

BEFORE AN EXPERT PANEL

FTAA-2502-1024

UNDER THE Fast Track Approvals Act 2024 (“**FTAA**”)
IN THE MATTER OF an application for resource consents by
Manawa Energy Limited for activities
associated with the listed Kaimai Hydroelectric
Power Scheme Re-Consenting Project

BETWEEN **MANAWA ENERGY LIMITED**
Applicant

AND **THE KAIMAI HYDRO-ELECTRIC POWER
SCHEME EXPERT PANEL**
Consent authority

AND **NGĀTI KAHU, NGĀTI RANGI, AND NGĀTI
PANGO (WAIROA HAPŪ)**
Participant

AND **OTHER PARTICIPANTS**

**FIRST MEMORANDUM OF COUNSEL FOR WAIROA HAPŪ
IN RESPECT OF RF11 FROM THE PANEL**

16 JANUARY 2026

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MAY IT PLEASE THE PANEL:

Ka rere atu ngā awa o Kaimai

Ki te whakakotahi te awa rongonui ā Wairoa

Wairoa tōku kāinga

Wairoa tōku tūranga

Wairoa tōku ūkaipo

Wairoa tōku moemoeā

INTRODUCTION

1. I have this afternoon been appointed as counsel for Ngāti Kahu, Ngāti Rangī, and Ngāti Pango (**Wairoa hapū**).
2. This follows the inability of the Wairoa hapū and Manawa Energy Limited (**Manawa**) to agree to a joint written response, which the Panel requested that endeavours be made to be produced by Manawa following engagement with relevant mana whenua groups (which necessarily include the Wairoa hapū).
3. The Wairoa hapū had wished to have their position on the relevant matters recorded in a separate section of the draft joint response. Manawa's position was that the Wairoa hapū position should be included (in its entirety) as an appendix to the "joint" response. I understand that the Wairoa hapū's position was only provided to Manawa at around 12pm today, and that Manawa does not agree with the substantive content, or the directions requested, and that time was short to see if progress could be made in resolving how the points of difference might be resolved.
4. That said, the section was drafted to be a record of the Wairoa hapū's position, and Manawa was able to record its reservations about that position. The concern for the Wairoa hapū is that the relegation of its position to an appendix (in their view) would diminish the force and recognition of their position, as well as their mana. They did not want their views to be relegated to an appendix.
5. Accordingly, I have been instructed to record Wairoa hapū's position by way of this memorandum. Given my urgent instruction, it simply records what

the Wairoa hapū wished to have included in a section in the body of the “joint” response, with some minor changes in syntax to reflect its inclusion now in a memorandum of counsel. I have had a limited briefing and obviously have had no direct involvement in any recent engagement. I also note, that some time ago, while in the role of a consultant/ project manager, I did attend, for the Wairoa hapū, a site visit hosted by Manawa. Accordingly I have some background context.

The Wairoa hapū

6. Within Tauranga Moana, Wairoa hapū are widely known as “The River People” — ko tātou te awa, ko te awa tātou. The name derives from our awa, Wairoa (aka Te Awaroa), and reflects the nature of our relationship with the awa and its tributaries.
7. Wairoa Marae shares the name of their awa and is situated on the hill overlooking it. Their urupā, Taumatawhiōi, is located even closer to the awa.
8. In accordance with tikanga, the awa is an extension of mana whenua people. Wairoa hapū therefore bear responsibility for the active management, enhancement, protection, and preservation of their awa, its environs, and the associated mātauranga. They are kaitiaki for the entire awa. A map illustrating the geographical extent of Wairoa hapū is appended to this memorandum.
9. For generations, Ngāti Kahu / Wairoa hapū whānau have exercised kaitiakitanga across the awa environs. Their Hapū Management Plan (**HMP**), ‘Te Awaroa’, records and advances these obligations. While the application mentions the HMP, it is not understood to be included as part of the application materials. A copy of the HMP accompanies this memorandum, in case that would assist the Panel in its understanding of key issues.
10. The HMP recognises the health and wellbeing of the awa as the most critical environmental issue for the Wairoa hapū and provides clear direction for consenting processes. Of particular relevance to engagement with Manawa are the policies under the realm of Tāne Mahuta (pages 62–65).

11. Te Rūnanga o Ngāti Kahu (ki Tauranga) (**TRONK**) is the hapū authority currently responsible for environmental matters. TRONK was established to support the reclamation of our tino rangatiratanga and has long represented the interests of all Wairoa hapū, including in Treaty claims. With the passage of the Ngā Hapū o Ngāti Ranginui settlement legislation, the hapū post-settlement governance entity is increasingly relevant, including in the context of the FTAA.

Engagement with Manawa Energy

12. I understand that initial engagement between Wairoa hapū and Manawa staff, prior to the Fast-track process, was considered generally constructive, with respectful participation by both parties.
13. Subsequently, the Wairoa Hapū considers that the engagement encountered significant challenges, summarised from the perspective of Wairoa Hapū as follows:
 - a. Manawa adopted a conditional approach to resourcing, making support contingent on Wairoa Hapū conforming to Manawa's preferred collective engagement model, including requirements to work jointly with other hapū, share limited resources, and operate within parameters set by Manawa. These conditions impeded the ability of Wairoa hapū to participate on equitable terms and exerted improper pressure to adopt a process misaligned with our capacity, tikanga, and legitimate decision-making structures.
 - b. Manawa consistently prioritised the interests and perspectives of other hapū over those of Wairoa hapū.
 - c. Manawa appeared to expect Wairoa hapū to respond to a large-scale, resource-intensive consenting process with minimal capacity and largely on a voluntary basis.
14. Collectively, the Wairoa hapū consider that these factors placed them at a structural disadvantage from an early stage.
15. The Wairoa hapū are willing to collaborate with other hapū where appropriate and have, within Tauranga Moana, led other large infrastructure processes. However, meaningful collaboration is impracticable without clarity around roles, responsibilities, resourcing, and leadership. The

Wairoa hapū consider that Manawa's engagement approach lacked such clarity, creating the untenable impression for the Wairoa hapū that they were responsible for coordinating multiple other hapū without mandate, support, or resourcing — an unreasonable and unsustainable expectation.

16. Despite good-faith efforts by Wairoa hapū to coordinate with other hapū, it became apparent that the conditions and “preferred” process advice given to Wairoa hapū were not communicated or applied consistently across all hapū. This produced an uneven engagement landscape that advantaged some hapū and disadvantaged others, effectively creating “winners and losers.”
17. Between Manawa's lodgement under the Resource Management Act and its subsequent lodgement under the Fast-track Act, engagement with Wairoa hapū was minimal due mainly to capacity constraints.
18. Since lodgement in September 2025, two meetings have occurred with Manawa staff, both initiated by Wairoa hapū.
 - a. The first on 4 November 2025, was to understand any changes following the Contact Energy acquisition and to confirm application status. The meeting was constructive. An outcome was that Wairoa hapū would prepare an effects-mitigation paper for Manawa's consideration; that paper is nearing completion.
 - b. At the second meeting on 11 January 2026, elements of a Wairoa hapū effects-mitigation paper were discussed. The key item related to the need for a Cultural Flow Preference Study (CFPS). Paragraph 23 provides further detail.
19. The position of Wairoa hapū has been consistent: adverse effects must be addressed as a first priority. This includes remediation – or finding other ways to address or resolve – past environmental and cultural effects. An analogy can be made in respect of an overallocated water catchment or a lake that is eutrophied. Before more water can be taken or more nitrates discharged (respectively) those past effects need to be addressed. This includes through conditions, or other mechanisms.

20. Understanding all of the above context is important to avoid any perception that Wairoa Hapū declined to engage, or are not looking to be constructive in their engagement.

Agreements reached

21. There is no agreement in place between Wairoa hapū / Ngāti Kahu and Manawa addressing effects and/or consent conditions. I am instructed that an exhaustive email search found no record of an offer of a relationship agreement. That said, the Wairoa hapū acknowledge that it is possible that an offer was made.
22. For clarity, any agreement reached with Ngāmanawa Incorporation / Ngāti Hangarau does not extend to, or represent, the position of the Wairoa Hapū. No wider consensus exists and any such agreement cannot be taken as evidence of mana whenua consensus.
23. Reliance on Ngāmanawa Incorporation as a proxy for engagement with Ngāti Kahu – Wairoa hapū is incorrect in fact and inappropriate in principle. While some individuals with Ngāti Kahu whakapapa may hold shares in land administered by Ngāmanawa Incorporation, this neither constitutes nor legitimises engagement with the hapū. The Incorporation does not hold mandate or authority to represent Ngāti Kahu, and its agreements cannot be construed as reflecting hapū views or consent. Engagement with Ngāmanawa Incorporation cannot, under any circumstances, be treated as engagement with Wairoa hapū – Ngāti Kahu. Only direct, properly mandated, intentional, and good-faith engagement with the hapū meets the requirements of recognising mana whenua interests.
24. The Wairoa hapū consider that Manawa must remain genuinely open to reasonable proposals by other hapū where those proposals address adverse effects on their distinct cultural values and practices or relate to ongoing involvement in consent management. A settlement reached with one hapū cannot justify rejecting similar proposals by others, including where the measures are materially the same as those agreed with others.
25. Notwithstanding the above, Ngāti Kahu / Wairoa hapū remain open to discussing unresolved matters. At the recent 11 January 2026 hui initiated by Ngāti Kahu / Wairoa hapū, information was provided in good faith with the intention of closing gaps, although no agreement was reached.

26. Ngāti Kahu / Wairoa hapū introduced a framework to determine cultural flow needs for taonga waterbodies within the Kaimai area, supported by relevant information.
27. A Cultural Flow Preference Study is not newly proposed. Ngāti Kahu raised it in our first meeting with Manawa staff in or about 2023. It is a positive measure that complements flow-related aspects of the project and provides for the practical assertion of kaitiakitanga through cultural monitoring using a tested framework.
28. Cultural flow preferences support culturally significant outcomes and can inform the setting of other flow values (e.g., residual flows). Absent a cultural flow component, the residual flows currently drafted into the consent conditions are, from a cultural perspective, not meaningful and primarily serve Manawa's needs.
29. In summary, recent discussions have produced no remedies for Wairoa hapū despite the measures tabled. Statements suggesting openness are not considered reflected in outcomes or commitments to the remedies proposed by the Wairoa Hapū to date.
30. In short, following the 11 January 2026 meeting, the Wairoa hapū have lost confidence in the process and harbour doubts as to whether Manawa is genuinely prepared to treat their issues with the respect and openness asserted by Manawa.

Matters remaining to be resolved and proposed steps

31. The Wairoa hapū have not agreed, even in principle, to any matters. As proposed, the conditions are not considered to address the effects of the proposal on them. The effects are broad and cannot be remedied by a Native Fish Passage Management Plan and related activities, nor by establishing a Mana Whenua Kaitiaki Rōpū. Such measures, in practice, are considered to only generate further adverse effects by imposing ongoing commitments on already limited capacity.
32. The Wairoa hapū also do not consider it appropriate to simply maintain the current environment. Maintaining the current state of a highly modified catchment is not an option as the Wairoa hapū firmly believe that the lands and waters of the Kaimai catchment need to be restored, enhanced and

protected. The concern is also that a narrow focus on the rivers most affected by infrastructure and its operation to produce electricity could result in many of the opportunities for Wairoa hapū and options for restoration and enhancement of mahinga kai and kaitiaki connections with the land and awa/wai in the catchment as a whole, being lost or limited.

33. When assessing the impacts of the Scheme on the Wairoa hapū's rights, beliefs and practices, the Wairoa hapū cannot only focus on the impact of the Scheme on today's generation. Using mahinga kai as an example; the Wairoa hapū have the right to benefit from mahinga kai sourced from the catchment as long as they protect forever the integrity of what makes the awa a mahinga kai. A key focus therefore has to be how to enable future generations to thrive in the catchment.
34. To generate positive effects for the Wairoa Hapū, the proposal must recognise their unique relationship to their taonga through providing for Wairoa Hapū decision-making and the exercise of kaitiakitanga by Wairoa Hapū kaitiaki, as well as including measures that address the health and wellbeing of their wai/awa through the use and application of a range of interventions and mechanisms that provide for the wellbeing of their awa, and integrated environmental programmes and initiatives, specifically:
 - a. Te Mana o Te Wai -
 - b. Recognition of past, present and future effects
 - c. Development of a State of our Wai project through which an appropriate 'cultural reference' or 'cultural baseline' can be established
 - d. Restoration and/or enhancement initiatives with a focus on environmental resilience, biodiversity and ecological considerations
 - e. Protection of culturally important habitats
 - f. Protection against further loss of sites and/or access to important sites
 - g. Measures to avoid, remedy or mitigate any deterioration to water quality

- h. Any further loss of important puna
 - i. Any further loss of mahinga kai habitat
 - j. Management of contaminants from power station operations
35. References to matters “agreed in principle” — including data handling, the scope and operation of the Mana Whenua Kaitiaki Rōpū, and native fish passage responsibilities — are not correct insofar as Wairoa Hapū / Ngāti Kahu are concerned. No in-principle agreement has been given, concerns remain outstanding, and no substantive drafting has been endorsed by them.

Requested directions

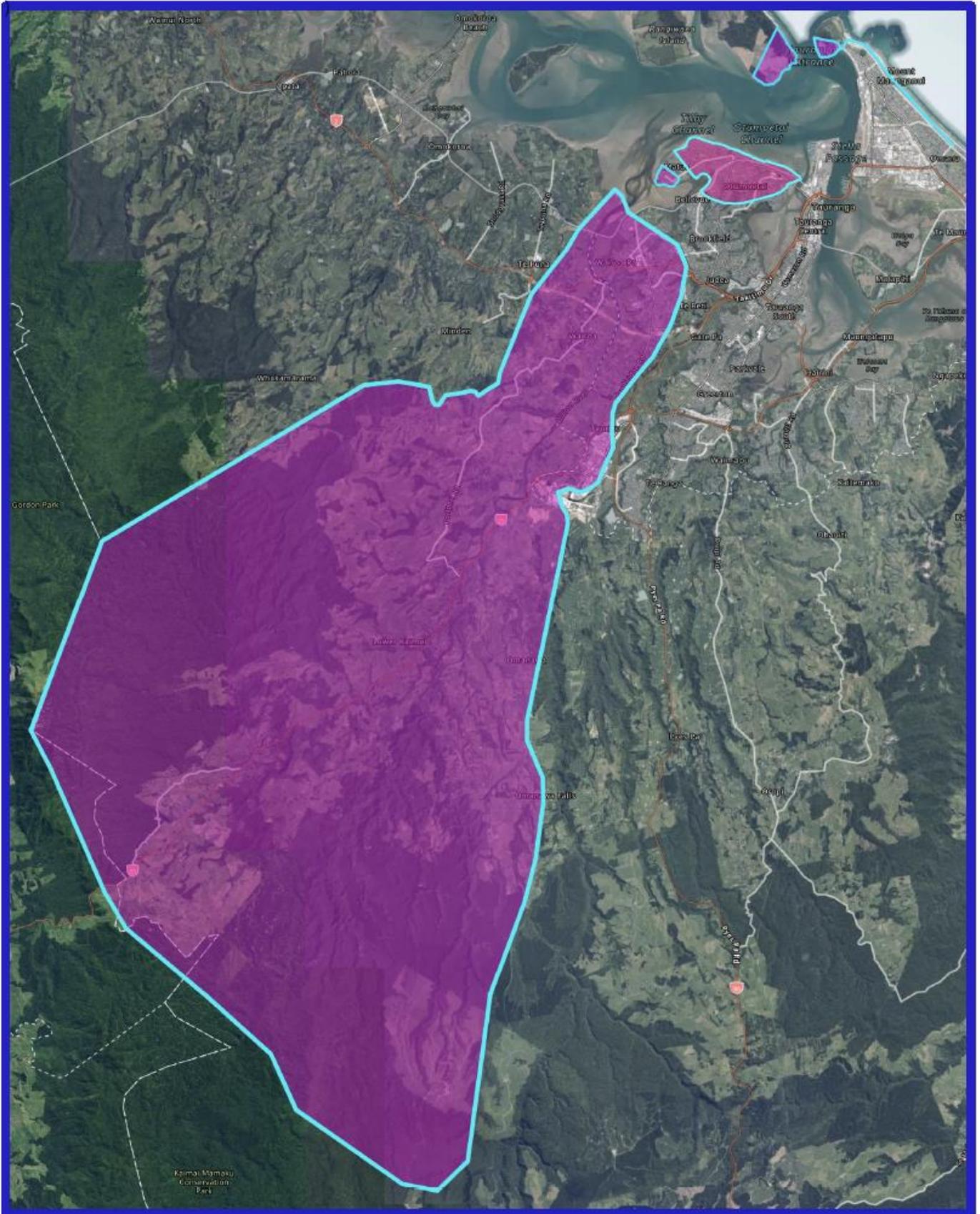
36. In light of all of the above, the Wairoa Hapū respectfully request the Panel direct:
- a. Manawa staff and Wairoa Hapū representatives to engage in an intensive, time-bound negotiation between 25 January and 5 February 2026; and
 - b. For both parties to report by way of a joint memorandum to the Expert Panel by 10 February 2026.

16 January 2026



James Gardner-Hopkins
Counsel for the Wairoa Hapū

WAIROA HAPŪ ATTACHMENT - WAIROA HAPŪ ROHE MAP



Note: map of rohe does not show the full extent of the Ngāti Pango rohe which extends to Okauia (northern side of Kaimai ranges)