



Cabinet

CAB Min (14) 26/18

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Minute of Decision

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Crown Position on the Resource Consent Application for the *Rena* Wreck

Portfolio: Attorney-General

On 4 August 2014, Cabinet:

Background

- 1 **noted** that on 13 June 2014, the Bay of Plenty Regional Council notified an application for resource consent to leave the remains of the *MV Rena* on Ōtāiti Reef and authorise any potential future discharges of contaminants from the wreck (the application);
- 2 **noted** that submissions on the application close on 8 August 2014;

Wreck Removal Deed

- 3 **noted** that the Wreck Removal Deed between the Owner and the Crown and Maritime New Zealand requires the Crown and Maritime New Zealand to, in good faith, consider making a submission in support of any consent application lodged by the Owner, taking into account the environmental, cultural and economic interests of New Zealand and the likely cost and feasibility of complete wreck removal;
- 4 **noted** that the Wreck Removal Deed provides that the Owner will make a payment of \$10.4 million for public purposes to be specified by the Crown at the time, if:
 - 4.1 a consent is granted and acted on;
 - 4.2 the Crown and Maritime New Zealand do not oppose its grant; and
 - 4.3 the Owner obtains a substantial cost saving in carrying out the activities authorised by the consent when compared to the cost of the removal of the wreck;

Waitangi Tribunal claims

- 5 **noted** that:
 - 5.1 the Motiti Tribunal claimants and other tangata whenua have expressed the view that Ōtāiti reef is a taonga, and the Waitangi Tribunal has agreed with this view;

- 5.2 under the principles of the Treaty of Waitangi, the Crown has a duty of active protection with respect to the reef - such protection is not absolute, but requires the Crown to do what is reasonable in the circumstances;
- 5.3 Crown Law considers that the Crown has informed itself of iwi/Māori views compliant with the Treaty;
- 5.4 in its 17 July 2014 interim report, the Waitangi Tribunal concluded that it does not consider that the Crown has acted in a Treaty-compliant manner, and that both the reef and the Motiti Waitangi Tribunal claimants are in a damaged and vulnerable state;

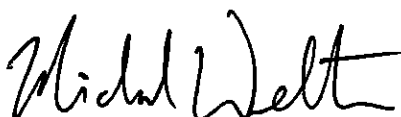
Crown submission

- 6 **noted** that on 23 June 2014, Cabinet agreed that any Crown submission on the application should be approved by Cabinet and represent a whole-of-government view, consistent with the process for nationally significant issues under the Cabinet Office Circular CO (06) 7 [CAB Min (14) 21/11];
- 7 **noted** that the key concerns with the application relate to:
- 7.1 the impacts on the natural character of the reef;
- 7.2 health and safety issues;
- 7.3 cultural values, including that tangata whenua consider that the reef is a taonga;
- 7.4 the Crown's obligations to Māori under the Treaty of Waitangi;
- 7.5 certain environmental impacts and how these are dealt with in the proposed consent conditions;
- 8 **noted** that officials have consulted with affected iwi/Māori that responded to an offer of consultation by the Crown, and that those iwi/Māori have expressed a strong preference for full wreck removal;
- 9 **noted** that the Crown is aware of the views of other affected iwi/Māori that something less than partial wreck removal is acceptable, including on a cultural basis, and that such groups intend to make submissions to the consent authority to this effect;
- 10 **noted** that section 96 of the Resource Management Act 1991 requires a submission to state whether it supports, opposes or is neutral in relation to the consent application;
- 11 **agreed** that the Crown should make an all-of-government submission that:
- 11.1 opposes in part the grant of the consent with respect to the bow sections and debris field down to 30 metres, and seeks the removal of the bow sections and debris field down to 30 metres as far as is practicable;
- 11.2 seeks improved monitoring and consent conditions for all parts that remain;
- 12 **authorised** the Attorney-General, the Minister of Conservation and the Minister for the Environment (the Ministers) to approve, sign and lodge the submission by 8 August 2014;

- 13 **authorised** the Ministers to have the Power to Act to take final decisions in relation to the content and lodgement of the Crown submission;
- 14 **noted** that the Ministers intend to publicly release the paper under CAB (14) 439 (with the exception of Appendix 6, which is legally privileged advice) and the Crown submission following the lodgement of the submission;

General

- 15 **authorised** the Ministers to have Power to Act to make decisions associated with the Crown's future involvement in this resource management process, including whether officials should appear in support of the application;
- 16 **noted** that the resource consent application is likely to be directly referred to the Environment Court, and that a hearing is not expected to begin until March 2015 at the earliest;
- 17 **noted** the recommendations and suggestions of the Waitangi Tribunal contained in its interim report, as outlined in the paper under CAB (14) 439, and having considered those recommendations and suggestions:
- 17.1 **noted** that the Crown's proposed submission seeks enhanced monitoring and conditions for any parts of the wreck that remain;
- 17.2 **agreed** that a Crown funded mechanism already exists for the Motiti Tribunal claimants and other tangata whenua to seek potential financial support in relation to participation in the consent authority process, and that the Crown does not need to make special financial or other support available to them;
- 17.3 **agreed** that the Crown submission acknowledge that tangata whenua consider the reef is a taonga;
- 17.4 **agreed** that, notwithstanding the Tribunal's recommendation for immediate release, disclosure of the experts' reports commissioned or undertaken by the Crown (but not the Crown entity, Maritime New Zealand) should be made following the Crown's submission being filed on 8 August 2014;
- 17.5 **noted** that the Minister of Local Government has decided not to make a submission as territorial authority of Motiti after careful consideration of a number of factors;
- 18 **noted** that if the costs exceed the \$1.5 million remaining in the *Rena* appropriation, additional funding may be sought.



Secretary of the Cabinet

Reference: CAB (14) 439

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