IN THE ENVIRONMENT COURT
AT AUCKLAND

I TE KŌTI TAIAO O AOTEAROA
KI TAMAKI MAKAURAU

Decision No. [2024] NZEnvC 072

IN THE MATTER OF	application under s 279 of the Resource Management Act 1991
BETWEEN	MCCALLUM BROS LIMITED
	(ENV-2022-AKL-121)
	Applicant for strike out
AND	MANUHIRI KAITIAKI CHARITABLE TRUST
	Respondent to strike out

Court:	Judge J A Smith Judge A H C Warren Commissioner S Myers Commissioner K Prime Special Advisor R Howie
Hearing:	22 – 23 November 2023
Last case event:	23 November 2023
Appearances:	J K MacRae and N A Hopkins for McCallum Bros Limited (**McCallum Bros**) J M Pou and T M Urlich for Manuhiri Kaitiaki Charitable Trust (**MKCT**) L Black for Pākiri G Ahu Whenua Trust (**Pākiri G**), S Wikaira, and R Greenwood J C Campbell and N R Williams for Friends of Pākiri Beach Incorporated (**FOPB**) V Morrison-Shaw for Te Whānau o Pākiri (**Te Whānau**)
Date of Decision:	11 April 2024
Date of Issue:	11 April 2024

DECISION OF THE ENVIRONMENT COURT ON APPLICATION TO STRIKE OUT SECTION 274 PARTY

A: The application for strike out is refused.

B: Costs are reserved.

REASONS

Introduction

[1] The application for strike out by McCallum Bros Limited (**McCallum Bros**) claims that Ngāti Manuhiri Kaitiaki Charitable Trust (**MKCT**) is a trade competitor of McCallum Bros and that MKCT should be struck out as a party to the appeal before this Court (**the strike out application**).

[2] This strike out application came at the end of the hearing of an appeal in relation to an application for extraction of sand at the Mangawhai–Pākiri embayment (**the embayment**) north of Auckland (**the appeal**).

[3] The strike out application is opposed by MKCT and other s274 parties to the McCallum Bros appeal. No party supports the McCallum Bros position but several simply abide the Court decision.

Context

[4] The original application for consent was refused at first instance. In the Environment Court, MKCT was one of the s 274 parties supporting the Council's refusal and advancing evidence, particularly as to mana whenua effects.[1]

[5] The application for consent was not commenced by McCallum Bros but by Kaipara Limited. The consent sought to enable Kaipara Limited to "renew" an existing consent for offshore sand extraction. The consent expired in 2023. It also

[1] We use "mana whenua effects" in the substantive appeal decision, as opposed to the commonly used "cultural effects".

sought to extend the area of extraction to allow extraction between the 30 and 40-metre isobaths within specified areas. It is important to note the Kaipara Limited was not substituted by McCallum Bros until part way through the Council hearing in 2021.

[6] The submission on the matter filed for MKCT is annexed hereto and marked "**A**". We include the entire original submission, given its importance to the matters the subject of the strike out application.

[7] Further, when McCallum Bros filed an appeal in relation to what is termed as an **offshore** consent, MKCT was one among a number of parties to file a s 274 notice. A copy of that notice is annexed hereto as "**B**".

[8] The matter proceeded to a substantive hearing only on the offshore application for consent. Other appeals relating to the embayment were resolved. The midshore consent had been granted but appealed by several parties. This application for consent was withdrawn close to the appeal hearing.[2] The inshore application had also been appealed by McCallum Bros but after negotiations this consent was surrendered on the basis of a temporary consent for the offshore area.[3] The reasons for that are set out in the Court decision and also discussed further in the Court's substantive decision on the offshore appeal.

The application for strike out

[9] The strike out application is filed under ss 279, 291, 308B and 308C of the Act. The application states:[4]

> **Grounds for the application**
>
> MKCT is a trade competitor as defined in section 308A of the Act. Neither of MKCT's or NMST's submissions disclose an interest in the Application as a trade competitor.
>
> The MKCT section 274 notice does not disclose MKCT's interest in the Appeal as a trade competitor and is contrary to section 274(1)(e) and (f) and section 308B of the Act. Insofar as it purports to rely on MKCT's interest in

[2] *McCallum Bros Limited v Auckland Council* [2023] NZEnvC 130.
[3] *McCallum Bros Limited v Auckland Council* [2023] NZEnvC 138.
[4] Amended application to strike out the case of Manuhiri Kaitiaki Charitable Trust, dated 27 September 2023, at [5] – [7].

the Appeal as being greater than the interest of the general public, MKCT's section 274 notice was in breach of section 274(1)(d) and section 308C. Rather, the section 274 notice purports to enable MKCT to participate in the Appeal in relation to effects of the application which relate to trade competition.

In reliance on the scope for participation represented by the MKCT section 274 notice, the MKCT case has been presented in a manner that exceeds the limits on trade competitors imposed by sections 96(2), 274(1)(e) and (f), 274(1)(d), and 308B and 308C.

MBL seeks the MKCT's case be struck out on the following grounds:

(a) the MKCT case is vexatious and frivolous pursuant to section 279(4)(a) of the RMA, because the Court cannot grant the relief sought;

(b) discloses no reasonable or relevant case in respect of the Appeal pursuant to section 279(4)(b) of the RMA;

(c) that it would be an abuse of process to allow the MKCT case to stand, pursuant to section 279(4)(c) of the RMA; and

(d) the MKCT case is non-compliant with the grounds for representation in section 274(1), and the MKCT does not have standing to participate in the Appeal and the MKCT case should be struck [*corrected*] out.

[10] In support McCallum Bros filed affidavits from Ms SS Ali, a Solicitor with McVeagh Fleming Lawyers, who attached copies of the submissions filed for MKCT and Ngāti Manuhiri Settlement Trust (**NMST**).

[11] Subsequently an affidavit was filed attaching a copy of the NMST annual report for 30 March 2021, a company extract for Sandglass Corporation, Northern Sands Resources Limited and change of name for Te Arai South Partners Limited and an affidavit from Mr Donoghue,[5] who had been a witness in the case as a concrete consultant. The affidavit indicates that there were discussions between McCallum Bros and the Te Arai South group of companies about the suitability of the Sandglass quarry sand for manufacturing concrete. It also notes the need for significant capital works needing to be undertaken before there could be any production of sand for concrete manufacture.

[5] Affidavit of Paul Donoghue, sworn 18 October 2023.

Opposition to application for strike out

[12] MKCT opposes the strike out application on the following grounds:

(a) that they are not a trade competitor;

(b) that they do hold standing to participate; and

(c) that the application lacks definition and is without evidential foundation and most importantly merit, such that it does not meet any of the strike out merit thresholds.

[13] MKCT in particular raises issues in the offshore hearing in relation to Ngāti Manuhiri's relationship with te whenua, moana, taonga species and other taonga. It is consistent with the evidence of other tangata whenua parties (including Pākiri G) as to highly relevant effects that are not related to trade competition.

[14] Furthermore, MKCT say the McCallum Bros application has been poorly pleaded and does not clearly identify the relevant grounds, lacks an appropriate evidential basis, has no merit, does not meet the high threshold for strikeout, and has been made at a very late stage. They also say the strikeout of MKCT would result in prejudice to other parties, such as Pākiri G, who relied on the evidence and submissions of MKCT in presenting their case, and prejudice to MKCT in terms of costs and resources spent to date and their ability to have their case heard.

[15] In support of their opposition, MKCT filed an affidavit from Mr Hohneck, who also gave evidence in the substantive case. He notes that MKCT is not an appellant but it is McCallum Bros who appeal the refusal of consent. He acknowledges that MKCT and NMST report as a group, and that NMST is considered to be the parent entity of MKCT. MKCT notes they hold different obligations. Mr Hohneck recites in detail the history of opposition by Ngāti Manuhiri to the various consents.

[16] Mr Hohneck notes that they have purchased, under the Treaty Settlement, the land which has a sand mining consent. He also notes that there have been discussions with McCallum Bros over the years as to any potential utilisation of sand but:

> 4.9 Not once has MBL suggested that these sand resources represent a viable alternative to mining the seabed, in fact, any such proposition has been rejected.

[17] In short, Mr Hohneck asserts that the post-settlement situation is well known to McCallum Bros and there had been discussions between the parties in relation to potential utilisation.

[18] A number of other parties filed notices of opposition. These include:

- FOPB, who represent residents of the area. They assert that MKCT is not a trade competitor of McCallum Bros in terms of s 308A RMA, and that s 308C RMA only applies when a consent has been granted in favour of one of the competing parties. Given that there was a declining of consent in this situation, they say there is no decision in favour of person B (McCallum Bros) thus s 308C RMA does not apply. They also say that MKCT is directly affected by the subject matter of the appeal, and their appeal relates to adverse effects on the environment – it does not relate to trade competition. They say that because the Court is precluded in any event from considering trade competition under s 104(3)(a)(i) RMA, there is no need to strike out MKCT in order to correctly circumscribe the Court's consideration. They further assert that the application has not demonstrated the MKCT case is frivolous or vexatious, and that MKCT's case does disclose a reasonable and relevant case in respect of the proceedings, that it would not be an abuse of process, that the hearing was already concluded and reply submissions were the only outstanding matter (which has now been attended to). FOPB go on to a general plea that the strike out would not serve the interests of justice as this is simply too late in regard to the resources having already been expended.

- Pākiri G, also representing the Omaha Marae, many of whom are members of Ngāti Manuhiri, opposes the application on the basis that Ngāti Manuhiri is not a trade competitor, that it does have proper standing and is directly affected by the sand mining application.

- Te Whānau also opposes the application. Again, this group has members who

are members of Ngāti Manuhiri and advanced their own case. It expressly adopted the evidence of MKCT and advances similar issues to those raised by the other parties. In particular Te Whānau note that the matters raised by MKCT relate to effects of the proposal on Ngāti Manuhiri and their relationship with whenua, moana, taonga species and other taonga, which is consistent with the evidence relied upon by the other tangata whenua parties (including Te Whānau), are highly relevant effects the Court must consider under the RMA framework, and not related to trade competition. Again, they say the same things as Pakiri G in respect of McCallum Bros's case and rely on prejudice not only to their own case but other tangata whenua parties, who include Ngāti Manuhiri.

[19] The other parties indicated at the call-over that they would abide the decision and did not wish to participate.

Issues

[20] In considering the various matters raised by the parties the following issues require determination:

(a) Is MKCT a trade competitor of McCallum Bros?

(i) Does Part 11A apply?

(ii) What does the term "trade competitor" mean?

(iii) Are MKCT and McCallum Bros in business competition?

(iv) Is there an obligation to disclose trade competition?

(b) Is there a basis to strike out MKCT and if so, fully or parts of its case?

Is MKCT as trade competitor of McCallum Bros

<u>*Does Part 11A apply?*</u>

[21] The strike out application is made on the basis that trade competition provisions under the RMA have been breached. Part 11A of the RMA deals with trade competition. It was introduced in 2009 to ensure that the RMA was not being used to oppose trade competitors.

[22] We start by analysing Part 11A of the RMA to confirm our jurisdiction and to explain how Part 11A works.

[23] Part 11A appears to provide a code as follows:

(a) the identification of trade competitors and surrogates (s 308A);

(b) limit on making submissions at first instance (s 308B);

(c) limit on representation at appeals (s 308C);

(d) limit on representation at proceedings as party under s 274 (s 308CA);

(e) limits on appealing under the Act (s 308D);

(f) prohibition on using surrogates (s 308E and F); and

(g) provides a remedy under s 308G for a declaration if that part is contravened, and under s 308H an order for costs if a declaration is made, and may allow a proceedings for damages in the High Court under s 308I.

[24] Mr MacRae does not seem to accept that Part 11A is a code, arguing that the Court's power to strike out under s 279 of the RMA is not displaced by Part 11A.

[25] In simple terms McCallum Bros argues that under s 308B MCKT did not disclose its interest as a trade competitor as required under s 274(1)(e) and (f) of the

Act and that this was a breach of s 274(1)(d) and s 308C.

Section 308B

[26] Section 308B states:

> (1) Subsection (2) applies when person A wants to make a submission under section 96 about an application by person B.
>
> (2) Person A may make the submission only if directly affected by an effect of the activity to which the application relates, that—
>
> (a) adversely affects the environment; and
>
> (b) does not relate to trade competition or the effects of trade competition.

[27] The s 96 notice lodged by MKCT was in relation to the Kaipara Limited application, and Kaipara Limited was not involved in these proceedings. McCallum Bros being substituted as an applicant at a later date does not change that position. Accordingly, the strike out application could not succeed under s 308B.

[28] It is also clear under s 308B that a trade competitor may make submissions to the extent they are directly affected by an effect that adversely affects the environment. Arguments were raised about what "directly affected" means in this context.

[29] Mr MacRae argues that "directly affected" in s 308B refers to a direct effect. He submits that cultural, or as we have coined mana whenua effects, including effects on Māori and cultural beliefs, are not direct effects and therefore they do not adversely affect the environment. He appears to be relying upon the earlier decision of the Environment Court:[6]

> The final class of environmental effects of the proposed sand extraction to which we have regard is indirect non-physical adverse effects. In this class we consider adverse effects on the natural character of the coastal environment (including the coastal marine area); non-physical adverse effects on the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga; and adverse effects on amenity values for safe swimming and surfing, and generally for recreation.

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[6] *Sea-Tow Limited v Auckland Regional Council* A066/2006, at [393] (***Sea-Tow***).

[30] In questions from the Court Mr MacRae accepted that that could not be regarded as good law in light of the recent superior court decisions, particularly *Tauranga Environmental Protection Society Inc v Tauranga City Council*.[7]

[31] The convoluted wording in ss 308B, C, CA and D draws a clear distinction between a party directly affected and an adverse effect. Mr MacRae's argument is essentially founded on a proposition that the parties may only become a s 274 party if they are *directed effected*. It relies upon a conflation of the two points in *Bunnings Ltd v Queenstown Lakes District Council* (***Bunnings***).[8] The use of the term "directly" in s 308B is intended to reduce the sets of effects which permits participation by a trade competitor. Obviously, indirect effects are excluded, and so would be consequential effects because the competitor would not be directly affected (an example is cumulative traffic effects where the competitor does not have a property in the area as in the *Bunnings* case).

[32] Mr MacRae goes on to state:[9]

> It is submitted that most, if not all, of the effects on mana whenua spiritual values claimed by Ngāti Manuhiri witnesses (e.g. taonga, wahi tapu, mauri, kaitiakitanga) depend on the existence of physical effects. Obvious examples are the effects on mauri as a result of taking sand and moving it to another rohe, effects on kaimoana species and sand itself as taonga, effects on the dunes and beach as taonga/wahi tapu and places of spiritual significance to mana whenua and effects of tara iti as a taonga species. The great majority of Ngāti Manuhiri witnesses' evidence relate to effects of this kind. There may be direct spiritual effects on mana whenua which are not dependent on physical effects but, as the discussion with Ms Black yesterday indicated, they are not so easily identified and the onus lies on the trade competitor to do so. …

[33] With respect, we consider that this contention conflates a directly affected party (such as MKCT) and adverse effects. Adverse effects do not need to be direct. The cases quoted do not, on our reading support that contention when examined in context. In *Bunnings* there is discussion of the provisions in s 308B(2). It is clear that the term "directly" which is quoted in [53] and discussed in [54], relates to directly

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[7] *Tauranga Environmental Protection Society Inc v Tauranga City Council* [2021] NZHC 1201 (***Tauranga Environmental Protection Society***).
[8] *Bunnings Limited v Queenstown Lakes District Council* [2018] NZEnvC 135.
[9] Submissions of counsel for McCallum Bros Limited in support of application to strikeout Ngāti Manuhiri Kaitiaki Charitable Trust, dated 23 November 2023, at [5.5]

affected parties:[10]

> Obviously "indirect" effects are excluded, and so too would be "consequential" effects.

We do not agree and are not bound by *Bunnings*.

[34] In that case the issue was that H & J Smith Limited (**HJSL**) did not occupy industrial land and was arguing that the Bunnings Limited would occupy land intended for warehousing and transport yards, and therefore reduced the available industrial land. HJSL were clearly not directly affected by that, as they did not own industrial land. Thus, they were not directly affected. That decision can be rationalised on that basis notwithstanding the sentence referred to.

[35] In relation to *Sea-Tow*, we again suggest that in the quotation relied on by Mr MacRae, the word "indirect" seems unhelpful in the circumstances of that sentence, and, to the extent it may contradict the *Tauranga Environmental Protection Society* case, has been over-ruled in the High Court. Nevertheless, again we are not bound by that decision which, if it does conflate issues of a party directly affected with adverse effects, then could not be regarded as following the legislation. In this regard, we should note that the *Sea-Tow* decision was made in 2006 some three years prior to the s 308 paragraphs being inserted.

[36] Accordingly, the word "indirect" in that case may have an entirely different meaning to creating a dichotomy under s 308 between direct and indirect effects. Accordingly, again we do not consider that decision necessarily conflicts with our interpretation of the Act given it was decided prior to these provisions being inserted.

[37] In *Tauranga Environmental Protection Society*, regarding effects, the High Court found the Environment Court's conclusion in relation to the cultural effects of the proposal did not reflect the evidence before it. When the considered, consistent, and genuine view of Ngāti Hē was that the proposal would have a significant and adverse impact on an area of cultural significance to them and on Māori values of the ONFL,

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[10] *Bunnings Limited v Queenstown Lakes District Council* [2018] NZEnvC 135, at [53].

it was not open to the Court to decide it would not. Ngāti Hē's view was determinative of those findings. Deciding otherwise is inconsistent with Ngāti Hē's rangatiratanga, guaranteed to them by article 2 of the Treaty of Waitangi, which the Court was bound to take into account by s 8 RMA. It is inconsistent with the requirement on the Court, as a decision-maker under the RMA, to "recognise and provide for" "the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga" as a matter of national importance in s 6(e) RMA. Further, the High Court stated that "even though cultural effects may be intangible, they are no less real for those concerned…".[11]

Section 308C

[38] Section 308C states:

> 308C Limit on representation at appeals
>
> (1) This section applies when person A wants to be a party under section 274 to an appeal to the Environment Court against a decision under this Act in favour of person B, on the ground that person A has an interest in the proceedings that is greater than the interest that the general public has.
>
> (2) Person A may be party to the appeal only if directly affected by an effect of the subject matter of the appeal that–
>
> (a) adversely affects the environment; and
>
> (b) does not relate to trade competition or the effects of trade competition.

[39] Section 308C limits a trade competitor being a party under s 274 to the Environment Court. However, this is only where the applicant has been successful at first instance (in favour of person B, in this case McCallum Bros). As the application for consent was refused at first instance, s 308C does not apply.

[40] Furthermore, even if it did, there is the same right for a trade competitor to be a party to an appeal if they are directly affected by an effect the subject matter of the appeal that adversely affects the environment.

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[11] *Tauranga Environmental Protection Society Inc v Tauranga City Council* [2021] NZHC 1201, at [62] – [66].

[41] Even if ss 308B and 308C applied, this would require an assessment of the evidence relating to trade competition. Mr MacRae argues that the Court is unable to be alerted to the need to identify any trade competition evidence so that it can assess this as part of the appeal. With respect, this is the everyday work of the Environment Court and is clearly the subject of direct requirement under s 104(3) RMA:

> (3) A consent authority must not–
>
> (a) when considering an application, have regard to–
>
> (i) trade competition or the effects of trade competition; or
>
> (ii) any effect on a person who has given written approval to the application.

[42] In fact, this application may have its foundation in questions asked by the Court of MKCT in relation to their interest in the Sandglass quarry. The Court was aware from its site visit that there are a number of sand quarries in the area, one of which at least is within the Te Ārai (NMST) lands. They include the Tomarata sand mine and there are clearly a series of others.

[43] It is a regular function of this Court to have to understand the distinction between adverse effects and whether evidence of an adverse effect relates to trade competition or not. Curiously, no assertion is made by Mr MacRae as to what portions of any witnesses' evidence that he names is inappropriate. We would consider this as a bare minimum. Instead, there is a general assertion that all evidence is tainted, including that from landscape architects, ecological specialists, and a planner, on the basis of this trade competition. For the reasons that follow, we do not accept this very broad proposition.

Sections 308G, H and I

[44] Finally, we should note that Part 11A has specific provisions as to when that part of the RMA can be relied upon. Section 308G provides that a declaration can be sought in the Environment Court in relation to a contravention of the provisions of the RMA. However there is a clear limitation under s 308G(3), *the proceedings must not be commenced until the appeal or proceedings referred to in subsection (2) are determined.*

[45] For declarations obtained, ss 308H and I provide that the Environment Court can make an order for costs but proceedings for damages may also be taken in the High Court. McCallum Bros have not sought these remedies, but rather a strike out.

The term "trade competitor"

[46] The RMA does not define the term "trade competitor" as found in Part 11A, but it has been defined by this Court in two often cited decisions: *General Distributors Limited v Foodstuffs Properties (Wellington) Limited*[12] and *Bunnings*. These decisions have been relied on by McCallum Bros.

[47] We set out the key principles and relevant contexts from these decisions:[13]

> … We see no need to go further than the Concise Oxford which, relevantly, defines *trade* as ... *the buying and selling of goods and services* ... or … *a business of a particular kind*. *Competition* is defined as ... *the activity or condition of competing against others*. And for completeness, *compete* is given as ... *strive to gain or win something by defeating or establishing superiority over others*. So, if we have two or more organisations striving to establish superiority over the other(s) in the buying and selling of (in this case) goods, then we have *trade competition*, and those organisations are *trade competitors*.

[48] In *General Distributors*, Foodstuffs Properties (Wellington) Limited was the landowner and other organisations (General Distributors Limited) conducted the actual business. The Court took a broader view of the matter to establish whether in fact it was part of an organisation that was in trade competition.

[49] In determining whether there is trade competition, it was noted that the Court will look to who in a group of companies shares "the same directing mind and will".[14]

Are MKCT and McCallum Bros in business competition?

[50] Assuming for the moment that MKCT is sufficiently part of the tribal corporate group under NMST, the starting point is to determine what business they and

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[12] *General Distributors Limited v Foodstuffs Properties (Wellington) Limited* [2011] NZEnvC 212 (***General Distributors***).
[13] *General Distributors Limited v Foodstuffs Properties (Wellington) Limited* [2011] NZEnvC 212, at [14].
[14] *Bunnings Limited v Queenstown Lakes District Council* [2018] NZEnvC 135, at [40].

McCallum Bros are engaged in. What goods and services are they both providing or selling?

[51] Clearly, McCallum Bros is in the business of mining sand within the coastal marine area and selling it on the wholesale market in Auckland. There is no dispute on that score.

[52] With respect to MKCT the identification of their "business" is not straightforward. The theory advanced by Mr MacRae was that NMST owns the land, which has sand located on it. That land is leased to Te Ārai South Partners Limited (TASPL), who has a permit to extract sand from the leased land. As consideration for the lease NMST receives a royalty from the sand extraction and has already received some income from the extraction to date.

[53] In effect, McCallum Bros says MKCT is indirectly in the business of landward sand extraction, as long as the lease and sand extraction permit are in place. Further, due to the existence of an easement which could enable the transportation of sand via a slurry line from the land to the ocean, this right has a future potential to access far easier and cheaper sea transport, if the McCallum Bros consents were refused.

[54] In our view, the indirect nature of the alleged business by MKCT/NMST is such that it cannot meet the definition of trade competitor when assessed against the purpose of Part 11A of the RMA and the basics of statutory interpretation, i.e., text, purpose and context. The indirect nature of the economic benefit is too remote in our view, and does not meet, by any objective measure, the status of a business competing in the sense that MKCT/NMST is striving to get superiority over McCallum Bros. There is little evidence to support that conclusion. It is speculative and filled with claims of what potentially could or what has happened, as opposed to being in trade competition now as a matter of fact.[15]

[55] We are not convinced that Part 11A intends to apply to people who may have in the past been trade competitors or may wish in the future to be trade competitors.

[15] The evidence is that there has been no sale of sand on the land for at least three years.

Person A is defined in s 308A as a person who **is** a trade competitor of Person B. The word "is" appears to be deliberate and clearly constitutes the current tense. As a matter of statutory interpretation, the text and context are clear on this point.

Was there evidence of trade issues raised during the appeal?

[56] Mr Carlyon, the planner called for MKCT, acknowledges that sand is a valuable resource, important for the infrastructure and construction industries in Auckland. In our view, that supports McCallum Bros' evidence to the same effect and could not be seen as raising a trade competition issue. Beyond that, we have struggled to find evidence to support the suggestion that economic or competition issues were raised by MKCT at all. We do acknowledge that other parties raised such issues, but they were not in the context of supporting any sand extraction in the local area.

[57] To that end, the Court has looked at both the original submission and the subsequent submission of MKCT, and there is no evidence or suggestion of any economic issues at all with either of those documents.

[58] We have also examined the evidence. Ms Lucas who gave evidence on landscape did not touch upon any economic issues whatsoever. The question then is whether Mr Brown or Mr Hohneck did.

[59] The application relied upon the transcript relating to cross-examination conducted by McCallum Bros itself. This turns on a response given by Mr Hohneck to particular questions asked by Mr MacRae:[16]

Q [Mr MacRae]	Within the golf course area, I mean it's not just the golf courses is it?
A [Mr Hohneck]	No, that's correct. There's existing standing forest still left, that's left standing and there's the golf courses obviously, there's approximately 40 homes, I think, that have been bought to date in the south and there's some sand mining consent permits.
Q	How has that sand mining – how is, you know, Ngāti Manuhiri are here opposing a resource consent for sand mining. There's a sand mine that exists on the land and

[16] NOE, at page 1902, line 20 – page 1903, line 8.

there's all this development. How should the Court be looking at those sorts of things?

A Well, going right back to when we done our Treaty claim, when we done our analysis and that of our whenua and of the reserves and what was available and what available rights throughout the whole area of interest of Ngāti Manuhiri, we obviously weren't acutely really aware of the sand mining, offshore sand mining, and also the operations at that time that was operated by Stan Semenoff inshore if you like, that's at … the lakes, they're still going on today. So we were acutely aware that there was a large volume of sand under the forest, if you like, or were, you know, within the area of Te Arai South. So an aspiration was us that one day if we could ever stop the sand mining offshore, there was always a possibility and resource available in the long term for our people, our mokopuna to turn to so that we could actually, you know not have any of the offshore sand mining that was an affront to who we are as a people.

[60] This comment appears to be the basis of the assertion that MKCT and NMST are in trade competition with McCallum Bros

[61] Again, it is difficult to find anything that might refer to economic effects except in the broadest of terms namely an acknowledgement of its benefits for the wider environment, and certainly no evidence as to its impact upon other producers of minerals. Accordingly, it is difficult to see that there has been any non-compliance with s 308B or s 308C.

[62] We conclude that there is no evidence advanced to this Court by MKCT about effects on trade competition at all. No specific examples were given to us beyond the citation from the cross-examination identified here. We acknowledge that there has been discussions from time to time between Mr Hohneck and Mr McCallum about utilising sand resource on land, but that is as far as the evidence goes. In fact, it appears to have been based upon the possibility of the parties utilising the resource owned by NMST for McCallum Bros' benefit.

Is there an obligation to disclose trade competition?

[63] The strike out application does not disclose the statutory basis that requires disclosure of any trade competition by MKCT.

[64] We find that none of the provisions relied on by McCallum Bros establishes a duty for disclosure at either the Council or the appeal level. *General Distributors* discusses the obligations on a would-be submitter.[17] In particular, the Court stated that:[18]

> … The strength of the new provision lies in requiring a would-be submitter, **if challenged**, to demonstrate that it was directly affected by an adverse effect on the environment created by the proposal, and that the adverse effect does not relate to (ie had no connection with) trade competition or its effects.
> [emphasis added]

[65] Mr MacRae's submission is the MKCT stated that they were not trade competitors and thus it did not comply with s 308B, and MKCT's 274 notice was therefore invalid under s 274(1)(f)(iii). As noted, that can only be a reference to the s 96 notice at the Council level in respect of an application by Kaipara Limited.

[66] We make the further point (and conclude) that s 274(1)(f)(iii) does not contain any provision making a submission invalid simply because a person is a trade competitor. It must be established that adverse effects directly affect the submitter and do not relate to a trade competitor. We have concluded that, as a matter of fact, that does not occur in this case; but in any event there is no provision in the Act that we can find that makes a notice invalid per se. The assertion by Mr MacRae, that MKCT has a greater involvement in the appeal than permitted, is not based upon any factual statement or evidence.

[67] The further submission that this taints the entire evidence of MKCT is without any authority. It is simply a statement made by counsel and includes a statement: it is not now possible to separate out trade competition effects and indirect effects from any other direct adverse effects on the MKCT. As we have already noted, these propositions are unsupported by either case law or any provisions of the Act or any evidence.

---

[17] *General Distributors Limited v Foodstuffs Properties (Wellington) Limited* [2011] NZEnvC 212, at [17] – [22].
[18] *General Distributors Limited v Foodstuffs Properties (Wellington) Limited* [2011] NZEnvC 212, at [19].

[68] We have already noted this Court is able to assess the evidence (including any cross-examination) to see whether it includes any issues which could relate to trade competition, and this is part of the requirements imposed by s 104(3) of the Act.

Is there a basis to strike out MKCT?

[69] The power under s 279(4) has a particularly high threshold and involves considering whether the whole or any part of a person's case is:

(a) frivolous or vexatious;

(b) discloses no reasonable or relevant case in respect of the proceedings; or

(c) it would otherwise be an abuse of process to allow the case to be taken further.

[70] This Court to our knowledge has never exercised such a judgement at the conclusion of the case before issuing a decision. That, in and of itself, is not a basis to reject the strike out application, but it does support the high threshold to strike out a party.

[71] This strike out application must fail quite simply because we have found that MKCT is not, as a matter of fact, in trade competition with McCallum Bros. Given that finding, the entire basis of the strike out application falls away.

[72] For completeness we note that Part 11A does not suggest that trade competitors may not have valid concerns. In fact, those that relate to the effects on the environment are specifically allowed to be advanced. It is unclear what specific arguments advanced by MKCT are argued to be trade competition arguments but in the absence of s 308C the general provisions of the Act would be applied which do not allow matters of trade competition to be considered. Given that this Court at this stage has not been able to identify any, the question will be what particular issues are identified and whether that could not be remedied simply through the Court process.

Matters pertaining to effects on Ngāti Manuhiri

[73] Cultural traditions and ancestral relations are highly relevant to the substantive appeal proceeding. Striking out matters of this nature would have perverse outcomes, circumventing the proper operation of Part 2 of the RMA and the related planning documents.

[74] Finally, even if this Court were to consider Ngāti Manuhiri to be a trade competitor (which we say they are not) ss 308B and 308C of the RMA do not operate to exclude Ngāti Manuhiri from making submissions or becoming a s 274 party on the basis of adverse environmental impacts.

Outcome

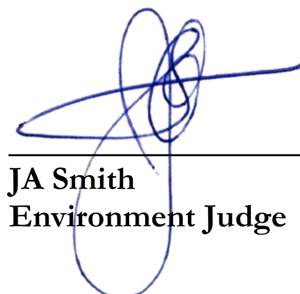
[75] The application for strike out is refused.

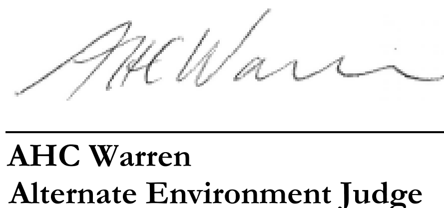
[76] Costs are reserved.

Final Comment

[77] Because of the integrated nature of this decision with the substantive matters before the Court, we have determined to release the strike out and substantive decisions contemporaneously. However, in preparing our substantive decision, we have taken into account the matters discussed in this decision as they relate to the substantive case.

For the Court:





JA Smith
Environment Judge

AHC Warren
Alternate Environment Judge

"A"

Jackie Lee

From: [redacted]
Sent: Thursday, 4 June 2020 4:16 PM
To: Resource Consent Admin
Cc: [redacted]
Subject: CST60343373 [ID:10497] Submission received on notified resource consent
Attachments: Ngati Manuhiri Final submission - Resource Consent for Kaipara Sands Limited - 4 June 2020.docx

Categories: Jackie

We have received a submission on the notified resource consent for Coastal Marine Area (Off-shore from Pakiri).

Details of submission

Notified resource consent application details

Property address: Coastal Marine Area (Off-shore from Pakiri)

Application number: CST60343373

Applicant name: Kaipara Limited

Applicant email: [redacted]

Application description: To extract up to a total of 2,000,000m³ of sand from an area of 44km² within the coastal marine area over a 20 year period. Extraction between the western boundary of the sand extraction area (being the 25m isobath) and the 30m isobath is limited to 150,000m³ per annum, and there is no annual limit between the 30m and 40m isobaths

Submitter contact details

Full name: Pieter Tuinder

Organisation name: Manuhiri Kaitiaki Charitable Trust

Contact phone number: [redacted]

Email address: [redacted]

Postal address:
P.O. BOX 117 WARKWORTH 0910
Warkworth
North Auckland 0910

Submission details

This submission: opposes the application in whole or in part

Specify the aspects of the application you are submitting on:
Whole of the application. Please refer to attached submission document

What are the reasons for your submission?
Please refer to attached submission document

What decisions and amendments would you like the council to make?
Decline consent. Please refer to attached submission document

Are you a trade competitor of the applicant? I am not a trade competitor of the applicant.

Do you want to attend a hearing and speak in support of your submission? Yes

If other people make a similar submission I will consider making a joint case with them at the hearing: No

Supporting information:
Ngati Manuhiri Final submission - Resource Consent for Kaipara Sands Limited - 4 June 2020.docx

NAME OF SUBMITTER: MANUHIRI KAITIAKI CHARITABLE TRUST

ADDRESS FOR SERVICE: P.O. BOX 117 WARKWORTH 0910

APPLICATION NUMBER: CST60343373

NAME OF APPLICATION: KAIPARA LTD

ADDRESS OF PROPOSED ACTIVITY: COASTAL MARINE AREA (OFF-SHORE FROM PAKIRI)

DESCRIPTION OF PROPOSED ACTIVITY: CONTINUATION OF THE EXISTING SAND EXTRACTION OPERATION FROM THE AUCKLAND OFFSHORE SAND EXTRACTION SITE

MANUHIRI CHARITABLE TRUST'S (MKCT) SUBMISSION OPPOSES THE WHOLE OF THE APPLICATION FOR SAND EXTRACTION. MKCT REQUEST THAT THE COUNCIL DECLINE CONSENT.

REASONS FOR OPPOSING APPLICATION:

Ngāti Manuhiri

Ko Tainui me Moekaraka nga waka

Ko Tamahunga te maunga tapu

Ko Hauturu o Toi te motutere rongonui

Ko Te Moananui a Toi te Pataka Nui

Omaha te Marae

Manuhiri te Tupuna

Manuhiri te Tangata

Manuhiri te Tapu

Haumi e, Hui e, Taikii e.

The Ngāti Manuhiri rohe encompass Bream Tail / Mangawhai to the north and extends south to the Okura river mouth south of Whangaparaoa. Our easterly boundary takes in the islands of Hauturu O Toi (Little Barrier), Kawau O Tumaro, Tiritiri Matangi, Panetiki, the Mokohinau islands, Hawere a Maki, Motu Tohora, Motuihe,Moturekareka, Motuketekete, Motutara, Te Haupa and associations in the Waitemata and the lower Hauraki Gulf. The western boundary starting in the North at Patumakariri, Kaipara, Moturemu, Arapareira, Makarau through to Oteha / Takapuna.

Ngāti Manuhiri's marae, kainga, wahi tapu and taonga are all situated adjacent to this application. Ngāti Manuhiri are the people that reside on the land and observe the extraction of resources within their territory. Ngāti Manuhiri are the mana whenua with the customary rights and responsibilities to look after the mauri of their own whenua and moana.

Ngāti Manuhiri achieved a Treaty Settlement with the Crown. One of the most significant grievances for Ngati Manuhiri, was the exploitation and theft of their tribal lands by others.

They fought hard to have their grievances acknowledged through their Treaty Settlement. These interests throughout their rohe whenua and rohe moana have been recognised and the ongoing fight to have them protected rests with the people of Ngāti Manuhiri and their entities: the Ngāti Manuhiri Settlement trust, their marae, whanau and hapu.

Following on from that settlement, and as a result of the ongoing political support that is provided to the settlement group, the Manuhiri Kaitiaki Charitable Trust is the only entity mandated to represent the interests of Ngāti Manuhiri within this matter.

It is within this context of this submission in opposition to the application for resource consent to extract sand off the Ngāti Manuhiri Coast.

From a broad perspective, Ngati Manuhiri say that the consent does not adequately recognise and provide for their connections, and that it marginalises them in their exercise of kaitiakitanga. As such, they say that the principles of the Treaty have not been properly taken into account.

The matters raised further highlight further key particular concerns that Ngāti Manuhiri have with the application

A Replacement Consent?

In discussing these benefits to Auckland, the consent is described as a replacement consent and is often pitched as a renewal. This is a misrepresentation. This is an application for a new consent. It is therefore implicit that it is substantially different from the one that is currently operating. While this might just be semantic, the conceptualisation of the application in such a way marginalises its impact.

The context created is that the new consent ought to be granted because it is better than the current one that the people have had to endure. This is not an appropriate context in which a consent ought to be considered.

Ngāti Manuhiri are concerned that the grant of the application would remove current limits and effectively consent the ability to mine without limits within a more intensified area between the 30m and 40m isobaths. While it would be an exaggeration to suggest that the applicant would mine the total permissible extraction of $2,000,000 m^3 within one year, the fact is, that the proposed consent would ostensibly allow for it.

Sand is a Taonga

The application perceptively commoditises a natural resource that is precious to Ngāti Manuhiri.

Minerals were seen to be of such significance that a minerals protocol was agreed between Ngāti Manuhiri and the Crown relating to nationalised minerals. While sand does not sit within the agreement, the ongoing extraction of sand was a context to the discussions and the agreement.

It is clear that the applicant also accepts that sand is a taonga, and reference is made within the supporting documents to a Memorandum of Understanding with Ngātiwai. That memorandum of understanding was entered into prior to the Ngāti Manuhiri settlement and recorded that a cultural liaison fee be paid to benefit the hapu most affected by the extraction.

To date, this has not occurred. Ngāti Manuhiri would expect that any such relationship that would be put in place would properly affect this intention.

Ecological Effects

The assessment of ecological impacts cannot be relied upon as an indication of the impacts of sand mining on the local ecological environment. Reports highlight the fact that extraction has occurred since the 1950's yet a baseline that is put forward sets the time of comparison at the 2003 state where the resources were already exploited.

Even when we look at the setting of 2003 as a time point of reference, the reporting methodology appears apparently flawed.

In the 1990's, prior to the current consent being granted, there were four companies exploiting the resources of Pakiri. The exploitation was concentrated closer to shore. In 2003, with the development of new technologies, operations shifted further offshore.

There seems to be no mention in the reports of the impact that shifting the mining operation offshore has had on the location of the biota. In this regard, assertions that there are more scallops just might mean that the scallops have shifted closer to shore rather than a reflection that the community has revitalised since 2003.

This is a case of not necessarily what to measure, but where it is measured.

The assessment notes that there are no marine mammals present in the area, though these might be transient. Ngāti Manuhiri have a particular relationship with the Bryde's Whale which lives of their coast. It is unclear how this relationship will be provided for in the consent.

Lastly, Ngāti Manuhiri remain concerned about the impact that the sand harvesting will continue to have on the bristle worm. This worm is of course at the bottom of the food chain and is essentially a fundamental keystone for those species above it. It is clear that the harvesting of sand will continue to have a sterilising effect on the area.

In doing so, it is difficult to see how the precautionary principle that underpins the NZ Coastal Policy Statement is to be given effect.

It should also be noted that within the context of this application, ss 7&8 of the Hauraki Gulf Marine Park Act 2000 also need to be implemented. The diminishment of the bristleworm is an indication that this will not be achieved.

Positive Benefits

Ngāti Manuhiri are concerned that in the assessment of positive benefits, none of them relate to the area of extraction. Ngāti Manuhiri are therefore concerned that the resources that sit within their area will continue to be extracted, not only for the benefit of others, but for the benefit of other areas.

It is difficult to see how this can amount to a recognition and provision for the connections that Ngāti Manuhiri have with their taonga.

Much is made of the increasing demand for sand for the building of Auckland. Ngāti Manuhiri do not see this as a positive benefit. Indeed, it seems that the need to exploit the Ngāti Manuhiri resource is being predicated on a future need to increase the exploitation. It is difficult to see how such assertions can fit within the construct of sustainable management.

Surf breaks

The fact that there are no listed surf breaks, does not mean that there are none. Te Ārai point is well known surf spot. While not a misrepresentation, the failure to address this reality in a meaningful way is an indication of the lack of balance that exists within the application and a reason to treat it with caution.

It must be said that the failure to address potential impacts on surf breaks is a significant outstanding issue.

Engagement with Ngāti Manuhiri

There has been some engagement between the applicant and Ngāti Manuhiri. The engagement has been constructive, however, it has not achieved a point at which Ngāti Manuhiri can be satisfied that their interests and connections have been properly accommodated.

Though it is expected that this engagement will continue, Ngāti Manuhiri continue to oppose the application.

Jackie Lee

From:	[redacted]
Sent:	Thursday, 4 June 2020 4:46 PM
To:	Resource Consent Admin
Cc:	[redacted]
Subject:	CST60343373 [ID:10507] Submission received on notified resource consent
Attachments:	Submission - Ngāti Manuhiri Settlement Trust - 4 June 2020.pdf
Categories:	Jackie

We have received a submission on the notified resource consent for Coastal Marine Area (Off-shore from Pakiri).

Details of submission

Notified resource consent application details

Property address: Coastal Marine Area (Off-shore from Pakiri)

Application number: CST60343373

Applicant name: Kaipara Limited

Applicant email: [redacted]

Application description: To extract up to a total of 2,000,000m³ of sand from an area of 44km² within the coastal marine area over a 20 year period. Extraction between the western boundary of the sand extraction area (being the 25m isobath) and the 30m isobath is limited to 150,000m³ per annum, and there is no annual limit between the 30m and 40m isobaths

Submitter contact details

Full name: Louise Ford

Organisation name: Atkins Holm Majurey

Contact phone number: [redacted]

Email address: [redacted]

Postal address:
FLOOR 19 48 EMILY PLACE
Auckland
Auckland 1010

Submission details

This submission: opposes the application in whole or in part

Specify the aspects of the application you are submitting on:
Please see the attached submission

What are the reasons for your submission?
Please see the attached submission

What decisions and amendments would you like the council to make?
Please see the attached submission

Are you a trade competitor of the applicant? I am not a trade competitor of the applicant.

Do you want to attend a hearing and speak in support of your submission? Yes

If other people make a similar submission I will consider making a joint case with them at the hearing: Yes

Supporting information:
Submission - Ngāti Manuhiri Settlement Trust - 4 June 2020.pdf

Submission on Resource Consent Application

Auckland Council
Te Kaunihera o Tāmaki Makaurau

1.0 SUBMITTER DETAILS

Name of submitter(s) *(please write all names in full)*	Ngāti Manuhiri Settlement Trust
Physical Address:	c/- Atkins Holm Majurey, PO Box 1585, Shortland St, Auck Postcode: 1140
Address for service: (if different)	Postcode:
Telephone (day):	[redacted] Mobile: [redacted] Fax: [redacted]
Email:	[redacted]

2.0 APPLICATION DETAILS

Application Number:	CST60343373
Name of applicant: *(please write all names in full)*	Kaipara Limited
Address of proposed activity:	Auckland Offshore Sand Extraction Site Coastal Marine Area (Off-shore from Pakiri) Postcode:

Description of proposed activity:

Continuation of the existing sand extraction operation from the Auckland Offshore Sand Extraction site.

3.0 SUBMISSION DETAILS

My/our submission: (please tick one)

☐ Supports the Application	☑ Opposes the Application	☐ Neutral regarding the Application

The specific parts of the application to which my/our submission relates to are: (use additional pages if required.)

Please see attached submission.

P0098.3 06/07/10

3.0 SUBMISSION DETAILS contd

The reasons for my/our submission are: (use additional pages if required.)

Please see attached submission.

The decision I/we would like the Council to make is (including, if relevant, the parts of the application you wish to have amended and the general nature of any conditions sought):

Please see attached submission.

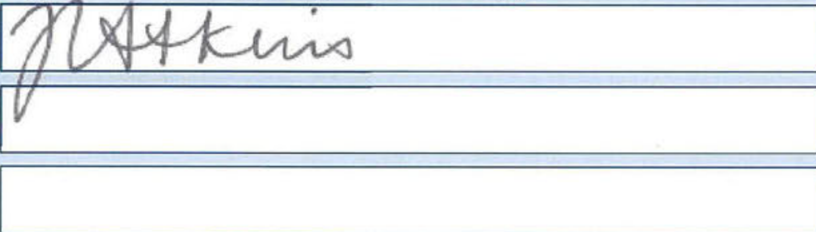
4.0 SUBMISSION AT THE HEARING

☑ I/we wish to speak in support of my/our submission.

☐ I/we do not wish to speak in support of my/our submission.

☑ If others make a similar submission, I/we will consider presenting a joint case with them at the hearing.

Signature of submitter(s) or agent of submitter(s)



Signature	Date
J Atkins	4 June 2020

IMPORTANT INFORMATION

The Council must receive this submission before the date and time indicated. A copy of this submission must also be given as soon as reasonably practicable to the applicant at the applicant's address for service.

All submitters will be advised of hearing details at least 10 working days before the hearing. If you change your mind as to whether you wish to attend the hearing, please phone the Council so that the necessary arrangements can be made.

PRIVACY INFORMATION

The information you have provided on this form is required so that your submission can be processed under the RMA, so that statistics can be collected by the Council. The information will be stored on a public register, and held by the Council. The details may also be made available to the public on the Council's website. These details are collected to inform the general public and community groups about all consents which have been issued through the Council. If you would like to request access to, or correction of your details, please contact the Council.

SUBMISSION ON APPLICATION CONCERNING RESOURCE CONSENT APPLICATION THAT IS SUBJECT TO PUBLIC NOTIFICATION

TO: **AUCKLAND COUNCIL**

SUBMITTER: **NGĀTI MANUHIRI SETTLEMENT TRUST**

1. This is a submission by Ngāti Manuhiri Settlement Trust on an application from Kaipara Limited (**Kaipara**) for a resource consent coastal permit for offshore sand extraction (**Application**).

NGĀTI MANUHIRI SETTLEMENT TRUST

2. Ngāti Manuhiri Settlement Trust (**NMST**). NMST has substantial land and development interests in the southern coastal Te Arai area, immediately adjacent to the Application area. That land was acquired by NMST as part of its treaty settlement with the Crown and falls within the Te Arai South Precinct of the Auckland Unitary Plan (**AUP**). The Te Arai South Precinct provisions specifically enable that use and development of that land for commercial redress purposes.

3. NMST is not a trade competitor for the purposes of section 308B of the Resource Management Act 1991.

Resource Consent details

4. The Application, if granted, will replace resource consent 20795 which is currently held by Kaipara. The Application seeks consent for the continued sand extraction in the Outer Hauraki Gulf for a period of 20 years.

5. NMST note the proximity of the Application with another application before the Council which is awaiting a notification decision. This second application is for a sand extraction operation by McCallum Bros Limited in the nearshore area (**McCallum consent**), between the beach and the Application area.

Opposition to the Application

6. NMST **<u>OPPOSES</u>** the Application for the following reasons:

   (a) Since the current consent was granted in 2003, a number of major regulatory and policy changes relevant to the consenting of the Application have been made. These changes include a considerable expansion of the level of environmental protection required to be considered by the resource consent decision makers as well as the

special importance of consultation with relevant iwi and hapū and the assessment of cultural as well as environmental values.

(b) Consequently, the Application by Kaipara cannot be regarded as a simple consent replacement exercise but requires a fundamental re-evaluation of against a number of new environmental protection considerations, including the AUP, the New Zealand Coastal Policy Statement and the Hauraki Gulf Marine Park Act.

(c) In its Application, Kaipara has not properly assessed the existing environment. This has led to a lack of proper consideration of the potential cumulative effects of the current consents in the area, including the Application and the McCallum consent.

(d) The extent of the environmental effects of the Application cannot be fully ascertained from the Assessment of Effects on the Environment that was submitted with the Application. Due to the nature of the changes in the regulatory and policy framework surrounding resource consenting, a full and comprehensive hearings process should be undertaken so that the environmental effects can be subject to a more detailed explanation and robust scrutiny by a range of independent experts.

(e) Furthermore, the Application does not appropriately avoid, remedy or mitigate the adverse effects of the activity in the immediate Application area or its surrounding environment. Detailed consideration of appropriate conditions to be included in the consent, if it is granted, should be undertaken through a robust and open hearings process.

7. NMST seek the following decision from the consent authority:

(a) That the Application be declined.

(b) Notwithstanding the relief sought in (a) NMST seek that the Application be re-notified with the McCallum consent so that the submitter and the public has the opportunity to consider and be fully informed in the decision making process and the two applications are considered though a joint decision making process.

(c) Notwithstanding the relief sought in (a) or (b), if the Application is processed and granted on its own, that:

i. The consent includes stronger environmental monitoring and enforcement conditions; and

ii. The consent includes a mechanism, such as a sunset condition, which enables the consent authority to reduce the

consent period if the adverse environmental effects are found to be greater than what was considered at this time.

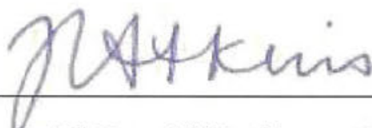
Hearing

8. NMST wish to be heard in support of its submission.

9. If others make a similar submission, NMST will consider presenting a joint case with them at a hearing.

10. Pursuant to section 100A of the Resource Management Act 1991 we request that you delegate your functions, powers, and duties required to hear and decide the application to one or more hearings commissioners who are not members of the local authority.

DATE: 4 June 2020



Ngāti Manuhiri Settlement Trust

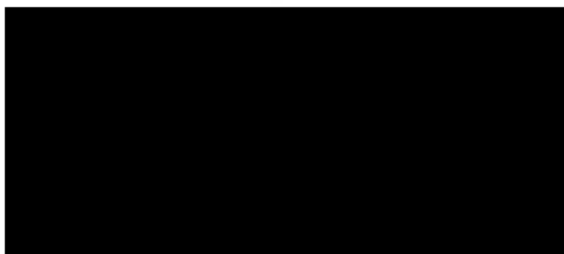
Address for service of submitter: C/- Helen Atkins / Louise Ford
Atkins Holm Majurey Ltd
Level 19, 48 Emily Place
PO Box 1585, Shortland Street
Auckland 1140

Telephone:

Facsimile:

Email:

Contact person:



"B"

IN THE ENVIRONMENT COURT AUCKLAND	**ENV-2022-AKL-000121**
I MUA I TE KŌTI TAIAO O AOTEAROA TĀMAKI MAKAURAU ROHE	
IN THE MATTER	of an appeal under s120 Resource Management Act 1991 (**RMA**)
BETWEEN	**McCallum Bros Limited** Appellant
AND	**AUCKLAND COUNCIL** Respondent

Notice of Intention by Manuhiri Kaitiaki Charitable Trust to be Party to Proceedings

Dated 16 June 2022

Tu Pono Legal Limited
Barristers and Solicitors

1222 Eruera Street
P.O. Box 1693
ROTORUA 3040

Ph:
Fax:
DX JP30025

Counsel Acting: Jason Pou

To: The Registrar
Environment Court
Auckland

WHAKATAKINGA

1. The Manuhiri Kaitiaki Charitable Trust (the Trust) wishes to be a party to the appeal by McCallum Bros Ltd of the decision by Auckland Council (**Council**) to refuse resource consents for offshore sand mining in the coastal marine area at Pakiri: *ENV-2022-AKL-000121 McCallum Bros Ltd v Auckland Council* (**Appeal**).

2. The Trust made a submission on the application for resource consent that is the subject of the Appeal and gave evidence at the Council Hearings.

3. The Trust has an interest in the Appeal that is greater than the interest of the general public in that:

   (a) It is part of the post settlement group established following the settlement of Treaty grievance between Ngati Manuhiri and the Crown in 2012. The Trust has a particular mandate to represent the Ngati Manuhiri on resource management related matters.

   (b) Ngati Manuhiri hold mana and exercise rangatiratanga over the area in which the application is proposed to be located.

4. The Trust is not a trade competitor for the purposes of ss 308C, 308CA or 308D RMA.

5. The Trust is interested in the entire Appeal.

NGA MEA AI

6. The Trust opposes the relief sought in the Appeal and hold concerns about the impacts of ongoing sand extraction operations within their rohe that:

   (a) have and will continue to cause significant intergenerational and ongoing cultural effects that are unacceptable from a resource management perspective;

   (b) is of such a scale and extent that it will have unacceptable impacts on the environment, particularly coastal processes and ecological effects

7. The Trust notes further that the Applicant has:

(a) failed to adequately investigate alternatives to sand extraction at Pakiri;

(b) failed to provide ample information to ensure that a precautionary regime for the sustainable management of the coastal environment can occur; and

(c) failed to identify any benefit or positive effect that will arise within the area in which the application relates to.

RONGOA

8. The Trust seeks that:

(a) the relief sought be declined and resource consents refused; and

(b) costs

9. The Trust agrees to participate in mediation or any other alternative for of dispute resolution of the proceedings.

Dated this 16th day of June 2022

____

Terrence (Mook) Hohneck
Chair, Manuhiri Kaitiaki Charitable Trust

Attachments

- Decision of consent authority;
- Submission by Appellant;
- Names and addresses of persons to be served with this Appeal;
- Parties served with a copy of this Notice of Appeal will not be served with the attachments and may obtain a copy from the Appellant on request.

Address for service

Electronic address for service: █████@ngatimanuhiri.iwi.nz; and
█████@ngatimanuhiri.iwi.nz.

Telephone: ██████████

Postal address: PO Box 117, Warkworth 0910

Contact person: Nicola MacDonald

Copies to Counsel: ███████████████

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, lodges 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 or the decision (or part of the decision) appealed. These documents may be obtained, on request, from the appellant.