Mataatua District Maori Council and the Claim filed by Elaine Butler on behalf of Ngai Te Hapu Incorporated Society (Wai 2393, #1.1.1). Wai 2391 and Wai 2393 parties are referred to together in this Memorandum as the "Claimants".

obliged and able to recognise the Treaty of Waitangi is enshrined in statute and case law.

The principles of the Treaty do not apply to local authorities in the same manner or to the same level as they do to the Crown as a Treaty partner.

*Principles are principle
Delegated authorities*

6. Certain statements and claims have been made in the documents filed on behalf of the Claimants regarding the Regional Council's conduct in relation to duties it exercises under various pieces of legislation, including the RMA, LGA 1974 and 2002 and the Marine and Coastal Area (Takutai Moana) Act 2011 ("MACA"). The Regional Council wishes to address those comments briefly in this memorandum but reserves the right to make further full submissions in response to any allegations or statements critical of its role in the management of resources in its region and the way it undertakes statutory processes, if and when the claims are heard by the Tribunal.

7. The Regional Council maintains that it has complied with its legal obligations to Maori in dealing with the Rena grounding to date under the legislation that governs the situation, primarily the RMA, LGA and Maritime Transport Act 1994 ("MTA"). Whether these statutory obligations fulfil the Crown's Treaty responsibilities to Maori is not a matter that the local authorities have any control over and is a matter for debate between the Crown and the Claimants.

8. With respect to these claims, the Regional Council wishes to raise two points:

(a) First, the manner by which the Regional Council manages resources within its region falls outside the scope of these proceedings which are limited to claims against the Crown; and

(b) Second (and in relation to the urgency applications in particular), there are currently processes underway (or likely to be triggered in the future) which provide specific opportunities for the claimants to be directly involved in the issues raised in their claims.

Confusion & minimisation of the Wai 2391 claims.

9. It appears from the claims that the overall objective of the Claimants is to be consulted in relation to the Rena's future and ultimately to have the wreck removed from Otaiti (Astrolabe Reef). The Regional Council submits that there are currently dual processes dealing with the Rena – first Maritime New Zealand has issued notices under the MTA requiring the wreck to be removed. However those notices do not affect the Rena Owners right to apply for resource consent under the RMA to leave all or part of the wreck in situ. If it does not make such an application (or consent is refused), the Regional Council understands that the MTA notices will need to be complied with.

10. The Rena Owner has been engaging extensively with parties (including Tangata Whenua) over the fate of the Rena. If it does make a resource consent application to leave the wreck in situ, RMA processes will be triggered and Tangata Whenua (including the Claimants) will have a full opportunity to submit and be heard on the application. The RMA requires recognition and consideration of Maori interests through sections 6, 7 and 8 RMA which cumulatively seek to protect matters of cultural and spiritual value. Together those sections enable Maori to challenge decision-makers across a wide spectrum of Maori values recognised in the RMA as being relevant to environmental management.
11. As the Claimants will have a full opportunity to be involved in the RMA process (and are currently already being consulted by the Rena Owner), the Regional Council does not consider the application for urgency to be justified in terms of the Tribunal's Practice Note.
What about consultation since 5.10.11 to now?

Response to statements made about the Regional Council's actions

12. Claimant WAI 2391 has raised several issues regarding the Regional Council's actions in response to the Rena grounding and its exercise of its statutory functions. The Council considers it may be helpful to the Tribunal to briefly explain the context and ongoing processes in relation to those issues, which may assist the Tribunal in its determination of the urgency applications. The issues raised with respect to the Regional Council can be summarised as follows:
- (a) Consultation by the Regional Council generally in relation to the Rena – allegations the Regional Council has failed to inform and consult with the Trust in its decisions⁴;
 - (b) Resource consents granted under urgency for containers following the grounding of Rena – statements that the Trust was "excluded" from the Regional Council's decision⁵;
 - (c) Reduction of exclusion zone around Rena by 2 nautical miles – lack of consultation with the Trust⁶;
 - (d) Variation 1 to the Proposed Regional Policy Statement ("Proposed RPS") – allegations of collusion between the Regional Council and the Rena Owner to downgrade the natural character classification of Mōtiti Island to "high natural character"⁷; and
 - (e) Delegation by Crown of its Treaty obligations to the Regional Council⁸.

⁴ Wai 2391, #1.1.1, paragraph 59, Wai 2391, #3.1.1, paragraphs 17 and 33-34

⁵ Wai 2391, #1.1.1, paragraphs 54-57

⁶ Wai 2391, #1.1.1, paragraph 58

⁷ Wai 2391, #1.1.1, paragraphs 22-24, Wai 2391 #3.1.1, paragraph 19

⁸ Wai 2391, #1.1.1, paragraph 60

Delegation by Crown of Treaty obligations to Regional Council

13. Dealing with the last issue first, as noted above, the Regional Council is not an agent of the Crown and it is incorrect to state that the Crown has delegated its Treaty obligations to local authorities, including the Regional Council. As stated above, the Regional Council is not a Treaty partner - it is a creature of statute and its duties and responsibilities to Tangata Whenua arise from provisions of the RMA and LGA, rather than being delegated from the Crown. In any event, the Regional Council denies allegations in the SOC that the Regional Council has breached its duties to Tangata Whenua. *Statutes are Acts of the Crown.*

The Regional Council's response to Rena, including consultation

14. Following the grounding of the Rena on 5 October 2011, the Regional Council has been part of a multi-agency response led by Maritime New Zealand. Under the MTA the oil spill response was declared Tier 3 (National level), meaning that Maritime New Zealand assumed responsibility for managing the response. Maritime New Zealand oversaw the monitoring and clean-up of oil from the wreck and mobilised the National Response Team. The salvage company and a container recovery company contracted by the Owner worked to remove oil from the vessel and containers and debris from the vessel, respectively. A large number of volunteers, the New Zealand Army and other trained responders spent days cleaning up oil from the beaches. As described further below, the Regional Council's Harbour Master set up an area closure surrounding the Rena for safety reasons due to the amount of containers and debris floating in the surrounding water.
15. *Steering Group chaired by GPPAC CEO*
The Regional Council is part of the Rena Recovery Governance Group (along with iwi, Government Ministries, Maritime New Zealand and the district councils (amongst others)) which works together to implement the Rena Long-Term Environmental Recovery Plan. The Recovery Plan was issued by the Ministry for the Environment in December 2011 and identified a number of work streams to address the key environmental issues arising from the Rena grounding. *No consultation or engagement with MEMP*
16. The Regional Council has been heavily involved in a number of those work streams, including monitoring clean-up work undertaken by contractors for the Owner, monitoring residual oil, undertaking contaminant analysis of sediment/sand and pore water and monitoring dune and estuarine vegetation against existing baseline data. The Regional Council has also been involved in providing an assessment of the environmental impacts on the shoreline to identify and prioritise key areas or habitats that would benefit from restoration works and the preparation of restoration plans for priority areas. *No reporting to MEMP*
17. The oil spill response has now been downgraded from a Tier 3 (National) response and the Regional Council is now managing the monitoring and future clean-up of any further oil spills

from the vessel and is working with the wreck removal and debris recovery contractors to ensure the risk of further oil spills is managed.

18. In performing its duties with respect to the Rena response and recovery ^{There needs to be} there has been no statutory obligation on the Regional Council to consult with Maori. As noted above, because of the size and complexity of the spill Maritime New Zealand was responsible for managing the response at a national level. Consultation with iwi in particular has occurred through the Iwi Liaison Team at Maritime New Zealand's Incident Command Centre.

Resource consents granted under urgency

19. Only one resource consent has been granted by the Regional Council in relation to the Rena. The application related to the discharge of contaminants (plant-based carbohydrate stock feed) from 5 containers on the Rena into the coastal marine area. The reason for the application was that the stock feed containers were blocking access to the holds beneath, which held containers with cargo listed as hazardous which were a priority for the salvage operation. The salvage company (Switzer) had exhausted all other options for removal of the stock feed containers (which were beyond the reach of the crane and too heavy to winch across the deck to a point where the crane could lift them) and deterioration of the wreck from weather impacts meant that the stability of the front section of the Rena at that stage was uncertain. For those reasons an urgent application was made to discharge the contents of the containers into the coastal marine area to enable the containers to be moved.

20. ^{What? Where is it? Not an application or consent file} Specialist advice to the Regional Council was that any material that could not be collected would be consumed by fish with no harmful effects. Council also sought advice from the ^{What body? iwi leaders?} body that had been set up by central government for liaison with iwi about Rena issues and was advised by the Iwi Liaison Officer that while Motiti Island iwi were not happy about the situation they understood the need for urgency in the consent process. The Regional Council determined that the effects of the activity were no more than minor and consequently the application was processed non-notified and granted on 26 January 2012. This was prior to the claimants making an application for customary marine title on 13 February 2012. As such, they were not required at that stage to be notified under s62 MACA.

F.S Act appln made in Jan 2010.

Reduction of Area Closure surrounding Rena

21. Following the grounding of the Rena, the Harbour Master closed access to an area of water surrounding the Rena. This was because the Harbour Master considered there was a danger to people in the area while the oil spill recovery was underway and also due to debris from the wreck. This area closure was effected in reliance on the Harbour Master's powers

Why do press releases refer to consultation with appropriate authorities?

7

under the Bay of Plenty Regional Navigational Safety Bylaw 2010. The Bylaw was made pursuant to the LGA 1974. There is no duty for the Harbour Master to consult with any parties when closing an area of water under the Bylaw due to safety concerns. Similarly, the Harbour Master can continually review the area closure, and adjust its boundaries and/or conditions as he sees fit, pursuant to that Bylaw. As the salvage and clean-up operation progressed and containers and other navigational hazards were removed, the Harbour Master considered that from a safety perspective, the area closure could be reduced to two nautical miles. Again, there is no duty on the Harbour Master to consult with any parties regarding adjustments to area closures. The decision is made purely on navigational safety grounds.

seek Wt recommendation for amendment to consult with TW. particularly where s62 might apply

Proposed RPS (Variation One appeals) and Possible Consent Application

Proposed RPS

22. The RPS is a high level planning document created under the RMA which lists the significant resource management issues for the region and contains policies and methods to address those issues. The Regional Council is required by s79 RMA to review its RPS every 10 years and in November 2010 it issued its Proposed RPS for public submissions. In December 2010 the Government issued the New Zealand Coastal Policy Statement 2010 ("NZCPS"), which required (amongst other things) an assessment of the natural character of the coastal environment by mapping or otherwise identifying at least areas of high natural character. The Regional Council is required to give effect to the NZCPS in its planning documents including the Proposed RPS. including matauranga Maori

23. Consequently, the Regional Council promulgated a variation to the Proposed RPS, known as Variation One (Coastal Variation) to better reflect the provisions of the new NZCPS. This was publicly notified for submissions on 26 March 2012. Part of Variation One included a natural character assessment of the entire harbour and identified and mapped areas as being of outstanding, high and very high natural character. Motiti Island and a surrounding area (including Otaiti (Astrolabe Reef)) was shown in the notified version of the maps as being of 'outstanding' natural character.

24. A Hearing Committee appointed by the Regional Council heard 52 submissions and 25 further submissions on Variation One on the 5th and 6th November 2012. This included a submission and further submission from the Trust. The Hearing Committee (as required by the RMA) considered all matters raised in the submissions and further submissions and released its decision on Variation One on 14 March 2013. The Regional Council (based on specialist advice) accepted submissions that the natural character for Motiti Island (and surrounding area, including Astrolabe Reef) must be assessed as it is currently found (i.e. post Rena grounding). The Regional Council consequently adjusted the natural character

Rejected all internet submissions

classification of Motiti Island to that of 'high' natural character. For Otaiti (Astrolabe Reef), the Regional Council recognised that the Rena shipwreck had occurred and deferred the natural character assessment for the reef pending restoration of the area as part of the wreck remediation programme. The reef has a default natural character value of 'high' under the policies of Variation One, as it forms part of the open coastal waters in the region.

25. The Trust has appealed the relevant provisions of Variation One to the Environment Court – a process which is set out in Schedule 1 RMA. The Environment Court issued directions in relation to that appeal (and others) at a prehearing conference on 18 June 2013, requiring the Rena Owner to advise the Court by the end of November 2013 whether it will be applying for resource consent to leave the wreck in situ.
26. If the intention is to apply for consent, the Regional Council understands that it is likely the applicant will apply for a direct referral of the consent application to the Environment Court (meaning the matter will bypass the Regional Council hearings stage and be considered directly by the Environment Court). The Environment Court Judge managing the Variation One appeals has indicated that those appeals (dealing with the natural character status of Astrolabe Reef) will be joined to the resource consent application referral, so that all the matters can be heard together.
27. The Claimants attended the prehearing conference on 18 June relating to this matter and are consequently aware that they will have a full opportunity to exercise their rights under the RMA in relation to both the Variation One landscape/natural character appeal and any future resource consent application for the wreck that may be made by the Rena Owner. The Regional Council understands that the Rena Owner has already been engaging extensively with interested parties, including Tangata Whenua (and more specifically the Claimants) as to whether the wreck is removed or not.

Possible Resource Consent Application

28. The Regional Council wishes to briefly note that the fate of the Rena wreck is proceeding down two pathways:
- (a) As described in the Crown's submissions, Maritime New Zealand issued notices under the MTA requiring removal of the wreck. However, those notices do not negate the ability of the Rena Owner to apply under the RMA to leave the wreck in situ. If no resource consent application is forthcoming to leave the wreck in situ (or consent is refused), then the Regional Council understands the Owner will have to comply with the MTA notices;

(b) If the Owner decides to make a resource consent application to leave the wreck in situ, the provisions of the RMA will apply. This process is briefly described below.

but not BOP RC engaging with MENT

29. As noted above, the Rena Owner has already been engaging extensively with parties as to whether the wreck is removed or not. The Environment Court has directed, as part of the Variation One RPS appeals, the Owner to advise the Court by the end of November 2013 as to whether it will be applying for resource consent to leave the wreck in situ.

30. Currently the Owner has engaged experts to undertake environmental effects assessments - including a cultural impact assessment being undertaken by Dr Des Kahotea. Council has also engaged experts to peer review those reports (including the cultural impact assessment), and if a consent is applied for Council will instruct its experts to carry out their own independent environmental effects assessment.

*Who?
'front consulted
MENT
as req'd*

by BOP RC practice notes s. 562. Seek direction of WT

31. If a resource consent application is lodged with the Regional Council, all Tangata Whenua will have the opportunity to submit and be heard (by either the Regional Council or the Environment Court depending on the process that is followed under the RMA).

Conclusion

32. There are RMA processes which are currently underway (or may be triggered if an application is made by the Owner) which will not only afford the Claimants with a full opportunity to be heard by the Court on matters relating to the Rena, but Part 2 RMA (sections 6, 7 and 8, which have been judicially described as the 'cornerstone' of the Act) requires specific recognition and consideration of Maori cultural and spiritual values. If an application is not made under the RMA (or consent is not granted), then the Regional Council understands the MTA notices will need to be complied with and the remainder of the vessel removed.

33. The Regional Council submits therefore, that there are other remedies available to the Claimants which are currently underway, and which it would be reasonable for the Claimants to exercise in the current circumstances.

*Has only looked a narrow
Rena & RMA issue - not
under MTA - MTA/BOPRC
issues & engagement.*

Dated this 28th day of June 2013.


P H Cooney

Counsel for the Bay of Plenty Regional Council

Request to BOPRC Chairman Doug Leeder

*Chairman Leeder <Douglas.Leeder@boprc.govt.nz>

21
Jul

to me, Kelly, Matata

Morena Hugh

Just acknowledging your request and will ask staff to action.

Regards Doug Leeder

Sent from my iPhone

On 21/07/2016, at 6:56 AM, Hugh Savers <hugh.savers01@gmail.com> wrote:

Doug Leeder
Chairman, Bay of Plenty Regional Council

Kia ora Doug

1. I have been asked to seek explanation of your Council's **response** to the Matata Wastewater Scheme court proceedings - Decision No [2015] NZEnvC 90 dated 12 May 2015.

Please disclose

- a. what **lessons** have been learned by Bay of Plenty Regional Council;
- b. what **responses** have been made and what **changes** have been implemented to avoid repetition of errors and failures;
- c. what **costs** were incurred by BOPRC in
 - i. processing the Matata WWTP resource consents;
 - ii. participation in the Commissioners hearing;
 - iii. participation in the Environment Court appeal proceedings.

2. I am informed by Matata Papakainga Komiti Inc that BOPRC has appropriated their Oniāo identity and heritage and used this to promote a conference on mauri and te mana o te wāi - key themes of the *Matata* Decision (pp94-104) - which is promoted as a "*koha to the community*".

Please advise

- a. what consultation was undertaken with the Komiti?
- b. what is the cost of this 'koha' to the community?

3. At the BOPRC Council hearing of 2014-15 Annual Plan submissions which you chaired on 8 May 2014 you informed me that Council fully funds consultation with Maori.

Please disclose BOPRC expenditure on consultation with Maori since that date, ie 2014-15 and 2015-16 financial years.

4. I have endeavoured to find Environment Court decisions on the BOPRC website.

Please advise where BOPRC court cases are publicly available?

Please disclose how many court proceedings BOPRC has participated in involving Maori parties?

Nga mihi

Hugh Sayers

Project Manager

For
Matata Papakainga Komiti Inc

Your Ref:
Our Ref: A2399349



28 July 2016

Mr H Sayers
c/- hugh.sayers01@gmail.com

Tēna koe Mr Sayers

LGOIMA request dated 21 July 2016

I refer to your email to Chairman Doug Leeder dated 21 July 2016.

Staff have assessed and processed part of your request under the Local Government Official Information and Meetings Act (LGOIMA).

Please note that under the LGOIMA we are able to:

- Provide the first hour of time free
- Recover any other actual costs
- Time in excess of an hour is charged at \$38.00 per half hour (30 minutes)
- Request a deposit for costs in advance

Information gathered in first hour (free of charge)

The following information was gathered within a two hour time frame timeframe and is free of charge. This information relates to:

1. Questions in relation to the name of the Te Ōnīao conference
2. Some questions in relation to the Matatā Wastewater Treatment Plant consent

Name of Te Ōnīao

The name of the conference (Te Ōnīao) is not in reference to Ōnīao Marae in Matatā.

Te O-nīao is a conceptual reference chosen to depict the relationship between various waka including Tainui, Mataatua, Takitimu and Te Arawa waka. 'Nīao' is a word used to describe the gunwale on a waka which has many functions such as keeping the waka water tight and afloat. In the context of the conference, this represents the 'binding' or significance of close kin relationships (eg waka and iwi). It reflects the historical connection we have in the Bay of Plenty to our relations in the Waikato and the collaboration between two regional Councils.

This meaning was clearly articulated at the opening of the Te Ōnīao conference on Thursday 21 July 2016 to approximately 200 delegates.

Objective ID: A2399349

28 July 2016

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The cost or 'koha' to the community:

A budget of \$40,000 was approved in the Bay of Plenty Regional Council Long Term and Annual Plan 2016/17 budgets.

BOPRC ROLE IN THE MATATĀ WASTEWATER TREATMENT PLANT:**What lessons have been learnt?**

We do not hold any information on lessons learned. However you may recall this matter being discussed at a Komiti Māori hui on 25 February 2015 at Rangitihī Marae, Matatā. A report was prepared and discussed in length at the following Komiti Māori hui held at Tapuaeharuru Marae, Rotoiti on 23 April 2016. The excerpt below is from that agenda report (pg 53):

"The Matatā Wastewater Treatment Plant

Council does not specify a particular wastewater treatment system or disposal site when deciding to allocate funds to support reticulation. This is because at the time the funds need to be committed as part of the long term plan process details have not been finalised through the hearing or Environment Court process. Council also has a potential conflict of interest if it were to retain approval requirements as it also fulfils that role of consent authority for discharge consents to the system.

The consultation carried out by the applicant included hui with iwi groups as well as public communications through written forums and community meetings. The application went through a public notification process, with in excess of 200 property owners within proximity of the WWTP site being directly notified. Further, during the progressing of the application, the applicant continued to work with iwi groups and other submitters to resolve issues, resulting in a number of changes to proposed conditions and the provision of specialist archaeological investigations.

Owners of Matatā Lot 6A had appointed trustees to act on their behalf, who in turn had signed an agreement with Whakatāne District Council for use of the proposed site. The objection by a small number of owners to the decision of the trustees was taken to the Maori Land Court. This objection was rejected and the court reinforced the right of duly elected trustees to make decisions of this nature on behalf of the owners. This point was further raised at the environment court and rejected by Judge Smith in that neither the applicant nor Council could be expected to notify each of the hundreds of owners when there were elected trustees empowered to make decisions on their behalf.

Cultural impact assessments were prepared by the appropriate iwi groups and paid for by the applicant which is reasonable and appropriate".

Costs incurred by BOPRC in processing the Matatā WWTP resource consents;

\$40,823.15. These costs are recovered from the applicant, Whakatāne District Council.

Participation in the Environment Court appeal proceedings:

Approximately \$162,500

28 July 2016

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Advise where BOPRC court cases are publicly available:

We do not post notice of Court decisions, as they are not our decisions. Decisions by the Court can be obtained from the Environment Court - <http://environmentcourt.govt.nz/decisions-publications/>

How many court proceedings BOPRC has participated in involving Maori parties?

Council does not hold these records. Researching this would be time consuming and charged out at a rate of \$38.00 per half hour.

Question 3 of your request

Advice from financial staff is that this request would require an extensive amount of research such as collating info on every public meeting/hearings/discussion; determining which portion of that cost to apportion to Māori, determining the total cost of every public meeting, hearing, and discussion that involved Māori.

It is likely that this work would take at least two days to scope could take two weeks to deliver (around 56 hours). As these costs would be charged to you, we would like to discuss your question to determine if there is a better way to proceed.

Summary

The research involved in LGOIMA requests can be time consuming and costly. I would like to reiterate that staff are more than happy to meet with you to discuss your concerns. We have an open door policy and maintain our commitment to this approach.

However, if you wish to proceed we would request a 50% deposit prior to research commencing.

If you have any queries or wish to arrange a meeting, please contact Ms Fiona McTavish, General Manager Strategy and Science (Fiona.McTavish@boprc.govt.nz) or Kataraina O'Brien, Strategic Engagement Manager (Kataraina.O'Brien@boprc.govt.nz).

Ngā Mihi

Fiona McTavish
General Manager Strategy and Science

Copy to: Doug Leader, Chair Bay of Regional Council