Before the Environment Court	**ENV 2016 -**
IN THE MATTER	Of the Resource Management Act 1991
AND	
IN THE MATTER	Of an appeal under Clause 14(1) of Schedule 1 of the Resource Management Act 1991
BETWEEN	**The Ngāti Huarere ki Whangapoua Trust**
	Appellant
AND	**The Thames Coromandel District Council**
	Respondent

Notice of appeal to the Environment Court on a Decision of the Proposed District Plan

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TO; The Registrar

Environment Court

Auckland

The Ngāti Huarere ki Whangapoua Trust (the Trust) appeals against the Decision of the Thames Coromandel District Council on the Thames Coromandel Proposed District Plan.

1. The Trust made three submissions, one written submission to the Draft District Plan and one written and one verbal submission to the Proposed District Plan.

2. The Trust is not a trade competitor for the purposes of Section 308D of the Resource Management Act 1991.

3. The Trust received notification of the decision on or about 29 April 2016.

4. The decision was made by the Thames Coromandel District Council.

5. The Trust appeals those parts of the decision relating to matters raised in its submissions to the Proposed District Plan as identified in this notice of appeal. The reasons for this appeal are set out below;

May it please the Court

The appellant

1. The Ngāti Huarere ki Whangapoua Trust (the Trust) is an organisation that was duly established and mandated in 1998 by the Ngāti Huarere ki Whangapoua iwi to act on the iwi's behalf in respect of all aspects pertaining to the tribe. This qualifies it as an iwi authority under the RMA and accordingly it is listed in the Thames Coromandel District Council's (Council) Section 35A Iwi Authority list and also in the operative plan as tangata whenua. The Trust's mandate to represent the Ngāti Huarere ki Whangapoua people has never been challenged.

2. Ngāti Huarere ki Whangapoua has occupied the Whangapoua basin since earliest Maori inhabitation. They hold mana whenua in this area.

The appeal

3. The Trust is appealing Council's decision not to include a notation in the Proposed District Plan (the Plan) which was requested by the Trust in its verbal submission to the Plan. This states;

> ***27. Relief sought;*** *Ngāti Huarere requests Council explain how it will correct this injustice. Denial is not an option. Ngāti Huarere require a highlighted statement included in the District Plan that states that Crown recognition of iwi has no standing in the Plan. In any event the Trust asserts that Council must begin its Maori consultation again. This time the process must be inclusive not exclusive.*

Cause of action

4. The appellants say that Council made a serious and fundamental error in the preparation of its Plan when it chose to provide special funding and separate consultation meetings with iwi authorities who are in Treaty settlement negotiations with the Crown, while at the same time refusing funding and entry to consultation meetings for other iwi authorities listed in Council's Section 35A register.

5. The error is compounded because Council failed to meet its obligations under Section 8 of the Resource Management Act (the Act) which requires Council to take into account the principles of Te Tiriti o Waitangi (Te Tiriti).

6. Councils actions follow a Crown established process of placing Ngāti Huarere ki Whangapoua below other iwi in Hauraki in contravention of Te Tiriti. As a result, Council's iwi consultation for the preparation of its Plan was discriminatory as it afforded some iwi authorities a significant advantage over others. Council has neglected its obligations under s8 of the Act by failing to actively protect the rangatiratanga of Ngāti Huarere ki Whangapoua, failing to act reasonably and in good faith, failing to make informed decisions and by advantaging one group of Maori over another.

7. Crown recognition for Treaty settlement purposes is not controlled by legislation whereas consultation with tangata whenua in the preparation of the Plan is controlled

by legislation through the Resource Management Act (the Act). Council acknowledges the two processes are different in Section 13 of its Recommended Decision Report dated April 2015 where it states in paragraph 5.5 "*The Treaty Settlement process is separate to the Plan review".*

8. Councils decision to apply recognition from a non-statutory process to an entirely separate and unassociated statutory process is embedding a class system amongst Māori in its district that was initiated by the Crown through its actions and omissions which contravene its obligations under Te Tiriti. The Crowns actions and omissions have resulted in the discriminatory recognition of tribes for settlement purposes. Council has followed the Crowns lead by awarding tribes, recognised by the Crown for settlement negotiations, special treatment in its iwi consultation in the preparation of its District Plan.

Particulars

9. Schedule 1, [Part 1, 3(1)(d)] of the Act requires Council to consult with affected tangata whenua through iwi authorities in the preparation of its Proposed Plan. Ngāti Huarere ki Whangapoua Trust is listed in Councils s35A list of "Iwi Authorities".

10. Section 8 of the Act requires Council to take into account the principles of Te Tiriti when exercising powers and functions under the Act. Section 8 states;

> *8. 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).*

11. The appellants say that Council failed in its duty to take into account the principles of Te Tiriti in the preparation of the Plan. These include inter alia; 1) a duty to actively protect the rangatiratanga of Ngāti Huarere ki Whangapoua, and; 2) a duty to act reasonably and in utmost good faith, and; 3) a duty to make informed decisions, and; 4) a duty to ensure that one group of Maori is not advantaged over another group.

12. At its meeting on 28 August 2012 the District Plan Review Committee considered the possibility of service level agreements with tangata whenua to enable engagement with the District Plan review process. As a result of discussions the Committee resolved to recommend to Council that it:

3. *Consider entering into service level agreements with iwi authorities to provide input into the District Plan Review process.*
4. *Consider the financial implications associated with entering into service level agreements with iwi authorities, with a view to setting a cap on funding these agreements.*

13. On 12 December 2012 the Thames Coromandel District Council resolved to;

2. *Instructs staff to enter into discussions with the eight iwi authorities recognised by the Crown in Treaty of Waitangi negotiations to provide written comments on the Draft District Plan.*
3. *Authorises unbudgeted expenditure of up to $20,000 (from the Contract Planning budget via the Landuse Planning Activity) to enable contracts for service to be entered into with iwi authorities.*

14. Somehow the recommendation from the District Plan Review Committee was altered from 'iwi authorities' to 'the eight iwi authorities recognised by the Crown in Treaty of Waitangi negotiations'. This demonstrates that Council made a conscious decision to only fund a specific subgroup group of iwi authorities.

15. The Ngāti Huarere ki Whangapoua Trust is not in settlement negotiations with the Crown. On 16 December 2012, in accordance with point 3 of Council's resolution, which did not specify Crown recognition, the Trust applied for Council funding to prepare a submission to the Draft Plan. However, the Trust was informed by the Council that this funding was only for iwi authorities who are recognised by the Crown for Treaty of Waitangi settlement negotiation purposes.

16. The Trust again wrote to Council on 18 January 2013 seeking clarification as to why Council had chosen to fund only Crown recognised iwi authorities.

17. The Trust received a letter from Council dated 12 February 2013 which confirmed that Council has taken the lead from the Crown which in turn had been guided by the Hauraki Collective.

18. The Crowns settlement process in Hauraki is alleged to be highly discriminatory and is the subject of a number of contemporary Treaty claims by tribes who have been excluded from negotiations. Ngāti Huarere ki Whangapoua is one of those iwi excluded from the negotiations.

19. The Council made a fundamental error when it chose to follow the Crowns lead in the recognition of tribes for the preparation of the Plan. This decision has significantly disadvantaged some Māori, including the Ngāti Huarere ki Whangapoua people, as it has created a discriminatory consultation process.

20. The Trust asserts that Crown recognition for Treaty settlement purposes is not a matter the Council can consider as part of its statutory obligation to consult with iwi authorities in the preparation of the Plan. Council is using criteria from one process to determine funding and engagement eligibility for an entirely separate and un-associated process thereby causing prejudice to Ngāti Huarere ki Whangapoua.

21. The Trust contends that Council has also failed to exercise a duty of care to ensure that its iwi consultation has not significantly disadvantaged some tribes. Iwi consultation should be a level playing field. The Trust also alleges that Council's iwi consultation is in breach of the New Zealand Bill of Rights Act, which affirms the rights of persons to freedom from discrimination (section 19); and the right to natural justice [section 27(1)].

22. Council has admitted in correspondence to the Trust that there is no additional value to be gained from the iwi authorities it has chosen to fund over those iwi authorities it has refused to fund. This is an interesting admission by Council as it highlights Council has implemented an inequitable system. That is, if the Crown recognises an iwi for Treaty settlement purposes, that iwi will receive funding from Council for its submission to the Draft Plan, however, if an iwi is not recognised for settlement purposes it will have to self-fund its submission. There is no benefit to Council by funding one and not the other but Council's funding regime has clearly advantaged one over the other.

23. This discrimination is not limited to funding. On 12 November 2012 the Trust requested that it be allowed to attend District Plan consultation meetings Council held with the Crown recognised tribes. The Trust was subsequently informed that it could not attend. Iwi authorities, including the Trust, have been denied the opportunity to be involved in these discussions so their views have not been heard by other iwi. They were also denied the opportunity to hear the views of other iwi and challenge or support those views.

24. Council was fully aware that the 'Crown recognised' iwi may not be the only iwi having mana whenua status in the district because it has a highlighted note in Section 2 *'Significant Resource Management Issues'* of its Operative District Plan which states;

> *"Please note, however, that the 12 iwi identified in that section of the Waikato Regional Plan are the iwi listed in the Hauraki Māori Trust Board Act 1988, and may not be the only iwi having mana whenua in the Thames Coromandel District."*

25. Council's actions have some denied iwi authorities equal input into the Plan. For example, the District Plan Review Committee requested staff engage with iwi authorities in respect of the landscape, natural character and coastal overlay maps. The Trust was never invited to discuss these matters. It would appear Council's engagement on these matters was only with the Crown recognised iwi.

26. In addition to this, paragraph 44 of Councils Section 42 report on Tangata Whenua states;

> *"Attempts to even list iwi in the Plan, let alone identify ancestral rohe, has been fraught with disagreements about which are 'iwi' and where their rohe were."*

27. This has created further prejudice because the Trust was not involved in these discussions despite having an interest in the matters under discussion and in fact was the iwi authority that raised the issue.

28. Councils actions have not only made the Ngāti Huarere ki Whangapoua people feel of lesser value than other Māori in Hauraki, they have also embedded a Crown initiated class system. The Crown chooses "winners" and "losers" in its settlement process, or in other words a "class" system. By following the Crowns lead in recognition, Council has integrated this class system into its District Plan consultation process automatically. Here is an excerpt from page 12 of the Waitangi Tribunal's Tamaki Makaurau Report that demonstrates how groups are marginalized within settlements:

> *"When the Crown targets for settlement the most high profile, effective group in a district, and leaves out the other tangata whenua groups, it reinforces the view that they matter less. When the Crown keeps doing it (in Auckland, Ngati Whatua o Orakei has now been chosen four times), that implication is even stronger. When the winners are picked out, they feel and act more like*

winners. This can leave the other tangata whenua groups in the district feeling like losers. They can feel that they have been relegated to a class of also-rans. Suspicion and resentment are the natural result".

29. The Trust considers this will provide an opportunity of other Hauraki iwi to marginalize Ngāti Huarere ki Whangapoua. Tribal rangatiratanga, which encompasses notions of tribal autonomy, authority, control and self-determination, will be significantly eroded if there are not clear notations in the Plan to prevent this from happening. This situation must be addressed before it becomes entrenched within the policies of TCDC and other local authorities.

30. In summary; The Ngāti Huarere ki Whangapoua people have been significantly disadvantaged in Councils process of preparing the Proposed Plan by; 1) being denied resources that were afforded other iwi authorities; and 2) by being refused attendance to iwi liaison meetings where Proposed Plan matters were discussed; and 3) by being denied the ability to hear other iwi authority's views and to voice their own views on matters discussed.

Relief sought;

31. Ngāti Huarere seek the following relief;

a) An apology.

b) For Council to make payment of two thousand five hundred dollars to the Ngāti Huarere ki Whangapoua Trust for its engagement in the preparation of the Plan to bring them into alignment with the other iwi authorities that submitted.

c) For Council to include, to the satisfaction of the Trust, a statement in the Plan to the effect that Crown recognition of iwi for Treaty settlement purposes has no standing in the RMA, and therefore the Plan. Also that any Post Settlement Governance Entity or Co-Governance Entity cannot overrule a tribe that holds mana whenua or mana moana status over an area. This statement may be amended post settlement to align with the settlement legislation if necessary.

d) For Council to carry into the Proposed Plan its statement from the Operative Plan referred to in paragraph 24 above that the 12 the iwi listed in the Hauraki Māori Trust Board Act 1988, and may not be the only iwi having mana whenua in the Thames Coromandel District.

e) Because of Councils discriminatory process not as much weight will have been given to Ngāti Huarere ki Whangapoua perspectives in the Plan. Therefore, Council should initiate a variation to the Plan to review the Tangata Whenua section of the Plan. This time the process must be inclusive not exclusive.

Such further or other relief as appropriate to give effect to the matters raised in this notice.

The following documents are attached to this appeal;

a) A copy of the Trusts submissions

b) The Trust is not aware of any other submitters who submitted on these points.

Chairman – Ngāti Huarere ki Whangapoua Trust

Deane Adams

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Form 7 Notice of appeal to Environment Court against decision on proposed policy statement or plan or change or variation

Clause 14(1) of Schedule 1, Resource Management Act 1991

Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (*see* form 38).

***How to obtain copies of documents relating to appeal**

The copy of this notice served on you does not attach a copy of the appellant's submission and (*or* or) the decision (*or* part of the decision) appealed. These documents may be obtained, on request, from the appellant.

Advice

If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.
