

**MOTITI
PROPOSED DISTRICT PLAN**

DECISIONS OF HEARINGS COMMISSIONERS

Volume I

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MOTITI PROPOSED DISTRICT PLAN

Decisions of Hearings Commissioners

1. INTRODUCTION

1.1 He Mihi/Acknowledgements

Tihei Mauri ora.

Tuatahi, he hoonore, he kororia ki te atua, he maungarongo ki te whenua he whakaaro pai ki nga tangata katoa. Rire, rire hau, paimarire.

Ka tangihia, ka mihi ki nga tupuna kei te takoto i te kopua o te moutere o Motiti; a Ngatoroirangi, te hapu a Tauwhao me nga uri, a Ngati Te Hapu, a Maumoana, a Te Patuwai me Te Whanau a Tauwhao. Takoto mai ra koutou nga tupuna, takoto mai!

Ka mihi atu ki nga kaitiaki o MAL me nga kaituawhenua, e kitea ana i a Motiti ara, he kainga huanui, he whenua tapuwae. No reira, tena koutou, tena koutou katoa.

Hurinoa, ko tenei whakaaturanga na matou ki a koutou, hei korerorero, hei whiriwhiri, kia tau nga maramatanga me te tiroiro ake whakamua.

Ko matou nga kaikomihana, ka koa, ka hari te ngakau mo o koutou whakaaro hohonu i puta mai i roto i nga huihuinga mo Motiti.

Ka tau te mauri mo Motiti mai nga whakapapa. Kia kawea ake e matou nga uri, ara, ko nga hiahia, nga wawata mo amua.

Kei te marama matou ki nga take i whakatauria e koutou.

To the various ancestors who rest upon the island of Motiti, Ngatoroirangi, Te Hapu, a Tauwhao, and their descendents, Ngati Te Hapu, Maumoana, Te Patuwai, Te Whanau a Tauwhao.

Also to the MAL representatives and other land owners who see Motiti as a place of special character.

We present our decision for your consideration, for openhearted discussion, understanding and a way into the future.

As Commissioners, we thank you for sharing your views and indicating what Motiti means in your hearts and minds.

We give hope for the future in terms of the proud associations for all who associate with Motiti by virtue of whakapapa or by other interests.

We have been mindful of the issues that were presented to us.

No reira, ko etahi ka whakaae ki te horopaki me te ngako ki tenei whakataunga. Korekau pea ki etahi atu. Heoi ano, kei a ratou tena.

Some people will agree with the contents of this decision, and some may not. Regardless it is their right to do so.

Ko te whakataunga kei mua i a koutou, ara, kei te kawae hoki te Rt Hon Mark Burton, te Minita mo te kawanatanga haukainga

The decision that is before you has been delivered to the Hon Mark Burton the Minister of Local Government.

Ma o koutou wairua e manaaki, e tautoko kia u.

May you all consider these matters here in with wisdom and sound logic.

No reira ko nga manaakitanga a Te Runga Rawa ka ruia mai ki runga i a koutou, ki a tatou katoa.

God bless and greetings to all who spoke and submitted before us.

1.2 Appointment

Motiti is not included within the jurisdiction of any territorial local authority in New Zealand. Pursuant to the Local Government Act (LGA) s22(1), the Minister of Local Government (the Minister) is the territorial authority for any part of New Zealand that does not form part of the district of a territorial authority.

Section 34A of the Resource Management Act 1991 (RMA) allows a local authority (including the Minister in his capacity as Territorial Authority for Motiti (the Territorial Authority) to delegate to a Hearings Commissioner or Commissioners any of its/his functions, powers, or duties, including the power to hear and determine submissions and further submissions on a district plan.

A territorial local authority would ordinarily hear and determine the issues on a proposed district plan. In this case the Territorial Authority elected to appoint Hearings Commissioners with expertise and experience in resource management. We have each been appointed by letter signed by the Minister as Territorial Authority delivered to each of the Commissioners personally.

In addition the Territorial Authority appointed Mr Keith Frenz of Beca Carter Consultants of Tauranga to both prepare the Proposed District Plan for Motiti (Proposed Plan) and assess the submissions and further submissions made in respect of it. Both the Territorial Authority and the Department of Internal Affairs have therefore been removed from the preparation and assessment of the Proposed Plan.

1.3 Background

In 1995 an application for a subdivisional consent was made in respect of land on Motiti. That issue came before the Environment Court¹. In that case the Environment Court noted that there was no district plan for Motiti and strongly recommended that the Territorial Authority take steps to propose a district plan under RMA.

On the instructions of the Territorial Authority and after considering the issues and consulting widely, Beca Carter produced the Proposed Plan for Motiti. It is that Proposed Plan which is now before us.

1.4 Notification

The Proposed Plan for Motiti was publicly notified on 15th of December, 2006 with submissions closing on 9th March, 2007

A summary of submissions was prepared for the Territorial Authority by Beca Carter and notified on the 20th April, 2007 with a closing date for further submissions on 21st May, 2007.

1.5 Submissions and further Submissions

A total of 208 primary submissions were received. There were 4 further submissions received.

A summary of the submissions (some 49 pages) was set out in the "Submissions" volume of the material circulated to the parties prior to the Hearing.

1.6 Hearing

We conducted a Hearing of the submissions and further submissions in relation to the Proposed Plan as follows:

- a) Tauranga Monday 2 July 2007
 Tuesday 3 July 2007
- b) Motiti Saturday 7 July 2007
 Sunday 8 July 2007
 Monday 9 July 2007

¹ *Berkett and Ngahau v Minister of Local Government and Others* Decision A103/95 (Judge Bollard presiding)

- c) Whakatane Tuesday 10 July 2007
Wednesday 11 July 2007

In the course of the Hearing the parties set out in Appendix 1 to this Decision made appearances. Where evidence was tendered in Te Reo, it was translated viva voce by Mr Joe Malcolm independent licensed interpreter from Rotorua.

1.7 Site Visit

On the afternoon of Sunday July 8, we undertook a site visit of the northern part of Motiti. We were accompanied by Mr Frentz and a number of representatives from Tamateakitehuatahi Marae.

On the afternoon of Monday July 9, we undertook a site visit of the south end of Motiti accompanied by Mr Frentz and Mr Andy Thomson, Manager of Motiti Avocados Limited (MAL).

1.8 Format of this Decision

There are no less than 860 individual submission points. Rather than deal with submission by submission we have instead elected to deal with the matters by issue.

For the reasons set out in Section 4 of this Decision, this Decision is a final decision as to part and an interim decision as to the remainder. The final decision is set out in Section 11 of this Decision. The substance of the interim decision and the consequential Directions are set out in Section 12 of this Decision.

1.9 Procedure

Five of the seven days of the Hearing was conducted on firstly the Tamateakitehuatahi Marae on Motiti and then on the Pupuaruhe (Toroa) Marae at Whakatane. While on each Marae, we adopted a hearings procedure rather different than may ordinarily be expected of a local authority hearing. That included hearing persons who were neither submitters nor further submitters (but who could have been called as witnesses by submitters or further submitters with whom they were aligned). We nevertheless continued to be conscious of our responsibilities to observe the principles of natural justice and be fair to all parties. We consider we achieved that while remaining respectful of the kawa of each Marae.

1.10 Definitions

In this decision we use the following terms:

LGA	Local Government Act 2002
MAL	Motiti Avocados Limited
MHWS	Mean high water springs tide line
Minister	Minister of Local Government
Motiti	Motiti including its off shore islets, rock outcrops and stacks
Proposed Plan	Proposed District Plan for Motiti
RMA	The Resource Management Act 1991 and its amendments.
Rural (Non-Policy) Zone	That Area of Motiti excluding the: - Tangata Whenua Policy Areas; and - Proposed Coastal Zone
Tangata Whenua Policy Areas	The Te Patuwai/Maumoana Policy Area together with the Te Whanau a Tauwhao Policy Area
Territorial Authority	The Minister in his capacity as territorial authority for Motiti

2. PRELIMINARY MATTERS

2.1 Late Submissions

21 submissions were received after the closing date for submissions of 9 March 2007 and were therefore late. The late submissions are those set out in Appendix 2 to this Decision. Several of the late submitters wished to be heard. It was therefore necessary for us to make a determination pursuant to RMA s37 whether or not to exercise a waiver in favour of those submitters.

In considering the late submissions we note:

- a) The late submissions were late by only a few days. The plan making process under RMA is a lengthy process. In that context the lateness was insignificant;
- b) The submissions were not so late that they could not be or were not included in the summary of submissions and available for consideration during the further submission period;
- c) We can see no prejudice accruing to any party if the late submissions are accepted;
- d) From an early stage in the process in which we are engaged it was quite apparent that a district plan for Motiti brings a number of challenges that are outside the normal range of considerations of a district plan. In the submission of many Motiti is unique. To reach an appropriate solution we consider an inclusive approach is preferable.

For these reasons and early in the Hearing, we formally exercised a waiver under RMA s37 waiving the time within which the late submissions may be lodged. The effect is that the late submissions referred to are all valid and those submitters are formal parties to these proceedings.

2.2 Jurisdiction

A significant number of submitters lodged written submissions which effectively challenged our jurisdiction. The challenge came in various forms but the thrust was the same. The submitters were endeavouring to reject a district plan being placed over Motiti.

In response to the formal submissions raising jurisdiction issues, the Independent Reporting Planner Mr Frentz included (as addendum to Part C of his report) a report from Crown Law Office setting out the legal position. The substance of that report is that the issue of jurisdiction as it is raised by Maori has been considered on a number of occasions by the Courts. In particular there has been:

- A decision of the Environment Court in *Berkett and Ngahau v Minister of Local Government and Others*² in respect of the same area, ie Motiti. In that case the Appellant had argued that RMA was not applicable to Motiti. The Court observed that Motiti :

*“... is, however, unquestionably part of New Zealand; and for the purposes of the Resource Management Act 1991 (“the Act”) having regard to the definitions of the term “territorial authority” in the Act and the Local Government Act 1974, the Minister is deemed to be the territorial authority in respect to the island”*³; and

- *Berkett v Tauranga District Council*⁴. That case involved the question of Parliamentary sovereignty over Tuhua (Mayor Island). Fisher J held that:
 - Tuhua was part of New Zealand for legal purposes;
 - there was an unbroken chain of constitutional authority declaring the Crown’s sovereignty over New Zealand;
 - that authority applied to Tuhua;
 - the Court had no jurisdiction to question the validity of Acts of Parliament; and
 - the relevant statute in that case (ie the Crimes Act 1961) was binding on all persons within the territory of New Zealand.

The finding of the High Court in this second *Berkett* case has not been modified by any other judicial pronouncement or Parliamentary intervention.

The Crown Law Report presented by Mr Frentz noted that there had been some 36 different decisions on jurisdiction as it is raised by Maori in an attempt to avoid New Zealand statute law. The result has been what Williams J in *Morunga*⁵ referred to the “... unanimous judicial rejection of the plea in whatever form it is propounded”.

² Decision A103/95 (Judge Bollard presiding)

³ Ibid pg 2

⁴ [1992] 3 NZLR 206

⁵ *Morunga (aka Hapi) v NZ Police High Court* CRI 2004 – 404-8

The Crown Law Office report on the legal position was circulated to all parties prior to the Hearing. Where submitters wished to raise the jurisdiction issue before us at the Hearing, we invited them to clearly set out the legal basis on which that submission was advanced and the manner in which it could be distinguished from the cases included in the report prepared by Crown Law Office and in particular the *Berkett* cases. In our view no such distinction was made by any submitter who presented to us.

We are satisfied that:

- a) Motiti is within the territorial jurisdiction of New Zealand;
- b) Motiti is not part of a district of a territorial authority;
- c) Pursuant to LGA section 22(1) the Minister is the territorial authority for Motiti;
- d) Pursuant to RMA s73 the Minister as the responsible territorial authority has the legal responsibility for preparing a district plan for Motiti; and
- e) We have already recorded in Section 1.2 of this Decision that pursuant to RMA s34A we have been duly appointed by the Territorial Authority to hear and determine the submissions in relation to the Proposed Plan for Motiti.

We consider that we are bound by the case law provided by Crown Law Office and in particular the two *Berkett* decisions referred to in this Decision. The Courts deciding those cases are of superior jurisdiction to us. We conclude that we have jurisdiction and we will discharge the duties delegated by the Territorial Authority to us accordingly.

We reject those submissions which assert we have no jurisdiction.

2.3 Administrative Issues

There are three preliminary issues which Mr Frenz conveniently grouped under the head of “Administrative Issues”:

- Administration of the District Plan
- Rates
- The Territorial Authority’s contribution to amenities.

We consider these in turn.

a) Administration of the District Plan

In the formal submissions and in the course of the Hearing a number of submitters expressed concern about how a district plan for Motiti would be administered. Considerable apprehension was expressed that the Proposed Plan may be administered by the Department of Internal Affairs based in Wellington. Submitters considered that the communication and logistics with that arrangement are likely to prove difficult if not impossible.

We consider that those are legitimate concerns. Each of the Commissioners has had substantial experience with a number of local authorities in relation to administration of their respective district plans. In our view essential functions of that administration are:

- Providing an identifiable person or people within the administrative organisation to whom enquiries, comments or complaints can be addressed;
- Providing personnel who are able to have an ongoing relationship with the key stakeholders;
- Providing a physical office at which landowners and other interested parties can conveniently attend to examine plans, and/or other provisions of a district plan and discuss them with a knowledgeable person;
- Having a person within the administrative organisation who has a good understanding of what is happening on the ground; and
- Providing an identifiable enforcement process which of necessity should have the capacity to inspect on the ground if necessary.

Taking all of those considerations into account, in our view it is imperative that the administration of the Proposed Plan for Motiti be based not in Wellington but in the Bay of Plenty, probably in Tauranga (from whence both boat and air access is provided to Motiti).

The Territorial Authority's delegation to us does not include consideration of or decisions about the logistics of administering the Proposed Plan. However, we are sufficiently concerned about this issue that we have resolved to separately and on our own initiative make a recommendation to the Territorial Authority.

We will do that concurrently with the delivery of this Decision. With that assurance we can take the matter no further within the context of this Decision.

b) Rates

A considerable number of submitters both in their formal submissions and at the Hearing expressed concern that the introduction of a district plan would bring with it an introduction of rates. Thus far, land on Motiti has not been rated at all.

Authority for the Territorial Authority to collect rates arises primarily under the Local Government (Rating) Act 2002 and LGA. It does not arise under RMA.

Whether and the extent to which the Territorial Authority may levy rates on land on Motiti is a matter which the citizens of Motiti will have to address directly to the Territorial Authority. We are unable to help.

c) The Territorial Authority's Contribution to Amenities

There were a number of submissions that:

“The Draft Plan does not identify how the Department of Internal Affairs will contribute to amenities for Island people and their guests”.

As we discussed in the preceding Section on jurisdiction, the Territorial Authority's authority as a territorial local authority under RMA is in fact derived not under RMA but under LGA. LGA vests in local authorities many more powers than are contained in RMA including the general civic functions of a local authority. To what extent a local authority provides for its citizens is not an RMA function but is generally driven by a Long Term Council Community Plan (LTCCP) and its associated policies and initiatives under LGA. There is a process for that under LGA but not under RMA.

Whether and the extent to which the Territorial Authority may provide amenities on Motiti is a matter which the citizens of Motiti will have to address directly to the Territorial Authority. We are unable to help. We nevertheless observe that if the citizens of Motiti request amenities be provided by the Territorial Authority for Motiti, and that request is met, then that may well trigger issues of rating.

We reject all those submissions and further submissions which raise the issues of:

- Administration of the District Plan
- Rates
- The Territorial Authority's contribution to amenities.

2.4 Treaty of Waitangi

The delegation by the Territorial Authority to us is under RMA and RMA alone. Our delegation is to hear and make a determination on the submissions relating to the Proposed Plan for Motiti. That focuses on appropriate land use issues. We are not authorised nor indeed has RMA any jurisdiction to deal with the Treaty of Waitangi claims.

2.5 Land Ownership

The delegation by the Territorial Authority to us is under RMA and RMA alone. Our delegation is to hear and make a determination on the submissions relating to the Proposed Plan for Motiti. That focuses on appropriate land use issues. We are not authorised nor indeed has RMA any jurisdiction to deal with land ownership.

2.6 No District Plan?

In the formal submissions and in the presentations to us, a number of submitters continued to advocate a position that a district plan was neither needed nor wanted by tangata whenua. Indeed that position was put to us by some very forcefully in both word and gesture.

We are concerned that tangata whenua continued to maintain that position. We consider that in today's commercial environment, Motiti is extremely vulnerable. Coastal property is seen as very desirable and exclusive island property even more so. Without an appropriate district plan with appropriate controls, the people of Motiti may find it difficult to resist a major development on the Island.

We recognise that tangata whenua have managed the land on a sustainable manner for many years. That point was highlighted to us by submitters. In more recent years there has been pressure on the land resource from subdivision proposals and from a desire to create vehicle access to coastal landing points such as at Wairere Bay. Submitters expressed concerns to us regarding these proposals and works and sought input to the consideration of any such future proposals.

We were told about the special nature of Motiti and its unique character. We agree with those comments which are supported from our observations from the ground and from the opportunities we had to fly over the Island. The coastal aspects of Motiti, including its scenic qualities and tranquil nature, together with its proximity to the mainland, provide an attractive environment for development proposals. It is also apparent that landing points and associated vehicle access will increasingly need to be provided and/or improved for both commercial (avocado) and residents' use.

We consider there needs to be means by which such proposals can be properly managed; by which the local resources and character of Motiti are respected; and, by which local people can be involved. This desire is essentially for sustainable management of the environment of Motiti. That is the basis of the RMA and its associated plan-making provisions. The close association that tangata whenua have with the land and waters around Motiti also needs to be reflected in any planning and/or planning documents relating to it.

We consider that, from all the information that has been put before us and from our observations of Motiti, the needs and desires of its people can and indeed should be suitably provided for through a district plan. We conclude that there is a very real need for such a plan. The examples of activity that have occurred and which have been of concern are clear evidence of that. If there is a district plan then such concerns can be considered in the context of that plan.

For example the considerations for the recent deeply incised vehicle access at Wairere Bay may have sufficiently addressed erosion and sedimentation effects but appear to have not sufficiently addressed cultural and the landscape effects.

The preparation of a district plan for Motiti can provide for a range of matters including vegetation and cliff protection, heritage protection, housing and earthworks. It can be directed to have more of a preservation focus as sought by residents but either way, it needs to be seen as an opportunity to address the concerns of the local people given the increasing demands for works or proposals affecting the Motiti. If there is no such plan then Motiti remains open to risks and vulnerable to proposals that may adversely impact on its character and residents. We have in mind particularly resort type proposals.

In addition, there is a statutory obligation under RMA s73, for all territorial authorities to prepare a plan to achieve the integrated management of the effects of development on the environment. This is a duty that in this case falls to the Minister as Territorial Authority for Motiti.

As Commissioners we also acknowledge the regional planning documents that apply and which are administered by Bay of Plenty Regional Council and the New Zealand Coastal Policy Statement that also applies at Motiti.

We reject those submissions which assert there should be no district plan for Motiti.

3. PROPOSED DISTRICT PLAN

3.1 Overview of the Proposed Plan

The approach adopted for the Proposed Plan is to include the whole of Motiti in the Motiti Rural Zone. This is then overlain by two policy areas, both referred to as the Motiti Rural Zone Policy Area, which cover the multiply-owned Maori land on Motiti. The two Policy Areas apply to the respective lands of Te Patuwai and Maumoana in the north and Te Whanau a Tauwhao in the south-east, although there is some land held in general titles also included. We refer to these two Policy Areas collectively as the Tangata Whenua Policy Areas in this Decision.

An additional overlay is the Coastal Hazard Protection Area that applies to the coastal margin of Motiti. It extends 40m inland from the top of the cliff edge and otherwise 60m inland from mean high water springs (MHWS).

Within the above areas various rules apply to land use activities, development and subdivision.

3.2 Preamble

The Proposed Plan for Motiti commences with a Preamble that is provided for information purposes only. The Preamble describes the statutory duty to prepare a district plan and states that the purpose of the Proposed Plan is to achieve the sustainable management of Motiti in a way that the residents believe will achieve their vision for the island. It covers the land area above MHWS as well as the adjacent smaller islands and rocks surrounding Motiti as is shown on the Planning Map in the Appendices to the Proposed Plan. The vision statement that the residents and tangata whenua have for the future of Motiti is stated as being *“To sustain the unique island character and lifestyle of Motiti for the cultural, social, environmental and economic benefits of future generations.”* The existing environment is described in physical terms as is the manner in which the island is formed of two distinct areas, the northern half being held in multiple-Maori land ownership while the southern half is held in general title apart from land on the south-eastern side which is also mainly in multiple-Maori land ownership.

The Proposed Plan is then structured under chapter headings of:

- Resource Management Issues, Objectives and Policies (Chapter 1);
- Procedures and Information Requirements (Chapter 2); and
- Environmental Management Rules (Chapter 3)

followed by Appendices, which include the Planning Map for Motiti.

3.3 Chapter 1, Resource Management Issues, Objectives and Policies

Chapter 1 provides the resource management issues, objectives, policies, methods and other methods associated with each of six identified key environmental topics being:

- Island character and amenity;
- Natural resources and environment;
- Physical resources;
- Tangata whenua values;
- Natural hazards; and
- Emergency management.

These are set out in a logical manner with the issues for each topic identified followed by the objectives and policies that address those issues and then the methods by which those objectives and policies are to be implemented through the provisions in the Proposed Plan.

Examples of the approach taken, and that provide an insight into the provisions of the Proposed Plan, are:

(a) *Environmental Topic 1 : Island Character and Amenity.*

The issues associated with this environmental topic refer to the scale and intensity of new subdivision, use and development having the potential to change the character and amenity of Motiti and, given the limited land area available, the island can therefore only sustain a limited population without adversely affecting the character and amenity of it. In order to then meet an objective of the present character and amenity being maintained or enhanced, a policy is stated that 240 units is the maximum sustainable number of dwellings (or dwelling unit equivalents) on Motiti to be compatible with the existing rural character and amenity of the island. That is, a density of one dwelling per 3ha of land area.

The associated methods (Method 1, page 2) include identifying the island as a rural environment area within which lies three distinct policy areas which are the:

- Te Patuwai Policy Area;
- Te Whanau a Tauwhao Policy Area; and
- Motiti Rural Policy Area.

We note that the last of these three areas is, in practical terms, not a Policy Area but rather the base Rural Zone for Motiti. We refer to that area hereinafter in this Decision as the Rural (Non-Policy) Zone to clearly differentiate it from the two Tangata Whenua Policy Areas.

The above three areas provide a separate Policy Area for the lands of each of the Hapu of Motiti with the Rural (Non-Policy) Zone covering the land of general title that is largely covered in avocado plantings.

- (b) *Environmental Topic 2 : Natural Resources and Environment* is concerned with protecting those resources, addresses matters including biodiversity; visual appearance; the disposal of wastewater, stormwater and solid waste; earthworks; and, the pohutukawa habitat along the cliff edge. It refers to a method to protect the cliff-face around the island from use and development by providing a buffer around the top of the cliff. This buffer is shown on the Planning Map as the “*Coastal Hazard Protection Area*”. It is however not a specific policy area or similar but is covered by various rules in the Proposed Plan from which it is taken to be an area 40m from the top of the cliff edge and otherwise 60m from mean high water springs (Rule 3.3.7).
- (c) *Environmental Topic 3 : Physical Resources* is concerned with providing the resources necessary to support rural and rural-support activities. It addresses matters including transportation infrastructure to and on Motiti and communication links. In seeking to provide for subdivision in a way that supports the physical resources of the Motiti community and that maintains the productivity of the rural land uses, a method is “*To provide for the transfer of rights to enable the development of additional residential accommodation, visitor accommodation and tourist related activities on certain certificates of title, thus leaving other titles in rural production*”.
- (d) *Environmental Topic 4 : Tangata Whenua Values* is concerned with subdivision, use and development having adversely affected the relationship of tangata whenua and their culture and traditions with their ancestral lands, water, waahi tapu and other taonga and resources associated with the island. The tangata whenua are identified as Te Patuwai, Maumoana and Te Whanau a Tauwhao. The associated objectives and policies include the relevant mana whenua group or affected parties being consulted in relation to subdivision, use and development and maintaining and enhancing the relationship Te Patuwai, Maumoana and Te Whanau a Tauwhao have with the land, its character and amenity and the island lifestyle on Motiti.

- (e) *Environmental Topic 5 : Natural Hazards* is concerned with the risk to use, development and to natural resources from hazard events, such as erosion, landslip or inundation around the coast. This is sought to be addressed in part by a method that requires buildings to be set back from areas identified as being at risk from coastal erosion, inundation and landslip and that any buildings sought to be located with identified areas of risk because of the purpose they serve, be considered as discretionary activities under the RMA to allow close assessment of them in the context of that risk.
 - (f) *Environmental Topic 6 : Emergency Management*, recognises the limited emergency responses resources on Motiti and the isolation of the island increasing the risk to the residents during emergency events. It seeks to ensure that lifeline infrastructure is constructed and maintained to withstand significant storm events and that there are sufficient means and materials held on the island to maintain and repair lifeline infrastructure to enable continued use in and immediately after an emergency.
- 3.4** Chapter 2, Procedures and Information Requirements, contains the procedures and information requirements for implementing the rules of the Proposed Plan. This is largely of a procedural nature setting out the five activity classes of permitted, controlled, discretionary, non-complying and prohibited, in accordance with the RMA. It sets out the information required to be included with an application for resource consent application, including subdivision.
- 3.5** Chapter 3, Environmental Management Rules, contains the rules that are intended to put into effect the objectives, policies and methods in Chapter 1 of the Proposed Plan. It lists the activities that are permitted, subject to those activities meeting standards and terms (rules) in the Proposed Plan. Earthworks are listed as a permitted activity subject to rules that limit that activity to 50m³ in what can be considered sensitive areas, including the coastal margin, in any 12-month period (Rule 3.3.7) and, where otherwise earthworks are to exceed 500m³ in any 12 month period, the exposed area is limited to a maximum of 5,000m² at any one time (Rule 3.3.15).

The rules that must be met by permitted activities include an intensity of development standard (Rule 3.3.1) that provides for residential activity and visitor accommodation at a density of one dwelling unit or dwelling unit equivalent per 3ha of allotment area. Exceptions to that rule are that one dwelling unit may be erected on any existing lot that is less than 3ha and further, more than one dwelling unit may be erected on any partition in the Tangata Whenua Policy Areas that is less than 3ha in area when it is for the permanent residence of any shareholder with a registered interest in the land on which the residence is to be erected subject to compliance with the rules of

the Proposed Plan. However the total number of dwelling units or dwelling unit equivalents established on Motiti shall not exceed 240.

The Proposed Plan also includes a provision for transferable development rights (Rule 3.3.2) whereby the right to develop each site for residential activities may be accumulated, or transferred to alternative development sites, subject to specified conditions.

A range of other rules include provisions relating to the bulk and location of buildings, trimming of coastal pohutukawa trees, infrastructure and earthworks.

The Proposed Plan also lists controlled activities which include the subdivision/partition of land with rules that include compliance with the residential intensity of development controls and provision of practical vehicular access by legal right of way or access lot to an identified airfield or identified landing jetty/wharf. Discretionary activities are provided for that include any permitted land-use activity that does not comply with the rules and/or any subdivision activity that does not comply with the rules for controlled activities. Non-complying activities are listed that provide for any activity, including subdivision, that is not otherwise provided for and including the establishment of dwelling units or dwelling unit equivalents such that the total number of units on Motiti Island exceeds 240.

Prohibited activities are described as being the erection of any building or structure requiring building consent within 60m of mean high water springs, or 40m landward of the top cliff-edge around the island (whichever is the greater) other than those buildings or structures required to be located in this area for the purposes supporting access to/from the island, navigation or public safety. This provision means, in RMA terms, that there can be no consideration of any other buildings, such as dwellings, within these 60m and 40m areas.

3.6 Appendices to the Proposed Plan include a list of definitions and the Planning Map for Motiti.

4. APPROACH TO THIS DECISION

4.1 The whole process of a Proposed District Plan for Motiti has troubled tangata whenua deeply. There have been a range of reactions in both the written submissions and in the presentations to us during the Hearing:

- Some endeavoured to assert total independence by asserting that neither we nor the Territorial Authority had any jurisdiction to impose a district plan over Motiti. We have dealt with that in Section 2.2 of this Decision;
- A number asserted that they did not want a district plan for Motiti at all and indeed it was not needed. We have dealt with that in Section 2.6 of this Decision;
- Some recognised the need for future planning but the task has been hugely daunting. By the time of the Hearing there were on the table for each interested party a number of volumes of printed material. It is completely understandable that people who to date have not had to deal at all with such matters, may be bewildered when confronted by serious issues of process and information management;
- There has been some thought given by some tangata whenua about an iwi or hapu management plan for all or part of Motiti. We return to that in Section 4.4 (et seq) following.
- There was no tangata whenua who advocated the adoption of the Proposed Plan in essentially its present form.

We were encouraged that over the seven days of hearing some tangata whenua appeared to us to be beginning to appreciate the value of a planning document for Motiti. Others remained firm in their opposition, indeed defiant.

4.2 Although Mr Frenz for Beca Carter has done a thoughtful and thorough job in preparing a district plan for Motiti, there are a number of matters in RMA part 2 on which we need to be satisfied:

S6 Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) *The preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their*

margins, and the protection of them from inappropriate subdivision, use, and development:

(b) The protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development:

(c) The protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:

(d) The maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers:

(e) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.

(f) the protection of historic heritage from inappropriate subdivision, use, and development.

(g) the protection of recognised customary activities.

S7 Other matters

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall have particular regard to—

(a) Kaitiakitanga:

(aa) The ethic of stewardship:

(b) The efficient use and development of natural and physical resources:

(c) The maintenance and enhancement of amenity values:

(f) Maintenance and enhancement of the quality of the environment:

(g) Any finite characteristics of natural and physical resources:

S8 Treaty of Waitangi

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

We consider that we would be in a much better position to make decisions in respect of those sections with positive input from tangata whenua.

4.3 In addition, RMA s74 provides:

Matters to be considered by territorial authority

(2) In addition to the requirements of [section 75(3) and (4)], when preparing or changing a district plan, a territorial authority shall have regard to—

- (b) Any—
 - (i) Management plans and strategies prepared under other Acts; and
 - (iia) Relevant entry in the Historic Places Register; ...
- to the extent that their content has a bearing on resource management issues of the district; and*
- [(2A) A territorial authority, when preparing or changing a district plan, must—*
- (a) take into account any relevant planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on resource management issues of the district; ...

4.4 Mr Peter Grant and Ms Eunice Evans gave evidence of a working party which had been formed under the auspices of Environment Ngati Awa. Both remain members of that working party.

Environment Ngati Awa is a section of Te o Runanga Ngati Awa. Ms Beverley Hughes the Manager of Environment Ngati Awa provided very useful evidence during our Hearing at Whakatane. She confirmed the existence of the working party and spoke of its initial deliberations. Consideration by the working party has been given to the formulation of a hapu management plan for Motiti. That process is still in a formative stage.

4.5 Ms Evans who has been involved on the working party provided a list of the issues at Motiti which were in need of being addressed. The list of issues provided by Ms Evans is set out in the left column of Table 1 below. In the right column of Table 1 are the considerations which might be included within each issue. Some of these were provided by Ms Evans. We have added others based on matters addressed by submitters at the Hearing. There may be further considerations.

Table 1.

Heritage	<ul style="list-style-type: none"> Identification of sites Protection of sites Erosion of pa sites Waahi tapu Other taonga
Coastal Margin	<ul style="list-style-type: none"> Cliffs Pohutukawa protection Enhancement/Rehabilitation Beach access Offshore islets, rock outcrops and stacks

Housing	Papakainga Accommodation of multiple ownership titles Transferable Building Rights Building Controls
Earthworks	Archaeological protection Archaeological finds Sedimentation Erosion
Reserves	Present Future requirement Management Rehabilitation/enhancement
Commercial Activity	Fishing Tourism Orcharding (including sprays) Beach access Air Strip access
Kaimoana	Access Rahui Adjacent land uses Infestation – slime, “snot”
Water	Quality Access – Springs Irrigation Allocation Protection of springs/waterways Re-vegetation of springs/waterways
Stormwater	Discharge Retention Dams

Waste Water	Standards Discharge Grey water
Waste Management	Domestic Refuse Inorganic Refuse particularly larger items Marine Refuse

Monitoring

- 4.6** We are sufficiently encouraged by this work that we consider that in the circumstances of this case, time should be allowed for a hapu management plan or plans to be developed. That may assist us greatly in considering the issues before us. Indeed we are reluctant to make final decisions at present in respect of the Proposed Plan without a recognised hapu management plan or plans.

We are in a position to afford additional time by delivering this Decision not as a final decision but as a predominantly interim decision and thereby remain seized of most of the matters before us. We would make the interim decision final once the hapu management plan or plans have been recognised by the appropriate iwi authority, lodged with the Territorial Authority and considered by us, possibly with a further hearing reconvened for that purpose (but only that purpose).

It is for these reasons that this Decision is substantially an interim decision only. There are some issues on which we are able to make an immediate decision because we see such issues as being unrelated to a hapu management plan. Where that is so, we make a final decision on those issues.

- 4.7** It is recognised that the development of a hapu management plan through to the point where it is recognised by the appropriate iwi and lodged with the Territorial Authority (Department of Internal Affairs) is likely to take several years. However, in the meantime, the Commissioners wish to be assured that the process is advancing. The Commissioners intend that that should be done by setting a series of reporting dates at which the process from there can be decided. Following each reporting date the Commissioners will review the position and may:

- issue case management directions; and/or
- reconvene the hearing; and/or
- take such other steps as are reasonable and fair to all parties; and/or
- make a final decision.

4.8 While we are prepared to allow time for the preparation of a hapu management plan, we nevertheless continue to have a responsibility to reach and deliver a decision on all of the submissions and further submissions in respect of the Proposed Plan. If a hapu management plan is not forthcoming within what we consider is a reasonable time, then we will be obliged to make our decisions without the benefit of such a plan.

4.9 Table 1 represents a very broad span of issues which will require a significant input from tangata whenua. However, we would encourage the development of the a hapu management plan or plans to be undertaken in “bite size” pieces with priority in the first instance given to those issues which may have implications in the Proposed Plan. We see those issues as being:

- Heritage;
- Coastal margin;
- Housing;
- Earthworks.

We would hope that dealing with this smaller list in the first instance may be more manageable and would certainly be very useful for us in making decisions on the Proposed Plan.

We see the other matters in Table 1 as being less related to district plan issues. Some like stormwater and wastewater may be Regional Council issues and others like water supply and waste management are civic or organisational issues which do not need to be provided for in a formal RMA instrument.

4.10 Ms Hughes made it clear that if a hapu management plan for Motiti were presented to Te Runanga o Ngati Awa, it would not have to go through a further approval process with that entity. It would simply be “recognised”. That is all that is required under RMA s74. Once the hapu management plan is recognised by an iwi authority then it is a document which we are statutorily bound to take into account.

4.11 We were impressed with the contribution and approach offered by Ms Hughes of Environment Ngati Awa. On behalf of Environment Ngati Awa Ms Hughes made an offer to the Hapu of Motiti to be involved in the development of a hapu management plan for Motiti. As Resource Management professionals we recognise that within Environment Ngati Awa there is a significant base of skill, knowledge and experience which could be hugely helpful to the Hapu of

Motiti. We therefore strongly encourage the Hapu to take advantage of the offer made.

- 4.12** We appreciate that Environment Ngati Awa has only finite resources. Resourcing Environment Ngati Awa to assist the Hapu of Motiti is not part of our jurisdiction. However, like the issue of the administration of the Proposed Plan we are prepared to take it upon ourselves to make representations to the Territorial Authority that appropriate resourcing be provided. We will do so concurrently with the delivery of this Decision.
- 4.13** For the reasons provided thus far in this Section of this Decision we consider that time should be allowed for the development of a hapu management plan or plans. We hope that such a plan or plans may then be a valuable guide for the provisions applicable in the Tangata Whenua Policy Areas of the Proposed Plan.
- 4.14** The hapu management plan or plans will apply primarily to the Tangata Whenua Policy Areas on Motiti. It is unlikely to apply to the Rural (Non-Policy) Zone. If there is to be an interim decision in respect of Tangata Whenua Policy Areas, that raises the issue of whether our decision in respect of the Rural (Non-Policy) Zone should be final or interim.
- 4.15** We recognise that for the landowners within the Rural (Non-Policy) Zone it would be highly desirable to have the certainty of a final decision, particularly because within that Zone are areas which are either currently under commercial production or rapidly becoming so. We have given serious consideration to making a final decision in respect to that part of Motiti but have elected not to do so for a number of reasons:
- a) The Proposed Plan is for the whole of Motiti and Motiti alone. In comparison with most other local authorities, the total area covered by the Plan is very small. To make a final decision in respect of the Rural (Non-Policy) Zone would create even smaller areas that had separate RMA planning processes running. We consider that the area of Motiti is too small to allow that;
 - b) Having two different RMA processes running in respect of such a small area may not be well understood by the parties to these proceedings. We consider it would be better to have the one process for the whole island of Motiti;
 - c) Although we consider it highly unlikely, it is possible that there may be something in a hapu management plan which requires some amendment in the Rural (Non-Policy) Zone. If a final decision was made now then there would be no opportunity to make that change;

- d) Even if no substantive change were required to the Rural (Non-Policy) Zone following the hapu management plan, it may be desirable, for the sake of consistency, to amend some of the provisions of that Zone.

Although we are not prepared at present to make the provisions of the Rural (Non-Policy) Zone final, neither do we consider it satisfactory to leave all the provisions applicable to that Zone “in limbo” awaiting a final decision, particularly when the final decision may be some time away. Rather than leave the Rural (Non-Policy) Zone without any indication of its likely ultimate zoning pending the final decision, we consider that in respect of that Zone, it would be more helpful now to give a strong indication of what our likely final decision might be subject only to the contents of the hapu management plan or plans and issues of consistency;

We have therefore considered the submissions and further submissions which relate to the Rural (Non-Policy) Zone and come to a provisional view on those submissions and further submissions. We do this in Section 9 of this Decision. As a consequence of those provisional decisions, we then produce:

- A schedule (as Appendix 6) of those submissions and further submissions with the likely outcome of each submission and further submission relating to that Zone;
- A “markup” version of the Environmental Rules (Appendix 7) which incorporates the consequences of those likely decisions in respect of the submissions and further submissions.

Taking this step should add to the weight attaching to the Proposed Plan in considering any subsequent development within the Rural (Non- Policy) Zone.

- 4.16** The Rules in Appendix 7 can be taken as a strong indication of our present view of what the rules will be for the Rural (Non-Policy) Zone in our final decision. Until our final decision, the rules remain subject to any matter that is raised by a hapu management plan or plans. However, we have to say that there would need to be a very compelling basis in a hapu management plan to change the provisions we set out in Appendix 7. Without changing the substance of the Rules there may need to be some minor amendments for consistency across the whole of the Proposed Plan once the contents of the hapu management plan or plans are incorporated into the Tangata Whenua Policy Areas.

4.17 On the basis that we may receive further guidance from a hapu management plan or plans we now consider as separate Sections of this Decision each of the four issues we have identified namely:

- Heritage;
- Coastal margin;
- Housing;
- Earthworks.

In each case we provide our preliminary views and identify the areas in respect of which further guidance from Hapu would be helpful.

5. HERITAGE

5.1 History and Background.

Both in the written submissions and further submissions but more particularly in the presentations made to us at the Hearing, a number of submitters provided evidence regarding the history of Motiti, covering a broad span of occupation and events from pre- European times to the present day. The island's indigenous people comprises descendents of the Te Arawa and Mataatua canoes that brought some of the earliest Polynesian inhabitants to the Bay of Plenty region over 700 years ago.

At the hearings at Tamateahuatahi Marae at Motiti, Mr Nepia Ranapia produced a short written history and genealogy of Motiti. That was subsequently translated by the licensed interpreter Mr Malcolm. At Pupuaruhe Marae at Whakatane, Mr Ranapia provided us an extensive narrative on the traditional Maori history of Motiti. Other elders supported that narrative.

There are many landmarks on Motiti and within its coastal margins that convey its ancient past and their relationship with tangata whenua. Mr Ranapia's history and commentary during the site visit to the Te Patuwai and Maumoana policy areas provided us a further insight into the past lives of the various chiefs who held customary authority over those parts of the island through the generations.

Mrs Bennett observed in her submission that Taumaihi Island in particular is famed within the traditions of the tangata whenua. Taumaihi contains an ancient pa built by Ngatoroirangi who was the high priest and navigator onboard the Te Arawa canoe⁶.

He may have well been one of the first ancestors to explore and occupy Motiti, naming significant landmarks for future generations ensuring that his personal mana and tapu endures.

In preceding generations, Taumaihi Island became the final resting place for a number of noted chiefs including Te Hapu, Tauwhao whose descendents are referred to as Te Whanau a Tauwhao. No doubt, there are other sites of significance throughout the island that are also esteemed by their living descendents.

⁶ Commissioner Puke notes that Ngatoroirangi originally was to have navigated the Tainui canoe. He was also the first individual to scale Mt Tongariro.

From the documentation and submissions to present to us, the island is divided into two groupings:

- Te Patuwai, Ngati Maumoana, Ngati Te Hapu of Ngati Awa of the Mataatua canoe to the north of the island.
- Te Whanau a Tauwhao of Ngaiterangi of the Te Arawa canoe to the south of the island.

According to Mr Nepia Ranapia and the NZAA files, a boundary line dividing these groupings was established in 1845 in order to avert war between them.

This aukati (boundary) is set from east to west almost across the middle of the island. On the east, from a Pa named Te Huruhi (V14/45) and Okoronui Pa (V14/57) on the west. A significant area of the southern part of the island was sold to european interests in 1885⁷.

The interior landscape of Motiti has changed considerably since pre-European times due to human activity on the island possibly spanning over 700 years. The island in pre-human times would probably have been extensively forested in pohutukawa, kohekohe, rata, tawa, kanuka growing upwards of 10 to 20 metres, possibly teeming bird population such as kaka, kereru, komako, titi (mutton birds) tieke and tui.

It is assumed that the older pohutukawa trees that may have dated back to the times of earliest habitation of Motiti may have eroded from the cliffs into the sea. The roots of some of these trees may have reached down to the waters edge with hollows between these roots providing habitat for various sea birds and tuatara. The bent roots of selected pohutukawa were also fashioned into durable fishhooks for catching large species of shark, tamure (snapper) moki and hapuka by the ancient inhabitants. Much of its indigenous trees such as pohutukawa and other forms of native flora are now confined to the cliffs, waterways and some rocky outcrops. A future ecological assessment and study may identify surviving pohutukawa of a considerable age.

The island's ancient inhabitants cleared these first primeval forests for ease of access to key advantage points in order to establish valuable root crops brought over from ancient Polynesia.

The island's unique soils and temperate weather were well suited for the growing of kumara, taro, hue (gourds) which, served as floats for fish nets and storage containers and aruhe (fern-root) as an additional supplement to

⁷ See *Berkett Decision A103/195 (Judge Bollard presiding)*.

kaimoana. The already volcanic nature of soils combined with vegetation burn offs provide for friable fertile growing soils.

The Te Patuwai and Ngati Maumoana elders told us during the site visits and during the Hearings that their elders and parents were able to develop large-scale horticultural practices where considerable areas of their lands were planted in maize, potatoes and kumara up to the 1960s.

Further deforestation would have been exacerbated by the need for firewood for domestic purposes and manufacturing of hard wood hand weapons such as spears (huata, tao, koikoi), and agricultural implements, (ko, ketu). Populations of people who inhabited the island would have put strain on these resources. It is currently unknown when the last stands of mature native trees were felled. The undergrowth of these forests would probably have had masses of twisted vines of supple-jack (pirita) that were traditionally used for making traditional crayfish pots and hoops (pouraka) for fishing nets and were therefore an import resource for local fisherman.

The various inlets provided abundant shellfish such as oysters, paua, mussels, kina and koura (crayfish). These areas are still used today by the island inhabitants.

The coastal environment also contains named rock outcrops and outer islands that also served as markers and boundaries of prized traditional fishing grounds for various hapu and whanau groups who inhabited the nearby cliff top pa or papakainga. Maps of the island provide names that appear to link back to the islands earliest period of Maori settlement. Names such as Hani⁸, a rock outcrop in Wairere Bay was probably used by ancient Maori priests as tuahu (shrines) to venerate local deities and tribal taniwha in the form of various sea creatures such as whales and sharks and other forms of natural phenomena. It was interesting to note that while we were at Wairere Bay, we observed sea birds were hovering over a large shoal of fish beyond Hani. Given the locality of Matarehua Pa on Taumaihi Island, it appears that Ngatoroirangi himself may have named this feature.

There were a number of caves seen below pa sites on the northern seaboard of the island that were hewn out by the sea. During the site visit to the north part of the island, the elders stated that these areas including pa were tapu.

⁸ Commissioner Puke notes that Hani is also recorded within the ancient Tainui accounts as a deity of war where offerings of cooked human flesh in baskets were offered to Hani before the kawhia based Waikato tribes ventured into war. Hani is a stone marker that was dedicated by Hoturoa, and Raakataura marks the final burial place of the Tainui canoe at Maketu Kawhia still stands to this day.

The island contains a unique landscape of various types of rock and stone deposits resulting from its volcanic past. We noted these particularly during our inspection of the cliffs and cove at the Rejthar/Luxton property. In addition, naturally occurring karamaea (red ochre) can be seen in the cliffs. That would have been highly prized by pre-European Maori on Motiti. These deposits were ground into a fine powder and mixed with shark oil then used as pigments for personal adornment, carvings and sacred structures to indicate personal tapu.

During the site visit to the Wills and MAL properties, flaked pieces of obsidian glass (mata tuhua) were observed. Apparently these were commonly unearthed during farming horticultural activities. Obsidian from Motiti and Tuhua (Mayor Island) was traded extensively and has been found in archaeological sites throughout the North Island.

Mr Andy Thomson, manager of MAL reported that there are solidified veins of obsidian found in the cliffs on the island. Obsidian flakes were used primarily as cutting tools for flaxes, raupo, cords, or etching fine patterns on gourds. The presence of discarded obsidian chards may indicate there was at various times a thriving flax industry for making large scale fishing nets, braided lines, cords, ropes and rigging for sailing ships in exchange for muskets and European tools and making traditional textiles such as korowai (cloaks), whariki (woven mats) and kete (kits). If there are obsidian resources on Motiti, then that would make it one of only two known sites where obsidian was sought after and traded by pre-European Maori throughout the mainland and other parts of the North Island.

A hoanga (traditional grinding or sharpening stone) made from slabs of sandstone or boulders that were used for grinding and shaping stone adzes, whao pounamu (greenstone chisels) and patuonewa (stone patu) was seen in the marae grounds at Tamateahuatahi Marae at Motiti. Its surface was pitted with hollows and grooves which had resulted from the grinding motion of stone tool manufacturing. It is assumed that this rock was transported from elsewhere or onto the island at an unknown time.

The island has over 33 recorded pa sites that have been identified in the New Zealand Archaeological Association (NZAA) site record files that were presented to us at the Hearing at Motiti by MAL. The vast majority of these pa are sited along the cliffs and high points of the island. Many of these pa would have been densely populated and constructed at different periods gauging from the various types of defence works. Some may have been modified further in order to accommodate the use muskets from the 1820s onwards. The pa sites are also a testimony to past conflicts involving not only other iwi in the Bay of

Plenty but as far a field as the Ngapuhi tribes of the far north from whence they made several forays to Motiti between 1818 and the 1830s.

On visual inspection from the air and during site visits, most pa sites overall in terms of their defence features such as ramparts and ditches are still in good condition despite signs of some having cattle or sheep damage. The soils provide easy digging for the construction of ditches and ramparts.

It appears that there was an understanding between tangata whenua and paheka landowners in the south of the island has led to many of the pa sites left relatively undisturbed. Prior to the open pasture lands that are seen today, these sites may have been covered in kanuka and scrub, which may explain their good state of preservation.

It is highly probable that many of these ancient pa may also contain the remains of the ancestors of the tangata whenua and of other iwi due to the conflicts and battles fought on the island.

However, there are a small number of pa, which were identified during the site visit to the northern part of the island that have been modified slightly. According to the NZAA files, and what was pointed out to us, these pa sites and tribal landmarks are:

- Te Oromai (V14/51): Used as an urupa for the two resident marae on the island Tamateahuatahi and Tahinga O Te Ra.
- Te Ota (V14/54): Main outer ditch forms a portion of a road for access to Wairanaki Bay.
- Rangitahua (V14/52): Is inland and has a mounted 5 metre high beckon light for navigational aids for off shore ships and craft.
- Otungahoro (V14/53): While outer ditches and earthen ramparts are still preserved, the interior of the Pa is currently used for horticultural purposes.

During the course of our visit to the southern part of the island, we observed from the MAL landing at Wairere Bay and from the air during our visits to the island:

- Matarehua Pa (V14/ 41) on Taumaihi Island which is currently in the process of being created a Maori Reserve.
- Taumataika Pa (V14/59) at the southern extremity of the island is under attack from erosion. Only some of its outer defence features were seen during our site visit.
- Te Hiira. A hill ridge (which contains a trig station) from where large fires were lit to signal to the tangata whenua of Matakana Island that a tangi had occurred. This was mentioned by kaumatua at Tamateahuatahi

Marae. This feature was pointed out to us while on route to the southern end of the island.

We observed while at Wairere Bay, and we were told by MAL that the southern tip of the island is currently under threat of erosion due to storms and undercutting the cliffs through natural coastal processes. Further erosion over a period of time may cause the site of Taumataika Pa and any artefacts or koiwi (human remains) that maybe buried there to spill into the sea.

Whilst a vast majority of the pa sites are sited along the cliffs of the island, within the island's interior there may other be sites associated with ancient camping sites for hunting birds, hangi or umu, (ovens) hidden storage pits, springs, stone working areas, stone adzes, hammer stones, middens, discarded bone, shell and stone implements, ancient garden soils, flax and raupo gathering sites, buried talismans that the ancient inhabitants would have used to protect these sites. Post European implements may include corroded iron tools, muskets, musket balls, clay smoking pipes, ceramic plates and glass fragments. By their nature, these sites are sporadic and may have already been modified over the past 100 years by farming practices dispersing non-perishable objects further afield. Much of these features may also still survive as subsurface features and may become unearthed through topsoil stripping.

5.2 Issues

From this discussion it is clear that the provisions of RMA Part 2 relating to Maori which we have cited above (Section 4.2 of this Decision) have significant application in considering the Proposed Plan for Motiti. The difficulty we face is that at the moment we do not have a clear indication of:

- Which of these elements need to be included in the Proposed Plan;
- If protection is sought, what level of protection;
- What activities are appropriate in or close to particular areas of significance;
- To what extent do the activities in or near to sites need to be regulated.
- To what extent this history and background should colour other elements of the Proposed Plan;
- How do we treat traditional papakainga areas.

5.3 Hapu Management Plan or Plans.

The following are the potential areas in which we see a hapu management plan being helpful to guide the provisions of the Proposed Plan:

(a) The current Proposed Plan does not include sites of historic importance to tangata whenua. Having examined the file records from the NZAA and hearing evidence from kaumatua and other submitters, we consider the inclusion of the pa sites and features such as rock outcrops into the proposed Coastal Zone may be warranted for the following reasons:

- Most of these pa are in good condition and their current state of preservation provides for a direct relationship with the tangata whenua in terms of their central importance within their traditions.

Taumaihi Island and its pa Matarehua is associated with Ngatoroirangi, high priest of the Te Arawa canoe and Tauwhao, the founding ancestor of Te Whanau a Tauwhao and Te Hapu. It is recognised as a place of national significance with its association with Ngatoroirangi, who represents one of the earliest periods of settlement of Aotearoa by early Polynesian Maori. It ranks equal to any of the landing places associated with Captain Cook and his voyages and should be protected accordingly.

- Any developments on these pa for buildings or housing are likely to be vigorously opposed by tangata whenua and the Historic Places Trust.
- In contrast to many sites that have been destroyed on the mainland due to urban sprawl, Motiti has pa sites that have not been disturbed making them of special status and character.

A hapu management plan could include a section on heritage matters that provides an outline for tangata whenua as to how pa sites can be conserved, commemorated or reused as burial grounds along with other customary practices such as the burying of afterbirth and hair clippings within the interior of these pa by exercising concepts of tapu or rahui over these sites within the proposed Coastal Zone.

(b) Whether in respect of the pa sites on the perimeter of Motiti, the proposed Coastal Zone should include an area 10 meters inland of the landward defence ditch or raised rampart of those pa sites;

- (c) Whether and to what extent should the cliffs and pohutukawa be protected;
- (d) Whether the gathering of customary foods such as kaimoana and its sustainability need be included in the Proposed Plan;
- (e) The manner in which the rock outcrops and outer islands which are of immense significance to tangata whenua should be treated in the Proposed Plan. Many of these features have significant names that originate back to the earliest Maori inhabitants of Motiti and successive generations for establishing fishing rights to those areas. The geological formations of these outcrops attest to the ancient volcanic origins of Motiti spanning back some millions of years along with its names are unique to the island's character;
- (f) Whether there are obsidian resources on Motiti and if so whether they need any special provisions;
- (g) Whether protocols covering any discoveries of any taonga or koiwi which may be developed as part of the hapu management plan should somehow be incorporated in to the Proposed Plan. All artefacts are deemed to be property of the Crown in terms of the Antiques Act 1977 and are administrated by Internal Affairs. The Crown acts as interim custodian until ownership of the artefact is determined. The Antiques Act was adopted as a means to stop any objects of Maori origin from being sold overseas illegally;
- (h) Whether, given the long history of cultivation on Motiti, any special provisions are required to cover possible archaeological finds inland from the proposed Coastal Zone;
- (i) What are the appropriate housing limitations within the Tangata Whenua Policy areas for:
 - Papakainga areas
 - Rural areas outside the traditional papakainga areas;
- (j) We applaud the efforts of Mr Vern Wills for replanting the cliffs with pohutukawa and the waterways with locally sourced native trees and flora in reviving and maintaining something of the essence of the island's past ecology. We need to know whether this should somehow be given some priority in the Proposed Plan.

We invite tangata whenua of Motiti to give consideration to these issues and develop a hapu management plan or plans which will guide us on these and the other issues identified in this Decision.

6. COASTAL MARGIN

6.1 Introduction

There was no landscape study undertaken as part of the preparation of the Proposed Plan. Neither was there any expert landscape evidence tendered in the course of the Hearing. The Proposed Plan nevertheless records:

“Residents and tangata whenua also appreciate Motiti for the unique setting it has in the Bay of Plenty as a constant and significant part of the landscape and seascape from any part of the mainland or off-shore. The foreshore and cliff-face holds flora important to Motiti such as the yellow pohutukawa.”⁹

“The island is recognised as a visually significant landscape in the Bay of Plenty Regional Coastal Plan with the cliffs being an important landscape feature when viewed from the mainland or from the sea.

These cliffs harbour the last remnants of the indigenous vegetation remaining on the island and provide important habitat for once extensive seabird populations that under pressure from predators and human activities.”¹⁰

In conducting the Hearing we spent 3 days on Motiti during the course of which:

- We accessed Motiti daily by air. That included flying round the whole island on two occasions;
- In the course of the site visit of the northern part of Motiti we first travelled along the lip of the north-western escarpment and then went down to Wairanaki Bay. We then went along the northern track and viewed the north-eastern and northern coastal margin;
- During our site visit to the southern part of Motiti we:
 - clambered down the escarpment face to the shoreline on the property of Messrs Rejthar and Luxton;
 - we walked down the recently formed MAL access to Wairere Bay;
 - we visited the MAL landing site on the south-western side Motiti; and
 - we visited Pattersons Inlet on the western side of Motiti.

⁹ Proposed Plan pg iii

¹⁰ Proposed Plan pg 7

All of this provided us with an excellent first hand view of the coastal margin. We consider that the coastal margin is a very significant element contributing to the uniqueness of Motiti. It certainly deserves a measure of protection.

In addition, within that coastal margin or very close to it, lie all but two of the pa sites on Motiti. For the reasons set out in Section 5 of this Decision, we consider that they too deserve protection.

6.2 Proposed Plan Provision

The scheme of the Proposed Plan as it was notified is that the whole island has a rural zoning. On the Planning Map the coastal margin is shown as “Coastal Hazard Protection Area”. This has the appearance of a separate zone or at least policy area but in fact it is neither. The entry on the Planning Map is simply a notation of the area in which Rural Zone Rule 3.3.7 (relating to set backs) applies.

We consider that this planning technique is inadequate. We consider that the coastal margin should have a separate zone with separate supporting policies. We consider there are good reasons why the zoning for the rest of the island should not cover the coastal margin. In particular we are concerned that the presence of stock or heavy cultivation of the surface along that coastal margin may compromise its stability. At the moment, much of the margin is fenced but there is no requirement for that. We consider that permanent protections should be built into the planning provisions.

In considering the coastal margin a number of elements need to be addressed namely:

- Extent;
- Pohutukawa ;
- Pa site protection;
- Sea access points; and
- Geotechnical, land stability issues.

We consider each of these in turn.

6.3 Extent

a) Outer Limit

Within a distance of approximately 1,000m around the main island of Motiti there are, particularly on the eastern side, a considerable number of offshore islets, rocky outcrops and stacks. That includes Taumaihi and Motuputa. During the Hearing there appeared to be a question about whether the Proposed Plan included or did not include those offshore features. Page ii of the Proposed Plan as notified records:

“This District Plan covers the land area above Mean High Water Spring Tide line (MHWS) of the island of Motiti as well as the adjacent smaller islands and rocks surrounding Motiti as shown on the Planning Map.”

We consider that those offshore features are within the scope of the Proposed Plan as notified. Even if they were not, it was the submission of both Ngati Awa and the Department of Conservation that they should be included. It is our firm view that the offshore features should be included within the Proposed Plan. Furthermore, those features should take the new coastal zoning proposed by us. The general zoning is basically rural. However, we are not prepared to afford those offshore features a rural type zoning. Those offshore features should certainly be given a significant measure of protection. That is another reason for allocating a separate zoning to the coastal margin.

Before we were to decide on the exact nature of the protection afforded to those offshore features, we would prefer to be guided by a recognised hapu management plan or plans. We note for example that Taumaihi in particular is a very significant and important site for Tauwhao.

b) Landward Boundary

The Proposed Plan provisions largely related to building setbacks from the cliff edge. The primary distance was 40 metres. That appears to have been driven by considerations relating to both landscape and cliff-scape protection on the one hand and geotechnical building limitations on the other.

We agree with the MAL submission that the two considerations of landscape and geotechnical should be separated.

Our provisional view is that for landscape purposes the landward boundary of the coastal margin should be fixed at a distance generally 40 metres from the upper edge of the cliff. We noticed on our site visit that

a substantial portion of the coastal margin has been fenced on its landward side. It appeared to us that that fencing would be anywhere between 20 and 40 metres from the edge of the cliff but we had no evidence on that distance.

Where there is no cliff we consider the landward boundary of the proposed Coastal Zone should be 60 metres from MHWS.

In summary, our provisional view of the extent of the proposed Coastal Zone is that:

- It's outer limit should include the offshore islets and rocky outcrops and rock stacks; and
- The landward boundary should be fixed generally 40 metres from the top edge of the cliff or 60 metres from MHWS where there is no cliff.

c) Policy Areas.

It is our preliminary view that where the Tangata Whenua Policy Areas are immediately adjacent to the proposed Coastal Zone, those Policy Areas should extend over the Coastal Zone. We recognise that the final decision on that may well turn on the content of the hapu management plan or plans.

6.4 Pohutukawa

The cliffs forming the coastal margin are substantially covered by very mature pohutukawa trees, the canopies of which extend a considerable distance inland. We had no evidence of the extent of that. It would appear to us to be in the order of 10 to 20 metres. That may also have a bearing on the landward boundary of the proposed Coastal Zone.

In addition we noted particularly from our aerial viewing of the coastal margin that the coastal cliffs are unstable and the subject of continuing erosion. There has been a number of significant coastal land slips:

- We noted that on the property next to the Rejthar-Luxton property, a recent land slip there took with it a sizeable mature pohutukawa tree;
- Similarly, two very large pohutukawa trees were dead or dying at the foot of relatively recent falls at Wairere Bay;

- The submitter Sharon Baker (Nuku) lamented that Wairere Bay used to be lined with pohutukawa trees (a photo was produced) and is no longer so. The implication that she drew was that the trees had been destroyed by MAL or its predecessor in title. Having inspected the land there and seen evidence of a number of recent coastal land slips together with tree debris on the beach we suspect that natural causes have removed those trees rather than any human intervention. Indeed we suspect that at Wairere Bay the same coastal processes are continuing to be at work as those which separated Taumaihi from Motiti.

If the cliff faces are as unstable as they appear then rehabilitation and enhancement of the vegetation coverage particularly pohutukawa is more likely if space is allocated at the top of the cliff for regeneration. We noted in the MAL property where stock had been excluded for some time now significant natural regeneration was beginning to occur back from the cliff edge.

We discuss sea access in a subsequent sub-Section but we note that the east west airstrip on the Wills property has an approach and take off path over the coastal margin at the eastern end. There is no obstruction limitation surface proposed in the Proposed Plan for that flight path but for safety reasons, trimming of all vegetation in that area must be contemplated in the Proposed Plan.

Our provisional view on the pohutukawa trees within the coastal margin is that there should be strong protection provisions which can be relaxed for the purposes of sea and air access.

6.5 Pa Site Protection.

We have discussed this in Section 5 of this Decision. It is our provisional view that protection of the coastal pa sites could conveniently be covered within the proposed Coastal Zone. That can be done by realigning the landward boundary of the Zone 10m landward of the perimeter of any pa site.

6.6 Sea Access

Motiti is an island. It is accessed by either air or sea. The airstrips are able to take only small aircraft with the limited payload that they can carry. All the heavy equipment, supplies and live stock must come in by sea. There is no natural harbour. Over time islanders have created appropriate landing points. These tend to be functional utilities which interrupt the otherwise outstanding coastal landscape. The island cannot do without such landing facilities. Those facilities must therefore be recognised within the coastal margin. We consider this should be done by a notation for each specific landing point on the

Planning Map with plan provisions which allow quite a different treatment of the coastal margin in that location. There are currently four such points:

- Wairanaki Bay;
- Pattersons Inlet;
- MAL south western site; and
- Wairere Bay.

We understand there is the possibility of a fifth point off the eastern end of the Wills Airstrip. At the time of the Hearing we had little evidence of that. However, by the time we reconsider the Proposed Plan there may be more certainty about the nature and scope of that possible landing place.

We envisage that each landing point would be fixed on the Planning Map on the line of MHWS and then the landing point provisions in the Proposed Plan would apply for a distance of a total of 60m along MHWS with the landing point anywhere along that 60m distance.

In the course of the Hearing a number of tangata whenua made adverse comment about the escarpment down to Wairere Bay. We have perused the Resource Consent relating to that work issued by Bay of Plenty Regional Council. We note that it contains a condition:

“All construction, earthworks and erosion and sediment controls shall be carried out in general accordance with the following Harrison Grierson drawings:...” There follows a list of drawings including:

“Landscape Plan” 10967 – RD06 identified as BOPRC Plan Number RC62709/6, particularly the planting of Pohutukawa as mitigation”

The Harrison Grierson Landscape Plan shows nine Pohutukawa to be planted on the bench on the north side of the earth cut and a further three pohutakawa trees to be planted on the south side of the cut. No other planting is proposed. No such planting has yet occurred.

With respect to the Regional Council, we regard that level of landscaping for that scale of cut on such a sensitive coastline is inadequate. We agree with submitters that at the time we inspected it, the Wairere Bay access is fairly raw and in our view has not received the environmental enhancement it deserves.

The work relatively recently undertaken to provide access down to Wairere Bay for the purposes of a landing place there having been completed under an appropriate consent, we consider that that has to be recognised in the Proposed Plan. However, we learned with concern that there may be a second access proposed in Wairere Bay. That matter is not before us but for the purposes of

the Proposed Plan we consider that there should be only one scheduled access point at Wairere Bay. If MAL wish to create another then in our view the existing one will need to be completely rehabilitated to preserve the coastal margin.

Having made those comments about Wairere Bay, we were also concerned at the utilitarian nature of the landing facility at Wairanaki Bay. That has:

- a clay road freshly bulldozed down to it;
- a water course which has been channelled by machine; and
- very little planting in the area.

We appreciate that Wairanaki Bay has been used by tangata whenua for a long time. However, with very little effort the facility could be substantially enhanced.

In addition, we noted on our site visit that the track to Wairanaki Bay is routed through the foss of an old pa site. That is confirmed by the New Zealand Historic Places Trust archaeological record of site number 54.

Our provisional view on sea access points for the whole of Motiti is that:

- There should be four scheduled sea access points shown on the Planning Map;
- A distance of 60m along MHWS which includes each sea access point should be subject to provisions different from the rest of the proposed Coastal Zone which provisions recognise the utilitarian nature of the sea access points;
- That is not to say there should not be some requirement for environmental rehabilitation and/or enhancement of the sea access points.

6.7 Geotechnical - Land Stability

We agree with the MAL submission that geotechnical considerations about siting buildings near the edge of the cliff should be separated from landscape issues. Unfortunately we had no geotechnical evidence before us to provide a basis for a building setback for geotechnical reasons. Mr Frenz reported that technical advice he had received suggested that conservative approach would be that buildings should be set back inland twice the distance of the height of the cliff at that point. So if, for example, the cliff were 40 metres high then the setback from the top of the cliff would be 80 metres. We would be happy to go along with that suggestion but it would need to come with the proviso that

if an applicant could adduce a sound geotechnical basis for siting a building closer (but not within the 40 metre coastal margin or its adjacent zone boundary yard) then there should be the opportunity to do so by resource consent.

With a zone boundary defining the coastal margin and the rural zone, there will also need to be a yard setback in the rural zone along that boundary. We consider that that setback should be of the order of 5 metres. That is a normal set back for a rural zone and one which allows vehicle passage between the structure and the boundary.

Our preliminary view on building setbacks for land slip/geotechnical reasons is that there be:

- A horizontal distance of twice the vertical height of the cliff at that point; and
- A dispensation to come closer (up to the yard boundary of the Coastal Zone) as a restricted discretionary activity with discretion being exercised in respect of geotechnical considerations only.

We note that any buildings which existed at the date the Proposed Plan was notified which are closer to the cliff edge than that contemplated by the provisions we are proposing, will continue to enjoy existing use rights pursuant to RMA.

6.8 Conclusion

We invite the Territorial Authority to promulgate a coastal zone for Motiti with provisions as suggested in this Section of our Decision.

We will also need advice on the extent to which such a zone lies within our jurisdiction as fixed by the Proposed Plan as notified and the submissions on it.

7. HOUSING

7.1 Issues

The Proposed Plan provides for “*residential activities*” as a permitted activity subject to rules that include particularly an *Intensity of Development – Density* standard and an *Intensity of Development – Transferable Development Rights* standard (Rules 3.3.1 and 3.3.2).

The density standard provides for one residential dwelling per 3ha subject to compliance with other rules of the Proposed Plan. Exceptions to that rule provide for a dwelling on an existing site that is less than 3ha and further, that more than one dwelling unit may be erected on any partition in the Te Patuwai and Te Whanau a Tauwhao Policy Areas that is less than 3ha in area for the permanent residents of any shareholder with a registered interest in the land on which the residence is to be erected, subject to compliance with other rules of the Proposed Plan. Both these provisions are subject to the total number of dwelling units or dwelling unit equivalents established on Motiti not exceeding 240.

These rules adopt an averaging approach and do not specify any minimum lot size for subdivision. In doing so the rules are to put into effect the objectives, policies and methods explained under *Environmental Topic 1 : Island Character and Amenity* whereby it is sought to ensure that the scale and intensity of use and development of buildings and physical resources, including, but not limited to, the maximum sustainable number of dwellings, (or dwelling equivalents) of 240 units, is compatible with the existing rural character and amenity of the island. The Proposed Plan states:

“It is not inconceivable that without rules in place to maintain and enhance the preferred character and amenity of Motiti future generations will be left with an environment quite different from the island today. The issues identified that subdivision, use and development does have the potential to change the character and amenity of the island and the objective is that in order to sustainably manage Motiti in a way that will achieve the Vision held by residents, tangata whenua and stakeholders the focus of the Plan is to maintain and enhance the present character and amenity by limiting the maximum population to a sustainable level.”¹¹

¹¹ Proposed Plan pg 3

The second part of the intensity of development standards relates to transferable development rights where the right to develop each site for residential activities may be accumulated, or transferred to alternative development sites, subject to conditions. Those conditions include maintaining the one dwelling unit per 3ha intensity standard; recognising existing dwelling units on donor sites at the time of transfer; the transfer being recorded on the Certificate of Titles of both the donor site and the recipient site; details being provided to the Territorial Authority; and, compliance with other relevant rules. This control therefore provides for the average density standard across the whole of Motiti to be applied but in a manner whereby, if desired, a number of dwellings can be concentrated in any one part of Motiti by way of the transferable development rights provision.

7.2 Findings

We find that this approach towards providing for a specified intensity of development, with an upper limit and with averaging and transferring provisions, to be a reasoned approach towards managing development on Motiti in a manner which can maintain and enhance the preferred character and amenity of Motiti as desired by its residents. It provides for building on existing subdivided sites and partitions and for development rights to be transferred between sites. It does not restrict opportunities for tangata whenua who are able to build on existing partitions and to transfer development rights within their own parts of the island, or in association with others as required, in accordance with an overall vision for Motiti.

7.3 Preliminary View

Our view is that the Proposed Plan gives due recognition to the rights of land owners on Motiti, and achieves a reasonable balance between those rights and environmental considerations of the island. However, such provisions for housing are most effectively considered in the context of the aspirations of tangata whenua and the information that can potentially be obtained through a hapu management plan or plans.

7.4 Hapu Management Plan

The consideration of current and future housing proposals for Motiti will undoubtedly be a principal concern of tangata whenua in considering hapu management plans and how these can reasonably be managed in the best interests of the Maori people and the environment. Currently the separate Policy Areas applying to the Patuwai land and the Tauwhao land provide the base for the development of hapu management plans for each of those respective areas.

Tangata whenua are invited to consider where future buildings are desired to be built and how many dwelling units are anticipated. They may also consider the issue of multiple ownership of Maori land and specifically how far is it reasonable to go in terms of providing for registered owners to build on individual areas of land.

8. EARTHWORKS

8.1 Issues

Earthworks are a permitted activity in the Proposed Plan subject to meeting specified rules. Those rules limit earthworks to 50m³ in any 12-month period in areas that are in proximity to the cliff-edges, mean high water springs line, running water, stormwater overland flow paths and groundwater tables (Rule 3.3.7) In other areas, where earthworks in excess of 500m³ are undertaken in any 12-month period the exposed surface area is limited to a maximum of 5,000m² at any one time together with provision having to be made for mitigation of dust nuisance and reinstatement of the exposed surface area after completion of the earthworks (Rule 3.3.15).

Non-compliance with any of these rules means a proposal requires consideration as a non-complying activity.

8.2 Findings

We are concerned whether these provisions sufficiently take account of the following in terms of associated environmental effects:

- The fragile nature of the coastal cliff face around most of Motiti.
- The concerns expressed to us relating to the recent access cut made at Wairere Bay.
- Re-contouring of land for activity such as avocado growing that we were informed can extend to a depth of 1m or more and potentially have archaeological implications.
- Reasonable land disturbance associated with cultivation and what may be considered as normal rural production activities.

8.3 Preliminary View

Our preliminary view is that:

- a) The coastal margin should be included in a specific zone that can include controls on earthworks that recognise and provide for its sensitive nature. We consider that control and management of this fragile coastal area should not be left to the Regional Council. On the contrary, we consider that controls in the Proposed Plan are appropriate and could provide for greater regard to be given to the local situation. Section 6 of this Decision has provided a discussion on this proposal for a new coastal zone.

In this new Coastal Zone any earthworks up to 50m³ or that expose an area of up to 100m² could be treated as a restricted discretionary activity and assessed against specified criteria relating to:

- Land stability;
- Cultural/heritage, including regard to NZ Historic Place Trust records;
- Landscape and visual;
- Erosion and sedimentation; and
- Rehabilitation.

Earthworks in the new Coastal Zone greater than 50m³ or exposing a surface area greater than 100m² would appropriately be considered as a non-complying activity given the sensitive nature of the coastal margin. This will be considered in conjunction with the proposed Coastal Zone provisions.

The above would include most of the pa sites on Motiti, which are in coastal locations. That recognises too that most of the early human habitation would have been around the coastal perimeter of Motiti. However, to ensure that account is taken of all the pa sites on Motiti the same controls would apply within 10m of a recognised pa site or any other burial site in the Tangata Whenua Policy Areas and in the Rural (Non-Policy) Zone so that archaeological effects can be considered.

- b) For earthworks in the areas of Motiti outside the new Coastal Zone we do not consider the controls need to be so restrictive. However, where earthworks, such as ground recontouring, are to be to a depth of 1.0m or more there are potential archaeological effects. In that case we would see earthworks being dealt with as restricted discretionary activities. These would be assessed against criteria relating to cultural/heritage considerations. Other earthworks could remain as permitted activities in accordance with the provisions currently in the Proposed Plan and the control standard at Rule 3.3.15.

The definition for “earthworks” in the Proposed Plan can reasonably be altered and used to differentiate between earthworks and the normal rural production activity of cultivation. This would remove the exposed surface area rule which otherwise applies and would limit the area able to be cultivated at one time.

8.4 Hapu Management Plan

A future hapu management plan or plans could consider the nature of the assessment criteria to be applied to the above restricted discretionary and discretionary activities in terms of having due regard to Maori concerns and how these matters may be effectively addressed in the Te Patuwai and Te Whanau a Tauwhao Policy Areas.

9. RURAL (NON-POLICY) ZONE

9.1 The Rural (Non-Policy) Zone has been defined by us in Section 1.10 of this Decision as that area of Motiti excluding the:

- Tangata Whenua Policy Areas; and
- Proposed Coastal Zone.

9.2 For reasons we set out in Section 4 of this Decision we now consider the submissions and further submissions which are either lodged by persons having an interest in land within the Rural (Non-Policy) Zone or affecting the rules of that Zone. We identify those as follows:

a) Submitters and further submitters having an interest in land within the Zone:

Submission 28, Don Wills;
Submission 97, Motiti Avocados Limited (MAL);
Submission 208, Vernon Wills.
Further submission 210, (MAL).

b) Other parties: Some submissions points from:

Submission 6, Bay of Plenty Regional Council
Submission 96, Western Bay Moana Fire Authority
Submission 98, Te Runanga o Ngati Awa
Submission 99, The Royal Forest and Bird Protection Society
Submission 100, Ministry for the Environment
Submission 101, Department of Conservation
Submission 201.41, 201.42 Raewyn Bennett.

We consider each of these in turn.

As set out in Section 4 of this Decision our decision in respect of each of these submissions and further submissions is not final but interim. Within the limitations expressed in Section 4.16 of this Decision, the decisions which follow in this Section may be the subject of some adjustment or change.

9.3 Don Wills Submission No. 28

The submission of Don Wills opposes the clauses involving the setback from the island fringes. It submits that one rule for the whole of the island's fringe is not suitable in some areas.

We have considered that issue in Section 6 of this Decision and make proposed changes.

Submission 28 is accepted insofar as we provide in this Decision for building set backs in the Rural (Non-Policy) Zone on geotechnical grounds.

The landscaping considerations will be dealt with in our final decision as part of the proposed Coastal Zone.

9.4 MAL Submission No 97

The MAL submission raises some 57 submission points. We address here the principal submissions relating to the Environmental Rules which were addressed by MAL in detail in the Hearing.

a) Access Plan (submission 97.1)

We will deal with sea access points in the promulgation of the new Coastal Zone. We will make a decision on that issue in our final decision.

We accept as does the other landowner Mr Vernon Wills that there should be some forward planning for access for MAL to the east/west airstrip in the centre of the island on the property of Mr Vernon Wills. However, we will await the hapu management plan or plans to see whether any of that access may be available through the Tauwhao Policy Area.

Accordingly, we will make a decision on that issue in our final decision.

We can make a decision now on that part of the MAL proposed access around the western end of the Wills Airstrip. To that extent MAL submission 97.1 is accepted in part.

b) Island Character and Amenity, Natural Resources and Environment (submissions 97.4, 97.5, 97.6, 97.7, 97.9, 97.10, 97.11, 97.12, 97.13)

These matters will be dealt with as part of the new Coastal Zone.

We make no decision on those submissions at present.

c) Drinking Water (submissions 97.17, 97.44)

The MAL submission requested that reference in the Proposed Plan to “current drinking water standards for New Zealand” be removed and the reference simply be to “potable water”. The Reporting Planner recommends acceptance of that change.

We accept that submission but agree with the Reporting Planner that there is no need for a definition of potable water.

d) Horticultural Spraying (further submission 210.7, 210.8)

Some submissions sought to apply further controls in relation to horticultural spraying. We agree with the MAL submission that the use of sprays is accepted as an essential activity of an established horticultural operation. Furthermore, it is already governed by a regulatory regime with strict requirements. In any event we see the discharge of spray as a Regional Council issue.

The MAL further submission is accepted.

e) Consultation - Section 36A RMA (further submission 210.17)

We will deal with consultation issues after we consider the hapu management plan or plans. Accordingly, we will make a decision on that issue with our final decision.

f) Planning Maps - Sites of Significance (submission 97.28, further submission 210.18)

MAL seek the identification of significant sites. In that respect it produced information from the NZ Archaeological Association database endorsed by the New Zealand Historic Places Trust and Department of Conservation.

It is our intention to accept the MAL submission in that regard but that will be done:

- as part of our consideration of the proposed Coastal Zone because a significant number of the sites are on the perimeter of Motiti and will be within the proposed Coastal Zone; and
- as part of our consideration of a hapu management plan or plans.

Accordingly, we will make a decision on that issue in our final decision.

g) Permitted Activities (submission 97.33)

To clarify matters in the permitted activity status in the various zones and policy areas we propose that a table be inserted in the Proposed Plan to substitute the present list of permitted activities. We will deal in this interim decision only with the permitted activities in the Rural (Non-Policy) Zone. We will deal with the permitted activities in the other zones or areas as part of our final decision.

To that extent the submission is accepted.

h) Development Intensity Table

There was no formal submission from MAL on this issue but MAL nevertheless raised the point at the Hearing. There were a number of other submissions querying the development intensity provisions including submission 6.26 (Bay of Plenty Regional Council), submission 188.13 (Chris Rejthar and Simon Luxton) and submission 201.41 (Raewyn Bennett). We nevertheless deal with the issue here. Submissions identified that the provisions for development intensity were unclear and confusing. We consider the Development Intensity Table should be clarified to clearly show that it is to be applied on an averaging basis.

We agree the Table needs modification.

The submission is accepted.

i) Earthworks (submissions 97.33, 97.36, 97.37, further submissions 210.25, 210.32)

MAL was concerned that as a large horticultural operation it is essential that adequate provisions made for earthworks. We have discussed this in considerable detail in Section 8 of this Decision dealing with earthworks.

For the reasons given in Section 8 the MAL submissions are accepted in part.

j) Height (further submission 210.28)

MAL supports the 9 metre height restriction for all buildings.

That further submission is accepted.

k) Waste Water Treatment and Disposal (submission 97.47)

MAL wanted to make it clear that the wastewater treatment and disposal provisions should clearly allow for a shared disposal and treatment system. We agree.

The MAL submission as it relates to wastewater is accepted.

l) 313 Building Setback (submissions 97.38, 97.39)

The MAL submission sought to distinguish between setbacks for landscaping reasons and setbacks for geotechnical reasons. We agree that the distinction should be made. The submission is accepted insofar as we provide in this Decision building set backs in the Rural (Non-Policy) Zone on geotechnical grounds.

The landscaping considerations will be dealt with in our final decision as part of the proposed Coastal Zone.

m) Legal Access (submission 97.47)

Section 3.5.2(d) of the Proposed Plan requires all new lots to have practical vehicular access by legal right of way or access lot to an airfield and a jetty/wharf. MAL considers that only one access point is required, ie that the requirement should be not conjunctive but disjunctive.

We disagree. It is clear that there is a significant amount of air traffic to and from the island. Air transport is sufficient to take a limited number of passengers and limited cargo. All the heavy equipment, supplies and live stock must come on and off Motiti by sea. Which access is required is entirely dependent on the purpose of the access. We consider that all new lots should have both options.

That submission is rejected insofar as it relates to legal access.

n) Controlled Activities – Matters of Control (submission 97.48)

MAL was concerned that having provided standards in the permitted activity rules they appear again in the controlled activity rules. While a land use will be either a permitted activity because it complies with the permitted activity standards or a discretionary activity (ie not a controlled activity) a subdivision will certainly be a controlled activity. For that purpose we consider it is prudent to repeat the standards.

The MAL submission is rejected.

o) Controlled Activities – Non Notification (submission 97.49)

MAL sought a provision in the Proposed Plan which automatically rendered any application for a controlled activity a non-notified process. Mr Frentz recommended rejection of that submission on the basis that the law should apply.

The legal position is that ordinarily an application for controlled activity would be non-notified unless “special circumstances” apply. As Commissioners we have been involved in several controlled activity consents where a notification decision is required. In an island as small and unique as Motiti we could well see that there may be special circumstances. We are not prepared to remove that possibility.

We consider that the law as it is contained in RMA should apply.

The MAL submission is rejected.

p) Discretionary – Limited Discretionary (submission 97.50)

The MAL submission observes there is no provision for restricted discretionary activities.

In our discussion on setbacks in Section 6.7 of this Decision we consider that the building setback for landslip reasons is a geotechnical issue which can be dealt with by way of the restricted discretionary process. Furthermore in Section 8 we consider that there are some earthworks which need only restricted discretionary consent.

Otherwise we adopt the Reporting Planner’s recommendation so that any other failure to comply with Standards becomes a discretionary activity.

q) 3.18 Prohibited Activities (submission 97.53)

With the amendment to building setbacks that we propose in the preceding paragraph the only potential prohibited activity that remains is buildings in the proposed Coastal Zone.

We will deal with that in our final decision when we consider the provisions of the proposed Coastal Zone.

- r) Site Definition (submission 97.55)

The MAL submission expressed concern that within the Proposed Plan each of the terms “allotment” “lot” “site” “partition” are used.

We note that each of those are defined. For ourselves we can see no difficulty in the present drafting.

The MAL submission is rejected.

- s) There are a significant number of other submissions made by MAL which are in respect of the Proposed Plan other than the Environmental Rules and the Definitions.

We will make a decision on those issues in our final decision.

9.5 Vernon Wills Submission No. 208

- a) Mr Wills supports the vision for the Proposed Plan.

We will make a decision on that issue in our final decision.

- b) Mr Wills’ submission expresses concern about vermin and noxious vegetation.

Those are not matters for a district plan.

The submission is rejected.

- c) Mr Wills requests trimming of pohutukawa to help stop cliff erosion and airport runway access.

We will deal with that in the provisions for the proposed Coastal Zone.

Accordingly, we will make a decision on that issue with our final decision.

- d) Mr Wills seeks exemption from setbacks for an airport service building.

The setback is measured from the property boundary. That is a matter of amenity and separation distance for the neighbouring property. We are reluctant to compromise those amenity requirements at the expense of the adjacent neighbour. However, setbacks are able to be reduced with the written approval of that neighbour and the Rule is clarified in this regard.

The submission is accepted in part.

9.6 Other Submission Relevant to the Rural (Non-Policy) Zone

We have identified in Section 9.2 b) more general submissions affecting the Rural (Non-Policy) Zone made by submitters other than those having an interest in land within the Zone.

Each of those submissions have been determined either:

- within our Decision down to this point; or
- if they have not already been discussed then we adopt the reasoning and conclusion of Mr Frentz in his report to us.

9.7 Schedule of Decisions on Submissions and Further submissions on Rural (Non-Policy) Zone

We include as Appendix 6 to this decision a schedule of our interim decisions on the submissions and further submissions on the Rural (Non-Policy) Zone. The schedule is to be taken as a schedule of our provisional decisions only of those submissions and further submissions identified. Any other submission or further submission not included in Appendix 6 is held over as part of our interim decision. Decisions on those submissions and final decisions will be included in our final decision in due course.

9.8 Amended Environmental Rules for Rural (Non-Policy) Zone

On the basis of our provisional decisions on the Rural (Non-Policy) Zone, we include as Appendix 7 of this Decision a “mark up” version of the Proposed District Plan Environmental Rules and Definitions.

10. OVERALL POSITION OF WHOLE DECISION

For the reasons set out in Section 4 of this Decision, a limited part of this Decision constitutes a final decision and the remainder is an interim decision. Most of the submissions and further submissions in the interim decision are simply deferred pending:

- Receipt and consideration of a hapu management plan or plans;
- The promulgation of a proposed coastal zone

In respect of those submissions and further submissions relating to the Rural (Non-Policy) Zone we have gone a step further in the interim decision by giving an indication now of what we consider the likely outcome of those submissions and further submissions will be. That will provide a more definitive guide for that Zone in the meantime.

All submissions and further submissions other than those the subject of our final decision and those in the interim decision relating to the Rural (Non-Policy) Zone are deferred.

To make the overall position absolutely clear to all submitters Appendix 8 to this Decision is a complete schedule of all submitters and submission points in relation to the Proposed Plan with our record of the outcome of that submission or further submission in each case.

11. DECISION PART 1 (FINAL)

11.1 This part of the Decision is a final decision. It applies to only those submissions and further submissions specifically identified in this Section of this Decision and to no other.

11.2 We reject all those submissions and further submissions which assert we have no jurisdiction. Those submissions and further submissions are set out in Appendix 3

11.3 We reject all those submissions and further submissions which raise issues of:

- Administration of the District Plan;
- The Territorial Authority's contribution to amenities;
- Rates.

Those submissions and further submissions are set out in Appendix 4.

11.4 We reject those submissions and further submissions which assert there should be no district plan for Motiti. We accept those submissions and further submissions which support in principle a district plan for Motiti.
Those submissions and further submissions are set out in Appendix 5

Advisory Note:

This part of our Decision is final. Any body or person who made a submission on the Motiti Proposed District Plan in relation to the submissions and further submissions listed in Appendices 3, 4 & 5 may appeal the Territorial Authority's decision to the Environment Court on a matter or provision referred to in such submission or further submission.

Notices of appeal should be in the format of Form 7 of the Resource Management (Forms, Fees and Procedure) Regulations 2003 and must be lodged, within 30 working days of service of this Decision, with:

The Registrar
Environment Court
Box 5027
Lambton Quay
WELLINGTON

A copy of the appeal must also be served on the Territorial Authority.

Department of Internal Affairs
PO Box 805
WELLINGTON

Attention: Grant Kamau

and all other parties to these proceedings.

12. DECISION PART 2 (INTERIM)

12.1 This part of the Decision is an interim decision. It applies to all submissions and further submissions other than those specifically identified in our Decision Part 1 (Final) set out in Section 11 of this Decision.

12.2 We record in Appendix 6 a schedule of our interim decisions in respect of (mainly) the Environmental Rules relating to the Rural (Non-Policy) Zone.

12.3 The Territorial Authority is invited to:

- Promulgate objectives, policies and rules for a separate coastal zone for Motiti in accordance with the principles set out in Section 4 of this Decision.
- Present a report to the Commissioners addressing whether and the extent to which the proposed Coastal Zone falls within our jurisdiction circumscribed by the Proposed Plan as notified and the submissions made to it.
- In the event that the proposed Coastal Zone may be beyond our present jurisdiction, provide to the Commissioners an outline of an appropriate process to incorporate the proposed Coastal Zone in to the Proposed Plan.

12.4 The Hapu of Motiti are invited to develop a hapu management plan or plans for Motiti which address at least the following issues:

- Heritage;
- Coastal margin;
- Housing;
- Earthworks.

12.5 In developing a hapu management plan or plans, Hapu of Motiti are strongly encouraged to utilise the services of Environment Ngati Awa. In the event that Te Whanau a Tauwhao prefer to work through Ngaiterangi, then in doing so Te Whanau a Tauwhao are strongly encouraged to co-operate with Environment Ngati Awa. The Commissioners see it as highly desirable that either:

- there be only one hapu management plan; or
- if there are two hapu management plans, then there be a high degree of consistency between the two.

12.6 When a hapu management plan or plans covering at least the four issues identified in Section 12.4 of this Decision is finalised, the Hapu of Motiti are invited to:

- Have that plan or plans (or the relevant section/s of it/them) recognised by the appropriate iwi authority; and then
- Lodge the plan or plans with the Territorial Authority (through the Department of Internal Affairs)

12.7 To satisfy the Commissioners that progress is being made, the Territorial Authority (or its agent) shall lodge with the Commissioners by 31st March 2008 and thereafter at six monthly intervals, a report outlining progress towards:

- The promulgation of a coastal zone
- The recognition by an appropriate iwi authority of a hapu management plan or plans for Motiti.

12.8 If either:

a) By 31st March 2010, there is:

- No coastal zone promulgated; and/or
- no recognition by an iwi authority of a hapu management plan or plans for Motiti;

or

b) After any progress report before 31st March 2010 the Commissioners consider that there is insufficient progress towards the promulgation of a coastal zone and/or recognition by an iwi authority of a hapu management plan or plans for Motiti and/or further progress is unlikely;

Then the Commissioners will make final decisions on the submissions and further submissions to the Proposed Plan based on the merits of the written and oral submissions and further submissions considered at the several Hearings conducted in July 2007.

12.9 If any party who appeared or was represented at the Hearing prefers that the Commissioners make their decision or any part of it final without considering a coastal zone and/or a recognised hapu management plan, then application to that effect should be made in writing to the Territorial Authority with copies served on all other parties who appeared or were represented at the Hearing.

Any other party may respond within 15 working days of receiving such request.

The Commissioners will then consider the request and responses and either make their decision or part thereof final or issue further directions.

12.10 If at any time before 31st March 2010 a coastal zone is promulgated and/or a hapu management plan for Motiti is both recognised by an iwi authority and lodged with the Territorial Authority, then the Commissioners will consider all the relevant remaining submissions and further submissions and consider whether:

- Any further changes to the Proposed Plan are necessary or desirable;
- Any changes to the Proposed Plan are within the scope of the Proposed Plan as notified and the submissions made on it;
- The Territorial Authority should promulgate a variation of all or part of the Proposed Plan;
- A case conference should be convened to consider the procedural issues arising from any of these options;
- A hearing should be reconvened.

The Commissioners will issue directions accordingly.

12.11 In the meantime the Proposed Plan stands and will be applied as the law provides.

12.12 Any party may apply in writing at any time:

- To extend any date or time period specified; and/or
- For any other order or direction.

If any such application is made, the Commissioners will issue such further directions as they consider appropriate to ensure the process remains fair to all parties.

12.13 Appendix 8 records our decisions in respect of each submission point of all submitters and further submitters to the Proposed Plan.

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C D ARCUS

.....
A R WATSON

.....
W PUKE

14th August 2007

