

15 May 2025

Minister for Infrastructure  
Via portal and email

Tēnā koe

**Re: Response to invitation to comment on the referral application of the Waipiro Marina Project**

1. My name is Winston McCarthy. I act for Huhana Lyndon, applicant for CIV-2017-485-408 (Nga Uri o Hairama Pita Kino Davies) and 409 (Whangaroa-Ngaiotonga Trust) (**our client**).
2. This letter responds to the Minister for Infrastructure's invitation to provide written comments on the referral application of the Waipiro Marina Project (**the project**).
3. Our client descends from the Te Ture Whenua Māori lands of neighbouring Orokawa block, namely s 9(2)(a) with whakapapa connections to the whenua through Te Wharerahi and his marriage to Tari Tapua of Ngāpuhi and Taiawa of Ngātiwai. She is Co-Chair of Whangaroa Ngaiotonga Trust, an Ahuwhenua Trust which administers 1,137.23 hectares of Te Ture Whenua Māori on Ngaiotonga A3 Block on behalf of 1407 shareholders, and wider beneficiaries.
4. In summary our client opposes the project being referred on the following grounds:
  - a. consultation with relevant groups with applications for customary marine title has not been sufficiently undertaken; and
  - b. the project does not have significant regional or national benefits;

**No consultation with applicants for customary marine title**

5. Section 11 of the Act mandates that an applicant **must** consult with a range of bodies before lodging a referral application, specifically:

- a. relevant local authorities;
  - b. any relevant iwi authorities, hapū, and Treaty settlement entities, including:
    - i. iwi authorities and groups that represent hapū that are parties to relevant Mana Whakahono ā Rohe or joint management agreements; and
    - ii. the tangata whenua of any area within the project area that is a taiāpure-local fishery, a mātaimai reserve, or an area that is subject to bylaws or regulations made under Part 9 of the Fisheries Act 1996; and
  - c. any relevant applicant groups with applications for customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011; and
  - d. ngā hapū o Ngāti Porou, if the project area is within or adjacent to, or the project would directly affect, ngā rohe moana o ngā hapū o Ngāti Porou; and
  - e. the relevant administering agencies; and
  - f. if the proposed approvals for the project are to include an approval described in section 42(4)(f) (land exchange), the holder of an interest in the land that is to be exchanged by the Crown.
6. I am instructed that our client has not been consulted at all by the applicant. She first learned of the application when she was contacted 20 working days ago by the Ministry for the Environment. She does not consider she has had a proper opportunity to respond to the application given the lack of consultation.
7. She recommends declining the application as it does not meet the requirements for a referral application under s 11 of the Act.

## **No significant regional or national benefits**

8. As you are aware, the purpose of the Act is to “facilitate the delivery of infrastructure and development projects with significant regional or national benefits”<sup>1</sup>. One of the criteria for accepting a referral application under s 22 of the Act is that a project would have such benefits.
9. Our client does not consider that the project would have significant regional or national benefits when viewed as a whole. Waipiro Bay is a remote area of Northland with

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<sup>1</sup> Section 3.

numerous sites of cultural significance to Māori in the surrounding area. There is already a large number of moorings in Waipiro Bay and adjacent bays. In addition, there are several marina within the area. Given the availability of existing moorings, existing marina in the surrounding area and significant ecological and cultural risks, my client asks that the application be declined.

10. When considering whether a project has significant regional or national benefits, the Minister may consider whether the project:<sup>2</sup>

- a. *Has been identified as a priority project in a local government strategy:* The Northland Regional Council (**NRC**) 'Moorings and Marinas Strategy (2014)' indicates that the NRC will "*investigate the potential demand for marina berths in Waipiro Bay to inform a Coastal Plan review in the late 2030s*". My client does not consider that this amounts to the project being identified as a priority project.
- b. *Will deliver new regionally significant infrastructure or enable the continued functioning of existing regionally significant infrastructure:* As noted above, there are sufficient existing moorings within the area, and existing berth vacancies at Opua Marina. My client considers that it would make more sense to make use of existing infrastructure and expand where necessary or explore alternative sites or other mooring technology in areas that are less environmentally and culturally sensitive.
- c. *Will increase the supply of housing, addressing housing needs, or contribute to a well-functioning urban environment:* This criteria category is not applicable.
- d. *Will deliver significant economic benefits:* Our client disagrees with the economic analysis provided by the applicant. The document relies in part on the NRC's strategy document which was published in 2014. Importantly the economic assessment does not consider alternatives such as developing existing infrastructure, or alternative sites. Our client also does not consider that there has been sufficient weighing of economic risks that may result from the environmental issues identified below.

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<sup>2</sup> Section 22(2).

- e. *Will support primary industries, including aquaculture:* This criteria category is not applicable.
  - f. *Will support development of natural resources, including minerals and petroleum:* This criteria category is not applicable.
  - g. *Will support climate change mitigation or adaptation:* While the project applicant says that the marina will reduce greenhouse gas and create multiple benefits that align with climate change, there is very limited evidence provided to support these conclusions.
  - h. *Will address significant environmental issues:* The project will not address significant environmental issues. Rather the project risks creating significant environmental issues and associated economic cost. The marina will require dredging of the marina basin, clearing of mangroves and reclamation of land. This will likely result in a change to the floor of the seabed and a different environment for indigenous species. The increase of boats in the area will make the risk of non-indigenous species establishing themselves high. The area is also very culturally significant to local hapū, iwi and to our client. In summary, our client considers that the marina will have significantly adverse environmental impacts and adversely affect the natural character of the coastal environment.
  - i. *Is consistent with local or regional planning documents:* Our client has insufficient information to comment on this aspect of the criteria.
11. Finally, our client wishes to record her view that there are existing customary interests in the proposed area which have not been recognized under the existing legislative scheme due to significant funding shortfall. My client considers that the project's progression without accounting for these interests will amount to a contemporary breach of Te Tiriti o Waitangi.
12. For these reasons we ask that you decline the referral for application so that the proposal can proceed through the standard consenting process which will allow proper scrutiny and input from our client and other interested parties.

13. Should the Minister decided to refer the application, we seek to comment and be heard on the substantive application also.

Ngā mihi

Winston McCarthy  
Partner, Manaia Legal

Ph: s 9(2)(a)  
Eml: