In Confidence

Office of the Attorney-General

Chair

Cabinet

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

Proposal

1. This paper seeks Cabinet's approval for an all-of-Government submission opposing in part the resource consent application to leave the remains of the MV Rena on Ōtāiti reef.

Executive summary

2. The application for resource consent to leave the remainder of the wreck on Ōtāiti (Astrolabe) Reef triggers an obligation in the Wreck Removal Deed between the Owner and the Crown and Maritime NZ for the Crown and Maritime NZ to consider, in good faith, making a submission in support of the application taking into account the environmental, cultural and economic interests of New Zealand and the likely cost and feasibility of complete removal of the Wreck. This does not oblige the Crown to submit in support, or even make a submission.

3. Officials have reviewed the application and sought expert reviews and advice on the technical aspects of the application.

4. Key concerns with the application relate to the impacts on the natural character of the reef, health and safety issues, cultural values including that tangata whenua consider that the reef is a taonga, the Crown's obligations to Māori under the Treaty of Waitangi and certain environmental impacts and how these are dealt with in the proposed consent conditions.

5. Based on these concerns, and on considerations relating to the health and safety risks associated with complete wreck removal and international best practice in similar circumstances, we recommend that the Crown make a submission proposing changes to the nature of any consent that might be granted.

6. Such a submission would propose that the consent does not include the parts of the wreck and debris field to a depth of 30m and seek the enhancement of monitoring and consent conditions for those parts of the wreck site below 30m.

7. Crown submissions on resource management matters of significance should generally represent an all-of-Government position agreed by Cabinet. Whether an all-of-Government submission is appropriate in a particular instance is a case-by-case decision. In this instance, the Crown has decided to make an all-of-Government submission, having considered the following matters:

    a. A contractual obligation to the Owner to consider whether or not to make a submission;

    b. Having undertaken a robust review over a considerable period in order to decide its position on a submission, the Crown is in a position to positively contribute to the consent authority's decision-making process;

    c. The impacts of the proposal (including whether the conditions are appropriate and enforceable) are of significant importance to the region.

8. While we have considered the Waitangi Tribunal's recent finding that the Rena constitutes a unique set of circumstances for the Crown, that finding was not a significant factor in recommending an all-of-government submission be made.

Background

9. On 5 October 2011, the containership MV Rena struck Ōtāiti (Astrolabe Reef) and grounded en route from Napier to Tauranga.

10. Following the grounding, a Tier 3 national oil spill response was activated immediately by Maritime New Zealand under the Maritime Transport Act 1994. The Owner of the Rena engaged salvage company Svitzer Salvage to undertake salvage operations. Approximately 1,556 tonnes of oil was recovered from on board the Rena during response operations and 1,053 of the 1,368 containers have been recovered.

11. Hundreds of oil spill responders and 8,000 volunteers removed around 1,000 tonnes of oily waste from the coastline, recovered more than 4,500 tonnes of containers and debris and rescued hundreds of oiled birds. Beaches closed as a result of the oil were re-opened less than six weeks later.

12. The Crown and related agencies, principally through Maritime New Zealand, successfully managed the immediate response to the grounding, minimising what could otherwise have been very significant environment effects in a dynamic, challenging environment. There were effective collaborative efforts between Maritime New Zealand, the Bay of Plenty Regional Council, iwi, community groups, local government and other agencies such as the Department of Conservation, the Defence Force, and Massey University's Wildlife Health Centre.

13. An independent review has found that the response team achieved "a high quality, world class clean-up".

14. Maritime New Zealand continues to have resources dedicated to work associated with the Rena, in Tauranga, supervising on-going work by the owners and supporting the Bay of Plenty Regional Council.

15. Since the grounding in October 2011, the Owner has engaged expert salvage advisors who have supervised the salvage and wreck removal activity. The salvage activities to date have been extensive in what is considered to be a dynamic and challenging maritime environment. The extensive nature of the salvage is reflected in the owner's costs, which have publically stated to be more than USD $ 300 million, making it one of the most expensive salvage operations ever. The owner's current focus pending the hearing of its application is on the significant debris field. Removal of this would address a key concern of Ministers.

Rena Long Term Environmental Recovery Plan

16. The four year Rena Long-term Environmental Recovery Plan was developed by the Ministry for the Environment, with significant input from Bay of Plenty councils, iwi, and central government agencies and published in January 2012. The Plan provides a shared goal to ensure the mauri of the wider Bay of Plenty environment is restored to its pre-Rena state, as far as it is practical to do so. The established work streams within the Plan focus on monitoring the environmental and cultural impacts associated with the Rena grounding. A total of $2.42 million has now been provided by the Government to implement the Plan through to June 2015.

17. The Te Mauri Moana Environmental Monitoring work stream is the largest work stream under the Plan and was commissioned to capture scientific data that would detail how the Bay of Plenty environment is responding to the Rena grounding. The "Rena Environmental Recovery Monitoring Programme 2011/2013" report was produced by Waikato University in 2013 and at a high level, concluded that the Bay of Plenty environment is recovering well.

18. Iwi have been engaged and consulted throughout the development and implementation of this Recovery Plan. During the Plan's inception iwi were involved in reviewing, providing feedback, and finalising the draft Recovery Plan. Iwi played a key role in developing the Recovery Plan's overall goal and objectives.

19. Following the launch of the Recovery Plan in January 2012, several forums and roles were established that supported iwi engagement in the Recovery Plan's implementation. A Rena Recovery Steering Group and Governance Group were established that provides iwi with the opportunity to contribute to the establishment, monitoring of, and decision-making regarding, the implementation of the Plan and its agreed work streams.

20. Three iwi co-ordinator roles and the Te Moana a Toi Iwi Leader's Forum were also created to support iwis involvement in the establishment and implementation of the Recovery Plan's work streams and associated contracts. The Recovery Plan progressed to a monitoring and reporting phase in 2013, which meant that the iwi co-ordinators had fulfilled their roles and were disestablished following consultation with iwi.

21. Iwi continue to be involved in the final stages of the Plan's implementation through the Steering and Governance Group forums. The Te Moana a Toi Iwi Leaders Forum continues to be provided with information and updates on the progress of the Recovery Plan.

The Crown's settlement and the Wreck Removal Deed

22. The Crown successfully negotiated and received a settlement of $27.6 million from the Owner, which was also fined for unlawfully discharging harmful substances under the Resource Management Act. The Master and Second Officer have served prison sentences for their breaches of the Maritime Transport Act and Crimes Act.

23. As part of the settlement, the Crown entered into three deeds1 with the Rena Owner in October 2012 that settled the Crown's (and specified agencies'2) claims for losses as a result of the grounding.

24. The Wreck Removal Deed provides that, if the Owner makes an application for a consent to leave the wreck or part of the wreck in the coastal marine area, the Crown and MNZ "will, in good faith, consider making a submission or submissions in support of the Consent taking into account the environmental, cultural and economic interests of New Zealand and the likely cost and feasibility of complete removal of the Wreck." An application for resource consent has now been lodged, triggering this obligation.

25. If a consent is granted and acted on, the Crown and MNZ do not oppose its grant, and the Owner obtains a substantial cost saving in carrying out the activities authorised by the consent when compared to the cost of the removal of the wreck, then the Owner will make a payment of $10.4 million to the Crown, for public purposes to be specified by the Crown at the time.

[1] The Deeds were the Deed in relation to Claims Arising from the Rena Casualty, the Deed of Indemnity, and the Deed in Relation to Removing the Wreck Arising from the Rena Casualty ("Wreck Removal Deed").

[2] The groups that settled included: Maritime New Zealand, the New Zealand Transport Agency, the Environmental Protection Authority, the Minister of Local Government in his capacity as the territorial authority for Motiti Island, and the Bay of Plenty District Health Board.

26. Ministers have three options in relation to the resource consent application:

    a. Support the owner's application;

    b. Oppose the application (in full or in part); or

    c. Neither oppose nor support the Owner's application (and either not make a submission or make a neutral submission).

27. Section 96(7) of the Resource Management Act 1991 (RMA) requires that the submissions states whether it supports, opposes or is neutral in relation to the consent being sought. The statutory template from the consent authority reflects this and requires the Crown to state its position. The body of the submission can reflect a more nuanced position. For reasons outlined below, we recommend that the submission opposes in part.

Waitangi Tribunal Claims

28. In January 2014 the Waitangi Tribunal granted urgency for two claims relating to aspects of the Crown's conduct in relation to the Rena. The claims were heard on 30 June – 2 July in Tauranga.

29. The Tribunal produced an interim report and recommendations on 17 July to inform the Crown in its consideration of whether to make a submission. The interim report focusses on the question of whether the Crown's post-Wreck Removal Deed (October 2012) consultation with tangata whenua on the resource consent application was Treaty compliant and on how the factors in the Wreck Removal Deed that the Crown must consider should be weighed against each other.

30. While there is significant criticism of the Crown consultation process in the body of the Interim Report, the recommendations provided by the Tribunal can be considered in the context of Cabinet's decision on whether to make a submission in respect of the owner's consent application (noting in particular the differentiating amongst the three layers of wreck/debris). It is also telling the Tribunal says issues for Motiti Māori are as much about appearance as reality.

31. The Tribunal finds Otaiti (Astrolabe Reef) is a taonga to the claimants and Motiti Māori are isolated and in a vulnerable position in terms of the wreck's effects if left on Otaiti. The Tribunal finds the Crown's actions in terms of consultation represent a breach of the Crown's Treaty principles of good faith and partnership because the consultation has been directed at the Crown informing itself as to the views of Māori (but has not done so adequately, so it is not fully informed) and the Crown has not adequately equipped Māori to participate in the consent process or respond meaningfully to the Crown's consultation.

32. Significantly, and contrary to the submission of some of the claimants, the Tribunal does not recommend that the Crown support, oppose or remain neutral in relation to the owner's application. However, as described below, the Tribunal has made recommendations about the specific content of aspects of any Crown submission, with the consequence that it does not see the Crown as having full autonomy in this respect.

33. The Tribunal recommends the Crown must visibly protect Motiti Māori interests in the forthcoming process. The Tribunal states that any Crown submission should acknowledge the reef is a taonga and this elevates the protection of it to be a matter of national importance under the RMA. The Crown should also consider monitoring and mitigating conditions directed at Motiti and should actively assist Māori to submit in the consent process beyond the Ministry for the Environment's "limited contestable legal aid fund".

34. The Tribunal's final report will address these matters in more detail and other issues such as the Crown's conduct in entering into the settlement with the Rena owner. Given the Tribunal's criticisms in the Interim Report, it is likely the final report will contain similar but more wide ranging findings of Treaty breach with respect to the Crown's conduct in entering into the Deed, and potentially more generally.

35. The Crown must carefully consider the Tribunal's findings and recommendations. The paper addresses these key recommendations further below and our proposed responses. Based on advice from officials, we consider that:

    a. The report is not a full and accurate reflection of the Crown's conduct or of the relevant constraints and dynamic within which the Crown and Māori have had to operate;

    b. Within those constraints, the Crown has been as proactive as it could be;

    c. The Crown was already independently undertaking a robust analysis in considering the application, having started this process in April 2013. The Crown advised the Tribunal about that well before its recent hearing. Further, the Crown had reached a preliminary view to oppose the application in part prior to the Tribunal's interim report.

    d. A number of the Tribunal's recommendations should not be implemented either because they are inconsistent with evidence before the Tribunal or because they are matters for the consent authority to determine with the benefit of fuller evidence than is available to the Crown or to the Tribunal.

Comment

The application – what is being applied for?

36. On 30 May 2014, the Astrolabe Community Trust ("the Applicant"), a trust established by the Owner, submitted a resource consent application to the Bay of Plenty Regional Council pursuant to sections 15A and 15B of the RMA

to leave the remainder of the *Rena* and associated debris on Ōtāiti Reef and to authorise any potential future discharges of contaminants from the wreck.[3] The application was notified on 13 June for a period of 40 working days, meaning that submissions will close on 8 August.

37. The application does not seek retrospective consent for the grounding or its aftermath, including for any discharges that have already occurred. The grounding event and subsequent discharges were dealt with under the RMA by the prosecution and conviction of the officers responsible and the Owner.

38. The application details that the wreck will be left in an "as benign as practicable state" in the opinion of the applicant and its experts. The application acknowledges that ongoing work is required to get to this point and will continue as necessary while the resource consent application is being considered. If the application is successful, any resource consent granted will define a state in which the wreck shall be left. It will be the responsibility of the consent holder to continue the salvage and clean-up work until this point is reached.

39. The applicant will be responsible for the implementation and monitoring of consent conditions to manage the longer term effects of the proposal to dump the remains of the Rena, its equipment and cargo, which would include environmental, social and cultural effects. The applicant proposes that a fund be created, and held by the Bay of Plenty Regional Council or other independent stakeholder, to cover the costs of any conditions in the event of the default of the consent holder.

Status of the wreck

40. Since the grounding in October 2011, the Owner has engaged expert salvage advisors who have supervised the salvage and wreck removal activity. Their reports as at April 2014 state that an estimated 3154.27 tonnes of steel wreckage has been recovered, leaving approximately 11,346.51 tonnes unrecovered. They also reported that debris recovered from the wreck site (as at April 2014) comprised 620 tonnes of metallic cargo (containers, cargo and ingots), 298 tonnes of ship debris and 131 tonnes on non-metallic debris. It is estimated that 3,000 tonnes of cargo debris remains in the debris field on the sea floor.

41. The wreck can be defined as comprising three distinct zones:

    a. the **bow section** has broken into a number of pieces and sits on the top surface of the reef at relatively shallow depths;

    b. the **aft section** is in much deeper water, estimated between 35 and 70m depth, and is more intact than the bow but will continue to break down; and

    c. the **debris field** consisting of the structural parts, equipment and cargo surrounding both the bow and aft sections.

[3] The application and supporting documents are available on renaresourceconsent.org.nz

42. The bow and the aft sections are now approximately 100m apart. A map of the wreck site is attached at Appendix 1.

43. The debris field is a source of adverse effects on amenity, health and safety, natural character and a variety of environmental pollutants. A large amount of the debris can be clearly seen from snorkelling depths. Some debris poses a direct danger to recreational divers, through entanglement hazards. Photos of the debris field, taken from the application, are provided in Appendix 2.[4]

44. We understand from discussions with the Owner that the intention is to continue work to minimise the debris field over the next 4-5 months before any hearing on the resource consent application. It will, however, be at the discretion of the Owner as to what will be removed and the application, if granted on the terms proposed by the Applicant, would not require this work. The owner's current focus pending the hearing of its application is on the significant debris field. Removal of this would address a key concern of Ministers.

45. The wreck site is located in a highly dynamic environment meaning that it will continue to change as a result of weather events. This is especially the case for the parts of the site located at shallower depths. This was evidenced by significant changes in the wreck site caused by Cyclone Lusi in March 2014. The cyclone moved the aft section into deeper water, damaged and moved the remaining bow sections considerably and created new hazards in the debris field. Photos from July 2014 are provided in Appendix 3. Data from both the application and NIWA suggests that there is an average of nine days a year where waves of more than 3m occur in that area. Waves of this significance are likely to affect the wreck site.

Analysis of the application

46. The application's assessment of effects of the proposal to leave the remains of the Rena on the reef concludes that overall, with the proposed conditions in place, any adverse effects of the proposal are considered to be no more than minor, with potential for minor positive effect in relation to marine habitat abundance, fishery operations, historic heritage preservation, recreational diving and regional tourism. The assessment of effects notes that the exception to this is the cultural effects, which, to some groups, are still considered to be more than minor, but are anticipated to lessen with time and restoration of the marine habitat.

47. Officials have reviewed the application and sought expert review of the technical reports. The expert scientific reviews were conducted as a desktop analysis of the reports. A summary of the technical reports and the Crown's expert reviews is provided in Appendix 4. These summaries are necessarily high level and brief, however, officials and experts are available to provide any further information to Ministers as required.

[4] These photos were taken before Cyclone Lusi.

48. Officials engaged an expert to both independently assess the cultural associations with the reef and to critique the applicant's expert report.

49. Officials also engaged an independent planner, as well as drawing on planning expertise from the Department of Conservation, to provide planning advice on the application. A summary of the independent planner's findings is also provided in Appendix 3.

50. The Crown's interests when assessing the application, as broadly reflected in the Wreck Removal Deed, are to consider the environmental, cultural and economic interests of New Zealand and the likely cost and feasibility of complete removal of the wreck. The Crown is also guided by consideration of Treaty of Waitangi principles. In addition, the application expressly considers the effects on the social environment, which is also considered to be an important consideration for the Crown. This part provides a summary of the key issues with respect to each of those considerations.

51. In summary, there appear to be five key concerns with the application:

    a. the cultural impacts;

    b. the potential environmental issues associated with particular contaminants, in particular copper clove[5], antifouling paint and plastic beads;

    c. the natural character issues;

    d. variability in the robustness and quality of the scientific analysis; and

    e. the monitoring and consent conditions.

<u>Environmental interests</u>

52. The majority of the technical reports supporting the application relate to the environmental impacts of the proposal. Reviews of these reports were undertaken by the Department of Conservation, NIWA and the EPA. In preparing advice on the environmental impacts of the application, officials have also, where relevant, considered data collected and analysed as part of the "Rena Environmental Recovery Monitoring Programme 2011/2013".

53. The application concludes that, overall, the proposal will have no more than minor effect on the natural environment. Mitigation in the form of ongoing monitoring and shoreline debris management is proposed.

54. Expert reviews of the technical environmental reports highlighted that there is variability in the robustness and quality of the scientific analysis underpinning the application. A number of expert reviewers expressed concerns with the methodology or data used by the Applicant's experts in coming to their conclusions. In some respects, this concern may be able to be addressed through improved consent conditions (see below).

[5] Copper "clove" is scrap copper ground into small (~1-3mm) uniform sized granules for packing and shipping.

55. The expert reviews of the technical environmental reports identified four key issues related to the natural environment:

a. the potential environmental issues associated with leaving the copper clove on the wreck;

b. the potential for environmental issues associated with the antifouling paint (TBT) used on the *Rena*;

c. the potential impacts of discharges of plastic beads on seabirds; and

d. the impacts on the natural character of the reef.

56. The presence of one unrecovered and unlocated container of copper clove has the potential for chronic toxicity. Excessive copper in water may damage or kill marine organisms such as fish and molluscs. In high doses or following chronic exposure, it can be toxic to humans. While the container is unlocated, it is thought to be in the aft section of the wreck, and therefore at depths that make it difficult to recover with the technology that the Owner is currently using. We understand that the volume of copper clove in the container was 21 tonnes. The Crown experts recommend that the resource consent conditions should provide for removal of the copper clove should conditions at the wreck change and removal become practicable. Adequate monitoring conditions will also be important to ensure that any mass release of the copper clove is detected early and action taken to protect against any adverse toxicity effects.

57. The Rena was, at some point in her history, painted in **antifouling paint containing tributyl tin (TBT) and copper**. These toxins are classified as very ecotoxic to the aquatic environment and TBT has now been banned from use on large vessels. The TBT is likely to continue to be shed from the hull, particularly during storms, in relatively low concentrations. However, short of full wreck removal, there is little that can be done to physically mitigate this effect. The Applicant's report considers that full wreck removal would be more likely to release the toxins into the environment. Contingencies are included in the monitoring plan, however this is lacking in detail. The EPA reviewed the antifouling report and expressed significant concerns with the quality of the analysis provided in the application.

58. The Applicant proposes to remove all remaining containers of plastic beads from the wreck site "if located". One container of these beads remains and poses a considerable risk to seabirds if released. In addition, the plastic beads already discharged into the environment (multiple tonnes to date) continue to pose a potentially significant impact on seabirds in the region. Experts recommend that a scientific programme be put in place as a condition on the consent to assess the nature and extent of plastic beads found in the stomachs of seabirds.

59. Natural character considerations relate to the physical effect of the remains of the Rena on the natural structure of the reef and its habitats, and peoples' experience of the reef (which primarily relates to diver experience and visibility of debris). The key concern with respect to natural character is the debris field which is considered to broaden the natural character footprint of the wreck. The advice received on natural character recommends that the debris field be cleaned up as far is as reasonably practicable.

Cultural interests/Treaty of Waitangi considerations

60. The application includes a cultural impact assessment, as well as impact assessments prepared by Te Arawa, Ngati Whakaue and Ngati Whakahemo. The application states that the views of tangata whenua have been mixed in regard to the significance of potential cultural effects. It identifies the main concerns as relating to the protection of kaimoana, access to the reef, and the spiritual values the reef has for some iwi.

61. The Crown is aware from regular meetings with the owner's representatives in 2013 and 2014 that the owner has consulted extensively with Māori about the possible scope and conditions of a consent application, including providing Māori with detailed reports in a range of areas and access to information. The application reflects that consultation and states that some iwi have provided qualified support for the proposal as it will minimise further damage to the reef and the reef environment from removal works, will avoid the risks of death and serious injury to salvors and will provide closure and enable a return to the reef. However, other iwi consider that the wreck must be removed completely in order for the mauri ("life force") of the reef to be restored and that the presence of a foreign body on the reef is culturally offensive.

62. The owner's consultation, including with the Motiti Waitangi Tribunal claimants, was not adequately reflected in the claimants' evidence to the Tribunal. The Tribunal appeared to accept this evidence uncritically, a material factor in its sceptical assessment of the value of the Crown's consultation.

63. The application proposes mitigation measures to address the cultural concerns including an apology from the Owner, karakia ceremonies to restore the mauri, cultural monitoring and the establishment of a Kaitiakitanga Reference Group, and a restoration package intended to benefit affected iwi and hapū.

64. Because the Crown considered at an early stage that it needed to assess the cultural values raised by the application to ensure that the Crown met its Treaty obligations, officials have gathered information on the cultural impacts of the proposal through:

    a. an expert report on the groups that have an interest in the reef, the values held in the reef and the impact of the grounding and the proposal to leave the wreck there on those values;

b. an expert review of the cultural assessment supporting the application; and

c. engagement with affected iwi/Māori from late November 2013 and consultation with affected iwi/Māori that wished to meet with the Crown. A diagram showing the Crown's consultation process is attached at Appendix 5 and the views of iwi/Māori consulted are summarised below.

65. The expert report was prepared by Dr Grant Young, a principal researcher at The History Workshop Limited. The report identifies three iwi and hapū where evidence shows customary interests in Ōtāiti: Te Arawa; Te Patuwai (who share whakapapa with Ngāti Awa and Te Arawa); and Te Whanau a Tauwhao (Ngāi te Rangi with shared whakapapa with Ngāti Awa).

66. Dr Young concludes that, without taking into account any other factors, the cultural values attached to the reef require the removal of the wreck. He also notes however that the process of removing the wreck could potentially have a greater impact on cultural values associated with the reef, particularly if the marine environment suffers further adverse effects. In this respect, he notes that consideration of the scientific data on these effects and an understanding of the engineering possibilities will be essential to dialogue with iwi and hapū over the impact of the proposal on cultural values.

67. Dr Young also provided the Crown with an expert review of the cultural assessment supporting the application which was completed by Dr Des Kahotea. Dr Young does not consider that Dr Kahotea's conclusion (that the wreck would not damage the reef's mauri if consented on the basis in the consent application) is well supported. He further considers that a number of relevant considerations to tangata whenua, including whether they prefer short term adverse impact on the marine environment to long term and ongoing effects on the marine environment if the wreck remains, have not been considered by Dr Kahotea. Dr Young also raises concerns with the lack of attribution of iwi views in the cultural assessment.

68. There has been ongoing consultation with iwi in relation to issues raised by the grounding of the MV Rena. As noted above, there has been extensive involvement in the context of the Long Term Environmental Plan. There has also been extensive consultation between the Owner and iwi, the details of which officials have seen from the consultation meeting notes provided in support of the application. This information was before the Tribunal.

69. In November 2013, officials invited affected iwi/Māori to consult with the Crown on the future of the Rena in anticipation of a resource consent application possibly being applied for. The Owner confirmed its intention to apply for a resource consent in late January 2014. The offer to consult in November was considered a necessary first step, recognising the tight timeframes that would likely be necessary for consultation on any application itself.

70. The response to the offer to consult was minimal. Only Ngāti Awa and Ngāi te Rangi took up the offer to consult and meetings were held in February 2014. Ngāi te Rangi and Ngāti Awa expressed their desire for complete removal of the wreck and total restoration of Ōtāiti reef. The key point for these iwi is that the Rena is not part of the natural environment. Furthermore, these iwi do not share the marine environment around the wreck is recovering to its former state that existed prior to the grounding of the Rena.

71. On 6 June, following the resource consent application being lodged with BOPRC during the narrow window in which the Crown could consult on the detail of the application before any Crown submissions might be due, officials wrote again to affected iwi/Māori offering to meet with them to hear their views on the application.

72. Again, the response was modest, despite the Crown advising that it would make available its experts if Māori had any questions. Tapuika Iwi Authority, Mataatua District Māori Council and the Motiti Rohe Moana Trust (the latter two being the Wai 2391 claimants) sought consultation and met with officials in the week of 23 June. The Crown proactively ensured that food safety experts from the Ministry of Primary Industries attended the meetings. Tapuika Iwi Authority expressed a similar position to that expressed by Ngāi te Rangi and Ngāti Awa.

73. Two key themes emerged from consultation with these groups, from evidence provided by claimants and other interested tangata whenua to the Waitangi Tribunal, and from media reports of the views of Māori. Iwi/Māori have expressed a strong preference for complete removal of the wreck noting that the Rena has compromised the ability of Māori to exercise their cultural practices and will continue to do so if the wreck is left on Ōtāiti reef. The second key theme was the view that the ability of iwi/Māori to participate meaningfully in the Crown's consultation process and the statutory consent process is limited due to issues around iwi capacity and capability. They believe the consent process will therefore be inherently unfair and prejudicial to iwi/Māori.

74. There was limited discussion with iwi/Māori, during consultation, of the Owner's proposed cultural mitigation as outlined in the application. The reasons for that varied. For Māori who opposed the application, mitigation was irrelevant. Other Māori whom the Crown consulted (the Wai 2391 claimants) did not wish to discuss specifics. The Crown is aware that some Māori support the owner's application or partial removal, and that they have engaged with the Owner around mitigation.

75. Officials have also been informed by the evidence provided to the Waitangi Tribunal about the cultural significance of the reef to the local iwi and hapu. Officials note that a number of the individuals and groups who provided evidence to the Waitangi Tribunal inquiry choose not to participate in the Crown's consultation.

76. Since the pre-hearing consultation, Te Patuwai (one of the Motiti hapu, but not one of the Waitangi Tribunal claimants) has written to the Crown indicating support for the resource consent application.

77. The Motiti Tribunal claimants and other tangata whenua have expressed the view that Ōtāiti reef is a taonga. The Tribunal has agreed. Under Article 2 of the Treaty, the Crown has a duty of active protection with respect to taonga.6 Such protection is not absolute, but requires the Crown to do what is reasonable in the circumstances.7 Article 2 interests will be prominent in the Crown's consideration of the broader "environmental, cultural and economic interests of New Zealand and the likely cost and feasibility of complete wreck removal" under the Wreck Removal Deed.

78. The Crown submitted before the Waitangi Tribunal:

    a. the Treaty obligation did not require the Crown to consult with Māori about entering into the Wreck Removal Deed;

    b. the Wreck Removal Deed has not meant the Crown has a predetermined view on the Rena application; and

    c. given that the Owner has a legal right to apply for a consent, and that the consent process will properly and meaningfully consider the interests of Māori because the Resource Management Act 1991 places significant explicit weight on these interests, the Crown has discharged its active protection obligation by consulting with Māori since November 2013. The start of this consultation with iwi/Māori is likely to be almost 16 months before the consent authority commences hearing the application.

79. The interim report focusses on c above. The Tribunal found that Otaiti is a taonga to the claimants and Motiti Māori are isolated and in a vulnerable position in terms of the wreck's effects if left on Otaiti. The Tribunal acknowledges that the circumstances are unique in part because the Crown has not caused the damage. However, it finds the Crown's post-settlement actions in terms of consultation represent a breach of the Crown's Treaty principles of good faith and partnership because the consultation has been directed at the Crown informing itself as to the views of Māori (but has not done so adequately, so it is not fully informed) and the Crown has not adequately equipped Māori to participate in the consent process or respond meaningfully to the Crown's consultation.

80. Arising from these findings, the Tribunal considers the Crown has the following duties:

    a. With respect to its duty of active protection of rangatiratanga and the resource consent process, the Crown must:

        i. Recognise which hapū and iwi have interests in the taonga.

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[6] *New Zealand Māori Council v Attorney-General* [1987] 1 NZLR 641 at 664

[7] *New Zealand Māori Council v Attorney-General* (the *Broadcasting Assets* case) [1994] 1 NZLR 513 (PC) at p 517

ii. Recognise the nature of their relationship to their taonga, and how the Rena grounding has affected that relationship.

iii. Ensure robust consultation, by providing information on the particularly complex resource consent application and the process itself so Māori are adequately informed and able to make 'intelligent and useful responses'.

iv. Ensure meaningful engagement, by providing Māori with active support that will allow them to articulate the nature of their relationship with Otaiti and how the grounding of the Rena has affected their relationship, so as to allow full expression in the consent process of the interests affected and the reasons why Māori wish the wreck to be removed.

b. With respect to its duty of active protection of the taonga itself, and the impact of a consent on affected Māori, the Crown must:

i. Do as much as is reasonable to test the evidence on the feasibility of the removal of the wreck, cargo and debris in order to form a view on whether to make a submission on the consent application and the nature of the submission.

ii. Seek the imposition of monitoring and mitigation conditions to protect the environment of the reef and Motiti Island on an ongoing basis from the effects of any material left in situ.

iii. Seek that, in the event resource consent is granted, some positive and worthwhile reasonable mitigation off-set is provided by the consent holder to affected Māori.

c. Take active steps to look beyond the current process, taking into account the possible outcomes in the event of success or failure of the resource consent application, and begin considering how the Crown's duties – both in relation to the taonga and in relation to Māori and their exercise of rangatiratanga – might be fulfilled.

d. In considering whether to make a submission in respect of the Rena owners' application, the Crown should take into account the following matters:

i. The adverse effects of the continued presence of the Rena in its rapidly degrading form on the reef, including: the bow section, which is wedged on the top of the reef, one metre below the low tide mark; the balance of the hull and superstructure, situated further down the reef, which is subject to strong ocean currents; the large debris field on and around the reef; and the potential for continued discharge as containing structures break down further, potentially releasing further contaminants.

ii. The effects on Māori as to the limitations on use of their taonga, which are significant either in direct physical terms, potentially from further discharges, and in perception terms, knowing of the existence of the vast debris tonnage lying in, on and around the reef.

iii. The fact that the grant of resource consent in these circumstances imposes solely adverse effects on the environment, including the affected community on Motiti.

iv. The feasibility of removal or mitigation of adverse effects may be different depending on which part or parts of the wreck or its former contents are under consideration for retention, that is: the bow section, the balance of the hull and superstructure; or the large debris field on and around the reef.

e. In the event that the Crown decides to make a submission in respect of the owners' application, whether in support, opposition, or neutral, the Tribunal recommends the Crown should:

i. Submit the decision-maker accept that Otaiti Reef is a taonga.

ii. Submit to the decision-maker that, as a consequence of the reef being a taonga, its status elevates the protection of Otaiti Reef to a matter of national importance in terms of section 6(e) of the RMA.

iii. Ensure the submission seeks that, if any consent was to be granted, monitoring and mitigating conditions are imposed to reduce the effects on the taonga of Otaiti and on the coastal environment of Motiti and its community to a sustainable level as far as is possible.

f. In the event the Crown has not made all of its expert reports available to Māori, it does so immediately.

g. Given the unique nature of these circumstances and given the claimants are in a vulnerable position, the Crown should consider how it can actively assist Māori to make their own submission on the resource consent application, beyond the limited contestable legal aid fund administered by the Ministry for the Environment.

h. Suggests the Minister of Local Government makes her own submission on the resource consent application in her capacity as the territorial authority of Motiti.

81. Officials consider that notwithstanding the Tribunal's findings, the process of consultation with Māori and the review by officials and experts for the purpose of advising Ministers on the range of Rena issues (reflected in this paper)

addresses most of the Tribunal's recommendations. In particular, the Crown was already independently undertaking a robust analysis in considering the application, having started this process in April 2013 with review of the owner's draft experts' reports for its then potential application. The Crown advised the Tribunal about that well before its recent hearing. Further, the Crown had reached a preliminary view to oppose the application in part prior to the Tribunal's interim report.

82. The recommendations which require additional consideration are:

a. Providing Māori with active support (including financial support beyond that permitted in the contestable legal aid fund administered by the Ministry for the Environment) that will allow them to articulate the nature of their relationship with Otaiti and how the grounding of the Rena has affected their relationship, so as to allow full expression in the consent process of the interests affected and the reasons why Māori wish the wreck to be removed.

b. In the event that the Crown decides to make a submission in respect of the owners' application, whether in support, opposition, or neutral, the Tribunal recommends the Crown should submit to the decision-maker that, as a consequence of the reef being a taonga, its status elevates the protection of Otaiti Reef to a matter of national importance in terms of section 6(e) of the RMA.

c. The Crown should make all of its expert reports immediately available to Māori.

d. As a suggestion rather than a recommendation, the Minister for Local Government to make her own submission on the resource consent application in her capacity as the territorial authority of Motiti.

83. Officials:

a. Do not consider that the Tribunal's conclusion that the Crown is not providing active support to Māori is supported by the evidence :

i. While officials acknowledge that the owner's application is novel and presents challenges because of the range of scientific and other expertise required to properly engage, the owner has since 2012 made significant efforts to engage with local Māori to brief them on its plans and the scientific and other evidence relevant to the formation of the views of Māori. This is detailed in the owner's consent application, which was before the Tribunal, and Crown witnesses advised the Tribunal of the fact of it at the hearing. Māori (including the Motiti claimants) have not, as the Tribunal suggested, had no input or been at a significant disadvantage in terms of engaging with the owner on matters which the Crown is also considering.

ii. The contestable Environmental Legal Assistance Fund administered by the Ministry for the Environment at arm's length from Ministers is available to Māori groups and others, including the Waitangi Tribunal claimants. On the assumption that the application is to be referred to the Environment Court, the Fund is potentially available. The Fund is capped at a maximum $40,000 (excl. GST) for each successful applicant group, and can be used to reimburse the costs of legal counsel and expert witnesses. While such a figure is unlikely to cover the full costs of instructing a specialist environmental lawyer and associated experts for the hearing (one of the claimants' experts estimated that the costs could be in the region of $150,000 and officials concur with that estimate), recent experience with submitter groups at boards of inquiry is that successful funding recipients shared their resources to enhance the advocacy of their common position.

iii. The provision of support, including significant financial support, raises a significant issue of precedent. While the Crown has previously provided financial support through the Iwi Leaders' Group to assist Māori to instruct experts on matters such as the ETS and water, these have been strategic issues with a long-term future focus. The current situation is of a different character, but attempts to distinguish it are unlikely to be persuasive to Māori in light of the nature of resource consent applications under the RMA. The present application is complex, not unlike many other applications which have not involved the Crown, let alone Crown consultation. The Tribunal Interim Report, if acted on in the future, is likely to present a significant burden on the Crown. Further, even if Cabinet is prepared to consider support through funding, there is a real issue as to whom that funding should be provided. Both Waitangi Tribunal claimants assert mana whenua over Motiti and are reluctant to deal with each other. There is a third hapu group on Motiti also, and mainland iwi also have cultural interests in Motiti and Otaiti.

iv. Further, recent Treaty settlements in the Bay of Plenty have resulted in some iwi groupings (of which the claimants are part, although they resist the statement that they have settled) having sufficient financial resources to participate in the consent process.

v. Finally, the Tribunal's recommendation overlooks the value of the Crown's robust analysis of the owner's application. The claimants are reflexively very sceptical of any Crown analysis, but the ultimate release of the Crown's experts' analyses (see below) should dispel that.

vi. Officials do not consider that the Crown needs to do more than it is currently doing in relation to active support.

b. In relation to the content of the Crown's submission, the Crown acknowledges that the reef is a taonga for tangata whenua.

c. In relation to the experts' reports:

i. Proactive release of the reports could be seen to be useful in showing the extent of the Crown's consideration of the owner's application. The claimants might also find the information useful in terms of focussing on what is of real concern and what is not in terms of the consent process.

ii. Officials note that LOC expert reports were commissioned by Maritime New Zealand. Consistent with its independence as a Crown entity, Maritime New Zealand will manage the decisions about the release of these reports and the timing of any release.

iii. A risk with disclosure is that the claimants or others might seek to call the relevant Crown officials or retained experts as witnesses before the Environment Court, although this can be managed.

iv. Disclosure prior to 8 August is likely to compromise the free and frank development of the Crown's final position.

v. On balance, officials consider that experts' reports commissioned by the Crown should be released after the Crown's submission is released. The timing of this release will not prejudice the claimants as this will occur well before the hearing before the consent authority. However, officials note that release other than immediate release is likely to receive substantial criticism from the Tribunal.

d. Understand that the Minister for Local Government does not consider that she should make a submission (see below). It should be noted that not all Māori inhabitants of Motiti support full wreck removal in any event.

84. A fuller, legally privileged, summary of the Tribunal's interim report is attached as Appendix 6.

85. We agree with this advice from officials. This paper puts forward a number of noting and decision points in relation to the Tribunal's recommendations for Cabinet's formal consideration.

Economic interests

86. The application identifies anticipated positive economic benefits in the areas of tourism (particularly from boat charters and wreck divers), commercial

fishing operations (because the exclusion zone will be lifted much earlier than if full wreck removal was pursued) and benefits from the implementation of consent conditions and a restoration and mitigation package.

87. The Treasury has provided advice on the economic impacts of the application. The Treasury considers that the majority of the economic effects of the proposal to leave the wreck on the reef are locally or regionally based. The Treasury does not consider that there are any major nation-wide economic costs or benefits arising from the proposal, including any significant adverse effects to New Zealand's international reputation.

Likely cost and feasibility of complete removal of the wreck

88. The cost and feasibility of complete wreck removal is discussed in Volume 3 of the application in a consideration of alternatives. This is supported by a report by TMC (Marine Consultants) Ltd that was provided to the Crown shortly after the consent application was lodged. Officials understand that the Owner intends to publically release the TMC report.

89. The application considers complete wreck removal an impracticable option because of the significant costs involved and the high level of health and safety risk to salvors. The application also highlights the extended length of time required to complete full wreck removal and the potential for adverse social and recreational impacts this could impose on the community. The application also claims that full wreck removal could prolong the period of time before the reef and the environment recovers and the applicant believes that full wreck removal could inflict further damage on the reef and the environment. Finally, the applicant says that a wider contribution back to the region through restoration and mitigation packages can be made if the wreck remains on the reef.

90. Maritime New Zealand has sought advice from London Offshore Consulting (LOC), an internationally recognised marine and engineering consultancy and survey organisation, on the likely cost and feasibility of complete wreck removal and the implications of full wreck removal for diver safety. Their advice is that although they consider the application significantly exaggerates the timescales and cost of full wreck removal, LOC are aware that the international insurance market is unlikely to support much more in the way of financial claims arising from the *Rena*.

91. While the application approaches the alternatives for removal in terms of complete wreck removal, in terms of difficulty, expense and danger of wreck removal, we consider that the wreck site can be split into two parts: the bow sections and debris field down to a depth of 30m[8]; and the aft section and debris field deeper than 30m.

92. The bow section is now in seven parts; two large sections, with the heaviest weighing approximately 674 tonnes and the remaining five weighing considerably less. The total weight of these parts is estimated to be 1419 tonnes. By contrast, the total weight of the aft section when the vessel first broke in half is estimated to be about 10,353 tonnes.

93. The Applicant's report by TMC considers that a number of the smaller sections of the bow can be practicably removed. The two larger sections are embedded in the reef and are more difficult to remove. TMC consider that removal of all remaining bow sections is likely to take around 160 working days. This work is heavily dependent on the weather as divers working on the shallower parts of the wreck are highly impacted by surge conditions. With likely downtime due to weather, removal would take approximately 410 days and cost approximately $79 million. LOC consider that the figures quoted are not unrealistic.

94. The current sheer leg equipment being used by salvors is unable to access to the wreckage on the reef. LOC advises that this therefore requires sections to be pre-rigged by divers and pulled to deeper water before re-rigging and lifting can occur. This increases damage to the reef and the release of TBT. An alternative would be for different equipment to be brought into New Zealand. The damage could be reduced with this equipment, however it would increase costs.

95. For the debris field down to 30m, TMC estimates that cleanup, with downtime, will take 184 days at a cost of around $29 million. It is not clear exactly what would be required to be removed. However, a common international standard for removals is any material over $1m^2$. LOC consider that the figures quoted are not unrealistic for the techniques proposed.

96. At present, significant further work is being undertaken by the salvors to clear the shallower parts of the debris field. As discussed further below, any Crown presentation to the Environment Court at the hearing of this matter would need to be updated in light of that work, once the results have been assessed.

97. Removal of the aft section is technically more difficult. The aft section is badly damaged but remains relatively intact. It is lying on its side in a depth of 35-70m. Air diving cannot be used and either saturation diving (which presents significant risks to divers involved) or the use of remote operated vehicles (which are very expensive) would be required. TMC say that removal of this section would also take considerable time (between 2.6 and 7.1 years) and cost a very significant amount (between US$314m and

[8] 30m is considered to be the safe diving limit for general recreational divers.

US$759m). Estimates depend on the techniques used. LOC do not consider that the rate quoted by TMC is realistic. However they do note that, even if more advanced technology is used, the operation is still likely to long and expensive.

98. Removal of shipwrecks is a technical and difficult area. The evidence presented by the Applicant is that removal of the deeper aft section is likely to be significantly more difficult, expensive, lengthy and dangerous to salvors (if saturation diving is used). Removal of the bow sections and clean up of the debris field, on the other hand, while still presenting some risk to salvors as does any salvage operation, appears to be less difficult, expensive, lengthy and dangerous.

99. LOC considers that the removal operations for both parts would present risks to salvage workers given the techniques proposed by the Applicant, considering the inherent dangers of diving at depth. LOC are critical of the techniques being proposed, which are particularly vulnerable to the weather conditions and/or rely heavily on the deployment of divers. Given the techniques being considered by the Owner, LOC considers that the key difference between the two parts of the wreck site relate to the costs of removal. As a general observation regarding the asserted costs, LOC consider that the application presents excessive costs for the proposed works. They consider that the work could be achieved by using more sophisticated machinery for substantially less than the figures provided by TMC.

Social effects

100. The application assesses the effects on the social environment, including on community and people, recreation and tourism, heritage, and health and safety. The application concludes that the proposal is expected to have no more than minor adverse social effects and is expected to have positive social effects in regards to historic heritage and experiential values associated with the wreck (ie diver experience).

101. A key aspect of the social impact relates to the consumption of kaimoana. Since *Rena* ran aground, MPI has been providing advice to the Bay of Plenty District Health Board and Bay of Plenty Regional Council on the safety of kaimoana as well as working with the commercial seafood industry to ensure their products are safe.

102. Results from the monitoring to date have not identified a risk to consumers of kaimoana. The contamination that has been detected from monitoring to date is largely in the invertebrates such as kina and rock lobster, both of which were taken both recreationally and commercially at Astrolabe reef. MPI notes that further removal of the wreck and its debris may, for a period, increase release of contaminants into the environment, primarily as a result of disturbing and redistributing the contaminated seabed. Given that monitoring to date has not identified a risk to consumers, MPI has no scientific evidence to suggest that this new disturbance will create a new risk to consumers.

103. Irrespective of whether the wreck and/or its debris is further removed, MPI considers that further monitoring is essential to ensure that there are no risks to consumers now or into the future.

104. A significant social effect also relates to safety for recreational divers visiting the wreck site. Advice from LOC identified significant concerns regarding the changing nature of the debris field and the hazards that it poses to divers. This health and safety risk is especially relevant for the parts of the wreck down to 30m, which is considered to be the safe limit for recreational divers.

Monitoring and consent conditions

105. The Crown experts have identified a number of improvements that could be made to the monitoring and consent conditions from a technical perspective. At a high level, there are concerns around the adequacy of the monitoring proposed and the form of the response should monitoring show unanticipated environmental effects.

Procedural matters

106. The unprecedented nature of the proposal raises a number of procedural issues in relation to the interpretation and application of the RMA, the Maritime Pollution Regulations and the relevant planning documents.

107. Consequently there is some uncertainty as to whether the applicant's classification of the two parts of the proposal as a discretionary activity is correct. It is possible (but not probable) that some aspects of the proposal could be held to be prohibited activities for which no resource consent can be applied for or granted.

International comparisons

108. Maritime New Zealand has received expert advice from LOC regarding comparable wreck removals in other developed countries.

109. The advice indicates that wrecks are generally required to be removed following the issuance of wreck removal notices by Authorities of the affected countries. The approach by States has hardened in recent years with increasing emphasis on full removal. Previously it was not uncommon for pollutants to be removed and wrecks to be left in situ. The primary considerations for assessing whether wrecks should be removed are:

    a. Whether they pose a Hazard to Navigation;

    b. Whether they pose an environmental risk; and

    c. Whether they pose a danger to divers or boaties.

110. A comparative table of other wreck incidents worldwide is attached at Appendix 7.

111. Officials understand that the costs incurred for the salvage for the Rena to date are the second most expensive in the world.

Other matters

112. Should the Owner fail to secure a consent, it is unclear what stance they will take towards ongoing salvage.

113. At the most recent meeting between officials and the Owner's representatives, the Owner indicated that if it was unsuccessful in obtaining a resource consent on terms acceptable to it, it would reserve its position about full wreck removal, which is its default legal requirement under the Resource Management Act 1991. Officials also understand that the ongoing costs of wreck removal activity are being met by re-insurers of the Owner and its Insurer (the Swedish Club) and there is little appetite to spend much more money, especially given the large amounts spent to date.

114. The Crown has limited options to enforce full wreck removal by the Owner. The Owner has the option to rely on its 'no asset status' as a 'one wreck' Liberian company, with any future action left to the re-insurers to manage. Based on legal analysis that was done at the time of the grounding, action by the Crown to enforce the legal requirement of full removal would not be viable.

115. It is difficult to know how seriously the Owner would pursue this approach, as its parent company, Costamare, clearly places considerable store on maintaining a good corporate reputation. However, given the relative costs and the commitment made by the Owner's to date they may take the view that they have done more than what would be considered reasonable.

116. The upcoming Transport Accident Investigation Commission (TAIC) investigation report may influence the Owner's decisions.

117. The TAIC report in to the Rena grounding is yet to be released. While it is not known what conclusions TAIC will reach, it is possible that TAIC will explore issues beyond the proximate cause of the accident (such as poor navigation). If the TAIC report emerges during the consent application process, any negative perception created by the report may challenge perceptions of the Owner's good faith engagement since the grounding and may influence their decisions.

Proposed approach

118. Based on the analysis above, key concerns relating to the bow section of the reef and associated debris field down to 30m include the impacts on natural character, cultural impacts (including importantly the views of tangata whenua), health and safety concerns and environmental impacts.

119. In light of these concerns, we consider that it would be preferable for the bow sections and the debris field to be removed as thoroughly as is practicable.

    119.1 Regarding the debris field, the Crown submission for 8 August 2014 will address the present condition of this area, as we understand it to be. However, officials note that considerable further efforts are being undertaken by the Owner contemporaneously with the resource

consent process to improve the condition of the debris field. Accordingly, any Crown submission before the Environment Court would need to assess whether this work had made a material improvement to the situation and addressed the identified concerns.

119.2 Regarding the remaining bow sections, it is our preference that all seven remaining pieces be removed. However, further expert assessment of the removal of the two larger pieces, which we are advised remain embedded in the reef, may be required in order to assess the damage that removal of these pieces would cause to the reef. Matters of detail of this sort can be pursued in evidence and in questioning of experts during the hearing for the consent.

120. With respect to the aft section, we consider that the proposal to leave the aft section on the reef is reasonable, given the health and safety risk to salvors operating at such depths using saturation diving techniques and the significant difficulty and cost associated with removal of that part of the wreck using either saturation diving or remote operated vehicles. Furthermore, the expert's concerns relating to the natural character of the reef were more focussed on the debris field than the aft section.

121. However, in terms of environmental impacts on the aft section remaining, we consider that these should be managed through a tighter set of consent and monitoring conditions. In that respect, we further recommend that the Crown submit on improvements to the monitoring and consent conditions to ensure that the long term effects of what remains of the wreck is appropriately managed.

122. We consider that a submission of this nature would strike an appropriate balance between the concerns regarding the wreck remaining on the reef, and the risks (including significant reef damage) and significant expense associated with full wreck removal of the lower aft section.

123. Officials note that while the proposed approach does not take the position of full wreck removal as the Waitangi Tribunal claimants and most Māori would like, it is a considered balance and is reasonable in the unique circumstances of this incident. Also, some Māori do consider this position supportable and we understand that they intend to make submissions to the consent authority to this effect. Accordingly, officials consider that it is consistent with the Crown's duty of active protection and of the interests of Māori, including their resumed access to the reef for cultural and food gathering purposes. In light of the financial realities of full wreck removal and the possibility that the Owner could disengage completely should full wreck removal be required (resulting in there being no ongoing Owner involvement or monitoring, and on a worst case scenario abandonment of the wreck), we consider that the option proposed best protects the Reef.

124. An outline of the proposed submission is included at Appendix 8.

125. The submission will provide an outline of the Crown's position, The form and content of such submissions are prescribed by the RMA.[9] The filing of a submission is usually the start, not end, of the consent process for submitters, providing jurisdiction to develop further and argue the substance of the points raised. At present, we propose that the Crown reserves it right to be heard in support of its submission. Should the Crown take an active role in the hearings for this application, officials will prepare detailed submissions and supporting evidence, taking into account further information that is received and the expert views provided by other submitters.

Crown submissions under the RMA

126. Crown submissions on resource management matters of significance should generally represent an all-of-Government position agreed by Cabinet. Whether an all-of-Government submission is appropriate in a particular instance is a case-by-case decision. In this instance, the Crown has decided to make an all-of-Government submission, having considered the following matters:

    a. A contractual obligation to the Owner to consider whether or not to make a submission;

    b. Having undertaken a robust review over a considerable period in order to decide its position on a submission, the Crown is in a position to positively contribute to the consent authority's decision-making process;

    c. The impacts of the proposal (including whether the conditions are appropriate and enforceable) are of significant importance to the region.

127. Officials note that an all-of-Government submission has very recently been made to the EPA in relation to an application for marine consent by Chatham Rock Phosphate Limited to mine off the coast of the Chatham Islands. This submission represented the views of the Crown in relation to economic development, conservation, fisheries, soil and food safety. The possibility of this submission was considered prior to its lodgement by Cabinet, on 7 July 2014, where it was agreed that any submission made would be an all-of-government submission [CAB Min (14) 23/6B].

Statutory role of the Minister of Local Government in respect of Motiti

128. Under section 22 of the Local Government Act 2002 (LGA), the Minister of Local Government is the territorial authority for any part of New Zealand that is not already part of a local authority's district, including Motiti Island. This jurisdiction extends to the low-water mark along the coast of Motiti. The Minister's responsibilities as territorial authority are separate to those the Minister may have as a Minister of the Crown. Sections 12 and 13 of the LGA enable the Minister as territorial authority for Motiti to consider making a submission on the Rena resource consent application. The Minister has statutory decision-making responsibilities regarding the Rena resource

[9] Section 96; form 13.

consent application. The Minister is advising Cabinet of these responsibilities and her decision as a courtesy and in the interests of efficiency.

129. The Minister of Local Government has decided not to make a submission as territorial authority of Motiti after careful consideration of a number of factors. These include the reported impact on the Motiti community culturally and socially; the views of the wider community and tangata whenua as available to her; the Crown's consideration of the wider impacts of leaving or removing the wreck from Ōtāiti reef; the findings of the Waitangi Tribunal in its interim report; and relevant principles relating to local authorities including the impact of the decision not to make a submission on the interests of the future and current Motiti community. The Department of Internal Affairs is contacting Motiti residents to advise them of her decision.

Likely timing of consideration of resource consent application

130. We understand that the Applicant is likely to apply to have the resource consent application directly referred to the Environment Court. If direct referral is granted, the Environment Court will hear and make a decision on the application. The Crown submission will form part of the Environment Court's consideration, but is not determinative.

131. We understand that any Environment Court hearing is unlikely to occur before March 2015.

132. The Crown submission proposed in this paper would reserve the right of the Crown to appear in support of its application at the hearing. We will make decisions around whether the Crown should appear in due course. In this paper, we are seeking a delegation from Cabinet to authorise the three of us jointly to make any decisions required consequential to the decision to make the submission.

Consultation

133. The Crown has been engaging with iwi/Māori specifically on the consent proposal since November 2013 and on the wider issues since the grounding of the vessel. This is detailed earlier in the paper.

134. This paper was prepared by the Ministry for the Environment and the Department of Conservation and the Crown Law Office has provided advice. The following departments were consulted on this paper: Department of Internal Affairs, the Treasury, Ministry of Transport, Maritime New Zealand, Te Puni Kokiri, the Office of Treaty Settlements (part of the Ministry of Justice), Ministry for Primary Industries, and the Ministry of Health. The Department of Prime Minister and Cabinet was informed.

135. Maritime New Zealand has indicated that it will not make a separate submission and is coordinating its efforts alongside the Crown. Its views are incorporated into this Cabinet paper.

Financial implications

136. The Crown has provided $36.48 million in Vote Transport non-departmental other expense Tauranga Maritime Incident Response to fund the response to the grounding. This has primarily been paid to Maritime New Zealand to fund its activities. Other departments were expected to meet their costs from their baselines.

137. The $36.48 million was appropriated on the basis that this would be sufficient to fund the activities to completion, which included the costs of Maritime NZ responding to the resource consent application. This was expected to be in December 2013. The most recent funding request was made in November 2012 and did not envisage the Waitangi Tribunal application that has now eventuated.

138. The Ministry of Transport became concerned about the sufficiency of the appropriation during 2013/14 and has managed to fund costs of over $400,000 in relation to the Waitangi Tribunal claim from its baseline to try to prevent the response appropriation becoming exhausted.

139. At 30 June 2014, an estimated $1.5 million remained in the appropriation. Initial indications are that the $1.5 million may not be sufficient and the Ministry of Transport is working with the key departments involved to clarify costs. If the costs do exceed the $1.5 million, the parties will explore reprioritisation options but we may have to seek additional funding.

140. The Wreck Removal Deed provides for a payment of $10.4 million to the Crown for public purposes if the consent is granted and acted on, the Crown and MNZ do not oppose its grant, either directly or indirectly, and the Owner obtains a substantial cost saving in carrying out the activities authorised by the consent when compared to the cost of the removal of the wreck. The proposal to make a submission as identified in this paper may mean that the Crown will not receive the payment of $10.4 million regardless of whether the consent is eventually granted and acted on.

Human rights, gender implications and disability perspective

141. The proposals are consistent with the Human Rights Act 1993, and there are no gender implications or disability implications with the proposals.

Legislative implications and regulatory impact analysis

142. There are no legislative implications associated with the proposals and a regulatory impact analysis is therefore not required.

Publicity

143. There is likely to be significant media scrutiny and interest in the Crown's submission on the resource consent application. We recommend that Ministers issue a media release to announce the Crown's submission and to address any potential issues proactively.

144. We recommend that the Crown publically release this Cabinet paper (with the exception of Appendix 6, which is legally privileged advice) and the Crown submission to the consent authority promptly following the lodgement of that submission.

145. We also recommend that the expert reports commissioned or undertaken by the Crown (but not Maritime New Zealand) and considered as part of the preparation of this paper also be released at this time. Maritime New Zealand has commissioned the LOC reports and as a crown entity is responsible for decisions about the release of these documents.

Recommendations

146. The Attorney-General recommends that Cabinet:

1. note that on 13 June, the Bay of Plenty Regional Council notified an application for resource consent to leave the remains of the *MV Rena* on Ōtāiti Reef and authorise any potential future discharges of contaminants from the wreck
2. note that submissions on the application close on 8 August 2014
3. note that the Wreck Removal Deed between the Owner and the Crown and Maritime NZ requires the Crown and Maritime NZ to, in good faith, consider making a submission in support of any consent application lodged by the Owner taking into account the environmental, cultural and economic interests of New Zealand and the likely cost and feasibility of complete wreck removal
4. note that the Wreck Removal Deed provides that if a consent is granted and acted on, the Crown and MNZ do not oppose its grant, and the Owner obtains a substantial cost saving in carrying out the activities authorised by the consent when compared to the cost of the removal of the wreck, then the Owner will make a payment of $10.4 million for public purposes to be specified by the Crown at the time
5. note that the Motiti Tribunal claimants and other tangata whenua have expressed the view that Ōtāiti reef is a taonga. The Tribunal has agreed. Under the principles of the Treaty of Waitangi, the Crown has a duty of active protection with respect to the reef. Such protection is not absolute, but requires the Crown to do what is reasonable in the circumstances. Crown Law considers that the Crown has informed itself of iwi/Māori views compliant with the Treaty, but that the Waitangi Tribunal has concluded in its 17 July 2014 interim report that it does not consider that the Crown has acted in a Treaty-compliant manner and that both the reef and the Motiti Waitangi tribunal claimants are in a damaged and vulnerable state
6. note that on 23 June 2014 Cabinet agreed that any Crown submission should be approved by Cabinet and represent a whole-of-government view, consistent with the process for nationally significant issues under the Cabinet Office Circular CO (06) 7 [Cab Min (14) 21/11]

7. note that the key concerns with the application relate to the impacts on the natural character of the reef, health and safety issues, cultural values, including that tangata whenua consider that the reef is a taonga, the Crown's obligations to Māori under the Treaty of Waitangi, and certain environmental impacts and how these are dealt with in the proposed consent conditions

8. note that officials have consulted with affected iwi/Māori that responded to an offer of consultation by the Crown, and that those iwi/Māori have expressed a strong preference for full wreck removal

9. note that the Crown is aware of the views of other affected iwi/Māori that something less than partial wreck removal is acceptable, including on a cultural basis, and that such groups intend to make submissions to the consent authority to this effect

10. note that s 96 of the RMA requires a submission to state whether it supports, opposes or is neutral in relation to the consent application

11. agree that the Crown should make an all-of-Government submission that:

    11.1. opposes in part the grant of the consent with respect to the bow sections and debris field down to 30m and seeks the removal of the bow sections and debris field down to 30m as far as is practicable.

    11.2. seeks improved monitoring and consent conditions for all parts that remain.

12. authorise the Attorney-General, Minister of Conservation and Minister for the Environment to approve, sign and lodge the submission by 8 August

13. authorise the Attorney-General, Minister of Conservation and Minister for the Environment to have the Power to Act to take final decisions in relation to the content and lodgement of the Crown submission

14. agree that we will publically release this Cabinet paper (with the exception of Appendix 6, which is legally privileged advice) and the Crown submission following the lodgement of the submission

15. authorise the Attorney-General, Minister of Conservation and Minister for the Environment to have Power to Act to make decisions associated with the Crown's future involvement in this resource management process, including whether officials should appear in support of the application

16. note that the resource consent application is likely to be directly referred to the Environment Court and a hearing is not expected to begin until March 2015 at the earliest

17. having considered the recommendations and suggestions of the Waitangi Tribunal contained in its interim report:

17.1. note that the Crown's proposed submission seeks enhanced monitoring and conditions for any parts of the wreck that remain

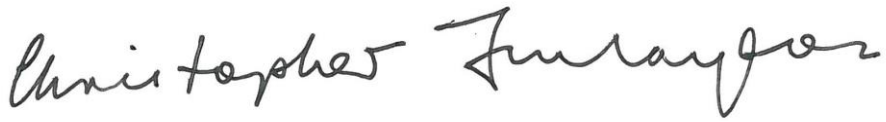
17.2. agree that a Crown funded mechanism already exists for the Motiti Tribunal claimants and other tangata whenua to seek potential financial support in relation to participation in the consent authority process and that the Crown does not need to make special financial or other support available to them

17.3. agree that the Crown submission acknowledge that tangata whenua consider the reef is a taonga

17.4. agree that notwithstanding the Tribunal's recommendation for immediate release, disclosure of the experts' reports commissioned or undertaken by the Crown (but not the crown entity, Maritime New Zealand) should be made following the Crown's submission being filed on 8 August 2014

17.5. note that the Minister of Internal Affairs has decided not to make a submission as territorial authority of Motiti after careful consideration of a number of factors.

18. note that if the costs exceed the $1.5 million remaining in the Rena appropriation, additional funding may be sought.



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Hon Christopher Finlayson
Attorney-General
31 /July /2014

Appendix 1: Map of wreck site taken from resource consent application (note that work has been continuing on the wreck site since these images were developed)

Figure 3: Multi-beam Image of the Wreck of the Rena (April 2014). Source: ADUS Deep Ocean

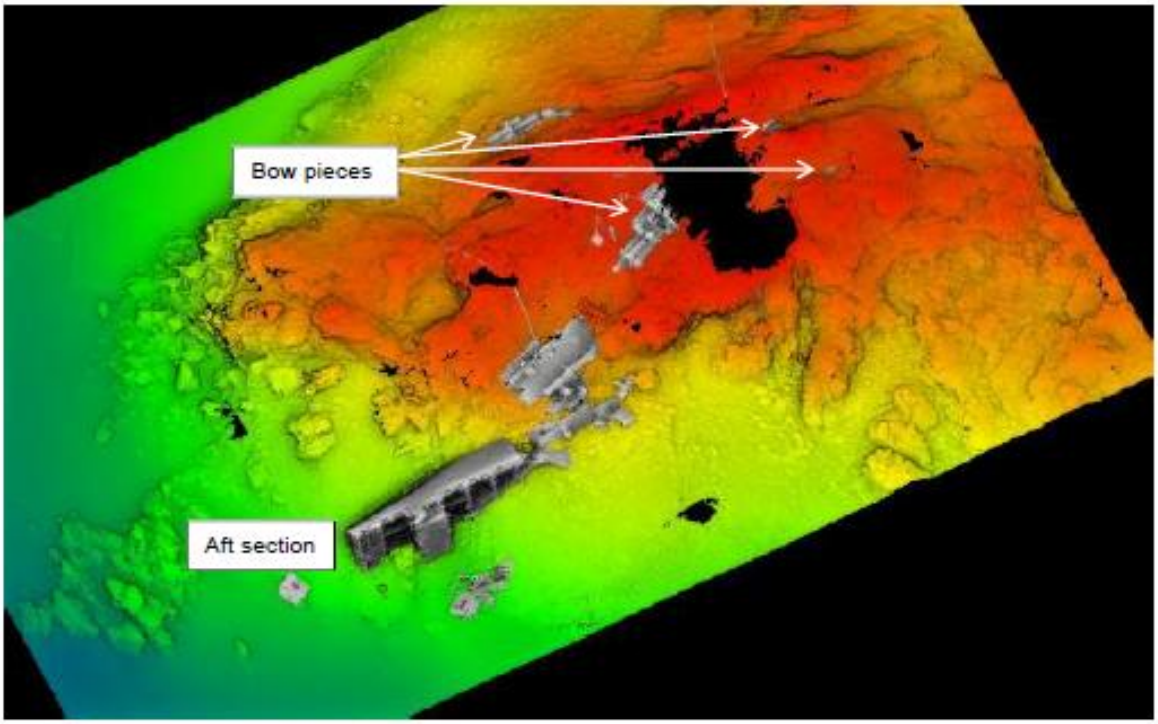
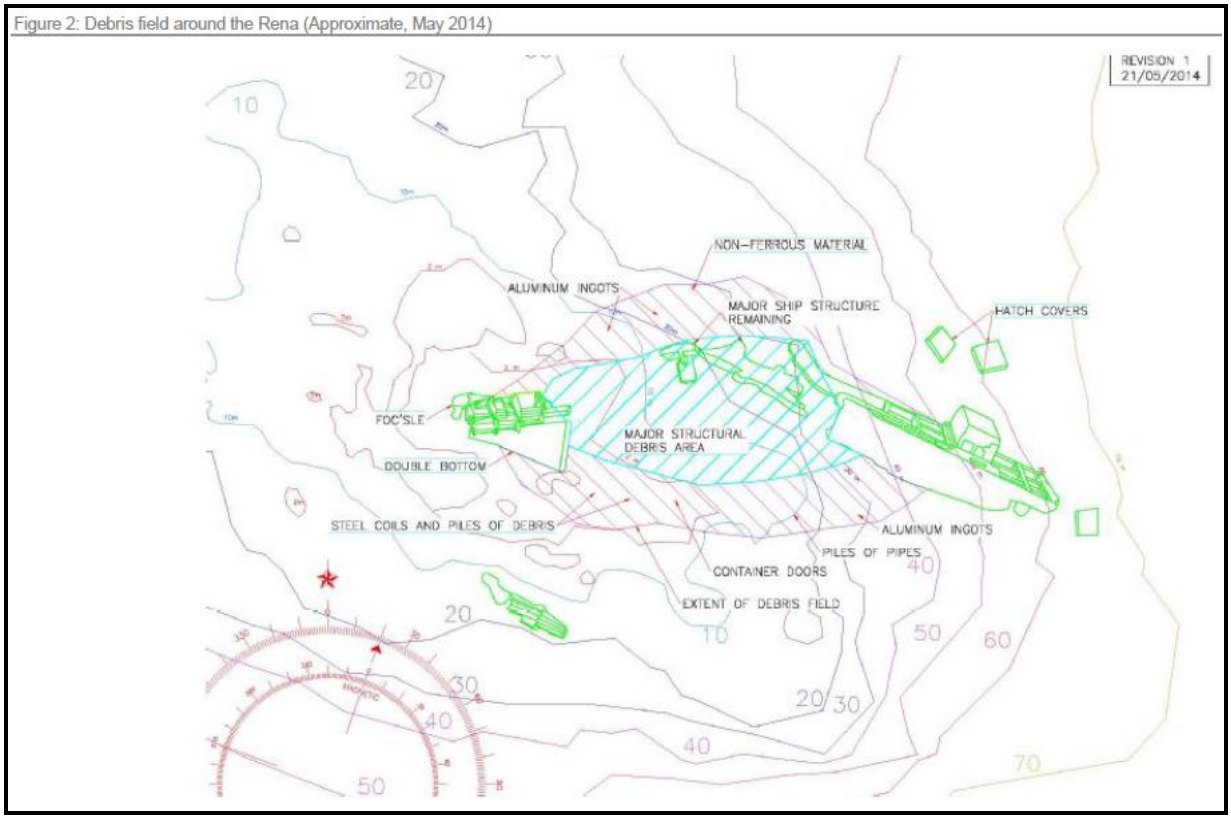


Figure 2: Debris field around the Rena (Approximate, May 2014)



Appendix 2: Selected photos of debris field taken from resource consent application and supporting documents (pre-Cyclone Lusi, March 2014)


Imperial
MAGNESIUM OXIDE
An aid in the prevention and treatment of hypomagnesaemia (Grass Staggers) in cattle.
Net Weight
25Kg

Appendix 3: Selected photos of debris field, July 2014

Appendix 4: Summary of the technical reports supporting the application and the Crown's expert reviews

Environmental considerations

Water quality and eco-toxicology and pollutant distribution reports

v. From the remaining material in the wreck and debris field, the application identifies copper clove[10], antifouling paint, remnant plastic beads, potassium nitrate powder[11], residual fuel/oil, and ferrosilicon[12] as having the potential to affect water quality and/or have toxic effects on the ecosystem.

vi. The effects are summarised in the applicant's report as follows:

Contaminant	Potential effect	Monitoring / mitigation	Severity of predicted impact
Copper	Toxicity (sediment and water column)	Monitoring	More than minor
Anti-foulant	Toxicity (water column)	n/a	Negligible
	Toxicity (sediment)	Monitoring	Minor (localised)
Plastic beads	Aesthetics* (water quality)	Debris management	Less than minor
Potassium nitrate	Nutrient enrichment (water quality)	n/a	Less than minor
Residual oil / fuel	Toxicity, aesthetics (water quality)	n/a	Negligible
Ferrosilicon	Emission of gas	n/a	None

*Effects not related to water quality or ecotoxicity are not addressed in this report, but are discussed in other technical reports.

vii. Any remaining containers of trichloroisocyanuric acid (TCCA)[13] are to be removed from the debris field.

viii. The applicant's report finds that only copper clove poses a "more than minor" risk. There was one 20ft container holding 21 T of scrap copper on the MV Rena and it has not been definitively located. The applicant considers that the risk of significant adverse ecotoxicity effects is very low unless a major physical disturbance to the

[10] Copper "clove" is scrap copper ground into small (~1-3mm) uniform sized granules for packing and shipping. Certain copper compounds are categorised as "marine pollutants" under the International Maritime Dangerous Goods Code. The high surface to weight ratio of copper clove increases the amount of copper which is available to react with sea water and any other chemicals present in the water.
[11] Potassium nitrate (KNO_3) is typically used as a agricultural fertiliser and is highly soluble.
[12] Ferrosilicon is used in the manufacturing of pre-alloys to reduce metals from their oxides. It is a listed hazardous material and it is flammable and has the potentially explosive and may emit toxic or explosive fumes when in contact with water.
[13] TCCA is a disinfectant, algicide and bactericide mainly for swimming pools and dyestuffs, and is also used as a bleaching agent in the textile industries.

wreck causes all remaining copper to be released in one event. Concentrations of contaminants will be monitored as a condition of the consent, including monitoring to identify any copper contamination.

ix. The expert review undertaken by NIWA on the eco-toxicology and water quality agrees that the copper clove has the most potential for ongoing effects. They suggest that the resource consent conditions should provide for removal of the copper clove should conditions at the wreck change and removal become practicable. The reviewers note the risk of bulk release of organic material (eg milk powder) which could cause an acutely toxic event and suggest attempts should be made to identify any remaining bulk organic material and facilitate a 'slow release'.

Pollutant dispersal

x. The applicant has also commissioned a report to assess the likely dispersal rates of four possible pollutants from the wreck of the MV Rena; potassium nitrate, TCCA, milk powder and magnesium oxide. It is a highly technical report, using particle distribution modelling, at a depth of 30m, within a hindcast 3D oceanic flow field in both La Nina and El Nino conditions. It is modelled on an assumed steady rate of introduction of material to be dispersed.

xi. The expert review by NIWA considered that the methods used in the applicant's report were appropriate, but that additional evidence would be needed in order to verify the report's conclusions. Officials note that it is unlikely that many of the likely pollutants remain on the wreck at the rates assumed in the dispersal modelling.

Antifouling paint assessment

xii. The underwater surfaces of the MV RENA are known to have been coated at some point in her history with paint containing tributyltin (TBT)[14]. This material is now banned from use on larger vessels. Sediment samples obtained near the wreck showed significantly elevated concentrations of TBT.

xiii. The application considers that any further release of contaminants from the antifouling paint on the hull of the vessel is only possible if the paint cracks or is scraped off, concluding that this is unlikely to happen if the wreck is left undisturbed. The consent conditions propose monitoring of sediments to identify any contaminant concentrations from antifouling paint.

xiv. The expert review undertaken by the EPA criticises applicant's report as lacking sufficient evidence and not presenting a sufficiently thorough assessment of the risks that the antifouling paint presents to the environment. They are also critical that the

[14] TBT was used as a biocide in anti-fouling paint. It has toxic effects on organisms at all points of the food chain, including mammals. TBT has a long half-life and remains in the ecosystem as a toxin for up to 30 years.

report overlooks the sea conditions on the reef and ongoing movement of the wreck, which in turn scrapes off the antifouling paint. The EPA concludes that, while much of the rationale in the report appears sound, in the absence of sufficient evidence or data, they are not able to support or oppose the conclusions reached in the report.

Benthic Sediment

xv. The applicant's report concludes that adverse effects on marine organisms are likely to be occurring in sediments adjacent to the wreck. A number of contaminants were present in 2013 survey of sediment samples in concentrations above the biological effects threshold.[15] The report then concludes that adverse effects of contaminants on organisms at 500-1500m from the wreck are unlikely to be occurring.

xvi. The expert review by DoC considers that the objective of the report is unclear and the analysis and presentation of the data are inadequate to robustly assess the effect of the Rena on sediment quality.

Fisheries and Ecological Effects, Marine Mammals and Avifauna

xvii. The application concludes that the Proposal is considered to have:

a. no risk to threatened species;
b. no effect on commercial aquaculture or fisheries;
c. less than minor effect of contamination of living organisms;
d. minor positive effect on marine habitat and fisheries abundance;
e. minor adverse effect on reef habitat from increased boating, fishing and diving;
f. no effect on ecological communities and species diversity;
g. no effect on marine mammals; and
h. less than minor effect on birds from small quantities and/or slow release of toxic materials.

xviii. A number of expert reports have been provided to support the application in these areas.

xix. The application considers that no further mitigation is necessary, other than the Proposal to leave the wreck in as benign a state as is practicable and monitoring for the consent period.

xx. The expert reviews by DoC concluded:

a. with respect to fisheries, the report does not provide a comprehensive and robust assessment of the fisheries and ecological effects of leaving the wreck on the reef. However, there is no reason to believe the applicant's report is inaccurate.

[15] Copper, zinc, polycyclic aromatic hydrocarbons (PAHs) and TBT, nickel and chromium.

b. with respect to marine mammals, the review agrees with the applicant's report that the overall risk of impact from this consent is likely to be negligible or low for marine mammals. Consent conditions were suggested to include (a) a monitoring requirement for the Applicant to report all marine mammal sightings and incidents involving marine mammals to DoC; and (b) mitigation procedures for sonar operations.
c. with respect to avifauna, the review agrees with the report that most of the identified risks (such as residual oil, antifouling agents and toxic cargo) pose no serious long-term impacts for seabirds. The release of multiple tonnes of plastic beads since the grounding is an area of concern. Experts recommend a scientific programme be put in place to collect and autopsy dead seabirds found on Bay of Plenty beaches over the next 10 years to assess the nature and extent of plastic beads found in the stomachs of seabirds.

Natural Character Assessment

xxi. The application considers that any potential adverse natural character effects resulting from the remains of the wreck are less than minor and lessening over time as the wreck is colonised by marine life and integrated into the structure of the Reef. The proposed mitigation measure for natural character consists of reinstating public access to the Reef as quickly as possible to restore a sense of public ownership of the Reef.

xxii. Officials note that the underwater photographs relied on in the report are taken pre-Cyclone Lusi and on balance, minimise the visual effect of the debris field when compared to other photographic records of the wreck.

xxiii. DOC commissioned an external review as well as completing an internal review. The reviews were primarily concerned with the debris field and considered that the debris field broadens the natural character footprint of the wreck and should be cleaned up as far is as reasonably practicable. The benefits to diving from leaving the wreck in situ we found to be overstated in regards to natural character.

Metocean Conditions and Wave Modelling on Astrolabe Reef

xxiv. This report assesses the impact of the wreck on the wider ocean and wave conditions. The application concludes that, given the spatial extent of the wreck in relation to the size and structure of the Reef (approximately 2% of the Reef area), the potential for the wreck to affect local wave patterns or swells is considered to be insignificant. It is immeasurable at a distance of approximately 1.5km from the Reef.

xxv. The expert reviews conducted by NIWA generally supported the conclusions reached in the applicant's report.

Acoustic Assessment

xxvi. The application considers that the noise effects on wildlife of leaving the wreck in place are less than minor, and no mitigation is proposed.

xxvii. The expert review by NIWA is generally supportive of the applicant's report, but notes that the applicant's acoustic measurements were conducted during very good sea state conditions, which means that the wreck moves less in calm conditions. However, the reviewer does note that in a higher swell, it is likely that noise coming from the wreck would be lost in the sea state noise.

Social considerations

Social Impact Assessment

xxviii. The application considers that the Proposal is expected to have no more than minor adverse social effects.

xxix. The expert reviewer contracted by the Ministry for the Environment agreed in principle with the conclusion in the SIA that the overall social impacts of the proposal to leave the Rena on the wreck are considered minor negative to minor positive, but considered the applicant's report to be too brief, particularly in the analysis of the social impacts of the proposal.

Recreation Assessment

xxx. The applicant's report considers that, given that a considerable amount of marine life is expected to continue to inhabit the wreck and that diving and navigational health and safety risks are minimised, there are likely to be minor positive effects on recreation and tourism. Plans for monitoring the reef environment, for managing shoreline debris and for wreck access plans are proposed to optimise the potential positive effect.

xxxi. Expert reviews were undertaken by MPI (fisheries) and MBIE (tourism). MPI agreed with the report that positive impacts on recreational fishing from the proposal are likely, given that additional complexity to a rocky habitat are likely to increase fishing opportunities. MPI also agreed with the identified benefit that leaving the wreck on the reef will allow access to the reef far sooner than if the wreck were fully removed.

xxxii. MBIE considered it unlikely that, at a national level, the existence of the wreck would make any difference to Tourism. At a regional or local level, MBIE considered it possible that the Rena may provide an unquantifiable local amenity or have unquantifiable amenity value.

Health

xxxiii. The application concludes that adverse human health effects from contaminants from the wreck are considered unlikely if the wreck is left in place as proposed. The monitoring programme is proposed to provide updated data.

xxxiv. MPI and Ministry of Health reviewed the applicant's report. MPI consider that the potential food-borne risks from the consent are low and there is no evidence to suggest that there might be a significant difference in terms of food-borne risks between the two possible scenarios – removal or leaving the wreck on the reef. They consider the proposed monitoring plan for food safety is largely sufficient but should be subject to review as results come in. They suggest aluminium and fluoride be included in the monitoring programme as these compounds will remain in the seabed and might bio-accumulate over time in species such a crayfish and kina. The initial biannual monitoring would be most effectively undertaken in winter and summer. Subsequent annual monitoring should take place in the season previously showing the highest seafood level.

xxxv. Health consider that if the results of the first and subsequent rounds of the sampling programme indicate there is no public health risk from seafood consumption, the Ministry of Health considers that it is reasonable to conclude that it is highly unlikely that there would be a risk to public health from exposure during recreational activities given the dilution effect of seawater and the likely short duration of any such exposure.

Dive Safety

xxxvi. The application presents the wreck as being a desirable dive site, once the exclusion zone is removed. The applicant's expert considers, that the MV RENA constitutes a level of risk to recreational divers that is comparable with the risks associated with other deliberately and accidentally sunk wrecks of similar size that are accessible in New Zealand. They suggest that minor changes be made to the remaining wreck to enhance safety.

xxxvii. Maritime New Zealand commissioned London Offshore Consultants (LOC) to review the diving assessments. They have significant concerns regarding the changing nature of the debris field and the hazards that it poses. Allied to this, they question who will prepare the dive risk assessment and maintain the information sources in such a dynamic environment. There is also a specific concern about a 30m tunnel, close to the surface and exposed to surge risk.

Navigation Safety

xxxviii. The applicant's expert considers that leaving the remains of the wreck in place poses no hazard to navigation. Large vessels are required to avoid the reef and small commercial charter vessels and privately owned pleasure craft are already aware that the reef is a hazard to be navigated.

xxxix. Maritime New Zealand commissioned LOC to review the navigation report and they agree that the wreck poses no risk to larger vessels. They consider that there is some risk to smaller commercial and recreational vessels. However, in the conditions of most risk, these vessels will not be in the risk environment.

Cultural considerations

Cultural Assessment

xl. A cultural assessment was prepared for the applicant by Dr Kahotea and by a number of affected iwi. Dr Kahotea's report concludes that, on the basis that mitigation strategies to offset the cultural impact are implemented in consultation with tangata whenua, the potential adverse effects on cultural values of the proposal are considered to be no more than minor. This conclusion is based on a number of factors, including that the environment at Ōtāiti is recovering and would be allowed to continue to recover, the risk to salvors is reduced, further damage to the reef and additional contamination is minimised, and the exclusion zone around the wreck could be lifted earlier.

xli. In this area, the Crown commissioned unique research from Dr Grant Young. In preparing his research Dr Young considered the work of Dr Kahotea and officials consider that the work of Dr Young (discussed in the body of the Cabinet Paper) is to be preferred.

xlii. Dr Young reviewed the applicant's cultural assessments. He considers that the evidence demonstrates that the reef is a taonga, including to Motiti Māori, but also to Māori based on the mainland. All regard themselves as having long historical and cultural links to the reef. Dr Young does not consider that Dr Kahotea's conclusion (that the wreck would not damage the reef's mauri if consented on the basis in the consent application) is well supported. He further considers that a number of relevant considerations to tangata whenua, including whether they prefer short term adverse impact on the marine environment to long term and ongoing effects on the marine environment if the wreck remains, have not been considered by Dr Kahotea. Dr Young concludes that, without taking into account any other factors, the cultural values attached to the reef require the removal of the wreck. He also notes however that the process of removing the wreck could potentially have a greater impact on cultural values associated with the reef, particularly if the marine environment suffers further adverse effects. In this respect, he notes that consideration of the scientific data on these effects and an understanding of the engineering possibilities will be essential to dialogue with iwi and hapū over the impact of the proposal on cultural values. He notes that there is a need for the Crown to provide such information to these groups.

Heritage Assessment

xliii. The Applicant's heritage report consider that the wreck site has high historical and social values and recommends that the remains be given recognition in the proposed Bay of Plenty Coastal Environment Plan and be considered for registration under heritage legislation.

xliv. The expert review by Heritage New Zealand considers that an enduring association is yet to be formed and that historic values are not able to be ascribed to the place at this time. The reviewer concludes that Heritage New Zealand would not be in a position to consider the Rena wreck site for listing on the New Zealand Heritage List for some time.

Feasibility and cost of Full Wreck removal

The Crown's expert review of the information provided in the application, and the TMC report provided by the Owner, is discussed in depth in the body of the Cabinet paper.

Expert Planning Advice

xlv. The Ministry for the Environment contracted expert planning advice on the application.

xlvi. The expert review concludes that the application and its supporting documents are reasonably thorough in terms of the scope of issues addressed but some potentially negative effects and relevant policy guidance have either been ignored or downplayed.

xlvii. The review also raises some procedural issues around the use of sections 15A and 15B as the foundation for requiring consent and how the application aligns with the provisions of the Coastal Plan.

Appendix 5: Outline of the Crown's process for consultation with iwi on the Owner's application

Rena resource consent process – lodgement, notification, submissions and potential timeframes

April 2012 – May 2014
Rena owners prepare resource consent application

30 May 2014
Consent application lodged with Bay of Plenty Regional Council (BoPRC)

13 June 2014
BoPRC notifies application (submissions called)

8 August 2014
Submission period closes

Crown actions to date seeking iwi views on the Rena consent application

29 November 2013
Letter initiated preliminary discussions with affected iwi and offered to meet

4 & 11 February 2014
Crown undertake face-to-face consultations with Ngāti Awa and Ngāi te Rangi

29 April 2014
Letter advising iwi of further engagement opportunities

6 June 2014
Letter offering to meet with affected iwi

Week beginning 23 June 2014
Crown undertakes further face-to-face consultation with Tapuika Iwi Authority, Mataatua District Māori Council and Motiti Rohe Moana Trust

Appendix 7: Table of international comparisons

Vessel	Incident	Location	Distance to Shore (nm)	Water Depth (m)	Cargo	Response	Reason for Removal
CORAL BULKER	Dragged Anchor, Grounding	Viana Do Castelo Breakwater, Portugal	Ashore	N/A	Sawn Timber, logs and wood chip	Salvage and Wreck removal. Removed in its entirety other than small sections of shell plating entangled in the rock breakwater.	Wreck removal notice issued by relevant Portuguese regulatory authority.
TRICOLOR	Collision, Capsize	TSS Off Belgium and Netherlands	17’	30	3,000 automobiles and trucks	Salvage and wreck removal. Removed in its entirety to contractual obligations of	Removal of wreck imposed by wreck removal notice issued by relevant regulatory authority.

						everything > 1m^2	
CP VALOR	Dragged Anchor, Grounding	Faial, Azores Islands, Portugal	Ashore	7-10	900 containers	Salvage and wreck removal. Removed in its entirety, though hull section sank in deep water after refloat. Small sections of scrap remained in way of original grounding site.	Wreck removed due to imposition of wreck removal notice by Portuguese authorities.
ROKIA DELMAS	Grounding	1 mile outside Ile De Re, La Rochelle, France	1’	5-10	8614 tonnes sawn timber and RoRo Deck cargo	Salvage and wreck removal. Removed in its entirety to terms of >1m^2	Wreck and cargo removed due to imposition of wreck removal notice issued by the French authorities.
MSC	Structural	Beached in	1’	15-20	2318	Salvage and wreck	Wreck and cargo

NAPOLI	Failure, Beached	Lyme Bay, UK			containers	removal. Removed in its entirety to terms (believed to be >1m^2)	removed under Notices issued by SOSREP.
NEW FLAME	Collision, Beached	Beached 0.5 miles South of Europa Point, Gibraltar.	0.5’	18 surrounded by 40-60	42,200 tonnes scrap.	Salvage and wreck removal. Partial removal of wreck, with minimum clearance of 17.7 metres chart datum over remaining wreck sections.	Removal of wreck and cargo due to imposition of wreck removal notices issued by Gibraltar authorities.
SEA DIAMOND	Grounding Capsize, Sinking	Beached in a Bay within the caldera at Santorini, Greece,	0.5’	62-180	1195 passengers	Initial oil removal and follow-on oil clean-up as oil continued to leak from the sunken wreck.	Wreck remains sunk within the Santorini Caldera. No removal notice issued.

						Wreck remains in its entirety.	
FEDRA	Dragged Anchor, Grounding	Grounded at the foot of Europa Point.	N/A	N/A	In Ballast	Bunker removal and bow section removal under one wreck contract. Stern section removed under second contract.] \Beleived to have been removed in its entirety.	Removal of all wreck due to intervention and issuance of removal notice by Gibraltar authorities.
MSC CHITRA	Collision, Grounding Capsize	Outside of Mumbai harbour.	< 1	15-20	1219 containers.	Initial bunker and cargo removal culminating in wreck removal. Believed to have been removed in its entirety.	Wreck removal notice issued by Indian authority.

MSC AL AMINE	Grounding	Grounded off Qurbus, Tunisia.	12	N/A	<20 containers	Bunkers removed under Lloyds Open Form Salvage (with SCOPIC invoked). Vessel refloated and redelivered to owners in Dry Dock.	Tunisian naval authorities issued a removal notice to the Owners. Due to nature of damages, the bunkers were removed from some of the damaged tanks prior to the refloating operation.

Appendix 8: Outline of proposed all-of-Government submission on the *Rena* resource consent application

Before the Bay of Plenty Regional Council, submissions due 8 August 2014

Purpose of Resource consent: Resource consent is sought by the owners of the RENA to abandon the remains of the MV RENA, its equipment and cargo (the wreck) on the Ōtāiti (Astrolabe) Reef. Consent is also sought to discharge any harmful substances or contaminants from the remains of the wreck that may occur over time as a result of the degradation.

Overall Crown position: Oppose in part.
The Crown wishes to be heard in support of its submission.

The grounding of the MV Rena on Ōtāiti reef is a nationally significant maritime environmental disaster. While the initial response and subsequent prosecution addressed the immediate clean up, the proposal to leave the wreck *in situ* will require resource consent and consideration of ongoing longer term health and safety, environmental, social and cultural effects.

The submission would have two parts:

1. Opposing, in part, leaving *in situ* those parts of the wreck and its debris field that currently lie above the 30m below mean sea level (bmsl) contour and seek the removal of this material to extent that is practicable. Removal of materials greater than $1m^2$ in area, is generally considered best practice worldwide for salvage; and
2. In the event that the decision maker is of the mind to grant consent to leave *in situ* those parts of the wreck and its debris field that lie below the 30m LAT contour, seek more rigorous consent conditions including an improved monitoring regime.

Officials note that the overall Crown position and first aspect of the submission would be expressed as 'opposition in part', as the Crown would seek only partial removal of the remaining wreck and debris field and the body of the submission would clearly state the Crown preference that the material above 30m bmsl be removed to the extent which is practicable. The RMA and the consent authority template provides only for submitters to either support, oppose or adopt a neutral stance.

The purpose of the Crown's involvement via the submission process would be to achieve improved outcomes in terms of health and safety, environmental, social and cultural effects. Those improvements would differ between the two parts of the submission being:

1. For those depths that fall within easily accessible diving depths (above the 30m below mean sea level (bmsl) contour), the submission would aim to achieve relatively good amenity and natural character, coupled with environmental quality, physical safety for recreation purposes and improved cultural outcomes; and

2. Those depths that pose higher risks to divers and are less easy to access (below the 30m bmsl contour), the submission would accept an environment that has higher actual and potential environmental risks (including in relation to discharges), but for which appropriate management strategies are in place.

Arriving at these outcomes would be subject to 'practicability' – recognising the need for actions that can be safely and reasonably achieved by the consent holder, while still also achieving the purpose of the Resource Management Act.

Details of Submission: The Crown's expert reviewers have identified a number of shortcomings in the application which could be addressed in a submission. The concerns expressed by the Crown's reviewers fall into the following general areas:

Technical concerns:

1. The nature of effects, some of which appear to have been understated in the consent application;
2. The efficacy of consent conditions and management plans proposed by the applicant; and
3. The adequacy of the proposed 10 year timeframe for the consent, in terms of addressing the effects most likely to arise.

Scope of Application and Submission: The Crown's expert reviewers consider that, in some respects, the application lacks sufficient detail about the state of the environment (including the wreck), the likely risks, and the nature of what is being sought.

As one example, the physical status of the wreck is likely to change between the time of lodging the application and the consent hearing. During that time there will be both continued clean-up work by the applicant and it is likely that the weather / currents will continue to break up the wreck and / or alter the debris field. The applicant is therefore likely to provide further information either before or during the hearing.

The Crown's submission can only be on the basis of the information currently before it, but the position expressed in that submission will need to be assessed before any hearing to take into account the changes in the wreck site and any other new information.