PART 5 – Māori values

Introduction

[530] The significance of the proposal to Māori is reflected in the complex evidence and strongly held views presented to us during the hearing, spanning:

(a) the history of Otaiti;

(b) the grounding of the vessel and the clean-up effort in the immediate aftermath of that event;

(c) the complicated inter and intra iwi/hapū dynamics that unfolded as the salvage work progressed, and the Owners of the MV Rena engaged in an extensive network of hui and workshops in the mainly Western Bay of Plenty area, in an attempt to address issues of concern for local communities; and

(d) the enduring effects of the wreck on Māori.

[531] Partly because of the paucity of documented information on Otaiti, much of the evidence presented to us was iwi/hapū history as recalled by particular individuals, or stories recorded in the broader annals of particular iwi or hapū.

[532] Two key geographic locations stand out, Otaiti and Motiti Island (Motiti), which we deal with in turn before considering the evidence we were provided by, and on behalf of, Māori.

Otaiti

[533] It is generally accepted that the name Otaiti was given to the reef by Ngātoroirangi, the tohunga (priest) on board the Te Arawa waka, on reaching Bay of Plenty waters at the end of a tiring journey from Hawaiki.

[534] According to Ngati Whakahemo tradition, he called it "Te taunga o te tapū iti o te tangata" (The resting place of the people on board the canoe). This was later shortened to Otaiti, though it is not absolutely clear when.

[535] However, it became more widely known as Astrolabe Reef, the name given to it by the French explorer, Jules Dumond d'Urville after his ship (Astrolabe) nearly ran aground there on 6 February 1827.

[536] For those Māori communities in the vicinity, the key connection to Otaiti has been because of their high regard for the reef as:

(a) an important tāonga and wāhi tapū; and

(b) a significant mahinga kai (traditional food gathering place).

[537] Those people are primarily the citizens of nearby Motiti.

Motiti Island

[538] Motiti Island (Motiti) is the nearest permanently inhabited landmass to Otaiti, for which fact it is a key consideration in our deliberations.

[539] The origin of the name Motiti is obscure. One version is that Motuiti (Small Island) was its original name.

[540] Some say that it was once called Motiti Wahie Kore (Motiti where there is no firewood), because it resembled a low bare table.

[541] We were told that the hapū for whom Motiti is home are those who have the closest relationship with Otaiti, and are therefore those for whom the application will mean the most. From the evidence we received, we found this to be the case.

[542] As a consequence, the evidence of the hapū of Motiti carries considerable weight.

Consultation

[543] Although it is not a requirement of the resource consent process, the Applicant engaged in a lengthy consultation process with Māori in the Western Bay of Plenty area, in an attempt to reach common ground on the future of the MV Rena.

[544] The evidence from the Applicant indicated there was an unprecedented level of engagement with iwi and hapū – and other local communities – notwithstanding that some chose not to participate, or became less engaged and/or withdrew as a result of continued engagement with the Applicant.

[545] Although the majority of Māori with whom the Applicant met were opposed to the proposal, few could argue that the engagement was anything less than respectful and dignified.

[546] The Ngāti Mākino Heritage Trust's submission captures this succinctly:[152]

> Te Arawa have sought to proactively engage with the Owners and their NZ advisors on matters, which are the subject of this submission.
>
> On that basis, Ngāti Mākino recognise that the engagement process, although challenging at times, has been a respectful and mutually beneficial process.

[152] Ngāti Mākino Heritage Trust submission (2014) at [5]

> We consider we are well informed and well aware of the highly complex nature of the proposal. We therefore consider we are well placed to make informed decisions on the same.

[547] Whilst we did not put the question, it is conceivable that this statement reflects in part how the Te Arawa Parties subsequently arrived at their decision to support the proposal.

[548] Others made similar observations about the deferential manner in which the Applicant engaged with local Māori, even though it might have had little impact on their decision to oppose the application.

[549] If there were issues for some it was about the nature of the consultation rather than the extent, and/or the sense of coercion some felt at being told that the wreck could not be removed without endangering salvage workers or causing further damage to the reef.

[550] A series of mitigation/restoration measures were developed and agreed to during the course of the consultations, upon which some communities subsequently based their decision to support the proposal, and whilst we were not privy to all the details, we are satisfied that the engagement was constructive.

[551] We acknowledge that the Owners and insurers of the MV Rena went to considerable lengths to engage with local communities, above and beyond what is normally required for resource consent applications.

Hapū with direct associations to Otaiti

[552] There are two hapū with direct links to Otaiti, primarily through their traditional occupation of Motiti Island. These two hapū are Te Patuwai (formerly known as Ngāi Te Hapū) and Te Whānau a Tauwhao. Te Patuwai were represented at the hearing by the Council of Elders, Te Korowai Kahui o te Patuwai (Te Korowai), the Te Patuwai Tribal Committee, and Ngāi Te Hapū Inc. There was a clear difference of opinion within the hapū. The Te Korowai supported the application. Te Patuwai Tribal Committee and Ngāi Te Hapū Inc were opposed to the application.

[553] Te Patuwai, who have close and enduring links to Ngāti Awa, have maintained a strong presence on Motiti, and are generally recognised as having kept the home fires burning (ahi ka).

Te Korowai

[554] Te Korowai supported the proposal based largely on their concerns for ongoing spiritual damage to Otaiti.

[555] Chairman, Nepia Ranapia, commented that:[153]

> Otaiti has suffered enough and [that] the conditions of consent proposed by the Applicant, and also supported by MEMI[154], will be sufficient to ensure the mauri of the reef is respected.
>
> As important as Otaiti is to the culture and heritage of Motiti people, the elders say that removal of the final remains of the Rena is unnecessary and could cause more spiritual harm than good.

[556] He cited a series of worrying physical and spiritual 'near misses' during the salvage work as a cause for concern if further attempts were made to remove the remains of the MV Rena. He stated that the spiritual kaitiaki (guardians) of the area in which the vessel had grounded had been disturbed by that event, and that they could only be properly appeased through karakia (prayers, incantations). There was, in essence, an imbalance that needed to be rectified, and that would be best achieved through karakia.

[557] We note that this process effectively began when representatives of Te Korowai visited the reef to conduct karakia in order to address a series of mishaps that the salvage crew had been experiencing. In reflecting on this Mr Ranapia made the following observation:[155]

> Once the karakia were complete the spiritual world started to move back into balance. By this I mean that the spiritual kaitiaki of that site had been put at ease, and were no longer a cause of harm to human life.

[558] Te Korowai also supported the establishment of the Motiti Island Projects Fund as a means for all the people on the island to benefit materially (as 'compensation') for the damage that the grounding of the MV Rena had inflicted on them. They viewed the fund as a '*..sensible suggestion that should enable the Applicant to reach an holistic agreement with the people of Motiti*.'

Te Patuwai Tribal Committee

[559] The Te Patuwai Tribal Committee, of which Te Korowai is ostensibly an integral part, opposed the application because of concerns about the effect it would have on: [156]

(a) the mauri of Otaiti;

(b) the relationship of Te Patuwai with Otaiti; and (in particular)

(c) the role of Te Patuwai as kaitiaki of Otaiti.

---

[153] EIC, Mr Nepia at [2.3] and [2.5]
[154] Motiti Environment Management Incorporated
[155] EIC, Mr Nepia Ranapai at [6.10]
[156] Opening Legal Submission on Behalf of Te Patuwai Tribal Council at [5]

[560] Legal counsel for Te Patuwai Tribal Committee, Mr G Lanning, in his opening submission argued that to grant the consent and allow the wreck to remain would not:

(a) adequately recognise and provide for the relationship of Te Patuwai with Otaiti as a matter of national importance, in terms of Section 6(e) of the RMA;

(b) have proper regard for the role of Te Patuwai as kaitiaki of Otaiti under Section 7(a) of the RMA;

(c) take proper account of the principles of the Tiriti o Waitangi;

(d) have proper regard for the New Zealand Coastal Policy Statement – in particular Policy 2; and

(e) have proper regard for the actual and potential effects on the environment and, in particular, the fact that there are no substantive benefits that outweigh the adverse cultural effects.

[561] The Patuwai Tribal Committee also did not consider that monetary compensation would address the cultural effects of the wreck remaining on the reef. Consequently, they chose not to accept any financial gain from allowing the wreck to remain. In their view, any such rewards would be a constant reminder that the wreck was still there, and that they had somehow failed in their responsibilities as kaitiaki.

[562] Throughout the hearing we were conscious of the courteous manner in which Māori submitters acted towards each other, even in the face of disagreement, as was the case here. Whilst there was obviously disquiet on the part of the rest of Te Patuwai, and others, on the stance adopted by Te Korowai, it was expressed in a respectful manner.

[563] In addition we note the strong outpouring of iwi/hapū support for the presentation of evidence by the Te Patuwai Tribal Committee, and also for the Ngāti Awa and Ngāi Te Rangi presentations, and the Ngāi Te Hapū-led presentations at Whakaue Marae. Substantial numbers of hapū members and supporters turned up for these sessions, demonstrating how emotionally charged the application was for them.

Ngāi Te Hapū Inc

[564] Ngāi Te Hapū Inc was opposed to the application as they maintained that the proposal:

(a) was culturally offensive, not just to them but to all Māori;

(b) ran counter to, and was inconsistent with, Ngāi Te Hapū responsibilities as kaitiaki of Otaiti;

(c) would not precipitate the recovery of the mauri of Otaiti in a timely and/or culturally acceptable manner; and

(d) failed to meet Part 2 RMA requirements, in particular to uphold the principles of 'mutual benefit' and 'partnership'.

[565] Furthermore, the Ngāi Te Hapū Cultural Assessment, one of three Cultural Assessments we received[157] was quite unambiguous in seeking:

(a) a formal apology from the Owners of the MV Rena;

(b) complete removal of the wreck and remaining debris;

(c) the setting up of a fund to deal with cleaning up any further debris that might be washed up on Motiti;

(d) funding for monitoring reef and general environmental recovery;

(e) changes to navigation rules to ensure that large cargo vessels did not repeat what the MV Rena did; and

(f) the establishment of emergency response facilities on Motiti.

[566] Many of these outcomes sought are beyond our jurisdiction in these proceedings.

[567] We note that Mr Konstantinos Zacharatos, the Owner's representative, together with Mr John Owen, the insurer's representative, delivered a formal apology on a number of marae, and the monitoring of reef and general environmental recovery is provided for in the proposed consent conditions. Complete removal of the wreck, however, remains a major sticking point.

[568] We also note that Ngāi Te Hapū Inc drew considerable support for their opposition to the proposal from other iwi and hapū, and, that they were partly responsible for convening the full-capacity hui at Whakaue Marae at Maketū for one day of the hearing.

Te Whānau a Tauwhao[158]

[569] Te Whānau a Tauwhao also unanimously opposed the application, on the grounds that leaving the wreck and remaining debris on Otaiti:

(a) was culturally offensive;

(b) would continue to adversely affect the relationship of Te Whānau a Tauwhao with their tāonga (Otaiti);

[157] In addition to the Cultural Assessment prepared by consultants, Dr Des Kahotea and Mr Shadrach Rolleston for the Applicant, Cultural Assessments were also prepared on behalf of Ngāi Te Hapū, Ngāti Mākino, Ngāti Whakahemo and Ngāti Whakaue.

[158] Te Whānau a Tauwhao are a hapū of Ngāi Te Rangi who, whilst their numbers on Motiti have not been that great of recent times, nevertheless retain their interests on the island through land ownership and a long history and tradition of occupation.

(c) would continue to compromise the kaitaiaki responsibilities of Te Whānau a Tauwhao;

(d) would continue to negatively impact on the mauri of Otaiti; and

(e) would not mitigate the damage that has been inflicted on Te Whānau a Tauwhao tikanga (custom/tradition) no matter how sizable any financial recompense on offer might be.

[570] On the latter point Te Whānau a Tauwhao rejected an offer of a mitigation package from the Owners/insurers of the MV Rena. In this regard Ngaraima Lee Taingahue, Chair of the Te Whānau a Tauwhao ki ngā Moutere Trust, commented:[159]

> Whilst our hapū have enjoyed cordial relations with the Rena owners/insurers and its New Zealand agents Beca, this offer undermines our mana by putting a price on it, a value that Te Whānau a Tauwhao asserts as being irrefutably priceless.

Other iwi with close associations to Otaiti

[571] We heard from a number of witnesses from other iwi in Te Moana a Toi (Bay of Plenty), who also have legitimate close ties to Otaiti. For those who opposed the application, they professed their own kaitiaki responsibilities towards the reef and concern for the mauri, as the key reasons. For those in support, the potential for further damage to the reef, and satisfaction with mitigation measures on offer were uppermost.

[572] It is a matter of record that whakapapa connects all these iwi in one way or another. Geographic proximity to one another also counts.

[573] We deal with each iwi group in turn.

Ngāti Awa

[574] As mentioned, the strong whakapapa connections of Ngāti Awa to Te Patuwai largely define their links to Otaiti.

[575] Not surprisingly perhaps, the Ngāti Awa Rūnanga rejected the proposal, partly as a display of support for Te Patuwai, but equally importantly, as stated in their evidence, on the grounds that:[160]

(a) the mauri of the reef had suffered irreparable damage;

(b) the gateway between the physical and spiritual worlds, that is such a key part of the Māori way of life, would remain impaired;

(c) the Applicant's contention that removal of the wreck would not only be costly but a danger to human life and to further damage the reef was unacceptable;

[159] Brief of evidence, Ngaraima Lee Taingahue at [44]
[160] Brief of evidence, Mr Pouroto Ngaropo, at [99]

(d) the strong kaitiakitanga obligations of Ngāti Awa, with respect to Otaiti would continue to be marginalised;

(e) the health and cultural well-being of Ngāti Awa would continue to suffer; and

(f) only full removal of the wreck would rectify the negative impact the grounding has had on Ngāti Awa cultural and spiritual values, and the relationship of Ngāti Awa with Otaiti and Motiti.

[576] At the same time Ngāti Awa presenters remained silent on the decision taken by Te Korowai to support the application. We considered this to be as much an indication of the considerate way in which the Māori presenters treated each other during the hearing, as it might have been about silent condemnation.

Te Arawa

[577] There is no simple single grouping for the confederation of iwi and hapū of Te Arawa, nor was there a common view on the application.

[578] The Te Arawa Parties, who submitted as one, comprised the Maketū-based Ngāti Mākino Heritage Trust as the original submitter, plus a number of other Te Arawa entities.[161]

[579] The Te Arawa Parties initially opposed the proposal but later withdrew their opposition to one of support, on the basis that:

(a) their concerns had largely been addressed through ongoing discussion with the Applicant, from which they had reached general agreement on a way forward; and

(b) their own expert diver cautioning that full wreck removal would cause further considerable damage to the reef, which for them was untenable.

[580] Mr Hemi Bennett and Ms Maria Horne, on behalf of Ngāti Whakaue, distanced themselves from the Te Arawa Parties and submitted separately, as already mentioned. They opposed the application out of concern for ongoing adverse impacts on their kaitiakitanga responsibilities, fear for possible future contaminant releases, cynicism over the mauri monitoring model put forward by the Te Arawa Parties and frustration over what they regarded as unreasonable treatment of Ngāti Whakaue leading up to the hearing.

[581] It is not the role of the panel to try to determine what the various interests of the iwi/hapū are with respect to Otaiti, but rather to weigh up how the application recognises and provides for the connections they each have with the reef.

[161] The Te Arawa parties included: Nga Tangata Ahikaaroa o Maketū, Te Arawa ki Tai Trust, Te Arawa Lakes Trust, Te Pumautanga o Te Arawa Trust, Ngāti Tuwharetoa (BOP) Settlement Trust, Te Mana o Ngāti Rangitihi Trust, Maketu Taiapure Trust, Ngāti Tunohopu, and the Te Arawa Koeke Council.

Tauranga Moana

[582] As with Te Arawa, there is no single grouping for the iwi of Tauranga Moana either, and neither too was there a common view on the application.

[583] Tauranga Moana iwi have a strong and significant relationship with Otaiti and the surrounding moana through:

(a) whakapapa links to one or other of the hapū on Motiti;

(b) geographic proximity;

(c) overlapping/common customary interests; and

(d) a shared sense of kaitiakitanga (towards Otaiti) that epitomises their collective Tauranga Moana identity.

[584] We deal with each iwi in turn.

Ngāti Ranginui

[585] Ngāti Ranginui initially opposed the proposal but then withdrew their submission prior to the hearing because, as Mr Carlton Bidois, Deputy Chairperson of the Ngāti Ranginui Society wrote:[162]

> Ngāti Ranginui and the [Astrolabe Community] Trust have [also] successfully negotiated resourcing to assist in the further mitigation and offset of Ngāti Ranginui's concerns.
>
> For these reasons Ngāti Ranginui no longer wishes to be heard in opposition to the consent being granted and we wish to withdraw our submission.

[586] Notwithstanding, the withdrawal of Ngāti Ranginui, there was a presentation by three of their members, who gave evidence in support of Ngāi Te Hapū.

Ngāi Te Rangi

[587] Ngāi Te Rangi unanimously opposed the application, partly in support of the position taken by their whanaunga (relatives) on Motiti, Te Whānau a Tauwhao, but also out of concern for possible ongoing adverse effects on Māori cultural values.

[588] In their view:

(a) Otaiti was a tāonga and had to be recognised and provided for as a matter of national importance;

[162] Letter of 3 June 2015 from Mr Carlton Bidois at [1.2]

(b) further releases of contaminants could not be ruled out, which could compound the ecological damage already done to the reef, and to Māori values, like mauri, mana and kaitiakitanga;

(c) the proposed consent conditions were inadequate in that:

i) the ten year timeframe was much too short;

ii) the KRG would not be truly representative;

iii) the 'monitoring' conditions did not go far enough; and

(d) the application would fail to protect those characteristics of the coastal environment that are of special value to Ngāi Te Rangi, in accordance with the New Zealand Coastal Policy Statement, the Bay of Plenty Regional Policy Statement and the Bay of Plenty Coastal Environment Plan.

Ngāti Pūkenga

[589] Ngāti Pūkenga did not formally submit, though the Chair of the Ngāti Pūkenga Iwi ki Tauranga Trust, Mr Rehua Smallman, gave evidence in support of Ngāi Te Hapū.

[590] In his view allowing the wreck of the MV Rena to remain on Otaiti would further compromise the shared kaitiaki responsibility that Ngāti Pūkenga, and other Tauranga Moana iwi, had, and from which they derived their Tauranga Moana identity. As he saw it, not opposing the application would be tantamount to abrogating their responsibilities as kaitiaki for Otaiti.

[591] Mr Smallman also expressed concerns that:

(a) the KRG would not be truly representative;

(b) the proposed mauri model was culturally deficient and inappropriate; and

(c) possible future releases of contaminants were not sufficiently covered by the consent conditions.

Ngā Pōtiki a Tamapahore

[592] Ngā Pōtiki a Tamapahore objected to the proposal, also partly in support of the hapū on Motiti. In their view, approval of the application represented a serious ongoing threat to Motiti and the wider Tauranga Moana rohe and traditions as:

(a) mahinga kai areas had been seriously compromised and faced ongoing degradation as contaminants continue to be released; and

(b) customary practices associated with the sea remained in the balance until, or unless, the reef was cleaned up.

[593] Mr Tama Hovell, legal counsel for Ngā Pōtiki a Tamapahore, reminded us that declining the application did not mean the wreck would be removed. However, granting it foreclosed that possibility.

Summary of submissions

[594] Of the 151 submissions received, 48 were from Māori. 46 opposed the application, one was neutral and one was in support. During the hearing two of the opposing submissions were withdrawn, and one submission was changed from opposition to support.

Opposing

[595] Those opposed to the application considered that:

(a) the proposal was culturally offensive to Māori;

(b) the proposal did not adequately recognise Māori values;

(c) abandoning the wreck would have adverse effects on the physical and spiritual values associated with Otaiti, in particular the mauri of the reef;

(d) the tapū (*sacred*) characteristics of Otaiti had been totally disregarded;

(e) the ability of Māori to exercise their kaitiakitanga responsibilities and rangatiratanga over Otaiti would continue to be adversely affected;

(f) potential continued contaminant releases would have direct detrimental consequences for kai moana and other ecological resources;

(g) traditional food gathering practices would be adversely affected and the kai moana resource would be lost;

(h) the ability of tangata whenua of Motiti to undertake customary practices, and to meet their customary obligations, such as hosting manuhiri (*visitors*) in a traditional and proper manner would be compromised;

(i) the application failed to recognise the principles of the Treaty of Waitangi, in particular the Principle of Partnership and the Principle of Mutual Benefit;

(j) the application failed to meet Part 2 requirements of the RMA;

(k) the proposal was contrary to Iwi Management Plans;

(l) restoration and mitigation measures being offered were unacceptable and, to some, insulting; and

(m) the proposed conditions of consent were inadequate.

[596] The majority of those opposed to the Application also sought full removal of the wreck and remaining debris. They did so out of a belief that the effects on Māori values would be significant and would not be adequately remedied or mitigated by the proposed conditions of consent, or by the mitigation packages on offer.

Withdrew

[597] Three submissions were withdrawn, one prior to the hearing and the other two at the time of the hearing.

[598] The key reasons were:

(a) the willingness of the Applicant to recognise and provide for the relationship of the people of Motiti with Otaiti, primarily through ongoing and productive engagement with each of the submitters on matters raised;

(b) the provision of mitigation packages that adequately met the concerns of each of the submitters; and

(c) the inclusion of monitoring mechanisms in the proposed consent conditions that would deal with any contingencies that might arise.

Supporting

[599] During the hearing the Te Arawa parties changed their opposition to one of support, and they together with other parties that supported the proposal, emphasised that:

(a) no further damage should be inflicted on the reef, for spiritual and physical reasons;

(b) full removal was unnecessary;

(c) the proposed conditions of consent were acceptable;

(d) the mitigation measures being offered satisfactorily addressed their concerns; and

(e) the Applicant had at all times dealt openly and respectfully with Māori.

Values

[600] We have set out in the previous subsection of this decision, the stance taken to the proposal by the different iwi and hapū who have a relationship with Otaiti. Underlying the opposition of those who oppose the proposal is the alleged effects on Māori values. Even those who supported the proposal accepted that there were undeniable effects on Māori values.

[601] To appreciate the significance or otherwise of the effects on Māori values, we consider it is important to identify those values and briefly discuss the evidence in respect to them.

[602] Various values were discussed at length by Māori presenters, of whom some were directly involved as members of their iwi/hapū as submitters and gave evidence accordingly. Others were called by the Applicant, Crown, Council and others as independent consultants with expertise in Tikanga Māori and/or resource consent matters.

[603] In considering their evidence, we are mindful of the fact that Māori values have a particular relevance for individual iwi/hapū depending on the circumstances, and that there is no 'one size fits all' template for dealing with them. Nevertheless, we are compelled to highlight the key values that submitters have identified and need to be considered in weighing up our decision.

[604] We deal with each of these values in turn.

Tāonga (treasure or a highly prized possession)

[605] There was agreement that Otaiti was a tāonga, and that its relationship with the hapū of Motiti had therefore to be recognised and provided for as a matter of national importance – in which case Section 6(e) of the Act applied. Many who opposed the application were of the view that the proposal failed to adequately address this provision.

[606] Its status as a tāonga arises from the many Māori values that are associated with the reef. These include:

(a) the historic association of Māori with the reef;

(b) the spiritual association of Māori with the reef; and

(c) the physical association of Māori with the reef, primarily as a mahinga kai.

[607] Its acceptance as a tāonga is reflected in Condition 3.2(a) which recognises the importance of Otaiti as a tāonga.

Wāhi tapū (sacred place)

[608] Section 6(e) of the RMA requires that we recognise and provide for the relationship of Māori with Otaiti as a wāhi tapū-along with other tāonga. As we have said, Otaiti is considered to be a wāhi tapū by some Māori, especially those who have a relationship with the reef.

[609] The grounding of the MV Rena was regarded as tantamount to desecration to the tapū state of Otaiti, and was viewed as being intolerable to some Māori. We heard evidence from some Māori submitters and we acknowledge that their concerns were genuine.

[610] We also note that such is the significance of this issue ie Otaiti being a wāhi tapū, that Ngāi Te Hapū Inc in 2013 sought to register Otaiti under the New Zealand Historic Places Act 1993, now replaced by the Heritage New Zealand Pouhere Tāonga Act 2014. At the time of the hearing the outcome of that application was not known.

Mauri (life force)

[611] The overwhelming view of Māori was that the mauri of Otaiti had been adversely affected by the collision of the MV Rena with Otaiti. There was considerable discussion on the issue of mauri during the hearing.

[612] Most submitters maintained the mauri would continue to suffer for as long as the wreck of the MV Rena, along with its associated debris, remained; and that the proposal should be declined and the wreck removed.

[613] For some, the '*abandonment of the wreck would result in the permanent severance of the mauri of Otaiti. No amount of cultural or mauri monitoring would alter that*.'

[614] Others, like Te Korowai, reasoned that removing the wreck would damage the reef even more, and that it would be more advantageous to the mauri if the remains of the wreck were to be left as is.

[615] They also asserted that the mauri of Otaiti could be restored through ritual karakia, and were quick to point out that if the reef was completely destroyed the mauri would be lost forever; hence their insistence on there being no further salvage work carried out than was absolutely necessary.

[616] Dr Kepa Morgan, Auckland University Senior Lecturer in the Department of Civil Engineering, called by Te Arawa, accepted that the mauri of the reef was adversely affected; however, he claimed that it was possible to measure mauri and it is, also possible to restore mauri, in this instance to its pre-MV Rena state.

[617] As mentioned, the mauri monitoring model he put forward as a way of achieving this was less than enthusiastically received. For reasons given earlier in this decision, we have deleted the condition requiring a mauri monitoring plan and have included mauri in the list of key values to be monitored as part of the overall cultural monitoring plan.

[618] Te Patuwai agreed that the onus for 'repairing' or 'rejuvenating' the mauri was on the Applicant. However, they expressed a preference for this to be done under the guidance of Te Patuwai and Te Whānau a Tuwhao rather than the KRG. Te Patuwai and/or Te Whānau a Tawhao membership of the KRG, and ITAG is, of course, an option.

[619] Mr Tahu Pōtiki, Cultural Advisor for the Applicant, challenged the notion that the mauri of Otaiti had been adversely affected by the grounding. In his view this could arguably only be demonstrated by fish having abandoned the reef and by the noticeable absence of other life, including kaimoana, from that environment. The evidence, as he saw it, seemed to suggest that this was not the case.

[620] We were not persuaded by his argument in the face of widespread agreement across all the hapū of Motiti, together with most other local iwi, to the contrary.

[621] It was also suggested that the damage done to the reef would be alleviated over time by the forces of nature.

Kaitiakitanga (guardianship responsibilities)

[622] Section 7(a) of the RMA requires us to have particular regard to kaitiakitanga, the ethic of stewardship. The Act also requires determination of those who are kaitiaki.

[623] From the evidence provided, we accept that the hapū of Motiti have kaitiaki responsibilities for Otaiti that outweigh others. Their very existence on Motiti depends on ensuring that the surrounding moana (sea) is carefully managed and cared for so that it can sustain the people of Motiti accordingly. In addition, it is important for them to ensure that Otaiti is passed on to successive generations in as good a state, if not better, than before. The people of Motiti fiercely expressed their rangatiratanga (traditional authority) over Motiti and the surrounding moana including Otaiti. This rangatiratanga was strongly reflected in their kaitiakitanga responsibilities to Otaiti.

[624] It was argued that the mana of the hapū had been damaged by the collision, and that unless, or until, the mauri of Otaiti is restored the chances of passing on a pristine Otaiti to their grandchildren is remote.

[625] Having made these observations, we also accept that iwi and hapū in Te Moana a Toi as a whole maintain a kaitiakitanga responsibility to Otaiti through their whakapapa links and proximity to the reef.

Mana (authority, prestige)

[626] Cultural expert, Mr Tamati Waaka, described mana as '*the most prized and sought-after quality*.' He went on to say that mana was not about how one perceived oneself but rather how others saw you. In his words '*claims of mana need to be acknowledged by others in order to realise.*'

[627] In the Otaiti context, the focus becomes more on the richness of the food resources that the marine environment provides, and from which the hapū of Motiti are able to either bathe in glory or shrink from in shame (whakamā).

> The abundance of resources for a hapū and iwi was, and remains, a source of great mana. There are many traditions about the bounty of resources of hapū and iwi as symbols of their mana. In addition to sustaining the iwi and hapū, resources provided the means for the hapū or iwi to provide for others through manaaki (host guests) or koha (gifts or offerings).

[628] Maintaining mana over the resources provided by Otaiti and the surrounding marine area is paramount for the hapū of Motiti and all iwi in the rohe.

Manaakitanga (obligations as hosts and helpers)

[629] The ability of tangata whenua to look after (manaaki) visitors (manuhiri) is a duty Māori take very seriously. To not do so would result in a loss of mana (prestige); in some instances seriously so.

[630] Traditionally the hapū of Motiti have relied on the moana around Motiti, which includes Otaiti, for a large part of their daily sustenance, and to provide kaimoana (seafood) to manaaki their manuhiri.

[631] The grounding of the MV Rena, and subsequent events, in particular the imposition of an Exclusion Zone, has had significant impacts on the ability of those hapū to uphold their manaakitanga duties. Until the exclusion zone is lifted, no kaimoana (which includes fish) will be able to be taken from the zone, limiting the ability of the hapū of Motiti to properly provide for manuhiri, not to mention their ability to simply harvest the fruits of the moana around Otaiti for daily use.

Mahinga kai (food gathering places)

[632] Otaiti has been variously described as a kete kai (food basket, a kāpata kai (food cupboard) and other shades of meaning related to its pivotal role as a mahinga kai. However, the Exclusion Zone prevents access to this resource, a possibility that Ngāi Te Hapū spokesperson Mr Buddy Mikaere was prepared to face in opposing the application.

[633] Mr Mikaere said:[163]

> We appreciate that achieving full wreck removal will likely mean the present restrictions on access to the reef for fishing purposes will remain in place for a long time – possibly years. But we are happy to make that sacrifice if at the end of that time the wreck is removed and our reef is able to recover unfettered by the presence of a junk pile.

[634] In his view, the life supporting capacity of Otaiti and surrounding waters will continue to be vulnerable for as long as the wreck remains on the reef.

[163] EIC, Mr Buddy Mikaere at [10]

[635] Most agree that the grounding has had an impact on the mahinga kai qualities of the reef, despite claims that ecologically it might be returning to some sort of normalcy.

[636] We heard evidence from witnesses, about their concern relating to the past and ongoing effects of contaminants on kaimoana. Despite the evidence from the technical experts, we accept the reluctance of Māori to gather kaimoana when they have experienced evidence of contamination.

Ara wairua (spiritual pathway)

[637] Mr Mikaere, on behalf of Ngāi Te Hapū, described Otaiti as a 'toka tapū (sacred stepping stone) that was part of '*a pathway for the spirits of our dead back to the ancestral homeland of Hawaiki*.' Various other experts alluded to this as well.

[638] Ngāti Awa cultural expert, Mr Pouroto Ngaropo, also referred to Otaiti as '*the spiritual leaping place of the spirits of Ngāti Awa*.' From there they followed a prescribed pathway traversed by Rehua Ariki, the trusted attendant of Io, the Supreme Being.

[639] Cultural advisor for the Applicant, Mr Tahu Pōtiki, had difficulty in substantiating this because of the scarcity of source material other than the cultural assessments prepared for the hearing.

[640] Mr Ranapia is also claimed (in personal conversation with Mr Pōtiki) to have discounted Otaiti being part of an ara wairua. Whilst his word carries weight in this kind of dialogue we note that Mr Ranapia did not address it directly in his evidence.

[641] There was a clear divergence of opinion on the matter of Otaiti being an ara wairua. While there appeared on the evidence to be a scarcity of source material on the issue, we found that those who addressed the issue from their iwi perspective appeared devout and sincere in their expression of belief. We did not see the need to question their integrity as, at the end of the day, it would make no difference to our overall finding. It was one of many Māori values claimed to be affected by the grounding.

Effects on Māori Values

[642] We heard a lot of evidence relating to the effects of the proposal on the Māori values that we have identified. We heard evidence on behalf of the Applicant from Dr Des Kahotea and Mr Shad Rolleston. We heard evidence from the Crown from Dr Graham Young. We heard evidence from the Council from Mr Reginald Proffit. All of these witnesses were consultants with expertise in tikanga Māori.

[643] We heard from a large number of Māori who associated either directly or indirectly with Otaiti. This evidence was presented by learned kaumatua; others with an innate and knowledgeable understanding of Māori values; and professionals associated with the various hapū. The evidence presented on behalf of the iwi/hapū who appeared before us reflected their particular association with Otaiti.

[644] The evidence was lengthy and at times complex. However, one outstanding and endurable thread of all of the evidence was that the collision, its aftermath and continuing presence of the wreck has significant adverse effects on the Māori values that we have identified.

[645] Where there was a difference of opinion, was whether conditions of consent could be imposed that would mitigate those effects to the extent that they became less than significant.

[646] The evidence for the Applicant and for those Māori who supported the proposal was that the conditions of consent that have been proposed would adequately mitigate the adverse effects.

[647] The evidence for the Crown and for those Māori who opposed the proposal was that the conditions of consent that have been proposed would not adequately mitigate the adverse effects.

[648] Accordingly, we now turn to the proposed conditions.

Consent Conditions

[649] We have discussed the proposed conditions of consent earlier in this decision and have attached as **Attachment One**, the decision version. The conditions propose mitigation measures to address the adverse effects on Māori values as follows:

(a) the establishment of a **KRG** whose prime purpose/role is to recognise the importance of Otaiti as a tāonga, and to recognise the kaitiakitanga of Māori who have a relationship with Otaiti;

(b) the establishment of an **ITAG** with suitably qualified and experienced matauranga Māori representation as part of the group, in order to best assist the Council to fulfil its consent management responsibilities;

(c) the inclusion of a Cultural Monitoring Plan for monitoring the effects over time on a number of fundamental Māori values including but not limited to: mana, ara wairua, mahinga kai, mauri, and kaitiakitanga[164]; and

(d) the provision of restoration and mitigation packages.

[164] We have earlier in this decision, for reasons there set out, deleted a proposal for a Mauri Monitoring Plan as we considered mauri would better be included as part of the Cultural Monitoring Plan rather than as a separate mechanism.

[650] Some Māori considered the proposed conditions of consent would sufficiently mitigate the adverse effects on Māori values because:

(a) the KRG would enable those Māori who have a relationship with the reef to actively participate in the control and management of the wreck and the released, and yet to be released contaminants;

(b) the KRG and its participation in the ITAG group would assist in accommodating their kaitiakitanga responsibilities;

(c) the Cultural Monitoring Plan would assist in monitoring the effects over time of many of the Māori values that would be effected; and

(d) the offsetting of adverse effects by the restoration and mitigation packages.

[651] To those Māori who opposed the proposal, the package of proposed consent conditions was not considered sufficient to mitigate the adverse effects on Māori values. The KRG was not so appealing to them as they had concerns about it not being representative of all Māori. They were also of the view that management of the reef, including the wreck and contaminants, would not sufficiently address the adverse effects on Māori values. They were concerned that the Cultural Monitoring Plan would not address the effects on Māori values from the perspective of each individual iwi/hapū - only the complete removal of the wreck would achieve these things. However, as we have said, we have no jurisdiction to order removal of the wreck.

[652] While we heard a lot of evidence on these complex issues, we do not consider it necessary to discuss that evidence in detail. We can see benefit for Māori in there being a controlled management regime for the reef. Notwithstanding, we are of the view that the effects on Māori values are such that the conditions, while addressing those effects, do not sufficiently mitigate them to the extent that they become less than significant.

Finding

[653] We find that, notwithstanding the proposed conditions of consent, the effects on Māori values would be significant. This is a matter that we must weigh in the balance when coming to our evaluation and decision.

PART 6 – Consideration of alternatives

Introduction

[654] It is now well accepted that if a consent authority concludes that a proposal may have significant effects on the environment then the availability of alternatives is a relevant matter for consideration. However, an applicant is not required to demonstrate that its proposal is the best.[165]

[655] We have found that the proposal would have significant adverse effects, particularly on Māori in contravention of subsections 6(a) and 7(a) of the RMA. In this respect we are conscious of the comments of the Privy Council in ***McGuire v Hastings District Council***:[166]

> …These are strong directions, to be borne in mind at every stage of the planning process. The Treaty of Waitangi guaranteed Māori the full exclusive and undisturbed possession of their lands and estates, forests, fisheries and other properties which they desired to retain. While, as already mentioned, this cannot exclude compulsory acquisition (with proper compensation) for necessary public purposes, it and the other statutory provisions quoted do mean that special regard to Māori interests and values is required in such policy decisions as determining the route of roads. Thus, for instance, their Lordships think that if an alternative route not significantly affecting Māori land, which the owners desire to retain, were reasonably acceptable, even if not ideal, it would accord with the spirit of the legislation to prefer that route. So too, if there were no pressing need for a new route to link with the motorway, because another access was reasonably available.

[656] The ***McGuire*** case considered a request for a designation. However, it is applicable by way of analogy to the present circumstances where we have found there to be significant effects on Māori.

[657] Some submitters sought that the wreck be removed in its entirety. We have said that we have no jurisdiction to order removal of the entire wreck. Our task is to grant or refuse what has been applied for in the application for resource consent.

[658] Some submitters, particularly the Crown, sought that the bow and debris from the "*debris field*" be removed, and that only the stern of the wreck remain in the sea bed. The Crown sought everything above the LAT-30 metres should be removed.

---

[165] See ***Meridian Energy Limited v Central Otago District Council*** [2010] NZRMA 477 [HC]

[166] [2001] NZRN 577 at [21]

Can a condition be imposed requiring removal of the bow?

[659] Mr Casey QC questioned whether we may impose a condition requiring that the bow pieces be removed. He asserted that any such condition would need to be reasonable and for there to be a "*logical connection*" between the proposed activity and the condition. He referred to the Supreme Court decision of ***Waitakere City Council v Estate Homes Limited***.[167]

[660] The power to impose conditions on resource consents under Section 108 of the RMA is broadly expressed. However, the power to impose conditions is not unlimited. To be valid, a condition must comply with what has become known as the "***Newbury** principles*":[168]

(a) the condition must be for a resource management purpose, not for an ulterior one;

(b) the condition must fairly and reasonably relate to the development authorised by the consent to which the condition is attached; and

(c) the condition must not be so unreasonable that no reasonable planning authority duly appreciating its statutory duties could have approved it.

[661] The Supreme Court in ***Waitakere CC v Estate Homes*** held that the application of common law principles to New Zealand's statutory planning law does not require a greater connection between the proposed development and conditions of consent than that they are logically connected to the development. In other words, we must ensure that the condition we impose is not unrelated to the proposal. The limit does not require that the condition be required for the purpose of the proposal.

[662] We consider that imposing a condition to remove the bow would be logically connected to the application, in that if adverse effects arise from the bow section remaining, then conditions could be imposed to address them. This could include removal. Whether it is reasonable to do so is a matter of fact that we discuss below.

The Applicant's consideration of alternatives

[663] It was the Applicant's position that an assessment of alternatives was not necessary as the application concluded that there were no significant adverse effects.[169] However, an alternative assessment of wreck removal options was undertaken.

[664] As we have said, the Applicant considered alternatives that included:

(a) leaving the wreck and debris as it was prior to the application;

(b) full wreck removal; and

---

[167] [2006] NZSC 11, [2007] 2 NZLR 149 at [65]-[67]

[168] ***Newbury DC v Secretary of State for the Environment*** [1981] AC578; [1980] 1 ALL ER 731 (HL)

[169] Based on Schedule 4, Part 1(b) of the RMA

(c) partial wreck removal which amounted to removing the pieces of the wreck and debris so the wreck and debris field was in a "*benign*" or "*consented*" state.

[665] The process involved a risk-based approach, with environmental, cultural, social and economic effects of each of the options being considered, including the short, medium and long term effects. The assessment process has been identified as being ongoing and evolving as the Owner responded to assessments and feedback during the ongoing salvage works. The assessment was also influenced and refined by the experiences and learnings on the reef through the salvage and recovery phase.

[666] Based on the risk assessment of the three alternatives[170] the Applicant decided that the partial wreck removal option was the most suitable option for the following reasons:

(a) the outcomes of the risk assessment identified that the partial wreck removal option had a clear risk-based advantage in the short and medium term over full wreck removal;

(b) full wreck removal would have greater adverse effects in the short term and result in the continuation of the exclusion zone at the reef until works were completed; and

(c) wreck removal would be a hazardous, prolonged and expensive undertaking.

Wreck removal feasibility reports and evidence

[667] Further to the assessment of alternatives the Applicant engaged Mr Colin Barker of TMC Marine Consultants Limited to undertake a technical feasibility assessment of full wreck removal, referred to in the evidence as the "**TMC report**."[171] The TMC report concluded:

> Whilst it is theoretically possible to perform a full removal of the Rena wreck, it would be a hazardous, prolonged and expensive undertaking.
>
> Comparisons with other equivalent sized wreck removal operations across the world show that the Rena is significantly more difficult and expensive than operations that have been undertaken elsewhere. If full removal of the Rena (an unremarkable container ship of modest size by modern liner shipping standards) were attempted the Astrolabe reef would remain a restricted area for a period of several years, the risk to life would be high and the financial cost would be very high.

[170] Volume 3, Part B – Table 6 and Part C – Table 7 of the Application
[171] Full wreck removal feasibility appraisal, 18 June 2014

[668] The Council engaged Mr Camiel de Jongh of Global Salvage Consultancy, an international salvage and wreck removal consultancy based in the Netherlands, to undertake a review of the TMC report. In summary, Mr de Jongh was of the view that the TMC report is missing some critical aspects which are required to compile a full appraisal of the feasibility of a full removal of the wreck. He was in general concurrence with the conclusions of the report that a full removal operation would be faced with operational challenges and compounded total costs, making it overall disproportionate.

[669] The Crown instructed Mr Nick Haslam, an experienced marine casualty investigator employed by London Offshore Consultants. He concluded:[172]

> The stern section is known to be structurally damaged and removal would be a complex operation which would take a protracted period of time. The latest ADUS survey undertaken in 2015 clearly shows the stern section has again moved and is further collapsing in on itself.

[670] The three experts conducted an expert conference and produced a Joint Witness Statement dated 24 August 2015.[173] While there were some areas of disagreement as to cost, methodology and feasibility, there was in the end surprisingly little disagreement on a number of important issues.

Wreck degradation and movement

[671] All agreed that the stern section is currently located on a scree slope on the exposed outer side of the reef. All experts expect that the stern will slowly slip down the reef and collapse in on itself. In the initial years the stern would be more significantly affected by hydro dynamic forces rather than corrosion. The stern section is still unstable and over the next year or so it should collapse further and settle. Once it has collapsed in on itself in the deeper waters, there would be little or no movement thereafter.

[672] All agreed that scattered small bow pieces had moved in a south-west section to the lee side and are in about 10-20 metres of water. All agreed that these pieces are now in a more settled position. Messrs Barker and Haslam consider that these pieces are unlikely to move up the reef (towards the north). Mr de Jongh considered it was difficult to predict if they would move and therefore monitoring is recommended. They all agreed that these bow pieces are not considered to be a hazard to navigation.

[172] EIC at [5]
[173] Wreck removal and salvage, 24 August 2015

[673] All experts agreed that the main (larger) cut down bow section is in shallower water and is the part of the wreck that is most exposed to the high energy of the waves. Currently it is below LAT -1 metre. All agree that in future it is more likely that pieces will deteriorate and break off this bow section, rather than it will move in one piece. All agree that significant storm events are likely to cause pieces to break off and move to deeper parts of the reef, downslope to the lee side of the reef. Mr Haslam expressed concern that plates, particularly the tank top, may peel up and protrude, in which case remediation work would be required.

Removal of bow pieces

[674] Some submitters particularly the Crown sought that the bow and debris from the debris field be removed and that only the stern section of the wreck remain on the seabed. The Crown sought everything above LAT -30 metres should be removed.

[675] All experts agreed that access to the large bow section would be difficult because of its location near to the centre of the high point of the reef and in shallow water. Messrs de Jongh and Haslam maintained that there are vessels/equipment in the world that could be used to remove this main bow section by direct lifting. Mr Barker considered that more information is needed to illustrate that such vessels could in fact reach this (double-bottom) bow section. However, all agreed that technically it could be removed but they also all agree that it would be more difficult to remove than would be the case for the scattered small bow pieces. All agreed that it would be difficult for this main bow section to lift in one piece and it would therefore require cutting. Another option would be to drag the main bow section across the reef to deeper water and remove it from there. Either option could cause damage to the reef.

[676] All experts agreed that, if the bow section was to be removed, then the cost would be high and it would take a long time, and that the only way to confirm the cost and time period would be to go out to international tender.

[677] Mr Barker, who is familiar with the current operations that have been taking place at the reef, was more specific in terms of cost of removal for the bow section.[174] He estimated that it would take between 320 days and 410 days to remove the bow pieces at a cost of between US$62 and US$79 million. Messrs de Jongh and Haslam both considered that Mr Barker's estimates were too high but they were unable to provide alternative estimates. We are satisfied that the cost would likely be somewhere in the vicinity of the estimated cost made by Mr Barker.

[174] EIC at [4.32] and [4.33]

Removal of stern section

[678] In relation to the stern, all experts agreed that whilst the stern section could technically be removed, they all recorded their concern that any benefits (if any) would be outweighed by the risks, time, cost and safety of such an undertaking. All agreed that removal of the stern section would be a major and costly undertaking. Mr Barker estimated a timescale for the removal of the stern section[175] of between two and a half, and three and a half years. He estimated a cost[176] of between US$310 and US$430 million.

Finding

[679] As we have said, we do not have jurisdiction to order removal of the wreck other than to impose a condition to remove the bow pieces. We find that the removal of the bow section is not warranted. When considering bow removal in a "balance of effects" scenario, we are of the view that removal would be disproportionate and overly cautious in light of the potential for the bow pieces to cause adverse effects. Any effects, which may occur, could be adequately addressed by the proposed conditions of consent.

[680] In weighing up the potential adverse effects on leaving the bow sections on the reef (damage to the reef and more immediate release of contaminants); any reduction of adverse effects that could result from their removal (in natural character and the risk of scour); and the costs of undertaking the risk; we conclude that overall a requirement to remove the bow pieces would constitute a disproportionate response.

[681] We find that any ongoing issues relating to the bow, including potential navigational and ecological (scouring/smothering) effects can be adequately dealt with through the monitoring and contingency measures as set out in the proposed conditions of consent.

[682] The removal of the bow section on cultural grounds, in the absence of wider support from tāngata whenua that this would mitigate cultural effects or provide for their relationship with Otaiti, does not appear warranted. Only Te Whānau a Tauwhao sought removal of the bow sections, if consent were granted. Those that opposed the application expressed a desire for the whole wreck to be removed.

[175] EIC at [4.22]
[176] EIC at [4.23

PART 7 – Evaluation and overall finding

Introduction

[683] We have now come to that part of our decision where we must evaluate our findings against the statutory framework and come to a decision on whether to grant the application for resource consent, subject to conditions, or to refuse the application. This requires us to make an evaluative judgement as to whether granting the consents would meet the single purpose of the RMA set out in Section 5, which is to promote the sustainable management of natural and physical resources.

[684] We need to view this as guided by the statutory directions contained in Section 104 of the RMA, but subject to the overarching matters set out in Part 2. Sections 6, 7 and 8 inform and assist the purpose as set out in Section 5, being factors in the overall balancing

[685] In the first part of this section we summarise our findings on the disputed facts within the framework of, and applying, Section 104. In the second part of this section, we proceed to make the evaluative judgment of whether granting the consents would better serve the purpose of the RMA as defined in Section 5 and informed by Sections 6, 7 and 8.

Summary of factual findings

[686] We now set out a summary of our factual findings on the various contested matters of fact related to the potential effects of granting the proposal. When assessing the evidence we have been mindful of the principles set out in Part 2 giving rise to numerous themes that consistently thread their way down through the hierarchy of statutory documents.

Positive effects

[687] We deal first with positive effects that would arise by granting the consent.

Certainty of control

[688] We have previously pointed out that in the event of us declining the consents, we would not have any statutory authority to order that the wreck be removed. Declining the consents would mean that the wreck would remain on the reef, at least in the meantime, and would not be subject to any conditions requiring the Owner to monitor for adverse effects and if necessary take, where practicable, remedial action.

[689] In the event of us refusing consent, it will fall:

(a) on the Applicant to seek an alternative proposal; or

(b) the Council to take enforcement action; or

(c) both parties allowing the status quo to continue; or

(d) action being taken by the Director of Maritime New Zealand under the Maritime Transport Act.

[690] In the event of the Applicant not seeking any alternative proposal, any action taken either by the Council or the Director of Maritime New Zealand would be subject to a degree of uncertainty arising from the applicability of the limitation provisions of the MTA, a matter we have previously discussed.

[691] This future uncertainty would be avoided by the granting of the applications subject to the proposed conditions of consent. The conditions of consent would impose a complex and extensive monitoring regime under the control of the Council to determine whether any adverse effects are occurring. In the event that adverse effects do occur, then a hierarchical response system has been set out in the conditions which may require remedial action, or, if this is not practicable, some offset compensation.

[692] The consent holder would be responsible for the monitoring, contingency responses and reporting for the ten years of the consent. The Council would be responsible for the ten years after expiry of the consent, which would be secured by a robust and effective bond.

[693] This certainty factor arising from the granting of the application would be a significant positive outcome. It would guarantee Council controlled surveillance and ongoing management of the wreck and the reef. This would be at the cost of the consent holder. It would be for a period of 20 years from the granting of consent. This, together with the time lapse since the grounding, would mean a period of approximately 25 years from the grounding. This passage of time would likely filter out many, if not all, of the physical adverse effects.

[694] It is apparent from the evidence relating to Māori values that the proposed conditions of consent would not adequately address many of the issues raised by them. However, a number of Māori groups did state that it would be better to address the effects on Māori values by controlled conditions than to leave the wreck on the reef with an uncertain prognosis.

Form of Security

[695] We have fixed, as a condition of consent, a robust and effective form of security to ensure that the cost of monitoring and, where practicable, the remediation of any unacceptable adverse effects on the environment, are met by the consent holder.

[696] The form and amount of the security has been set on the evidence to ensure that the Council and the community are sufficiently protected financially from the management of this site which is effectively a contaminated site.

[697] The protection provided by the form of security is an important positive adjunct to the management regime set out in the conditions of consent.

Recreation and tourism

[698] We heard evidence from the experienced diving community that the wreck, particularly the bow, would be an attraction to experienced divers. While safety issues were raised by some submitters, it was generally felt that experienced divers could address such issues, particularly with the conditions requiring a Wreck Management Plan.

[699] On the other hand, there was some concern expressed about the wreck being a drawcard to the less experienced divers and the safety issues this may give rise to. We have found on the evidence that these concerns are not without substance.

[700] We have also found that the proposal was very unlikely to have any adverse effect on recreational activities such as fishing and boating.

[701] Overall, there is likely to be some positive effects arising from a new diving attraction to the area.

Social impacts

[702] While the immediate post grounding had significant social impacts on the local community, the evidence of the social experts was that the majority of Bay of Plenty residents now experience an environment they consider is largely back to normal. A number of submitters still clearly associate the wreck with negative experiential values. On the other hand, a number of submitters referred to potentially positive effects from an experiential value.

[703] Overall, we have found the social effects of the proposal range from minor negative to minor positive.

Potential adverse effects

Contaminants

[704] We have found that the effects of individual contaminants on water and sediment quality varied due to differences in their physical and chemical characteristics and the quantities released. We split the contaminants into four broad categories:

(a) dispersed contaminants with no apparent effects;

(b) broadly dispersed contaminants with diminished effects;

(c) locally dispersed contaminants with ongoing effects; and

(d) potentially harmful contaminants that have not been released.

We set out our findings on (b), (c) and (d) above.

Broadly dispersed contaminants with diminished effects

[705] The pollutants identified of particular concern were oil and plastic beads. We have found on the evidence that the potential risk of the remaining oil adversely affecting the Bay of Plenty coast is negligible. Plastic beads continue to reappear on the Bay of Plenty and Coromandel coastlines. However, the proposed consent conditions provide a mechanism for responding to their reappearance.

Locally dispersed contaminants with ongoing effects

[706] We have found, on the evidence presented, that prior to the grounding the water and sediment quality of the reef was likely to have been close to pristine. That close to pristine condition has been affected by the release of potential ecotoxic quantities of contaminants during the grounding and breakup of the wreck.

[707] The contaminants involved include:

(a) Antifouling constituents (including TBT, diuron, copper, zinc);

(b) oil-derived polycyclic aromatic hydrocarbons (PAHs);

(c) fluoride containing cyalite;

(d) copper clove; and

(e) other heavy metals, including chromium, lead and nickel.

[708] Previously released contaminants are not within the scope of the application. However, they will be monitored as part of the monitoring process, as agreed by the Applicant, required by the proposed conditions of consent. Contingency measures would be triggered if adverse effects of the released contaminants exceed yet to be defined trigger values without distinction between pre- and post-releases.

[709] We have found on the evidence that:

(a) contaminants released from the ship have had a significant adverse effect on the quality of Otaiti, its biota and surrounding sediment;

(b) those effects are still significant, but the scale, magnitude and ecological implications of these effects have not been ecologically defined; and

(c) the proposed monitoring conditions should keep the adverse effects under control and would determine whether the quality of Otaiti is returning towards its pre-collision state, as the Applicant maintains would happen.

Potentially harmful contaminants that have not been released

[710] The potential for further contaminants to be released has diminished since the grounding. Our concerns are confined to the future releases of the remaining copper clove and antifouling.

[711] We found that:

(a) copper clove and antifouling have the potential to exacerbate the effects of contaminants that have already been released from the wreck on Otaiti;

(b) it is reasonable to assume that copper clove and antifouling would be released as the wreck breaks apart or corrodes. This could take years, decades or centuries;

(c) proposed consent conditions adequately provide for the management of copper clove and antifouling effects during the term of the consent and for the following ten years; and

(d) we have concerns about the management of effects for copper clove after ten years from the expiry of the consent.

Ecology and fisheries

[712] We have found on the evidence that:

(a) the wreck would have a negligible effect on the abundance and diversity of reef ecology;

(b) the wreck would possibly have ecological effects arising from the scouring or physical disturbance of the bow pieces;

(c) the areas to be affected are limited in extent and the ecology would recover naturally;

(d) contaminants already released from the wreck are likely to have adverse effects on the biota of Otaiti;

(e) further releases of contaminants have the potential to exacerbate or prolong those effects;

(f) the proposed consent conditions provide a framework for obtaining baseline information, and for monitoring and responding to adverse ecological effects; and

(g) we have concerns about the potential for ecological effects caused by contaminants (mainly copper clove) released after the term of consent and additional bond period.

Human health

[713] We have found on the evidence that:

(a) contaminants already released to the environment do not pose a current health risk;

(b) TBT levels have not declined in Otaiti seafood, and should continue to be monitored. The proposed consent conditions provide for this;

(c) we accept the potential for the wreck to affect the health of Māori, but we are uncertain about the extent and severity of those health effects; and

(d) proposed consent conditions may assist in assessing and managing wreck-related Māori health issues.

Marine mammals and birds

[714] We have found that the proposal would have little, if any, impact on marine mammals or birds.

Coastal processes

[715] We have found that the effects of the proposal of wave patterns on the reef, and thus, coastal processes would be negligible.

Heritage

[716] The grounding of the MV Rena was an event of high historical significance on a local, regional and national scale. The physical remains of the wreck have a direct association with this historic event which would grow over time. Its removal, either partially or in whole, would not necessarily lessen the historical significance of the occasion.

Natural character and landscape

[717] We have found that the wreck is a prominent unnatural object in what is accepted as a high value natural landscape and habitat. Overall, we consider the adverse effects on the natural character of the reef and on the wider ONFL would be significant, notwithstanding their local impact.

Māori values

[718] The complexity of the Māori landscape was illustrated by the large number of Māori submitters who became actively involved in the proceedings. Our discussion under the heading of "Māori values" also reflects this complex but colourful landscape.

[719] Of the 151 submissions received, 48 were from Māori, of which 46 opposed the application, one was neutral and one was in support. During the proceedings two of the Māori submissions opposed to the application were withdrawn and one changed from opposing to supporting the application.

[720] We have set out in some detail the reasons why some Māori submitters supported the application and the reasons why some were opposed. All of the Māori submitters were in agreement that Otaiti is a tāonga and that the grounding and the wreck's continued presence on the reef would have a continuing significant adverse effect on the Māori values associated with the reef.

[721] Where they differed was that those who support the proposal considered that the monitoring and contingency conditions of consent adequately address the effects on Māori values and that no further damage should be inflicted on the reef. This together with the restoration and mitigation payments adequately addressed their concerns.

[722] On the other hand, those who opposed the proposal considered that the proposed conditions of consent did not adequately address the effects on Māori values. The adverse effects on Māori values by the continuing presence of the MV Rena and its contaminants on the reef are such that the only way they can be addressed is by their complete removal.

[723] We have found that the views of those opposed to the application are genuine, despite the criticism by some leading Māori spokesmen called by the Applicant. It was apparent from the community support offered to the speakers at the hearing that the evidence expressing their strongly held cultural values was representative of the people. We have found that, notwithstanding the proposed conditions of consent, the continued presence of the MV Rena and its contaminants on the reef would significantly affect a number of the Māori values associated with the reef – a reef that all, without exception, consider to be a tāonga.

Application of Part 2

[724] Our duty to consider the effects on the environment and the other matters that we should have regard to listed in Section 104 is subject to Part 2. The relevant matters set out in Part 2 inform and are elaborated on in the relevant statutory instruments, particularly the New Zealand Coastal Policy Statement, the Bay of Plenty Regional Policy Statement, and the Bay of Plenty Regional Coastal Environment Plan, all of which we have referred to in our section headed "Legal and Statutory Context and Hearing Process."

[725] A finding that a matter is consistent with or inconsistent with Part 2 is effectively a finding that the matter is consistent with, or inconsistent with, the relevant provisions of the statutory instruments. Where appropriate we have considered the relevant provisions of the statutory instruments when considering the factual findings on effects on the environment.

[726] We propose to consider each of the relevant paragraphs in Sections 6, 7 and 8 separately except for the provisions relating to Māori. The paragraphs relating to Māori in Sections 6, 7 and 8 overlap and are interrelated to such an extent that we propose to discuss the application of those provisions together under one heading.

Section 6 – Matters of national importance

[727] Section 6 is entitled "***Matters of National Importance***". It directs that in achieving the purpose of the Act, all persons exercising functions and powers under it in relation to managing the use, development and protection of natural resources are to "***recognise and provide for***" certain specific aims or matters of national importance.

Section 6(a) – Natural character

[728] Section 6(a) is relevant to this proposal and requires us to recognize and provide for the preservation of the natural character of the coastal environment from inappropriate use and development. This direction has been given effect to by strong directions in the relevant statutory instruments and in particular Policies 13, 14 and 15 of the New Zealand Coastal Policy Statement 2010.

[729] The effects on natural character were addressed in the evidence of the landscape architects. We have considered that evidence in some detail, and in particular in the context of the strong directions contained in the Bay of Plenty Regional Policy Statement and the Regional Coastal Environment Plan, and have found that the ongoing effects of abandoning the wreck and its remaining contaminants on the reef would be significant, and that the proposal would be inappropriate in terms of Section 6(a).

Section 6(c) – Protection of areas of indigenous vegetation and significant habitats of indigenous fauna

[730] Section 6(c) requires us to recognise and provide for areas of indigenous vegetation and significant habitats of indigenous fauna.

[731] We heard an extensive amount of evidence from the experts on contaminants, ecotoxicity and ecology as to the effects of the grounding and the continuing effects of abandoning the MV Rena and the contaminants not yet released on the reef. The grounding caused the release of contaminants which all agreed had significant effects on the environment. Much of the grounding effects have diminished with the passage of time due to natural dispersion and remedial action being taken by the Owner. These released contaminants are not part of the proposal. However, the Applicant has agreed to conditions that monitor the effects and contingency measures to be taken, if yet to be fixed trigger levels are reached.

[732] We have found that there are still contaminants, copper clove and antifouling in particular, smothered within the wreck and on the hull whose release could have the potential to cause significant adverse effects. The proposed conditions of consent make provision for a complex arrangement of management plans for the duration of the consent to monitor these contaminants and where appropriate to take remedial action. The Council will continue to monitor and, if necessary, take appropriate remedial action for the ten years following termination of the consent, for which an appropriate bond would provide security.

[733] The imposition of the proposed conditions of consent addresses the potential for future adverse effects from the release of contaminants within the collapsed structure of the wreck. The conditions would control the wreck and any contaminants within the framework of the proposed monitoring and contingency provisions. Such control provides certainty that additional adverse effects will be detected and responded to, at least for the next 20 years after the grant of consent. This would be preferable to leaving the wreck and contaminants without any control and subject to the uncertainty of enforcement action by the Council or Maritime New Zealand. However, the practicability of addressing future effects is uncertain in which case offset mitigation measures are provided for.

Section 6(d) – Maintenance and enhancement of public access to and along the coastal marine area

[734] Section 6(d) requires us to recognise and provide for the maintenance and enhancement of public access to the coastal marine area.

[735] Currently access is not permitted for the recreational use of the water at the reef. Granting the application for resource consent would enable controlled access to the reef subject to the Reef Access Plan. This would not only ensure access to the reef, but would put in place controls to provide for the safety of those who wish to access the reef for boating, fishing or diving activities.

Section 6(f) – Protection of historic heritage from inappropriate use and development

[736] Section 6(f) requires us to recognise and provide for the protection of historic heritage from inappropriate use and development. We find the grounding of the MV Rena was an event of high historical significance on a local, regional and national scale. The physical remains of the wreck have a direct association with this historic event. It would grow over time, but its removal either partially or in whole would not necessarily lessen the historic significance of the grounding.

Section 7 – Other matters

[737] Section 7 directs that, in achieving the purpose of the RMA, all persons exercising functions and powers under it in relation to managing the use, development and protection of natural and physical resources are to "have particular regard to" certain specific values. Although some of the relevant values listed in the several paragraphs of Section 7 may overlap with others, and with the paragraphs in Section 6, to some extent, each deserves separate consideration.

Section 7(c) – Maintenance and enhancement of amenity values

Section 7(f) – Maintenance and enhancement of the quality of the environment

[738] Sections 7(c) and (f) require us to have "particular regard to the maintenance and enhancement of amenity values and the quality of the environment." The two subsections are so interlinked that we deal with them together.

[739] The definition of amenity values in the RMA refers to those natural and physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence, cultural and recreational attributes. It embraces a wide range of elements and experiences.

[740] The amenity values and environmental quality of the reef have been considered in a number of sections in this decision including:

(a) contaminants and ecology;

(b) heritage;

(c) natural character and landscape;

(d) social impacts;

(e) recreation and tourism; and

(f) Māori values.

[741] These sections of the decision all contain elements that are relevant to a consideration of amenity values.

[742] There would be some positive amenity and environmental quality effects including:

(a) the certainty of a managed monitoring and response framework to address effects arising from contaminants released both pre- and post-consent;

(b) the certainty of a managed monitoring and response framework to address potential effects on ecology and human health;

(c) the certainty of access to the reef subject to the Wreck Access Plan, the provisions of which address the safety of recreational boaties and divers;

(d) the certainty of a monitoring and response framework to address the potential movement of the bow pieces in the interests of navigational safety;

(e) the presence of a diving attraction for experienced divers and the flow-on effects for tourism; and

(f) the fact that the presence of the wreck on the reef would, in time, add to the historic heritage value of this collision.

[743] We have discussed both the positive and negative effects of amenity at some length in the earlier sections of this decision, and we do not propose to repeat them here. We have found that, for the reasons given earlier, the adverse effects on the amenity values of the area are significant, notwithstanding the proposed conditions of consent.

[744] We therefore find that the proposal would be inconsistent with Sections 7(c) and 7(f) as the effects would not maintain or enhance amenity values and the quality of the environment.

[745] There would be a number of adverse effects on the amenity values and environmental quality, including:

(a) the potential release of contaminants and the consequential potential for effects on the ecology and human health;

(b) the adverse effects of the continuing presence of the wreck on the reef on:

i. the natural character and landscape qualities of the reef;

ii. the fact that a number of submitters still associate the presence of the wreck on the reef with negative experiential values; and

iii. the significant adverse effects on Māori values to the majority of Māori submitters who appeared before us.

Section 7 – Intrinsic value of ecosystems

[746] Section 7(d) requires us to have particular regard to the intrinsic value of ecosystems.

[747] It was accepted by all of the expert witnesses that, before the grounding the reef would have had very high ecological value affected mainly by fishing and associated impacts such as anchor damage. The water and sediment quality was close to pristine. The collision and break-up of the wreck and release of contaminants caused significant adverse effects. With the passage of time these effects have diminished, although they are still ongoing.

[748] The continuing presence of the wreck and its potential to release contaminants is a potential threat to the intrinsic value of the ecosystem. This threat would be controlled by the management regime that would be put in place by granting the consents. However, the practicability of addressing future effects is uncertain in which case offset mitigation measures are provided for.

Māori values

[749] We deal with Māori values separately as the statutory directions are contained in Sections 6, 7 and 8.

[750] Section 6(e) requires us to **recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other tāonga**.

[751] Section 7(a) requires us to **have particular regard to kaitiakitanga**.

[752] Section 8 requires us to **take into account the principles of the Treaty of Waitangi (Tiriti o Waitangi).**

[753] All three sections do, to an extent, overlap and interrelate with each other. We have discussed at some length the evidence relating to Māori values and the cultural associations of Māori with Otaiti.

[754] By far the majority of the Māori submitters who appeared before us expressed the strong belief that the continuing presence of the wreck, together with the contaminants, would have a significant adverse effect on Māori values; an effect that would not be sufficiently mitigated by the proposed conditions of consent; an effect that could only be alleviated sufficiently by the complete removal of the wreck, the debris and its contaminants.

[755] As for kaitiakitanga, there are strong measures to ensure that those Māori with relationships with Otaiti have the opportunity to be engaged in the ongoing management of the reef. While this is acceptable to some Māori submitters it does not assuage the hurt suffered by the majority.

[756] We have come to the inevitable conclusion that the proposal would not be consistent with the strong directions to Māori contained in Part 2 of the RMA.

Summary of the application of Sections 6, 7 and 8

[757] In summary, having applied the provisions of Sections 6, 7 and 8, we have found that the proposal would, subject to the proposed conditions of consent:

(a) be inconsistent with the strong directions relating to Māori contained in Sections 6(e), 7(a) and 8;

(b) be inappropriate in terms of Section 6(b), which requires us to recognise and provide for the protection of outstanding natural features and landscapes;

(c) be consistent with Section 6(c) as the proposed conditions of consent would provide certainty and manage the aftermath of an accident thus providing for and recognizing areas of indigenous vegetation and significant habitats of indigenous fauna;

(d) be consistent with Section 6(d) as the Wreck Access Plan would enable access to the reef in a managed way;

(e) be consistent with Section 6(f) by providing for the enhancement of historic heritage;

(f) be consistent with Sections 7(c) and 7(f) in that the certainty of a managed monitoring and response framework would assist in maintaining amenity and environmental quality. However, the potential effects on ecology by the possible release of contaminants, the adverse effects on natural character and landscape, and the significant effects on Māori culture would make the proposal overall, on balance, inconsistent with Sections 7(c) and 7(f);

(g) be inconsistent with Section 7(d) as the potential for contaminants to be released from the wreck threaten the intrinsic value of the reef's ecosystem.

Exercise of judgement in accordance with Section 5

[758] Sections 6 and 7 are ancillary to Section 5 in the sense of assisting us in making our decision as to whether granting the consent would promote sustainable management (as described in Section 5 (2)) of natural and physical resources. Having applied Sections 6 and 7, we now have to make our determination in respect of the application.

[759] As previously mentioned, the application of Section 5 requires a broad judgement on whether the application promotes the sustainable management of natural and physical resources, allowing a comparison of conflicting considerations, their scale or degree and their relative significance or proportion in the final outcome[177].

[760] The protection of certain values is not to be achieved at all costs. Questions of national and regional value and benefits, and needs, must all play their part in the overall consideration and decision.[178]

[761] Our starting point is the indisputable fact that the wreck and its contaminants are located on the seabed of Otaiti as a result of an accident. It has deteriorated and broken up into several pieces. The bow section is now in five pieces on the reef. Most have now settled on the lee side of the reef to the south-west at depths of between LAT -10 and -20 metres. The main (larger) cut-down bow section is in shallow water in the part of the reef that is most exposed to the high energy waves. It is expected that storm events are likely to cause pieces to break off and move downslope to the lee side to deeper water.

[762] The stern or aft section has slid down the side of the reef and collapsed in on itself. It is currently located on a scree slope on the exposed outer side of the reef. The shallowest part of the aft section now lies at LAT -26 metres. The lowest part of the stern, the starboard quarter, lies at LAT -56 metres.

[763] It is expected that the aft section will slowly slip down the reef and collapse further in on itself.

[764] It is estimated that in total there remains on the reef 10,495 tonnes of wreck with an approximate area of 7096 m^2. It is scattered over a much wider, but undefined, area.

[765] The remains of the debris field consist of the broken and dispersed contents and cargo and other broken ship structures. The debris field covers an area of about 10,000 m^2 between the bow and the aft section. The total amount of debris recovered as at the time of the hearing was 3,521 tonnes. As at the date of hearing dive contractors were clearing accessible areas of remaining debris above LAT -30 metres. What remains after dive contractors complete their work, will be left on the reef.

[766] Also on the reef, or in its sediments or in the water column, are the remains of contaminants that have been released from the wreck after they have been dispersed. The wreck itself is harbouring contaminants, particularly copper clove concealed within the collapsed stern and antifouling containing TBT on the hull.

---

[177] See **North Shore City Council v Auckland Regional Council**, [1997] NZRMA 59; **Contact Energy v Waikato Regional Council** ENVC A004/2000 at [308]
[178] ***NZ Rail v Marlborough RC*** [1994] NZRMA 70 (HC) at [86]

[767] The issue before us is how this large conglomeration of wreckage and debris can best be managed in a sustainable way in accordance with the single purpose of the RMA. Some submitters have sought that the wreck should be removed. The Applicant maintains that the cost of removing the wreck would be disproportionate to the alleged adverse effects on the environment. We have discussed the potential difficulties of salvaging the wreck, particularly the aft section, in some detail. We have in particular addressed the safety issues associated with any salvage.

[768] More importantly, as we have already said, we do not have jurisdiction to order the wreck to be removed. Those that have sought its removal have not given to us any procedural or statutory means as to how this could be achieved. No one has proffered a reasonable or tenable pathway to achieve complete wreck removal.

[769] We can only grant the consents or refuse them. Refusing the consents would not ensure the wreck's removal. Refusing the consents would not address the management of this large assortment of wreckage and debris. Refusing the consents would put the whole matter in limbo.

[770] If we refuse the consents, the only statutory control would be enforcement action by the Council or action under the MTA. Both these courses of action would be fraught with uncertainty due to the limitation provisions of the MTA, a matter which is beyond the Regional Council's jurisdiction and could lead to extensive litigation in the hierarchy of the Courts.

[771] Granting the consents subject to the proposed conditions of consent would put in place an enforceable statutory regime for at least 20 years after the granting of any consent. The conditions have been extensively considered, particularly by the Council, the Applicant and the Crown, and their expert witnesses. They have gone through many iterative stages and been subject to expert caucusing sessions.

[772] In our view the proposed conditions would put in place a framework under the control of the Council that would ensure that the reef would be managed in as sustainable way as is possible.

[773] This management would be at the cost of the consent holder. To protect the Council, and hence the community, we have put in place through the conditions of consent, a robust and effective form of security for the duration of the consent and for a ten year period following its expiry.

[774] It is this certainty of a managed programme, designed to prevent further damage to the reef and to monitor the expected long-term recovery of the reef that weighs importantly in the exercise of our judgement. Importantly, the considerable cost would be met by the consent holder. To leave Otaiti in a state of uncertain limbo would not, in our view, reflect the single purpose of the Act - sustainable management.

[775] The ongoing presence of the wreck and its contaminants would:

(a) give offence to a large group of Māori because of the effects on Māori values particularly of those Māori who have a relationship with the reef contrary to Sections 6(e), 7(a) and 8; and

(b) have an ongoing and potential adverse effect on the intrinsic values of the reef's ecosystem, and on an area of significant indigenous vegetation, habitat and fauna contrary to Sections 6(c), 7(d); and

(c) not recognise and provide for the natural character and landscape of the reef contrary to Sections 6(a), (b);

[776] On the other hand, the certainty of outcome by granting the consent would:

(a) recognise and provide for the reef's area of indigenous vegetation and significant habitat of indigenous fauna by the implementation of the monitoring and contingency measures, at the cost of the consent holder (Section 6(c));

(b) recognise and provide for controlled access to the reef under the Wreck Access Plan (Section 6(a));

(c) have particular regard to the use and development of natural and physical resources by the imposition of the monitoring and contingency measures (Section 7(b));

(d) have particular regard to amenity and the quality of the environment by monitoring and managing contaminants, granting controlled access and assisting, to at least a minor extent, recreation and tourism (Sections 7(c) and 7(f));

(e) have particular regard to the intrinsic values of the reef's ecosystem by managing the potential effects of the wreck and its contaminants (Section 7(d)); and

(f) To some extent accommodate, in accordance with the statutory directions, the adverse effects on Māori values because:

(i) the KRG would enable those Māori who have a relationship with the reef to actively participate in the control and management of the wreck and the released, and yet to be released contaminants;

(ii) the KRG and its participation in the ITAG group would assist in accommodating their kaitiakitanga responsibilities;

(iii) the Cultural Monitoring Plan would assist in monitoring the effects over time of many of the Māori values that would be effected; and

(iv) the offsetting of adverse effects by the restoration and mitigation packages.

[777] We are mindful of the adverse effects of the wreck and its debris on the physical and ecological characteristics of Otaiti. We are particularly mindful of the effect on Māori values. This was evident by the vivid, and at times colourful and emotionally charged, presentation by the Māori submitters. Their genuineness was unquestionable.

[778] However, the fact is the wreck and its contaminants are there as a result of the collision. Even if we had jurisdiction to order their removal, such a course would, on the evidence, be fraught with difficulties including serious safety issues. Such a course could also inflict further damage on the reef and extend the duration of the exclusion zone. More importantly, granting the consent would provide certainty that a management regime under the control of the Council would be put in place to monitor and respond to future adverse effects.

[779] The ultimate criterion is whether granting the consents would promote the sustainable management purpose of the RMA. On that criterion we judge that the certainty of a strong management regime under the direction and control of the Council would promote the sustainable management purpose described in Section 5.

[780] It follows that the consents, subject to the conditions attached as **Attachment One**, should be granted.

The Conditions of Consent

[781] The Conditions of Consent as set out in **Attachment One** – the Decision Version, are quite complex. In the event, that we may have made some minor omissions or mistakes, we allow ten days for the Council to make any necessary application to remedy them.

PART 8 – Determination

For the reasons set out in this decision, the applications by the Applicant for the following resource consents:

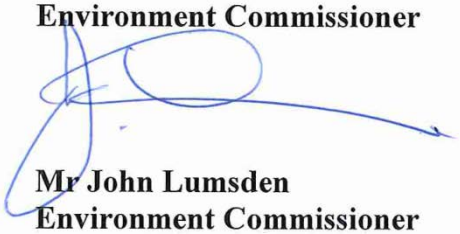
1) consent to "**dump**" the remains of the MV Rena, its equipment and cargo on Astrolabe Reef as a result of the grounding of the vessel on 5 October 2011 pursuant to Section 15A of the RMA; and

2) consent to "**discharge**" any harmful substances or contaminants from the remains of the MV Rena, its equipment and cargo that may occur over time as a result of the degradation of the vessel pursuant to Section 15B of the RMA;

are granted, subject to the conditions of consent attached hereto as **Attachment One**.

Retired Environment Court Judge Gordon Whiting – Chairman

Mr Rauru Kirikiri
Environment Commissioner



Mr John Lumsden
Environment Commissioner

Dr Shane Kelly
Environment Commissioner

26 February 2016