

BEFORE THE ENVIRONMENT COURT  
I MUA I TE KOOTI TAIAO O AOTEAROA

Decision No. [2020] NZEnvC 151

IN THE MATTER of the Resource Management Act 1991  
AND of an application for Waiver under section 281 of the Act  
AND of an appeal under clause 14 of the Schedule 1 to the Act  
BETWEEN ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED  
(ENV-2019-AKL-127)  
Appellant  
AND BAY OF ISLANDS MARITIME PARK INCORPORATED  
(ENV-2019-AKL-117)  
Appellant  
AND NORTHLAND REGIONAL COUNCIL  
Respondent  
AND NGĀTIWAI TRUST BOARD (Applicant for Waiver under s 274 of the Act) (**Ngātiwai**)  
AND MINISTER OF CONSERVATION (Applicant for Waiver under s 274 of the Act) (**MOC**)  
AND TE RŪNANGA A IWI O NGĀPUHI (Applicant for Waiver under s 274 of the Act) (**Te Rūnanga a Iwi**)  
AND TE OHU KAI MOANA TRUSTEE LIMITED (Applicant for Waiver under s 274 of the Act) (**Te Ohu Kai Moana**)

Court: J A Smith, Environment Judge sitting alone pursuant to s279 of the Act.

Hearing: 8<sup>th</sup> September 2020

ROYAL FOREST AND BIRD PROTECTION SOCIETY OF NZ INC & ORS v NORTHLAND REGIONAL COUNCIL (DECISION 20200914)



Submissions: H MacDonald for Ngātiwai Trust Board  
No submissions for Te Uri o Hikihiki Hapū

Date of Decision: **15 SEP 2020**

Date of Issue: **15 SEP 2020**

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**DECISION OF THE ENVIRONMENT COURT FOR WAIVER  
AND DIRECTIONS ON OTHER WAIVER APPLICATIONS**

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A: Waiver is granted for Ngātiwai Trust Board to join both sets of proceedings as a s 274 Party.

B: This is subject to the Ngātiwai Trust Board being bound by the agreements reached at mediation. Given that s 274 Party was present at that meeting they were already parties to those outcomes.

C: This Waiver was originally opposed by Te Uri o Hikihiki Hapū and the matter was set down for a hearing. Te Uri o Hikihiki Hapū have now advised that they do not oppose the application.

D: On this basis, it seems unlikely that costs will be an issue. The Court reserves costs for any application for costs within 10 working days and reply by Te Uri o Hikihiki Hapū within a further 10 working days and any final reply 5 days thereafter. Such an application is not encouraged.

**REASONS**

**Introduction**

[1] These Appeals relate to matters concerning the Northland Regional Council Coastal Plan Provisions. One aspect of the matters on Appeal before the Court relates to the potential for some form of Marine Protection in parts of the coastal waters. The matter was subject to agreement by all parties to proceed to mediation and this mediation occurred in the last few months.

[2] The Applicant, Ngātiwai filed an Application for Waiver of late filing of a s 274 Notice prior to the mediation date. I directed that they should be able to attend the



mediation notwithstanding that the Application for their Joinder was disputed. Ngātiwai did attend that mediation and I understand the meeting was constructive.

### **Mediation**

[3] As a result, the parties have agreed steps that need to be undertaken and as I understand it Ngātiwai is also a party to those agreed steps.

[4] The Court set the disputed Waiver matter down for hearing at the next sitting in Whangarei on **23<sup>rd</sup> September 2020**.

[5] In the meantime, several additional parties have filed applications for Joinder (including Minister of Conservation, Te Rūnanga a Iwi o Ngāpuhi and Te Ohu Kai Moana Trustee Limited).

### **Waiver**

[6] A telephone conference was held on the 8<sup>th</sup> September 2020 involving all parties and the applicants for Waiver. During that meeting it was indicated that discussions would take place to see if the s 274 Applicants could join on the basis that they accepted the steps already undertaken by the parties in mediation and could thereafter participate as matters proceeded.

[7] Ms Gepp for Maritime Park offered to advance discussions with the Parties. Ms Gepp subsequently reported to the Court that the parties appear to have agreed on a process for additional parties. At that stage she was unable to confirm the position in respect of the Ngātiwai Trust Board Waiver.

[8] Subsequently, the Ngātiwai Trust Board have filed submissions and affidavits in support of their application which set out the basis of their involvement in marine activities. This sets out their tribal and cultural interest and use of the area but also their involvement in many proceedings and plan involvement over many decades.

[9] The Waiver dispute appears to be an issue of mandate in respect to fisheries matters and it is clear from the affidavits that Ngātiwai Trust Board does not purport to



hold a mandate from Te Uri o Hikihiki Hāpu in this respect notwithstanding that Hāpu is part of the wider Ngātiwai Iwi.

### Evaluation

[10] There has been no opposition affidavit filed and the Te Uri o Hikihiki Hāpu have now confirmed to the Registrar that they no longer oppose the application. Accordingly, I deal with it on the basis of the uncontested evidence before me.

[11] It is abundantly clear that Ngātiwai Trust Board has an interest in this area. I accept immediately that it is non-exclusive, and it is not for this Court to establish the issues of Te Mana o Te Wai. Ngatiwai have a wide interest in the coastal area which they show in the **attached Plan marked A**.

[12] As with the Te Uri o Hikihiki Hapū there are likely to be other Hapū and Iwi with interests within the same area. For the Environment Court, the issue is the relationship of the group with the particular areas of interest (in this case, the coastal marine area).

[13] On the basis of the evidence before me, I am satisfied that the Ngātiwai Trust Board has interest in this matter greater than the public generally. Ngātiwai Trust Board accept themselves that they do not speak for Te Uri o Hikihiki Hapū in this matter and accordingly on that basis there is no particular conflict with having both parties involved in the proceedings.

[14] From the Courts perspective, we see the benefit of having the various interests of Iwi and Hapū involved in important decisions around the coastal marine area and acknowledge the clear connection of both groups with the area in question in this case.

[15] We note too that the other groups Te Ohu Kai Moana Trustee Limited and Te Runanga a Iwi o Ngapuhi are being dealt with separately. I understand agreement has been reached as to Waiver and their Joinder and the basis for that is to be finalised by Memorandum filed by **22<sup>nd</sup> September 2020**.

[16] We note also that the Minister of Conservation has made an Application for waiver and I understand that is to be dealt with on the same basis.



## Conclusion

[17] Overall, the Ngatiwai Trust Board is joined as a s 274 Party to these proceedings on the basis that it accepts the matters reached at mediation to date.

[18] That the additional parties, the Minister of Conservation, Te Ohu Kai Moana Trustee Limited, Te Runanga a Iwi o Ngapuhi are intended to join with no opposition on the basis that they too accept the steps of mediation to date. Those matters are to be finalised by Memorandum filed by **22<sup>nd</sup> September 2020**.

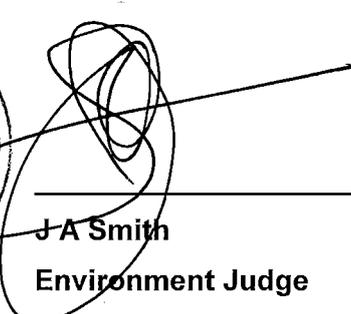
[19] Given that there are no further disputes as to Joinder as I understand it, I vacate the hearing for **23<sup>rd</sup> September 2020** which was to deal with the Ngātiwai Trust Board Waiver Application only.

[20] In the event that the other Waiver matters are not resolved as anticipated I will hold a further telephone conference to decide how these matters can be dealt with either on the papers or by Audio Visual Link. I do not understand that to be a likely eventuality given the confirmation to the Registrar.

[21] Finally, I thank Ms Gepp for her assistance in resolving the additional applications and contacting Te Uri o Hikihiki Hapū. I also understand the parties intend to file a further report in due course.

For the court:



  
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**J A Smith**  
**Environment Judge**

"A"

# Map of Ngāti Wai Rohe



This is the exhibit marked " A " referred to in the Affidavit of Aperhama Kerapeh-Edwards sworn at Whangarei this 28<sup>th</sup> day of August 20 20 before me:

A Solicitor (Deputy Registrar) of the High Court of New Zealand  
C Browne  
Deputy Registrar  
Whangarei District/High Court



### LEGEND

 Ngāti Wai Rohe

This map is provided for informational purposes only. Any person wishing to rely on this map should consult the primary data source to ascertain the suitability and reliability of the information.

Base Map : LINZ Topo 50  
Date : 04 October 2013