

BEFORE THE EXPERT CONSENTING PANEL CONCERNING TE RĀHUI HERENGA WAKA WHAKATĀNE, A BOAT HARBOUR AT WHAKATĀNE

IN THE MATTER of the COVID-19 Recovery (Fast-track Consenting) Act 2020 (the **FTCA**) and the decision of the Expert Consenting Panel appointed under Clauses 2, 3, and 4 of Schedule 5 of the FTCA to consider an application for resource consents by Te Rāhui Herenga Waka Whakatāne Limited for activities associated with a boat harbour at Keepa Road, Whakatāne (**Te Rāhui Herenga Waka**)

Expert Consenting Panel:

Graeme Mathias (Chair)

Sheena Tepania (Member)

David Hill (Member)

Legal Representation:

Sally Gepp, for the applicant

Date of Decision:

22 June 2022

Date of Issue:

22 June 2022

**RECORD OF DECISION OF THE EXPERT CONSENTING PANEL
UNDER CLAUSE 37 SCHEDULE 6 OF THE FTCA**

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PART A: SUMMARY OF FINDINGS

- [1] This is an application for resource consents by Te Rāhui Herenga Waka Whakatāne Limited (the **Applicant**) to develop Te Rāhui Herenga Waka Boat Harbour at Keepa Road, Whakatāne (the **Project**).
- [2] The Applicant sought a referral from the Minister for the Environment to an expert consenting panel under the COVID-19 Recovery (Fast-track Consenting) Act 2020 (the **FTCA**). The Minister accepted that the purpose of the FTCA would be met by the Project and referred it to an expert consenting panel (the **Panel**).
- [3] The Panel visited the site at Keepa Road, Whakatāne (the **Site**) on 5 May 2022 and were given the courtesy of a trip from the existing marine facilities serving Whakatāne by the Bay of Plenty Regional Council's (**BOPRC**) Harbour Master up the Whakatāne River to the application site and back on 6 May 2022.
- [4] The Panel having considered the application identified a number of parties from whom comment was invited. Comments were duly received from 18 sources which were forwarded to the Applicant. A reply to those comments was received from the Applicant including modified suggested conditions.
- [5] Draft conditions were prepared and circulated and comments in response received and considered.
- [6] The principal issues in contention can be summarised as follows:
- (a) Is the Project "specified infrastructure" for the purposes of the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NESF**)?;
 - (b) Are there any actual and potential effects arising from the damage to a natural wetland in constructing the proposed boat harbour and the channel connecting it to the Whakatāne River and, if there are, are the proposed off-setting measures sufficient and appropriate?;
 - (c) What would the effects be on existing boating activities (particularly recreational) currently undertaken on the Whakatāne River?;
 - (d) Would the effects of dredging a new channel in the Whakatāne River weigh against a grant of consent? and

- (e) Have the cultural impact assessment and process of consultation, and in particular first the assessment of the application on the relationship of Ngāti Awa with Whakatāne River, and secondly the potential effect on Te Hokowhitu a Tū Marae (**Te Hokowhitu a Tū Marae**) at Keepa Road, been fairly and properly undertaken?

[7] Our findings on these issues, which are discussed in greater detail, are;

- (a) The Project constitutes specified infrastructure for the purposes of the NESF;
- (b) The extent to which the existence of areas of natural wetland will be destroyed is adequately compensated for by the restoration works proposed, and to be required as a condition of the grant of consent, on adjacent land;
- (c) The effects on existing boating activities can be minimised/regulated so as to be no more than minor;
- (d) Controls on the methodology of dredging can address concerns over sedimentation effects on other river users;
- (e) The relationship of Ngāti Awa and their culture and traditions has been recognised and provided for and Te Rūnanga o Ngāti Awa has offered conditional support;
- (f) While direct consultation with Te Hokowhitu a Tū Marae may have ensured a more robust process, we do not consider that there has been a failure by the applicant to consult or to consult adequately in terms of the Act; and
- (g) The Project will have a minor effect on Te Hokowhitu a Tū Marae, with a view shaft of particular relevance being protected.

[8] Subject to conditions, the Panel grants consent to the Project.

PART B: INTRODUCTION AND PROCEDURE

Introduction

[9] Te Rāhui Herenga Waka Whakatāne Limited lodged an application with the Environmental Protection Authority (EPA) to be considered under the FTCA. The Project was known as the Whakatāne Commercial Boat Harbour and was included as Schedule 20 to the FTCA on 18 June 2021 by clause 4 of the COVID-19 Recovery (Fast-track Consenting) Referred Projects Amendment Order (No. 6) 2021.

[10] While the initial application for resource consent named the authorised persons for the Project as:

- (a) Whakatāne District Council;
- (b) Te Rāhui Lands Trust;
- (c) Te Rūnanga o Ngāti Awa¹;
- (d) Ngāti Awa Group Holdings Limited²;
- (e) Te Rāhui Herenga Waka Whakatāne Limited;
- (f) Provincial Growth Fund Limited;

the Panel understands the application proceeds solely in the name of Te Rāhui Herenga Waka Whakatāne Limited.³ It is hereafter known as the Applicant.

[11] The application sought a wide range of resource consents to:

- (a) authorise activities associated with the construction, operation and maintenance of a commercial boat harbour;
- (b) undertake activities associated with the construction, operation and maintenance of recreational berthing facilities;
- (c) construct an access channel;
- (d) recreate a wetland at the property identified as 2 Keepa Road, Whakatāne; and

¹ Refer to part F.2(f) regarding TRONA and NAGHL confirmation that they are not an applicant

² As above

³ AEE page 1

(e) undertake dredging activities and install navigation aids within the Whakatāne River.

[12] The list of the resource consents required pursuant to the Whakatāne District Plan, the Bay of Plenty Regional Coastal Plan and the Bay of Plenty Natural Resources Plan, the Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health Regulations) 2011 (**HAIL**) and NESF, and their activity status, are listed as Appendix 1.

Procedure

[13] Following appointment the Panel conducted a number of Teams meetings, the Minutes of which have been posted on the EPA website.

[14] Following its initial meetings the Panel invited comments on the Project from parties from whom comments were required to be sought and from other parties from whom it was determined it was appropriate.

[15] A range of comments were received with those from whom comments were received being listed at Appendix 2. The Panel identified difficulties in the receipt of a number of comments from individuals, and an organisation, from whom comments had not been sought.

[16] To the extent that those comments were from individuals who were either established as being owners, or having ownership interests (beneficial or otherwise), in adjacent land or where, as members of the organisation known as Pupuaruhe ki Te Rāhui (**PKTR**), could similarly establish an ownership link with adjacent land then such comments as were received were accepted. Comments from PKTR itself, a group which in fact did not exist at the time comments were sought, and from members of that group where it could not be established that they were owners of, or had ownership interests in, adjacent land, or could be shown to be trustees of Te Hokowhitū, were disallowed.

[17] Comments received were sent to the Applicant, that being conducted in four stages. The second of those was when the association of some of the individuals of PKTR were identified as having an ownership interest in adjacent land. The third when comments were received from the Whakatāne Rowing Club due to late notification to it of the application. The fourth in response to Petroleum Logistics advising the Panel of its interest in terms of the proposed fuel facility.

[18] The comments received and the Applicant's responses to those comments have

been considered by the Panel. They will be referred to in detail below, where relevant, at Part H Effects Assessed.

- [19] After initial consideration of the Project the Panel had concerns about the status of the Project and whether it constituted (Regionally) Significant Infrastructure. The position of BOPRC was sought. A response was received from Ms Tennent, Principal Advisor, Consents advising that in the opinion of BOPRC the Project, (both commercial and recreational berths), constituted regionally significant infrastructure.⁴
- [20] Further information was also sought by the Panel as while the application made reference to the business case for the Project no documentary record of that business case was included in the supporting documents. The Whakatāne Regeneration Programme, as referred to throughout the application, was made available.⁵ It provided considerable assistance to the Panel in considering the context of the application.
- [21] Having considered the draft conditions proposed and the comments from parties from whom comments had been sought, a draft set of conditions was issued by the Panel on 9 May 2022. Those draft conditions were sent to all from whom comments had been received. The responses from all of those who commented on the draft conditions were considered in finalising the final conditions.
- [22] The Panel having considered the responses to the draft conditions resolved that a hearing was not required on any issue. The Panel's reasoning was that:
- (a) No issues requiring an assessment of differing technical/expert evidence arose which could not be addressed through conditions of consent;
 - (b) No view was expressed in conflict with the statutory planning background and assessment provided by the Applicant;
 - (c) Generally the comments received were supportive of the proposal and where not, such as differing views on the extent of consultation, were not such that a hearing of the opposing views would have assisted the Panel in its conclusions.

⁴ Letter from Bay of Plenty Regional Council to the Environmental Protection Authority ("EPA") dated 23 March 2022

⁵ Whakatane Regeneration Programme prepared by Veros Property Services

PART C: LEGAL CONTEXT

FTCA - purpose

[23] The purpose of the FTCA in section 4, by Clause 31(1) of Schedule 6 (along with Part 2 Resource Management Act 1991 (**RMA**)), is a matter to which we are to have regard to as well as the other matters described in Clause 31 (1) for a referred project.

Section 4 provides as follows:

“The purpose of this Act is to urgently promote employment to support New Zealand’s recovery from the economic and social impacts of COVID-19 and to support the certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources.”

[24] The role of an expert consenting panel appointed under the FTCA is described in the decision granting consent for the Matawii Water Storage Reservoir at Kaikohe dated 27 October 2020. While the Matawii decision was in respect of a listed project and the Project is a referred project nothing of consequence arises.

[25] While the Project was referred to the Panel and the Minister clearly satisfied that the Project would be consistent with the purpose of the FTCA we understand we are not bound to grant consent.

Relationship between FTCA and RMA

[26] Section 12 of the FTCA sets out the relationship between the FTCA and the RMA. The process for obtaining a consent under Schedule 6 of the FTCA applies in place of the process under the RMA, still subject to the RMA’s purpose and principles.

[27] In respect of referred projects clause 31 of Schedule 6 sets out the matters to which a Panel must have regard.

[28] Clause 31 provides when considering a consent application in relation to a referred project and any comments received in response to an invitation given under section 17(3), a panel must, subject to Part 2 of the Resource Management Act 1991 and the purpose of this Act, have regard to-

- (a) any actual and potential effects on the environment of allowing the activity; and

- (b) any measure proposed or agreed to by the consent applicant to ensure positive effects on the environment to offset or compensate for any adverse effects that will or may result from allowing the activity; and
 - (c) any relevant provisions of any of the documents listed in clause 29(2); and
 - (d) any other matter the panel considers relevant and reasonably necessary to determine the consent application.
- (2) In respect of the matters listed under subclause (1), a panel must apply section 6 of this Act (Treaty of Waitangi) instead of section 8 of the Resource Management Act 1991 (Treaty of Waitangi).
- (3) If a consent application relates to an activity in an area where a planning document prepared by a customary marine title group under section 85 of the Marine and Coastal Area (Takutai Moana) Act 2011 (MACAA) applies, a panel must have regard to any resource management matters in that document until all obligations under section 93 of the FTCA have been met by the relevant local authority. It is noted that this does not apply.
- [29] Clause 31(5) lists the matters that a Panel must not have regard to, and the circumstances in which it must not grant consent. In respect of the matters listed in clause 31(5) we have considered s 107 of the RMA when considering stormwater effects.
- [30] Clause 31(1) has significant similarities to s 104 RMA, but with the addition of scope to consider offset and compensation, and that consideration is subject not just to Part 2 of the RMA but also, the purpose of the FTCA.
- [31] These matters will be considered in detail in parts I and J on this decision.

Application process under the FTCA

- [32] The Waitohi Picton Ferry Precinct decision dated 6 May 2021 summarises the procedural aspects of the FTCA that apply to applications being considered under Schedule 6 of the FTCA and subject to the differences between listed and referred projects we adopt the procedure set out in that decision accordingly.
- [33] Our analysis in summary of the consideration of the application against the purpose of the FTCA is at Part J of this decision.

PART D: OUTLINE OF PROJECT

Overview

- [34] Te Rāhui Herenga Waka Whakatāne involves the construction, operation and maintenance of a boat harbour facility providing up to 130 berths, (comprising 60 commercial and 70 recreational berths), and supporting facilities and infrastructure.⁶
- [35] The Applicant is seeking resource consents to authorise activities associated with the construction, operation and maintenance of a staged boat harbour development. The application includes activities associated with the construction, operation and maintenance of both commercial and recreational berthing facilities, an access channel to the Whakatāne River, the recreation of a wetland and dredging within the Whakatāne River.
- [36] The Project is to be developed in three stages generally described as:
- **Stage 1** provides for site enabling works including (non-indigenous) vegetation clearance, services relocation and removal of historical wood waste previously disposed of onsite. The enabling works for Stage 1 will involve works over the entire Boat Harbour site.
 - **Stage 2** provides for the earthworks and construction activities required to create the commercial elements of the Boat Harbour including works within the adjacent Scenic and Local Purpose Reserves in the creation of an access channel and wetland restoration. Following the completion of construction activities, the commercial boat harbour is to become operational.
 - **Stage 3** provides for the earthworks and construction activities required to create a recreational boat harbour. Following completion of these construction activities, the recreational boat harbour is to become operational.⁷
- [37] The proposed timeframe for construction activities is:
- **Stage 1** and **Stage 2** – Jan 2022 to June 2024 (noting that stages 1 and 2 will occur concurrently, subject to the contractors' programme); and

⁶ AEE page 13

⁷ AEE page 13

- **Stage 3** – Proposed 2027/2028 (subject to demand and funding approval).⁸

Boat Harbour Stage 1 Works

[38] These include:

- The installation of erosion and sediment control measures;
- Vegetation clearance and relocation of internal servicing;
- Installation of new roadside swale drains along the eastern boundary of Keepa Road;
- Realignment of the flood channel within the site to accommodate Stage 2 works; and
- Bulk earthworks consisting of excavation and disposal of top soil and wood waste material to disposal sites across the Whakatāne region.⁹

Boat Harbour Stage 2 – Commercial Boat Harbour, Access Channel and Wetland Recreation

[39] Stage 2 of the Project will primarily consist of the works required to construct the commercial boat harbour including:

- Earthworks to form the Boat Harbour, access channel and new wetland area;
- Construction of 60 commercial berths and associated infrastructure, commercial wharf and hardstand areas, site buildings to accommodate the office, marine training/educational and commercial activities, associated site servicing, accessways, parking, signage and lighting for the commercial boat harbour, and a fuel facility; and
- Capital dredging and placement of Navigation Aids within the main channel of the Whakatāne River between the confluence of the access channel and the river and the upstream extent of the Harbour Development Zone as such is defined in the relevant statutory plan.¹⁰

[40] The commercial boat harbour and associated activities and operations include:

⁸ AEE page 13

⁹ AEE pages 15-16

¹⁰ AEE page 19

- Approximately 60 commercial berths;
- Commercial wharf providing loading and unloading areas;
- Hard stand for vessel maintenance;
- Vessel haul-out and fuel dispensing facilities; and
- Buildings catering for vessel maintenance, café, training facilities, office and ice manufacture.¹¹

Boat Harbour Stage 3 – Recreational Boat Harbour

[41] Stage 3 is the proposed construction of the recreational boat harbour. Subject to demand, funding approval and detailed design, Stage 3 works are anticipated to commence in 2027 and to include:

- Bulk earthworks to create the operational Stage 3 boat harbour basin;
- Construction of 70 recreational berths, associated access, parking, and a boat ramp; and
- Site servicing, landscaping, lighting and signage.

[42] The Stage 3 works proposed will also require the decommissioning of the existing pump station and stormwater pond onsite and construction of a new pump station to manage primary and flood flows from the upstream contributing catchment and flood flows from the site. These works, while linked to the Project, will be subject to separate consenting processes as such are subject to an existing Environment Court Order.¹²

¹¹ AEE pages 29-34

¹² AEE page 45

PART E: LEGAL ISSUES ARISING

- [43] There are some particular legal issues which arise out of the application to be considered.
- [44] We identified those as:
- (a) Given the activity requires the use of property belonging to others, and is the subject of an existing Environment Court Order for a discharge permit, does the requirement for other consents or that existing authority preclude/restrict us in our decision making?
 - (b) Does MACAA apply?
 - (c) Does the NESF, and the related National Policy Statement for Freshwater Management (**NPSFM**) apply and, if so, how should they be considered?
 - (d) Are there any provisions in the New Zealand Coastal Policy Statement (**NZCPS**) or other planning instruments which need assessment?
 - (e) Is the “dispute” over the extent of consultation such as to weigh against a grant of consent? We note this issue is addressed in the following Part - Part F.
 - (f) Is the Panel’s consideration of the Application consistent with s 6 of the FTCA? We note this issue is addressed in the following Part - Part F.
- [45] We will deal with each in turn.

Other Consents

- [46] The Project will require:
- (a) A consent from the Department of Conservation (**DOC**) for use of the Keepa Road Scenic Reserve under the Reserves Act 1977;
 - (b) A licence to use berm land administered by the Bay of Plenty Regional Council (**BOPRC**) for the relocation of woodwaste as part of the proposed wetland restoration programme;
 - (c) A licence from BOPRC to breach the existing stopbank within a BOPRC owned reserve along the Whakatāne River;

(d) An authorisation, if stage 3 of the Project (the recreation boat harbour) is established, to relocate the existing stormwater pump station located in the middle of the eastern boundary of the 2 Keepa Road property which pump station is subject to an existing Environment Court Order.

[47] We are satisfied that none of these matters preclude our decision on the application. It is accepted that consents will be required from the Director-General of Conservation to undertake works within the scenic reserve administered by DOC and that consents from BOPRC will be required to deepen and widen the existing Kopeopeo Canal flood pump station discharge channel and to cut and relocate the existing stopbank which runs parallel to the Whakatāne River. Further, (if stage 3 proceeds), it will be necessary to reconstruct/relocate the existing stormwater disposal system which is the subject of an Environment Court Order which would need to be addressed.

[48] While all of these consents are required such requirements do not preclude the consideration of the application. There is nothing to stop a consent being sought to utilise the land of another. Obviously consents from others will be required but those consents are not required before our consideration of the application.¹³

[49] There are clear indications given from DOC and BOPRC that the consents required from those bodies will be forthcoming, at least for stages 1 and 2 of the application, but actual consents are not pre-requisites.

Takutai Moana (Coastal and Marine Area) Act 2011 (MACAA)

[50] We considered whether MACAA applied. Given the Project is to be developed on private land outside the boundaries of the marine and coastal area, albeit eventually connected to it, we are satisfied the area occupied by the boat harbour is not marine and coastal area, being specified freehold land, with the channel being constructed within conservation/reserve areas.¹⁴

NPSFM and NESF

[51] The widening and deepening of the existing Kopeopeo Canal flood pump station channel is required. In addition to consent from BOPRC such activity will require consideration under the NESF given such would involve the destruction of an area of natural wetland.

¹³ Hampton v Hampton [2010] NZRMA 412
MacLaurin v Hexton Holdings Ltd [2008] NZCA 570

¹⁴ See Section 9(1) MACAA 2011

- [52] Consent for this activity is linked to the status of the works and whether the project constitutes "specified infrastructure" in terms of the NPSFM.
- [53] The application of the NESF arises because the access channel as part of the boat harbour involves works in a "*natural wetland*" and the NESF prohibits earthworks within a natural wetland if it results or is likely to result in the complete or partial drainage of part of a natural wetland (and there is no alternative consent pathway through other provisions of the NESF).
- [54] Regulation 53 of the NESF provides:
- (1) Earthworks within a natural wetland is a prohibited activity if it—
 - (a) results, or is likely to result, in the complete or partial drainage of all or part of a natural wetland; and
 - (b) does not have another status under any of regulations 38 to 51.
 - (2) The taking, use, damming, diversion, or discharge of water within a natural wetland is a prohibited activity if it—
 - (a) results, or is likely to result, in the complete or partial drainage of all or part of a natural wetland; and
 - (b) does not have another status under any of regulations 38 to 51.
- [55] Regulation 45 of the NESF provides:
- "(1) Vegetation clearance within, or within a 10 m setback from, a natural wetland is a discretionary activity if it is for the purpose of constructing specified infrastructure.
 - (2) Earthworks or land disturbance within, or within a 10 m setback from, a natural wetland is a discretionary activity if it is for the purpose of constructing specified infrastructure.
 - (3) Earthworks or land disturbance outside a 10 m, but within a 100 m, setback from a natural wetland is a discretionary activity if it—
 - a. is for the purpose of constructing specified infrastructure; and
 - b. results, or is likely to result, in the complete or partial drainage of all or part of the natural wetland.

(4) The taking, use, damming, diversion, or discharge of water within, or within a 100 m setback from, a natural wetland is a discretionary activity if it is for the purpose of constructing specified infrastructure.”

[56] The NPSFM defines “*specified infrastructure*” as meaning any of the following:

- (a) ... (not relevant);
- (b) **regionally significant infrastructure identified as such in a regional policy statement or regional plan**; (our emphasis).

[57] As already stated BOPRC has given its view that the Project constitutes regionally significant infrastructure.¹⁵

[58] The Bay of Plenty Regional Policy Statement (**RPS**) defines regionally significant infrastructure as:

“..... infrastructure of regional and/or national significance **and includes** (our emphasis)

Commercial port areas”¹⁶

[59] At the outset we note this is not an exclusive definition. The provision of commercial port areas, and indeed the various named items of infrastructure within the RPS, are not mutually exclusive although the RPS does not provide any formal criteria for determining whether other infrastructure, such as the Project, could be deemed automatically through the operation of the provisions of the RPS as regionally significant. It is further noted that the High Court commented on “the very wide definition given to the words Regionally Significant Infrastructure”.¹⁷

[60] Consideration can however be given to the RPS. Relevant provisions we have identified within the plan are as follow:

- (a) Section 2.3.2 of the RPS provides context,

Regionally significant infrastructure is different from other infrastructure due to its scale, function, and benefits to the wider region and in some cases to the rest of the country. Some types of infrastructure are both nationally and regionally significant, for example renewable electricity generation activities

¹⁵ See para 19

¹⁶ P.260 RPS

¹⁷ See *Royal Forest & Bird Protection Society v BOPRC* [2019] NZRMA 1 at para 24

*and major roads such as the Tauranga Eastern Link. It is critical to the social, economic and cultural well-being of the region's communities and their health and safety.*¹⁸

[61] Ms Tennent states the proposition, that whether infrastructure is regionally significant or not is in part related to the relevant infrastructure's value to the region in regards to social, economic and cultural well-being and health and safety. She expresses the view that where this is applied to the Project such will have social, economic and cultural well-being benefits for Whakatāne. We agree. This opinion is supported by the analysis in the Whakatāne Regeneration Programme.

[62] Policy CE 15B of the RPS identifies Whakatāne port as being of regional significance. It reads as follows

Policy CE 15B: Recognising secondary ports

Recognise the local and regional significance of ports at Whakatāne and Opotiki and take into account their social and economic benefits, including the need to maintain navigation channels.

Explanation

*The region's secondary ports contribute to the wellbeing of their communities. Policy CE 15B requires recognition of their existing and potential benefits in decision-making. Opotiki and Whakatāne Ports are located in river estuaries and require ongoing dredging in order to maintain safe vessel access.*¹⁹

[63] There is an existing port at Whakatāne but it is clearly constrained in size and has serious limitations in flood events due to debris being washed down the river.²⁰ It cannot expand without resource consents and there is no indication that consents are being sought or are likely to be granted. Such a development would not accord with the Ngāti Awa Environmental Plan let alone Ngāti Awa's aspirations for the river.

[64] The explanation to this policy identifies that Whakatāne's port is located in a river estuary and has shortcomings through the requirement for regular dredging and the need to maintain safe vessel access.

[65] The existing facilities at Whakatāne stretch along the river front. They comprise concrete wharfs, a timber wharf and a small wharf and marina adjacent to the

¹⁸ RPS page 38

¹⁹ BOP RPS page 127

²⁰ See Navigation Safety Assessment (undated) by Dilley & Muir AEE pp 7-10

Whakatāne Yacht Club. There is also a boat ramp and trailer parking area. There is little room to expand and obviously pressure on the existing facilities in major storm events.

- [66] In the context of the application and the policy framework the provision of a new port facility as detailed in the Project would create infrastructure we assess of regional significance. Further the provision of the recreational facility, if developed at a future date, would similarly fall within that scope due to the current difficulties associated with mooring in the Whakatāne River. Boats so moored are at serious risk of damage in flood events. There is a lack of room for further development, a lack of parking space for boat launching and no facilities for marine based infrastructure to provide for general marine servicing.²¹
- [67] All of these requirements are to be created as part of the Project. Maritime, (fishing, aquaculture and boat building) and tourism, activities, all of which are of prime importance to the Whakatāne Regeneration Programme, are all to be either established or provided for. As such the Project will be for the welfare of the residents of the area. The Project's importance is well developed and explained in this programme.
- [68] We have also considered and been greatly assisted by the careful reasoning provided by the Expert Consenting Panel in its decision on the Kōpū Marine Precinct at Thames dated 9 March 2022 when considering a similar issue. Although a different planning regime and with differing considerations, there were elements of the Panel's assessment of the referred project under consideration which similarly apply here. In particular its considerations at para 89 are adopted. On an overall consideration we consider the Project can be said to be regionally significant infrastructure.

Bay of Plenty Regional Coastal Environment Plan (BOPRCEP)

- [69] The proposed access channel and wetland restoration works are located in an Indigenous Biological Diversity Area A (**IBDA A**)²² as identified in the BOPRCEP.
- [70] Areas identified as IBDA A and which require consideration under the BOPRCEP can be relied upon as giving effect to the NZCPS.²³
- [71] Policy NH1 of the BOPRCEP provides in relation to the natural heritage of the coastal

²¹ See Navigation Safety Assessment prepared by Dilley & Muir lodged with the AEE

²² Bay of Plenty Regional Coastal Environmental Plan (BOPRCEP) Pages 27 and 240

²³ Royal Forest & Bird Protection Society of New Zealand v Bay of Plenty Regional Council [2018] NZ EnvC 157

environment that activities may be considered appropriate if they contribute to the restoration and rehabilitation of natural heritage or cultural values associated with natural heritage, (including kaimoana resources and cultural landscape features), or if they meet the requirements of clauses (1) and (2) of that policy. What is proposed meets the requirements of clause (1) noting it constitutes in our view regionally significant infrastructure.

[72] Clause (2) of Policy NH 1 requires that the activity will not have unacceptable adverse effects on the values and attributes of an Outstanding Natural Feature and Landscape, an area of Outstanding Natural Character or an IBDA-A identified in Policy NH5 as is the case here.

[73] An advice note provides that when determining whether an activity may have unacceptable adverse effects under Clause (2), policies NH 5, NH 6, NH 7, NH 16 and NH 17 apply.²⁴ We have assessed these policies and accept the submissions made by Ms Gepp as to their application in this context.²⁵

[74] Policy NH 6 provides guidance on how the extent and consequences of any adverse effects on the values and attributes of these areas are to be assessed. This includes recognising the existing activities that were occurring at the time that an area was assessed as being an IBDA-A. This is relevant to the existing Kopeopeo Canal flood pump station and overflow channel creation works as they are within the same wetland complex. Rather than an offset, the wetland recreation ensures that there is no loss of wetland extent or values as part of the Project.

[75] Ms Gepp concludes,

“The NH policies were the subject of a High Court appeal followed by reconsideration by the Environment Court. In confirming this suite of policies, the Environment Court noted that within a significant indigenous area where regionally significant infrastructure is proposed, works to enhance or protect the values of the area can adequately avoid or mitigate adverse effects of new regionally significant infrastructure:

“In our view, this doesn’t prevent arguments that the adverse effects on the values and attributes of new regionally significant infrastructure are either avoided or adequately remedied or mitigated by virtue of proposed conditions to enhance or protect the values and attributes of the significant indigenous

²⁴ Ibid Note 12

²⁵ See pages 28-29 of the BOPRCEP

area. In this regard, we mean such things as pest control, fencing, habitat enhancement, removal of exotics and the like, that might be applicable in the particular circumstances of a case. That should be subject to rigorous examination, and would need to meet NZCPS policies 11(a)(i) or (ii)."²⁶

[76] The Court went on at para 65 in this decision to note that,

“we do not consider that the removal of new infrastructural activities from (Policy) 11A necessarily prevents such an application.”

[77] The proposed wetland restoration enhances and protects the values and attributes of the IBDA-A area.

[78] We find the proposed access channel and wetland restoration works are consistent with Policy 11 of the BOPRCEP natural heritage policies and therefore with the NZCPS.

Comments Received in Opposition

[79] The primary objections received through the comments from notified parties related to conflicting uses in the waterway, the risk of sedimentation through further dredging and a claim of a lack of proper consultation.

[80] The first two of these issues will be dealt with in the assessment of effects – Part G. The issue of consultation, and the extent or lack of it, is dealt with in the next Part – Part F.

²⁶ RFBPS v BOPRC at para 64

PART F: CULTURAL CONSIDERATIONS

- [81] The Panel has been particularly mindful of the fact that the subject land proposed to be developed (at 2 Keepa Road, Whakatāne, legally described as Part Allot 28B 22 Rangitaiki PSH (the **Whenua**)) is Māori freehold land administered by an Ahu Whenua Trust constituted under Te Ture Whenua Māori Act 1993. That Act has a broad and purposive interpretation that facilitates and promotes the retention, use, development, and control of Māori land as taonga tuku iho by Māori owners, their whānau, their hapū, and their descendants, and that protects wāhi tapu.²⁷ As stated in the CIA, “The Act places the prerogative for decision-making squarely in the hands of the Māori landowners and any trust they establish under the Act. In short, no one else holds the prerogative to decide the future of Māori land but its landowners and trusts with the support of the Māori Land Court.”²⁸
- [82] We note that Te Rāhui Lands Trust (**TRLT**), as landowner, provided a Supporting Statement to the Application (Appendix B, **Supporting Statement**), by Dayle Hunia on behalf of the Trust and the over 1,000 Māori Land Owners, the majority of whom whakapapa to Ngāti Hōkōpū²⁹. It adds that, “It should be noted that owners are also Ngāti Awa and are therefore also represented by TRONA albeit within a Post Settlement Entity context.”³⁰
- [83] We think that raises more complex issues particularly in the context of section 6 of the FTCA, consistency with the principles of the Treaty of Waitangi, and Part 2 of the RMA. As recognised by Justice Whata³¹, the special significance of sections 6(e), 7(a) and 8 was affirmed by the Privy Council in *McGuire v Hastings District Council*³², “These are strong directions, to be borne in mind at every stage of the planning process.”
- [84] The Supporting Statement records that it is “intended to provide guidance to the Expert Consenting Panel to ensure that the Māori Land Owners’ issues, concerns, interests and values are given effect to as part of the consenting process”³³. In light of the Māori freehold land status and the complexities that raises, we consider the scope and provision of the Supporting Statement is appropriate.

²⁷ Te Ture Whenua Māori Act 1993 (Māori Land Act 1993), section 2; see also CIA, p. 6

²⁸ CIA, p. 58

²⁹ Appendix B to the Application, Supporting Statement by Dayle Hunia on behalf of Te Rāhui Lands Trust relating to the Application, 6 September 2021, p.8

³⁰ Supporting Statement, p.8, para 34

³¹ *Ngāti Maru Trust v Ngāti Whātua Ōrākei Whai Māia Ltd*, [2020] NZHC 2768, at [42]

³² [2002] 2 NZLR 577 (PC) at [21]

³³ Supporting Statement, p.8, para 33

- [85] In that context we are conscious that there is a difference of view expressed in some of the comments received and while it is not uncommon for tangata whenua to hold diverse and differing stances on potential cultural effects, the evidence and comments received are all matters the Panel must weigh when considering the Application.
- [86] For these reasons, and in line with the statutory requirements of both the FTCA and RMA, we have gone to the extent we have to properly consider the evidence that was put before us on the actual and potential cultural effects of this Application.

F.1 Statutory Framework

- [87] Section 6 of the FTCA requires all persons performing functions and exercising powers to act in a manner that is consistent with the principles of the Treaty of Waitangi 1840 (**Treaty**) and Treaty settlements.
- [88] A number of Treaty principles have been defined through the findings of the Waitangi Tribunal and decisions of the Courts including partnership, active protection, redress and the duty to make informed decisions with good faith consultation and communication. Section 5.1 of the AEE also describes the commonly referred to principles of partnership, participation and protection with a summary of how the Project is consistent with these.³⁴
- [89] Every consent application is required to include:
- (a) information about any Treaty settlements that apply in the project area (cl 9(1)(i) of Schedule 6 of the FTCA);
 - (b) an assessment against any relevant provisions of a planning document recognised by a relevant iwi authority and lodged with a local authority (cl 9(1)(h) and (2)(g), Schedule 6);
 - (c) a cultural impact assessment (**CIA**) prepared by or on behalf of the relevant iwi authority or a statement of reasons given by the relevant iwi authority for not providing an assessment (cl 9(5), Schedule 6);
 - (d) an assessment against any resource management matters set out in a planning document prepared by a customary marine title group (cl 9(6)(b), Schedule 6);

³⁴ AEE, p.114, section 5.1

- (e) an assessment of any effects of the activity on the exercise of a protected customary right (cl 10(1)(h), Schedule 6);
- (f) views of iwi or hapū that have been consulted in relation to the proposal and if the iwi or hapū elect not to respond when consulted, any reasons they have specified for that decision (clauses 10(1)(e) and (f), Schedule 6).
- (g) any cultural effects on the people in the neighbourhood and if relevant the wider community;³⁵ and
- (h) an assessment of the activity's effect on natural and physical resources having cultural value for present or future generations.³⁶

F.2 Assessment

(a) Treaty Settlements

[90] The Site is located on Māori freehold land adjacent to State Highway 30 (SH30) and Keepa Road, close to the true left bank of the Whakatāne River.

[91] The Section 17 Report³⁷ prepared by the Ministry for the Environment states that the Treaty settlement with Ngāti Awa is the sole Treaty settlement relevant to the proposed project³⁸, recognising that the Ngāti Awa area of interest extends from the Waihi Estuary (in the west) to Ōhiwa Harbour (in the east) within the central Bay of Plenty.³⁹

[92] The Section 17 Report and the AEE outline the relevant provisions in the Ngāti Awa Claims Settlement Act 2005 (the **Settlement Act**) for resource consent applications within their area of interest. This includes:

- (i) The acknowledgements and apologies. As the Section 17 Report notes, respecting Ngāti Awa views on resource management matters and enabling effective involvement of Ngāti Awa as a Treaty partner in resource management decision-making within their rohe are important

³⁵ Clause 11(a).

³⁶ Clause 11(d).

³⁷ Ministry for the Environment, Application 2020.022 Whakatāne Commercial Boat Harbour Report Prepared in Accordance with Section 17 Covid-19 (Fast-track Consenting) Act 2020 (**Section 17 Report**)

³⁸ Also acknowledged in the AEE, 1 February 2022, p.116, section 5.2

³⁹ Section 17 Report, p.5 paras 23-24

ways in which the Crown can give on-going effect to these acknowledgements and uphold its relationship with Ngāti Awa;⁴⁰

- (j) Cultural redress. Here, that includes statutory acknowledgements for Ngāti Awa over 11 areas that relate to rivers and reserves, including parts of the Whakatāne River, a deed of recognition covering the Crown-owned and managed parts of the Whakatāne riverbed and the vesting of 7 areas of significance (mainly reserves) in Ngāti Awa.

Statutory Acknowledgment

- (i) The Settlement Act recognises the cultural, spiritual, historical and traditional association of Ngāti Awa with identified “statutory areas” and enhances the ability of the iwi to participate in specified RMA processes. Under Schedule 10 of the Settlement Act, the Whakatāne River is included as a Statutory Acknowledgment Area.⁴¹
- (ii) The Section 17 Report refers to the statement in the statutory acknowledgement (in Schedule 5.7 of the Deed of Settlement) that Ngāti Awa have always maintained a considerable knowledge of the Whakatāne River, its history, the traditional trails of the tipuna along the River, the landing places of waka, the places for gathering kai and other taonga and the ways in which to use the resources of the Whakatāne River. It acknowledges that proper and sustainable resource management has always been at the heart of the relationship of Ngāti Awa with the Whakatāne River.⁴² Clause 3.13 of Schedule 5.7 of the Deed of Settlement states that mana, mauri, whakapapa and tapu are all important spiritual elements of the relationship of Ngāti Awa with the Whakatāne River. All of these values remain important to the people of Ngāti Awa today.⁴³
- (iii) The AEE states:⁴⁴

⁴⁰ Section 17 Report, p.6 para 34

⁴¹ AEE, 1 February 2022, p. 120, section 5.6

⁴² Section 17 Report, p.6 para 40

⁴³ Section 17 Report, p.6 para 41

⁴⁴ AEE, 1 February 2022, p. 120, Section 5.6

“Therefore, when forming a view about the actual and potential effects of the Project, it is necessary to have regard to the values and associations set out in the Ngāti Awa Statutory Acknowledgment for the Whakatāne River. The values associated with the Project Site are described in further detail in the CIA and an assessment of the effects of the Project on the values described in the Ngāti Awa Statutory Acknowledgment is provided...”

Deed of Recognition

- (iv) The Deed of Recognition in relation to the Whakatāne riverbed requires DOC to consult with Ngāti Awa and have regard for their views on any plans, strategies or programmes for the protection and management for these areas. The Section 17 Report considers that as the Whakatāne riverbed downstream of the SH30 bridge lies in the CMA, which by definition is owned by no-one [Section 11(2) MACAA], the proposed Project will not affect any areas to which the Deed of Recognition relates.⁴⁵ Ngāti Awa’s views on the Project are outlined in the cultural impact assessment section below.

Kāpūterangi Historic Reserve

- (v) Under the Settlement Act, Kāpūterangi is identified as a cultural redress property (subject to the Kohi Point Walkway⁴⁶) with the fee simple estate vesting in Ngāti Awa. Kāpūterangi is classified as an historic reserve and named Kāpūterangi Historic Reserve with Ngāti Awa as the administering body for the purposes of the Reserves Act 1977.⁴⁷ Kāpūterangi is not directly affected by the Project though provision has been made to protect existing views from Te Hokowhitu a Tū ki Te Rāhui Marae towards Kohi Point and Kāpūterangi.⁴⁸
- (k) Commercial redress. Ngāti Awa have a Right of First Refusal (RFR) over Crown-owned properties in a specified area, until 2055. The proposed project lies within the specified RFR area. While part of the land required

⁴⁵ Section 17 Report, p.7 paras 42-43

⁴⁶ Section 28, Ngāti Awa Claims Settlement Act 2005

⁴⁷ Section 29, Ngāti Awa Claims Settlement Act 2005

⁴⁸ Condition 2.2.2(e)

for the Project is privately owned such that rights of first refusal do not apply, they do apply to the Crown-owned land affected by the proposed project which is a scenic reserve managed by DOC under the Reserves Act 1977. The Section 17 Report records the understanding that currently this land (the scenic reserve) is not surplus to Crown requirements.⁴⁹

- (l) Other redress. The settlement did not create any new co-governance or co-management processes which would affect decision-making under the RMA for the proposed project and the project will not affect any other specific redress in the settlement.⁵⁰

[93] The Section 17 Report notes that there are no recognised mandates for negotiation of any further historical Treaty claims, or any current or anticipated negotiations for settlement of historical Treaty claims, affecting the proposed project area.⁵¹

[94] We accept that as the Ngāti Awa Treaty Settlement is relevant to the project or project area, the Applicant has appropriately engaged with and taken into account feedback and the cultural impact assessment provided by Ngāti Awa. The consultation undertaken by the Applicant with Ngāti Awa is outlined in subsection (c) below.

(b) Planning document recognised by a relevant iwi authority

[95] Under section 7(1) of the FTCA, a relevant iwi authority means an iwi authority whose area of interest includes the area in which a project will occur.

[96] The FTCA does not define iwi authority, so under section 7(2) of the FTCA, it has the same meaning as in the RMA: the authority which represents an iwi and which is recognised by that iwi as having authority to do so.

[97] The Section 17 Report states that Te Rūnanga o Ngāti Awa (TRONA) is the relevant iwi authority in relation to RMA matters concerning the project area.⁵²

[98] The Applicant provided an analysis of Te Mahere Whakarite Matatiki Taiao o Ngāti Awa – Ngāti Awa Environmental Plan 2019 (the **Taiao Plan**).⁵³ The Applicant assessed the Proposal as being consistent with the relevant objectives and policies of the Taiao Plan as it recognises Te Mana o Te Wai, takes an integrated approach

⁴⁹ Section 17 Report, p.6 para 36

⁵⁰ Section 17 Report, p. 7 paras 44-45

⁵¹ Section 17 Report, p.7 para 46

⁵² Section 17 Report, p.4 para 20

⁵³ AEE, p. 250, section 9.8

to freshwater management, represents a sustainable, productive use of under-utilised Māori land and provides a framework for managing potential effects on cultural values in the coastal environment. The Applicant also noted that project planning has sought partnership with tangata whenua through frequent consultation and the preparation of the CIA with proposed conditions that seek to maintain this partnership along with a project design which sought and recognised iwi input on the cultural values and interests associated with the Site and its setting in a wider environment of high cultural significance.⁵⁴

- [99] In their CIA, TRONA provided a more detailed assessment of the consistency of the Proposal with the Taiao Plan and identified its environmental planning provisions⁵⁵ to provide insight into the kaitiakitanga standards of TRONA. The assessment also provides a fuller account of the reasoning TRONA used in the development of its advice for proposed consent conditions.⁵⁶
- [100] The AEE records that the CIA sets out TRONA’s conclusion that the cultural effects of the Project are acceptable, subject to resource consent conditions to implement a rigorous environmental management and monitoring framework for the duration of the construction and operation of the Boat Harbour.⁵⁷
- [101] Having reviewed the Applicant’s assessment, the CIA and TRONA’s more detailed assessment, the comments from Ngāti Awa and the Taiao Plan, we are satisfied that to the extent the Taiao Plan is relevant, the Proposal (subject to the imposed conditions) is consistent with it.

(c) Cultural impact assessment

- [102] A CIA dated 23 September 2021 was provided with the application, prepared for TRONA by Beverley Nawarihi Hughes. The AEE states:⁵⁸

“Given the significance of the Whakatāne River and wider area to TRONA and its associated hapū, and the Ngāti Awa Statutory Acknowledgment and obligations under the RMA and Covid Act, TRONA was formally (via letter dated 26 January 2021) invited to prepare the CIA.

The Applicant’s engagement with TRONA representatives and the information contained in the CIA has informed the concept design of the

⁵⁴ AEE, pp. 250-251, section 9.8

⁵⁵ CIA, Appendix 8

⁵⁶ CIA, pp. 18-19

⁵⁷ AEE, p. 251, section 9.8

⁵⁸ AEE, p.117, section 5.3

Project and the proposed methods and measures to manage any impacts/effects of the Project on cultural values and interests.”

- [103] The CIA outlines the history of Te Rāhui Lands Trust land (the subject Site), its place within Ngāti Awa’s cultural landscape and the relationship of Ngāti Awa to the Whakatāne River and rohe (area), referring to the Statutory Acknowledgment in respect of the River, its identification in the BOP RPS and relevance to provisions in the District Plan, and noting the cultural significance of the estuary (in the river reach from Bridge to Sea) where Mataatua waka landed. It states that:⁵⁹

“The Whakatāne River continues to be a life giving taonga and source of cultural and spiritual wellbeing, and a place at which profoundly important historic events occurred, all of which underpin and support the traditions and cultural identity of every Ngāti Awa person.”

- [104] The CIA provided a comprehensive assessment of the Proposal against the Taiao Plan noting that the plan guides development of cultural impact assessments that aim to show how Ngāti Awa relationships, culture and traditions can be recognised and provided for, as matters of national importance, in resource consent decision-making.⁶⁰

- [105] The CIA stated:⁶¹

“TRONA’s key procedural focus is to participate in development of consent conditions that absolutely minimise, with the aim of eliminating, adverse effects on freshwater quality in Whakatāne River, ecological biodiversity in the estuary and coastal environment and meaningful recognition and provision for the relationships, culture, and traditions of Ngāti Awa people with their ancestral taonga.”

- [106] The CIA emphasised Ngāti Awa’s history of opposition to proposals seeking to locate marinas in the estuary given their proximity to wāhi tapu, ecologically significant areas and dioxin contaminated sites and their concern to ensure any proposals for significant increases in activities are very carefully considered due to the lack of space for them to safely occupy. Importantly, TRONA asserts, “in consideration of the natural capital of the Whakatāne estuary, the proposed 156 berth boat harbour is the maximum number of berths appropriate for the Whakatāne estuary.”⁶² It

⁵⁹ CIA, p.13

⁶⁰ CIA, p. 16

⁶¹ CIA, p. 10

⁶² CIA, pp. 13-14

concludes:

"The attributes of the proposed boat harbour strike few of those actual and potential adverse environmental and cultural effects of previously proposed marina locations (which Ngāti Awa opposed), and those struck are not insurmountable but can be appropriately provided for by rigorous consent conditions."⁶³

- [107] In concluding, the CIA recommended the imposition of consent conditions that are consistent with the objectives and policies of the Taiao Plan and the advice provided in the CIA with Appendix 8 of the CIA setting out TRONA's specific recommendations about the scope of the Proposed Consent Conditions.
- [108] TRONA also sought involvement in: the planning and design for implementation of any construction activities, earthworks activities, Contaminated Sites Management Activities and wetland restoration, remediation and enhancement planning; the development of Boat Harbour operational plans (including those relating to the Conduct of Boat Harbour Users); and to provide education in respect to the means by which boat harbour users must give way to unmotorised craft including waka ama and particularly those waka carrying the deceased to Opihiwhanaungakore Urupā.⁶⁴
- [109] The AEE noted the recommendations have, where appropriate, been provided for in the Proposed Consent Conditions and set out the Applicant's disagreement with four of the recommended conditions in Appendix 8 to the CIA.⁶⁵ The first related to the need for imposition of a condition to regulate noise from the Boat Harbour and to protect Te Hokowhitu a Tū Marae from reverse sensitivity issues relating to their current levels of noise and activities. The Applicant does not consider the Boat Harbour is likely to cause reverse sensitivity effects, the Project will meet the applicable noise limits and proposed noise monitoring will confirm the operational noise and ensure compliance can be achieved in the event of any breaches.
- [110] The second related to a recommendation that discharges of contaminated and eutrophic water from the proposed Boat Harbour basin to Whakatāne River be avoided and that the quality of off-site stormwater inflows to the Boat Harbour site be monitored. The Applicant considered the outcome is achieved by the Applicant's proposed conditions relating to discharge quality standards and a consenting

⁶³ CIA, p. 62

⁶⁴ CIA, p. 63

⁶⁵ CIA, Appendix 8 and AEE, pp. 118-119

framework to ensure that onsite stormwater treatment will ensure that the quality of discharges from the Site to the Whakatāne River will be of a higher quality than required by the Regional Plan.

- [111] The third recommended condition required monitoring to avoid shellfish beds when dredging the Whakatāne River which the Applicant considered unfeasible as sporadic maintenance dredging in the river channel cannot avoid disturbing shellfish and shellfish are expected to recolonise areas after dredging is complete.
- [112] Lastly, the CIA noted that it did not support the proposed wetland restoration activity at the location proposed by the Applicant. We address this matter in Part F.3 below.
- [113] We are satisfied that the CIA provides a comprehensive and appropriate assessment of the Proposal with recommendations provided for in the consent conditions to ensure Ngāti Awa relationships, culture and traditions can be recognised and provided for. We agree with the Applicant that the additional four recommended conditions, as discussed above, are unnecessary for the reasons outlined in the AEE and the relevant technical reports.

(d) **Customary marine title**

- [114] The AEE records that there are currently several hundred applications for recognition of customary marine title before the High Court under the Marine and Coastal Area (Takutai Moana) Act 2011 (**MACAA**), as well as direct negotiations being conducted with the Crown. It states that the customary marine title (**CMT**) applications which specifically include the Project area and the Whakatāne River are yet to be heard or decided. It also notes that the recent decision in *Re Edwards* on CMT applications⁶⁶, while located in the eastern Bay of Plenty, does not apply to the Project Area or the Whakatāne River.⁶⁷ Accordingly, an assessment of planning documents prepared by a customary marine title group under s.85 of the MACAA is not required. We also note our discussion regarding MACAA in Part E above.

(e) **Protected customary rights**

- [115] Given the absence of any protected customary rights applying to or in close proximity to the Site, noting also as above that the areas in respect of which the *Re Edwards* decision granted rights does not include the Project area or the Whakatāne

⁶⁶ *Re Edwards (Te Whakatohea (No.2))* [2021] NZHC 1025
⁶⁷ AEE, page 119, section 5.4

River, an assessment of the effects of the development on the exercise of a protected customary right is not required.

(f) **Consultation**

[116] Under Clause 10(1)(e), Schedule 6 of the FTCA an AEE must include “identification of persons who may be affected by the activity and any response to the views of any persons consulted, including the views of iwi or hapū that have been consulted in relation to the proposal.”

[117] Clause 10(2), Schedule 6 states: “Subclause (1)(e) does not oblige a consent applicant to consult any person, although a failure by the applicant to consult, or to consult adequately, may be taken into account by a panel in determining a consent application.”

Iwi and Hapū

[118] The AEE sets out the iwi and hapū who were consulted with about the Project namely:⁶⁸

- (m) Ngāti Awa; and
- (n) Hapū of Ngāti Awa consulted with:
 - (i) Ngāti Hokopū ki Te Whare-o-Toroa;
 - (ii) Ngāti Hokopū ki Te Hokowhitu-a-Tū;
 - (iii) Ngāi Taiwhakaea II;
 - (iv) Ngāti Pūkeko;
 - (v) Ngāi Te Rangihouhiri II;
 - (vi) Ngāti Wharepaia;
 - (vii) Ngāti Hikakino;
 - (viii) Ngāti Rangataua;
 - (ix) Ngāi Tamapare; and

⁶⁸ AEE, p.113, section 5

(x) Te Patuwai.

- [119] The AEE notes that Ngāti Awa, through TRONA, have been directly engaged with during development of the Boat Harbour concept and that this primarily occurred through their role on the Project Governance Group but also through preparation and provision of the CIA. It states that: "It is important to note that engagement with TRONA has been independent of the role that Ngāti Awa has as project partners under their Ngāti Awa Group Holdings Ltd commercial division.⁶⁹ The AEE also acknowledges that, it is through the engagement with TRONA that the Applicant has also undertaken direct engagement with multiple Ngāti Awa hapū who have a relationship with the Project area and surrounding environment and a summary of the engagement with TRONA and the relevant hapū is set out.⁷⁰
- [120] The CIA records that the draft CIA prepared by TRONA in mid-July 2021 was developed with input from two hapū hui convened by TRONA and that the final CIA was the subject of further engagement with Ngāti Awa hapū.⁷¹ It notes that at the two hapū hui held, many owners (Te Rāhui Land) and hapū members expressed concern about the proposed boat harbour and its potential to create issues of gentrification, a domino development effect and create a precedent for more marina in Whakatāne estuary.⁷² The CIA considered the actual and potential effects of the Application, including gentrification and the social wellbeing of Ngāti Awa people as owners of Māori freehold land. These issues are addressed further in Part F.3 below.
- [121] The Panel invited comment from TRONA as the relevant iwi authority and Treaty settlement entity identified by the Ministry for the Environment in its Section 17 Report and the twelve relevant MACAA applicant groups also identified. While the Section 17 Report noted that it did not consider any other iwi authorities or Treaty settlement entities are likely to have an interest in the matter, the Panel also invited comment from Ngāi Tūhoe, out of an abundance of caution, given the recommendation of the EPA's Kaupapa Kura Taiao that the Ngāi Tūhoe Treaty Settlement area of interest is in the vicinity of the project area, the Panel noting also the importance of the estuary to the Mataatua waka. We record that we did not receive any comments from Ngāi Tūhoe or on behalf of the MACAA applicant groups identified.
- [122] In their response to the invite to comment⁷³ TRONA noted the following matters for

⁶⁹ AEE, p. 122, section 6.2

⁷⁰ AEE, p. 122-123, section 6.2

⁷¹ CIA, pp. 9-10

⁷² CIA, p. 35

⁷³ TRONA response to invite to comment, 5 April 2022

clarification:

- (a) Te Rūnanga o Ngāti Awa (TRONA) is not an applicant for resource consents for the Proposed Whakatane Boat Harbour.
- (b) TRONA's assets management agent Ngāti Awa Group Holdings Limited is also NOT an applicant for resource consent for the proposed Whakatane Commercial Boat Harbour at the current time.

[123] TRONA reiterated support for the CIA and its recommendations particularly in relation to the peer review advice from Dr Anderson relating to contaminated sediments on land to the north of the subject land. It provided further clarification about its ongoing opposition to locating the proposed wetland restoration areas and land disturbance activities on the contaminated land owned by BOPRC.⁷⁴ We address this matter further in Part F.3 below.

Te Rāhui Lands Trust

[124] In their Supporting Statement, TRLT noted that the Project represents a unique opportunity to unlock the potential of Māori land in a fit-for-purpose location, while providing long term essential infrastructure and economic development in the Eastern Bay of Plenty. TRLT considers that overall, development of the Boat Harbour will enable the Whenua to be remediated, transformed and developed, to realise the potential of the Whenua while also providing significant cultural, social, economic and environmental benefits for the Owners.

[125] We note further that TRLT proposes to lease the land and partner in the proposed boat harbour activities (with a one-third share) thereby retaining ownership of their lands in perpetuity.⁷⁵

[126] The Supporting Statement sets out the Whenua History, the background to the PGF funding, the Trust's aspirations and their own cultural values assessment. In terms of TRLT aspirations it recognises that the benefits arising from the Project will make a positive and measurable difference for whānau, hapū and iwi. It points out the difficulties in developing the whenua due to the constraints of the woodchip material, stormwater structures and limited land productivity and states:⁷⁶

"The Project is therefore viewed as a unique inter-generational opportunity

⁷⁴ Comment from TRONA dated 5 April 2022

⁷⁵ Supporting Statement, p. 13 and CIA, pp. 35-36

⁷⁶ Supporting Statement, p.12, para 53

to transform the whenua into productive use while also strengthening the relationship of tangata whenua with their ancestral lands.”

[127] TRLT’s cultural values assessment demonstrates their unique perspective both as tangata whenua and as shareholders of the Māori owned land to which the Project relates with the cultural values held by landowners in connection with the Whenua and surrounding environment therefore being determined by both ancestral and contemporary relationships. The Supporting Statement describes a cultural values framework to assess the impact of the Project on the Cultural Values held by TRLT landowners with responsibilities of rangatiratanga and kaitiakitanga at its core and the strengthening of whanaungatanga, manaakitanga and kotahitanga.

[128] In terms of rangatiratanga for example, it records:⁷⁷

“The Whenua is regarded as a taonga, passed through generations. For the first time in its history, the Trust has been able to actively influence decision making; including consent planning, to ensure that the mauri of Te Taiao (inclusive of ecosystems and indigenous flora and fauna) is maintained and enhanced.”

[129] It concludes by highlighting the benefits for present and future generations with an increased and diversified asset base, job creation and new career pathways within the marine and tourism industry, future diversification to maximise benefits for landowners, whānau and hapū, a governance structure that provides for active participation for iwi and local government and an innovative “off-river” solution that will positively impact the mauri of the Whakatāne River promoting sustainable management of natural and physical resources and providing intergenerational benefits for years to come. Importantly, the Project alleviates long held concerns of tangata whenua regarding previous marina proposals that were to be sited within the river channel and adjacent to wāhi tapu.

(g) Neighbourhood, wider community and resources having cultural value for present or future generations⁷⁸

[130] Referenced in the AEE,⁷⁹ although not explicitly assessed, the Panel is satisfied that the Applicant’s overall assessment covers these matters and the Panel has discussed them further in our consideration of other issues particularly in relation to Te

⁷⁷ Supporting Statement, p.14, para 62

⁷⁸ Schedule 6, Clauses 11(a) and 11(d), respectively

⁷⁹ AEE, at Parts 6.4 and 7

Hokowhitu a Tū Marae, Whakatāne River and the long term benefits of the Project.

F.3 Cultural Effects

(a) Potential effects

[131] The AEE identifies a range of potential cultural effects related to the Application⁸⁰:

- (c) Engagement
- (d) Cultural effects: Landscape and Amenity effects
- (e) Cultural effects: Environmental effects
- (f) Cultural effects: Contamination and wetland restoration activities
- (g) Cultural effects: Coastal processes, natural hazards and climate change effects
- (h) Cultural effects: Operational effects
- (i) Cultural effects: Economic effects
- (j) Cultural effects: Effects on the relationship of tangata whenua with the environment; Kaitiakitanga and the ongoing role of mana whenua.

[132] While we accept that these effects are highlighted in the CIA, we have not limited our consideration of cultural effects to these matters but also had particular regard to the potential adverse cultural effects raised by those who provided comments on the Application as set out in the following section.

Engagement

[133] We have previously set out the evidence received relating to the process of consultation, engagement and cultural impact assessment undertaken by the Applicant. The Panel has given close consideration to the methods followed by the Applicant to develop the Project while recognising the interests tangata whenua may hold as landowners, as hapū and as iwi, in relation to the Site and its surrounding context.

[134] We are satisfied that the Applicant has sought to consult and engage with TRONA as the relevant iwi authority and the hapū of Ngāti Awa including hui that

⁸⁰ AEE, pp. 160-173, section 7.3

representatives from Ngāti Awa and its hapū were invited to attend, held between January – June 2021, and facilitating TRONA’s preparation of a CIA. We also acknowledge the process of consultation undertaken by TRONA with its hapū in relation to the CIA and by TRLT with its beneficial Māori land owners in preparation of the Proposal.

- [135] The Applicant has taken the identified values and concerns into consideration and has appropriately incorporated matters raised by the CIA into the different elements of the Project and/or addressed the recommendations provided in Appendix 8 of the CIA in the respective technical assessments and reports. The Applicant has provided for Ngāti Hokopū and TRLT in the Project by involving representatives from the respective parties in the development of the Project. Opportunities for further involvement for Ngāti Awa and its hapū including Ngāti Hokopū, are ensured through conditions which provide for an ongoing role, in recognition of the parties’ role as kaitiaki, in the Project and its development, construction and operation.

Cultural effects: Landscape and Amenity effects

- [136] We have noted the importance of the stretch of river from the Landing Road bridge to the river mouth, referred to in the CIA as a cultural landscape of great significance to Ngāti Awa. The CIA recommends consent conditions require the design and siting of buildings and structures avoid imposing on views from Te Hokowhitu a Tū ki Te Rāhui Marae towards Kohi Point and to the pā, Kāpūterangi above the Wairaka precinct, to the east and north-east respectively.
- [137] The AEE notes that the tallest building on the site, the boat maintenance shed, will be approximately 15.5m above natural ground level and that the Boat Harbour Site is subject to a 12m maximum height limit pursuant to Rule 7.2.1.1(b) of the District Plan. The Landscape Assessment considers this context and concludes that the Project’s landscape effects on Te Hokowhitu a Tū ki Te Rāhui Marae will be ‘Low’.
- [138] The Applicant notes that the Architecture and Urban Design Report requirement will ensure that the Project design responds appropriately to the landscape values of the surroundings.
- [139] Having considered the CIA, comments received and the Landscape Assessment, the Panel acknowledges the significance of these viewpoints and has ensured this is provided for with the following requirement of the Architecture and Urban Design Report at Condition 2.2.2(e).

"Confirmation, through identification of the final building and structure heights and site layout, that development within the site is sited and designed to ensure that existing views from Te Hokowhitu a Tū ki Te Rāhui Marae towards the culturally significant sites of Kohi Point, the escarpment behind the urban area of Whakatāne and the Kāpūterangi pā site are protected."

- [140] Accordingly, the Panel accepts that the Project's landscape effects on Ngāti Awa, and Te Hokowhitu a Tū ki Te Rāhui Marae in particular, will be 'Low' with adherence to the conditions imposed.

Cultural effects: Various 'Environmental' effects

- [141] The CIA identifies potential adverse ecological effects of disturbing migratory fauna, the loss of small areas of coastal habitat, dredging, discharges to the coastal environment, the management of soil contamination, operational pollution and biosecurity risks. In respect of each of these potential effects, as discussed elsewhere in this decision, with the exception of the Whakatāne Yacht Club there was little, and in some cases no, matters in contention between the technical assessments provided by the Applicant and the additional issues raised by invited commentators. Where necessary we have provided recommendations for additional consent conditions.

Cultural effects: Contamination and wetland restoration activities

- [142] The CIA states that it does not support the proposed wetland restoration activity at the location proposed by the Applicant given the concerns over historical contamination within the area identified as 'Section 2' and the proposed disturbance of this area associated with the filling of suitable woodwaste material and the location of restoration works being outside the proposed construction footprint of the Boat Harbour.
- [143] The Applicant considers the wetland restoration is appropriate based on the advice of the Project's technical advisors, the Wildlands Terrestrial Ecology Report and on the findings of the HAIL DSI Report and its recommendations (Appendix C to the Application). The Applicant considers that the proposed approach to site management and contamination matters are appropriately addressed through the Proposed Consent Conditions and the Proposed SMP.

- [144] The AEE⁸¹ states that while acknowledging the concerns raised in the CIA, the Project will apply strict management control over land disturbance of areas that have been subject to historic contamination – to manage and minimise potential adverse effects including contamination risks. The adverse effects of encroachment by the access channel into a 0.1 ha area of wetland will be minimised through restoring a significantly larger area of wetland, approximately 0.93ha, that currently is the site of historical woodwaste and is identified as having 'low ecological value'.
- [145] It is noted that it is not unusual for a restoration site to be outside the footprint of a proposed development, where the best ecological outcome can be achieved. This restoration of saltmarsh wetland will have positive ecological effects which in turn has the potential to positively contribute to the mauri of the restoration site and the wider river side environment through removal of historic wood waste and reverting the area to its natural function.
- [146] The AEE notes that the peer review of the draft HAIL DSI Report, undertaken by TRONA's nominated expert, identified some opportunities for additional reporting captured in the TRONA recommended conditions set out in Appendix 8 of the CIA which have been adequately encompassed in the HAIL DSI Report and the final draft SMP.
- [147] The Panel notes that the Conditions require the final SSCMP and construction management plans be provided to the Reference Group (which includes TRONA) for review and feedback prior to provision to Council for certification.

Cultural effects: Coastal processes, natural hazards and climate change effects

- [148] Referring also to our later comments on coastal processes under Part G of this decision, we are satisfied that the issues identified in the CIA regarding the potential for the Project to create an adverse effect on coastal processes and natural hazards have been appropriately addressed particularly with section 6.9 of the Tonkin + Taylor Coastal Assessment directly responding to the CIA's recommendations. Further, in relation to the issue raised regarding the need to ensure that the potential effects of climate change should be used to inform the design of the Project, we accept the Applicant has ensured that all structures will be designed and located to avoid creating or exacerbating erosion and flooding issues on neighbouring lands and in the Whakatāne River consistent with the recommendations of Appendix 8 to

⁸¹ AEE, p. 168, section 7.3.3

the CIA. We also refer to the Applicant's response to Te Hokowhitu a Tū Marae below regarding the issue of flood mitigation.

Cultural effects: Operational effects

- [149] The CIA comments on potential adverse effects in terms of construction and operational noise, the cultural appropriateness of signage, access to the riverbank and wider CMA for resource gathering, the exercise of matauranga Māori and the conduct of Boat Harbour users.
- [150] The AEE notes⁸² and we accept, that the recommendations made in the Acoustic Assessment have had specific regard to the amenity of Te Hokowhitu a Tū ki Te Rāhui Marae and are captured in the Applicant's proposed consent conditions. The design of signage will be subject to review by the Reference Group and can therefore be informed by any recommendations proffered by TRONA through its membership of the Reference Group.
- [151] Access to the riverbank and wider CMA will be improved by the Project as discussed in the Landscape Assessment and Recreation Assessment. The conduct of Boat Harbour Users will be regulated through the development and implementation of an Operational Management Plan – noting conditions ensure that prior to the commencement of Marine precinct activities within the commercial Boat Harbour, the consent holder shall include in the OMP details of how the OMP has been prepared to address the relevant objectives and policies of the Taiao Plan, in particular those which address wai (freshwater), whenua (land), coastal and marine, biodiversity, biosecurity and ecosystems. The efficacy of code of conduct arrangements can also be monitored over time through the liaison groups.

Cultural effects: Economic effects

- [152] While noting that the tenure of the Site will remain Māori freehold land vested in TRLT, the CIA records wider concerns raised at hapū engagement hui about the economic and social effects of Māori landowners being displaced by industrial and residential subdivision and development in the Coastlands area and around Te Hokowhitu a Tū ki Te Rāhui Marae. People expressed concerned that the boat harbour would create a potential domino development effect exposing their Māori freehold lands to more development pressure from others and create a precedent effect developers would exploit to apply for more marinas below Whakatāne Bridge.

⁸² AEE, pp. 170-171, section 7.3.

[153] The Applicant acknowledged this commentary and noted in response to those who provided similar comments that industrialisation, zoning and rezoning are all matters for the District Council. In the AEE the Applicant pointed out that the Boat Harbour will be open to the entire community and that the CIA confirms that the Project is not considered to be a cause of this economic activity that may displace tangata whenua.

***Effects on the relationship of tangata whenua with the environment;
Kaitiakitanga and the ongoing role of mana whenua***

[154] The CIA states⁸³ that only Ngāti Awa can determine the extent to which an activity may affect Ngāti Awa relationships, culture and traditions with their ancestral taonga, an approach that is woven into policy and objectives in the Taiao Plan and provided for in the BOPRPS in Policy IW 2B.

[155] The CIA identifies the potential for loss of access to / destruction of sites of cultural significance as a concern as well as the potential for the proposal's land disturbance activities to affect the cultural association with the whenua, the awa and the wider environment.

[156] The AEE notes that the Project's design will not affect the wāhi tapu site Toitoihuia and that formed pedestrian access through the Site to the stopbank area and river margins is provided in the concept design and this will enable the public to continue to access these areas for a range of purposes including whitebaiting, fishing and the collection of natural art/craft materials.

[157] The AEE points out that the risks associated with accidental discovery of culturally significant material during construction works are subject to management controls set out in the proposed conditions.

[158] Regarding in-river works, consent conditions will ensure the siting of Navigational Aids is developed in consultation with the Reference Group and it is expected that this consultation will ensure that any placement is useful to operators of waka ama, including those tasked with transporting tūpāpaku to Opihiwhanaungakore Urupā.

[159] Consistent with recommendations made in the CIA, consent conditions will ensure dredging activities are timed and undertaken to avoid or mitigate disruption to other users of the Whakatāne River.

⁸³ CIA, p. 17

[160] As recognised in the AEE, an overarching theme of the CIA is ensuring that mana whenua have an ongoing role in the Project, as kaitiaki of the Whakatāne River and surrounding environments, both with respect to the detailed design phase and the operational phase and the Applicant has restated its commitment to providing for this.

[161] Conditions include the requirement for the Applicant to invite parties to establish:

- (a) A Reference Group – consisting of representatives from the Consent Holder, TRONA, TRLT, DOC, WDC and BOPRC. The role of this group includes the review and feedback on the Project’s management plans to be developed prior to the construction and operation of the Boat Harbour; and
- (b) A Tangata Whenua Liaison Group – consisting of representatives from Ngāti Awa and its relevant hapū. The purpose of this group is to facilitate ongoing engagement and information sharing between the Mana Whenua Group and the Consent Holder.

[162] Conditions also provide for regular meetings between the Consent Holder and the liaison groups during the construction and operational life of the Boat Harbour. Ongoing environmental performance of the Boat Harbour will be subject to annual performance reporting, which will be shared with the liaison groups such that reporting outcomes can be discussed and any issues worked through.

[163] The AEE notes that this framework of consent conditions will provide a pathway to refine operational processes as the Project matures, aligning well with the recommendations of the CIA and enabling Ngāti Awa, and its hapū, to exercise their role as kaitiaki of the wider Whakatāne River environment including the Project area.

[164] In concluding the assessment on cultural effects, the AEE also recognises the long term benefits of the Project for TRLT and its beneficial owners as discussed earlier in our decision regarding comments from TRLT, with “an innovative “off-river” solution that will positively impact the mauri of the Whakatāne River and provide intergenerational benefits for years to come” whilst also “alleviating long held concerns of tangata whenua regarding previous marina proposals that were to be sited within the river channel and adjacent to wāhi tapu”.

(b) Comments received

[165] Comments were received from persons associated with properties invited to comment as adjacent owners and occupiers, noting that included 25A & 25B Keepa

Road, which also includes Ngāti Hokopū - Te Hokowhitu a Tū ki Te Rāhui Marae. The Marae was also identified in the AEE as being potentially affected by the Project with the Applicant seemingly relying upon the consultation and engagement with TRONA and it's hapū in preparing the Application and through the CIA development process.⁸⁴

Te Hokowhitu a Tū Marae

[166] Te Hokowhitu a Tū Marae, whānau homes and driveway are situated opposite the proposed Boat Harbour entrance on Keepa Road as shown in the figure below:⁸⁵



[167] A comment was received from Te Uara Jaram for Te Hokowhitu a Tū Marae Trustees submitted on behalf of Ngāti Hokopū ki Te Rāhui hapū and whānau of Te Hokowhitu a Tū Marae.⁸⁶ It records a neutral position on the proposal and states that while “we oppose in principle the *concept* of a commercial harbour and utilisation of the Te Rāhui land block for that purpose, we recognise and support the potential opportunity it may yield for the Māori landowners, their collective prosperity and intergenerational aspirations.” It endorsed the CIA, it's recommendations, and the general extent to which it speaks to their Ngāti Awa cultural history and impacts they collectively face.

[168] The comment also outlined the direct and proximate impacts specific to their hapū and marae, as an adjoining landowner and neighbour to the proposal. Issues

⁸⁴ AEE, pp128-129, section 6.4

⁸⁵ CIA, pp. 7-8

⁸⁶ Comment from Te Uara Jaram for Te Hokowhitu-a-Tū Marae Trustees, 8 April 2022

identified included the erosion of their cultural identity noting that the Site is part of the broader area of Te Rāhui which includes their marae and surrounds and is integral to their cultural identity as Ngāti Hokopū ki Te Rāhui. They expressed concern about the cumulative impact of development in the area that is continuing to envelope their marae and presence at Te Rāhui as they are immediately surrounded by intensive industrial development (current and future) noting that the harbour proposal will further exacerbate the significant level of development that surrounds them. In this respect, they sought conditions and/or measures to maintain recognition of Ngāti Hokopū ki Te Rāhui presence at Te Rāhui (inclusive of the proposed development site) suggesting this may include a cultural history instalment and the like, incorporation of Ngāti Hokopū cultural elements in the design of the precinct and processes to provide for their involvement in the development and ongoing operation of the Boat Harbour.

[169] The Marae made a number of other recommendations including:

- (a) Increased rates obligations: appropriate measures to mitigate and/or offset any increased rates and resultant financial impact of the proposal for the Marae.
- (b) Contaminated site management and remediation: conditions to ensure robust processes are in place to manage contaminated material, particularly to guard against the risk of dispersion to the neighbouring environment; conditions to ensure appropriate remediation of contaminated sites and material. The Marae noted strong support for the Site Management Plan proposed consent condition as set out in Appendix C - Detailed Site Investigation Report.
- (c) Traffic safety and management: appropriate measures to enhance the safety and access to/from the marae driveway to Keepa Rd, including roadside parking along Keepa Rd as part of roading upgrades and the inclusion of a Hokowhitu a Tū Marae representative in the Keepa Rd upgrade project.
- (d) Flood mitigation: an assurance that appropriately robust flood management / mitigation measures will be implemented to safeguard lands contiguous with Te Orini canal.

[170] The Applicant responded addressing the issues raised as follows:⁸⁷

- (a) The Applicant supports the provision of cultural identity and representation in the Project and proposes the inclusion of a specific condition to provide for this. The Panel notes that condition is provided at 2.11.2. There is also provision for ongoing involvement in the Project through the Reference Group and the Mana Whenua Liaison Group – see conditions 1.2.1 & 1.2.2.
- (b) Rates and financial impacts on the Marae are a District Council matter and related to zoning and land value.
- (c) Based on the findings of the HAIL DSI Report and its recommendations (Appendix C to the Application), the Applicant considers that the proposed approach to site management and contamination matters is appropriately addressed through the Proposed Consent Conditions and the Proposed SSCMP.
- (d) The Traffic Assessment provided in support of the Application (Appendix L) concluded that the Boat Harbour, in particular Access Point 3 across from the entrance to the Marae, would not have an effect on the safety of parties entering or leaving the Marae. As part of the Keepa Rd upgrade works, WDC may decide to provide for further access provisions and roadside parking but that is not a matter which this application can provide for. However, the Applicant acknowledges that there will be times when the Marae requires additional parking, and it is happy for Marae representatives to contact the Boat Harbour site manager who may be able to provide for parking onsite during these events. This would sit outside of the consent requirements, but the Applicant sees it as a key part of the ongoing relationship between the site and the Marae and its representatives.

[171] The modelling undertaken to inform the Application demonstrates that the proposal will not 'change the existing water level' within the Whakatāne River and the flood levels 'along the seaward edge of the Boat Harbour are below the stopbank crest level for the 1%AEP design flood but with reduced freeboard (refer Table 5-6). However, with climate change projections to 2040 the flood levels are

⁸⁷ Te Rāhui Herenga Waka Whakatāne, Comment, Attachment A, pp.43-45

some 0.1m above the crest levels of the stopbanks at cross section 3b, which is close to the access channel location (refer Figure 5-13). This means that river flooding can overtop the stopbanks adjacent to the Boat Harbour. Future climate change effects beyond 2040 are likely and therefore it is also likely that ongoing management of stopbanks on both sides of the river will be required to maintain current levels of service.⁸⁸ Based on the technical advice from T+T, the Project will not result in any increase to the existing flood risk at present under the current situation (i.e. pre-development flood risks).

Wharewera whānau submissions

- [172] Six individual comments on the Project were received from parties identifying as the Wharewera Whānau.⁸⁸
- [173] Given that the parties identified under a collective submission, the approach has been to identify the collective position and note the Applicant's response.
- [174] The submission of Walter and Te Peehi Wharewera (identifying as the collective whānau submission) notes that members of the Wharewera Whānau reside and whakapapa to the property at 46b State Highway 30, Whakatāne and they are the children, mokopuna, mokopuna tuarua and mokopuna tuatoru of the original owners and builders of the house and Māori Roadway. They are also members of Ngāti Awa iwi, Ngāti Hokopū ki Te Rāhui hapū, Te Hokowhitu a Tū Marae and Te Rāhui whenua.
- [175] Consistent with the comment from the Marae, the Whānau comments record a neutral position on the Proposal but note they oppose the concept of a commercial harbour and utilisation of the Te Rāhui land block for that purpose while also recognising and supporting the potential opportunity it may provide for the Māori Landowners and descendants of the whenua and their future aspirations. The collective submission states that it supports the CIA and its recommendations to which this highlights the Ngāti Awa cultural history and the impacts they as a whānau, as mana whenua and as kaitiaki, face.
- [176] It is submitted that the Project will affect whānau and hapū mentally, spiritually and physically through loss of:

- (a) Mana of the iwi and hapū

⁸⁸ These parties are: Walter and Te Peehi Wharewera Whānau, Tui Wright, Talei Swanson, Puawera Wright, Moeroa Wright, Jazmin Ashby

- (b) Water rights
- (c) Source of food and building materials
- (d) Control of Māori Land
- (e) Access to the awa and its margins.

[177] There is criticism of entities such as TRONA and Te Rāhui Lands Trust who the whānau consider have been created to take tino rangatiratanga away from whānau and hapū.

[178] It is further submitted that the proposal will have an adverse effect on:

- (a) Flood events in the Whakatāne River
- (b) Traffic management of Keepa Rd and access / parking for the marae
- (c) Economic impacts associated with whitebait and kaimoana
- (d) Contaminated sites
- (e) Dredging and erosion of the river unearthing kōiwi sites
- (f) Access to urupā sites
- (g) The relationship to the whenua
- (h) Land use and values.

[179] The Applicant responded to the above comments as follows:

- (a) The Applicant recognises the submitters' cultural association with the whenua as it applies to the proposed development area, the Whakatāne awa and wider taiao.
- (b) The Proposed Conditions formalise a number of the recommended mitigation and management measures set out within the CIA and also provide for ongoing involvement in the Project, in recognition of the parties' role as kaitiaki, and its development, construction and operation.
- (c) The Applicant has aspired to recognise and provide for the mana of the people of Ngāti Awa and its hapū, including Ngāti Hokopū and the TRLT in the Project, through involving representatives from the respective parties

in the development of the Project. The input received from those who participated helped shape the final concept design. The Proposed Conditions provide for an ongoing role in the Project in the event that the application is granted.

- (d) The Project does not include any consents to take water from either surface or ground water. As detailed in the Tektus Infrastructure Report (Refer to Appendix E to the Application), the Proposal's approach to avoid adverse effects on the mauri of the water has been managed by the adoption of a design approach that seeks to bring a Te Ao Māori perspective to the configuration and operations of the Boat Harbour with the aspiration to reuse water and improve the water quality of any discharges into the awa and reduce reliance on the awa as a water source.
- (e) The technical reports supporting the Application identify that the proposal will not result in any adverse effects on the coastal or freshwater species which are present in the Whakatāne awa. As set out in the Wildlands Marine / Freshwater Ecology Assessment (Refer to Appendix R to the Application), the Project has the potential to have a minor positive impact through the creation of new structures in the Boat Harbour and Access Channel which will provide opportunity for new habitat for aquatic species and this can create positive flow on effects of habitat and food sources for other marine / freshwater species. Regarding building materials, the Applicant is not aware of any specific materials being sourced from the proposed Boat Harbour or the restoration area. However, as communicated during hui with TRLT representatives, there is an interest from Ngāti Hōkōpū to re-establish a harakeke resource that was once present in the wider awa area. The Applicant acknowledges this and has added this as a requirement under the proposed Landscaping Plan (Proposed Condition 2.4.3(b)).
- (f) The Applicant has entered a lease agreement with the landowners for use of this land.
- (g) The Applicant considers that the Project will improve the ability for all people, including tangata whenua, to access the awa and its margins. The Project will include public access through the Boat Harbour site to the existing tracks along the stopbank and river margins to the north and south of the site.

- (h) The Applicant notes that the TRLT Supporting Statement (Appendix B to the Application), identifies that it is the responsibility of the Trustees to maintain and exercise tino rangatiratanga and kaitiakitanga.

[180] The Applicant's response to concerns regarding flood events in the Whakatāne River, traffic management of Keepa Rd, contaminated sites and land use and values are the same as those provided in response to the Marae and as set out above. In relation to the additional concerns the Applicant noted that:

- (a) The Wildlands Marine / Freshwater Ecology Assessment (Refer to Appendix R to the Application) has concluded that any effects of the proposal, including discharges and dredging activities, will not result in adverse effects on whitebait or marine / freshwater species present in the river. Additionally, the Applicant has agreed to the inclusion of a further condition to avoid programmed dredging activities during the whitebait season. This will further remove any potential adverse effects of the proposal on the whitebait stocks.
- (b) The removal of the historic woodwaste from the Site will have a direct positive effect on the whenua.
- (c) Other than the works required to create the access channel in the existing Kopeopeo Canal flood pump station discharge channel, the proposal does not include any direct disturbance of the banks of the Whakatāne awa. In the event that the creation of the access channel, or any other project related earthworks, unearths kōiwi or other items, the Accidental Discovery Protocol will be the mechanism which sets out the protocol for dealing with such finds.
- (d) The Boat Harbour at the proposed location will not affect the ability of any person to access any recorded urupā sites (primarily downstream of the Site).
- (e) The relationship of tangata whenua with their whenua is acknowledged and recognised by the Applicant. TRLT (through their role as representatives of the land owners and as a project partner) and TRONA have provided guidance to the Applicant throughout the development of the Project to date. The ongoing involvement of these parties and others has been provided for through to Proposed Conditions. Additionally, the Applicant also supports the inclusion of conditions which enable the

cultural identity of Ngāti Awa and its hapū, and their relationship to the whenua and awa, to be incorporated into the final design of the Boat Harbour.

25A & 25B Keepa Road

- [181] Seven individual submissions on the Project were received from parties from Te Hokowhitu a Tū ki Te Rāhui Marae - 25A and 25B Keepa Rd.⁸⁹
- [182] A further seven submissions on the Project were received from parties who also noted their connection to either Te Hokowhitu a Tū Marae, the Wharewera land block, and/or TRLT.⁹⁰
- [183] In addition, the Panel accepted the content of the Pupuaruhe ki Te Rāhui comment on behalf of each of the individuals named in Appendix 1 to that comment (as per Minute 3 issued by the Panel on 2 May 2022).⁹¹
- [184] Again, given that the parties above identified under collective submissions with similar concerns, the approach has been to identify the collective position and issues and note the Applicant's response.

Cultural association

- [185] Parties referred to their inherent relationships and connections to the Te Rāhui Land and its place within the cultural landscape of Ngāti Hokopū ki Te Rāhui. They set out whakapapa to inform their associations highlighting connections with the original landowners of 25A or 25B Keepa Road with some emphasising their connections to Pupuaruhe ki Te Rāhui.
- [186] Parties oppose the concept of a commercial boat harbour and utilisation of the Te Rāhui land block for that purpose. They note that the site is wāhi taonga for Ngāti Hokopū, that they are kaitiaki to the whenua and taiao including activities and development that may impact parties' ability to practise authentic kaitiakitanga, which includes caring for whānau, hapū, whenua, and te taiao. They consider the Proposal blocks the view of significant wāhi whenua sights as chosen by kuia and does not recognise the special significance and Wahi Taonga of the land. It is

⁸⁹ Those parties are: Shaneen Tumanako Rangirangi, Josephine Clarke, Suzanne Keepa, Dianne Sharma-Winter, Riripeti Kingi, Kelly Walker, Josephine Smith

⁹⁰ Those parties are: Alexandra Clarke, Pearl Hona-Allen, Rangimarie Clarke, Cadence Savage Clarke, William Clark Jaram, Shawnee Clarke, Natalie Te Are & Ors (Whānau of Karauria Claude Keepa)

⁹¹ Those individuals are: Riripeti Kingi, Wendy Main, Sharon Heta, Te Ruihi Heta-Lane, Awarua Savage, Shawnee Clarke, Talei Swanson, George Walker, Esmay Wharewera, Puarewa Wright, William Jaram, Cadence Savage, Kelly Walker, William Main, Shaneen Rangirangi, Josephine Smith, Rapata Kopae, Josephine Clark

submitted that, the reason the land was chosen was because “From this site we can see Ohinemataroa [awa], Te Kapua o Te Rangī”.⁹²

- [187] The Applicant responded⁹³ noting cultural values and associations of Ngāti Hōkopū with the Site and the role of Ngāti Hōkopū as kaitiaki (together with TRONA and the hapū of Ngāti Awa) are acknowledged and recognised by the Applicant. They added that the Project has been designed to protect te taiao and will ensure kaitiakitanga is upheld. As set out in Section 7.3.1 of the AEE, the Applicant acknowledges the cultural significance of the landscape and the viewshafts from the marae and will design and site buildings and structures to avoid imposing on views from Te Hōkōwhitu a Tū ki Te Rāhui Marae towards Kohi Point and to the pā called Kāpūterangi above the Wairaka cultural precinct, to the east and north-east respectively. The Applicant noted, and the Panel confirms, this has been provided for as a requirement in the Architecture and Design Report. We refer to our later discussion on Cultural effects: Landscape and Amenity effects.

Engagement and Consultation

- [188] In terms of engagement and consultation, the parties submit there was no meaningful consultation and engagement with affected parties and with Nga Uri and Hapū of Ngāti Awa and that they have been denied a place in their own Wharenuī to engage and share korero with their own tipuna and whānau on why they oppose the developments on their taonga. They disagree that the consultation process with all the applicants took place with the hapū and note that not all members of the hapū are in the Te Rāhui block and that the meetings the Trust has held on the marae are trust hui, not hapū hui. They consider they have been ignored and made to feel indistinct and undervalued. Some parties highlight that mana whenua lies with the hapū while TRONA, NAGHL and TRLT, “are all entities created under the auspices of the Crown”.
- [189] The parties submit that as a result of no meaningful consultation, there is inadequate consideration of inherent relationships with the whenua and awa impacted by the Boat Harbour Project. They note that as tangata whenua of Te Rāhui, they still maintain a cultural and spiritual relationship with their lands, water, wāhi tapu and taonga and that the Proposal will have a direct impact on their ability to continue practising these traditions - both tangible and intangible.

⁹² Comment by Dianne Sharma-Winter, (grouped under 25A/25B Keepa Road)

⁹³ Applicant’s response to Item 15.2 of Attachment A – Tabulated Response of the Response Package provided on 19 April 2022.

- [190] The Applicant provided a detailed response to this issue⁹⁴ noting that iwi and hapū engagement has been supported and, to a certain extent, directed through the Applicant's engagement with Ngāti Awa (through TRONA) and their role as the authors of the CIA. The Applicant stated that in developing the proposal and in preparing the Application, there has been ongoing and constant engagement with TRLT, as representatives of the landowners (many of whom are affiliated with Ngāti Awa and its hapū), through this engagement TRLT communicated their aspirations for their whenua and the project area which included their desire to address the historical contamination issues of the whenua and provide prosperity for their beneficial landowners. The Applicant recorded their understanding that TRLT held eight hui with their beneficial land owners between August 2019 and February 2022. We note that that is consistent with the Supporting Statement of Dayle Hunia on behalf of TRLT⁹⁵ who recorded seven owners' meetings had been held since August 2019 (up until the date of her statement) in accordance with the Trust Order and had been well attended with all meetings being held at Te Hokowhitu a Tū Marae.
- [191] The Applicant added that extensive engagement has also occurred with TRONA and the hapū of Ngāti Awa referring also to the summary of the engagement with iwi and hapū as set out in Section 6.2 of the AEE. This engagement included the Applicant holding a number of hui that representatives from Ngāti Awa and its hapū were invited to attend. The hui, held between January –June 2021, were well attended with in excess of 50 people attending in person and via zoom. The matters discussed at the hui covered both cultural elements and technical matters relating to the proposal. The Applicant acknowledges its ability to engage in a full and complete manner has been significantly impacted by the lockdown and restrictions as a result of COVID-19. These restrictions resulted in a delay of the lodgement date of the Application, from Mid-2021 to Jan 2022, while the Applicant continued to pursue further engagement and consultation opportunities.
- [192] The Applicant responded, in summary, there has been ongoing engagement with TRLT and Ngāti Awa / TRONA and associated hapū in relation to this Project, in addition to the engagement that TRLT had with its own beneficiaries. The input received through this consultation process has informed the concept design of the Boat Harbour and the development of the Application and the supporting technical reports and assessments. These inputs are primarily summarised through the conclusions of the CIA and discussed in detail in Section 7.3 of the AEE. The

⁹⁴ Applicant's response to Item 15.3 and 15.5 of Attachment A –Tabulated Response of the Response Package provided on 19 April 2022; Applicant's response to Item 1.1 of Attachment A -TRHWW – Further Response to Additional Comments Received in Minute 3

⁹⁵ Dated 6 September 2021, Appendix B to the Application

Applicant is committed to ongoing engagement with Ngāti Awa its hapū, and TRLT, and this is provided for in the Proposed Conditions through the ongoing roles for iwi and hapū and TRLT, through the Project Reference Group (Condition 1.2.1) and the Tangata Whenua Liaison Group (Condition 1.2.2). These conditions will ensure that parties have an ongoing role in the delivery of the Project.

- [193] The Applicant considers that the Project and supporting Application acknowledges and recognises the relationships, cultural and otherwise, that parties have with the whenua (including the Project area), the awa and the wider taiao. The Applicant stated that, it is not the role of the Applicant to determine who has mana whenua status over the project area and therefore, the Applicant has taken an inclusive approach to recognition and provision for these inherent relationships with the relationships of iwi and hapū with the project area and wider taiao being further recognised through the new condition proposed by the Applicant in response to the Te Hokowhitu a Tū Marae / Ngāti Hokopū ki Te Rāhui hapū submission point⁹⁶ requesting a condition / measure to maintain recognition of their presence at Te Rāhui. The new Condition 2.11.2 states:

The consent holder must, following consultation with Te Rāhui Lands Trust and Te Rūnanga o Ngāti Awa and its hapū (noting that TRONA requires thirty (30) working days advance notice), provide for markers of cultural identity through provision of a cultural history installation by means of information panels and signage and, where appropriate, incorporation of cultural elements in the design of the precinct.

- [194] Further, and as previously noted, the Proposed Conditions provide for the ongoing role of iwi and hapū in the Project and its delivery and their role as kaitiaki over their whenua and taiao.

Kaitiakitanga

- [195] In terms of kaitiakitanga the parties consider the true practice of kaitiakitanga would be impacted and that the Proposal will take Kaitiakitanga away from the hau whenua and give it to an official body, making their function and voice even more invisible and suppressed, that the ability to practice kaitiakitanga on their land and the Marae would also be restricted, limited and difficult to practice whenever there is a conflicting event at the Boat Harbour and that the need to attend to duties on the Marae as part of the Ahi kaa would be affected by and in conflict with the need

⁹⁶ Item 13.1 in Attachment A –Tabulated Response of the Response Package provided on 19 April 2022

to attend to traffic management and other potential breaches of tikanga by tauwi. The parties raise concerns that users of the Boat Harbour would not give due respect nor consideration to the needs of the hapū which would impact on parties' ability to support whānau and hapū during occasions on the Marae. They too highlight the impact on their ability to maintain cultural practices as kaitiaki where that has been greatly diminished through industrialisation, council zoning and rezoning, industrial rating and concern that the Proposal will exacerbate that.

- [196] As noted above the Applicant has acknowledged the role of Ngāti Hokopū as kaitiaki and has confirmed a willingness to co-ordinate with the Marae during key events which occur at the Marae. However, the Applicant considers that this sits outside of the resource consent process. The Applicant also notes that sufficient parking has been provided for in the design of the Boat Harbour and the Stantec ITA (Appendix L to the Application) concludes that the operation of the Boat Harbour will not impact on the surrounding road network which includes Keepa Rd. As also noted above, matters relating to land use controls and rating are for the District Council and outside this consenting process.

Mauri

- [197] In relation to the issue regarding Mauri, the parties submit that any impact on the awa and whenua also impacts on the submitters, their whānau, hapū and iwi, that there is no regard for the mauri of the awa or their whānui katoa within the Boat Harbour plans and that the development is in breach of the stated objective of TRONA that traditional practices, such as kaitiakitanga, are protected. They too point to the concern that the proposed site is contaminated as the environment reports are contradictory to their familial experiences and what people have witnessed as kaitiaki and have long waited for remediation of the contaminated whenua. In their view, the earthworks and remediation plans proposed to address this issue are inadequate. They also submit that there are inadequate plans to address emergency management of any potential spills of fuel and potential adverse effects on the marine and estuary environment, as well as customary use.
- [198] The Applicant responded that the impacts of the proposal, including those on the awa and whenua, have been appropriately provided for through the Project design and Proposed Conditions. They note that as detailed in the Tektus Infrastructure Report (Refer to Appendix E to the Application), the Proposal's approach to avoid adverse effects on the mauri of the water has been managed by the adoption of a design approach that seeks to bring a Te Ao Māori perspective to the configuration

and operations of the Boat Harbour with the aspiration to reuse water and improve the water quality of any discharges into the awa and reduce reliance on the awa as a water source.

- [199] The Applicant highlighted that once operational, the Boat Harbour will fall under the direction of the OMP (which sets out the management controls and requirements for the site and its users) and also a BMP (which directs the biosecurity requirements for the site and its users). The Boat Harbour will also provide the future opportunity to remove moorings from the main river channel and improve the river margins downstream of the town wharves. The Project design, the management plan documents, and the other focused construction and operational conditions proposed, will ensure that the awa is not adversely affected.
- [200] Regarding earthworks, the Applicant referred to the Application and Tektus Infrastructure Report (Appendix E of the Application) which provide a detailed description of the proposed earthworks for the Project. These documents detail the nature and extent of the earthworks required remove the historical woodwaste and develop the site. The earthworks are shown, both in volume and extent, in the Engineering Design Plans (Appendix E(i) of the Application). The Application goes on to detail that the earthworks and land disturbance activities will be controlled and managed through the development of a suite of management plans, as requirements of the Proposed Conditions (Appendix G to the Application), which includes development of a Construction Management Plan (CMP) and Erosion Sediment Control Plan (ESCP). Regarding contamination, it is the opinion of the Applicant that the HAIL DSI Report (Appendix C of the Application) and the final draft Site Management Plan (SMP) (Appendix E of the Application), along with the Proposed Consent Conditions (primarily Proposed Condition 1.2.9), adequately encompass any potential contamination matters, this includes those canvassed by the Cultural Impact Assessment (CIA), the supporting peer review and their recommendations. This includes the amendments made to the SMP to provide for targeted sampling, contaminant management protocols and monitoring and reporting.
- [201] The Applicant noted that the Proposed Conditions (Condition 1.2.1) also require the final management plans, including the CMP, ESCP and the SMP, to be provided to the Reference Group (which includes TRLT and TRONA) for review and feedback prior to provision to Council for certification. Specific responses to the CIA recommendations relating to contaminated land in Appendix 8 are provided in Table 11 of the AEE. The Applicant also notes that the submission on the Application by

Ngāti Hokopū ki Te Rāhui hapū and whānau of Te Hokowhitu a Tū Marae identified that they 'strongly support the SMP proposed consent condition as set out in Appendix C – Detailed Site Investigation Report.' The Applicant considers that overall, the Project will apply strict management control over land disturbance - including the disturbance of areas that have been subject to historic contamination - to manage and minimise potential adverse effects including contamination and land disturbance risks.'

- [202] The Applicant addressed the concern regarding the potential for a spill noting that in the event of a spill, such as wastewater, oil, etc, the spill will be managed in accordance with MNZ's process in the marine environment; coupled with the OMP (Proposed Conditions 1.5.1 and 1.5.3) requires the consent holder to submit details of the storage and controls of hazardous substances including details of the site's spill containment system and spill management plan in accordance with Rule 1.2.5 of the District Plan.

Climate change

- [203] The parties submit there are inadequate plans to realistically address issues pertaining to climate change and sea level rise.
- [204] In response the Applicant noted that the concept design for the Boat Harbour has provided for climate change and sea level rise and that these matters will be further addressed through the detailed design phase of the project with the specific design provisions and details being set out in the Engineering Design Report (Proposed Condition 1.2.4), the As-Built plan requirement (Proposed Condition 1.4.3) and the Works Completion Report (Proposed Condition 1.4.4). We also refer to our comments on this issue above under Cultural effects: Coastal Processes.
- [205] The parties also noted the importance of the 'papakainga', the whānau whenua known as the Wharewera Homestead which they considered an integral part of Te Hokowhitu a Tū ki Te Rāhui Marae. That connection is acknowledged by the Applicant and the Panel and we have referred to and considered comments received from the Wharewera whānau above.
- [206] For completeness, the Panel acknowledges the Applicant's comprehensive response to the matters raised in the above comments and, given our consideration of the evidence put before us, we confirm that response is satisfactory in terms of the Act.

F.4 Panel Findings in relation to Section 6

[207] A Panel must decline consent for a referred project if that is necessary to comply with section 6 (Treaty of Waitangi).⁹⁷

[208] Having closely considered all of the above matters, the Panel is satisfied that the Proposal:

- (a) has appropriately identified and considered the relevant provisions of the Ngāti Awa Treaty Settlement;
- (b) is consistent with Ngāti Awa's Taiao Plan;
- (c) has appropriately considered and responded to matters raised by TRONA as the relevant iwi authority and provider of the CIA particularly with a project design which sought and recognised iwi and hapū input on the cultural values and interests associated with the Site and its setting in a wider environment of high cultural significance and which ensures they have an ongoing role in the Project both with respect to the detailed design phase and the operational phase, enabling Ngāti Awa and its hapū, to exercise their role as kaitiaki of the Whakatāne River and surrounding environments; and
- (d) sufficiently mitigates any potential adverse effects including through conditions which - enable the cultural identity of Ngāti Awa and its hapū, and their relationship to the whenua and awa, to be incorporated into the final design of the Boat Harbour; acknowledge the cultural significance of the landscape and protect existing views from Te Hokowhitu a Tū ki Te Rāhui Marae towards significant sites at Kohi Point including Kāpūterangi pā; establish the Reference Group and Tangata Whenua Liaison Group.

[209] We are satisfied that the Applicant has undertaken an appropriate process of consultation and engagement with TRONA as the relevant iwi authority and the hapū of Ngāti Awa and has facilitated TRONA's preparation of a CIA, consistent with the requirements of the FTCA. We also acknowledge the process of consultation undertaken by TRONA with its hapū in relation to the CIA, and by TRLT with its beneficial Māori land owners in preparation of the Proposal and TRLT's Supporting Statement.

[210] While we accept that there was some dispute as to adequacy of the consultation process, and we acknowledge that the FTCA process has its own deficiencies, we

⁹⁷ FTCA, Schedule 6, clause 31(12)

do not agree with some of the comments that there has been no meaningful consultation. While direct consultation with Te Hokowhitu a Tū Marae may have ensured a more robust process, we do not consider that there has been a failure by the applicant to consult or to consult adequately in terms of clause 10(2), Schedule 6 of the Act.

- [211] We are also satisfied that further consultation would not have added to the weight of issues before us.⁹⁸ Those matters have also been raised and assessed in the CIA and addressed by the Applicant with suitable mitigation and management measures set out within the CIA and included as part of the Application. Conditions provide opportunity for ongoing engagement and involvement in the Project by the Marae through the hapū and TRONA and the Applicant has acknowledged its commitment to an ongoing relationship between the Site and the Marae and its representatives.
- [212] We are persuaded by the CIA provided to us as prepared by TRONA being the relevant and mandated iwi authority, the evidence regarding consultation set out in the AEE and expanded upon in the Applicant's response to comments and the Supporting Statement of TRLT. We also recognise the neutral position expressed in the comments received from Te Hokowhitu a Tū Marae Trustees and Walter and Te Peehi Wharewera Whānau, that while they oppose in principle the *concept* of a commercial harbour and utilisation of Te Rāhui land block for that purpose, they recognise and support the potential opportunity it may yield for the Māori landowners, their collective prosperity and intergenerational aspirations noting they also endorse the CIA and its recommendations.
- [213] We consider the approach undertaken by the Applicant, the Panel's invitation to comment on the Project and broader acceptance of responses within the purview of the FTCA, our consideration of the CIA by Ngāti Awa and comments provided by Ngāti Hokopū – Te Hokowhitu a Tū ki Te Rāhui Marae, the Wharewera Whānau, various members associated with 25a and 25b Keepa Road (the Marae and whānau land) and TRLT as landowners of the subject site being Māori freehold land, together with conditions imposed to address potential cultural effects, is consistent with the principles of the Treaty including those relating to partnership and the duty to make informed decisions.
- [214] In relation to Treaty settlements, we have acknowledged the Ngāti Awa Treaty Settlement as the relevant Treaty Settlement that applies to the Site, accepted that Ngāi Tūhoe may also have a potential interest given the significance of the Estuary

⁹⁸ Clause 10(2) Schedule 6

to the Mataatua Waka, and invited them to comment. We have considered the Section 17 Report, AEE and CIA, and Ngāti Awa's Statutory Acknowledgement over the Whakatāne Awa which applies to the Site. We confirm there are no obligations in the Ngāti Awa Treaty Settlement that this Panel must comply with.⁹⁹ Furthermore, as also noted above, there are no Customary Marine Title or Protected Customary Rights Applications which affect the Project Site.

[215] There has been no suggestion from TRONA that the Project is (to use the words of the FTCA) inconsistent with the principles of the Treaty or any Treaty settlements.

⁹⁹ FTCA, Schedule 6, clause 31(10)

PART G: PLANNING INSTRUMENTS

Statutory Planning Provisions

[216] The Applicant addressed the statutory considerations in chapter 9 of the 1 February 2022 Te Rāhui Herenga Waka Whakatāne – Commercial Boat Harbour Assessment of Environmental Effects, and specifically:

- The Resource Management (National Environmental Standards for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011 (**NESCS**);
- The National Policy Statement for Freshwater Management 2020 (**NPSFM**);
- The Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**NESF**);
- The New Zealand Coastal Policy Statement 2010 (**NZCPS**);
- The Bay of Plenty Regional Policy Statement 2014 (**BOPRPS**);
- The Bay of Plenty Regional Coastal Environment Plan 2021 (**BOPRCEP**);
- The Bay of Plenty Regional Natural Resources Plan 2017 (**BOPRNRP**);
- The Whakatāne District Plan 2017 (**WDP**); and
- Te Mahere Whakarite Matatiki Taiao ō Ngāti Awa - Ngāti Awa Environmental Plan 2019 (**NAEP**).

[217] The Project is proposed to take place in the following areas:

- WDP Rural Plains Zone (boat harbour site);
- WDP Coastal Protection Zone (access channel);
- RCEP Coastal Environment; and
- RCEP Coastal Marine Area (dredging);

which are subject to the following overlapping overlays:

- WDP Significant Indigenous Biodiversity Site BS138A; and
- RCEP Indigenous Biological Diversity Area IDBA A44;

and

- BOPRC Designation D112: Flood Control Reserve.

[218] We note that while both the Bay of Plenty Regional and Whakatāne District Councils identified specific matters of detail in their invited comments on which they considered further information was required, neither raised any matters of concern regarding the scope, coverage or interpretation of their plans¹⁰⁰.

[219] Furthermore, neither the Ministers for Arts, Culture and Heritage, and Climate Change, nor the Director-General of Conservation raised national policy or plan interpretation matters.

[220] As we have already noted, the Panel has carefully considered the question as to whether, as proposed, the application qualifies as significant regional infrastructure under the BOPRPS / BOPRCEP – and can therefore access the discretionary activity status as *specified infrastructure* under the NPSFM (3.21) / NESF (Reg 45). We sought further clarification from the BOPRC on the question and, having received¹⁰¹ and reviewed that detailed advice, have accepted that it so qualifies and satisfies the NPSFM policy requirement of 3.22(1)(b). In reaching that conclusion we also note the relationship between the present application and the wider Whakatāne Regeneration Programme as set out in the business case for the approved Provincial Growth Fund application¹⁰².

[221] As outlined in chapter 4 of the AEE the activity will take place in zones and overlays noted above and requires consents under the various regional and district plans and national instruments that, when bundled as proposed¹⁰³, attract an overall non-complying activity status. While bundling across district, regional and national instruments is not absolutely required, doing so ensures a degree of assessment and evaluation conservatism that might not otherwise occur.

[222] That proposed overall status was not disputed and we have proceeded on that basis, bringing s 104D RMA into play, noting that the specific activities that are classified as non-complying activities are:

¹⁰⁰ Acknowledging that BoPRC would have preferred the matter be dealt with by way of a private plan change to the established RCEP Harbour Development Zone.

¹⁰¹ Response to further information request, dated 23 March 2022.

¹⁰² Refer AEE, section 1.2.1.

¹⁰³ AEE, section 4.9.4.

- WDC Rule 15.2.1.7: indigenous vegetation clearance to construct the access channel in SIBS BS138A;
- WDC Rule 15.2.1.12: channel and wetland remediation works in SIBS BS138A; and
- BOPRCEP Rule SO 14: new regionally significant infrastructure requiring works in and to the Kopeopeo Canal for the access channel and embankment structures, and operation and maintenance, within IBDA-A44.

[223] We note that the specific requirements for consent and those sought are identified in the AEE at sections 4.3 – 4.6. There was no dispute about those matters and therefore, in the interest of efficiency, we adopt those sections for present purposes rather than repeat them at this point.

[224] We also note that section 4.8 AEE identifies other potential consents that may subsequently be required but that are not presently sought. Those are not considered by the Applicant to be necessary at this time, nor are they considered to be necessary in determining the present Application. The Panel agrees with that conclusion and sees no need to invoke s 91 RMA to that end.

[225] With respect to those *specific* non-complying activity matters affecting a portion of the regionally significant IBDA-44A and SIBS BS138A, occasioned by the Project requirement to enlarge the access channel area, the AEE notes¹⁰⁴ that the natural heritage provisions of the RCEP require either the avoidance of adverse effects or an explanation as to why any such effects are either minor or acceptable (policies NH5-7 and 16-17).

[226] In response, the AEE observes the following:

- *All adverse effects on the IBDA-A44 wetland cannot be avoided (Policy NH 5(c)). The siting and alignment of the proposed access channel has been designed with a 'light touch' approach and therefore, minimises adverse effects on the values of IBDA-A44 to the extent practicable.*
- *Other potential effects (such as effects on avifauna and aquatic species) are able to be managed so that they are no more than minor.*
- *Based on the ecological advice, the adverse effects of the encroachment into, and disturbance of, the IBDA-A44 area are mitigated through the re-creation*

¹⁰⁴ AEE, section 9.5.2, pages 236 – 237.

of new salt marsh wetland within the same wetland system thus increasing the extent of this type of wetland by 15% within the IBDA-A44 site. Therefore, the proposal will generate a net environmental gain and no more than minor adverse effects on the wetland (Policy NH 6(b) and (d)).

- *As the adverse effects of the Project will be no more than minor (Policy NH 7(a)), and as it results in a net ecological benefit the Project satisfies Policy NH 7.*
- *Proposals that meet the tests of Policy NH 7 to be considered for consenting are required to be considered against the criteria at Policy NH 16(a) – (g). Based on the descriptions and assessments of the Project earlier in this report, the Project complies with those criteria.*
- *For the reasons outlined above, the Project also meets Policies NH 11 and NH 12, both of which require that there is no net loss of saltmarsh wetland.*

[227] Having considered those matters the Panel agrees that the works and mitigation proposed are acceptable in terms of those policy directions.

Section 104D RMA

[228] The AEE discusses the two non-complying activity s 104D gateway tests at section 9.9 – those tests being that the adverse effects will be minor (s 104D(1)(a)) or that the activity will not be contrary to the objectives and policies of the relevant statutory plans (s 104D(1)(b)). The RMA requires that at least one of those tests is satisfied in order that a grant of consent can be considered.

[229] With respect to the s 104D(1)(a) *adverse effects* test, the AEE concludes¹⁰⁵, based on the expert technical reports provided with the application, that the adverse effects of the project can be avoided, remedied and / or mitigated to the extent that the residual adverse effects will be minor.

[230] The Panel’s findings on adverse effects follow later in this decision.

[231] With respect to the s 104D(1)(b) *not contrary to* test, the AEE concludes¹⁰⁶ that the project is “highly consistent with” the BOPRCEP¹⁰⁷ and “consistent with” the WDP¹⁰⁸ (noting that the RMA defines “plan” to mean a regional or district plan (s

¹⁰⁵ AEE, section 9.9.1.

¹⁰⁶ AEE, section 9.9.2.

¹⁰⁷ AEE, RCEP, section 9.5.

¹⁰⁸ AEE, WDP, section 9.7

43AA), thereby excluding a national or regional policy statement or environmental standard). The AEE concludes similarly with respect to the BOPRNP¹⁰⁹.

[232] Furthermore, we note that under the WDP, marine precinct activity is a discretionary activity in all zones except Rural Ohiwa and the Coastal Protection Zone (where it is an NCA – if not prohibited in the Awatarariki High Risk Debris Flow Policy Area). Provision is thereby made in both relevant zones – noting that section 3.7 of the Plan includes dual assessment criteria in both zones for discretionary and non-complying activities - albeit for a higher standard of assessment. We therefore agree that it is not contrary.

[233] As noted above, the BOPRCEP also provides policy direction for activities in regionally significant areas, such as IBDA-44A, with which the proposal is able to comply.

[234] We accept that the application passes the s 104D(1)(b) test.

[235] That finding is sufficient for the Application to move forward to a s 104 determination.

¹⁰⁹ AEE, RNP, section 9.6.

PART H: EFFECTS ASSESSED

[236] The application contains technical supporting reports dealing with potential effects and investigations across a range of disciplines and topics including:

- Archaeology;
- Biosecurity;
- Coastal processes;
- Contaminated land;
- Cultural impact;
- Engineering, Infrastructure and construction;
- Landscape;
- Lighting;
- Marine exhaust;
- Marine and freshwater ecology;
- Navigation safety;
- Noise and vibration;
- Recreation and tourism;
- River modelling;
- Traffic;
- Water quality; and
- Wetland and terrestrial ecology.

[237] The AEE also references¹¹⁰ sections of the PGF Business Case in discussing the positive social and economic effects of the proposal – in terms of employment, fiscal benefits and revenue streams, and public amenity.

¹¹⁰ AEE section 7.2.

[238] Because of the particular requirements of the FTCA, the “usual” consideration of effect matters addressed by an applicant – through (often) independent technical reviews by the consent authority and technical submissions from interested parties, expert conferencing, and testing at hearing – does not occur as a matter of course. Expert Consenting Panels are therefore dependent to a high degree on issues being raised (but not examined because of the tight timeframes) by those few persons who are required to be or are invited to comment under cl 17 Schedule 6 of the FTCA.

[239] Those invited comments, in turn, elicit responses from the Applicant, which may be supplemented by further information requests issued by the Panel through the EPA under cl 25 FTCA. The ability to request and to respond are subject to further tight deadlines – including the maximum period that the application may be suspended in order, for example, to respond to such requests. This “compression” is evident in the resulting number of management plans proposed that will require subsequent certification by one or other of the councils.

[240] In that respect, the FTCA process can be considered a “high trust” model. Once accepted as a referred project (as in this instance), unless an application’s assessment of effects is obviously deficient in material respects, a Panel has limited inquiry ability and is, to a degree, constrained to accept the assessments and conclusions presented.

[241] The AEE concludes¹¹¹ its review of the technical assessments as follows:

The technical assessments identify that the Project gives rise to numerous potential adverse effects. However, the technical assessments have recommended feasible controls and measures that can be readily implemented through consent conditions to avoid, remedy and / or mitigate the adverse effects of the Project.

Overall, it is concluded that, subject to implementation of the recommended management measures, the adverse effects generated by the construction and operation of the Boat Harbour will be no more than minor.

[242] The following section therefore summarises the Applicant’s findings on the respective effect matters, noting where additional issues have been raised by invited commentators (recommendations for additional consent conditions are

¹¹¹ AEE, Section 7.6.

included in a later section below). Having considered those matters, we include our finding under each heading.

Archaeology

- [243] The archaeological assessment report by Lynda Walker of InSitu Heritage Limited concludes that no recorded or visible archaeological sites will be affected by the proposed construction of the Te Rāhui Boat Harbour and that the low probability justifies having an Archaeological Site Discovery Protocol in place during all earthworks as added insurance.
- [244] The NZHPT did not dispute that finding but sought a modified discovery condition – which we have accepted.
- [245] The Panel accepts the conclusion.

Biosecurity

- [246] The biosecurity assessment report by Dr Dan McClary concluded that the location of the boat harbour in the upper reaches of the estuarine area of the Whakatāne River is a key biosecurity mitigation and that, managed to world-class standards, would provide a net environmental and biosecurity benefit to the local area through, for example, having a dedicated and secure out-of-water vessel cleaning and maintenance facility.
- [247] The Panel accepts the conclusion.

Coastal processes

- [248] The coastal processes assessment report by Haughey and Reinen-Hamil of Tonkin + Taylor concludes that there are likely to be only very localised and small changes to currents in the river as a result of the Boat Harbour, access channel and targeted dredging of shallow parts of the lower river and estuary. These changes occur in the river in the immediate vicinity of access channel. Furthermore, within the wider river, estuary and open coast environment there are no significant changes that will have a measurable impact on coastal processes. Therefore, present day and potential future climate change induced coastal and river processes are likely to occur with no observable change as a result of the proposed development.
- [249] The report accepts that the formation of the Boat Harbour, access channel and targeted dredging within the riverbed will result in small and localised changes to sediment transport processes. Therefore, in order to maintain the operability of

the Boat Harbour, it is likely that ongoing maintenance dredging will be required when navigation is restricted by sediment accumulation.

[250] It also notes that debris accumulation following significant river flooding may also result in blockages of the access channel to the Boat Harbour that will require clearance to maintain operability as part of the maintenance regime required to maintain the Boat Harbour and access.

[251] Finally the report notes that climate change effects are likely to require upgrades and modifications of the stopbank levels on both sides of the river as flood levels will exceed current stopbank crest heights at some point in the future. This will result in a need for upgrades and changes to the stopbank and perimeter levels of the Boat Harbour for continued protection of the low-lying land currently protected by the stopbanks.

[252] The report concludes that any effects of the physical system, including flows, water levels and sediment transport regimes is very localised, focussed around the access channel and within the immediate vicinity of the dredged areas of the riverbed.

[253] The Panel accepts the conclusion but has amended the proposed conditions relating to dredging.

Contaminated land

[254] The contaminated land detailed site investigation report by Brendon Love of Hail Environmental Limited concludes that although existing investigations have not encountered contaminants that exceed applicable soil criteria, some uncertainty still exists associated with the quality of uncontrolled fill which was historically placed onsite and the potential for isolated hotspots of contaminants to be encountered during the works. It notes that control measures will be required for the proposed remediation of woodwaste in the adjoining wetland but that laboratory analysis results show that dioxin and heavy elements within the proposed access channel are within background range.

[255] The report advises that if unexpected waste or contamination is encountered during development, contingency measures and additional testing will need to be implemented. Temporary erosion and sediment control measures will be essential to manage containment of this material while further investigation is completed.

[256] The Panel accepts the conclusion.

Cultural impact

[257] These effects are discussed above in section F.3 of this decision.

Engineering, Infrastructure and construction

[258] The Infrastructure assessment report by Emily Afoa for Tektus Consultants Limited, with associated appendices, outlines the essential engineering, infrastructure and construction effects based on the proposed civil engineering design and three waters and flood hazard management systems. Of note is the attention given to the existing flood protection infrastructure and the two pump stations – the district council’s (aka Lysaght) Hub pump station in the vicinity of the boundary intersect between proposed stages 2 and 3, and the BOPRC’s Keepa Road pump station and Kopeopeo Canal overflow channel (part of the Whakatāne-Tauranga Rivers Scheme) at the head of the proposed access channel. The applicant also proposes to adopt relevant design elements of the Te Aranga Principles, Mātauranga and Wayfinding in the final detailed engineering design phase.

[259] A construction management plan is proposed for each of the three stages of construction – and will incorporate a number of associated management plans (e.g. erosion and sediment control, stormwater, dust, traffic, noise etc). These are relatively routine, industry standard, measures.

[260] The report concludes that adequate provision can be made to service Te Rāhui Herenga Waka Whakatāne, in accordance with relevant guidelines and standards, and without causing adverse impacts on existing networks, other properties, or the environment.

[261] We note that the engineering report was subject to review by both councils.

[262] Waka Kotahi raised a concern about:

- (a) the proximity of cut and fill activity to the state highway road reserve;
- (b) the absence of a geotechnical engineering assessment as to potential land stability effects on adjacent land, including the road reserve;
- (c) the need to identify what network improvements were considered necessary, when and how those were to be funded and delivered; and
- (d) the need for a specific stormwater drainage assessment to identify and address potential adverse effects on the state highway road reserve.

[263] WDC noted:

- (a) the need for integrated and coordinated infrastructure upgrading;
- (b) the need for further information about water demand, the impact of wastewater flows from the Boat Harbour on the wastewater network, and how stormwater will be managed; and
- (c) whether the storage of hazardous goods has been assessed against the WDP provisions.

[264] Horizon Networks advised that access to and transporting high loads in the vicinity of its assets needed to meet other defined processes and permits.

[265] BOPRC expressed a concern that no geotechnical assessment of the risk of liquefaction had been presented.

[266] The Panel accepts the overall conclusion but has amended the geotechnical engineering condition to provide for, among other matters, additional assurance regarding the resulting stability of the stopbank and the road reserve.

Landscape

[267] The landscape assessment report by Brad Coombs of Isthmus Group Limited notes that views from Te Hokowhitu a Tū ki te Rāhui Marae through the site towards culturally significant sites at Kohi Point and on and above the Whakatāne escarpment are protected through the design and location of the site and buildings.

[268] The report concludes, in summary, that:

- (a) the adverse natural character effects will be very low;
- (b) the adverse landscape character effects will be low;
- (c) the adverse visual amenity effects will be either low or very low; and
- (d) the adverse urban design and building effects will be either very low or positive.

[269] Overall the report concludes that the site is well suited for a boat harbour development and any natural character, landscape and visual amenity effects arising from the proposal on the receiving environment are acceptable, provided

that the landscape and urban design considerations of the proposal are implemented.

- [270] The Panel accepts the conclusion and has added a condition requirement to ensure that the viewshaft from Te Hokowhitu a Tū ki Te Rāhui Marae towards the culturally significant sites of Kohi Point, the escarpment behind the urban area of Whakatāne and the Kāpūterangi pā site is maintained (as far as the project is concerned).

Lighting

- [271] The lighting assessment report by Lawrence Wood of LDP Limited notes that while no lighting design has yet been undertaken nor luminaire type or location identified, a worst-case scenario was assumed and assessed. On that basis, and in view of the surrounding zoning and WDP rules and standards, the report concludes that light spill and glare will comply, and the additional lighting effect will be negligible.

- [272] The Panel accepts the conclusion.

Marine exhaust

- [273] The potential effect of boat motor exhaust on the water quality of the Whakatāne River was assessed and reported by Mark Crooks of Babbage Consultants Limited. The report concludes that in-river concentration of the more toxic constituents of unburnt hydrocarbons (UHC), the contaminant of concern, will be below current environmental protection guidelines, and such discharges will be relatively brief occurring only during transit to or from the river mouth. Adverse effects on water quality are concluded to be less than minor.

- [274] The Panel accepts the conclusion.

Marine and freshwater ecology

- [275] The marine and freshwater ecology assessment report by Stephen Brown and Stella McQueen of Wildland Consultants Limited notes that the Whakatāne estuary supports a diverse flora and fauna, including species of high ecological and cultural value that utilise the marine and estuarine habitats, and concludes that:

- (a) Overall, effects on the marine habitats, biotic communities, and freshwater fauna in the estuary from construction of the access channel are likely to be no more than minor, and construction of the access channel is likely to have a positive effect through provision of new habitat;

- (b) the risk of harmful ecological effects to the marine and freshwater environment through the release of contaminants (particularly dioxins) during excavation and dredging associated with the construction of the access channel is low provided that appropriate mitigation measures are applied;
- (c) Given that there are flood events in the catchment carrying sediment loads into the estuary that cause turbidity and sedimentation of much greater magnitude and duration than is likely to result from the proposed dredging activity, effects on freshwater biota of dredging associated with the boat harbour development will be comparatively minor and temporary in nature;
- (d) Taking into consideration the existing maintenance dredging that already takes place in the harbour entrance and approaches, the additional effects of dredging to maintain the navigability of approaches to the proposed boat harbour are expected to be no more than minor;
- (e) Effects on the marine and freshwater ecology of the estuary resulting from the installation of navigational aids are expected to be negligible;
- (f) The exchange of water within the boat harbour will be sufficient to avoid stagnation that would lead to eutrophication and associated detrimental effects on aquatic organisms;
- (g) If revetment structures lining the sides of the boat harbour and access channel are composed of rip rap or similar complex hard substrate it will provide settlement surfaces and favourable habitat for estuarine species, providing a positive ecological outcome as this habitat type is currently rare in the estuary;
- (h) Development of the proposed boat harbour, access channel, and navigation channel is not expected to result in adverse effects on the ecology of the outer coast; and
- (i) Freshwater aquatic vegetation is largely absent from the estuary due to the salinity, turbidity and tidal fluctuation. Freshwater aquatic invertebrates are likely to have a negligible presence due to the salinity.

[276] The Panel accepts the conclusion with the conditions that are imposed.

Navigation safety

[277] The navigation safety assessment report by Captain J Dilley and V Muir concludes that the navigation to, from and around the boat harbour in the river and access channels will not be particularly demanding given the sheltered location, generally low river levels and tidal currents, and the layout and construction of the boat harbour, which is designed to meet Australian Standard AS3962-2001. There are no navigation safety matters that are not adequately addressed by existing Maritime Rules and Bylaws as is evident by the current safe navigation of vessels in the more congested area off the town wharf and navigationally challenging areas of the approach, bar area and entrance channel.

[278] Furthermore, the report notes that there is a management system in place to regulate and control the movement of vessels at Whakatāne and its bar entrance. This includes bylaws, local harbourmaster staff, provision of real time information and educational material. The report concludes that there no significant matters of navigation safety within the proposal.

[279] The Panel accepts the conclusion.

Noise and vibration

[280] The acoustic assessment report by Micky Yang of Marshall Day Acoustics Limited concludes that:

- (a) Construction noise and vibration can readily comply with the applicable limits;
- (b) Operational noise is predicted to comply with the applicable limits at occupied sites, subject to controls on garnet blasting; and
- (c) Potential infringements in the CPZ zone are acceptable because it is not an occupied site.

[281] The Panel accepts the conclusion.

Recreation and tourism

[282] The recreation and tourism assessment report by Rob Greenaway of Rob Greenaway & Associates observes that the proposal will result in the creation of a shared recreation space in an area currently occupied by – in the main – one form of aquatic recreation: small unpowered recreation craft. It notes that while overlap between such activities is common nationally, it is a local change and will require current users to adopt new approaches to their activities, particularly considering

the installation of permanent aids to navigation. The report concludes that residual effects on river users upstream of the Whakatāne Yacht Club will be unavoidable.

[283] However, the report agrees that while the partial occupation of the preferred low-tide channel on the true left of the river by the access channel to the Boat Harbour will require additional navigational awareness by all users, the northern channel access as proposed is clearly preferable from a recreation perspective to a southern option.

[284] The report also notes that considering that a lack of public access adjacent to the proposed development area – and more importantly at the location of the proposed Boat Harbour access channel – is a feature of the existing environment, the proposal has low potential to reduce existing amenity for access to and along the coast. However, it is reasonable to assume that the stopbank on the true left of the river will eventually be developed for public access for its full length. If that occurs in the future, consideration will need to be given to how access around the proposed access channel could be provided. It concludes that without consideration for providing for public access to and along the coast, the proposal has the potential to limit future local recreation amenity.

[285] The Panel accepts the conclusion.

River modelling

[286] The numerical river modelling report by Ben Tuckey of DHI Water & Environment Limited concludes that:

- (a) The boat harbour will have good flushing for spring tides. The northern basin of the boat harbour will also have good flushing for neap tides, while the southern basin of the boat harbour will have fair flushing for neap tides.
- (b) A reasonable flood flow could fill in the dredge channel within the vicinity of the boat harbour entrance and begin to spill into the boat harbour entrance channel. If significant sedimentation were to occur, the current speeds generated through the boat harbour entrance are not large enough to maintain a channel;
- (c) The boat harbour will have no impact on maximum water levels for the range of river flows simulated;
- (d) Over the course of a year, it is estimated there would be up to 12 mm of siltation within the boat harbour basin;

- (e) With respect to the regionally significant Whakatāne Heads surf break: with a predicted increase of 2.7% to 4.2% of the peak ebb flow, these minimal changes in outflows will have no significant effect on the dynamics of the ebb delta, especially when considering how drastically and rapidly the bar bathymetry can change with high energy wave conditions and a flood in the river.

[287] The Panel accepts the conclusions with the conditions imposed.

Traffic

- [288] The traffic assessment report by Chris Rossiter of Stantec notes that four accesses are proposed enabling separation of different vehicular activities – such as the separation of large truck movements associated with the commercial fishing and aquaculture activity from the movement of light vehicles associated with other commercial activity and from the recreational boating activity. Three of those access points exceed the required minimum sight distances for the posted speed limit and current speed environment. The primary commercial boat harbour access (Driveway 1) falls short to the south (140m where 200m is required) on the assumption that Keepa Road will be reclassified in due course from a local to an arterial road.
- [289] The report records that when fully developed 200-220 vehicle movements per hour are predicted to be generated across all four accesses during the morning and evening commuter peaks. In concert with planned land use development in 2036, that will require improvements to the state highway network to increase its capacity across the Whakatāne River and at the SH30 / Landing Road roundabout.
- [290] The report concludes that, with those otherwise required improvements in place, the proposed boat harbour will not contribute to adverse effects on the road network.
- [291] Waka Kotahi raised a concern about the potential traffic effects on the state highway network – particularly regarding the unspecified volume and frequency of construction vehicle traffic.
- [292] WDC noted the need for integrated and coordinated transportation infrastructure upgrading.

[293] As noted and addressed above, Te Hokowhitu a Tū Marae was concerned about the safety risk to those attending their activities from both additional traffic on Keepa Road and from the access directly adjacent the marae driveway.

[294] The Panel accepts the conclusion with the conditions imposed, noting the need in due course to address the wider network transportation issues.

Water quality

[295] The water quality assessment report by Brendon Love of Hail Environmental Limited concludes that:

- (a) Sediment quality upstream of the Harbour Development Zone (HDZ) and within the proposed boat harbour access channel is generally within the regional background range, so any disturbance of sediment during dredging is unlikely to result in the discharge of toxicants to fresh water;
- (b) Baseline data indicates that water quality of the Whakatāne River in the proximity of the proposed works is generally good; and
- (c) The potential effects on river water quality associated with navigational dredging upstream of the HDZ and within the boat harbour access channel are considered no more than minor.

[296] Whakatane Yacht Club (WYC) was concerned about potential downstream sedimentation effects on its facility, both from capital and maintenance dredging and from increased vessel movement (wave and propeller wash).

[297] The response from Richard Reinen-Hamill of T+T concluded:

- (a) That present sedimentation effects experienced by WYC are more likely due to changes to the inlet to the sea and the flood and ebb delta;
- (b) Boat wake sediment disturbance effects at the regulated vessel speed (i.e. 5 knots maximum) would be low;
- (c) There would be small scale changes in suspended sediment due to vessel movements and largely localised around the entrance to the access channel; and

- (d) Suspended sediment concentrations will be low and the volumes of movement small in relation to the larger scale movements within the river and estuary system.

[298] BOPRC was concerned that:

- (a) The coastal discharge may receive greywater discharges from the site;
- (b) No assessment had been provided of potential contaminant loads being discharged into the environment and whether the effluent discharge from the treatment system can meet proposed water quality guidelines; and
- (c) No groundwater quality information is provided in relation to the site and the organic materials that were reported to be buried on site.

[299] The Panel accepts the conclusion with the conditions imposed and that accommodate WYC and BOPRC's concerns to the extent necessary.

Wetland and terrestrial ecology

[300] The further assessment of ecological effects report by William Shaw and Chris Bycroft of Wildland Consultants Limited considered the potential for effects on the adjacent wetland complex (Keepa Road Scenic Reserve, IBDA-A44 / SIBS BS138A), recognised as of high ecological significance.

[301] The report notes that the wetland complex is dominated by raupō with smaller areas of sea rush and oioi and other wetland species, and provides good habitat for mātātā/fernbird, with multiple pairs present during the field surveys. It may also provide habitat for other wetland bird species of conservation concern

[302] It also notes that much of the area that would be affected by widening the existing flood overflow channel for the Kopeopeo Canal (for the boat harbour access channel) is exotic grassland but that two small areas of saltmarsh wetland on each side of the channel would be affected, with up to 0.1 hectares of saltmarsh wetland to be lost. That loss is calculated to be 1.5% of the wetland complex in IBDA-A44 – to be offset by re-creating 0.93ha of saltmarsh wetland in the "reclaimed" area of woodwaste to the north of the channel.

[303] The report concludes that if these matters are addressed in an ecologically appropriate manner, considerably more wetland habitat will be provided and overall ecological effects will be minor, due to the small area of wetland habitat to be lost and the much larger area of ecologically-equivalent wetland habitat to be

re-created and restored at the site. That would maintain and enhance the ecological values of IBDA-A44, SIBS BS138A and Keepa Road Scenic Reserve, and would be undertaken in a manner that is consistent with the approach as set out in the NPSFW 2020. A finalised Restoration Plan was submitted.

[304] BOPRC expressed concern about a missed opportunity to obtain a net gain in habitat and biodiversity values through the restoration of the remaining exotic grasslands and surrounding the wetted habitats.

[305] The Panel accepts the conclusion and notes the finalised restoration plan and mitigation in the conditions imposed.

Conditions

[306] All the above technical reports provided advice and recommendations on conditions or provisions that should be imposed to ensure that the adverse effect assessment conclusions reached are sustained.

[307] As will be evident below in this decision, the Panel has broadly accepted those recommendations except as we discuss.

PART I: COMMENTS ON CONDITIONS

- [308] In the following we do not comment on changes made to the Applicant's final set of proposed conditions (dated 22 May 2022) where those are of a clarificatory, syntactic or typographic nature. Furthermore, unless otherwise indicated the Panel has accepted the Applicant's final set of conditions as amended (noting that those had been formally discussed with both councils in advance).
- [309] For convenience, we summarise the changes we have made in the final condition set we impose.

1.1 General Conditions

- [310] In draft condition 1.1.3.1 the Applicant proposed a *green light* provision if the certification timeframes stipulated are not met by council, whereby works can commence. This proposed condition is not a deeming provision as such as the plans still require certification. The two councils were concerned about the appropriateness of such a condition.
- [311] The Applicant's reasoning for the condition was that the plans that required certification would already have been reviewed by the Reference Group of which both councils were members and therefore the detail would not be a surprise. Furthermore, as the reports to the councils were required to also indicate responses to matters raised in or by the Group, further inquiry was unlikely to be necessary. Accordingly, there should be no problem meeting the specified timelines for response.
- [312] The above logic, we note, actually argues against necessity for the provision – although it does assume, correctly or not, that the councils' representative on the Reference Group will be the same person to whom a particular plan will eventually be referred for certification.
- [313] Having said that, we agree with the Applicant that a project should not be held up, with associated costs, simply because the regulator fails to meet a required timeline – without good reason – and conditions should not provide an open-ended timeframe.
- [314] However, the Panel sees practical difficulties with the proposed provision. Apart from the fact that certification consideration may still bring matters to light that require addressing, and the works having commenced may cut across that option, many of the matters that are required to be certified are technical and complex.

While it is to be expected that council will attend to any submitted matter with due diligence, there are any number of reasons why a timeframe may not be met – availability of technical or professional advice being but one obvious one. The Panel therefore does not accept that provision and declines to impose it.

1.2 Pre-construction conditions

- [315] 1.2.1.2: We agree with the Department of Conservation that timeframes should be stipulated where practicable.
- [316] 1.2.2.1: We agree that the omission of Te Patuwai was an error and should be corrected by inclusion in the Tangata Whenua Liaison Group.
- [317] 1.2.3.1: The WYC sought the inclusion of itself and the Eastern Bay Canoe Racing Club in the Community Liaison Group (CLG). We agree.
- [318] 1.2.3.6: RF&BPS sought that proposed changes to plans, rather than approved plans, be referred to the CLG. We disagree – that consideration is the function of the Reference Group.
- [319] 1.2.4.2v: BOPRC recommended deleting this requirement as the discharge would meet the 90% criterion after reasonable mixing. We agree.
- [320] 1.2.5.2j: RF&BPS suggested adding a species-specific advice note. We see no harm in accepting that suggestion. That advice note is repeated in 2.6.1c.
- [321] 1.2.10.2: We have included the BOPRC in the list of restoration plan implementation parties as it had noted that it had not had the opportunity to confirm the draft restoration plan.
- [322] 1.2.12.1e: We have accepted the Applicant’s suggestion of an advice note clarifying the process for a site visit in the event of any proposed changes to plans.
- [323] 1.2.14.2: The Applicant disagreed with the requirement for the Geotechnical Investigation Report (GIR) to address stability aspects of the project on adjacent land. We disagree. We note Waka Kotahi’s concerns in that regard and consider the requirement both necessary and appropriate.

1.3 Construction conditions

- [324] 1.3.3.1: HNZPT sought amended archaeological discovery provisions. While we agree there is a degree of overlap with the cultural Accidental Discovery Protocol, we accept that any such overlap is best negotiated by the parties concerned at the

time rather than providing a potentially conflicting demarcation in the conditions. HNZPT's provision is accepted.

[325] 1.3.4.2c: RF&BPS sought a 50m or 40m rather than a 30m works buffer around any occupied nests. We agree with the Applicant that no justification for that extension was provided in evidence and the technical evidence was that 30m would be sufficient. We accept that latter evidence.

[326] 1.3.4.3c: DOC sought an advice note to the effect that access to the Keepa Road Scenic Reserve for works purposes would require approval under the Conservation Act. We find that appropriate.

1.4 Post-construction reporting

[327] 1.4.3.1f/g: BOPRC noted that the 2130 climate change adjusted 1% AEP was the more typical standard. We agree.

1.5 Operational conditions

[328] 1.5.4: BOPRC sought to include sediment monitoring with and in addition to water quality monitoring. We agree and have so incorporated.

2.2 Architecture and urban design report

[329] 2.2.2f: RF&BPS sought to delete the word "visible". We disagree. The standard visual amenity rule relates to structures visible from public places.

4.9 Navigational aids

[330] 4.9.1: WYC sought the inclusion of the Eastern Bay Canoe Racing Club as a party to be consulted. We accept.

4.11 Stormwater discharge quality

[331] 4.11.2 – 4.11.7: BOPRC recommended the deletion of these water quality parameter provisions as unnecessary because the 90% protection standard is likely to be reached after reasonable mixing. We accept.

5.2 Dredging

[332] WYC sought the removal of references to dredging methods that result in sediment resuspension – such as disking or use of agitation pumps. The BOPRC agreed that extractive methods should be preferred.

[333] The Applicant disagreed stating three reasons for allowing the use of non-extractive methods:

- (a) The technical advice from T+T was that the adverse effect would be less than minor, and that advice was not challenged by either BoPRC or WYC with expert evidence;
- (b) Consistent consent conditions with those in place for the Harbour Development Zone would enable collaborative use of the same methodology at the same time; and
- (c) Sediment deposition monitoring condition 5.7 would inform the appropriate methodology for each cycle.

[334] We note that the T+T coastal process report states that the volume of capital dredging for the access channel and in-river dredging is around 26,000m³. Some 4,000m³ of this is within the existing harbour development zone.

[335] While it is common practice for numerical models to be used for assessment purposes, and there was no argument with the work of either DHI or T+T, no physical modelling has been undertaken and no pre-condition sediment dispersal and settlement testing is proposed. The monitoring proposed either requires the water clarity and suspended sediment results to be relayed to BoPRC from 2 and up to 20 working days after each dredging campaign is completed (conditions 5.1.3 and 5.6.5) or reported annually in the case of capital dredging monitoring (condition 5.7.3). That, of course, would not prevent significant sedimentation in the interim if that were to occur.

[336] In the circumstance we find that it is more appropriate to condition on the side of caution. We agree that those methods should not be used as other methods that will not have that effect are readily available. The conditions are amended accordingly.

[337] Furthermore, we note that, should the monitoring demonstrate that sedimentation concerns are misplaced, a subsequent condition change application to enable non-extractive methods should be relatively straight-forward.

5.6 Dredging – Monitoring of water clarity and quality

[338] 5.6.2 – 5.6.5: WYC sought a variation on the proposed monitoring and reporting of dredging water quality results. We are not persuaded that the proposed amendment

adds anything material to the conditions proposed. We agree that requiring daily monitoring during dredging is appropriate as is proposed.

Other matters raised by invited commentators

[339] The Minister for Climate Change in a late comment to the draft conditions noted that the,

“draft conditions don’t require an adaptive management plan as suggested in my comments of 8 April. I submit that a condition be added requiring the development of an adaptive management plan that is specific to impacts on the site, to manage the adverse effects of water level (tidal and flooding) on the facility”.

[340] While the Panel accepted and noted the late comment, it felt that the issue was addressed to the extent it could properly be addressed through condition 1.4.3.1 (f) of the conditions of consent.

[341] The Panel also felt constrained by the fact that the current regime of stopbanks operated by the BOPRC along both sides of the Whakatāne River is closely regulated so that the flood banks along the right bank of the river (the town side) are higher than those along the left bank so that in flood events the countryside to the north of the Whakatāne township would be flooded before the town itself.

[342] Given that there is a regime in place controlling (or at least seeking to regulate) flood water levels with specific policies in place regulating the height of stopbanks along the margins of Whakatāne River it was considered more appropriate to leave further regulation for the future management and direction of BOPRC. To apply an adaptive management regime to one particular area when the left bank at the river in this area is already the subject of height regulation by BOPRC would have been inappropriate.

[343] The Panel is satisfied that the conditions imposed meet the general intention of the Minister’s concern.

[344] Heritage New Zealand Pouhere Taonga sought a modified accidental discovery condition. The Minister for Arts, Culture and Heritage endorsed the HNZPT comments.

[345] The Panel has accepted the condition proposed.

PART J: STATUTORY PURPOSE

[346] Clause 31(1) of the FTCA requires the Panel in considering this application to take Part 2 of the RMA 1991 into consideration. That is however subject to s 6 of the FTCA applying instead of s 8 of the RMA.

Purpose of the FTCA

[347] Clause 31(1) of the FTCA requires the Panel to consider the application against the purpose of the FTCA. That purpose is to “urgently promote employment to support New Zealand’s recovery from the economic and social impacts of COVID-19 and support the certainty of ongoing investment across New Zealand, while continuing to promote the sustainable management of natural and physical resources”.

[348] The Panel has reviewed the Applicant's assessment of the purpose of the FTCA at section 10.1 of the AEE. It accepts that the Project will advance the purpose of the FTCA by promoting employment to support recovery from the economic and social impacts of COVID-19. It enables the certainty of ongoing investment across New Zealand and more particularly, having regard to the Whakatāne Regeneration Programme, within the eastern Bay of Plenty providing for the overall well-being of the Whakatāne community, while continuing to promote the sustainable management of natural and physical resources.

Part 2 (Purpose) of the RMA

[349] Schedule 6, Clause 9(1)(g)(i) provides that every application for a referred project must include an assessment of the activity against Part 2 of the RMA. This was provided at section 10.2 of the AEE.

[350] The matters to which we must have regard when considering a referred application for consent are expressed as being subject to Part 2.¹¹² In our view, further reference to Part 2 of the RMA would not add anything to the evaluative exercise undertaken above.¹¹³

[351] However, for completeness, the Panel has reviewed the Applicant's assessment of Part 2 of the RMA at section 10.2 of the AEE.

[352] The Applicant has advanced a detailed Application strongly advocating that the Project would be a use and development of natural and physical resources in a way which enables the Whakatāne community to provide for its social, economic, and

¹¹² Schedule 6, clause 31(1).

¹¹³ *RJ Davidson Family Trust v Marlborough District Council* [2018] NZCA 316.

cultural well-being while sustaining natural and physical resources and at the same time safeguarding the life supporting capacity of water, soil and eco-systems and avoiding, remedying or mitigating any adverse effects on the environment.

[353] The Panel accepts that assessment, including the Applicant's view that the Project will promote the sustainable management of natural and physical resources.

[354] The Panel also refers to its discussion in Part F above regarding section 6 of the FTCA. It notes that the history of the relationship of Māori with the Crown in this area is set out at length in the Application and the supporting documentation. The record detailed in the Supporting Statement on behalf of TRLT is also noted. This development is in the opinion of the Panel, a tangible way of allowing Māori to exercise development of their land which has in the past been difficult to develop through its size and location. It has been used in the past as a site for the disposal of woodwaste, a highly inappropriate use of the land, and more recently to grow maize. Not only is the Project entirely in accord with the regeneration programme for Whakatāne, as Ms Hunia says,¹¹⁴

“(t)he long term benefits of the project are empowering in that the Trustees (of the Te Rāhui Lands Trust) are able to exercise Rangatiratanga over the whenua while safeguarding their inherited responsibilities as Kaitiaki”

[355] While there are a considerable number of plans to be prepared and certified to enable the Project to be implemented, development work behind those plans is well advanced within the application documents as listed in Table 1 to the proposed conditions attaching to the grant of consent, which the Panel has determined can be given.

¹¹⁴ Supporting Statement, p.19, para 86

PART K: FINAL CONDITIONS

[356] The Applicant has provided the Panel with a number of iterations of the conditions it has suggested as appropriate having considered the draft conditions prepared by the Panel and a number of ancillary matters.

[357] Quite late in the process the Panel referred various issues applicable to conditions back to BOPRC and the District Council. Their replies were forwarded to the Applicant who in turn responded to the Panel.

[358] The final three points which were troubling the Panel were:

- (a) The possible effects of sedimentation on the existing harbour channel if some forms of dredging were used to form the new harbour channel, such being an issue of concern to the Whakatāne Yacht Club;
- (b) The requirement for a geotechnical investigation report before construction works commenced; and
- (c) The certification process.

[359] The sedimentation issue is discussed in Part H – Effects Assessed - see paras 295-299 of this decision.

[360] The requirement for a geotechnical report was re-considered by the Panel but it has determined that such is appropriate. Its reasons are:

- a) This is an area of high seismic activity and there is a concern about liquefaction;
- b) The integrity of the existing stop banks for the Whakatāne River and their ongoing stability is an important public issue;
- c) The engineering of the construction of the boat harbour in close proximity to existing infrastructure necessitates a cautious approach; and
- d) Any works in the immediate vicinity of the State Highway network similarly necessitates careful consideration and Waka Kotahi was specific in its request for such a condition.

[361] As we note above in paragraphs 310 - 314 with respect to the certification of plans, we understand the possible frustration of the Applicant in that the conditions it

reviewed only permitted work to commence when the plans were certified. We note that while BOPRC agreed with the Panel, the District Council was ambivalent to such a requirement.

- [362] Certainly what the Applicant proposes is an improvement on the original draft conditions which envisaged certification as being deemed to have been given if not actually given by the applicable authority within the specified time allowed. We however believe such conditions would have been ultra vires. A local authority cannot be deemed to have exercised a statutory function when it has not actually performed that function.
- [363] We have however reached the conclusion that what the Applicant proposes is in effect not significantly different from certification being deemed to have been given. We cannot see how work can be permitted to commence and how the applicable conditions of consent could be said to be enforceable if work commences but the plans for that work are not certified by the appropriate certifier.
- [364] We consider that for any work to be undertaken such should only be undertaken pursuant to an approved plan. We understand the two councils have asked for the 30 working day period to ensure their ability to process and certify or require further information and that this has been agreed to by the Applicant. Nevertheless we find that work should only commence pursuant to a plan once that plan has actually been certified. The councils have given commitments to meet the specified timelines and it is to be hoped that such commitments are met.
- [365] As limited by cl 37(8)(a) of the FTCA, a lapse period of 2 years from the date of commencement is imposed on all conditions, with a 10 year expiry date on both the regional land use consent and discharge permit, and 35 years on the coastal permit. Those latter terms were as sought by the Applicant and were not in dispute.

PART L: FINAL DECISION

- [366] The consents sought are granted subject to the conditions in attached to this decision. Any person entitled to appeal on a question of law to the High Court who wishes to do so must do so within 15 working days from the date they are notified of the decision.
- [367] If no such appeal is filed, the Consents will commence 16 working days after every person has been notified of this decision and will lapse unless given effect to within the timeframes provided for in the conditions.



Graeme Mathias (Chair)



David Hill (Member)



Sheena Tepania (Member)

APPENDIX 1

Summary of Resource Consents being Sought

Whakatāne District Plan

- Land use consents as a:
 - Non-complying activity for:
 - Indigenous vegetation clearance within a SIBS-A of up to 2,000 m² per year, where the sum of all disturbances does not exceed 2 ha or 10% of the scheduled feature on that site within a Schedule A area; and
 - Modification of any natural landform, earthworks, deposition of fill or excavation within a scheduled feature in the SIBS-A area.
 - Discretionary activity for:
 - Earthworks in the Rural Plains Zone;
 - Operational noise - Noise from all proposed activities which exceed the noise limits specified in Table 11:1 when measured at any point within the receiving zones of the Industrial, Light Industry, Coastal Protection and Rural Plains Zones;
 - Signage – provision for signage within the site which infringes Permitted Activity Rule 11.2.19.1;
 - Diesel Fuel Storage – provision for 75,000 L above ground diesel tank;
 - “Marine precinct activities” in the Rural Plains Zone;
 - Building Height - Buildings in the Rural Plains Zone on lots larger than 5,000 m² in area that exceed 12 m in height; and
 - Hazardous Facilities - activities involving a hazardous substance; the sites at which and structures within which hazardous substances are used, stored, handled, or disposed of.
 - Restricted discretionary activity for:
 - Earthworks in the CPZ that exceed 200 m² and 100 m³ during any 12-month period; and
 - Distance to boundaries - Buildings which do not comply with the setback requirements in the District Plan.

Bay of Plenty Regional Coastal Plan

- Coastal permits as a:
 - Non-complying activity for:
 - Construction, use and maintenance of new Regionally Significant Infrastructure in an Indigenous Biological Diversity Area-A.

- Discretionary activity for:
 - Disturbance, deposition and extraction of the seabed and foreshore a in Indigenous Biological Diversity Area A and areas of Outstanding Natural Character associated with the construction, use and maintenance of the Boat Harbour (inclusive of dredging of the access channel and navigational channel within the Whakatāne River);
 - Take, damming and diversion of coastal water; and
 - The placement of navigational aid structures and their occupation and use in the coastal marine area (being the main body of the Whakatāne River).
 - Restricted discretionary activity for:
 - Stormwater discharge into coastal waters from the Boat Harbour; and
 - Dredging of the Boat Harbour and access channel where these are not located in the Harbour Development Zone or the Port Zone.

Bay of Plenty Natural Resources Plan

- Land use consent as a:
 - Discretionary activity for:
 - Earthworks exceeding 1 ha in area and 5,000 m³;
 - Earthworks in the Riparian Management Zone exceeding 500 m² and 500 m³; and Te Rāhui Herenga Waka Whakatāne Ltd - COVID-19 Recovery (Fast Track Consenting) Application – Assessment of Environmental Effects 4
 - The modification of a wetland located in the bed of a river, the disturbance, removal, damage of any plant or the habitats of any plants or animals in the wetland.
 - Restricted discretionary activity for:
 - Disturbance of land and soil from vegetation clearance in the Riparian Management Zone on slopes no greater than 35 degrees; and
 - Disturbance of a contaminated site by a volume greater than 400m³.

Resource Management (National Environmental Standard for Assessing and Managing Contaminants in Soil to Protect Human Health) Regulations 2011

Land use consent as a restricted discretionary activity for:

- Exceeding the thresholds for soil disturbance in Regulation 8(3) and not meeting the controlled activity requirements of Regulation 9(1); and
- Not meeting the permitted activity requirements for changing land use in Regulation 8(4) or the controlled activity requirements in Regulation 9(3).

Resource Management (National Environmental Standards for Freshwater) Regulations 2020

Land use consent as a:

- Discretionary activity under Regulation 45 for the construction of specified infrastructure (including vegetation clearance, earthworks, and land disturbance, and taking, use, damming, diversion, or discharge of water) within, or within a 10 m setback from, a natural wetland.
- Restricted discretionary activity:
- Under Regulation 47 for the maintenance and operation of specified infrastructure in a natural wetland; and
- Under Regulation 39 for the restoration activities in a natural wetland.

APPENDIX 2

Parties From Whom Comments Were Received

- 1) Heritage New Zealand Pouhere Taonga
- 2) Royal Forest and Bird Protection Society Inc
- 3) Whakatāne Yacht Club Incorporated
- 4) Minister of Climate Change
- 5) Minister of Arts, Culture and Heritage
- 6) Director-General, Department of Conservation
- 7) Te Rūnanga o Ngāti Awa
- 8) Whakatāne District Council
- 9) Bay of Plenty Regional Council
- 10) Dianne Sharma-Winter
- 11) Te Hokowhitu a Tū ki Te Rāhui / Wharewera Whānau and supporting individuals
- 12) Te Hokowhitu a Tū Marae / Ngāti Hokopū ki Te Rāhui hapū
- 13) Whakatāne Harbour Care Group
- 14) Waka Kotahi NZ Transport Agency
- 15) Pupuaruhe ki Te Rāhui and supporting individuals
- 16) Horizon Networks
- 17) Whakatāne Rowing Club
- 18) Petroleum Logistics Limited