

IN THE MATTER

of an application to
change the Whangarei
District Plan (PC 113)

BY

**WHANGAREI RACING
CLUB**

Applicant

EVIDENCE OF ANI RAMARI PITMAN
Dated the 29 October 2013

1. Introduction

- 1.1 My name is Ani Ramari Pitman.
- 1.2 I am a descendant of Patuharakeke and was raised in Otaika Valley near Whangarei. I hold a Bachelor of Laws degree specialising in natural resources, environmental law and treaty jurisprudence from Victoria University of Wellington. I am also an enrolled Barrister and Solicitor of the High Court of New Zealand. I have worked in both the public service and non-government sector. As a consultant, for over ten years I have worked in hapu, iwi, and community development; resource management and conservation projects contracting to various Iwi, Hapu and Maori organisations and local government. As a public servant I have been involved with Policy development, research and analysis, advising and “operationalising” organisations’ Treaty of Waitangi responsiveness and as a Treaty Negotiations Advisor for the Crown settling historic Treaty of Waitangi Claims. I spent several years as Advocacy/Legal Analyst for a multi-Iwi Runanga Consortium based in Taitokerau/Northland. For the past three years I have been a Trustee on Patuharakeke Te Iwi Trust Board (“PTB”), holding the Education portfolio; working on strategic and legal projects and contributing to the Claims committee and resource management issues.
- 1.3 I am authorised to speak on behalf of PTB. PTB is the representative body of Patuharakeke Hapu, tangata whenua of the Rohe o Patuharakeke with respect to manawhenua, mana moana within the rohe of Patuharakeke. PTB furthers representation made by our elders and forebears who have consistently asserted and advocated for our rights as tangata whenua holding mana over the area under discussion in the proposed plan change.
- 1.4 I have read the Environment Court’s Code of Practice for Expert Witnesses. Although this is not an Environment Court hearing I

consider that Code to be an appropriate basis for this evidence and I have prepared it accordingly and agree to abide by it. The opinions expressed are my own and when I rely on the evidence of others I have drawn attention to this.

2. Scope of this Evidence

2.1 I have been asked by PTB to present evidence that covers outstanding issues arising out of the Cultural Impact Assessment (“**CIA**”) and the effects the proposed application by Whangarei Racing Club (“**WRC**”) to change the current zone for the Ruakaka Racecourse land from Coastal Countryside to Ruakaka Equine Environment (“**REE**”).

2.2 My evidence should be read in conjunction with other submissions prepared on behalf of PTB for the purposes of this plan change application, namely our submission of 26 April 2013, 19 June 2013 and those provided at the pre-hearing meeting on 31 July 2013.

3. Patuharakeke relationship to the area

3.1 The area of the proposed plan change is located in Ruakaka which is in the traditional rohe o Patuharakeke.

3.2 Patuharakeke traditional rohe has its ‘seat’ in the south side of the Whangarei harbour and includes the marae at Takahiwai. The traditional area of Patuharakeke rohe included the landward areas from Toetoe inwards to Otaika, traverses west to Tangihua, then south verging on the east to Ruarangi then to Taipuha, then south-east through Mareretu then Piroa to Mangawhai north of the harbour, then due east to include the islands of Maui-i-roto, Mauri-i-taha, Marotiri, Taranga, Ngatuturu (Sail Rock) thence to Manaia and Whangarei Heads, thence up the Whangarei harbour to incorporate Patungarahi (Snake Bank) onward to Parua and Solomon’s Point, then Tamaterau, Pakikaikutu, Rahongaua, Ruakekeno, Tahunatapu, and to include

interests in the islands of Motupomana, Motukawau, Motukaroro, Pouroa, Okoko, Tongamaru, Ko Mapuro at Whangarei Heads area and in Whangarei harbour across and up to Tikorangi (Portland) and back around to Otaika and Toetoe.

- 3.3 The area that is currently owned by the WRC was traditionally utilised by Patuharakeke for food gathering and kainga (for living purposes). Along the back straight of the race course was the site of a large fresh water lake (Roto Parera) covering an area of about 5 acres. It was a water source well known to Patuharakeke and other hapu for the gathering of Tuna, Parera, Kokopu, Koura and Kuaka.
- 3.4 The remnants of the Lake are still present with the abundance of reeds and other swamp dwelling habitation in the area. I am also aware that the Trotting Club utilised the water source on many occasions in order to reduce dust from the trotting track.
- 3.5 The fresh water lakes were a phenomenon that were present behind the dunes of Bream Bay coastline, however, now they are only usually evidenced with the growth of marsh and swamp habitation. The Whangarei District Council (“**WDC**”) and a number of technical experts involved with the plan change as well as the Department of Conservation (“**DOC**”) recognise the dune lake is of national significance, being the only dune lake left in the north east of Northland.
- 3.6 The area was also the place where Patuharakeke traditionally had Pou (marker/beacon/sign) indicating occupation and signifying the use rights associated with the land.
- 3.7 Patuharakeke also had sentry posts near the entrance to the Ruakaka River strategically placed to alert the hapu of any potential threat.

3.8 Essentially, this area was well utilised by Patuharakeke for over 250 years and it is for this reason we take issue with the use of this land being overdeveloped. It will effectively limit access and compromise the traditional history of Patuharakeke.

4. Development within the Patuharakeke rohe

4.1 Within our rohe there have been a number of developments which have impacted on and negated our mana, both in our status as tangata whenua and our duties as Kaitiaki. These developments have harmed the natural balance and ecosystems within our rohe. Developments such as Portland Cement Works, Marsden Point Oil Refinery and expansion, PortCorp Deepwater Port and reclamation, Ruakaka Power Station and the Hopper Marina Development all occur within our rohe and have all had significant impact on our natural environment and our ability to perform our traditional practices.

4.2 Patuharakeke have sought throughout our history to have our lands and connections and duties to those lands recognised in all appropriate means provided for by law in real terms. Where they have not been provided for by policy and practice, we have sought through all appropriate mechanisms and avenues to have these rights restored and/or recognised.

5. Proposed Private Plan Change

Consultation

5.1 PTB acknowledge that consultation has taken place between Patuharakeke and the Whangarei Racing Club albeit at the tail end of the Master Plan process when the design details had principally been set.

5.2 The WDC facilitated a number of activities regarding this proposal including a Cultural Impact Assessment in 2011. The WDC held

discussions to mitigate some of the effects that have been deemed to be outside of the Plan Change process and subject to some other potential process at the agreement of parties. This approach frankly appears to frustrate the whole purpose of meaningful engagement in the first place.

Outstanding Concerns

- 5.3 PTB maintains our concern at the density of housing proposed and height restrictions which are excessive and the effects of which are uncertain. Patuharakeke is concerned that the density of housing will inevitably have a detrimental effect on the natural resources and effectively devastate the natural habitat. It will therefore set in train a number of effects that cannot be mitigated. Further, we will not agree to a piecemeal approach, remedying effects as they arise. Once again Patuharakeke feels that it has been brought in basically when the deal has been done without the ability for all of the impacts of the proposal to be fully explored.
- 5.4 What has become clearer over the past 5 to 10 years is that the impact of residential developments and heavy industry in this area is having a devastating effect on the kaimoana or seafood stocks in the Whangarei Harbour and the Bream Bay coastline. The decline in water quality is acknowledged by both the Northland Regional Council and the WDC in its Draft Whangarei Harbour Water Quality Action Plan 2012.
- 5.5 We have attempted to resolve some of the issues to some degree by agreeing on a requirement for further hapu involvement by way of cultural impact assessments at the management plan stage. However, this is not a best practise model and does not appear to demonstrate a sufficient level of transparency which appears to be relegated in importance in the guise of providing future flexibility for the developer as time passes.
- 5.6 In recent months the underlying status of the land at Ruakaka Racecourse and its various stages of conversion away from any

justiciable remedies to Patuharakeke has become clearer to PTB and of concern to our hapu. The recent Waitangi Tribunal claims hearing process has been timely in terms of our overall objectives of resuming landholding within our rohe and in uncovering more accurate information as to its status and eligibility for resumptive landowning under the State Owned Enterprises Act 1987 and Waitangi Tribunal process. This is discussed in section 4 of my Evidence. Of concern however, is that the true status of land was uncovered by a group of voluntary researchers rather than as a matter of full disclosure and in the course of government employees' discharging duties as parties involved in the plan change application.

6. Conflict of Interest

- 6.1 PTB have consistently stated its concerns at the apparent conflict of interest arising from the consenting authority acting as project manager and 'facilitator' for a private developer's application for plan change. While this has been articulated at every turn, little, if any, evidence has been provided by the consenting authority as to how this conflict of interest has been managed - if at all. Government needs to have a duty of care, which provides for robust and transparent processes.
- 6.2 We note that this is an inequitable and dangerous precedent and activity for the consenting authority to participate in and for the general public to have faith and therefore confidence in.
- 6.3 We further note the lack of information provided regarding the status of land despite the amount of expertise and resources deployed to this plan change proposal.
- 6.4 When challenged by PTB as to the apparent conflict of interest, vague references were made by the WDC officials to the construction of a 'chinese wall'-type system synonymous with activities relating to one large law firm acting for numerous opposing parties to the same case.

However, this mechanism has not been clearly laid out, nor has the process or pace in which this private plan change has progressed.

7. Te Tiriti o Waitangi

- 7.1 Patuharakeke recently presented its Wai 745 and Wai 1308 case before the Waitangi Tribunal in Whangarei on 16 October 2013. As part of this claim we seek to have ownership of lands wrongfully taken from our Tupuna to be returned to us.
- 7.2 The Applicant and WDC will be aware that the status of the land and areas involved in the current proposed plan change is subject to a resumption clause under section 27(B) of the State Owned Enterprises Act, 1986 ('resumption clause'). It is noted that neither the consenting authority, nor other parties involved in the plan change proposal have ever applied to have the section 27B Memorial removed.
- 7.3 PTB will seek to invoke the resumption clause as a result of the recent Waitangi Tribunal Hearing and hereby provides notice to the Hearing Committee of this intent. Patuharakeke have suffered numerous injustices over illegal land acquisition and failure to provide appropriate mechanisms to protect lands subject to established and accepted historic settlement practices and Treaty of Waitangi legislation. Since colonial settlement Patuharakeke has suffered numerous breaches of the Treaty of Waitangi/ Te Tiriti o Waitangi.
- 7.4 We feel that to continue with the current development before any such recognition of Patuharakeke's underlying ownership and finding of the Waitangi Tribunal only perpetuates the alienation that Patuharakeke has already suffered. If the proposal goes ahead, the land would effectively become irretrievable. The status of the land is such that it requires true ownership clarification before any further development be allowed.

- 7.5 The site still remains of significance to Patuharakeke despite the various Crown mechanisms to place the area out of our occupation. The area is still of importance as is our ongoing connection to our history and our practice as manawhenua, as well as - but not limited to - kaitiaki. It also becomes an impediment to our right to development and to our ability to determine what we wish for our lands upon return.
- 7.6 The lands available under the resumption clause are tracts of land of which, this is one of a few left of Crown land that remains for re-purchase under a Treaty of Waitangi settlement package. This would fall under the 'commercial redress' part of any settlement package and would provide for Patuharakeke's participation in commercial activities.
- 7.7 A legal opinion prepared by the consenting authority's legal counsel of record states that the Resource Management Act ("RMA") hearing is distinct from the Waitangi Tribunal process. This is a matter of opinion and developing case law and Treaty jurisprudence. It is our submission that this issue is not extant to the RMA process but rather a limited operating model employed by the consenting authority.
- 7.8 In the Cultural Effects Assessment prepared by PTB in 2011 commissioned by the consenting authority and applicant for which I was one of the authors, PTB signalled the fact that surrounding Crown lands under administration of the Department of Conservation may also be included in a Treaty settlement process. This would occur only under the auspices of 'cultural redress' which would recognise the cultural connection to our historic physical spaces based on conservation activities. Resumption of ownership of commercial properties would therefore allow development potential that PTB have historically been precluded from participating in.

8. Patuharakeke's position

- 8.1 In essence, a set of conditions has been discussed and agreed to in principle but there are some issues that override the current process,

namely the ownership of lands subject to Treaty of Waitangi Claim and settlement. The resolute position of the WDC to continue at full pace with this current private plan change is problematic in its lack of conflict management and due diligence.

8.2 While Patuharakeke acknowledge that there will be a level of contact with WRC and WDC as the project manager/facilitator *and* consenting authority - the due process of engagement with Patuharakeke as tangata whenua on this area under proposal, should not be confused with the actual process being employed by the parties operating in conflict and at haste.

8.3 It is clearly a different situation in respect of tangata whenua, particularly given the concerns raised and recognised by the Crown. There is a special and unique relationship that exists for Maori in terms of the resources associated with a proposal such as this and should reflect that relationship in terms of the Act.

9. Conclusion

9.1 The Applicants proposal will have significant impact on the land and the area, for that reason PTB asks this Committee to await the outcome of any Treaty settlement and/or hearing before progressing the consent of this plan change. While WDC is apparently reluctant to fully recognise tangata whenua in their rohe, this is an important and opportune moment for local government to fully actualise its Treaty obligations as well as build on a relationship with us.

Dated at Whangarei this 29th day of October 2013

Ani Ramari Pitman