

29 April 2009

Attention: Andy Larsen

The Chief Executive
Environment Bay of Plenty
PO Box 364
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Tēna koe

**ENVIRONMENT BAY OF PLENTY: BAY OF PLENTY REGIONAL NAVIGATION SAFETY
BYLAW 2009**

This is the submission of Te Runanga o Ngati Awa.

Te Runanga o Ngati Awa is established as the governance entity for Ngāti Awa by Te Runanga o Ngati Awa Act 2005, operative from 26 October 2005

Te Runanga o Ngāti Awa holds statutory acknowledgements for Ohiwa Harbour, Rangitaiki, Tarawera and Whakatane Rivers, as well as off-shore islands including Uretara (in the Ohiwa Harbour), Motiti, Moutohora (Whale Island), as identified in various sections within the Ngati Awa Claims Settlement Act 2005, operative from 26 October 2005

Please note that Te Runanga o Ngati Awa jointly manages Moutohora, Ohope Scenic Reserve and Tauwhare Pa with the Department of Conservation.

Te Runanga o Ngāti Awa has a gazetted Rohe Moana along the coast from Wahieroa to Maraetotara.

We also have interests and relationships with Te Paepae o Aotea (a marine reserve) and Whakaari (White Island) alongside our kin from Mataatua waka.

Te Runanga of Ngāti Awa is also the owner of titles for various rocks at the Whakatane River Mouth and it is a party to the integrated management regime promoted for Ohiwa Harbour via the Ohiwa Harbour Strategy.

It should be noted that the Ngati Awa Customary Fisheries Authority, a sub-committee of Te Runanga o Ngati Awa and party to this submission, has commenced works to establish various mahinga mataitai in Ohiwa Harbour, and along the coastline of our rohe moana.

The attached maps indicate the areas with which Te Runanga o Ngati Awa interests are associated.

The Draft Ngāti Awa Resource Management Strategy and various other iwi planning instruments which are recognised as relevant by Te Runanga o Ngati Awa should also be regarded in the development of the Navigation Safety Bylaws.

Consultation

The Manager Environment Ngāti Awa, Ms Hughes, sought to be consulted on the development of the Navigation Safety Bylaw.

Ms Hughes had also extended the invitation to members of Upokorehe, Te Waimana Kaaku and the Chairman of the Ngāti Awa Customary Fisheries Authority so that a more integrated approach could be used to allow tangata whenua to contribute during the informal developmental phase of the bylaw.

A meeting was arranged for 23 April 2009 at which Mr Larsen and Mr Spake discussed the proposed bylaw with Ms Hughes.

It is suggested that consultation with Ngāti Awa and other iwi on future reviews and the development of future regulation affecting coastal resources should occur earlier and be initiated by the consent authority undertaking the planning works.

Submissions

While it is understood that the proposed bylaws are intended to standardise local and regional regulations with national requirements there are a number of issues to be dealt with during the bylaw development process.

The key issues to be resolved are those surrounding the location of incompatible activities in close proximity to one another.

We understand that while the proposed bylaw cannot (in itself) designate zones for various activities, Councils can designate areas and can also retrofit facilities to avoid incompatibility issues.

While the regulation of incompatible activities are provided for in the proposed bylaw the bylaw does not disclose the extent to which the enforcer may use their discretion when employing methods to resolve such issues and that such discretion is left (largely) to the enforcer to decide.

There is no information in the bylaw to assist the enforcer to recognise and provide for the rights of Māori under Article II of the Treaty of Waitangi, for example.

When issues of conflict arise, Ngāti Awa submits that weight must be afforded to these important rights and provisions for Māori people.

The rights of Maori must not be overlooked; under-estimated, assumed or negated by uninformed decisions as such decisions are likely to be subject to judicial review sought by Te Runanga o Ngati Awa or its hapu.

Incompatible Activities Located in Close Proximity to One Another

There are a number of places in the region where incompatible activities are located in close proximity to one another.

The Whakatane River Mouth and Ohiwa Harbour are two such places.

Whakatane River Mouth

In the Whakatane River mouth a boat launching ramp is situated immediately upstream of a Council dedicated swimming enclosure.

A more suitable swimming enclosure area at a location further downstream from the current boat ramp has been consented however work has been prevented from occurring at that location.

This means that incompatible activities will continue to be located alongside one another till one or other activity is moved to a more suitable place, while meantime conflicts are likely to continue to arise.

In resolving such issues it is important that enforcers of the bylaw give weight to the longstanding customary activities of tangata whenua, such as swimming, waka launching and paddling, fishing and shellfish collecting when seeking solutions that avoid or resolve conflict.

Retrofitting of facilities in the area is recommended, provided consultation on the development of designs for this work is undertaken early, is ongoing and recognises the costs incurred by Ngāti Awa and its hapu when working with Council to resolve such issues.

Port Ohope Boat Ramp

At the Port Ohope boat ramp the ski lane is directly **over** half of the only surviving mussel bed in Ohiwa Harbour (currently closed by rahui and s186A Fisheries Act closure). Please see attached map.

This means that mussel collecting in the western part of the beds will in future be in direct conflict with skiers when they are using the lane.

It is anticipated that enforcers of the bylaw will address these issues at their discretion.

If the mussels east of the boat ramp are decimated by over-collection and the enforcer causes Ngāti Awa, Tuhoē, Whakatohea and other Mataatua mussel collectors to vacate the western area in favour of skiers, then there is a probability that Māori rights to exercise the customary activity of mussel collecting at this location, may be abrogated.

It should also be noted that Ngāti Awa is entitled to issue shellfish permits including for the gathering of mussels from Ohiwa (when the beds are open).

Given there are so few mussel beds in the Ohiwa Harbour now, it is likely that these incompatible activities issues will become very prevalent once the rahui and section 186A closure ends and the mussels in the east of the beds are taken.

It is proposed that this issue should become a topic of discussion between regional council and tangata whenua with relationships with the Ohiwa Harbour, including members of Te Runanga o Ngāti Awa's customary fisheries authority, relevant hapu delegates and the Manager Environment Ngāti Awa. At Ngāti Awa discretion other iwi may be invited to participate in these discussions.

Port Ohope Wharf

At the Port Ohope Wharf the soon to be decommissioned 'slipway' is adjacent to the smaller boat ramp (used by Port Ohope Yacht Club) and Port Ohope Wharf where recreational fishing is enjoyed by many local people and visitors to the area.

Whakatane District Council formally agreed that it would ensure that use of the slipway would be limited to minor mechanical repairs and not for careening purposes.

However a recent visit to the slipway demonstrates that the agreement is not being given effect by the district council harbour master who recently approved the use of the slipway for boat maintenance, painting, hull cleaning and careening purposes.

It is important that Councils ensure all relevant staff are informed of and comply with such agreements.

We anticipate that issues relating to the slipway will be resolved when Whakatane District Council removes the slipway from the Port Ohope Wharf when the current consent expires (in approximately 18 months time).

In the meantime we respectfully seek reassurance from Whakatane District Council that the agreement entered into with Te Runanga o Ngati Awa will be adhered to by all relevant staff.

General Observations

Whakatane River Mouth

Te Runanga o Ngāti Awa and its constituent hapu do not refer to the Whakatane River mouth as 'Whakatane Harbour'.

Ngāti Awa consistently asserts this point and proposes that Councils take a fresh look at the river mouth in this context.

For example, there are a number of activities in the Whakatane River mouth that are being undertaken by Whakatane District Council yet seem more appropriately relevant to the functions of regional council.

Establishment and ongoing management and maintenance of a western spit fall and the flood way fuse on Opihi Spit are two activities, the purposes of which are:

1. To provide for navigation safety in the river mouth
2. To provide a floodway fuse in the event of more major storm events.

WE perceive both these reasons to be more consistent with the functions of a regional council rather than a district council.

We suggest that district and regional councils discuss this with Ngāti Awa and note that our preference is to avoid the establishment of structures such as training walls, fuses and access-ways to maintain such structures in favour of ongoing dredging of the bar.

We take this opportunity to promote discussion on this and other matters relevant to the Whakatane River mouth.

Honorary Enforcement Officers

We note that Council can appoint Honorary Enforcement Officers. These volunteers contribute significantly to their communities, the environment and the fishery.

Te Runanga o Ngati Awa wishes to explore with council the aim of establishing more Māori people as become honorary enforcement officers in future.

It is also possible that we might co-host and share events at which honorary enforcement officers and tangata kaitiaki can come together to celebrate their respective roles and discuss how they might work with one another in a more integrated fashion.

In the meantime it is strongly recommended that at least one further full time Maritime Officer be employed in the eastern Bay of Plenty to assist with enforcement of the regional bylaws in the eastern part of the region.

Kia ora

Beverley Hughes
MANAGER
for Chief Executive

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