

Māori - infrastructure provider engagement

Huihuinga kaiwhakarato - hanganga
Māori

State of Play





“

Leadership: We see moral codes from traditions and beliefs, looking always to see how these should be practised today and tomorrow.

Respect: We acknowledge and celebrate the distinct but shared aims of each other understanding that we have different roads to take for the wellbeing of Aotearoa.

Share: We share our misunderstandings, our insights, our worries and our triumphs. We accept that good faith, integrity, honesty, transparency and accountability are the standards necessary to build a future trustful relationship.

He Tapuāe: Service Management Plan:
Crown Commitments to Tūhoe, 2021

”





New Zealand Infrastructure Commission | Te Waihanga

New Zealand's infrastructure is the roads we use to get to work or move goods to market, the power connections that heat our homes, the schools where our children learn, and the hospitals that heal us. It's a system, supporting almost everything we do, and this means the decisions we make about it affect us all. Because of the long life and size of our infrastructure, these decisions can also have an impact for decades, even centuries and involve millions or billions of dollars.

The New Zealand Infrastructure Commission | Te Waihanga (Te Waihanga) helps government and others to shape this system, to grow wellbeing and drive a strong economy. We look to the long term, identifying issues and the actions New Zealand can take to improve. We developed New Zealand's first Infrastructure Strategy, using research, evidence and the views of New Zealanders to set out the issues we face, and the changes needed over the next thirty years to build a better New Zealand. Following its release, we're working to help track progress against this Strategy and be a catalyst for its success. We continue to share critical insights into issues that impact our infrastructure, carrying out our own investigations and engagement, shining a light on further opportunities for change.

How to cite this document

New Zealand Infrastructure Commission (2024). *State of Play: Māori engagement in infrastructure – Māori – infrastructure provider engagement*, Wellington: New Zealand Infrastructure Commission | Te Waihanga.

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State of play - Māori engagement on infrastructure
ISBN 978-1-7385911-9-0

Acknowledgements

This report was drafted by **Clare Sinnott**, with supporting analysis and peer review by **Alannah Bradbury**, and supporting analysis by **Chetana Dehya**.

We are grateful for comments and feedback from **Judy Kavanagh**, **John Summers** and **Nicholas Goodman**, Te Arawhiti and the project Te Ao Māori advisory Group members.

We would also like to thank those staff at infrastructure providers, Māori organisations, government entities, contractor firms and consultancies who spoke with as part of this research and Taituarā for helping us to reach out to its members with research questions.



Summary

Engagement is happening in an inherently diverse, fluid and complex environment

The environment within which Māori and infrastructure providers engage on infrastructure initiatives is inherently diverse, fluid and complex.

- Māori are diverse and the differences between, and evolving nature of, Māori groups mean that it is unhelpful for infrastructure providers to make assumptions about what the priorities and aspirations of members of a particular group of Māori will be (even if the infrastructure provider has engaged with members of that group before).
- The government infrastructure sector is also complex. Different government infrastructure providers have different levels of autonomy and different accountabilities, are subject to different funding controls, and take different approaches to how they undertake infrastructure initiatives. Relevant legislation changes regularly. These factors make it challenging for Māori groups who engage on a range of government infrastructure initiatives.

The environment will continue to be complex and evolving. It would help both Māori groups and infrastructure providers to engage effectively in this environment if infrastructure providers improved the extent to which their personnel had visibility of:

- what other parts of their organisation are engaging with different Māori groups on
- what other infrastructure providers (and other government organisations) are talking to particular Māori groups about.

Approaches to increasing the visibility of the engagement that is occurring with different Māori groups across the infrastructure sector need to:

- be practicable to maintain over time
- not place an unreasonable time or cost burden on Māori groups or infrastructure providers

- enable mātauranga Māori (Māori knowledge) (including information about culturally sensitive sites and landscapes) and commercially sensitive information to be treated appropriately.

Why Māori groups and infrastructure providers engage with each other

New Zealand legislation, local authorities, mana whenua groups, and infrastructure sector participants give a very wide range of reasons why Māori groups and infrastructure providers should be, or are, engaging with each other in relation to infrastructure initiatives.

Mana whenua groups' reasons for engaging tend to include:

- to fulfil inherited responsibilities and uphold their status (including as kaitiaki (guardians))
- to enable te ao Māori values to be integrated into infrastructure initiatives
- to achieve broader outcomes for the group (including to ensure that the group's social, and economic interests are taken into account).

Infrastructure Staff's reasons for engaging include some factors focused on achieving particular infrastructure initiatives. However, their reasons are not limited to that, and many of the reasons they give for engaging take a longer-term view.

Mana whenua groups, infrastructure sector participants and local authority websites all see engagement as part of the participants fulfilling their roles under the Treaty of Waitangi | Te Tiriti o Waitangi (Treaty | Te Tiriti).

Trust-based ongoing relationships

There is a lot of debate regarding what the Treaty | Te Tiriti requires. However, there appears to be consensus between mana whenua groups, the New Zealand Courts and infrastructure providers that (whatever else it does or does not require) the Treaty | Te Tiriti obliges both Māori groups and government infrastructure providers to:

- act reasonably, honourably and in good faith, and be genuine, collaborative, and respectful
- listen to what others have to say, consider those responses and then decide what will be done.

There is also a high degree of consensus between mana whenua groups and infrastructure sector participants that the best approach to meet those obligations to act reasonably etc. is to establish and maintain enduring relationships between infrastructure providers and Māori groups.

Factors that both mana whenua groups and infrastructure providers see as necessary for such relationships to be established and maintained are that the relationships are based on trust with the parties:

- genuinely listening to what each other is saying
- having reasonably regular ongoing contact
- having a long-term focus and allowing the time for necessary conversations to occur
- genuinely seeking to address matters of importance to the Māori group (not only matters of importance to the infrastructure provider)
- taking a positive and constructive approach.

Shared decision-making mechanisms currently being used

There are also a number of mechanisms currently being used which, to varying degrees, mean that Māori groups have a share in the decision-making around government infrastructure initiatives. Those mechanisms include:

- inclusion of Māori group representatives on infrastructure project governance or steering groups
- inclusion of Māori as partners within Alliance contracts
- bespoke Treaty | Te Tiriti Settlement Act mechanisms which result in a mana whenua entity having specific decision-making powers that could directly affect infrastructure initiatives
- a joint application by a mana whenua group and an infrastructure provider for resource consents for an infrastructure project
- Te Mana o te Wai statements under the National Policy Statement for Freshwater Management 2020.

For some of those mechanisms it is not clear what role Māori groups have in relation to decisions which affect the cost of infrastructure initiatives. It is also unclear whether the Māori groups and other parties that participate in those mechanisms all share the same understanding of who each of the parties are accountable to.

Engagement in practice

There are some approaches Māori groups and infrastructure providers take to engaging on the planning and delivery of infrastructure that appear to be common across different types of infrastructure and across the country,

- The focus is on engagement between infrastructure providers and individual mana whenua groups (iwi, hapū, rūnanga, and marae):
 - Multiple-mana whenua group fora are generally only used when mana whenua groups choose that approach or there is a statutory requirement to engage with such a group (for example the iwi-Māori partnership boards established under the Pae Ora (Healthy Futures) Act 2022).
 - With one exception (the Ministry of Education engaging with the peak body a kura kaupapa affiliates to and/or Māori whānau who have a long-standing relationship with a school), infrastructure providers do not specifically engage with mātāwaka (non-mana whenua Māori) groups.
 - Infrastructure providers do not generally engage with national or regional-level Māori organisations.
- It is common for engagement to occur at multiple levels – for example governance or senior leadership at infrastructure providers engaging with governance or senior leaders within a Māori group and operational staff at a Māori group engaging with operational infrastructure staff.
- Infrastructure providers are generally either not using, or limiting the use of, external engagement consultants when engaging with Māori groups.
- Personnel at contractors and consultants working on infrastructure initiatives may be involved in engagement with Māori groups but they do so on the understanding that the primary relationship is held by the Māori group and the infrastructure provider.

- There is a reasonable degree of consensus between mana whenua groups and infrastructure providers that infrastructure providers should use publicly available sources to seek to understand a mana whenua group's history, priorities, kawa and tikanga before substantive engagement occurs.
- Generally, infrastructure providers do not develop written engagement strategies or plans for engaging with Māori groups (and instead are guided by a Māori group on how and the extent to which that group wants to engage on a particular initiative).
- Infrastructure providers pay for Māori groups' time, and meet expenses Māori groups incur, in engaging on projects initiated by those infrastructure providers (in the same way as infrastructure providers would pay for other specialist input).
- Where possible, engagement includes multiple kanohi ki te kanohi (face-to-face) meetings (unless a Māori group indicates that that is not required).
- If differences arise between Māori groups during engagement infrastructure providers do not get involved in trying to broker agreement between those groups, but in some situations the parties will use mechanisms that allow those differences to be resolved between the Māori groups separately while other aspects of the infrastructure initiative continue to progress.
- Infrastructure providers generally do not undertake formal reviews of how engagement with a Māori group went on a particular initiative or have a formal process for discussing with Māori groups how their feedback shaped an initiative (with several infrastructure providers commenting that those matters are addressed more informally as part of regular ongoing meetings with a Māori group).

Three areas where there is notable divergence in views or practice are:

- mana whenua groups appear to have a greater level of preference for entering into written relationship Memoranda of Understanding than infrastructure providers
- differences in when and how any specialist Māori engagement staff employed by an infrastructure provider are involved in engagement with Māori groups
- a lack of consensus as to whether which contracting and procurement model an

infrastructure provider uses for a project has a substantive impact on Māori engagement.

There are some issues that appear to arise in relation to many infrastructure initiatives.

- Infrastructure providers often find it difficult to identify which specific Māori groups to engage with or who within a Māori group to engage with.
- It is quite common for infrastructure providers not to identify that some areas of land affected by an infrastructure initiative are multiple-owned Māori land, resulting in the beneficial owners of that land not being engaged with.
- Māori staff within infrastructure providers have multiple accountabilities - their accountabilities as employees/public officials and accountabilities to their iwi, hapū or Māori generally – which may lead to burn-out or other issues.
- There are issues regarding the extent to which Māori groups and infrastructure providers can be open with each other when information relevant to an infrastructure initiative is mātauranga Māori (particularly information about culturally sensitive sites or landscapes), or commercially sensitive.
- Infrastructure providers generally do not specifically budget or account for the costs of engaging with Māori groups.
- The acquisition of land owned by Māori groups for infrastructure initiatives is a matter of particular concern to Māori groups and creates complex future obligations for infrastructure providers/the Crown when land acquired for a project is no longer needed.

He Whakarāpopotanga

He whakapāpā kei te haere i roto i te taiao kanorau ā-roto, kūtere, matatini hoki.

Ko te taiao e whakapāpā ana ngā kaiwhakarato Māori, hanganga hoki, ki ngā whakatakotoranga hanganga, he āhuatanga kanorau ā-roto, kūtere, matatini hoki..

- He tāngata kanorau ngā Māori ka mutu ko ngā rerekētanga i waenga i ngā taiao tipuranga o ngā iwi Māori e whakauaua ana i te pōhēhē o ngā kaiwhakarato he aha koa ngā hiahia ā-whakaarotau, ā-tūmanako o ngā mema ina koa o ia rōpū Māori (ahakoa kua tūtaki kē te kaiwhakarato hanganga ki ngā mema o taua rōpū i mua.)
- He matatini anō hoki te hanganga kāwanatanga. He rerekē hoki ngā apaapa motuhaketanga, haepapa hoki o ia rāngai kāwanatanga, e taka ana ki raro i ngā whakahaerenga pūtea rerekē, e kōkiri ana hoki i ngā aropā rerekē e pēhea ana tā rātou whakahaere kaupapa hanganga. Ki te riterite i ngā waeture whaitake. Ko ēnei tauwehe kei te whakauaua mō ngā rōpū Māori e whakapāpā ana ki ngā kaupapa hanganga kāwanatanga.

Ka matatini, ka whanake tonu te taiao. He āwhina nui ki ngā rōpū Māori me ngā kaiwhakarato hanganga ki te whakapāpā mārika i tēnei taiao mehemea ka whakapikihia e ngā kaiwhakarato hanganga te takiwātanga e kitea atu ai e ā rātou kaimahi:

- ko ēhea atu wāhanga o tō rātou tōpūtanga e whakauru atu ana me ētahi atu rōpū Māori.
- ko ēhea atu kaiwhakarato hanganga (me ētai atu tōpūtanga kāwanatanga) e kōrero ana ina koa ki ētahi rōpū Māori mō .

ngā aropā ki te whakapiki i te kitea atu o te whakapāpā e whakahaeretia ana i waenga i ngā rōpū Māori rerekē puta noa i te rāngai hanganga e matainaina kia:

- māmā ki te tiaki haere noa te wā
- ki te kaua e uta wā uaua, he utu taumaha ki runga i ngā rōpū Māori i ngā kaiwhakarato hanganga
- ki te whakamana mātauranga Māori (hui mai hoki ngā pārongo e pā ana ki ngā wāhi tapu) me ngā pārongo tauhokohoko kia āta tiakina..

Te take i whakapāpā ai ngā rōpū Māori me ngā kaiwhakarato hanganga tētahi ki tētahi.

He tino whānui ngā take e whakaarahia ake ana e te hunga waeture o Aotearoa, e ngā rangatōpū ā-rohe, e ngā rōpū mana whenua me ngā kaiwhakarato hanganga e mea ana me whakapāpā kē ngā rōpū Māori me ngā kaiwhakarato hanganga e pā ana ki ngā kaupapa hanganga.

E whakauru ana ngā take whakapāpā a ngā rōpū Mana whenua:

- ki te whakatutuki i ngā haepapa tuku iho, ki te pupuri hoki i tō rātou mana (pā atu hoki ki ngā kaitiaki)
- ki te whakamana i ngā whanonga pono o te ao Māori kia whakauru ai ki ngā kaupapa hanganga
- ki te whakatutuki i ngā putanga whānui mō te rōpū (hui katoa hoki ki te whakatūturu kia tautokohia ngā whaipānga hapori, ohaoha hoki ā te rōpū).

Ko ngā take whakapāpā a ngā Kaimahi Hanganga e whakauru ana i ētahi āhuatanga e arotahi ana ki te whakaū i ētahi kaupapa hanganga. Heoi anō, kāore ā rātou take e noho noa iho ki reira, he maha ā rātou take whakapāpā e titiro ana ki te pae tawhiti..

E pūrangiaho ana ngā rōpū Mana whenua, te hunga whaiwāhi o te wāhanga hanganga me ngā pae tukutuku mana ā-rohe i te whakapāpā hei wāhanga mō te hunga whaiwāhi ki te whakatutuki i ā rātou takohangaa i raro i Te Tiriti o Waitangi

Whanaungatanga Haere Noa I Rung i Te Whakapono

He maha ngā tautohetohe e pā ana ki ngā whakaritenga o Te Tiriti. Te āhua nei e whakatau ana ngā rōpū mana whenua, ngā Kōti o Aotearoa me ngā kaiwhakarato hanganga (he aha atu anō e hiahia ana, e kore rānei) e matainaina ana Te Tiriti ki ngā rōpū Māori, me ngā kaiwhakarato hanganga kāwanatanga kia:

- mahi tika, whakahōnore i raro i te ngākaupono ā kia motuhenga, mahitahi kia maruwehi hoki.
- whakarongo ki ngā kupu ā ētahi, ki te whakaaro i ngā urupare, kātahi ka whakarite me aha.

He whakataunga nui kei waenganui i ngā rōpū mana whenua me te hunga whaiwāhi o te wāhanga hanganga e mea ana, ko te huarahi pai ki te whakatutuki i aua takohanga ki te mahi tika, ko te whakakaupapa me te poipoi i te wairua whanaungatanga i waenga i ngā kaiwhakarato hanganga me ngā rōpū Māori.

Ko ngā kaupapa e kite ana ngā rōpū mana whenua me ngā kaiwhakarato hanganga he tino whaitake hei whakakaupapa, hei whakaū i te whanaungatanga arā ko te pūmau o te whakapono ki te whanaungatanga i waenga i ngā rōpū ki te whakarongo mārika ki ngā kōrero ā tētahi ki tētahi

- Ki te tūtakitaki ā-haere noa te wā
- he arotahinga haere ake nei e whaiwāhi ai ki te whakahaere i ngā kōrero e tika ana.
- ki te ātā whakarongo ki ngā take whaitikanga ki te rōpū Māori (kaua ki ngā take noa iho e whaitikanga ana ki te kaiwhakarato hanganga)
- ki te whaiwhakaaro ki tētahi huarahi ngākaupai, whaitake hoki.

Ngā pēwheatanga whakatau kaupapa toha ōrite e whakamahia ana i naianei

He maha hoki ngā pēwheatanga e whakamahia ana i naianei e whakarite ana ki ētahi taumata, arā e whaiwāhi atu ai ngā rōpū Māori ki tētahi wāhanga o te whakatau kaupapa e pā ana ki ngā kaupapa hanganga ā te kāwanatanga. E whai ake nei aua kaupapa:

- kia whakaurua atu ngā kaiwhakarite rōpū Māori ki ngā rōpū mana whakahaere kaupapa hanganga, ki ngā rōpū hoe urungi rānei.
- ki te whakawhāiti i te Māori hei hoa haere kōtui i roto i ngā kirimana Hāumi.
- ki te waitohu i ngā pēwheatanga o te Ture Whakataunga Tiriti e whakaāhei ai i tētahi hinonga mana whenua ki te whiwhi whaikaha whakatau tatūnga e whakaaweawe ai i ngā kaupapa hanganga.

- he tono tainohotanga a tetahi rōpū mana whenua me tētahi kaiwhakarato hanganga mō ētahi whakaaetanga rawa taiao mō tētahi kaupapa hanganga.
- Ngā tauākī o Te Mana o te Wai i raro i te Tauākī Kaupapa Here a Nāhinara mō Te Mana Whakahaere Wai Māori 2020.

Kāore e mārama ana he aha te mahi a ngā rōpū Māori mō ētahi o aua pēwheatanga, e pā ana ki ngā whakataunga e whakaaweawe ana i te utu o ngā kaupapa hanganga. Kāore hoki e mārama ana mehemea ka tuari ngā rōpū Māori me ētahi atu rōpū e whaiwāhi ana ki aua pēwheatanga i te whakaaro kotahi kowai te mana whakahaere e taka ana ia rōpū ki raro.

Te whakaharatau whakapāpā

Tērā ētahi huarahi e whakamahia ana e ngā rōpū Māori me ngā kaiwhakarato hanganga ki te whakapāpā atu ki te whakamahere me te whakapuaki hanganga te āhua nei e noho māori ana i roto i ngā tūāhua hanganga puta noa i te motu.

- Ko te arotahi e pā ana ki te whakapāpā i waenga i ngā kaiwhakarato hanganga me ngā rōpū takitahi mana whenua (iwi, hapū, rūnanga me ngā marae)
 - o Whakahaere ā-rangapū hia ai ngā taurea rōpū mana whenua mēnā e tohua ana e ngā mana whenua tērā huarahi, tēnā rānei he whakatau ā-ture ki te whakapāpā ki tērā tuāhua rōpū (hei tauira, ngā poari rangapū iwi-Māori i whakatūria i raro i te Ture Pae Ora 2022.)
 - o I tua atu o tētahi tukunga noatanga (te Manatū Mātauranga e whakapāpā ana ki te rangatōpū matua, kura kaupapa me ōnā piringa katoa, ngā whanau Māori kua roa e mahitahi ana me ngā kura) kāore ngā kaiwhakarato hanganga e whakapāpā ki ngā rōpū mātāwaka (ngā Māori kāore he mana ki te whenua)
 - o Kāore ngā kaiwhakarato hanganga e whakapāpā ana ki ngā rōpū whakariterite ā motu, ā-rohe rāne)
- He āhuatanga māori kia tūpono ngā whakapāpā i ngā kaupae taurea – hei tauira, ngā hautūtanga, ngā kāwanatanga matua o ngā kaiwhakarato hanganga e whakapāpā ana ki ngā rangatira matua o ngā rōpū Māori me ngā

kaimahi whakahaere o tētahi rōpū Māori e whakapāpā ana me ngā kaimahi whakahaere hanganga..

- I te nuinga o te wā kāore ngā kaiwhakarato hanganga i te whakamahi, kei te whakamahi paku rānei i ngā mātanga hāpai whakapāpā i te wā e whakapāpā ana ki ngā rōpū Māori.

Ka whaiwāhi ngā kaimahi ā ngā kaitono me ngā mātanga hāpai e mahi ana i ngā kaupapa hanganga ki te whakapāpā me ngā rōpū Māori, engari ka noho rātou i raro i te mōhio kei te rōpū Māori me te kaiwhakarato hanganga te whakapiringa mātāmua.

- He whakataunga māmā kei wāenga i ngā rōpū mana whenua me ngā kaiwhakarato hanganga e mea ana kia whaiwāhi atu ngā kaiwhakaraato hanganga ki ngā rauemi e wātea ana, kia mārama ai rātou ki ngā hītori, ngā whakaarotau, ngā kawa me ngā tikanga i mua o te whakapāpā motuhake.
- I te nuinga o te wā, kāore ngā kaiwhakarato hanganga e waihangā rautaki whakapāpā tuhi, mahere rānei mō te hui tahi ki ngā rōpū Māori (engari arahi kētia ai rātou e tētahi rōpū Māori i te pēheatanga me te roanga o te whakapāpā ki tētahi kaupapa.)
- Ko ngā kaiwhakarato hanganga kei te utu i ngā hāora me ngā whakapaunga moni e tau ana ki runga i ngā rōpū Māori i te wā e whakapāpā ana ki ngā kaupapa e whakahaeretia ana e aua kaiwhakarato hanganga (he rite tonu ki te utu ā ngā kaiwhakarato hanganga ki ētahi atu mahi mātanga)
- I ngā wāhi ka taea, ka whakaurua mai ki ngā whakapāpā ngā hui taurea kanohi ki te kanohi (engari kāore e whakaurua mai mehemea kāore ngā rōpū Māori e hiahia).
- Mehemea he taupatupatu kei waenganui i ngā rōpū Māori i te wā whakapāpā kāore ngā kaiwhakarato hanganga e whakauru atu ki te whakatau i te raru ā ngā rōpū nei, engari i ētahi tūāhura ka whakaritea e ngā rōpū ētahi tukanga e whakaae ana kia whakatau ā-wehetia ngā taupatupatu i waenga i ngā rōpū Māori kia haere tonu ai ētahi atu āhuatanga o te kaupapa hanganga.
- I te nuinga o te wā kāore ngā kaiwhakarato hanganga e whakahaere arotake whaitikanga i pēhea te whakapāpā i te taha o tētahi rōpū Māori e pā ana ki tētahi kaupapa, e whakahaere tukanga whaitikanga rānei mō te kōrero rānei ki ngā rōpū Māori i pēhea te āhuahanga o ā

rātou whakahoki kōrero i tētahi kaupapa (me te tākupu a ētahi kaiwhakarato hanganga, ko ēnei take ka tirohia ōpakitia hei wāhanga o ngā hui māori i waenga i ngā rōpū Māori)

Ko ngā wāhanga e toru e pupū ake ana te tāngoni o ngā trohanga me ngā whakahaere:

- he kaha ake te manako o ngā rōpū Māori i ngā kaiwhakarato hanganga ki te whakarite Tuhinga Orotau
 - ngā rerekētanga e pā ana ki te āhea me te pēhea o te tāpiripiri whakapāpā o ngā kaimahi mātanga Māori whakapāpā e mahi ana mā tētahi kaiwhakarato hanganga ki te whakapāpā ki ngā rōpū Māori.
 - he whakaaweawe nui ka tau ki runga i te whakapāpā Māori nā te iti o te whakataunga a te nuinga ko tēhea tauira mahi ā-kirimana me te whiwhinga e whakamahia ana e tētahi kaiwhakarato hanganga mō tētahi hingonga.
- Tērā ētahi kaupapa kua ara ake e pā ana ki ngā kaupapa hanganga e mahas.
- He uaua kia kitea e ngā kaiwhakarato hanganga ko ēhea rōpū Māori hei whakapā atu, ko tēhea tangata i roto i te rōpū Māori ki te whakapā atu.
 - He āhuatanga māori kia kore e taea e nga kaiwhakarato hanganga te tautohu ko ētahi o ngā whenua e whakaaweawetia ana e tētahi kaupapa hanganga he whenua Māori taurea, koi a nei ka mahue ngā uri whaihua ki waho.
 - He maha ngā haepapa taurea a ngā kaimahi Māori kei roto i ngā kaiwhakarato hanganga - ko ā rātou haepapa kaimahi/apiha tūmatanui, haepapa ki ō rātou iwi, hapū, ki te iwi Māori hoki – kei konei kua te te koito me ētahi atu take.
 - He take anō e pā ana ki te korahi e kōrero pono ai ngā rōpū Māori me ngā kaiwhakarato hanganga mehemea he mātauranga Māori ngā pārongo e hāngai ana ki tētahi kaupapa hanganga.(ina koa ngā pārongo e hāngai ana ki ngā wāhi tapu, taiao hoki) e noho tau ana ā-arumoni..
 - Kāore ngā kaiwhakarato hanganga e whakarite pūtea ana mō te utu o ngā whakapāpā ki ngā rōpū Māori.
 - He āhuatanga āwangawanga ki ngā rōpū Māori te rironga o ngā whenua Māori hei whakahaere i ngā kaupapa hanganga, ā, ka waihangatia hoki ngā herenga ā-mua matatini mā ngā kaiwhakarato hanganga/ te Karauna tae noa ki te wā e kore ai e hiahia ngā whenua i hokona mō tētahi hingonga.

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1. The purpose of this work and this document

1.1. The context and purpose of this work

At least every five years, Te Waihangā is required to provide the Minister for Infrastructure with a strategy report which, among other things, identifies the priorities for infrastructure for the next 30 years.¹

The first of these strategies, Rautaki Hanganga o Aotearoa | the New Zealand Infrastructure Strategy 2022-2052 (the Strategy) (New Zealand Infrastructure Commission Te Waihangā, 2022) was released in 2022. The Strategy acknowledges that to achieve a thriving New Zealand, and lift the performance of our infrastructure system, we need to:

- “strengthen partnerships with and unlock opportunities for Māori” (2022, p. 10)
- “recognise and respect Te Tiriti o Waitangi and look for opportunities to build strong, meaningful and enduring relationships with Māori” (2022, p. 13).

The Strategy prioritises three action areas in relation to these matters (2022, p. 42):

- “Creating stronger partnerships with Māori across infrastructure planning and delivery”
- “Unlocking opportunities for Māori across the infrastructure system”
- “Incorporating mātauranga Māori into infrastructure design, planning and delivery”.

It contains three recommendations regarding how to achieve these things (each with sub-recommendations). The first sub-recommendation (1 a.) is:

“Undertake a ‘State of Play’ of current Māori engagement activity for infrastructure to help inform and educate readers on how infrastructure providers can engage and work with Māori in a way that works for Māori and infrastructure providers.”

In September 2022 the Government released its response to the Strategy (New Zealand Government, 2022). In relation to the recommendations around strengthening partnerships with and opportunities for Māori, the Government (New Zealand Government, 2022, pp. 9–11):

- supported the proposal to undertake the State of Play work
- noted that it supported other recommendations in principle and would consider implementing them (in several cases following the completion of the State of Play).

In May 2023 the Government released He Whakakaupapa mō Te Hanganga o Aotearoa | the Infrastructure Action Plan which sets out what the Government is doing, and will do, to address the challenges and opportunities set out in the Strategy (New Zealand Government, 2023, p. 2). The Action Plan refers to the State of Play work as something that “will enable better transparency and coordination across the system so we can take a more strategic approach” (2023, p. 11).

1.2. Two aspects of ‘engagement’ and two reports

As discussed in the literature review we published in September 2023 (New Zealand Infrastructure, Te Waihangā, 2023) (Literature Review), there are two aspects to ‘engagement’ used in this research:

- Māori engagement on infrastructure proposals initiated by others/infrastructure providers
- wider involvement of Māori in infrastructure.

The Literature Review discussed published literature relating to both aspects of engagement.

Across this State of Play research as a whole we have considered the full range of engagement categories commonly referred to (Te Arawhiti the Office for Māori Crown Relations, 2018) – not just informing and consultation but also collaboration, co-design and empowerment. However, in practice engagement between Māori groups and infrastructure providers tend to move back and forth through several of those categories (often depending upon whether a particular issue is, or is not, a priority for the Māori group).

This report incorporates findings from our research in relation to Māori engagement on infrastructure proposals initiated by others/infrastructure providers. Wider involvement of Māori in infrastructure (such as ownership and operation of infrastructure, investment in infrastructure, involvement of Māori individuals and businesses in the infrastructure workforce and infrastructure issues affecting multiple-owned Māori land) will be discussed in a later report.

At the same time as we publish this report, we will also publish a document which provides, at a very high-level, a chronicle of the impacts of New Zealand infrastructure development on Māori. The purpose of that document is to recognise and acknowledge that when Māori groups engage with government in relation to infrastructure planning or development that engagement is very often influenced by past experiences of the types discussed in that document.

1.3. Terms used in this report

Infrastructure Staff - Staff at central government or mixed ownership model infrastructure providers who are involved in the planning and delivery of infrastructure who we conducted semi-structured interviews with as part of this research.

Contractor Staff - Staff at contractors involved in the construction of infrastructure projects we interviewed as part of this research.

Infrastructure Consultants – Staff at consultancies involved in the planning and delivery of infrastructure projects we interviewed as part of this research.

Council Respondents - Local authority staff who responded to questions that we sent to local authority staff via two Taituarā special interest group mailing lists.²

Mana Whenua Documents – Documents published on iwi and hapū groups’ websites that include statements regarding how they want to engage and work with government or people proposing to undertake projects. Those documents have a variety of names. For example, some are described as iwi or hapū management plans, some as environmental management plans, and others as engagement guidelines. As part of our research, we reviewed 29 Mana Whenua Documents authored by or for mana whenua groups with rohe/takiwā across the country.

Appendix A includes some English translations of te reo Māori terms used in this report. We acknowledge that:

- providing an English translation of a te reo Māori term cannot capture the full depth of meaning of that term
- different Māori groups may use some terms in different ways and there are differences in te reo Māori across different parts of New Zealand.

1.4. What this report does not include

As noted in the Literature Review, indigenous peoples may view infrastructure holistically as including:

- both natural and built elements – a river into which stormwater flows being an integral part of a stormwater system (personal communication, 1 May 2023)
- ways of knowing aligned to local ecosystems (Morgan et al., 2022)
- relations between people and non-human things (Barney, 2021).

The report discusses how many mana whenua groups engage, or want to engage, on infrastructure or other development proposals, in order to be able to fulfil inherited or Treaty I Te Tiriti responsibilities including to meet their obligations as kaitiaki or tangata tiaki (responsible for the natural and physical resources in their rohe) and uphold their status, as rangatira, mana whenua and mana moana (people with authority over land, seas and lakes)

The report also discusses that some Māori groups engage on infrastructure initiatives with the aim of ensuring that mātauranga Māori (Māori knowledge) and mana whenua values guide

infrastructure initiatives. It also discusses some issues around the sharing and subsequent use of mātauranga Māori when Māori groups engage on infrastructure initiatives.

However, this work does not explore te ao Māori perspectives on infrastructure more broadly. If you are interested in learning about those perspectives, potentially useful places to start are Rout et al’s article on a Māori approach to environmental economics (2021) and a 2020 thesis by Te Whata (2020).

This work also does not address issues which, while encompassing infrastructure, have far broader scope and implications. This includes different Māori groups’ views on what genuinely exercising tino rangatiratanga (authority) and mana motuhake (self-determination) would entail. For example, members of Ngāi Tahu currently have a claim before the High Court in which they are arguing (among other things) that (Tau & Ors v Attorney-General, 2022, para. [12] to [14]):

- Ngāi Tahu rangatiratanga over wai māori (fresh water) includes the right to make, regulate, alter, and enforce decisions pertaining to how wai māori is allocated, used, managed, and traded, and by whom within its takiwā (area)
- the Crown is obligated to design and implement, in cooperation and partnership with Ngāi Tahu, a regime for the regulation, governance, and allocation of wai māori which recognises Ngāi Tahu entitlements.

1.5. Research approach in relation to obtaining Māori group perspectives

Mindful of the demand on Māori group members’ time from people wanting to speak to them about development proposals, research or policy or planning initiatives (‘consultation fatigue’), we used Mana Whenua Documents (defined above) as the primary source of insights on mana whenua groups’ perspective on engagement with infrastructure providers about infrastructure initiatives.

While those Mana Whenua Documents were often prepared for a range of purposes, two common purposes were so that people wishing to engage with the relevant mana whenua group on a particular initiative:

- can obtain some understanding of the group's history, priorities, kawa and tikanga before they engage with the group on their proposal,
- are provided with information on how in practice a particular mana whenua group wishes to be engaged with, such as who within a group they should contact in the first instance.

The process for preparing the Mana Whenua Documents reviewed (as described in those documents) generally involved one or more hui-a-iwi or hui-a-hapū and consensus building within each group as to what the document content should be.

Further insights on how engagement has worked on the ground or in practice for Māori groups can be obtained from discussion with individual groups. Our research involved direct discussions

with some individual mana whenua groups and interviews with several people who (while working for infrastructure providers, government or contracting or consulting firms involved in the infrastructure sector) also have governance roles within mana whenua groups they whakapapa to. We also drew on findings from previous relevant research involving interviews with representatives of Māori groups.

1.6. What will happen next?

We are aiming to release the findings from our research into wider involvement of Māori in infrastructure in mid- 2024.





2. Engagement is happening in an inherently diverse, fluid and complex environment

The environment within which Māori and infrastructure providers engage on infrastructure initiatives is inherently diverse, fluid and complex.

- Māori are diverse and the differences between, and evolving nature of, Māori groups mean that it is unhelpful for infrastructure providers to make assumptions about what the priorities and aspirations of members of a particular group of Māori will be (even if the infrastructure provider has engaged with members of that group before).
- The government infrastructure sector is also complex. Different government infrastructure providers have different levels of autonomy and different accountabilities, are subject to different funding controls, and take different approaches to how they undertake infrastructure initiatives. Relevant legislation changes regularly. These factors make it challenging for Māori groups who engage on a range of government infrastructure initiatives.

An Infrastructure Staff member described the environment in which engagement between Māori groups and infrastructure providers is occurring in the following way:

“The sands are shifting and it’s a changing landscape legislatively and capability, capacity, everything is just continuously shifting, so ... it’s not always clear and it’s not easy.”

The environment will continue to be complex and evolving. It would help both Māori groups and infrastructure providers to engage effectively in this environment if infrastructure providers improved the extent to which their personnel had visibility of:

- what other parts of their organisation are engaging with different Māori groups on
- what other infrastructure providers (and other government organisations) are talking to particular Māori groups about.

Approaches to increasing the visibility of the engagement that is occurring with different Māori groups across the infrastructure sector need to:

- be practicable to maintain over time
- not place an unreasonable time or cost burden on Māori groups or infrastructure providers
- enable mātauranga Māori (including information about culturally sensitive sites and landscapes) and commercially sensitive information to be treated appropriately.

2.1. Māori are diverse

As of 30 June 2023 the estimated New Zealand resident Māori population was 904,100 or 17.3 percent of the population (Stats NZ, 2023c). That number is made up of a diverse mix of people.

Whether an individual is 'Māori' is determined by self-identification. Current Māori resident population figures are based on the number of people who, in the five-yearly national census, state that they are usually residents in New Zealand and identify 'Māori' as the ethnic group, or one of the ethnic groups, they belong to. In between census, Stats NZ updates the estimated Māori resident population using estimates of (StatsNZ, 2020): ³

- the natural increase (births less deaths)
- net Māori migration
- net 'inter-ethnic mobility' – those changing their identification to include Māori less those no longer including Māori in their ethnic identification.

Overall, the New Zealand Māori population is younger and (while primarily urban) more rural than the non-Māori New Zealand population. Individual Māori are more likely to have a low personal income than New Zealanders overall and more likely to have lower net worth than European New Zealanders. ⁴

However, individuals within the Māori resident population vary, not only in terms of their age, income and personal wealth and where they live, but also in terms of:

- **whether they are connected to an iwi or hapū they whakapapa to or live in the area in which an iwi or hapū they whakapapa to is mana whenua** -
 - Stats NZ worked with the Data Iwi Leaders Group of the National Iwi Chairs Forum to develop estimated 2018 iwi affiliation

counts.⁵ Those counts are not census counts but did draw on people's self-identification as iwi members in the 2018 census. ⁶ They estimated that over 136,400 people who identified as Māori did not know what their iwi affiliation was (out of an estimated Māori resident population at the time of nearly 870,000).

- People who identify as Māori and either normally live outside the area where an iwi or hapū they identify as a member of is mana whenua or, do not know what either their iwi or their hapū are, are sometimes referred to as 'mātāwaka' or, when they live in urban areas, 'urban Māori'. Ryks et al analysed 2013 census data relating to Māori living in the Auckland, Hamilton, Wellington and Christchurch urban areas ⁷ in terms of whether they were mana whenua, 'taura here' (mātāwaka with a strong connection to their iwi or hapū), or 'taunga hou' (mātāwaka who were of Māori descent and Māori ethnicity who "through choice or circumstance" did not link back to their iwi or hapū) (Ryks et al., 2016, p. 31): They found that (2016, p. 34) both the Auckland and Wellington urban areas had relatively low proportions of mana whenua Māori living there (16% and 6% of Māori living in those urban areas respectively), while the Hamilton and Christchurch urban areas had higher proportions of mana whenua (38% and 29% of Māori living in those urban areas respectively). The Wellington urban area had the highest percentage of taura here (80% of Māori living in that area), as compared to Auckland (69%), Hamilton (47%) and Christchurch (54%). The percentage of taunga hou was similar across the four centres at between 13% and 15% of the Māori living in the relevant urban areas. In the Auckland urban area taura here and taunga hou together accounted for 84% of all Māori living in that area. In Hamilton, Wellington and Christchurch they accounted for 61%, 93% and 70% respectively.

- **whether they also identify as a member of other groups** - In the 2018 census, over fifty percent (55.4%) of respondents who identified as belonging to the Māori ethnic group also identified as belonging to at least one other ethnic group (Stats NZ n.d.-b). This included people who primarily self-identified as an ethnic group other than Māori. ⁸

- **the extent to which they understand or speak te reo Māori** – In a 2013 Stats NZ survey of adults who identify as Māori (Stats NZ, 2013),⁹ just over eight % (8.1%) of respondents considered they understood te reo Māori very well, 8.0% well, 17.0% fairly well, 29.2% not very well, and 37.7% understood no more than a few words or phrases. Five % of respondents reported they were able to speak te reo Māori very well, 5.6% well, 12.0% fairly well, 32.1% not very well, and 45.3% no more than a few words or phrases.
- **the extent to which they consider Māori cultural engagement to be important** - In that 2013 Stats NZ survey, 46.3% of respondents considered Māori cultural engagement to be very or quite important, 24.2% somewhat important, and 29.5% only a little or not at all important.

We discuss two of the implications of this diversity for engagement with Māori below:

- It is important when engaging with someone who identifies as Māori not to make assumptions about what their priorities and interests are. Consistent with this the New Zealand Transport Agency (NZ Transport Agency) Māori engagement framework states (n.d., p. 19):
“It is important that care is taken not to assume what may or may not be significant to Māori. Ultimately Māori will determine what is significant to them and what the impacts are and it is our responsibility to listen to that advice and allow it to shape [our] engagement approach.”
- It cannot be assumed that the views of a mana whenua group coincide within the views of all people who identify as Māori living within the mana whenua group's rohe or takiwā. This is recognised in the current iwi-Māori partnership board provisions in the Pae Ora (Healthy Futures) Act 2022. Those provisions require an iwi-Māori partnership board established under that Act to have constitutional and governance arrangements which demonstrate that, among other things, it will engage with and represent the views of Māori within the relevant area; and Māori communities and groups in the relevant area will be able to hold the organisation accountable for the performance of its functions.¹⁰

2.2. The Māori groups who engage on infrastructure initiatives differ from each other and are continually evolving

As discussed later in this report, much of the engagement between Māori groups and infrastructure providers is engagement between iwi and hapū (or entities which represent those groups) and infrastructure providers. There are often multiple iwi and hapū who engage with an infrastructure provider on a particular infrastructure initiative. As one Infrastructure Staff member commented:

“History has seen each iwi move backwards and forwards across [the] landscape and, yes, it is right to recognise that the two, the three, the four, the five [iwi groups who] may well have interests in [an area] associated with that long history. It may not be easy but that is how it is. And that is one of the pieces of colour of working in the New Zealand landscape.”

Another Infrastructure Staff member commented that, because hills or mountains (‘maunga’) are so visible in the landscape, when they are looking to develop infrastructure on a maunga there can be a significant numbers of Māori groups who engage on that initiative.

Prior to all Māori groups in an area having settled their historic Treaty of Waitangi | Te Tiriti o Waitangi (Treaty | Te Tiriti) claims there can be a lower level of consensus regarding which Māori group(s) are mana whenua in relation to a particular area.

The New Zealand Environment Court recently recognised the complexity of engaging in areas where there are multiple Māori groups. While stressing the importance of genuine engagement occurring, the Court noted that the following statement made by Counsel for the one of the parties “fairly described” that complexity (*Re Port of Tauranga Limited*, 2023, para. [223] and [224]):

“... there is an enormous amount of complexity in developing relationships in Tauranga Moana [Tauranga Harbour] with 27 hapū, three iwi and multiple mandated entities within the iwi framework, all of which hold their own mana and individual relationships.”

In addition, many individual Māori have close kinship relationships with members of iwi and hapū that they themselves are not members of. Individual marae may be shared by multiple hapū. Some hapū affiliate to more than one iwi.

Several iwi and hapū with shared interests may choose to act collectively in relation to certain matters. For example, the Tauranga Moana iwi and hapū collective has negotiated with the Crown in relation to historic Treaty I Te Tiriti claims regarding Tauranga Harbour.

2.2.1. There are significant differences between iwi and hapū and those groups are continually evolving

There are significant differences between iwi and hapū including in terms of population size, socio-economic measures, the number of different hapū affiliated to an iwi, their kawa and tikanga and how they interpret te reo Māori words. Further iwi and hapū are continually evolving – particularly as the move from being pre-Treaty I Te Tiriti settlement (Settlement) to post-Settlement groups and become more established post-Settlement groups.

From the 2018 estimates of iwi affiliation:¹¹

- the largest iwi by population was Ngāpuhi at over 165,200
- ‘don’t know’ was the next biggest group at over 136,400
- Ngāti Porou was third largest at over 92,300, Ngāi Tahu/Kai Tahu fourth at over 74,000 and Waikato Tainui fifth at nearly 51,900
- the five smallest named iwi with populations estimated at over 100 were Tamakana (Ruapehu, Waimarino) at 111, Te Ākitai-Waiohū at 135, Ngāi Te Ohuake (Rangitikei) at 171, Maungaharuru Tangitū at 180 and Te Kawerau ā Maki at 201.

Social and economic statistics relating to different iwi and comparisons of those statistics with the statistics for ‘all Māori’ and ‘all New Zealand’ are available on the iwi data platform Te Whata (see <https://tewhata.io/>).

The number of different hapū affiliated to an iwi varies significantly and a group that was considered a hapū or a group of related hapū may come to identify as an iwi. Some examples are given below.

- The Maniapoto Deed of Settlement (2021) acknowledges 44 whānau, hapū, iwi or groups who descend from a Maniapoto tīpuna (ancestor) (Ngā Toronga o Maniapoto), and a further seven groups who “affirm historical and contemporary affiliations with other iwi” (Maniapoto et al., 2021a, sec. 9(6)). The Deed also acknowledges 219 hapū or toronga (related groups) that have “traditional and historical links” with Ngāti Maniapoto (Maniapoto et al., 2021b) and notes that some of these hapū/toronga connect to other iwi as well, and some may consider their tribal identity independent of Ngāti Maniapoto.
- The Ngāti Ranginui Deed of Settlement (2012) acknowledges that Ngā Hapū o Ngāti Ranginui are comprised of eight hapū and one hapū group — the Wairoa Hapū (which consists of Ngāti Kahu, Ngāti Rangī and Ngāti Pango).
- Ngāpuhi, is made up of approximately 300 hapū across 100 marae (Te Rōpū o Tūhoronuku, 2012, sec. 2(1)).
- Ngāti Koroki (descended from the high chief Koroki) and Ngāti Kahukura (descended from the high chieftainess Kahukura) are today together the iwi Ngāti Koroki Kahukura (Ngāti Korokī Kahukura et al., 2012).

Different iwi and hapū groups have different interpretations of Māori cultural concepts such as kaitiakitanga, and different kawa and tikanga (Environmental Protection Authority, n.d.). ‘Kawa’ essentially means ‘how’ things are done, and varies from marae to marae, region to region, kin-group to kin-group (Te Whata, 2020, p. 58).¹² ‘Tikanga’ can be described as the customary system of values and practices that have developed over time (Te Aka Māori Dictionary, n.d.). The High Court recently stated (*Ngāti Whātua Ōrakei Trust v Attorney-General*, 2022, para. [30]–[31]):

“... tikanga is quintessentially developed by each iwi or hapū, in the exercise of their rangatiratanga. There are different versions of which principles would be regarded as ‘core’ to tikanga, Importantly, as circumstances change over time, norms evolve in response. Tikanga and its practice can change over time. ...

There were and are fundamental philosophical underpinnings, described as tāhuhu he aratohu, that guide iwi approaches to tikanga and allow for some shared understandings and mutual interactions. However, the tikanga of an iwi or hapū is shaped by the historical narrative of that iwi and hapū, including the impact of colonisation and other events and circumstances over time. ...”

Kupu Māori (Māori words) may be interpreted differently by different iwi or hapū based on their own tikanga (Te Aka Matua o te Ture | Law Commission, 2023, pp. 274–275).¹³

There are some iwi and hapū who have had access to Settlement assets and rights for a substantial period of time, some who have only had access to them relatively recently and some who do not yet have Settlements. A few iwi or hapū settled historic Treaty | Te Tiriti claims over 20 years ago (including Waikato-Tainui in 1995 and Ngāi Tahu in 1998). A number settled their claims between 2005 and 2014. Approximately thirty Settlements were finalised (by Settlement Acts being passed) between 2015 and 2023 (Te Arawhiti the Office for Māori Crown Relations, 2023). Some iwi and hapū historic claims are yet to be settled, including the claims by ngā hapū o Ngāpuhi which (as noted above) together have an estimated population of over 165,200.

The leadership of iwi and hapū groups changes over time. The settlement of historic Treaty | Te Tiriti claims has introduced a new type of entity – post-settlement governance entities. Generally, the trustees of a post-settlement governance entity hold office for a term (such as three years) after which there are elections at which current trustees may be reappointed (subject to any limit on the maximum number of terms they can serve) or replaced by new trustees.¹⁴ A whenua Māori (Māori land) organisation board member spoken to as part of this research noted that many Māori groups are in a phase where there is an incremental change in the make-up of their boards as those people who have led groups through the significant changes that have occurred over the last few decades step back and the next generation become members of boards.

Contractor Staff at one company commented that different mana whenua groups have different areas they want to be involved in:

- some are really focused on structures reflecting who they are – the cultural manifestations and the artwork and making sure that the buildings reflect them
- others are saying it is about what happens within a building - the internal spaces
- for others it is the training and upskilling of their people.

2.2.2. Other Māori groups may need or want to engage on an infrastructure initiative

There may be Māori groups (in addition to bodies representing iwi and hapū) that need or want to engage on an infrastructure initiative. These include bodies managing marae and Māori reservations, beneficial owners of multiple-owned whenua Māori and, potentially, non-kin based Māori groups.

Marae and Māori reservations

Te Puni Kōkiri describes marae in the following way (Te Puni Kōkiri Ministry of Māori Development, n.d.):

“In Te Reo Māori, the marae atea is the open space in front of the wharenui (meeting house) which was traditionally part of a Pā (village). In modern usage the phrase is often shortened to marae and has come to include all the land and buildings associated with the marae atea. Today marae are storehouses of history, mātauranga (knowledge) and taonga (treasures). Many marae are also venues for the provision of health, education, justice and social services.”

While there are private family marae belonging to whānau (Te Whata, 2020), most marae are associated with a hapū or are shared by a group of hapū connected by kin-relationships. Day-to-day management of a marae is often undertaken by a marae committee.

The land on which a marae is situated may be set aside as a Māori reservation under Te Ture Whenua Māori Land Act 1993. Other land may also be set aside as a Māori reservation under that Act, such as land where a wāhi tapu site or water supply source is located. Māori reservations can be vested in incorporated bodies or trustees.

Beneficial owners of Māori freehold land

Where the beneficial ownership of land has been determined by the Māori Land Court by a freehold order that land is 'Māori freehold land'.

Those that succeed to a beneficial interest in a block of Māori freehold land may or may not be registered members of an iwi that has mana whenua of the rohe in which the land is situated.

The Māori Trustee is appointed, in most cases by the Māori Land Court, to act as trustee to administer Māori freehold land and other assets on behalf of the beneficial owners of those assets.¹⁵

Because it is common that many persons succeed to a deceased's interest in Māori freehold land, the numbers of beneficial owners in Māori freehold land can grow significantly over time. Many blocks have 100s and some 1,000s of owners. It goes without saying that there is a wide range of beneficial owners' views, knowledge and experience of the kinds of matters they are called on to discuss and consider in order to provide views to their trustee, or to make decisions themselves at an assembled owners meeting convened by the Māori Land Court in cases whether the land has not been vested in trust.

The diversity of ownership of whenua Māori underlines the importance of infrastructure providers not making assumptions about the priorities of the beneficial owners of Māori land. Staff at Te Tumu Paeroa, the office of the Māori Trustee, spoken with as part of this project stressed that engagement with an iwi, hapū or marae does not constitute engagement with the legal or beneficial owners of Māori freehold land affected by a project.

Where Māori freehold land affected by an infrastructure initiative is administered by the Māori Trustee, Te Tumu Paeroa may be involved in facilitating engagement by the beneficial owners of that land. The Māori Trustee administers approximately 6% of freehold Māori land. There are considerable amounts of Māori freehold land which have not been vested in trust by the Māori Land Court and most of that land is unadministered.

East Rotoiti and Rotomā Wastewater Treatment – working with both beneficial owners of Māori land and local iwi

This case study is an example of an infrastructure provider working with both a trust representing beneficial owners of whenua Māori and local iwi and hapū and how that was done in practice. Chronologically the events in this case study follow the events of the case study in relation to the former proposed Rotomā and Rotoehu wastewater treatment scheme in section 6.3.4 of this report.

In February 2014 Rotorua Lakes Council involved iwi and hapū representatives in discussions around the best practicable option for a sewerage scheme for the lakeside communities in East Rotoiti and Rotomā. Much of the land in the relevant area is whenua Māori. The iwi and hapū representatives identified a preferred option that would have used a bio-filter wastewater treatment system at each property in East Rotoiti and Rotomā before the waste from that property entered the proposed reticulated wastewater system and was transferred to a local treatment plant. One of the reasons that the iwi and hapū preferred this option was that dealing with other people's waste as it passes through different rohe is considered tapu and, in modern times, some Māori groups apply this concept not only to waste travelling between rohe but also to waste travelling from one individual property to another (Whata, 2017, p. 17). The project steering committee recommended a version of the iwi- and hapū-preferred option to the Rotorua Lakes Council – that version would trial the use of bio-filter wastewater pre-treatment units at east Rotoiti properties served by the scheme but involve no pre-treatment¹⁶ for properties in Rotomā (Rotorua Lakes Council, 2015a).

The Council entered into negotiations with one of the ahu whenua trusts (Māori land trusts) in the area for the Council to lease part of the land block for the proposed wastewater treatment plant and disposal to land of the treated wastewater (Rotorua Lakes Council, 2016).

The Council lodged applications for consent for the proposed scheme. Those consent applications were subject to two cultural impact assessments - one prepared by the ahu whenua trust (relating to the wastewater treatment site

that would be built on the land it managed) and the other on behalf of the relevant iwi and hapū (primarily focused on the proposed reticulation system).¹⁷ Those cultural impact assessments contained several recommendations. Some recommendations related to matters such as how archaeological monitoring should be carried out during the construction of the project and the provision of inductions on cultural matters to contractors before they began working on site. Other recommendations related to broader matters such as the Council paying for an iwi group to undertake independent environmental monitoring of potentially affected waterbodies and designing the scheme so that it would not constrain iwi or hapū aspirations for future growth.

Following the receipt of submissions on the applications (including submissions from some of the beneficial owners of the proposed treatment plant site), the Council changed the proposal so that each property at Rotomā served by the scheme and (if the bio-filter trial was unsuccessful) each east Rotoiti property served by the scheme would be required to have onsite wastewater pre-treatment at least the quality of a septic tank effluent pump (STEP) system (Bosch, 2017).

The Council obtained consent for the scheme subject to conditions (Bay of Plenty Regional Council, 2017). Under those conditions the Council was to appoint both advisors nominated by the ahu whenua trust and advisors nominated by iwi groups. The advisors nominated by the ahu whenua trust would provide advice largely in relation to the project activities to be undertaken on the trust-managed land whereas the iwi advisors would provide advice largely in relation to the reticulation system.

The consents also required the Council to establish an Iwi Wastewater Liaison Group. Among other things, that Group would prepare a Cultural Management Plan which would draw from recommendations contained in both cultural impact assessments. Once the Cultural Management Plan was prepared, the Council and the Group were to meet to discuss the recommendations in it with the Council required to give genuine consideration to implementing any recommendations that would not require review of the resource consent to the extent practicable (RM16-0384-DC.02, condition 15).

No appeals were lodged against the resource consents obtained for the East Rotoiti and Rotomā scheme (Rotorua Lakes Council, 2017).

In 2020 the Council applied to change some of the conditions of the consent. This included the Council seeking to reduce the level of E.coli bacteria that can be contained in treated wastewater discharged from the treatment plant. The Council sought that change to give effect

to an agreement with the ahu whenua trust (Cranswick & Tennent, 2020).

In June 2021, the Council agreed to award the contract for onsite pre-treatment to a supplier of a bio-filter pre-treatment system (Michael, 2021).

'Non-tribal' Māori groups

Particularly in urban areas there may be established non-kin-based Māori groups. In 1998 the Waitangi Tribunal expressed the view that an established non-kin-based or 'non-tribal' urban Māori community (made up of a trust which provided social services and the recipients of those services) exercised "rangatiratanga in welfare matters and [was] entitled to expect recognition as such by the Crown" and to "have that rangatiratanga protected through an ongoing partnership with the Crown" (Waitangi Tribunal, 1998, p. 221). However, subsequent Court proceedings where the matter of whether such non-tribal Māori groups have rights under the Treaty | Te Tiriti to be recognised by the Crown have been determined on other grounds.¹⁸

2.3. The government infrastructure sector is also complex

The government infrastructure sector is also complex. Different government infrastructure providers have different levels of autonomy and different accountabilities, are subject to different funding controls, and take different approaches to how they undertake infrastructure initiatives. Relevant legislation changes regularly. This makes it challenging for Māori groups which engage on a range of government infrastructure initiatives.

Central government infrastructure providers vary in the extent to which they can be directed in what they do by Ministers. For example:

- generally, the board of the NZ Transport Agency can be directed by the Minister of Transport to give effect to government policy that relates to its functions. However, the Minister cannot direct the NZ Transport Agency in relation to how it exercises certain functions. For example, the Minister cannot direct the NZ Transport Agency to include a particular land transport project in the national land

transport programme and, therefore, make that project eligible for funding from the National Land Transport Fund.

- currently two wānanga,¹⁹ all universities, Te Pūkenga - New Zealand Institute of Skills and Technology²⁰ and the boards of all primary, intermediate, and secondary state schools are Crown entities owned by the Crown but none of them can be directed by the Minister of Education to give effect to government policy that relates to their functions and objectives²¹

Local authorities are primarily accountable to the residents and ratepayers they represent.

Some infrastructure providers are companies which, under company law, owe obligations to their shareholders.

- Both Kiwi Rail Holdings Limited (kiwi Rail) and Transpower New Zealand Limited are State-owned enterprises, whose shareholders are Government Ministers. Under legislation their principal objective is to operate as a successful business, while having regard to the interests of the community in which they operate and endeavouring to accommodate or encourage those interests when able to do so.²²
- Genesis Energy Limited, Mercury NZ Limited, and Meridian Energy Limited are mixed-ownership model companies listed in Schedule 5 to the Public Finance Act 1989. The Crown owns approximately 51% of the shares in those companies. The companies are listed on the New Zealand stock exchange and their remaining shares are traded.²³ An Infrastructure Staff member described mixed-ownership model companies as having a 'Crown whakapapa'.

Infrastructure providers have a range of different funding sources including:

- Crown funding authorised by Parliament as part of the annual Budget process
- user charges such as electricity usage charges, water use charges and public transport fares

- for State highway activities - the National Land Transport Fund (derived primarily from fuel excise duty and road user charges)
- for local government - development contributions under the Local Government Act 2002 and rates, for local roads approved funding from the National Land Transport Fund.

A video regarding how infrastructure users ultimately pay for four different kinds of infrastructure (electricity, telecommunications, water, and land transport) is available at <https://tewaihanga.govt.nz/watch-listen/videos/how-new-zealanders-pay-for-infrastructure>.

These different funding sources mean that infrastructure providers are subject to different requirements for forward planning for the costs of infrastructure initiatives which include varying needs to consult in relation to, or obtain approval for, proposed spending on infrastructure. In turn, this means that infrastructure providers have different levels of control and certainty around what funding they receive and differing levels of flexibility around what changes they can make to the scope of an infrastructure initiative at different stages in the initiative's development.

Infrastructure Staff at one provider said that new legislative initiatives relevant to the planning and development of infrastructure are being introduced all the time and this is making the landscape more complex for everyone working in the space, including Māori groups.

As noted above, the complexity of the government infrastructure sector makes it challenging for Māori groups which engage on a range of government infrastructure initiatives. An Infrastructure Staff member noted that when they engage with a Māori group in relation to an infrastructure proposal it is important that they provide information to that group about how their particular organisation undertakes infrastructure projects including what the funding sources for their projects are. Infrastructure Staff noted that a mechanism that can help give a Māori group an understanding of how an infrastructure provider's business works is seconding people from the Māori group into the provider.

2.4. There are issues with the extent to which Infrastructure Staff have visibility over other engagement being undertaken with Māori groups

Generally, there are issues with the extent to which Infrastructure Staff have visibility over:

- what other parts of their organisation are engaging with different Māori groups on
- for central government organisations, what other central government organisations are talking to different Māori groups about.

It would assist both Māori and infrastructure providers to engage effectively within this complex and fluid context if the infrastructure sector addressed that lack of visibility.

2.4.1. Visibility of engagement with Māori groups within an infrastructure provider

Several, but not all, government Infrastructure Staff commented that they do not really have visibility over what other parts of their organisation are engaging with different Māori groups on.

An Infrastructure Consultant noted that the idea of pursuing a particular infrastructure project may have been around for decades and when it becomes a priority again an infrastructure provider begins engagement with Māori groups about that project again. This can be frustrating for Māori groups particularly as there can be little or no recognition by infrastructure project teams of the previous engagement a Māori group has had in relation to the proposed initiative.

An iwi representative spoken with as part of this project noted that changing leadership within government organisations often means their iwi have to repeat information they have previously shared with an organisation in relation to iwi history and what the iwi is seeking.

Therefore, if possible, infrastructure providers need to be aware of what their agency (or one of its predecessors) has previously heard from a Māori group in relation to previous iterations of a project and other relevant projects. Finding out about and recognising that previous input also demonstrates to Māori groups that what they said previously was recorded and valued.

Infrastructure Staff from one provider who did feel they had good visibility of relationships with Māori groups across their organisation noted that they had tried various ways of keeping track of relationships (including client relationship management systems, spreadsheets and databases), but have moved away from that. What they currently do is have a 90 minute 'speed dating' session every six weeks attended by anyone who has a relationship with, or is dealing with issues that relate to, relevant Māori groups. Prior to each meeting attendees are asked to fill in a document saying where things are up to with engagement on the matters they are dealing with, which can be added to orally at the meeting. They run the meeting so that it is an updating session, not a problem-solving session. The numbers of staff attending is growing so they think people must find it useful.

2.4.2. Visibility of engagement by other infrastructure providers and government entities

A couple of the Mana Whenua Documents we reviewed specifically noted the need for co-ordination between government agencies in relation to engagement with the mana whenua group and the need for government agencies to understand the amount of consultation/engagement the mana whenua group is experiencing. One Mana Whenua Document commented that their mana whenua group looks to Te Puni Kōkiri | the Ministry of Māori Development for support in ensuring collaboration among agencies to avoid consultation fatigue.

Infrastructure Staff said that they had very little visibility of what other infrastructure providers and government entities are talking to different Māori

groups about. A couple of Infrastructure Staff commented that what visibility they have of what engagement other infrastructure providers are having with particular Māori groups is obtained through talking to staff from other agencies who have recently joined their organisation or talking to ex-colleagues who have moved to other organisations. Some Infrastructure Staff identified one or two other infrastructure providers where they have an idea about the engagement that those providers might be having with Māori groups. Often this is because they and the other infrastructure provider have assets located near each other or some of one provider's assets are located on land managed by the other provider (such as the conservation estate or defence land).

Central government Infrastructure Staff commented that they have more visibility of what relevant local authorities are doing or sometimes work alongside local authorities (for example if the land affected by a proposal is an area of land the local authority is interested in from a planning point of view).

Several Infrastructure Staff commented that the Māori groups they engage with often have a better understanding of what is happening across central government than they do. This is reflected in the NZ Transport Agency's Hononga ki te Iwi // Our Māori engagement framework which states "Māori are aware of the range of projects across many agencies in their rohe and to this end can provide a broader regional context for projects and programmes" (NZ Transport Agency, n.d., p. 9). Infrastructure Staff at one provider noted that where a mana whenua group in an area is represented by a mana whenua-owned design and engagement consultancy that consultancy tends to have a good idea what a range of infrastructure providers in that area are doing.





3. Why Māori groups and infrastructure providers engage with each other

New Zealand legislation, local authorities, mana whenua groups, and infrastructure sector participants give a very wide range of reasons why Māori groups and infrastructure providers should be, or are, engaging with each other in relation to infrastructure initiatives.

Mana whenua groups' reasons for engaging tend to include:

- to fulfil inherited responsibilities and uphold their status (including as kaitiaki (guardians))
- to enable te ao Māori values to be integrated into infrastructure initiatives

- to achieve broader outcomes for the group (including to ensure that the group's social, and economic interests are taken into account).

Infrastructure Staff's reasons for engaging include some factors focused on achieving particular infrastructure initiatives. However, their reasons are not limited to that, and many of the reasons they give for engaging take a longer-term view.

Mana whenua groups, infrastructure sector participants and local authority websites all see engagement as part of the participants fulfilling their roles under the Treaty | Te Tiriti.

3.1. How we identified why engagement is happening

In the Literature Review, we identified that New Zealand legislation uses a range of different formulations of the reasons why infrastructure providers should engage with Māori groups. These reasons include:

- to not act inconsistently with, or take into account, the principles of the Treaty | Te Tiriti
- to enable consideration of Māori historical, cultural, or spiritual interests
- to provide opportunities for Māori to exercise decision-making authority on matters of importance to Māori
- to recognise that whenua Māori is taonga tuku iho of special significance to Māori.

Since we undertook the Literature Review, we have:

- analysed what the websites of all 78 New Zealand local authorities say about why people proposing to apply for resource consent could, should, or must engage with Māori groups
- looked at what 29 Mana Whenua Documents said about why the relevant mana whenua group engages with government or project developers
- reviewed what Infrastructure Staff, Contractor Staff and Infrastructure Staff spoken to as part of this research said about why infrastructure providers are engaging with Māori groups.

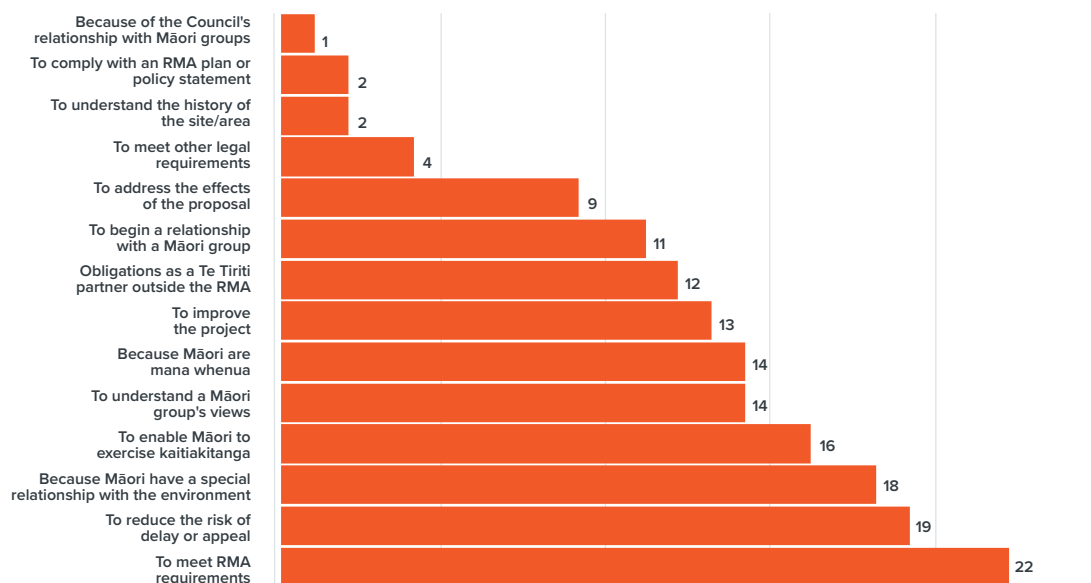
3.2. What New Zealand local authority websites say about why people looking to undertake developments should engage with Māori groups

Details of how we undertook our analysis of the websites of the 78 New Zealand local authorities are provided in Appendix B.

As noted in Appendix B, we only looked at those pages on local authority websites that were specially aimed at potential resource consent applicants and documents directly linked to those pages. Twenty-one local authorities did not make any statements referring to engagement with Māori/Māori groups on those specific webpages /in those directly linked documents. (There may have been references to engagement with Māori on other parts of those local authorities' websites such as the sections relating to preparation of local authority planning documents).

In relation to the remaining 57 local authorities, Figure 1 below shows the frequency of the different types of reasons that were given for applicants to engage with Māori. (The numbers below add up to more than 57 because many local authority websites gave several reasons for why applicants should engage with Māori.)

Figure 1: Frequency of different reasons for engaging with Māori given in local authority resource consent web documents



“RMA requirements” (referred to in Figure 1) include a requirement under the Resource Management Act 1991 (RMA) to take into account the principles of the Treaty | Te Tiriti (as well as obligations to recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga and obligations to have particular regard to kaitiakitanga).

3.3. What Mana Whenua Documents say about why mana whenua groups engage

Many of the Mana Whenua Documents stated that mana whenua groups engage, or want to engage, on infrastructure or other development proposals, in order to be able to fulfil inherited or Treaty | Te Tiriti responsibilities or uphold their status. The reasons given include references to mana whenua groups’:

- obligations as kaitiaki or tangata tiaki (responsible for the natural and physical resources in their rohe and having in-depth knowledge about those resources which enables them to work with others to seek to protect and restore the environment/achieve sustainable management of those resources)
- desire to fulfil their inherited obligations, and uphold their status, as rangatira, mana whenua and mana moana (people with authority over land, seas and lakes)
- seeking to exercise their role under Treaty | Te Tiriti.

One Mana Whenua Document refers to engagement as expressing their mana motuhake (autonomy).

Other reasons given for mana whenua groups engaging on infrastructure or other development proposals relate to wanting te ao Māori values to be integrated into those initiatives, including ensuring that:

- mātauranga Māori (Māori knowledge) and mana whenua values guide infrastructure initiatives
- an integrated or holistic approach is taken to resource use, development and management and effects unacceptable to the mana whenua group are avoided
- tikanga is observed and mana whenua principles are adhered to (for example in relation to discharges)
- mana whenua histories are reflected in project design.

A specific issue raised in a number of Mana Whenua Documents is wanting to engage in order to improve understanding and management of, or mana whenua access to, culturally significant areas.

Some Mana Whenua Documents talk about engagement enabling the mana whenua group and government/the project developers to achieve outcomes desired by both parties or mutual benefits – including:

- to develop and maintain relationships and partnerships
- mutual capacity and capability building.

Other reasons given relate to seeking broader outcomes for the mana whenua group including:

- to ensure that the mana whenua group’s social, and economic interests are taken into account
- to obtain an understanding of government agencies’ plans and their potential impacts on members of the mana whenua group and, therefore, to be able to make more informed decisions in relation to the use of their resources
- so that the group obtains an understanding of the current state of the environment/rohe
- to have a more visible presence within their rohe
- to ensure that any proposed acquisition, transfer, disposal or management of Crown assets relating to the proposal takes into account actual or potential Treaty | Te Tiriti claims in relation to those assets.

3.4. What infrastructure sector participants say about why they engage with Māori groups

Some drivers for engaging with Māori groups Infrastructure Staff mention are focused on achieving particular infrastructure initiatives, such as:

- to meet requirements to assess the cultural impacts of a proposal under the RMA
- as part of the process for obtaining archaeological authorities under the Heritage New Zealand Pouhere Taonga Act 2014
- to enable monitoring of earthworks undertaken as part of a project by members of the relevant Māori group(s)

- to meet specific legal obligations under Settlement legislation - including lease obligations where a Settlement transferred an infrastructure property to a Māori group subject to an obligation to lease it back
- in some cases, because some of their infrastructure is delivered in a form of joint venture with a Māori group.

However, the primary reasons the Infrastructure Staff we spoke with gave for engaging with Māori in relation to the planning and delivery of infrastructure were:

- to build a relationship, or maintain/build on an existing relationship, with a Māori group (with a couple of Infrastructure Staff members noting that an infrastructure provider, and the mana whenua in the area where their infrastructure is (or will be) located, are (or will be) long-term neighbours)
- to increase cultural representation of Māori, reflect tikanga and an understanding of te ao Māori, and incorporate Māori narratives within structures - as one Infrastructure Staff member put it so that Māori users of infrastructure structures can see themselves and their stories.
- to be a better Treaty | Te Tiriti partner - including to recognise and support the exercise of rangatiratanga by mana whenua groups.

Similarly, the *Why engage with Māori* section of the NZ Transport Agency's *Hononga ki te Iwi // Our Māori engagement framework* (NZ Transport Agency, n.d., p. 8) gives the following reasons:

- “because Māori have enduring perspectives and understandings that unlock wider opportunities and also help project teams avoid otherwise unseen issues”
- to achieve “positive outcomes for all”/“mutually beneficial outcomes”
- because the NZ Transport Agency has a responsibility to contribute to the improvement of the Māori-Crown relationship
- to be informed/gain a deep understanding of Māori views and aspirations
- in some cases, “to access Māori land for a project”
- to act consistently with Settlements
- to meet statutory obligations requiring recognition of the Treaty | Te Tiriti and engagement with Māori.





4. Trust-based ongoing relationships

There is a lot of debate regarding what the Treaty | Te Tiriti requires. However, there appears to be consensus between mana whenua groups, the New Zealand Courts and infrastructure providers that (whatever else it does or does not require) the Treaty | Te Tiriti obliges both Māori groups and government infrastructure providers to:

- act reasonably, honourably and in good faith, and be genuine, collaborative, and respectful
- listen to what others have to say, consider those responses and then decide what will be done.

There is also a high degree of consensus between mana whenua groups and infrastructure sector participants that the best approach to meet those obligations to act reasonably etc. is to establish and maintain enduring relationships between infrastructure providers and Māori groups.

Factors that both mana whenua groups and infrastructure providers see as necessary for such relationships to be established and maintained are that the relationships are based on trust with the parties.

- genuinely listening to what each other is saying
- having reasonably regular ongoing contact
- having a long-term focus and allowing the time to for necessary conversations to occur
- genuinely seeking to address matters of importance to the Māori group (not only matters of importance to the infrastructure provider)
- taking a positive and constructive approach.

4.1. The Treaty | Te Tiriti requires the parties to act reasonably etc.

The Mana Whenua Documents we reviewed expressed a range of views regarding what the Treaty | Te Tiriti requires, including views that it requires:

- the Crown (or all Treaty | Te Tiriti partners) to act reasonably, honourably and in good faith, be genuine and collaborative or be respectful
- the Crown or all Treaty | Te Tiriti partners to listen to what others have to say, consider those responses and then decide what will be done
- the Crown to fulfil an ongoing obligation to engage with mana whenua groups
- genuine working relationships that are robust enough to be sustained over the long term.

Other Treaty | Te Tiriti requirements put forward in one or more Mana Whenua Documents were:

- meaningful engagement of mana whenua in decision-making processes
- the achievement of outcomes (including environmental outcomes) that are aligned with mana whenua values and interests or based on outcomes defined by mana whenua groups
- both central and local government agencies to recognise a mana whenua group as a partner in
 - the management of the area within the mana whenua group's rohe
 - the natural and physical resources within it, or
 - the exercise of government's statutory responsibilities in relation to te taiao (the environment)
- the implementation of co-governance opportunities, arrangements for the joint management of natural and physical resources, mana whenua having a voice on governance and decision-making bodies, rights to co-development, or transfers of functions and powers to mana whenua

- the Crown to recognise or actively protect a mana whenua group's customary rights inherent in the group's rangatiratanga
- recognition that mana whenua have specific rights and interests in resources such as water and energy-generating resources, with one Mana Whenua Document stating that the Treaty | Te Tiriti requires mana whenua to have an equitable share in the benefits derived from freshwater.
- each mana whenua group to be able to exercise equal explanatory and decision-making power to the Crown within their rohe or takiwā.

In relation to the New Zealand Courts, in the 1987 'Lands Case' ²⁴ the Court of Appeal held that the Treaty | Te Tiriti "created an enduring relationship of a fiduciary nature akin to partnership, each party accepting a positive duty to act in good faith, fairly, reasonably and honourably towards each other" (*Greenpeace Aotearoa Incorporated v Hiringa Energy Limited & Anor*, 2023, para. [187]; Te Puni Kōkiri Ministry of Māori Development, 2001, pp. 65 and 78). Subsequently, in 1993 the Privy Council confirmed that the relationship envisaged by the Treaty | Te Tiriti is "founded on reasonableness, mutual cooperation and trust" ²⁵ (Te Puni Kōkiri Ministry of Māori Development, 2001, p. 79 to 80).

In the context of a decision by the then Director-General of Conservation to give custody of the jaw bones of two whales to one iwi group rather than another, the High Court found that the Director-General breached the Treaty | Te Tiriti relationship because they failed to deal with one of the iwi groups in good faith and failed to make an informed decision (*Hart & Ors v Director General of Conservation*, 2023, para. [81]). The Courts have found that an 'informed decision' is one where the relevant party "when acting within its sphere [is] sufficiently informed as to the relevant facts and law to be able to say it had proper regard to the impact of the principles of the Treaty | Te Tiriti" ²⁶ (Te Puni Kōkiri Ministry of Māori Development, 2001, p. 85).

The High Court has commented that at the heart of the obligation of good faith is transparency (*Hart & Ors v Director General of Conservation*, 2023, para. [83]).

In 1989 the Court of Appeal held that the Treaty | Te Tiriti relationship imposes a requirement for reasonable co-operation on the parties - with the parties required to make a genuine effort to work out agreements over issues arising between them, with judicial resolution as “very much a last resort”²⁷ (Te Puni Kōkiri Ministry of Māori Development, 2001, p. 79). The reasonableness and cooperation inherent in the relationship means that the rights, values and needs of one partner should not inevitably be subsumed by those of another (*Greenpeace Aotearoa Incorporated v Hīringa Energy Limited & Anor*, 2023, para. [204]). However, the Courts have held that Treaty | Te Tiriti does not include a general requirement for government to reach agreement with a Māori group before making a decision that affects them (*Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation*, 2018, para. [95]; *Te Korowai o Ngāruahine Trust & Ors v Hīringa Energy Limited & Anor*, 2022, paras. 271–272; *Watercare Services Limited v Minihinnick*, 1998).

Two other Treaty | Te Tiriti concepts that have been identified by New Zealand Courts are the principles of tino rangatiratanga and active protection. The New Zealand Court of Appeal recently considered the impact of those principles in the context of an infrastructure project. The Court found that (*Greenpeace Aotearoa Incorporated v Hīringa Energy Limited & Anor*, 2023, para. [194], [203], [204] and [207]):

- both of those principles sit within the overarching ‘partnership’ relationship framework
- consistency with the principle of active protection has both procedural and substantive implications – not only must the Crown adopt fair consultative processes with Māori in respect of planned projects that may engage Treaty | Te Tiriti principles, but the principle may also be relevant to whether a project should proceed on a site proposed or proceed at all
- in a particular case, adoption of mitigation measures may result in a version of a project that is consistent with the Treaty | Te Tiriti, “reflecting a balancing of interests reflective of the partnership that the Treaty represents”.

Since at least 2009 there has been discussion in the New Zealand Courts as to whether they should recognise a “relational duty of good faith” in Māori-Crown relationships (such as those recognised in employment relationships) with that duty only derived in part from the Treaty | Te

Tiriti. Ngāi Tahu currently has a claim before the High Court which, among other things, alleges that “the Crown has a relational duty of good faith to work in cooperation and partnership with Ngāi Tahu to design and implement a regime for the regulation, governance and allocation of wai māori [fresh water] that recognises, safeguards and accommodates the rights and interests of Ngāi Tahu over wai māori within its takiwā” (*Tau & Ors v Attorney-General*, 2022, para. [15]). As of 26 January 2024, no substantive decision had been made on that claim.

4.2. The need to establish and maintain enduring relationships

There also appears to be a high degree of consensus between mana whenua and infrastructure providers that the best approach to take to meet Treaty | Te Tiriti obligations to act reasonably etc. is to establish and maintain trust-based ongoing relationships between infrastructure providers and Māori groups. The New Zealand Environment Court recently also stressed the importance of infrastructure providers building and maintaining positive ongoing relationships with tangata whenua in the area(s) in which they operate (*Re Port of Tauranga Limited*, 2023).

Many of the Mana Whenua Documents we reviewed discuss the need for government agencies and developers, particularly those whose activities impact on natural and physical resources/taonga, to establish relationships with them and engage regularly with them. A specific area where several Mana Whenua Documents note that ongoing relationships are of key importance is the protection and maintenance of access to significant cultural sites.

All the Infrastructure Staff we talked to as part of this project spoke about how they are trying to establish and maintain ongoing relationships with Māori groups. An Infrastructure Staff member said:

“It’s all about the long game for iwi and it’s all about the long game for infrastructure operators like us who are operating long-term kit.”

A couple of Infrastructure Staff members noted that where infrastructure providers acquire existing infrastructure or sites consented for use for infrastructure, to a degree, they inherit some of the relationships with Māori groups the

former infrastructure provider/project developers had. However, they need to put the effort in to establish a direct open and trust-driven relationship with those Māori groups themselves.

Some Contractor Staff and Infrastructure Consultants commented that many, but not all, of the infrastructure providers they work for have established relationships with Māori groups. One Infrastructure Consultant noted that in the past they have tended to come in to work on a project and then leave but are now looking to become better at maintaining their own enduring relationships with Māori groups they have worked with.

4.3. What is required for an enduring mana whenua/infrastructure provider relationship

Factors that both mana whenua groups and infrastructure providers see as necessary for such relationships to be established and maintained are that the relationships are based on trust with the parties:

- genuinely listening to what each other is saying
- having reasonably regular ongoing contact
- having a long-term focus and allowing the time to for necessary conversations to occur
- genuinely seeking to address matters of importance to the Māori group (not only matters of importance to the infrastructure provider)
- taking a positive and constructive approach.

4.3.1. Relationships based on trust

Infrastructure Staff talked about the importance of being trustworthy and the need to engage in open and honest dialogue with Māori groups. (Similarly, the interviewees in a lessons learnt review of the City Rail Link project commented that trust and honesty are critical to an infrastructure provider's relationship with mana whenua (Joyce & Spies, 2023)).²⁸

Infrastructure Staff at one provider noted that if their organisation failed to honour commitments to a Māori group that would be a factor in the relationship with that Māori group for generations. Several Infrastructure Staff commented that if an infrastructure provider damages the environment or damages sites of significance that will adversely affect its relationships with Māori groups. Another

Infrastructure Staff member said that on one occasion their organisation changed design consultancies because a mana whenua group had had a previous bad experience with the first consultancy and did not want to work with them.

Infrastructure Staff at one provider commented that if a Māori group they have an ongoing relationship with introduces them to another Māori group, part of the flavour of their relationship with the first group gets passed to the new relationship, and if they did not act in a trustworthy way in their dealings with the second group that would damage their relationship with the first group.

Several Infrastructure Staff discussed the importance of being very open about sharing information with Māori groups in relation to proposed infrastructure initiatives.

- Infrastructure Staff from one provider noted that the representatives of Māori groups they talk to tend to have significant commercial experience and, therefore, it makes sense to share information about things like the relative cost of different options for infrastructure initiatives with them.
- Infrastructure Staff from two different infrastructure providers commented that if Māori groups are provided with information about the technical limitations a provider is working to, most Māori groups will accept that options for an infrastructure initiative need to work within those limitations to be viable/safe. Infrastructure Staff at one provider noted that recently they have started having technical people in the room when they engage with Māori groups. They find that this adds transparency and “a wider appreciation of everyone’s mahi comes out of it”.
- Infrastructure Staff at another provider commented that they share relevant geological/hydrogeological survey results with Māori groups.

As discussed further in section 6.3.7 of this report, in order for an infrastructure provider to understand a Māori group's position on an issue that group may need to share mātauranga (knowledge) passed down to them from tūpuna or information about culturally sensitive sites or landscapes. To do that they need to trust that the infrastructure provider will treat that information appropriately.

Some Infrastructure Staff interviewed discussed the need for an appropriate handover of

responsibility for complying with ongoing commitments made to a Māori group after an infrastructure project has been commissioned to ensure that responsibility for that sits with staff who are best placed to ensure the commitments are complied with. Those obligations may sit in resource consent or archaeological authority conditions or advice notes, or in contracts or memoranda of understanding entered into between the infrastructure provider and a Māori group. Some other infrastructure providers use a model where, if the project involves modification of an existing piece of infrastructure, asset management staff are involved in engagement with Māori groups at all stages of the project and, therefore, are part of the relationships and aware of any ongoing commitments made.

4.3.2. Genuinely listening

Several Infrastructure Staff we spoke to as part of this research stressed the importance of:

- allowing Māori groups the space to speak
- genuinely listening to what members of a Māori group are saying about what is important to them, and what they think and want,

rather than going into engagement with assumptions about what the group is likely to think or want.

One Infrastructure Staff member noted that many Māori groups have experienced a long history of no one caring or being interested in what they thought or wanted and, therefore, have a level of expectation that that will happen again. That Infrastructure Staff member stated “[g]ive them the space to speak and you will learn something you didn’t know before”. Another said that every time their organisation engaged with a Māori group they obtained more information.

4.3.3. Having reasonably regular ongoing contact

Infrastructure Staff indicated that establishing and maintaining ongoing relationships is easiest where an infrastructure provider has a constant presence in an area (e.g. where infrastructure provider staff work and live in the area and are, therefore, part of the local community).

Given the number of iwi and hapū groups across the country, a couple of Infrastructure Staff commented it would be impossible for their organisation to have a genuine ongoing relationship with every iwi and hapū group in the country. Some Infrastructure Staff talked about

identifying and prioritising those iwi and hapū groups it is most important for them to have an ongoing relationship with. Similarly, one Mana Whenua Document indicated that the mana whenua group intended to develop a relationship strategy to identify existing relationships and external parties there is the potential to develop relationships with.

Infrastructure Staff at one infrastructure provider advised that, if they are thinking of developing an infrastructure initiative in a new area they will establish relationships with Māori groups in that area, and they will maintain the relationships they have established with those groups even if the particular initiative does not proceed or is significantly deferred.

Some Infrastructure Staff interviewed discussed how they seek to ensure that relationships with a Māori group continues after an infrastructure project is commissioned. One Infrastructure Staff member identified the need for infrastructure provider project staff to appropriately hand-over relationships they have established with Māori groups to asset management staff once a project was commissioned.

This is consistent with the Controller and Auditor-General’s observation (when looking at four non-infrastructure Government initiatives) that effective relationships between government and Māori groups has been “built over time with regular engagement” (Controller and Auditor-General, 2023, p. 25).

4.3.4. Having a long-term focus and allowing the time for necessary conversations to occur

An Infrastructure Staff member noted that infrastructure providers’ assets are multi-generational assets and, therefore, infrastructure providers think in more similar time horizons to Māori groups than private developers (who may only be looking to obtain resource consent for an initiative and then on-sell the consented site).

Infrastructure Staff commented that in their first meetings with a Māori group they focus on building a relationship with that group rather than expecting the Māori group to engage on a specific infrastructure initiative or other transactional matters (unless the Māori group wants to do that). They also noted that a first meeting with a mana whenua group will generally centre on that group’s past experiences of infrastructure development and land occupation

in their rohe (which Infrastructure Staff then acknowledge without seeking to justify it and, if it relates to the past actions of their organisation or a predecessor organisation, apologise for).

Several Infrastructure Staff talked about the need to allow time for necessary conversations with Māori groups to occur and that taking time to work through issues is inherent in the fact that infrastructure providers and Māori groups are seeking to establish and maintain long-term relationships. One Infrastructure Staff member commented that, at this stage in the Māori-Crown relationship, there is a need to repair wounds and “store up a bit of grace and humility and trust between the parties” rather than being focused on making engagement more efficient. A Mana Whenua Document also specifically commented that real and satisfactory engagement for both parties takes time.²⁹

Some Infrastructure Staff noted that having open conversations with Māori groups very early in the thinking about a possible infrastructure initiative means that there is time to have the necessary conversations. Infrastructure Staff at one provider noted that if they know that a piece of infrastructure is nearing the end of its economic life they will begin engaging with relevant Māori groups about the potential need to replace it maybe ten years before any replacement is likely to occur. They will begin by identifying which particular people within the wider mana whenua groups they need to engage with in relation to that piece of infrastructure, establish an initiative-specific steering group and obtain a detailed understanding of the values, history and mamae (past hurt) relating to the specific area in which that infrastructure is located. They will do this before they start actively looking at different options. An Infrastructure Staff member noted that engaging with Māori groups at very early stages in the thinking about an infrastructure proposal should avoid last minute cost blowouts due to the need to make significant changes to a project to address the group’s concerns at a late stage.

Infrastructure Staff from one provider noted that because they have established relationships with Māori groups, they are able to discuss with them the extent to which the Māori groups want to engage on particular initiatives – whether it is not a matter of interest or priority for them, whether they want ‘light touch’ engagement, or whether the engagement needs to be an intensive process over a matter of years. The Infrastructure

Staff commented that they are guided by Māori groups on the scope and extent of engagement those groups require for a particular initiative.

Infrastructure participants noted that turn-over in the leadership and management of Māori groups (as a result of elections or individuals moving on to new roles elsewhere) can mean that issues that were worked through with the previous leadership/management need to be revisited. (As noted earlier in this report, changes in government/infrastructure sector personnel can also result in a need for issues previously discussed with a Māori group to be revisited.)

Working with the fact that there are significant demands on Māori groups’ time

Infrastructure Staff noted that when, after a relationship with a Māori group has begun to be established, they seek to engage with the group on a specific infrastructure initiative, demand on Māori group members’ time from people wanting to speak to them about development proposals or policy or planning initiatives (‘hui fatigue’ or ‘consultation fatigue’) means that it can take some time for a Māori group to form a view as to whether they want to engage on a particular infrastructure proposal. This means that not having heard from a Māori group is not treated as an indication that the group does not want to engage.

Due to the demand on Māori group members’ time, it can also take time for the appropriate people to speak to at a Māori group to be available to engage on a particular infrastructure proposal. Iwi and hapū organisations may only meet periodically and have the agendas for their meetings determined some time in advance so that it can take a few months for a matter relating to a particular infrastructure proposal to make it onto the agenda.

Several Infrastructure Staff commented that it may be more difficult to find times that work for an iwi or hapū group when that group does not have a finalised Settlement:

- When pre-settlement groups are in the middle of Settlement negotiations, they may be wary about something they agree to with an infrastructure provider later prejudicing their ability to advocate for a particular outcome as part of their Settlement and, if they are in active Settlement negotiations, they tend to have very little, if any, time available to engage on anything else.

- Post-settlement mana whenua groups tend to have structures in place to support engagement and are significantly better resourced. However, mana whenua groups whose Settlements have been finalised relatively recently are often still at the stage of embedding and implementing their Settlements.
- Mana whenua groups who have been operating in a post-Settlement environment for some time tend to be more experienced at triaging what issues they do and do not want to engage with an infrastructure provider on.

One Infrastructure Staff member commented that it helps to think about what is likely to be on a particular Māori group's 'to do' list and whether by engaging with them you would take something off their list or add something to it.

Engaging on a programme of works rather than just an individual project

Infrastructure Staff at one provider commented that where they have a programme of work planned for a particular area over the next few years and an existing relationship with a mana whenua group in that area they may meet with the mana whenua group and let them know what the planned programme of work includes and ask the group which aspects of it they are most interested in so that they can tailor their engagement accordingly. Infrastructure Staff at another provider noted that they work with a consultancy which represents local rūnanga. They commented that having built a relationship with that consultancy means that they can:

“... talk about our projects as a whole and where we want to go and I suppose about where the opportunities lie for ongoing engagement and development across [our infrastructure].”

Infrastructure Staff at two other providers independently identified a version of engaging on a programme of work as an approach they would like to move to in future (although not one they use currently).

One Council Respondent said that their local authority holds a staff-level hui quarterly so that mana whenua group staff and local authority staff can connect. Matters discussed at this hui include any new projects in the pipeline and how mana whenua groups want to be engaged on each of those projects. They noted that sharing this information with mana whenua representatives means that when mana whenua group members hear about a proposed project and raise it with

the representatives, the representative are able to say that they are aware of the project and a channel of communication with the local authority about that project is available.

An Infrastructure Consultant also commented that it is better to talk to Māori about a programme of work rather than about a project as that allows a Māori group to see where future spending is planned and identify where they can best allocate their resources. It also enables infrastructure providers to understand what a Māori group's priorities are.

Several Mana Whenua Documents noted the need or desirability for agencies to provide them with work plans or programmes and information on possible projects. One Mana Whenua Document proposed asking local authority infrastructure providers to negotiate three-year schedules of work for roading, other infrastructure, reserves, and community services with the mana whenua group.

4.3.5. Genuinely seeking to address matters of importance to the Māori group not only matters of importance to the infrastructure provider

Several Mana Whenua Documents talked about working with developers to seek to ensure both the mana whenua group's and the developer's objectives and requirements are met rather than parties acting solely out of self-interest. Infrastructure Staff at one provider commented that something they are actively working on is treating Māori groups' objectives and aspirations as equally important as the provider's objectives (while acting consistently with matters the provider is accountable for, such as accountability to shareholders where an infrastructure provider is a company). Other Infrastructure Staff also referred to working with Māori groups to explore how they can achieve the groups' goals as well as the infrastructure provider achieving its goals. An Infrastructure Consultant commented that infrastructure providers need to be open and flexible in terms of the opportunities that a project might provide to achieve mutual outcomes.

An iwi representative spoken with as part of this work noted:

- that, in their experience, how well engagement with government in relation to infrastructure goes depends upon the government leadership and their level of understanding of the rights and aspirations of the iwi

- the importance of government agencies identifying the value add they can bring to a Māori group and, if they are unsure how to do that, talking to a Māori group about what value adds the group thinks the government agency could provide to the group.

Several Mana Whenua Documents referred to the Māori groups' intention to progress, or past experiences of, initiatives delivered with developers and government agencies such as:

- school holiday programmes and scholarships
- training opportunities, including project developer-provided workshops in relation to technical information
- internships, secondments, mentoring or work experience for group members in areas such as environmental management, planning, resource management and local government decision-making and processes, engineering and research, and information documentation and collation.

Ways in which infrastructure providers have sought to facilitate Māori groups' objectives and aspirations identified by Infrastructure Staff included:

- providing access to land on which culturally significant sites are located which (due to the land being in private ownership) a Māori group has been unable to access for decades ³⁰
- co-funding the documentation of sites of cultural significance in the area where their infrastructure is located and the stories associated with those sites
- providing the infrastructure provider's GIS data for a particular area to a Māori group on the basis that they can use that data for whatever they want and providing no-charge GIS training
- when commissioning archaeological assessments in relation to an infrastructure initiative engaging the archaeologist to study a larger area than would strictly be required

solely for that initiative and sharing the results of the study with a Māori group (noting that this also has benefits for the infrastructure provider as it gives them information that they can refer to if they want to do works in that general area again in future)

- Māori groups and the infrastructure provider jointly undertaking environmental enhancement projects
- organising work experience, internship and apprenticeship opportunities for Māori in the local community
- providing support to events such as te reo Māori learning events.

(Initiatives being undertaken in relation to engagement by Māori businesses and individuals in the infrastructure workforce will be discussed in our next report.)

Some Mana Whenua Documents referred to the need for two-way or reciprocal capacity/capability building with Māori groups assisting to upskill agencies including in relation to cultural values, tikanga, and mana whenua approaches to environmental management. Several Council Respondents also noted the need for local authority staff to increase their knowledge and expertise or the need to increase capability being reciprocal. Mechanisms for increasing local authority staff capability referred to by Council Respondents included:

- inviting Māori group representatives to attend field trips, conferences and other subject matter expert fora
- meetings between local authority staff and mana whenua representatives to discuss each other's organisational structures and ways of working
- organised professional development programmes for local authority staff including site visits and presentations.

Port case study:

The 2023 Environment Court decision in this case study draws on ³¹ covers a range of issues. ³² This case study focuses on the relevant insights from this case regarding what is required for infrastructure providers and Māori groups to successfully establish and maintain ongoing relationships.

Tauranga Harbour | Te Awanui is of great historic and cultural significance to tangata whenua iwi and hapū and their relationship with it is intrinsic to who they are (*Re Port of Tauranga Limited*, 2023, para. [324] to [332]). The development of the current Port of Tauranga in Te Awanui began in the 1950s and the port has grown rapidly so that, in 2023, it handled 32% of all New Zealand cargo (in tonnes) (*Re Port of Tauranga Limited*, 2023, para. [39]).

The 2011 consents for channel deepening and widening at the Port

In around 2009 the Port Company applied for resource consent for channel deepening and widening. It did not undertake any engagement with tangata whenua groups prior to lodging the consent applications (although it undertook some engagement after lodgement when encouraged to do so by the Bay of Plenty Regional Council and, subsequently, the Environment Court) (*Re Port of Tauranga Limited*, 2023, para. [40] to [43]). In 2011 the Environment Court expressed significant concern at the Port Company's approach stating that the case highlighted "the yawning chasm in cultural insight sometimes displayed by major infrastructural companies" (*Te Rūnanga o Ngāi Te Rangī Iwi Trust & Ors v Bay of Plenty Regional Council*, 2011, para. [315]). The Court granted the consents on the condition that the Port Company established and funded a trust (Ngā Mātarae Trust) through which the relevant iwi and hapū and the Port Company could "form an enduring relationship and engage with each other directly and equally" (*Te Rūnanga o Ngāi Te Rangī Iwi Trust & Ors v Bay of Plenty Regional Council*, 2011, app. C).

Following the 2011 decision, the Port Company appointed a cultural liaison officer to seek to improve engagement with mana whenua but after that officer left local iwi and hapū provided feedback that they wanted to deal directly with representatives from the Port Company rather than a liaison officer (*Re Port of Tauranga Limited*, 2023, app. 3, para [6]).

Engagement between the Port Company and tangata whenua on a proposal to further extend the Port

In around 2016 the Port Company decided to pursue further expansion of the port and, through Ngā Mātarae Trust, informed representatives of some tangata whenua groups of that intention.

From 2019 the Port Company undertook an engagement process with tangata whenua groups in relation to the expansion proposal which included:

- providing those groups with a draft of the proposed assessment of environmental effects and other information relating to the proposed consent application for the proposal
- arranging a hui between some of those groups and academics the Port Company had engaged to undertake research required for the project

- offering assistance or resourcing to assist tangata whenua groups to respond to the draft application, including engaging an independent planner to assist tangata whenua groups to review it

- holding a hui with some tangata whenua representatives in March 2020.

The engagement process involved ongoing engagement between tangata whenua groups and some Port Company staff, including some engagement with Port Company senior leadership. A number of tangata whenua groups provided feedback on the draft application raising matters they considered needed to be addressed.³³

Direct referral of the applications to the Environment Court

In 2020 the Port Company applied for the project to be considered under two Government programmes aimed at shortening the time it took to consent and deliver projects – the 'shovel-ready' programme and the fast-track consenting programme.

As those applications were both unsuccessful, in May 2021, the Port Company lodged resource consent applications with the Regional Council. The project proposed included new wharves, reclamation and dredging in two locations – an area of the port known as Sulphur Point and an area on the Mount Maunganui (eastern) side of the port. The proposal was for the works at Sulphur Point to be undertaken in two stages. When it lodged the consent applications, the Port Company asked for them to be processed without being notified to anyone. On the recommendation of an independent Commissioner, the Council undertook limited notification of the application, notifying it solely to tangata whenua groups and the Tauranga Airport Authority (Greaves, 2021, para. 4.2).³⁴

Following submissions in opposition to the proposal being lodged by tangata whenua groups (Greaves, 2021, para. 4.4), in December 2021 the Port Company applied for the resource consent applications for the proposed expansion to be referred directly to the Environment Court.³⁵ A number of groups representing tangata whenua became parties to the Environment Court proceedings, opposing the grant of the consents.

The Environment Court's interim decision on the proposed Port expansion

In December 2023, the Environment Court released an interim decision in relation to the consent applications. It granted consent for Stage 1 of the proposed Sulphur Point wharf extension within an area the Port Company already held a resource consent to undertake dredging (subject to some matters being addressed to the Court's satisfaction). In relation to Stage 2 of the Sulphur Point proposal and the proposed works on the Mount Maunganui side of the port, the Court reserved its decision subject to the Port Company providing further information.

In the 2023 decision, the Environment Court found that the following statement made by Counsel for the Port Company "fairly described the complexity of consulting with tangata whenua in Tauranga Moana" (*Re Port of Tauranga Limited*, 2023, para. [223] to [224]):

"... there is an enormous amount of complexity in developing relationships in Tauranga Moana with 27 hapū, three iwi and multiple mandated entities within the iwi framework, all of which hold their own mana and individual relationships."

However, the Court noted that, despite the engagement with tangata whenua undertaken prior to the consent applications being lodged, the Port Company's original evidence before the Court was silent on measures to avoid, remedy, or mitigate effects cultural effects on tangata whenua. Although some remediation or mitigation proposals were made in the Port Company's closing submissions the Court understood that those proposals had been developed without specific input from tangata whenua.

The Court also noted the views of tangata whenua that:

- in relation to all past development of the port, consultation with them had been non-existent or inadequate
- they did not have an established relationship with the Port Company
- they felt that there was unwillingness by the Port Company to give serious consideration to their views,

and stated that those perceptions had created "a significant level of distrust of [the Port Company] and reservations [among tangata whenua] about whether further consultation could result in any different outcomes" (*Re Port of Tauranga Limited*,

2023, para. [342] to [344]). The Court also noted the perceptions of tangata whenua groups that (*Re Port of Tauranga Limited*, 2023, para. [342] and [359]):

"... however many times they explain what is important to them, they are ignored and nothing changes."

"[The Port Company] does not respond to tangata whenua proposals, engages only on matters [the Port Company] wants to engage on, ... does not engage meaningfully on other hard issues of concern to tangata whenua, [and] appears to have little or no appreciation of the overall costs involved [in engaging] for tangata whenua personally, collectively as iwi and hapū and financially."

The Court identified several factors that had put back the development of a good relationship between the Port Company and iwi and hapū since 2011. These included the Port Company (*Re Port of Tauranga Limited*, 2023, para. [589] and [590]):

- in 2016, proposing to lease land in close proximity to a marae for use for fuel storage without any discussion with the marae
- not undertaking annual kaimoana monitoring as required under the conditions of the 2011 consent
- asking for the consent applications for the latest proposed port extensions to be processed on a non-notified basis
- notifying tangata whenua of its intention to apply for the most recent expansion project to be determined under fast-track consenting legislation by email less than six weeks after it had confirmed an intention to apply to the Regional Council for consent
- when it applied for direct referral to the Environment Court, not including representatives of an affected marae on the list of parties it thought should be notified of the proceedings.

Looking forward, the Court stated that (*Re Port of Tauranga Limited*, 2023, para. [32]):

"... it was evident that improved relationships are starting to be built between tangata whenua and the new chairperson of the board and senior executives of the [Port Company]. It is to be hoped that this will provide a starting point from which the parties will be able to move forward constructively together."

4.4. Being positive and constructive (including making a genuine effort to reach agreement)

As discussed above, in 1989 the Court of Appeal held that as part of the obligation to the Treaty | Te Tiriti relationship requires the parties make a genuine effort to work out agreements over issues arising between them, with judicial resolution as “very much a last resort” ³⁶ (Te Puni Kōkiri Ministry of Māori Development, 2001, p. 79).

An Infrastructure Staff member commented that if an infrastructure provider has an established ongoing relationship with a Māori group, and has open conversations with that group, that does not mean that the provider and the group members will always agree. However, their relationship means that they can have constructive conversations about areas of disagreement. Infrastructure Staff from two providers noted that having established ongoing relationships means that when an issue arises they can get on the phone and ask what the concern or situation is.

An Infrastructure Staff member commented that, if an organisation relied on consenting and Court processes to get through issues with Māori groups they might, ultimately, get consent but their relationships with Māori groups and social licence would be damaged.

There has been comment in the media, (see for example (Cumming, n.d.)) that, under the RMA, projects have been delayed due to opposition by Māori groups in the Courts. We identified some data which, while it does not provide a comprehensive picture of who is submitting against or appealing the grant of consents for infrastructure projects, provides some insight. That data is the successful applications for funding made to the Environmental Legal Assistance Fund (ELAF) from the 2010-11 to the 2022-23 financial years. ³⁷

The ELAF is administered by the Ministry for the Environment. It has a total annual budget of \$600,000 including GST (Ministry for the Environment, 2023). ELAF funding can be granted to cover the time and expenses of legal representation or expert witnesses used in preparing for, resolving or presenting cases before the Environment Court, higher courts or first instance hearings where the right of appeal is likely to be restricted to points of law only, such as Board of Inquiry hearings (Ministry for the Environment, 2023). Only not-for-profit groups (including iwi and hapū groups, incorporated societies, and community groups) can apply for ELAF funding. Therefore, the ELAF data we analysed does not identify any infrastructure projects which were solely opposed by entities other than not-for-profit groups eligible to apply for ELAF funding – such as individuals, companies, government entities or other entities such as family trusts. Also, not all iwi or hapū who are involved in environmental litigation apply for ELAF funding. For example, some iwi who settled their Treaty | Te Tiriti claims relatively early are active in environmental matters but did not receive ELAF funding in the period we looked at.

As discussed in Appendix C:

- we used the ELAF data to identify a number of infrastructure projects which went to, or were proposed to go to, Board of Inquiry, Environment Court or higher court hearings in relation to environmental or heritage matters in the relevant period
- we then analysed who opposed those projects (looking at publicly available information to seek to identify all parties opposing the projects, not focusing solely on the parties who received ELAF funding).

There were significantly more cases in that data where infrastructure projects were opposed in Court (or at a Board of Inquiry hearing) solely by non-Māori groups) or opposed by a number of parties including both Māori and non-Māori groups, than cases where infrastructure projects were opposed solely by Māori groups.

*Ōhakuri, Waikato River hydro scheme*

5. Shared decision-making mechanisms currently being used

There are a number of mechanisms currently being used which, to varying degrees, mean that Māori groups have a share in the decision-making around government infrastructure initiatives. Those mechanisms include:

- inclusion of Māori group representatives on infrastructure project governance or steering groups
- inclusion of Māori as partners within Alliance contracts
- bespoke Treaty | Te Tiriti Settlement Act mechanisms which result in a mana whenua entity having specific decision-making powers that could directly affect infrastructure initiatives
- a joint application by a mana whenua group and an infrastructure provider for resource consents for an infrastructure project
- Te Mana o te Wai statements under the National Policy Statement for Freshwater 2020.

For some of those mechanisms it is not clear what role Māori groups have in relation to decisions which affect the cost of infrastructure initiatives. It is also unclear whether the Māori groups and other parties that participate in those mechanisms all share the same understanding of who each of the parties are accountable to.

5.1. Inclusion of Māori group representatives on project governance or steering groups

A mechanism used by some infrastructure providers is to include Māori group representatives on project governance or steering groups. An Infrastructure Consultant commented that having Māori groups in infrastructure project governance roles brings both a different world view (which has a focus on what is good for future generations) and adds significant governance experience to a project.

However, currently, project governance and steering groups made up of, or including, representatives of Māori groups tend to be established after decisions have been made about which projects to undertake and what the scope of a particular project should be.³⁸

Several Infrastructure Staff commented that it would good if Māori groups were involved in prioritising projects or choosing between different project options. That would mean that Māori groups had some ownership of those decisions and there would be an agreed plan, or as one Infrastructure Staff member described it, “a conduit of energy”, that Māori groups and the Infrastructure provider would be working with. An Infrastructure Consultant also commented that Māori groups need to be involved at the point where decisions are made about what the right thing to do to address an infrastructure issue is and that Māori groups should have input into all areas they identify as critical from the start of a project to the finish.

However, Infrastructure Staff at one provider commented that when they have offered to have discussions with Māori groups at the stage where they were deciding what option to take to address an infrastructure issue, the groups’ response has been to ask them to come back once they have identified a preferred option. An Infrastructure Consultant stated that, in their experience, Māori groups represented on governance or steering groups

generally do not want to be involved in the option selection processes for an infrastructure proposal (although in one recent case mana whenua members of a project governance body did participate in the multiple criteria analysis process undertaken as part of option selection).

An Infrastructure Consultant identified that establishing governance or steering groups including representatives of Māori groups after many key decisions about a project has been made means that infrastructure providers and Māori groups then need to spend time agreeing how their relationship in relation to the project will work and what outcomes they are seeking to achieve. Project teams may impose timeframes around reaching agreement on those matters which do not work with a Māori group’s operational requirements or proceed at pace with a project before those matters have been agreed. Project teams may also expect Māori groups to accept decisions that were made before the Māori group became involved in the project, including:

- decisions around the principles which will inform decisions that do not reflect te ao Māori constructs
- procurement decisions.

5.2. Including Māori groups as ‘Alliance partners’

Under an Alliance contract delivery model, the client, one or more consultants and the main contractor enter into a contract to deliver a project on a ‘pain/gain share’ basis where costs below and above the target cost are shared between the parties based on a pre-agreed percentage split.

Some mana whenua groups have been included on infrastructure projects being undertaken under an Alliance contracting model and identified as ‘Alliance partners’. Conversations with people involved in such Alliances undertaken as part of this research indicated that where Māori groups are Alliance partners they are not part of the ‘pain/gain share’ arrangements, tend not to make commercial decisions and do not have responsibility for matters such as compliance with health and safety requirements.

Because Alliance documents tend to be commercially sensitive, currently there is not sufficient publicly available information to determine how the model of Māori being Alliance partners is working in practice.

5.3. Bespoke Treaty | Te Tiriti Settlement mechanisms

Each piece of Settlement legislation brings into effect the outcomes of negotiations between the Crown and the relevant mana whenua group recorded in a Settlement Deed. Therefore:

- Settlements are similar to a contract between two parties
- the mechanisms used in each Settlement are all different to at least some degree.

The Coalition Government elected in 2023 has stated that no changes will be made to existing Settlement Acts.

Some Settlements provide for mana whenua entities to be involved in the creation of documents which set out the vision, objectives or strategy for the management of particular natural resources. Once developed, those documents have a varying degree of impact on the RMA planning framework (and sometimes other statutory frameworks). For example:

- Te Ātiawa o Te Waka-a-Māui Trust may prepare a kaitiaki plan which the Marlborough District Council must “take into account” when preparing or changing a regional policy statement or regional coastal plan that includes part of the coastal marine area of Queen Charlotte Sound | Tōtaranui³⁹
- Te Heke Ngahuru is a document developed under the Te Awa Tupua (Whanganui River Claims Settlement) Act by a body called Te Kōpuka nā Te Awa Tupua (Te Kōpuka). Te Kōpuka is comprised of representatives of people and organisations with an interest in the Whanganui River | Te Awa Tupua, including iwi, relevant local authorities, departments of State, commercial and recreational users and environmental groups.⁴⁰ Te Heke Ngahuru⁴¹ identifies issues relevant to the health and wellbeing of Te Awa Tupua, and provides a strategy and recommended actions to deal with those issues.⁴² People exercising functions and powers under a range of Acts (including the RMA, Conservation Act 1987, Local Government Acts 1974 and 2002, Heritage New Zealand Pouhere Taonga Act 2014, and Marine and Coastal Area (Takutai Moana) Act 2011) must “have particular regard to” the Te Heke Ngahuru document.⁴³
- the Rangitikei River Document (prepared by a forum comprised of members appointed by seven different mana whenua organisations

and seven members appointed by local authorities) must be “recognised and provided for” whenever the Bay of Plenty Regional Council prepares or changes a regional policy statement⁴⁴

- The Maniapoto Claims Settlement Act requires the Waikato Regional Council, Waitomo District Council and Ōtorohanga District Council to enter into a joint management agreement with the trustees of Te Nehenehenui (the Maniapoto post-settlement governance entity).⁴⁵ That joint management agreement is to relate to⁴⁶ all waters upstream of the landward boundary of the coastal marine area within an identified area (‘Ngā Wai o Maniapoto’) which includes parts of the Waikato, Taranaki and Manawatū-Wanganui regions and activities within the catchments affecting those waters. Among other things, that agreement must provide for the Councils and the Trustees to work together to jointly develop and agree criteria to assist local authority decision-making in relation to resource consents affecting the area covered by the joint management agreement.⁴⁷

However, some bespoke Settlement Act mechanisms (such as the examples discussed below) provide a mana whenua entity with specific decision-making powers which could more directly affect infrastructure initiatives undertaken in the area(s) where those powers apply.

If someone considered that a decision made under a Settlement mechanism was not properly made they could, in appropriate circumstances, ask the High Court to review that decision (*Tūpuna Maunga o Tāmaki Makaurau Authority v Norman & Anor*, 2022).

5.3.1. Te Arawa Lakes Settlement Act 2006

The Te Arawa Lakes Settlement Act vested the beds of a number of lakes⁴⁸ in the trustees of the Te Arawa Lakes Trust, with the Crown retaining ownership of the space occupied by water and the space occupied by air above each lakebed.⁴⁹

A public utility authority that wants to:

- place or install a structure or thing comprising a public utility in or on a Te Arawa lakebed
- enter or remain on a Te Arawa lakebed to perform any activity comprising a public utility,

and does not have right or authorisation to do that under another Act must obtain the consent

of the trustees of the Te Arawa Lakes Trust.⁵⁰ A 'public utility' includes a road, railway, electricity line, gas pipeline, project or work relating to electricity generation, harbour works, navigation aids, and public works carried out by the Crown or a local authority.⁵¹

If a public utility has a right or authorisation under another Act to undertake that kind of activity and that other Act requires the consent of the owners of the lakebed for that right or authorisation to be exercised the Trustees of Te Arawa Lakes Trust must not:⁵²

- unreasonably withhold their consent
- impose a charge for granting their consent unless that is expressly permitted by the other Act.

5.3.2. Ngāti Pāhauwera Treaty Claims Settlement Act 2012

The Ngāti Pāhauwera Treaty Claims Settlement Act vested the bed of Lake Rotongaio and part of the bed of Lake Rotoroa in the trustees of the Ngāti Pāhauwera Tiaki Trust.⁵³

A person who wants to erect or modify a structure in or on, or attach a structure to, those lakebeds must obtain the trustees' consent unless that structure is authorised under an Act in way which means that the consent of the registered proprietors of the lakebeds is not required.⁵⁴ The trustees can impose conditions on the grant of their consent, including (unlike under the Te Arawa Lakes Settlement) imposing a charge.⁵⁵

5.3.3. Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act 2010 and Ngā Wai o Maniapoto Waipa River Act 2012

The Waikato River Authority is made up of five members each appointed by a different mana whenua organisation (the Waikato Raupatu River Trust (Waikato Tainui), Te Arawa River Trust, Tūwharetoa Māori Trust Board, Raukawa Settlement Trust, and Te Nehenehenui (Maniapoto)) and five members appointed by the Minister for the Environment (some on the recommendation of local authorities).⁵⁶

The Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act and Ngā Wai o Maniapoto Waipa River Act give the Waikato River Authority some powers if someone makes an application for resource consent to:⁵⁷

- take, use, dam, or divert water in the Waikato River or Upper Waipa River
- make a point source discharge to either of those Rivers
- undertake one of a range of activities relating to the bed of either of those Rivers.

If a Council-level hearing is held in relation to that type of consent application the committee hearing the application must consist of equal numbers of members appointed by the relevant Council and members appointed by the Waikato River Authority and an independent chairperson jointly appointed by the Authority and the Council.⁵⁸ If such an application is called in by the Minister for the Environment and referred to a Board of Inquiry under the RMA, the Board must be comprised of equal numbers of people nominated by the Waikato River Authority and people appointed by the Minister, plus a chairperson appointed by the Minister.⁵⁹

5.3.4. Te Urewera Act 2014 and Iwi and Hapū of Te Rohe o Te Wairoa Claims Settlement Act 2018

Under Te Urewera Act, Te Urewera was declared to be a legal entity with all the rights, powers, duties and liabilities of a legal person., with those rights, powers and duties being exercised and performed in practice by Te Urewera Board.⁶⁰

Te Urewera Board consists of six members appointed by the trustees of Tūhoe Te Uru Taumatua and three members appointed by the Minister of Conservation.⁶¹ The Director-General

of Conservation and the chief executive of Tūhoe Te Uru Taumatua are responsible for the operational management of Te Urewera.⁶²

Te Urewera Board, among other things, prepares and approves a Te Urewera Management Plan, makes bylaws for Te Urewera, and grants permits for activities that cannot be undertaken in Te Urewera without authorisation.⁶³ Te Urewera Management Plan must, among other things, identify the criteria that will be used when decisions are made on applications for activity permits.⁶⁴

Activities that can only be undertaken within Te Urewera if authorised by an activity permit include:⁶⁵

- making a road or altering a road
- some activities that may need to be undertaken in order to maintain, repair, upgrade, or construct infrastructure such as taking, cutting, or destroying any plant; disturbing, taking, or killing any animal (other than sports fish); and entering specially protected areas.

The Board can only grant an activity permit to make or extend a road or alter an existing road if that activity is provided for in the Te Urewera Management Plan and the Board is satisfied that:⁶⁶

- the activity will have minimal effects on natural features as far as practicable
- all practicable measures will be taken to mitigate any adverse effects including avoiding the fragmentation of habitats and ecosystems, the rehabilitation of surfaces of earthworks, weed control and the collection and treatment of stormwater run-off.

Te Urewera Board can also grant concessions (authorisations in the form of a lease, licence, permit, or easement) for other activities that are not inconsistent with Te Urewera Management Plan.⁶⁷

Under the Iwi and Hapū of Te Rohe o Te Wairoa Claims Settlement Act, Te Urewera Board is required to “consider and provide appropriately for the relationship of the iwi and hapū of Te Rohe o Te Wairoa and their culture and traditions” with identified areas of Te Urewera when the Board makes certain decisions, including

decisions on granting permits or concessions and making bylaws.⁶⁸

5.3.5. Ngāti Hauā Claims Settlement Act 2014

The Ngāti Hauā Claims Settlement Act established the Waharoa (Matamata) Aerodrome Committee which exercises certain powers in relation to land at the Waharoa Aerodrome (also known as the Matamata Aerodrome). The Committee is made up of three members appointed by the trustees of the Ngāti Hauā Iwi Trust, the mayor and deputy-mayor of Matamata-Piako District Council and one other member appointed by Matamata-Piako District Council (who must be a councillor).⁶⁹

The Committee can:⁷⁰

- make recommendations to the Council in relation to any aspect of the administration of the Aerodrome land
- make decisions on access and parking arrangements for that land that affect Raungaiti Marae
- perform some functions in relation to any review of the reserve management plan for the Aerodrome (but not initiate a review or approve a management plan for the Aerodrome reserve unless the Council specifically delegates those powers to the Committee)
- perform any other functions the Council delegates to it.

5.4. A joint application by a mana whenua group and an infrastructure provider for resource consents

A model that has recently been used in Rotorua Lakes District is joint application by a mana whenua group (an ahu whenua trust) and the Council for resource consents for a municipal water supply. That model was used to re-consent the municipal water take for an area in western Rotorua (and for part of central Rotorua in certain emergency circumstances).

Joint Council iwi municipal water supply consents

In 1966 the then Rotorua County Council identified a need to increase the municipal water supply to the Ngongotahā area on the western shores of Lake Rotorua | Te Rotorua-nui-a Kahumatamomoe. To meet that need, it compulsorily took land containing a freshwater spring called Te Wairo-Uri under the Public Works Act 1928 (Rotorua Lakes Council, 2023). Te Wairo-Uri is the main spring in a collection of springs (Te Puna o Pekehaua, colloquially known as Taniwha Springs) which are part of the source of the Awahou River. The County Council built a concrete pumphouse over Te Wairo-Uri and pump infrastructure and, in 1967, began supplying municipal water from the spring to the Ngongotahā area.

In 2001 the County Council's successor, Rotorua Lakes Council, applied for resource consent to continue the water take and increase the amount of water able to be taken to meet forecast demand and supply, or augment the supply to, other areas of Rotorua. In 2004 the Bay of Plenty Regional Council granted that consent for a 25-year term authorising a lower water take volume and rate than Rotorua Lakes Council had sought. Rotorua Lakes Council appealed that decision to the Environment Court seeking an increase in both the quantity and rate of take allowed. The local iwi, Ngāti Rangiwewehi, also appealed the Regional Council's decision challenging the take and the term of consent. Ngāti Rangiwewehi argued that the effects of the water take on them were so culturally significant that:

- the District Council should seek an alternative source of water, and
- to allow an alternative to be investigated and implemented, the consent should be granted for a greatly reduced term.

The Environment Court found that (*Te Maru o Ngāti Rangiwewehi & Anor v Bay of Plenty Regional Council*, 2008, para. [3] and [51]):

"The puna (springs) and awa (stream) are more than a mere physical presence and resource to Ngāti Rangiwewehi. They are central to their identity as an iwi."

"The compulsory taking in 1966, the covering of the spring and the abstraction of water from such a sacred taonga was an act of considerable insensitivity. ... The effect on Ngāti Rangiwewehi has been, and is continuing to be, significant."

As there was evidence that it would potentially be feasible for an alternative water supply to be

obtained from groundwater, the Court reduced the term of the water take consent to 10 years to enable Rotorua Lakes Council to fully investigate alternative water supply options (*Te Maru o Ngāti Rangiwewehi & Anor v Bay of Plenty Regional Council*, 2008, para. [145] to [151]). In 2012 the New Zealand Government approved a one-off grant to Rotorua Lakes Council of \$1,075,000 to meet part of the costs the Council would incur in identifying and providing an alternative drinking water source to Te Wairo-Uri (Taniwha Springs).⁷¹

By 2015 discussions between Ngāti Rangiwewehi and Rotorua Lakes Council had reached the point where they jointly agreed to continued use of Te Wairo-Uri as a municipal water supply source but in a manner that would respect and align with iwi aspirations and cultural and spiritual values. As a step towards reaching an agreement and as an "act of good faith" (Morrison & Weston, 2015, p. 55) in August 2015 the Council agreed to return ownership of the land containing the puna to the relevant ahu whenua trust, the Pekehaua Puna Reserve Trust, subject to an easement allowing the Council to take water from the site up until the end of the term of the 10-year consent (in 2018) (Rotorua Lakes Council, 2015b). In doing so the Council received advice that it did not need to own the site in order to be able to continue to take water and an easement (or lease) would be sufficient (Morrison & Weston, 2015).

The Council and the Trust then worked together to develop a joint application for consent to take water for municipal supply from Te Wairo-Uri (Rotorua Lakes Council, 2023).

The joint consent application was for both:

- water take for municipal supply for Ngongotahā (and supply to part of central Rotorua in certain emergency circumstances) and
- the removal of the existing pump house and its replacement with underground water take and pump infrastructure.

Because of the level of community and iwi support, the consent application was dealt with non-notified and, in 2022, the consents were granted.

Because the Council and the Trust jointly hold the consents, they manage all matters relating to the design, implementation, and operation of the consented activities by agreement and they are both responsible under the RMA for those activities.

The Council and the Trust removed the old pumpstation from Te Wairo-Uri in June 2023, with the occasion marked with a karakia at dawn (Rotorua Lakes Council, 2023).

5.5. Te Mana o te Wai statements under the National Policy Statement for Freshwater Management

The National Policy Statement for Freshwater Management 2020 (Freshwater NPS), created under the RMA, states that the fundamental concept relevant to all freshwater management in New Zealand is ‘Te Mana o te Wai’ (New Zealand Government, 2020, para. 1.3(2)). ‘Te Mana o te Wai’ encompasses six principles relating to the role of tangata whenua and other New Zealanders in the management of freshwater. Those principles include (New Zealand Government, 2020, para. 1.3(4)):

“Mana whakahaere: the power, authority, and obligations of tangata whenua to make decisions that maintain, protect, and sustain the health and well-being of, and their relationship with, freshwater:

Kaitiakitanga: the obligation of tangata whenua to preserve, restore, enhance, and sustainably use freshwater for the benefit of present and future generations:

Manaakitanga: the process by which tangata whenua show respect, generosity, and care for freshwater and for others.”

Under the Freshwater NPS every local authority must “actively involve tangata whenua (to the extent they wish to be involved) in freshwater management (including decision-making processes), including in ... identifying the local approach to giving effect to Te Mana o te Wai”.

The concept of Te Mana o te Wai also applies to Taumata Arowai – the Water Services Regulator. Any person exercising any function, power or duty under the Act Taumata Arowai operates under “must give effect to Te Mana o te Wai, to the extent that Te Mana o te Wai applies to the function, power, or duty” (Water Services Act, 2021, sec. 14).



Manawatu Bridge

6. Engagement in practice

There are some approaches Māori groups and infrastructure providers take to engaging on the planning and delivery of infrastructure that appear to be common across different types of infrastructure and across the country,

- The focus is on engagement between infrastructure providers and individual mana whenua groups (iwi, hapū, rūnanga, and marae):
 - Multiple-mana whenua group fora are generally only used when mana whenua groups choose that approach or there is a statutory requirement to engage with such a group (for example the iwi-Māori partnership boards established under the Pae Ora (Healthy Futures) Act 2022).
 - With one exception (the Ministry of Education engaging with the peak body a kura kaupapa affiliates to and/or Māori whānau who have a long-standing relationship with a school), infrastructure providers do not specifically engage with mātāwaka (non-mana whenua Māori) groups
 - Infrastructure providers do not generally engage with national or regional-level Māori organisations.
- It is common for engagement to occur at multiple levels – for example governance or senior leadership at infrastructure providers engaging with governance or senior leaders within a Māori group and operational staff at a Māori group engaging with operational infrastructure staff.
- Infrastructure providers are generally either not using, or limiting the use of, external engagement consultants when engaging with Māori groups.
- Personnel at contractors and consultants working on infrastructure initiatives may be involved in engagement with Māori groups but they do so on the understanding that the primary relationship is held by the Māori group and the infrastructure provider.
- There is a reasonable degree of consensus between mana whenua groups and infrastructure providers that infrastructure providers should use publicly available sources to seek to understand a mana whenua group's history, priorities, kawa and tikanga before substantive engagement occurs.

- Generally, infrastructure providers do not develop written engagement strategies or plans for engaging with Māori groups (and instead are guided by a Māori group on how and the extent to which that group wants to engage on a particular initiative).
- Infrastructure providers pay for Māori groups' time, and meet expenses Māori groups incur, in engaging on projects initiated by those infrastructure providers (in the same way as infrastructure providers would pay for other specialist input).
- Where possible, engagement includes multiple *kanohi ki te kanohi* (face-to-face) meetings (unless a Māori group indicates that that is not required).
- If differences arise between Māori groups during engagement infrastructure providers do not get involved in trying to broker agreement between those groups, but in some situations the parties will use mechanisms that allow those differences to be resolved between the Māori groups separately while other aspects of the infrastructure initiative continue to progress.
- Infrastructure providers generally do not undertake formal reviews of how engagement with a Māori group went on a particular initiative or have a formal process for discussing with Māori groups how their feedback shaped an initiative (with several infrastructure providers commenting that those matters are addressed more informally as part of regular ongoing meetings with a Māori group).
- It is quite common for infrastructure providers not to identify that some areas of land affected by an infrastructure initiative are multiple-owned Māori land, resulting in the beneficial owners of that land not being engaged with.
- Māori staff within infrastructure providers have multiple accountabilities - their accountabilities as employees/public officials and accountabilities to their *iwi*, *hapū* or Māori generally – which may lead to burn-out or other issues.
- There are issues regarding the extent to which Māori groups and infrastructure providers can be open with each other when information relevant to an infrastructure initiative is *mātauranga Māori* (particularly information about culturally sensitive sites or landscapes) or commercially sensitive.
- Infrastructure providers generally do not specifically budget or account for the costs of engaging with Māori groups.
- The acquisition of land owned by Māori groups for infrastructure initiatives is a matter of particular concern to Māori groups and creates complex future obligations for infrastructure providers/the Crown when land acquired for a project is no longer needed.

Three areas where there is notable divergence in views or practice are:

- *mana whenua* groups appear to have a greater level of preference for entering into written relationship Memoranda of Understanding than infrastructure providers
- differences in when and how any specialist Māori engagement staff employed by an infrastructure provider are involved in engagement with Māori groups
- a lack of consensus as to whether which contracting and procurement model an infrastructure provider uses for a project has a substantive impact on Māori engagement.

There are some issues that appear to arise in relation to many infrastructure initiatives.

- Infrastructure providers often find it difficult to identify which specific Māori groups to engage with or who within a Māori group to engage with.

6.1. Common approaches to engagement across infrastructure providers

6.1.1. The primary focus is on engagement between infrastructure providers and individual *mana whenua* groups

Infrastructure Staff engage one on one with a range of different types of *mana whenua* groups – *iwi*, *hapū*, *rūnanga* and *marae* committees – depending on what is most appropriate in relation to the particular proposal and in the relevant area.

Fora for collective engagement

Fora for collective engagement with a range of *iwi* or *hapū* are generally only used when *mana whenua* groups choose that approach or there is a statutory requirement to engage with such a group.

There were a wide range of opinions expressed in *Mana Whenua Documents* regarding such multiple *mana whenua* fora.

- One Mana Whenua Document expressed concerns that such fora are being used as mechanisms to broker collective bargaining between mana whenua groups and have no basis in tikanga.
- Another noted that the relevant Māori group would consider participating in multi-hapū/iwi engagement processes on a case-by-case basis while retaining their right to maintain their own opinion where necessary. One Mana Whenua Document specifically commented that pan-Māori organisations are not a proxy for direct engagement with the relevant mana whenua groups.
- One Mana Whenua Document set out an approach where for most parts of their rohe initial contact should be made to the iwi organisation but for one area initial contact should be made to an iwi-mandated organisation representing three different iwi.
- Another Mana Whenua Document noted that where several iwi or hapū identify that they have an interest in a proposal the iwi organisation may ask a project developer to arrange for joint consultation and engagement processes to be independently facilitated.
- Another Mana Whenua Document stated that where an initiative involves an area where there are shared interests across a number of iwi, a wānanga may be required to ensure that all parties are in agreement on the preferred engagement outcomes.

A statutory mechanism for engagement with multiple mana whenua groups is the iwi-Māori partnership boards established under the Pae Ora (Healthy Futures) Act 2022. The iwi-Māori partnership boards:

- individually relate to particular areas of the country
- together cover the entire country.

Iwi-Māori partnership boards represent local Māori perspectives within the health sector,⁷² and from 30 June 2024, among other things, will:⁷³

- engage with whānau and hapū about local health needs, and communicate the results and insights from that engagement to Health New Zealand | Te Whatu Ora (Te Whatu Ora)
- work with Te Whatu Ora in “developing priorities for improving hauora Māori”

- engage with Te Whatu Ora and “support ... its priorities for kaupapa Māori investment and innovation”
- report on the hauora Māori activities of Te Whatu Ora to Māori within the area covered by the iwi-Māori partnership board.

From 30 June 2024 Te Whatu Ora must:⁷⁴

- “engage with iwi-Māori partnership boards when determining priorities for kaupapa Māori investment”
- take reasonable steps to support iwi-Māori partnership boards to achieve their purpose, including by providing administrative, analytical or financial support where needed; and sufficient and timely information.

The membership of an iwi-Māori partnership board must be determined by the board itself after taking reasonable steps to engage with Māori communities and groups that are present in, or have interests in, the area where the board will operate.⁷⁵ “It is up to the Iwi Māori members [of a partnership board] as to who and how they want to appoint members and how they deal with matters such as conflicts of interest around that” (Te Aka Whai Ora | The Māori Health Authority, 2023).

To be recognised as an iwi-Māori partnership board an organisation must have “constitutional and governance arrangements” which demonstrate that, among other things, it will engage with and represent the views of Māori within the relevant area; and Māori communities and groups in the relevant area will be able to hold the organisation accountable for the performance of its functions in relation to the area.⁷⁶

Since July 2022, fifteen iwi-Māori partnership boards have been established. It is currently too early to be able to evaluate how they are working.

Case study:

The Āti Awa Toa Hauora Partnership Board

This case study draws on publicly available sources to look at one iwi-Māori partnership board -including how that board perceives its role and relationships with mana whenua groups and other Māori.

The Āti Awa Toa Hauora Partnership Board (Hauora Board) is an iwi-Māori partnership board established under Pae Ora (Healthy Futures) Act 2022. Its area is Porirua, the Hutt Valley, Wellington City and most, but not all, of the Kāpiti Coast.⁷⁷

The Hauora Board's website describes the Board as strengthening tino rangatiratanga, stating that it will "help strengthen the influence of Māori values and tikanga within the wider health system [as] an important part of fulfilling Te Tiriti o Waitangi, as it helps ensure everyone has the same access to good health outcomes". It also describes the Board's work as strengthening "mana motuhake for whānau – supporting families to take control of their own health, healing and wellbeing" (Ātiawa Toa Hauora, n.d.).

The Te Rūnanga o Toa Rangatira website states "Āti Awa Toa Hauora Partnership Board has been established to represent the health and wellbeing needs, aspirations and interests of te iwi o Ngāti Toa, te iwi o Te Āti Awa and all Māori living within the Porirua, Wellington and Hutt Valley regions" (Te Rūnanga o Toa Rangatira, n.d.). At the time the first Hauora Board members were appointed the Te Rūnanga o Toa Rangatira Chief Executive stated "[a]s mana whenua, we see it as our responsibility to lead and support positive health and wellbeing of all those living in our community".

The members of the Āti Awa Toa Hauora Board were selected by representatives from Ngāti Toa Rangatira and Te Āti Awa using a two-stage process which first sought nominations from members of those iwi (Ātiawa Toa Hauora, n.d.; Te Rūnanga o Toa Rangatira et al., 2021) and then sought to recruit two members who would represent the community and health sector expertise on the board (Ātiawa ki Whakarongotai, 2022). As of March 2024, the Hauora Board had six members. Two of them were taura here representatives who, between them, whakapapa to Ngāpuhi, Kai Tahu, Te Rapuwai, Waitaha, and Kāti Māmoe. The other four members whakapapa to Te Āti Awa or Ngāti Toa Rangatira (or both), as well as in some cases, other iwi.

The information pack which sought expressions of interest from iwi members wishing to be considered as board members stated that iwi-Māori partnership boards would "not report to the Crown – [but be] accountable to iwi and hāpori Māori (Māori communities) within their respective coverage areas" (Te Rūnanga o Toa Rangatira et al., 2021, p. 7).

The boards and CEOs of the mana whenua organisations Ngāti Toa Rangatira, Te Ātiawa/ Taranaki Whānui ki te Upoko o te Ika and Te Ātiawa ki Whakarongotai have been described as tuakana (elder) to the Hauora Board (Te Rūnanga o Toa Rangatira et al., 2023).

In Auckland a limited partnership made up of a number of iwi organisations has statutory rights of first refusal over various land, including land owned by the University of Auckland. The University of Auckland can dispose of land it owns that is subject to the right of first refusal if its Chief Executive gives notice to the limited partnership that, in the Council of the University's opinion, "the disposal will assist in giving effect to the University's policies relating to the provision of tertiary education".⁷⁸

Some mana whenua groups are deliberately deciding to take a collective and coordinated approach to engagement. For example, the Tauranga Moana iwi and hapū collective has

negotiated with the Crown in relation to historic Treaty of Waitangi claims regarding Tauranga Harbour, the rivers, streams, and wetlands within the harbour catchment, and other parts of the coastal marine area.

Generally no specific engagement with mātāwaka

With one exception, the infrastructure providers we spoke to are not engaging specifically with mātāwaka (non-mana whenua Māori) groups.

- Our interviews with Infrastructure Staff and Infrastructure Consultants identified that infrastructure providers generally take the approach that mātāwaka can, if they choose,

participate in consultation processes aimed at the public as a whole. Some Infrastructure Staff noted that one of the reasons they do not generally engage with mātāwaka is because their infrastructure is located, or largely located, in rural areas without large numbers of mātāwaka.

- We asked local authority staff, via a Taituarā special interest mailing group, whether their local authority engages with mātāwaka in relation to local authority infrastructure projects. No Council Respondents identified that they did.⁷⁹
- There are indications in the conversations we have had, and documents we have reviewed, as part of this research that some infrastructure sector participants felt that engaging specifically with mātāwaka is not necessary because mana whenua have a customary role in relation to mātāwaka within their rohe or takiwā. One Infrastructure Consultant referred to mana whenua groups having a core value of manaakitanga, - which they described as caring for everyone while respecting mana whenua authority. A Council Respondent commented that only engaging specifically with mana whenua:

“... recognises that mana whenua have a kaitiaki role over mātāwaka marae and mātāwaka living in their Rohe ... One of our local Mana Whenua groups also considers they have a kaitiaki role over non-Māori living in their Rohe and push Council to consider these wider community views as well.”

One Mana Whenua Document noted that a consultancy established by some rūnanga to manage engagement on RMA matters has also agreed to assist relevant local authorities with consultation with mātāwaka living in the relevant area.

- Other than the reference to the consultancy agreement with relevant local authorities noted above, and one reference to engaging with mātāwaka specifically in relation to the management of pounamu (greenstone), the Mana Whenua Documents we reviewed made no reference to non-mana whenua Māori or to mana whenua groups having a role in engagement with non-mana whenua Māori groups.

The exception to the general approach of not specifically engaging with mātāwaka groups

is that an Infrastructure Staff member from the Ministry of Education noted that when they are undertaking a project at a particular school, they will often engage with the peak body that a kura kaupapa affiliates to and/or any Māori whānau who have a long-standing relationship with the school (for example because a number of whānau members have gone through /are going through the school).

Most Infrastructure Staff spoken to did not identify any national or regional-level Māori organisations their organisation engages with in relation to infrastructure initiatives. Infrastructure Staff at one provider commented that they might occasionally engage with Māori groups at a national or regional level, or they might use fora they are a member of, which also include national or regional-level Māori groups, to engage with those groups. Another exception was that, when wanting to engage in relation to a kura Kaupapa (Māori immersion state schools), the Ministry of Education reaches out to Te Rūnanga Nui o Ngā Kura Kaupapa Māori, which represents kura Kaupapa nationally.

From our review of local authority web documents (see Appendix B), of the 57 local authorities whose webpage and documents aimed at resource consent applicants specifically referred to consultation with Māori:

- 47 identified iwi as groups to be engaged with
- 25 identified hapū
- 18 identified rūnanga (iwi or hapū councils)
- twelve identified marae
- twelve identified Māori trusts (of some kind)
- ten identified individual kaitiaki “likely to be mandated by an iwi, hapū or marae”
- five referred to particular consultancies which represent different iwi, hapū or rūnanga
- four referred to whānau (families)
- four referred to holders of, or applicants for, customary marine title or protected customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011
- three only referred to ‘tangata whenua’ without being more specific
- one specifically referred to ‘post-settlement governance entities’
- one referred to regional management committees

- one referred to any 'other group who holds mana whenua'
- one referred to 'local Māori'.

Only five local authorities' resource consent web documents referred to groups which might include *mātāwaka* ('whānau' and 'local Māori'), only one referred to regional-level Māori groups and none referred to national-level Māori groups.

6.1.2. Engagement at multiple levels

It is common for engagement between Māori groups and infrastructure providers to occur at multiple levels – for example senior leadership at infrastructure providers engaging with senior leaders within a Māori group and operational staff at Māori groups engaging with operational infrastructure staff.

One Mana Whenua Document stated that the preparedness of the high-level management of a project developer to meet with mana whenua demonstrates the commitment of that organisation to providing for mana whenua involvement. Another Mana Whenua Document included a table setting out who at what level within the iwi organisation a person should contact depending upon that person's status within their own organisation – to implement a *mana ki te mana* approach. Under that framework CEOs and General Managers are asked to contact the iwi organisation's Pou Whakahaere (Chief Executive), while operational staff and less senior managers are asked to contact the Pou Taiao (Environmental Manager).

Another Mana Whenua Document specifically notes that iwi organisation staff may need to refer matters discussed at engagement meetings for governance-level decisions within the iwi.

A number of iwi and hapū have a specific unit within the iwi organisation (or a group-owned consultancy) whose role is to engage with potential resource consent applicants and their Mana Whenua Documents say to contact those units in the first instance. However, the process of first contact being made with the specialist group appears to be primarily designed for developers who will not have an ongoing relationship with the mana whenua group – for example private property developers who intend to on-sell the land once a development is consented or developed - rather than discouraging infrastructure providers from making initial contact with an iwi *rangatira ki te rangatira*.

Infrastructure Staff from two infrastructure providers advised that when they start building a relationship with a new Māori group they begin at the infrastructure provider board to iwi trust board level – *rangatira ki te rangatira* – and are guided by iwi leaders as to at what level within mana whenua group (iwi, hapū, or marae) they engage at after that. Another Infrastructure Staff member commented that once ongoing relationships are established there can be governance-level conversations between their organisation and a Māori group, and day-to-day operational discussions with that group, playing out alongside each other.

6.1.3. Generally, no, or limited, use of external engagement consultants

Infrastructure providers are generally either not using, or limiting the use of, external engagement consultants when engaging with Māori groups, preferring to develop and maintain a direct relationship between their organisation and a Māori group.

Infrastructure Staff from one provider which works only with existing well-established assets said they do not use facilitators or consultants to engage with Māori groups. Infrastructure Staff from another provider said that, while previously they have had help from external consultants, these days they would not use someone other than themselves to make first contact with a Māori group, stating: *"we very much try to make those connections ourselves with our people and with the people who can really make the commitment to what the [infrastructure provider] will stand for."*

A few Infrastructure Staff commented that external engagement consultants will sometimes be used to obtain an introduction to a relevant Māori group. Often those consultants will be members of one of the relevant Māori groups. The consultants will not represent the infrastructure provider but will help the infrastructure provider identify who to talk to and what the correct *tikanga* and *kawa* for a particular Māori group is. However, Infrastructure Staff stressed that where such consultants are used staff from the infrastructure provider will attend all meetings with the Māori groups and they will always try to deliver their own messages. Infrastructure Staff from one provider commented that they are very careful who they choose to use when they use an external consultant, and they will find them by getting referrals from people they know within a relevant Māori group or because they know their family.

In Auckland, where there are a large number of different mana whenua iwi across the region, some infrastructure providers will engage external consultants to obtain specialist knowledge of who to engage with in Auckland.

Further, where the Crown is seeking to acquire land for an infrastructure initiative, negotiations for the acquisition of land are generally undertaken through a private sector supplier of Crown property services accredited by Land Information New Zealand | Toitū Te Whenua (LINZ) rather than directly between the Crown and the landowner.

If a Māori group does not have the capacity (people-hours) to engage on an infrastructure proposal some infrastructure providers will fund the Māori group to contract a consultant to engage on their behalf.

Infrastructure Staff from a couple of universities said that they always, or often, engage with design consultancies who have a relationship with the relevant mana whenua groups and those consultancies perform a mana whenua engagement role and will engage directly with mana whenua on some issues. Consultancies referred to were Aukaha in Dunedin (which represents local rūnanga within Ngāi Tahu), and Haumi in Auckland.

Six Māori groups located at the top of the South Island have established Tiakina Te Taiao Limited which evaluates whether a cultural impact assessment is required for a project, prepares any required cultural health indicator reports and cultural impact assessments, and undertakes iwi monitoring of project sites and fish relocation for projects.

6.1.4. Infrastructure providers' contractors and technical consultants may be involved in engagement

An infrastructure provider's contractors and technical consultants may be involved in engagement with a Māori group but on the understanding that the primary relationship is held by the Māori group and the infrastructure provider.

Staff at the main contractor for an infrastructure initiative may have direct involvement in engagement with Māori groups. Sometimes the head-contractor on an infrastructure project will have in-house Māori engagement consultants who, once the head-contractor has been

appointed, become part of the overall project Māori engagement team. That can be a person with a communications background, someone with an environmental management background or a person with links to a relevant mana whenua group. It varies from case to case.

Several Contractor Staff commented that:

- they may have separate avenues of communication to let Māori groups know about things like upcoming employment opportunities in relation to a project
- often the client will have established mana whenua advisory boards or governance or working groups which Contractor Staff will attend to be available to answer construction-related questions.

However, Contractor Staff spoken to stressed that the relationship with Māori groups is 'owned' by the principal/client infrastructure provider.⁸⁰ A Contractor Staff member from one company noted the slight variation that where a Māori group is part of an Alliance that group also one of the contractor's clients.

One Contractor Staff member commented that some clients want to be involved in every meeting the contractor has with Māori groups, and some do not. Another Contractor Staff member noted that the contractor's involvement in engagement depends upon the contracting model. If it is a construct-only contract then there is very little opportunity for the contractor to engage with Māori groups. If it is an Alliance there are greater opportunities.

6.1.5. Undertaking preparation to understand a mana whenua group's history, priorities, kawa and tikanga

There is a reasonable degree of consensus between mana whenua groups and infrastructure providers that infrastructure providers should use publicly available sources to seek to understand a mana whenua group's history, priorities, kawa and tikanga before substantive engagement occurs.

Ten of the 29 Mana Whenua Documents we reviewed recommend that project developers read the relevant Mana Whenua Document in full before making an appointment to meet with the mana whenua group. One Mana Whenua Document suggests that the document should be read before a project developer decides anything that might affect the relevant mana whenua group.

Several Infrastructure Staff noted that before an infrastructure provider reaches out to engage with a new Māori group, they should investigate the history of the type of infrastructure they are seeking to develop in the relevant area. One Infrastructure Staff member commented that past development of infrastructure has given rise to significant trauma within many Māori communities and if engagement is not undertaken in the right way now that will create further trauma. Another Infrastructure Staff member commented on the need to be aware of the *mamae* (hurt) felt by *mana whenua* in relation to past actions by their predecessor organisations.

An Infrastructure Staff member said that they read any *iwi* or environmental management plan prepared by the relevant Māori groups. However, they noted that those plans may:

- not address all issues relevant to a particular infrastructure proposal
- have been prepared some time ago and, therefore, not be entirely up to date, including because the Māori group's priorities may have changed over time.

Other Infrastructure Staff said they did their 'due diligence' by reading relevant *iwi* and Government websites.

An Infrastructure Staff member commented that the *kawa* Māori groups wish an infrastructure provider to follow can change over time as leadership of the group changes (with different leaders having different leadership styles). Therefore, generally they need to confirm what the appropriate *kawa* and *tikanga* is before they meet with a Māori group, even where they have met with them before.

6.1.6. Generally, infrastructure providers do not develop written engagement strategies or plans for engaging with Māori groups

Generally, Infrastructure Staff said that they do not develop written engagement strategies or plans for how they will engage with Māori groups on a particular initiative. How they engage in a particular situation will be bespoke. They will have internal conversations beforehand on what they think the best general approach might be, but they will be adaptive and shape their engagement around what relevant Māori groups want in the circumstances. Infrastructure providers may have high-level initiative-

wide engagement plans but those would be living documents that related to a range of stakeholders as well as Māori groups and, therefore, not appropriate to share with a Māori group.

6.1.7. Paying for time and expenses

There is consistency across *Mana Whenua* Documents reviewed and the conversations had with Infrastructure Staff that infrastructure providers pay for Māori groups' time, and meet Māori groups' expenses incurred, in engaging on projects initiated by infrastructure providers (in the same way as infrastructure providers would pay for other specialist input).

Nearly all of the *Mana Whenua* Documents reviewed specifically referred to the need for project developers to meet the costs incurred by a Māori group in engaging. Specific activities which *Mana Whenua* Documents indicated Māori groups would seek payment for included:

- time spent assessing an application
- meetings with Māori group representatives
- consultation with the wider Māori group (which could include advertising costs and meeting-hosting costs)
- site visits
- discussions the Māori group has with a consent authority about the proposal
- the Māori group's costs in obtaining expert technical advice
- preparing cultural impact or cultural values assessment reports (if required)
- preparing a written response to the application (which could be an email or a report)
- any input into consent or designation conditions
- disbursements (such as printing costs)
- entering into protocols in relation to what will happen if there is an accidental discovery of *koiwi* (human remains) or *taonga* (valued objects)
- Māori group representatives acting as environmental and cultural monitors during activities on site
- travel and accommodation costs for Māori group representatives.

One *Mana Whenua* Document indicates that, for a complex consent application, the Māori group would also charge a 10% fee for project management of its response to that application.

Four of the 29 Mana Whenua Documents we reviewed specifically note that a Māori group charging for engaging on a project developer's proposal is like any expert providing advice.

One Mana Whenua Document includes a schedule of the fees that the Māori group would charge for different activities relating to engaging on proposals but noted that the fee schedule might be adjusted without notice. Another Mana Whenua Document includes a guide for cost contributions but noted that costs would be discussed and agreed on a case-by-case basis. Other Mana Whenua Documents state that the likely charges would be discussed at the time of enquiry.

Three Mana Whenua Documents note that if an applicant did not agree to pay an application processing fee the Māori group might decline to review the application. Another Mana Whenua Document notes that if a project developer would not agree to meet the Māori group's costs in relation engaging on a proposal they would need to make an appointment to attend one of the Māori group's regular meetings, which might take some time. Two Mana Whenua Documents require an initial fee to be paid prior to the Māori group beginning to review a proposal, another requires a processing fee to be paid prior to the developer receiving the iwi's formal response to their initiative.

One Mana Whenua Document states that financial contribution conditions should be imposed on resource consents granted for developments requiring consent holders to make payments to the relevant Māori groups to enhance those groups' ability to exercise kaitiakitanga and participate in development proposals as a Treaty | Te Tiriti partner.

All Infrastructure Staff spoken to said that they pay for the time Māori group members spend:

- assessing draft consent applications and notices of requirement for designations
- acting as members of governance, steering or advisory groups
- preparing assessments of the cultural impacts of a project
- providing design input.

These payments are generally made using hourly rates agreed between the infrastructure provider and the Māori group. Where a consultancy owned by a mana whenua group is the standard point of contact for development proposals

which affect that group and also performs a role in liaising directly with mana whenua about a proposal, the cost of the consultancy engaging with mana whenua is 'baked in' to the overall consultancy fees the infrastructure providers pay.

None of the Infrastructure Staff spoken to expressed any concern about the rates Māori groups are currently charging for their input into infrastructure initiatives.

Some Infrastructure Staff said they will occasionally pay for a Māori group to engage a consultant to undertake specific work:⁸¹

- Where a Māori group does not have:
 - the capacity (in terms of people-hours) to provide a representative to a governance, steering or advisory group
 - either the people-hours or specialist design skills to provide design input into a project,

it is reasonably common for infrastructure providers to pay for those groups to contract a consultant to sit on a group as their representative or provide design input on their behalf.

- Sometimes infrastructure providers reimburse Māori groups for the costs of those groups engaging a consultant to prepare a cultural values report or cultural impact assessment on their behalf. However, Infrastructure Staff at one provider stated that if a mana whenua group proposes that they tend to suggest that they pay the mana whenua group to prepare the assessment themselves. This is because, in their experience, that enables the mana whenua group to both:
 - develop and own the intellectual property in a report
 - own their own story.
- Infrastructure Staff at a couple of providers said that sometimes, particularly in relation to a very big infrastructure initiative, they might pay for a Māori group to get specific advice such as legal advice or advice on a particular scientific issue.⁸²

Infrastructure Staff from one infrastructure provider noted that where individual members of a Māori group monitor earthworks it can impose a significant administrative burden to require each of those individuals to fulfil the infrastructure provider's policies and procedures for onboarding new suppliers. Therefore, in some cases, the infrastructure provider will pay the fees

for the monitors' time to a relevant entity, such as the local marae committee, which is set up as a supplier in their system on the understanding that that entity will manage reimbursement of the individuals involved.

Via a Taituarā special interest mailing group, we asked local authority staff whether, when their local authority engages with Māori groups in relation to the planning or development of local authority infrastructure, they pay those groups a fee. All Council Respondents said that their local authority paid Māori groups agreed fees. Specific activities for which fees were paid mentioned in those responses included:

- providing expert advice (reports on the history of a land block or place, cultural design frameworks, cultural impact assessments etc.)
- mana whenua group members acting as facilitators or members of project steering groups and working parties.

One Council Respondent said they would pay a lump sum fee for a two-hour meeting with a mana whenua group, another that they also met venue and catering costs, and a third that they make an annual payment to mana whenua groups to cover more general engagement over the course of the year.

Infrastructure Staff said that koha is gifted where meetings are held at a Māori group's premises, there are hui on marae, or where members of mana whenua groups undertake cultural protocols in relation to projects. Koha might be in the form of cash, or it might be in another form such as fuel cards.

An issue noted in two Mana Whenua Documents was that developments can increase the rateable value of multiple-owned Māori land, although the land in practice remains difficult to develop, and that if that occurred the costs of that increase in rateable value over time should be met by the developer. No infrastructure sector participants we spoke to mentioned paying compensation for the increase in rateable value of multiple-owned Māori land.

From our review of local authority web documents (see Appendix B), of the 57 local authorities whose websites specifically referred to resource consent applicants engaging with Māori, eighteen indicated that applicants might want to ask a Māori group for an estimate of their likely costs or seek an agreement as to their costs. One local authority website included the statement:

“While a ‘fee’ may be required of you before consultation takes place, you are under no legal obligation to meet these expenses. However, there may be circumstance where you could benefit by contracting the services of tangata whenua in a similar way to those of, for example, an environmental consultant.”

6.1.8. Multiple kanohi ki te kanohi meetings

Both the interviews we had with infrastructure sector participants and the Mana Whenua Documents we reviewed indicated that engagement between infrastructure providers and Māori groups is generally occurring through multiple kanohi ki te kanohi (face-to-face) meetings. With the COVID-19 pandemic and the resulting increase in distance-working there are more occasions on which that kanohi ki te kanohi engagement is occurring online, particularly where a mana whenua group has a geographically large rohe or takiwā. However, the preference remains for physical face-to-face meetings.

Some Mana Whenua Documents noted that kanohi ki te kanohi engagement builds relationships and trust and is generally an effective way of exchanging ideas and resolving conflict or mediating between differences in values. One Mana Whenua Document noted that kanohi ki te kanohi meetings are particularly appropriate where a new relationship is being established, a large-scale initiative is being proposed, or multiple agencies or Māori groups will be involved in an initiative.

However, several of the Mana Whenua Documents we reviewed note that the appropriate first contact with a mana whenua group about a proposal would be a telephone call or an email to initiate the process for arranging possible kanohi ki te kanohi engagement. One Mana Whenua Document notes that the relevant Māori group may decline requests to meet kanohi ki te kanohi where they deem that unnecessary.⁸³

The Mana Whenua Documents reviewed indicated that:

- often, as part of engagement, project developers will attend hui-ā-iwi or hui-ā-hapu at marae, (although there will also be hui-ā-iwi or hui-ā-hapū organised to discuss a proposal which the project developer will not attend)

- there will also often be meetings between a project developer and Māori group representatives at the proposed development site.

One Mana Whenua Document notes that if a site visit is not possible, due to the location of the site, aerial photographs or digital aerial images may be used but this would be a poor substitute for an actual site visit.

6.1.9. Approach if differences arise between Māori groups

Infrastructure Staff at some providers noted that sometimes some members of a Māori group will agree a way forward on an infrastructure initiative with a provider but other members of that Māori group (for example another hapū of the same iwi) will not. Generally, the Māori group which has agreed a way forward will either:

- maintain their support for the infrastructure proposal while the other group opposes it but act in a way which respects the other group's right to oppose the proposal (see for example *Greenpeace Aotearoa Incorporated v Hiringa Energy Limited & Anor*, 2023)
- support the other group's opposition to respect the mana of that other group.

If during engagement on an initiative a dispute arises between Māori groups relating to a specific issue, there are mechanisms that can potentially be used to allow sufficient time for that issue to be resolved between the Māori groups while other aspects of the initiative progress.

- In one case a dispute between Māori groups regarding the wording of resource consent conditions relating to mana whenua engagement and the installation of cultural markers resulted in appeals to the Courts. Because there were no challenges to the grant of the consents all the parties agreed to the Environment Court making an order⁸⁴ that all the resource consents except some specific parts of the conditions relating to mana whenua engagement and cultural markers had 'commenced' (come into effect). This allowed the consented works to begin (*Ngāti Whātua Ōrakei Whaia Maia Limited v Auckland Council*, 2019).
- If a taonga tūturu (artefact) is found during the construction of an infrastructure project there

is a process under the Protected Objects Act 1975 for resolving disputes between Māori groups in relation to the ownership, possession, or custody of that taonga tūturu. Ultimately that process may involve resolution of the claims in the Māori Land Court. In the interim the taonga is kept in safe custody in accordance with directions of the Minister for Culture and Heritage. In some parts of the country the operation of the Protected Objects Act is modified by Settlement legislation. For example if a taonga tūturu is found within a specified area including both Lake Taupō and land to the east, west and south of the Lake, or is found elsewhere (other than in a customary marine title area) and identified by the Chief Executive of the Ministry of Culture and Heritage as being of Ngāti Tūwharetoa origin, the default position is that, until the ownership of the taonga is determined, the taonga is held in the interim custody of the trustees of Te Kotahitanga o Ngāti Tūwharetoa.⁸⁵ The trustees are required to inform any interested iwi of any taonga tūturu which they hold or receive.⁸⁶

Both Infrastructure Staff and Contractor Staff noted that occasionally disputes arise between Māori groups, for example disputes as to which iwi or which hapū an infrastructure provider should engage with in relation to the area affected by the proposal, or a particular part of the area affected by the proposal. One Infrastructure Staff member advised that it was important to note that this sort of dispute does not occur very often. Infrastructure Staff and Contractor Staff stated that if that sort of dispute arises, they take a broad approach to which Māori groups they engage with. Consistent with that, the NZ Transport Agency's engagement framework states (n.d., p. 12):

"One important principle is that it is not the role of [the NZ Transport Agency] to determine which Māori groups do or do not hold mana whenua over a project area. [The NZ Transport Agency] needs to adopt an open approach and be informed of the range of relevant groups. ..."

One government official spoken to as part of this project noted that, in their observation, the extent of disputes about who has the mandate to speak on behalf of a Māori group has reduced since the early 2000s. This is the period within which the bulk of Settlements have occurred.

6.1.10. Understanding how engagement went

Infrastructure providers generally do not undertake formal reviews of how engagement went on a particular initiative or have a formal process for informing Māori groups how their feedback shaped an initiative.

However, issues relating to engagement with Māori might be considered part of an overall project review process if 'something went wrong'. Infrastructure Staff at one provider said that at the end of a very big project they might undertake a review of how the engagement with Māori groups on that project went. Some Infrastructure Staff commented that undertaking such reviews is something they might want to look at doing in the future.

However, one Infrastructure Staff member said that, in the context where they have an ongoing relationship with a Māori group, they did not think that undertaking a review of how engagement on a particular initiative went would be appropriate. The relationship keeps going, and learning about and from the Māori group is ongoing. Getting better at engagement is also something that is ongoing. There is no 'destination' to be reached. Another Infrastructure Staff member similarly commented that because of their ongoing relationship with Māori groups if a group thought that there was room for improvement in how they were engaging the Māori group would let them know.

Similarly, one Infrastructure Staff member commented that formally providing feedback to Māori groups on how their input influenced a project would run the risk of giving the impression that the infrastructure provider was making some sort of performance assessment of the groups' contribution.

6.2. Areas where there is notable divergence in views or practice

6.2.1. Level of preference for written relationship Memoranda of Understanding

Infrastructure Staff engaged in the planning and delivery of infrastructure generally did not discuss having Memoranda of Understanding with Māori groups relating to how they engage with them on infrastructure initiatives (although

some referred to the existence of Memoranda of Understanding between their organisation's board or senior management team and a Māori group). One Infrastructure Staff member commented that they will enter into Memoranda of Understanding or written relationship agreements if a Māori group would like the relationship formalised in that way.

In contrast, 15 of the 29 Mana Whenua Documents we reviewed specifically refer to entering into Memoranda of Understanding, relationship agreements or engagement protocols with government agencies. A couple of Mana Whenua Documents commented that entering into such instruments provides clarity and certainty.

6.2.2. Use of specialist Māori engagement staff

The roles of any specialist Māori engagement staff employed by infrastructure providers vary across infrastructure providers.

- In some cases, the usual process is for a specialist Māori engagement staff member to make the initial introductions between staff working on a significant infrastructure proposal and relevant Māori groups and then the proposal staff continue the engagement.
- In other cases, specialist Māori engagement staff only become involved if they are asked which Māori groups should be engaged with or if engagement with a particular Māori group becomes a bit difficult.

Infrastructure Staff, including staff in Māori advisory roles, expressed widely varying views on the extent (if any) to which the presence of Māori engagement specialists is required when infrastructure provider staff are engaging with Māori groups.

One Infrastructure Staff member in a Māori Advisory role noted that they only became directly involved in their agency's engagement with Māori groups if things got particularly complicated. However, Māori Advisory staff at another agency expressed concern that it would not be culturally safe for people who were not specialists, or otherwise highly culturally competent, to engage directly with Māori without specialist support. Similarly, people interviewed during the lessons learnt review of the City Rail Link project expressed the view that infrastructure providers need a dedicated team for mana whenua engagement who, ideally,

are fluent in te reo Māori and possess cultural competence (Joyce & Spies, 2023, p. 33).

Infrastructure Staff from a couple of providers noted that relationships with Māori groups are spread across their organisations:

- One said that any staff who whakapapa to a mana whenua group or have another interest in relation to a Māori group are encouraged to be part of the organisation's relationship with that group. They expressed the view that relationships are organisation to organisation – and not exclusively owned by individuals. While people relate to individuals, there are risks for a business and to relationships if relationships are too individual-based. For example, it makes it more difficult to ensure that there is consistency in the values staff demonstrate, and messages staff give, to Māori groups.
- Infrastructure Staff from another provider noted that they have operational staff (such as asset management staff) located throughout different regions with those regional staff having a growing understanding of which mana whenua groups to speak to in relation to proposals relating to a particular area and directly engaging with those groups.
- A third commented that having a lot of 'touch points' between their organisation and the relevant mana whenua Māori group meant that if there were material changes at that mana whenua group, such as changes in key personnel, the organisation would find out about them in a timely way.

Our review of Mana Whenua Documents did not indicate whether, and if so when, mana whenua groups prefer infrastructure providers to use specialist Māori engagement staff when engaging with them.

6.2.3. A range of views as to whether what contracting and procurement model an infrastructure provider uses has a substantive impact on Māori engagement

There are a range of views among Contractor Staff and Infrastructure Consultants as to whether which of a range of models a government infrastructure provider uses in procuring and contracting consultants and contractors for an infrastructure project makes a difference in the quality of engagement with Māori groups.

Government infrastructure projects can be undertaken using a range of models for procuring consultants and contractors (New Zealand Government, 2019). The 'traditional delivery', 'early contractor involvement' and 'design and build delivery models' vary in terms of how early the main construction contractor is involved in the project.:

- Under the traditional delivery model the design of a project is fully developed before the construction contract is awarded (NZ Government Procurement, 2019b).
- Under early contractor involvement, potential contractors are provided with concept or preliminary design information and an indication of the budget limit for an initiative. A preferred contractor is identified (generally through a tender process) and they then work with the infrastructure provider to provide input into the more developed design of the initiative (NZ Government Procurement, 2019a).
- Under the design and build delivery model the infrastructure provider develops the functional and technical performance requirements for an initiative and (generally following a tender) the successful main contractor is responsible for both the design and the construction of the initiative (NZ Government Procurement, 2019c).

Under the Alliance delivery model the client, one or more consultants, and the main contractor enter into a contract to deliver the project on a 'pain/gain share' basis where costs below and above the target cost are shared between the parties based on a pre-agreed percentage split.

A 'Public Private Partnership (PPP)' can refer to a range of different arrangements but generally the term is used where a contractor will first construct or alter infrastructure and then deliver services using that infrastructure under long-term contractual arrangements.

One of the questions we raised with Contractor Staff and Infrastructure Consultants was whether they observed any differences in Māori engagement on infrastructure initiatives depending on what contracting model the government infrastructure provider was using. We received a variety of responses.

- Contractor Staff at one company said that they did not observe the contracting model used making any difference in the quality of the engagement with Māori groups in relation to an infrastructure project. An Infrastructure Consultant said that there is good and bad in all

contracting models from a Māori engagement point of view and what is important is how Māori groups' involvement in a particular project is set up from the outset.

- One Contractor Staff member said that they felt PPPs were less likely to result in a project which visually reflected Māori cultural values.
- An Infrastructure Consultant commented that of the various contracting models, Alliances offer greater opportunities to work with, and generate benefits for, Māori groups and result in better design outcomes, better end solutions, and overall stronger relationships and trust.

Our review of Mana Whenua Documents did not indicate whether mana whenua groups consider that the model a government infrastructure provider uses in procuring and contracting consultants and contractors affects the quality of the engagement with them.

6.3. Practical issues that arise in relation to many infrastructure initiatives

There are some practical issues that appear to arise in relation to many infrastructure initiatives.

6.3.1. Difficulty in identifying which Māori groups, and who within a Māori group, to engage with

Most Infrastructure Staff commented that it can be difficult to identify both which Māori groups to engage with and who within a Māori group to engage with. While Infrastructure Staff from two education sector infrastructure providers said that, in their experience, it is generally very well established 'who' they should engage with, one of those Infrastructure Staff noted that occasionally they will miss someone and, once they become aware of that, will facilitate a hui aimed at repairing the relationship.

Identifying which Māori groups to engage with

Some Infrastructure Staff commented that identifying which mana whenua bodies to talk to was particularly challenging when they were looking to undertake a greenfield development in an entirely new area or an initiative in an area where they have existing infrastructure, but no staff based in the relevant area, or for some time their activities in relation to that infrastructure had been limited to repair and maintenance.

Methods that Infrastructure Staff said they use to identify which Māori groups to talk to included:

- asking mana whenua groups they have an established relationship with who the correct mana whenua group to talk to is and whether they would be willing to introduce them to relevant people within that other group
- using the Te Puni Kōkiri Te Kāhui Māngai iwi database to identify relevant iwi and then contacting the iwi RMA engagement people identified on that database to ask them who the appropriate people to speak with at the hapū and marae level were
- contacting the committee managing a marae located near the project area and asking if they are the correct people to talk to in relation to the proposal
- where the relevant local authorities have established relationships with Māori groups in their area, asking those local authorities
- looking at publicly available sources to find out if any mana whenua groups have made submissions on other proposals or local authority plans which relate to the relevant area

In Auckland, where there are a large number of different mana whenua iwi across the region, infrastructure providers tend to either hire dedicated mana whenua /Māori engagement staff or engage external consultants in order to obtain specialist knowledge of who to engage with in Auckland.

From our review of local authority web documents (see Appendix B), of the 57 local authorities whose websites specifically referred to resource consent applicants engaging with Māori:

- twelve gave no specific guidance on how to identify which Māori individuals or groups to speak to
- 32 suggested asking local authority staff
- seventeen referred to specific Māori entities or specific organisations representing Māori groups within their district or region
- twelve suggested using the Te Puni Kōkiri Te Kāhui Māngai directory
- three referred to other maps identifying areas of interest to Māori groups
- two suggested that applicants contact local iwi authorities/consultancies and ask them.

(Note: Some local authorities' resource consent web documents gave more than one suggestion regarding how to identify which Māori /Māori groups to consult with.)

Te Puni Kōkiri's Te Kāhui Māngai database

In 2004, the then Deputy Secretary at Te Puni Kōkiri, asked for a stocktake to be undertaken on government agencies' databases of contacts within Māori groups. That stocktake found that there were issues with those databases in terms of:

- not being up to date
- not accurately recording who within iwi groups was recognised by the Crown as having a mandate to speak on behalf of a group.

This led to the creation of Te Kāhui Māngai – the Directory of Iwi and Māori Organisations maintained by Te Puni Kōkiri (<https://www.tkm.govt.nz>).

That database records those groups which are formally recognised by the Crown as having a mandate to represent an iwi. On the whole it does not include hapū groups or marae contact details, given the very large numbers of those which exist.

The current contact details for iwi groups on the database are being updated all the time.

- As Settlements go through Te Puni Kōkiri adds post-settlement governance entities to the database.
- Every six months Te Puni Kōkiri sends an email to every entity on the database asking them to update their details or confirm that their details remain correct.
- Some iwi groups send updates proactively, for example when a new Chair is appointed, using the contact function on the database website.
- When contact detail lists are sent out to government agencies, Te Puni Kōkiri asks those agencies to let the Te Kāhui Māngai team know if they get a bounce-back or a return to sender from any entity when they use those contact details.

Under section 35A RMA, each local authority must keep and maintain:

- the contact details of each iwi authority within the region or district and any groups within the region or district that represent hapū for the purposes of the RMA
- records of any area of the region or district over which one or more iwi or hapū exercise kaitiakitanga.

We asked local authority staff, via a Taituarā special interest group mailing list, about how straightforward it was to comply with this obligation. Issues identified by Council Respondents included:

- the scale of the task – in one case the Council has sought to manage that by focusing on maintaining information on iwi authorities and post-settlement governance entities because the majority of those groups possess various mandates to speak on behalf of their membership, including hapū, in the context of RMA matters
- that from a te ao Māori perspective data is a taonga and is relationship-bound and, therefore, there is an argument that compliance with section 35A should only be handled by staff with appropriate knowledge and understanding of te ao Māori
- the significant effort required to identify and add spatial information for each iwi, hapū and marae and check and update information, and that local authorities' ability to do that is hampered by factors such as staff turnover and competing priorities
- difficulties in ascertaining, sometimes even from iwi authorities themselves, which iwi authorities are mandated for the purposes of the RMA
- the fact that there is often no one 'source of truth' for staff within a Council regarding iwi and hapū groups which meets both statutory and organisational requirements.

Identifying who within a Māori group to engage with

Most Infrastructure Staff commented that, even where it is relatively straightforward to identify which iwi and hapū to engage with, it can be difficult, and take time, to identify who within the structure of the various iwi or hapū bodies are the best people for the infrastructure provider to talk to. This is the case even where they have an established relationship with a particular Māori group, including because mandates within Māori groups change over time and new entities may be established (for example as a result of Settlements) which are led by different people within a Māori group. One Infrastructure Staff member commented:

"I don't envy someone coming in cold who doesn't ... have [the] relationship to get on the phone and see how to do things."

Contractor Staff from one company commented that if a principal's conversations with a Māori group all occurred sometime before the construction company was engaged it can be difficult for Contractor Staff to know who within Māori groups they should be talking to once they are engaged because the appropriate people to speak to within the Māori group may have changed.⁸⁷

Infrastructure Staff noted that, where they have established relationships with a Māori group, often the best approach to identify who to talk to about a particular initiative is ask someone they know within the relevant group. Another approach mentioned is asking colleagues within the infrastructure provider, who may have links to, or contacts within, relevant Māori groups who within those groups to talk to. Those colleagues might be staff in specific Māori advisory/engagement roles or might be other staff (for example members of KiwiRail's Te Kupenga Mahi network of Māori staff located throughout the country).

Something that varies across mana whenua groups is whether they prefer the relevant iwi-level organisation to be contacted about a particular initiative first, before the initiative is discussed with hapū, rūnanga or marae.

- Te Runanga o Ngāi Tahu Act 1996 provides that "where any enactment requires consultation with any iwi or with any iwi authority, that consultation shall, with respect to matters affecting Ngāi Tahu Whānui be held with Te Runanga o Ngāi Tahu".⁸⁸ The Ngāi Tahu iwi includes 18 Papatipu Rūnanga/Rūnaka. Under the Act, Te Rūnanga o Ngāi Tahu in carrying out consultation is required to seek the views of "such papatipu Rūnaka of Ngāi Tahu whānui and such hapū as in the opinion of Te Rūnanga o Ngāi Tahu may have views that they wish to express in relation to the matter".⁸⁹ However, Ngāi Tahu's 2022 engagement guidelines stated "[o]n regional matters unless otherwise required for legal reasons, engagement is to be undertaken with the relevant Papatipu Rūnanga, with Te Rūnanga [o Ngāi Tahu] providing support and advocacy" (Te Rūnanga o Ngāi Tahu, 2022).
- Several of the non-Ngāi Tahu iwi Mana Whenua Documents we reviewed ask for an iwi organisation to be notified of all consent applications within their rohe and stated that the iwi would then identify which hapū were

directly affected and forward notification of the applications to those hapū. However, one iwi Mana Whenua Document reviewed noted that:

- o where an application relates only to one hapū the appropriate approach is to contact the hapū and the hapū will ask the iwi organisation to become involved if it sees fit or the iwi group may bring relevant information to the attention of the hapū
- o if a developer is unclear which hapū are affected the iwi organisation will provide advice
- o if a proposal would affect the whole iwi the iwi will facilitate consultation with the various hapū.

Another stated that all affected hapū should be contacted as well as the iwi organisation.

- Many Mana Whenua Documents prepared by (non-Ngāi Tahu) hapū ask developers to contact the hapū rūnanga or trust directly. They state that the rūnanga or trust will then facilitate hui of hapū members to discuss the proposal or facilitate engagement between a developer and affected whānau, marae and wider hapū members.

One Mana Whenua Document specifically noted that hapū, whānau and individual iwi members can make their own submission on issues if they wish.

6.3.2. Not identifying that affected land is multiple-owned Māori land

Infrastructure providers will need to engage with responsible trustees of Māori freehold land if the land has been vested in trust by the Māori Land Court. Otherwise, they will normally need to apply to the Māori Land Court to have an assembled owners meeting called formally by the Court to engage with beneficial owners of Māori freehold land.

Staff at Te Tumu Paeroa (TTP) noted that often Māori freehold land is leased, and the lease will commonly require that lessee meet the costs of the rates. Infrastructure providers need to be aware that the ratepayer that the Council records in its system may be a lessee and not the landowner. To engage with the legal owner of the land, the trustees if the land has been vested in trust, or the beneficial owners if not, infrastructure providers need to check the record of title of the land with LINZ and if necessary, the Māori Land Court.

When the Māori Trustee is appointed responsible trustee, she will, subject to the terms of her trust, have the decision-making responsibility on matters relating to infrastructure projects affecting the whenua. This is notwithstanding that views of the beneficial owners in the trust may significantly vary.

Further, TTP staff noted that:

- the interests of beneficial landowners tend to be a mix of environmental and economic concerns, and these may differ significantly to the concerns or balance/mix of concerns of the iwi or hapū body with mana whenua in the relevant rohe
- due to oversight, or lack of understanding as to who must be engaged with, there have been times where neither the trustee nor beneficial owners of land blocks affected by infrastructure projects have been engaged about infrastructure projects affecting their Māori freehold land
- infrastructure providers frequently do not realise that affected land is Māori freehold land and limit their engagement to lessees of the land identified from local authority rating rolls.

TTP staff also commented that, because of constraints associated with developing Māori freehold land, often that land appears to infrastructure providers to be unoccupied. For this reason, there is a perception that it is seen as a first option for infrastructure providers when it comes to finding a location for infrastructure. This misconception about the land as unoccupied can also lead to people doing things like disposing of spoil on the land without engaging with the trustee or beneficial owners, or (following engagement with a lessee) an infrastructure provider may establish a structure on Māori freehold land without getting the consent of the legal owner. For example, transmitters have been established on whenua Māori without any consent of the trustee or beneficial owners if no trustee has been appointed.

Beneficial owners of land blocks do not generally live on or near the land and, therefore may not find out that infrastructure-related works are being proposed or happening until much later than members of the community. Some beneficial landowners are active in the local marae or otherwise active in the community and may find out about a project affecting their land that way. Local roadshows, including roadshows at marae can, therefore, be helpful in reaching beneficial owners. A good number of beneficial owners of Māori freehold land live overseas.

When an infrastructure provider contacts TTP about potential use of Māori freehold land it may take some time before a decision can be made. Depending on what is being proposed the trustee may need to hold beneficial owner meetings. This can often take four to six weeks to work through. If a meeting of owners is considered necessary and a quorum of owners is not present at a meeting, the trustee may decide to convene another meeting. On some occasions the trustee may apply to the Māori Land Court for directions.

6.3.3. Māori staff within infrastructure providers having multiple accountabilities

There are indications that there may be challenges for many Māori staff in government infrastructure providers in terms of having multiple accountabilities – accountabilities as employees/public officials and expectations and aspirations for their work to benefit their iwi or hapū or Māori generally.

As noted in the Literature Review, participants in 2022 research undertaken on behalf of the Office of the Controller and Auditor General noted that many Māori who have roles in the public sector face an ongoing challenge due to multiple accountabilities. The research report stated (Haemata Limited, 2022, pp. 17–18):

“Participants employed in the public sector spoke at length about multiple lines of accountability as an issue they deal with daily. They explained the tension between being accountable to their iwi, hapū, and whānau as a duty borne out of whakapapa, and their responsibilities as a public sector employee derived from an employment arrangement. Thus, they are not only accountable to their employer (the Crown), but they continue to remain accountable to their iwi, to their hapū, and to their whānau for their own actions as a public servant and, at times, for the actions of their organisation.

As a result, participants spoke of feeling compromised when they are required to front or defend a policy decision that is not in the best interests of their iwi, hapū or whānau. ...

All participants acknowledged that multiple accountabilities are a real issue for Māori employees in the public sector, perhaps more so than other sectors because of the nature of a public sector accountability system that does not recognise competing and, at times, conflicting accountabilities. What participants were also in agreement about, is that accountability to their whānau, hapū and iwi is lifelong and will remain far beyond any employment relationship with the Crown. Nonetheless, managing those, at time conflicting accountabilities is an ongoing challenge.”

A Māori Infrastructure Staff member spoken with as part of this research commented that for Māori working within government who are passionate about achieving positive outcomes for Māori working to achieve change can take a lot of energy and, therefore, may not be something that an individual can keep doing continuously for extended periods of time.

In his review of four (non-infrastructure) Government initiatives the Controller and Auditor-General also noted that Māori staff working in public organisations (Controller and Auditor-General, 2023, pp. 4–5):

“ ... can face additional pressures compared to non-Māori colleagues. This can include tension between their iwi and the public organisation they work for. Some Māori staff could have a real or perceived conflict of interest that needs to be appropriately managed. ... It is important that public organisations acknowledge these pressures and engage with their Māori staff to understand how best to support them ... ”

In 2019 Te Kawa Mataaho | the Public Service Commission undertook a survey of public service employees. However, the results published by Te Kawa Mataaho do not discuss tenure (average number of years in role) in the public service by ethnicity.⁹⁰

6.3.4. Sharing sensitive information

There are issues regarding the extent to which Māori groups and infrastructure providers can be open with each other when information relevant to an infrastructure initiative is mātauranga Māori (particularly information about culturally sensitive sites or landscapes) or commercially sensitive.

Mātauranga Māori

A couple of the Mana Whenua Documents we reviewed comment that:

- in order for a project developer to understand a Māori group's position on an issue the group may need to share mātauranga (knowledge) passed down to them from tūpuna
- sharing such knowledge does not mean the project developer can subsequently use that information without the Māori group's permission or the permission of the kaumatua who are the kaitiaki of that knowledge.

Another Mana Whenua Document stated that all information pertaining to the Māori group is their property and taonga and any use of any such information without the group's permission may be subject to legal action or rāhui.

However, as noted earlier in this report to avoid Māori groups having to constantly repeat themselves infrastructure providers need to be aware of what their agency (or one of its predecessors) has heard from a Māori group in relation to previous iterations of a project and other relevant projects. Further, as the Environmental Protection Authority (EPA) has recognised in the development of its mātauranga framework, statutory decision-makers need to understand mātauranga evidence and probe and test it effectively - applying Māori meanings, cultural concepts, values and practices.

A couple of Mana Whenua Documents note that discussions with mana whenua group members are needed to decide matters such as:

- how mātauranga and other information the group holds is to be stored
- who is to hold that information
- what information will not be made publicly available.

Consistent with this, the chief executive of a software company which specialises in kaupapa Māori software we spoke to as part of this research, noted that each mana whenua representative group works through the process of how they want to deal with data their group holds, in way which is consistent with their tikanga.

Sensitive information relating to culturally significant sites or cultural landscapes

A particular issue mentioned in Mana Whenua Documents is sensitive information relating to culturally significant sites or cultural landscapes.

One Mana Whenua Document notes that any public cultural information about sites of significance must be approved by the mana whenua group or relevant kaumātua.

A method a number of Māori groups use to protect sensitive information about sites is to maintain registers of 'silent files' which note that there is a sensitive site within a particular area but do not disclose information about the

nature of the site or its specific location within that area. Some information may be shared with local authority staff but on the basis that that shared information will be protected by the local authority. A number of Mana Whenua Documents refer to developing systems and protocols with local authorities to protect information in relation to sensitive sites.

Case study:

Former proposed Rotomā and Rotoehu Wastewater Treatment scheme – confidential information about a site of significance to a Māori group

This case study is both an example of a Māori group holding sensitive information relevant to an infrastructure proposal and the importance of infrastructure providers being co-operative and appropriately open when engaging with mana whenua groups. Chronologically the events in this case study pre-date the events of the East Rotoiti and Rotomā Wastewater Treatment case study in section 2.2.2 of this report.

In 2011 Rotorua District Council obtained consents from the Bay of Plenty Regional Council to construct a reticulated wastewater system for parts of the Lake Rotomā and Lake Rotoehu communities and discharge treated wastewater onto land at a site in Rotomā. The grant of those consents was appealed to the Environment Court by the Ngāti Pikiao Environmental Society Incorporated Limited and the Ngāti Makino Heritage Trust.⁹¹

The appeal went to a Court hearing in July 2012. In a public-excluded session of the hearing, mana whenua presented evidence relating to sensitive cultural issues. The evidence given in that session was made subject to a confidentiality order. Following that evidence being presented, the hearing was adjourned and, in around September 2012, the District Council surrendered its resource consents for the proposal.

In May 2013, in making orders of costs in favour of the mana whenua appellants, the Environment Court held that, while the specific sensitive cultural evidence was not given until the public-excluded Court session:

- "cultural concern had been identified to the District Council both in general terms as to its scale and in general terms as to its place"

- "the disquiet of the iwi groups was made clear to the Council at an early stage", and at site meetings iwi indicated "that there were important cultural icons in the vicinity"

(*Ngāti Pikiao Environmental Society Incorporated & Ors v Bay of Plenty Regional Council*, 2013, para. [33], [35] and [41]).

The Court commented that iwi do not have an obligation to produce secret information to a Council in a more public forum and the iwi choosing to disclose the evidence in a Court hearing where appropriate protections could be put in place was an appropriate option for them to have taken.

The Court also made comments regarding the overall approach of the Council to negotiations with the iwi about the wastewater initiative, including how the Council had conducted negotiations regarding potentially leasing some whenua Māori for the proposed wastewater treatment plant. The Court commented that the negotiation approach was "highhanded and did not display the level of cooperation and trust expected between the Council and the Te Arawa tribes" (*Ngāti Pikiao Environmental Society Incorporated & Ors v Bay of Plenty Regional Council*, 2013, para. [53] and [91]).

The Environment Court's findings, were a significant contributor to Te Arawa whānui (represented by the Te Tatau o Te Arawa Charitable Trust) and the District Council entering into a partnership agreement on 18 December 2015 – the Manatū Whakaaetanga Partnership Agreement (Te Tatau o Te Arawa & Rotorua Lakes Council, 2015). The agreement provides mechanisms to enable Te Arawa participation in District Council decision-making while also acknowledging "the right for hapū and iwi to represent their specific interests directly with Council" (Te Tatau o Te Arawa & Rotorua Lakes Council, 2015, p. 6).

Commercially sensitive information

Both mana whenua groups and infrastructure providers may hold information relevant to an infrastructure initiative that is commercially sensitive.

A particular area where this can arise is when an infrastructure provider is in the middle of negotiations with a landowner about potential acquisition, or use, of a particular piece of land for an infrastructure initiative. A mana whenua group may want to understand how decisions about where the infrastructure would be located are being made. Infrastructure Staff from one provider expressed concern about the legal and commercial issues that would arise if a provider engaged with a Māori group about what site they were looking at while negotiations with the landowner were ongoing. If the infrastructure provider is mixed-ownership model energy company 'gentailer', an additional issue is that another gentailer might also be interested in undertaking a development in the same general area and might also be in regular contact with the same mana whenua group(s). (Mixed-ownership model energy companies were, by design, set up to be in competition with each other).

One of the Mana Whenua Documents reviewed suggested that either an agency or a Māori group shared information with the other which was commercially sensitive the parties could manage that issue by entering into a confidentiality agreement.

6.3.5. Infrastructure providers generally do not specifically budget or account for the costs of engaging with Māori groups

Only Infrastructure Staff from one provider we spoke to identified that they have a budget for their relationships with Māori groups. Several other Infrastructure Staff commented that Māori engagement is not specifically budgeted or accounted for under their organisation's processes (for example they commented that there is no budget line for Māori engagement in project budgets or that information on Māori engagement is not currently required as part of their organisation's business case processes).

6.3.6. Acquisition of Māori group-owned land for infrastructure initiatives

While there are some circumstances in which land held (or managed) by Māori groups cannot legally be acquired,⁹² generally land owned by Māori groups can either be either permanently or temporarily acquired for an infrastructure initiative under the Public Works Act 1981 (or in some circumstances the RMA).⁹³ Currently temporary acquisition of land is generally used for things like obtaining rights to use land as a construction yard during the construction of a project.

In addition, when land becomes a public road, under New Zealand statutes ownership of the road and "the soil thereof" automatically vests in either the relevant district or city council or in the Crown (depending on whether the road is a local road or a State highway and where the road is located).⁹⁴

The acquisition of land owned by Māori groups for infrastructure initiatives is a matter of particular concern to Māori groups. A mana whenua group spoken with as part of this research indicated that the fact that if a road was built on their land the ownership of the subsoil would transfer to a local authority or the Crown was a consideration for them. In relation to the Mount Messenger State highway project:

- Some of the land required for the project was land that had been returned to the relevant iwi as part of a Treaty I Te Tiriti Settlement. When considering the applications for resource consent and notice of requirement for a designation for the project the Environment Court decided that it could only be satisfied that the cultural impacts of the project on that iwi had been appropriately addressed if the relevant post settlement governance entity advised the Court that an agreement had been reached as to the sale of the land (and an agreement had been reached with the NZ Transport Agency on other key elements the iwi had sought by way of mitigation and offset/compensation).⁹⁵
- Another Māori group sought for the ownership of the subsoil of the proposed new area of State highway to be retained in the ownership of the iwi (although ultimately the Court did not need to resolve that issue).⁹⁶

There are provisions in Te Ture Whenua Māori Act 1993 which enable the Māori Land Court to order 'roadways' to be laid out that do not change the ownership of the land on which those roadways are located. However, the Court's power to order roadways to be laid out only applies where either: ⁹⁷

- the roadway would be for the purpose of providing or improving access to whenua Māori and the roadway would be laid out over "other land", or
- the purpose of the roadway would be to provide access to land that is not whenua Māori and the roadway would be laid out over whenua Māori.

The acquisition of land for infrastructure projects also creates complex future obligations on infrastructure providers/the Crown, particularly when land acquired for a project is no longer needed (for example if a road is substantially realigned and some of the land on which the former road alignment was located was no longer required either for a road or for any alternative public purpose).

If land acquired for a public work is no longer needed this can trigger:

- an obligation, under the Public Works Act, to offer the land back to the person from whom it was acquired or their successor(s) ⁹⁸
- the Government's return of gifted land policy. ⁹⁹
- rights of first refusal under Settlements.

Under the return of gifted land policy, where a landowner has gifted land to the Crown on the condition that it be used for a type or certain types of public works and the land is no longer used for the purpose for which it was gifted, the land can be offered back to the donor at nil value on the condition that the donor (or a proposed future tenant of the donor) pays the value of any improvements on the land that were constructed by the Crown,

Rights of first refusal under Settlements mean that if specified Crown properties, or Crown properties located within a specified area, become surplus to the needs of the Crown, then (generally subject to some exceptions)

the Crown needs to offer to sell the land to the relevant post-settlement governance entity. The details of the right of first refusal provisions vary between Settlements. LINZ and Te Arawhiti have developed a set of guides in relation to the key aspects of the rights of first refusal under particular Settlements (Right of First Refusal guides | Crown property, Māori and iwi Guidance (linz.govt.nz)).

There are circumstances where infrastructure providers hold the legal rights they need to operate, maintain, repair, renew and undertake upgrades to infrastructure but do not own the freehold of the land the infrastructure is located in, on or over. These include:

- infrastructure located in the common marine and coastal area ¹⁰⁰
- some electricity infrastructure installed on private land or within buildings before 1993 which has the benefit of the 'existing works' provisions in the Electricity Act 1992
- the municipal water supply infrastructure discussed in the case study in section 5.4 of this report.

English translations of te reo Māori terms

In providing the following English translations we note that:

- providing an English translation of a te reo Māori term cannot capture the full depth of meaning of that term
- different Māori groups may use some terms in different ways to each other and there are differences in te reo Māori across different parts of New Zealand.

The English translations below primarily use, or are based on, relevant definitions contained in Te Aka Māori Dictionary (Māoridictionary.co.nz) (Te Aka Māori Dictionary, n.d.). Where a definition is not sourced from that dictionary it is given in italics. The use of macrons and double vowels in Māori words is also based on how macrons and double vowels are used in Te Aka Māori Dictionary.

Te reo Māori term	English translation
Ahu whenua trust	<i>Trust established by the Māori Land Court to promote and facilitate the use and administration of whenua Māori in the interests of the persons beneficially entitled to the land.</i>
Aratohu	Guideline
Atua	Ancestor with continuing influence, god, demon, supernatural being, deity
Hapori Māori	Māori communities
Hapū	Kinship group, clan, tribe, subtribe - section of a large kinship group and the primary political unit in traditional Māori society. It consisted of several whānau sharing descent from a common ancestor, usually being named after the ancestor, but sometimes from an important event in the group's history. Several related hapū usually shared adjacent territories forming a looser tribal federation (iwi).
Hui	Gathering, meeting, assembly, seminar, conference
Hui-a-hapū	<i>Meeting of hapū members</i>
Hui-a-iwi	<i>Meeting of iwi members</i>
Iwi	Extended kinship group, tribe, nation, people, nationality, race - often refers to a large group of people descended from a common ancestor and associated with a distinct territory.
Kaimoana	Seafood, shellfish
Kaitiaki	Trustee, minder, guard, custodian, guardian, caregiver, keeper, steward
Kaitiakitanga	Guardianship, stewardship, trusteeship, trustee
Kanohi ki te kanohi	Face to face, in person, in the flesh

Te reo Māori term	English translation
Karakia	Incantation, ritual, chant, intoned incantation, charm, spell – a set of words to state or make effective a ritual activity
Kaumātua	Adult, elder, elderly man, elderly woman, old man – a person of status within the whānau
Kaupapa	Topic, policy, matter for discussion, plan, purpose, scheme, proposal, agenda, subject, programme, theme, issue, initiative
Kawa	Marae protocol – customs of the marae and wharehau, particularly those related to formal activities such as pōhiri, speeches and mihimihi.
Koha	Gift, present, offering, donation, contribution
Koiwi	Human bone, corpse
Kupu	Word, vocabulary, saying, talk, message, statement, utterance, lyric
Kura kaupapa	<i>Primary school operating under Māori custom and using Māori as the medium of instruction</i>
Mamae	Ache, pain, injury, wound
Mana	Prestige, authority, control, power, influence, status, spiritual power
Manaakitanga	Hospitality, kindness, generosity, support – the process of showing respect, generosity, and care for others
Mana ki te mana	Engagement between people who are of similar standing or seniority
Mana moana	Authority over the sea and lakes - although this is a modern term, the concept of authority over lakes and parts of the sea (mana o te moana) is traditional. According to Māori custom, land rights extended as well to adjacent sea or lakes with fixed boundaries for inshore and deep-sea fishing and the gathering of seafood.
Mana motuhake	Separate identity, autonomy, self-government, self-determination, independence, sovereignty, authority
Mana whakahaere	<i>The power, authority, and obligations of tangata whenua to make decisions that maintain, protect, and sustain the health and well-being of, and their relationship with, freshwater</i>
Mana whenua	Territorial rights, power from the land, authority over land or territory, jurisdiction over land or territory - power associated with possession and occupation of tribal land.
Marae	<i>The open space in front of the wharehau (meeting house) which was traditionally part of a Pā (village). In modern usage the phrase is often shortened to marae, and has come to include all the land and buildings associated with the marae atea.</i>
Mātauranga	Knowledge, wisdom, understanding, skill
Mātauranga-a-iwi	<i>Iwi knowledge</i>

Te reo Māori term	English translation
Mātauranga Māori	Māori knowledge – the body of knowledge originating from Māori ancestors, including the Māori world view and perspectives, Māori creativity and cultural practices.
Mātāwaka	Kinship group, tribe, clan, race, ethnic group (It has come to be used as a term to describe Māori who are living in an area but are not a member of a mana whenua group in relation to that area).
Maunga	Mountain, mount, peak
Mihimihi	Speech of greeting, tribute – introductory speeches at the beginning of a gathering after the more formal pōhiri
Pōhiri/Pōwhiri	Welcome ceremony on a marae
Pou	Post, upright, support, pole, pillar
Pou Whakahaere	<i>Chief executive officer, general manager, CEO</i>
Rāhui	To put in place a temporary ritual prohibition, closed season, ban, reserve
Rangatira	Chief (male or female), chieftain, chieftainess
Rangatira ki te rangatira	<i>Chief to chief</i>
Rangatiratanga	Chieftainship, right to exercise authority, chiefly autonomy, chiefly authority, ownership
Rohe	Territory, area
Rōpū whakahaere	Management group, organisational committee
Rūnanga	Council, tribal council, assembly
Tāhuhu	Ridge pole (of a house), subject of a sentence, main theme, direct line of ancestry
Taiao / te Taiao	World, Earth, natural world, environment, nature, country
Takiwā	District, area, territory, vicinity, region
Tangata tiaki	<i>People who protect, look after or conserve</i>
Tangata whenua	Local people, hosts, indigenous people – people born of the whenua
Taonga	Treasure, anything prized
Taonga tuku iho	Heirloom, something handed down, cultural property, heritage

Te reo Māori term	English translation
Taonga tūturu	<i>An object that relates to Māori culture, history, or society, was (or appears to have been) manufactured or modified in New Zealand by Māori; brought into New Zealand by Māori; or used by Māori and is more than 50 years old.</i>
Tapu	Sacred, prohibited, restricted, set apart, forbidden, under atua protection
Taunga hou	<i>Mātāwaka who are of Māori descent and Māori ethnicity who do not link back to their iwi or hapū</i>
Taura here	<i>Mātāwaka with a strong connection to their iwi or hapū</i>
Te ao Māori	<i>The Māori world</i>
Te reo Māori	<i>The Māori language</i>
Tikanga	Correct procedure, custom, habit, lore, method, manner, rule, way, code, meaning, plan, practice, convention, protocol - the customary system of values and practices that have developed over time and are deeply embedded in the social context
Tīpuna / Tūpuna	Ancestors, grandparents. <i>‘Tīpuna’ is the eastern dialect variation, ‘tūpuna’ is the western dialect variation</i>
Toronga	Distant relatives, branch (e.g., of a family lineage)
Tuakana / Tuākana	Elder brother (of a male), elder sister (of a female), cousin (of the same gender from a more senior branch of the family).
Wāhi tapu	Sacred place, sacred site - a place subject to long-term ritual restrictions on access or use, for example a burial ground, a battle site, or a place where tapu objects were placed
Wāhi taonga	<i>Sites of significance to Māori</i>
Wai māori	Freshwater
Wānanga	Generally, seminar, conference, forum, educational seminar. <i>Under the Education and Training Act 2020, ‘wānanga’ means a tertiary education institution established under that Act or a predecessor Act.</i>
Whakapapa	Genealogy, genealogical table, lineage, descent
Whānau	Extended family, family group, a familiar term of address to a number of people - the primary economic unit of traditional Māori society. In the modern context the term is sometimes used to include friends who may not have any kinship ties to other members
Whareniui	Meeting house, large house - main building of a marae where guests are accommodated.
Whenua Māori	<i>Māori land</i>

Analysis of local authority websites

We reviewed all 78 New Zealand local authorities' websites to identify information provided to potential resource consent applicants regarding consulting with Māori groups about proposed developments.

The first reviews began on 30 March 2023 and ended on 26 July 2023 with second reviews and further checks being undertaken between 26 July 2023 and 3 August 2023.

We reviewed the local authority webpages that refer to how to apply for resource consent and other webpages and documents specifically referred, and linked, to those resource consent pages (together 'resource consent web documents'). Eleven local authorities specifically referred, and linked, to the Ministry for the Environment publication '*Consultation for resource consent applicants*'. With one exception, where that occurred that document was treated as part of the relevant local authority's resource consent web documents. The exception was that one local authority's website made it clear that there was one consultancy representing local rūnanga which should be engaged with so the broader statements in the Ministry for the Environment document about who should be engaged with were not counted towards that local authority.

We analysed information identified on resource consent web documents using qualitative data analysis software, coding and analysing information, including information relating to:

- reasons given for engaging with Māori groups
- the types of Māori groups resource consent web documents indicated applicants should talk to (e.g., iwi, hapū, etc.)
- how applicants could find out which Māori groups or who at Māori groups to talk to
- what resource consent web documents said about applicants paying Māori groups they consult with.

In our analysis of the reason given for consultation with Māori groups we did not include reasons given in resource consent web documents for consulting with any 'affected parties'. A particular local authority's resource consent web documents may have referred to a particular type of reason for consulting with Māori groups multiple times (if so, we only counted that type of reason once for that local authority).

We also analysed the website content regarding what types of issues the content indicated Māori groups were likely to want to be engaged on. We have not specifically reported on that analysis in this report because:

- there was such a range and number of different issues identified
- the feedback we received from Infrastructure Staff was that it was important not to assume before talking with a Māori group what particular matters were of interest, or most interest, to that group.

For some local authorities it was easy to find, and understand, information regarding engaging with Māori. For other local authorities it was difficult to find references to consulting with Māori. Twenty-one local authorities did not make any statements specifically referring to consultation with Māori/Māori groups in their resource consent web documents (although there may have been reference to engagement with Māori on other parts of those local authorities' websites such as the sections relating to preparation of local authority planning documents).

Analysis of ELAF data

On 8 August 2023 we downloaded Excel spreadsheets providing information on the outcome of applications for funding made to the Environmental Legal Assistance Fund (ELAF) from the 2010-11 to the 2022-23 financial year from the Ministry for the Environment's website.

We then removed all entries that related to unsuccessful applications for funding.

We grouped the hearing/Court proceedings successful applicants received funding for so that all hearings/proceedings relating to the same matter were grouped together as one 'Case'. For example:

- we grouped all successful applications in relation to appeals on a particular proposed regional plan as one Case and all successful applications in relation to a particular proposed change to an operative RMA plan as another single Case.
- first round hearings (where relevant), Environment Court appeals and subsequent appeals, or related applications, to higher courts relating to the same proposal were all grouped together as one Case.

Using that approach we identified 190 different Cases that applicants received ELAF funding to be involved in in the 2010-11 to 2022-23 period.

We then identified which Cases related specifically to projects, that is proposals for new developments, modification of existing developments or re-consenting existing developments and not non-project specific matters such as proposed RMA plans, non-project specific local authority-initiated RMA plan changes or proposed Water Conservation Orders. We then removed any Cases which related to non-infrastructure projects (such as residential developments and privately-owned marina). This left us with 52 Cases/projects.

We then used publicly available sources to obtain information about the subject matter, parties to, and outcomes of those 52 different Cases. The main sources we used were the New Zealand Legal Information Institute (NZLII) website, the Judicial Decisions Online database on the Ministry of Justice website, online local media reports and local authority websites.

In relation to 25 of those 52 Cases no Māori groups were parties opposing the project in the Environment Court or a Board of Inquiry hearing (the opponents were all either individuals or non-Māori groups or entities). Those projects included:

- the Makara and Hurinui windfarms, a proposed Castle Hill windfarm, and an application by Blueskin Energy Limited to construct wind turbine(s)
- proposed hydro-electric power stations on the Mokihinui and Mokau Rivers
- the Central Plains Irrigation Scheme ¹⁰¹
- the Rāwene Wastewater Treatment Plant, a Wairoa District Council wastewater disposal project, and a proposed Te Anau sewerage scheme
- the Waterview Connection, Basin Overbridge, Transmission Gully and Puhoi to Wellsford State highway project Board of Inquiry hearings
- an application for consent to widen and deepen the Port Chalmers Channel and applications for consents for Port Otago Limited to discharge dredging spoil
- the Watercare central interceptor sewage and stormwater tunnel
- an application for consent to replace the Huia Water Treatment Plant.

In relation to twenty of the 52 infrastructure projects both Māori groups and non-Māori groups or entities were parties opposing the project at the Environment Court or a Board of Inquiry level. In one other case we were unable to determine from publicly available sources whether any Māori groups were parties opposing the project in the Environment Court, but we were able to determine that non-Māori groups were.

In six of the 52 infrastructure project cases only Māori groups were parties opposing the project in the Environment Court (there were no Board of Inquiry hearings across those six cases). Those six cases involved applications:

- by the Port of Tauranga to dredge at the port (discussed in the case study in section 4.3.5 of this report
- for an archaeological authority for earthworks to construct a gas pipeline in Taranaki
- by The New Zealand Refining Company Limited (now Channel Infrastructure NZ Limited) to deepen and realign the Whangarei Harbour entrance
- for a stormwater discharge by the Western Bay of Plenty District Council
- to discharge stormwater from Whanganui Prison
- by Port of Tauranga for a wharf extension and related dredging (discussed in the case study in section 4.3.5 of this report.

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Notes

- ¹ (New Zealand Infrastructure Commission/Te Waihangā Act, 2019, sec. 13(1)(b)).
- ² The number of responses received from local authority staff through this channel was small but the information contained in those responses was very useful.
- ³ Similarly, under the Electoral Act 1993 a 'Māori' is "a person of the Māori race of New Zealand; and includes any descendant of such person" (section 3(1)). In practice people self-identify whether they fall within this definition. When a person first registers to vote in New Zealand they are asked if they are a New Zealand Māori or a descendant of a New Zealand Māori. If they indicate that they are, they are given the option of being on the Māori electoral roll or the general electoral roll. Before a general election, local election or relevant by-election, individuals who have identified as a New Zealand Māori or a descendant of a New Zealand Māori are given the opportunity to decide again which roll they want to be on. A person can also change their registered voter details at any time to indicate that they are (or are not) a New Zealand Māori or a descendant of a New Zealand Māori.
- ⁴ Māori population estimates as at 30 June 2023 found that the median ages for males and females identifying as Māori were 25.8 and 27.9 years respectively (compared with national median ages of 37.0 and 39.0 years respectively (Stats NZ, 2023). In 2018 14.7% of people who identified as Māori lived in small urban areas (such as Stratford) and 18% lived in rural areas, compared with the total New Zealand population (at 10.0% and 16.3% respectively) (Environmental Health Intelligence New Zealand, n.d.). In 2018, 23.8% of people who identified as Māori reported a personal income of more than \$50,000 year compared with 31.6% of all New Zealanders (Te Whata, n.d.). For the year ended June 2021, Māori had a median net worth of \$42,000, even after adjusting for their younger age profile, while the median individual net worth of European New Zealanders was \$151,000 (Stats NZ, 2022). (Collective assets, such as Māori land and assets held by iwi and hapū trusts, were out of scope for the Household Economic Survey these net worth figures were derived from.)
- ⁵ For statistical purposes Stats NZ defines an 'iwi' as "a whakapapa-based kinship grouping that generally has several hapū and one or more active marae, and a recognised structure that represents the interests of the iwi, such as a rūpū whakahaere, committee, or board" (Stats NZ, n.d.-a).
- ⁶ Stats NZ has stated that they do not recommend either comparing the 2018 Iwi Population Counts with previous census counts or measuring populations of less than 100 people. The counts provide estimates of the iwi population for each iwi in the Stats NZ iwi classification (Stats NZ, 2021).
- ⁷ The authors used the Stats NZ urban classification urban boundaries for Auckland, Hamilton, Wellington and Christchurch but for Wellington included the Kāpiti main urban area.
- ⁸ In the 2018 census, 45.5% of people who identified as belonging to the Māori ethnic group did not also identify as belonging to any other ethnic group. This does not necessarily mean that those people had no non-Māori ancestry, it means that they self-identified solely as Māori.
- ⁹ 'Māori adults' for the purposes of that survey meant members of the usually resident Māori population living in occupied private dwellings on the 2013 Census night, aged 15 years and over who identified themselves as having Māori ethnicity or being of Māori descent in the 2013 Census form.
- ¹⁰ (Pae Ora Healthy Futures Act, 2022, sec. 31(1)(c)).
- ¹¹ Whether or not an individual is a member of an iwi or hapū is determined by a combination of iwi or hapū acknowledgement and self-identification. Most, if not all, iwi and many hapū maintain member registers. There are differences between the Stats NZ/Data Iwi Leaders Group estimated iwi affiliation counts and the numbers of iwi members recorded on iwi registration databases. This is partly because the iwi affiliation counts are based solely on self-identification, whereas most iwi registration databases are based on whakapapa that is verified by an acknowledged authority (Stats NZ, 2021). Also, iwi member registers will include registered members who live overseas. There is variation in what information different iwi and hapū require for someone to register as a member.

- ¹² Quoting a 2018 thesis submitted by Paratene Tane.
- ¹³ The Law Commission has recommended that the Legislation Act 2019 be amended “to either require or establish a presumption that kupu Māori are to be interpreted consistently with tikanga” (Te Aka Matua o te Ture | Law Commission, 2023, p. 275). The Law Commission has expressed the view that “[t]here is a strong argument against legislation setting the parameters of cultural concepts: a definition that is too descriptive is likely to inappropriately codify the content of the concept” (Te Aka Matua o te Ture | Law Commission, 2023, p. 274).
- ¹⁴ The Crown requires proposed post-settlement governance entities to have a structure that adequately represents all members of the claimant group, has transparent decision-making and dispute resolution procedures, and is fully accountable to the whole claimant group (Office of Treaty Settlements, 2018, p. 67).
- ¹⁵ She also accepts appointments to provide agency services for owners or a trust under agency arrangements. Te Tumu Paeroa, the office of the Māori Trustee, supports the Māori Trustee to administer land for approximately 1,700 Māori land trusts as trustee or agent which are subject to approximately 1,700 leases (The median size of the land blocks they administer is sixteen hectares). Some are landlocked with either no legal access and/or physical access.
- ¹⁶ Other than grinding.
- ¹⁷ (Skerrett-White & Skerrett, 2016; Whata, 2017). For the purposes of the consents, ‘iwi’ means Ngāti Tamateatutahi-Ngāti Kawiti, Ngāti Hinekura, Ngāti Te Rangiunuora (all hapū of Ngāti Pikaio) and the iwi Ngāti Rongomai, Ngāti Māhino and Ngāti Tarawhai.
- ¹⁸ For example on the basis that the matter in dispute can be determined under the terms of a specific contract between the relevant parties (Te Whanau o Waipareira Trust v Attorney-General, 2012).
- ¹⁹ On 1 January 2024 Te Wānanga o Raukawa ceased to be a Crown entity and become primarily accountable to Te Āti Awa ki Whakarongotai, Ngāti Raukawa ki te Tonga and Ngāti Toa Rangatira for its performance and management (Whakahau Mātauranga (Te Wānanga o Raukawa) Order, 2023, sec. 10)).
- ²⁰ The Government has begun the process of disestablishing Te Pūkenga (Simmonds, 2023).
- ²¹ (Education and Training Act, 2020, secs. 153 and 305). Although school boards can be directed to comply with requires to support a whole-of-government approach for the purposes of improving public services, securing economies or efficiencies, develop expertise and capability, ensure business continuity and manage risks to the Government’s financial position.
- ²² (State-Owned Enterprises Act, 1986, sec. 4).
- ²³ However, no person other than the Crown, or some corporate entities which hold securities on behalf of other people, can own more than 10% of a class of issued shares or a class of voting securities in one of those companies.
- ²⁴ In *New Zealand Māori Council v Attorney General* (1987) 1 NZLR 641 (Lands Case) as described by President Cooke in *Te Rūnanga o Wharekauri Rekohu v Attorney-General* [1993] 2 NZLR 301, at 304.
- ²⁵ *New Zealand Māori Council v Attorney-General* [1994] 1 NZLR 513 (PC) (Broadcasting Assets Case), at 517.
- ²⁶ *Lands Case*, Richardson J at 682.
- ²⁷ *Tainui Māori Trust Board v Attorney-General* [1989] 2 NZLR 142 (CA).
- ²⁸ This is consistent with the findings of the Controller and Auditor General | Tumuakā o te Mana Arotake, when looking at four non-infrastructure Government initiatives aimed at supporting improved outcomes for Māori that “[a] critical success factor that the initiatives had in common was the strength of the relationships between public organisations and Māori involved in each initiative and [that] the engagement between the parties demonstrated a strong sense of mutual trust” (Controller and Auditor-General, 2023, p. 4).
- ²⁹ This is consistent with the Controller and Auditor-General’s comments that relationships between government entities and Māori groups “can take time to build. In our view, the benefits of effective and trusting relationships can significantly outweigh the cost of investing time and resources in building them” (Controller and Auditor-General, 2023, p. 18).
- ³⁰ With appropriate health and safety measures put in place.

- ³¹ Re Port of Tauranga Limited [2023] NZEnvC 270. The decision acknowledges the passing of Mr. Patrick Nicholas of Ngāti Makamaka who was a trustee of the Tupuna Trust and represented the Trust at the Environment Court hearing.
- ³² Including assessment of the cumulative effects of development in an area on tangata whenua cultural values.
- ³³ Including one group providing a cultural impact assessment and another providing a cultural values assessment.
- ³⁴ The Tauranga Airport Authority lodged a submission supporting the applications but did not ask to be heard in relation to that submission (Greaves, 2021, para. 4.4). The Authority did not seek to become a party to the subsequent Environment Court proceedings.
- ³⁵ The use of that direct referral process meant that there was no Council-level hearing in relation to the consent applications.
- ³⁶ *Tainui Māori Trust Board v Attorney-General* [1989] 2 NZLR 142 (CA).
- ³⁷ Available at <https://environment.govt.nz/what-you-can-do/funding/environmental-legal-assistance-fund/>.
- ³⁸ The City Rail Link mana whenua forum is an example of a mana whenua forum established early in a project which informed many of the decisions about the project. However, even in that case the mana whenua forum was established in 2012, the first business case for the project had been prepared, by KiwiRail and Auckland Transport, in 2010 and Notices of Requirement to designate land for the project were lodged by Auckland Transport in August 2012 (Joyce & Spies, 2023).
- ³⁹ (Ngāti Kōata, Ngāti Rārua, Ngāti Tama Ki Te Tau Ihu, and Te Ātiawa o Te Waka-a-Māui Claims Settlement Act 2014, 2014, secs. 154 and 155).
- ⁴⁰ (Te Awa Tupua (Whanganui River Claims Settlement) Act, 2017, sec. 29).
- ⁴¹ (Te Awa Tupua (Whanganui River Claims Settlement) Act, 2017, sec. 30).
- ⁴² (Te Awa Tupua (Whanganui River Claims Settlement) Act, 2017, sec. 36).
- ⁴³ Te Heke Ngahuru. (Te Awa Tupua (Whanganui River Claims Settlement) Act, 2017, sec. 37).
- ⁴⁴ (Ngāti Manawa Claims Settlement Act 2012, 2012, secs. 105, 118 and 109; Ngāti Whare Claims Settlement Act, 2012, secs. 109, 122 and 123).
- ⁴⁵ (Maniapoto Claims Settlement Act, 2022, sec. 135).
- ⁴⁶ (Maniapoto Claims Settlement Act, 2022, sec. 136).
- ⁴⁷ (Maniapoto Claims Settlement Act, 2022, sec. 141(2)(c)).
- ⁴⁸ Lakes Ngāheha, Ngāpourī (also known as Ōpourī), Ōkareka, Ōkaro (also known as Ngākaro), Ōkātina, Rerewhakaaitu, Rotoehu, Rotoiti, Rotomā, Rotomahana, Tarawera, Tikitapu, and Tutaeinanga.
- ⁴⁹ (Te Arawa Lakes Settlement Act, 2006b, sec. 23).
- ⁵⁰ (Te Arawa Lakes Settlement Act, 2006b, sec. 38).
- ⁵¹ (Te Arawa Lakes Settlement Act, 2006b, sec. 37).
- ⁵² (Te Arawa Lakes Settlement Act, 2006b, sec. 39). The Settlement Act also established a permanent Rotorua Lakes Strategy Group comprised of Te Arawa Lakes Trust, Rotorua Lakes Council and Bay of Plenty Regional Council. The purpose of the strategy group is to “contribute to the promotion of the sustainable management of ... Rotorua Lakes and their catchments, and for the use and enjoyment of present and future generations, while recognizing and providing for the traditional relationship of Te Arawa with their ancestral lakes (Te Arawa Lakes Settlement Act, 2006a, sec. 49).
- ⁵³ (Ngāti Pāhauwera Treaty Claims Settlement Act, 2012, secs. 34 and 35).
- ⁵⁴ (Ngāti Pāhauwera Treaty Claims Settlement Act, 2012, secs. 51 and 52).
- ⁵⁵ (Ngāti Pāhauwera Treaty Claims Settlement Act, 2012, sec. 51(3)).
- ⁵⁶ (Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act, 2010, sec. Schedule 6, clause 2).
- ⁵⁷ (Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act, 2010, sec. 26).
- ⁵⁸ (Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act, 2010, sec. 28).
- ⁵⁹ (Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act, 2010, sec. 29). The Waikato

River Authority may also request that such applications are ‘called-in’ by the Minister for the Environment to be determined by either a Board of Inquiry or the Environment Court (Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act, 2010, sec. 23(2)(h)).

⁶⁰ (Te Urewera Act, 2014, secs. 11 and 96).

⁶¹ (Te Urewera Act, 2014, sec. 21(2)).

⁶² (Te Urewera Act, 2014, sec. 50).

⁶³ (Te Urewera Act, 2014, sec. 18).

⁶⁴ Some activities, such as not-for-profit recreational activities, can be undertaken in Te Urewera without an authorisation or concession. Mining activities authorized under the Crown Minerals Act 1991 also do not require an authorisation or concession. (Te Urewera Act, 2014, sec. 46(1)(h) and 56).

⁶⁵ (Te Urewera Act, 2014, sec. 58).

⁶⁶ (Te Urewera Act, 2014, sec. Schedule 3, clause 3).

⁶⁷ There are easements in perpetuity registered over the part of Te Urewera used for the operation of the Waikaremoana power station. (Te Urewera Act, 2014, secs. 62 and 99).

⁶⁸ (Iwi and Hapū of Te Rohe o Te Wairoa Claims Settlement Act 2018, 2018, sec. 77(2)(b)).

⁶⁹ (Ngāti Hauā Claims Settlement Act, 2014, sec. 90).

⁷⁰ (Ngāti Hauā Claims Settlement Act, 2014, sec. 89).

⁷¹ In Budget 2016 the potential use of this money was broadened so that it could be used to contribute towards addressing issues relating to the drinking water supply for Rotorua.

⁷² (Pae Ora Healthy Futures Act, 2022, sec. 29(c)).

⁷³ (Pae Ora Healthy Futures Act, 2022, sec. 30).

⁷⁴ (Pae Ora Healthy Futures Act, 2022, sec. 15).

⁷⁵ (Pae Ora Healthy Futures Act, 2022, sec. 31(1)(b) and (2)).

⁷⁶ (Pae Ora Healthy Futures Act, 2022, sec. 31(1)(c)).

⁷⁷ Ōtaki, Ōtaki Beach, Forests Lakes and Waitohu in the Kāpiti District Council are under the auspices of the Te Pae Oranga o Ruahine o Tararua iwi-Māori partnership board.

⁷⁸ (Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act, 2014, sec. 141).

⁷⁹ Although as noted above, the number of Council Respondents was low so there may be local authorities that do specifically engage with mātāwaka groups.

⁸⁰ However, where a proposed development would connect with existing infrastructure and would require alterations to that infrastructure sometimes the developer (rather than the infrastructure provider) may undertake engagement with Māori groups in relation to both the development and the alterations to the existing infrastructure.

⁸¹ Three Mana Whenua Documents stated that where an archaeological assessment is required as part of the development of a proposal and the relevant site may contain wāhi taonga the mana whenua group should determine which archaeological consultant is used or the archaeologist being used will need to be one approved by the Māori group.

⁸² An Infrastructure Consultant commented that very few Māori groups have the specific technical expertise (engineers, planners, environmental scientists or architects) to be able to respond to technical information provided to them at level of detail that infrastructure providers often ask them to.

⁸³ Several Mana Whenua Documents include lists of information that should be provided to the mana whenua group before a project developer met with them. For some Mana Whenua Documents the nature of the information requested – for example proposed works methodology and timing, proposed measures to mitigate adverse effects, the outcomes of any engagement already undertaken – implies that the planning for a project would be quite advanced before the project developer contacted the Māori group. For other Mana Whenua Documents the information requested is more general – for example a map identifying the area in which the project is proposed to be undertaken. One Mana Whenua Document states that developers should provide an initial assessment of the potential significance of their initiative to the relevant iwi, based on an assessment of that initiative against the Mana Whenua Document.

⁸⁴ (Resource Management Act, 1991, sec. 116).

⁸⁵ (Ngāti Tūwharetoa Claims Settlement Act, 2018, sec. 190).

⁸⁶ (Ngāti Tūwharetoa Claims Settlement Act, 2018, sec. 191).

- ⁸⁷ They also commented that they do not necessarily know all the environmental and sustainability concerns that were raised by Māori groups at earlier stages in a project.
- ⁸⁸ (Te Rūnanga o Ngāi Tahu Act, 1996, sec. 15(2)).
- ⁸⁹ (Te Rūnanga o Ngāi Tahu Act, 1996, sec. 15(3)).
- ⁹⁰ Findings from that survey included: (1) Māori Public Service Staff had the highest level of comfort at work of any ethnicity at 56.9% (with staff who identified as European at 56.1%) and the lowest levels of being uncomfortable at work at 32.3% (with European staff at 33.2%); and (2) Māori Public Service staff also had the highest levels of finding it easy or very easy to be themselves at work at 53.8% (with European staff at 52.9%) and the second lowest levels of finding it hard or very hard to be themselves at work at 8.5% (with Pasifika staff at 5.7% and European staff at 10.1%).
- ⁹¹ Initially, the Lake Rotomā/Rotoehu Ratepayers Association also appealed but that appeal was subsequently settled.
- ⁹² Māori customary land' (land held by Māori in accordance with tikanga Māori) and land set apart as a Māori reservation cannot be vested or acquired under any Act. (Te Ture Whenua Māori Act, 1993, sec. 145(1)(c) and 338(11)(a)). Where a special purposes vehicle has been established under the Infrastructure Funding and Financing Act 2020., types of land defined as 'protected Māori land' cannot be taken for the purposes of 'infrastructure to be constructed, by or under the control of that special purpose vehicle. Similarly, under the Urban Development Act 2020 no power to acquire land under the Act can be used in relation to certain land held or managed by Māori groups and the Minister for Land Information can only acquire some other kinds of land owned by Māori groups by agreement.
- ⁹³ (Public Works Act, 1981, sec. 17 to 27A, 28(a) and 173; Resource Management Act, 1991, sec. 186; Urban Development Act, 2020, sec. 250 to 278)
- ⁹⁴ Local Government Act 1974, section 316 and Government Roothing Powers Act 1989 section 44.
- ⁹⁵ (Director-General of Conservation & Ors v Taranaki Regional Council & Ors, 2019).
- ⁹⁶ (Director-General of Conservation & Ors v Taranaki Regional Council & Ors, 2019; Director-General of Conservation & Ors v Taranaki Regional Council & Ors, 2021)
- ⁹⁷ (Te Ture Whenua Māori Act, 1993, sec. 317 to 318):
- ⁹⁸ (Public Works Act, 1981, sec. 40(1) and (2)).
- ⁹⁹ As a result of a Settlement a specific gifted land policy applies to land that was gifted to the Crown under the terms of a particular agreement.
- ¹⁰⁰ (Marine and Coastal Area (Takutai Moana) Act 2, 2011).
- ¹⁰¹ There had been previous proceedings where Ngāi Tahu successfully argued that its resource consent applications should be given priority in processing over Central Plains Water Limited's consent applications.

