

**Hearing Committee Report and Decision on a
resource consent application by the New
Zealand Transport Agency to install erosion
protection works for State Highway 3 in the
Tongaporutu Estuary**

Taranaki Regional Council
Private Bag 713
STRATFORD

4 February 2013

Doc# 1137691

**Report and decision
of a Committee of the Taranaki Regional Council which heard,
commencing at 1.30 pm on 12 December 2012,
at the Taranaki Regional Council offices, Stratford,
an application by the New Zealand Transport Agency.**

The application seeks to install a reinforced earth embankment with an armoured toe and occupy the associated coastal marine area on the foreshore at the Tongaporutu Estuary, for erosion protection purposes.

The application, made in accordance with the Resource Management Act 1991 [the RMA] was lodged with the Taranaki Regional Council [Council] and is referenced as application 6932.

Present

Commissioners:

Cr David Lean [Chairperson]
Cr Michael Joyce
Mr Buddy Mikaere

Applicant:

New Zealand Transport Agency

John Jones [on behalf of applicant]
Cole O'Keefe [on behalf of applicant]

Taranaki Regional Council Officers:

Colin McLellan	Consents Manager
Kim Giles	Consents Officer
Darlene Ladbrook	Senior Consents Administration Officer
Janette Harper	Consents Administration Officer

Submitters:

Nga Hapu o Poutama

Russell Gibbs [on behalf of submitter]
Haumoana White [on behalf of submitter]

Description of Proposed Activity and Existing Environment

1. The application by the New Zealand Transport Agency (NZTA) is to install a reinforced earth embankment with an armoured toe on the foreshore at the Tongaporutu Estuary to repair an underslip threatening State Highway 3 (SH3).
2. The subject site is located on the seaward side of SH3, approximately 335 metres to the north of the Tongaporutu River Bridge (Figure 1). The road embankment at the site is approximately 200 metres in length and was constructed in the 1950s. There are two existing consents for protection structures adjacent to the site of this application (6951-1 & 5582-1).

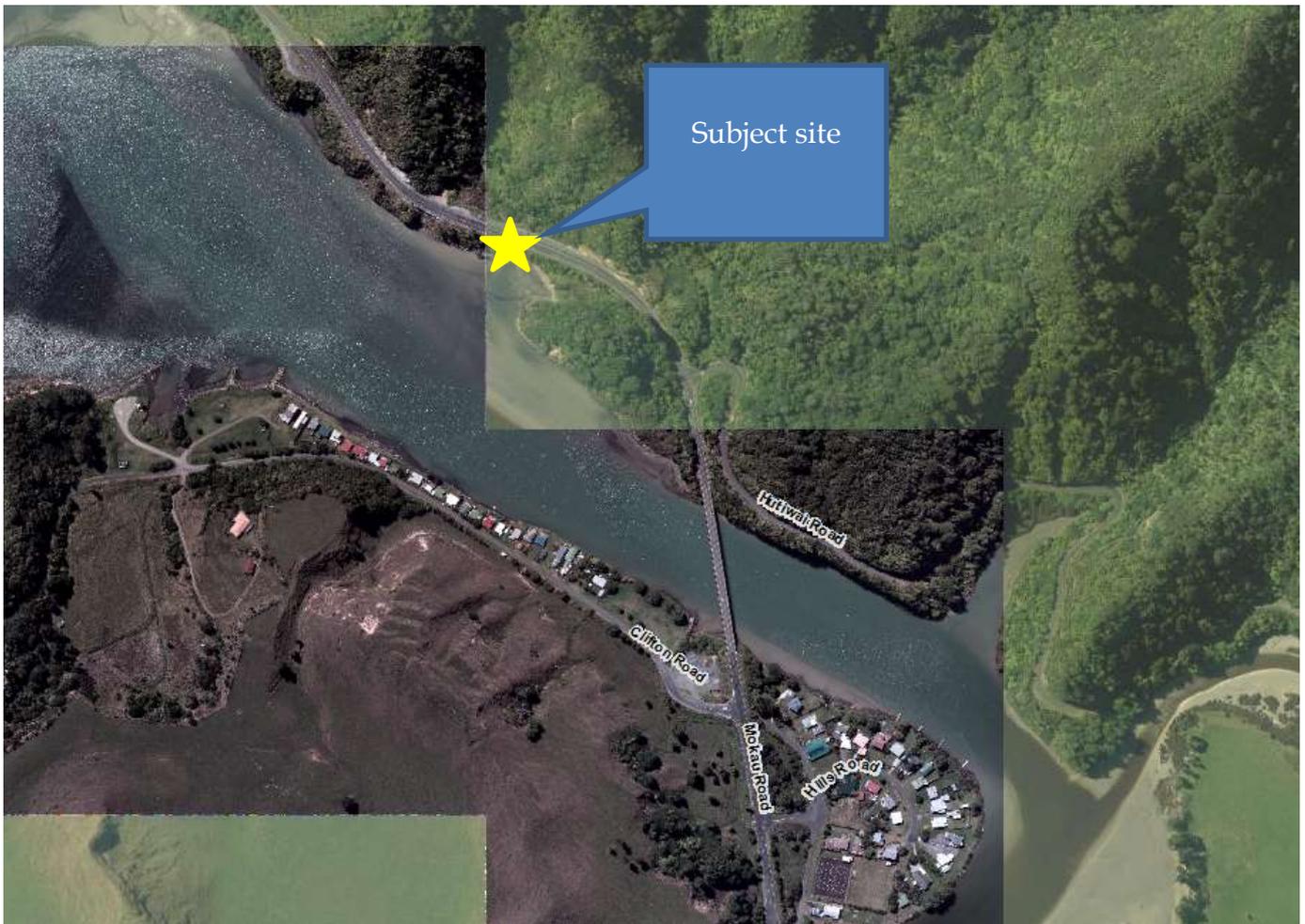


Figure 1: Aerial photo illustrating the location of the proposed works.

3. The underslip is located approximately 80 metres south of the northern end of the embankment, adjacent to an area of bank which has previously been stabilised with mass blocks and rock works. The slip area is 8 metres high and 28 metres long (at the base). The Tongaporutu Estuary is located directly below the underslip, and the Pou Tehia Historic Reserve is located approximately 50 metres southeast of the underslip.

4. The proposed works include construction of an engineered slope with select hard fill, including coastal erosion protection in the form of concrete anchor mass blocks and armour protection. Drainage measures are also proposed, including subsoil drains within the engineered fill and a concrete dish drain or kerb and channel along the edge of the state highway closest to the slope.
5. The use of concrete mass blocks requires excavation of the soft estuarine sediments at the base of the wall. Large angular rock is to be placed in this cutting to form a base designed to provide suitable bearing capability to prevent settlement and slumping of the heavy mass blocks above.
6. An engineering report provided with the application proposes that the works will be undertaken as follows:
 - assemble materials at site to ensure no delays to work once started;
 - excavate bench at the estuary level out from face of the slip to accommodate regraded slope;
 - place rock as base for mass block wall along the front of the slip face and to the north to link with the existing mass block wall;
 - lower mass blocks to estuary level and then place precisely using an excavator
 - fill behind mass block wall with local sand or selected imported fill;
 - remove vegetation, loose and unsuitable material from slope face;
 - construct engineered slope surface from imported fill in predefined lifts using excavator and a compactor roller;
 - install filter drainage and reinforcement as specified; and
 - undertake soil stabilisation as soon as practical after completion of the work.

Regional Plan Rules Affected

7. The application is a discretionary activity under Rule A1.11 of the *Regional Coastal Plan for Taranaki* (RCP), which has been operative since 1997.

Notification and Submissions

8. The application was limited notified on 11 January 2012, in accordance with section 95B of the RMA. Notice was served on Nga Hapu O Poutama [Poutama] as their written approval was not obtained by NZTA.
9. An opposing submission was received from Poutama on 3 February 2012.
10. The submission is that:
 - The submitter opposes the works as its unnecessary damage to waahi tapu, natural character and natural features;
 - There is a history of works failing the area;
 - The issue is generally explained in the Poutama Kaitiaki report dated 4 March 2011 (which was attached to the application);
 - The submitter agrees with NZTA that the issue be reviewed, and that proposed mitigation has not been finalised.

Officer Report

11. Council staff prepared a report [the Officer Report] in accordance with section 42A of the RMA, which was provided to all parties at least five working days before the hearing. The Officer Report included an assessment of the proposal under the provisions of the RMA and recommended that the application be granted to 1 June 2045.
12. The recommendation contained conditions of consent including, restricting access to the work site through the estuary, requiring that no work be undertaken within the estuary at times when there is water covering the work site, and requiring that the embankment be planted in consultation with Poutama.

The Hearing

Procedural Matters

13. The Chairperson, Cr Lean noted that the Committee members were familiar with the subject site and its general area, having visited the site recently.
14. At the start of the hearing Mr Gibbs queried Mr Mikaere's suitability as a Commissioner on the grounds that he had previously been involved in the preparation of a Cultural Impact Assessment (CIA) involving Poutama and therefore would have a conflict of interest.
15. The Chairperson directed that the hearing proceed and advised that he would address the question of Mr Mikaere's suitability as a Commissioner at a later date. He subsequently determined that Mr Mikaere's previous work does not prevent him taking a full part as a hearing commissioner. The reasons for that determination are attached to this decision.

Summary of evidence heard

Applicant

16. Written evidence was presented by Mr Jones and Mr O'Keefe on behalf of NZTA.

Evidence of Mr Jones

17. Mr Jones is a qualified engineer with over 40 years experience in the roading industry. He provided a written statement of evidence which addressed the importance of SH3, the proposed works and the alternatives.
18. Mr Jones stated that SH3 is a significant 'inter-regional lifeline', and the value to the regional community in maintaining this section of state highway to a safe standard is therefore high. He then gave a brief history of works in the area and went on to describe the current proposal. He stated that appropriate mitigation measures would be implemented to adequately avoid, remedy or mitigate any potential or actual effects on the Tongaporutu Estuary and surrounding environment.

19. Mr Jones then discussed alternative methods that were considered and explained why the current proposal had been chosen. He also confirmed that the structure would protrude approximately 2-3 metres into the estuary from the toe of the embankment, as opposed to 6-7 metres as previously advised by NZTA.
20. When made aware by the Committee that it was apparent that the existing block wall needed maintenance, Mr Jones acknowledged that repair of the existing wall could be carried out at the same time the new structure is installed.
21. Mr Jones concluded that the Taranaki and wider public will benefit from the protection works, and that it is important that the works be undertaken to repair the slip in order to protect the state highway from subsidence and consequent damage, and to ensure that the state highway can continue to function in a safe and efficient manner in the future.

Evidence of Mr O'Keefe

22. Mr O'Keefe is a qualified resource planner with over 4 years experience in the planning and transport sectors. He provided a written statement of evidence which addressed the role of the NZTA, previous applications, consultation with Poutama and the Officer Report.
23. Mr O'Keefe provided a number of dates between 2010 and 2012 when MWH (acting on behalf of NZTA) or NZTA met with Poutama to discuss the proposal. He stated that NZTA had consulted thoroughly with Poutama in the view that it could potentially provide the relief Poutama sought, in order to avoid pre-hearing meetings and a hearing.
24. Mr O'Keefe said Poutama advised NZTA that the sandy beach area located between the end of the proposed embankment and Pou Tehia Historic Reserve was a historic waka landing site (tauranga waka) which should not be disturbed or modified during construction of the embankment. NZTA assured Poutama that the waka landing site would not be modified in any manner and that all access to the site would be provided via a benched track cut into the slip face.
25. Mr O'Keefe stated that Poutama believe they were offered surplus land as compensation to mitigate adverse effects on waahi tapu during initial consultation undertaken by MWH. He said that after obtaining legal advice, NZTA's position is that it is not possible to transfer land to Poutama when applying the statutory framework applicable to the application, and have since asked Poutama many times if there is any other mitigation that NZTA could provide to relieve Poutama's concerns. Mr O'Keefe stated the proposal will have less than minor effects (if any) on the waahi tapu site.
26. Mr O'Keefe concluded that the proposal is not contrary to the objectives and policies of the relevant policy documents, and the Assessment of Environmental Effects (AEE) demonstrates that the effects of the proposal will be short term and no more than minor. He advised that NZTA are supportive of the recommendation in the Officer Report and requested that the Committee adopt this recommendation to approve the application with the conditions detailed in the report.

Submitter – Nga Hapu o Poutama

27. The submitter's case was presented by Mr Gibbs and Mr White.

Evidence of Mr White

28. Mr White provided verbal evidence and began by giving a brief cultural history of the area. He said the road was first laid in the 1940's which required graves on Pou Tehia to be shifted.
29. Mr White said he doesn't believe the proposed structure will last, and that the problem would instead be solved if the swamp on the other side of the state highway was drained.

Evidence of Mr Gibbs

30. Mr Gibbs also gave verbal evidence and stated that he did not agree with both the application and paragraph 59 of the Officer Report which state that the location of the proposed structure does not contain any known cultural values. Mr Gibbs went on to say that the tauranga waka is located in the same location as the proposed structure, and he was concerned that the presumption of 'no known cultural values' had influenced the assessment of environmental effects presented in the application and the Officer Report.
31. He said Poutama were very clear about the subject site being a waahi tapu as there is a large midden located under the road. The road cut through the urupa in the late 1940's and was backfilled over the waahi tapu (tauranga waka), therefore the embankment is laid over the waahi tapu which NZTA now proposes to excavate.
32. Mr Gibbs said that during initial consultation undertaken by MWH (on behalf of NZTA), surplus land was offered to Poutama as compensation. He said Poutama were happy to accept land as compensation, as it is undesirable to trade cash for damage to waahi tapu. However as this transaction never eventuated, Mr Gibbs said the Committee should decline the application on the basis that the proposed location of the structure contains waahi tapu.
33. Mr Gibbs said he believed the biggest cause of the failure of existing structures was the runoff from the road. He said some drainage work has already been done which has helped so far, however in order to fix the problem the swamp on the opposite side of the state highway should be drained. He also said that localised widening of the state highway was not a 'do nothing' option as stated in paragraph 19 of Mr Jones' evidence, as he believes draining the swamp and widening the road will fix the problem without having to install the proposed structure.
34. Mr Gibbs concluded that draining the swamp will have less adverse effect than installing the proposed structure, and because of the presumption that the subject site does not contain waahi tapu, he feels that proper weight has not been given to alternatives and mitigation.

Presentation of Officer Report

35. The Officer Report was presented by Ms Giles. The report was taken as read and Ms Giles noted the following points:
- Paragraph 24 of Mr O'Keefe's evidence volunteered conditions of consent. These are included as special conditions 7 and 8 of the recommendation;
 - Mr Jones clarifying that the structure will actually only extend 2-3 metres from the toe of the embankment (as opposed to 6-7 metres), does not result in any change to the recommendation.
36. Ms Giles noted that, having heard all the evidence, said she did not wish to change her recommendation from that circulated with the Officer Report.

Applicant's right of reply

37. Mr Jones stated that he would like to complete the works this summer as he believed they may lose a road lane this winter if the works were delayed any further.

Hearing closure

38. Cr Lean, on behalf of the Committee, thanked the submitter and the applicant for the information they provided and the manner in which it was presented.
39. Cr Lean noted that all evidence presented at the hearing would be carefully considered and a written decision would be issued in accordance with the timeframe in the RMA.

Principal issues in contention

40. The RMA requires the Committee to identify the principal issues in contention and the main findings of fact. The principal issues in contention are the effects on waahi tapu, and how recognising and providing for the matters included in Section 6(e) of the RMA impacts on the achievement of sustainable management.

Main findings of fact

41. The Committee deliberated on the application, the submission, the Officer Report, and other evidence presented, with particular regard to the matters which it is required to address under the RMA. The Committee's main findings of fact are detailed in the following paragraphs.
42. Subject to the findings noted here the committee agrees with the assessment and conclusions presented in the Officer Report, including the assessments of section 104 and Part 2 of the RMA. The application achieves sustainable management of natural and physical resources and subject to the consent conditions included in this decision, any adverse effects associated with the proposed activity, including any damage to waahi tapu, can be appropriately avoided, remedied or mitigated. Therefore, the application is to be granted.

43. The area is of significance to Poutama and it is likely the tauranga waka was once larger than it is at present, and has already been significantly compromised by past roading work.
44. Appropriate consent conditions will ensure that any further impact on the waahi tapu will be avoided as far as practicable, and consequently the proposal will not have significant effects on the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.
45. SH3 is an important roading infrastructure for Taranaki and New Zealand and as such ensuring that it continues to function efficiently is significant in providing for the social and economic wellbeing of people and communities.
46. The proposed structure is the most appropriate method of dealing with long term erosion of the state highway embankment.
47. Planting proposed by NZTA should not necessarily be limited to the embankment, and details such as species and extent of planting, should be determined in consultation with Poutama.
48. Maintenance of the integrity of the new structure is essential to avoiding adverse environmental effects and the committee agrees with Poutama that drainage issues in the surrounding area are likely to be contributing to the failure of existing structures. Therefore, requiring NZTA to undertake drainage works will ultimately avoid future adverse effects associated with failure of the structure.
49. The issue of monetary compensation, and questions about manawhenua and historical ownership which were raised by Poutama, are outside the Council's jurisdiction. However, the committee notes that Tangata Whenua, Ngati Tama iwi, gave support for the proposed works.
50. The consent duration and the review provisions, recommended in the Officer Report, are appropriate.

Other matters arising

51. The issue of repairing the existing block wall was also raised during the hearing. Although the Committee cannot require NZTA to carry out maintenance of the existing structures, it strongly supports the notion of undertaking this work at the same time the new structure is installed.

Relevant statutory provisions

52. The relevant statutory provisions are detailed in the Officer Report and, although they form part of this decision, are not repeated in the decision.

Decision

53. The Committee, acting pursuant to the powers delegated to it by the Taranaki Regional Council, and having given due consideration to sections 104, 104B, and 108 of the RMA, hereby grants the following resource consent subject to the conditions detailed in this decision report for a period to 1 June 2045:

Consent 7959-1 [6932] – to install a reinforced earth embankment with an armoured toe and to occupy the associated coastal marine area on the foreshore of the Tongaporutu Estuary, for erosion control purposes.

Consent 7959-1 [application 6932]

That application 6932; to install a reinforced earth embankment with an armoured toe and to occupy the associated coastal marine area on the foreshore of the Tongaporutu Estuary, for erosion control purposes, be approved for a period to 1 June 2045, subject to the following conditions:

General condition

- a. The consent holder shall pay to the Taranaki Regional Council all the administration, monitoring and supervision costs of this consent, fixed in accordance with section 36 of the Resource Management Act.

Special conditions

1. The structure shall be in accordance with the plans prepared by MWH NZ Ltd (Drawing No. Z1902010, Sheet No. C00 and C01), provided with application 6932. In the case of any contradiction between the drawing[s] and the conditions of this consent, the conditions of this consent shall prevail.
2. The consent holder shall notify the Chief Executive, Taranaki Regional Council, in writing at least 48 hours prior to commencement of any works. Notification shall include the consent number and a brief description of the activity consented and be emailed to worknotification@trc.govt.nz.
3. The consent holder shall ensure that the area and volume of foreshore disturbance shall, so as far as practicable, be minimised and any areas which are disturbed shall, so far as practicable, be reinstated.
4. No work shall be undertaken within the estuary at times when there is water covering any part of the work site.
5. Within 12 months of the commencement of this consent, the consent holder shall undertake drainage works to ensure water seepage into the road embankment is avoided as far as practicable, and report back to the Chief Executive, Taranaki Regional Council on the work that has been undertaken.

6. If any area of soil on the embankment is exposed, all run off from that area shall pass through settlement ponds or sediment traps with a minimum total capacity of;
 - a) 100 cubic metres for every hectare of exposed soil between 1 November to 30 April; and
 - b) 200 cubic metres for every hectare of exposed soil between 1 May to 31 October;unless other sediment control measures that achieve an equivalent standard are agreed to by the Chief Executive of the Taranaki Regional Council.
7. The obligation described in condition 5 above shall cease to apply, and accordingly the erosion and sediment control measures can be removed, only when the site is stabilised.

Note: For the purpose of conditions 6 and 7 'stabilised' in relation to any site or area means inherently resistant to erosion or rendered resistant, such as by using rock or by the application of basecourse, colluvium, grassing, mulch, or another method to the reasonable satisfaction of the Chief Executive, Taranaki Regional Council and as specified in the Taranaki Regional Council's Guidelines for Earthworks in the Taranaki Region, 2006. Where seeding or grassing is used on a surface that is not otherwise resistant to erosion, the surface is considered stabilised once, on reasonable visual inspection by an officer of the Taranaki Regional Council, an 80% vegetative cover has been established.

8. After consultation with Nga Hapu o Poutama regarding plant species and the extent of planting, the embankment shall be planted as soon as is practicable and no longer than 6 months after completion of soil disturbance activities.
9. No machinery shall gain access to the work site through the estuary. Any excavation of the estuary shall only occur from within the footprint of the structure.
10. The consent holder shall ensure that during construction periods, the area subject to works shall have sufficient signage to warn the public of any potential hazards.
11. The consent holder shall maintain the structure in a safe and sound state such that:
 - a. it does not fall into a state of disrepair and continues to function effectively for the purpose it was designed i.e. for the protection of State Highway 3; and
 - b. any erosion, scour or instability of the estuary that is attributed to the works carried out as part of this consent is monitored and, if significant deterioration to the estuary occurs, remedied by the consent holder.
12. In the event that any archaeological remains are discovered as a result of works authorised by this consent, the works shall cease immediately at the affected site and tangata whenua and the Chief Executive, Taranaki Regional Council, shall be notified within one working day. Works may recommence at the affected area when advised to do so by the Chief Executive, Taranaki Regional Council. Such advice shall be given after the Chief Executive has considered: tangata whenua interest and values, the consent holder's interests, the interests of the public generally, and any archaeological or scientific evidence. The New Zealand Police, Coroner, and Historic Places Trust shall also be contacted as appropriate, and the work shall not recommence in the affected area until any necessary statutory authorisations or consents have been obtained.

13. This consent shall lapse on 31 March 2018, unless the consent is given effect to before the end of that period or the Taranaki Regional Council fixes a longer period pursuant to section 125(1)(b) of the Resource Management Act 1991.
14. In accordance with section 128 and section 129 of the Resource Management Act 1991, the Taranaki Regional Council may serve notice of its intention to review, amend, delete or add to the conditions of this resource consent by giving notice of review during the month of June 2015 and/or June 2021 and/or June 2027 and/or June 2033 and/or June 2039, for the purpose of ensuring that the conditions are adequate to deal with any adverse effects on the environment arising from the exercise of this resource consent, which were either not foreseen at the time the application was considered or which it was not appropriate to deal with at the time.

For the Taranaki Regional Council:

Dated: 4 February 2013



Cr David Lean [Chairman]



Cr Michael Joyce



Buddy Mikaere

Chairman's determination of Mr Mikaere's suitability as a hearing commissioner on New Zealand Transport Agency's application for resource consent 7959-1

Mr R Gibbs, a representative of Nga Hapa O Poutama (Poutama), a submitter opposing the application, queried Mr Mikaere's suitability as a Commissioner on the grounds that he had previously been involved in the preparation of a Cultural Impact Assessment (CIA) involving Poutama and therefore would have a conflict of interest.

This is a serious matter that I, as Committee Chairman, must rule on.

In investigating the matter I have confirmed that in 2011 Mr Mikaere prepared a CIA, which was one of a number of specialist reports to be used in support of resource consent (and other) applications lodged jointly by Vector Gas Limited and Maui Development Limited (Vector/Maui). The applications were associated with rerouting the two existing gas pipelines that cross Mr Gibbs' farm property south of the Tongaporutu River, and they were granted on a non-notified basis in October 2011. Mr Gibbs worked through cultural and other issues arising from the applications and then gave his written approval for the applications.

The key issue is one of natural justice. The questions that I must determine are, firstly whether Mr Mikaere, by preparing the CIA for Vector/Maui, might benefit from any particular decision on the NZTA application, and secondly whether he has demonstrated any pre-determination of the application.

The CIA was an assessment of the potential cultural issues associated with rerouting the pipelines. It is essentially a statement of the situation as Mr Mikaere sees it based on his expertise and research for the purpose of informing decision makers. Importantly, it does not advocate for any outcome.

I am therefore satisfied that the work done by Mr Mikaere for Vector/Maui has no bearing on this application. He will receive no personal benefit from any particular decision, and he therefore has no conflict of interest.

In addition there is nothing to suggest that Mr Mikaere has pre-determined the application.

My ruling is therefore that Mr Mikaere can take a full part in hearing and determining the NZTA application.



Councillor David Lean (Chairman)