

**IN THE ENVIRONMENT COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

**I TE KŌTI TAIAO O AOTEAROA
TĀMAKI MAKAURAU ROHE**

IN THE MATTER of the Resource Management Act 1991

AND of an appeal under clause 14 of Schedule 1 of the Act

BETWEEN **ROYAL FOREST AND BIRD PROTECTION SOCIETY
OF NEW ZEALAND**

BAY OF ISLANDS MARITIME PARK INCORPORATED

Appellants

AND **NORTHLAND REGIONAL COUNCIL**

Respondent

JAMES HENRY GRIFFIN EVIDENCE IN CHIEF

PLANNING

TOPIC 14: MARINE PROTECTED AREAS

16 APRIL 2021 (updated 22 June 2021)

Respondent's Solicitor
PO Box 2401 AUCKLAND 1140
Tel +64 9 300 2600
Fax +64 9 300 2609

Solicitor: M Doesburg
(mike.doesburg@wynnwilliams.co.nz)

WYNNWILLIAMS

Introduction, qualifications, and experience

1. My name is James Henry Griffin. I hold diplomas in both Environmental Analysis and Monitoring (Farnborough College of Technology, UK), and Conservation and Environmental Management (Unitec Institute of Technology).
2. I have held full professional membership of the New Zealand Planning Institute since 2007. Lapsed UK memberships include full membership of the Institution of Environmental Sciences and associate membership of the Royal Town Planning Institute.
3. I work as a Policy Specialist for the Northland Regional Council (**Council**). I started in my current role of Policy Specialist in April 2019 and had previously held the role of Policy Analyst for the Council since October 2012 and Consents Officer since August 2010. I have worked primarily on policy development for matters involving biodiversity, including mangrove management, marine pests, significant ecological areas, wetlands, damming and diversion and activities in the beds of lakes and rivers. I have been the lead for these matters with regards to the Proposed Regional Plan for Northland (Proposed Plan) since April 2014, including authoring the associated section 32 reports and section 42A reports.
4. I also worked on the Regional Policy Statement policy development on water quantity and biodiversity matters, including Appendix 5 significance criteria.
5. Prior to commencing my role at the Council, between July 2007 and July 2010, I held minerals and waste planning positions in Rutland and Northamptonshire either self-employed, as a consultant or under contract for Rutland County Council, GP Planning Ltd or Northamptonshire County Council. I have worked as a consent officer for Bay of Plenty Regional Council between 2004 and 2007, compliance officer for Auckland City Council between 2000 and 2004, and in the UK various project management positions between 1989 and 1998.

Code of conduct

6. I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014 and agree to comply with it. The contents of this statement are within my area of expertise. I have not omitted to

consider material facts known to me that might alter or detract from the opinions expressed in this statement.

7. Although I am employed by the Council, I am conscious that in giving evidence in an expert capacity that my overriding duty is to the Environment Court.

Scope of evidence

8. I have read the evidence in chief filed on behalf of:
- a. Bay of Islands Maritime Park Incorporated (**BIOMP**), Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest and Bird**) and the hapū of Ngāti Kuta ki Te Rawhiti (**Ngāti Kuta**) prepared by:
 - i. Mr Peter Reaburn (planning);
 - ii. Dr Vicky Froude (natural character and ecology);
 - iii. Dr Nicholas Shears (ecology);
 - iv. Dr Mark Morrison (ecology);
 - v. Dr Rebecca Stirnemann (ecology);
 - vi. Dr Timothy Denne (economics);
 - vii. Mr Matutaera Te Nana Clendon, Mr Robert Sydney Willoughby and Mr George Frederick Riley (on behalf of themselves and Ngāti Kuta); and
 - viii. Mr Jeroen Jongejans, Ms Julia Riddle, Mr Craig Johnston (dive tourism business owners).
 - b. The hapū Te Uri o Hikihiki (Te Uri o Hikihiki) prepared by:
 - i. Dr Mark Bellingham (planning and ecology);
 - ii. Mr Vince Kerr (ecology);
 - iii. Ms Diane Lucas (landscape);
 - iv. Mr Carmen Hetaraka (cultural); and
 - v. Ms Vania Keefe (cultural).

9. This statement responds to the evidence above and is structured as follows:
- (a) Executive summary;
 - (b) Background to the Proposed Regional Plan for Northland (**Proposed Plan**) relevant to the proposals;
 - (c) Planning analysis;
 - (d) Assessment of the proposals, being:
 - (i) Te Hā o Tangaroa Protection Areas Rakaumangamanga-Ipipiri and objectives, policies and rules proposed by Royal Forest and Bird Protection Society of New Zealand (**Forest and Bird**), Bay of Islands Maritime Park Incorporated (**BOI Maritime Park**) and Ngati Kuta ki te Rawhiti hapū (**Ngati Kuta**); and
 - (ii) Te Mana o Tangaroa Protection Areas and objectives, policies and rules proposed by Te Uri o Hihikihiki hapū (**Te Uri o Hihikihiki**).
 - (e) Response to Dr Mark Bellingham's evidence; and
 - (f) Conclusion.

Executive summary

10. The relevant planning framework, including the New Zealand Coastal Policy Statement (**NZCPS**), Regional Policy Statement for Northland (**RPS**), Proposed Regional Plan for Northland (**Proposed Plan**) and iwi and hapū management plans direct that adverse effects on significant indigenous biodiversity in particular must be avoided. The planning framework also directs that cultural values, natural character, natural features and landscapes must be protected (to the extent dependent on the values of those areas).
11. The evidence of the proponents for marine protected area controls and the evidence of Dr Phil Ross demonstrate that there is a real risk of adverse effects on the important values of Northland's environment from fishing activities. I consider that this is a resource management issue that needs to be managed.

12. In my opinion, the proposals, their objectives and their provisions are necessary to address this issue and are the most appropriate way to achieve the purpose of the Act.
13. Subject to comments I make on the drafting of the proposals, my opinion is that the proposals should be adopted in the Proposed Plan.

Background

14. This section provides a summary of the approach taken to marine and benthic biodiversity in the Operative Regional Coastal Plan (**Coastal Plan**) and the Proposed Plan. It then summarises the progress of the proposals from submissions on the Proposed Plan to the appeals before the Court.

The Operative Regional Coastal Plan

15. The Coastal Plan was prepared prior to the New Zealand Coastal Policy Statement 2010. It includes policies and methods targeted and ensuring that when processing coastal permit applications, the effects of the proposed activity on commercial, recreational and customary fisheries, including taiapure and maataitai reserves are considered. For example, Policy 35.5(2) provides:¹

When processing coastal permit applications, to consider the effects of the proposed activity on commercial, recreational and customary fisheries, including taiapure and maataitai reserves.

16. In terms of marine protected areas, the Coastal Plan identifies methods such as seeking to promote the establishment of marine reserves² and encourage communities to participate in the active protection of the importance conservation values.³ It also seeks to assist tangata whenua who are in the process of applying for taiapure or maataitai reserves.⁴
17. Despite these policies and methods, the Coastal Plan does not include rules controlling fishing or fishing methods in the CMA.

¹ Operative Regional Coastal Plan for Northland, Policy 35.3(2).

² Operative Regional Coastal Plan for Northland, Policy 36.3(1).

³ Operative Regional Coastal Plan for Northland, Policy 36.3(2).

⁴ Operative Regional Coastal Plan for Northland, Policy 37.3(1).

The Proposed Regional Plan for Northland

18. Development of the Proposed Plan began following the 10-year reviews of the Council's existing three regional plans (the Coastal Plan, the Regional Air Quality Plan for Northland and the Regional Water and Soil Plan for Northland).
19. The Proposed Plan was notified on 6 September 2017. It did not include any provisions relating to fishing controls or marine protected areas. The Proposed Plan's section 32 report did not assess the option of providing controls on fishing or establishing marine protected areas. Issues associated with fishing were only considered in the context of aquaculture and marine pests.

Submissions, decisions and appeals

20. Two submissions were made on the Proposed Plan seeking the introduction of fishing controls and marine protected areas. In summary:
 - a. Bay of Islands Maritime Park Incorporated (**BOI Maritime Park**) sought the inclusion of policies addressing the preservation of natural character and the Council's role in protecting marine ecosystems from the adverse effects of fishing activities;⁵ and
 - b. Royal Forest and Bird Protection Society of New Zealand Incorporated (**Forest and Bird**) sought the inclusion of policies and rules to control the effects of fishing on the values of significant ecological areas.⁶
21. In response to BOI Maritime Park's submissions on the preservation of natural character, the section 42A report prepared for the Proposed Plan Hearings Panel recommended the inclusion of objectives and policies manage adverse effects on natural character.⁷ However, it did not

⁵ Bay of Islands Maritime Park Incorporated, Submission on the Proposed Regional Plan for Northland, 12 November 2017, page 4.

⁶ Royal Forest and Bird Protection Society of New Zealand Incorporated, Submission on the Proposed Regional Plan for Northland, 15 November 2017, page 64.

⁷ Significant natural and historic heritage - Section 42A Hearing Report on the Proposed Regional Plan for Northland, at page 50.

recommend including policies and methods to manage the effects of fishing on significant ecological areas. The report stated:⁸

I am proposing new objectives and policies to manage adverse effects on natural character in the Proposed Plan. Direct management of fishing (in terms of setting quota limits) is set by other legislation (and by the Ministry of Primary Industries). Marine reserves/parks which can restrict commercial fishing are also created by other legislation. The Proposed Plan does contain objective, policies and rules however to protect significant ecological habitats that fish inhabit (from disturbance, dredging and the like). I understand that very recent case law does give scope for regional councils to include rules in relation to the management of fishing activities to protect biodiversity (*Attorney-General v Trustees of the Motiti Rohe Moana Trust*, 2018) however at present, we do not have enough information to inform the setting of rules on this. This would also require significant analysis through a s32 evaluation that is not currently available and a sufficient level of supporting information/evidence is not provided in the submissions.

22. Forest and Bird did not provide submissions or evidence in support of this aspect of its submission at the Council hearing.⁹
23. Dr Victoria Froude provided evidence in support of BOI Maritime Park's submission seeking policies to protect marine ecosystems from fishing activities.¹⁰
24. The Hearings Panel released its recommendations in April 2019. The Hearings Panel's recommendation report adopted an approach of generally not providing detailed reasons where it adopted the recommendations of the section 42A report authors. The Hearings Panel did not recommend including provisions restricting fishing activities or establishing marine protected areas, and the Panel did not give specific reasons.
25. On 16 April 2019, the Council resolved to accept and adopt the recommendations of the Hearings Panel. The Council's decision on the Proposed Plan was publicly notified on 5 May 2019.

⁸ Significant natural and historic heritage - Section 42A Hearing Report on the Proposed Regional Plan for Northland, at page 50.

⁹ Legal Submissions for Forest & Bird before Council Hearings Panel, 7 September 2018, at [2(b)].

¹⁰ Evidence of Dr Froude for BOI Maritime Park before Council Hearings Panel, undated.

26. Two appeals were lodged against the Council's decision in relation to this issue. In summary:
- a. BOI Maritime Park appealed the decision, seeking the inclusion of policies and rules to provide for:
 - i. the protection of marine ecosystems, significant ecological values and natural character from the adverse effects of extractive fishing;¹¹
 - ii. a supportive process for considering nominations from organisations, and especially tangata whenua, of marine areas needing protection and restoration;¹²
 - iii. for those areas agreed by tangata whenua as needing a higher level of protection / restoration, the general prohibition of damage, destruction and removal of marine flora and fauna;¹³and
 - iv. controls in relation to fishing methods that may damage benthic environments or impact sea birds or marine mammals.¹⁴
 - b. Forest and Bird appealed the decision¹⁵, seeking the inclusion of policies and rules to provide for marine protection in particular areas, including rocky reefs.¹⁶
27. A number of parties filed notices to join one or both of the appeals under section 274.

¹¹ Notice of Appeal by the Bay of Islands Maritime Park Incorporated on the Proposed Regional Plan for Northland, 17 June 2019, at paragraph 23.

¹² Notice of Appeal by the Bay of Islands Maritime Park Incorporated on the Proposed Regional Plan for Northland, 17 June 2019, at paragraph 24.

¹³ Notice of Appeal by the Bay of Islands Maritime Park Incorporated on the Proposed Regional Plan for Northland, 17 June 2019, at paragraph 24.

¹⁴ Notice of Appeal by the Bay of Islands Maritime Park Incorporated on the Proposed Regional Plan for Northland, 17 June 2019, at paragraph 24.

¹⁵ Notice of Appeal by the Royal Forest and Bird Protection Society of New Zealand Incorporated on the Proposed Regional Plan for Northland, 17 June 2019, at paragraph 8.

¹⁶ Te Paki Stream, Oruaiti river to the Takou river, Tapeka Point to Nine Pin across to Motukokako, Mokau river to Titi island, in areas of rocky reefs and to protect indigenous species or at risk species and to give effect to Policy 11 of the NZCPS.

28. The appeals relating to fishing activities and marine protected areas were initially placed on hold while the parties awaited the Court of Appeal's decision in *Attorney-General v the Trustees of the Motiti Rohe Moana Trust*.¹⁷ After the decision was released the appeals progressed to mediation on 6 August 2020. Mediation and subsequent discussions did not result in resolution so the appeals were case managed to hearing.
29. As part of case management, the Council was required to advise the parties and Court of its position. On 5 February 2021, the Council's position was:
- a. Council supports the principle of fishing controls in BOI and at Mimiwhangata in some form to protect at-risk indigenous biodiversity and/or habitat from the adverse effects of fishing.
 - b. Based on the evidence to date, Council considers there is merit in fishing controls for:
 - i. Area A and Area B (restricting dredging only, not other fishing techniques) in the Bay of Islands.
 - ii. Rahui Tapu area in Mimiwhangata.
 - c. Based on the evidence to date, Council is not yet convinced of the merit of fishing controls for:
 - i. Area A buffer zone, Area B (with the exception of dredging) and Area C in the Bay of Islands.
 - ii. Buffer areas around the Rahui Tapu area and Te Au o Morunga area (beyond the Rahui Tapu area) in Mimiwhangata.
 - d. There are specific aspects of the proposals Council is unlikely to support for planning or legal reasons:
 - i. Te Uri o Hikihiki's proposal process for preparing a management plan and linking rules to the output of the management plan.

¹⁷ *Attorney-General v the Trustees of the Motiti Rohe Moana Trust & Ors* [2019] NZCA 532.

- ii. Provisions directing actions for councils (e.g. Council to investigate x). The structure of the Regional Plan does not include methods (other than rules).
 - iii. Proposed rules in the Te Uri o Hikihiki proposal providing an exception for “customary marine management”.
 - iv. Te Uri o Hikihiki’s proposed species-specific restrictions (such as prohibitions on catching certain types of shark).
- e. Other specific comments:
- i. The objectives should better define what the proposed controls aim to achieve (particularly from an ecological perspective) in each management area.
 - ii. Further expert comment on the expected benefits of the size of BOI Area A (as a no-take area) would assist in assessing the merits of the proposal.
 - iii. A clear explanation for the boundaries of the Rahui Tapu area, including why it does not match the current marine park boundary.
- f. Reserves its position on all other aspects of the proposal (including the specific wording of the provisions) until its evidence in chief.

Planning analysis

30. A number of planning documents are relevant to provisions sought by Forest and Bird, BOI Maritime Park, Ngati Kuta and Te Uri o Hikihiki relating to marine protection and biodiversity. These include:
- a. the NZCPS;
 - b. the RPS;
 - c. other provisions in the Proposed Plan; and
 - d. iwi and hapū management plans.
31. The relevant provisions of the NZCPS, RPS and the Proposed Plan have been summarised by Mr Peter Reaburn and Dr Mark Bellingham in their evidence. In particular, Mr Reaburn provides a comprehensive description of the relevant provisions and attaches the provisions to his

evidence. I generally agree with his summary of the relevant provisions so do not repeat it. However, I consider that there are additional provisions that are also relevant. I address only those provisions below.

New Zealand Coastal Policy Statement

32. The NZCPS states objectives and policies in order to achieve the purpose of the RMA in the coastal environment. It contains seven objectives and 29 policies.
33. In addition to the objectives and policies described in the evidence of Mr Reaburn, I consider that the following provisions are also relevant to the issues raised by the appeals seeking marine protection provisions:
 - a. Policy 4: Integration – Policy 4 requires that integrated management is provided for in the coastal environment. Among other things it requires particular consideration of situations where public use and enjoyment of public space is affected or significant adverse cumulative effects are occurring or can be anticipated.;
 - b. Policy 5: Land or waters managed or held under other Acts – Policy 5 requires consideration of the effects on land or waters held under other Acts for conservation or protection purposes and requires that significant adverse effects on those purposes are avoided; and
 - c. Policy 12: Harmful aquatic organisms – Policy 12 requires plans to provide, as far as practicable, for the control of activities that could have adverse effects on the coastal environment by causing marine pests to spread.
34. The NZCPS objectives and policies are given effect in the RPS, which is addressed below.

Regional Policy Statement for Northland

35. The RPS was made mostly operative in May 2016. As is required of regional policy statements, the RPS provides an overview of the resource management issues for Northland and sets policies and methods in relation to the natural and physical resources for the region.
36. While there are no specific marine protected area or fishing controls provisions in the RPS, in my opinion many sections are relevant. Key

resource management issues identified when the RPS was developed that are relevant to marine protection and fishing controls include:

- a. Issue 2.2, which highlights key pressures on the region's indigenous ecosystems and biodiversity. The Issue and explanatory text include reference to marine pest threats and the importance of natural heritage and ecological integrity.
 - b. Issue 2.3, that lists factors limiting economic potential and social wellbeing in Northland, including availability of natural resources.
 - c. Issue 2.5, highlighting the importance of early and effective participation in resource management processes, inclusion of Mātauranga Māori and other Māori concepts and values.
 - d. Issue 2.6, which identifies regionally significant issues that relate to pressures on natural and physical resources as identified by iwi authorities. For example, the loss of indigenous biodiversity and the decline of mahinga kai, particularly kai moana harvesting sites, which is impacting on the ability of tangata whenua to feed their whanau and manaaki manuhiri.
 - e. Issue 2.8, which highlights that much of Northland's natural character has been compromised and the importance of safeguarding natural character.
37. In addition to the RPS objectives and policies described in the evidence of Mr Reaburn, I consider that the following are relevant:
- a. Objective 3.5, which seeks sustainable management of natural resources and economic wellbeing of Northland and its communities.
 - b. Policy 4.4.2, which commits to supporting community groups, iwi and hapū voluntary efforts to achieve Objective 3.15 of the RPS (which relates to maintaining or improving aspects of the environment, including significant habitats of indigenous fauna, through active management).
 - c. Method 4.4.5, which promotes voluntary efforts to achieve Objective 3.4 of the RPS (which relates to protecting significant habitats of indigenous fauna, maintaining ecosystems and where

- practical enhancing ecosystems), including assistance with establishing marine reserves.
- d. Policy 4.5.1, which relates to the identification of natural values in Northland's coastal environment, including natural character.
 - e. Policies in sections 4.7, which promote plan provisions that recognise the positive effects of a range of management measures, including:
 - i. re-vegetation with indigenous species particularly for natural character improvement;
 - ii. protection of significant biodiversity and outstanding natural character through legal means;
 - iii. natural marine habitat restoration (Policy 4.7.1);
 - iv. supporting iwi, hapū, and community efforts to improve key aspects of the environment (Policy 4.7.2).
 - f. Policies in section 6.1, which largely reflect RMA requirements and good planning practice for efficient and effective planning instruments.
 - g. Policies in section 8.1 and 8.3, which recognise and provide for tangata whenua including, participation in planning processes (Policy 8.1.1), the use of mātauranga Māori (Policy 8.1.3) and other Māori concepts, values and practices (Policy 8.1.4), as well as supporting tangata whenua to have a kaitiaki role in managing resources and taonga (Policy 8.3.1).

Proposed Regional Plan for Northland

- 38. While there are no specific objectives in relation to marine protected areas and fishing controls in the Proposed Plan, there are a number of other provisions that are relevant to the management, protection and identification of natural resources.
- 39. In addition to the objectives and policies in the Proposed Plan described in the evidence of Mr Reaburn, I consider the following objectives are also relevant:

- a. F.1.8 which recognises Tangāta whenua's kaitiaki role in decision-making over natural resources.
 - b. F.1.10 which enables activities to improve natural resources.
 - c. F.1.11 Natural character, natural features, historic heritage and places of significance to tangata whenua¹⁸, which seeks to protect these areas and values from inappropriate use and development.
40. These objectives are implemented by a range of policies, including the policies in Topic 11 (Biodiversity and natural character) that are subject to the Environment Court Decision released 1 April 2021. I consider that the following policies are also relevant:
- a. Policy D.2.1 which provides for efficient and effective rules to manage the use, development and protection of natural resources.
 - b. Policy D.2.2 which requires regard to be had of social, cultural and economic wellbeing.
 - c. Policy D.2.11 which recognises the irreversible adverse effects associated with the introduction and spread of pests (including marine pests).

Iwi and hapū management plans

41. Under section 66(2A) of the RMA, the Council must take into account any relevant planning document recognised by an iwi authority. Twelve such documents have been submitted to Council in the form of iwi and hapū environmental management plans.
42. These plans identify key issues and management measures for iwi and hapu, which are relevant to the consideration of the management, protection and identification of natural resources.
43. Ngati Kuta ki Te Rawhiti Hapū Management Plan (Fifth Edition) describes the relationship Ngati Kuta has with the natural environment. It includes Ngati Kuta's approach to a range of issues associated with natural resources and lays out their policy and management of these matters. A significant proportion of the plan describes their policies and management of fisheries and a set of baseline standards and principles, such as

¹⁸ 1 April 2021 Decision No. [2020] NZEnvC 039 – approving the consent order

seeking plentiful kaimoana and taonga and identifying species in which they have a special interest or treasure.

44. Te Iwi o Ngatiwai, Iwi Environmental Policy Document describes the relationship the iwi have as kaitiaki of their rohe, including a wide range of natural resources and the matauranga of Ngatiwai and use of rāhui. While there are statements regarding availability and abundance of customary resources, fishing controls and marine protection are not specifically covered.
45. The Ngāti Rēhia Hapū Environmental Management Plan sets out the vision, values and responsibilities of the hapū as the Tangata Whenua of their rohe in the north western proportion of the Bay of Islands centered areas Te Kerei Mangonui (Te Puna Inlet) and Te Awa o nga Rangarira (Kerikeri Inlet). It also provides the foundation for the hapū's engagement with various agencies like the NRC who have statutory responsibilities for the sustainable management of resources within their rohe. Management of customary fisheries is a significant matter for Ngāti Rēhia. Ngāti Rēhia marae is represented by iwi authority, Te Rūnanga A Iwi O Ngāpuhi, via representatives on our Takiwa committee, Te Taiamai ki te Marangai Takiwa. Ngāti Rēhia is represented on TRAION¹⁹ via the takiwa system and Te Rūnanga a Iwi o Ngāpuhi as the iwi authority of Ngāpuhi.
46. While not an iwi or hapū management plan as defined in the RMA, information provided with Te Uri o Hikihiki's evidence includes historical connections that the hapū have with their rohe and Ngatiwai.

Part 2 of the RMA and section 30 regional council functions

47. Section 5(2)(b) (which outlines the purpose of the RMA) includes safeguarding the life-supporting capacity of water and ecosystems as a key 'limb'. This is underpinned by section 6 (matters of national importance) and section 7 (other matters).
48. Natural character is included in section 6 as a matter of national importance and must be protected from 'inappropriate subdivision, use and development'.
49. Significant indigenous biodiversity (section 6(c)) is also an important section 6 matter. However, the requirement to provide for significant

¹⁹ Te Rūnanga a Iwi o Ngāpuhi (TRAION)

indigenous biodiversity as a matter of national importance under section 6(c) is more absolute than that for natural character. Section 6(c) requires that areas of significant indigenous vegetation and significant habitat of indigenous fauna must be protected, without the qualification that protection is from 'inappropriate subdivision, use and development'.

50. Section 7 includes a range of other matters that it is necessary to have particular regard to, and of relevance are s.7(a), (aa), (b), (d), (f) and (g) dealing respectively with: kaitiakitanga; the ethic of stewardship; the efficient use and development of natural and physical resources; intrinsic values of ecosystems; maintenance and enhancement of the quality of the environment; and any finite characteristics of natural and physical resources.
51. Section 8 places a requirement to take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi) when achieving the purpose of the Act.
52. The relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga is also a matter of national importance.
53. Section 30 sets out regional council functions that include:
 - a. establishing provisions to manage natural and physical resources, for purposes that include maintenance and enhancement of ecosystems in coastal water;
 - b. in regards to the CMA (in conjunction with the Minister of Conservation), the control of:
 - i. land (including seabed) and associated natural and physical resources, extraction of shell or other natural material, and activities in relation to the surface of the water. However, section 30(2) precludes these functions from controlling the taking, allocation or enhancement of fisheries resources for the purpose of managing fishing or fisheries resources controlled under the Fisheries Act 1996;
 - ii. actual or potential effects of the use, development, or protection of land; and

- c. the establishment, implementation, and review of objectives, policies, and methods for maintaining indigenous biological diversity.
54. I understand that a regional council may control fishing and fisheries resources under section 30 of the RMA (including those listed in section 30(1)(d)(i), (ii) or (vii)) for the purposes of protecting indigenous biodiversity, provided it is not for a Fisheries Act 1996 purpose.²⁰

Assessment of the proposal

55. In this section of my evidence I provide an assessment of the proposal in terms of section 32 of the Act, in three parts:
- a. The concept of introducing marine protected areas;
 - b. Specifics of each proposal; and
 - c. My opinion on each proposal.

Introducing marine protected areas

Is there a resource management issue to be addressed?

56. With regards to whether I support the general concept of including marine protection provisions in the Proposed Plan, I have considered whether there is an environmental issue here that needs to be addressed.
57. In the areas where marine protection measures are proposed, the applicants' evidence²¹ identifies current significant ecological and cultural values, and outstanding natural character values that under Part 2 of the Act represent matters of national importance and other matters.
58. The applicants evidence also describes the actual and potential adverse effects on ecological, cultural, natural landscapes and natural character values that occur as a result of fishing (including commercial, recreational and customary fishing). Confirmation of the direct²² and indirect²³ impacts

²⁰ *Attorney-General v the Trustees of the Motiti Rohe Moana Trust & Ors* [2019] NZCA 532, at [67].

²¹ Dr Vicky Froude, Dr Nicholas Shears, Dr Mark Morrison, Dr Rebecca Stirnemann, Dr Mark Bellingham, Mr Vince Kerr.

²² Dr Ross EIC: Direct impacts: Removal of target [13-25] and non target fish species [26-32]; changes in population structure [33]; seafloor impacts [34-56]

²³ Dr Ross EIC: Indirect impacts [57-62] including altered species interactions [63-66]

on indigenous marine biodiversity from a range of recreational, commercial and customary fishing activities are further supported by Dr Ross' evidence. In my opinion, the evidence demonstrates that there is a resource management issue that needs to be assessed.

Section 32AA assessment

59. Section 32AA of the Act requires further examination of the extent to which the objectives of any proposed changes to the Proposed Plan are the most appropriate way to achieve the purpose of the Act. It requires a further evaluation under section 32(1) to (4), at a level of detail that corresponds to the scale and significance of the changes. In this section I assess whether the proposed objectives²⁴ of the proposals are the most appropriate way to achieve the purpose of the Act and whether the other provisions are the most appropriate way to achieve the objective (as well as other relevant objectives in the Proposed Plan).
60. I consider that the relevant sections in Part 2 include section 5, section 6(a), (b), (c) and (e), section 7(a), (aa), (b), (d), (f) and (g) and section 8. Having regard to those sections and how they are detailed in the NZCPS (including Policies 2, 11, 13 and 15) and given effect through the RPS and Proposed Plan, I consider that there is a clear direction to:
- a. avoid adverse effects on significant indigenous biodiversity;
 - b. protect natural character and natural landscapes the adverse effects or significant adverse effects of inappropriate use and development; and
 - c. recognise and provide opportunities for iwi and hapū to participate in the plan-making process, continue cultural relationships with the coastal environment and exercise kaitiakitanga.
61. In light of the proponents' evidence and Dr Ross' evidence, in my opinion, the most appropriate way to address this issue is through spatially identified marine protection measures. Spatial identification enables the Proposed Plan to identify the characteristics, qualities and values sought to be protected. Policies and rules can then be developed to achieve that.

²⁴ The objectives of each of the two proposals are very similar so are assessed in broad terms. I comment on the detail of the drafting in a later section.

62. Accordingly, I support the introduction of an objective that seeks to protect the characteristics, qualities and values of identified areas from inappropriate use, disturbance and development caused by fishing activities.²⁵
63. In respect of the proposed objectives directing investigation of further spatial areas, I acknowledge that there are other areas in Northland where protection is likely to be warranted. However, I do not consider an objective is required that mandates that further investigations must occur.
64. The proposed objectives requiring further investigation suggest that the Council will take a leading role in investigating and implementing controls for future areas. I do not think that is necessarily appropriate. As the proponents' evidence notes, the identification of future areas needs to be informed by tangata whenua involvement (as well as other stakeholders). The Council does not have the cultural knowledge to be able to identify and investigate areas in a strategic and coordinated way.
65. Furthermore, I am concerned that the objective would lead to a presumption or expectation that areas that may be proposed in the future would automatically be incorporated in the Proposed Plan. Any future proposal would need to be considered on its merits.
66. Finally, in designing the Proposed Plan, the Council decided that the Plan should be streamlined and not include non-regulatory methods. The objective and related policies suggest a non-regulatory method, which is inconsistent with the architecture of the Proposed Plan.
67. In assessing whether the proposed provisions are the most appropriate way to achieve the objectives, I agree with Mr Reaburn that other objectives of the Proposed Plan are also relevant, including:
- a. Objective F.1.3 – Indigenous ecosystems and biodiversity;
 - b. Objective F.1.7 – Use and development in the coastal marine area;
 - c. Objective F.1.8 – Tangāta whenua role in decision-making;
 - d. Objective F.1.10 – Improving Northland's natural and physical resources;

²⁵

I address the detail of the drafting below.

- e. Objective F.1.11 – Natural character, outstanding natural features, historic heritage and places of significance to tangata whenua.
68. Section 32 requires assessment of other reasonably practicable options for achieving the objectives, an assessment of the efficiency and effectiveness of the provisions and a summary of the reasons for the decision. When considering efficiency and effectiveness, benefits and costs (environmental, economic, social and cultural) must be identified and assessed, as well as the risk of acting or not acting if there is uncertain or insufficient information about the provisions.
69. I consider that the reasonably practicable options are:
- a. do nothing and maintain the status quo;
 - b. do nothing, but lobby for the introduction of protection under other legislation (e.g. fisheries controls, the establishment of marine parks or marine protected areas);
 - c. the proponents' provisions or a reduced form of the proponents' provisions;
 - d. a hybrid approach of amending the Proposed Plan's existing controls to attempt to manage the issues (e.g. amend the rules relating to Significant Ecological Areas, Sites and Areas of Significance to tangāta whenua, Natural Character, Natural Features or Natural Landscapes to address effects from fishing activities).
70. Given that establishing further fisheries controls, the establishment of marine parks or marine protected areas under other legislation is not an outcome the Court can order, I have not considered it further.
71. In respect of the “do nothing” option, in my opinion:
- a. There is compelling evidence that the status quo has not successfully avoided adverse effects from fishing activities on the environmental characteristics, qualities and values of interest. Accordingly, I consider that this option will not effectively achieve the objective of the proposal or the other objectives of the Proposed Plan.

- b. In terms of benefits and costs, this option has low environmental benefit and low immediate costs to the users of resources. However, it potentially has high environmental and cultural costs as it is likely to result in further degradation of the environment, that in turn (due to adversely affecting the abundance of a range of fish species) has potential costs to commercial, recreational and cultural fishers.
 - c. I consider that there is a risk associated with not acting due to the evidence of historic and ongoing environmental degradation due to the direct and indirect effects of fishing activities.²⁶
72. In respect of the proponents' provisions (or a reduced form of them):
- a. The Te Hā o Tangaroa Protection Area: Rakaumangamanga-Ipipiri provisions provide a clear regime that distinguishes between permitted activities and prohibited activities in the various proposed sub-areas. In my opinion, the provisions will efficiently and effectively achieve the objective of the proposal as they prohibit fishing activities likely to adversely affect the characteristics, qualities and values of interest. The provisions will also generally achieve the other objectives of the Proposed Plan identified above. I acknowledge that the provisions partly achieve Objective F.1.7(3) but also partly conflict with it. Objective F.1.7(3) seeks that use and development recognises the need to maintain and enhance recreational opportunities. The provisions would prohibit recreational fishing in Sub-Area A ~~and limit it in Sub-Area A—Buffer~~, but will enhance other recreational opportunities such as diving and tourism.
 - b. In terms of benefits and costs, the Te Hā o Tangaroa Protection Area: Rakaumangamanga-Ipipiri provisions are likely to have a high environmental benefit, but some cost to users of resources (as detailed in the evidence of Dr Denne). There may be costs associated with monitoring and enforcement of the provisions, but that will depend on the compliance, monitoring and enforcement policy adopted by the Council and the effort spent. My understanding of the Bay of Plenty Motiti protection areas is that

monitoring and enforcement has been arranged to involve a range of stakeholders including the council, Ministry for Primary Industries, Department of Conservation and local tangata whenua.

- c. The Te Mana o Tangaroa Protection Area generally also provides a clear regime that will achieve the objective and the other objectives of the Proposed Plan. However, its provisions also provide that activities that are neither permitted nor prohibited activities are discretionary activities. The provisions also provide for the development of Hapu Management Plans. Activities undertaken in the proposed “buffer” areas are non-complying activities unless they are provided for in a management plan. As I address in further detail below, I have some concerns with the management plan approach and generally prefer the Te Hā o Tangaroa approach.
- d. In terms of benefits and costs, my opinion is similar to that for the Te Hā o Tangaroa provisions. The Te Mana o Tangaroa provisions will have both environmental benefits, and costs to resource users. The additional complexity and lack of clarity of the regime may increase compliance and enforcement costs.

73. In respect of a hybrid approach:

- a. All things considered, a hybrid approach would be effective but not efficient at achieving the objective and the other objectives of the Proposed Plan. Not all Significant Ecological Areas, Sites and Areas of Significance to tangāta whenua, and areas of Natural Character, Natural Features or Natural Landscapes warrant protection from fishing activities. While restricting activities in those areas might have environmental benefits, there would likely be significant costs as a significant proportion of Northland’s coast is subject to one or more of the mapped areas. Further, such an approach would not respect the different aspirations of management of mana moana by different iwi and hapū.
- b. A further concern I have with this approach is that if restrictions were applied to all of the mapped areas identified above, a wide range of people would be potentially affected who are not party to these appeals.

74. Accordingly, in light of the evidence to date and my analysis above (and subject to my comments on drafting below), in my opinion, the proponents' proposals are the most appropriate way to achieve the proposed objective and the objectives of the Proposed Plan.

Specifics of each proposal

75. In this section I comment on the specific drafting of the Te Hā o Tangaroa Protection Area: Rakaumangamanga-Ipipiri proposal and the Te Mana o Tangaroa Protection Area proposal. I agree with Mr Reaburn that the provisions are likely to undergo an iterative process of refinement and so have focused my comment on the objectives and policies.

Te Hā o Tangaroa Protection Areas Rakaumangamanga-Ipipiri

76. The proposal includes two alternative wordings for a first new objective:

Te Hā o Tangaroa Protection Areas

Protect from inappropriate use, disturbance and development the characteristics, qualities and values that make up Te Hā o Tangaroa Protection Areas.

or

Protect from inappropriate disturbance, use and development the mauri and taonga species and their habitats, and customary values that make up Te Hā o Tangaroa Protection Areas.

77. Both options are very similar in that they provide the same level of protection from the same activities (i.e. inappropriate disturbance, use and development). By using the text 'characteristics, qualities and values' the first option has greater internal consistency with terms used for mapping elsewhere in the plan and might be more easily understood by a wider proportion of Regional Plan users. As a result, it is likely to more effectively communicate the intent of the objective. Whereas, the alternative '*mauri and taonga species and their habitats, and customary values*' better recognises tangata whenua's role as kaitiaki and value of working with concepts such as Te Ao Māori, mātauranga and tikanga, when identifying these matters.
78. I do not have a strong preference between the first or alternative text, however I agree with Mr Reaburn's evidence that the first option more clearly provides for inclusion of matters other than cultural values,

including those characteristics, qualities and values already referred to in the Proposed plan relating to biodiversity and natural character. On balance, I prefer the first version of the first objective.

79. My opinion of the second objective, which seeks investigation into additional areas that may be proposed for marine protection measures in the future has been set out above. I generally do not support that objective and consider it should be deleted.
80. Four policies are proposed for the Te Hā o Tangaroa Protection Areas Rakaumangamanga-Ipipiri proposal. Two relate to the management of effects on the various sub-areas, the other two relate to the identification and implementation of new areas:

D.2.x Te Ha o Tangaroa Protection Areas - manage adverse effects

In Te Ha o Tangaroa Protection Areas

- (1) *Avoid adverse effects of activities on the identified characteristics, qualities and customary values of Te Ha o Tangaroa Protection Areas — Sub Areas A*
- (2) *Avoid, remedy or mitigate adverse effects of activities on the identified characteristics, qualities and customary values of Te Ha o Tangaroa Protection Areas — Sub Areas other than Sub Areas A*

D.2.x Possible Future Te Ha o Tangaroa Protection Areas

- (1) *Consider proposals from tangata whenua and/or the community to identify, investigate and monitor areas of the coastal marine area that are, or are likely to be, adversely affected by activities (including fishing).*
- (2) *Where Te Ha o Tangaroa Protection Areas have been identified, introduce the further marine spatial planning mechanisms that may be required to protect and restore them.*
81. The first policy on managing adverse effects seeks that adverse effects are avoided on the characteristics, qualities and values of Sub-Areas A. The second seeks that adverse effects on the other Sub-Areas are avoided remedied and mitigated. I am concerned that the policy direction does not achieve the intent of the proposal for the other Sub-Areas. Adverse effects are still intended to be avoided (through prohibited activity status), instead, a more limited range of activities are controlled (e.g. small

scale fishing methods and some dredging activities are enabled in Sub-Areas B and C).

82. Further, the two policies refer to “customary values” rather than the “characteristics, qualities and values that make up Te Hā o Tangaroa Protection Areas” as in the first objective. I consider the policies should be amended for consistency.
83. In my opinion, the two policies on the management of adverse effects will need to be further refined if they are to be adopted.
84. For the reasons given above in relation to the objective requiring identification of further areas, in my opinion the policies relating to the identification of further areas should be deleted.
85. In terms of the proposed Sub-Areas and their associated rules, I generally support the approach. In particular, based on the evidence to date:
 - a. I support Sub-Area A ~~and Sub-Area A Buffer~~ as having controls to protect the important characteristics, qualities and values in those areas.
 - b. I support Sub-Area B as having controls on larger scale fishing and dredging activities to protect the high benthic values in the area, including biogenic habitats.
 - c. I support Sub-Area C as being subject to controls on larger scale fishing to protect areas of known significant indigenous biodiversity values (including seabirds) and likely areas of sensitive habitats, and to recognise the cultural values associated with taonga species in that area. Although it is finely balanced, I consider the benefit of protecting Sub-Area C, including on a precautionary basis, outweighs the cost to resource users (as summarised by Dr Denne).

Te Mana o Tangaroa Protection Areas and the marine area around Mimiwhangata

86. The Te Mana o Tangaroa Protection Areas associated with the marine area around Mimiwhangata propose essentially identical objectives and policies as the Te Hā o Tangaroa Rakaumangamanga-Ipipiri areas, with the exception of the first objective. My opinion on those provisions is the same as for the Te Hā o Tangaroa proposal. The Te Mana o Tangaroa

proposal is very similar to the alternative objective of the Te Hā o Tangaroa proposal.

87. Given the significant similarities between the provisions for both proposals, my preference would be to define a single objective and policies for both proposals. I have identified above why I do not prefer the “alternative” objective in the Te Hā o Tangaroa proposal which is sought as part of the Te Mana o Tangaroa proposal. Dr Bellingham’s planning evidence does not address the drafting of the objectives in the Te Mana o Tangaroa proposal.
88. In terms of structure, I consider that there would be benefit in providing a single objective and policies that applies to both proposed protected areas.
89. In terms of the proposed rules, the Te Mana o Tangaroa proposal introduces additional complexity in that:
 - a. it provides that activities that are neither permitted nor prohibited are discretionary activities;²⁷ and
 - b. it contemplates the development of non-statutory management plans, which are intended to provide site specific rules. Non-compliance with the management plans would change the status of an activity within the “buffer” areas.²⁸
90. By providing that the activity status of fishing activities not otherwise provided for is discretionary, the Te Mana o Tangaroa proposal makes “standard” fishing (i.e. with rod and reel) a discretionary activity outside Sub-Area A and makes dredging outside Sub-Areas A and B a discretionary activity. I consider that this approach adds unnecessary complexity and prefer the Te Hā o Tangaroa approach of providing for all fishing activities as either permitted or prohibited.
91. While I appreciate Te Uri o Hīkīhīkī’s desire to manage its mana moana with flexibility, I have concerns that the proposed management plan framework is contrary to good planning practice and seeks to avoid the Schedule 1 process. The effect of the management plan framework is that the status of activities could be changed without the Northland

²⁷ Proposed rule C.1.9.3(3).

²⁸ Proposed rule C.1.9.3(4), (5)

community having a say through the Schedule 1 process. Accordingly, I do not support the proposed management plan framework.

92. In terms of the proposed areas and other rules:
- a. I support Sub-Area A and Sub-Area B as having controls to protect the important characteristics, qualities and values of the Mimiwhangata Rahui Tapu.
 - b. Like for the Te Hā o Tangaroa proposal, I support Sub-Area C as being subject to controls on larger scale fishing to protect areas of known significant indigenous biodiversity values (including seabirds) and likely areas of sensitive habitats, and to recognise the cultural values associated with taonga species in that area. Although it is finely balanced, I consider the benefit of protecting Sub-Area C, including on a precautionary basis, outweighs the cost to resource users (as summarised by Dr Denne).

Response to Dr Bellingham's evidence

93. The evidence of Dr Mark Bellingham on behalf of Te Uri o Hīkīhiki Hapū identifies a number of policies that he proposes is added to the Proposed Plan, apparently beyond those in the Te Mana o Tangaroa proposal. He also raises concerns with the Council's consultation process with tangata whenua in the development of the Proposed Plan.²⁹ In light of this, I have summarised the consultation process with iwi below.

Proposed other objectives and policies

94. Dr Bellingham's evidence addresses ten additional objectives and policies that he appears to propose be introduced to the Proposed Plan, beyond those in the Te Mana o Tangaroa proposal.³⁰ It is unclear which of the provisions are intended as objectives and which are policies, or which part of the Proposed Plan that they are intended to sit within.
95. In any event, Dr Bellingham provides little analysis in support of the additional objectives and policies, other than that he considers that they are required in order to give effect to the NZCPS and implement other provisions of the Proposed Plan. No section 32 analysis is provided, nor

²⁹ Evidence in chief of Dr Mark Bellingham, at [3.7].

³⁰ Evidence in chief of Dr Bellingham, 7 April 2021, at [3.10.1], [3.10.5], [3.10.6], [3.10.7] and [3.11.1]-[3.11.6].

has Dr Bellingham identified the submission or appeal relied on for the proposed relief. The additional objectives and policies were also not identified when the parties were directed to provide their proposal at the end of 2020.

96. The ten additional objectives and policies appear to replicate the intent of the provisions of the Te Mana o Tangaroa proposal. In my opinion, the objective and policies of the Te Mana o Tangaroa proposal I have addressed above should be preferred and the additional objectives and policies are not appropriate.

Consultation process

97. In response to Dr Bellingham's comments, this section summarises the consultation during the development of the Proposed Plan with tangata whenua generally, and with iwi authorities.
98. In terms of tangata whenua engagement in the development of the Proposed Plan:³¹
- a. two regional hui were held in response to expressions of interest from tangata whenua. The hui were held at Otiria Marae, Morewa on 17 October 2016 and at regional council offices in Whangarei on 19 October 2016;
 - b. at its March 2016 meeting, the Te Tai Tokerau Māori Advisory Committee confirmed the establishment of a nine member Māori Technical Working Party (**the working party**) to provide input into the development of the Proposed Plan. The working party met three times – 29 September, 27 October and 24 November 2016. A report outlining the working parties recommended changes to the Proposed Plan was presented to council at a workshop on 14 February 2017;
 - c. the review of the current regional plans included a series of topic based workshops attended by key stakeholders and tangata whenua, and tangata whenua focused consultation which included three regional hui and an issues and options report.

³¹ Section 32 analysis report, Proposed Regional Plan for Northland, September 2017, at page 11.

99. Advice from iwi authorities for the development of the Draft Regional Plan was received through the following processes:³²
- a. A series of workshops were held in October 2014 on specific resource management issues. Iwi representatives attended the workshops. A workshop was held on tangata whenua participation in resource management.
 - b. Three regional hui were held in Whangarei, Kaikohe and Kaitaia in November, involving representatives from the district and regional councils. These hui focussed primarily on understanding the environmental issues of concern to tangata whenua and included discussion on the regional plan reviews.
 - c. A Draft Issues and Options paper was developed which included response to advice received through the workshops and hui. The iwi and hapū management plans lodged with the council were taken into account in developing the Draft Issues and Options paper. The paper was circulated widely in the Taitokerau tangata whenua community for feedback. Feedback received was incorporated into the final paper.
 - d. A set of tangata whenua provisions was developed to implement the proposals in the Issues and Options paper.
 - e. The proposed tangata whenua provisions were considered by the Council's Regional Policy Committee, which made recommendations to the Council. Members of the council's Te Taitokerau Maori Advisory Committee were included in the Regional Policy Committee meetings on the Draft Regional Plan, and had voting rights for decisions on recommendations.
 - f. The tangata whenua submissions to the Draft Regional Plan were considered, and the provisions amended in response where relevant. Amended tangata whenua proposals were presented to a Council workshop which three members of the council's Te Taitokerau Maori Advisory Committee attended with voting rights on recommendations.

³² Section 32 analysis report, Proposed Regional Plan for Northland, September 2017, at pages 11-12.

100. I disagree with Dr Bellingham's criticism that the Council did not undertake any processes to consult with tangata whenua. As I have outlined above, the Council sought to consult with tangata whenua and iwi authorities throughout the development of the Proposed Plan. I note that Te Uri o Hikihiki had an opportunity to make a submission or further submission on the Proposed Plan, but did not do so. However, I acknowledge that consultation processes can always be improved, and I consider that the fact that Te Uri o Hikihiki feels that consultation was not sufficient indicates that further progress is required in this space.

Conclusion

101. For the reasons given above, I conclude:
- a. there is a resource management issue that the proposals address;
 - b. the objective of the proposals is the most appropriate way to achieve the purpose of the Act;
 - c. the provisions (subject to my comments on the drafting) are the most appropriate way to achieve the objective of the proposals and the objectives of the Proposed Plan; and
 - d. accordingly, I support the identification of the proposed marine protected areas and their provisions to protect the identified values of the areas from fishing activities.



James Henry Griffin

16 April 2021 (updated 22 June 2021)