

DEPARTMENT OF CONSERVATION
Te Papa Atawhai

AKAROA MARINE RESERVE
APPLICATION

Report by the Director-General of Conservation

July 2006

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1. INTRODUCTION

1.1 Akaroa Marine Reserve Application

An application for an Order in Council to establish a marine reserve in outer Akaroa Harbour was made by the Akaroa Harbour Marine Protection Society Inc in January 1996. The boundaries of the area proposed for the marine reserve are shown on Map 1 of the application document (Annex 1). The proposed area lies on the eastern side of the outer Akaroa Harbour, between Gateway Point and Manukatahi (near Nine Fathom Point) - also known as Grasshills. The application covers some 530 hectares, approximately 12 percent of the harbour area. Photographs of the area are contained in the application document (Annex 1) and in the scenic and business profile (Annex 2).

Section 3.6 of the application by the Akaroa Harbour Marine Protection Society Inc describes the natural values of the proposed marine reserve. The area is notable for spectacular volcanic cliffs, sea caves and sea stacks. The underwater topography is likewise spectacular, with the cliffs and bluffs falling vertically to the seabed and colonised by marine communities which exhibit interesting zonation patterns. At the base of Dan Rogers Bluff, there are huge room-sized boulders that provide spectacular underwater scenery and habitat for different types of marine communities that are typical of parts of the exposed Banks Peninsula coastal environment.

1.2 Report Format

This report deals with the application for a marine reserve in outer Akaroa Harbour made by the Akaroa Harbour Marine Protection Society Inc under the Marine Reserves Act 1971. The Akaroa Harbour Marine Reserve application covers an area adjacent to the Dan Rogers cliffs near the entrance to the harbour. Hence the colloquial reference to the application area as “Dan Rogers”. The report outlines the history behind the application, including the relationship between the Akaroa Marine Reserve application and the Akaroa Taiāpure, the purpose of a marine reserve, the statutory procedures to be followed in establishing a marine reserve, and shows how the application has complied with those procedural requirements. The report also summarises submissions received during the first public consultation process in 1996 and provides an analysis of updated information received during the 2006 public consultation process. A copy of the document relating to the application for an Order in Council to establish the Akaroa Marine Reserve is contained in Annex 1 to this report.

2. HISTORY OF THE MARINE RESERVE APPLICATION

2.1 Early Progress

A steering group to facilitate the creation of marine reserves in Canterbury existed between 1990 and 1992, chaired in turn by the Canterbury Regional Council and the Ministry for the Environment, and serviced by the Department of Conservation. Various sites in Canterbury including sites within Akaroa Harbour, were considered for marine reserves. It was here that the concept for a taiāpure was first discussed at length at Committee meetings. The Maori perspective was presented by Trevor Howse. The Steering Committee considered Wainui as "worthy of further investigation for a marine reserve". The Steering Committee members went to the Wainui residents and presented the concept of a marine reserve at Wainui at a Residents Association Meeting. The Committee eventually petered out but it had achieved its aim of identifying sites suitable for a marine reserve. (Consultation with the Wainui residents indicated that the "other side of the harbour, not Wainui" was more suitable for a marine reserve).

The Akaroa Harbour Marine Conservation Working Group, supported by the North Canterbury Conservation Board, was subsequently formed in 1993, and a taiāpure was included in a draft plan as a management mechanism for local fisheries in the harbour. Differing expectations as to the purpose of this working group led to its dissolution. In the mid-1990s the Banks Peninsula Fisheries Plan Working Group, supported by the Ministry of Fisheries, brought together primarily fishing and Iwi interests to consider fisheries management issues.

In 1994 the Friends of Banks Peninsula and the Akaroa Underwater Divers' Club began investigating options for marine reserves in Akaroa Harbour. A discussion paper was published and submissions on options requested. Following analysis of submissions, the Dan Rogers proposal was prepared, with a pamphlet released for comment in 1995 by the Akaroa Harbour Marine Protection Society Inc. That same year, the recreational and commercial fishers announced their intention to promote Flea Bay (Pōhatu) as an alternative marine reserve site to Dan Rogers.

2.2 Applications

The Akaroa Harbour Marine Protection Society Inc lodged a formal application under the Marine Reserves Act 1971 for an Order in Council to establish a marine reserve in the vicinity of Akaroa Harbour. The application was publicly notified on 6 January 1996 and the applicant complied with all statutory requirements for such an application.

By 6 March 1996, 709 objections and 2334 submissions in support had been received within the statutory time period given. On 9 April 1996 the applicant lodged a written answer to the objections within the statutory period provided.

On 10 September 1996 the Director-General of Conservation provided a report on the Akaroa Marine Reserve proposal to the then Minister. Appended to that report were the applicant's answers to the objections and submissions in support. The then Minister of Conservation, the Hon Dr Nick Smith, agreed with the recommendations in the Director-General's report, and on 21 July 1997 signed the report (Annex 13).

On 18 January 1997, the Canterbury Recreational Marine Fishers Association and Akaroa Harbour Recreational Fishing Club formally notified their application for a marine reserve at Flea Bay, outer Banks Peninsula. Following consideration of the objections and submissions in support received on the Pōhatu Marine Reserve, the application and answers, the then Minister of Conservation, the Hon Dr Nick Smith, decided not to uphold the objections and obtained the concurrence of the Ministers of Fisheries and Transport to his decision for a marine reserve to be established by Order in Council. The Pōhatu Marine Reserve at Flea Bay was gazetted in July 1999.

2.3 The Pōhatu Agreement

Prior to the establishment of the Pōhatu Marine Reserve in July 1999, the then Minister of Conservation, the Hon Dr Nick Smith, negotiated an agreement in December 1998, with a number of concerned parties about marine reserve issues on Banks Peninsula. The parties to the agreement were Te Rūnanga o Ngāi Tahu, the Ōnuku, Wairewa and Koukourārata Rūnanga, commercial fishers, recreational fishers, NZ Forest and Bird and the Akaroa Harbour Marine Protection Society.

The final record of the agreement noted that the parties agreed to support the Pōhatu Marine Reserve; agreed in principle to the establishment of a taiāpure in Akaroa Harbour and entrance area; and agreed that the process of public consultation on the taiāpure "will recognise the existence of the Dan Rogers Marine Reserve application and will leave open the option of how best to achieve protection." At the same time the parties supported "the notion that the Dan Rogers application for a marine reserve lie on the table and not be further progressed by the Minister of Conservation, until the taiāpure is established." The six-point agreement reached between all parties present at the 18 December 1998 meeting, more commonly referred to as the Pōhatu Agreement, is reproduced and attached as Annex 14.

The taiāpure process took much longer than anticipated to get underway. With the Māori Land Court hearing pending, the applicant for the Akaroa Marine Reserve, the Akaroa Harbour Marine Protection Society, expressed ongoing concerns to the Department of Conservation regarding the length of time the taiāpure process was taking. There were two hearings of the Māori Land Court into the proposed taiāpure. The Department was represented at these hearings and at both hearings showed support for the establishment of the taiāpure and marine reserve.

The Department made the Court aware of the marine reserve application in Akaroa Harbour.

2.4 The Former Minister's Involvement

The Department was aware that once the taiāpure was ready to be established, progress could be made on the Akaroa Marine Reserve application.

By report of the Director-General dated 10 September 1996 to the Hon Dr Nick Smith, the following were recommended:

“It is recommended that you agree to:

- 4.1 *Accept this report and accompanying documents*
- 4.2 *Consider whether or not any objection should be upheld (in considering the objections you are entitled to seek further advice from your Department)*
- 4.3 *Make a decision on the objections before considering the substantive application*
- 4.4 *Advise me of your decision in order that I may arrange draft letters for your signature, notifying the objectors and the applicant of your decision”*

The recommendations were accepted by the Minister on the 21 July 1997. Whilst the Minister agreed to consider the objectives (4.2) and to make a decision thereon (4.3), there is no record of these steps having been given effect to.

The Minister's apparent agreement was understood to be subject to a subsequent meeting he intended to have with Ngāi Tāhu where he would seek endorsement for the marine reserve. The fact that the then Minister facilitated the agreement in December 1998 (the Pōhātu agreement) with Ngāi Tāhu and key stakeholder groups concerning the establishment of marine reserves at Flea Bay and Akaroa Harbour, indicates that the Minister did not intend that his apparent agreement should be acted upon. The Department concluded that whatever the nature of the Minister's agreement of July 1997 was, that decision was put on hold pending the outcome of the Akaroa Harbour Taiāpure application.

2.5 Taiāpure Decisions

On 11 February 2004 the Hon. Pete Hodgson noted publicly that the Māori Land Court Tribunal's report recommended “a taiāpure-local fishery be established over an area excluding the proposed Dan Rogers Marine Reserve”, and referred to the Dan Rogers Marine Reserve proposal being “on hold until the taiāpure application is resolved.”

The Māori Land Court report and recommendation to the Minister of Fisheries, dated 16 January 2004, recommended that a taiāpure be gazetted in accordance with the rūnanga's application for a taiāpure at Akaroa Harbour, except that the area comprised in the Dan Rogers Marine Reserve proposal (also known as the Akaroa Marine Reserve Proposal) should be excluded from the taiāpure. In the event that no marine reserve is created at Dan Rogers, the Māori Land Court recommended that the Dan Rogers area is included in the taiāpure.

Further progress on finalising the taiāpure application was then put on hold through an appeal lodged by Sea-Right Ltd. While the High Court did not uphold this appeal it did refer a number of matters back to the Māori Land Court Tribunal. That Tribunal reconvened, considered the matters raised, and produced a final report in July 2005. This report reiterates the Tribunal's previous decision to exclude the area subject to the marine reserve application. The Tribunal discussed the matter of the proposed marine reserve at some length in its final report attached as Annex 15 (refer pages 19-24.)

Subsequently, the Minister of Fisheries has approved the taiāpure application for the Akaroa Harbour, and restated the Māori Land Court Tribunal's decision to exclude the area subject to the marine reserve proposal (the proposed reserve comprises 8% of the taiāpure area). The taiāpure was enacted on 27 February 2006 and attached as Annex 16.

PŌHATU AGREEMENT:

The agreement reached between all parties present at the 18th of December 1998 meeting was refined at the 12th of March 1999 meeting between the parties. The final agreement is as follows:

1. The parties¹ agree to support the establishment of a marine reserve, to be known as the Pōhatu marine reserve, from the south-west corner of Redcliffe Point to the Ōunuhau Point incorporating Flea Bay, Island Nook and extending out 500m from the coastline as detailed in the attached map. The reserve will not allow any marine life to be taken for consumption purposes and no fishing regulations will be advanced.
2. The parties agree to support in principle the establishment of a taiāpure in Akaroa Harbour and entrance area. Further discussions on the choice of management mechanisms within the area will take place.
3. The parties agree to participate, along with a representative of the local landowners and the Banks Peninsula District Council, Te Rūnanga o Ngāi Tahu, Department of Conservation and Ministry of Fisheries, in an establishment committee for the Pōhatu marine reserve, reporting to the Minister of Conservation. The Department of Conservation will service the Committee. The Committee will also provide advice to the Minister of Food Fibre Biosecurity and Border Control on the establishment of the Akaroa taiāpure.
4. The parties further agree that the process of public consultation on the taiāpure be advanced as quickly as possible. The consultative process will recognise the existence of the Dan Rogers Marine reserve application and will leave open the option of how best to achieve protection. The process will include working with the Pōhatu marine reserve establishment committee.
5. The parties support the notion that the Dan Rogers application for a marine reserve lie on the table and not be further progressed by the Minister of Conservation, until the taiāpure is established.
6. The parties endorse and encourage the Minister of Conservation to formally protect the nesting sites of the kororā (white flippered blue penguin) colony, and the associated indigenous vegetation on the north face of Flea Bay.

¹ The parties are defined as those who were invited by the Minister to attend the meetings. Those parties are: Ōnuku and Wairewa Rūnanga, Te Rūnanga o Ngāi Tahu, Commercial Fishers, Recreational Fishers, Forest and Bird, and the Akaroa Harbour Marine Protection Society. Koukourāta Rūnaka were brought into proceedings once Flea Bay was identified as a possible location for a marine reserve.