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Call for Rena liability to stay with wreck's owner

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Schools of fish swarm the wreck of the Rena in a photo taken earlier this month. Photo/supplied

Opponents of the decision to leave the wreck of the Rena on Astrolabe Reef say the ship owner was seeking to remove itself from direct liability for the wreck.

Lawyer Robert Makgill was making his opening legal submission to the Environment Court which is hearing appeals from hapu and iwi groups to the consent granted last year to leave the remains of the Rena on the reef.

The application to abandon the wreck was made by the Astrolabe Community Trust which was established by the owner of the Rena, Daina Shipping.

Mr Makgill, whose submission dealt with planning, social and economic issues of abandoning the wreck, told the court yesterday that iwi appellants were concerned that if consent was granted, the owners would transfer their responsibilities and liability for the wreck to the community.

He said the trust would be funded by the Swedish Club insurers for the duration of the consents. Swedish Club would provide a bond for the consent conditions and a letter of undertaking to remove parts of the ship's bow wreckage where required by the consent.

He referred to earlier evidence that calculated the bond at \$6.3 million, decreasing after the expiry of consents to \$2.9m for up to 10 years.

"At the moment, the exact amount of money that will be made available to the trust seems unclear, which raises the question as to whether the trust is going to be able to finance all its regulatory and private commitments."

Mr Makgill said the appellants considered it would be more appropriate for the wreck's owner to be the consent holder rather than the Astrolabe Community Trust.

Continued below.

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The appellants' preference was that the court declined consent to abandon the wreck, but if consent was granted Nga Potiki, Ngati Whakaue and the Te Arawa Takutai Moana Kaumatua Forum were willing to discuss potential conditions, he said.

Mr Makgill said if consent was granted, the applicant needed to mitigate cultural effects on all affected tangata whenua- not just parties the trust had reached agreement with.

The split that occurred within the Rotorua-based Te Arawa tribal federation over reaching agreement with the ship owner following mediation hearings last year was commented on by Judge Jeff Smith who said there was no unanimous decision among coastal Te Arawa about what should happen.

"I would prefer that Te Arawa sorted it out amongst themselves."

Recalling other court hearings over the years, he said it was not appropriate to have these sorts of arguments put before the court.

"But notwithstanding that, here we are in the same position."

The first witness for the appellants called yesterday, kaumatua forum chairman Manu Pene, responded to a request on the issue by Judge Smith. Mr Pene said he would be prepared to meet with coastal Te Arawa to find a way forward.

The lawyer putting the appellants' environmental arguments, Tom Bennion, said the "pristine" marine environment should be the baseline against which all effects of the wreck should be assessed.

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Rena wreck allowed to remain on reef off Tauranga



The wreck of the Rena will be allowed to remain on Astrolabe Reef after the Environment Court says everything that could be done has been done.

Judge Jeff Smith ruled out removing the stern and mid sections of the container ship that ran aground in the middle of the night of October 5, 2011.

He said the prospect of removing the deepest stern section was negligible and it should be left in situ to flat-pack, or collapse into itself.

He accepted evidence from Joe Te Kowhai, the diver used by Rotorua pan-tribal authority Te Arawa, that the use of grapples and chains to remove the 600 tonne mid-section of the wreck would have a "significant adverse impact on the reef".

This left the bow or front section of the Rena that was embedded in the top section of the reef below the water line.

Judge Smith said the wholesale removal of the bow, including pieces that had gone over the reef, was "not appropriate". However he signalled that the Bay of Plenty Regional Council should have the power to order the removal of parts of the bow that broke away.

"Similarly, we consider that

provision should be made to consider the removal of contaminants TBT and copper, if circumstances arise where it is both feasible and safe."

The court was ruling on the appeal against the 2016 decision by the regional council to leave the remains of the Rena on the reef.

The appellants were Motiti Island's Ngai Te Hapu and Papamoa hapu Nga Potiki. Maketu's Ngati Whakaue and Te Arawa Takitai Moana Kaumatua Forum joined Nga Potiki's appeal.

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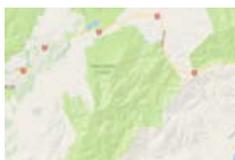
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Nga Potiki's lawyer, Tama Hovell, was disappointed with the outcome of the appeal and said he was still analysing the decision which would need to be considered by the iwi.

Mr Hovell said there were positives and negatives, including recognition of the tangata whenua groups with primary connections to Motiti. "We are not including ourselves in that."

The court made an interim decision, leaving it up to all the parties to consult on the conditions of consent. The parameters of the conditions of consent were set out in the decision.

Lawyer Matt Cassey, QC, representing the Astrolabe Community Trust that applied to leave the remains of the Rena on the reef, said the court had largely dealt with the impact on the mauri of the reef- its spiritual wellness or life force.

Mr Casey said the decision dealt with the potential effects of what was left, monitoring the effects, and the formation of the Kaitiaki Reference Group comprising representatives of the principally affected Maori groups.

"It was a very positive decision in terms of charting a way forward."

Ngati Whakaue lawyer Robert Makgill said the court had come out strongly and said all affected iwi needed to be dealt with, even if they were not submitters to the application.

He said the decision inserted environmental triggers into the original monitoring conditions so that if triggers were reached then action was required. The original consent only required monitoring of what the applicant's experts anticipated would happen, with no requirement to take steps to mitigate or remedy any adverse effects that were not anticipated.

A further appeal to the High Court must be on questions of law.

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