

**ENVIRONMENT COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I MUA I TE KOOTI TAIAO O AOTEAROA
TE WHANGANUI-A-TARA**

ENV-2023-WLG-000005

Under the Resource Management Act 1991

In the matter of the direct referral of applications for resource consent and notices of requirement under sections 87G and 198E of the Act for the Ōtaki to North of Levin Project

By Waka Kotahi NZ Transport Agency

**SUBMISSIONS FOR MUAŪPOKO TRIBAL AUTHORITY
ON CULTURAL CONDITIONS**

17 October 2023

INTRODUCTION

1. These submissions are on behalf of the Muaūpoko Tribal Authority as a s274 party and concern the issue of cultural conditions and objections to them.
2. Evidence from MTA's expert witness, Siobhan Karaitiana, explains:
 - 2.1 The assessment of the project impacts on Muaūpoko and the development of cultural mitigation conditions to mitigate effects of the project on Muaūpoko;
 - 2.2 The early development of those conditions, and Muaūpoko agreement not to lodge them with the project documentation, and waiting for Ngāti Raukawa representatives to explain what the concerns were to see if they could be addressed.
3. In the absence of any clear statements about precisely what Ngāti Raukawa's concern is with the wording of the cultural conditions, with Muaūpoko reluctantly concluding that it had no option but to bring the issue before this hearing.

WHAT THE CONDITIONS CURRENTLY PROVIDE

4. Muaūpoko has now considered and is generally happy with the conditions as lodged by Waka Kotahi's planner on 12 October 2023 (these were seen only after MTA rebuttal evidence had been filed).
5. Below is a quick overview of the conditions as the MTA understands them. Ms Karaitiana can speak to them in detail:
 - 5.1 The project must implement the most recent version (ie lodged with councils) of the Muaūpoko Management Plan and Ngāti Raukawa Management Plan (DGA2);
 - 5.2 The management plans must be prepared prior to commencement of construction (DTW3&4);
 - 5.3 The relevant iwi will be invited to endorse a person/s to prepare their management plans (DTW3&4);
 - 5.4 The objective and the minimum requirements for each management plan are set out (Schedules DTW3&4). In the case of Muaūpoko (Schedule DTW3) the objective is:

"to manage the adverse effects of construction and operation of the Ō2NL Project on the cultural values of Muaūpoko with particular focus on their management in the Horowhenua Block, which to Muaūpoko is now their heartland."

- 5.5 And the Muaūpoko plan must include provision for narrative and cultural connection with four named places (Arapaepae, Whakahoro, Ohau, and Pukehou), for connections 'ki uta ki tai' and for a number of species. What this looks like is to be developed through detailed design and the management plans, and includes the requirement to consult with Ngāti Raukawa and detail the outcome of this process.
- 5.6 In the case of Muaūpoko, if the Management Plan specifies strategies for narratives and cultural connections at specific places, those must be provided for within the relevant cultural landscape of that place, and Waka Kotahi must "investigate and support the implementation of built elements, traditional names and planting' (DTW3(b)). The Raukawa plan does not have this provision.
- 5.7 However, the Raukawa plan (Schedule DTW4) includes the following:
- (i) Provides for 'investigation' of narratives and cultural connections at places that Raukawa has yet to identify;
 - (ii) Provides for 'investigation' of narratives and cultural connections for species that Raukawa has yet to identify;
 - (iii) Includes specific works or 'mahi toi', harvesting and naming at Waikawa Stream;
 - (iv) Provides for restoration works at Te Repo o Hinemata wetland; and
 - (v) Details of a "Cultural Health Monitoring Framework.
- 5.8 In addition:
- (i) There is an Iwi Partner Steering Group that, among other matters, 'co-ordinates' the development of the iwi management plans (DTW1A), but does not determine their final content ie no veto.

- (ii) There is a Cultural Environmental Design Framework (CEDF) – an audit of the CEDF forms part of the outline plan process (see DGA6(c)(ii)). The Project iwi Partners will be invited to complete the chapter on the cultural landscape (DTW5 (f)).
- 6. Muaūpoko text for Chapter 2.3 of the CEDF, which provides background to the mitigation that is sought, has been with the project partners for over a year and is attached to Ms Karaitiana's evidence. There are different versions of this internally. The conditions (DTW5 as a whole) anticipate that, provided text does not breach the "Core Principles", including mutual respect, it must be included.
- 7. In this regard, Ms Karaitiana seeks wording that “Muaūpoko should be invited to insert their information”. Waka Kotahi proposes "iwi partners will be invited to complete the Cultural Landscape section". It would be better to say “Muaūpoko and Ngā hapū o Raukawa will be invited to insert their information into the Cultural Landscape section consistent with the Core Principles”.

LEGAL REQUIREMENTS FOR CONDITIONS

- 8. The controlling law for conditions in this context is Part 2¹ matters, including section 6(e), and the general requirement that conditions are focussed on mitigation of the effects of the work and are clear and enforceable.

PART 2

- 9. The Court is required to consider evidence of any impacts of the project on the "relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga" per s6(e). Conditions should address any such impacts.
- 10. Muaūpoko conditions respond to effects of the project on cultural values and seeks mitigation related to those effects – as set out in the evidence filed by Di Rump, Dean Wilson and Siobhan Karaitiana and in the earlier CIA.²
- 11. The Ngāti Raukawa objections in the evidence of Mr Kiriona and Mr Parr do not provide clear details of why the particular conditions are problematic.

¹ Section 171(1), 171(2) and for Part 2 see *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991 at [118] “Section 171(1) and the considerations it prescribes are expressed as being subject to Part 2. We accordingly have a specific statutory direction to appropriately consider and apply that part of the Act in making our determination.”

² Rump, D., Procter, J., Wilson, D., and Karaitiana, S. (2022). Assessment of Effects on Muaūpoko Values; Ōtaki to North of Levin Highway Project. Muaūpoko Tribal Authority and Lake Horowhenua Trust.

12. Assuming that the argument is that Muaūpoko somehow lack mana in the project area (which seems to be a view held by some Ngāti Raukawa about the nature and extent of their 19th century raupatu in the project area):

12.1 This development is very much in the Muaūpoko 'contemporary heartland', including its two marae,³ and hundred acres of Maori freehold land including 400 hectares held by the iwi which forms the bed of Lake Horowhenua. The Waitangi Tribunal's 2017 *Muaūpoko Priority Report* of 709 pages discusses the Horowhenua 'heartland'.⁴

12.2 To give a recent RMA example, in 2022 the Horowhenua District Council approved Plan Change 4, which provides for a new large subdivision called Tara-Ika, immediately east of Levin, and which adjoins a section of this proposed expressway. Plan Change 4 records:⁵

Muaūpoko have a very strong and enduring relationship with the Tara-Ika area, as it is an area where they have worked, cultivated, hunted and gathered resources for over 1000 years. Tara-Ika sits between areas of high cultural association to Muaūpoko, including Punahau (Lake Horowhenua) and the Tararua Ranges, and is therefore part of important physical, ecological, visual and spiritual pathways.

12.3 The objectives provide:

Policy 6A.1.3

Subdivision, land development and open space reserves in Tara-Ika will acknowledge, protect, and celebrate Muaūpoko values, history, and local identity in the following ways:

- Use of Muaūpoko names, among others, for streets and reserves;*
- Protection of culturally significant sites and their values;*
- Prioritise use of locally sourced indigenous plants in street and reserve planting;*

³ Kawiu at 294 Kawiu Road, Levin and Kohuturoa at 306 Hokio Beach Road.

⁴ Pages 50ff.

⁵ <https://www.horowhenua.govt.nz/files/assets/public/v/2/districtplan2015/ppc4/proposed-plan-change-4-tara-ika-growth-area-chapter-6a-tara-ika-objectives-and-policies-decision-version-14-june-2022.pdf>

- *Muaūpoko Accidental Discovery and Tikanga Protocol to be observed during site works.*

- 12.4 All appeals on the Plan were recently settled and no appeals were taken on those statements.
- 12.5 The nature and extent of the Ngāti Raukawa raupatu in the early 19th century was a matter of very active dispute before the Courts in the late 19th century and continues to be argued among historians today;⁶
- 12.6 Section 6(e) is concerned with wider matters than mana anyway. The relationship with ancestral lands is not limited to mana whenua;⁷
- 12.7 The Environment Court has no power to rule on customary rights per se, and should only make determinations on culturally disputed matters where the issues are clearly cut.⁸ Situations where there are layers of customary interests will be common.⁹ That is clearly the case here.
- 12.8 The cultural mitigation sought by Muaūpoko in these areas could not practically diminish the mana of a large iwi with a significant presence in the region.
13. It is noteworthy that Muaūpoko has not objected to conditions providing for Ngāti Raukawa values to be recognised via 'mahi toi' at Waikawa Stream and has provided active support for the restoration works at Te Repo o Hinemata wetland (through design of the wetland offset package).

REQUIREMENTS FOR CONDITIONS TO BE CLEAR AND ENFORCEABLE

14. As the Court minute of 13 October 2023 notes, conditions must be certain, workable, enforceable and clear on their face and not unlawfully delegate decision making.

⁶ Ms Rump's evidence references historical research by Bruce Stirling, produced in the ongoing Waitangi Tribunal inquiry into historical claims in this district. Bruce Stirling *Muaūpoko Customary Interests Report for Waitangi Tribunal Wai 2200*, #A182 September 2015.

⁷ And, as the Supreme Court has recently noted "even within its own tikanga framework, mana whenua is neither immutable nor incapable of adaptation to new circumstances." *Wairarapa Moana Ki Pouākani Inc v Mercury NZ Limited* [2022] NZSC 142.

⁸ *Ngāti Maru Trust v Ngāti Whātua Ōrākei Whaia Maia Ltd* [2020] NZHC 2768 at [67]-[69].

⁹ *Ngāti Maru Trust v Ngāti Whātua Ōrākei Whaia Maia Ltd* [2020] NZHC 2768 at [73]-[74].

15. A recent example is Plan Change 4 and Policy 6A.1.3 noted above. The requirements for recognising Muaūpoko values are reduced to concrete and certain actions.
16. The same is true of the conditions. In this case providing for Muaūpoko cultural values to be upheld at four sites, and in association with four species, as well as the 'mahi toi' and naming at Waikawa Stream and restoration works at Te Repo o Hinemata wetland.
17. The list of further sites where Ngāti Raukawa seeks mitigation are 'to be confirmed'. These need to be spelt out in similar fashion.
18. In conclusion, MTA seeks to have the Court approve the conditions for the CEDF, and the provision for mitigation of specified sites as a requirement of the Muaūpoko management plan under DTW3.



TH Bennion

Counsel for Muaūpoko Tribal Authority