

**TUHUA
PROPOSED DISTRICT PLAN**

DECISION OF HEARINGS COMMISSIONERS

Volume I - Decision

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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.

First honour and glory to god, long lasting peace to the land, peace of mind to all people.

Ka tangihia, ka mihi ki nga tupuna kei te takoto i te kopua o te moutere o Tuhua, nga hapu o te ao kowhatu, a Ngai Tauwhao, koutou nga tupuna mo nga iwi mai ra no, takoto mai!

To the various ancestors who rest upon the island of Tuhua who belong to the stone age world. To Te Whanau a Tauwhao to all other ancestors who lay there.

Ka mihi atu ki nga kaitiaki o nga kowhatu o Tuhua, me nga ara rau tapuwae o nga matua tupuna i tua o te arae No reira, tena koutou, tena koutou katoa.

Greetings to the guardians of the sacred stone of Tuhua and its many pathways once treaded by the ancestors beyond the threshold of the spirit world greetings to you all.

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

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

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

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

Ko Tuhua, he waahi whakahirahira mo nga Iwi Maori/ Paheka o te Motu. He Moutere motuhake, he moutere tino taonga.

Tuhua is famed amongst all throughout the land. An island set aside, an island treasured.

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

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



Otira, i roto i a matou ratonga tohuhanga i tukua mo te kaupapa, ka tauhou ki te hunga kore mohio. 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 kawé hoki te a Nanaia Mahuta, te Minita Hou mo te kawanatanga haukainga

The decision that is before you has been delivered to the Hon Nanaia Mahuta, the new Minister of Local Government.

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

Tuhua 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 Tuhua (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 Hollings & Ferner Ltd (Beca) of Tauranga to both prepare the Proposed District Plan for Tuhua (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 nor neighbouring Tuhua and strongly recommended that the Territorial Authority take steps to propose district plans under RMA.

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

1.4 Notification

The Proposed Plan for Tuhua was publicly notified on 15th of December, 2006 with submissions closing on 9th March, 2007. The period for submissions was extended by a further 20 working days and closed on Tuesday 10 April 2007.

A summary of submissions was prepared for the Territorial Authority by Beca 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 7 primary submissions were received. There were 2 further submissions received.

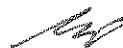
A summary of the submissions was included in the material circulated to the parties prior to the Hearing.

Before preparing a hearing report Mr Frenz conducted a series of workshops with submitters, in particular the Tuhua Trust Board and Mr Jason Ake. Further consultation was also undertaken with Mr Mark Ake.

1.6 Hearing

We conducted a Hearing of the submissions and further submissions in relation to the Proposed Plan in Tauranga on March 26th 2008.

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



In the course of the Hearing the following parties made appearances:

Submitter Opposed:

Mr Mark Ake

Submitter in Support:

Tuhua Maori Trust Board

- Ms Magda Williams, Chairperson
- Mr Pio Kawe , Senior Cultural Adviser,
Boffa Miskell, Tauranga

Territorial Authority

Mr Keith Frentz, Beca, Tauranga

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 Wednesday 26 March we undertook a site visit to Tuhua. Accompanied by Ms Williams, Chairperson of the Tuhua Maori Trust Board and Mr Frentz, we travelled by helicopter and landed on the beach of Opo Bay. We viewed the existing buildings and associated facilities immediately beyond the beach. We then walked up the track to the site of Panui Pa which overlooks Opo Bay, and the surrounding proposed development area. We came across the remnants of a large fosse of the old Pa site which ran east to west through a natural gully at each end of Tokimataa Point. The upper ramparts of the Pa were still discernable despite extensive erosion and damage over a considerable period of time.

Commissioner Puke recited an ancient karakia and we entered the site. There were many signs of ancient habitation scattered through the old Pa interior with storage pits and rectangular impressions of house sites under the undergrowth and rejuvenating bush cover within the interior of the Pa. The area of the Pa site was extensive. There were mature native trees that were well over ten metres in height providing excellent protective cover for the rejuvenation of other indigenous flora species. Much of the lesser undergrowth was Manuka thus preserving the former habitation sites on Panui Pa.

We were taken to a cleared open area where it appeared that gardens had once been established. Within the general area of the open space considered for

development, a burial site of an elderly kuia was pointed out by the resident caretaker who accompanied us on the walk. We understand the kuia died about 1900. This confirmed to us the potential issues that Mr Mark Ake expressed to us at the Hearing.

Our site inspection proceeded to the north western corner of the Pa site and we saw its defence features; the large cliff established Pohutukawa and we gained views along Omapu Bay and its foreshore which extended to the north.

We left the site of Panui Pa and walked for a further 10 minutes to a very large Pohutukawa of sacred and historical importance to the tangata whenua of Tuhua named Rakautapu.

We were impressed with the tree's girth and approximate age. We were also assured that tourists are generally not taken to waahi tapu because of concerns for fossicking of human remains or artefacts as access to such areas is generally discouraged.

We returned to Opo Bay and inspected the buildings and the camping areas used by various community groups and schools.

Our return flight took us first in a northerly direction just off shore to the east. We noted sea caves, some cliff erosion, the island geology in the cliffs including the veins and layers of volcanic obsidian. We also viewed beach landing sites, and off shore rock markers indicating traditional fishing grounds. There were some areas where there were large land slips and open sink holes, mainly where the sea cliffs were steep.

We flew over the crater to view some of the tracks that led into the crater and the two lakes named Paritu and Aroarotamahine. The flyover also provided us aerial views of the state of preservation of the vegetation on the island. To the north, we observed a peak named Taupiri as well as signs of a Pa site at the northern end of the island in an area named Wharenuui. That would have provided good sun conditions for growing kumara and other root based crops. Many of the old Pa sites on the island are under vegetation bush cover. On the western seaboard of Tuhua we saw the various layers of vegetation that have been rejuvenating over many years. Our last view of Tuhua was the site of Omapu Bay, Panui Pa and Tokimataa Point before returning back to Tauranga.

This site visit served to provide us with a very good understanding of the matters that are addressed in the Proposed Plan as well as the submissions and further submissions and the evidence presented at the Hearing.



1.8 Further Information

At the conclusion of the Hearing, we did not close the Hearing but rather adjourned it contemplating that we may require further information. In the event we did seek further information from the Department of Conservation (DoC) about the significance of Tuhua regionally and nationally. We did that to gain an appreciation of the significance of Tuhua ecologically and because of its pest free status. We refer to that further in Section 6 of this decision.

1.9 Definitions

In this decision we use the following terms:

DoC	Department of Conservation
EBoP	Bay of Plenty Regional Council (Environment Bay of Plenty)
LGA	Local Government Act 2002
MHWS	Mean high water springs tide line
Minister	Minister of Local Government
Proposed Plan	Proposed District Plan for Tuhua as originally publicly notified for submissions but amended prior to the Hearing to include recommended changes to reflect relief sought in the submissions and further submissions following consideration of those submissions and subsequent workshops conducted by the Territorial Authority Reporting Officer.
RMA	The Resource Management Act 1991 and its amendments.
Territorial Authority	The Minister in his capacity as territorial authority for Tuhua
Tuhua	Tuhua including its offshore islets, rocky outcrops and stacks.



2. PRELIMINARY MATTERS

2.1 Late Submissions

Submission 7 from the Tuhua Trust Board was received on 13 April 2007 after the closing date for submissions of 10 April 2007.

Similarly the further submission from the Tuhua Trust Board was also received on 18 June 2007 after the closing date for further submissions on 21 May 2007.

No reasons were given for the delay in filing either the submission or further submission although the submitter had requested and anticipated that the period for further submissions would be extended.

RMA s37 allows a consent authority to waive a failure to comply with a requirement under RMA for the time of service documents.

We were advised that:

- the late submission was summarised and available for consideration during the period for further submissions;
- the further submission was received after the closing of further submissions but was received within the timeframe open to the territorial authority for extension and the submitter had requested that the timeframe be extended;
- prehearing consultation has been undertaken with the Tuhua Trust Board along with all other parties.

We are satisfied that there can be and has been no prejudice to any other party by the submission and further submission being late.

In this particular case we are also very mindful that it is the Tuhua Trust Board which is the sole registered proprietor of the entire area covered by the Tuhua District Plan. It is not only desirable, but in this case we consider imperative, that the Tuhua Trust Board be a party to these proceedings.

We therefore waive the requirement to comply with the closing date for submissions and further submissions to the Proposed Plan.

As a result we regard the Tuhua Trust Board as a full party to these proceedings.



2.2 Koiwi and Ownership Issues

Mr Mark Ake addressed us following the opening mihi and karakia to begin our hearing. It appeared to us that Mr Ake had two issues:

1. He represented the dead ancestors on the island. He provided us a brief narrative of the history of the island as far as Te Whanau a Tauwhao ki Tuhua was concerned. He acknowledged other Iwi connections over several centuries such as Te Arawa and Ngati Ranginui.

Mr Ake was concerned about koiwi (human remains) on the island from other Iwi. He suggested that DNA can establish who they are or at least to whom they are related. He raised concerns pertaining to the disturbance to a grave of his grandmother who was buried there on the old Panui Pa site (We think that may be an NZAA site which has been identified within the development zone). He contended that there was never a marae on the island.

Mr Ake's opposition was primarily based on cultural concerns over people coming to the island and disturbing waahi tapu and koiwi that are buried throughout the island. He noted the many artefacts which were taken off the island over many years.

While we as Commissioners understand this concern, we consider that the protection of waahi tapu and taonga in this case is entirely under the control of the tangata whenua. Any illegal removal of artefacts constitutes a criminal offence under the Antiques Act which is administered by Internal Affairs and the Historic Places Trust.

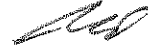
2. Mr Ake expressed concerns regarding the role of the Territorial Authority and the role of the Commissioners in respect of an impending court action that Mr Ake was taking. We understood he wishes to challenge the ownership position on Tuhua. We did not encourage Mr Ake to provide any detail of that. Ownership issues are within the jurisdiction of the Maori Land Court.

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



We did note however that Mr Ake had no opposition to the land use proposals of the Proposed Plan.

We reject Mr Ake's submission to the extent that it seeks to redress ownership issues in respect of Tuhua.

A handwritten signature in black ink, appearing to be 'M. Ake', located to the right of the second paragraph.

3. HISTORY & BACKGROUND

3.1 Human History

In *Tuhua Environmental Management Plan: Mayor Island* the author Ms Rolleston records a summary of the human history which has found sufficient favour with tangata whenua that its inclusion in the Proposed Plan is supported. Although it is to be included in the Proposed Plan we think it worth including in this decision:

“The word Tuhua has special significance as it applies to the location of the island and the glassy black obsidian, which is found in abundance on the island. The name Tuhua is derived from a similar island in the traditional Maori homeland of Hawaiki, which also possessed a source of obsidian.

In Maori mythology the Tuhua were a race of people who emerged from the bowels of the earth and settled on the island. Tuhua lived peacefully until conflict arose with Pounamu who surfaced one stormy night from the turbulent green waters of the ocean. They too wished to make the island their home. A fierce and bloody battle followed. Tuhua, the eventual victors forced Pounamu to retreat to the mainland. Tuhua pursued Pounamu to the South Island, and eventually to the Arahura River on the West Coast. It is here that Pounamu came to rest. Tuhua returned to its island sanctuary (Prebble, 1971). The Ngai Tahu people of the South Island also tell of a similar tradition of Tuhua and Pounamu (Rewi, 2006).

Obsidian was highly prized by early Maori as a cutting and scraping instrument. Early archaeological finds of obsidian have been found as far away as Tiwai Point in Southland and the Kermadec Islands in the far North (Prebble, 1971).

According to traditional oral accounts, when early Maori settlers arrived at Tuhua from Hawaiki they found the island already occupied. There is, however, little information as to who these inhabitants were and where they originated. These inhabitants were later displaced by the new wave of Polynesian settlers. Descendants of the Takitimu, Tainui and Te Arawa canoes settled on the mainland and frequented the island. The Ngai Te Rangi people, who migrated from the east coast of the Bay of Plenty, later displaced earlier settler populations and established permanent and temporary settlements on the island.

Captain James Cook named Tuhua, Mayor Island when he sighted it on November 3, 1769, in recognition of the Lord Mayor's Day to be held in London a few days later. A group of smaller islands located to the north were named the Aldermen's.



The last Maori occupants to Tuhua, Te Whanau a Tauwhao vacated the island around 1900, however, the hapu have maintained a strong link to the island through frequent visits and temporary occupations continuing today. In more recent times, recreational and commercial fishers have used the island as a fishing base. Attempts to develop the island for farming failed due to the lack of fresh water and workable land.

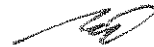
The island was confiscated under the 1864 Tauranga confiscation but later returned to Maori ownership in 1888, when 195 shares were issued to 120 owners, 16 of which were maintained by the Crown. The island was declared a Wildlife Sanctuary in 1913 until 1953 when this status was uplifted to a Wildlife Refuge. A board was established to administer the interests of the owners in 1949 and later given legal status under a trust deed in 1953. The deed indicated a large proportion of Tuhua to be managed as a conservation area for the protection of flora and fauna. A new trust deed was approved in 1993 with directions for the continued protection and a proactive approach toward use and management with provisions for limited development.

In 1953 the Tauranga Big Game Fishing Club was granted a lease in Opo (Southeast) Bay where it developed facilities for recreational and commercial fishers who visited the island. This lease was mutually terminated in 1990 and the Trust Board purchased all remaining facilities.

In 1993 a Marine Reserve was established on the northern side of the island, covering about 5 km of the coastline extending out 1 nautical mile. The creation of a Marine Reserve was a joint partnership with the Tuhua Trust Board and the Ministry of Fisheries (New Zealand Department of Conservation, 2000).

3.2 Significance

Given that obsidian from Tuhua has been found from Tiwai point in Southland and the Kermadec Islands in the far north and many, many points between, we are in no doubt that the island has been extremely important to Maori.



4. PROPOSED PLAN

4.1 Overview of the Proposed Plan

The approach adopted for the Proposed Plan is to include the larger part of Tuhua in a Conservation Area with a smaller area at the southern end of the Island included in the Opo Bay and Panui Development Area. The respective areas for the Conservation Area and the Development Area are approximately 1260ha and 20ha, the total island being 1280ha.

That division recognises the conservation values that apply to the island whilst also recognising earlier and existing development at its southern end and the potential for the continuation and expansion of that development as a resource for its owners. There are no designations applying to the island.

4.2 Preamble

The Preamble to the Proposed Plan is provided for information purposes only. It is however important in describing the island and setting some background for the Proposed Plan. The Preamble describes the statutory duty to prepare the Proposed Plan. It states that the Proposed Plan is to have regard to relevant planning documents recognised by an Iwi authority. The Iwi planning documents prepared and recognized by Te Whanau a Tauwhao are listed as:

- Tuhua (Mayor Island) Restoration Plan 2000
- Tuhua Environmental Management Plan : Mayor Island 2001
- Nga Whenua Rahui Kawanata (being the co-management agreement between the Maori landowners of Tuhua and the Department of Conservation and prepared under Section 77A of the Reserves Act 1977).

The purpose of the Proposed Plan is stated as being to achieve the sustainable management of Tuhua in a way that those with interests in the island believe will achieve their vision for it. A Vision Statement is described which refers to the high cultural and ecological significance of Tuhua to the current owners, Te Whanau o Tauwhao ki Tuhua. Tuhua is Maori owned and administered by the Tuhua Trust Board, who represent the beneficial owners and descendents of Te Whanau a Tauwhao. It refers to the pest-free status that has been achieved for the island through the combined efforts of the Tuhua Trust Board and DoC, to the co-operative conservation agreement between those two parties and their aim for the preservation of Tuhua's pest-free status in perpetuity.

The owners of Tuhua would also like to provide for their social and economic wellbeing into the future, while also protecting and enhancing the unspoiled natural resources of the island.

The Preamble also provides a description of the existing environment, that being taken from the Tuhua Environmental Management Plan, detailing the human history, landform, climate, geology, soils, flora, fauna, and cultural sites of significance to Maori. It also includes a section addressing a Maori perspective on Island management and relating this back to the work of the Tuhua Trust Board which has developed principles of management of island resources based on a Maori environmental ethic of conservation.

4.3 Structure of Proposed Plan

The Proposed Plan is structured under chapter headings of:

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

followed by two Appendices, being Definitions and the Planning Map for Tuhua.

4.4 Chapter 1, Resource Management Issues, Objectives and Policies

Chapter 1 provides the resource management issues, objectives, policies, district plan methods, other methods and anticipated environmental results associated with each of seven identified environmental topics being:

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

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.



(a) Environmental Topic 1 : Island Character and Amenity

The issue is that Tuhua has a limited developable land area and land use and development has the potential to produce negative environmental impacts affecting the outstanding natural character and amenity of the Island. In order to then meet an objective that the established character and amenity of the island is maintained and enhanced, associated policies include ensuring that the nature of use and development is compatible with the established natural character and amenity on the Island; that the location of activities does not compromise the established character and amenity of the island; and, that the scale and intensity of use and development is compatible with the existing environment on the island. The policies, in combination with the district plan methods, provide for use and development by identifying two environmental activity areas, the Conservation Area and the Opo Bay and Panui Development Area, with the latter providing for limited development.

(b) Environmental Topic 2 : Natural Resources and Environment

The issues are concerned about use and development on Tuhua being able to affect the quality of the environment on the Island through contamination of the environment and/or restricting future use of the island and with the introduction of exotic pest plants and animals that can adversely affect the natural environment of the island. The associated objectives, policies and methods are concerned with protecting and preserving the important natural values and resources of Tuhua having regard to development matters such as wastewater, stormwater, solid waste, water and earthworks and to exotic pest plants and animals.

(c) Environmental Topic 3 : Physical Resources

The issues are concerned about the increased use and development potentially affecting physical resources necessary to support the island community, transportation and communication links and hazardous substances. The objectives, policies and methods are concerned with providing for some use and development to provide for the current needs of the community; with providing for transportation infrastructure and communication services, but in a manner that does not affect the physical resources of the island; and, control on the storage and use of hazardous substances.



(d) Environmental Topic 4 : Tangata Whenua Values

The issue is that the use and development of Tuhua can affect 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. In order to maintain and enhance that relationship the policies and methods include consultation and ensuring that use and development avoids, remedies or mitigates adverse effects on land, resources or other taonga important to tangata whenua. Provision is made for development of residential activities in the Opo Bay and Panui Development Area, with limits established to that development; protection of waahi tapu; and, establishing a protocol for consultation with the Minister or the Minister's agents for any application for resource consent.

(e) Environmental Topic 5 : Natural Hazards

The issue is concerned with use and development in areas at risk from hazard events, such as erosion, landslip or inundation round the coast, exposing people and natural and physical resources to an unacceptable risk. It is sought to avoid such adverse effects or to remedy or mitigate the potential for adverse effects on structures or buildings required to be located in areas subject to natural hazards. This is addressed in part by avoiding locating buildings and structures within areas known to be at risk, unless they are required to be located in those areas for reasons of public safety and access to the island, in which case all buildings and structures known to be at risk are to be designed and constructed to standards appropriate to their intended use. A rule requires a setback from areas identified as being at risk from coastal erosion and landslip, resulting from sea level rise and natural hazards, and to establish a minimum floor level in areas subject to inundation. Only structures essential for public access, navigation or public safety are to be allowed in identified risk areas outside of the Opo Bay and Panui Development Area.

(f) Environmental Topic 6 : Emergency Management

The issue is to avoid, remedy or mitigate the potential for adverse effects arising from emergency events. Provision is made for the implementation of an emergency response plan, together with assessing and upgrading as required identified landing places and provision for the telecommunications receiving facility, in order to provide for safety of people on the island.



(g) Environmental Topic 7 : Sustainable Economic Development

The issue is that the sustainable management of Tuhua as a unique natural environment and cultural heritage resource is dependent upon the economic viability of activities established on the island. The objective is to establish economic activities, in an integrated manner with the natural and cultural resources of the Island, that maintain and manage the significant environmental and heritage values in unique location for the benefit of the beneficial owners via the Tuhua Trust Board and other stakeholders including but not limited to, DoC and the Department of Internal Affairs.

The associated objectives and policies seek to recognise the national contribution made by Tuhua to the conservation of native plants and animals and for the development of a comprehensive Opo Bay and Panui Development Plan that identifies the constraints and opportunities for commercial and private development. It is intended to maintain the current pest-free status of the island through the quarantine process for all visitors to the island and to ensure the relationships with DoC and the Department of Internal Affairs are maintained with support and assistance being sought from the latter in the development of the Opo Bay and Panui Development Plan.

4.5 Chapter 2, Procedures and Information Requirements

This contains the procedures and information requirements for implementing the rules of the Proposed Plan.

4.6 Chapter 3, Environmental Management Rules

This 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 the standards and terms for permitted activities stated in the Proposed Plan. The activities are listed as those permitted:

- Island wide;
- in the Opo Bay and Panui Development Area; and
- in the Conservation Area.

The permitted activities Island Wide are limited and include transportation activities; vegetation clearance; organized walks on the formed island walking tracks; public/visitor toilet facilities; and, for existing use and activities by the beneficial owners of Tuhua including, but not limited to, camping, land based fishing, landing on the island, removal of Tuhua (obsidian) for customary purposes.

The permitted activities for the Opo Bay and Panui Development Area include places of assembly/marae; residential activities/papakāinga; visitor accommodation; and, buildings, structures, activities identified in the approved Opo Bay and Panui Development Plan or as specified in the policy (Policy 1.1.1.3) providing for limited development of this area until a Development Plan is prepared. That policy provides for:

- Four sites (in addition to those leased at 1 July 2007) for development of permanent dwellings for the use of Te Whanau a Tauwhai ki Tuhua
- Buildings that are used to carry out the role and functions of the Tuhua Trust Board
- Buildings for the use of DoC
- The provision of accommodation for visitors to Tuhua including cabins, tent sites and associated ablution, kitchen, dining, recreation and servicing buildings to accommodate up to 100 visitors at any one time.

The permitted activities in the Conservation Area are limited to activities undertaken in accordance with the Tuhua Restoration Plan and the provision for up to three visitor relief and emergency facilities along the major walking tracks that may include ablution and first aid facilities.

A range of network utilities are provided for as permitted activities but subject to limitations and controls, including any associated structures being no more than 7m above ground level.


The Standards and Terms for Permitted Activities, Island Wide include rules relating to roading and transportation activities, vegetation clearance and controls on the design and construction of any building or structures located within 60m of MHWS or within 40m landward of the top cliff/edge around the island, whichever is the lesser, or other areas identified as being subject to erosion, landslip or inundation.

The Standards and Terms for Permitted Activities for the Opo Bay and Panui Development Area include a rule that the development intensity shall be in accordance with the current Opo Bay and Panui Development Plan or, in the event that such a plan is not approved at the time of development, shall not exceed the activities/development limitations mentioned above. Other controls include the height of any structures or buildings associated with a permitted activity not exceeding 7m; infrastructure controls; and, a limitation on earthworks to 500m³ undertaken in any 12 month period and the exposed surface area being limited to a maximum of 5000m² at any one time.

The Standards and Terms for Permitted Activities for the Conservation Area include a rule that any permitted activity shall be undertaken only with the written authorisation of the landowners' representative.

Discretionary Activities are listed which include any permitted land use activity that does not comply with the rules of the Proposed Plan for permitted activities; any subdivision or partition of land; the erection of any building or structure within the Conservation Area other than those required for purposes of access, conservation, navigation or public safety; the establishment or construction of structures or development of sites in the Conservation Area associated with carrying out a commercial activity; and, the establishment of buildings or activities within the Opo Bay and Panui Development Area that are not provided for in the current Opo Bay and Panui Development Plan or, that exceed the activities/development limitations mentioned above.

Prohibited activities are listed on the basis of the whole of Tuhua being private property and in order to protect the unique character, amenity, ecology and biodiversity of the island. The prohibited activities are landing by any persons other than landowners except as authorised by the landowners representative or in emergency situations; introduction of exotic plant or animal pest species; landing of any domestic animals or pets anywhere on the island; the disposal to water of any human remains; and, no person other than beneficial owners may remove Tuhua (obsidian) from the island.



5. CONSERVATION ZONE

5.1 Introduction

The Conservation Area applies across the larger part of the island. It is only the Opo Bay and Panui Development Area at the southern end of the island that lies outside it. The Conservation Area provides for very limited activities and development in recognition of the high significance of Tuhua in terms of its natural values, cultural heritage, geological history and its flora and fauna. Tuhua retains this natural character and amenity and this is sought to be continued with the Conservation Area provisions in the Proposed Plan.

Importantly, the Conservation Area recognises the establishment of the Nga Whenua Rahui Kawanata with DOC in September 2002, established under Section 77A of the Reserves Act 1977, which meant that approximately 1260ha of the total of 1280ha more or less of the island is "protected" for a period of twenty five years. "Kawanata" means essentially a covenanted area. The extent of the Kawanata coincides with the Conservation Area in the Proposed Plan.

5.2 Proposed Plan Provision

The permitted activities in the Conservation Area and the associated standards and terms, or rules, are described in the earlier chapter, the Proposed District Plan.

We largely accept the Conservation Area in terms of its intent and the provisions for it in the Proposed Plan, it being based upon sound resource management principles, except as otherwise discussed below.

5.3 Tuhua Restoration Plan 2000

The permitted activities for the Conservation Area include:

"Activities undertaken in accordance with the Tuhua Restoration Plan, 2001."

We note the date of that plan is in fact February 2000 and not 2001. However, even with that correction, we have difficulty accepting that activities can be permitted in the District Plan on the basis of referring to another plan (the Restoration Plan) that has not undergone the public scrutiny associated with the notification procedures for plan-making in the RMA. The Tuhua Restoration Plan could readily be changed without any recourse to public input and any such change to the Restoration Plan could then change what is permitted by the Proposed Plan. That is clearly contrary to the public input tenet of the RMA.



We note that the submission from the Royal Forest and Bird Protection Society of New Zealand Inc expressed concern regarding this part of the Proposed Plan (Section 3.2.3, Permitted Activities – Conservation Area). It was concerned with the wording in the Proposed Plan, as notified, giving *“unprecedented control to the Board which no other land owner in New Zealand enjoys.”* It requested *“that the wording of section 3.2.3 be modified to represent other stakeholder interests in the protection of the natural environment and management of Tuhua”* and in particular sought that the wording *“or activity undertaken with the specific approval of the Tuhua Trust Board”* be removed. That wording has been removed in the Annotated Proposed Plan as presented at the hearing of submissions and in accordance with the recommendations of Mr Frenzt.

However, we consider activities being undertaken in accordance with the Tuhua Restoration Plan should be removed altogether. Instead, where the activities that are provided in that Restoration Plan are clearly in line with the intent and other provisions of the Conservation Area then those provisions of the Restoration Plan can be incorporated into the Proposed Plan now. The submission by Forest and Bird provides the opportunity to amend this provision in the Proposed Plan so that it provides the precision and certainty required of such district plan provisions.

We therefore remove Section 3.2.3(a) from the Proposed Plan and replace it with the activities that are in the Tuhua Restoration Plan that are consistent with the Conservation Area which are:

- The inclusion of pest eradication and
- The inclusion of activities undertaken to protect and/or restore archaeological sites

as permitted Island-wide activities. All other activities provided for in the Restoration Plan are included in the permitted activities for the island. Rule 3.3.4(c), Pest Eradication is also added to the Proposed Plan to provide conditions on the implementation of pest eradication as a permitted activity.

5.4 Pest-free Status of Tuhua

Tuhua has achieved a pest-free status through the combined efforts of the Tuhua Trust Board and DOC with the earlier pest eradication programme. As described in the evidence of Ms Williams, Chairperson of the Tuhua Trust Board, Tuhua was declared pest-free in 2002 as part of the Tuhua Restoration Plan whereby the eradication of rats and cats was funded under the New Zealand Biodiversity Strategy in 2000. The foundation for the Restoration Plan is a co-operative conservation agreement (the Nga Whenua Rahui

Kawanata) between the two parties to ensure the current pest-free status remains.

Tuhua has benefited from the pest-free status, with the regeneration of many vegetation species and return of native birds. The status also means that Tuhua has the potential to become a refuge for native animal or bird species that may be introduced to the island in the future. The preservation of Tuhua's pest-free status in perpetuity is a substantial aim for the owners and future generations of Tuhua.

We applaud the efforts of the Tuhua Trust Board and the beneficial owners of the island, together with DoC, in providing for Tuhua to achieve pest-free status. Through our considerations of the Proposed Plan for Tuhua we will certainly be supporting those earlier and continuing efforts.

5.5 Conclusion on Conservation Area

We consider that the Proposed Plan provisions in respect of the Conservation Area, as they were presented to us in the ~~strikeout~~ version of the Proposed Plan at the commencement of the Hearing, are appropriate under RMA provided that:

- (a) Reference to the Tuhua Restoration Plan is deleted; and
- (b) Those provisions of the Restoration Plan which are consistent with the Conservation Area provisions be incorporated in to the Proposed Plan



6. OPO BAY AND PANUI DEVELOPMENT AREA

6.1 Existing Situation

The Tuhua Trust Board has voluntarily covenanted almost all of its land for environmental and ecological purposes. That goes well beyond satisfying its own needs by also satisfying regional and national objectives and policies. The Bay of Plenty Regional Coastal Environment Plan identifies Tuhua as being an outstanding natural feature and landscape with outstanding conservation values and nationally significant indigenous vegetation, archaeological and historic values. We invited DoC to comment on the significance of Tuhua. In response it referred to the provisions we have identified in the Regional Coastal Plan. In addition DoC referred us to a more recent report dated December 2006 by Wildland Consultants Ltd for EBoP. That report reviewed significant indigenous vegetation and habitats of indigenous fauna in the coastal environment and makes a "significance" assessment. In respect of Tuhua it finds:

Relative Significance: National

Significance Justification: Tuhua is the largest offshore island in the Bay of Plenty (and the largest terrestrial natural area within the Bay of Plenty coastal bioclimatic zone). It is geologically and ecologically distinctive, and has previously been ranked as both nationally and internationally significant (Beadel 1994a; Kenny and Hayward 1996). It supports populations of acutely and chronically threatened species, some of which have been reintroduced. Two plants reach national distribution limits on the island. The ecological condition of the island has improved dramatically since the eradication of all mammalian pests in 2000 and there can be no doubt that this is one of the most important offshore island restoration projects nationally.

The Tuhua Trust Board is providing New Zealand with a very considerable resource.

However, the consequence of making such voluntary provision is that there are few options remaining on Tuhua to provide:

- Papakaianga for the Beneficial owners; and
- The Trust and all beneficial owners with any economic benefit.

There are currently limited facilities on the island which are available for beneficial owners. What buildings there are, are proving difficult to maintain. Although some landing fees are charged, these are insufficient to even maintain limited caretaking services.



To provide for both some residential accommodation for owners and to make provision for some possible economic venture, the Proposed Plan provides for an Opo Bay and Panui Development Area (Development Area)

6.2 Scope of the Development Area

There is space in the immediate hinterland of Opo Bay and in the Panui area for additional buildings either for housing purposes or for business purposes.

On reading the papers and up to the end of the Hearing we were a little concerned about the prospect of further buildings on the island. However, as is frequently the case, a comprehensive site visit clarified the position for us considerably. On our site visit we observed that the proposed Development Area is covered in mature Pohutakawa forest with an understory of different native species. That Pohutakawa forest is:

- Substantially taller than 7 metres, that being the maximum building height proposed for the Development Area;
- Fairly dense right to the lip of the coastal escarpment. With an appropriate setback, any development would be scarcely visible from any open sea view and certainly not intrusive.

6.3 Economic Possibilities

It is not for us to direct the Trust to any particular economic undertaking to generate a revenue stream from its land holding. However, it was very evident to us that the most likely economic activity is a relatively “upmarket” small-scale eco-tourism operation. There has been substantial development in eco-tourism worldwide in the past few years. That includes eco-tourism in undeveloped and emerging countries with limited resources. We see no reason why it could not occur very successfully on Tuhua. Such an operation would have the benefits of requiring fulltime residents on the island, providing employment for tangata whenua and allowing the exercise of customary values and traditional technologies (particularly in relation to obsidian).

We consider that such a development, if sensitively implemented, could be very attractive both environmentally and commercially and we encourage the Tuhua Trust Board to pursue that option. That may mean entering into a joint venture arrangement.

Our responsibility is to ensure that, were such a venture to be established, then appropriate standards are imposed now to ensure that any development remains appropriate under RMA .



6.4 Proposed Plan Provisions

We have set out in Section 4 the provisions of the Proposed Plan in relation to the Development Area. We have considered those provisions in detail. We have concluded that the provisions are indeed appropriate but with three amendments:

(a) Reference to Opo Bay and Panui Development Plan

The Proposed Plan makes reference in Rule 3.2.2 to the Opo Bay and Panui Development Plan. No such plan exists at present. It may well be appropriate that such a plan be developed. However, such a plan would have little status until it had been through the same process as the Proposed Plan is currently traversing, that is an RMA First Schedule process. That is a formal plan change. We consider that until a development plan has been through that process, it should not be referred to in the Proposed Plan.

We put that position to Mr Frentz in the course of the Hearing. He recognised the appropriateness of the suggestion but for the sake of the owners he was seeking to avoid the formality and cost of a further plan change.

We recognise that the cost of a plan change is a legitimate concern. We therefore gave serious consideration to advancing a development plan as part of the present plan making process. To achieve that we actively contemplated issuing an interim decision in respect of the Development Area but making the decision in respect of the rest of Tuhua final. In the event we decided against pursuing that possibility for two reasons:

- (i) Rules 3.2.2 and 3.4 provided adequate constraints in the meantime. In particular we note that Rule 3.3.6 states that

“No activity shall damage, disturb or modify any known archaeological site, unless authorised under the New Zealand Historic Places Act, or disturb any building, structure or site of cultural or heritage value.”

This recognises the cultural history of the island and information from the NZ Historic Places Trust that there are recorded archaeological sites in the Development Area that need to be taken into account in future planning for the island.



We consider it would be more desirable to have the Proposed Plan completed and operative as soon as practical so that at least those provisions will be operative.

- (ii) From our site visit it appeared there would need to be a significant amount of professional work completed before such a development plan could be advanced to the point where it could be incorporated in the Proposed Plan. At the very least a topographical survey, and separate assessments in the areas of archaeology, geotechnical (for wastewater and infrastructure), and landscape would be required. We see both a comprehensive archaeological assessment and the response to it by tangata whenua as being imperative to guide the actual location of any proposed development.

In addition we imagine that there would need to be considerable consultation with the owners. Depending on available funding for the professional work, the promulgation of a development plan may take considerable time, possibly years. It would be undesirable to have an interim decision outstanding for a considerable length of time.

For these reasons we recommend that the reference to the Opo Bay and Panui Development Plan be deleted from the Proposed Plan and that the other constraints in the Standards and Rules be relied on in the interim.

(b) Encouragement of an Opo Bay and Panui Development Plan

Our strong preference is that an Opo Bay and Panui Development Plan be prepared as soon as practicable and incorporated in the Proposed Plan by way of a change or variation. However, the incentives to advance such a plan are not high within the Proposed Plan as it stands (without reference to the Development Plan). The Rules and Standards in the Proposed Plan are relatively conservative. That is as it should be when the necessary work has not been done to justify more liberal development. However, as it was presented to us, the Proposed Plan provides for any activity which does not comply with the Rules and Standard is to be considered as a discretionary activity.

We would prefer to see the incentive to advance a development plan increased and the options to proceed with development by way of resource consent reduced. That can be done by increasing the threshold for any application for a proposal which fails to comply with the existing



Rules and Standards in relation to the number of houses or the extent of visitor accommodation. We consider such an application should be a non-complying activity rather than a discretionary activity.

We consider that that amendment should be made.

(c) **Development Set-back**

In the course of our consideration of both the natural hazard provisions as well as the character and amenity provisions of the Proposed Plan it came to our attention that there was one matter that required clarification.

Rule 3.3.7 deals with buildings in areas subject to natural hazards. It provides that:

“All buildings or structures located within 60 metres of MHWS, or within 40m landward of the top cliff edge around the island, whichever is the lesser, or other areas identified as being subject to erosion, landslip or inundation shall be either ... [appropriately designed or re-locatable]”.

Similar provisions, but couched in slightly different terms, were also proposed in Rule 3.4.3 dealing with island character and amenity, Rule 3.4.4 dealing with waste water treatment and disposal and a subsequent Rule also numbered 3.4.4 dealing with stormwater.

Mr Frenz reported that there may need to be some clarification about the set back provisions. Those provisions as they appear in the Proposed Plan may not be well understood. In the strike out version of the Proposed Plan tendered to us at the commencement of the Hearing, it was proposed that proposed Rule 3.4.3 be removed and the two Rules numbered 3.4.4 be amended to remove the set back. Rule 3.3.7 would then control the set back.

With respect, that does not appear to clarify the position. To us there are two issues:

(1) Natural hazards of which there may be two separate considerations:

- (i) Protection from any hazard that may arise from proximity to the coast, such as inundation, erosion or landslip. . We understand the existing buildings behind the beach in Opo Bay have been subject to inundation from the sea in extreme weather conditions.



- (ii) Protection from land instability near the lip of the cliffs. We noted on our site visit flight that there have been cliff failures around the coast line.
- (2) Island Character and amenity - natural character. That has particular application to the proposed Development Area.

The Proposed Plan appears to us to appropriately recognise the coastal hazard by placing a hazard line around the whole island and require a building setback behind that line. To recognise the potential for land instability near the lip of the cliffs, a set back needs to be from the lip of the cliff. It is the interrelationship between those two hazard setbacks that need to be clarified in the Proposed Plan.

In addition and quite separate from any hazard setback is a setback which may be required for reasons associated with amenity and natural character of the island. For us, a significant component in the justification for the Opo Bay and Panui Development Area is the fact that it can readily nestle into the existing vegetation thereby substantially screening that development particularly from external view. We would be concerned if any development that occurred adversely affected the natural character of the coast line.

To clarify the confusion and to satisfy the RMA provisions relating to natural character, we consider it prudent to make changes to the original rules.

6.5 Conclusion on Opo Bay and Panui Development Area

We consider that the Proposed Plan provisions in respect of the Opo Bay and Panui Development Area, as they were presented to us in the strikeout version of the Proposed Plan at the commencement of the Hearing, are appropriate under RMA provided that:

- (a) Reference to the Opo Bay and Panui Development Plan is deleted; and
- (b) Failure to meet applicable standards or rules for the Opo Bay and Panui Development Area relating to the number of houses or the extent of visitor accommodation is to be treated as a non complying activity;



(c) The Rules are amended as follows:

- Amend Rule 3.3.7 by deleting the word “*lesser*” and inserting “*the more landward*”;
- Reinststate Rule 3.4.3 Island Character and Amenity – Natural Character but delete sub-clauses i), ii), iii) and iv) and insert “*60m of MHWS or within 40m landward of the top cliff edge around the island whichever is the more landward*”;
- Reinststate clause (a) of 3.4.4 but amend to provide “*no effluent and/or disposal area shall be constructed within 60m of MHWS or 40m landward of the top cliff edge around the island whichever is the more landward*”;
- Reinststate second numbered Rule 3.4.4 Stormwater clause (a) but amend to provide “*no ground soakage system shall be constructed within 60m of MHWS or 40m landward of the top cliff edge around the island whichever is the more landward*”;
- Reinststate Rule 3.7 Non Complying Activities but amend to provide: “*Any activity, building or structure located within 60m of MHWS or within 40m landward of the top cliff edge around the island whichever is the more landward, or other areas identified as being subject to erosion, landslip or inundation, other than lighthouses, navigational aids and beacons required to be located in those areas shall be a non-complying activity.*”



7. DECISION

Having had regard to the provisions of the Resource Management Act 1991 and in particular to s74 (matters to be considered by a territorial authority), s31 (functions of territorial authorities under this Act), s32 (consideration of alternatives, benefits and costs), and s75 (contents of district plans); and

Having considered the effects on the environment of the Proposed Tuhua District Plan and the management of those effects; and

Having considered the report of Mr Keith Frenz of Beca Carter Hollings & Ferner Ltd of Tauranga appointed by the Territorial Authority and the further evidence provided by him, the submissions, the further submissions, and the evidence tendered in support of those submissions and further submissions; and

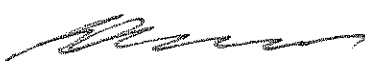
Acting under a delegation from the Minister of Local Government to hear and make a decision on the submissions and further submissions relating to the Proposed Tuhua District Plan; and


For the reasons set out in the text of this Decision;


- A. Pursuant to RMA s 37 the Territorial Authority waives the requirement to comply with the closing date for submissions and further submissions by the Tuhua Trust Board.
- B. Pursuant to Clause 10 of the First Schedule of the Resource Management Act 1991;
 1. Those submissions and further submissions which support the Proposed Plan are accepted; and
 2. Those submissions and further submissions which seek the changes the Territorial Authority had identified and provided for at the commencement of the Hearing are accepted; and
 3. The further changes to the Proposed Tuhua District Plan we have identified in this Decision are accepted; and
 4. Except to the extent provided above, all other submissions and further submissions are rejected; and
 5. A schedule of the decisions in respect of each submission and further submission is set out in Appendix 1 to this Decision; and



6. Consequential alterations to the text of the Proposed Tuhua District Plan (as notified version) which are required are set out in Appendix 2 to this Decision (as a "*strike through*" version); and
7. A "*clean*" version of the Proposed Tuhua District Plan is set out in Appendix 3 to this Decision. The version in Appendix 3 will be the District Plan (Decisions Version) with all the changes required in our Decision effected.


.....
C D ARCUS
Chairman


.....
A R WATSON


.....
W PUKE

9th May 2008

Advisory Note:

Any body or person who made a submission or further submission on the Tuhua Proposed District Plan 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.