BEFORE A BOARD OF INQUIRY
EAST WEST LINK PROJECT

IN THE MATTER OF
the Resources Management Act 1991

AND

IN THE MATTER OF
a Board of Inquiry appointed under section 149J of the
Resource Management Act 1991 to decide notices of
requirement and resource consent applications by the
New Zealand Transport Agency for the East West Link
Project

OPENING SUBMISSIONS ON BEHALF OF NGĀTI MARU

Dated 6 July 2017

Director
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MAY IT PLEASE THE BOARD

1.0 INTRODUCTION

1.1 On 22 March 2017, Ngāti Maru filed a submission on the proposed East West Link Project (“EWL Project”).\(^1\)

1.2 Ngāti Maru joined with other Tāmaki Makaurau Mana Whenua in discussions with the New Zealand Transport Agency (“NZTA”) to address the effects of the EWL Project and identify solutions.

1.3 These opening submissions:

(a) Provide context to the Ngāti Maru Treaty settlement aspirations as they relate to the Manukau Harbour and Takutai Moana generally;

(b) Outline Ngāti Maru participation in the Mana Whenua/NZTA discussions;

(c) Provide an overview of the Ngāti Maru submission; and

(d) Update the Board on the current Ngāti Maru position.

2.0 Ngāti Maru and Tāmaki Collective Treaty Settlement

2.1 Ngāti Maru is one of the 13 iwi/hapū of Ngā Mana Whenua o Tāmaki Makaurau (also known as the Tāmaki Collective).\(^2\)

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\(^1\) Refer to submission lodged by Ngāti Maru dated 22 March 2017.

\(^2\) The iwi/hapū of the Tāmaki Collective comprise:

(a) Ngāi Tai ki Tāmaki;
(b) Ngāti Maru;
(c) Ngāti Pāoa;
(d) Ngāti Tamaoho;
(e) Ngāti Tamaterā;
(f) Ngāti Te Ata;
(g) Ngāti Whanaunga;
(h) Ngāti Whātua o Kaipara;
(i) Ngāti Whātua o Ōrākei;
(j) Te Ākitai;
(k) Te Kawerau ā Maki;
(l) Te Patukirikiri; and
(m) Te Rūnanga o Ngāti Whātua.
2.2 In July 2009, the Crown and Tāmaki Collective entered into Treaty of Waitangi settlement negotiations. In September 2012, the Crown and Tāmaki Collective signed the Tāmaki Makaurau Collective Redress Deed. To give effect to the Deed, the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014 was enacted.

2.3 The preamble to the Act provides a high level summary of the settlement context and progress of the Tāmaki Collective negotiations between 2009 and 2012 as follows:

Preamble

(1) The iwi and hapū constituting the collective known as Ngā Mana Whenua o Tāmaki Makaurau have claims to Tāmaki Makaurau based on historical breaches of the Treaty of Waitangi (Te Tiriti o Waitangi) by the Crown:

(2) Settlement of these claims is progressing through negotiations between the Crown and each individual iwi and hapū:

(3) At the same time, the Crown has been negotiating other redress with Ngā Mana Whenua o Tāmaki Makaurau—

(a) that relates to certain maunga, motu, and lands of Tāmaki Makaurau; and

(b) in respect of which all the iwi and hapū have interests; and

(c) in respect of which all the iwi and hapū will share:

(4) The maunga and motu are taonga in relation to which the iwi and hapū have always—

(a) maintained a unique relationship; and

(b) honoured their intergenerational role as kaitiaki:
The negotiations between the Crown and Ngā Mana Whenua o Tāmaki Makaurau began in July 2009:

On 12 February 2010, the Crown and Ngā Mana Whenua o Tāmaki Makaurau signed a Framework Agreement:

On 5 November 2011, the Crown and Ngā Mana Whenua o Tāmaki Makaurau signed a Record of Agreement:

On 7 June 2012, the Crown and Ngā Mana Whenua o Tāmaki Makaurau initialled a deed encapsulating the agreed redress arising from the Framework Agreement and the Record of Agreement:

On 8 September 2012, representatives of the Crown and Ngā Mana Whenua o Tāmaki Makaurau signed the deed.

The first Treaty settlement negotiation milestone achieved by the Tāmaki Collective was the Framework Agreement signed on 12 February 2010. Clause 2 of the Framework Agreement states:

Ngā Mana Whenua o Tāmaki Makaurau

2. The āti/hapū members of Ngā Mana Whenua o Tāmaki Makaurau ... recognise they each have legitimate spiritual, ancestral, cultural, customary and historical interests within Tāmaki Makaurau.

An important feature of the Tāmaki Collective settlement is the ‘excluded harbour claims’. Part 10 of the Tāmaki Collective Deed states:

10. WAITEMATĀ AND MANUKAU HARBOURS

10.1 Ngā Mana Whenua o Tāmaki Makaurau and the Crown acknowledge and agree that –

10.1.1 the Waitematā and Manukau harbours are of extremely high spiritual, ancestral, cultural, customary and historical importance to Ngā Mana Whenua o Tāmaki Makaurau; and

10.1.2 this deed does not –
2.6 The Waitematā and Manukau Harbour claims remain outstanding. How these outstanding claims (specifically the Manukau Harbour claims) are to be protected, in light of the EWL Project, is one of the key issues for Ngāti Maru, along with other Mana Whenua.

2.7 NZTA has acknowledged that protecting the outstanding Harbour claims is one of the issues to be addressed with Mana Whenua.³

3.0 Ngāti Maru Participation in the EWL Project discussions

3.1 Ngāti Maru decided in good faith to work with other Mana Whenua and NZTA to address the effects of the EWL Project and identify potential solutions in the following ways:

(a) Engaged with NZTA on the EWL Project since early 2013;

(b) Participated in the EWL Project Mana Whenua group from September 2013;⁴

(c) Participated in the Southern Iwi Integration group;⁵ and

(d) Participated in the Tāmaki Transport Table.

³ Refer to Opening Statement on behalf of Auckland Council dated 28 June 2017, at para 5.8(b) and the Transcript of Proceedings dated 4 July 2017, at page 296 line 17 and page 302 line 10.

⁴ Refer to Statement of Primary Evidence of Amelia Linzey on behalf of the New Zealand Transport Agency – Cultural Values Assessment (Engagement) dated 12 April 2017, page 9.

⁵ Refer to Statement of Primary Evidence of Amelia Linzey on behalf of the New Zealand Transport Agency – Cultural Values Assessment (Engagement) dated 12 April 2017, at page 6-7 and the Statement of Primary Evidence of Scott Deemer Wickman on behalf of the New Zealand Transport Agency dated 12 April 2017 and the Statement of Primary Evidence of Eynon William Delamere on behalf of the New Zealand Transport Agency dated 21 June 2017 at pages 3-4.
3.2 These forums have allowed Ngāti Maru to raise their concerns, as outlined in their submission, and provided opportunity to explore solutions.

3.3 Speaking for Ngāti Maru, the iwi confirm the NZTA evidence summarising the engagement process is fair.  

3.4 Ngāti Maru acknowledge that the input of Mana Whenua with NZTA to this point has positively influenced the design of the EWL Project to avoid, remedy or mitigate some of the adverse effects, and based on their experience to date, the proposed further engagements may well provide further opportunity to ensure all adverse effects are addressed.

3.5 These acknowledgements are made in light of the following:

(a) Ngāti Maru have made it clear to NZTA that their participation to date and going forward is not of itself an endorsement of the EWL Project;

(b) NZTA has understood and respected this position;

(c) NZTA has always been clear that Ngāti Maru and other Mana Whenua would make their own submissions and express their own views on the EWL Project. This point was reiterated by counsel for NZTA in his opening submissions;

(d) Ngāti Maru remain committed in continuing with the engagement process to ascertain whether the remaining issues can be addressed.

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6 Refer to Statement of Primary Evidence of Amelia Linzey on behalf of the New Zealand Transport Agency – Cultural Values Assessment (Engagement) dated 12 April 2017, at pages 6-7.

7 As suggested by Amelia Linzey in her Statement of Rebuttal Evidence on behalf of the New Zealand Transport Agency dated 20 June 2017, at page 18 para 8.3.

8 Refer to the Transcript of Proceedings dated 4 July 2017, at page 614 line 35 and the Statement of Primary Evidence of Amelia Linzey on behalf of the New Zealand Transport Agency – Cultural Values Assessment (Engagement) dated 12 April 2017, at para 7.1(c).

9 Refer to the Opening Legal Submissions on behalf of the New Zealand Transport Agency dated 27 June 2017, at paras 6.8(a), 6.8(c) and 14.12 and the Transcript of Proceedings dated 27 June 2017, at page 39 line 24 and page 81 at line 10.
4.0 Ngāti Maru Submission

4.1 The Ngāti Maru submission is neutral on the EWL Project provided all identified issues are addressed.

4.2 Fundamental to the Ngāti Maru submission is the expectation that NZTA must meet the key statutory requirements of ss 5, 6(e), 7(a) and 8 of the Resource Management Act 1991.¹⁰

4.3 The submission confirmed that the EWL Project should not intrude into three key waahi tapu sites:

(a) Te Hōpua ā Rangi;

(b) Mutukāroa;

(c) Urupā located at Tip Top corner.

4.4 Ngāti Maru highlighted a number of conditions:

(a) The minimum area of reclamation;

(b) Mana Whenua co-governance and co-management with NZTA of the reclaimed area;

(c) Cultural monitoring;

(d) Cultural education of all personnel employed on the project;

(e) Approved discovery protocols; and

(f) Wetland remediation - the planting of native trees.¹¹

4.5 The request for these conditions, among others, has and will form part of the ongoing discussions with NZTA.

5.0 Current Position

5.1 Ngāti Maru acknowledge the submissions and evidence filed by NZTA thus far, which has fairly reflected the nature of the engagement (speaking for

¹⁰ Refer to Clause 3 of the Ngāti Maru submission.
¹¹ Refer to Clause 4 of the Ngāti Maru submission.
Ngāti Maru), identified some of the key issues that need to be addressed and importantly leaving it to Mana Whenua to make their position known to the Board.

5.2 Given the current progress and positive indications of NZTA and the Auckland Council, Ngāti Maru remain committed to on-going attempts to address the issues.

5.3 Ngāti Maru thanks the Board for the opportunity to provide these submissions and looks forward to providing further information during the hearing process.¹²

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Aidan Warren
Counsel for Ngāti Maru

¹² Ngāti Maru is due to give evidence on Wednesday 30 August 2017.