

**BEFORE THE ENVIRONMENT
COURT AUCKLAND REGISTRY**

CONCERNING

Appeals under clause 14 of the
First Schedule of the Resource
Management Act 1991

BETWEEN

**NGATI MAKINO HERITAGE
TRUST**

(ENV-2015-AKL-000140)

AND

**NGATI RANGINUI IWI
INCORPORATED SOCIETY**

(ENV-2015-AKL-000141)

Appellants

AND

**BAY OF PLENTY REGIONAL
COUNCIL**

Respondent

AND

**VARIOUS INTERESTED
PARTIES**

Section 274 Parties

**Submissions for the Ngati Makino Heritage Trust and
Ngati Ranginui Iwi Incorporated Society**

Dated this 6th day of December 2017



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May it Please the Court:

1. These submissions address the outstanding matters raised by the Court in the interim decision on the Iwi Resource Management Topic (Iwi RM Decision)¹;
2. As addressed before this Court, the appeals, though focussed on different geographical areas, broadly sought to increased provision and protection within the pCREP for the respective iwi through the implementation of methods that would provide appropriate mechanisms for the management, maintenance and protection of iwi Maori and their coastal taonga.²

Outstanding Issues

ASVC 7

The Respondents Proposal

3. The Appellants remain concerned that the amendments to ASCV 7 still fall short of recognising and providing for the Ngati Makino relationship to their coastal tāonga and that the proposed provisions have the potential to place them in competition with other iwi and/or hapu as consensus is sought in the description of attributes and values.

The Description of Cultural Attributes and Values

4. In this sense, it should be noted that the evidence presented in the IRM hearing is Ngati Makino korero tuku iho, *not* korero tuku iho of Te Arawa. The purpose of this evidence was to demonstrate to the Court the Ngati Makino connection to an identified area of cultural significance and value.
5. This is not to suggest that others of Te Arawa do not connect to the area, however, those connections manifest for different reasons. It was never the intention of Ngati Makino to impose those connections onto others or to force their interpretation of what the relationship should be.

¹ 2017] NZEnvC p72

² See Ngati Makino Heritage Trust Appeal Notice, p11. Also, see NZCPS Policy 2(f)(ii)

6. It is not appropriate for them to determine attributes for others and conversely, for other tāngata whenua groups to determine those attributes for them.
7. It is within this context that real concerns remain relating to the efforts of others to refine ASCV 7. It is for those reasons that an overlapping ASCV was sought.
8. Such a paradigm risks the manipulation of mātauranga to fit within the plan that balances conflicts by either choosing a winner or averaging the outcomes between the parties. It is submitted that neither of the outcomes are desirable.

Parties Comments

9. It is noted that Ngati Whakaue ki Maketu Incorporated Society have suggested changes and refinements to Schedule 6 Descriptions which are not subject to an appeal. The Respondent has indicated they have no particular views on the matter.
10. It is the appellant's view that it is not helpful for the Respondent to take a neutral position on changes and refinements to matters not subject to an appeal. This is particularly so when Ngati Makino are being told by the Respondent that changes to the same Schedule would raise scope issues as the Appeal does not relate to Schedule 6.
11. It is against this backdrop that the Appellants note the rather selective way in which issues of scope are raised by the Respondent in this proceeding to silence disagreement within the process.

PERMITTED ACTIVITY RULES

Preliminary Issue: Scope

12. Issues relating to scope continue to be raised by the Respondent, however, this was, of course, addressed in opening submissions for the appellants during the IRM hearing.
13. While it is not the intention of Counsel to re-state those propositions it does once again seem necessary to highlight that the appeal did

traverse deficiencies relating to activity-based rules that permeated the Plan as a whole.

14. In this regard, the assertions that have been made by the Respondent and s.274³ parties relating to lack of scope are rejected.
15. The Court has concluded that a "*rule in relation to permitted activities could provide for the relationship of Māori recognised under the plans and policy statements, and the purpose of the Act would be met as a practical short-term outcome to resolving the issues raised in the appeal*".⁴
16. Concerns raised regarding the enforceability of the proposed standards. Counsel submit that this is the exact issue that the appellants were faced with in regards to the application of attributes relating to ASCV 7.
17. The submission highlights an inconsistency of approach which sees the Respondent attempt to differentiate between cultural and hapu interests for the purposes of determining activity status for the sake of certainty, while advocating for a broad brush for the purposes of defining and describing the character and nature of an ASCV.
18. The Appellant agrees that "*it is not considered reasonable to expect a person undertaking the types of activities permitted under the rules to undertake an assessment of potential effects on intangible aspects such as mauri or relationships of Maori with a wider area*".⁵
19. This lack of certainty is the very concern that has been raised by the Appellants from the outset. This highlights, however, that the connection between Māori and their tāonga is too hard and therefore impractical to provide for.
20. It is therefore unsurprising that the Appellants remain trepidatious and seek to have cultural attributes and spatial areas identified with urgency.

³ PowerCo Limited, Port of Tauranga Limited, Motiti Avocadoes Limited, Tauranga City Council

⁴ [2017] NZEnvC 072 at p.23

⁵ Respondent Memoranda dated 21 August 2017 Paragraph 41

OUTSTANDING ISSUES

21. The Respondent provided a summary to the Court addressing matters still to be resolved at the upcoming hearing on the Marine Spatial Planning topic including issues that were subject of the IRM hearing in January 2017 and need to be determined in the final decision issued on that topic.

NATURAL HERITAGE PROVISIONS

22. The Appellants are concerned there remains a gap in the interface between the Natural Heritage and Iwi Resource Management issues.
23. When the Appellants participated in the Natural Heritage hearing, their evidence on Natural Heritage appeal provisions were presented. Evidence presented at the IRM hearing largely dealt with IW provisions and an artificial separation has permeated.
24. The Appellants consider that IRM decision did not address the substantive overlap within the appeal points of Ngati Makino. This view was generally supported by the Respondent when they filed a memorandum dated 13th July 2017 stating that the interim decision on Natural Heritage provisions largely dealt with Forest & Bird's appeal on Policies NH1, NH5 and NH11.
25. It should be noted that the Ngati Makino NH appeal relief was not limited to Policies NH 1, NH5 or NH 11.
26. When the interim decision on Natural Heritage was issued, the Court had not released a decision on the IRM topic. The Court had earlier recognised the overlaps that existed between the NH and IRM matters under appeal and that potentially the IRM issues might be better settled by way of consequential amendments to the NH provisions or vice versa.
27. In light of the appeal by Forest & Bird to the High Court in respect of Policies NH1, NH5, NH11 and Rule SO10 as set out in the NH interim decision, the appellant's supports the position of Forest & Bird recorded in their memorandum dated 15th September 2017.

28. Rather than properly address the NH appeal relief, it seems that the Respondent has sought to limit Ngati Makino NH appeal relief to Policies NH1, NH5 and NH 11.
29. In this regard, particular attention is drawn to proposed Policy NH 4(d) which seeks an avoidance of impact upon areas of particular significance that might be identified within any particular ASCV.

IWI RESOURCE MANAGEMENT

30. In terms of the outstanding iwi resource management issues, many were covered within spatial planning hearing and those are relevant. In particular, issues pertaining to specific relief that provides more detailed architecture and guidance for regional and local levels have not been traversed, indeed, they were to some extent avoided within the IRM hearing.
31. The divergences, probably rest with where those might sit and increasing the potential for a process to determine how they might be included through method 19AA.
32. As has been traversed within the hearing relating to Spatial Planning issues, the appellants seek a more collaborative approach which sees the development of such mechanisms between Council and Tangata Whenua:

19AA Council will collaborate with tangata whenua to progress the establishment of additional spatial mechanisms for the coastal marine area when a proposal is submitted that will:

- i Support the maintenance of cultural practices associated with the coast
- ii. Support the revitalisation of coastal cultural practices
- iii. Support the maintenance and restoration of taonga species and habitats
- iv. Support the maintenance and restoration of cultural seascapes features

v. Support the revitalisation and transmission of matauranga
Maori

vi. Properly plan for future cultural opportunities

vii. Allocate areas of coastal space

33. While the different wording of the method cannot guarantee that the spatial mechanisms are developed, they nevertheless provide a backdrop of understanding when the plan is being implemented throughout its lifecycle, signalling a desire to work in partnership.
34. The approach also seems to find resonance within the NZCPS Policy 2, particularly subpolicy 2(g).
35. It is important to note that such a mechanism, in itself, is largely ineffective if the only things that can be developed a ASCV's as there is little if any protection around these areas.
36. At the moment it is submitted that the plan provides protection for matters that are usually related to culture, but not for the culture itself. This highlights the desire to have the reference added to NH 4 including the protection of:

Areas of particular importance or significance to tāngata
whenua identified within Areas of Significant Cultural Value.



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