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 REBUTTAL

PLANNING

TOPIC 14: MARINE PROTECTED AREAS

22 JUNE 2021

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1. Introduction, qualifications, and experience

1.1 My name is James Henry Griffin. My qualifications and experience are set out in my evidence in chief, dated 16 April 2021.

Code of conduct

1.2 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.

1.3 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

1.4 I have read the evidence in chief filed on behalf of:

a. Bay of Islands Maritime Park Incorporated (**BOI Maritime Park**), Royal Forest and Bird Protection Society of New Zealand (**Forest and Bird**) and Ngāti Kuta Hapū ki te Rawhiti (**Ngāti Kuta**);

b. Te Uri o Hikihiki Hapū and Ngāti Manuhiri;

c. The Fishing Industry Parties;

d. Minister for Oceans and Fisheries and Minster of Conservation;

e. Ngātiwai Trust Board;

f. New Zealand Sports Fishing Council;

g. Patuharakeke Te Iwi Trust Board;

h. Te Ohu Kai Moana;

i. Te Rūnanga-Ā-Iwi o Ngāpuhi; and

j. Te Rūnanga o Ngāti Rehia.

1.5 I have also read the Joint Witness Statements (**JWS**) produced at the ecology and fisheries management conferences.

1.6 This statement responds to issues raised in the evidence provided by:

a. Dr Philip Mitchell;

b. Kier Volkering;

c. Wane Wharerau;

d. Kipa Munro;

e. Andrew Johnson;

f. Jacob Hore;

g. Murray Brass;

h. Barry Torkington;

i. Jonathan Holdsworth;

j. Paul Roy Knight; and

k. Alicia McKinnon.

1.7 I participated in expert witness conferencing between planners on 21 June 2021 and signed the resulting Joint Witness Statement.

1.8 My evidence is structured as follows:

a. Consultation with iwi/hapū and parties in relation to the proposed marine protected areas and the development of the Proposed Regional Plan for Northland (**Proposed Plan**);

b. Enforcement of the proposed controls;

c. Section 32AA evaluation, including the financial and cultural impact of the proposed controls;

d. Buffer zones as an effective regulatory tool;

e. Response to revised proposed protection areas provided on 8 June 2021 and revised rules circulated on 21 June 2021; and

f. Conclusion.

2. Consultation

2.1 In this section I respond to evidence on the Council's consultation process in relation to the proposed marine protected areas and the development of the Proposed Plan more generally.

2.2 The evidence of Dr Mitchell, Mr Wharerau and Mr Johnson identifies concerns with the way the Council consulted with tangata whenua and other interested parties in relation to the proposed marine protected areas. I respond to the issues raised by each of the witnesses in turn:

a. Dr Mitchell's evidence provides a critique that the Council has not undertaken consultation specifically in relation to the marine protected areas and that the process has fallen "significantly short".[1] This criticism seems to be directed at the fact that the submissions seeking the marine protected areas were not separately notified under Schedule 1, and therefore certain interests (including his clients) did not learn of the proposals or participate in the earlier stages of the process. In response:

(i) In my opinion, Dr Mitchell's concerns reflect a discomfort with the introduction of new provisions through the RMA's submissions process generally, rather than a particular failure by the Council.

(ii) The RMA is clear that any person can make a submission on a proposed plan. Schedule 1 provides a process for all submissions to be summarised and for the submissions and summary to be made publicly available.[2]

(iii) Anyone can read the summary and the submissions and if they have an interest in the proposed plan that is greater than the general public, they can make a further submission in support or opposition.[3]

(iv) I am aware that issues can arise if the summary of submissions is incorrect (for example, if submissions are not summarised correctly or are omitted from the summary). However, I do not understand Dr Mitchell's evidence to say that the summary was incorrect in relation to the submissions by BOI Maritime Park or Forest and Bird.

(v) While it was not the same approach Dr Mitchell adopted in his capacity as Chair of the hearings panel on the Proposed

[1] Dr Mitchell EIC on behalf of Te Ohu Kaimoana, paragraphs 12 and 89.

[2] Schedule 1, clause 7.

[3] Schedule 1, clause 8.

Waikato District Plan, I consider that the proper Schedule 1 process was followed by the Council in this case.

b. Mr Wane Wharerau's evidence comments that "TRAION had not been consulted by the Regional Council at any stage during the formation of the Proposed Plan".[4] In response:

i. Given the context of the comments, Mr Wharerau's evidence seems to be directed at the formation of the marine protected areas provisions. The proposed marine protected areas were not part of the Proposed Plan as notified. They were sought in submissions, which the hearings panel rejected and the Council adopted that recommendation.

ii. The appellants and Te Uri o Hikihiki decided to pursue the marine protected areas through the appeals. While I understand the frustration that Mr Wharerau expresses on behalf of TRAION, I do not consider it is the Council's role to lead consultation on the provisions sought by another party on appeal.

iii. If Mr Wharerau's comments relate to the Proposed Plan's consultation generally, my evidence-in-chief outlined the consultation leading to the development of the Proposed Plan and its notification. I have reviewed the contacts that letters, email circulars and other panui were sent to in the lead up to the notification of the Proposed Plan. Ngātiwai Trust Board, Te Rūnganga Ā Iwi Ō Ngāpuhi and Te Rūnanga o Ngāti Rēhia representatives were all included in that correspondence.

c. Mr Andrew Johnson for NZSFC also considers "consultation has not been adequate".[5] In response:

i. I accept that Mr Johnson considers that the RMA process has meant that engagement with a broad range of potentially interested parties has not occurred and that is

[4] Mr Wharerau EIC on behalf of Te Runanga-A-Iwi O Ngapuhi, section 11.

[5] Mr Johnson EIC on behalf of NZ Sport Fishing Council, paragraph 4.1.

less than ideal. However, that is beyond the Council's control.

ii. While the parties listed in Mr Johnson's evidence may not all be represented on this appeal (including, for example, divers, sightseers and sailors), I consider that there are a wide range of interests now involved, which will result in robust testing of the proposals.

3. Enforcement of the proposed controls

3.1 Mr Jacob Hore raises the issue of the Council not being able to enforce the proposed controls.[6] Mr Hore's evidence states that the Council may not be able to employ MPI Fishery Officers to help with enforcement as Section 6 of the Fisheries Act may prevent this. He considers that "allocating fisheries resources to one sector in preference to another is unenforceable".[7]

3.2 If the proposed rules involving fishing controls are put in the Proposed Plan, the Council will need to develop a compliance, monitoring and enforcement process. I am not aware of anything that would prevent the Council doing so.

3.3 The Council designs compliance and monitoring regimes for a broad range of rules throughout the region. Such rules include widely dispersed mobile activities within the coastal marine area (for example, marine pest vessel hull biofouling and marine pollution restrictions). The Council Harbourmaster and Maritime team have staff and vessels that are based in the Bay of Islands and are experienced in regulation and compliance.

3.4 I understand from discussion with staff at the Bay of Plenty Regional Council that a regime based around education, communication and enforcement and involving use of an existing maritime team vessel during summer months is planned to manage the Motiti marine protection provisions that come into force 11 August 2021. In several respects the Northland proposals are more straightforward, in that they involve:

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[6] Mr Hore EIC (Fisheries Management) on behalf of Minister for Oceans and Fisheries, paragraph 61 and 88-95.

[7] Mr Hore EIC (Fisheries Management) on behalf of Minister for Oceans and Fisheries, paragraph 25.2.

a. Fishing prohibition in the two “Area As”, that are generally well known to the fishing community and have some level of existing restrictions.

b. Restrictions on scallop dredging and large scale fishing methods in Area B at the Bay of Islands, which should be relatively straight forward to observe. As noted in the Fisheries experts JWS[8] ‘*a number of recreational fishers and organisations support this restriction*’. Therefore, I would anticipate a high degree of compliance and notification by the public when alleged offences take place.

c. Both “Area Cs” are limited to large scale methods and operators likely to already use GPS tracking and fishing method reporting processes. It appears, on the face of it, that this data should be straight forward to monitor remotely and require limited physical inspections. Under RMA enforcement powers, Council enforcement officers could require fishers to provide compliance information (perhaps in a similar fashion to the electronic position reporting described in Mr Hore’s evidence).[9] I would also hope the Ministry of Oceans and Fisheries would be willing to work with the Council towards a practical solution in these areas, without breaching section 6 of the Fisheries Act.

3.5 If the proposed marine protected areas are confirmed, in my opinion, the Council can and will develop an appropriate compliance, monitoring and enforcement regime. However, I do not consider that the details of compliance, monitoring or enforcement is critical for the consideration of whether a proposed provision is the most appropriate in terms of section 32 or 32AA of the RMA. In my opinion, provided that the provisions are not unenforceable, how the Council ultimately decides to ensure compliance, monitor compliance and enforce the provisions is a separate consideration.

[8] Fisheries Expert Conference on 11 June 2021 - Joint Witness Statement (JWS) Paragraph 2(b).

[9] Mr Hore EIC (Fisheries Management) on behalf of Minister for Oceans and Fisheries, paragraph 61 and 88.

4. Section 32AA evaluation

4.1 This section responds to the evidence from various parties that the section 32AA evaluation has fallen short in terms of financial and cultural impacts in particular.

a. Mr Murray Brass' evidence states that I have "disregarded" the further assessment of fisheries controls under other legislation in my analysis.[10] His evidence also observes that regional councils must have regard to regulations relating to fisheries resource when preparing regional plans (section 66(2)(c)(iii)). In response:

i. To be clear, in preparing my evidence-in-chief I had regard to the relevant matters under section 66(2)(c) of the RMA, including under section 66(2)(c)(iii), based on my understanding at the time of the relevant fisheries regulations. What I did not consider further in my section 32AA assessment was the option of managing the adverse effects of fishing activities at the Bay of Islands and Mimiwhangata under other legislation (like the Fisheries Act).

ii. The reason why I did not consider that option further is that the Council (and the Court) does not have the power to provide for that outcome. It involves a different process under a different Act. I maintain that the managing the adverse effects of fishing activities under other legislation is, in essence, a "do nothing" approach in terms of the assessment under section 32AA of the RMA.

b. A number of witnesses' evidence comments that the financial and cultural impacts of the proposals have not been adequately considered in the assessments of the proposal. For example, Dr Mitchell's evidence is critical of the assessment of the costs and benefits on customary, recreational and commercial fishing.[11] In response:

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[10] Mr Brass EIC for Minister of Conservation and Minister for Oceans and Fisheries, paragraph 66.

[11] Dr Mitchell EIC on behalf of Te Ohu Kaimoana, paragraph 88.

i. Additional information has been made available in the evidence of the section 274 parties on financial and cultural impacts. I am grateful, in particular, for the evidence of Ngāti Manuhiri, Ngatiwai Trust Board, Patuharakeke Te Iwi Trust Board, Te Rūnanga-Ā-Iwi o Ngāpuhi and Te Rūnanga o Ngāti Rehia on matters Māori.

ii. The information provided by the Minister of Oceans and Fisheries, Fishing Industry Parties, Te Ohu Kaimoana and the NZ Sport Fishing Council is also helpful.

iii. I consider that the additional information demonstrates that there are complex issues at play and that there are a range of interests to balance. Having regard to the additional cultural, fisheries and financial information, I maintain my opinion that the proposed objective that I supported in my evidence-in-chief (and in the Planning JWS) is the most appropriate way to achieve the purpose of the Act.

iv. I also maintain that policies and rules in the Proposed Plan restricting fishing activities in certain areas are the most appropriate way to achieve the objective.

5. Buffer zones

5.1 Several witnesses consider that buffers zones are problematic due to being hard to define and difficult to enforce, including Mr Jonathan Holdsworth, Mr Barry Torkington, Mr Paul Roy Knight and Ms Alicia McKinnon. Mr Wharerau also considers having a buffer creates new and complex rules "that will only serve to be punitively weighed against Maori".[12]

5.2 Much of the evidence in relation to buffer zones[13] is focussed on the Bay of Islands buffer that was proposed but has now been withdrawn. Accordingly, I do not address this further.

5.3 In my evidence-in-chief I supported the proposed buffer zones, in reliance on the evidence of Dr Shears and the effectiveness of buffer zones in

[12] Mr Wharerau EIC on behalf of Te Runanga-A-Iwi O Ngapuhi, paragraph 16.6

[13] Paul Roy Knight, Wane Wharerau and Andrew Johnson.

managing edge effects.[14] I maintain that such an approach may be appropriate in certain circumstances. In my opinion, the buffer provisions that were proposed at the Bay of Islands were preferable to the provisions proposed by Te Uri o Hikihiki relating to the creation of management plans. As addressed further below, I understand that Te Uri o Hikihiki intends to revise its relief in its rebuttal evidence.

6. Response to revised proposals

6.1 On 8 June 2021, BOI Maritime Park, Forest and Bird and Ngāti Kuta revised their relief to remove the proposed Area A Buffer, to reduce the size of the proposed Area C and to rename the areas. I support the revised relief for the reasons given in my evidence-in-chief and above.

6.2 On 21 June 2021, Te Uri o Hikihiki circulated revised provisions for its proposed mapped areas. I understand that the revised provisions were intended for discussion, rather than as a formal change of position and that Te Uri o Hikihiki will propose further amendments in its rebuttal evidence.

6.3 The revised provisions that Te Uri o Hikihiki circulated aligned its proposal more closely with the proposal for the Bay of Islands, including by removing the proposed management plan approach, removing the consenting framework to specify only permitted and prohibited activities, and removing reference to particular species in the proposed rules. I support those amendments.

6.4 The revised provisions sought to include some of the objectives and policies that Dr Bellingham referred to in his evidence-in-chief. As addressed in my evidence-in-chief, the rationale for those provisions is unclear, as is their source (in terms of submissions and appeals). If those provisions are pursued in rebuttal, I will address them at the hearing, if necessary.

7. Conclusion

7.1 For the reasons given above, the evidence of the section 274 parties does not change my opinion expressed in my evidence-in-chief. I support the proposed marine protected area provisions, at least to a certain extent.

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[14] Dr Shears EIC on behalf of BOI Maritime Park, Forest and Bird and Ngāti Kuta, paragraphs 50 and 53(b).

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James Henry Griffin

22 June 2021