

**FOR OFFICE USE ONLY**

Submitter ID:

File No:

Clause 8 of Schedule 1, Resource Management Act 1991.

Please complete this form to make a further submission on the Proposed Natural Resources Plan for the Wellington Region (**PNRP**). All sections of this form need to be completed for the submission to be accepted.

A further submission may only be made by a person representing a relevant aspect of the public interest, or a person that has an interest in the PNRP greater than the interest that the general public has, or the Wellington Regional Council itself. A further submission must be limited to a matter in support of, or in opposition to, a submission made on the PNRP.

For information on making a further submission see the Ministry for the Environment website: [www.mfe.govt.nz/publications/rma/everyday-guide-rma-making-submission-about-proposed-plan-or-plan-change](http://www.mfe.govt.nz/publications/rma/everyday-guide-rma-making-submission-about-proposed-plan-or-plan-change)

**Return your signed further submission to the Wellington Regional Council by post or email by 5pm Tuesday 29 March 2016 to:**

regionalplan@gw.govt.nz  
info@gw.govt.nz

Greater Wellington Regional Council	Regionalplan@ gw.govt.nz					
Further Submission on Proposed Natural Resources Plan						
for the Wellington Region						
Freepost 3156						
PO Box 11646						
Manners Street						

## FORM 6: FURTHER SUBMISSION FORM

This is a further submission in support of, or opposition to, a submission on the PNRP.

### A. DETAILS OF FURTHER SUBMITTER

Graeme Ebbett  
 Chairman  
 Titahi Bay Residents Assn Inc  
 37 Terrace Rd, Titahi Bay, Porirua 5022.  
 Ph 236 8574, Mob 021 499 736  
[tbra@clear.net.nz](mailto:tbra@clear.net.nz)

#### Only certain people may make further submissions

Please tick the option that applies to you:

I am a person representing a relevant aspect of the public interest; or

I am a person who has an interest in the PNRP that is greater than the interest the general public has.

Specify below the grounds for saying that you are within the category you have ticked.

TBRA is a community organisation representing the interests of a large number of submitters and with an established public mandate.  
 TBRA is party to the Environment Court Orders which have established the existing rules subject to this review.

Signature:  Date: 29 March 2016

### B. APPEARANCE AT HEARING

I do wish to be heard in support of my further submission; and,

I would be prepared to consider presenting this further submission in a joint case with others making a similar further submission at any hearing.

**Please enter further submission points in the table on the following pages**

### C. FURTHER SUBMISSION POINTS

Please complete the following table with details of which original submission points you support and/or oppose, and why, adding further rows as necessary.

Details of the submission you are commenting on	Original submission number	Position	Part(s) of the submission you support or oppose	Reasons	Relief sought
<p>Porirua City Council PO Box 50-218 16 Cobham Court Porirua, 5240</p> <p>Harriet Shelton</p>	S163	<p>Whether you support or oppose the submission.</p> <p><i>Oppose in part Support in part</i></p>	<p>Indicate which parts of the original submission (which submission points) you support or oppose, together with any relevant PNRP provisions.</p> <p><i>Support all of submission point R190</i></p>	<p><i>The use of motor vehicles to launch and retrieve is not specifically stated.</i></p> <p><i>Condition (a) is confusing. If there is no boat ramp at the locality, does that mean boat launching (without a ramp) is still permitted?</i></p> <p><i>With regards to (b), this will be very difficult to interpret, monitor and enforce. What exactly is meant by "exposed" fossil forest and what criteria will be used to determine the difference between this and driftwood?</i></p> <p><i>Is it exposed if under water? What if it becomes "exposed" during the process of launching or retrieving?</i></p>	<p>The part or whole of each submission point you wish to be allowed or disallowed.</p> <p><i>Provide clarification to address the concerns raised in the comments.</i></p> <p><i>"known to become exposed" was wording originally proposed by us in previous E Court action. That allowed a specific detailed map to be used.</i></p>
			<p><i>Oppose in part R199</i></p>	<p><i>Retention of the existing prohibited area boundary as defined in the Operative Coastal Plan is not practical and has proven impossible to enforce.</i></p> <p><i>The stream on the beach at the existing Bay Drive entrance forms a natural barrier to vehicles. For the purpose of a practical method of monitoring and enforcing an existing centre-beach vehicle prohibited area, the northern boundary needs to be moved to there.</i></p>	<p><i>Shift the northern boundary of a centre-beach vehicle prohibited area to the stream at the existing Bay Drive entrance.</i></p>
				<p><i>The PCC submission is uninformed and irresponsible.</i></p> <p><i>PCC is the lessor of boat sheds on the beach which require tractors on the beach for launching boats yet has created an invisible demarcation line at MHWS with no rules above the line and refused to accept responsibility for the adverse effects below the line.</i></p> <p><i>This is despite its civt boundarv</i></p>	

			<p><i>Oppose comments on Titahi Bay beach accompanying the submission.</i></p> <p><i>We oppose the status quo vehicle prohibited area sought and the basis of the proposed "collaborative management regime".</i></p> <p><i>Also the questions raised over the status of the fossil forest.</i></p>	<p><i>This is despite the city boundary being shifted to MLWS in 1995 specifically for a bylaw to manage vehicles on the whole beach.</i></p> <p><i>Its actions have made the GWRC rules below the line unenforceable.</i></p> <p><i>If PCC is now giving weight to perceived community polarised views and questioning the status of the fossilised forest, then it is in breach of its 1999 agreements with GWRC and TBRA where Environment Court Orders (by consent) acknowledged the significance of the FF and that the agreed rules were "the first step agreed ... in a longer term approach to minimising driving and parking vehicles on the beach (apart from exceptions to the rules)". And that "The Respondent will review the situation .... within 5 years of the plan becoming operative, to see if any further steps are warranted". This did not occur and is only now happening after 16 years.</i></p> <p><i>So for PCC, there is no going back, nor simply maintaining the status quo. Since the three Court Orders of 1999/2000, further steps are necessary because of, among other things, the obvious failure of a workable management plan, integrated cross-boundary with GWRC, to monitor and enforce the rules.</i></p> <p><i>Court Order copies attached FYI.</i></p>	<p><i>Give no weight to the PCC submission</i></p>
			<p><i>Support R105</i></p>	<p><i>A rule must be clear and certain, and be capable of consistent interpretation and implementation by people without reference to council officers.</i></p>	<p><i>Review the rule against the tests for permitted activities and amend to provide more certainty.</i></p>



**IN THE MATTER** of the Resource Management Act 1991

**AND**

**IN THE MATTER** of a reference under Clause 14 of the  
First Schedule of the Act

**BETWEEN**

**THE TITAHI BAY RESIDENTS  
ASSOCIATION INCORPORATED**

(RMA 921/96)

Applicant

**AND**

**WELLINGTON REGIONAL  
COUNCIL**

Respondent

**BEFORE THE ENVIRONMENT COURT**

Her Honour Judge Kenderdine sitting alone pursuant to section 279 of the Act

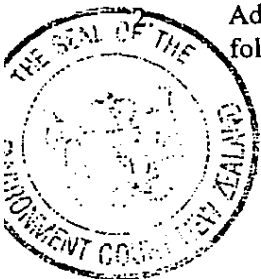
**IN CHAMBERS** at WELLINGTON

**CONSENT ORDER**

**HAVING CONSIDERED** the notice of reference RMA 921/96 **AND UPON READING** the memorandum of counsel filed herein, **AND BEING SATISFIED** that the relief agreed on is reasonably within the scope of the relief sought in the original submission, **AND BEING SATISFIED** there are no other parties who oppose the proposed order, **THIS COURT HEREBY ORDERS BY CONSENT** that the appeal be allowed to the extent that the Wellington Regional Council modify its Proposed Regional Coastal Plan for the Wellington Region by:

1. Adding a new bullet point to the bullet points under rule 12.4.3.1 as follows:
  - Between 9.30pm on any day and 5.00am on the next day, the foreshore at Titahi Bay that is not included in rule 12.4.2.1.

Adding a new condition, as condition (7), to the conditions to rule 12.4.3.1, as follows:



- (7) for Titahi Bay, any motor vehicle, trailer or tractor owned, leased or operated by a registered boatshed owner in the Porirua City Council's Titahi Bay Boatshed Owners Register.

The reference is otherwise dismissed.

There is no order as to costs.

DATED at WELLINGTON this 18<sup>th</sup> day of October 1999

*S.E. Kenderdine*  
S E Kenderdine  
Environment Judge



IN THE ENVIRONMENT COURT

*under* the Resource Management Act 1991

*in the matter of* a reference under clause 14 of the First Schedule of that Act

*between* The Titahi Bay Residents Association Incorporated  
(RMA 921/96)  
*Applicant*

*and* Wellington Regional Council  
*Respondent*

*and* Porirua City Council  
*Section 271A Party*

*and* Leighton Kim Arnold  
*Section 271A Party*

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MEMORANDUM SEEKING CONSENT ORDER

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Dated 16 September 1999

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**Chapman Tripp Sheffield Young**

*Barristers & Solicitors, Wellington*

AMP Centre, Grey Street, Wellington 1. PO Box 993, Wellington New Zealand.

Telephone 64-4-499 5999. Facsimile 64-4-472 7111. DX SP20204

*Solicitor*

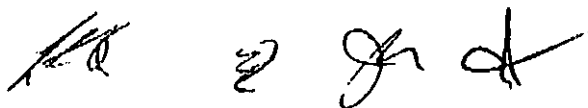
Joan Allin/Rose Feary




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**MEMORANDUM SEEKING CONSENT ORDER****May it please the Court:**

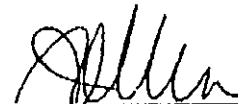
- 1 The parties to this reference seek directions by consent in terms of the Draft Consent Order attached to this memorandum.
- 2 Reference 921/96 relates to a decision of the Respondent made in November 1996 in relation to the Proposed Regional Coastal Plan for the Wellington Region ("the Proposed Regional Coastal Plan"). In particular, this reference relates to rule 12.4.3.1 and to the status of the activity of driving on Titahi Bay beach.
- 3 While the reference is made in respect of a regional coastal plan, the Minister of Conservation did not take any part in these proceedings before the Environment Court.
- 4 Leighton Kim Arnold gave notice of his wish to be heard on this reference by a letter dated 31 January 1997.
- 5 The Porirua City Council gave notice of its wish to be a party to these proceedings, and served a copy of that notice on the Respondent by a letter dated 2 March 1999.
- 6 At a hearing before the Environment Court on 22<sup>nd</sup> and 23<sup>rd</sup> March 1999, proceedings were adjourned, after hearing the evidence of the Respondent and some witnesses of the Applicant, with an indication from the Court that the parties should explore a settlement.
- 7 Following discussions between the Applicant, the Respondent, Leighton Kim Arnold and the Porirua City Council, all the parties have agreed that subject to the Court's approval this reference can be determined by way of a consent order. The agreed changes to the Proposed Regional Coastal Plan are set out in the attached Draft Consent Order.
- 8 The Respondent acknowledges that the changes to the Proposed Regional Coastal Plan are part of a first step agreed with the Applicant in a longer term approach to minimising driving and parking vehicles on the beach (apart from the exceptions to the rules). The Respondent will review the situation (which may or may not include a review of the Regional Coastal Plan) within 5 years of the plan becoming operative, to see if any further steps are warranted.



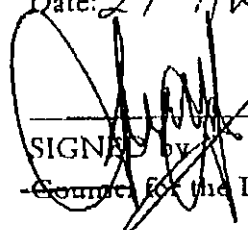
9 The parties respectfully invite the Court to direct the Respondent to amend the Proposed Regional Coastal Plan as set out in the attached Draft Consent Order.

  
\_\_\_\_\_  
SIGNED by  
Counsel for the Applicant  
THE TITAHU BAY RESIDENTS  
ASSOCIATION INCORPORATED

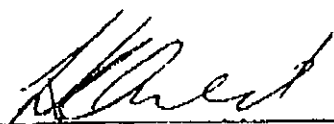
Date:

  
\_\_\_\_\_  
SIGNED by  
Counsel for the Respondent  
WELLINGTON REGIONAL COUNCIL

Date: 24 August 1999

  
\_\_\_\_\_  
SIGNED by  
Counsel for the PORIRUA CITY COUNCIL

Date:

  
\_\_\_\_\_  
SIGNED by L K ARNOLD  
Date: 16 Sept 1999

Decision W 6/2000

**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

of a reference under clause 14 of the  
First Schedule to that Act

**BETWEEN**

**THE TITAHU BAY RESIDENTS  
ASSOCIATION INCORPORATED  
AND GRAEME A EBBETT**

(RMA 920/96)

Appellants

**AND**

**THE WELLINGTON REGIONAL  
COUNCIL**

Respondent

**BEFORE THE ENVIRONMENT COURT**

Environment Judge S E Kenderdine presiding  
Environment Commissioner J D Rowan  
Environment Commissioner R Bishop (first hearing only)

**HEARING** at WELLINGTON on the 22, 23 March and 13 December 1999

**COUNSEL/APPEARANCES**

Mr G Evans for the appellants  
Ms J Allin for Wellington Regional Council  
Ms V Hamm for Porirua City Council  
Mr L K Arnold on his own behalf

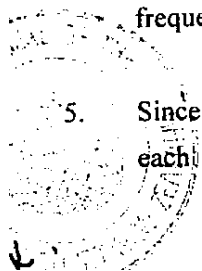


## REPORT AND DIRECTION

To the Minister of Conservation  
Parliament Buildings  
Wellington

### Background

1. This is a reference on the proposed appeal in respect of the Wellington Regional Council's Proposed Coastal Plan ("*the proposed coastal plan*"). There were two other related references heard but these were resolved by the parties by way of consent orders (see further discussion below). In respect of the remaining references, the Court's function is to conduct an inquiry and report its findings to the applicant (appellant), the Wellington Regional Council (the regional council) which administers the plan and the Minister of Conservation in accordance with Clause 15(3)(a) of the First Schedule to the Resource Management Act 1991 (the Act). The Court may also direct the regional council to modify, add, or delete matters from its proposed plan (see clause 15(3) of the First Schedule, and s.290(3) and s.293(1) of the Act).
2. This reference concerns whether the boundary limiting vehicular access to the centre of Titahi Bay Beach should be situated at either 70 or 167 metres south of Bay Drive. The ability to drive vehicles on Titahi Bay Beach has been available as long as can be remembered. And the right to drive and park on to the beach is maintained in the proposed plan for the Wellington Region, albeit in a restricted form. Titahi Bay Beach is the only beach in Porirua City where the right to drive/park on a beach for casual beach activity is permitted and it is considered one feature which contributes to the beach's popularity.
3. A further feature of Titahi Bay Beach is a fossil forest which is identified in the proposed plan as an Area of Important Conservation Value (further discussed below). How traffic and beach grooming affects the fossil forest is an issue of concern to the appellants.
4. An additional feature of Titahi Bay Beach is the presence of approximately 90 boatsheds in three locations at the northern and southern ends of the bay. These are privately owned and are on leased land belonging to the Porirua City Council ("*the city council*"). The owners of these boatsheds pay an annual rental. The owners use their boatsheds extensively at all hours and frequently have motor vehicles parked in front of the boatsheds.
5. Since 1994 the city council has had coastal permits to enable it to erect temporary barriers at each end of the location which the regional plan now specifies is a vehicle free area. The



current permit expires in 2008. From 1 July 1995 the regional council has had full responsibility for the administration and enforcement of the rules in the proposed coastal plan and the bylaw relating to the foreshore. A 1996 amendment to s.424(11) of the Act has been clarified in that where there has previously been an inconsistency between the proposed coastal plan and any bylaws, the proposed coastal plan prevails.

Resolution of issues in evidence presented

6. The case was adjourned part heard in March 1999 after the regional council had presented all the evidence in support of its case and Mr Arnold, one of the two s.271A parties, had completed his case. Most of the appellants' case had been presented and the evidence in support of Porirua City Council's case had been provided to the Court for the Court to read.
7. The adjournment was intended to allow the parties time to explore settlement of some of the issues raised in the earlier evidence. In the event a resolution was completed in respect of the following:-
  - **Prohibited activity (vehicle-free) area:** It is a prohibited activity to drive, ride or park any motor vehicle, motorcycle, trailer or land yacht in the central area of Titahi Bay beach (Rule 12.4.2.1), with limited exceptions set out in that rule (rescue, enforcement, litter, dog control, beach grooming – no exception for boat launching or retrieving or for boat shed owners). That central area of Titahi Bay beach is the only beach in the region where driving, parking etc. on the beach is a prohibited activity. The northern extent of that central area is the one issue to be resolved in these proceedings.
  - **Prohibited activity where fossil forest exposed:** Beyond the area in which vehicles are prohibited completely, it is a prohibited activity to drive, ride or park such vehicles where any fossil forest is exposed (Rule 12.4.2.1). The previous dispute about the wording of this provision ("where any fossil forest is exposed" vs "where any fossil forest is *known to become* exposed") has been resolved with the words in the proposed plan remaining.
  - **Conditions where driving/parking is a permitted activity:** The proposed coastal plan includes conditions for areas where driving/parking is permitted. Those conditions include not being a safety hazard to other users and not involving acceleration or turning in a tight radius at such a speed that results in unnecessary spraying of sand or other material from the wheels (Rule 12.4.1.4, condition (1)). The conditions in Rule 13.1.3 about noise also apply. There is no issue in relation to those conditions.

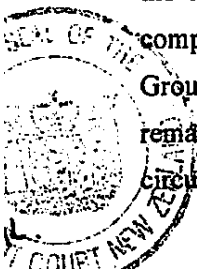


**Night-time driving:** There was concern among the residents about night time vehicle use of the beach. After considerable discussion, agreement was reached among all the parties about rules to deal with the night-time driving issue. A Consent Order dated 18 October 1999 for RMA 921/96 adds a new bullet point to Rule 12.4.3.1. That makes the driving or riding or parking of any motor vehicle, motorcycle, trailer or land yacht between 9.30 pm on any day and 5.00 am on the next day a discretionary activity (apart from the exceptions in that rule). In addition, in the central part of the beach, driving or parking is a prohibited activity at all times of the night (as well as the day).

- **Exception to night-time restriction for boatshed owners:** In that same Consent Order there is a provision, allowing an exception to the night-time restriction outside the vehicle-free area at Titahi Bay for "any motor vehicle, trailer or tractor owned, leased or operated by a registered boatshed owner in the Porirua City Council's Titahi Bay Boatshed Owners Register". This allows boatshed owners to have access outside the vehicle-free area between 9.30 pm and 5.00 am.
- **Beach grooming:** In relation to the concerns about beach grooming and the fossil forest, all the parties agreed to a change to the proposed coastal plan. The Court's Consent Order dated 18 October 1999 for RMA 701/98 includes a new condition in Rule 6.4.1.2. The consequence is that there is a condition to beach grooming being a permitted activity at Titahi Bay beach which is that it "be carried out by or on behalf of a local authority to maintain amenity values, and any vehicle used shall not have tracks and the activity is not to involve recontouring or reshaping".

The Remaining Issue: The Extent of the Area Where Vehicles May Park on the Beach

8. The only remaining issue is the location of the northern limit to the area where vehicles are a prohibited activity at any time of the day or night. The community is divided almost equally about the location of the northern boundary and the regional council considers that a compromise boundary is an appropriate one to be adopted at this time. This would involve changing Rule 12.4.2.1 by replacing "167 metres south of Bay Drive" to "122 metres south of Bay Drive".
9. The 122 metre boundary was agreed to by the regional council and the appellants over the adjournment as a first stage to limiting the number of vehicles parking on the beach and with the intention of reviewing whether parking should be limited further in due course. The compromise was not acceptable to the Porirua City Council. As stated by Mr G A Simpson, Group Manager, Leisure and Recreation for the city council, whilst council policy was and remains that the centre of Titahi Bay Beach should be free of vehicles (except in specified circumstances) and that parking and driving vehicles at the northern and southern ends of the



beach should be a permitted activity, the council strongly supports the 167 metre boundary as currently delineated in the proposed plan, for amenity reasons. This is also the location in the coastal permit that the council has been given specific approval for.

10. Meanwhile counsel for the regional council indicated that if we do not accept the appropriateness of the compromise boundary, then the regional council considers that the northern boundary in the proposed plan following council decisions (167 metres south of Bay Drive) would in fact be acceptable. Attached to this decision is a coloured photocopy of a plan of Titahi Bay taken from the evidence of Dr W Hastie's evidence (attachment 5). Dr Hastie is the Manager of the Resource Policy Department of the regional council. The plan shows the location of the southern and northern boatsheds and various proposed boundaries for restricting vehicular access, including the latest one at 122 metres south of Bay Drive ("the compromise position").

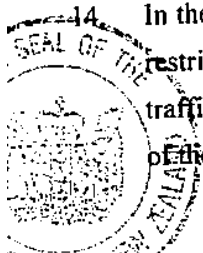
#### A 70, 167 or 122 Metre Boundary?

11. Evidence on the extent of the boundary on traffic issues was touched upon by Mr D Armour, planning consultant to the regional council, and a long time resident of Titahi Bay. At the resumed hearing, traffic evidence was given by Mr D T Bullen, Traffic Engineering Consultant to Porirua City Council.
12. Of relevance is the Porirua City Council's 1997 Management/Development Plan of the beach (October 1997), states in section 5.2:

*"The last detailed analysis of cars/people on the beach showed that on good days 50 to 60 cars and about 100 people would be on the beach. On exceptional or "local event" days there could be as many as 150 cars and up to 600 people on the beach. The normal average would be 20 to 30 cars, and about 60 people using the beach at most times during the day over the mid-December to early February period".*

13. Mr Bullen's recollection is that up to 100 vehicles may park on the beach at peak times so there is a slight discrepancy in the figures between the two experts. Mr Bullen's figures seemed to be a guesstimate so we took the Porirua City Council's figures as the more correct as they come from a detailed analysis.

14. In the course of the first hearing, Mr D Armour stated in cross-examination that he considered restricting the carpark to the 70 metre limit as originally sought by the appellants would lead to traffic congestion and a safety hazard in terms of vehicle/pedestrian conflict at or in the vicinity of the Bay Drive entrance.



15. Mr Bullen stated that the boundary line in terms of its position along the beach to limit vehicle movement is very arbitrary and could be drawn anywhere. He supported vehicles being allowed on the beach in order to provide sufficient space for parked vehicles to form a single parked row except in very peak demand.
16. Mr D D Petrie, another traffic engineering consultant, gave evidence for the appellants in response. In his view neither the 122 metre compromise limit or the 70 metre limit ultimately required need not be associated with either parking or traffic congestion at the Bay Drive entrance. His practical solutions included appropriate signage of a reduced area of available parking, together with the provision of a 20 metre turning area south of the ramp at the end of Bay Road.
17. In terms of road safety it was Mr Petrie's opinion that restricting the length of beach available to parking will in itself limit the speeds vehicles can achieve and hence the likelihood of serious accident. He said that allowing vehicles on the beach can be expected to result in an occasional accident, and given the otherwise unstructured mixture of vehicles and pedestrians there is always the potential for accidents to occur (it transpires Titahi Bay Beach had an accident in 1989, but the first for 44 years).
18. In conclusion, Mr Petrie identified that in his opinion there are at least 134 spaces in council parking areas close to the beach, with further extensive areas of other kerbside parking space for more than 100 additional cars located within about a 100 metre walk from the beach itself.
19. Mr Bullen identified that 35 angle parks are provided for in Bay Drive immediately adjacent to the beach but the spaces are not within sight of the users of the beach unlike other comparable beaches in the Wellington region. Mr Simpson for the city council indicated that many of the adjacent streets do not have line of sight with the beach itself. The city council considers that whilst off beach parking is available, the carparks are generally unattractive for the public to use due to the distance and security of the vehicles. Mr Simpson said this:

*"The area to the north of the original northern sign, which was taken to be permitted parking space, was inadequate for the level of beach use at peak periods. It is important to note that the cars do not only serve as means of transport on the beach, they also serve as shelters and picnic points in that most people take their cars on to the beach and use them as the focus of their beach activities. Older people remain seated in their cars with the doors open, picnics and picnic equipment is usually left in the car and taken out to be used. Frequently people sit either in the car or adjacent to the car on a blanket, when they are not swimming or engaged in other activities. To curtail the parking spaces to a greater degree, forces a change in this behaviour and Titahi Bay*



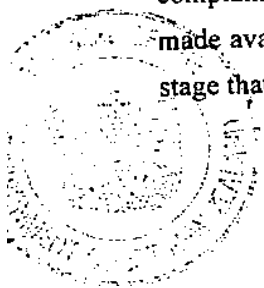


*Beach has no picnic shelters on it that people can reasonably sit out of the sun. While this is a common position with most beaches in New Zealand, it is nonetheless an amenity that has been available at Titahi Bay Beach for many years."*

20. Mr Bullen stated if parking is prohibited (altogether), pedestrian movements will be lengthy and generally involve a climb (often steep) with pedestrians, including children, having to compete with vehicle movements.
21. It was Mr Bullen's evidence that the present parking boundary provides a length of 160 metres – allowing 50-60 vehicles in one row, and for a total of about 80 above the high tide mark if two parking rows are formed where possible.
22. The evidence established that 70 metres of beach at the original boundary sought by the appellant would allow for 1 row of cars only – possibly about 20 if Mr Bullen's assessment of being able to fit 50-60 cars into 160 metres is correct. That, according to the Titahi Bay Beach Management Plan, would allow for the normal average of 20-30 cars to be parked on the beach.
23. Mr Bullen has been particularly involved in safety auditing of both existing roading facilities and proposed ones. In his professional opinion, if the beach vehicle space is restricted to the previous northern sign of 70 metres, motorists would seek a beach parking space in the first instance and finding it fully parked would generally mill around in the restricted parking space on the Bay Drive Ramp and at the intersection of Bay Drive with Richard Street. This would take place with pedestrians and some children moving to and from the beach and to their parked vehicles. He did not consider this to be a safe manoeuvre as it would allow little safety zone between drivers and beach users.

### ***Evaluation***

24. We have little doubt that providing for vehicles to access the beach has undoubted amenity value for beach goers, and especially for those older citizens and those with disabilities.
25. There was some discussion at the first hearing about vehicle use of the beach associated with bad behaviour. But it appears that in the past six years the city council erected barriers which have been monitored through wardens. We understand that there has been an absence of complaints overall since that time. Thus the issue remains, how much parking space should be made available on the beach itself? We did not understand the appellants to be seeking at this stage that parking should be disallowed completely.



26. We are confident that on Mr Petrie's figures, there are approximately 134 carparking spaces available in relative close proximity to the beach.. Exceptional events on Mr Bullen's figures require space of up to 150 cars - 16 more than available on the streets close by, but nevertheless available elsewhere within 100 metres walking distance of the beach.
27. We concluded also that limiting the numbers of cars on the beach and requiring them to park on the surrounding streets will result in more people frequenting the area and the fact that cars cannot be seen from the beach may not necessarily result in more security issues for vehicle owners. There remains the amenity question therefore which was emphasised by the city council witnesses, and some of those from the regional council at the first hearing.
28. Having taken into account the possible conflicts between turning vehicles and pedestrians if the carparking spaces on the beach are cut too short, we concluded that safety is an issue but cutting the boundary back to 122 metres south of Bay Drive would comfortably allow for one row of cars (40 – 50) average use and would also reduce the length of beach on which cars may be parked. Such a limit would therefore contribute to reducing the speed of the vehicles which do park and thereby the risk of accident. Mr Petrie was quite clear that two rows of cars is more dangerous than one, with more opportunity for accidents involving children running between cars and in that he was persuasive. As he stated, there are no controls on how people park.
29. Ideally, in our view there should be no cars on this beach at all. The evidence established that the area near the entrance from Bay Drive is the most sheltered being protected from the prevailing north-westerly winds and is favoured by some small children. And if the tide is in, the beach is reduced to quite a narrow strip. The evidence of Tania Tiopira for the appellants identified that her deaf three year old is not taken to the beach when it is busy because she cannot hear the cars or any warnings about them approaching. Another mother identified that parents have to take evasive action from aggressive drivers and that it is very difficult to manage children adequately when the barriers on the beach are down. Mrs Hudson, further witness for the appellants, spoke of an incident with her four year old grandson when she had had to rescue him from under the wheels of a moving car in the early evening after the flag barrier came down. Mr Mabbett, a long time resident of Titahi Bay, stated that *"cars driving along Titahi Bay beach are just like cars driving through a playground. It is an inherently dangerous activity"*.
30. We concluded that whilst recently there have been no major accidents, it would only take one such accident to give a quite different slant to vehicles on this beach. Between the dangers of the water and vehicles on the beach it is difficult for families with children to manage their recreational pursuits. If it is appropriate that some cars be allowed to accommodate the amenities of some beach goers, it is appropriate also that cars are restricted as much as possible

in what should be an area of public open space. Mr Arnold accepted that some people have real apprehension for the safety of their children amongst the traffic.

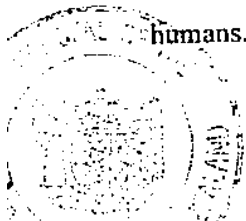
31. Mr S F Warren, who gave evidence for the regional council as a long term resident of the bay, indicated that where the barrier is located now, allows an area for parking which he considers is only just big enough. He stated that on most fine weekends in the 1998-99 summer there would be 100 vehicles parked at any one time. In cross-examination he stated that there was not enough parking for boat trailers at peak times. Mr Jennings, also a long time resident of the bay, stated if there are too many cars, boats and trailers they crowd each other. If they crowd each other now what kind of problem do they pose for families with children on the beach? Mr Armour in cross-examination stated that he considers vehicle use of the beach is increasing. Clearly the problem is not going to go away.
32. The answer, in our view, is not to increase parking on the beach but to sustainably manage the issue between providing for some beach parking in the shorter term and allowing the rest to park on the surrounding streets.
33. Nevertheless, we fully appreciate the city council's difficulties.
34. On the Court's visit to the beach over a weekend, many aspects of all witnesses' evidence were clearly apparent. The beach was damp after rain, and the useable area narrowed. Even so, there were a dozen or so cars parked in single file, all located towards the Bay Drive end. There were many people in the surf.
35. What was disturbing was the presence of children digging in the sand with vehicles coming and going between them. In spite of the large parking area still available on the beach itself, numerous cars came down and appeared to use the Bay Drive entrance to the beach as both a viewing platform and a turning circle in spite of the presence of the children.
36. There were a dozen or so cars parked in the angle parking provided indicating it is a facility used.
37. Although not strictly with the parameters of this case an indication by the city council that parking on the beach is limited in advance of the Bay Drive entrance to the beach may assist in informing the public and encouraging them to use the carpark.
38. We conclude that 122 metres is a sufficient boundary to provide for average parking. We cannot direct the city council to expend funds on carparking facilities but we do consider that within the next planning period consideration ought to be given to further restricting cars parking on this area of the beach.

39. Ms Allin submitted that whilst people prefer the northern part of the beach where the vehicles park because it is more sheltered, their judgement about letting children play where vehicles are not prohibited must be questioned. That may well be so, but the culture of this beach seems to be that people picnic where their cars are parked. Until the culture of parking vehicles on the beach changes, the risk to children remains.

#### The Titahi Bay Beach Fossil Forest

40. The Wellington Regional Policy Statement (RPS) includes under "**Geological Features and Landforms**" **Titahi Bay: fossilised forest in beach: 'R'**. The 'R' refers to a classification of regional significance. The proposed coastal plan refers, under the heading "**Areas of Important Conservation Value**", the "**Titahi Bay Pleistocene Fossil Forest – Intertidal reef in the centre of Titahi Bay, as indicated on Planning Map 2B – remains of forest from last interglacial period**".
41. Thus two important planning documents for the region identify the fossil forest on the Titahi Bay Beach as being of regional significance and as being an area of important conservation value. The question arises therefore, do the presence of vehicles on the beach damage such a significant geological resource?
42. Evidence on the history significance and ecological qualities of the Titahi Bay Beach fossil forest was given by Dr D C Mildenhall for the regional council. Dr Mildenhall has extensive experience as a practising palynologist/palaeobotanist/geologist studying fossil plants and rocks associated with them. He has researched and written about the fossil forest. Dr H Campbell gave evidence for the appellants. He is employed as a Research Geologist with the Institute of Geological and Nuclear Sciences. He became aware of the forest through the involvement of Mr G Ebbett, one of the appellants.
43. Dr Mildenhall explained the resource is a good example of a Pleistocene interglacial forest occurring in the centre of Titahi Bay as parts of a reef. An interglacial is a warm climate period like that of the present day. Pleistocene is a geological term referring to the last two million years.
44. The forest consists of scattered stumps and roots of trees in growth position, some of which have been identified as totara and rimu (miro and kahikatea), within an old soil, usually covered with sand. The trunks have broken or rotted off leaving mainly root systems. The trees are quite soft and have much of their structures still preserved. Annual rings are obvious in exposed stumps. The stumps have probably been pickled by salt brine aiding their survival. Depending on sand conditions, the stumps are either flush to the ground or raised.

45. The forest can be periodically and patchily exposed, over potentially most of the beach under certain tidal and climatic conditions. There was some discussion that the forest might be limited to the more southern part of the beach but we are satisfied both from Mr Ebbett's photographs and maps and the evidence of Dr Campbell that the forest remains are scattered all over the beach with the biggest concentrations between the existing northern sign and the proposed northern sign and between the barriers in the proposed plan. The experts agree the stumps appear and disappear the full length of the beach.
46. Dr Mildenhall explained there are at least seven identified fossil forests in the Wellington region, including at least two others that are accessible, for example at Melling in the Hutt Valley, and Kaiwhata River, south of Riversdale on the east Wairarapa coast. About 100 fossil forests of Pleistocene age occur in New Zealand as a whole.
47. The age of the forest is unknown but current scientific ideas place it in the last interglacial period, which can be given an age of about 100,000 years ago, that is, between about 150,000 and 80,000 years ago. It is too old to be radiocarbon dated. Cliffs at the southern end of the beach, apparently overlying and therefore younger than the fossil forest, are composed of deeply weathered sand dunes, silts and gravel. The depth of weathering, with iron pans, iron oxide staining, and gravel, softened by prolonged warm climate weathering, suggests that the sediments may be older than the last 80,000 years (the end of the last warm period).
48. The forest formed during a warm climatic period, probably on a coastal plain. Since then a change in the relative levels of the sea and land first buried the forest and then caused it to become exposed again when the latest sea level rise, which culminated about 6500 years ago, receded, causing the sediments that had previously protected the forest to erode.
49. The presence of pieces of fossil wood on the shore of Titahi Bay indicates to Dr Mildenhall that this eroding of sediment and exhumation of the trees is still occurring offshore. This provides evidence that periodic storm events probably cause much danger to the fossil forest.
50. In Dr Mildenhall's opinion the Titahi Bay fossil forest is not an outstanding natural feature nor is it of national significance. In terms of importance and vulnerability, the Titahi Bay fossil forest was given the lowest rating of C in the Joint Earth Science's Inventories – sites of regional, scientific, educational or aesthetic value. Dr Mildenhall considered that if the scientific community regarded the fossil forest as significant it would have been studied in more detail. The Inventories also referred to give ratings as to vulnerability to modification by humans. The forest is given rating 3 "*unlikely to be damaged by humans*".



51. Dr Mildenhall explained that in terms of its geological significance the fossil forest is regionally important in the sense that it is the only interglacial forest with trees in growth position (as opposed to beds of fallen and transported trees) in the Porirua area. It also has some aesthetic value, in that it is there and, when exposed, can be easily seen and is accessible and when exposed it is a good place to take students to see the effects of fossilisation and sea level changes.
52. The evidence of Dr Mildenhall established that the potential for damage to the forest comes from cars when it is exposed, but that damage will also be caused by people, periodic storm events and constant slow natural abrasion.
53. He stated that scientifically there is nothing lost if minor damage from humans and vehicles does occur to the fossil trees, the bulk of the fossilised forest extends offshore and is therefore preserved and there is nothing lost if trees are eroded down to the level of the peat bed as long as they are identified.
54. Dr Mildenhall stated that the forest is important because it is the only one exposed and it is significant to the region because of its existence. Mrs Rosemary Hudson, another long time resident of the bay and a local school teacher told us she uses the beach as a school room. Her main reason for bringing students to the area is the forest and its significance, and she is concerned about its need for long term protection. Mr Simpson for the city council acknowledged that awareness of the significance of the fossilised forest on the beach is changing as the work of the University becomes public. Research on the forest is in fact currently being undertaken at the instigation of the city council at the School of Earth Scientists at Victoria University of Wellington.
55. Dr Campbell reflected on the recent growth of interest in earth sciences and stated that he was almost certain that this particular fossilised forest will be visited very often as part of practical school trips in relation to secondary school science classes. It is a particularly visible testimony to the kind of earth movements New Zealand has experienced in the past resulting in its exposure.
56. We were urged by the appellants to consider that driving on the beach would have a major adverse effect on the fossilised forest and that as a result parking there on the whole should be avoided.

### *Evaluation*

57. We note that the proposed coastal plan protects the fossilised forest to the extent of prohibiting vehicles driving or parking in the centre of the beach and in any other part of the Titahi Bay

foreshore when any of the fossilised forest is exposed. The city council urged us to conclude there is no justification to limit the vehicular parking area because any potential adverse effects are already controlled and avoided accordingly.

58. The fossil forest, however scientifically important or otherwise, may be seen as part of the natural character of the Titahi Bay Beach. It is a forest thought to be over 100,000 years old and one of its features is its immediate accessibility by the population of a large urban area. There may be other such resources in the Wellington region but it is unique to the Porirua region and situated on a popular beach.
59. We have difficulty in accepting that vehicle owners who do not know of the existence of the fossil forest, would be able to easily identify its existence and avoid driving over the stumps particularly as they appear and disappear depending on beach conditions.
60. As to whether vehicles will damage the forest irreparably, Dr Mildenhall observed that the weight of a vehicle may compress the structure of the wood so that the fluids are drained out of it temporarily and they will come back when the pressure is released. The trees are therefore like sponges and would not be damaged when compression release occurs, so this is not an issue.
61. Nevertheless we do not see the presence of cars on a beach such as this as conducive to the preservation of the natural character of the coastal environment – a matter of national importance under s.6(a) of the Act – and even accepting that a reasonable rather than strict interpretation of the provision is required.

#### **Relevant Plan Provisions and Provisions of the Act**

62. Dr Hastie set out the relevant plan provisions at some length and legal counsel the provisions which arise under Part II and s.32 of the Act. Mr Evans made the point that the New Zealand Coastal Policy Statement had barely been referred to by the other parties so we gave it particular attention when considering all the provisions referred to which relate to the reference.
63. In the light of those provisions, we concluded that some important compromises between the residents and the regional council were reached in the Consent Orders filed and the 122-metre boundary agreed to. We conclude, as a result, that for the purposes of this planning period, sustainable management of the beach has been achieved with the resources available to the city council.

64. Issues arising out of the references have been contention for many years. It is pleasing that so many have been or are in the process of being resolved through the proposed coastal plan processes and with the establishment of a Management Plan for the beach.

**Conclusion**

65. Accordingly in the light of our findings above, we direct that the regional council modify Rule 12.4.2.1 (first bullet point) and any relevant maps in its proposed coastal plan so that the northern boundary of the vehicle zone is moved from its current location to the 122 metres ~~sought north~~ <sup>south</sup> of Bay Drive. In this regard we note as we did on page 2 of this decision that in the event of an inconsistency between the provision in the proposed coastal plan and the city council's bylaw, the proposed coastal plan prevails.

66. These being references to proposed plan provisions there is no order as to costs.

**DATED** at WELLINGTON this *1<sup>st</sup>* day of *February* 2000

*S.E. Kenderdine*

S E Kenderdine  
Environment Judge



\* REF ERRATUM  
23/2/00





**IN THE MATTER**

of the Resource Management Act  
1991

**AND**

**IN THE MATTER**

of a reference under clause 14 of the  
First Schedule to that Act

**BETWEEN**

**THE TITAHĪ BAY RESIDENTS  
ASSOCIATION  
INCORPORATED AND  
GRAEME A EBBETT**

(RMA 920/96)

Appellants

**AND**

**THE WELLINGTON  
REGIONAL COUNCIL**

Respondent

**BEFORE THE ENVIRONMENT COURT**

Environment Judge Kenderdine (sitting alone pursuant to section 279 of the Act)

**ERRATUM**

The parties are advised that the report and direction to the Minister of Conservation issued by this Court on 1 February 2000 (W 6/2000) regretfully contained an error.

At paragraph 65 the words "north of Bay Drive" should have read "south of Bay Drive".

Paragraph 65 is therefore amended to read as follows:

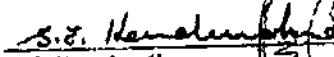


Accordingly, in the light of our findings above, we direct that the regional council modify Rule 12.4.2.1 (first bullet point) and any relevant maps in its proposed coastal plan so that the northern boundary of the vehicle zone is moved from its current

location to the 122 metres sought south of Bay Drive. In this regard we note as we did on page 2 of this decision that in the event of an inconsistency between the provision in the proposed coastal plan and the city council's bylaw, the proposed coastal plan prevails.

In all other respects the decision remains unchanged.

DATED at WELLINGTON this 23<sup>rd</sup> day of February 2000

  
S E Kenderdine  
Environment Judge























**IN THE MATTER**

of the Resource Management Act 1991

**AND**

**IN THE MATTER**

of a reference under Clause 14 of the  
First Schedule of the Act

**BETWEEN**

**GRAEME A EBBETT**

(RMA 701/98)

Applicant

**AND**

**WELLINGTON REGIONAL  
COUNCIL**

Respondent

**BEFORE THE ENVIRONMENT COURT**

Her Honour Judge Kenderdine sitting alone pursuant to section 279 of the Act

**IN CHAMBERS** at WELLINGTON

**CONSENT ORDER**

**HAVING CONSIDERED** the notice of reference RMA 701/98 **AND UPON READING** the memorandum of counsel filed herein, **AND BEING SATISFIED** that the relief agreed on is reasonably within the scope of the relief sought in the original submission, **AND BEING SATISFIED** there are no other parties who oppose the proposed order, **THIS COURT HEREBY ORDERS BY CONSENT** that the appeal be allowed to the extent that the Wellington Regional Council modify its Proposed Regional Coastal Plan for the Wellington Region by:

1. Adding a new condition, as condition (7), to the conditions to rule 6.4.1.2 as follows:
  - (7) If the activity is carried out on Titahi Bay beach, it shall be carried out by or on behalf of a local authority to maintain amenity values and any vehicle used shall not have tracks and the activity is not to involve recontouring or reshaping.

The reference is otherwise dismissed.

There is no order as to costs.



**DATED** at WELLINGTON this *18<sup>th</sup>* day of October 1999

*S.E. Kenderdine*  
S E Kenderdine  
Environment Judge



IN THE ENVIRONMENT COURT

*under* the Resource Management Act 1991

*in the matter of* a reference under clause 14 of the First Schedule of that Act

*between* Graeme A Ebbett  
*Applicant*

*and* Wellington Regional Council  
*Respondent*

*and* Porirua City Council  
*Section 271A Party*

*and* Leighton Kim Arnold  
*Section 271A Party*

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MEMORANDUM SEEKING CONSENT ORDER

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Dated 16 September 1991

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**Chapman Tripp Sheffield Young**

*Barristers & Solicitors, Wellington*

AMP Centre, Grey Street, Wellington 1. PO Box 993, Wellington New Zealand.

Telephone 64-4-499 5999. Facsimile 64-4-472 7111. DX SP20204

*Solicitor*

Joan Allin/Rose Feary

## MEMORANDUM SEEKING CONSENT ORDER

**May it please the Court:**

- 1 The parties to this reference seek directions by consent in terms of the Draft Consent Order attached to this memorandum.
- 2 Reference 701/98 relates to a decision of the Respondent made in November 1996 in relation to the Proposed Regional Coastal Plan for the Wellington Region ("the Proposed Regional Coastal Plan"). In particular, this reference relates to the activity of beach grooming on Titahi Bay beach.
- 3 While the reference is made in respect of a regional coastal plan, the Minister of Conservation did not take any part in these proceedings before the Environment Court.
- 4 Leighton Kim Arnold gave notice of his wish to be heard on this reference by a letter dated 3 March 1999.
- 5 The Porirua City Council gave notice of its wish to be a party to these proceedings and served a copy of that notice on the Respondent by a letter dated 2 March 1999.
- 6 At a hearing before the Environment Court on 22<sup>nd</sup> and 23<sup>rd</sup> March 1999, proceedings were adjourned, after hearing the evidence of the Respondent and some witnesses of the Applicant, with an indication from the Court that the parties should explore a settlement.
- 7 Following discussions between the Applicant, the Respondent, Leighton Kim Arnold and the Porirua City Council, all the parties have agreed that subject to the Court's approval, this reference can be determined by way of a consent order. The agreed changes to the Proposed Regional Coastal Plan are set out in the attached Draft Consent Order.
- 8 The Respondent acknowledges that the changes to the Proposed Regional Coastal plan are part of a first step agreed with the Applicant in a longer term approach to minimising driving and parking vehicles on the beach (apart from the exceptions to the rules). The Respondent will review the situation (which may or may not include a review of the Regional Coastal Plan) within 5 years of the plan becoming operative, to see if any further steps are warranted.

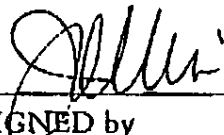


- 9 The parties respectfully invite the Court to direct the Respondent to amend the Proposed Regional Coastal Plan as set out in the attached Draft Consent Order.



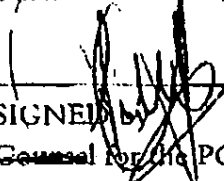
SIGNED by  
Counsel for the Applicant  
GRAEME A EBBETT

Date:



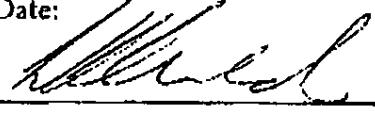
SIGNED by  
Counsel for the Respondent,  
WELLINGTON REGIONAL  
COUNCIL

Date: 24 August 1999



SIGNED by  
Counsel for the PORIRUA CITY  
COUNCIL

Date:



SIGNED by L K ARNOLD

Date: 16 Sept 1999