

Under the Resource Management Act 1991

In the matter of Private Plan Change 21 Waikawa Bay – Marina Extension and Mooring Management Areas to the Marlborough Sounds Resource Management Plan

Port Marlborough New Zealand Limited

Applicant

And

Marlborough District Council

Local Authority

**Closing submissions on behalf of Port Marlborough
New Zealand Limited**

17 December 2010

BELL GULLY

BARRISTERS AND SOLICITORS

WELLINGTON LEVEL 21, HP TOWER, 171 FEATHERSTON STREET
PO BOX 1291, WELLINGTON 6140, DX SX11164, NEW ZEALAND
TEL 64 4 915 6800 FAX 64 4 915 6810

Introduction

1. Port Marlborough New Zealand Limited (**PMNZL**) sees any future marina development in Waikawa Bay as an opportunity for participation and partnering between key stakeholders in the area, including Te Atiawa, other bay users and PMNZL. It sees an opportunity to provide for the needs of all parties with an interest in Waikawa, and it does not perceive that there is a need or justification to elevate the aspirations or concerns of one bay user above all others.
2. An inclusive approach would recognise and respond to past grievances as well as provide opportunities for the future, including habitat and resource enhancement and facilitating access to the highly valued natural and physical resources not only of Waikawa, but of Tōtaranui in its entirety.
3. The evidence has demonstrated that there is a clear and pressing demand for additional marina berths in the Queen Charlotte Sound. It is appropriate that this demand be met by careful co-location with existing marina facilities, in a manner that avoids unnecessarily compromising areas with high values and that maximises utilisation of existing infrastructure.
4. The provision for Mooring Management Areas (**MMAs**) is appropriate to rationalise existing boating activity in Waikawa Bay. This will be of benefit to all bay users and will lessen the administrative burden associated with the current process of individual processing of consents for each and every bay user. This aspect of the proposal has received strong support from existing swing mooring holders. In addition, re-organisation of the swing moorings at Waikawa will result in efficient maximisation of the areas set aside for such purposes.
5. Evidence was adduced that there may be more space efficient methods than swing moorings for mooring boats in these areas. Without accepting the validity of those claims, we note that such alternative methods can be achieved under the proposed moorings regime, if this is deemed appropriate at some point in the future. This is an advantage of an umbrella type approach to swing mooring management in the MMAs.
6. The evidence establishes that a marina extension is both necessary and appropriate for the area proposed to be rezoned for the NW extension.

7. The proposed new objective, which enables marinas within a Marina Zone, is the most appropriate way to achieve the purpose of the RMA. The proposed policies are the most appropriate for achieving the objective.
8. There was no evidence brought by opponents that establishes that there are any significant adverse effects arising from a marina extension to the north-west that cannot be adequately avoided, remedied or mitigated. In any event, even if there are any such effects (which is not accepted), with the appropriate plan provisions that form part of this proposal any such effects can and will be factored into any decision regarding whether or not a proposed marina can proceed in any or all of the Marina Zone at Waikawa.
9. In this closing we will primarily focus on the matters raised by Te Atiawa, as it is perceived that the key issues raised by other submitters were comprehensively addressed during the course of the hearing. When considering the matters raised by Te Atiawa, it is important that their concerns are subjected to proper scrutiny and the meet standards of proof (and seriousness) that any participant would be expected to meet.
10. While it is acknowledged that only Te Atiawa can speak for Te Atiawa, that does not translate in any way to Te Atiawa having a right of veto or some special status that means their refusal to agree to the plan change in any way amounts to an insurmountable obstacle.
11. When considering the matters of concern to Te Atiawa, it is important to also be cognisant of the countervailing matters of national importance that weigh in support of the proposal. Recreational boating is an activity that is deeply rooted in the New Zealand psyche. It is a culturally and socially important activity for many New Zealanders – it contributes to our health and wellbeing. This activity cannot be simply dismissed as “boys and their toys” as some submitters and witnesses would have you do. The maintenance and enhancement of access to and along the coastal marine area is enshrined as a matter of national importance under the RMA. This proposal is all about facilitating this important activity within this important recreational setting.
12. It is submitted that, with the planners’ recommended amendments (those agreed to by PMNZL), PC21:
 - (a) provides a more appropriate regime to give effect to spatial planning and meeting and managing competing demands for space at Waikawa than does the status quo; and

- (b) provides the potential to remediate historical effects– through off-set mitigation – which would be unachievable under the *status quo* planning regime and if no additional development occurs at Waikawa. In other words doing nothing could result in a worse outcome for Waikawa Bay than enabling an appropriate development to occur.

Key issues

- 13. We note that opening submissions for PMNZL identified the significant positive benefits of the *whole* plan change (including the MMAs). These matters were not the subject of significant challenge during the hearing.
- 14. We set out the expert evidence responding to alleged significant adverse effects from any marina development in our opening submissions. We do not propose to repeat that. The reply primarily focuses on the further evidence adduced during the hearing from iwi members or witnesses, including oral responses to questions from the Commissioners.
- 15. The key claims and issues emerging from the submissions, questioning and evidence are set out below. Many of these are overlapping.
 - (a) The purported failure of Port Marlborough New Zealand Limited (**PMNZL**) to identify or address significant adverse effects (including cumulative effects) arising from PC21 on Te Atiawa’s interests at Waikawa.
 - (b) Te Atiawa’s contention that “enough is enough” at Waikawa Bay (i.e. there should be no marina extension within either the NW or NE Areas, and there should be no provision for MMAs).
 - (c) The suggestion by witnesses called by Te Atiawa that “enough is enough” for development in the wider Queen Charlotte Sounds (Totaranui).
 - (d) The assertion by Te Atiawa that PC21 would put the Crown in further breach of Treaty of Waitangi commitments to Tangata Whenua.
 - (e) The claim that PMNZL’s consultation with Te Atiawa was inadequate.
 - (f) The contention that PC21 allows a “private” company exclusive occupation for profit.

- (g) The claim made by Te Atiawa that it represents the Waikawa community.
 - (h) Whether the Marina Zone boundaries are the most appropriate and whether retention of the NE marina area is appropriate.
 - (i) Whether there are more appropriate alternatives that should have been (and were not) considered.
16. Opponents largely focussed on the proposed rezoning of the NW marina extension area. Accordingly, unless expressly stated otherwise, PMNZL's reply concentrates on these matters in that context.

Significant adverse effects (including cumulative effects) on Te Atiawa

17. There are a number of alleged adverse effects on Te Atiawa arising from PC21. Legal submissions state that Waikawa Bay has "enormous importance...for traditional mahinga kai" (at [14]), and "the related mauri of the water and mana of the people" (at [14]).
18. Te Atiawa's cultural experts rely in their evidence on factual matters of iwi member submitters.
19. Mr Ropata explained the history of marginalisation and land loss, as an attempt to demonstrate that the activities in Waikawa Bay mirror an historical sequence (i.e. "the gradual and cumulative process of cultural resource and mahinga kai loss through marina and associated developments in Waikawa Bay" (at [25])). He noted that "the development will displace iwi from an important traditional place, a significant cultural site for customary practices" (at [31]).
20. Te Atiawa's legal submissions stated that Te Atiawa would present evidence of *extensive customary use, for mahinga kai, recreational fishing and shellfish collection for individuals and the marae*; and that Te Atiawa *will be physically displaced from their mahinga kai* with direct and wider implications on the kaitiakitanga and the mana of Te Atiawa people (at [46], at [55]) (our emphasis).

Customary gathering

21. Having made these assertions, the almost complete absence of evidence confirming use of the NW extension area by Te Atiawa people was surprising. At best there is very limited shellfish gathering in the NW Marina Zone

extension area. No reference was made at all to any mahinga kai gathering in the NE Marina Zone area:

- (a) Mr Buna Riwaka, a long-time resident (“born and bred”) references traditional kaimoana gathering places as being the pipi bed to the east of the Marina, Waikawa stream and swamplands (at [7]). No mention was made of any traditional gathering areas in the NW area.
- (b) Only two witnesses briefly mentioned shellfish resources in this area – but only in passing, and no specific detail of any gathering activities was provided:
 - (i) Mr Buchanan (not of Te Atiawa descent, but part of Te Atiawa) identifies the NW area as where the green lipped mussels, kopakopa and pupus were mainly found.
 - (ii) Ms Linda Martin stated “we still go there and gather kopa kopa and other mussels. The extension will take the kopa kopa away from us” (at [6]).
- (c) Mr McNabb, a resident of Waikawa Bay and CEO of PMNZL, confirmed he has not seen anyone collecting shellfish in the NW extension area in his two years of living above the Marina.

22. While historically (i.e. prior to the existing Marina development) mahinga kai gathering may have occurred in inner Waikawa Bay, it also occurred throughout the wider Marlborough Sounds:

- (a) Ms Martin’s mother and father used to go to the Sounds to gather kina, bringing them back (about 8 sacks) and pulling in their motor boat where the marina is now (at [11]).
- (b) Ms Ede submitted in order to “protect and assure her whanau interests” (at [11]). Ms Ede’s family trust has “interests in numerous properties within Waikawa Bay, the wider Marlborough Sounds, Taranaki and the Chatham Islands” (at [15]). She used to play at the beach and gather pipis. Her family used to also go on fishing trips down the Sounds (at [38]).
- (c) Mr Barry Houra, born in Picton in 1948 and who grew up in the bay, relayed that it was traditional for people to go out on Sundays to collect kai, i.e. gather in Waikawa Bay and collect together (at [6]). He notes the loss of a way of life (at [8]).

- (d) The photos provided of Ms Ede's whanau over the years (Appendix 2 to her evidence) show a boat or use of a boat in every water-based picture. There is no photographic evidence of customary gathering whatsoever.
23. It seems clear that in current times collection of shellfish (if any) is done at other places than the inner waters of Waikawa Bay – perhaps because of resource depletion, perhaps because of convenience:
- (a) Ms Buchanan's evidence references a conversation (p.12) about still collecting pipis - but they go further around the bays now.
- (b) Mr Buchanan's evidence refers to "people" gathering pipis at the beach, or by the Arapawa Rowing Club and at Port Underwood, because they know in those places they are not polluted (at [13]).
- (c) A participant in the video produced by Te Atiawa talked of "gathering seafood" from the supermarket.
24. It is acknowledged by submitters that urban development has also contributed to a change of resource gathering patterns and locations:
- (a) Pollution in waterways and estuaries has been attributed in part to "civilisation". There has been a change in resources, making fishing easier (at p.15). Housing has also built up, as the town has developed. (Ms Buchanan at [8] and p.15).
- (b) Houses on septic tanks at Whatamango Bay were also mentioned (Mr Buchanan at [14]).
25. Ms Robyn Metzger (not of Te Atiawa descent) talked of how she started setting a net in Waikawa Bay in 1993 on the eastern side of the bay. She expressed a preference to retain the beach on the east side (as is intended) as a living part of the food chain, accessible to all who wish to wander around the foreshore. She observed that there is still a wide area of cockles and grass seaweed [at 4].
26. The activities Ms Metzger referred to, "looking under the rocks for crabs, in the pools for cockabullies, catch herrings, and garfish and then cook and eat them, learn to skim stones", can all still be carried out alongside the marina activities envisaged by PMNZL.

27. You heard from Mr Sneddon that effects on the natural and physical food resource can be significantly off-set through mitigation measures (such as artificial reef substrate), and that this area is only a smaller part of a wider resource.
28. Mr Boffa recognised, in response to questioning from Commissioner Maassen, that there would be an “experiential value” for a person who waded and gathered in the NE area and who had done so for a number of years. However there was no evidence provided of this experience from such a person. He also considered that, with the existing breakwater and NE zoning, you would be seeing a larger visual face. This change in experiential value would be a loss but it would be experienced in the context of existing marina, roadside and development behind you, etc.
29. There is insufficient evidence for you to find there is a significant cultural attachment to the NW extension area (or the existing NE area) arising from customary kaimoana gathering activities.
30. The evidence from Te Atiawa in relation to this aspect falls well short of establishing significant customary activities that would preclude a marina development in this area.

The related mauri of the water and mana of the people

31. Te Atiawa contends that the effects of the plan change go considerably beyond the physical effects on mahinga kai, to the very mana of the people who were displaced from their preferred Waitohi (Picton) to Waikawa by the earlier European colonisation of the area (legal submissions at [46]). We note that there was nothing presented to confirm anything other than a willing sale between the parties at the time Te Atiawa relocated from Picton to Waikawa. We note that there is nothing in the (draft) agreement between Te Atiawa and the Crown to settle their Treaty claim to set aside areas or offer compensation as a result of wrongful confiscation at Picton.
32. Mr Riwaka talked of the “deal done” (i.e. sale) and the relocation to Waikawa where the land was cut up to whanau.
33. It is suggested that history is repeating itself for what remains of Te Atiawa’s traditional food gathering grounds (legal submissions at [49]):
 - (a) Ms Ohia stated that “without our intact mahinga kai, we lose touch with our ancestral traditions, we lose our ability to both physically and

spiritually sustain ourselves and others and our children and grandchildren lose a vital part of their cultural heritage.” We note that you have heard from Mr Sneddon that the physical effects on mahinga kai in Waikawa Bay are acceptable.

34. In relation to loss of mana:
- (a) Ms and Mr Ohia both stated that not being able to gather from your traditional gathering place brings shame and downgrades tribal mana (at [5], at [6.6]).
 - (b) Mr Houra provided evidence (at [10]) that “[i]f we lose the remaining mahinga kai areas (where the proposed marina development will be sited) we will have to get permission and a permit to fish and collect kai from another iwi’s mahinga kai area to provide guests with food”.
 - (c) He further commented that “[t]his previous development, and the further development proposed, removes our ability to use, care for and manage our kaimoana resources, in other words it removes our ability to practice kaitiakitanga” (at [12]).
 - (d) Mr Ropata notes the health and accessibility of Waikawa Bay and its resources are integral to Te Atiawa’s health and cultural wellbeing (i.e. their collective and individual mana, wairua and rangatiratanga) (at [29]).
35. To the extent the mana of Te Atiawa is derived from gathering mahinga kai, the evidence of Te Atiawa members is that there are a number of places to gather kaimoana (including in Te Atiawa’s wider rohe – Totaranui).
36. As noted above there is no evidence to suggest anything other than very low levels of use of the NW extension zone (if any) for kaimoana gathering. The importance of this area for this purpose and the potential for loss of mana arising from development in the NW is being substantially overplayed in light of both the actual evidence regarding patterns of use in the NW area and the extent of Te Atiawa’s rohe.
37. We note that Mr Sneddon, contrasting his ecological report with that of Mr Stevenson, stated that while there has been some 50% reduction in the density of cockles (i.e. size and numbers), the existing seagrass and cockle beds appear to be established and healthy.
38. While Mr Sneddon acknowledged that it was *possible* for hydrodynamics to change as a result of the NE extension, which could in turn affect cockles, he

also noted that cockles can thrive in many areas provided there is a balance between sediment and water flow. Such effects would need to be assessed in detail once a suitable marina design is achieved.

39. There is no evidence to suggest that the health of the marine resources in the extension areas or in the wider bay will be compromised in an unacceptable manner by further marina development, particularly when using the existing environment as a baseline.
40. Mr Quickfall's supplementary report (16 November 2010, at [13]) shows the Council files record:
 - (a) Water quality in Waikawa Bay has improved over the last 10 years.
 - (b) Shellfish quality in Waikawa Bay is not trending up or down, and is on par with shellfish quality in Queen Charlotte Sounds as a whole.
 - (c) Heavy metal contaminants around boat painting/washing operations are high. These contaminants are not limited to marinas.
41. In response to biosecurity issues raised, Mr McNabb talked of only a few international boats each year coming to Waikawa Bay. You heard from Mr Sneddon that for biosecurity to be effective it needs to be managed on an area wide basis, and that the best place to site a marina to maintain biosecurity is near an existing marina.
42. To the extent that there are opportunities arising from future development at Waikawa for Te Atiawa to participate to ensure positive outcomes and to rectify past actions that have impacted upon the natural and physical processes of Waikawa Bay – this will ensure that the role and success of Te Atiawa as kaitiaki remains both intact and enhanced.
43. Waikawa Bay is healthy. There is no basis to assert that the existing mauri of the Bay is seriously compromised. In addition, there is no evidence that the existing mauri will change as a result of PC21. Any proposal that is advanced in the future will have to ensure that there are no significant and inappropriate adverse effects on the mauri of the Bay or the mana of Te Atiawa.

Physical occupation

44. Te Atiawa alleges the physical occupation of the water space is culturally and spiritually offensive, and a displacement of their relationship with the Bay.
45. For example, Ms Buchanan (at [4]) considers continued development and the inability to maintain that spiritual connection “disconnects iwi from their ability to exercise our responsibilities as Kaitiaki, to Papatuanuku, who has always provided us with sustenance”.
46. This is a potentially wide-ranging and far-reaching assertion. Mr Mikaere notes that there was no evidence from Te Atiawa about how the role of kaitiakitanga is given expression to (at [24]).
47. Mr Mikaere explains that the Act has commonly taken kaitiakitanga into account through physical expression, for example, as an obligation to “care for the environment”. There is nothing within this statutory expression that supports the contention that it prohibits occupation of water space.

Learning environment

48. It is alleged that the current marina development has put Te Atiawa’s learning environment for Maturanga Maori (learning spaces and places) at risk (Ohia at [7.1]) i.e. much teaching and learning is done at the river mouth (Ohia at [7.4]). However:
 - (a) there was no evidence that the NW extension area is used for learning activities; and
 - (b) existing learning opportunities have seemingly not been affected by the environment that exists today.
49. Ms Martin refers to life growing up in Waikawa Bay. She refers to cultural practices (at [15]) involving flax weaving, splitting the harakeke with mussel shells, stringing up fish, using trees for medicines (at [19]), and land hunting (at [21]). These activities will not be affected by any development that may be enabled by PC21.

Cumulative effects assessment

50. Alleged cumulative effects are the “cumulative loss and destruction of Waikawa Bay from serial development and the resulting displacement of tangata whenua” (Te Atiawa legal submissions at [14]). For any displacement

to be significant, patterns of use are required. Here the evidence was related to a way of life that is associated with the Bay and the wider Sounds area. The evidence relating to the specific areas in question was sparse at best.

51. As outlined in our opening submissions, the assessment required is a factual and evidential one of identifying and assessing cumulative effects.
52. It is not sufficient for Te Atiawa to prove historical grievances (i.e. they have lost their relationship with other areas of resource in the bay in the past). It needs to be shown that there is a further adverse effect on a resource or their relationship to this resource in order for there to be a cumulative effect.
53. Te Atiawa submit that assessment by the applicant of pre-development baseline data and post development assessment of impacts to date should occur prior to the application for plan change proceeding (at [64]). The applicant's experts have assessed the existing environment and have taken into account the effects of marina developments in both the NW and NE areas.
54. Past development forms part of the existing environment from which to assess effects.
55. It is suggested that what we have now is not something Te Atiawa have wanted (Ropata, oral). However, we note that:
 - (a) Te Atiawa wrote to PMNZ in support of the initial marina development at Waikawa. Some of the evidence presented for PC21 was that they did not object because they expected or were assured of economic and other benefits that did not materialise to the extent they had anticipated.
 - (b) Te Atiawa did not formally object to the Marina extension (see 3 January 1991 letter (Quickfall supplementary evidence (QSE) 16 November 2010 attachments)), but noted their concerns with any further extension. The letter from Te Atiawa stated that "it wished to see" no further extensions towards the Snout as this point [i.e. the Snout) is used extensively by not only the Maori Community but many other community members and further development would lead to the possibility of pollution of this area" (QSE, attachment letter from Te Atiawa to Port Marlborough, 30 July 1990).

- (c) Swing moorings and a consented subdivision (with 6 berths) currently exist on the Snout coastline. Te Atiawa did not make a submission on this subdivision (despite it including 7 allotments), or an application to construct a multi-berth jetty (fixed and floating structures) to berth 6 boats (U060794).
 - (d) In the past Te Atiawa supported and gave written approval for the consent application for the discharge of stormwater into a stream at the rear of Waikawa Marina (U941081) (QSE, Attachment dated 1/11/94); and further discharges to the stream containing trace elements of hydrocarbons (U011055) (22/08/2002).
56. There is no other evidence to suggest that any existing effects are or were unacceptable to Te Atiawa (“natural character” issues raised by Te Atiawa were responded to by Ms Kidson and traffic issues raised by Mr Culbert have been responded to by Mr Chesterman).
57. The consequences of incremental change occasioned by further marina development to the NW in particular was fully assessed by the experts called by the applicant, and they all concluded cumulative effects are acceptable.
58. In relation to other activities that were discussed in this context we note:
- (a) The Rowing Club does not currently have a 2000 m course on the western shoreline (because of moored boats).
 - (b) Commissioner Rennie was interested in displacement of sea kayakers. Mr Greenaway assessed orally that the effects on kayaking would be minimal. He noted that Waikawa Bay is a bay full of boating activity, including a marina, a greater length of Marina wall is not a significant change because of this primary expectation (peri-urban setting), and that the set back of the MMA will allow greater clear water for kayaking (i.e. a sense of more water). We note no submissions raised issues of kayaking.

Legal matters

59. Te Atiawa's legal submissions criticise PC21 strongly, stating that:
- (a) "an assessment of effects on future generations is required" (at [10]). We agree that such an assessment should take into account all future users (and not just Te Atiawa);
 - (b) "the section 5 requirement that all effects be avoided, remedied and/or mitigated is a **necessary** condition but **not a sufficient condition** for sustainable management" (at [29(a)]). This is an incorrect assertion of the law; and
 - (c) "the attempt to dismiss many effects for later consideration as part of the consent application is disingenuous" (at [29(b)]). This comment ignores the fact that the applicant's approach is entirely consistent with established caselaw. The assessment is based on potential change to the existing environment. There is no significant change in a wide variety of parameters. There will not be the significant change in use of Waikawa Bay suggested by Te Atiawa (at [10]).
60. Suggestions that PMNZL ignored Te Atiawa's expert evidence and stated significant effects without calling contrary evidence to justify its views (Legal submissions at [47]) are incorrect. In addition to specific and detailed evidence rebutting the factual concerns raised in submissions, Mr Mikaere has responded to this evidence on two occasions (during the hearing and in his supplementary brief).
61. Mr Quickfall noted at [27] that, on the evidence presented, he heard nothing from Te Atiawa to suggest that a marina could not be designed so effects could be mitigated – including off-set mitigation for any cultural effects.

"Enough is Enough"

Waikawa Bay

62. The key theme from Te Atiawa's presentation was that "enough is enough". This slogan was explained in Te Atiawa's legal submissions at [16] as an "attempt to prevent history continuing to repeat itself as tangata whenua face the threat of being displaced yet again from their home".
63. The claim of displacement is both alarmist and without foundation.

64. We heard from Ms Powick that the marae is concerned that the plan change sets out to ignore an already *established process of use* in Waikawa Bay and to totally dispossess its people from being part of the decision making in the bay (at [16]). No evidence was provided on this process of use or what it involves.
65. The proposed plan change would not in any way preclude Te Atiawa from ongoing participation in decision making in the bay. To the contrary it would make express provision for matters of concern to them to be provided for and addressed. PC21 has the potential to result in outcomes that not only recognise the mana of Te Atiawa, but that will also meet the needs of others with an interest in the area.

*MMA*s

66. Mr Williams provided supplementary planning evidence in response to issues raised during the hearing about MMA
- s. He considers that PC21 is more appropriate than the status quo. PC21 sets out the spatial framework for the location and extent of mooring activities in Waikawa Bay under the RMA framework while the Bylaw/ Licence/ Management Plan provides for the equitable allocation of individual mooring space within the bounds of the MMAs and also for the ongoing management of moorings (at [7.9]).
67. The only significant opposition to the MMA came from Te Atiawa witnesses who contend “enough is enough”.
68. Some submitters, who did not seem to have a good grasp of the intent or extent of the MMA
- s, spoke in opposition, but otherwise the proposed MMAs received strong support from those who moor boats in Waikawa.
69. For some submitters, this is contrary to earlier positions taken. For example, Ms Ede acknowledged that her Family Trust has a mooring and that the trust has previously submitted in acknowledgement of the issues with efficiencies with regard to mooring allocation and its support of a process that proactively sought to provide for the needs of existing mooring holders (at [45]).
70. There was no evidence from Te Atiawa that MMA
- s affect mahinga kai gathering locations or sites of significance (which are located around the shoreline as opposed to further into the Bay’s water).
71. The MMA areas are designed to rationalise existing moorings in Waikawa Bay. They are an improvement over the status quo.

Wider Queen Charlotte Sounds (Totoranui)

72. The Te Atiawa evidence also seems to suggest that “enough is enough” with regard to development in the wider Queen Charlotte Sounds (Totoranui):
- (a) Ms Gemmell explained that “mana, mauri, whakapapa and tapu are all important elements of the spiritual relationship of Te Atiawa with Totoranui” and “one of the roles of Te Atiawa as Kaitiaki is to protect the mauri of the Totoranui” (at [6]).
 - (b) Ms Buchanan considers at p6 that “500 more boats in the wider Totoranui will place increased pressure on an already pressured ecosystem” and that, “Port Marlborough has not considered the impact of further development on the wider area of Totoranui”.
73. Ms Powick has been on the Te Atiawa RM Committee for 15 years. Its major role is to look at issues in the Sounds.
- (a) Ms Powick refers to the mana of an iwi being measured upon its ability to manaaki manihiri (care for visitors) (at [11]) and “that the marae prizes, and is protective of, the particular kaimoana stocks within our rohe (region)” (at [13]).
 - (b) When asked by Commissioner Ellison about whether there are occasions when Te Atiawa cannot provide kai, Ms Powick’s response was “yes, and it is becoming more common”. She refers to sending people to the Sounds to get kai, that the best kinas in the world came from the (Tory) channel, and finding it now it is an exception not the norm. Ms Powick says it is Te Atiawa’s role to “turn it around”. Ms Powick states the ability to collect right across Totoranui is very fragile, and that providing kai is tough.
 - (c) In relation to Waikawa Bay, we heard from Ms Powick that there has been no kopakopa on the marae table for 15 years, and once in the last 5 years they were able to put cockles on the table. She notes that the number and size of shellfish in the NW extension are not sufficient for a customary harvest.
74. It is submitted that PC21 will not have a significant adverse effects on the ability of Te Atiawa to continue to gather seafood from the Bay itself (to the very limited extent this is occurring) or from further afield – i.e. from the areas that are the actual focus of such activities for Te Atiawa.

75. In a similar vein, Mr Culbert suggests the Sounds are at full capacity and there is nothing to moor on. He notes that, “if we increase the boats by 500 where are they all going to go when cruising around the sounds?”
76. With respect, the Commissioners should be mindful about the extent to which the “enough is enough” mantra could be applied if upheld in relation to Waikawa and Totaranui, in the absence of specific concerns of substance arising from the effects of development in the areas in question.

Examples of conflicting evidence

77. Ms Gemmell stated orally that “Te Atiawa are not opposed to development. They are opposed to the destruction of mahinga kai. Don’t destroy what is most precious to us”. She also stated “Port Marlborough it is time for us to work together”. While PMNZL is grateful for the offer of a joint approach, attempts to explore the possibility were not taken up.
78. Ms Gemmell refers to the Snout (between Grids 1-6, Figure 1) as a place where iwi do not gather mahinga kai because of the Taniwha located there.
- (i) Linda Martin (at [5]) commented that “[w]e still gather seafood at Te Ihu Moemoe (the Snout) but it is nowhere near as plentiful as it once was”.
 - (ii) Mr Buchanan recalls having walked the mudflats and out towards the end of the Snout and having collected kai (at [10]).
 - (iii) The Cultural Resource Map shows an area for scallop gathering.
79. Ms Gemmell states that iwi do not gather shellfish at Sunshine Bay (Grid 24 , Figure 1), which is contrary to evidence of both Mr Riwaka and Mr Buchanan.
80. The belated reference to the Taniwha by Ms Gemmell is also in a different place to where Ms Powick places the Taniwha.
- (a) Ms Powick identifies that a Taniwha, *Te Ihu Moeone*, who in his search for freedom of the ocean, surged his way through from Wairau thus cutting the passage to Waitohi, until he ended as the land mass that lays between Waitohi and Waikawa (at [8]).
 - (b) We find it surprising and inconsistent that (despite the claimed existence of the Taniwha) Te Atiawa did not make a submission on an application

for a 7-dwelling subdivision and associated multi-berth jetty along the length of the Snout.

Treaty obligations

81. Te Atiawa allege that PC21 would put the Crown in further breach of Treaty of Waitangi commitments to Tangata Whenua and that PMNZL, as a Council owned company, is effectively a Treaty partner.
82. Te Atiawa further allege that PC21 is directly contrary to the specific commitment of the Crown to provide special redress to Te Tau Ihu to identify and assess options to improve the quality of the environment (Legal submissions at [25]; Ropata at [10]¹, Ms Gemmell at [103]).
83. The Letter of Settlement is stated as the Crown's *best and final* offer and is in settlement of *all* historical claims for breaches of the Treaty of Waitangi (see letter 11 February 2009 attached to Mr Witte's evidence (DoC)).
84. Te Atiawa's area of "rohe" is wider than Waikawa Bay. For example, the Crown's initial offer includes (Attachment two, 11 February 2009 Letter, Mr Witte's evidence):
- (a) Governance Arrangements in the Totaranui to Te Atiawa over Arapawa Island and the Brothers Islands (Table 1) in recognition of kaitiaki;
 - (b) to recognise Te Atiawa's role as kaitiaki of the coastal marine area of Queen Charlotte Sound (at [10]), the area of which is still to be discussed (at p18), as is the deed of recognition (at p.19). This will be achieved by providing advice and expertise to Te Atiawa to develop a statutory plan articulating Te Atiawa's values in relation to the Queen Charlotte Sound;
 - (c) a number of islands, bays and rivers (including Waikawa River) to be included in a deed of recognition; and
 - (d) special redress such as providing resources to Te Atiawa to focus on improving water quality (for Waikawa Marina and Waikawa Bay) to specified standards such as those suitable for bathing and shellfish gathering.

¹ We note Mr Ropata does not hold cultural qualifications to Waikawa (at [3]); and refers to detailed analysis of the effects of the proposed plan change on Te Atiawa as being provided by other iwi representatives and experts (at [7]).

85. While there is an agreement with the Crown, it is draft in the sense that negotiations have been suspended and settlement legislation has not been or is not being implemented to give effect to the contents of the letter (which is “draft and confidential”).
86. The terms and conditions of the initial Crown offer include:
- (a) The letter is not legally binding and does not create legal relations between the parties (Terms and Conditions, 2).
 - (b) The offer is made on a without prejudice basis and is not to be used as evidence in any proceedings before, or presented to, the Courts, the Waitangi Tribunal and any other judicial body or tribunal (Terms and Conditions, 5).
87. Mr Witte (DoC) noted that, as the scope and details of the proposed statutory acknowledgements for Tainui Taranaki are still to be refined through the negotiation process, the final nature and details of the settlement are draft and confidential, and may vary from those set out in the Letter of Agreement (at [28]).
88. In any event, the only offer in relation to Waikawa is an offer to assist with improvements in water quality. PMNZL supports this outcome, and it is not inconsistent with further marina development as was outlined by the experts who were called.

Inadequate consultation

89. It was alleged by Te Atiawa and others that consultation was inadequate and/or non-existent.
90. Te Atiawa’s legal submissions state that the implication of this is that “the assessment undertaken by the applicant and its experts is therefore seriously deficient, as it has not properly loaded the assessment scales because it is missing vital information on Part 2 matters including cultural impacts and cumulative effects” (at [23]).
91. We note:
- (a) Te Atiawa has essentially refused to engage in consultation.

- (b) During the hearing a key message in evidence was that PMNZL should take into account what is said, reflect on it and come back with a considered response.
 - (c) The applicant heard statements from Te Atiawa about their willingness and desire to consult further with PMNZL (Linda Ohia). Comments from one witness (Ms Gemmell) suggested a desire to explore a negotiated outcome and that they were in settlement mode.
 - (d) Ms St Claire (at [13]) noted that “instead of coming to the present impasse if [PMNZL] had been more open and genuine in their consultation there may have been opportunities for Te Atiawa to work with POM to find a suitable way forward”.
92. PMNZL has been and continues to be willing to engage with Te Atiawa. PMNZL sought to engage with Te Atiawa after hearing the evidence called by them. The offer was rejected.
93. It takes two to consult. Ms St Claire’s comments (at [14]) apply to both parties:
- “Consultation by nature indicates there will be two-way communication. To avoid or become disingenuous because a group does not agree with you is not productive and in the long run will damage relationships, trust and everyone’s ability to grow and develop”.
94. There is also criticism of the earlier Cultural Impact Assessment (**CIA**). There seemed to be a lot of misunderstanding about the CIA attached to Mr Mikaere’s evidence. This was initially prepared in relation to marina extension applications anticipated prior to the hearing for U040624.
95. Ms Prendeville explained that Te Atiawa were initially provided with a copy but PMNZL did not receive a response. As explained in Ms Prendeville’s evidence, Te Atiawa were invited on at least two occasions to prepare a CIA themselves, which PMNZ would fund, but they declined. Such a response is surprising considering the strong views that Te Atiawa have that they should be the one to prepare the CIA.
96. As outlined in our opening submissions, it is not unusual for a consultant to prepare a CIA for an applicant. This must particularly be so when iwi refuses to engage as occurred here.

97. Any suggestion that PMNZL has failed to consult is rejected. It is Te Atiawa who have refused to participate in the two way process envisaged by the RMA.
98. In any event, nothing arose out of evidence presented to the hearing that was not already known to PMNZL and its advisors prior to the hearing (apart from the claimed existence of a taniwha – already discussed above).

Exclusive Occupation

99. It is alleged that PC21 allows a “private” company exclusive occupation for profit. This is inconsistent with the assertion mentioned above that PMNZL is, in all respects, a partner to the Treaty.
100. There is an assumption by opponents that profit (especially PMNZL profit) is bad. This is not the case. Here, as the Council is a 100% shareholder of PMNZL, any profit will benefit the community.
101. Te Atiawa considers PC21 would result in the exclusive and dominant occupation of public space by PMNZL and the displacement and exclusion of *existing users* such as tangata whenua (Legal submissions at [5]). There is no evidence of regular existing use of this area by tangata whenua.
102. The current Marina allows public access as a condition of the resource consent. The marina is designed to enable users of the coastal marine area to access that area in a convenient manner.
103. Provision of space within the marina for iwi interests is readily achievable.
104. Claims of exclusive occupation are unfounded.
105. Reference is made to the Crown’s emphasis on maintenance of public access to the coastal marine area (i.e. through foreshore and seabed legislation). It is then stated that “[y]et at Waikawa Bay, at the heart of Te Atiawa’s home, and where customary rights have already been recognised by the Crown, the Crown’s agent MDC, is considering an application that would result in its own commercial entity – Port Marlborough Ltd – displacing tangata whenua and the general public and charging for access to the foreshore”. This comment is blatantly incorrect. The purpose of PC21 is to facilitate better access to the CMA. Te Atiawa conveniently omit to refer to other users of the area who are being provided access in and out of Waikawa Bay.

106. Ms Buchanan (at p8) refers to the struggle to hold fast to access to the beach and kaimoana resources there. She references three negotiated passageways from Waikawa Bay to the beach that have been set aside as native accessways. Historical maps were also produced during the hearing by Ms Gemmell. PC21, which will enable the NW Marina extension, will not affect access on the east side of Waikawa Bay or any such property rights.

Demand

107. When asked by Commissioner Rennie if there is anything to stop PMNZL selling the Marina, Mr Mc Nabb agreed that there was not. Mr Rennie also tested the prospect that someone (presumably PMNZL) could “buy up all of the berths” in order to trigger the ability to consent the next extension. We consider that this proposition ignores economic reality (why build something like this in the absence of underlying demand?), is therefore fanciful, and fails to acknowledge commercial imperatives that are required by the legislation governing the port company.
108. Te Atiawa suggests that there is an “overstatement of the “need” and perceived positive effects of the proposed marina extension” (Legal submissions at [29(c)]). The legal submissions state that no conclusion of demand can properly be drawn from [Mr Greenaway’s] evidence (at [44]).
109. In fact, no evidence has been adduced which contests the applicant’s evidence. We also note that Mr Riwaka of Te Atiawa (who has been present in the Bay from the 1950s) states at [5] of his evidence “we all know the need for more marina berths to cater for the boating public...”.
110. The Commissioners noted that no further information from MBMA was needed regarding demand, seemingly on the basis you were satisfied that a demand had been demonstrated to your satisfaction (compare this to the assertion in legal submissions of Te Atiawa that the questioning from the Commissioners had identified serious flaws in the applicant’s claim for the marina extension (at [43])).
111. Mr Greenaway confirmed that demand would outstrip supply for the first marina in terms of the waiting list numbers and that a reasonable assumption could be made that the waiting list reflects the current demand.
112. Ms Prendeville confirmed that PMNZL consistently updates and reviews its waiting list. She also said that some people have been on the wait list for 5-6 years. As some people do not see any prospect of getting a berth, they do not

bother to go on the list. Mr McNabb confirmed in questioning that turnover of berths is not great. In essence, if you leave you cannot get back in.

113. The current and foreseeable demand relates to the indicative maximum capacity of the proposed Marina extension.

Do Te Atiawa represent the community?

114. During the hearing, in response to a proposition by Commissioner Maassen, Te Atiawa asserted that they represent the wider Waikawa community, not just the iwi.
115. Te Atiawa should not be taken as representing the general public interest or all of those with an interest in Waikawa Bay:
- (a) No other party has specifically opposed the MMAs.
 - (b) Mr King for the Waikawa Ratepayers and Residents Association (he reported orally that there are 4,000 residents in Picton and 1,000 in Waikawa) supports the proposed rezoning for Marina development in the NW area. He also noted that PMNZL is unlikely to develop the NE for 15-20 years, should the NE extension proceed.
 - (c) Mr Culbert acknowledged that most people want one marina extension, and he would personally prefer the NE area.
 - (d) Mr Williams, in answering a question from Commissioner Rennie about why the NW extension to the Marina was agreed to (and relocation of MMA1 to the NW extension area had not been proposed instead), noted that the existing NW mooring holders are happy with the proposal, that it is a whole bay solution, and that allowing for a marina development is a “bit of acknowledgement of the efficiency of use of coastal space. Marinas are a more efficient use of space than swing moorings and as an association we are happy to accept a cap as a swing mooring is a relatively inefficient use of space when compared to a marina”.
 - (e) No residents along the NW shoreline submitted in opposition to the proposal, and there are a number of submitters from Waikawa Bay who support the application. It is widely accepted that those who support or are ambivalent about a proposal are less likely to submit or appear at a hearing than those who oppose.

- (f) Te Atiawa did not at any point until during the hearing assert they somehow represent the wider public interest and the proposition they do did not arise until they were prompted by questioning.

Whether the Marina Zone boundaries are the most appropriate (and should the NE area have been given up?)

116. The proposed MMAs provide a restriction on further Marina growth.
117. Mr Lemman (Marina Design) responded to questions about technical constraints of a Marina Zone because of land formation. Mr Lemman identified the northern end of the NW extension area as having weak materials which dictated Marina boundaries. Such weak materials do not limit swing mooring activities. It is appropriate that the zoning of the identified areas are utilised, as marinas can provide highly efficient boat storage solutions.
118. Spatial allocation will not “lock up space in the bay for some time and prevent other uses” as suggested during questioning. Existing moorings can continue to remain in the NE Marina Zone, until such time as this space is required. The amended plan provisions introduced by PC21 clearly provide a process for this. Mr Williams identified at the hearing that a number of moorings in MMAs will become available during the transition to the licensing regime as moorings which are currently used by older vessels (or not used at all) are released for other users.
119. Mr Greenaway colloquially referred to “mooring” or “marina” people – noting if you are on a waiting list for a berth, you are likely not a mooring person. Moorings can still be established in other bays, and it is likely that some mooring owners will take a marina berth.
120. Mr Greenaway’s expert evidence is that there is justification for not relinquishing the existing zone.

Whether there are more appropriate alternatives?

121. Mr Batchelor (Planner for Te Atiawa) claimed that there were alternatives to that proposed by PC21. No alternative locations or designs were given.
122. Coastal water is a finite resource, but so is usable water within the reach of current infrastructure and urban development. The Waikawa Bay landscape character is marine focussed and the marina is an integral part of the character of the Bay.
123. Mr Williams (for the MBMA) considers there is only one area that provides the requisite mix of facilities, services and access to the main transport routes – Waikawa (at [7.23]). We agree.
124. He explains that from a boatie’s perspective, an assessment of alternatives should not focus on just the breakwaters, pontoons, mooring tackle and the parking of boats. The marina facilities and moorings in Waikawa Bay are seen as just a part of a much greater centre of boating activity (at [7.17-7.22]). Important factors include:
- (a) associated facilities (i.e. boat builders and services, restaurants, bars and boat club facilities);
 - (b) the proximity to a town (in this case Picton) that provides supermarkets for provisioning, sports shops for associated fishing and diving equipment, and other retail, food and entertainment facilities; and
 - (c) good road access to moored or berthed boats.
125. The marinas at Havelock and Picton also have these elements, although to a lesser degree. Picton has very limited capacity for expansion. Queen Charlotte Sound is the main nautical thoroughfare from the top of the South Island and beyond. Havelock services a very different catchment.
126. Mr Quickfall agrees with PMNZL that as PC21 is a site specific plan change for a specific location it is not necessary to evaluate other areas (at [9]). Mr Quickfall agrees with the applicant’s assessment that Havelock and Picton are not viable alternatives. He concludes that evidence at the hearing convinced him that Picton and Shakespeare Bay are not viable options for marina development or expansion, and that Havelock would not provide a solution to demand for berths in Waikawa Bay (at [3]-[8]).

127. Mr Boffa considers, based on his knowledge, that there are few other places in the Sounds which could be considered an alternative location in terms of natural character and landscape (Oral).
128. PMNZL does not see a demand for drystacking, or that drystacking is a current alternative, especially considering the size of boats intended for the proposed marina extension area (Ms Prendeville supplementary statement at [4]).

Coastal tendering

129. In response to questions from Commissioner Rennie, Mr Kyle explained how coastal tendering is a process not without its complexities.
130. While a regional council has the ability to offer authorisations for occupation of space in a CMA (by public tender or other method), it is submitted that this option is not the most appropriate method to manage moorings in Waikawa.
131. Applications for coastal permits have already been lodged as part of a bulk mooring application. Interested parties have been identified. With careful arrangement, there is room in the MMA for all of these mooring applicants and each applicant has been provisionally allocated a site.
132. It is unnecessary to task the Council with the administrative burden of public tender or other similar method given this background and relatively late stage in the process. No submissions suggested this option as an alternative.

PC21 - Restrictive planning regime

133. The provisions in PC21 have the potential to deliver a better environment than what physically exists today. PC21 provides a more restrictive regime than the status quo. For example:
- (a) the proposed development will give effect to spatial planning;
 - (b) as a result of further recommendations by Mr Quickfall (Council), agreed to by PMNZL, applications for Marina development outside the Marina area will become non-complying (with more onerous consenting requirements); and
 - (c) all effects will be squarely addressed at the time of a future marina resource consent process.

134. Mr Quickfall supports the plan change as a strategic spatial planning exercise, in preference to incremental, reactionary planning as demand increases (at [10]):
- (a) The non-complying status of MMAs and a marina outside the Marina Zone are justified in terms of moorings being placed in deliberately clear navigation lanes or recreation areas.
 - (b) In the joint statement (29. 11. 10) of the planning experts (with the exception of Mr Batchelor), it was considered that a prohibited status for moorings outside MMAs is not justified in terms of the principal RMA issue (being efficient allocation and occupation of water space and navigation). This is also outside the scope of the plan change.
135. The plan change “enables”, “facilitates” or “directs” Marinas in the Marina Zone. However, a marina, by its (amended) definition, can encompass a design which is smaller than its maximum utilisation indicative design of 250 berths. At the time a consent application is made an applicant will need to establish that what is proposed is an appropriate and reasonably necessary coastal occupation.
136. Mr Solly (DoC) accepts that it is generally appropriate that a zone for a specific activity is enabling of that activity (at [46]).
137. As Mr Quickfall notes, the plan change does set up some expectation of future marina development. However, it has been acknowledged by all planners that a Marina could still be declined if it is not designed at a density, in a manner, or is of a size that is reasonably necessary and fails to adequately avoid, mitigate or remedy adverse effects.
138. How this occurs is informed by a particular design, which may have to be altered and adjusted until it can be supported.
139. This equally applies to a Marina application in the NE Marina Zone. While this is now potentially subject to a more enabling policy for a Marina in this area, it is also subject to a rigorous effects assessment. The enabling approach to the rules remedies a disconnect identified by the planners where, although specific provision was made for a Marina Zone, the rules themselves did not prioritise that activity in that area
140. Suggestions by Mr Solly that PC21 is not a prerequisite for further marina development do not sit consistently with the test of whether the zoning is more

appropriate than the existing zoning, or with his earlier comment above. Further, we note that the existing NW application covers a conservation zone as well, which Dr Solly's evidence fails to recognise.

141. A simple comparison can be made to a spatial plan that identifies areas as being appropriate for a type of activity (for example a residential activity could be identified as the most appropriate in a residential area). An application for specific residential housing which requires consent can be declined if it is held to cause unacceptable effects on the environment.

Off-set mitigation

142. In addition, there are opportunities to remediate historical effects through off-set mitigation under PC21. These off-sets are not recognised under the status quo planning regime, including for the NE Marina extension, which will also now be subject to this more restrictive planning regime.
143. Ms Buchanan provides a list of what Te Atiawa want, including “to see the quality of the marine environment improved and the damage done remedied” (at [14]). PMNZL has no difficulty with this in principle, but sees the way to achieve it is as a part of a joint approach to dealing with the future accommodation of competing demands at Waikawa. If nothing changes, the status quo remains.

Part 2 – s.6(e), 7 and 8

144. The Minister of Conservation recognises Te Atiawa as kaitiaki of the CMA of Queen Charlotte Sound and submits that substantial weight should be given to the evidence of Te Atiawa. (Mr Witte, at p.17). Interestingly, DoC were not present when Te Atiawa gave their evidence. Presumably, DoC was referring to ensuring sections 6, 7, and 8 matters are properly weighted with other Part 2 matters.
145. Opening submissions and the planning evidence of Mr Kyle have comprehensively addressed Part 2 matters.
146. Claims from Te Atiawa that they have the right to block further change (refer “enough is enough”) must be very cautiously approached.

147. Mr Mikaere assessed ss 6(e), 7(a) and 8 matters in his evidence and has reviewed those conclusions in his supplementary statement, after listening to all of the evidence called by Te Atiawa. Mr Mikaere's conclusions remain unchanged i.e. "that none of the cultural issues raised are of sufficient moment to warrant the application being declined and accordingly there is no reason why the application should not be granted" (at [4]).
148. We note the Court's comments in *Serenella Holdings Ltd v Rodney District Council* (A 100/04) at [106]: =:

It is important however to record that the matters of national importance in s.6(e) that are to be recognised and provided for, should not generally include everyday activities and wide-spread but long-lost random burials, with the consequence of preventing new endeavour on the land. The consequences for continuing human endeavour are obvious: it would become difficult or even impossible to obtain consents to carry out activities on land that has passed out of Maori ownership to non-Crown interests, if the principles in s.6(e) are to be considered to operate in some sort of blanket fashion based on daily general association with the land of Maori life in times past. Section 6(e) calls for proof of something more in order to attain recognition and provision as a matter of national importance.]

Other matters

149. Mr Perano suggested that a plan change was not necessary as the existing space could be more efficiently utilised. Mr Perano's assessment had the flavour of a sales pitch to PMNZL and was based solely on his engineering opinion. Some of his methods could at some future time be incorporated in the MMAs or marina design if this is considered appropriate or desirable.
150. Suggestions by DoC that the public notice procedure has not been followed due to the omission of a chapter reference (at [45] to [47]) are unfounded when the broader context of the notice is considered. This was discussed, and we understand resolved, during the hearing.
151. Concerns by Ms Buchanan about fishing quota in the Sounds, lack of enforcement rights for Te Atiawa, leases paid for iwi quota, and increased property values and rates (at p15) are not relevant considerations.
152. Sir Paul Reeves stated that, "the proposal to extend Waikawa Marina, with the attendant damage to the environment and traditional food sources of Te Atiawa, is clearly contrary to the Declaration of the Rights of Indigenous Peoples" (at [3.4]). We note that the Declaration of the Rights of Indigenous

Peoples is a non-binding document, but in any event Part 2 analysis under the Act provides for the principles contained within the document. The salient point is that Sir Paul's assertion is based on assumptions regarding adverse consequences that were not supported by any evidence of substance.

Summary

153. The question for you as Commissioners is whether the sustainable management purpose of the Act is better served by this proposed plan change to manage any marina extension(s) and MMAs, or by retaining the status quo.
154. PC21 will provide a practicable, workable solution to meet the short and long term demand for boat storage opportunities in Waikawa Bay. Waikawa Bay has existing marina and mooring facilities and supporting infrastructure that can be readily expanded in an appropriate manner. The substantial positive benefits were set out in opening submissions.
155. There is inconsistency in the evidence and outcomes sought by Te Atiawa. While it is accepted that a better understanding of Te Atiawa's concerns has been achieved, apart from the "enough is enough" slogan the evidence has not established that PC21 or further marina development will unreasonably interfere with the activities or values of Te Atiawa.
156. Sections 6(e), 7 and 8 do not provide Te Atiawa with a right of "veto". If you agree that "enough is enough" based on Te Atiawa's use of and relationship with the existing natural and physical resources within the relevant parts of Waikawa Bay, this would set an inappropriate benchmark for use (or no use) of other sites in the Sounds.
157. Protection is not synonymous with maintaining the status quo or with prohibiting an activity. There must be a balancing of competing interests, including the interests of the many other users of Waikawa Bay and Queen Charlotte Sound.
158. An application for resource consent for a marina expansion will occur separately to the plan change application. There are provisions in the Marlborough Sounds Resource Management Plan (MSRMP) to address any potential adverse effects arising from any specific proposal. Such effects will be adequately considered and addressed in the resource consent process.

159. It is respectfully submitted that the Commissioners should approve the change to the MSRMP set out in Version 9, dated 17.12.10 as it is more appropriate than the existing plan provisions.

A handwritten signature in black ink, consisting of a stylized, cursive 'A' followed by a horizontal line extending to the right.

A Beatson / A Roberts

Counsel for Port Marlborough New Zealand Limited