IN THE ENVIRONMENT COURT

ENV2008-?

IN THE MATTER OF	Sections 12(1)(e) of the Resource Management Act 2001
AND	
IN THE MATTER OF	Section ? of the Wildlife Act 1953
BETWEEN	**MICHAEL GUNSON**
AND	**WAIKATO REGIONAL COUNCIL**

AFFIDAVIT OF NATHAN CHARLES KENNEDY

(24 SEPTEMBER 2008)

Jane Hunter Law

Victoria Chambers
Level 1,Yictoria House
23Victoria Street East
Auckland

I, Nathan Charles Kennedy swear:

Nathan Kennedy and Ngati Whanaunga

1. I am a mandated Environment Officer for Ngati Whanaunga Iwi, this position being undertaken in a voluntary capacity. Ngati Whanaunga is one of the Marutuahu iwi of Hauraki, and our rohe (tribal estate) includes the lands and waters at Whangamata on which the Whangamata Marina is intended. This land is also one of the few mainland locations of Moko skink.

2. As Environment Officer I speak on behalf of the iwi in RMA and environmental matters, and have prepared submissions and presented evidence at numerous consents and Environment Court hearings both on behalf of the iwi and as an independent expert witness.

3. I am also a research officer for the International Global Change Institute (IGCI), a research institute of the University of Waikato. In this capacity I have spent the last five years investigating the environmental outcomes of council planning from a Māori perspective as part of the FRST funded Planning Under Cooperative Mandates (PUCM) research programme.

4. I am also currently completing a PhD at the IGCI, my research subject being the treatment of Māori values under the RMA, with Whangamata being my case study area.

5. My own whānau, descending from the Ngāti Whanaunga tupuna (ancestor) Maraea Tiki, has a particularly strong relationship with Whangamata. Maraea Tiki was described in the whaikōrero (evidence) of various Hauraki tribal members including Ruihana Kawhero, Hone Rewiti, Maihi Mokingohi, and Hori Ngakapa Whanaunga as holding the mana over some of the iwi lands at Whangamata (Native Land Court 1872). Her two daughters were amongst the ten original trustees in whom the court vested Whangamata Two – the name of the original block in which the Moko habitat is found (See Appendix 1).

6. I have prepared this affidavit in support of the present case being taken by Michael Gunson.

7. **Scope of affidavit**

8. This affidavit addresses three subjects; the significance of the Moko Skink to Ngāti Whanaunga and Hauraki Māori; the importance of Te Matatuhi – the traditional name for the location of the Moko Skink habitat at Whangamata - to Ngāti Whanaunga; and the treatment of Moko Skink by statutory authorities.

9. For this affidavit I rely on oral and written traditions of Ngāti Whanaunga and Hauraki iwi, and refer to published material of non Hauraki Māori regarding the significance of Moko to Hauraki.

10. It reports my observations regarding the treatment of Moko Skink and participation, or lack thereof, of Hauraki Māori since the rediscovery of Moko at Whangamata was brought to our attention earlier this year.

11. **Moko Skink**

12. Moko (or mokomoko) is both a generalised Māori term for lizards including skink – as reported in the Williams Dictionary of the Māori language (Williams 1997), and the specific name by which this variety was known to Hauraki.

13. Moko Skink are clearly known to be a taonga of Ngāti Whanaunga and other hapū with ancestral association with Whangamata. Our elders, including Toko Renata and Ngawhira Tanui, have described Moko as having always been known to the iwi and as being particularly significant to Hauraki. It is identified in traditions by both its colour and the fact that it lays eggs.

14. There is a recognised distinct Hauraki art tradition relating to the Mokomoko, that has been reported by respected tohunga from outside the area. For example in his book Te Toi Whakairo, respected author Moko Mead (Mead 1986) dedicates one chapter (chapter 6) to the Hauraki art tradition.

15. Mead refers to the Hauraki treatment of mokomoko there in the form of a "sketch of an elongated mania form which represents a stylised lizard". The combination of mokomoko and the mania in the Hauraki carving style conveys the role of the creatures as spirit world messengers. The manaia is believed to have bird like qualities as are reptiles, including that they both give life in the form of eggs.

16. I have consulted our elders widely over the last 4 months regarding the significance of Moko Skink, as my own whānau traditions recall them as having been lost to us at Whangamata some time after our tribal lands there were alienated. During the time iwi occupied the proposed Whangamata marina site in July this year there were several hui held on site, specifically to discuss the significance of the Mokomoko.

17. Our loss of ability to properly protect the mokomoko as kaitiaki has been widely lamented as being a product of the widespread loss of ancestral land by the iwi. Whangamata has been recognised as an example of this. This dislocation is considered to be responsible for significant loss of tribal knowledge regarding the mokomoko. This has been an important theme of Ngāti Whanaunga and wider Hauraki Waitangi Tribunal Claims.

18. **Te Matatuhi – Moko Skink habitat at Whangamata**

19. Te Matatuhi is the ancestral name of tangata whenua for the specific lands subject to the proposed marina, and on which Moko Skink have been found. Te Matatuhi is land of particular significance to Ngāti Whanaunga. The name, including the same root word as the harbour – mata, refers to the black volcanic rock obsidian. Mata has long been a principle reason for my people residing at Whangamata, as the rock was widely sought after for its fine cutting edge. My aunties have told me that Te Matatuhi refers to a gathering place for the mata, and this has long been observed.

20. The wider significance of Whangamata and Whangamata Harbour was expressed at length by a large number of Hauraki kaumātua during both the initial hearings and Environment Court hearings for the Whangamata Marina

21. While Mokomoko are still found on several of our offshore islands, their recent rediscovery at Whangamata was news but not a surprise to the iwi. The reason for this is, according to our iwi, the same as the reason that the saltmarsh itself has survived for over a century despite increasing urban encroachment, including illegal infilling by TCDC. The saltmarsh is itself, like the adjacent Whangamata Harbour, considered to have a particularly strong and resilient mauri. Mauri has been translated as life-force and life supporting capacity (Waitangi Tribunal 1995; Mead 2003).

22. According to Ngāti Whanaunga the strength of this mauri is significant to an explanation of the continued survival of the mokomoko here in an urban setting with its associated pressures including predators, habitat loss, contamination, and proximity to people, that have seen the widespread disappearance of mokomoko across their traditional mainland range.

23. **Treatment of Moko by the statutory authorities**

24. **Department of Conservation**

25. At a meeting between Whangamata tangata whenua and DoC on 12 May 2008 iwi were for the first time consulted regarding the recent discovery of moko skink at Whangamata by the Marina Society's consultants Bio Researchers Ltd. Notes taken at that meeting are attached as Appendix 2.

26. At that meeting iwi representatives strongly opposed the removal of the skinks from this site, arguing that the location is itself significant to the continued survival of the skinks, and also that it is offensive to tribal tikanga for these animals to be removed from the tribal rohe and thereby from our kaitiakitanga (ancestral guardianship).

27. Promises were made at that meeting and a subsequent one regarding appropriate protocols that would be required if it transpired that the Moko had to be moved, including the need for iwi monitors at all times and karakia before removal. However approximately one week later we learnt that DoC had sanctioned additional removal, dishonouring the previously made commitments. Written apologies were subsequently given for this but the damage had been done.

28. During July this year DoC stated in the Hauraki local newspapers that they had consulted and come to a mutually acceptable arrangement with "Hauraki Iwi" regarding the relocation of the Mokomoko. This statement was entirely false. In fact DoC had come to a verbal arrangement with one member of local hapū Ngāti Pū. Additionally the Ngāti Pū tribal authority confirmed that they had not been involved in any such discussions.

29. Iwi have not to date given any support nor approval for removal or relocation of Mokomoko from Whangamata. In fact we have collectively and continuously opposed such habitat destruction and relocation.

30. **Thames Coromandel District Council**

31. Because of their respective statutory responsibilities most of our discussions regarding the Mokomoko have taken place with DoC and EW rather than TCDC, our primary concern with that council being their destruction of skink habitat, and potentially of skink.

32. I witnessed the contractors spraying along the roadside at Whangamata including immediately adjacent to causeway within known Moko Skink habitat. In my capacity as iwi Environment Officer I subsequently inspected the moko skink habitat for damage from the spraying, which was carried out under instruction from TCDC. As a result of this spraying most vegetation at this location had begun to die off less than a week after spraying.

33. The significance of this land to Ngāti Whanaunga has been communicated to TCDC on numerous occasions, most recently in relation to the process undertaken by council relating to leasing the Whangamata land to the Marina Society (Attached as Appendix 3). However, as previously discussed, our belief that Moko Skink had been lost to this

location meant that we had not discussed their significance to the iwi during the Whangamata Marina consents and hearings process.

34. **Waikato Regional Council**

35. EW has long known of the presence of Mokomoko in the vicinity of the proposed marina. In its 2007 *Draft Whangamata Harbour Plan* EW reported that skink had been discovered in 2006, reporting that:

36. *"An investigation initiated by Environment Waikato following unauthorised mangrove clearance and burning of saltmarsh areas discovered that an apparently healthy population of Moko Skink (Oligosoma moco) is present on the causeway. Numerous individuals were sighted sun-basking along the causeway banks immediately above the cleared mangrove area. This species is confined to northern New Zealand and has mostly been recorded from offshore islands, with only a few known mainland populations in Northland, Auckland and the Bay of Plenty. This population had not previously been recorded and must be regarded as highly significant"* (Waikato Regional Council 2007).

37. But Council failed to inform tangata whenua of this discovery, nor seek that an investigation be undertaken by the Marina Society in order to confirm their presence there. This is considered by Ngāti Whanaunga to be remiss, particularly given the specific recognition of Māori values associated with such biodiversity in the EW Regional Policy Statement, where it states:

38. *"Maori regard all plant and animal life as significant, each with a particular purpose. Of special significance are the indigenous species. Many traditional foods and medicines are derived from indigenous biological resources. In recent times, the emphasis for protecting indigenous ecosystems has shifted from management for human purposes to management for their values as communities of living organisms. In particular, it is now regarded as important to prevent further modification of and to enhance wherever possible significant indigenous vegetation, significant habitats of indigenous fauna and significant indigenous ecosystems. These include lakes and streams, estuaries, wetlands, coastal margins and lowland forests - which are among the most productive and diverse ecosystems, yet traditionally the most sought after for development"* (Waikato Regional Council 2000).

39. Apparently consistent with the EW's own objectives as reported above, the significance of Moko Skink and of Te Matatuhi was communicated to Waikato Regional Council during the limited consultation undertaken by Council with iwi in its deliberations as to whether to notify the four recent resource consent applications.

40. Then Ngāti Whanaunga and other iwi groups were provided with a draft planner's report in which it was opined that the four applications could be granted on a non notified basis. This position was largely on the basis that because the Environment Court having granted overall approval for the marina all potential effects that might result from the marina development were considered to be accommodated under the permitted baseline principle.

41. We argued that there were various issues and effects, including Mokomoko that had never been considered by the Court, and therefore could not possibly be caught by the permitted baseline principle. Additionally we argued that there were new developments since the Court decision that were additional to those effects permitted, and that these represented potential cumulative effects that could not have been anticipated by the court.

42. I should note here that while we had argued for the notification of the four consent applications about which Council approached us for comment, we took no legal advice at that time regarding the significance of the recent discovery of Moko Skink. For this reason we did not argue for the need for specific consent to be sought in relation to Moko Skink, however we clearly argued for the need for the presence of moko skink to be properly considered via the consents processes we were advocating.

43. Our arguments in this regard were entirely ignored by Council's planner, who granted the consents on a non notified basis under delegated authority. When I say he ignored our (permitted baseline) arguments I mean he simply did not refer to them at all.

44. The importance of kaitiakitanga to tangata whenua is recognised and provided for in both the RMA 1991 and the Hauraki Gulf Marine Park Act 2000, and is expanded upon in the Operative Waikato Regional Policy Statement (RPS):

45. *"Kaitiakitanga is fundamental to the relationship of tangata whenua and the environment, and has been developed by tangata whenua to fulfil their responsibilities towards the environment. Tangata whenua will each have their own interpretation of the concept of kaitiaki, however, there are two important overriding principles for kaitiaki, firstly there is the ultimate aim of protecting mauri and secondly, there is a duty to pass on the resources to future generations in a state which is as good as, or better than the current state"* (Waikato Regional Council 2000).

46. Yet we have seen a clear disregard for tangata whenua values in Council's decision making relating to the Whangamata Marina. It is our position that the current removal and relocation of Mokomoko and associated destruction of this ancient saltmarsh and its environs will have a significant impact on our ability to fulfil our obligations as kaitiaki. Because Council refused to notify these recent major consents we were effectively denied the opportunity to have our values and those effects that we believe will result from the consented activities tested.

47. **In Conclusion**

48. The Moko skink, often referred to as Mokomoko by Hauraki Maori, has long been known to Ngāti Whanaunga and is considered to be a taonga (treasured species) of our people. It is also considered to be a traditional kaitiaki for those significant places in which it resides. We have maintained our relationship with this taonga through its maintained survival on several of our ancestral offshore Islands.

49. However, our relationship with the Mokomoko whānau on our ancestral lands at Te Matatuhi had become broken some decades ago, this being - we assert - a product of the total loss of our traditional lands at Whangamata. This despite these lands being declared inalienable by the early Native Land Court. In recent years we have continuously sought to reconnect with our ancestral lands and to fulfil those kaitiaki obligations handed down from our ancestors. During this time we have repeatedly been blocked from undertaking our kaitiaki duties by the obstructive and exclusive actions of both TCDC and EW. The Whangamata Marina processes are certainly an example of this.

50. Despite specific recognition of our values, and numerous promises to tangata whenua within the statutory documents of Waikato Regional Council, the discovery of Mokomoko at Whangamata was not brought to the attention of Ngāti Whanaunga by the regional council. Furthermore, despite our arguments that effects on Mokomoko had not been considered by the Environment Court and therefore must be tested via notified consents earlier this year, EW proceeded to pass a range of non notified consents. No

recognition was given in those decisions to the fact that Mokomoko had not been previously considered in the Environment Court decision.

51. The Waikato Regional Conservator of the Department of Conservation gave his word to iwi that the Department would genuinely consider the possibility that, should this be warranted, the Moko skink population at Whangamata might remain within their natural habitat. However within 3 days of making that assurance and without further notification to iwi the Department assisted in a large scale removal.

52. Hauraki iwi including Ngāti Whanaunga have maintained outright opposition to the removal of Mokomoko from Whangamata or the destruction of their habitat there, contrary to claims made by DoC in the news media.

53. Te Matatuhi is a site of particular significance to Ngāti Whanaunga, and we maintain that those properties that have allowed this ancient saltmarsh to survive despite substantial urban pressure contribute to Mokomoko survival there when they have disappeared from almost all other mainland locations.

54. These cultural values and the effects on Mokomoko and on Ngāti Whanaunga of the proposed relocation and or habitat destruction must be considered and tested within the appropriate consents hearing process.

SWORN on this 24th day of September 2008 before me:

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A solicitor of the High Court of New Zealand / Justice of the Peace

_____

Nathan C Kennedy

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AFFIDAVIT OF NATHAN CHARLES KENNEDY - Appendices

Appendix 1 - Original Ngāti Whanaunga Trustees of Whangamata No. 2

Ordered that a certificate of the title of
Hone Mahia
Ruihana Kawhero
Mere Kaimanu
Rawiri Taiporotu
Hera Kaimanu
Hori Ngakapa Whanaunga
Hemi Wa
Anaru Pahapaha
Rina Karepe
And Tukukimo

To be issued when plan has been approved by the Inspector of Surveys. That the estate be inalienable by sale or mortgage and vest from January 10th 1873.

Page 187 - Whangamata-Hikutaia Case - 10/1/1873

Appendix 2

Notes from meeting with DoC as consultation by Department over application to lease Whangamata reclaimed Foreshore and seabed.

12 May 2008. Thames DoC office

Present

DoC – Suzanne ? – solicitor for DoC, Greg Martin, George Teruki, Jo Harawira, John Gaugroger Nathan Kennedy, Sue King, Graeme King, Paul Shanks

DoC will forward minutes, and George recorded the whole meeting so we might look to get a copy of recording. These notes record discussion points and in particular DoC's statements.

TCDC misleading the public
I referred to the TCDC "consultation" and the fact that they had as far as we were concerned intentionally mislead the public by representing the land as a marina in all its advertisements, rather than as open space as it is now. I said they had also failed to declare at any time that TCDC is dependent on the saltmarsh being destroyed and the marina going ahead in order for their own plans for high density housing on the adjacent land. Nearly half of the land required for the housing requires the saltmarsh to be destroyed.

Does DoC have an open mind?
Also that TCDC had previously resolved that not allowing the Marina society land was no longer an option – prior to undertaking consultation and making their decision. In other words they had approached the special consultative procedure with a closed mind. We asked DoC if they would declare that they were approaching their decision with a truly open mind – i.e that they would genuinely consider not allowing the Marina society to use either lease or buy the land. (remembering that under the RMA FSSB Act amendments they are not allowed to sell the land without an Act of Parliament).

Greg stated that they had an open mind about this.

What about the part of the saltmarsh not required by the marina?
I pointed out that part of the saltmarsh was on the area TCDC wanted for housing, and asked if this was in the marina society application? On inspection they said the application was for the whole saltmarsh area. I asked what would happen about the TCDC part – would the marina society have to sub-lease that part to TCDC?
I suggested that if TCDC and the Marina society had any integrity this would have been identified and they would have jointly applied for the lease over their respective areas – DoC had no answer but said they will investigate. We should note that section 35 of the RMA amendment act prevents DoC selling this reclaimed land to TCDC for housing without an act of parliament.

Prue Kapua Letter
I asked if DoC had receive a letter from Prue suggesting that the Crown was prevented from leasing or selling this land by the Foreshore and seabed act. Greg said they had the letter but would not confirm their intended response. He said that DoC did not intend to respond to the letter until after this consultation process.

However, in response to further question both Suzanne and Greg stated that as far as DoC was concerned the Department does **not** have to consider the FS and SB Act **at all**.

Saltmarsh or a piece of dirt?
I then asked whether DoC considered itself to be making a decision about whether to lease the saltmarsh, or the reclaimed land – i.e. was DoC considering the intrinsic and cultural values associated with the saltmarsh when making this decision.

Susanne and Greg both confirmed that they will make the decision as if this is reclaimed land already – no values associated with the saltmarsh will be considered.

However, Susanne did say later on when her, George and I were speaking over a kai that they had hoped that tangata whenua would tell them about what values we think will be impacted on and how DoC might accommodate these in their decision.

She asked again if we were able to describe any values associated with the location that DoC could take into account and I stated it was impossible for us to express values given that DoC has stated its position that it is considering Te Matatuhi as if is already reclaimed land. I told her that it was near impossible for us (Ngāti Whanaunga) to express our values and tikanga in relation to a piece of level land that has been covered with concrete, having totally destroying an ancient taonga.

We stated that given that DoC was considering the area in question to be already reclaimed land that this showed that DoC already had a leaning toward leasing because the saltmarsh was in their deliberations already destroy – it would therefore be (in their mind not ours) unreasonable (and somewhat pointless) denying the Marina society the use of the land. We reminded DoC that TCDC had publically stated that it considered itself honour bound to allow the Marina society the use of the land because of both the heads of agreement (that was never legally binding) and the fact that they had supported the consents through the hearing / court process.
I said that DoC had also supported the marina by withdrawing opposition and agreeing to various conditions – therefore did they also consider themselves to have an ethical obligation to allow the Marina society the use of the saltmarsh land. Greg repeated that they had no such position.

Does this decision matter?
I asked what would happen if DoC said no.
Greg said that the Marina society had a consent to undertake the reclamation, and apparently intended to undertake this prior to the DoC decision regarding the lease. He suggested that they could also go ahead with the development and occupy – although their was a risk to them in doing so as DoC might in the future insist they vacate the site – he certainly didn't state (as far as I could understand) that DoC would insist they vacate, even if they declined the lease application.

Ngā Puna
Paul and I both spoke about the 2 springs that emerge in the saltmarsh. We said that these had never been considered by the court, and that afterwards the Marina society had written to EW apparently believing (as we do) that consents were required to destroy these – but that somehow the issue had just gone away and EW never required the society to get consents (unless these were granted non notified and we haven't yet discovered this).
We asked what was DoC's position about the springs?

We said that these contribute to the unique nature and ecology of the saltmarsh, and can therefore not be recreated in the mitigation area. There was a long discussion about these. Paul said that they had received engineering advice that the aquifers would try to make their way to the surface elsewhere and would either cause "heaving" and undermine the marina car park, or would emerge on adjacent neighbours land and impact on those people.

John G accepted that either of those 2 things could happen – they also collectively seemed to accept that this meant there was a real difference between the existing and proposed mitigation area.

DoC does not yet have position but will investigate and get back to us.

Proposed mitigation replacement method
There was also discussion about the plans of the marina society to use a digger to dump the vegetation from the saltmarsh onto the mitigation site – Paul said this could not be done.

John said that as far as he was concerned the only way the vegetation could be relocated was by hand with wheelbarrows so that the vegetation was carefully removed and replaced by hand.
There was also discussion about the $40.000 the court had required to do the mitigation and that this was a joke. In conversation the DoC reps agreed that this amount was unlikely to achieve what was required. Suzanne made the comment that the Marina society were able to spend more – they just weren't allowed to spend less – suggesting that DoC was considering that this might take place.

Moko skinks
The Marina society had contracted BioResearchers to undertake and investigation of the area during which the endangered moko skinks were found. Chris ? gave us a presentation in which he said they were collecting all the skinks in the next 2-3 weeks, would hold them in captivity over winter and were considering where to put them after that. 5 or 6 options were presented, including the mitigation area, 3 motu, and the Driving Creek sanctuary. There are only maximum 5 and maybe as few as 2 or 3 mainland populations remaining.

BioResearchers and DoC are both at a loss as to why the colony has survived where it is with urban pressures – but it has. Chris speculated that the population might be declining because of its location near a town – but on questioning admitted that he had no justification for this comment and the colony might just as well be constant or even increasing.

DoC had got involved once the skinks were found but BioResearchers were still undertaking the work.

Had DoC considered leaving the skinks and delaying – preventing the marina in order to preserve the colony?
Greg said that because earthworks were due to start in July and also because with winter approaching the skinks will slow down and be harder to find and capture that this had to be done urgently. I asked twice had DoC considered delaying or preventing the marina earthworks until the best solution for the skinks could be found. Greg said that they would genuinely consider this – however we pointed out that their previous comments and timeframe suggested that this was a false statement. Greg said that this decision would be made very soon – but then continued to speak about the capture.

Kaitiakitanga
I asked DoC to make a statement as to whether they recognised us as being kaitiaki here – and if they did that we should therefore be consulted properly about what happens to these skinks. However it was clear that these decisions had largely been made behind closed doors and therefore this was a token effort.

Joe said that the Department recognised us as kaitiaki – and that this is what the current consultation is for – but that "DoC is also kaitiaki of something called conservation".

I stated that as far as we are concerned BioResearchers are purely an employee of the marina society – that they marina society have always treated us with contempt – and that DoC should take all future actions and responsibility for the skinks in partnership with us.

They responded that they were working with the marina society and bioresearchers and were recovering their costs from the developer. I restated that this was unacceptable – that DoC and ourselves must take complete control – that we would not tolerate the marina society having any control over these animals.

We got no assurance about this, and in the end an invitation was extended by BioResearchers for tangata whenua observers to participate in the capturing of the moko skinks.

Costs

As stated above DoC intend to recuperate initial and ongoing costs relating to the skinks from the marina society. We reminded them that there are no conditions referring to the skinks – but DoC seems confident that the Marina society will pay for as long as is required.

A 2nd hui is intended soon to meet with the others who couldn't attend because of the tangi – DoC says it will answer the questions put forward here at that hui.

Minutes are being prepared by DoC and will be sent.

Nathan Kennedy

Appendix 3

To - Steve Ruru - Chief Executive
Thames-Coromandel District Council
Private Bag, Thames

From – Nathan Kennedy – Environment officer
Ngāti Whanaunga Environment Unit
P.O. Box 160, Coromandel

27 March 2008

Ngāti Whanaunga submission opposing alienation of Council owned land at Whangamata

Tēnā koe Steve, please convey the opposition of Ngāti Whanaunga to the proposed alienation by Thames Coromandel District Council of land it holds at Whangamata to the Whangamata Marina Society. The lands in question are a portion of those at 326 Hetherington Road, Whangamata, being Pt Sec 13, BLK XVI, Tairua Survey District, 15,130m2 - CT 918/263.

This is land is Ngāti Whanaunga ancestral land. In particular it is ancestral land of the Ngāti Whanaunga hapū Ngāti Karaua. I am a descendent of some of the traditional owners of this land. We acknowledge the ancestral associations of others in Hauraki to this place and in particular to the shared use of, and kaitiakitanga over, Whangamata harbour and its kaimoana.

This land includes taonga of Ngāti Whanaunga – which are culturally significant and treasured today. These include the ancient wetland at the place called Te Matatuhi. This is not simply a coastal wetland in that it has several fresh water springs or aquifers that emerge within it. These and its coastal location have resulted in a unique natural environment which has lasted according to our traditions since ancient times.
There are other specific Māori sites on the land in question including large areas of midden- both exposed and covered. These are evidence of the long time seasonal occupation of these lands by our people. It is also a product of course of this particular land being immediately adjacent to our pipi beds within the Whangamata Harbour. The shore adjacent to this land is tauranga waka – a place where our waka were landed and hauled.

We recognise that our ancestral land has come legally into the hands of Thames Coromandel District Council. We oppose this land being alienated from public ownership for the purpose of a marina or any other business venture. This is public land with important heritage, cultural, open space and conservation values. It is one of the few open space areas left in the Whangamata Residential area and should be preserved for this reason.

We note that the "heads of agreement" referred to by TCDC is now considered to have somehow predetermined the way in which TCDC will proceed in relation to its alienation or otherwise of this public land. The Mayor spoke in her statement on the subject proceeding "in the spirit of the Heads of Agreement signed with the marina society in 1994". Ngāti Whanaunga was not consulted in any manner shape or form in relation to that agreement between Council and a group of businessmen. Councils agreement as to the means by which our ancestral land would be alienated to these people was agreed with no consideration whatsoever of Māori values. Now Council has decided based on its perceived "strong moral obligation" that this historic and long lapsed agreement should predetermine the course of the current investigation into alienating or not this valuable public land.

We suggest to Council that the views and values of Ngāti Whanaunga and other Hauraki Māori with associations with Whangamata should not be presumed – as is apparent here – to be a tick box exercise on Council's obvious path to facilitating the exclusive use of our ancestral lands and waters as a money making exercise for a small group of people.

You appear to have approached this exercise as another hurdle in Councils own marina plans. Tangata whenua values and views of this place are not subordinate to alternative views including the desire of the group of individuals that make up the Whangamata Marina society.
Thames Coromandel District Council has been told on many occasions of the significance of Whangamata to Ngāti Whanaunga. I point you to the many RMA submissions and environment courts evidence we have given over the years where TCDC has been a party. A recent example is the Māori Values Assessment prepared for TCDC by Ngāti Whanaunga in relation to the Whangamata Waste Water Treatment Plant. I put to you that any person making this decision needs to be well informed of the significance of this land and the views of Ngāti Whanaunga and in particular to its hapū Ngāti Karaua.

We put Council that you are constrained here by the Crowns duty of the active protection of tangata whenua values and rights associated with this place, this through Council's administration of the Local Government Act 2002. This obligation is not negated by any decisions that may have been made under the Resource Management Act 1991 for activities that might take place in the future.

In this regard we are concerned with the extent that this heads of agreement and TCDCs strong advocacy role throughout the Whangamata Marina process means that Council – in its role as guardian of this land on behalf of the public – has already dismissed the option of not making the land available to the marina society prior to coming to talk to us. The Hauraki Herald reported on February 29th that "A third option of not giving the marina any access to the land was taken off the table at Wednesday's full Council meeting". There has been no retraction printed. This decision renders the consultation process of little integrity. Council has come to the table – such table as is being offered - with a closed mind.

This is inconsistent with the principles of meaningful consultation.

We put to Council respectfully that this submissions / hearings process is deficient as a means of meaningfully consulting with Ngāti Whanaunga (and other Marutuahu and Hauraki Māori) in relation to our values and interests relating to our ancestral lands and waters at Whangamata. We understand that this consultation is being carried out under the special consultative procedure provisions of the LGA, and note accordingly that TCDC was not constrained by the formality of a hearing as Council has chosen as the forum for consultation. We would encourage you next time you wish to discuss matters such as these with us to do so on the marae.

Ngāti Whanaunga questions the decision by TCDC to graphically represent the land in question as a marina in all the public notifications. This is indicative of the supportive and indeed proactive stance TCDC has taken in relation to the proposed marina at Whangamata.
Council is not seeking to alienate marina facilities as shown in your advertisements, but rather undeveloped land including a significant and functioning wetland (despite the actions of TCDC in the past dumping fill into the wetland in its effort to kill it off). It is this land you should be displaying to the public as you consult with them – not a plan for a marina.

We request the opportunity to speak to the hearing by the full council on April 14, 2008.

Nathan Kennedy

cc
Tipa Compain – Ngāti Whanaunga iwi authority trustee
Paul Majurey – legal counsel for Ngāti Whanaunga
The Minister of Conservation

Appendix 4 – Ngāti Whanaunga response to draft planners report re 4 consents

Ngāti Whanaunga Environment Unit
P.O. Box 160
Coromandel
nkennedy@ngaatiwhanaunga.maori.nz
Phone 0272909572
1 June 2008

Ref – Another round of Whangamata Marina consent applications

Tēnā koe Brent,
I write as per our discussion at the meeting on May 27th, where tangata whenua had indicated we would respond to your draft report relating to notification of the latest series of Whangamata Marina consent applications. This letter lays out the response of Ngāti Whanaunga to that draft.

Establishing the permitted baseline
At the meeting you opined that Judge Bollard's decision effectively establishes the permitted baseline for the current applications. You have since reported that Judge Bollard's decision provides for any and all activities and associated effects relating to a proposed marina at Whangamata, and the subject of the latest consent applications.

As discussed at our meeting we believe that the effects allowed for in terms of a permitted baseline stemming from Judge Bollard's decision are not clear, rather we are relying on your interpretation of that decision in terms of those activities and effects that the decision may or may not have provided for. We put to you that you have not properly assessed the permitted baseline, and that there are significant effects potentially stemming from the current applications that have not been considered by either the Environment Court or yourself.

Manawa - Mangroves
The removal of manawa and other indigenous vegetation was not provided for in Judge Bollard's decision – this is demonstrated by the fact that the Marina Society is now seeking consent to remove mangroves. It is certainly not explicit in para. 48 of decision No. A173/2005, rather you conclude that such intention is implicit.

The court did not receive tangata whenua evidence regarding the value of mangroves from our perspective, and there is a clear bias expressed in the decision. The comments you cite reveal an attitude to mangroves similar to that espoused by Friar etc – that the presence of mangroves must be considered as a negative factor. The statement is also factually incorrect in that mangroves are an important habitat for some shellfish, for example tio – oysters. Setting aside whether we agree with the statement or with your interpretation (and we don't), any implicit approval for mangrove removal here does not of itself establish the permitted baseline.

Judge Bollard was not provided information regarding the effects of removing mangroves from the proposed marina basin location. More importantly he clearly did not consider such mangrove removal in terms of cumulative effects in combination with the widespread removal of mangrove seedlings subsequently allowed by Judge Sheppard in December 2006 in the appeal by Ngāti Whanaunga. Unless he has clairvoyant abilities neither did he consider the cumulative effects of the proposed Marina mangrove removal in combination with the two large scale illegal removals of mangroves nearby to the proposed marina basin by Brian Friar and his criminal associates in September 2005 – soon after the marina Environment Court decision was released, and again in January 2007.

Nor did Judge Sheppard consider any mangrove removal relating to the proposed Marina, no party put such information before him – not Ngāti Whanaunga, not Whangamata Harbour Care or their consultant Brian Coffey, and not you Brent in your evidence for EW at that hearing. Together these

represent tens of hectares of mangrove removal. On the basis that Judge Bollard could not have taken these subsequent developments into account when he made his decision, and that these factors clearly have a bearing in terms of additional effects to those considered in the Marina decision - and not considered since in any hearing / court (thanks to the refusal of EW to prosecute those responsible for the illegal removal) – you can not state with any credibility that Judge Bollards decision establishes the baseline against which mangrove removal, as per the current application, is to be determined.

Moko Skink in the vicinity of the proposed marina basin
The Marina Society claims to have had no knowledge of the very important population of moko skink that lives at the location the marina is proposed. These were purportedly only found subsequent to the courts decision. It is believed to be one of only 5 (maybe as few as 2) mainland populations of this threatened lizard species. This ancient species, surviving as it has on our whenua at Whangamata, is a taonga of Ngāti Whanaunga and Hauraki Māori.

Chris Wedding of BioResearcers Ltd – the same company that gave repeated evidence clearly intended to diminish the ecological significance of the environment at Te Matatuhi, stated at a meeting between tangata whenua and DoC that moko skinks have been observed to inhabit the particular area between the saltmarsh and the area proposed for the marina basin. When asked why this population has survived in this mainland location within a residential setting, when they have been unable to survive in more "natural" environments elsewhere Chris admitted that his company has no idea. DoC too can offer no explanation for this persistence despite such an unlikely environment.

We put to EW that the survival of this threatened species population at Te Matatuhi is a product the unique environment there, including the combination of habitats and native vegetation found both in and around the coastal marine area including the saltmarsh and intended marina basin. Given that these define the boundaries of the skinks observed range these areas likely provide a protective environment, habitat, and or food location. No party is offering an alternative explanation.

Some of these skinks have been removed – an action that was undertaken without the knowledge of tangata whenua despite specific assurances being given to tangata whenua by the Regional Conservator of DoC that we would be informed prior to any removal. However, it is believed by all parties that skinks remain at the location. These animals have apparently been there for the longest time – and at no time was their presence or their removal considered by either the marina hearings authorities or the environment court. DoC failed to consider the option of leaving the skinks in their natural environment – despite promises to tangata whenua that they would genuinely consider this option. We are seeking that those that have been removed be put back into their natural environment.

The removal of vegetation within the coastal marine area the subject of these latest consent applications may have significant effects on the Moko Skink population there. No party can say – or has said – that this is not the case. The species being listed as threatened requires that EW take a precautionary approach to this issue. Unless Council has some information that demonstrates that our concerns as expressed above are without foundation we suggest that these effects must be tested. That these potential effects have not been considered by the Court positions them outside any permitted baseline.

The effects of the proposed marina on Mata – Te Matatuhi
Mata is our name for obsidian – obsidian has long been a taonga of Ngāti Whanaunga and of Hauraki Māori. It was traded widely as a material prized for its sharp cutting edge – and as such its source was strenuously defended by tangata whenua. The name Whangamata itself translates as harbour of obsidian, and Whangamata is one of the few mainland sources of Mata - the other being nearby on the coast, although the most significant source of obsidian is found offshore on adjacent Tuhua.

The traditional name for the location on which the marina is proposed is Te Matatuhi. Te Matatuhi is a gathering place of mata, this is reflected in the name. This name is recorded on the early survey

maps of Whangamata. Still today Te Matatuhi is a place where mata gathers in considerably greater amounts than elsewhere in the harbour, consistent with the fact that Te Matatuhi is the only traditional placename within the harbour indicating the presence of mata.

This knowledge was conveyed to me by an aunty of mine, Ngāti Whanaunga kaumātua Ngawhira Tanui, subsequent to the marina hearings during interviews for the preparation of a Māori Values Assessment commissioned by Thames Coromandel District Council. This kuia never gave evidence at the Whangamata Hearings. However our whānau are descendants of Ngāti Whanaunga tupuna Maraea Tiki. Maraea Tiki was acknowledged by several of the most senior ranked speakers before the early Native Land Court hearings into Whangamata as being the person who held the mana - chiefly authority – over much of our land at Whangamata.
That Ngawhira was not included among the speakers at the hearings is in no way intended as a criticism of the Hauraki Māori Trust Board, Ngāti Hako, or other parties that took part in the marina hearings – without their efforts the marina would have destroyed our kaimoana and other taonga a decade ago, as Ngāti Whanaunga did not have sufficient capacity to take such an appeal at the time. However, some of the descendents most closely related to Whangamata were never involved – and as a consequence important relevant knowledge was never put before the court. If EW has any doubt as to the origin or accuracy of this information this should be communicated to me immediately and I will obtain a signed affidavit.

Ngāti Whanaunga takes seriously our kaitiaki obligations to Whangamata and to mata. The excavation of a marina basin in the location proposed will result in the mata that currently settles along that part of the harbour edge instead ending up in the marina basin. That the Whangamata Marina Society – demonstrating as they have outright contempt for tangata whenua – should have any degree of control of this taonga is repugnant. This is a serious matter for Ngāti Whanaunga and other Hauraki Māori – it has immediate relevance in terms of RMA section 6(e) as mata (like manawa and moko skink) is and has always been recognised as a taonga of ours. The effects on this taonga and on tangata whenua as kaitiaki have never been considered or tested in previous hearings and must be considered in relation to any application to exclusively occupy Te Matatuhi.

Active protection
We respectfully remind Council of its Treaty principle obligation to actively protect the interests of Ngāti Whanaunga and other tangata whenua groups to the taonga described here. We are the kaitiaki of Te Matatuhi and Whangamata – including the location proposed to be destroyed for the marina, the manawa and indigenous vegetation there, and the other taonga described above. As detailed above, these issues and the effects associated with them have not been considered by the Environment Court and can not be credibly argued to be dealt with by the permitted baseline test.
This in addition to the position put to you at the meeting that consent to occupy the coastal marine area was not a question before the court. You have apparently dismissed this in your notification report – but it is confirmed in legal advice we have received.

Despite the continual erosion of the public right to participate in RMA consents processes there remains a presumption of notification unless effects can be proven to be minor, all affected parties support obtained, or activities and effects already allowed as of right by permitted baselines. We urge you to demonstrate a variation from ten years of conspicuously active support by Waikato Regional Council for this proposed marina, which has been to the substantial detriment of tangata whenua and environmental values. You should notify these consents.

Ngā mihi

Nathan Kennedy – Environment Officer