

BEFORE THE EXPERT PANEL

FTAA 2511 1150

UNDER THE

FAST TRACK APPROVALS ACT 2024 (FTAA or Act)

IN THE MATTER OF

a substantive application by McCallum Bros Limited for the Te Ākau Bream Bay Sand Extraction Project located at Te Ākau Bream Bay, Northland (**the proposal**)

LEGAL SUBMISSIONS ON BEHALF OF TE POUWHENUA O TIAKIRIRI KUKUPA TRUST (TE PARAWHAU KI TAI) IN RESPONSE TO MINUTES 8 & 12

Dated 18 August 2026

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MAY IT PLEASE THE PANEL

- 1 These submissions are filed on behalf of the Trustees of Te Pouwhenua o Tiakiriri Kukupa Trust, as a participant under s53 of the Fast-track Approvals Act 2024 (**FTAA**). The Trust appears on behalf of Te Parawhau ki Tai (**Te Parawhau ki Tai**).
- 2 This is being filed in response to Minute 8,¹ which identifies the following 3 issues:

[30] If the status of any person, group or entity is disputed or contested, and such dispute or contest is considered relevant to the Panel's FTAA decision-making, the Panel requests:

(a) That such matters be clearly addressed in the invited comments provided to the Panel, for example under a separate heading. Cross references may be used where necessary, for example to whakapapa contained in other parts of comment documents.

(b) That invited comments raising issues related to status also outline, or be accompanied by legal submissions which outline:

(i) the nature of the dispute or contest;

(ii) the relevance of such dispute or contest to the Panel's decision-making under the FTAA (and linked provisions of other statutes including the Resource Management Act 1991 and Wildlife Act 1953 for example) in relation to this project; and

(iii) any pertinent caselaw, particularly from the higher courts, that might assist the Panel in the proper resolution or determination of such dispute or contest.

- 3 In summary:
 - The issue is strength of relationship under s6(e) RMA and not status per se. The decisions of Whata J in Ngāti Maru and Te Rūnanga o Ngāti Whātua² on strength of relationship have equal application to the FTAA process by virtue of the relevant RMA considerations imported into the FTAA under Schedule 5.

¹ This submission (and the accompanying evidence) responds to matters identified by Minute 8, as directed by the Panel. It is not understood to be an opportunity to respond to the evidence (and submissions) filed by other participants to this process, and Te Parawhau ki Tai seeks directions around further steps, as set out below. Minute 12 is addressed below and in the evidence of Mira Norris and Pari Walker filed herein.

² *Ngāti Maru Trust v Ngāti Whātua Ōrākei Whai Maia Ltd* [2020] NZHC 2768 (**Ngāti Maru**); *Te Rūnanga o Ngāti Whātua v Auckland Council* [2024] NZHC 3794 (**Te Rūnanga**)

- Te Parawhau ki Tai is tangata whenua for this proposal, as confirmed by their whakapapa, and ongoing exercise of rangatiratanga and kaitiakitanga over the Applicant's proposal area;
- As a result of the agreement reached with the Applicant, Te Parawhau ki Tai continues to conditionally support the proposal, subject to implementing the mahi whakaora that it determines are appropriate,³ and continued active monitoring of te Taiao over the 35-year term;
- Te Parawhau ki Tai is best placed to assess the pros and cons of the proposal, under their tikanga. They have decided that there will be significant intergenerational benefits from the mahi whakaora and the exercise of their tribal authority. These are economic and social benefits that accrue within their rohe – and Northland region, not Auckland;
- Te Parawhau ki Tai has filed further evidence to confirm these matters as anticipated by Minute 8;
- Te Parawhau ki Tai requests a neutral venue for any cultural effects hearing because of the hara caused by the process followed by the Panel in unilaterally convening the pōwhiri at Takahiwai Marae without inviting Te Parawhau ki Tai or disclosing that this process was being undertaken. This request is made while maintaining the utmost respect for the Trustees of Takahiwai Marae.
- Both Pari Walker and Mira Norris have responded to Minute 12 in their evidence. Te Parawhau ki Tai seek the opportunity to address the Panel at Terena Paraoa Marae in Whangārei, on a tikanga basis. There is no opposition to the Panel hearing from other parties at a different venue, such as Takahiwai Marae, and this would normally be an acceptable location but (as Pari Walker notes) the Trustees do not wish to be treated as manuhiri again by this hearings process.

³ An inclusive list of such mahi whakaora (mitigation measures) is set out at para [10] of the Evidence of Pari Walker dated 26 May 2026 submitted to the Panel.

Conditional support based on continuous exercise of kaitiakitanga

- 4 In responding to the take identified by Minute 8, as relevant to the Panel's FTAA decision-making process, Te Parawhau ki Tai reiterates that it has adopted a position of conditional support of the MBL proposal. This is summarised in the evidence of Georgina Olsen,⁴ planner and landscape architect and Te Parawhau ki Tai's environmental specialist advisor, and the associated Cultural Impact assessment (**CIA**) and Addendum, as follows:

1.3 The sand resource is understood as a living expression of tātai, mauri, and mana, forming part of the interconnected relationships that sustain the taiao and ngā tāngata who remain connected to it as ahi kā and tāngata whenua.

1.4 The proposed sand extraction is an intervention into a living ancestral taiao and has the potential to adversely affect the mauri of Paepae Atua and the ability of Te Parawhau [ki Tai] to exercise kaitiakitanga.

1.5 In my opinion, these effects cannot be appropriately addressed unless the mahi whakaora framework is fully embedded and enforceable through consent conditions.

1.6 While technical assessments conclude that effects are low or less than minor, those assessments do not fully capture the cultural dimensions of effect.

1.7 Monitoring alone is not sufficient. Monitoring must be supported by adaptive management grounded in mātauranga Māori and tikanga, enabling timely responses to adverse effects on the taiao.

1.8 Active involvement of Te Parawhau Hapū in monitoring, interpretation, and decision-making is essential.

1.9 These matters are addressed through the mahi whakaora framework, which is grounded in ngā uara ahurea o Te Parawhau Hapū and provides a comprehensive approach to managing effects.

1.10 Cultural effects can only be appropriately addressed where this framework is fully embedded and enforceable.

1.11 Te Parawhau ki Tai, on behalf of Te Parawhau Hapū, has reached a position of conditional support.

1.12 Without these measures, cultural effects would remain significant.

- 5 The comments that follow are predicated on compliance by MBL with the mahi whakaora to be determined by Te Parawhau ki Tai over the expected duration of the 35-year project.

⁴ Statement of Evidence of Georgina Olsen on behalf of Te Pouwhenua o Tiakiriri Kukupa Trust (Te Parawhau ki Tai) dated 25 May 2026 at paras [1.3] to [1.12].

Strength of relationship, not status *per se*

- 6 Minute 8 requests that matters relating to 'status' be identified. Status is however the wrong starting point, as the issue relates to strength of relationship under s6(e) RMA, relevant to the MBL proposal under Sch 5, Cl17 FTAA; and *Ngāti Maru* and *Te Rūnanga o Ngāti Whātua*.⁵ Given the requirements of Cl17, Sch 5, there is no reason not to apply this case law (relating to decision-maker duties) to the FTAA framework.
- 7 In both decisions (i.e. *Ngāti Maru* and *Te Rūnanga o Ngāti Whātua*), Whata J cautioned the Environment Court against making determinations on status *per se*. The Environment Court does not have jurisdiction to confer, declare, or affirm tikanga-based rights. Declarations on tikanga or mana whenua/tangata whenua status are questions for the Māori Land Court or High Court. Moreover, section 6(e) RMA requires that all relevant Māori relationships established by probative evidence must be recognised and provided for, albeit the manner in which this is done reflects the relative strength of relationship, and the correlative effects to those relationships from a proposal.
- 8 While the Panel is not the Environment Court, it is submitted that it has jurisdiction to address strength of relationship to the relevant rohe, and natural and physical resources impacted by the subject proposal. Although the s3 purpose of the FTAA merits greatest weight under Cl17, Sch 5, this does not dislodge the relevance of ss5, 6, and 7 RMA, including ss6(e) and 7(a) RMA.
- 9 While it has jurisdiction, the ultimate merits issue before the Panel relates to whether approval is merited for the MBL proposal, giving greatest weight to the FTAA statutory purpose.
- 10 This is not a case where s7 FTAA relevantly applies. Accordingly, a key issue relates to the proportionality threshold in s85(3), including

⁵ *Ngāti Maru Trust v Ngāti Whātua Ōrākei Whai Maia Ltd* [2020] NZHC 2768; *Te Rūnanga o Ngāti Whātua v Auckland Council* [2024] NZHC 3794

the extent of any adverse impacts and how these are weighted against the net positive benefits of the proposal. In assessing proportionality, the Panel must have regard to the proposed conditions framework, which specifically includes consent conditions relating to cultural and relational effects; and the side agreement that Te Parawhau ki Tai has entered into.

- 11 Te Parawhau ki Tai has identified that approval of the proposal, which is conditional and subject to implementing the mahi whakaora that it determines are appropriate,⁶ and continued active monitoring of te Taiao over the 35-year term, will result in net positive cultural, social, economic and environmental benefits to Te Parawhau ki Tai that are likely to be intergenerational in effect.
- 12 Te Parawhau ki Tai's conditional support is an exercise of rangatiratanga in their rohe, and over their tribal lands, waters, sites and taonga, and preserves active and integral ongoing control over the cultural and environmental effects of the proposal, with ability to mitigate those effects, in accordance with its tikanga over the duration of the consent. The MBL sand extraction site is firmly within the Te Parawhau ki Tai rohe. When balancing cultural impacts, alongside other impacts, greater weight should be attached to the support of Te Parawhau ki Tai under s6(e) RMA and the balancing exercise envisaged by s85(3) FTAA.
- 13 Te Parawhau ki Tai considers that the mahi whakaora, once implemented and enforceable, provides an important environmental protection strategy that would not otherwise exist if Te Parawhau ki Tai were not actively involved in ongoing monitoring, enforcement and mitigation (where needed). In contrast, if the application was to be approved without Te Parawhau ki Tai's support, there would be no equivalent mechanism for ensuring ongoing and direct control over, and capacity to mitigate, environmental and cultural effects arising from the project and no hapū-grounded cultural framework

⁶ An inclusive list of such mahi whakaora (mitigation measures) is set out at para [10] of the Evidence of Pari Walker dated 26 May 2026 submitted to the Panel.

from which to derive consent conditions that address matters of cultural and environmental importance.

- 14 Accordingly, Te Parawhau ki Tai's active ongoing control via its conditional support model establishes an effective and embedded mechanism, consistent with Te Parawhau ki Tai's tikanga, that recognises and provides for the relational values in s6(e) and s7(a) RMA. It enables Te Parawhau ki Tai to protect Paepae Atua, the mauri of the takutai moana and the wellbeing of Te Parawhau ki Tai across several generations. As Pari Walker states in his FTAA evidence for this proposal:⁷

[11] These mahi whakaora are essential not only to mitigate adverse effects, but also to restore the mauri of Paepae Atua, uphold the mana of Te Parawhau ki Tai, and give effect to the articles and principles of partnership and active protection under Te Tiriti o Waitangi. Our Cultural Impact Assessment affirms that MBL must uphold the principles of rangatiratanga, mauri ora, and whakawhanaungatanga, to ensure that Te Parawhau ki Tai can exercise its kaitiakitanga obligations and protect the interconnected wellbeing of ngā tāngata, whenua, wai, and taiao.

Nature of dispute or contest

- 15 A dispute exists over the strength of relationships of Te Parawhau ki Tai, Patuharakeke Te Iwi Trust Board, and Ngātiwai Trust Board with the area occupied by the MBL proposal, and the tribal autonomy of Te Parawhau ki Tai to support a proposal based on conditions that enables the exercise of their tribal authority and kaitikaitanga. The dispute extends to the relationships and tikanga of each of these parties with their tribal lands, waters, wāhi tapu, wāhi tupuna, and taonga.
- 16 This dispute sits within the wider context under the FTAA as to whether approval should be granted on the basis of net regional benefits that include benefits to Te Parawhau ki Tai, as assessed by them under their tikanga, subject to the mahi whakaora framework identified by their evidence and CIA.

⁷ Statement of Evidence of Pari Walker dated 26 May 2026 at para [11].

17 These benefits must be balanced, under the so-called proportionality test in s85(3) FTAA, against whether the adverse impacts including those identified by the tikanga of Patuharakeke and Ngātiwai are sufficiently significant to be out of proportion to the project's regional or national benefits considered under s81(4) even after taking into account the conditions or modifications specified in s85(3)(b)(i) and (ii) (as discussed below).

18 Pari Walker has identified the relevant strength of relationship of Te Parawhau ki tai in his first statement of evidence dated 26 May 2026 at paragraphs [5] and [6]:

[5] The relationship that Te Parawhau ki Tai has with Paepae Atua is embedded in whakapapa, atua, and kōrero tuku iho. This connection is carried each day by the rising of Te Hōkio, whose flight traces the whakapapa of the Hapū across the rohe, west to east from Tangihua to Taranga, from Mano Hiwa Ariki in the south to Parikiore in the north including all the whenua, moana, motu and awa in between affirming the mana of Te Parawhau ki Tai and its unbroken association with Paepae Atua and surrounding Outstanding Natural Landscapes including its rite of passage to Moana nui ā Kiwa. Te Parawhau ki Tai asserts that it holds, under tikanga, the strongest relationship with the MBL extraction site, as part of our ancestral lands, waters, sites and taonga as handed down from our paramount Rangatira, Kūkupa and his sons, Tirarau and Tiakiriri.

[6] I also submit that other hapū also indicate that they connect in some way to the same place and use other names to identify the area, however with my limited knowledge of the areas they refer to, Te Ākau is not in the extraction area we submit as Paepae Atua.

19 This is further elaborated in Mr Walker's second statement of evidence dated 26 June 2026 at paragraph [14] as follows:

[14] I want to add to this statement by acknowledging that Patuharakeke and Ngatiwai have connections with the "MBL site" through their own whakapapa tātai. These connections are not stronger than Te Parawhau ki Tai's connections. It is up to them to prove these connections and show whether their connections prove interests that are at least as strong as Te Parawhau ki Tai. We rely on our whakapapa. This is our tikanga. We do not question the whakapapa of others. It is for them to say. We have acknowledged that Patuharakeke are our whaunanga through whakapapa.

20 While Te Parawhau ki Tai and Patuharakeke Te Iwi Trust Board have adopted divergent (and opposing) positions on this MBL proposal, the Trustees note that they are whanaunga, and closely related

under whakapapa, and Te Parawhau ki Tai considers it important that this FTAA process should not undermine those relationships or promote discord between whanaunga.

- 21 Section 6(e) RMA (and the NZCPS) requires the acknowledgment of all Māori interests identified by relevant probative evidence. Te Parawhau ki Tai does not challenge the validity of the whakapapa of any participant. That would not be tika. However, Te Parawhau ki Tai does consider by its tikanga that no Māori group has a stronger relationship by whakapapa with the area affected by the MBL proposal.

- 21A Furthermore, as Mira Norris notes in her Third Statement of Evidence dated 17 August 2026 at paragraph [7]:

[7] **Reserved matter – not for this Panel.** Some material before the Panel asserts Takahiwai Marae as the sole mana whenua of one group. Te Parawhau ki Tai does not accept that assertion. However, Te Parawhau ki Tai does *not* ask this Panel to determine it. Takahiwai Marae was set apart by New Zealand Gazette notice dated 19 July 1977 (s 439, Maori Affairs Act 1953) “for the common use and benefit of the Maori community of Takahiwai” — not for any single hapū to the exclusion of others. Whether one group may claim it as sole mana whenua, and whether the marae trustees discharge their duty to the whole community of Takahiwai, are matters for the Māori Land Court, and Te Parawhau ki Tai reserves its position to pursue them in that forum. They are not necessary to, and should not be resolved in, the Panel's FTAA decision-making.

- 22 In the area of Paepae Atua, Te Parawhau ki Tai are the tangata whenua and tangata moana. In the view of Mira Norris in her first statement of evidence at paragraphs [4] and [6]:⁸

[4] Te Parawhau ki Tai are the correct Tangata Whenua and Tangata Moana at Paepae Atua. This status is grounded in tikanga, whakapapa, occupation, and historical record that substantially predates and outweighs any claim advanced on behalf of Ngāti Wāi in this area.

[6] The hapū Te Patuharakeke – whose members Patuharakeke Te Iwi Trust Board now claims to represent – is itself a hapū of Te Parawhau. This is a matter that must be properly understood by the Panel. Patuharakeke's status does not displace or diminish Te Parawhau's overarching rangatiratanga and mana whenua in this area.

⁸ Statement of Evidence of Riripeti Mira Norris dated 26 May 2026 at paras [4] and [6].

23 While the strength of relationships arises under the FTAA, the proposed consent conditions and mahi whakaora framework allow other tribal groupings and hapū to be recognised and provided for (if the Panel approves the proposal). If the Panel decides to grant approval, then other participants will have the opportunity to seek additions to the proposed consent conditions, as aligned with their tikanga.

24 This is confirmed by Pari Walker's affidavit evidence produced as an exhibit in these proceedings as follows:

[3] As I also said in that affidavit I have strong misgivings about the MACA process and I believe it is a very divisive piece of legislation and runs the risk of destroying our whanaungatanga with other Whanau Hapu groups, through usurping our Maori Customary Law of Kaitiakitanga exercised by us over our Taonga, Whangārei Terenga Paraoa.

[...]

[10] As Te Parawhau, we recognise and respect our shared whanaungatanga and the right of each hapū to their own korero about their whakapapa. However, we don't believe that whakapapa should be recited by the Patuharakeke Te Iwi Trust Board without appropriate acknowledgement of the connection to Te Parawhau.⁹

25 While the above comments related to the MACA (Takutai Moana) legislation, and *take* raised under that Act, they have equal force in respect of the FTAA.

26 Accordingly, Te Parawhau ki Tai submits that the Expert Panel may ultimately not need to make findings on which party has the strongest s6(e) RMA relationship with the MBL proposal, as between Te Parawhau ki Tai and Patuharakeke Te Trust Board, who are closely related through whakapapa;¹⁰ but the Panel will need to identify and balance the net benefits to Te Parawhau ki Tai its hapu from approval of the MBL proposal, as against both the benefits and the adverse impacts to Patuharakeke Te Iwi Trust Board, Ngātiwai

⁹ Reply affidavit of Pari Walker (Dec 2023), Annexure 3 to 38 FTAA

¹⁰ Refer second statement of Pari Walker (18 August 2026) at [14]

Trust Board, and any other relevant Māori party, as part of the relevant matrix of considerations under s81(2), and in making a final determination under s85(3) FTAA. Section 6(e) RMA requires the Panel to evaluate the Project's effects on the relationship that Tangata Whenua have with the affected area, which also means that the Panel must consider the nature, location and intensity of those individual Tangata Whenua relationships. The question for this assessment is whose relationship is most directly affected by the Project.

- 27 Alternatively, Te Parawhau ki Tai submits that the Panel should prefer their evidence as establishing the strongest relationship under s6(e) RMA for the purposes of this MBL application. This includes under a 'rule of reason' assessment as anticipated by *Ngāti Hokopu*¹¹ and other case law.
- 28 In that regard, Mira Norris has confirmed in supplementary evidence filed herein, that Patuharakeke Te Iwi Trust Board's original claim for customary marine title under Takutai Moana legislation excluded the area within which MBL has applied for resource consent under this FTAA process, meaning that Patuharakeke did not assert traditional authority over this area for the purposes of seeking customary marine title. This is a significant issue, as holding an existing CMT (if one existing) would allow for a statutory veto power of this Project under the relevant Takutai Moana legislation.¹²
- 29 The decision by Patuharakeke Te Iwi Trust Board to not seek recognition of customary authority over the Project site, was taken in or about 2017 (and well before the MBL Project application was lodged, let alone the FTAA came into effect). This is a relevant factor identified in *Ngāti Hokopu* (the asserted tikanga should arise/have

¹¹ *Ngāti Hokopu ki Hokowhitu v Whakatāne DC* (2002) 9 ELRNZ 111 (EC) (**Ngāti Hokopu**) affirmed by Whata J in *Ngāti Maru*

¹² Supplementary Second Statement of Evidence of Riripeti Mira Norris filed herein. Ms Norris also confirms in her Statement of Evidence dated 26 May 2026 at para [10] that Patuharakeke Te Iwi Tribal Authority applied to amend their area claimed (and consolidate their customary marine title application with Ngātiwai Trust Board), and that this application remains live before the High Court (from Sept 2024).

crystallised before it came into question for the current FTAA dispute under a rule of reason analysis).

Relevance to decision-making criteria in FTAA

- 30 It is submitted that this is not a situation where inconsistency with a relevant existing Treaty Settlement arises under s7 FTAA. Accordingly, the only basis on which an approval can be declined is if the criteria in s85(3) FTAA apply. This relevantly includes a balancing of competing interests, including whether any adverse impacts identified by the Panel are sufficiently significant to be out of proportion to the project's regional or national net benefits (even after taking into account proposed conditions, including those volunteered by the Applicant).
- 31 Accordingly, the strength of s6(e) RMA relationships of affected Māori parties is relevant to the proportionality assessment, including the extent of regional (or national) benefits, and countervailing adverse impacts. There are other policy-based triggers for consideration of these relational values, such as under Objective 3 and Policy 2 NZCPS.¹³
- 32 Te Parawhau ki Tai contends that there are regional benefits arising to Te Parawhau ki Tai, and that these are material as they enable economic empowerment of Te Parawhau ki Tai over the 35 year term of the proposed MBL consents. This is subject to ongoing compliance by the proposed consent holder with the mahi whakaora requirements that will be determined by Te Parawhau ki Tai following a consultative process. As noted by Pari Walker in his FTAA evidence:

[22] Our decision to support MBL has not been taken lightly, and has required a number of hui under our tikanga, to reach a position of support. The Trustees believe that the MBL proposal will result in benefits to our uri over the next 35 years and longer through a partnership approach. Te Parawhau ki Tai is a pre-settlement hapū. We don't have a solid economic foundation, despite the multiple and documented breaches of Te Tiriti o Waitangi by the Crown, and including the Public Works Act, Local Government and RMA processes that have alienated our ancestral

¹³ It is of course acknowledged that a range of s6 (and s7) values are present for this proposal.

lands, waters, wāhi tapu, wāhi tupuna and taonga over generations. Our relationships, values, and tikanga need to be recognised and provided for by this MBL proposal.¹⁴

The recent Panel decision in **Hananui Aquaculture Project**¹⁵ has confirmed the importance of weighting benefits to tangata whenua as valued and measured by themselves. The assessment of benefits under the FTAA is not limited strictly to financial benefits and includes broader social and cultural benefits that arise from the Project. The cultural benefits identified by Te Parawhau ki Tai as arising subject to their ongoing duties and mahi whakaora are regionally significant. A project can provide a significant regional benefit even if it does not benefit every part of the region in which it is based. A sufficiently substantial localised public benefit can translate to a significant regional benefit.¹⁶

Pertinent case law

33 While each case ultimately turns on its own facts, there is substantial RMA and Senior Court authority on the relevance of:

- strength of relationship under s6(e) RMA as relevant to resource consent decisions on whether to grant approval, as well as proposed consent conditions. Such case law also deals with the 'rule of reason' approach required to evaluate the credibility and reasonableness of competing probative evidence by Māori parties;
- tikanga as relevant to the discharge of statutory duties, which applies by analogy to the FTAA proposal.

34 What follows is not intended to be a comprehensive summary of extensive existing case law.

Part 2 RMA

¹⁴ Statement of evidence of Pari Walker (FTAA)

¹⁵ FTA 2511-1138, refer that decision at [100]-[102]

¹⁶ Per McQueen J in *Valley RAGE Inc v Tasman District Council* [2026] NZHC 2202 at [60] (noting the different statutory context of that case which related to interpretation of the NPS-HPL).

- 35 Part 2 RMA sets out the purpose and principles of the Act, including a number of directions relating to Māori. Sections 6(e), 7(a) and 8 of the RMA are strong directions that are relevant at all stages of the planning process.¹⁷ As noted above, Clause 17, Sch 5 imports ss5, 6, 7 RMA (but not s8 RMA).
- 36 Section 5(1) outlines the purpose of the RMA, to promote the sustainable management of natural and physical resources. The Privy Council in *McGuire* acknowledged that in achieving the broad purpose of the RMA “all the authorities concerned are bound by certain requirements, and these include particular sensitivity to Māori issues”.
- 37 Section 6(e) creates an obligation to “recognise and provide for” the relationship of Māori with the matters outlined reflects the significant priority given to matters of national importance. Recognition alone is not sufficient. Decision-makers must also provide for that relationship.¹⁸
- 38 The High Court has acknowledged that the obligation to “recognise and provide for” the relationship of Māori and their culture and traditions, their whenua and other tāonga “must necessarily involve seeking input from affected iwi about how their relationship, as defined by them in tikanga Māori, is affected by a resource management decision”.¹⁹ Section 6(e) therefore requires consideration of all relationships.
- 39 But, that does not mean all iwi or hapū relationships are equal or merit equal treatment in terms of consent conditions. The Environment Court has stated that in recognising and providing for these relationships and in taking into account the Treaty of Waitangi “..it is essential to do so in a way that recognises the separate and distinct identities of iwi and hapū rather than treating all Māori as one entity..”.²⁰

¹⁷ *McGuire v Hastings District Council* [2002] 2 NZLR 577 at p594 (**McGuire**)

¹⁸ *Bleakley v Environmental Risk Management Authority* [2001] 3 NZLR 213 (HC)

¹⁹ *Ngāti Maru* (HC) at [73], [102], p122]

²⁰ *Tūwharetoa Māori Trust Board v Waikato Regional Council* [2018] NZEnvC 093, [2018] NZRMA 520 at [129].

Section 7(a) – kaitiakitanga

40 The requirement to “have particular regard” to kaitiakitanga conveys a stronger direction than “have regard”. This direction requires decision-makers to recognise this matter as something important to the particular decision and therefore consider and carefully weigh it in coming to a conclusion.²¹

41 As acknowledged by the High Court, it is necessary to identify who are kaitiaki in order to apply s 7(a):

... [g]uardianship, in tikanga Maori can involve degrees, and the exercise of stewardship at different levels. It is only kaitiaki who can tell the Court what they consider kaitiakitanga requires, and the views of the kaitiaki who have most recently and closely exercised stewardship over the land patently carry greatest authority.²²

Section 8 – principles of the Treaty / Te Tiriti

42 Section 8 RMA is not imported into the FTAA through CI17, Sch 5 FTAA. Despite this, it is submitted that Treaty principles remain relevant as part of the fabric of NZ Society under long-standing authority including (inter alia) *Huakina*.²³

43 The Supreme Court has confirmed that the principles of the Treaty / Te Tiriti have procedural and substantive implications, which decision-makers must keep in mind.²⁴

Other relevant authority:

Ngāti Maru Trust v Ngāti Whātua Ōrākei [2020] NZHC 2768

44 In *Ngāti Maru*, Whata J relevantly established a 3-pronged test where any relative strength claim must be:

(a) clearly defined according to tikanga and mātauranga;

²¹ *Auckland Council v High Quality Ltd* [2024] NZHC 2237 at [68]

²² *Friends and Community of Ngawha Inc v Minister of Corrections* [2002] NZRMA 401 (HC)

²³ *Huakina v Waikato Valley Authority* (HC); Boldt J in *Ngāti Kuku* at [65] took a different view (that decision makers are not required to consider the principles of the Treaty under the FTAA as (*inter alia*) s8 is excluded from CI17 of Sch 5 FTAA), but it is submitted this is an *obiter* statement as it was not relevant to the statutory interpretation question at issue, which related to listed projects in Schedule 2: [2025] NZHC 2453.

²⁴ *King Salmon* (NZSC) at [88]

- (b) clearly directed to discharge of obligation to Māori under RMA;²⁵
- (c) precisely linked to resource management outcome.

45 This may require choices to be made, but caution from decision-makers is required, to remain within their statutory powers. The jurisdiction to declare and affirm tikanga based rights in State law rests with the High Court and/or the Māori Land Court rather than the RMA. Evidential findings may be made to adjudicate on divergent iwi / hapū claims, where required to exercise relevant statutory duties under the RMA.²⁶

Te Rūnanga o Ngāti Whātua (HC) ²⁷

46 While this decision largely turns on its own facts (appeal against proposed landfill), Whata J relevantly affirmed the 3-pronged approach taken in *Ngāti Maru* at (*inter alia*) [73], [102], [111]. This was a case in which the positions of the relevant tangata whenua parties were partly in support and partly in opposition. The Environment Court relevantly gave weight to Ngāti Manuhiri support of the proposal, and the tribal empowerment that would enable, as determined by Ngāti Manuhiri, which had the stronger relationship with the landfill site, as distinct from those parties opposing, which had uncontested mana whenua further downstream from the site and at Kaipara Moana.

McCallum Brothers Ltd v Auckland Council [2024] NZEnvC 075

47 While there are some obvious points of difference (at Pākiri, there was no apparent contest that Ngāti Manuhiri had the stronger relationship to the proposal), the Environment Court decision provides a concise summary of relevant case law, including the observation that:

“[170] In a Māori context, where relationships are vital, it is important that we only determine what is necessary, through a mana whenua/Māori lens, and not unduly disturb the delicate nature of existing relationships. Whatever the context, *Ngāti Maru* reminds us that any contests only need

²⁵ As relevantly imported by cl17 of Sch 5 FTAA

²⁶ *Ngāti Maru* at (*inter alia*) [67], [68], [73]

²⁷ *Te Rūnanga o Ngāti Whātua v Auckland Council* [2024] NZHC 3794

to be determined if it is for a resource management purpose. Defining the nature of relationships mana whenua have with a resource, area or activity does not, in our view, cross the *Ngāti Maru* line.” [Footnotes omitted]

**Ngāti Whātua Ōrākei Whai Maia Ltd v Auckland Council [2025]
NZEnvC 228 (Interim decision, HC decision pending on appeal)**

48 While it turns on its facts, in this decision the Environment Court made a factual finding that Ngāti Whātua Ōrākei held the strongest relationship with Westhaven marina. This was in contrast to other Māori parties who also held relationships with Westhaven, but these were (on the evidence) less strong in character. As a result of this finding, the Court confirmed that the consent conditions must reflect this strength of relationship. The Court also confirmed that the stronger the relationship with Westhaven, the more pronounced the effect, to be addressed by consent conditions (in a case where approval was not challenged).

**Tauranga Environmental Protection Society v Tauranga CC [2021]
NZRMA 492 (HC)**

49 While not directly relevant to competing strength of relationship, in this decision Palmer J relevantly confirmed that each iwi / hapū is expert in their own tikanga, and a decision-maker should not substitute their own view for that of tangata whenua as to whether effects are avoided, remedied, or mitigated. That is an assessment to be made under tikanga by the affected hapū or Iwi. The decision-maker’s role is to assess whether approval is still merited and (if so) on the basis of proposed consent conditions.

Poupouwhenua

50 Mira Norris’s first statement of evidence²⁸ has already drawn attention to the findings of the Waitangi Tribunal in WAI 1040. While not binding on the Panel, these findings merit substantial weight and are directly relevant. As noted by Ms Norris at paragraph [20]:

²⁸ Statement of Evidence of Riripeti Mira Norris dated 26 May 2026.

"[20] At page 1883 of that Report [being the Waitangi Tribunal Report 2022, WAI 1040 Te Rangatiratanga me Te Kawanatanga Pre-Publication] the Tribunal found that:

"By requiring Te Parawhau to forfeit 1,000 acres of the Whangarei headlands (known as Te Poupouwhenua) as payment for the January 1845 taua muru against the settlers Millon and Patten, the Governor acted inconsistently with its obligation to act with utmost good faith, in breach of te maataapono o te houruatang / the principle of partnership."

- 51 Ms Norris confirms the significance of this finding which confirms: (a) Te Parawhau's status as the Tangata Whenua whose land was taken; (b) the location of that land as Te Poupouwhenua – the Whangārei headlands, encompassing Paepae Atua; and (c) that the Crown's dispossession was a Treaty breach, leaving Te Parawhau's underlying mana and rangatiratanga unextinguished.²⁹
- 52 This is not the place to provide comprehensive case law summaries, and the Panel will already be familiar with relevant authority, which briefly includes:
- ***Trans-Tasman Resources Ltd v Taranaki-Whanganui Conservation Board*** [2021] NZSC 127: the Supreme Court confirmed that tikanga-based customary rights and interests are existing interests protected by the statutory requirement to recognise and respect the Crown's obligation to give effect to the principles of the Treaty of Waitangi. While there is no equivalent statutory provision under the FTAA, it is submitted that tikanga must be taken into account as part of the law that the decision-maker must apply. Decision-makers must understand, recognise and respect the *particular* tikanga of the iwi or hapū concerned, and take Māori customary and kaitiakitanga interests into account as existing interests. The interests of iwi with mana moana in the consent area are the longest-standing human-related interests in that place. As with all interests, they reflect the values of the interest-holder.

²⁹ Ibid at [21]

Those values, including mana, whanaungatanga, and kaitiakitanga, are relational.³⁰

- ***Ngāti Whātua Ōrākei Trust v Attorney-General (No 4)*** [2022] NZHC 843; [2022] 3 NZLR 601 (Palmer J).³¹ Tikanga is identified as the first law of Aotearoa and relevantly defined in s2 RMA as “Māori customary values and practices”. At [327]-[328], Palmer J summarises key case law including *Trans-Tasman Resources*. Relevant findings are set out at [362]ff and include that tikanga-consistent dispute resolution is to be preferred to imposed methodologies. That is problematic in the FTAA context, where mandatory time limits apply and constrain the Panel’s process, as noted by Minute 8, albeit Te Parawhau ki Tai maintains that time constraints do not override fundamental principles of natural justice. It is a matter for iwi and hapū to determine and change tikanga, through their own deliberative aggregation of practices in exercising their rangatiratanga, and this does not form part of the Court’s function. A Court must recognise tikanga on the basis of the evidence before it, for the particular purpose of the particular case.
- ***Whakatōhea Kotahitanga Waka (Edwards) v Te Kāhui*** [2024] NZSC 164 (Part 1) and [2025] NZS’ 104 (Part 2). The Supreme Court’s MACA authority on the takutai moana, relied on here by analogy. It confirms that “exclusive use and occupation” is interpreted in light of tikanga and does not require possession to the exclusion of all others; that MACA contemplates **shared exclusivity**, with overlapping groups recognised together rather than one defeating the other; and that overlapping interests are best resolved among the groups in accordance with tikanga, ideally before hearings.

53 While each case must be viewed in its own context, it is submitted that: (a) decision-makers must engage with the particular tikanga and interests of each group; (b) customary interests in land and the

³⁰ Williams J at [297]; Glazebrook J at note 371.

³¹ Particularly from [326]ff.

takutai moana are commonly shared and overlapping rather than exclusive; (c) Courts routinely decline to rank or declare exclusive mana even on full records; (d) an assessment of strength of relationship under s6(e) RMA is available under the FTAA but solely for the statutory purpose of reaching a determination on the particular MBL proposal, and bearing in mind contextual factors identified by tikanga (which may be competing tikanga).

INVITATION BY THE PANEL

54 At paragraph [3], Minute 8 states:

[3] By way of this Minute the Panel:

[..] (c) Responds to the request for disclosure, and invites Te Parawhau ki Tai to further discuss the concerns outlined in their memorandum and affidavit, kanohi ki te kanohi, via videoconference or teleconference with the Panel if desired.

55 While Te Parawhau ki Tai acknowledges the invitation, having criticised the Panel for predetermination/breach of natural justice (which position is maintained), they do not consider that it would be appropriate to seek an opportunity for unilateral engagement with the Panel. Moreover, it is difficult to see how such engagement with the Panel could be equivalent to the pōwhiri already undertaken.

56 Te Parawhau ki Tai's evidence is that the Panel's decision to undertake a pōwhiri at Takahiwai Marae, without inviting or consulting some of the relevant tribal authorities, such as the Trust, before undertaking the pōwhiri, means that it is unreasonable for any further cultural issues hearing on the issues relevant to Te Parawhau ki Tai to take place at Takahiwai Marae. Trustees evidence is that they will not be treated as manuhiri at their own Marae. Ms Mira Norris, in her second statement of evidence dated 18 August 2026 filed herein, states that:

"[10] The Trust is concerned that holding any cultural issues hearing at a venue associated with one party — including Takahiwai Marae — would, on the material some parties have filed, place Te Parawhau ki Tai in the position of manuhiri, and could be read as conceding the very status questions that remain live. The Trust does not raise this as any criticism of the host or of Takahiwai Marae, for which it has the utmost respect."

- 57 This is further expanded in Ms Norris’ second statement of evidence at paragraphs [13] to [19], and in particular at paragraphs [15] and [17] where she states:

“[15] The Māori community of Takahiwai is not, and has never been, a single hapū. It is made up of closely interrelated whānau who descend from common tūpuna, and who include Te Parawhau (through Ngāti Tū, Ngāti Ruangio and Ngāitāhuhu), Koiwi Hapū, Ngāti Tū, and Patuharakeke. These groups are not strangers to one another — we are relations. The lines of descent cross and re-cross through intermarriage over many generations.”

[...]

“[17] We do not advance this evidence to diminish the connection of Patuharakeke or any other whānau to Takahiwai — the opposite is true. We acknowledge that Patuharakeke whānau are part of the community of Takahiwai, as we are. Our point is that the community of Takahiwai is shared, and that Te Parawhau whānau are within it, not visitors to it. To treat Te Parawhau ki Tai as manuhiri at Takahiwai, or to treat Takahiwai as belonging to one group alone, is inconsistent with the basis on which the marae was set apart and with the whakapapa of its people.”

- 58 As is often observed, tikanga requires the right person, doing the right thing, and in the right way.³² Te Parawhau ki Tai therefore requests that tikanga is best served, and a partial restoration of balance, by holding any further cultural effects/issues hearing relevant to Te Parawhau ki Tai in person (kanohi ki te kanohi), but at Terenga Paroa marae. The Trustees are open to discussion with other statutory participants on the location and this should be addressed through the FTAA process.
- 59 In summary, Te Parawhau ki Tai have exercised their right of self-determination under te tino rangatiratanga in deciding to conditionally support the MBL proposal, subject to the mahi whakaora framework being implemented and observed.³³ That is entitled to both respect, and weight, in this process given their strength of relationship with the MBL site.

³² *Ngāti Whātua Ōrākei Trust v Attorney-General* (No.4) [2022] NZHC 843, per Palmer J citing Rt Rev Manuhuia Bennett at [29]

³³ Subject to the conditions identified by Georgina Olsen and Pari Walker in their evidence.

60 As noted by Ms Olsen in evidence, and endorsed by the Trustees on behalf of Te Parawhau ki Tai:

“[6.8] The position of Te Pouwhenua o Tiakiriri Kūkupa Trust (Te Parawhau ki Tai), on behalf of Te Parawhau Hapū remains one of conditional support, subject to the mahi whakaora framework being fully and appropriately embedded and given effect within the final conditions of consent and management framework.”

Dated this 18th August 2026

Rob Enright / Martin Enright
Counsel for Te Pouwhenua o Tiakiriri Kūkupa Trust