

BEFORE THE EXPERT PANEL UNDER THE FAST-TRACK APPROVALS ACT 2024

IN THE MATTER OF an application for resource consents by Manawa Energy Limited (**Manawa Energy**) for activities associated with the listed Kaimai Hydro-electric Power Scheme (**Kaimai HEPS**) Re-Consenting Project

MEMORANDUM OF COUNSEL FOR THE APPLICANT IN RESPONSE TO MEMORANDUM OF COUNSEL FOR WAIROA HAPŪ DATED 16 JANUARY 2026

FTAA-2502-1025 – 11 FEBRUARY 2026

Introduction

1. On 16 January 2026, Te Wairoa Hapū filed a Memorandum of Counsel on behalf of Ngāti Kahu, Ngāti Rangī, and Ngāti Pango (**Memorandum of Counsel**). Pursuant to Minute 5, the Expert Panel provided an opportunity to the applicant to respond, noting that it may be more efficient to do so in response to comments.
2. This Memorandum responds to the Memorandum of Counsel. It does not constitute part of Manawa Energy's response to comments, as no comments were received from Te Wairoa Hapū pursuant to s 53 of the FTAA.
3. The Memorandum of Counsel canvases both:
 - (a) Engagement with Manawa Energy; and
 - (b) Substantive matters.
4. We address those in turn.

Engagement

5. The Memorandum of Counsel suggests that Manawa Energy's engagement was conditional on adopting Manawa Energy's preferred collective engagement model, which required Te Wairoa Hapū to share limited resources with other hapū.¹ It also suggests that other hapū interests were prioritised,² and that Manawa Energy appeared to expect Wairoa Hapū to respond to a large-scale, resource-intensive consenting process with minimal capacity and largely on a voluntary basis.³
6. Manawa Energy does not accept these matters. Counsel has taken instructions on the extensive engagement which Manawa Energy undertook with Ms Bennett on behalf of (initially) Ngāti Kahu, and then Te Wairoa Hapū. It commenced in 2022, well before this application was lodged under the FTAA. It is clearly evident that Manawa Energy made concerted efforts to engage with, and suitably resource, Te Wairoa Hapū.
7. More particularly, we are instructed that engagement involved the following steps:⁴
 - (a) Manawa Energy has been engaging with Te Wairoa Hapū since 2022 on the re-consenting of the Kaimai HEPS. This engagement has involved multiple hui over the past three years - including a senior leadership hui, a site visit for Te Wairoa Hapū, funding and support for Te Wairoa Hapū to engage consultants to review the re-consenting application, and supporting documents, and the offer of resourcing to provide a response and/or a Cultural Impact Assessment.

¹ Paragraph 13(a).

² Paragraph 13(b).

³ Paragraph 13(c).

⁴ This detail, including the detail in Appendix A, can be provided in evidential form, if that would assist the Expert Panel.

- (b) Engagement was not limited to formal consultation milestones, but included repeated outreach, funding for independent advice, open provision of technical information, site visits, and ongoing invitations to advance both consent-related and relationship-based discussions.
- (c) Between September 2023 and November 2024, Manawa Energy provided approximately [REDACTED] in funding to the Catalyst Group, engaged by Te Wairoa Hapū, to support their participation in hui, site visits, review of technical material, and engagement activities. In addition, Manawa Energy accepted in full a cost estimate of approximately [REDACTED] for a hapū-specific Cultural Impact Assessment, structured in a format proposed by Te Wairoa Hapū and consistent with work they had undertaken for other major infrastructure projects. No deliverables were ultimately produced under that agreement.
- (d) Over the same period, Manawa Energy raised the possibility of formalising the relationship between the two entities on multiple occasions as a means of acknowledging the relationship with Te Wairoa Hapū. While recollections may differ as to exactly when those discussions occurred, Manawa Energy's position throughout has been that it remained open to progressing such a relationship. Despite follow-up communications and repeated invitations to convene a hui to progress next steps, those discussions did not advance.
- (e) In parallel, Manawa Energy sought to ensure that its fish passage initiatives were developed in a coordinated and technically robust manner. These were established through a collaborative process involving multiple hapū and specialist practitioners, with invitations extended broadly across mana whenua. Manawa Energy's conditions package is framed so that it is inclusive of relevant hapū entities, and

Manawa Energy is hopeful that all hapū who wish to be involved will participate.

8. A more detailed chronology of Manawa Energy's engagement with Te Wairoa Hapū is attached in Appendix A.
9. The suggestion that Manawa Energy's offer of resourcing was conditional on adopting Manawa's preferred collective engagement model appears to be a misunderstanding. Through emails over 4-7 June 2023, Ms Bennett indicated she had been approached by *other* groups (Ngamanawa Inc, and Pirirākau) to support their response alongside Te Wairoa Hapū, and requested additional resourcing if this was to occur due to the additional workload. This did not eventuate.
10. Manawa Energy's position throughout the process has been to support providing resourcing for Te Wairoa Hapū and that it is for each hapū to determine the manner of its response. The engagement chronology set out at Appendix A confirms the resourcing provided by Manawa Energy. In 2024, Manawa Energy agreed to resource a hapū specific effects and mitigation matrix. This was never produced by Te Wairoa Hapū.
11. When read alongside the detailed engagement record set out in Appendix A, the criticisms in the Memorandum of Counsel do not accurately reflect the nature or extent of Manawa Energy's engagement with Te Wairoa Hapū.
12. As to the suggestion that Manawa Energy consistently prioritised the interests and perspectives of other hapū over those of Te Wairoa Hapū, it is submitted that the period of engagement regarding the Kaimai HEPS, and the resourcing which was provided, support the opposite conclusion.
13. Manawa Energy acknowledges that different hapū will engage in its resource consent processes in different ways. Manawa Energy can not compel

particular hapū, nor indeed any party, to engage at a particular pace. This does not mean that perspectives of other hapū have been prioritised over those of Wairoa Hapū.

14. The Memorandum of Counsel states that any agreement reached with Ngāmanawa Incorporation / Ngāti Hangarau does not extend to, or represent, the position of the Wairoa Hapū.⁵ In response, it is noted that Manawa Energy has not relied on any agreement with Ngāmanawa Incorporation, or any other entity, as evidence of support or consensus on the part of Te Wairoa Hapū.

Substantive matters

15. The Memorandum of Counsel also makes comments about the substantive application. More specifically:

- (a) Reference is made to undertaking a Cultural Flow Preference Study;⁶
- (b) Effects are said to be broad and unable to be remedied by a Native Fish Passage Management Plan and related activities, nor by establishing a Mana Whenua Kaitiaki Rōpū;⁷
- (c) It is not considered appropriate to simply maintain the current environment;⁸ and
- (d) A range of measures are suggested at a high level.⁹

16. Manawa Energy does not accept that the substantive application simply maintains the current environment. The Kaimai HEPS operates over a number of streams and rivers in the Wairoa catchment, through an integrated – albeit

⁵ Paragraphs 22-23.

⁶ Paragraphs 18(b), and 27-28.

⁷ Paragraph 31.

⁸ Paragraph 32.

⁹ Paragraph 34.

relatively complex - network of weirs, diversions, storage lakes, and power stations. Manawa Energy has assessed each of the reaches within the Kaimai HEPS and has not sought to 'simply maintain the current environment'. This is evidenced by the three new residual flows proposed by Manawa Energy at the Omanawa Weir, Managapapa Weir and McLaren Falls Dam, and the proposed Sediment Monitoring Plan. These measures reflect an approach that goes beyond maintaining the status quo, and instead seeks to improve ecological outcomes within the constraints of an existing hydro-electricity scheme.

17. As to the proposed Native Fish Passage Management Plan, and Mana Whenua Kaitiaki Rōpū, the criticism of these is misplaced. These were specifically developed to provide for the ongoing involvement of mana whenua in implementation and monitoring, while avoiding duplication of effort and administrative burden on hapū. In particular:

(a) The proposed Native Fish Passage Management Plan details the initiatives which Manawa Energy has been progressing since 2021, directly evidencing the progress that is being made. This has included wānanga, and the proposed management plan has been informed by feedback that there is a desire for fish passage and trap and transfer efforts to be iwi and mātauranga led.¹⁰ The proposed consent conditions require that the Native Fish Passage Management Plan address the opportunities to incorporate Mātauranga Māori into the design and monitoring of that plan.¹¹

(b) The proposed consent conditions for the Kaimai HEPS place the administrative burden of Rōpū meetings on the consent holder.¹²

¹⁰ Substantive application at section 8.3.1.2.

¹¹ Proposed condition 13.2(j), version dated 14 January 2026.

¹² Proposed condition 15.5, version dated 14 January 2026.

18. The proposed Native Fish Passage Management Plan and Mana Whenua Kaitiaki Rōpū are meaningful initiatives which recognise the relationship of hapū with the Wairoa catchment.
19. Manawa Energy does not agree to a Cultural Flow Preference Study. This appears to involve unspecified cultural monitoring across the Scheme with potential re-assessment of residual flows subject to that cultural monitoring. Such a framework poses significant uncertainty for a hydro-electricity generator such as Manawa Energy. It also runs counter to the National Policy Statement for Renewable Electricity Generation which includes avoiding, where practicable, any overall or cumulative losses of REG capacity and output from a region or district or existing REG assets and activities.¹³
20. Conditions must also be certain, enforceable, and proportionate. A Cultural Flow Preference Study, as proposed, would introduce an open-ended adaptive mechanism which is uncertain, and disproportionately onerous (particularly at this late stage of the consenting process).
21. A range of matters need to be integrated when re-consenting a hydro-electricity scheme such as the Kaimai HEPS. Manawa Energy has appropriately integrated relevant matters through its proposed new residual flows, and the proposed Native Fish Passage Management Plan, and Mana Whenua Kaitiaki Rōpū. If Manawa Energy's substantive application is granted as proposed, generation output from the Kaimai HEPS will be reduced.¹⁴ It is submitted that there is no case for some sort of condition mechanism which has the potential to reduce that further. Such conditions would be unduly onerous.

¹³ Policy B.

¹⁴ NZIER report, Appendix D to the substantive application. The annual 'missed' output from the Kaimai HEPS attributable to the existing residual flows is estimated at 4.9 GWh. The additional residual flows at the Omanawa River, Mangapapa River and McLaren Dam totals 5.71 GWh for the Kaimai HEPS.

Conclusion

22. It is submitted that it will be clear to the Expert Panel from the substantive application and the engagement detailed in Appendix A, that Manawa Energy engaged with iwi and hapū, and resourced, hapū appropriately. Manawa Energy has taken on board feedback from engagement in developing the substantive application, and this has included the proposed Native Fish Passage Management Plan and Mana Whenua Kaitiaki Rōpū.
23. These are meaningful initiatives which recognise the relationship of hapū with the Wairoa catchment, and which Te Wairoa Hapū is invited to participate in.

DATED at Tauranga this 11th day of February 2026



Vanessa Hamm / Bridget Bailey
Counsel for Manawa Energy Limited

Appendix A – Chronology of Manawa Energy engagement with Te Wairoa Hapū

July – September 2022	Manawa Energy contacted Ms Bennett as the representative for Ngāti Kahu on 7 July 2022 regarding the upcoming consenting of the Kaimai HEPS. Ms Bennett replied that she was occupied with the Port of Tauranga hearing and asked to reconnect later. Follow-up emails were sent from Manawa Energy on 1 August and 26 September 2022, both without response.
October 2022 – February 2023	Manawa Energy and Ms Bennett met on 4 October 2022 to progress discussions on a wide range of topics - including a senior leaders meeting between Ngāti Kahu and Manawa Energy, hydrologist led monitoring training, the Mauri Compass workshop, the Gail Tipa model, a Kaimai HEPS site visit, a cultural values assessment and the coordination of a hapū working group. Ms Bennett later responded to these items by email on 26 October 2023, followed by a Mauri Compass presentation from Ian Ruru on 28 October 2022. Additional follow ups were sent on 4 November 2022 and 13 February 2023.
February – May 2023	Manawa Energy contacted Ms Bennett on 13 February 2023 for a further meeting. Manawa Energy met with Ms Bennett on 16 May 2023. At that meeting, the company advised that lodgement of the Kaimai HEPS resource consent application was planned for June 2023 under the Resource Management Act 1991. The parties discussed sharing of all draft reports and consenting documents, resource support for Ngāti Kahu in the consenting process, and further engagement. A resourcing discussion followed on 19 May 2023 via Zoom with Ms Bennett and consultant planner Greg

	<p>Carlyon of Catalyst. Manawa Energy was already resourcing the costs of the planner and supported further resourcing.</p>
June 2023	<p>Through emails over 4-7 June 2023, Ms Bennett indicated she had been approached by other groups (Ngamanawa Inc, and Pirirākau) to support their response alongside Te Wairoa Hapū, and requested additional resourcing if this was to occur due to the additional workload. Manawa Energy supported this approach, however this did not eventuate, with other hapū later seeking separate resourcing. Ms Bennett also confirmed that she was representing Te Wairoa Hapū.</p> <p>On 15 June 2023, Manawa Energy provided all existing Kaimai HEPS resource consents, confirmed project management resourcing and requested terms of engagement. It subsequently advised Ms Bennett that the Kaimai HEPS resource consent application had been lodged with the Bay of Plenty Regional Council (BOPRC). The application which Manawa Energy lodged with the BOPRC was put on hold immediately, at its request, to enable ongoing tangata whenua engagement.</p>
July – August 2023	<p>On 19 July 2023, Manawa Energy confirmed resourcing approval and that the resource consent application had been placed on hold to allow for further engagement.</p> <p>On 27 July 2023, Ms Bennett outlined Te Wairoa Hapū’s approach to the re-consent and resourcing support needs and proposed a meeting with several consultants and Manawa Energy. Manawa Energy confirmed that it would cover Te Wairoa Hapū’s disbursement costs for hui, and resourcing for its consultant planner.</p>

September 2023	On 26 September 2023 Manawa Energy staff and its consultants provided an online presentation to Ms Bennett and Te Wairoa Hapū's consultant planner. In follow up, Manawa Energy again raised the concept of a relationship agreement.
February 2024	A meeting on 28 February 2024 between Manawa Energy, Ms Bennett and Te Wairoa hapū's consultant planner took place, where Manawa Energy provided a consent update, offered expert presentations, and reconfirmed support for a cultural impact assessment.
May – June 2024	<p>On 1 May 2024, Manawa Energy's Chief Executive Clayton Delmarter and Ngāti Kahu's Chair, Piripi Hikairo, discussed the Fast-Track application process for the Kaimai HEPS. Manawa Energy confirmed to Ngāti Kahu on 3 May 2024 that it intended to apply for the Kaimai HEPS to be listed in the Fast-Track Approvals Bill. On 29 May 2024, it provided Ms Bennett with an estimate of timing for that process and the draft Fast-Track Approvals Bill.</p> <p>On 30 May 2024, Ms Bennett and Manawa Energy confirmed the timeline for preparing the cultural effects matrix and confirmed resourcing, and questions were raised regarding Ngāti Pango and Ngāti Rangi involvement. Ms Bennett confirmed on 6 June 2024 that she would represent Te Wairoa Hapū collectively.</p>
July – November 2024	On 17 August 2024, Ms Bennett submitted a cost estimate of ████████ for the hapū specific effects and mitigation matrix, and resourcing for this workstream was confirmed by Manawa Energy on 22 August 2024. This effects and mitigation matrix has never been produced.

	<p>Manawa Energy met with representatives of Ngāti Pango on 3 July 2024 and, following an email from Manawa Energy, representatives of Ngāti Pango confirmed on 25 August 2024 that communication should continue through Ms Bennett who would then feed back to Ngāti Pango. Further discussions and arrangements for resourcing were put in place in September and October 2024.</p> <p>On 7 October 2024 Mr Delmarter advised that the Kaimai HEPS re-consent was listed in the Fast-Track Approvals Bill. Te Wairoa Hapū undertook a site visit on 26 November 2024.</p>
May – November 2025	<p>Manawa Energy contacted Ms Bennett on 1 May and 9 June 2025 proposing a meeting to provide an update on the re-consenting process. On 18 September 2025, Manawa Energy advised Ms Bennett that the Kaimai HEPS application would be lodged under the Fast-Track Approvals Act 2024 later that month, and provided draft consent conditions for review and comment. The next day, the draft Native Fish Passage Management Plan was sent to Ms Bennett for feedback and comment.</p> <p>On 25 September 2025, Ms Bennett confirmed she had reviewed the draft consent conditions and requested a hui. A meeting between Ms Bennett and Manawa Energy on 4 November 2025 revisited the idea of developing a more formal relationship. The proposed Kaitiaki Rōpū consent condition was also discussed.</p> <p>A meeting with BOPRC, tangata whenua groups, including Te Wairoa hapū, and Manawa Energy was</p>

	held on 5 December 2025 to discuss the proposed resource consent conditions.
January 2026	On 9 January 2026, the Manawa Energy team (now Contact employees) met with Ms Bennett and representatives of Pirirākau to discuss the proposal received by Pirirākau on 8 January 2026. The idea of a relationship agreement with Te Wairoa Hapū was revisited at that meeting.
28 January 2026	Contact staff contacted Ms Bennett suggesting a meeting between Te Wairoa Hapū and Contact leadership to discuss the relationship and the path ahead. As at the date of this Memorandum of Counsel, no response to that email has been received.