

EVIDENCE Wayne Peters Lawyers

TOPIC PC 113

SUB# Four

DATE 18 Nov 2013.

IN THE MATTER of the Resource Management Act
1991

AND

IN THE MATTER of the proposed private Plan Change
113 (Ruakaka Racecourse) to the
Whangarei District Plan

APPLICANT'S SUBMISSIONS RE PROCEDURAL ISSUES – TREATY OF WAITANGI

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1. Counsel has had the benefit of Mr Mathias' written legal opinion dated 16 August 2013 and concurs with the conclusions contained in that opinion.
2. The emphasis placed by the Patuharakeke Trust Board on its Treaty claim is somewhat different from the principle of kaitiakitanga in the RMA context.
3. The Courts have long separated issues of actual ownership of resources from the purpose and the principles of the Act as stated in Part 2.
4. Any right of resumption under section 27B of the State Owned Enterprises Act 1986 is not a matter which the Commissioners need consider. The assessment being undertaken by the Commissioners is concerned with the use of the land rather than any questions of ownership.
5. The Court of Appeal said (in obiter dictum) in **MacLaurin v Hexton Holdings Limited**:

"[47]The structure of the Resource Management Act is such that 'any person' may apply for resource consents affecting land over which they might have no ownership or other rights ... What consent authorities are concerned with is the proposed activity's effects not the nature of the applicant's legal rights or interests in the particular land."

6. The High Court held in **Falkner v Gisborne District Council** (at page 13):

" ... [the Act] prescribes a comprehensive, inter-related system of rules, plans, policy statements and procedures, all guarded by the touchstone of sustainable management of resources. The whole thrust of the regime is the regulation and control of the use of land, sea and air. There is nothing ambiguous or equivocal about this. It is a necessary implication of such a regime that common law property rights pertaining to the use of land or sea are to be subject to it.

The effect of all this is simply that, where pre-existing common law rights are inconsistent with the Act's scheme, those rights will no longer be applicable."

7. Justice Barker held in a subsequent paragraph (also at page 13):

"The Act is simply not about the vindication of personal property rights, but about the sustainable management of resources."

8. In that case, the Court decided that consideration of term could only be undertaken in connection with identifiable resource management

purposes. The Court in *Norris v Northland Regional Council* (referred to by Mr Mathias) held that any conditions must be made for a resource management purpose, and referred at paragraph 33 to the decision of the Court in *Marr v Bay of Plenty Regional Council* where it was held that the power to impose conditions is not unlimited:

" [217] To be valid a condition must be for a resource management purpose, fairly and reasonably related to the activity authorised by the consent, and not be so unreasonable that a reasonable consent authority would not have approved it. "

9. The presence of the section 27B memorial on the title to the Applicant's land means only one thing – the possibility exists that the Crown could resume the land as a result of a recommendation of the Waitangi Tribunal. This is not a process concerned with ownership of the land. The possibility of the resumption of land is not a planning matter relating to land use and as such the Commissioners need not, and with respect cannot, consider it.
10. Incidentally, if the land is resumed by the Crown, it will be resumed in a much improved and more valuable state as a result of the proposed PC113 and accordingly arguably there could be no detriment to the Patuharakeke Trust Board as a result of such a plan change.

Dated at this 18th day of November 2013



Wayne W Peters
Counsel for Applicant