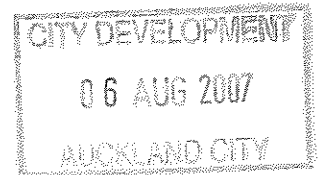


Further Sub No. **2951**



IN THE MATTER OF

The Resource Management Act 1991

AND

Late Submission

IN THE MATTER

Auckland City District Plan – Proposed Hauraki
Gulf Islands Plan - 2006

LATE FURTHER SUBMISSION OF THE NGATI REHUA TRUST BOARD

Ko Aotea te moutere rongonui
Ko Hirakimata te Maunga tapu
Ko te Moananui o Toi te huatahi te Moana
Ko Rehua raua ko Rangituangahuru nga tupuna
Ko Ngati Rehua te iwi
Ko te Tuatara raua ko te Mauri nga kaitiaki
Ko Tainui te waka

1.0 Introduction

Ngati Rehua is the tangata whenua with mana over Aotea (Great Barrier Island), and all outlying islands and rocky outcrops including the Pokohinu group of islands. Auckland City Council (ACC) acknowledge that Ngati Rehua have ahi kaa and exercise mana whenua over lands within Council boundaries and as such should be consulted by council for the purposes of the provisions of the

Resource Management Act 1991 (RMA). This is acknowledged by Auckland City in Part 1.3.5.1 of the Auckland City District Plan – Hauraki Gulf Islands Section – Proposed 2006 (ACDP).

2.0 Current Proposed Plan

It is recognised that the purpose of the preparation, implementation and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of the RMA.¹ The purpose of the RMA is to promote sustainable management of natural and physical resources.²

3.0 Ngati Rehua concerns

This is a late further submission to support and oppose submissions already lodged. In addressing these further submissions the underlying concerns for Ngati Rehua will be made evident.

3.1 Lynette Hoey – 1571 and 1601; Motairehe Marae Trust 3095 and 3096; Loma Cleave 3097

The Ngati Rehua Trust Board (NRTB) support the above submissions.

3.2 Warrick Murray – Department of Conservation 2501

The NRTB oppose this submission in its entirety.

¹ Section 72 RMA.

² Section 5 RMA

4.0 RMA – Section 5

The purpose of the preparation, implementation and administration of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of the RMA. The purpose of the RMA is to promote sustainable management. Pursuant to Section 5 subsection 2:

*“Sustainable management in the Act means managing the use development and protection of natural and physical resources in a way or at a rate which **enables people and their communities to provide for their social economic and cultural well being and for their health and safety while:***

- a) Sustaining the potential of the natural and physical resources (excluding minerals) to meet the reasonable foreseeable needs of future generations and*
- b) Safeguarding the life-supporting capacity of air water soil and ecosystems and*
- c) Avoiding, remedying or mitigating any adverse effects of activities on the environment.”*

(emphasis added)

The current approach to the application of section 5 is the “overall judgement approach.” This was first seen in *New Zealand Rail Limited v Marlborough District Council*³ and subsequent decisions.⁴

In relation to Maori issues, the Privy Council recently stated in *McGuire v Hastings District Council*⁵ as follows:

³ [1994] NZRMA 70 HC Wellington 4 November 1993 Greig J

⁴ *Trio Holdings v Marlborough District Council* [1997] NZRMA 97 *Green and McCahill Properties Limited v Auckland Regional Council* [1997] NZRMA 519

⁵ [2001] NZRMA 557 at para [21] at p 566

*“Section 5 (1) of the RMA declares that the purpose of the Act is to provide the sustainable management of natural and physical resources. But that does not mean that the Act is concerned only with economic considerations. Far from that, it contains many provisions about the protection of the environment, social and cultural well being, heritage sites and similar matters. The Act has a single broad purpose. Nonetheless, in achieving it, all the authorities concerned are bound by certain requirements and **these include particular sensitivity to Maori issues.**”*
(emphasis added)

4.2 RMA - Section 6

This section recognises and provides for matters of national importance in particular sub

sections (c):

“The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna”

section (e):

“The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga

section (g):

“the protection of recognised customary activities”

The terms [in this section] “recognise and provide for” having a stronger obligation than the phrase “regard must be had to [as per section 7 RMA].”⁶

⁶ *Environmental Defence Society v Mangonui CC* (1989) 3 NZLR 257 CA 272 per Mc Mullin J

To carry out the obligations in this section a “two step” approach has been adopted:

1. The recognition of the relationship of Maori with their traditional lands and
2. The provision for the relationship⁷

4.3 RMA - Section 7

The central provision of this section in terms of Maori interests is s 7 (a)⁸ “Kaitiakitanga.” The definition of “Kaitiakitanga” has been reviewed from a definition of:

“ ‘Kaitiakitanga’ means the exercise of guardianship; and, in relation to a resource, includes the ethic of stewardship based on the nature of the resource itself.”

to:

“ ‘Kaitiakitanga’ means the exercise of guardianship by the tangata whenua of an area in accordance with tikanga Maori in relation to natural and physical resources and includes the ethic of stewardship.”

4.4 RMA - Section 8

⁷ *Haddon v ARC* [1994] NZRMA 49

⁸ Other Matters – In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to – (a) Kaitiakitanga...”

This section takes into account the principles of the Treaty of Waitangi. The wording of section eight⁹ has been criticised for the nature of the obligation¹⁰ and that it should mirror the wording of Treaty in section 4 of the Conservation Act.¹¹

5.0 Support

NRTB supports the submissions indicated above as follows:

5.1 Lynette Hoey 1571; 1601

Part 3.2.1; Part 1.4.1.3 refers to "Aotea Settlement." This term "Aotea Settlement" is used throughout the plan for the areas of Motairehe and Kawa. (Part 10b.1.3). This term, name, classification is unacceptable to the tangata whenua.

The ancestral land demarcated in the Plan is incorrect. The Plan does not clearly identify the significance of the area nor the ancestral land.

5.2 Motairehe Marae Trust 3095; 3096 and Loma Cleave 3097

We support this submission's unacceptable name, term or classification of "Aotea Settlement." We support the need to cater for sustainable development for the tangata whenua. We also support the need to a wide consultation process and consideration of tangata whenua concerns.

⁹ "In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall take into account the principles of the Treaty of Waitangi (Te Tiriti o Waitangi)"

¹⁰ *Huakina Development Trust v Waikato Valley Authority* [1987] 2 NZLR 188

¹¹ "Act to give effect to Treaty of Waitangi – This Act shall be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi"

5.3 Amendments sought

5.3.1 "Aotea Settlement"

Withdrawal of "Aotea Settlement."

5.3.2 Ancestral land

Ancestral land correctly be identified within the Plan. Ngati Rehua as tangata whenua have territorial and non territorial rights on Aotea. The Plan does not reflect this.

Aboriginal rights [and the aboriginal rights of Ngati Rehua]have been classified as territorial and non territorial.¹² Aboriginal title (or territorial rights) is defined as¹³ indigenous title existing before the arrival of colonists. Academic writings¹⁴ and court decisions¹⁵ brought into prominence the common law doctrine of aboriginal title as an alternative cause of action for the protection of Maori rights.¹⁶

Non territorial include the rights relating to traditional usages of land such as the right to fish, hunt or continue cultural practices. These rights may exist even when the aboriginal or customary title has been extinguished and have been given a basis in "soft" law. For example, some recognition of aboriginal

¹² McDowell p 196.

¹³ Peter Spiller (ed) *Butterworths New Zealand Law Dictionary* (Lexis Nexis, Wellington, 2002 Fifth Edition) 2.

¹⁴ See P McHugh "The Maori Magna Carta – New Zealand Law and the Treaty of Waitangi 1991 Oxford University Press Auckland chs 3, 4, 5; P Mc Hugh, "Aboriginal Title in New Zealand Courts" (1984) 2 Cant LR 235; P McHugh *New Dawn to Cold Light: Court and Common Law Aboriginal Rights in Bigwood* (ed) pp25 – 66.

¹⁵ See *Te Runanganui o Te Ika Whenua Society v Attorney General* [1994] 2 NZLR 20.

¹⁶ M Mc Dowell and D Webb, 195.

customary law (or non territorial rights) was injected into the administration of criminal and family laws, often without any formal positive requirement.¹⁷

As such it is the submission of the NRTB that this position of Ngati Rehua be reflected in the District Plan in terms of land demarcation and a co management arrangement with respect to finalising the content of and administering the District Plan.

5.3.3 Further consultation - Sustainable development

Further consultation on achieving sustainable development within the area. The results of consultation hui held on 28 May 2005 i.e. signage; consultation on sale of reserves and land rationalisation; involvement of kaitiaki; waahi tapu to be included.

5.3.4 Tangata Whenua

It is submitted that in view of the above a position/s be made available for tangata whenua to work with Auckland City to amend these provisions. This will allow adequate provision of sustainable development and tangata whenua concerns to be included throughout the Plan e.g. Part 7.1.3 does not include protocol.

6.0 Opposition

6.1 Warrick Murray Department of Conservation; 2501

¹⁷ McHugh in Bigwood (ed) p 39.

The NRTB opposes the entirety of this submission. I reiterate that the purpose of District Plans is to ultimately achieve sustainable management. This is defined as

*“Sustainable management in the Act means managing the use development and protection of natural and physical resources in a way or at a rate which **enables people and their communities to provide for their social economic and cultural well being and for their health and safety while:***

- d) Sustaining the potential of the natural and physical resources (excluding minerals) to meet the reasonable foreseeable needs of future generations and*
- e) Safeguarding the life-supporting capacity of air water soil and ecosystems and*
- f) Avoiding, remedying or mitigating any adverse effects of activities on the environment.”*

(emphasis added)

This submission considers the proposed ecological values as outweighing the basic need for tangata whenua to live on their own land. This not only fails to consider the well being of people and communities to provide for their cultural well being but is a breach of the basic human right of right of self determination; and by virtue of that right to freely determine their political status and freely pursue their economic, social and cultural development.¹⁸

It is the submission of the NRTB that the submission 2501 be rejected outright.

Valmaine Toki

2nd August 2007

¹⁸ Article 1 International Covenant on Economic, Social and Cultural Rights. Referred to in the long title Human Rights Act 1993.