

**IN THE ENVIRONMENT COURT
AT AUCKLAND**

**I TE KŌTI TAIAO O AOTEAROA
KI TĀMAKI MAKURAU**

IN THE MATTER

BETWEEN

Decision [2024] NZEnvC 337

of an application for direct referral
under ss 87C-87I of the Resource
Management Act 1991

PORT OF TAURANGA LIMITED

(ENV-2021-AKL-153)

Applicant

AND

BAY OF PLENTY REGIONAL
COUNCIL

Respondent

AND

NGĀTI KUKU

WHAREROA MARAE TRUSTEES

NGĀ HAPU O NGĀ MOUTERE
TRUST

NGĀTI KAHU

NGĀTI RANGINUI FISHERIES
TRUST

NGĀTI RANGINUI IWI SOCIETY

NGATI KAAHU A TAMAPAHORE
TRUST

TE RUNANGA O NGAI TE RANGI
IWI TRUST

TUPUNA TRUST

Section 274 parties



Court: Chief Environment Court Judge D A Kirkpatrick
Environment Commissioner J Hodges
Environment Commissioner A C E Leijnen
Deputy Environment Commissioner S G Paine

Hearing: At Tauranga on 27 February - 3 March, 6 - 10 and 13 - 17 March 2023

Last Case event: 11 December 2024

Date of Decision: 16 December 2024

Date of Issue: 16 December 2024

SECOND INTERIM DECISION OF THE ENVIRONMENT COURT

- A. Consent for the Stage 1 Sulphur Point wharf extension within the already consented area of dredging is **granted** subject to the conditions of consent proposed by the Applicant by memorandum dated 2 October 2024 and amendments as set out in this decision.
- B. Port of Tauranga Limited (**POTL**) is directed to file and serve amended conditions to the satisfaction of the Regional Council as set out in this decision.

REASONS

Introduction

[1] The Environment Court issued its interim decision on 13 December 2023¹ which stated that consent for the Stage 1 Sulphur Point wharf extension within the already consented area of dredging would be granted to Port of Tauranga Ltd (**POTL**) on the revised conditions of consent proposed by the applicant subject to certain additional matters set out in the decision being

¹ *Port of Tauranga Ltd v Bay of Plenty Regional Council* [2023] NZEnvC 270 (**Interim decision**).

addressed to the satisfaction of the Court.

[2] Counsel for POTL filed a memorandum dated 30 September 2024 together with documents addressing the additional matters in the Court's interim decision and a draft set of conditions it proposed for Stage 1 of the proposal.

[3] The following documents were filed with counsel's memorandum:

Appendix 1 Stella Passage Engagement Post Interim Decision

Appendix 2 Southern Te Awanui Harbour Health Plan (**STAHH**P) scope final

Appendix 3 Te Paritaha Interim Survey Results

Appendix 4 Tauranga harbour Marine Monitoring Methodologies

Appendix 5 Summary of Scientific Environmental Data 2024

Appendix 6 Avifauna Management Plan for the Port of Tauranga Sand Storage Site, Wharf Extensions and Wider Port Environs

Appendix 7 Proposed conditions

[4] Counsel submitted that:

Port of Tauranga Limited's (**POTL**) submission is that it has complied with the directions as far as possible in the circumstances, and in light of the level of willingness of other parties to engage with POTL on the directions since the Decision.

POTL continues to seek consent at the earliest opportunity, particularly due to the ongoing urgency for Stage One and the Court's direction that the Stage One dredging consent can be granted for a term to 6 June 2027. In light of this and as signalled in our Memorandum of Counsel dated 27 June 2024, POTL now respectfully requests that the Court endorses the documents filed and issues consent for Stage One of the Stella Passage development.

[5] The scope of this second interim decision is limited to consideration of

the application to:

- (a) extend the existing Stage 1 Sulphur Point Wharf by 285 m;
- (b) reclaim an area of 0.88 ha of land behind the wharf;
- (c) extend the area of dredging in front of the wharf by 4.65 ha to a depth of 16 m below chart datum; and
- (d) deepen an already consented area of 5.9 ha from 12.9 m to the same 16 m depth.

[6] There is no scope within the application for the Court to impose conditions relating to the management of Te Awanui as a whole. While POTL offered a condition to facilitate the development of a Southern Te Awanui Harbour Health Plan (**STAHHP**) on a voluntary basis, on the Court's assessment of the further information now filed, such a condition is not sufficiently related to the suite of conditions to be attached to the resource consents for the Stage 1 expansion of the Sulphur Point Wharf to provide sufficient certainty as to what the condition is to achieve or how to make it workable or how it might be enforced.

[7] In the interim decision² the Court identified the primary issues to be determined as:

- (a) whether the proposal recognises and provides for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga, which is a matter of national importance; and
- (b) how to have particular regard to kaitiakitanga in the circumstances of this case.

² Interim decision, at [575].

[8] The Court has already determined that:

- (a) from a western science perspective, the effects of the proposal are expected to be minor in the short term and negligible in the long term;³
- (b) the cumulative physical effects of the additional area, over and above existing consented areas, on areas of Te Awanui, including Paritaha will be negligible;⁴
- (c) any additional effects of the proposal on biodiversity will be at a very low level and will be appropriately managed in accordance with the Biosecurity Act 1993;⁵ and
- (d) the likelihood of marine mammals entering Te Awanui is low and the proposed procedures for managing effects on any that do enter are appropriate.⁶

[9] Accordingly, from a western science perspective, there is no impediment to the grant of consent.

Engagement between parties

[10] In the interim decision the Court identified a number of key issues that need to be addressed but which could only be achieved successfully by effective communication between the parties. We identified the need for greater certainty as to what would occur, by when, what outcomes are to be achieved, who will be responsible and what enforcement mechanisms will be available.⁷ To provide certainty as to how kaitiakitanga is intended to be provided for in any meaningful way or how mātauranga Māori is intended to

³ Interim decision, at [435].

⁴ Interim decision, at [465].

⁵ Interim decision, at [471].

⁶ Interim decision, at [506].

⁷ Interim decision, at [564].

be incorporated, we identified the following requirements:

- (a) the definition of the kaitiaki roles relating to Te Paritaha surveys, the long-term kaimoana survey plan and the Avifauna Management Plan, what reports will be provided, how any responses will be addressed, dispute resolution processes and time-frames;
- (b) the scope of the mātauranga Māori State of the Environment Report, with a time-frame for completion;
- (c) the definition of kaitiaki roles in the review and updating of documents required by the conditions of consent;
- (d) lines of communication between POTL and iwi and hapū;
- (e) opportunities for Rangatira-to-Rangatira meetings, including timeframes; and
- (f) the reimbursement of costs.

[11] These are not matters that POTL could address without significant input from tangata whenua. Equally, there is a limit to the amount of time that can be allowed for such input. At the time of POTL's memorandum more than nine months had passed since the interim decision was issued. This should have been sufficient time to enable much more progress to be made and for agreements, at least in principle, to be reached. There is no certainty as to how much longer it might take before agreements are reached. Further delays cannot be justified.

[12] The historical relationships between POTL and tangata whenua are addressed in some detail in the interim decision and we do not intend to repeat that. At a conference held on 4 April 2024 concerns were raised by tangata whenua about the approach to consultation that had been taken until that time which was a matter of particular concern of all hapū. POTL also

identified difficulties it was having getting responses from tangata whenua.

[13] We were encouraged by the memoranda filed by counsel for POTL dated 27 June 2024 and on behalf of Ngā Tai Ki Mauao dated 02 July 2024. The memoranda indicated that each party had undertaken a significant amount of work in relation the Court's directions, that significant engagement had occurred and that there had been an improvement in the working relationship between them, all of which was positive. However, the memoranda also indicated that a number of matters remained unresolved with the parties some distance apart.

[14] Successful engagement between POTL and iwi and hapū will require the establishment of some form of iwi and hapū advisory group to work directly with POTL and communicate with different iwi and hapū organisations. Counsel for POTL had acknowledged in closing submissions that iwi and hapū that have a relationship with Te Awanui prefer to establish an advisory group 'on their terms' and through a tikanga based process.

[15] It considered this would take time and suggested an initial transitional Iwi Liaison Group with input from POTL to allow time to establish the main advisory group for the duration of the consent. It was submitted that the group "would be established by iwi and hapū with no input from POTL other than through the provision of funds up front once the group is established to enable them to perform functions under the consent and administer restoration funds."⁸

[16] Ngā Tai Ki Mauao Hapū Collective (**Ngā Tai ki Mauao**) was formed in January 2024 to more efficiently engage with POTL to address the directions in the Court's interim decision. All of the hapū involved had been participants in the proceeding and the hearing, each having made a substantive contribution. A list of the members of the Collective is at Attachment A. Ngā

⁸ POTL, Reply submissions, dated 6 April 2023, at [38].

Tai ki Mauao considered that its early establishment would enable direct communication between POTL and hapū representatives through a tikanga-based process for the duration of the consents without the need for a transitional group.⁹

[17] We note that Ngāti Ranginui Iwi Society and Ngāti Ranginui Fisheries Trust are not part of Ngā Tai ki Mauao, so the Collective is not fully representative of all tangata whenua. This has required POTL to initiate separate consultation processes with each of them. Ngāti Ranginui Iwi Society was positive about the process and sought more time for a facilitation/mediation process. They stressed that they have a different decision-making process to that of Ngā Tai ki Mauao and that it takes longer for them to consult with their hapū and marae. Ngāti Ranginui Fisheries Trust preferred to meet with their lawyer present but that person, unfortunately, was overseas.

[18] In an attempt to organise a process for all parties to reach agreement regarding proposed consent conditions, Mr James Hope was approved by the Court to act as a facilitator. While the possibility of such an engagement was first discussed at the April 2024 conference, it took time to identify who should be asked to undertake the role and Mr Hope was not engaged until July 2024.¹⁰

[19] In her memorandum dated 30 September 2024, counsel for POTL submitted that it had been very focused on engagement with the parties to the proceedings since the decision was released and that many meetings had been held, phone calls made and emails exchanged. A timeline summarising the engagement undertaken was included as an appendix.

[20] Counsel submitted that POTL had complied with the Court's directions

⁹ Ngā Tai ki Mauao memorandum, dated 3 March 2024.

¹⁰ Minute, dated 17 July 2024.

as far as possible in the circumstances and in light of the level of willingness of other parties to engage with POTL. Counsel requested the Court to endorse the documents filed and confirm the grant of the resource consents.

[21] By a memorandum dated 16 October 2024, Ngā Tai Ki Mauao provided what they termed a high-level commentary to the matters covered by the POTL memorandum. Ngā Tai Ki Mauao was highly frustrated with POTL which it submitted had not fully satisfied any of the Court's directions. Rather than there being a lack of feedback from other parties, the feedback provided had been completely missed if not overlooked.

[22] Ngā Tai Ki Mauao did not dispute POTL's timeline, but were concerned about the lack of information from POTL, its passive response to engagement its lack of commitment to building an enduring relationship and undertaking detailed work to provide for the exercise of Ngāti Kuku's kaitiaki function and its unwillingness to move away from the position that they took at the close of the hearing in respect of quantum. In light of the proposed inclusion of POTL's projects in the schedules to the Fast-track Approvals Bill, Ngā Tai ki Mauao asked the Court to provide the clarity as to what the future process is to be, so that time is not wasted if there is going to be no meaningful improvement in outcome.

[23] The memorandum also set out Ngā Tai Ki Mauao's views on what the kaitiaki role and management structure should entail, including requirements for a team of experienced and skilled people.

[24] In relation to the Avian Management Plan, Ngā Tai Ki Mauao stated that the final proposal from POTL does not reflect any of the considered feedback they provided, other than some minor editorial changes.

[25] It is clear that in relation to conditions, Ngā Tai Ki Mauao strongly disagrees with the approach proposed by POTL to the STAHHP and the

disregard shown to Te Pā Pātiki. We discuss Te Pā Pātiki below but note here that is not in evidence before the Court and the Court has no knowledge of it, other than POTL's understanding that it is intended to be used to develop the STAHHPP.¹¹ Ngā Tai Ki Mauao has concerns about the state of the environment report and proposals for the sand pile and the funding offered.

[26] The memorandum concluded:

While we genuinely appreciate the resourcing that Ngā Tai ki Mauao has received from POTL, we consider that not enough has been done by POTL to earn the granting of a consent for Stage one of their development plans. The issues highlighted by the Court in the interim decision remain.

[27] Ngā Tai Ki Mauao stated they value having the assistance of Mr Alex Hope as a Court-appointed facilitator within the process and take the view that a facilitated process is imperative for the purposes of addressing the Court's direction in the interim decision relating to Ngāti Kuku.

[28] By memorandum dated 2 October 2024, Mr Hope recorded:

[8] I have found that every group that I have met with has been positive in its approach to resolving issues around the consents however it quickly become clear to me that the parties were talking past each other.

[9] It was also clear to me that the parties spoke different languages (and I do not mean Te Reo Māori and English). For example when one party says "no" the other party assumes that that is end of all discussion.

[10] Finally, there is significant mistrust going both ways. There are historical grievances. There are relatively recent actions by the Applicant which have caused the section 274 parties to mistrust it. The Applicant for its part does not trust the section 274 parties as it perceives them as being obstructive and difficult to deal with.

...

[18] The deep-seated issues that are preventing communication will not be resolved in a single meeting. I have already made this point to all of those I have met with. The most useful and realistic comment made by one of the parties was that it would start the communication process

¹¹ POTL memorandum, dated 30 September 2024, at [15].

by treating the current consent applications as transactional as between the Applicant and the section 274 party concerned. That party then said it would see how the relationship with the Applicant grew. The starting point was how it conducted itself during the transactional phase.

[19] For all of the above reasons I recommend that the Court allows more time for the facilitation/mediation process, before abandoning it and issuing consents.

[29] The Court received no feedback from either Ngāti Ranginui Iwi Society or Ngāti Ranginui Fisheries Trust.

[30] It is difficult to avoid reaching a conclusion that, notwithstanding significant engagement between the parties since the interim decision was issued, no meaningful improvement has been achieved in the relationship issues that have existed since at least the Court's decision in 2011.¹² From the two memoranda, it is clear that each party places much of the blame for the lack of progress on the other. As long as that continues there will be no satisfactory outcome for themselves or Te Awanui.

[31] Four underlying issues appear to contribute to the continuing hiatus:

- (a) the deep-seated historical grievances and mistrust between the parties;
- (b) the complications introduced by a proposal to include the STAHHP as a voluntary condition of resource consent, including the wide difference between the scope of the kaitiaki role sought by Ngā Tai Ki Mauao and what is likely to be required to address the effects of the Stage 1 expansion;
- (c) the difficulties POTL faces in working with parties with diverse interests, different expectations and uncertain roles; and

¹² *Te Runanga O Ngai Te Rangi Iwi Trust v Bay of Plenty Regional Council* [2011] NZEnvC 402.

- (d) different interpretations of the Court's directions and the extent to which POTL has addressed them.

[32] We address each of the Court's directions below, within the scope of the application and the present legal framework. We do not include any consideration of what might arise from future legislation as that is not a matter within the Court's jurisdiction.

Court direction 1

[33] The first direction in the Court's interim decision required POTL to file and serve, within six months of the date of this decision, a detailed scope of the proposed STAHHP prepared cooperatively with tangata whenua (subject to their willingness to participate) and the Regional Council.

[34] The STAHHP was first proposed by POTL in its closing submissions together with a condition of resource consent offered on a voluntary basis in the following terms:

- (a) Resource consents which recognise the mana of Te Awanui and place it at the forefront of the consents through:
 - (i) Facilitating the preparation of a Southern Te Awanui Harbour Health Plan to promote integrated management and with the goal of improving the health of Te Awanui

[35] The same condition was proposed to apply to the resource consents for dredging, reclamation and structures consents. The condition would require POTL to complete a draft STAHHP within two years with, briefly, the following main components:

- (a) The consent holder to invite the Tauranga Moana Advisory Group to participate in a series of at least four wānanga to facilitate the preparation of a STAHHP;
- (b) The purpose being to foster a partnership approach between POTL, councils and iwi in setting the direction for the management

of Southern Te Awanui and associated catchments to achieve an overall improvement in the health of Te Awanui over time by:

- (i) identifying a long-term vision and key principles for improvement of the ecological and cultural health of Te Awanui;
- (ii) identifying priority focus areas and describe the current state versus future desired state;
- (iii) recommend actions and roles/ responsibilities to achieve the future desired state.

[36] POTL's submissions referred to Policy 7 of the Tauranga Moana Iwi Management Plan 2012-2026, which seeks to ensure a holistic and integrated management approach to restoring the health and wellbeing of coastal water within Tauranga Moana, including Te Awanui. While accepting that that integrated management to protect and restore the environment is primarily the role and responsibility of BOPRC, POTL wished to demonstrate leadership by facilitating the preparation of a STAHHP.

[37] Many aspects of the proposal are unclear to the Court. Having been raised by POTL in closing submissions delivered following the hearing, there has been no opportunity for the parties or the Court to explore the proposal with POTL. In the interim decision, we stated:¹³

[391] We consider the Southern Te Awanui Harbour Health Plan proposed by POTL in closing submissions could go some way to addressing concerns about the relationships of tangata whenua with their taonga, but we consider that much greater definition is needed of what is proposed. As a starting point, we direct POTL to provide the Court, within six months of the date of this decision, a detailed scope of that plan prepared in partnership with tangata whenua (subject to their willingness to participate) and the Regional Council. A final plan would be required within two years of the date of our final decision.

¹³ Interim decision, at [391] and [615](c).

...

[615(c)] The proposed Southern Te Awanui Harbour Health Plan could provide a basis to address tangata whenua concerns relating to Te Awanui but will require to be significantly clearer in terms of detail before that will be known; ...

[38] POTL's proposal that the plan be developed with the Tauranga Moana Advisory Group, which is an existing group that acts under a partnership agreement between iwi and local authorities, gave rise to the following response from Ngā Tai ki Mauao:¹⁴

[40] The role that iwi members play on the Tauranga Moana Advisory Group are significant for their strategic and political value, but they are not those who necessarily exercise kaitiakitanga in a practical sense. Nor have they been charged by their iwi or hapū to participate within this process to defend particular kaitiaki roles and responsibilities.

[41] The importance for kaitiaki to lead out the design of appropriate management structure/s and funding proposal/s is reiterated as the schedule of wananga attached highlights, they have already turned their minds to that task and achieved significant progress. Having come so far it would be devastating for the process to be cut short or to be ankle tapped by debates about the *vires* of assigning such roles.

[39] There is a strong desire expressed by tangata whenua for the STAHHP to cover the whole harbour and to have an adaptive management approach that can align with a te ao Māori worldview.¹⁵ The proposed scope of the STAHHP includes matters that go beyond the effects of Stage 1 of the Sulphur Point Wharf expansion. It would involve participation by a number of different third parties, the scope of which is not well defined. There is already a complex array of work programmes, plans and monitoring underway and planned in relation to Te Awanui. Statutory responsibility for managing Te Awanui rests squarely with the Regional Council and it expressed uncertainty as to how a facilitation role by POTL would work alongside or in addition to that role.

[40] In their memorandum in response dated 2 July 2024, Ngā Tai ki Mauao

¹⁴ Memorandum of Ngā Tai ki Mauao Hapū Collective, dated 2 July 2024, at [40] and [41].

¹⁵ Draft STAHHP, at 2.4.

stated:¹⁶

Ngā Tai ki Mauao has been giving considerable thought to how it and its members wish to exercise kaitiaki in a meaningful way through the exercise of the Port consents. It is the view of Ngā Tai ki Mauao, that *Te Pā Pātiki* achieves the direction of the Court in relation to holistic planning for the restoration of Te Awanui, and State of Environment reporting across all domains (cultural, environmental, social, and economic).

[41] We should be clear that the Court did not direct a holistic planning exercise for the whole of Te Awanui. The Court has no jurisdiction to make such a direction. The directions that have been made are for the purpose of enabling consideration of whether it is appropriate to grant resource consents for POTL's proposal within the scope of the application before us.

[42] The activities associated with POTL's application are relatively confined and, while significant within the Port and having some effects that extend beyond the area of the Port, do not affect the whole of the harbour. Expanding the proposed conditions of resource consent to address the management of the whole of Te Awanui is therefore outside the scope of the current application and the jurisdiction of the Court.

[43] POTL's initial proposal was for a condition that would require it to facilitate preparation of the STAHHP. POTL now suggests that the overall coordination is best left to the Regional Council.¹⁷ That makes it difficult to understand what a condition of consent could require POTL to do or how it would be monitored or enforced, other than making a contribution to iwi and hapu costs as already proposed. POTL monitoring information will be in the public arena and available for use without the need for a condition. The Court has insufficient understanding of wider harbour issues to frame any additional requirements that could be incorporated in a condition, even if it had jurisdiction to do so, which it does not.

¹⁶ Memorandum of Ngā Tai ki Mauao Hapū Collective, dated 2 July 2024, at [18].

¹⁷ STAHHP, at 3.2.

[44] We accept that POTL's offer was a genuine attempt to enhance relationships with iwi and hapu. Having now been provided with further information, we consider that the complexity, lack of clarity as to what is to be delivered, reliance on third party inputs for delivery to be achieved and the potential for disputes and conflict with the role of the Regional Council mean such a condition would be unworkable and unenforceable.

[45] Of most concern is that the proposed scope of the STAHHP extends well beyond the area of influence of the proposed works by POTL in this case. To effectively manage Te Awanui could require the development of an integrated catchment management plan for all land draining to Te Awanui, which is a matter for the Regional Council and beyond the scope of POTL's application.

[46] In our minute dated 26 July 2024 we stated:

[5] We are cognisant of the issues relating to the health of Te Awanui as a whole and are aware that the parties have wide-ranging responsibilities and concerns about those issues. We acknowledge the condition offered by POTL to facilitate a Southern Te Awanui Harbour Health Plan, which is on an *Augier* basis. For the purposes of addressing the application in this proceeding, the Court cannot try to fix everything, which could result in a dissipation of effort. Should the facilitated process produce agreed proposals, the Court will consider those.

[47] It is clear that no agreement has been reached for us to consider.

[48] The STAHHP records that discussions have been held with some parties that the Plan sits outside POTL's resource consents, stating that:¹⁸

However, this document provides a scope for the Plan as directed by the Court and POTL remain committed to contributing to Plan development with either a tangata whenua-led approach or if the POTL has a requirement to develop the Plan as part of their resource consents.

[49] We agree that such a plan would more appropriately sit outside the suite

¹⁸ STAHHP, at 1.2.

of conditions of POTL's consents. Unless POTL wishes to propose an alternative condition, for example confirming a contribution to iwi and hapu costs, the Court cannot impose one based on the information before us for the reasons stated above.

Court direction 2

[50] This required POTL to propose a meaningful kaitiaki role for tangata whenua to promote the objectives and policies of the Bay of Plenty Regional Coastal Environment Plan, including in relation to planning, implementing and reviewing monitoring programmes and contributing to management decisions arising from implementation of these programmes. This was to include a management structure which recognises the relationships between POTL and tangata whenua and how the implementation of the plan is to be funded.¹⁹

[51] This was addressed in the STAHHP scoping document,²⁰ which stated that Ngā Tai ki Mauao had given some thought to what the kaitiaki role could look like but that details were yet to be provided. POTL's proposal was based on a review of examples from elsewhere but emphasised that the nature of a kaitiaki role needs to be specific to the location, tangata whenua and their aspirations.²¹

[52] In their memorandum in response dated 2 July 2024, as noted above, Ngā Tai ki Mauao indicated that they see the exercise of kaitiaki being through Te Pā Pātiki, which is intended to be the basis of managing the whole of Te Awanui. As also noted above, the Court has no understanding of Te Pā Pātiki or if or how it might be applied to the management of Te Awanui. Importantly, the activities associated with POTL activities are more confined than those

¹⁹ Interim decision, at [392].

²⁰ Provided to the Court as an appendix to the POTL memorandum, dated 27 June 2024.

²¹ STAHHP scoping document, at section 4.

affecting the whole of the harbour and seeking to establish a kaitaiki role for the whole of Te Awanui is well outside the scope of the current applications and the jurisdiction of the Environment Court. If that role had already been agreed, established and in effect, it could form the basis of a kaitiaki role in the POTL consents, but that is not the case.

[53] In the absence of any agreement on kaitiaki roles between POTL and iwi and hapu, we have reviewed the updated conditions proposed by POTL and make our assessment of the extent to which they provide an appropriate kaitiaki role in relation to the Stage 1 consents under the heading of consents below.

Court direction 3

[54] This required POTL to provide further evidence that the extent and degree of recognition of and provision for the relationship of Ngāti Kuku and Whareroa Marae with their ancestral taonga is appropriate.²² In our minute dated 16 February 2024 we confirmed:

[4] ... the extent and degree of recognition of and provision for the relationship of Ngāti Kuku and Whareroa Marae with their ancestral taonga in terms of the matters listed at para. [414] (a) to (c) and required by the direction at para. [618](3) of the interim decision could occur prior to Stage 2 of the Sulphur Point Wharf extension and any works on the Mount Maunganui side, and the sooner the better so that the parties can begin the development of a collaborative working relationship. In any event, the Court expects that POTL's plan for this process should be presented to the Court and the parties no later than 31 March 2026.

[55] This recognised that time will be required for the parties to work together to develop an enduring solution to the difficult issues involved. The process is underway following a meeting between the parties on 2 July 2024 and POTL advised this will continue to engage so that it can report to the Court by 31 March 2026 as directed.

²² As referred to and described in the interim decision, at [414].

[56] To assist the parties, we repeat the following finding from the interim decision:

[414] We find that the adverse effects from existing activities at the Port are cumulatively unacceptable now and consider that it would be inappropriate to grant consent to an activity which will add to that situation without those effects being addressed in some meaningful way. Before we can determine the applications for works beyond Sulphur Point Stage 1, POTL must provide further evidence to demonstrate that the extent and degree of recognition of and provision for the relationship of Ngāti Kuku and Whareroa Marae with their ancestral taonga is appropriate, noting that:

- (a) any proposed mitigation measure should be reviewed to ensure it is adequately based on the specific effects to be mitigated;
- (b) a condition requiring a payment by one party to another is, in the absence of agreement between the parties, an insufficient measure to recognise and provide for the relationship identified in s 6(e) of the RMA; and
- (c) the burden on tangata whenua of participation in another party's consenting processes where a matter of national importance is at stake should be recognised.

[57] We also consider it appropriate to refer to the following finding from the Court's 2011 decision relating to POTL's earlier applications for resource consents to widen and deepen the channels of the harbour:²³

[316] ... Some 20 years after the enactment of the Resource Management Act, it is surprising that an infrastructural company of the size of the Port would not have been aware of its obligations in terms of the Regional Coastal Environment Plan, the New Zealand Coastal Policy Statement 2010 and the Act.

[317] During the course of this hearing, the Port has done a great deal to try and address this situation. However, we feel obliged to note that further examples of applications made without proper approach and consideration of the requirements of the relevant national and regional documents could lead to refusals of applications for consent.

[58] The extent to which a positive long-term working relationship can be established will depend on the willingness of both parties to listen to

²³ *Te Runanga O Ngai Te Rangi Iwi Trust v Bay of Plenty Regional Council* [2011] NZEnvC 402.

understand each other rather than to listen to respond. Ground will need to be given by both parties but we encourage POTL and its Board to consider the positive benefits that can result from good relationships with its neighbours, even if they come with some additional cost.

[59] We agree with Mr Hope's recommendation that more time should be provided for a facilitation/mediation process for this part of relationship building. We will direct that it continue for a period of up to a further 12 months provided Mr Hope considers that progress continues to be made and that there is a reasonable expectation that a successful outcome can be achieved. Should POTL consider facilitation of wider issues could assist, it would be free to engage Mr Hope for that purpose but that is not a direction of the Court.

Court direction 4

[60] This required POTL to undertake a minimum of three surveys of kaimoana at Te Paritaha within 6 months.

[61] The surveys were completed as directed and the report titled "Te Paritaha Pipi Monitoring May 2024 data summary" provides a comprehensive summary of the results of pipi surveys carried out in May 2024 and comparisons with earlier survey results. The report also addresses sediment and pipi flesh contaminants and mussel surveys.

[62] We reviewed the report and noted the following:

- (a) There has been a large decline in the abundance of adult pipis between 2016/2017 and 2022, with little sign of recovery up to March 2024. This is not unique to Te Paritaha as patterns of declining abundance of large individuals have been observed in intertidal populations of both pipi and cockles across the upper North Island.

- (b) The reasons for the general decline of large individuals within northern pipi and cockle populations remain unknown, but are likely to include harvesting pressure, changes in the benthic environment (e.g., grain size and topography of the seabed), adverse weather conditions (particularly unusually hot weather), poor water quality, parasites and bacteria.
- (c) In 2023, March 2024 and May 2024, levels of contaminants were found to be low within the sediment and within the pipi, suggesting that the presence of pollutants in the seabed and in the water column is unlikely to be the main driver for the decline of large pipi at Te Paritaha. This supports the slight increase in pipi sizes occurring across the Te Paritaha monitoring.
- (d) In the period of the decline of adult pipi (2017-2022) there were no large changes in the bathymetry of the intertidal area and in the profile of the subtidal slope on the north-east edge of Te Paritaha. Changes in bathymetry and slope profiles in the period 2017-2022 also appear in line with the variability observed in the period 2010-2015, before the capital dredging.
- (e) The second round of mussel bed surveys was conducted in May 2024. Results found zero mussel beds larger than 2 m². Once mussel growth exceeds a certain size, combined with excessive currents within the harbour, the loss of mussels from Te Paritaha is highly likely via washing away by currents, thus the scattered spatial cover. This result is not surprising given that mussels preferentially attach to hard surfaces, not sandy/gravel substrate.

[63] While we note the decline in pipi numbers, the reasons are unclear. We accept the report as meeting the requirement for a baseline survey required by paragraph [565] of our interim decision and that on-going monitoring will be required to investigate the likely causes of changes in the pipi population.

Court direction 5

[64] This required POTL to undertake follow-up surveys of Te Paritaha at intervals, as well as surveys of kaimoana in other parts of Te Awanui affected by POTL operations, in accordance with previous consent conditions.²⁴ We considered that a detailed baseline kaimoana survey plan was needed, which was to be generally consistent with the evidence of Dr Battershill in response to questions from the Court.²⁵

[65] We reviewed the revised Te Paritaha Monitoring Plan dated 29 August 2023 which was included as Appendix 1 of the report prepared in response to direction 4. We also reviewed the Tauranga Harbour Marine Monitoring Methodologies Report dated 27 September 2024. We noted POTL's advice that:²⁶

[37] ... The report does not contain mātauranga Māori inputs from the parties to the proceedings, as none have been provided. The methodology does record that, as part of the Kaimoana Restoration Programme requirements, the surveys undertaken are fundamentally informed by mātauranga Māori, as interviews with participating Tauranga Moana iwi representatives including kaumātua were carried out in 2013 to identify cultural sites of significance in the Tauranga Moana Mātaitai Reserve.

[38] The methodology has been shared with Professor Chris Battershill in light of the Court's directions that it take into account his recommendations and he has confirmed that he agrees with the methodology.

[39] The methodology provides for a comprehensive survey of kaimoana within parts of Te Awanui affected by POTL operations to be undertaken, which will assess whether the kaimoana is safe to eat, and provide the Court with a detailed baseline survey as well as a methodology for future follow up surveys. ...

[66] It is disappointing that no further progress was made with regard to mātauranga Māori inputs to plan development by tangata whenua. However, we acknowledge the opportunities POTL provided for this to occur and the

²⁴ As described in the interim decision at [436] and [565] – [568].

²⁵ Interim decision at [566].

²⁶ Memorandum of counsel on behalf of POTL, dated 30 September 2024.

lack of response received. Under those circumstances, we do not consider it would be appropriate to delay our approval of the plan.

[67] The plan provides for revision in light of the results of further investigations. Reasonable revision to incorporate mātauranga Māori concepts could be considered in addition, subject to the agreement of POTL, or in the event of dispute, on determination by the Regional Council.

[68] Taking the above matters into account and noting Professor Battershill's confirmation that he agrees with the methodology, we accept that the plan and report as submitted meet Court direction 4.

Court direction 6

[69] This required POTL to undertake a comprehensive state of the environment report (**SOER**) of the areas affected by Port operations within six months²⁷. There is no jurisdiction for a resource consent confined to Port operations to require POTL to prepare a report covering other areas. The Court's view was and remains that currently available information could form the basis of the report.²⁸

[70] POTL advised that:²⁹

Conversations with tangata whenua occurred regarding the report, in the context of wider discussions about the directions generally. Feedback was received during these discussions on the geographic extent that the report should cover, and the need for it to include information not currently held, for example in relation to matters of mātauranga. This feedback challenged POTL, given the time limitations, but also the commentary in the Interim Decision that "currently available information can form the basis of the report".

[71] Ngā Tai ki Mauao referred to the need for a holistic and integrated approach, which they describe as meaning that the tangata whenua

²⁷ As described in the interim decision at [437] and [569].

²⁸ Interim decision at [569].

²⁹ Memorandum of counsel on behalf of POTL, dated 30 September 2024 at [40].

perspectives and cultural directives need to infuse all matters at all stages so that cultural knowledge and values bind all matters together. They consider that the SOER needs to include the state of the environment from a cultural perspective, subject to the agreement of tangata whenua.

[72] While it would have been desirable to include the state of the environment from a cultural perspective, the information necessary to do that was not available in a form that would have enabled POTL to incorporate it within the six-month period or without it being provided by iwi and hapū. Subject to the matters raised below, we accept the report as satisfying Court direction 6. However, we agree with POTL that as a response to the feedback received,³⁰ the name of the report should be changed to “Port of Tauranga, Summary of Scientific Environmental Data, 2024” to reflect its scientific status.

[73] We also agree with Ngā Tai ki Mauao that a baseline against which future changes in the state of the environment from a mātauranga Māori perspective can be compared should be established. That will not delay our determination of the case. We will direct POTL to develop a brief for the work in consultation with iwi and hapū for submission to the Court within six months of the date of this decision. If there is no agreement among iwi or hapu on the terms of the brief, it may result in the Court deciding that the work should not proceed. Subject to agreement being reached, the mātauranga Māori part of the SOER must be submitted prior to the expiry of the occupation permit on 30 September 2026.

[74] While the content should be determined by iwi and hapū, the document should be in a form that is appropriate for use as a baseline. It should form an easily understood basis for assessing changes over time that focusses on Port related activities only. It should be at a scale and level of detail that is comparable to other parts of the scientific baseline. By way of clarification,

³⁰ Memorandum of counsel on behalf of POTL, dated 30 September 2024 at [30].

use of the word “baseline” does not mean a reference point for the acceptability of future effects, a concern raised by Ngā Tai ki Mauao. That is something that would need to be determined through regional planning processes.

[75] The broad geographical area covered by the Summary of Scientific Environmental Data report is the Port Zone, but the area considered differed depending on the scientific information available for each topic area, being water quality, marine ecology and air quality. We consider the report provides a good summary of relevant information for use as a current baseline and accept it as meeting the requirements of Court direction 6, noting the acknowledgement in the report that data does not encompass mātauranga Māori or the Māori world view.

[76] We also noted that monitoring the rocky reef and boulder habitat was not undertaken due to the lack of capacity of the preferred supplier to carry out the monitoring. That is not a valid basis for POTL not complying with the conditions of its resource consent, as alternative suppliers could have undertaken the work. This should not have been accepted by the Regional Council. It will also be important that consistent survey methods are used in future to ensure statistical comparability.³¹

Court direction 7

[77] This required POTL to produce “before and after” visual simulations to demonstrate the full extent of increased visual enclosure on Whareroa Marae that would result from structures, vessels and stacked containers on the Sulphur Point side, and from the proposed development on the Mount Maunganui side.³²

³¹ Port of Tauranga, Summary of Scientific Environment Data, dated 11 July 2024, at 4.2.1.2.

³² As described in the interim decision, at [410] and [573].

[78] The directions set out in our minute dated 16 February 2024 remain current:

[7] The visual simulations required in terms of the direction in para. [618](7) are relevant to our assessment of the effects of Stage 2 of the Sulphur Point Wharf extension and the works on the Mt Maunganui wharves and accordingly must be provided as soon as practicable in order not to delay the Court's final assessment of that part of the proposal.

Court direction 8

[79] This required POTL to prepare an updated Blue Penguin and Avian Management Plan (**BPAMP**) in consultation with the Department of Conservation and tangata whenua, including some restoration of the area of the sand pile towards the area available at the time of the 2011 consent.³³

[80] Issues relating to the sand pile were discussed at the judicial conference on 20 April 2024 and the outcome summarised by a minute dated 26 April 2024 as follows:

[6] In relation to the sand pile, Ms Hamm confirmed that the existing sand pile area of just over half a hectare is to remain. When considering restoration of the area towards that available at the time of the 2011 consent, which was approximately 1.65 ha, the Port wished to explore with the Court and the parties whether, rather than taking any of the current operational port area out of operation, that could be achieved by alternative means. The Court's view is that before considering that proposal, there will need to be engagement with the s 274 parties to explore how best to advance the exercise of kaitiakitanga by them. The outcomes could be reported to the Court at an appropriate time.

[81] In its memorandum dated 30 September 2024 POTL stated that it commenced engagement on the BPAMP following the conference. This included written communications and separate meetings were held with Ngā Tai ki Mauao and the Department of Conservation and the plan updated to incorporate feedback to the extent POTL and its expert considered appropriate. POTL also met with Ngāti Ranginui but no feedback on the plan

³³ As described in the interim decision, at [494] and [572].

was received.

[82] Counsel submitted:³⁴

[52] ... that the plan meets the Court's direction. The plan now incorporates the previously separate sandpile management plan content and has been updated in consultation with DOC and tangata whenua. Feedback from tangata whenua and DOC has been incorporated, for example in relation to wider bird monitoring of the Port area and the effects of artificial lighting of the Port on birds, which have been included as additional sections in the plan at the request of NTKM. The Plan confirms, as required by the Court's decision that the sand pile will be protected by way of the management measures set out in the plan on a year-round basis and will not be used for port operational purposes.

[53] While not all matters are agreed between the parties, POTL considers that it has made reasonable efforts to consult with and respond to feedback from the parties (and DOC)

[83] In relation to the restoration of the sand pile, counsel submitted that restoration of the sand pile to its 2011 size of 1.65 ha would require the retirement of at least one hectare of operational Port land which POTL submitted is significant. POTL explored suitable alternatives to extending the sand pile back to its original size with a number of parties but no outcome was agreed. POTL understands that the view of Ngā Tai ki Mauao is that the sand pile should be expanded as directed by the Court in the decision. A further request was that parties offer any suggested alternatives and suggested a possible contribution to a fund as a potential option.

[84] In light of the lack of feedback from other parties POTL proposes to include a new consent condition 15.4 in the structures conditions that establishes a \$150,000 fund, to be administered by the Te Awanui Advisory Group and to be used for the purpose of assessing and developing opportunities to enhance avifauna habitat in and around Te Awanui.

[85] The policy direction in both the New Zealand Coastal Policy Statement

³⁴ Memorandum of counsel on behalf of POTL, dated 30 September 2024.

and the Regional Coastal Environment Plan is that all indigenous biological diversity in the coastal environment is protected by avoiding adverse effects of activities on indigenous taxa that are listed as threatened or at risk in the New Zealand. The environment as it exists today can be protected by ensuring the existing sand pile is available for the exclusive use of avian species.

[86] While we accept that the sand pile will be protected by way of the management measures set out in the plan on a year-round basis and will not be used for port operational purposes,³⁵ the BPAMP provides for continued use of the sand pile for sand stockpiling for beach replenishment. The monitoring proposals in BPAMP provide limited certainty that the sand pile would be protected on a year-round basis, which we consider to be necessary based on Mr Heaphy's evidence.³⁶

[87] That would not achieve the policy outcome sought but we consider that maintaining the existing 5,000 square metres for the exclusive use on avian species and adding sufficient additional area to meet the storage requirements for beach replenishment would. That could either be by adding to the sand pile area or creating a separate area elsewhere. That would satisfy our direction for seeking to ensure some restoration of the area of the sand pile towards the area available at the time of the 2011 consent.

[88] While we note that Mr Heaphy and Ngā Tai ki Mauao consider the area of the sand pile should be restored to the full 1.65 ha existing in 2011, there was no specific consent condition requiring that the area be maintained at the size existing in 2011 and we accept POTL's advice that the effect on Port operations would be significant.

[89] We reviewed Ngā Tai ki Mauao's memorandum dated 16 July 2024 and noted:

³⁵ Memorandum of counsel on behalf of POTL, dated 30 September 2024 at [52].

³⁶ NOE, at page 1414.

- (a) the desire of hapū for the birds to have high quality roosting and breeding sites away from Port-related disturbances and along their movement pathway, such as from Te Kura a Maia to Rangiwaea and Matakana Islands;
- (b) concerns about the lighting of ships moored close to the islands on shearwaters;
- (c) the importance of and overarching multi-site monitoring framework that is not limited to the localised Port environment;

[90] These are not matters that can be addressed through this application.

[91] Expansion of the sand pile as directed will address POTL's concern that the retirement of at least one hectare of operational Port land would be significant, as we anticipate that the area required would be significantly less than a hectare, possibly 75% less. We consider that the proposed \$150,000 fund provides appropriate mitigation when considered alongside the above expansion of the sand pile. POTL is to confirm the additional area that will be provided to achieve the outcome sought and submit an amended BPAMP. We accept other aspects of the BPAMP, taking into account that largely, Mr Heaphy's feedback has been included in the plan and the additional provisions sought by tangata whenua are outside the scope of the current appeals.

Court direction 9

[92] This required POTL to convene a wananga with tangata whenua and the Regional Council.³⁷

[93] Based on our review of the process described by POTL in its memorandum dated 30 September 2024, we are satisfied that while no wananga has occurred because of matters outside of POTL's control, POTL has

³⁷ As described in the interim decision, at [427] and [438].

taken appropriate steps to involve all affected parties in the process within its ability to do so.

Proposed conditions of consent

[94] We have reviewed the conditions of consent and, on the basis that they have been checked and agreed to by the Regional Council, we accept them subject to the matters raised below.

[95] We agree that the STAHHP should sit outside the resource consents, which will require the removal of conditions 1.1 to 1.6 in both proposed sets of conditions. Condition 2.1 iii will require removal or amendment.

[96] All management plans must take into account any feedback from the advisory group or provide an explanation why the Consent Holder has not incorporated them.

[97] The conditions relating to the Council sign off on management plans are not appropriate. As one example, condition 15 of the structures plan relates to bird habitat but there is no definition of the purpose and parameters which must be met by the management plan. This must be expressly stated for all management plans. Conditions setting out the intent and key outcomes to be achieved by each management plan must be made clear and certain. The Regional Council must certify that each management plant will give effect to the relevant condition. The Court does not accept “deemed” approvals as being appropriate in this case and all references to deemed approvals must be removed.

[98] The advice note following condition A3 of the dredging consent is to be deleted as the conditions apply only to Stage 1. Reference to future stages does not improve understanding and is unnecessary.

[99] Condition 4.3 c) must be amended to specify consent numbers instead of

“these consents” to avoid any confusion with existing consents.

[100] We accept that a condition requiring the preparation of a state of the environment report from a western science perspective is no longer required but a condition requiring the preparation of mātauranga Māori state of the environment report is still required, together with an appropriate basis of funding the activity.

[101] While conditions relating to a meaningful kaitiaki role for tangata whenua lacks detail, they broadly address the Court directions.³⁸ These related to planning, implementing and reviewing monitoring programmes and contributing to management decisions arising from implementation of these programmes. The programmes relate to port operations only under the term of consents related to Stage 1 of the port expansion programme. They are separate from and in addition to any other programmes required by other consents held by POTL.

[102] We accept the proposed conditions relating to advisory groups to be appropriate in the absence of an agreed alternative and consider the provision of \$25,000 per year proposed to be appropriate, whether the group is in an interim or long-term role. The proposed interim name of Te Awanui Advisory Group for the longer-term group is not appropriate as the group’s role will relate only to POTL activities.

[103] As a result of the passage of time, and having been offered opportunities to participate in planning the programmes relating to kaimoana monitoring, that role is no longer applicable. The proposal for the Interim Advisory Group to comment on the Dredge Management Plan may also no longer be applicable if there is further delay in establishing the group.

[104] In relation to a kaitiaki role, the conditions provide for tangata

³⁸ Interim decision, at [392].

whenua participation in advisory groups, the tikanga for which is to be determined by iwi and/or hapū (condition 4). The proposed conditions provide for the advisory group involvement as follows:³⁹

- (a) An invitation to discuss the proposed design of structures and provide feedback on the incorporation of cultural elements in the design (condition 8.1 of the structures consent).
- (b) An opportunity to provide feedback on management plans prior to their submission to the Regional Council and to advise on amendments that may be requested to the management plans during the implementation of the consents (conditions 12.4 and 12.6 of the structures consent).
- (c) Management plans must include any feedback from the advisory group or provide an explanation why the Consent Holder does not accommodate any recommendation (condition 13 of the structures consent).
- (d) An opportunity for a Cultural Monitor to be present during capital dredging works under the consent,⁴⁰ with reasonable costs paid by POTL (condition 12 of dredging consent).
- (e) An invitation to a wananga to enable tangata whenua to share knowledge and exchange information of marine mammals in the area and to provide a marine mammal observation auditing role appointed by the advisory group (condition 14 of the structures consent).
- (f) An invitation to facilitate the preparation of a Mātauranga Monitoring Plan, which we consider should be restricted to

³⁹ Condition numbering from dredging consent unless stated otherwise.

⁴⁰ Includes a requirement for the Cultural Monitor to report back to the advisory group as required by the group.

mātauranga monitoring of areas of Te Awanui affected by POTL operations, as monitoring the whole of Te Awanui is too broad to be included as a condition of the Stage 1 consents. We consider the proposed funding of \$25,000 per annum to be appropriate for the area involved (condition 13). We note that this is separate from the baseline report referred to above.

(g) Notification of any exceedances of water quality limits during dredging (condition 14);

[105] It is unclear from the conditions what is the proposed involvement and funding of the advisory group or representative in the Te Paritaha monitoring and review of results. This requires clarification.

[106] Condition 2 includes provision for the advisory group to:

- (a) engage at least quarterly with POTL for the term of the consent;
- (b) attend an annual strategic planning meeting with the POTL CEO and Chair of the Board of Directors (Condition 2.3);
- (c) carry out ceremonies;
- (d) administer a fund of \$1,000,000 to be provided by POTL for ongoing projects of the advisory group's choosing that benefit the health of Te Awanui or that directly benefit iwi and hapū that have a relationship with Te Awanui;
- (e) administer a fund of \$150,000 to be provided by POTL for assessing and developing opportunities to enhance avifauna habitat in and around Te Awanui;
- (f) receive funding from the establishment of a fund of \$250,000 contributed by POTL towards education and research

scholarships for iwi and hapū that have a relationship with Te Awanui; and

[107] Items (a) and (b) in the list above provide an opportunity for tangata whenua to contribute to management decisions arising from the consented activities but the extent to which this is effective will depend of the reasonableness of approach adopted by both parties.

[108] We accept the proposed conditions relating to the kaitiaki role as appropriate in relation to the effects arising from the Stage 1 expansion only.

[109] We consider that annual payment of \$25,000 to the Whareroa Marae Reservation Trust towards Whareroa Marae Infrastructure projects, adjusted annually for inflation in accordance with the CPI index, is appropriate for the Stage 1 expansion. We will expect that in any application for works beyond Stage 1, a significantly different level of mitigation of effects on Whareroa marae will need to be demonstrated.

[110] All contributions are combined totals to be made available for the two consents. They are in addition to contributions made in accordance with resource consent 65806. These included a fund to mitigate the adverse effects on cultural and spiritual values that had not been directly mitigate. At the time of the 2023 Environment Court hearing, around \$1 million of the funding which was intended for distribution by the Ngā Matarae Trust remained unallocated. We note that consent 65806 requires an on-going annual payment of \$50,000 a year for the remaining duration of the consent.

Overall findings

[111] Subject to the matters outlined above being addressed and amended conditions being submitted to the satisfaction of the Regional Council and the Court, consent will be granted.

Directions

[112] POTL is to submit amended conditions to address the matters raised in this decision, together with confirmation from the Regional Council that they accept the amended conditions as final and appropriate as soon as reasonably practicable and no later than 14 February 2024.

For the Court

D A Kirkpatrick

Chief Environment Court Judge



Attachment A
Membership of Ngā Tai Ki Mauao Hapū Collective

The collective comprises the following, with signatories to the 2 July memorandum shown in brackets:

- (a) Ngai Tuwhiwhia (Nessie Kuka)
- (b) Ngāti Tauaiti (Hori Murray)
- (c) Ngai Tamawhariua (Te Uta Roretana)
- (d) Whānau a Tauwhao (ki Rangiwaea) (Brendon Taingahue)
- (e) Te Ngare (Jason Murray)
- (f) Ngāti Kuku (Awhina Ngātuere)
- (g) Whareroa Marae Trust (Manea Ngatai)
- (h) Whareroa Community (Joel Ngātuere)
- (i) Ngāti Tapu
- (j) Ngāti Kahu (ki Tauranga) (Pia Bennett)
- (k) Ngā Papaka o Rangataua
- (l) Kaitiaki Ngāti Hē (Des Heke-Kaiawha)
- (m) Ngāti Kaahu a Tamapahore (Whitioara McLeod)
- (n) Ngāti Hangarau (not a case party)
- (o) Pirirakau (not a case party)