

BEFORE THE ENVIRONMENT COURT

Decision No. [2013] NZEnvC 276

IN THE MATTER of an appeal pursuant to Clause 14 of the
First Schedule of the Resource
Management Act 1991 (**the Act**)

BETWEEN TRUSTEES OF TUHUA TRUST BOARD
(ENV-2009-AKL-000161)
Appellants

AND MINISTER OF LOCAL GOVERNMENT
Respondent

Court: Decision on the papers
Environment Judge J A Smith, sitting alone pursuant to Section 279
of the Act

Submissions: Mr J P Koning for the Trustees of Tuhua Trust Board (**the Trust
Board**)
Mr K G Stephen for Minister of Local Government (**the Minister**)

Date of Decision: 19 September 2012

FINAL DECISION OF THE ENVIRONMENT COURT

**Preamble and Plan confirmed, as set out in Annexure A and as amended by this
decision.**



REASONS FOR DECISION

Introduction

[1] On 19 September 2012 this Court issued a substantive decision in respect of this appeal - [2012] NZEnvC202. This followed with a decision in respect of costs in May of this year and a number of exchanges in relation to timing for submissions for wording.

[2] In the end, the lack of progress led to the Court to giving a final time for the filing of submissions by both parties. The parties agreed that the final decision on wording for the Plan could be on the papers.

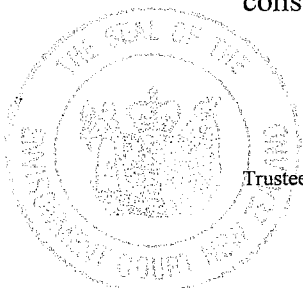
[3] Submissions were filed, but in the submissions for the appellant, Mr Koning sought instructions for the Trustees that the matter be adjourned. Further, that a representative from the Department of Internal Affairs (**DIA**) and/or BECA appear before the Trustees to present the Tuhua District Plan (**the Plan**) and answer questions, and that further, the respondent make a financial contribution to the presentation of the District Plan at the Annual General Meeting (**AGM**).

[4] For reasons which were not explained by the Minister, the Department of Internal Affairs did not consider it appropriate for a representative to address the AGM on the Plan. While it is not yet finalised, DIA would not attend the AGM nor contribute to the costs of presenting the Plan. It did note that the DIA would be pleased to present on the Plan once it has been finalised. I accept that the presentation of the provisions to the Trustees or any related to it, would not assist in the finalisation of the Plan for current purposes.

[5] Given that nearly a year has elapsed since the substantive decision, I intend to deal with the matters outstanding between the parties.

THE SCOPE OF REMAINING ISSUES

[6] The only remaining issues between the parties relate to the Preamble to the Plan, consisting of:



- [a] Mihi i;
- [b] Vision Statement - Whakatauki;
- [c] Tuhua Tangata Whenua
- [d] Legal framework and jurisdiction;
- [e] Purpose of the Plan
- [f] Uniqueness of the Plan
- [g] Existing Environment;
- [h] Plan format; and
- [i] References

[7] Annexed hereto as A is the Preamble and Plan as proposed by the Minister. The substantive portion of the Plan is agreed between the parties, and the disagreements relate only to the Preamble. The Minister's preference is noted in **A**. Mr Koning for the Trustees presents an alternative version of the Preamble that is contained as **B** which is a July 2013 version. I will deal with each change as it occurs as it is proposed in the Plan.

Vision Statement - Whakatauki

[8] In the Vision Statement, several small changes are suggested. Those in the Minister's version are preferred because they appear to represent a consistent spelling preferred and correct an error in the original wording.

Tuhua Tangata Whenua

[9] In the paragraph *Tuhua Tangata Whenua*, there is an argument about whether the final sentence of that provision should be included. We note that the Minister's version includes until the words *District Plan for Tuhua*. We agree that that is a sufficient



statement of the Trust Board's position, and that the Trustees are not able to state their position for all time, nor is it appropriate that they do so in this Preamble.

Purpose of the Plan

[10] There are no differences.

Management of Tuhua

[11] No differences.

Local Government Administration

[12] We agree that the Trust should be regarded as an administrator, rather than a public authority, and that wording change is appropriate and correct as a matter of fact.

Uniqueness of the Plan

[13] Very minor spelling error already corrected in the Minister's version.

Existing Environment

[14] The correct spelling of whanau.

Post European

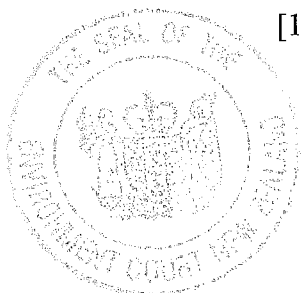
[15] No changes.

Landform

[16] No changes.

Climate

[17] No changes.



Geology

[18] No changes.

Soils

[19] No changes.

Flora and Fauna

[20] No changes

Plan Format

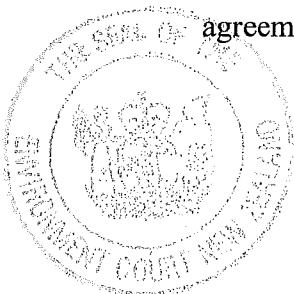
[21] The major difference between the parties is the Minister's desire to include the statement that the *Preamble (which does not form of the District Plan)*. I can understand that most of the Preamble can only be introductory and assist parties with background information as it does not contain objectives, policies or rules. Nevertheless, most Plans do contain such a Preamble and they can be helpful in understanding the way in which the Plan works and its purpose in a broader sense. Where there is a conflict between a Preamble and provisions in the Plan, then clearly the provisions in the Plan will take priority.

[22] Nevertheless, we are unable to see any reason why those words need to be included in this Plan, and accordingly, we delete them. We have shown this in copy version A by putting minor stripes through this to indicate that it is not to form part of the final Plan.

[23] There is also a change to the spelling of *limited resources*. This spelling mistake is not substantive.

CONCLUSION

[24] These changes are not substantive and it is unfortunate that the parties have not been able to improve their relationship to the extent that they are able to formalise this agreement without the Court's interference.




[25] Nevertheless, the final form of the Plan is confirmed as set out in **A**, with the alterations indicated in this decision. The major amendment is the deletion of the reference at Page viii regarding the Preamble not being part of the Plan.

[26] I appreciate that for both parties this has been a difficult process, but consider that the end result of the Plan is a clear, concise and relatively helpful document for the parties, and I trust that it can be used in that way in future years.

[27] This is the conclusion of this matter, with all other matters having been tended to.

DATED at AUCKLAND this 22nd day of November 2013



J Smith
Environment Court Judge

