

We have received a submission on the notified resource consent for 1232 State Highway 1, Wayby Valley.

Details of submission

Notified resource consent application details

Property address: 1232 State Highway 1, Wayby Valley

Application number: BUN60339589

Applicant name: Waste Management NZ Limited ('WMNZ')

Applicant email: rsignal-ross@tonkintaylor.co.nz

Application description: To construct and operate a new regional landfill.

Submitter contact details

Full name: Jennifer Lynn Driskel

Organisation name:

Contact phone number: 0212696249

Email address: jenniferdriskel@hotmail.co.nz

Postal address:

68 Pricor Road
Wellsford RD2
Auckland 0972

Submission details

This submission: opposes the application in whole or in part

Specify the aspects of the application you are submitting on:

Legacy of landfill on future environment and population. Noise pollution to surrounding properties from valley. Air quality at site and on transport routes. . Light pollution. Hours of operation. Transportation cost to rate payer and tax payer due to distance from source and where bin transfer stations may be along the way and if Rail is a future transporter. Insufficient info on Rail. Land zone change. Affect on sea birds scavenging and plastic in nest of our native birds.

399.1

What are the reasons for your submission?

I believe a world health forum will lobby to outlaw landfill use in the western world. We as the Green Islands should show by example that we can use all the advances of knowledge and ban the old fashion way of dumping waste into a hole and covering up. This application is for 35 years, by admission in the introduction and supporting documents is just the start of a century or more of potential use. This is not an option for New Zealand's future. I wish a better future for our population with reduced risk to pollutants in our environment. I believe this landfill will have a prolonged negative affect on our environment which is far more than minor.

What decisions and amendments would you like the council to make?

No to this site as it is too far from the source. Environmental risk too high. Document's may be outdated

399.2

ie:49BUN60339589 Health Risk Assesment, Risk Methodology HHRAP US EPA dated 2005?
State highway 1 and 16 unsuitable for an increase of heavy vehicals. Transport blockages, what other routes would be used? Time frame of new State Highway 1 in question at this time.
To re assess at Central government level due to scale of project.

Cost blow out, too costly for the consumer.

Waste of potential recycled resources. Too easy not to change legislation while land fill is still an option. Review processing, and improve and how waste is collected and reduce contamination at source to improve recycling volume.

If consented review bin exchange, further into site to reduce noise to recievers.

Reduce hours of operation and bin exchange.

Review health risk. What will they be in future decades and beyond?

Health risk to native birds. Review the habits on native birds and sea birds for nesting for negative affects.

| 399.2

| 399.3

Are you a trade competitor of the applicant? I am not a trade competitor of the applicant.

Do you want to attend a hearing and speak in support of your submission? No

If other people make a similar submission I will consider making a joint case with them at the hearing: No

Supporting information:

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Applicant name: Waste Management NZ Limited ('WMNZ')

Applicant email: rsignal-ross@tonkintaylor.co.nz

Application description: To construct and operate a new regional landfill.

Submitter contact details

Full name: Peter Robert Henderson

Organisation name: 1949

Contact phone number: 0274 776519

Email address: octavius@xtra.co.nz

Postal address:

4 John Andrew Drive, Warkworth
Auckland (and vicinity)
Auckland (and vicinity) 0910

Submission details

This submission: opposes the application in whole or in part

Specify the aspects of the application you are submitting on:

I oppose the change of zoning of the land from farm and forestry to a special landfill precinct.

What are the reasons for your submission?

The Dome Valley is part of the rural Mahurangi area and we have traffic problems continually and adding the large number of daily rubbish trucks would add to it greatly. Currently all freight to and from Northland is carried by road and the additional will put too much pressure on the roads and motorists. The dump area is close to the proposed satellite town of Warkworth and with little apparent thought being given to the changes the extra problem of a dump would severely effect the town.

What decisions and amendments would you like the council to make?

Don't change the zoning. Keep it farms and forestry.

400.1

Are you a trade competitor of the applicant? I am not a trade competitor of the applicant.

Do you want to attend a hearing and speak in support of your submission? No

If other people make a similar submission I will consider making a joint case with them at the hearing: No

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Applicant name: Waste Management NZ Limited ('WMNZ')

Applicant email: rsignal-ross@tonkintaylor.co.nz

Application description: To construct and operate a new regional landfill.

Submitter contact details

Full name: Sandra Mather

Organisation name:

Contact phone number: 021422935

Email address: sandramather@icloud.com

Postal address:
216 Goatley Road
Warkworth
Warkworth 0981

Submission details

This submission: opposes the application in whole or in part

Specify the aspects of the application you are submitting on:

Oppose plan change to rezone area.
Oppose operation of a landfill in this area.

401.1

What are the reasons for your submission?

The environmental impact from potential run off from the operation into streams and leachate into Kaipara Harbour.

The already dangerous stretch of road through the Dome Valley to have hundreds more truck movements every day.

The Flora and Fauna of the Dome Valley compromised by extra traffic and a Dumpsite.

The beauty of the Dome Valley area ruined by hundreds of trucks per day and vermin that a Dump attracts.

What decisions and amendments would you like the council to make?

We would like Auckland Council to take a stand and oppose the siting of a Dump in Dome Valley, in no way is it an appropriate place, it should be closer to Auckland and to all the rubbish, this is not a green alternative

Are you a trade competitor of the applicant? I am not a trade competitor of the applicant.

Do you want to attend a hearing and speak in support of your submission? No

If other people make a similar submission I will consider making a joint case with them at the hearing: Yes

Supporting information:

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Applicant name: Waste Management NZ Limited ('WMNZ')

Applicant email: rsignal-ross@tonkintaylor.co.nz

Application description: To construct and operate a new regional landfill.

Submitter contact details

Full name: nikki amiss

Organisation name:

Contact phone number: 0211646544

Email address: windsongcottage@xtra.co.nz

Postal address:
Kaipara Flats Road
Warkworth
Warkworth 0981

Submission details

This submission: opposes the application in whole or in part

Specify the aspects of the application you are submitting on:
the whole application to change the consent to allow the landfill to operate from this site

What are the reasons for your submission?
it contradicts many items in the act designed to protect the land, environment and waterways

What decisions and amendments would you like the council to make?
to decline the plan change in its entirety

Are you a trade competitor of the applicant? I am not a trade competitor of the applicant.

Do you want to attend a hearing and speak in support of your submission? No

If other people make a similar submission I will consider making a joint case with them at the hearing: Yes

Supporting information

402.1

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Property address: 1232 State Highway 1, Wayby Valley

Application number: BUN60339589

Applicant name: Waste Management NZ Limited ('WMNZ')

Applicant email: rsignal-ross@tonkintaylor.co.nz

Application description: To construct and operate a new regional landfill.

Submitter contact details

Full name: Lionel Foster

Organisation name:

Contact phone number: 0212263409

Email address: landfoster@outlook.com

Postal address:

11 Davies Rd Wellsford
Wellsford
Wellsford 0900

Submission details

This submission: opposes the application in whole or in part

Specify the aspects of the application you are submitting on:

Springhill Sealed Airstrip

The only mention found in the resource consent documents of on this airstrip is in Tompkin Taylor's AEE on page 35 where it gives a scant brief:

"There is also a working airstrip with associated hangar buildings. The airstrip, is only available for private use."

What are the reasons for your submission?

I believe that this part of the AEE fails to give the true value of this airstrip – it is the only sealed airstrip between North Shore and Whangarei airports. Here is a Testament to the sealed Springhill airfield:

"It can take a Cessna Mustang jet no trouble at all – it's the best private airfield in NZ."

– Barry Pinker, Commercial Pilot.

It is noted that a number of individuals, including neighbours to the subject site have expressed their interest in this airfield in the Private Change Request document (Appendix F): Consultation Record 27 February 2020.

What decisions and amendments would you like the council to make?

Should Council consider granting consent to WMNZ the to operate a landfill in the Dome Valley it

should be conditional that the airstrip and airfield be subdivided from the rest of the property so that it includes all equipment facilities hangers etc and required access in order to retain and increase the value of this private airfield. As supplementary to the subdivision, it is also submitted that all of this area that is required to operate and realise the value of this private airfield carry an airport precinct. This submission is being made to Private Plan Change number 42.

403.1

403.2

Are you a trade competitor of the applicant? I am not a trade competitor of the applicant.

Do you want to attend a hearing and speak in support of your submission? Yes

If other people make a similar submission I will consider making a joint case with them at the hearing: No

Supporting information:

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Applicant name: Waste Management NZ Limited ('WMNZ')

Applicant email: rsignal-ross@tonkintaylor.co.nz

Application description: To construct and operate a new regional landfill.

Submitter contact details

Full name: Joshua Don

Organisation name:

Contact phone number: 0212282633

Email address: joshuaqdon@gmail.com

Postal address:

57 Worker Road
Wellsford
Wellsford 0900

Submission details

This submission: opposes the application in whole or in part

Specify the aspects of the application you are submitting on:

Springhill Sealed Airstrip

The only mention found in the resource consent documents of on this airstrip is in Tompkin Taylor's AEE on page 35 where it gives a scant brief:

"There is also a working airstrip with associated hangar buildings. The airstrip, is only available for private use."

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Are you a trade competitor of the applicant? I am not a trade competitor of the applicant.

Do you want to attend a hearing and speak in support of your submission? No

If other people make a similar submission I will consider making a joint case with them at the hearing: No

Supporting information:

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Applicant name: Waste Management NZ Limited ('WMNZ')

Applicant email: rsignal-ross@tonkintaylor.co.nz

Application description: To construct and operate a new regional landfill.

Submitter contact details

Full name: malcolm lea

Organisation name:

Contact phone number: 0211502488

Email address: malcolmlea200@gmail.com

Postal address:

199 Shepherd Rd
Auckland
Auckland 0975

Submission details

This submission: supports the application in whole or in part

Specify the aspects of the application you are submitting on:
land use plan change and all the elements of the consents and consent conditions

|405.1

What are the reasons for your submission?
to improve the outcomes

What decisions and amendments would you like the council to make?
complete management plans of all aspects . clear consent conditions local community group to be
leased with by Waste management on all operational aspects and a 10 dollar levy per metre for
local environment improvement

|405.1
|405.2
|405.3

Are you a trade competitor of the applicant? I am not a trade competitor of the applicant.

Do you want to attend a hearing and speak in support of your submission? Yes

If other people make a similar submission I will consider making a joint case with them at the hearing: Yes

Supporting information:

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Applicant name: Waste Management NZ Limited ('WMNZ')

Applicant email: rsignal-ross@tonkintaylor.co.nz

Application description: To construct and operate a new regional landfill.

Submitter contact details

Full name: Dot Dalziell

Organisation name: NZ Walking Access Commission Ara Hikoī

Contact phone number: 021379132

Email address: dot.dalziell@walkingaccess.govt.nz

Postal address:

PO Box 11181
Manners Street
Wellington, New Zealand 6142

Submission details

This submission: is neutral regarding the application in whole or in part

Specify the aspects of the application you are submitting on:

The Plan Change and Resource Consent documentation does not identify the strategic importance of protecting and enhancing landscape-scale outdoor public access in the area. In line with the Rodney Greenways Pūhoi to Pākiri paths and trails plan (see Greenways Plan attached, particularly Map 2, page 24), the existing unformed legal road network adjoining the ARL land is a valuable provision for walking and cycling connectivity between Warkworth, Matakana and the Pākiri Coast, and offers opportunities within the buffer zone of the proposed landfill to further develop, enhance and connect public outdoor access.

What are the reasons for your submission?

The Walking Access Commission submits that walking and cycling connectivity proposed in the Rodney Pūhoi to Pakiri Greenways plan should be taken into consideration by the landfill developers, and steps taken to ensure connectivity into this network through the ARL development.

The Greenways plan is a published document that sets out the Rodney Local Board's long term vision for a network of landscape-scale paths, tracks and trails in the eastern part of the Rodney Local Board area, with the Dome Valley at its westernmost edge.

The applicant's Assessment of Environmental Effects section 9.2.4 describes consideration given by

the applicant to recreational access. However this is constrained to recreational access opportunities discussed with Department of Conservation and NZ Walking Access Commission in the context of specific Overseas Investment Office Consent Conditions for public access. These are OIO consent conditions that the applicant is already required to implement.

We submit that the Resource Consent and Private Plan Change considerations for recreational access need to be far broader, and include landscape-scale connectivity through the proposed landfill site and connecting to surrounding unformed legal roads.

The applicant's Assessment of Environmental Effects section 8.2.6 outlines intended Road stopping of unformed legal roads which cross Valley 1. While this is a separate matter governed by the LGA, if the applicant were to be successful in their road stopping application(s) there would be a net loss in public access provision in the area. Careful consideration needs to be given to the general principle (as discussed in the Commission's Guidelines for the Management of Unformed Legal Roads - attached) that unformed legal roads have the same status as formed legal roads, and that the Courts have favoured public rights to retain roads over private bids to stop them.

What decisions and amendments would you like the council to make?

Our submission is that there is an opportunity to amend both the Plan Change and Resource Consent to require particular public access to be created in and through the ARL landscape. This public access would connect to the legal road network (including unformed legal roads) adjoining the land, and also to future walking and cycling infrastructure in the surrounding area, specifically: | 406.1

1. A walking and cycling linkage connecting Wayby Valley north-western boundary of the ARL to Waiwhiu Valley via Wilson Road; and | 406.1

2. North-South walking and cycling linkage connecting from Wayby Valley through the ARL site to Sunnybrook Scenic Reserve. | 406.2

This is additional to the recreational access provisions outlined by the applicant.

We also submit that the council should require that the road stopping of unformed legal roads be constrained to Valley 1, and should not be sought for any part of the legal road network providing key landscape linkage. | 406.3

Furthermore, we submit that should their intended road stopping applications proceed, the applicant must be required to provide suitable replacement public access, and that this replacement public access should not also be counted as an enhancement or as mitigation for other environmental effects arising through the development of the landfill. | 406.4

Are you a trade competitor of the applicant? I am not a trade competitor of the applicant.

Do you want to attend a hearing and speak in support of your submission? Yes

If other people make a similar submission I will consider making a joint case with them at the hearing: Yes

Supporting information:

puhoi-pakiri-greenways-part-one.pdf
ULR-Guidelinesfor-web.pdf

New Zealand Walking Access Commission

Guidelines for the Management of Unformed Legal Roads

Edition 1 February 2011



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Foreword

Recreational access to our lakes, beaches, rivers, and mountains is an important part of what it is to be a New Zealander. Being in the outdoors is part of our cultural identity and something that we see as part of the birthright of all New Zealanders.

The New Zealand Walking Access Commission (the Commission) is the Crown entity that promotes access to publicly-owned land. It aims to enhance free, certain, enduring, and practical walking access to the New Zealand outdoors.

Because of this, the Commission has a strong interest in roads – particularly in unformed legal roads.

Former Registrar-General of Lands Brian Hayes has researched the origin and legal standing of unformed legal roads. In his book, *Roads, Water Margins, and Riverbeds: the law on public access*, he says the unformed roading network is the true anchor of rights of access to the outdoors:

“There has long been a close affinity in New Zealand between roads along water, unformed roads, waterside reservations of public land in lieu of roads, and the publicly owned riverbeds which together provide our recreational highways.

The intention of the Crown and the Colonial Office when founding New Zealand was to provide a new open country where the outdoors should be the preserve of the people rather than the privilege of the land owners. At the same time, land in New Zealand was to become a free market commodity, and private rights had to be respected.

The author has formed the opinion that the roading pattern set out by the early surveyors along water and over land to be Crown granted is and continues to be the foundation of free, public and permanent access in New Zealand. The intention was that most of these roads would remain in a state of nature. Next to the rivers, mountains, lakes and the sea, the unformed roading network, originally held in trust by the Crown for the people and now administered by local councils, is one of the greatest recreational assets of the nation, for it is the one mechanism that provides an unqualified guarantee of access for everyone.”

The Commission aims to be the lead government agency on public access issues. As part of this, we were assigned by the Government the task of providing this ‘best practice’ guidelines document for local authorities. These guidelines are designed to help support city councils and district councils.

The Commission was directed to lead a group of government agencies – made up of the Ministry of Agriculture and Forestry, Land Information NZ, and the Department of Internal Affairs – to work with Local Government NZ to develop and issue guidelines for local government on:

- a) the administration of unformed legal roads with the aim of removing possible impediments for their use for walking access; and
- b) the legislation and administrative practices on the stopping of unformed legal roads.

We have liaised with these organisations and other individuals and organisations to produce this document. We hope it will be of value.

We also expect that this will be just the first edition – and anticipate that future editions will be produced, taking into account experience from other organisations with a role in this area.

Comments, suggestions, and feedback on this document should be sent to:

The Operations Manager
New Zealand Walking Access Commission
PO Box 12-348
Thorndon
Wellington 6144
or contact@walkingaccess.govt.nz.

We have a small team in Wellington and a network of regional field advisors, who are working with local councils to provide advice, information, and guidance so that any conflict over public access can be resolved as quickly as possible.

John Acland
Chairman
New Zealand Walking Access Commission

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Introduction

Section summary

- The New Zealand Walking Access Commission was established to improve public access to and enjoyment of, the outdoors
- The Commission has developed an online Walking Access Mapping System (WAMS) which shows where the public may go
- Many public access ways are unformed or 'paper' roads
- Councils may receive more questions about rights to use unformed legal roads now this information is easier to obtain.

Access to the great outdoors is part of New Zealand's culture and identity. Outdoor New Zealand is a unique place to enjoy. Our rich recreational heritage – based on access to rivers, lakes, beaches and alpine areas – contributes to our quality of life as well as enhancing our awareness of the natural environment. However, public access to these places is not always clear and people are often unsure about where they can and cannot go.

The New Zealand Walking Access Commission (the Commission) was established by the Walking Access Act 2008 to enhance opportunities for public walking access to New Zealand's great outdoors, while respecting private landholders' rights and property.

One of the requirements of the Commission is to:

“Compile, hold and publish maps and information about land over which members of the public have walking access.”¹

The Commission has developed a Walking Access Mapping System (WAMS), an online resource designed to inform the New Zealand public and overseas visitors about land open to walking access. It can be accessed at www.wams.org.nz or through the Commission website at www.walkingaccess.govt.nz.

1. *Walking Access Act 2008*, No 101, Section 10 (1) (c). New Zealand Parliament.

The WAMS has been developed for the Commission by Terralink International Ltd in association with Geographic Business Solutions. It uses topographical and cadastral (land records) information highlighting conservation land, roads (including unformed or paper roads), esplanade strips, and other land open to public access (derived from Land Information New Zealand (LINZ) databases) and aerial photography, put into graphic form.

The mapping system is evolutionary. In addition to topographical and cadastral information, and aerial photography, more information will be added in the future, depending on how users respond. This information will appear as the Tracks and Access Points (TAPS) layer in the WAMS.

The WAMS does not exist in isolation and recreational users will continue to be guided by the New Zealand Outdoor Access Code², which provides advice on behaviour and expectations.

With the advent of the WAMS, walkers, trampers, cyclists, hunters and off road vehicle users have ready access to a way of identifying tracks, roads and walkways they can legally access. This greater public knowledge may result in councils receiving more questions about the legal status of and accessibility to

unformed legal roads, (sometimes known as 'paper roads')³, under their jurisdiction. Landholders may also be concerned about potentially greater use of unformed roads and how this might affect their privacy and security.

These guidelines are designed to explain the law and practice relating to the administration of unformed legal roads from a public access perspective.

Issues may include:

- landholder concerns about unformed legal roads intersecting or bordering their property being publicly identified
- landholders disputing the legal status of unformed legal roads
- members of the public objecting to obstructions such as fences, locked gates or buildings
- members of the public leaving gates open, lighting fires or bringing dogs into contact with a farming operation
- disputes between parties over the location of unformed legal roads
- proposals to stop unformed legal roads; and
- questions about the responsibility of councils for the maintenance of, or safety of users of, unformed legal roads.

2. New Zealand Walking Access Commission. (2010). *New Zealand Outdoor Access Code*.

3. The term 'paper road' was originally applied to roads that were drawn on the survey plans, but not pegged out on the ground. Case law has established that these roads have the same legal status as any other road.

Background

Section summary

- The Walking Access Act was the culmination of wide consultation
- During this process concerns about unformed legal roads were frequently raised
- Information about the location of legal roads whether formed or unformed is held by Land Information New Zealand (LINZ)
- The cadastral information in the LINZ database Landonline incorporates historical data that is subject to continuing review
- The Walking Access Mapping System (WAMS) makes data derived from LINZ much more accessible to the public
- There are accuracy issues about small amounts of this data, particularly that relating to rural areas.

The Walking Access Act 2008 was the culmination of widespread consultation with the public and interest groups in response to concerns about the availability of public walking access to New Zealand's outdoors. Two expert groups were appointed by the Government to guide the consultation and report on the issues. They were the:

- Land Access Ministerial Reference Group, which reported in 2003
- Walking Access Consultation Panel, which reported in 2007.

During this extensive consultation process, concerns were frequently raised about unformed legal roads and rights of public access.

Unformed legal roads are widespread throughout New Zealand. They are documented in the survey records held by Land Information New Zealand (LINZ), although these records do not distinguish between formed and unformed legal roads. The electronic form of these records can be accessed through Landonline (www.landonline.govt.nz), the LINZ interface for land title and survey records.

The survey records are public information but Landonline is designed for use by lawyers, surveyors and other land professionals rather than people who simply want information for recreational purposes. Topographical maps are

also published by LINZ. These maps show the physical features of the landscape, including road formation. Road formation does not necessarily indicate a legal road open to the public.

The WAMS provides walkers, trampers, hunters and others with easily accessible, current information about public access to New Zealand's outdoors.

Specifically it:

- indicates the location of land that, on the basis of the information held in the LINZ cadastral records, is open to public access
- enables the display of, or links to, additional information about walking access provided by other agencies or the public
- provides information and operational tools for the Commission to facilitate new access and mediate disputes over access.

The system has been designed to be:

- reliable, objective and as accurate as practicable, within the constraints of the underlying data
- current – the database will be kept up-to-date as legal and administrative changes are made (monthly via LINZ)
- free
- accessible, via the Internet, with the facility to view, download and print.

It should be noted, however, that the mapping system is only as accurate as the LINZ-sourced data it relies on. Many unformed legal roads were first defined in very old surveys. Although they met the needs of national mapping and surveying at the time, they are not as accurate as users today may expect. This can be illustrated by comparing high country boundaries defined by old surveys (subsequently manually transferred onto paper record sheets), with modern land information such as aerial or satellite photographs; inconsistencies of tens of metres can be found.

The process of overlaying the different information sources has potential for misalignment, and this needs to be taken into account in identifying the location of roads.

As a clearer picture emerges of the location of publicly accessible land, including unformed legal roads, local councils are likely to face challenges in managing public and private expectations.

Unformed legal roads – a legacy

Section summary

Unformed legal roads:

- were mostly established in the early years of New Zealand settlement
- are roads that have not been constructed
- have often not been 'pegged out' on the ground
- have the same legal status as any other public road
- are found extensively over the countryside as well as around the coast and alongside rivers and lakes.

Most unformed legal roads were established in the early days of settlement, particularly, in the period of provincial government (1854 to 1876). Before Crown land was sold, land was set aside as roads to ensure public access would be available once the land was developed. Roads were shown on survey plans but frequently not built or used. These include the 'paper' roads we have inherited today.

As well as intersecting our farmland and bush, unformed legal roads form much of the reserved land around the coast and alongside waterways. These waterside strips of land, sometimes referred to as the 'Queen's chain',⁴ were set aside for public use such as access to beaches, rivers and lakes. They were originally designated as 'roads', not because they were in many cases ever meant to be actual highways, but because a road was the most clearly understood legal form of public reservation available at the time to guarantee future public availability.

4. People often refer to the strip of land (usually 20 metres wide) reserved for public use along the sea shore and the banks of rivers and lakes as the 'Queen's chain' but there is no such legal entity. Instead there are a variety of land types which provide public access and/or protect conservation values. Private land also often extends to the water's edge so, in reality, no continuous chain of public land exists.

New Zealand has an estimated 56,000 kilometres⁵ of unformed legal roads. Some are part of farmland, others are muddy tracks, some are too rough to cross and some even traverse the side of sheer cliffs. The important thing to remember is that, however impractical, unformed or impassable, unformed legal roads have exactly the same legal status as any public road. They remain open to public access.

The term 'unformed legal road' generally refers to roads that:

- have not been formed as recognisable, surfaced roads. They may be just a strip marked on a map, ruts in the ground or indistinguishable from the surrounding countryside
- are formed roads that are no longer maintained by the responsible territorial authority, and have, in effect, reverted to being unformed.

Unformed legal roads are no different in law from formed public roads. That is, the public has the right to use them on foot, on horse back, or in vehicles without hindrance from the adjoining landholders or anyone else.^{6,7} However users of roads should still be considerate of others, including adjoining landholders and their livestock and property.

In summary, unformed legal roads may be unsurfaced, inaccessible and impossible to tell apart from the surrounding land but, in the eyes of the law – under the right to pass and re-pass – they are no different to the tarsealed highways we use every day.

5. Ministry of Agriculture and Forestry. (2007). Internal paper.

6. Hayes B. E. (2008) *Roads, Water Margins and Riverbeds: The Law on Public Access contains a full analysis of the rights attaching to unformed legal roads*. Faculty of Law University of Otago, New Zealand in conjunction with The Ministry of Agriculture and Forestry.

7. The right of free passage can be restricted by local councils by temporarily closing a road in accordance with the 10th Schedule of the Local Government Act 1974.

The law and unformed legal roads

Section summary

- The law does not distinguish between formed and unformed roads
- 'Roads' can include bridle paths and footpaths
- Legislation vested most roads in local councils in 1973
- The Local Government Act 1974 is the main statute covering roads, other than state highways, both unformed and formed
- In practical terms an unformed road is a road that has not been improved with gravel, metal or sealed surface.

These guidelines are concerned with roads that are recognised as public highways in law. All references to 'roads' mean roads in this legal sense, as distinct from road formation on private land that does not have this legal status.

An unformed legal road has the same legal status as any other road and the same general laws apply to both. The legal definition of a road is "a public highway, whether used as a carriageway, bridle path or footpath."⁸

The Crown used to hold title to all rural roads under the Public Works Acts. In January 1973 the ownership of roads in counties (which included virtually all of the unformed roads that are the subject of this paper) was transferred to the then county councils.⁹

The current law on the ownership of roads (other than state highways) is in s 316 of the Local Government Act 1974 which vests roads in the relevant council (territorial authority). Management and control of rural roads (as distinct from ownership) was devolved to county councils at a much earlier date, prior to 1900. Part 21 of the Local Government Act 1974 currently is the main statute covering roads, other than state highways, both unformed and formed.

8. Short W. S. (1907). *A Treatise Upon the Law of Roads, Bridges and Streets in New Zealand*, at p8. New Zealand Government Department of Roads.

9. *Counties Act 1956, Section 191A* as inserted by s2 of the Counties Amendment Act 1972. New Zealand Parliament.

The 1974 Act does not clearly define what a road is, other than by reference to existing roads. The term 'road' and the rights inherent in roads are largely common law concepts.

Neither does the 1974 Act describe the characteristics of an 'unformed' road. Section 2 does, however, define what the 'formation' of a road amounts to:

“Formation, in relation to any road, has the same meaning as the construction of the road, and includes gravelling, metalling, sealing, or permanently surfacing the road...”

An unformed road can, therefore, be taken to mean a road that has not been constructed or enhanced by adding metal, seal or any other type of surface.

Part 21 of the 1974 Act spells out councils' terms of ownership and responsibilities. In essence, councils hold title to roads (except state highways) on behalf of the public and are obliged to see that the right of passage is preserved.

Other statutes that have relevance to roads are:

- the Government Roding Powers Act 1989
- the Public Works Act 1981.

While the same roading legislation generally applies to both formed and unformed roads, there are legislative conditions that apply specifically to unformed roads:

- unformed roads are subject to resumption of ownership by the Crown. When the land is transferred from a council to the Crown it becomes subject to the Land Act 1948¹⁰
- roads along rivers and the coast, if stopped, become esplanade reserves vested in the council¹¹
- roads in rural areas cannot be stopped without the consent of the Minister for Land Information¹²
- unformed roads intersecting or adjoining Crown land may be closed (in this context meaning stopped)¹³
- unformed roads intersecting or adjoining land owned or acquired by the Crown may be closed prior to subdivision.¹⁴

A summary of legislation applicable to unformed legal roads can be found in Appendix A.

10. *Local Government Act 1974. Section 323.* New Zealand Parliament.

11. *Local Government Act 1974. Section 345 (3).* New Zealand Parliament. (Note, however, *Resource Management Act 1991. Section 77.* New Zealand Parliament.)

12. *Local Government Act 1974. Section 342 (1) (a).* New Zealand Parliament.

13. *Land Act 1948. Section 43 (1).* New Zealand Parliament.

14. *Land Act 1948. Section 43 (1).* New Zealand Parliament.

What the courts say

Section summary

- Over time, courts have clarified the status of unformed legal roads
- The Privy Council says a road identified on a record plan, even if not pegged out on the ground (a 'paper road'), has the legal status of a formed legal road
- Courts have favoured public rights to retain roads over private bids to stop them.

Disputes over unformed legal roads have arisen for as long as the roads themselves have existed. Some landholders regard unformed legal roads as an inconvenience; developers often want to get rid of them; and members of the public are sometimes upset when they find them blocked by buildings, fences or locked gates. When these disputes cannot be resolved between affected parties and local councils, the courts may become involved.

The courts have clarified the legal status of unformed legal roads. The key case is the decision of the Privy Council in *Snushall v Kaikoura County (1923)*,¹⁵ which reaffirmed decisions previously made by the Supreme Court (now the High Court) and the Court of Appeal.

The Snushall case established, on the authority of the Privy Council, that a road shown on a record plan but not physically 'laid out' on the ground (i.e. a paper road) has the same legal status as a formed legal road.¹⁶

15. *Snushall v Kaikoura County (1923)* AC459 (1840-1932) New Zealand Privy Council Cases 670, (1920) NZLR 783 (CA).

16. Hayes B. E. (2007). *Roading law as it applies to Unformed Roads*. Ministry of Agriculture and Forestry, Wellington, New Zealand.

The legal security of an unformed legal road has been protected by the historic and enduring common law right of citizens to pass and repass on a road. This principle has been strongly upheld by the highest courts.

Justice Peter Blanchard when delivering the decision of the Court of Appeal in *Man O' War Station Ltd v Auckland City Council (2002)*¹⁷ said:

"The integrity of the roading infrastructure is of such importance to the economic and social welfare of any society that it is to be anticipated that the public right to the use of roads will be given a measure of priority when it comes in conflict with private claims."

This judgement makes it clear the court gives priority to rights of public access over private interests when it comes to disputes over roads.

17. *Man O' War Station Ltd v Auckland City Council (2002)* 2 NZLR 267, at p286

Repairs and maintenance

Section summary

- Statute law does not provide clear guidelines about the maintenance of unformed legal roads
- The courts have tended to say councils are not liable for maintaining unformed legal roads
- The surface of unformed legal roads is often maintained by the occupiers (usually farmers) of adjoining or intersected private land.

A territorial authority has full power under s 319 of the Local Government Act 1974 to do whatever is necessary to construct and maintain any road under its control. The historic background on road formation and maintenance is contained in appendix B. In respect of formed roads there seems to be an ongoing obligation to maintain them. It is less clear whether there is any obligation to form or maintain historic unformed legal roads.

This apparent deficit in written law has been addressed by the courts in New Zealand, which have tended to absolve local councils from the responsibility for maintaining or repairing unformed legal roads, or at least made it discretionary.

Writing in *Roads, Water Margins and Riverbeds: the Law on Public Access*,¹⁸ Brian Hayes observes that a raft of case law has established that councils cannot be prosecuted on the grounds of nonfeasance (doing nothing) to maintain roads that have never been formed.

“A territorial authority is not bound to keep in repair roads which have never been formed and remain in a state of nature, and is not liable for injuries caused by defects in such roads to people who may use them.”

18. Hayes B. E. (2008) *Roads, Water Margins and Riverbeds: The Law on Public Access contains a full analysis of the rights attaching to unformed legal roads*. Faculty of Law University of Otago, New Zealand in conjunction with The Ministry of Agriculture and Forestry.

19. *Inhabitants of Kowai Road Board v Ashby (1891)* 9 NZLR658; *Tuapeka County Council v Johns (1913)* 32 NZLR618.

20. *Hocking v Attorney-General (1963)* NZLR513 (CA). Also refer to the Resource Management Act 1991. Section 77. New Zealand Parliament.)

Decisions from various court cases have further clarified the responsibilities of councils regarding the upkeep of unformed legal roads.

These can be summarised as follows

- the council has no obligation to construct or maintain an unformed legal road¹⁹
- if the council carries out no work there is no liability²⁰
- the council can fill in holes on part of a long line of unformed road, but still be immune from any duty to repair the whole road²¹
- the council is immune from the operation of natural causes²²
- if the council undertakes any artificial work, such as a culvert or bridge on a road which is generally unformed, it has a duty of reasonable care in construction and also a duty to monitor and repair any change in conditions that could make the construction dangerous.²³

Whenever the safety or convenience of the public applies, the council may require the owner or occupier of any land not separated from a road by a sufficient fence, to enclose the land with a fence that complies with council requirements.²⁴

There are additional responsibilities applying to secondary-use roads, such as old 'ferry

roads' leading to a river, which were originally maintained by the council as noted by Hayes.²⁵ In summary, the council is not liable for repair or maintenance for any damage to the unformed road through erosion, degradation or general wear and tear.²⁶

Further background on the case law relating to road stopping is contained in Appendix C.

Maintenance by adjoining landholders

Although they have no legal right of ownership, landholders of land adjoining unformed legal roads sometimes maintain the unformed legal road by laying down a gravel or metal surface or, if they are in pasture, keeping them free of noxious weeds. These actions may benefit the adjoining landholder but they also benefit recreational users because they can walk or ride through the land with greater ease.

This informal arrangement, where adjoining landholders privately care for the land comprising unformed legal roads, has traditionally saved councils time and money for weed and pest control. In return, adjoining landholders have had free use of the land for such purposes as the grazing of stock and have generally not been required to fence their boundaries with the unformed legal roads.

19. *Inhabitants of Kowai Road Board v Ashby* (1891) 9 NZLR658; *Tuapeka County Council v Johns* (1913) 32 NZLR618.

20. *Hocking v Attorney-General* (1963) NZLR513 (CA). Also refer to the Resource Management Act 1991. Section 77. New Zealand Parliament.

21. *Inhabitants of Kowai Road Board v Ashby* (1891) 9 NZLR658; *Tuapeka County Council v Johns* (1913) 32 NZLR618.

22. *Tarry v the Taranaki County Council* (1894) 12 NZLR487 (CA); *Hokianga County v Parlane Brothers* (1940) NZLR315; *Newsome v Darton Urban District Council* (1938) 3 All ER9; *Hocking v Attorney-General* (1963) NZLR513 (CA).

23. *Hocking v Attorney-General* (1963) NZLR513 (CA).

24. *Local Government Act 1974*, Section 353 (c). New Zealand Parliament.

25. Hayes B E. 2003. *Roads, Water Margins and Riverbeds: The Law on Public Access*. p84.

26. *Tarry v the Taranaki County Council* (1894) 12 NZLR487 (CA); *Hokianga County v Parlane Brothers* (1940) NZLR315; *Newsome v Darton Urban District Council* (1938) 3 All ER9; *Hocking v Attorney-General* (1963) NZLR513 (CA).

Guidelines for dealing with common issues

Section summary

- The public has right of passage along any public road
- The public has the right to use unformed legal roads, but must not endanger or cause distress to an adjoining landholders livestock or damage any property, including the surface of the unformed legal road
- Occupation does not equal ownership
- 'Licences to occupy' have no legal basis
- Fences, cattle stops and swing gates are allowed under certain circumstances
- In most circumstances, landholders are protected if someone is injured on their property while using an unformed road
- Farmers have a duty under the Health and Safety in Employment Act 1992 to warn visitors about work-related hazards.

Local councils are legally responsible for administering unformed legal roads. As the public becomes more aware of these access ways through use of the WAMS, councils may be called on to provide information, and mediate in disputes. Although the law is clear about the legal status of unformed legal roads, the practical application of the legislation can present challenges. Below are some brief guidelines for dealing with common issues.

Public rights

The public has the right of passage along any road regardless of whether it is formed or unformed.

Many unformed legal roads are not fenced off from neighbouring farmland, so extra care is needed. To avoid upsetting adjoining landholders, the public should follow some basic rules:

- leave gates as they find them
- don't litter or damage property
- don't chase or distress livestock
- keep dogs on a leash.

Any negligent behaviour that causes damage to property or distress to an adjoining landholder could result in legal action for loss or damage.

It is important to be aware that many unformed legal roads are indistinguishable from the surrounding countryside and users may unwittingly stray onto the adjoining private land.

The limitations of early survey and mapping techniques and other issues relating to accuracy mean that there can be a significant margin of error in the location of unformed legal roads in rural areas as shown in the cadastral records held by LINZ. In the more remote areas this could be up 50 metres either way in terms of their lateral location.

A hand-held Global Positioning System (GPS) receiver will typically achieve an accuracy of about 5-10 metres (greater accuracies can be achieved with more expensive equipment, commonly used for cadastral surveys). For these reasons, the use of GPS tools cannot be relied on for accurately determining the boundaries of unformed legal roads in rural areas. In the event of a dispute about the precise location of the boundaries of an unformed legal road a modern re-survey may be necessary.

From a practical perspective, the precise location of the boundaries may not be critical. Rather, an acknowledgement of the existence of the road by both the adjoining landholder and the public may be sufficient to reach a practical solution to accepting the public right of way through the area.

Just as private landholders have the right of undisturbed possession of their land, the public has a right to use a legal road. An issue is how the public can enjoy this right where there may be uncertainty as to the location of the boundary between the road and the private land, either because of a lack of precision in the cadastral record or because of a lack of any marked boundary. This difficulty applies just as much to the landholder in terms of protecting the private land from trespass.

There appears to be little, if any, case law on the point. A person can, however, be in a difficult position if served a trespass notice in a situation where the boundary may be unclear. The notice can be intimidating and, therefore, unlikely to be tested in the courts.

A landholder with an unformed legal road adjoining or intersecting their land who is concerned about possible trespass by the public, could indicate the whereabouts of the road. This will lessen the likelihood of a road user crossing land which the owner regards as private.

The boundaries of unformed legal roads are frequently not 'pegged out', unlike conventional land parcel boundaries. The exact location of a fixed boundary, if it is disturbed or there is an argument over its location, may be re-established to a degree of accuracy established by the law relating to surveys. Unformed legal roads that have not been defined on the ground do not have this attribute but do exist legally and physically, and establish legal boundaries with the adjoining land.

Physical identification by the landholder of the adjoining land of what the landholder considers to be the boundary with the unformed legal road should limit disputes. If, in spite of such identification, a dispute arises, the identified boundary will at least be a starting point from the landholder's perspective.

Private rights

Holders of land adjoining an unformed legal road have the right not to have their livestock disturbed, or property damaged as a result of people passing along an unformed road. Landholders should ensure that livestock do not prevent the use of an unformed legal road by the public. This is

reflected in s 33 of the Impounding Act 1955, which provides for the impounding of livestock wandering or tethered on any road in such a manner as to obstruct or be reasonably likely to obstruct the road. There is provision in s 34 of the 1955 Act for a local council to provide exemption from this provision where:

"...(it) is satisfied that any road or any portion of a road within its district is so infrequently used by motor traffic that stock depasturing on or near the road will not constitute an inconvenience or danger to the users thereof."

If landholders wish to keep people off their property they may define and fence their boundaries or place signposts indicating the boundaries.

In terms of protecting safety and convenience of the public, s353 of the Local Government Act 1974 empowers councils to require an adjoining landholder to fence the boundary of the road.

Fencing and gates

Councils are not financially responsible for the fencing of any legal road boundaries.

Unformed legal roads may be isolated with gates, installed by the occupier at their expense, in accordance with s 344 of the 1974 Act. The locking of such gates is not permitted. Section 344 of the 1974 Act requires any person who wishes to erect a gate across the road to apply in writing to the council.

Temporary fencing for the purpose of stock control may be erected across an unformed legal road but must not inhibit pedestrian access.

Does occupation equal ownership?

No. While many unformed legal roads that intersect farmland may have been occupied for many years, this does not give the occupier rights of ownership. This is clearly stated in s 172(2) of the Land Act 1948. While some adjoining landholders may treat unformed legal roads as though they own them, they have no greater right to use of the road than any member of the public. Moreover, they are not entitled to use the road in any way that obstructs the public right of free passage. It comes back to the robust legal principle that once a road is created it remains a road unless it is legally stopped. Even if the land parcels of road have been mistakenly included in a certificate of title for a parcel of private land, the law says the roads still exist even if they are not shown or referred to in the title document.²⁷

Licences to occupy and leases

Some local councils issue informal 'licences to occupy' or 'fencing permits' to occupiers of land adjoining unformed legal roads as a kind of grazing right over unformed legal roads. While this has become common practice, there is no provision in the 1974 Act for licences of this kind. Although local councils have control over unformed legal roads, the legal basis is more like that of a caretaker of the land for the public, and their powers do not extend to 'sub leasing' in this manner.

The only statutory authority for licences to occupy is in s 340 of the 1974 Act and applies to the use of roads for motor garages in urban areas.

27. Land Act 1948. Section 77. New Zealand Parliament.

Section 341 of that Act authorises leases of airspace and the subsoil of roads but requires the council to ensure there is no interference with the right of passage.

These two statutory powers highlight the absence of an explicit statutory power to lease or licence the use of the road surface.

Obstructions on unformed legal roads

If they are to fulfil their intended function, roads should not be obstructed in a way that interferes with the public right of free passage. This is reinforced in the 1974 Act, for example, by s 355 that empowers councils to require owners of abutting land to trim or remove overhanging trees that may interfere with the use of the road. A provision in s 344 empowers councils to authorise cattle stops or gates across roads that are not (longitudinally) fenced.

Obstructions on unformed legal roads may include fences, gates or even buildings. They could also include trees and other vegetation, especially if deliberately cultivated.

There are no explicit enforcement provisions in the 1974 Act in respect of obstructions, but keeping roads free of obstructions could be seen as a duty of local councils as part of their management responsibilities for roads.

It should be noted that it is an offence under the Summary Offences Act 1981 (s 22) to obstruct a public way. In some circumstances the police may be able to assist in dealing with obstructions on unformed legal roads.

If members of the public find an unformed legal road blocked by a fence or other obstruction

and they are not able to resolve the issue with the adjoining landholder, they should take up the matter with the responsible council. Involving the police should be a last resort.

Provision for cattle stops and swing gates

Landholders whose properties are intersected by unformed legal roads are, under certain circumstances, allowed to use gates and cattle stops to protect and contain livestock.

This is provided for in s 344 of the Local Government Act 1974 and the Gates and Cattle Stops Order 1955 (see appendix D). Where a gate has been placed across a legal road the public needs to observe the requirements in s 8 of the Trespass Act 1980 in respect of gates:

“8. Gates - Every person commits an offence against the Act who

(a)...

(b) with intent to cause loss, annoyance, or inconvenience to any other person, -

(i) Opens and leaves open a shut gate; or

(ii) Unfastens and leaves unfastened a fastened gate; or

(iii) Shuts and leaves shut an open gate - on or leading to any land used for the farming of domestic animals or of any other animals held under lawful authority.”

This section of the Trespass Act 1980 is designed to ensure that farming operations are not hindered by inappropriate behaviour concerning a gate, whether on private land, or on a legal road leading to farmland.

Use by motor vehicles

There is no specific legal provision to permanently stop vehicles using unformed legal roads but use – particularly by four-wheel drive vehicles – can result in considerable damage to unstable surfaces. The provisions in s 342 of the Local Government Act 1974 can be used to close a road temporarily to specified forms of traffic for reasons specified in the statute. These reasons relate, however, almost exclusively to formed roads. For these reasons, some local councils have investigated options to ban motor vehicles from using unformed legal roads where this poses risks of environmental damage.

The Dunedin City Council has made the following bylaw to deal with such situations.

It reads:

“PART 21: RESTRICTION OF TRAFFIC

21.1 Purpose – To prevent damage to the surface of unformed legal roads.

21.2 Statutes – The Council has jurisdiction to create such a bylaw under s 72 of the Transport Act 1962.

21.3 Restriction – The use of motor vehicles on the unformed legal roads identified in the attached schedule is prohibited except for motor vehicles associated with:

- *The Council and its contractors*
- *Telecom and its contractors; and*
- *Adjacent landowners and their contractors or agents for access to their properties;*
- *Activities being carried out under permit as set out in (5).*

21.4 Section of legal road subject to bylaw – The sections of road subject to the bylaw

are identified on the attached schedule and associated maps. Additional road sections may be added by resolution of the Council, following public consultation on each new proposal.

21.5 Permits – Permits may be obtained to allow events involving motor vehicles to be held on these roads. Applicants will be required to enter into a bond to cover any damage caused to the road or adjacent private property before a permit will be issued.

21.6 Date of effect – This Bylaw shall come into effect on the 1st day of August 2007.”

[the affected roads are listed]²⁸

While the Council has found the bylaws effective in dealing with a small number of specified roads under its jurisdiction, it acknowledges the approach may not be practical in dealing with a large number of roads because each road has to be identified.

A specific by-law making power to address vehicular use of unformed legal roads has been included in the Land Transport (Road Safety) Amendment Bill, before Parliament as at January 2011.

Liability

Councils assume no liability for the condition of any unformed legal road or the suitability of any activity carried out on any unformed legal road. Councils may, however, have liability in respect of structures or formation on roads previously constructed but now no longer maintained.

Liability for personal injury

Compensation for personal injury is provided for in the Accident Compensation Act 2001. There is only very limited potential civil liability for personal injury should this be attributable to a landholder or a council.

28. Dunedin City Council 2007. *Bylaw 21. Restriction of Traffic*

Liability under the Health and Safety in Employment Act

The object of the Health and Safety in Employment Act 1992 is the prevention of harm to all people at work, and others in, or in the vicinity of, places of work.

Under s 16 of the 1992 Act, persons who control workplaces have duties to ensure people who are in or at the workplace are not harmed. This includes visitors. There is also a duty to warn visitors to a workplace, including a farm, when they seek permission to be there. In these circumstances the person in control has a duty to warn visitors of any work-related, out-of-the-ordinary hazards that they know about that may cause harm.

Farmers, therefore, have two levels of duty:

- a duty to warn authorised visitors
- a full duty to paying customers (including people looking at or buying goods), employees, contractors and their employees, and people in the vicinity of the place of work.

A duty to warn

The public does not need permission to use an unformed legal road, but a farmer may give permission to access land which is in the vicinity of or which adjoins an unformed legal road.

Farmers have a duty to warn authorised visitors to their land, including people using unformed legal roads in, or adjoining their land, about work-related out-of-the-ordinary hazards.

These are hazards that arise out of work activity such as:

- trees being felled
- blasting
- earthmoving machinery operating

- pest control.

The need to inform does not include natural hazards such as:

- bluffs
- landslides
- swamps
- rivers
- wasp nests etc.

Under s 16 of the 1992 Act, farmers are not liable if they don't provide a warning about hazards to people visiting their land without permission.

A full duty to take all practicable steps

The 1992 Act extends a full duty of care to farmers to take 'all practicable steps' to ensure people adjacent to a place of work are not exposed to hazards arising in it, that are within the farmer's control. One situation might be when people are walking on an unformed legal road alongside a paddock where machinery is operating, or spraying is being carried out.

Landholders also have a full duty to other groups visiting a farm or other land as a place of work:

- all employees who work for them (e.g. farmhands, fruit pickers, forestry workers)
- all contractors they engage and their employees (e.g. for shearing, fencing, tree felling)
- all people buying or inspecting goods offered for sale (e.g. farm produce, craft items)
- all people that have paid to use the land for any purpose (e.g. camping, horse trekking).

The Department of Labour has a fact sheet explaining these issues: *If visitors to my farm are injured, am I liable?* The principles are the same for all rural land. It can be found at: <http://www.osh.govt.nz/publications/factsheets/farm-visitors.html> and in Appendix E of this publication.

Stopping of unformed legal roads

Section summary

- Councils can stop roads by following the procedure set out in Schedule 10 of the Local Government Act 1974
- If the road is in a rural area, the consent of the Minister for Land Information must be obtained for the road to be stopped
- The Minister for Land Information may stop a road under s 116 of the Public Works Act 1981
- Stopped roads bordering waterways must become esplanade reserves.

The term **stopping** refers to the legal process of permanently changing the status of the land so that it is no longer a road. This is different from **closing** a road, which is a temporary measure to restrict use for a period. Some confusion has been caused by earlier practice that sometimes used the term closing when referring to what is now termed stopping.

The essential pre-condition for any road stopping procedure is that the council must be satisfied that the road is not needed for use as a road by the public now or in the foreseeable future; nor for access to coastal marine areas.

There are two ways of stopping a road – through the Local Government Act 1974 and the Public Works Act 1981.

Road stopping under the Local Government Act 1974

Councils have the power to stop roads under the Local Government Act 1974, sections 319 and 342.

“319. General powers of councils in respect of roads – The council shall have the power in respect of roads to do the following things:
(h) To stop or close any road or part thereof in the manner and upon the conditions set out in s 342 and the Tenth Schedule to this Act.

and:

(k) *To sell the surplus spoil of roads.*

342. Stopping and closing of roads –

The council may, in the manner provided in the Tenth Schedule to this Act, –

(a) Stop any road or part thereof in the district; Provided that the council (not being a borough council) shall not proceed to stop any road or part thereof in a rural area unless the prior consent of the Minister of Lands²⁹ has been obtained..."

The process specified in Schedule 10 of the 1974 Act (see Appendix F) is the method used to stop a road that could be in demand for use by the public, and requires any proposal to be publicly notified.

Road stopping under the Public Works Act 1981

The Public Works Act 1981 also has a procedure for stopping roads, which applies to roads under the control of the Crown or a local authority. Section 116 of the 1981 Act provides for the stopping of roads by declaration of the Minister for Land Information. If the road in question is under the control of a regional council or territorial authority, the Minister must first obtain the authority's consent. There is no requirement for public notification.

As well as stopping roads, the Minister has power under s 323 of the Local Government Act 1974 to request that the land comprising the road be returned to the Crown. It then becomes unallocated Crown land and loses its status as a road.

The powers in relation to road stopping are exercised by LINZ officers, acting under delegation from the Minister.

Policy for stopping roads

The matters that need to be weighed up by local councils when considering stopping a road have been set out clearly in decisions of the Environment Court.

The key part of the process is the need to consider the public interest rather than the private interest of an adjoining landholder. The public notification process in the 10th Schedule of the 1974 Act provides an opportunity for the public to lodge objections but there is nothing to stop councils themselves from investigating the extent of public interest before embarking on the formal process of stopping a road. Not only would this avoid the cost of the formal objection process and an Environment Court hearing, it would provide an opportunity to explore options for alternative public access in advance of the formal process.

Recent cases where the Environment Court has upheld objections to road stopping have typically been instances where a council has sought to stop a road on behalf of an adjoining landholder. The Court has made it clear that the private interests of adjoining landholders are not relevant to the consideration of a stopping.

The view of the Environment Court is clearly expressed:

"A public road, even one that is unformed, may be an asset. It would be difficult to replace. If a public road is valued by the public or sections

29. *Local Government Act 1974, Section 342 (1) (a).*
New Zealand Parliament.

of it, for use within the scope of the purposes of a public road, that value deserves to be weighed against whatever cause is shown for stopping it as a road and disposing of the land.”³⁰

and:

“We find that there is a need by a significant section of the community for the road, albeit not in the ordinary sense of the right to vehicular passage, but for a wide range of uses including foot and horse passage. We find that the Kokako Road provides a necessary link in passage across the countryside, which fulfils a range of societal needs now and in the future. While we understand the concerns of the council and the reason they have advanced for the commercial benefit to a landowner, they have not addressed the need of the local community.”³¹

There may be scope for councils to explore alternative public access provisions before entering into a road stopping, especially where the unformed legal road is not in an ideal location. An example where the availability of alternative public access facilitated the stopping of a road was in the Waitaki District Council case for the stopping of Bushey Park Road.³²

Councils need to take care that they do not fetter the exercise of their powers prior to the formal process, which involves two separate steps: the stopping of the road; and if successful, the subsequent use or disposal of the land. Specifically, councils should not enter into a commitment to dispose of the land to an adjoining landholder prior to consideration of the merits of stopping the road. See *Lower Hutt District Council v Bank*.³³

30. Environment Court 2003. *Decision W21/2003. Paragraph 82.*

31. Environment Court 2002. *Decision A83/2002. Paragraphs 48 & 49.*

The role and policy of the Minister for Land Information

The Minister for Land Information has three statutory roles in the road stopping process. These roles are exercised by LINZ under delegated authority from the Minister.

The roles are:

- the consent required under s 342 (1) (a) of the Local Government Act 1974 for local councils to stop a road in a rural area
- the power to stop a road under s 116 of the Public Works Act 1981
- the power under s 323 of the Local Government Act 1974 to resume on behalf of the Crown, title to the land comprising an unformed road.

There are no formal policies used by LINZ in respect of each of these powers.

LINZ has a published standard (LINZS15002) for the stopping or resumption of roads.³⁴

The intended use of the standard is stated as:

“(a) A local authority, the New Zealand Transport Agency, and any Government agency or their contractor must use this standard when seeking a decision from the Minister or Land Information New Zealand (LINZ) on the stopping and resuming of a road

(b) All applications under this standard must be made to LINZ, as LINZ acts on delegated authority from the Minister.”

The purpose of the standard is expressed as follows:

“The purpose of this standard is to ensure that the Minister for Land Information’s role in road

32. Environment Court 2005. *Decision C100/2005*

33. *Lower Hutt City Council v Bank [1974] 1 NZLR545.*

34. Refer Appendix E or <http://www.linz.govt.nz/crown-property/standards-guidelines/crown-property-standards/index.aspx>

stopping or resumption is correctly carried out and that the protocols the Crown has with Ngā ti Mutunga and Ngāti Tama are followed when a road is proposed to be resumed."

Two statutory processes for stopping a road are available – that under s 342 of the Local Government Act 1974, or that under s 116 of the Public Works Act 1981 – the standard states:

"A local authority may request that the Minister stop roads under s 116 of the PWA. The decision whether to stop a road under s 116 of the PWA rests with the Minister. Use of s 116 of the PWA by a local authority will be made on a case by case basis. Justification A local authority should provide the Minister with reasons for why it considers use of s 116 of the PWA is more appropriate than s 342 of the LGA."

The standard goes on to say:

"...LINZ prefers that, in the first instance, local councils apply the procedures in s 342 of the LGA, including the requirements for public notification. Road should be stopped using the LGA when there are likely to be objections to the proposal, or matters of public access to consider."

LINZ has advised that the power for the Crown to take back the land comprising an unformed legal road by declaration by the Minister is rarely used. It has the effect of stopping the road.

Included in the standard is the requirement for the following information:

"(d) whether the road stopping will deny or restrict access to other areas, including bush, river, or sea,

(e) details of the intended recipient of the land once the land has been resumed by the Crown and is disposed of."

Stopping roads along waterways

Where roads are stopped either under s 342 of the Local Government Act 1974 or under s 116 of the Public Works Act 1981, special conditions apply to roads along waterways to safeguard public access and to protect the environment.

The law relating to stopping roads bordering beaches, rivers and lakes is governed by s 345 of the Local Government Act 1974, as well as the Resource Management Act 1991.

Essentially, if any road along a waterway is stopped, under s 345 of the Local Government Act 1974, it has to become an 'esplanade reserve' as defined in s 2 (1) of the Resource Management Act 1991. This provision is subject to any rule included in a district plan under s 77 of the Resource Management Act 1991.

Protection modified

In his 2007 publication *Roading as it applies to unformed roads*³⁵, Brian Hayes describes how successive law changes have weakened the protected status of roads along waterways.

"From 1882 to 1952, roads along rivers were statutorily protected and could not be stopped. At various times since, a road along water, if stopped became:

- if in a municipality, a public reserve for public convenience or utility (1954)*
- an esplanade reserve (1972)*
- a recreation reserve (1977)*

35. Hayes B. E. (2007). *Roading law as it applies to Unformed Roads*. Ministry of Agriculture and Forestry, Wellington, New Zealand.

- *a reserve for the purposes of providing access to the river, stream, lake or sea (1978)*
- *an esplanade reserve (1991, 1993).*

Now the stopping of a road along water may be governed by s 77 of the Resource Management Act 1991 which empowers a territorial authority in its district plan to provide that s 345(3) of the Local Government Act 1974 will not apply. In that event, public access to the water may be lost when a waterside road is stopped. Roads along water, which once had unique statutory protection, are now (in theory but hopefully not in practice) the least protected for public access.”

A new New Zealand Coastal Policy Statement has been published (2010) which gives increased prominence to public access.³⁶

Unformed legal roads in the foreshore and seabed

Section 15 (4) of the Foreshore and Seabed Act 2004 stopped unformed legal roads in the foreshore and seabed and vested the land in the Crown. These roads were in the foreshore mainly as a result of coastal erosion, although technical differences in the definition of the boundary with the foreshore has probably meant that parts of most roads bounding the foreshore have been stopped. There are, therefore, no unformed legal roads on the foreshore, although the landward margin of road if it is in the foreshore remains the boundary of the adjoining land.

Originally, under the Crown Grants Act 1908, the edge of the seashore was the line of high water mark at ordinary tides and roads along the coast ran along and upwards of this line. Under the 2004 Act the foreshore is the marine area up to the line of mean high water springs; i.e. the foreshore may extend further inland. As a result, in many cases the coastal road, which in any event may have suffered erosion, is now in whole or in part included in the foreshore and is stopped.³⁷

Walkways over unformed legal roads

Prior to the enactment of the Walking Access Act 2008 there was provision under the then New Zealand Walkways Act 1990 for walkways to be made on unformed legal roads. This is no longer possible.

36. <http://www.doc.govt.nz/conservation/marine-and-coastal/coastal-management/nz-coastal-policy-statement/>

37. The *Marine and Coastal Area (Takutai Moana) Bill*, currently (at January 2011) is before the New Zealand Parliament. The Bill appears not to affect the stopping of road below mean high water springs.

Recommended best practice

| Issue | What the law says | Recommended action |
|--------------------------------------|--|--|
| Public rights | The public has rights of free passage on unformed legal roads. | Councils should: <ul style="list-style-type: none"> • uphold those rights • increase public awareness of them • legally enforce, if necessary. |
| Private rights | Private landholders have a right to privacy and not to have their property or stock interfered with or damaged by recreational users of unformed legal roads. | Councils should: <ul style="list-style-type: none"> • make sure recreational groups are fully aware of their obligations • encourage landholders to use appropriate signage to clearly establish boundaries between their land and unformed legal roads • advise adjoining landholders of their rights to legal redress if their rights are seriously breached. |
| Leases and licences to occupy | There is no provision in the Local Government Act 1974 for leases or licences of this kind other than in permits in respect of motor garages (s 340) and leases of airspace and subsoil (s 341). | Such permits or licences should be granted only in accordance with the relevant statutory powers. |
| Occupation v ownership | Long-term occupation of publicly reserved land does not confer rights of ownership. | Councils should ensure landholders are aware of the legal status of unformed legal roads that intersect or border their properties. |

| | | |
|---------------------------------------|--|---|
| Obstructions | It is unlawful to block the public right of free passage unless this is done by a territorial authority using a statutory power. | Councils should: <ul style="list-style-type: none"> • ensure adjoining landholders do not fence or place locked gates across roads • ensure that any gates or cattle stops across roads are authorised by the council • investigate and deal with complaints by the public about unlawful obstructions • consider the scope to require landholders to fence roads to protect the safety and convenience of the public • note that there may be a remedy for unlawfully obstructing a road in the Summary Offences Act. |
| Repairs & maintenance | Councils cannot be held liable for nonfeasance (not maintaining) unformed roads, but may have some liability for abandoned structures (such as bridges and culverts) or formation on roads that are no longer maintained. | Councils should be aware of the case law establishing their legal obligations regarding maintenance and repair. |
| Use by motor vehicles | Motor vehicles may in law use unformed legal roads. There may be scope to make bylaws restricting motor vehicle access under the Transport Act 1962. The Land Transport (Road Safety and other matters) Amendment Bill (as at January 2011) provides for the making of bylaws restricting motor vehicle access in certain circumstances. | Councils should be sensitive to landholders' concerns about vehicles driving over farmland or fragile tracks and work with them to resolve such concerns. Any bylaws should be made in compliance with the relevant statutory powers in force. |
| Cattle stops & swing gates | The law provides, in certain circumstances, for cattle stops and swing gates to be placed across unformed legal roads (s 344 of LGA 1974). | Councils should: <ul style="list-style-type: none"> • ensure the criteria are met before such rights are granted • use discretion in applying this provision • make sure landholders know swing gates are not to be locked and should carry appropriate signage. |

| | | |
|---------------------------------|--|---|
| <p>Public safety</p> | <p>Compensation for personal injury is provided for in the Accident Compensation Act 2001. There is only very limited potential civil liability for personal injury attributable to a landholder or a council. However, councils can direct adjoining landholders to fence the boundary between their property and an unformed legal road if there is an issue of public safety. Because some unformed legal roads may be places of work, or adjoin places of work, some provisions of the Health and Safety in Employment Act 1992 may apply, such as the obligation of persons in control of a place of work to warn visitors about extraordinary work-related hazards, including those that may affect adjoining public land.</p> | <p>Councils should:</p> <ul style="list-style-type: none"> • be aware of any potential hazards that might arise from structures on unformed legal roads • be familiar with the provisions of the Health and Safety Act in Employment Act 1992 as it applies to authorised visitors to farms or other rural land. |
| <p>Stopping of roads</p> | <p>Councils can stop roads in accordance with s 342 of the Local Government Act 1974 and through following the process outlined in the 10th Schedule of the Act. Consent must be gained from the Minister for Land Information before roads in rural areas can be stopped. Roads along rivers, waterways and lakes, if stopped, must become esplanade reserves under s 77 of the Resource Management Act 1991 unless a plan provides otherwise. The Minister for Land Information may also stop roads under s 116 of the Public Works Act 1981.</p> | <p>Councils should take account of LINZ Standard 15002 and the decisions of the Environment Court in considering proposals to stop unformed legal roads. They should not fetter their decision-making by entering into prior commitments with adjoining landholders. Provisions in plans that may affect unformed legal roads must take into account the New Zealand Coastal Policy Statement 2010.</p> |

Glossary

Accretion: The gradual build up of dry land along a water body (beach, river or lake) through the action of the water on the bed of the water body.

Cadastral records: Spatial data held in Landonline and survey records from which this data was derived which shows legal boundaries, including formed and unformed roads.

Council: A territorial authority.

Erosion: The gradual loss of land along a water body (beach, river or lake) through the action of the water on the land.

Esplanade reserve: Land along any sea, river, or lake that, on the subdivision of land, is set aside for the purpose of conservation, public access, or public recreation. The reserves are usually vested in the local authority and subject to the protection of the Reserves Act 1977.

Esplanade strips: A form of statutory easement that may be required as an alternative to esplanade reserves. As well as being established on subdivision, they may also be established by agreement with the landholder.

Public access may be restricted if the easement specifies this.

Formation: In relation to roads, formation means the same as the construction of the

road and includes gravelling, metalling, sealing or permanently surfacing the road.

Landonline: is New Zealand's online database for land title and survey information. Landonline enables surveyors, lawyers and other land professionals (including territorial local authorities) to search and lodge title dealings and survey data digitally – www.landonline.govt.nz

LINZ: Land Information New Zealand is a New Zealand government department responsible for land titles, geodetic and cadastral survey systems, topographic information, hydrographic information, managing Crown property and a variety of other functions.

Paper road: A term often used to refer to an unformed legal road. The use of the term unformed legal roads is preferred in this document because 'paper road' can appear to reduce the status of the roads as legal roads with the same rights of use as any other road.

Queen's chain: The Queen's chain is a popular term referring to a strip of land (usually 20 metres wide) reserved for public use above the sea shore and the banks of rivers and lakes. The Queen's chain is not a legal term. A variety of different types of public land exist for conservation reasons and to preserve public access. There are significant gaps in the reserves of water margin land.

Road: In this publication, refers to a road as defined in the Local Government Act 1974, that is a legally recognised public road. A legal road is subject to a common law right of passage. Almost all rural legal roads in New Zealand are of a nominal width of 20 metres.

Road stopping: This is the process of stopping a formed or unformed legal road, and removing its legal status as a road.

Rural area: A rural area is defined in the Local Government Act 1974 as 'an area zoned rural in a proposed or an operative district plan'.

Spatial data: Data that represents information about the physical location of something.

Territorial authority: A city council or a district council recognised as such under the Local Government Act 2002.

Topographic maps: Topography involves studying and describing the surface features of the land. The most common way of describing the surface of the Earth is with topographic maps. These are graphic, detailed representations of the land's natural and man-made features, represented to scale.

Unformed legal road : A legal road that has either never been formed or is not maintained by the council. It exists legally, (i.e. is shown on an official plan) but is not physically formed.

Unformed legal roads have the same status as any other road. Road rules apply, the public has the same right to use them, and landholders are obliged to respect public use. Unformed legal roads often border or intersect private land. They can be key points of entry to nationally treasured resources (forests, parks, rivers, coastlines, and lakes).

WAMS: Is the Walking Access Mapping System developed by the New Zealand Walking Access Commission. The system provides an accessible, user-friendly online resource for people wanting to find areas of public land which they can use for recreational purposes – www.wams.org.nz

Walking access: As defined in the Walking Access Act 2008 is the right of any member of the public to gain access to the New Zealand outdoors by passing on foot across land over which the public has rights of access and performing any activity that is reasonably incidental to that passing.

Water margin: Refers to the point at which the water in a sea, lake or river adjoins dry land. For legal purposes, more specific terms are used, such as mean high-water mark or mean high-water springs.

Appendix A

Legislation applicable to unformed legal roads

| Legislation | Relevant provisions | Administering agency |
|--|--|---|
| The Local Government Act 1974 (Part 21) | Part 21 contains the regulatory regime that applies to roads. It includes a provision that if a water margin road is stopped it becomes an esplanade reserve. | Department of Internal Affairs for the statute itself; the relevant territorial authority for enforcement and statutory powers. |
| The Government Roading Powers Act 1989 | Part 4 relates to the powers of the Government to make and control roads. It applies largely to state highways and motorways, and is of limited relevance to unformed legal roads. | Ministry of Transport. |
| The Impounding Act 1955 | Provides for the impounding of livestock on roads; exemptions may be granted by the relevant local authority. | Department of Internal Affairs for the statute; the appropriate local authority for enforcement and statutory powers. |
| The Public Works Act 1981 (Parts 8 and 9) | Provides for the stopping of roads by Ministerial decision. | Land Information New Zealand. |
| The Gates and Cattle Stops Order 1955 (made under the Public Works Act 1981) See Appendix G in this guide | Prescribes the form and construction of gates and cattle stops which have been authorised to be placed across roads. | Land Information New Zealand for the statute; the appropriate local authority for compliance. |

| | | |
|---|--|---|
| The Land Transport Act 1998 | The rules for traffic behaviour on roads. | Ministry of Transport. |
| The Transport Act 1962 | Provides for bylaws that restrict vehicle classes and loads on roads. This residual provision is due to expire when this power is re-enacted by amendment to the Land Transport Act 1988. | Ministry of Transport. |
| The Summary Offences Act 1981 (s 22) | Makes it an offence to obstruct a public way. | Ministry of Justice for the Act; Police for enforcement. |
| The Foreshore and Seabed Act 2004 | Stops roads on the foreshore. The relevant land becomes public foreshore. It appears that the landward margin of the stopped road remains the boundary of the adjoining land. | Department of Conservation. Some functions may be delegated to a council. |
| The Walking Access Act 2008 | Established the New Zealand Walking Access Commission to safeguard and enhance opportunities for public walking access to the great outdoors, while respecting private landholders' rights and property. | New Zealand Walking Access Commission. |

Appendix B

Historical background on road formation and maintenance

The physical formation of roads and subsequent repair and maintenance has an obvious connection. So far as formation (or in context, the absence of it) is concerned, different rules applied depending on what period of history one is looking at.

- the pioneering period (1840 – 1900)
- the post pioneering period.

The Public Works Amendment Act 1900 introduced compulsory requirements for formation. Roads had to be a standard width of one chain, and statutorily dedicated to the public prior to actual use. Before 1900 the Crown was the principal subdivider but as land was bought and settled, substantial private subdivision began to take place. The Public Works Amendment Act 1900 sought to control private subdivision.

Neither the Crown nor the private subdivider could be compelled to form the roads they created on plans originating in the pioneering period, but since 1900 private subdividers

have had to form roads or provide for physical access. For this reason unformed legal roads on private subdivisions ceased to be a consideration after 1900.

In counties, the Crown divested management and control of rural roads to the county councils early in the pioneering period. If the Crown was exempt from an obligation to form and repair, given the vast distances of unformed roads, what then was the accountability of the county councils, which did have a legal obligation as part of their management responsibilities for construction and repair? The courts eventually protected councils from what would have been an unsustainable financial burden.

The decision of *Snushell v Kaikoura County* primarily confirms that unformed legal roads are like any other road. However, the observations of the judges on other relevant matters are significant and authoritative. Justice Sim in his Court of Appeal judgement (1920) NZLR 783 at 808 said:

“In the present case the County Council has the control and management of the roads in the county. It has the right to construct and maintain these roads, and also a duty to do so although, as pointed out in Tuapeka County Council v Johns, that duty cannot be enforced by indictment or by action.”

Justice Sim noted that there is a duty on the controlling authority of a legal road to construct and repair. Given the special nature of the then existing unformed roads in New Zealand, the courts, on the basis of earlier decisions,³⁸ will not enforce that obligation.

However, if a council accepts the vesting of land as a road and that road is unformed, the council will have a duty to form and maintain it and the council may be compelled to do so. This has been the law for more than 100 years, providing a caution for councils.

38. Chapman KC (later Mr Justice Chapman) counsel in *Bank of New Zealand v District Land Registrar (Auckland) (1907)* 27 NZLR126: “If the applicant’s contention is correct and these [unformed] roads have been dedicated, the local authority will have to maintain twenty five miles of

badly made or unmade roads running through a private estate, and that would throw a very heavy burden upon the ratepayers.” [the words in brackets added]. Note also the decision of the Court of Appeal in *District Court v Brightwell and Findlay (1912)* 31 NZLR707.

Appendix C

Environment Court case studies

Ruapehu District Council

Environment Court³⁹, 30 January 2002.

The issue

The Ruapehu District Council wanted to stop an 11 kilometre section of an unformed legal road which ran through a property owned by Ruatiti Wilderness Limited. The council received a number of objections and referred the matter to the Environment Court.

Council's submission

The council wanted to stop the road on behalf of the private owner who planned to develop the land as a tourist park and deer hunting area. It argued the road would become a danger to the public when hunters were shooting in the area. The council also said the road was redundant to its needs 'at present and in the future'.

Objector's case

There were numerous objections to the road stopping. Reasons included its:

- importance as a public access way
- interest to trampers, mountain bikers and

horse trekkers

- historical significance
- need to be maintained for future generations.

The Court

In considering the matter, the court relied on decisions by the former Planning Tribunal and English case law. It had this to say about the conflicting interests.

"When exercising our powers to stop a road we are required to consider the merits of the proposal in relation to the road itself and must judge whether the public benefit to be gained by the proposed stopping is outweighed by the private injury which would follow the proposal."

It also noted:

"It is clear that access by the public has been curtailed by the land use management practices of the proprietor who owns the land on both sides of the road. The road is currently incorporated into the farm property. Surveillance cameras, fences and barriers have prevented public usage and continue

³⁹ Environment Court 2002 Decision A083/02 ELRNZ. Reference 8 ELRNZ 144.

to do so. It appears that the owner has arrogated to itself a right to close the road."

Outcome

The court determined that the central issue in this case was establishing whether there was a public need for the road in question. It decided there was.

"The evidence clearly establishes that until the adjacent landowner made it difficult, a significant number of the community used the road for a variety of purposes: These included:

- *trekking*
- *tramping*
- *camping*
- *use of the road as part of a wider network linking tourists and recreation passages.*

We find that there is a need by a significant section of the community for the road, albeit not in the ordinary sense of the right to vehicular passage, but for a wide range of uses including foot and horse passage. While we understand the concerns of the council and the reason they have advanced for the commercial benefit to a landowner, they have not addressed the need of the local community."

The court also found the road provided an important link across the countryside, which could be developed in future. It reversed the council's decision to stop it.

In essence the decision made it clear that the court would not agree to the stopping of a road where there was a public interest in keeping it.

The public interest could be a current use or a potential future use, and use extended to recreational use.

Upper Hutt City Council

Environment Court⁴⁰, 17, 18 and 19 February 2003.

The issue

The road in question is an unformed legal road extending across Whiteman's Valley over a ridge into Wainuiomata. Most of the historic road has never been formed or used and the council, supported by the owners of the land through which it passes, wanted the unformed section to be stopped and the land sold to the adjoining owners, who planned to develop a rural subdivision.

Council's submission

The council arguments included:

- the road is impassable in its present state
- it will never be required as a road
- it allows access to private lands by unwanted intruders
- the council does not want responsibility for safety of people using it.

Objector's case

Objections were lodged by a recreational access group and two four-wheel-drive clubs.

The court

The court rejected previous decisions from the former Planning Tribunal which suggested

40. Environment Court 2003 Decision W 21/2003.

there was no obligation on local councils to keep roads open for recreational use. Instead it relied on the finding of the 2002 Ruapehu District Council case in reaching its decision and gave weight to rights of public access.

“A public road, even one that is unformed, may be an asset. It would be difficult to replace. If a public road is valued by the public or sections of it, for use within the scope of the purposes of a public road, that value deserves to be weighed against whatever cause is shown for stopping it as a road and disposing of the land.”

Outcome

The court ruled that the road should not be stopped. It accepted that although the terrain the road crossed was difficult in places for vehicles, it was not impossible, and it could be walked, especially if the council removed some of the obstructions.

“We have also found that the section in question is required now as a public road by some members of the public for use for recreational purposes. That is likely to continue in the future.”

The court determined that the private benefit to the land owner was not relevant to consideration by the court and rights of public access now and in the future was the paramount consideration.

Tasman District Council

Environment Court⁴¹, 26 January 2009.

The issue

The road in question consisted of three parts: the first was formed with a gravel surface, the second was unformed but could be used as a four wheel drive track and the third was unformed and was a farm track.

The applicant requested that the Tasman District Council stop the part of the unformed legal road which intersected the land which was to be subdivided.

Council's submission

Council's main reasons for stopping the unformed legal road were:

- there were adequate roads in the area to accommodate the increased traffic
- a condition of the subdivision consent was for an existing road to be upgraded with the intention it would service the subdivision
- a walkway was being constructed by the applicant and this would mitigate any negative effects of the stopping of the unformed road
- construction of the paper road would be difficult and expensive due to the terrain.

Objector's case

The primary objection was the increased volume of cars as a result of the subdivision.

41. Environment Court 2009 Decision W 004/2009.

Outcome

The court reversed the council's decision to stop the road. Its main reasons were:

- the Tasman Resource Management Plan (TRMP) included a subdivision design guide which referred to maintaining a single and central access to the Coastal Highway from each sub unit. The provision of access via a different road was inconsistent with the TRMP
- a planned by-pass road development included the intersection of the paper road at its farthest end and this indicated a potential future use
- the increased traffic resulting from the subdivision would mean the paper road would be well used if developed
- the court was not satisfied the council had adequately considered the strategic development of the area's roading network.

The court stated:

"We are not convinced that the closure of the road is needed for the development of the Carter Holt subdivision nor indeed that that is a valid reason for closing the road. Nor do we consider the retention of the unformed legal road is an improper use of the land. The key issue to be considered by the court on a road closure application is the need for the road for public use, or more specifically in this case whether or not the paper road could be used to provide feasible and practicable access in the future and should therefore retain its status as a road."

Appendix D

Gates and Cattlestops

Order 1955

PURSUANT to subsection (4) of s 11 of the Public Works Amendment Act 1935, as set out in s 16 of the Public Works Amendment Act 1952, the Minister of Works hereby makes the following order.

Contents

Schedule Specifications

1. This order may be cited as the Gates and Cattlestops Order 1955.
2. For the purposes of the said subsection (4) of s 11 of the Public Works Amendment Act 1935, the specifications for gates and cattlestops across public roads shall be those prescribed in the Schedule hereto.

Schedule Specifications

1. In these specifications—

Cattlestop means a device set in the formed portion of a public road consisting primarily of a number of rails or bars fixed horizontally over a pit in such a manner as to allow wheeled traffic

to pass but as to form a barrier for livestock. Gate means a swing gate constructed in conjunction with a cattlestop to provide access for livestock.

2. Cattlestops and gates shall be constructed of reasonably permanent material having regard to the circumstances applicable and shall be designed in accordance with sound engineering principles.

3. Every cattlestop shall be capable of supporting with the wheels in any possible position not less than one and a quarter times the maximum axle weight specified by the Heavy Motor Vehicle Regulations 1950 for the class of road on which the cattlestop is to be constructed:

Provided that if the road is classified lower than class three the road shall be deemed to be class three:

Provided further that the aforesaid axle weight shall be considered as being distributed over not more than two transverse rails or bars.

4. The minimum width of any cattlestop which is available for traffic shall be 10 ft, but either the cattlestop or the gate alongside shall afford a width available for traffic of at least 12 ft.

5. The minimum length of the pit of any cattlestop measured along the centre line of the road shall be 7 ft.

6. The depth from the top of the rails or bars of any cattlestop to the bottom of the pit shall be not less than 1 ft 6 in.

7. The rails or bars of every cattlestop shall be securely fastened to prevent movement under traffic, and shall be at right angles to the general direction of travel of traffic.

8. Openings adjacent to the running surface between rectangular bars or railway rails of any cattlestop shall be not less than 4 1/2 in nor more than 6 in. Spacing of pipes or chamfered rails of any cattlestop shall be not less than 6 in nor more than 7 in centre to centre.

9. The thickness of any earth retaining wall around the pit of any cattlestop, and of any wall supporting rails or bars of any cattlestop, shall be not less than 6 in.

10. Cattlestops shall have side fences effective to prevent the passage of livestock extending their full length.

11. A cattlestop shall be located so that it is clearly visible for a distance of at least 5 chains on both approaches.

12. The top of the part of any cattlestop carrying traffic shall be so built that it forms a continuation of the surface of the adjacent road.

13. At least one gate not less than 10 ft wide, of adequate design and construction with adequate hinges and fastenings, shall be constructed in conjunction with every cattlestop. No gate shall have timber members of less than the following widths and thicknesses:

| | New Zealand Timber | Australian Hardwood |
|------------------|---------------------------|----------------------------|
| Rails | 4 in x 1 1/2 in. | 3 1/2 in x 1 in. |
| Stiles | 4 in x 1 in double | 3 in x 1 in double |
| Diagonals | 4 in x 1 in double | 3 in x 1 in double |

14. All members of gates shall be securely bolted together with metal bolts of not less than 1/2 in diameter.

Appendix E

If visitors to my farm are injured, am I liable?

Under s 16 of the Health and Safety in Employment Act 1992, people who control workplaces, including farmers, have a simple duty to warn visitors who have permission to be on their properties of any work-related, out-of-the-ordinary hazards that they know about that may cause serious harm.

Under s 16 of the Act, farmers have two types of duties:

- A duty to warn authorised visitors
- A full duty to employees, contractors and their employees, people in the vicinity of the place of work and people who are paying customers (this is explained later).

You are not liable if anyone comes on to your land without your permission and suffers harm, whether from a work related hazard or for any other reason.

This fact sheet answers questions you may have about this law.

Duty to warn

You have a duty to warn authorised visitors of work-related, out-of-the-ordinary hazards.

What is meant by an authorised visitor?

This is anyone who comes on to your farm with your express permission. It includes people who come for leisure or recreational activities. It also includes people on your property who are doing work that is unrelated to your work, such as research workers.

What about workers who have legal authority to go on my property?

Your duty to warn expands to people who are legally authorised to be on your property, but only where they have given you oral notice of their visit. People in this situation include employees of electrical companies, Department of Conservation workers and local authorities.

What is meant by a work-related, out-of-the ordinary hazard?

This is a hazard that:

- arises from some work activity on the farm;
- wouldn't normally be expected to be on a farm; and
- could cause a person serious harm.

Examples might be:

- trees being felled
- blasting
- earthmoving machinery operating; or
- where pest control operators are working.

Natural hazards are excluded. You are not liable for warning visitors of natural hazards on your farm, such as:

- bluffs
- landslides
- rivers
- swamps
- wasp nests, etc.

What sort of warning should I give and when?

You need only give a verbal warning about the hazard. You need to do this at the time you give that person express permission to go on to your land. If a group of people are involved, it's sufficient to give the warning to a representative of that group.

The warning can be given by your farm manager if he or she is the person giving permission.

Full duty

The relationship changes if people pay to use your land for any purpose. In this case the people become your customers, and you have a full duty to take "all practicable steps" to ensure that they are not harmed by any hazard arising on the farm.

This would include situations where people pay to use your land in situations such as camping, horse trekking, "pick your own" fruit, or where a tour operator pays for tourists to visit a scenic site on your land.

You also have a full duty to other groups:

- all employees who work for you (e.g. farmhands, fruit pickers)
- all contractors you engage and their employees (e.g. for shearing, fencing, tree felling)
- all people buying or inspecting goods offered for sale (e.g. farm produce, craft items)
- all people in the vicinity of a place of work (e.g. driving on a road alongside a paddock where you are spraying chemicals).

What is meant by "all practicable steps"?

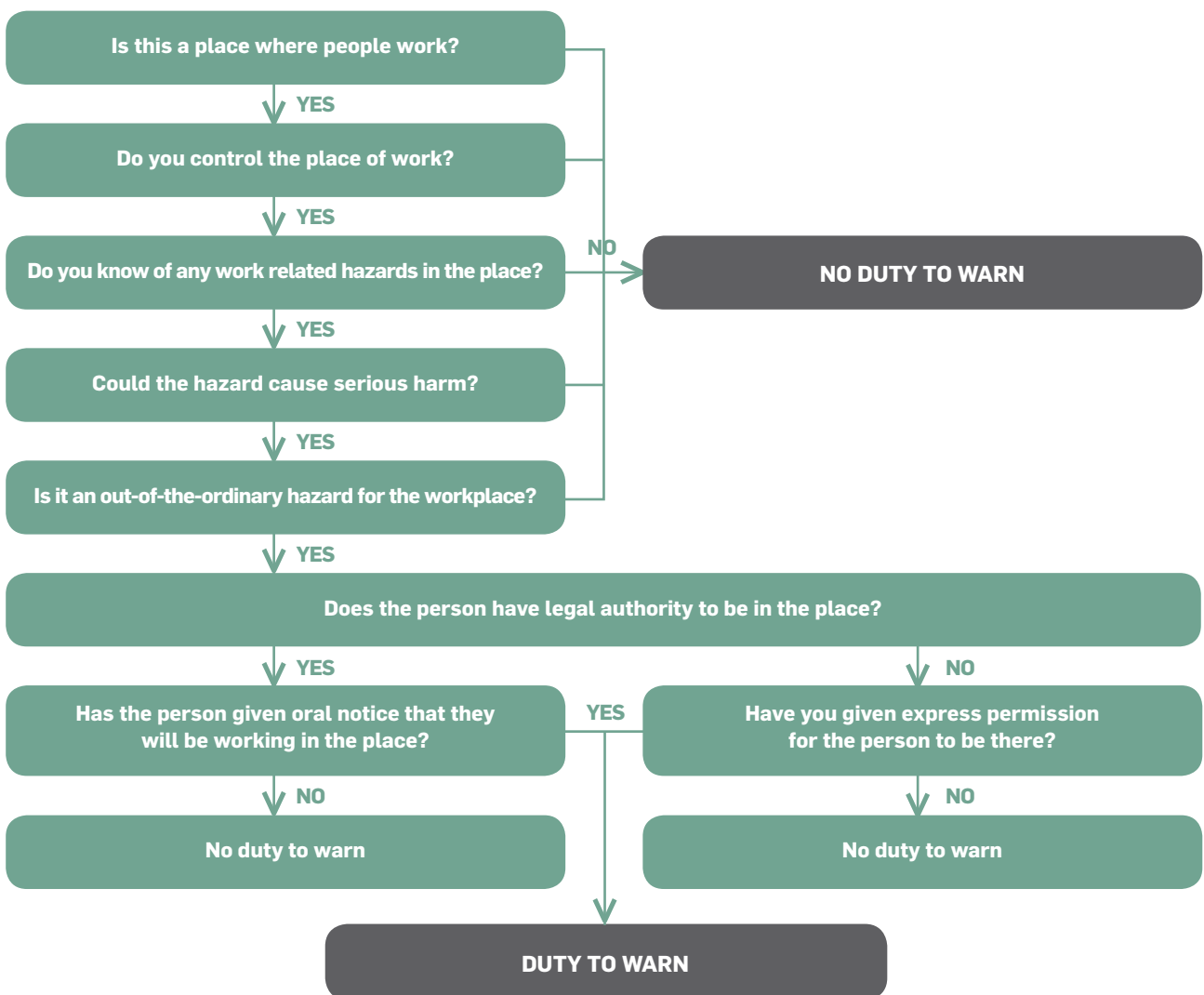
It means things that can reasonably be done to ensure that people are not harmed. It might also mean restricting access to certain areas of your farm, e.g. where chemical spraying is being done, or setting weight limits on bridges.

But remember, you are only required to take steps in respect of circumstances you know or ought reasonably to know about.

This fact sheet highlights the duties under s 16 of the Health and Safety in Employment Act 1992 only. Other duties may be owed under

other provisions of the Act, e.g. as an employer, self employed person or principal.

When do I have a duty to warn people about hazards?



Appendix F

Schedule 10 Local Government Act 1974

Conditions as to stopping of roads and the temporary prohibition of traffic on roads.

Schedules 10, 11, 12 and 13 were inserted as from April 1979, by s 3(1) of the Local Government Amendment Act 1978.

Stopping of Roads

1. The council shall prepare a plan of the road proposed to be stopped, together with an explanation as to [[why the road is to be stopped and]] the purpose or purposes to which the stopped road will be put, and a survey made and a plan prepared of any new road proposed to be made in lieu thereof, showing the lands through which it is proposed to pass, and the owners and occupiers of those lands so far as known, and shall lodge the plan in the office of the Chief Surveyor of the land district in which the road is situated.⁴² [[The plan shall separately show any area of esplanade reserve which will become vested in the council under s 345 (3) of this Act.]]

2. On receipt of the Chief Surveyor's notice of approval and plan number the council shall open the plan of public inspection at the office of the council, and the council shall at least twice, at intervals of not less than 7 days, give public notice of the proposals and of the place where the plan may be inspected, and shall in the notice call upon persons objecting to the proposals to lodge their objections in writing at the office of the council on or before a date to be specified in the notice, being not earlier than 40 days after the date of the first publication thereof. The council shall also forthwith after that first publication serve a notice in the same form on the occupiers of all land adjoining the road proposed to be stopped or any new road proposed to be made in lieu thereof, and, in the case of any such land of which the occupier is not also the owner, on the owner of the land also, so far as they can be ascertained.

3. A notice of the proposed stoppage shall during the period between the first publication of the notice and the expiration of the last day for lodging objections as aforesaid be kept fixed in a conspicuous place at each end of the road proposed to be stopped:

⁴² The words in both sets of double square brackets were inserted by s.362 of the Resource Management Act 1991.

Provided that the council shall not be deemed to have failed to comply with the provisions of this clause in any case where any such notice is removed without the authority of the council, but in any such case the council shall, as soon as conveniently may be after being informed of the unauthorised removal of the notice, cause a new notice complying with the provisions of this clause to be affixed in place of the notice so removed and provisions of this clause to be affixed in place of the notice so removed and to be kept so affixed for the period aforesaid.

4. If no objections are received within the time limited as aforesaid, the council may by public notice declare that the road is stopped; and the road shall, subject to the council's compliance with clause 9 of this Schedule, thereafter cease to be a road.

5. If objections are received as aforesaid, the council shall, after the expiration of the period within which an objection must be lodged, unless it decides to allow the objections, send the objections together with the plans aforesaid, and a full description of the proposed alterations to the [[Environment Court]].

6. The [Environment Court] shall consider the district plan, the plan of the road proposed to be stopped, the council's explanation under clause 1 of this Schedule, and any objection made thereto by any person, and confirm, modify, or reverse the decision of the council which shall be final and conclusive on all questions.]]

[This clause was substituted for the former clause 6 by s 362 of the Resource Management Act 1991.]

7. If the [[Environment Court]] reverses the decision of the council, no proceedings shall be entertained by the [[Environment Court]] for stopping the road for 2 years thereafter.

8. If the [[Environment Court]] confirms the decision of the council, the council may declare by public notice that the road is stopped; and the road shall, subject to the council's compliance with clause 9 of this Schedule, thereafter cease to be a road.

9. Two copies of that notice and of the plans hereinbefore referred to shall be transmitted by the council for record in the office of the Chief Surveyor of the land district in which the road is situated, and no notice of the stoppage of the road shall take effect until that record is made.

10. The Chief Surveyor shall allocate a new description of the land comprising the stopped road, and shall forward to the District Land Registrar or the Registrar of Deeds, as the case may require, a copy of that description and a copy of the notice and the plans transmitted to him by the council, and the Registrar shall amend his records accordingly.

11. The council may, subject to such conditions as it thinks fit (including the imposition of a reasonable bond), and after consultation with the Police and the Ministry of Transport, close any road or part of a road to all traffic or any specified type of traffic (including pedestrian traffic) –

(a) While the road, or any drain water race, pipe, or apparatus under, upon, or over the road is being constructed or repaired; or

- (b) Where, in order to resolve problems associated with traffic operations on a road network, experimental diversions of traffic are required; or
- (c) During a period when public disorder exists or is anticipated;
- or
- (d) When for any reason it is considered desirable that traffic should be temporarily diverted to other roads; or
- (e) For a period or periods not exceeding in the aggregate 31 days in any year for any exhibition, fair, show market, concert, film-making, race or other sporting event, or public function:

Provided that no road may be closed for any purpose specified in paragraph (e) of this clause if that closure would, in the opinion of the council, be likely to impede traffic unreasonably.

11a. The council shall give public notice of its intention to consider closing any road or part of a road under clause 11(e) of the Schedule: and shall give public notice of any decision to close any road or part of a road under that provision.

11b. Where any road or part of a road is closed under clause 11(e) of this Schedule, the council or, with the consent of the council, the promoter of any activity for the purpose of which the road has been closed may impose charges for the entry of persons and vehicles to the area of closed road, any structure erected on the road, or any structure or area under the control of the council or the promoter on adjoining land.[11C. Where any road or part of a road is closed under clause 11 (e) of this Schedule, the road or part

of a road shall be deemed for the purposes of –

(a) The Transport Act 1962 and any bylaws made under s 72 of that Act:

(b) The Traffic Regulations 1976:

(c) The Transport (Drivers Licensing) Regulations 1985:

(d) The Transport (Vehicle and Driver Registration and Licensing) Act 1986:

(e) The Transport (Vehicle Registration and Licensing) Notice 1986:

[(ea) The Land Transport Act 1998:]

(f) Any enactment made in substitution for any enactment referred to in [paragraphs (a) to (ea)] of this clause— not to be a road; but nothing in this clause shall affect the status of the road or part of a road as a public place for the purposes of this or any other enactment.]] [Clauses 11, and 11A to 11C, were substituted for this former clause 11 (as enacted by s 3 (1) of the Local Government Amendment Act 1978) by s 14 (1) of the Local Government Amendment act (No.3) 1986.

[In clause 11C, para. (ea) was inserted from 1 March 1999 by s 215 (1) of the Land Transport Act 1998.

[In Clause 11C the words “paragraphs (a) to (ea)” were substituted for the words “paragraphs (a) to (e)” from 1 March 1999 by s 215 (1) of the Land Transport Act 1998.]

12. The powers conferred on the council by clause 11 (except paragraph (e)) may be exercised by the Chairman on behalf of the council or by any officer of the council authorised by the council in that behalf.

13. Where it appears to the council that owing to climatic conditions the use of any road in a rural area, other than a State highway or Government road, not being a road generally used by motor vehicles for business or commercial purposes or for the purpose of any public work, may cause damage to the road, the council may by resolution prohibit, either conditionally or absolutely, the use of that road by motor vehicles or by any specified class of motor vehicle for such period as the council considers necessary.

14. Where a road is closed under clause 13 of this Schedule, an appropriate notice shall be posted at every entry to the road affected, and shall also be published in a newspaper circulating in the district.

15. A copy of every resolution made under clause 13 of this Schedule shall, within 1 week after the making thereof, be sent to the Minister of Transport, who may at any time, by notice 64 Appendix D to the council, disallow the resolution, in whole or in part, and thereupon the resolution, to the extent that it has been disallowed, shall be deemed to have been revoked.

16. No person shall—

(a) Use a vehicle, or permit a vehicle to be used, on any road which is for the time being closed for such vehicles pursuant to clause 11 of this Schedule; or [(aa) Without the consent of the council or the promoter of any activity permitted by the council, enter or attempt to enter, or be present, on any road or part of a road that is for the time being closed to

pedestrian traffic pursuant to clause 11 of this Schedule; or]]

(b) Use a motor vehicle, or permit a motor vehicle to be used, on any road where its use has for the time being been prohibited by a resolution under clause 13 of this Schedule.

[Para. (aa) was inserted by s 14 (2) of the Local Government Amendment Act (no. 3) 1986.]

Appendix G

Interim standard for stopping or resumption of road

(Reproduced in part)

How to have your say on the interim standard

Go to the LINZ website, www.linz.govt.nz, and type 15002 in the search box in the top right-corner. Click on the appropriate link for the comments form.

Please email your completed comments form to regulatorysubmissions@linz.govt.nz.

Your comments

- (a) Comments, in electronic format using the form provided, should be on the technical content, wording, and general arrangement of the interim standard.
- (b) Please provide supporting reasons for your comments and suggested wording for proposed changes.
- (c) Please do not return marked up drafts as comments.
- (d) Editorial matters such as spelling, punctuation, grammar, numbering, and references, will be corrected before final publication.

Confidentiality

LINZ is required to carry out its functions with a high degree of transparency. Accordingly, please be aware that any information provided to LINZ may be discussed with or provided to other parties. Please identify any information that you wish to remain confidential and provide reasons for this. You should also be aware that LINZ is subject to the Official Information Act 1982.

Enquiries: Manager Crown Property Regulatory

Telephone: 04 460 0110

Email: regulatorysubmissions@linz.govt.nz

Interim standard for stopping or resumption of road | LINZS15002

Effective date: 21 December 2009

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4 Right of resumption for unformed roads

4.1 Introduction

4.2 Application to Land Information New Zealand

4.3 Ngāti Mutunga protocol

4.4 Ngāti Tama protocol

council: As defined in s2 of the LGA. Has the same meaning as 'local authority'.

Gazette: The New Zealand Gazette - Te Kahiti o Aotearoa, the official newspaper of the Government of New Zealand Government

LGA: Local Government Act 1974

LINZ: Land Information New Zealand

local authority: A regional council or territorial authority. Definition from s 5(1) of the Local Government Act 2002. Has the same meaning as 'council'.

Minister: Minister of Lands referred to in s 4A of the PWA. The statutory responsibilities of the Minister of Lands are held by the Minister for Land Information.

Ngāti Mutunga Protocol: Land Information New Zealand Protocol with Ngāti Mutunga, entered into under the Ngāti Mutunga Treaty settlement

Ngāti Tama Protocol: Land Information New Zealand Protocol with Ngāti Tama, entered into under the Ngāti Tama Treaty settlement

principal administrative officer: As defined in s2 of the LGA

PWA: Public Works Act 1981

road: As defined in s 315 of the LGA and s 43(1) of the Government Rounding Powers Act 1989, and includes part of a road

rural area: As defined in s 2 of the LGA

territorial authority: A city council or a district council named in Part 2 of Schedule 2 of the Local Government Act 2002. Definition from s 5(1) of the Local Government Act 2002.

Terms and definitions

For the purposes of this standard, the following terms and definitions apply.

Computer register: As defined in s 4 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002 and created by the Registrar-General of Land under ss 7 to 14 of that Act; formerly known as certificate of title.

Foreword

Introduction

(a) The Public Works Act 1981 (PWA) and the Local Government Act 1974 (LGA) set out procedures for stopping and resuming of land that has the status of road. The Crown must use the provisions of the PWA to stop roads. Local councils may use the LGA or request the Minister use the PWA to stop roads.

(b) Consultation with either Ngāti Mutunga and/or Ngāti Tama will be required if there is a proposal to resume an unformed road that is situated in areas covered by the respective protocols entered into between the Crown and those respective iwi.

(c) Disposal of land that is stopped road must be carried out in accordance with the relevant statutory provisions in the PWA or the LGA.

(d) Disposal of land that is resumed road must be carried out in accordance with the relevant statutory provisions in the Land Act 1948.

Purpose of standard

The purpose of this standard is to ensure that the Minister for Land Information's role in road stopping or resumption is correctly carried out and that the protocols the Crown has with Ngāti Mutunga and Ngāti Tama are followed when road is proposed to be resumed.

Superseded documents

This standard supersedes the following documents:

LINZ 2004, *Legalisation: Accredited Supplier*

Standard 16, (as amended), Property Regulatory Group, LINZ, Wellington

LINZ 2005, *Disposal of Land: Accredited Supplier Standard 3*, Property Regulatory Group, LINZ, Wellington

Clause 33.6 of LINZ 2005, *LINZS2001: Guidelines to the Standard for the Acquisition of Land under the Public Works Act 1981*, Property Regulatory Group, LINZ, Wellington

LINZ 2008, *LINZS45001: Amendment to Accredited Supplier Standard 16 – Legalisation (Ngāti Tama and Ngāti Mutunga Settlement)*, Property Regulatory Group, LINZ, Wellington

References

The following documents are necessary for the application of this standard.

- Government Roding Powers Act 1989
- Land Act 1948
- Local Government Act 1974
- Ngāti Mutunga Deed of Settlement
- Ngāti Tama Deed of Settlement
- Public Works Act 1981

2 For the full text of a Deed of Settlement under the Treaty of Waitangi, contact the Office of Treaty Settlements.

Scope

- (a) This standard sets out the procedures to be followed and provides guidance for:
- (i) the stopping of road under the PWA and the LGA,
 - (ii) the resumption of unformed road by the Crown from territorial authorities,

and

(iii) the resumption of unformed road in the Ngāti Tama and Ngāti Mutunga protocol areas.

(b) A local authority is responsible for complying with all requirements of Schedule 10 of the LGA, including public notice. This standard does not cover those requirements.

2 Intended use of standard

(a) A local authority, the New Zealand Transport Agency, and any Government agency or their contractor must use this standard when seeking a decision from the Minister or Land Information New Zealand (LINZ) on the stopping and resuming of road.

(b) All applications under this standard must be made to LINZ, as LINZ acts on delegated authority from the Minister.

Road stopping

3.1 Introduction

The provisions for stopping road under the PWA and the LGA are as follows:

(a) The Minister may declare any road to be stopped under s 116 of the PWA.

(b) A council may stop any road under s 342 of the LGA but may not proceed to stop any road in a rural area without the prior consent of the Minister.

Guidance on mechanisms for stopping roads

Formed and unformed roads

The road stopping provisions under s 116 of the PWA and s 342 of the LGA apply to land which has the status of road, regardless of whether the road is formed or unformed.

Public Works Act 1981

Legislation

s 116 of the PWA provides for the stopping of road.

Use of s 116 PWA

Section 116 of the PWA must be used when the New Zealand Transport Agency or another Government agency proposes to stop a Government road.

A local authority may request that the Minister stop road under s 116 of the PWA. The decision whether to stop a road under s 116 of the PWA rests with the Minister. Use of s 116 of the PWA by a local authority will be made on a case by case basis.

Justification

A local authority should provide the Minister with reasons for why it considers use of s 116 of the PWA is more appropriate than s 342 of the LGA.

Local Government Act 1974

Legislation

Sections 319 and 342, and Schedule 10 of the LGA. s 342 of the LGA provides for the stopping of road.

When to use

LINZ prefers that, in the first instance, local councils apply the procedures in s 342 of the LGA, including the requirements for public notification. Road should be stopped using the LGA when there are likely to be objections to the proposal, or matters of public access to consider.

3.2 Road stopping under the Public Works Act 1981

When applying to the Minister to declare a road to be stopped under s 116 of the PWA, the application must include the following:

- (a) a report with a full description of the road to be stopped, and advice on the following matters, where applicable:
 - (i) whether the road to be stopped is a road, service lane, or access way,
 - (ii) public use of the road,
 - (iii) public use of any land severed by the road,
 - (iv) reasons for stopping the road, and
 - (v) proposals for the land following the road stopping;
- (b) a copy of the approved survey plan,
- (c) a plan or plans showing:
 - (i) the boundaries of the road that is proposed to be stopped,
 - (ii) topographic information for the road and adjoining land, and
 - (iii) the wider area showing the road that is proposed to be stopped and any alternative legal and practicable access to adjoining land;
- (d) evidence that adequate legal and practicable access to land adjoining the road is left or provided,
- (e) evidence that notice has been given under s116(2)(a) of the PWA,
- (f) a copy of any consent required under s 116(2) of the PWA,
- (g) the draft Gazette notice for execution, and
- (h) copies of the relevant computer registers.

Guidance on consents to stopping under the Public Works Act 1981

Legislation

s 116 of the PWA sets out the notice, situation, and consent requirements which must be met before the Minister may declare a road to be stopped.

Consent of adjoining owner

Under s 116(2)(b)(i) of the PWA, the consent of the adjoining owner is not required when adequate road access is left or provided. Adequate access should include both legal and practicable access to the adjoining land.

It may be prudent to obtain consent as it provides evidence that the adjoining owner has agreed to any exchange.

Form of consent

The consent of a local authority under s 116(2)(d) of the PWA should be signed by the principal administrative officer. Some local councils use a resolution under seal.

Guidance on road disposal under the Public Works Act 1981

Legislation

The key provisions relating to disposal of stopped roads are set out in Part 8 of the PWA.

Agreements for sale and purchase

Agreements for sale of land that is stopped road under s 117 of the PWA should not be entered into before the Minister's approval under s 116 of the PWA, unless the agreement is made subject to that statutory approval being obtained.

3.3 Stopping of road in a rural area under the Local Government Act 1974

Where consent from the Minister is required to stop any road in a rural area under s 342 of the LGA the application must include the following:

- (a) a full description of the road,
- (b) a report with advice on:
 - (i) whether the road to be stopped is a road, service lane, or access way,
 - (ii) public use of the road,
 - (iii) public use of any land severed by the road,
 - (iv) reasons for stopping the road, and
 - (v) proposals for the land following the stopping;
- (c) a copy of:
 - (i) the approved survey plan referred to in clause 2 of Schedule 10 of the LGA,
 - or
 - (ii) a plan which shows the proposed road stopping if a survey is yet to be completed;
- (d) a plan or plans showing:
 - (iv) the boundaries of the road that is proposed to be stopped,
 - (v) topographic information for the road and adjoining land, and
 - (vi) the wider area showing the road that is proposed to be stopped and any alternative legal and practicable access to adjoining land;
- (e) evidence that adequate legal and practicable access to land adjoining the road is left or provided,
- (f) a letter from the council requesting consent to the stopping, and

(g) a draft consent notice for execution.

This notice must contain the following:

- (i) the name of the road,
- (ii) the name of the territorial authority district,
- (iii) the name of the land registration district the land is located in,
- (iv) a description of the road, including:
 - (A) land area, in hectares,
 - (B) the lot and deposited plan numbers of any land the road adjoins or passes through,
- (v) space for a date and signature, and
- (vi) a file reference.

Guidance on stopping of road in a rural area under the Local Government Act 1974

Legislation

Sections 319(h) and 342 of the LGA provide for a local authority to stop any road, in the manner provided in Schedule 10 to that Act.

Minister's consent required

If a road is in a rural area, the local authority must obtain prior consent of the Minister of Lands under s 342(1)(a) of the LGA before proceeding to stop that road.

The Minister's consent should be obtained before public notice of the proposed road stopping is given under clause 2 of Schedule 10 of the LGA.

The local authority is responsible for complying with all requirements of Schedule 10 of the LGA, including public notice.

Updating of cadastre

Noted that under clause 9 of Schedule 10 of the LGA a road stopping does not take effect until LINZ makes a record in the cadastre following notification by the local authority.

4 Right of resumption for unformed roads

4.1 Introduction

The Chief Executive of LINZ has the delegated authority of the Minister of Land Information to issue a notice under s 323 of the LGA.

4.2 Application to Land Information New Zealand

Where it is proposed to transfer to the Crown, under s 323 of the LGA, any land that comprises an unformed road, the application to LINZ requesting the issue of a notice requiring that transfer must include:

- (a) a plan showing the location and area of the unformed road,
- (b) an explanation of the reason for the application to resume the road,
- (c) details of any alternative access to adjoining land that is intended to be provided,
- (d) whether the road stopping will deny or restrict access to other areas, including bush, river, or sea,
- (e) details of the intended recipient of the land once the land has been resumed by the Crown and is disposed of,
- (f) evidence of discussions with the council, and its response,

(g) comment on the current use of the unformed road,

(h) evidence of discussions with adjoining landowners,

(i) confirmation that the LINZ protocols with Ngāti Mutunga and Ngāti Tama have been considered, and complied with if applicable,

(j) details of any other matter that may be of consequence to the proposal, and

(k) the draft Gazette notice for execution.

Guidance on dealing with resumed roads

Legislation

The Land Act 1948 sets out the key provisions relating to the alienation of Crown land.

Resumed road becomes Crown land

Where the Minister requires the resumption of a road under s 323 of the LGA, the land ceases to be a road and shall be deemed to be Crown land subject to the Land Act 1948. Alienation of any such land will be under the relevant statutory provisions of the Land Act 1948.

4.3 Ngāti Mutunga Protocol

(a) Where the resumption of unformed road is proposed within the LINZ Protocol Area, depicted in Appendix A, the Ngāti Mutunga Governance Entity must be consulted with in terms of the principles set out in the Ngāti Mutunga Protocol.

(b) The Ngāti Mutunga Governance Entity must be provided with the information set out in subsection 4.2 above, and their views on the

proposal sought, ensuring that the information requirements set out in the Ngāti Mutunga Protocol are met.

(c) The unformed road must not be resumed unless LINZ is satisfied that the Ngāti Mutunga Governance Entity has been consulted.

(d) Any submission on the proposal provided by Ngāti Mutunga must be submitted to LINZ with the application to transfer the land under s 323 of the LGA, and the information in 4.2.

4.4 Ngāti Tama Protocol

(a) Where the resumption of unformed road is proposed within the LINZ Protocol Area, depicted in Appendix B, the Ngāti Tama Governance Entity must be consulted with in terms of the principles set out in the Ngāti Tama Protocol.

(b) The Ngāti Tama Governance Entity must be provided with the information set out in 4.2, and their views on the proposal sought, ensuring that the information requirements set out in the Ngāti Tama Protocol are met.

(c) The unformed road must not be resumed unless LINZ is satisfied that the Ngāti Tama Governance Entity has been consulted.

(d) Any submission on the proposal provided by Ngāti Tama must be submitted to LINZ with the application to transfer the land under s 323 of the LGA, and the information in 4.2.

Refer to the Ngāti Mutunga Deed of Settlement

or the LINZ website for the full text of the LINZ Protocol with Ngāti Mutunga.

Refer to the Ngāti Tama Deed of Settlement for the full text of the LINZ Protocol with Ngāti Tama.

Rodney Greenways | Paths and Trails Plan

Pūhoi to Pakiri

MAY 2017



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Puhoi Town Library on Puhoi Road

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1.0 Introduction

1.1 Purpose of the Document

Purpose

This document defines the long-term Greenways Plan for Puhoi to Pakiri, the southeast coast of the Rodney Local Board Area. To the west, a Greenways Plan has already been adopted for Wellsford, and for the Kumeu, Huapai, Waimauku to Riverhead area. A final series of Greenways Plans to connect the balance of the Rodney Local Board area will begin preparation in mid 2017.

This long-term Greenways Plan is a visionary and guiding document intended for use by elected members, Council and CCO officers, community and volunteer groups, private developers and other interested parties.

Visionary Document

Greenways plans similar to this have been successfully developed throughout the world. One of the most notable examples is in Portland, Oregon, where the local government and residents worked together to develop their network of cycleways, walkways and parkland. This was then extended further into the urban environment to include a wholesale retrofit of streets, parks and industrial developments to achieve a fully connected city.

Planning and delivery of Auckland's Greenways network is now well underway across the city with plans being developed in a 'ground up' manner by Local Boards with a shared vision; to greatly improve walking, cycling and ecological connections throughout the region.

Guiding Document

Upon adoption of the Greenways Plan, the Rodney Local Board will identify a series of priority projects and look for opportunities to fund and create these connections over the coming years. Auckland Council will continue to develop Open Space Network Plans under its Open Space Strategy for all local board areas, and greenways plans will ultimately become a chapter of these.

1.2 Strategic Fit

Links to the Auckland Plan

The Auckland Plan sets Council's long-term strategic direction, and sets out a vision to create the world's most liveable city. It provides an opportunity for integrated planning to significantly improve transport, environmental protection, land uses, housing growth and economic development, with the benefits of one authority responsible for all coordination.

Implementation of the projects contained within the Rodney Greenways Plan can deliver on a number of the aims of the Auckland Plan, including:

Chapter 5: Auckland's Recreation and Sport

Priority 1: *Encourage all Aucklanders, particularly children and young people to participate in recreation and sport*

Chapter 7: Auckland's Environment

Priority 1: *Value our natural heritage*
 Priority 2: *Sustainably manage natural resources*
 Priority 3: *Treasure our coastlines, harbours, islands and marine areas*

Chapter 12: Auckland's Physical and Social Infrastructure

Priority 2: *Protect, enable, align, integrate and provide social and community infrastructure for present and future generations.*
 Directive 12.8: *Maintain and extend the public open space network, sporting facilities, swimming pools, walkways and trails and recreational boating facilities in line with growth needs.*

Chapter 13: Auckland's Transport

Priority 3: *Prioritise and optimise investment across transport modes.*

Links to other initiatives

In developing this Greenways plan, a number of related Council and non-Council initiatives have been investigated and, where possible, included in the network:

- High level documents prepared by the former Rodney District Council and Auckland Council; including; the Auckland Plan, Operative District Plans and the Proposed Auckland Unitary Plan (PAUP);
- Area-specific Council planning documents, including; the Moir Hill Subdivision and Puhoi to Warkworth Motorway
- Auckland Transport (AT) proposals such as the Auckland Cycle Network (ACN) and Auckland Transport for Future Growth (TFUG); and
- Community and joint initiatives, led by the Matakana Coast TrailsTrust



Local Board Aspirations

Each Local Board Plan is a reflection of what elected members have heard from their community. Feedback gained both formally and informally has been instrumental in shaping these plans, they provide a touchstone for the aspirations of each area's community.

Greenways have potential to fulfil a number of the aspirations set out in the 2014 Rodney Local Board Plan, including that set out in the overall vision statement and goal:

OUR VISION: CREATING THE WORLD'S MOST LIVEABLE CITY AT THE LOCAL LEVEL

"Our goal is to develop a thriving, safe and well-connected vibrant community."

Supporting this vision, the Board Plan sets out a number of more tangible outcomes to guide allocation of funding and advocacy over the Local Board term. Construction of greenways, as set out by this document, can help to deliver on a number of these outcomes, specifically:

1. "Roads, paths and public transport enable us to get around easily and safely"

Increasing the network of safe walkways and cycleways across Rodney, and encouraging these alternative modes of transport as safe, practical, healthy options for community and regional connections is a main aim of any Greenways plan. Greenways can also provide a tourist destination for international and national visitors, and improve property values.

2. "Parks and sports facilities are easy to access and enjoy"

The Greenways plan provides a connected recreational network, allowing residents to move safely through and between their existing open spaces. This has benefits for the health and well-being of those people actively using the network, as well as offering an

opportunity for people to get out and meet others from their local community. It also has the potential to see a greater uptake of usage of existing recreational facilities in Rodney.

3. "Our environment is healthy, cared for and enjoyed."

The Greenways plan is a tool which can be used to deliver this outcome, by providing re-vegetated stream corridors. Such corridors offer habitat for local fauna in the area, and double as a movement corridor to allow animals to move between larger areas of habitat.

4. "Local economies are strong and growing"

Greenway connections and the development of green infrastructure increases connectivity and improves the quality of open spaces. These new connections increase the number of visitors and strengthen local economies.

RODNEY LOCAL BOARD PLAN OUTCOMES

- Roads, paths and public transport enable us to get around easily and safely**
Our communities will be well connected by transport links and have a range of transport options available to them.
- Parks and sports facilities are easy to access and enjoy**
Our communities, young and old, will have increased access to a wide range of recreation opportunities for health, wellbeing and enjoyment.
- Communities are empowered and plan for their own futures**
Our communities know what they want for their futures. Local people will plan for their own areas and determine what is important.
- Our environment is healthy, cared for and enjoyed by all**
Local community groups take ownership in the quality of their environment. River and stream water quality will be improving, pest species reduced and waste minimised. Our wastewater servicing will be reliable and environmentally friendly.
- Local halls and libraries are familiar, valued and well-used community spaces**
Our halls and libraries meet the needs of local communities. They are highly valued, welcoming friendly spaces in which local residents take pride and have a sense of ownership.
- Local economies are strong and growing**
Our local economy will strengthen and businesses will thrive through working together. A growing economy will provide more jobs for local people.
- Arts, culture and events enhance our communities and express who we are**
Our communities will celebrate, learn and grow through arts, culture, events and a variety of community-led initiatives. These activities will strengthen communities, provide opportunities for people to connect with each other and build a sense of pride.



ROADS, PATHS AND PUBLIC TRANSPORT ENABLE US TO GET AROUND EASILY AND SAFELY

| Our communities will be well connected by transport links and have a range of transport options available to them. | | | | |
|--|---|-----------------------------|---|--|
| WHAT WE WANT TO ACHIEVE | KEY INITIATIVES | LOCAL BOARD ROLE | OTHER KEY AGENCIES | POTENTIAL COST; FUNDING STATUS |
| Walkways and cycleways are a healthy and safe alternative | Build footpath and cycleway extensions in and between towns and villages to provide connectivity | Advocacy and decision maker | NZTA, Auckland Transport and community groups | \$2 million (over three years) local board funding in addition to Auckland Transport Funding |
| | Progress walkway/ cycleway connections between Warkworth and both Snells Beach and Matakana within five years | Advocacy | Auckland Transport and Matakana Coast Trail Trust | Project not costed and requires community funding |

1.3 What is a 'Greenways Plan'

Definition

The aim of a Greenways Plan is to provide cycling and walking connections which are safe and pleasant, while also improving local ecology and access to recreational opportunities. To achieve this, Greenways may cross existing areas of parkland, and follow street connections between parks. This network will link together areas of housing and employment, open spaces, town centres, recreational facilities, places of interest and transport hubs. In rural areas such as Warkworth, Matakana and beach communities, Greenways include bridleways too.

Implementation of the Puhoi to Pakiri Greenways Plan will better connect the towns along Rodney's southeastern coast, as well as provide links to the wider Rodney area and towards Hibiscus Coast and North Shore. It will also connect to regional walking/cycling proposals for the greater Auckland area. The adjoining map shows other Greenways Plans either under development or adopted by participating local boards. Each board sets their own Greenways definition for their respective areas, based around a common aim.

The Rodney Greenways Plan seeks to;

Create a future network of greenways that will provide safe and enjoyable ways for people to get around, get active, and get engaged with the community and their environment.

The network of greenways identifies the location and opportunity to:

- improve walking connections
- improve cycle connections
- improve bridle connections
- improve recreation opportunities
- improve ecological opportunities
- improve access to streams and waterways.

It is important to note that while cycling is an aspiration for the entire greenways network, in some places site constraints may mean that this is not feasible. This could be due to slope, vegetation, archaeological or ecological constraints, and is to be assessed on a project by project basis. In these cases, the greenway route would revert to being a walking and/or ecological route only.





CONNECTIONS IN OPEN SPACES

Benefits of a Greenway

There are many benefits from developing greenways, including:

- **Recreation** - Improving people’s access to outdoor recreation and enjoyment close to their home
- **Environmental** – reducing our reliance on fossil fuels by providing attractive and safe alternative transport choices, improving stormwater quality and reducing flooding events through low impact design measures, and by enhancing ecosystems, habitat sources and ecological niches;
- **Social** – providing improved opportunities for people to get outside and meet their neighbours, to be engaged with a diverse range of communities and to be connected with local community facilities;
- **Health** – providing improved opportunities for activity and fitness;
- **Education** – Providing opportunities to learn about the vegetation, wildlife, ecology, history and people of the landscapes that they pass through; and
- **Economic** – Increasing local employment as areas become more desirable for businesses and shoppers. Greenways can also provide a tourist destination for international and national visitors, and improve property values.



CONNECTIONS IN STREETS and TRANSPORT CORRIDORS

What the Greenways might look like

The appearance of the network will vary dependent on its location. For instance, a connection that runs through parkland may look and function quite differently to a connection adjacent to a road or in a built-up urban environment. The adjacent images show what the network could look like in a variety of settings, including:

- parks, reserves and bush areas
- alongside streams or ecological areas
- slow-speed traffic environments and transport corridors



STREAMS AND ECOLOGICAL AREAS

The surface treatment will vary depending on site-specific aspects such as the location of the path, slope gradient and the existing character of an area. It is also important that the network is connected through appropriate way-finding signage and/or other forms of markers.

These aspects are considered within the 'Local Paths Design Guide', which sets out a consistent 'kit of parts' to be used in construction. This will ensure that as greenways are built across the Auckland region, they will be recognisable due to their consistent look and feel.

1.4 Local Path Design Guide

Positioning Greenways within the Puhoi to Pakiri Walking and Cycling Network

Also known as the Greenways Design Guide, the Local Path Design Guide was recently developed by Auckland Transport and Auckland Council to provide best practice guidance for designing and developing greenways networks through our neighbourhoods and across the Auckland region. The Greenways Plans (such as this document) detail *where* the routes are to go, while the design guide describes their *look and feel*. It details the desirable width of connections, the materials to be used, methods of crossing roads, of calming traffic, and it also spells out the minimum ecological aspects of the routes as well. Together, these two documents will form the backbone of the ongoing delivery of greenways in the Rodney area, and ensures that they connect up in a logical manner to surrounding areas. Note that the figures on this spread are pulled directly from the Design Guide, meaning that the images are not local.



Greenway - Street

Greenways on streets are designed to create safe and pleasant neighbourhoods that encourage walking and cycling for local trips. Pedestrians are accommodated on footpaths and streets are safe enough to walk on. Traffic calming tools, pavement markings and signage are used to improve safety for all street users, particularly cyclists.

| | |
|---------------------------------|---|
| Vehicle Volume: | 1,000 - 1,500 |
| Vehicle Speed (km/h): | 30-40 |
| Arterial Road Crossings: | 50-100 per hour |
| Accessibility + Safety: | Ministry of Justice 7 Qualities of Safe Spaces |
| Green Infrastructure: | Impervious surface 70-90% Tree canopy coverage greater than 30-40% |

Greenway - Open Space

A Greenway through a park or open space is a path for cyclists and pedestrians that can be either separated or shared. Together with the Greenways on streets, they are designed to create linkages to local centres, parks, and schools as well as between primary paths. Greenways in open space provide opportunities to enhance ecological linkages and improve water quality.

| | |
|---------------------------------|---|
| Vehicle Volume: | N/A |
| Vehicle Speed (km/h): | N/A |
| Arterial Road Crossings: | N/A |
| Accessibility + Safety: | 20km/h design speed / 20m sightlines and stopping distance |
| Green Infrastructure: | Tree park: continuous canopy with grass and assorted low level planting |

Primary Path

Primary paths are designed to create direct links to regional and local centres. Pedestrians are accommodated on footpaths, cyclists are accommodated on separate paths and/or preferential use on streets. Off street primary paths typically accommodate pedestrians.

| | |
|---------------------------------|---|
| Vehicle Volume: | 1,500+ |
| Vehicle Speed (km/h): | 40-60 |
| Arterial Road Crossings: | 50-100 per hour |
| Accessibility + Safety: | Ministry of Justice 7 Qualities of Safe Spaces |
| Green Infrastructure: | Impervious surface <90% Tree canopy coverage greater than 30-40% |

Recreational Trail

A recreational trail is a shared path designed for recreational cycling, walking and equestrian. While they may form part of a persons commute or daily trips, they are not intended to create a connection between major destinations. Recreational trails often run in loops.

| | |
|---------------------------------|--|
| Vehicle Volume: | N/A |
| Vehicle Speed (km/h): | N/A |
| Arterial Road Crossings: | N/A |
| Accessibility + Safety: | 20km/h design speed / 20m sightlines and stopping distance |
| Green Infrastructure: | Park land / water system / self-generating forest |

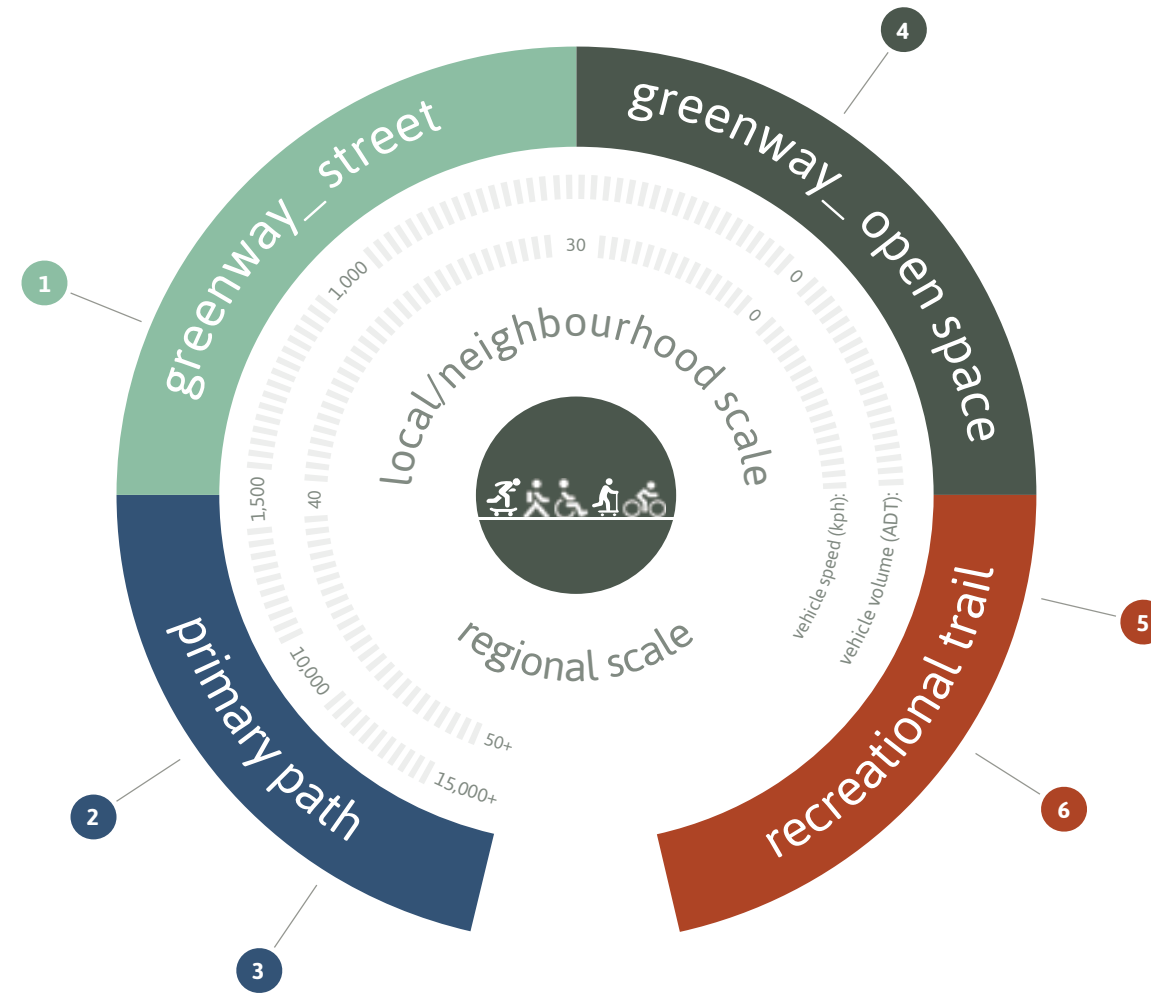
Positioning Greenways within Rodney's Walking and Cycling Network



Sandringham, Auckland



Mount Roskill War Memorial Reserve



Beach Road Cycleway



Mahurangi East Track



Northwestern Cycleway



Henderson Creek / Opanuku Stream

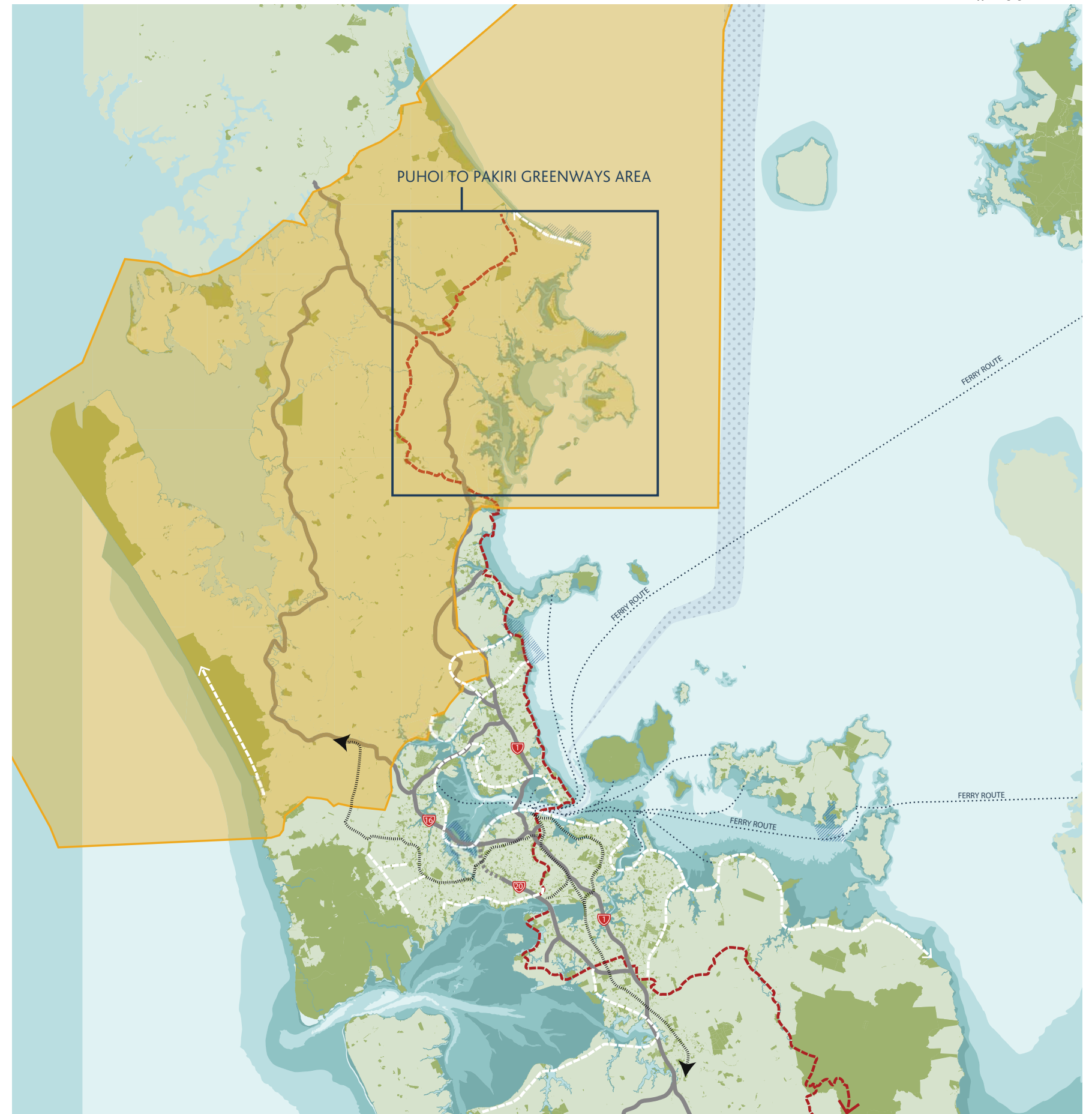


1.5 Auckland Context

This area of the Rodney Local Board takes in the established rural settlements of Puhoi, Mahurangi, Warkworth, Matakana, Omaha and Pakiri. This map shows the study area within its wider regional context, sitting approximately 40km north of Auckland's CBD, connected by the Northern Gateway Toll Road (SH1). The settlements sit well outside of Auckland's urban fringe, retaining a mostly rural character - although development pressure is starting to increase in some areas, and a future conversion of small pockets of farmland to housing is anticipated.

Broader Transport Connections

Due to anticipated future regional growth and the desire for better connections between Northland and Auckland for motorists, tourists and freight, the Ara Tuhono - Puhoi to Wellsford Road of National Significance project has been planned, and is scheduled to commence construction shortly. This project will divert SH1 around many of the townships in the study area. The resultant drop in traffic presents a number of walking, cycling and ecological opportunities that the greenways plan can leverage.



LEGEND

- Rodney Local Board
- Park and reserve land
- Railway
- Ferry routes
- State Highway Network
- Te Araroa National Trail
- Hillary Trail

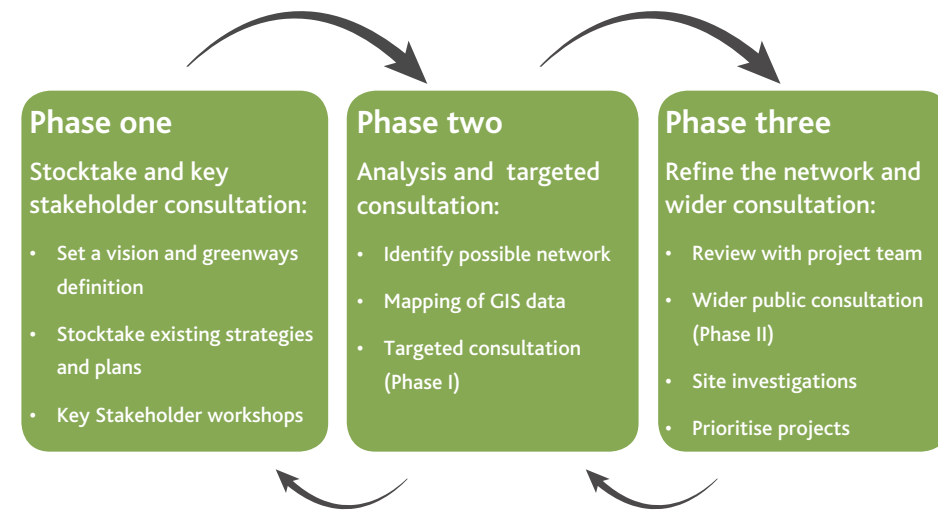


Matakana Village cycleway bridge opening, 2016

2.0 Method

2.1 The Process

This plan was developed using a three-stage process as outlined below:



Phase one - Stocktake and key stakeholder consultation

As a first step, previous studies and planning documents relevant to the area were collected and reviewed for the study area. The Rodney Local Board Plan (2014) was reviewed to gain an understanding of both the strategic vision of the community and also the projects planned for implementation over the coming years. After this, a definition for the Rodney Greenways was discussed and agreed upon with the Local Board, and a 'working party' was set up, which met regularly to review the plan as it developed.

Next, a desktop study was carried out to map a high-level network of walking and cycling connections as per the agreed Greenways definition. Ecological improvements were also given consideration, to improve links between existing forests, wetlands, coastal edges and streams. These desktop studies gave an understanding of the broad landscape patterns within the study area, and were used to guide phase two of the process, where the network was investigated on site.

In this area there were a number of established walking/cycling groups, and this plan was prepared collegially with the Matakana Coast Trail Trust, in addition to a number of other local community groups and agencies noted adjacent. We also held workshops with other key stakeholders, Auckland Transport, NZTA, NZ Walking Access Commission and Auckland Council staff to inform them of the project, and to understand linked policies, projects or aspirations that would affect the Greenways Plan. We also held meetings with Treaty Partners, Mana Whenua.

Phase two - analysis and targeted consultation

Following the desktop mapping, the draft route was overlaid with other background data (refer Appendices - Section A for Analysis Maps) to ensure that the network makes appropriate connections to destinations such as schools, community facilities, town centres and transport nodes. Consultation material was then prepared to for community engagement.

Targeted Consultation - Phase I

From October to December (2016) various sessions were held with community groups known to have an active interest in greenways. Representatives from the following groups attended the workshops, as well as some individuals:

- Mahurangi Coast Trail Trust
- Matakana Community Group
- Leigh Community Club and Business Group
- Mahurangi College
- Scotts Landing - MERRA
- Department of Conservation
- Sandspit R&R Association
- Puhoi Community Forum
- NZ Horse Network
- Snells Beach R&R Association
- Big Omaha Trail Trust
- Mahurangi Matters
- Warkworth Golf Club
- Warkworth Riverbank Enhancement
- NZ Walking Access Commission
- Baddleys Beach trail
- Omaha Beach Committee
- Forest and Bird - Warkworth Area
- Lions of Warkworth

At these sessions, the draft routes were provided and general feedback on their alignment was received. The maps resulting from this session are included in the Appendices.

Their feedback was then collated and the draft routes updated prior to wider community engagement. Comments beyond the scope of this project were collated and forwarded to the appropriate agency i.e Auckland Transport, New Zealand Transport Agency and the Department of Conservation

Phase three - refine the network and wider consultation

Following the analysis phase, the Rodney Local Board and Council staff from the Parks, Community Services, Community Facilities and Local Board Service departments as well as Auckland Transport reviewed the proposed Greenways routes in detail, and Phase II of community engagement commenced.

Wider Consultation - Phase II

A public consultation period was open from 27th January-28th February 2017 on the Shape Auckland website where the public could view the draft routes and submit online feedback (refer to Appendix - Section D for the Shape Auckland online survey results). Within the consultation period, a workshop and drop in sessions were held at the following locations.

- Static promotion - Countdown Warkworth Entrance
27th January - 28th February
- Drop in session - A&P Show Warkworth
Saturday 28th January 10am-1pm
- Workshop - Leigh Bowling and Community Club
Sunday 5th February 4:30pm - 5:30 pm
- Drop in session - Countdown Warkworth Entrance
Saturday 11th February 11am-2pm
- Drop in session - Puhoi Farmers Market
Sunday 26th February 9am-12:30pm

The feedback from these sessions and the Shape Auckland web page was then incorporated into the final network plans shown in Section 3. This local knowledge was also very valuable in determining the proposed priority routes (Appendix Section C).

As funding is not currently available to fully construct this network at this stage, the Local Board has identified priority sections. These priority sections are based on community desire, costs, benefits, constraints and opportunities, often coordinated with other local projects - including those by Auckland Council, Council Controlled Organisations and external stakeholders, such as NZTA, DoC, Community Groups and MCCT.

2.2 Consultation summary

Overall:

In general there is much support for greenways in the study area, with 70% of online submitters 'Strongly Agreeing' with the creation of the Puhoi to Pakiri greenways network. There was an emphasis placed on the importance of new walkway and cycleway linkages within new residential development as the area intensifies. The need to retain 'green space' and protect areas of native bush was also a concern. Another important aspect was the connection of beach settlements to the major hubs of Warkworth.

Safety was a key concern, for school children, recreational walkers and cyclists as well as horse riders. Many road edges (shoulders) are unsafe in that they have unsuitable edges for anyone not in a motor vehicle. Traffic calming measures in general were mentioned by many respondents.

There were comments in support of celebrating local heritage and conservation features, such as vineyards and the 1948 Cosmic Noise Expedition heritage site in Pakiri Hill. People noted that links would support local businesses such as wineries, cafés and accommodation providers.

The community identified a number of key 'gaps' at both a local and broader scale, including:

- sections of missing footpath on local roads such as Hill Road and Leigh Road
- footpaths to key destinations such as retirement villages, local shops and Mahurangi College in Warkworth
- a cycle and walking route from Puhoi to Pakiri, avoiding roads with heavy traffic
- Exploring the beaches and regional parks by creating bike routes and pedestrian access ie. Puhoi to Wenderholm Regional Park, Omaha to Tawharanui etc.
- New bike roads between Puhoi and Warkworth and Warkworth to Matakana, towards Leigh - commuting to Warkworth
- Bridle routes around farm communities
- Connections to the Te Araroa National Trail
- Loop walks to enjoy views of the Hauraki Gulf
- Mountain bike tracks

Walkways

There was an emphasis on the need for safe, connected walkways through reserves, around the coast (Snells Beach, Omaha, Leigh), the town centres and to schools. The community drew or wrote down their favoured routes on the maps or provided comments on the online feedback forms. All suggestions have been used to inform and revise the location of greenways network. The comments included;

"Safe access of new housing developments to local shops and the town centre" - Warkworth

"Connections and walks along the Mahurangi river" - Warkworth

"Connection along the coast to Leigh Scenic Reserve and Goat Island Marine reserve" - Leigh

"Easy access to Te Muri regional park and the Puhoi river" - Puhoi

Cycleways

Road cycling is popular in this area, although the high traffic speeds and blind corners on the country roads make for an unsafe environment. Feedback in relation to road safety will be shared with Auckland Transport to help develop the Auckland Cycle Network (ACN).

The majority of connections are not well developed between communities and biking is only possible on the road network.

Mapping from consultation showed new, safe connections between centres, these included:

- Warkworth to Snells Beach along the Mahurangi river
- Puhoi to Warkworth avoiding state highway one
- Warkworth to Matakana and towards Omaha and Leigh
- Warkworth Town Centre to Warkworth A+P Showgrounds

Mountain biking trails were also suggested in the Moir Hill area and North of the Omaha and Dome forests.

Bridleways

Bridleways were well supported in the feedback, especially outside the urban and future urban areas. There is a need for destination bridleways as the main roads are too trafficked and many lack the space for riders within the road corridor. Wide, safe verges away from the traffic are preferred by riders.

There was support to connect to Baddeleys Beach and Omaha from Matakana, avoiding the roads with heavy traffic.

Refer to **Appendix - Section D** for a consultation summary generated from the Shape Auckland online survey.



Greenways Consultation Workshop



3.0 Greenways Mapping

3.1 Long-term Aspirational Greenways with Additional Future Planning Overlays

This map shows the completed greenways vision adopted by the Community or supported by Local Board, including both the priority sections as well as longer term routes. This vision is aspirational, and will be reviewed on a regular basis as priority sections are completed, and as other related projects are completed. The greenways network is shown as it relates to the draft urban growth zones, future road network and other long term planning overlays. The overlays shown here include:

- Structure Plan Areas
- Future Urban Zones
- Park and Ride (Auckland Transport)
- Proposed roads (Auckland Transport, SHA and Structure Plans)

The backbone of the proposed greenways plan is the already established Te Araroa National Trail, which is a good reference to determine the location of rural connections, and serves as the North-South axis of the network.

This map sets out both existing/partially established and proposed greenways. Existing routes (marked with a solid line) are already established connections, which might require an upgrade to meet the greenways criteria. These are existing trails, paths and rural gravel roads. To be pragmatic, the thinking is that gravel roads can be retrofitted with signage and other means to make drivers aware that there may be walkers or cyclists using the shoulder. Sealed roads are marked as 'proposed' (dashed line), unless they already have a footpath on either side. Although these are existing roads, they effectively require a new connection to be established, as sharing the road is not safe due to high traffic speeds and volumes, and the lack of any dedicated walking or cycling facilities.

A "future greenway" line type is also included, that shows possible connections in the future growth areas. The exact location of the greenway routes can be reviewed once the layout of the growth areas is determined.

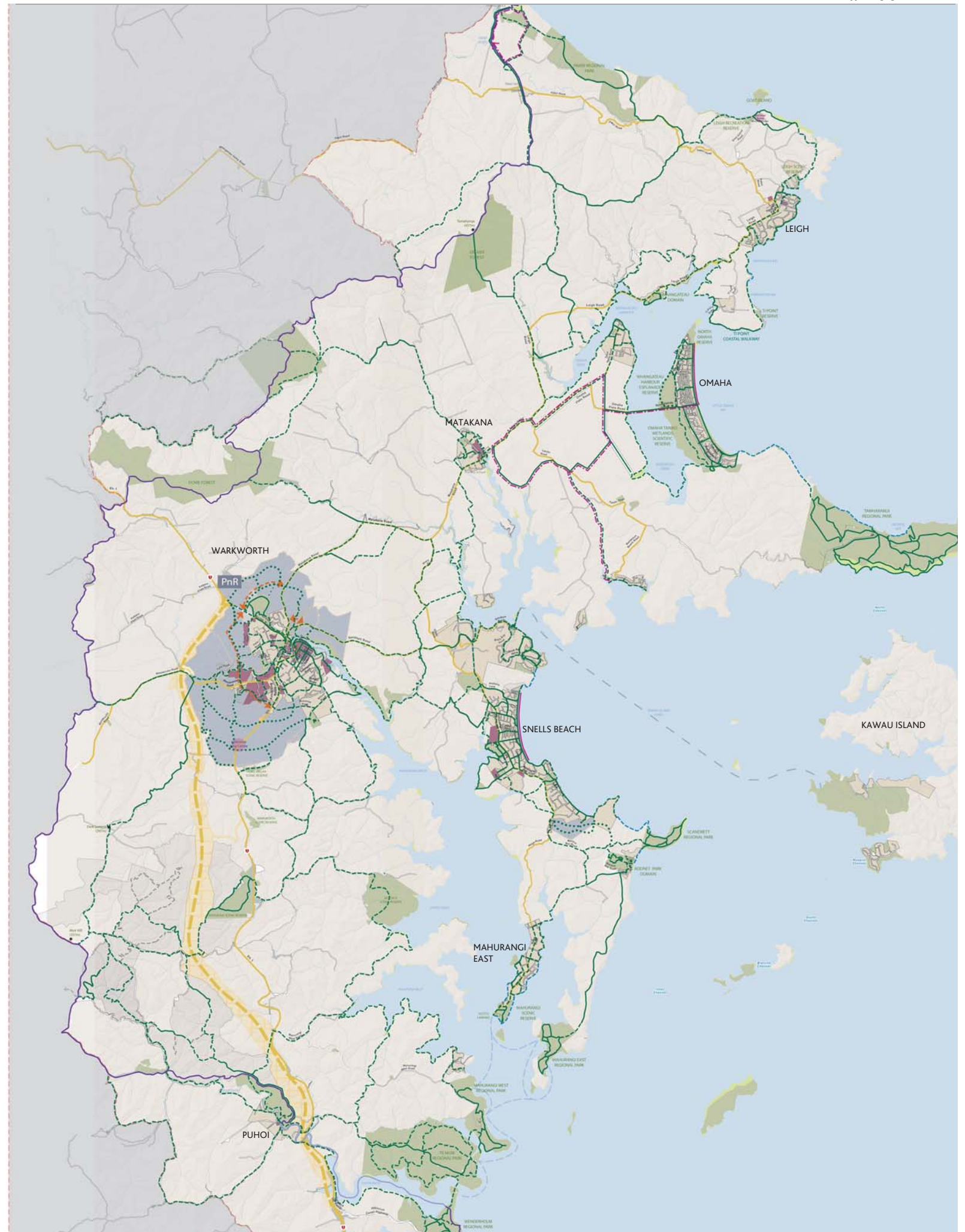
LEGEND:

Base information

- Key community destination
- Residential
- Future Urban
- Park and reserve land
- Coastal area
- Streams & Rivers
- Roads of local importance
- SH1 and arterial roads
- Puhoi to Warkworth RoNS (road alignment and designation area)
- Proposed Park+Ride
- Consented subdivision
- Future road

Greenway connections






- Existing route
- Proposed route
- Proposed bridleway
- Proposed coastal route
- Te Araroa national trail (land)
- Te Araroa national trail (waterway)
- Future greenway



3.2 Proposed Priority Routes

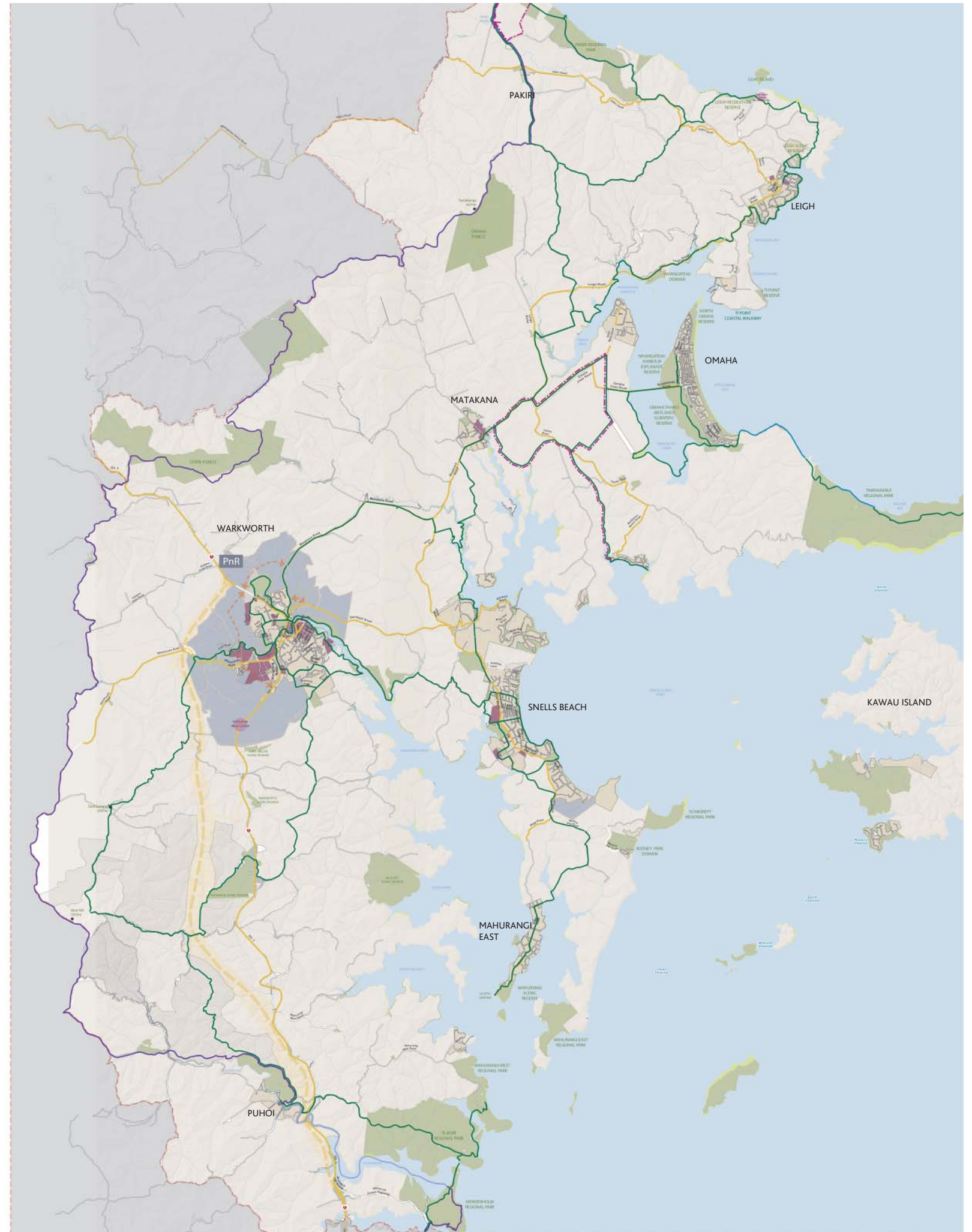
As noted earlier, the greenways plan is a long term vision, and in order to deliver a tangible result, a number of routes have been prioritised for delivery and/or advocacy over the next 3-5 years. Not all of these routes will be delivered, due to financial constraints - but these routes give an indication of where attention will be focused in the short term. Further detail on these routes is contained within Appendix C.

In Appendix C the priority routes are divided into two types of sections, based on the approach to be taken in a project phase: complex and straightforward delivery. Straightforward delivery sections are marked with a solid line, which means the ownership status, topography and environment enables a relatively fast evaluation. Complex delivery means land ownership, AT negotiations or topography makes evaluation necessary by these agencies in a project phase. In Appendix C, these complex delivery sections are marked with dashed lines.

- Greenway connections
-  Proposed greenway route
 -  Proposed bridleway
 -  Proposed coastal route
 -  Te Araroa national trail (land)
 -  Te Araroa national trail (waterway)



Scale 1:120,000 @ A3

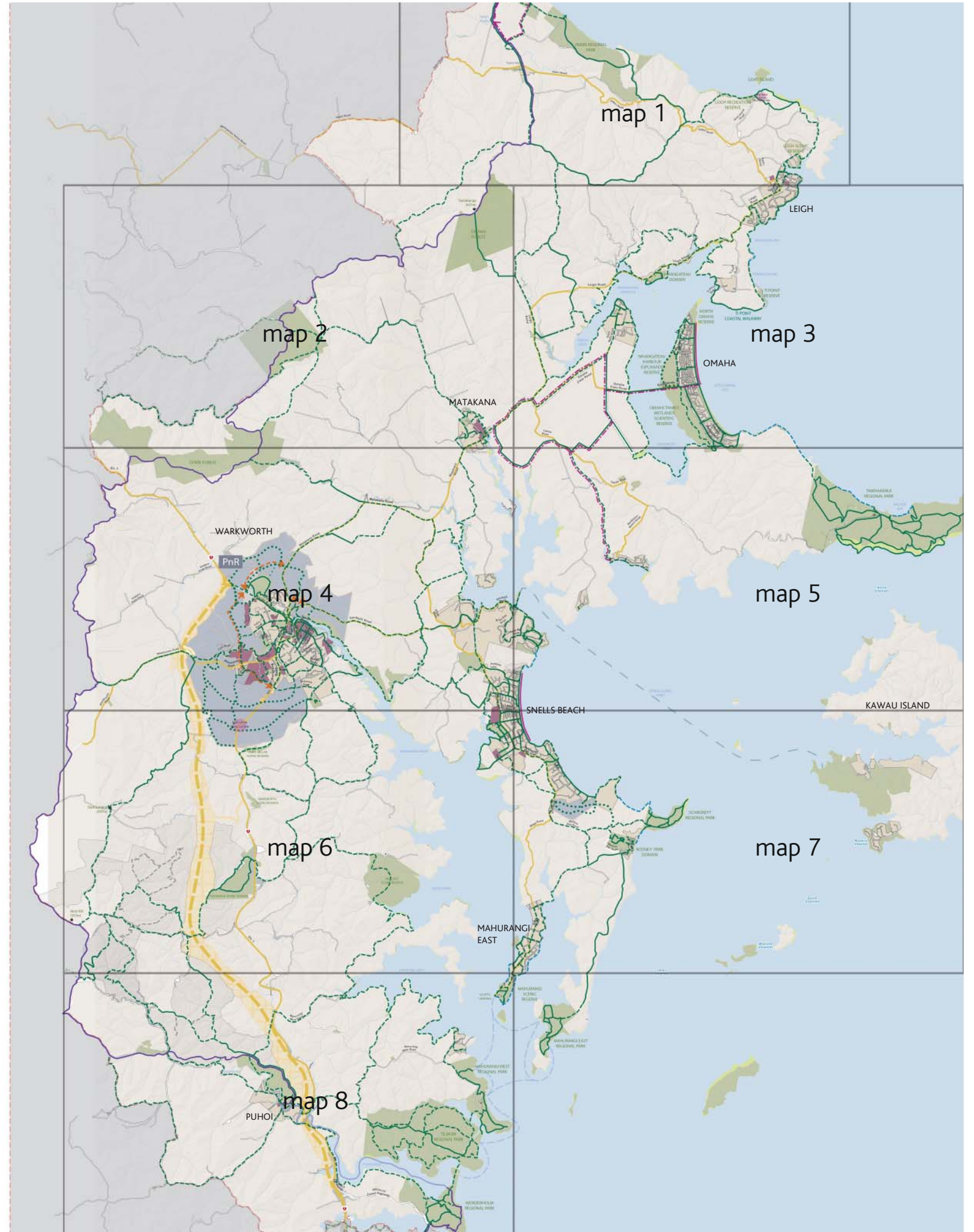


3.3 Proposed Greenway Network Reference Plan

Due to the difficulties in portraying such a large area at a legible scale, the network can be viewed at a closer scale on the following pages. On page 31 and 32 the Snells Beach and Matakana areas are shown independently. The plan adjacent shows how the network is sectioned.

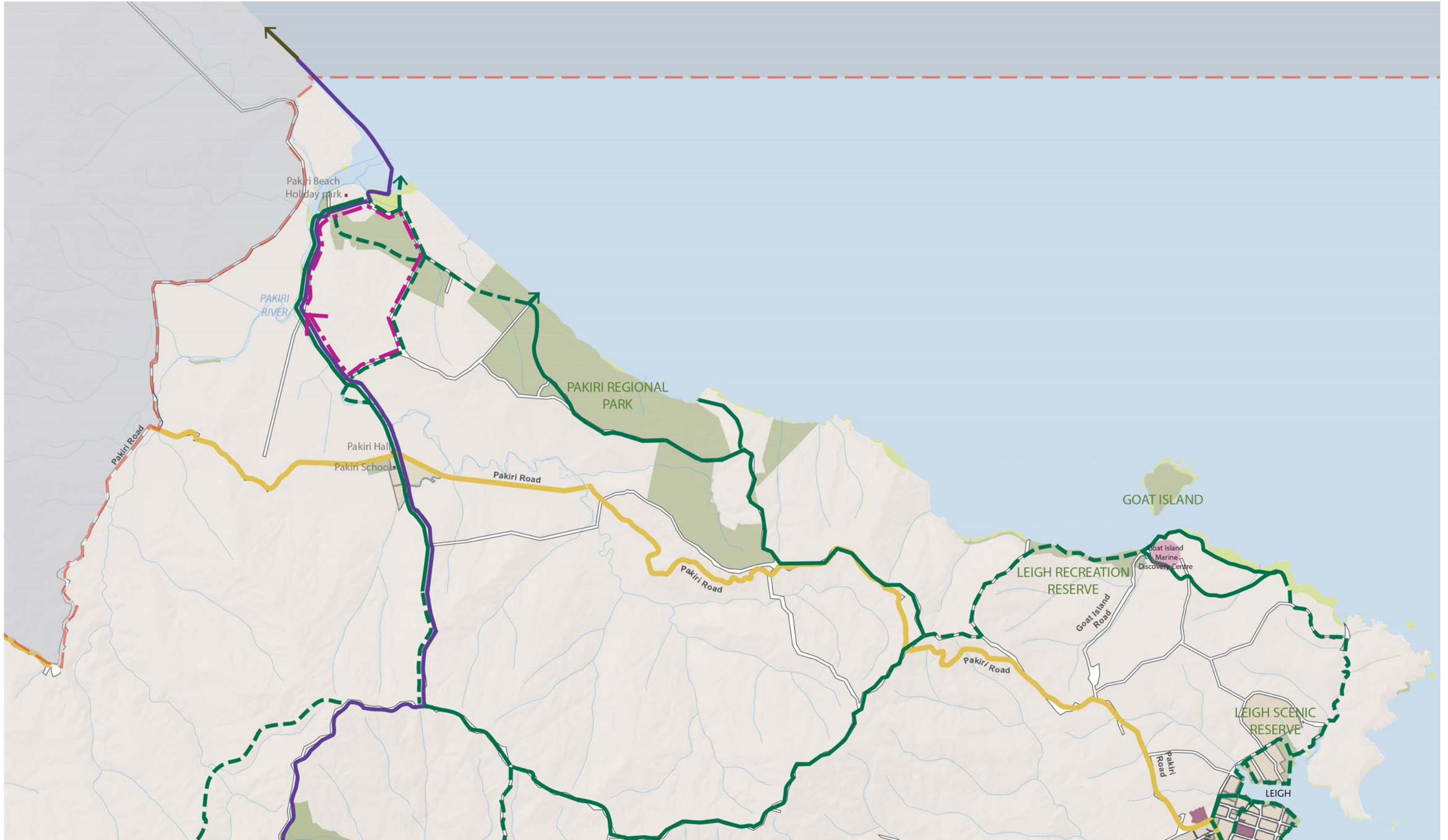


Scale 1:120,000 @ A3



3.4 Proposed Greenway Network Plan

Map 1 of 8 - Pakiri and Leigh



LEGEND:

Base information

- Key community destination
- Residential
- Future Urban
- Park and reserve land
- Coastal area
- Streams & Rivers
- Roads of local importance
- SH1 and arterial roads
- Puhi to Warkworth RoNS (road alignment and designation area)

- PnR Proposed Park+Ride
- Consented subdivision
- Future road

Greenway connections

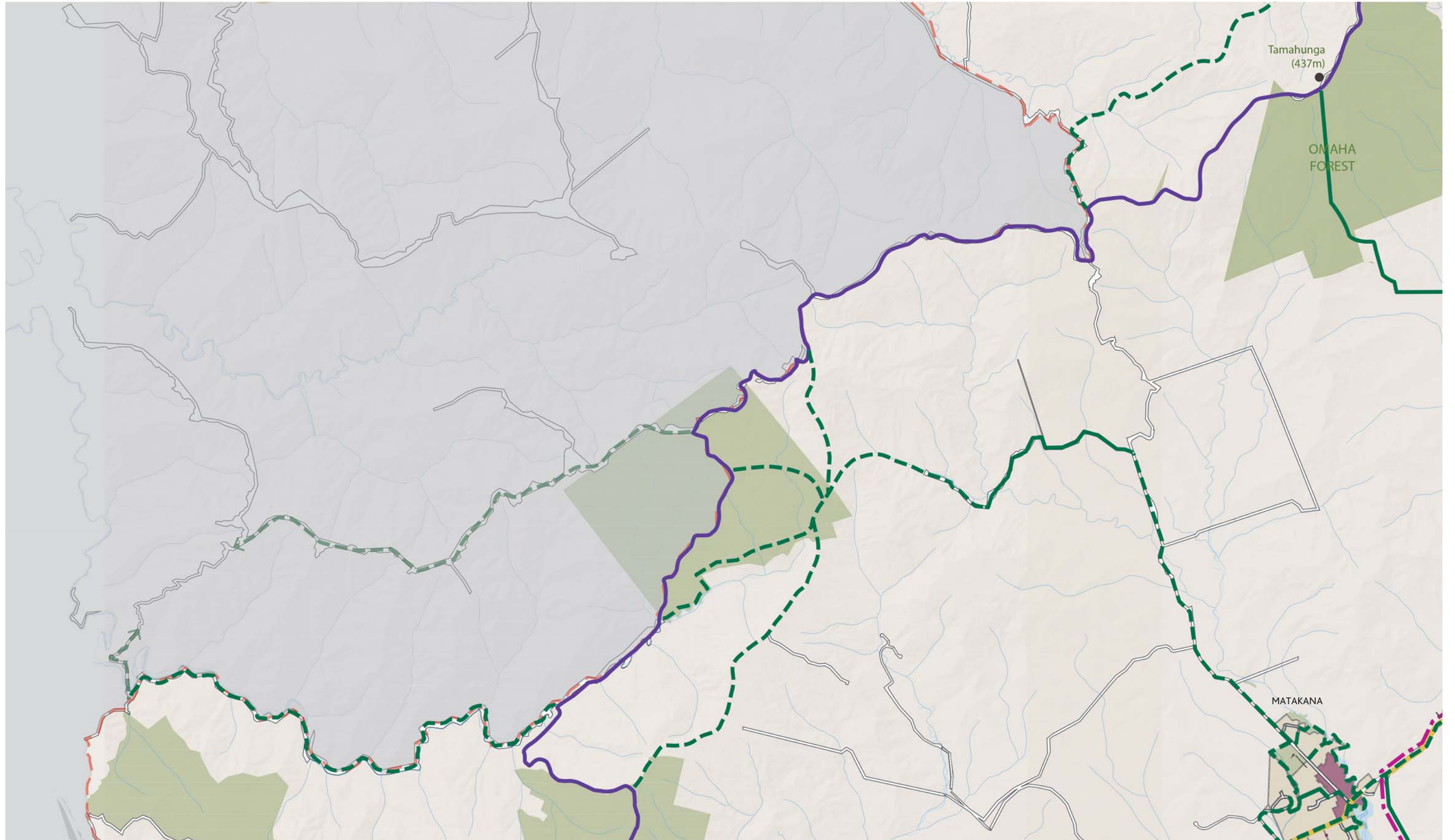
- Existing route (might require upgrade)
- Proposed route
- Proposed bridleway
- Proposed coastal route
- Te Araroa national trail (land)
- Te Araroa national trail (waterway)
- Future greenway

Scale 1:30,000 @ A3



3.5 Proposed Greenway Network Plan

Map 2 of 8 - Matakana North



LEGEND:

Base information

- Key community destination
- Residential
- Future Urban
- Park and reserve land
- Coastal area
- Streams & Rivers

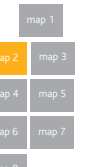
- Roads of local importance
- SH1 and arterial roads
- Puhoi to Warkworth RoNS (road alignment and designation area)

- PnR Proposed Park+Ride
- Consented subdivision
- Future road

Greenway connections

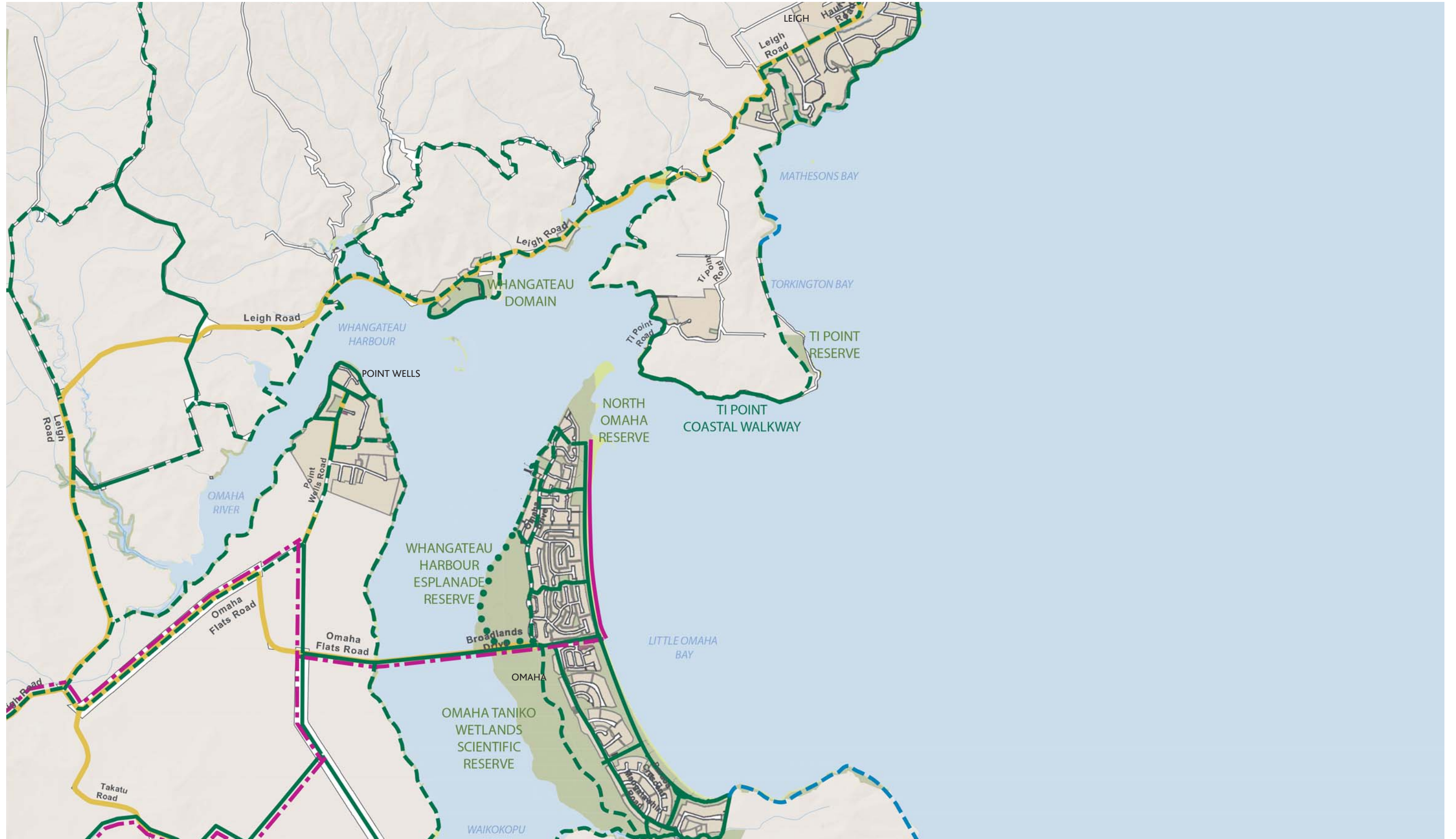
- Existing route (might require upgrade)
- Proposed route
- Proposed bridleway
- Proposed coastal route
- Te Araroa national trail (land)
- Te Araroa national trail (waterway)
- Future greenway

Scale 1:30,000 @ A3



3.6 Proposed Greenway Network Plan

Map 3 of 8 - Omaha



LEGEND:

Base information

- Key community destination
- Residential
- Future Urban
- Park and reserve land
- Coastal area
- Streams & Rivers
- Roads of local importance
- SH1 and arterial roads
- Puhoi to Warkworth RoNS (road alignment and designation area)

Greenway connections

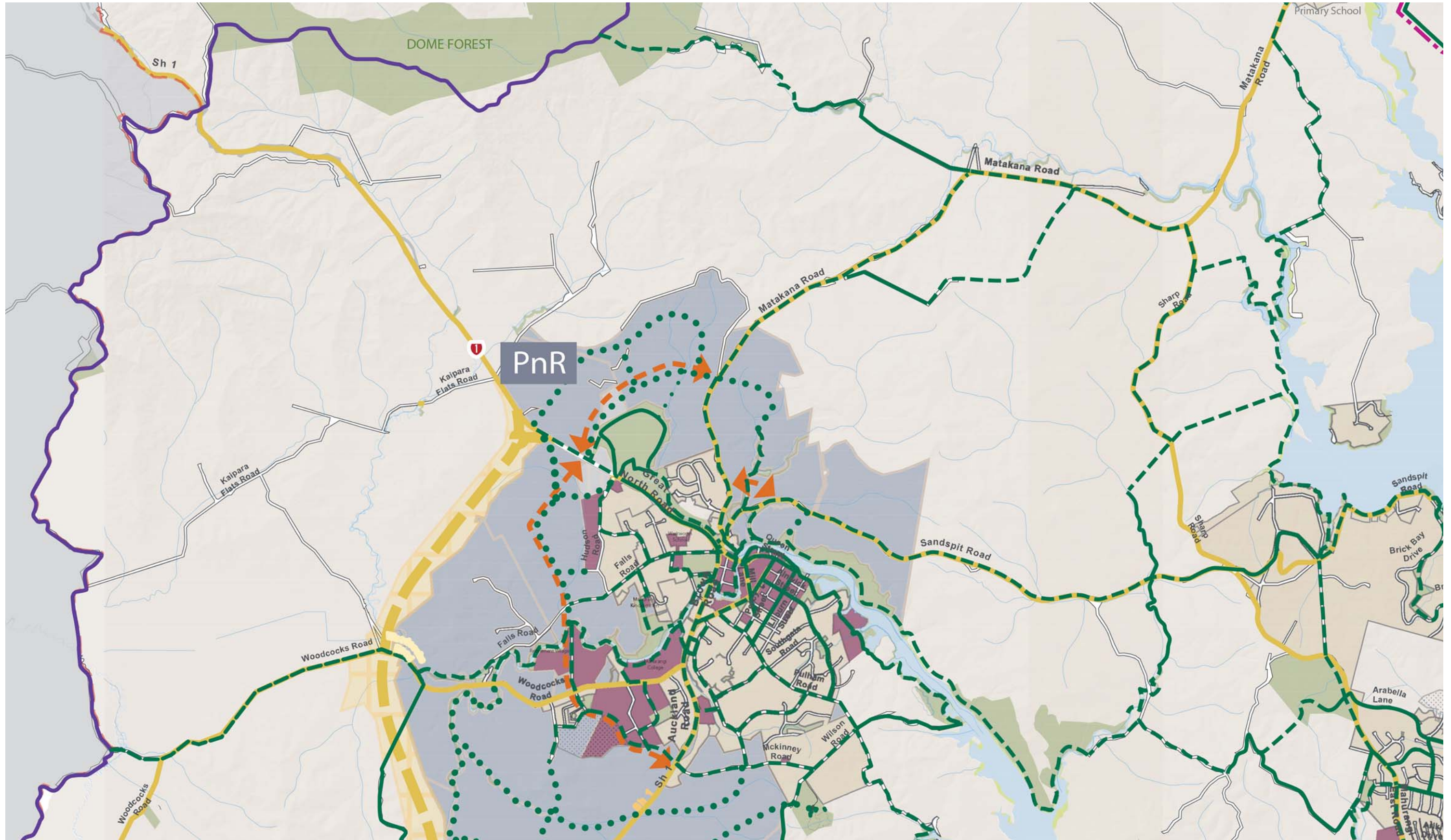
- Proposed Park+Ride
- Consented subdivision
- Future road
- Existing route (might require upgrade)
- Proposed route
- Proposed bridleway
- Proposed coastal route
- Te Araroa national trail (land)
- Te Araroa national trail (waterway)
- Future greenway

Scale 1:30,000 @ A3



3.7 Proposed Greenway Network Plan

Map 4 of 8 - Warkworth



LEGEND:

Base information

- Key community destination
- Residential
- Future Urban
- Park and reserve land
- Coastal area
- Streams & Rivers
- Roads of local importance
- SH1 and arterial roads
- Puhoi to Warkworth RoNS (road alignment and designation area)

- PnR Proposed Park+Ride
- Consented subdivision
- Future road

Greenway connections

- Existing route (might require upgrade)
- Proposed route
- Proposed bridleway
- Proposed coastal route
- Te Araroa national trail (land)
- Te Araroa national trail (waterway)
- Future greenway

Scale 1:30,000 @ A3



3.8 Proposed Greenway Network Plan

Map 5 of 8 - Tawharanui



LEGEND:

Base information

- Key community destination
- Park and reserve land
- Roads of local importance
- Residential
- Coastal area
- SH1 and arterial roads
- Puhoi to Warkworth RoNS (road alignment and designation area)
- Streams & Rivers

- PnR Proposed Park+Ride
- Consented subdivision
- Future road

Greenway connections

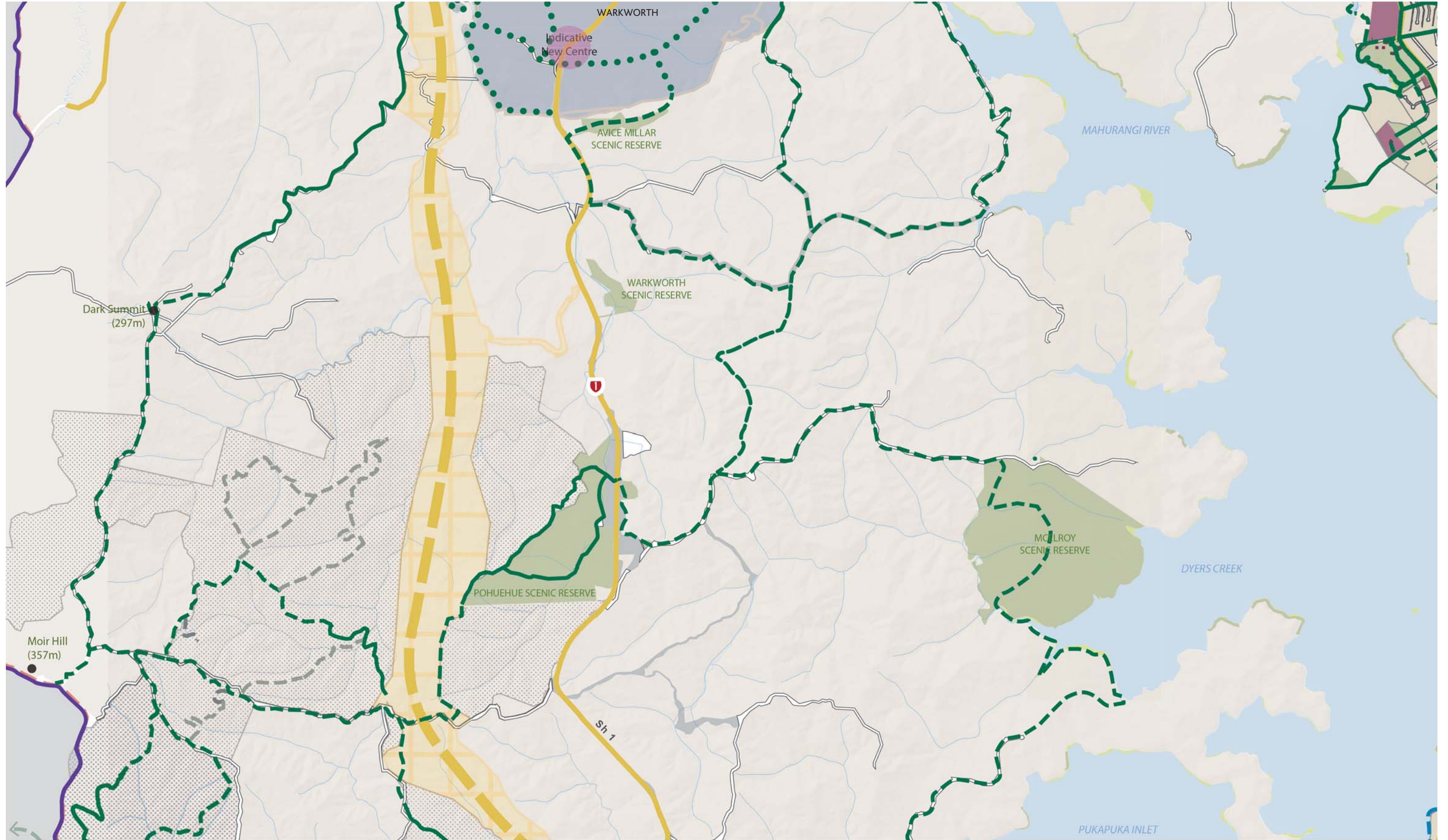
- Existing route (might require upgrade)
- Proposed route
- Proposed bridleway
- Proposed coastal route
- Te Araroa national trail (land)
- Te Araroa national trail (waterway)
- Future greenway

Scale 1:30,000 @ A3



3.9 Proposed Greenway Network Plan

Map 6 of 8 - Warkworth South



LEGEND:

Base information

- Key community destination
- Park and reserve land
- Roads of local importance
- Residential
- Coastal area
- SH1 and arterial roads
- Puhoi to Warkworth RoNS (road alignment and designation area)
- Future Urban
- Streams & Rivers

- Proposed Park+Ride
- Consented subdivision
- Future road

Greenway connections

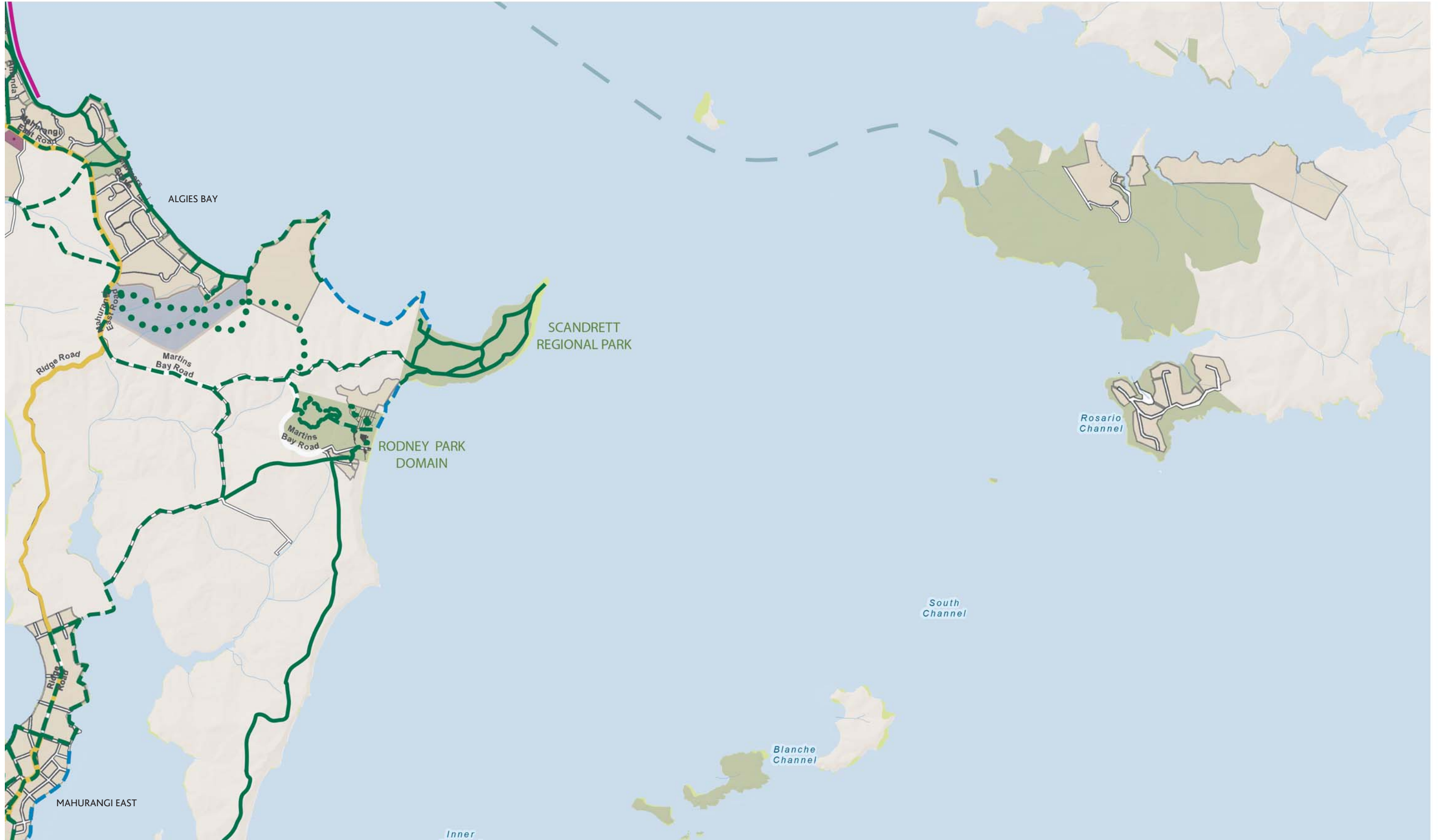
- Existing route (might require upgrade)
- Proposed route
- Proposed bridleway
- Proposed coastal route
- Te Araroa national trail (land)
- Te Araroa national trail (waterway)
- Future greenway

Scale 1:30,000 @ A3



3.10 Proposed Greenway Network Plan

Map 7 of 8 - Algies Bay and Mahurangi



Base information

- Key community destination
- Residential
- Future Urban
- Park and reserve land
- Coastal area
- Streams & Rivers
- Roads of local importance
- SH1 and arterial roads
- Puhoi to Warkworth RoNS (road alignment and designation area)

- Proposed Park+Ride
- Consented subdivision
- Future road

Greenway connections

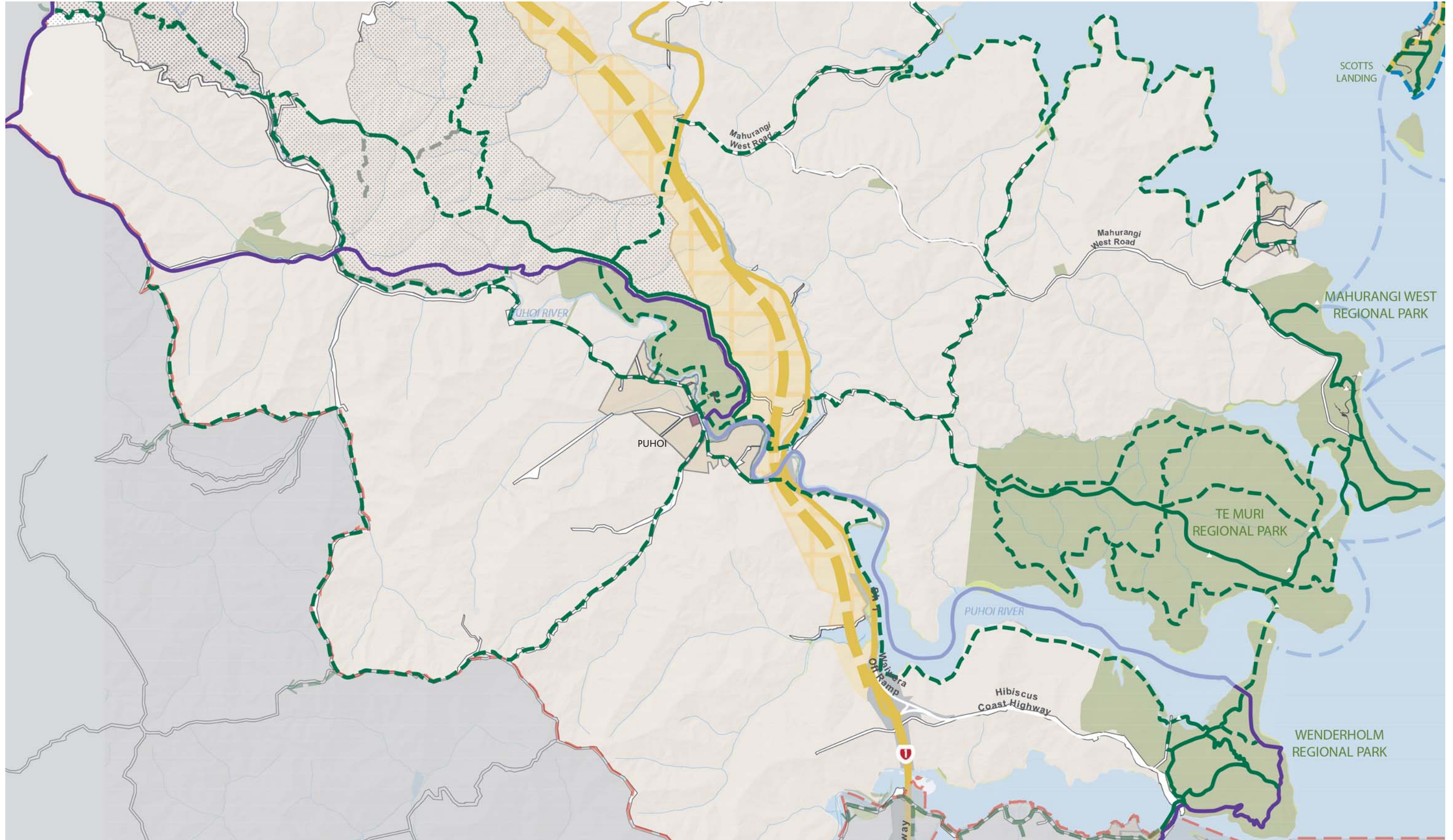
- Existing route (might require upgrade)
- Proposed route
- Proposed bridleway
- Proposed coastal route
- Te Araroa national trail (land)
- Te Araroa national trail (waterway)
- Future greenway

Scale 1:130,000 @ A3



3.11 Proposed Greenway Network Plan

Map 8 of 8 - Puhoi



LEGEND:

Base information

- Key community destination
- Residential
- Future Urban
- Park and reserve land
- Coastal area
- Streams & Rivers
- Roads of local importance
- SH1 and arterial roads
- Puhoi to Warkworth RoNS (road alignment and designation area)

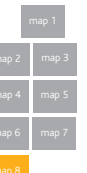
- PnR Proposed Park+Ride
- Consented subdivision
- Future road

Greenway connections

- Existing route (might require upgrade)
- Proposed route
- Proposed bridleway
- Proposed coastal route

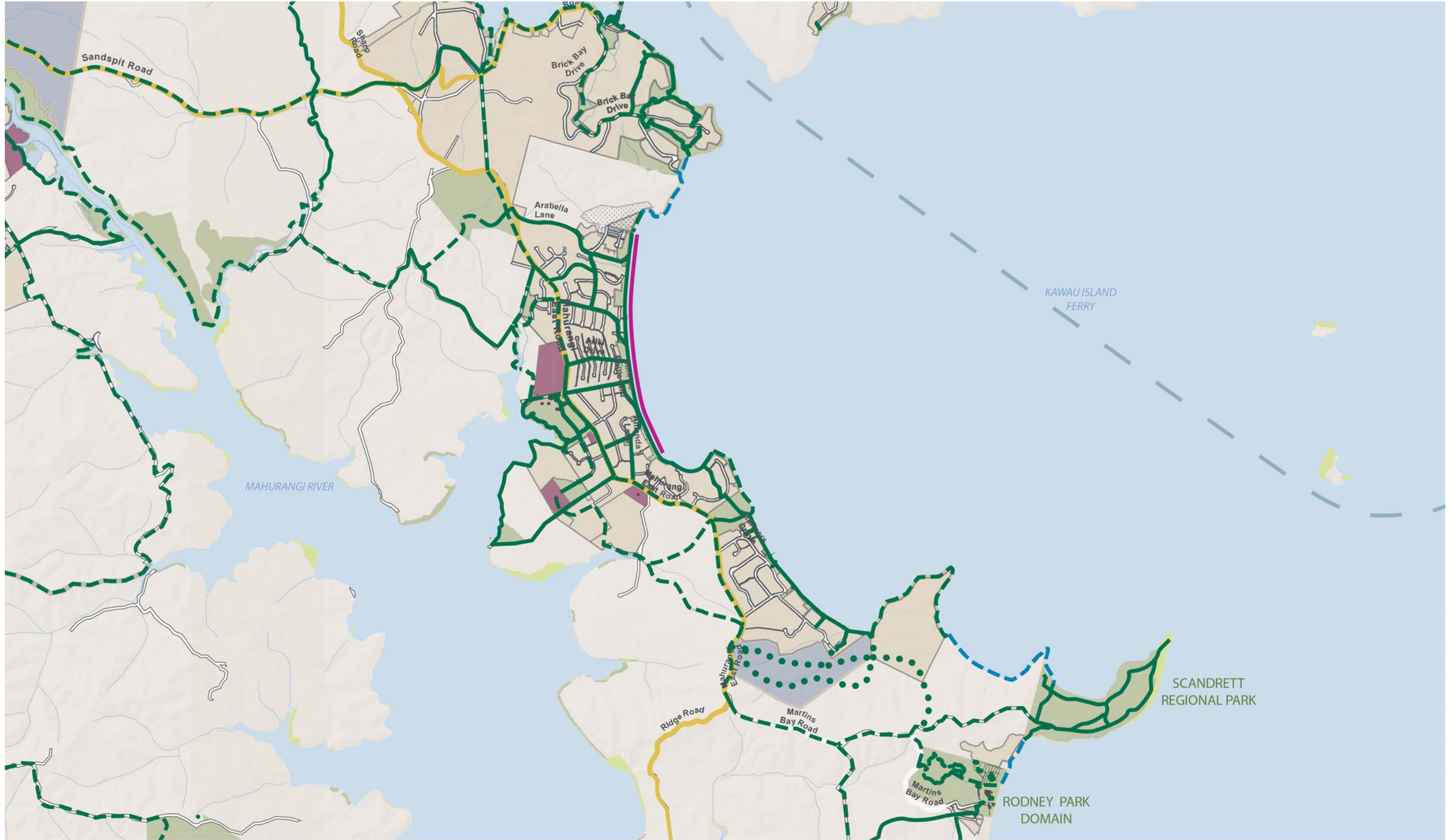
- Te Araroa national trail (land)
- Te Araroa national trail (waterway)
- Future greenway

Scale 1:30,000 @ A3



3.12 Proposed Greenway Network Plan

Snells Beach



LEGEND:

Base information

- Key community destination
- Park and reserve land
- Residential
- Coastal area
- Future Urban
- Streams & Rivers
- Roads of local importance
- SH1 and arterial roads
- Puhoi to Warkworth RoNS (road alignment and designation area)

- Proposed Park+Ride
- Consented subdivision
- Future road

Greenway connections

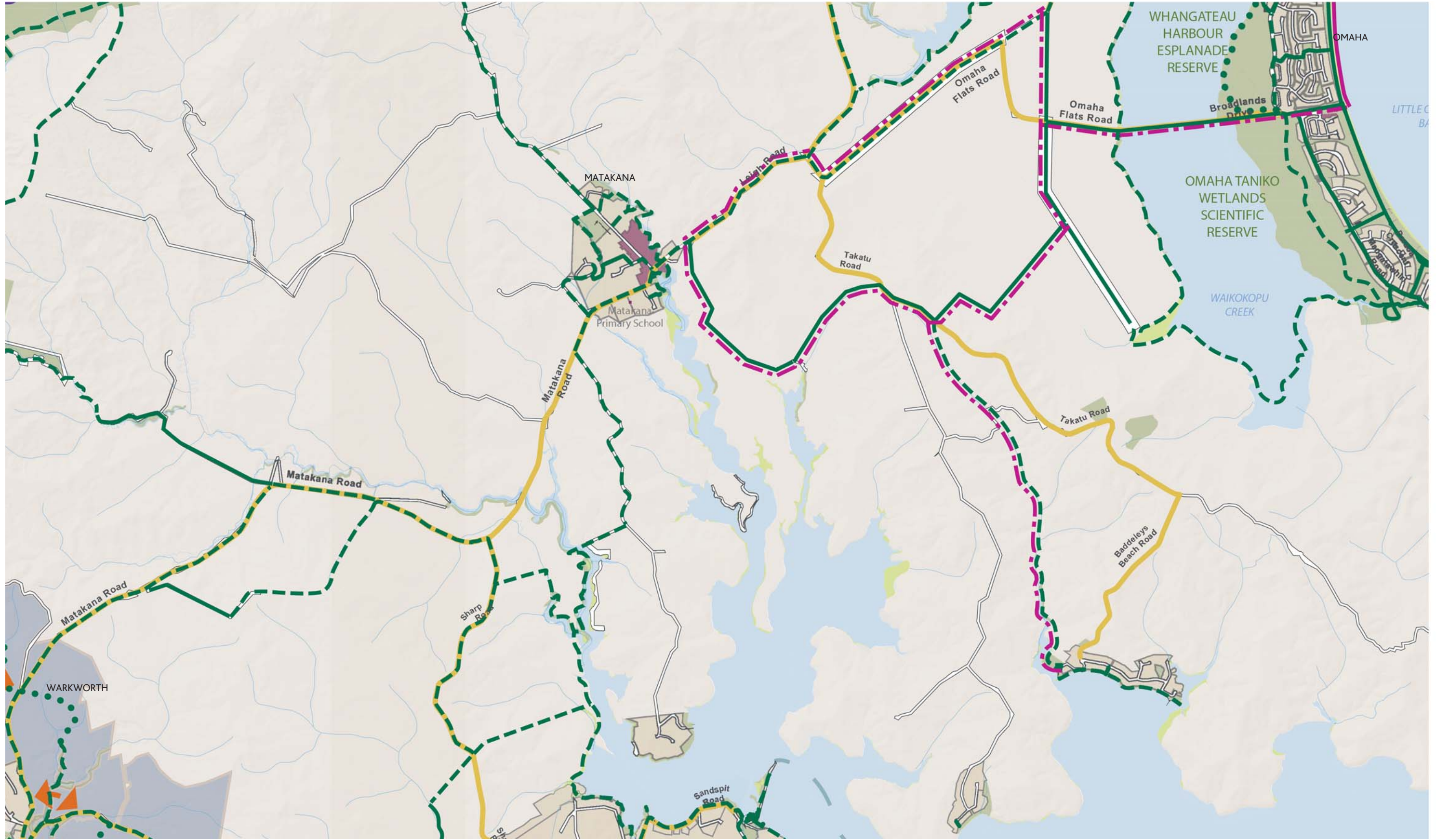
- Existing route (might require upgrade)
- Proposed route
- Proposed bridleway
- Proposed coastal route
- Te Araroa national trail (land)
- Te Araroa national trail (waterway)
- Future greenway

Scale 1:130,000 @ A3



3.13 Proposed Greenway Network Plan

Matakana



Base information

- Key community destination
- Park and reserve land
- Residential
- Coastal area
- Future Urban
- Streams & Rivers
- Roads of local importance
- SH1 and arterial roads
- Puhoi to Warkworth RoNS (road alignment and designation area)

- PnR Proposed Park+Ride
- Consented subdivision
- Future road

Greenway connections

- Existing route (might require upgrade)
- Proposed route
- Proposed bridleway
- Proposed coastal route
- Te Araroa national trail (land)
- Te Araroa national trail (waterway)
- Future greenway

Scale 1:30,000 @ A3





We have received a submission on the notified resource consent for 1232 State Highway 1, Wayby Valley.

Details of submission

Notified resource consent application details

Property address: 1232 State Highway 1, Wayby Valley

Application number: BUN60339589

Applicant name: Waste Management NZ Limited ('WMNZ')

Applicant email: rsignal-ross@tonkintaylor.co.nz

Application description: To construct and operate a new regional landfill.

Submitter contact details

Full name: Joanne Macdonald

Organisation name:

Contact phone number: 0275829622

Email address: lucymac58@gmail.com

Postal address:

PO Box 270
Warkworth
Auckland 0941

Submission details

This submission: opposes the application in whole or in part

Specify the aspects of the application you are submitting on:

Impact on the natural ecology of the area including rare species
Impact on the surrounding waterways that run into the Kaipara Harbour
Increased heavy vehicles passing through Dome Valley - a well known traffic black spot area
Increased noise and pollution
Impact on surrounding properties

What are the reasons for your submission?

I feel very strongly about the ecological impact the proposed landfill will have on the surrounding area and waterways - long term irreversible damage and pollution.

What decisions and amendments would you like the council to make?

| | |
|--|-------|
| Oppose the Plan Change & Resource consent and refuse the use of this land for a new Regional Landfill site. | 407.1 |
| Undertake to find a new more suitable area for this type of operation with less impact to the natural ecology or | 407.2 |
| Get pro active regarding alternative ways to dispose of Aucklands refuge. We are world ground breakers in the fight against Covid-19, why stay in the dark ages when it comes to refuge disposal - look to overseas examples and come up with something that works for the | 407.3 |

people/ecology/economy/New Zealand - get up with the play - ask Kiwis for solution ideas not just buy into an overseas investment request that only makes its investors money and costs New Zealand the ultimate price - our environment/ecology

Are you a trade competitor of the applicant? I am not a trade competitor of the applicant.

Do you want to attend a hearing and speak in support of your submission? No

If other people make a similar submission I will consider making a joint case with them at the hearing: No

Supporting information:

We have received a submission on the notified resource consent for 1232 State Highway 1, Wayby Valley.

Details of submission

Notified resource consent application details

Property address: 1232 State Highway 1, Wayby Valley

Application number: BUN60339589

Applicant name: Waste Management NZ Limited ('WMNZ')

Applicant email: rsignal-ross@tonkintaylor.co.nz

Application description: To construct and operate a new regional landfill.

Submitter contact details

Full name: Yvonne Reid

Organisation name:

Contact phone number: 0226585676

Email address: ynreid@gmail.com

Postal address:
21B Rishworth Avenue
Arkles Bay
Whangaparaoa 0932

Submission details

This submission: opposes the application in whole or in part

Specify the aspects of the application you are submitting on:

I oppose the rezoning that would enable a Landfill and I oppose the Landfill.

408.1

What are the reasons for your submission?

Proposals are contrary to sound resource management principles; contrary to the purpose and principles of the Resource Management Act 1991; they conflict with national policy statements on freshwater management; or they are contrary to the Waste Minimisation Act 2008 and the Auckland Council Waste Management and Minimisation Plan.

What decisions and amendments would you like the council to make?

Deny this landfill application in its entirety and any future applications of the same type in order to protect our food source, waterways and the natural beauty of the environment.

This is 2020. We should not be burying our waste instead we should be researching and implementing sustainable waste management options following in the footsteps of the multiple countries that have successfully done so already.

Are you a trade competitor of the applicant? I am not a trade competitor of the applicant.

Do you want to attend a hearing and speak in support of your submission? Yes

If other people make a similar submission I will consider making a joint case with them at the hearing: Yes

Supporting information:

We have received a submission on the notified resource consent for 1232 State Highway 1, Wayby Valley.

Details of submission

Notified resource consent application details

Property address: 1232 State Highway 1, Wayby Valley

Application number: BUN60339589

Applicant name: Waste Management NZ Limited ('WMNZ')

Applicant email: rsignal-ross@tonkintaylor.co.nz

Application description: To construct and operate a new regional landfill.

Submitter contact details

Full name: Diana Russek

Organisation name: Russek Family

Contact phone number: 0272739769

Email address: russekdi@gmail.com

Postal address:
198D Devich Road
Wellsford
Wellsford 0975

Submission details

This submission: opposes the application in whole or in part

Specify the aspects of the application you are submitting on:

All aspects

What are the reasons for your submission?

I do not think that the site proposed as a landfill by Waste Management, is a suitable site for a landfill with all the inherent potential for hazardous substances to leach into the upper reaches of the Kaipara Harbour via the Hotoe River and the multiple tributaries that run off the proposed land on which the landfill will be based. Waste Management are no longer a NZ owned firm so have no real sense of a duty of care for our country and the land and our Kaipara Harbour. Auckland council are derelict in their duty in that this is even being considered. This may be Auckland City included by statute that created the super city but all the land that boundaries on the Kaipara Harbour should be in the hands of the one council that borders the northern part of the Kaipara so that decisions are made for the benefit of the whole of the Kaipara Harbour. The Auckland Council need to investigate new technologies/strategies to reduce waste in the city and not just farm it out into the northern reaches of the district where the town dwellers can't see it.

What decisions and amendments would you like the council to make?

I would like to see the council refuse both the parts of the process - both the Resource Consent and the Private Plan Change .

Are you a trade competitor of the applicant? I am not a trade competitor of the applicant.

Do you want to attend a hearing and speak in support of your submission? No

If other people make a similar submission I will consider making a joint case with them at the hearing: No

Supporting information:

We have received a submission on the notified resource consent for 1232 State Highway 1, Wayby Valley.

Details of submission

Notified resource consent application details

Property address: 1232 State Highway 1, Wayby Valley

Application number: BUN60339589

Applicant name: Waste Management NZ Limited ('WMNZ')

Applicant email: rsignal-ross@tonkintaylor.co.nz

Application description: To construct and operate a new regional landfill.

Submitter contact details

Full name: Tracy William Davis

Organisation name: Ngati Whatua o Kaipara

Contact phone number: 0273182606

Email address: tdavishlv@gmail.com

Postal address:

16 Kervil Ave
Te Atatu Peninsula
Auckland 0610

Submission details

This submission: opposes the application in whole or in part

Specify the aspects of the application you are submitting on:

I oppose all aspects of this application.

What are the reasons for your submission?

I claim descent from Haumoewhaarangi and Waihekeao often attributed as the progenitors of the 'Ngati Whatua' iwi. Through Ngamaia I descend from Ngā Rīriki, down to his great grandchild Tarapakihi who wed Pāwhero with links to both Kaipara and Waikato. Their son was the renowned Te Taoū commander and chief Hukatere. Hukatere betrothed Toukararae of the Ngā Iwi & Ngā Oho people in Kaipara and begat Tuperiri from whom all uri of 'Ngati Whatua Orakei' descend today. Tuperiri's son Tarahawaiiki married the Waiohua-Ngati Te Ata ancestress Mokorua. I am a direct descendant of this union. I pay homage to my tūpuna Hua Kaiwaka and the the mana he possessed in Tāmaki in his time that continued down to his grand-daughter Te Ata i Rehia ancestress and progenitor of our Ngati Te Ata bloodlines. I also pay homage to my Tūpuna Te Reweti, son of Tarahawaiiki and Mokorua and the origin of my family name. His great grandson Piriniha Reweti, my Great Grandfather, was the principle Ngati Whatua elder during the 1960s-80s a period of much turmoil and pain. Tuperiri also begat Paewhenua who's principle partner was Paretaua and their offspring and great grandchild was the noted Ngati Whatua tohunga and leader Pāora Kāwharu. Today I sit as an elected Trustee on Nga Maunga Whakahii o Kaipara, a member of the Kaipara Moana Treaty Negotiation Team, a negotiator of the Te Runanga o Ngati Whatua 303 Treaty Claim, a

representative on the Mana Whenua Kaitiaki Forum and Climate Change working group. Having been brought up on the Kaipara Harbour by my elders and taught the traditional methods of gathering kaimoana in the 1970s and 1980s, I have seen the impacts of Western civilization on this once pristine treasure. The deforestation and change of land use to farming and other industries along with untreated sewage from council owned waste treatment plants and the leaching from private septic tanks and also the mining of sand from its seabed has created thousands of cuts to what we see as a the life force of our Taonga and foodbowl. This application will allow one of the largest most damaging and long term wound's the kaipara harbour. The numerous studies that'd be done on this Harbour have identified that it is at a tipping point of no return and this application could be the weight that takes it over the edge. The decision made by this hearing will have ramifications for generations to come of my people and the local community. This has been shown in recent events of landfills breaching thier bunds during climatic storm events which scientists say is going to increase. The Auckland Council is also budgeting now to mitigate the effects of all of the existing old landfill sites that are under threat from climate change around the entire City. Again this is an impact of Western civilization and their methodologies of burying waste and rubbish in papatuanuku (the ground) and covering over so that we do not see what is actually there. Waste management have not fully engaged with Ngati Whatua on the application. As the impacts of the application will not only affect the land that it is being built on but the environment reveiving environment. Waste Management have also advised that alternative methods or dealing with waste are too expensive such as Waste to Energy plants. This is factually incorrect as there is one being proposed in Manawatu for the cost of around \$27m. These alternative systems also mitigate the emissions to the environment and convert the waste to usable products, such as energy, bio diesel, and bio char. The impact of 300 truck movements per day with with round trips of approx 200km per trip is another major impact on climate change and our environment and the risk that this presents to other road users.

Once again I fully object to this application for a plan change and and ability for a landfill site.

410.1

What decisions and amendments would you like the council to make?

Totally opposed

Are you a trade competitor of the applicant? I am not a trade competitor of the applicant.

Do you want to attend a hearing and speak in support of your submission? Yes

If other people make a similar submission I will consider making a joint case with them at the hearing: No

Supporting information:

We have received a submission on the notified resource consent for 1232 State Highway 1, Wayby Valley.

Details of submission

Notified resource consent application details

Property address: 1232 State Highway 1, Wayby Valley

Application number: BUN60339589

Applicant name: Waste Management NZ Limited ('WMNZ')

Applicant email: rsignal-ross@tonkintaylor.co.nz

Application description: To construct and operate a new regional landfill.

Submitter contact details

Full name: Sarah Waller

Organisation name:

Contact phone number: 0278400558

Email address: sarahjwaller@gmail.com

Postal address:

99 Ashton Rd
Whangateau
Warkworth 0985

Submission details

This submission: opposes the application in whole or in part

Specify the aspects of the application you are submitting on:
Plan change request and resource consent for Dome valley Dump proposal

411.1

What are the reasons for your submission?
The proposal conflicts with national policy statements on fresh water management.

What decisions and amendments would you like the council to make?
I would like the council to decline the proposal

411.1

Are you a trade competitor of the applicant? I am not a trade competitor of the applicant.

Do you want to attend a hearing and speak in support of your submission? No

If other people make a similar submission I will consider making a joint case with them at the hearing: No

Supporting information

🌀 NGĀ TAONGA TUKU IHO 🌀

**WASTE MANAGEMENT NEW ZEALAND
DOME VALLEY PROPOSAL
A NGĀTI RANGO RESPONSE**

Copyright, 2020 Ngāti Rango
Published February 2020, by Ngāti Rango
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Ko te aronga matua kia huri ngā hakaaro ki iāia ki te wāhi ngaro – te tīmatanga te otinga o te ao tūroa. Me mihi ake ki te papa horonuku me te tangi ake ki o tātou mate huhua – rātou katoa kua okioki ki a rātou, tātou ngā mōrehu i puta i te tauā o te mate ki a tātou, kāti ake.

Ko ēnei rerenga kōrero e whai noa ana i ngā pitopito manatunga kua mahue mai e ngā whēinga e ngā tupuna e ngā tini karangatanga o tēnei wehenga o Ngāti Rango. Kua horahia ake aua kaupapa hei tūāpapa kawenga i ngā tūmomo huarahi atu ki te oranga mō ngā uri hakaheke tae noa atu ki te ira tangata a ngā wā āmuri ake nei.

This response can be translated as treasures left by our forebears. Culture and tradition expressed by Ngāti Rango is derived from that ethos. A simple philosophy of living life in harmony with everything around you, you were it and it was you, you hurt it, you hurt yourself a notion not well understood in today's world.

*E rua ano ngā mea e kite ana te tangata i tōna wā i runga i te mata o te whenua;
 Ko ngā mea nā te Atua i hanga, ko ngā mea nā te tangata ano i hanga;
 Ngā mea nā te Atua i hanga, he mea i hanga i roto i te tapu, tino tapu rawa. Puritia,
 tiakina, ina ngaro, ka ngaro rawa atu.
 Ngā mea nā te tangata ano i hanga, hea mea i hanga hei taputapu noa iho māna.
 Ka whakamahia, ka whiua, ka pirau, ka pangā, ka whakahou.*

*There are only two things a person will ever see during his or her lifetime.
 The things that God made, and the things that Man made.
 The things that God made are of divine creation, they are sacred and therefore must be
 protected for once they are lost, they are lost forever.
 The things that Man-made are for his or her own convenience, they are useable, consumable,
 disposable and replaceable. Rangatira from Te Popoto, circa mid 1950s a phrase looked
 upon as a taonga.*

Kupu Tātaki Introduction

This is a statement of evidence provided by Ngāti Rango, as requested by the applicant Waste Management New Zealand (WMNZ). A gesture of goodwill acknowledging a relationship between Ngāti Rango and WMNZ dating back two decades.

20 years ago, WMNZ lodged a similar application to construct and operate a landfill within an old abandoned limestone quarry located at the upper reaches of the Waitemata Harbour catchment. Redvale and on that occasion, Ngāti Rango did not oppose WMNZ's application.

Remembering that the Resource Management Act (RMA) 1991 was a new piece of legislation. Ngāti Whatua, which included Ngāti Rango, would meet applicants kanohi ki te kanohi, rangatira ki te rangatira. Eyeball to eyeball, chief to chief and decision making between applicant and Māori was based on trust and the proverbial hand shake.

On one occasion Ngāti Rango were informed that a visit by Ngai Tahu was pending and would they be prepared to welcome them. There was no hesitation back then. Culture and tradition kicked in automatically. The newly built admin office was blessed, toheroa harvested and like clockwork every aspect of Māori culture seamlessly fell into place.

On arrival carrying the customary bucket of Tītī. The eleven Ngai Tahu representatives were also opposed to a landfill being constructed within their tribal area of interest, Canterbury.

Ngai Tahu departed six hours later comforted that what they had heard and seen at Redvale addressed their cultural concerns. Ngāti Rango played a big part in in that cultural mind-set shift. In recognition of this special occasion Ngāti Rango and WMNZ

made a special trip south to deliver a taonga to the people of Ngai Tahu to commemorate the occasion.

In 2020 the confidence of Ngāti Rango has waned. This report explains why, in words that live and breathe from a cultural perspective. It deals with the effects, perceived or real, that Ngāti Rango faces should a consent be granted that allows WMNZ to construct and manage a landfill within the Hōteao catchment.

It covers the Ngāti Rango relationship with their culture and tradition over time past. A relationship that is diminishing at an accelerating rate. Genocide of culture and tradition may be considered harsh. However, when you alienate an ethnic group from their lands, waters, wāhi tapu and other taonga. Then add the continued erosion and suppression of their culture and traditions. It starts to stack-up.

Note: Throughout this report you will see Ngāti Rongo and Ngāti Rango, they are one and the same. Two decades ago it was Ngāti Rongo, today its Ngāti Rango and tomorrow it might be Ngāti Rongo. That's culture and tradition.

Tikanga, Purpose

There is a tikanga for everything and the main purpose of this response is to help enlighten three very different audiences. Firstly, Ngāti Rango descendants who have limited understanding of the RMA process. Secondly, the Applicant, Auckland Council consenting team and the Decision Makers (DM) who have a limited understanding of Part 2. Thirdly, the Beijing owners that Māori generally believe share cultural similarities:

Chinese celebrate Chinese New Year, Māori celebrate Matariki, Chinese celebrate the rat, Māori celebrate the kiore.



Ngāti Rango, Ngai Tahu and Waste Management 25-5-2000

Decision Making Process

All the concerns raised in this response will inevitably be determined by a Decision-Making Panel appointed by the consenting Authority, Auckland Council in accordance with the Resource Management Act (RMA) 1991.

A process as far removed from the grass roots Māori as Mātauranga Māori is to non-Maori.

Compounded by the perverse notion that oil and water can blend into a viable mix. The perverse aspect relates to a situation where one culture believes they have a monopoly on ideas. Where their sustainable environmental knowledge base is superior and there are ample indicators on how that's trending today.

Look even further afield and the reality hits home, with Beijing trending off the charts when it comes to environmental pollution and degradation. Its estimated that over 1.6 million people in China die each year from respiratory illnesses directly related to air pollution and that's not taking into account the poor health and wellbeing of their waterways.

That's approximately a third of New Zealand's population dying each year and those horrific statistics can't be ignored and swept under the carpet. Earlier mention was made of only two cultural similarities between Māori and Chinese and below may help explains why.

Environmental protection and enhancement v's return on investment appears to be what drives the Chinese economy. We see the same in Aotearoa and that has to be a concern for all New Zealanders in respect to off shore ownership and investment "uncertainty".

Statutory Hierarchy

The Making Good Decisions Programme was set up by the Ministry of the Environment to help councillors, community board members, and independent commissioners make better decisions under the Resource Management Act 1991 (RMA).

This is important, as at the end of the day it is their decision that determines the outcome of this application and Ngāti Rango people don't always appreciate or understand that.

Commissioners must be accredited to sit on RMA hearings panels where applications such as this one. Are heard, deliberated on and either approved or declined. Within that process sits a statutory hierarchy in short, a ladder where the rung above trumps that below.

This process requires one to consider each statutory piece of legislation in order of its position on the ladder. Starting from the top rung down, National Policy Statements, Regional and finally local and that requires a particular level of expertise.

RMA Part 2, Purpose and Principles

This section of the RMA covers 5, sustainable management, 6, matters of national importance. 6 being the second rung on the RMA Part 2 ladder and the first port of call for Māori when navigating the RMA. 7 and 8 follows.

However, this is not well understood by Māori who often place a great deal of emphasis on 8, Te Tiriti o Waitangi “ironic” as some Acts of more recent times fail to acknowledge it at all.

Māori can view 6, 7 and 8, through a cultural lens using the analogy of tuakana-teina. Where traditionally the older brother has a higher standing than his younger siblings.

This then intertwines seamlessly into s6 (e) Understand and provide for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga.

Unfortunately, regardless of where s6 (e) sits in the hierarchy of the legislation. It is of little value, if those charged with implementing it fail to understand the complexities and significance of this section.

The Making Good Decision program fails to address what is a fundamental decision-making requirement, as does the RMA in part and this is supported by the findings of the High Court in 2012 where the Court found.

The problem with statutory acknowledgements and deeds of recognition in the modern era is that they do not reflect the sophisticated hierarchy of interests provided for by Māori custom. They have the effect of flattening out interests as if all are equal, just as the Native Land Court did 150 years ago. In short, modern RMA-

based acknowledgements dumb down tikanga Māori.

This is of particular interest here as it relates to the Auckland Unitary Plan [AUP] where you find the following.

It is expected that Treaty of Waitangi outcomes will be integrated through all parts of the Unitary Plan and will be developed in partnership with Māori (Mana Whenua and Matāwaka).

Develop policies that integrate Te Ao Māori (Māori values) such as Tikanga and Mātauranga through all aspects of the AUP, such as urban design, transport infrastructure, sustainability, natural resource management, protection of cultural heritage, monitoring etc.

Late 2019 the Environment Court in its findings; Ngati Whatua Orakei v Ports of Auckland added to the mix the following.

As an aside, we detected in the submissions on behalf of the council [Auckland] a concern that councils or their hearing commissioners are not equipped to make such enquiries. The complainant cannot sway the outcome. Consent authorities must face up to the complexity of issues in all facets of resource consenting, whether of a Māori cultural nature or otherwise.

Statements and findings like those above are at the core of why the people of Ngāti Rango have closed ranks and opposed this application. The dumbing down effect.

These statements have been provided so Māori and non- Māori can gauge for themselves what dumbing down actually means and its consequences going forward.

Mātauranga Māori, Māori knowledge

To gain an understanding of Te Ao Māori and Mātauranga Māori takes a life time. To expect a fair decision based on the premise, that this understanding has been gained, is letting us down today. Words are cheap and its hypocrisy to make such claims, as the outcome arising from pretence will always come back with a vengeance.

To help explain, the writings of Māori Marsden refers to his return from World War Two. He was asked by his peers to share his war experiences. When he mentioned the Atom Bomb, he was pressed to explain, he cited the Einstein theory of the real world behind the natural world. “Do you mean to tell us that the scientists have managed to rend the fabric of the Universe?” “Yes” Māori replied. “Do they know how to sew it back together again?” No! “That’s what happens when you share knowledge, someone will always abuse it”!

A profound commentary, the breath of life, the mauri that keeps a belief system alive. The Unadulterated Māori World View as opposed to the-make-it-up as-you-go Random Māori World View in vogue today.

A systemic order brought about when Māori allowed their traditional world to unravel. In pursuit of the Western Ideological world and today we are struggling to stitch it back together again.

For example, this position, this information is guided by our tupuna, our ancestors, the traditional world of Māori.

The High Court’s use of the term “sophisticated hierarchy” is fitting. In the sense, that we are dealing with a people’s pictorial that has taken centuries to paint and all that remains today are small pieces of that cultural and social picture.

The conundrum for Ngāti Rango is that these small pieces will fade into obscurity if a challenge is not mounted. At stake is Māori wellbeing in the cultural and traditional sense, which most people don't understand. Restore culture, tradition and the environment and you restore the mauri, wairua and mana of the people affected.

Mātauranga Māori is not only sophisticated it has the added complexity of wairua the spirituality that tethers the tangible and intangible together.

If you can imagine that you are looking at a high-rise building reaching up into the sky and on each floor, there is a kitset piece of furniture and an instruction book. On the first floor is a chair. Follow the instructions correctly and you have your chair. If you desired a table you ascended to the floor above where the instructions were more complex, or you could just sit on your chair and stay on that floor.

The very top floors contained furniture of the gods. Knowledge pertaining to the creation of the universe beginning with the following cut and pasted account, shared to help non-Māori appreciate and understand.

The creation of the Universe occurred over three cosmic divisions of time. Te Kore – the void the absolute purity of nothing. Te Pō – Aeons of darkness where the shape and forms of the Cosmos was being considered. Te Whei Ao ki te Ao Mārama – the emergence of the Universe from the darkness of Te Pō into the visible shape and form of the Cosmos as we know it.

Te Kore, the void contained the absolute purity of nothingness, where all is sacred and nothing is adulterated. Na Te Kore-i-ai – from the infinity of nothingness came pure energy thence the potential was created. Te Kore-i-whiwhi – from potential came the increase in energy. Te Kore-i-rawea – ka hua Te Wānanga – from the increase in energy came the boundless bundles of infinity – then knowledge was created and became fruitful. Nā Te Kore ko Te Pō – ka noho i a

Rikoriko kia puta ki waho ko te Pō – then the creation dwelt within the creation of the goddess Rikoriko and night was born.

Te Pō – Aeons of darkness where the shape and form of the creation were being considered. Te Pō Nui – the greatest and most important night. Te Pō Roa – the longest night. Te Pō Uriuri-the deepest night. Te Pō Kerekere-the most intense night. Te Pō Tiwhatiwha-the dargest night. Te Pō Pepeke-the loftiest night. Te Pō Tangotango-the night to be felt. Te Pō Whāwhā- the night to be touched. Te Pō Te Kitea-the night of being unseen. Te Pō Namunamu-ki-te-Taio-the night of seeking passage. Te Pō i Whiri-atu-ki te mate-the night of ending. Te Pō Tahuri-atu-the night of restlessness. Te Pō Tahuri-mai-ki-te-taiao-the night of the turning.

From the void came the night and from the darkness, the Universe emerged into the light resplendent in all its glory. First to emerge was Tama-nui-te-rā the Sun, followed by Ngā Aorangi the planets who circled the Sun and lastly Ngā Whetū o te Rangi, the stars of the night. And Io the breath of life was instilled and the mauri, that intangible life force inherent in all living things swept throughout the Universe and the Cosmos came to life.

The above is provided for context. What Ngāti Rango once considered to be sacred knowledge and not to be shared with the masses and as you can see; its complex, intense and not for everyone.

The Making Good Decision program hasn't and can't get off that first floor and neither can Auckland Council, despite its claims. Traditionally teachings started at a very early age. For some that education began before they were born, that's Maori culture and tradition. The majority of Decision Makers today are the first to acknowledge this conundrum.

It is also important to appreciate and understand, traditionally this structured learning

wasn't available to all members of the tribal grouping. The majority were content with no chair. As these items came with a very stringent compliance regime and if that was compromised in anyway the consequences were often terminal.

Recognise and Provide for the Relationship

The Ngāti Rango relationship is defined by tātai. Decent lines that date back to the arrival of their ancestral waka Māhuhu. Which subsequently landed on the shores of the inner Kaipara Moana a few kilometres north west, adjacent to the mouth of the Hōteo.

The Hōteo is the river and catchment that the proposed landfill drains into and the Kaipara is the recipient of all that flows from it and the spiritual home of the present day Ngāti Whātua.

On arrival, those on board Māhuhu discovered that people were already in occupation of these lands and were welcomed ashore by the tangata whenua in residence at that time.

The hospitality extended was such, that three rangatira remained in the Kaipara, when the decision for Māhuhu to continue its explorations was reached. A decision not uncommon historically. Strategic alliances allowed those leaving with a bloodline connection enabling their return at a later date and that happened all around Aotearoa.

From that time on inter-marriage was also a common occurrence as they migrated from one place to another naming places as remembrances of events that they wished to recall. Today they are referred to as cultural sites of significance.

RMA Part 2 section 6 (e)

To understand section 6 (e), one must understand and appreciate Māori where nomadic. Inhabiting sites and places as determined by observing change and effects of the environment they were living in.

Ngāti Rango were renowned not only as canoe builders and open water voyagers. They were also fleet of foot covering vast distances along the ridge lines of all the ranges that flank the Kaipara and beyond.

The later traditional practice is very important, because they traversed the ridge lines of the Hōteoro seasonally to gain access to the east coast. These man-made tracks were referred to as ara, traditional pathways, the life line of the tangata whenua.

Their elevation was strategic as it allowed the users to observe everything that was happening below. Overtime like people these ara acquired mana and wairua that is still present today.

The Hōteoro catchment has a complex matrix of ridges that allowed foot traffic access to numerous locations and they were well worn and used as late as the 1950's. Their significance relates to the manner in which they were used and what occurred along them.

As it wasn't uncommon for the old people to ask to be left behind in a specific location because it was their time and they had a fondness for that area. It would have been a very hard thing to do, but they did it. They would be rested against a tree or somewhere comfortable, prayers and farewells exchanged and that would be it.

We have people today who can still recall times when they have been in these locations

and witnessed elders stopping to acknowledge tupuna, “*deceased ancestors*”.

Still in residence in the spiritual sense and the proposed landfill has the potential to affect these traditional relationships. Before a sod of earth was turned on the upper harbour highway and the Orewa to Puhoi motorway.

Ngāti Rango were afforded the opportunity to walk the designated routes in order to identify, acknowledge and take care of tupuna who were still in those areas and still are. Identifying them was my job and the acknowledgement was carried out by my kaumatua.

Culture and tradition

The ideas, customs and social behaviour of a peoples that has evolved over three or more centuries is definitely worthy of “recognition”. Unfortunately, today when that question is posed “how have you recognised and provided for the culture and traditions”. You more often than not get that confused look, as if to say “it’s not part of my brief or did you have to ask me that”. It’s embarrassing in this day and age.

The culture of Ngāti Rango evolved by observing cause and effect supported by a belief-system based on wellbeing and survival. The mythological and spiritual investment assured harmony and environmental sustainability was achievable. There were casualties as with all discoveries of new lands and waters.

Māori arrived on these shores equipped with conservation policies and methodologies brought from their original homelands. Kawa, tikanga, kaupapa, tapu, noa and rāhui residing in the *tiaki kete* were already imbedded in their DNA on arrival.

“Recognising” that potential has never be accorded to Māori. Simply because western science rules the roost in Aotearoa. It’s simple, if there’s no recognition then there’s no provision for culture and tradition and that’s been constant since western ideology arrived on these shores. Evidence today doesn’t deny that Māori are on the bottom of the heap.

Tangata Whenua - Mana Whenua, People of the Land

There is ongoing debate at all levels stemming from the interpretation of these two cultural terms in use today. For example, I was presented with “a version” of each, when I was carrying out oral interviews as part of the Mahurangi collective’s treaty claim and their authenticity will always be questioned. The first came from my mother and it resonated with me and the second sounds plausible and worth sharing, albeit abbreviated.

Tangata Whenua, People of the land

Tangata Whenua originated from the traditional practice where a mother in-child was seen as the sole nurturer of that child until that defining moment. The severing of the umbilical cord and burial of the placenta / whenua that followed. When the whenua of the tangata was placed into the whenua, the bosom of Papatūānuku / Mother Earth that was the defining moment that gave rise to the saying Tangata whenua.

A child of Papatūānuku, a synergy accompanied by teachings enabling that child to live in harmony with the birds, bees, plants and every other critter that graced this world. Invoking a small covenant whereby after death that human sibling is returned in the same manner, which explains why Māori insist on being buried.

The Papatūānuku fostering and intertwining of siblings played a vital role within the community as the seers and saints carefully observed the tendencies of the child. Did they get along and play more with the birds for example, was the indicator used to further that child's knowledge.

He or she would then be dispatched into that environment, to further their learnings along the pathway to higher learning. Eventually earning the title of Tohunga. Teachings light years removed from the tertiary teachings of today where expertise, is based on a piece of paper.

A long-winded explanation but that's the Māori way, culture and tradition covering Tohunga in later chapters.

Mana Whenua, Authority over the land

A term bandied around at random today, used by Māori to gain recognition and primacy refer EC decision *Ngāti Whatua Orakei v Ports of Auckland*. The desire to rule overriding the desire to preserve and protect the environment and with-it culture and tradition!

“They never used Mana Whenua up here in the north, it was always Tangata Whenua. It surfaced when the Pākehā started putting up fences to stop *Māori* from crossing their land. So, the chiefs, ignored the fences, telling the Pākehā that they may have title to the whenua/land but it didn’t extinguish the chiefs’ rights/mana to cross it, Mana Whenua”.

There is a level of irony to that tale, as we all know if you’re a land owner today, you only own the top portion, the Crown has a big stake in the minerals and other sub-surface natural resources. If that isn’t confusing enough then consider the Environment Courts findings on mana whenua, *Self-family Trust v Auckland Council* below:

B6 Mana Whenua Values

The relevant RPS objective recognise the Treaty of Waitangi partnerships and participation, recognise Mana Whenua values and require protection of Mana Whenua cultural heritage “Mana Whenua” is defined in section 2 of the RMA as meaning “...customary authority exercised by an iwi or hapu in an identified area” The expression is then used only once in the RMA – in the section 2 definition of “tangata whenua”.

There is an informative discussion of the rather problematic concept of Mana Whenua in a paper by Ms C I Magallanes. She points out that the Local Government (Auckland Council) Act 2009 which established the

Auckland Council was amended in 2010 to establish an advisory group, including “mana whenua groups” on (our words) Auckland Maori issues. While “mana whenua” is not defined the relevant group is.

These two Environment Court findings epitomises where the RMA world is at right now and that’s reflected in the written use of these two terms in the two paragraphs above. The use of capitals in Mana Whenua and the non-use in tangata whenua would suggest that Mana Whenua has greater status than tangata whenua as depicted in the first paragraph.

In the second paragraph we have Mana Whenua, mana whenua and “mana whenua groups” and no mention of tangata whenua along with... While “mana whenua” is not defined the relevant group is. “*What group*”? and this is coming from the very top of the RMA tree.

“*Why*” because the powers that be, keep relying on academics for interpretation and “answers”. Cultural and traditional knowledge far removed from a University library or lecture room. Net result turmoil! If in doubt go back to the beginning and if you still don’t understand, leave it alone and that equally applies to the environment.

Te Hauora begat shape
 Shape begat form
 Form begat space
 Space begat time
 Time begat Papa and Rangi
 Papa and Rangi begat seventy offspring

Mauri Ora (life force, first principle)
 Mauri Atua (life force of the Gods, second principle)
 Mauri Papatuanuku (life force of Mother Earth third principle)
 Mauri Manaaki (life force of the guests, fourth principle)
 Mauri Tangata (life force of the “Tangata Whenua” fifth principle)

Taha Wairua World, Spiritual World

The spiritual world of Māori where individuals inherited a unique skill set that enabled them access to the spiritual realm which was the norm until the Tohunga Suppression Act introduced in 1907. Specifically aimed at replacing Tohunga as traditional Māori healers with “modern” medicine. Introduced by James Carroll who expressed “impatience with what he considered regressive Māori attitudes”.

In 2012 the high court makes reference to the dumbing down of tikanga Māori, the Tohunga Suppression Act 1907 didn't dumb it down, it denied a people of its entire expertise portfolio. The Tohunga practice wasn't confined to medicine or witchcraft alone as perceived in 1907.

Below is taken from Matua Wiki to demonstrate what Māori were denied.

Tohunga ahurewa: highest class of priest,

Tohunga matakite: foretellers of the future

Tohunga whakairo: expert whakairo exponents

Tohunga tātai arorangi: experts at reading the stars

Tohunga kōkōrangi: expert in the study of celestial bodies (astronomer)

Tohunga tārai waka: expert canoe builders

Tohunga wete reo: expert in the language (linguist)

Tohunga tā moko: expert in tā moko

Tohunga mahi toi: expert artist

Tohunga tikanga tangata: expert in the study of humans (anthropologist)

Tohunga o Tūmatauenga: expert in weapons or war party chaplain

Tohunga kiato: lowest class of priest

Each tohunga was a gifted spiritual leader and possessed the natural ability of communicating between the spiritual and temporal realms through karakia (incantations), pātere (chants) or performing waiata (songs) that had been passed down to them by tohunga before them. However, their rites were mainly in the specific fields in which they practiced, as outlined above.

The Government of the day outlawed such practices, as the physical element is barely visible today. What it could not do is suppress the spiritual forces and presence of the Tupuna. It's not rocket science the teachings are out there, Māori just need to find a way to stitch it together so it's fit for purpose.

Unlike legislation which can be changed and manipulated to suit a specific agenda the taha wairua world functions unchanged today as it has for centuries. It's the other equation that non- Māori struggle to understand. While access to this world is not practiced as it once was, it still resides within Māori, which means manifestation can occur at any time and it's not always that easy to deal with as many of our uri, descendants have experienced.

It was present on the Saturday morning of our Wānanga with Waste Management at Kotare accompanying us on our site visit to the lands of the ancestors. It's a presence that can be felt and heard when Māori speak from the heart and it has a profound effect on everyone present. When Māori speak from the heart their words embrace the wairua and mauri of their ancestors and on that morning the messages had a clarity, not be ignored. Despite all the attempts to rationalise current day needs that clarity remained. This was the last of several engagements between Ngāti Rango and Waste Management which will be covered fully at the conclusion of this report.

Tapu, Sacred, Set-Apart

There are many meanings and conditions associated with tapu. First and foremost, tapu is the power and influence of the gods. Everything has inherent tapu because everything was created by Io (Supreme God). Land, waters, forests, along with all life on earth has a tapu, hence man is also tapu. He becomes tapu under the influence and protective power of the gods a practice not common to day. He becomes tapu under the influence and protective power of the gods a practice not common to day.

This is the kind of tapu that eludes the understanding of non-Māori. Knowledge of the past has to be taken seriously in order to gain that spiritual fertility the taha wairua. If you ignore the tapu of sacred things, it can lead to sickness or even death. Ngāti Rango will wear trendy clothes and eat in restaurants like everyone else, but deep inside, tapu is always there.

Knowledge of the past is taken seriously because it lives within, it protects and guides, confirmation that the tupuna are alongside you. they uphold the lore's of tapu, genealogy, history, mātauranga Māori, whakairo, in fact nature itself is all bound together by the sacred lore's of tapu.



Hikoi, Urban Migration

What proceeded and followed had devastating consequences for Ngāti Rango as the people stumbled through the changes that were forced upon them.

1841 All “waste lands” other than that needed for Māori occupation is made Crown Land. 1844 Native Trusts set up to help transition Māori into becoming Pākehā. 1846 Crown Right to pre-emption is set up. 1852 Constitution Act Right to vote based on single title ownership excluded Māori as communal owners. 1862 Native Lands Act, created to disperse Māori Land 1863 New Zealand Settlements Act and Suppression of Rebellions Act combined to assist Māori Land Confiscation. 1864 Native Reserves Act places all Māori Reserve Land under Crown control.

The Crown’s strategic push to alienate Māori from their ancestral lands “the stripping conquest” didn’t just take the land it stripped a people of their wairua, mauri and mana. All these Acts triggered the erosion of Māori tradition and culture.

The influenza epidemic that followed the first world war, in two months, killed around 9,000 people and Ngāti Rango whānau among them at its peak, a make shift hospital was set up at Kākānui. An epidemic that resulted in loved ones laid to rest in swamps and marshlands where they still remain today. Ngāti Rango had forebears as did others of Ngāti Whātua, who fought in that war and hospitalised at Fort Cautley, Devonport on their return.

Ngāti Rango suffered again after the second world war. Celebrated and decorated they returned to suffer the indignity of having their lands once again taken, this time for

resettlement of the returning Pākehā soldiers who they had fought alongside. A real kick in the guts for Ngāti Rango, because they had not heeded the call from Princess Te Puea their Waikato relative to boycott enlistment.

This is a compelling piece of relevant Ngāti Rongo history as it dates back to the arrival of the Bohemian People and the day they were summoned by the Crown to take part in the Waikato Land Confiscation War which is well publicised. What people don't know is the fact that the Bohemians were being summoned to fight and kill the cousins of the very people who they were indebted to for keeping them alive as they struggled to live on these lands.

As a consequence of the land confiscation wars, Princess Te Puea was not about to let her men do similar in going to war against people they had no gripe with. Had Ngāti Rongo not been decimated as a result of Te ika ā Ranganui in the infamous battle with Hongi Hika, they would have stood alongside their cousins in the Waikato land wars.

Instead they took rear guard action freeing the captives from that war “their cousins” who were incarcerated on Kauwau-Maroa, Kauwau Island. Once freed they were gifted land by Ngāti Rongo at Opahi as they could not return to their own lands now confiscated by the Crown. Later they moved further inland to avoid recapture, building a small pā just off the main pathway that ran along the highest point of the Dome Valley, not far from the proposed landfill.

·Māori were now forced to eke out an existence on small remnants of ancestral lands that could no longer sustain their families and by the early 1950's they were abandoning these lands in what was referred to as the urban migration. Families packed up and moved to the Cities looking for work and in doing so forfeiting what little lands were left to cover unpaid rates. The flattening out of land interests as if all are equal, as the Native Land Court did 150 years ago was deplorable and unforgivable.

Kaitiakitanga, Guardianship

Another Māori concept that the RMA has dumbed down “Other matters” that must be regarded by people with conflicting interests. What does that actually mean, “he talked very wisely, but I regarded him not” this quote from the Oxford Dictionary, sums it up nicely when this Traditional Māori concept is confronted by conflicting economic interests.

Kaitiakitanga was a concept used by Māori to define conservation customs and traditions, including its purpose and sanction through Rāhui. Kaitiakitanga and rangatiratanga are intrinsically linked where the rangatira sanctioned and enforced Rāhui over all he surveyed, which is not a lot today and this is merely the introduction to this traditional concept.

Ngāti Rango have a history steeped in kaitiakitanga in which god’s little creatures figure prominently, lizards and owls are feared by some and revered by others, a cultural norm. Pokopoko-Whiti-te-Ra, Pokopoko who makes the sun shine, Pokopoko. Pokopoko-herehere-taniwha, Pokopoko who binds taniwha, taniwhaPokopoko.

A legendary Ngāti Rango Taniwha who some say became a man was also revered and feared as were other Taniwha that reside in the Kaipara like Humuhumu which raises another concern for Ngāti Rango in relation to the Hōteō and Kaipara. Both are mentioned in Margret Orbell’s book, Māori Myths and Legends. Legend YES, but they are far from myths where Ngāti Rango are concerned as some of us have been lucky enough to get up close and personal.

Kaitiakitanga is another Māori concept that invokes the dumbing down of cultural

norms referenced by the High Court in 2012. Blatant ignorance is when people make decisions that suppresses the cultural beliefs of others, which in-turn forces Māori into reactive mode as we are witnessing today. The WMNZ proposal has also encountered this reaction when a rāhui was placed along the banks of the Hōteu created out of frustration.

Hohepa Kereopa in his book *Tohunga*, written by Paul Moon explains:

“When one considers kaitiaki, you have to consider for what purpose it is being used. If you have a pipi bed, for example, you cannot talk about kaitiaki until you know all the concepts and life of the pipi” [and it must be for the pipi’s wellbeing and not yours].

Without giving verse by verse, he’s simply saying that all life was imbued with mauri, wairua and mana and you were inextricably connected to that life force and when you nurtured and protected it as a kaitiaki. It reciprocated by extending your knowledge and learnings. Symbiotic relationships epitomise the ethics of kaitiakitanga in its unadulterated form and today man ignorantly overlooks these Mātauranga Māori teachings.

If one was to have regard for Kaitiakitanga as conveyed by Hohepa, then the kaitiaki assigned to the WMNZ landfill proposal would have to be accorded the opportunity to learn everything there is to learn about the Dome Valley landfill. This approach has been conveyed to the applicant in respect to a site visit to the Cape Valley Landfill in Canterbury to see in the flesh what is being proposed for the Dome Valley?

Te Tiriti o Waitangi, The Treaty of Waitangi

This subject, while historically important, does little to preserve or promote what has been covered so far and to date the due process that houses these issues in respect to who has interests are determined as Waitangi Tribunal matters during this process.

Having said that the claims process has also dealt a harsh blow to culture and tradition by stealthily and divisively severing Ngāti Rango land interest by inserting a line right through the center of their historical area of interest. Stamping Mahurangi on one claims sheet with another in south Kaipara.

Needless to say, with limited resources it created a split. Confusion reigned within Ngāti Rango especially when those interests were later swept into the Runanga o Ngāti Whatua last and final settlement claim and we note once again by the Crown. The sad thing is that the people of Ngāti Rango never got to speak before the Waitangi Tribunal.

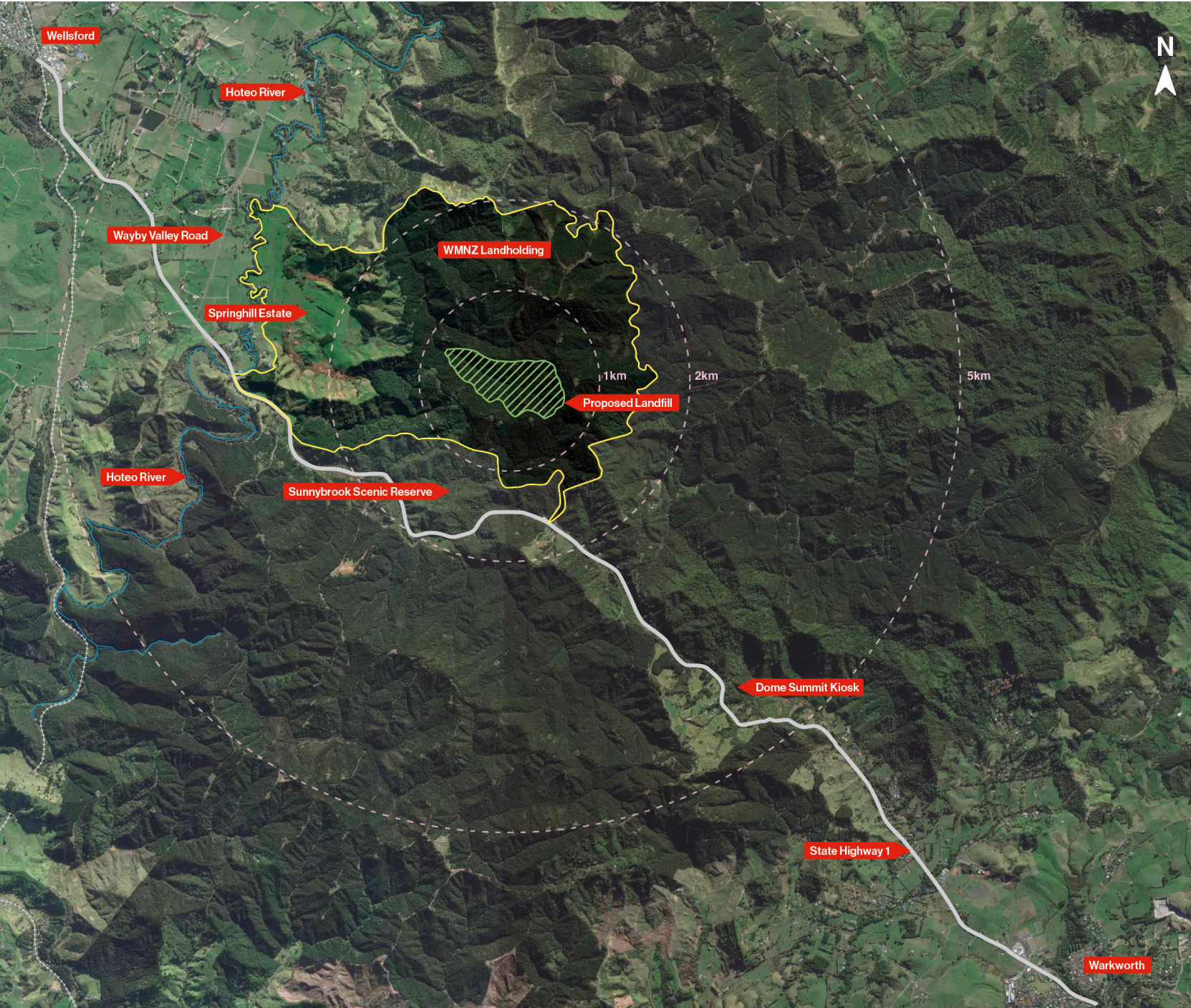
That was left to the two descendants, who on the very last day lodged claims on behalf of Ngāti Rongo. They went down the path alone and spoke through their hearts when they got their chance to speak to their respective Ngāti Rongo claims under the banner of the Mahurangi collective. What kind of justice is that?

This concludes the statutory Part 2 matters and even before we've actually looked at things like avoid, remedy or mitigate the popular chorus that was loudly echoing in the 1990's. Today we are starting to see why the confidence of Ngāti Rango is waning and one gets to understand the attitude shift that has occurred over the last two decades.

The Waste Management Dome Valley Landfill Proposal

As stated, Ngāti Rongo did not oppose WMNZ's Redvale landfill application two decades ago. Today, they do oppose and it's not rocket science. We're simply not comparing apples with apples. 20 years ago, Ngāti Rongo were looking at a kūmara, a sweet potato with smooth skin and a sweet taste. Today we are looking at a large grapefruit, rough skin, full of juice and pips and we can't be sure if its sour or not. That's not a palatable prospect.

Dairy Flat, is a reasonably flat parcel of land with a moderate rain fall, whereas the Dome Valley is the complete opposite steep country with a high rainfall which means there's no certainty when you peel the surface back, hence the comparisons between the kūmara and the grapefruit.



Proposed Landfill location

Te Taiao, The Receiving Environment

Through a Māori lens the proposed landfill area within the Hōteoro catchment has literally been raped and pillaged and that continues with ongoing farming and forestry production. As a consequence, the Hōteoro and Kaipara continues to suffer, as do the Tangata Whenua.

That too is not a good place to start from. When considering an application for a landfill, as the Ngāti Rango people can only see hurt and suffering as they felt on their site visit. That feeling is the taha wairua that resides in a people's DNA and that can't be suppressed or ignored.

Mahere Takirua. Contingency Plan

Ngāti Rango have opposed this application for a landfill on the northwestern side of the Dome Valley ridgeline. However as traditional users of the ara, *ridgeline - pathway* they're only too aware of the threats posed from the south - "Auckland's Growth".

To combat these threats a vigilant kaitiaki must have a contingency plan and while Ngāti Rango may feel powerless to stop what's coming, it needs to be well prepared when it arrives.

This places Ngāti Rango between a rock and a hard place, but they've been there before and the fact that they are still here today. Shows their resilience and that's not about to change anytime soon, it's in their DNA.

Ngāti Rango are aware of Auckland's needs, but are the people of Auckland aware of the needs of Ngāti Rango?

People are dumping their old car wrecks and rubbish into the ancestral waterways of Ngāti Rango. A pandemic symptom of Auckland's growth and It appears that AC are only interested in if they can identify and prosecute the offender. To back that up, listen to the Auckland Council message broadcast on the radio.

Ngāti Rango lodged a complaint two years ago and to date those wrecks remain imbedded in the soft silts of Makarau. It's not just the people of Auckland who are ignorant and unaware of how this behavior affects Ngāti Rango. People within the tribe are also doing it, because they don't want to pay the collection and tip fees.

Placing Ngāti Rango between a rock and a hard place once again – something that we

now seek to amend. Ngāti Rango are now against the rock with the hard place pressing against them and they're pushing back. It's not just the application to be considered it's all the other cumulative effects that have arisen over two decades.



Kaupapa / Mitigation

Ngāti Rango have put out feelers to see what mitigation would accompany the application that might result in some “meaningful” restoration and enhancement package. As yet that’s fallen on deaf ears.

Ngāti Rango have discussed amongst themselves things like. All pines that come out must be replaced with natives. The establishment of a tuna, eel hatchery. A fisheries joint-venture with the Chinese owners could be considered cultural diversification.

A partnership where we learn from each other. At the same time re-stocking waterways that have been depleted. That’s what Kaitiakitanga should look like today. We restore first, harvest sustainably and we restore culture and tradition by putting tuna back on the Marae menu.

Both cultures consider it a delicacy and it’s a viable mitigation win / win, socially, culturally, environmentally and lastly economically as the landfill proposal sits within the Hōteao catchment.

The establishment of a native nursery in the general area pre-construction. A definite win/win that Ngāti Rango can’t believe is not on the table considering what’s at stake. The removal of the Wattle (*Acacia mearnsii*) has been tagged by WMNZ should consent be granted. Ngāti Rango sees that as a mitigation opportunity and once again the bird remains caged.

The one for one forestry restoration mitigation is a no-brainer. It’s a win / win socially, culturally and environmentally as the returns are tenfold. Ngāti Rango have visual evidence of that along with the higher carbon credits, it’s bemusing.

While there is a financial return on pines replacing pines approximately every 25 years. There are also the harvesting effects and continued sucking up, of nutrients of Papatūānuku and that's not sustainable.

Western science labels it “Global Warming” Ngāti Rango see it as “retribution”. This application wants to take, but it does not want to give back “meaningfully” from a cultural perspective. Ngāti Rango have many whakatauki, mantra, that applied to conservation and restoration. Teachings, such as if you take you must also return. Ngāti Rango don't see that recognition and provision in this application.



Te Awa o Hōteō, nature undisturbed on the left and sterile pines on the right.

Kaupapa Kōrero, Consultation and Engagement

Having stated the above Ngāti Rango needs to declare that they have only seen the application pre-application show that was well presented by WMNZ prior to lodgment of the application. Ngāti Rango have met with WMNZ kanohi ki te kanohi, rangatira ki te rangatira. And on four other occasions with senior management.

Ngāti Rango and WMNZ facilitated a joint public hui in Helensville as an introduction and concluded with a Wānanga at Kōtare Lodge late 2019 which included a site visit to the Dome Valley proposed landfill site. Consultation and engagement has been ongoing and exemplary with an open-door policy that Ngāti Rango has really appreciated. It has ticked all the boxes from a cultural perspective.

Puka Tono, Application Lodged

The WMNZ landfill application lodged with AC has not been sighted by Ngāti Rango as that beast is a whole different story and ball game. Boxes and boxes of detailed information, graphs, drawings and pictures for Africa, days to read and thrice as long to understand. As a decision maker that understanding needs to be gained. This is the nuts and bolts of the decision-making, testing the evidence for uncertainty, contradiction, gaps in information and fake news.

This is a fundamental and critical part of the process that fails Ngāti Rango, as they don't always have the expertise on hand to challenge the information contained in all the reports and in this case, pick a number between eight and eighteen. Ngāti Rango are sadly not in any position at this juncture to test the technical expert evidence, what it can't do it can't do. All the consultation and engagement in the world won't change that fact.

Hononga – Relationships

Cutting to the chase, the strength and integrity of any relationships are the corner-stone indicators of meaningful value, . As stated in the introduction of this response and at several hui Ngati Rango and Waste Management formed a relationship two decades ago. Upon close scrutiny that 20 year-span shows an 18-year void in the relationship. So, what does that say about the quality of any future relationship between Ngāti Rango and Waste Management.

Ngāti Rango acknowledges the tenure of Waste Management personnel with a pledge to continue to respect and enhance those relationships. What can't be anticipated or guaranteed is ownership. In two decades ownership of Waste Management has changed three times. With those changes came policies of uncertainty - a concern for Ngāti Rango people based on some 35/45 years of operations with a further century of landfill after-care.

The Landfill emphasis simply states a reference to “alternatives” that would encourage Ngāti Rango to take a different stance should that occur. Ngati Rango sees potential in the restoration of tradition and culture within these “alternatives” that will only be realised through the strength and integrity of the relationship.

Hātepe, Process

Ngāti Rango, are currently re-evaluating the RMA and consenting process here in Auckland as there have been some significant changes since the 2010 re-set. No longer do you see avoid, remedy or mitigate the first amendment back in the day working alongside some of the best RMA kaitiaki practitioners one could wish to meet.

During that time when faced with a proposal like this landfill application. it was a very open shop you could cosy up to the consenting authority's experts and pick their brains and that proved invaluable. Today that doesn't happen, you need a swipe card to enter their fortress. it's now a closed RMA process where they will see you when they need information or when they have a vested interest in the outcome.

RMA Kaitiaki on the ground back then lived and breathed culture and tradition and you worked alongside your kaumātua. Today they get sent along by their Marae using the Pākehā tikanga process conveniently laid out by the Crown like a Venus fly trap and a CVA is a pre-requisite. The very dumbing down situation that the High Court referred to in 2012.

Cultural Values Assessments are a fine example aiding and abetting this unfortunate situation is the Consenting Authorities ability to exploit and withhold this information citing section 42 of the RMA.

A local authority may, on its own motion or on the application of any party to any proceedings or class of proceedings, make an order described in subsection (2) where it is satisfied that the order is necessary—

(a) to avoid serious offence to tikanga Māori or to avoid the disclosure of the location of wāhi tapu; or

(b) to avoid the disclosure of a trade secret or unreasonable prejudice to

the commercial position of the person who supplied, or is the subject of, the information — and, in the circumstances of the particular case, the importance of avoiding such offence, disclosure, or prejudice outweighs the public interest in making that information available.

Ihumātao is a case in point, Auckland Council can be credited with stealthily opening that Pandora's Box. Self-Family Trust v Auckland Council, exploiting culture and tradition, to get the outcome they wanted. Auckland Council land grab, another reserve.

To achieve that, Māori culture and tradition was effectively compromised. A collaboration between Auckland Council – Māori did the unthinkable. Declaring under oath that gardens were tapu and therefore culturally significant.

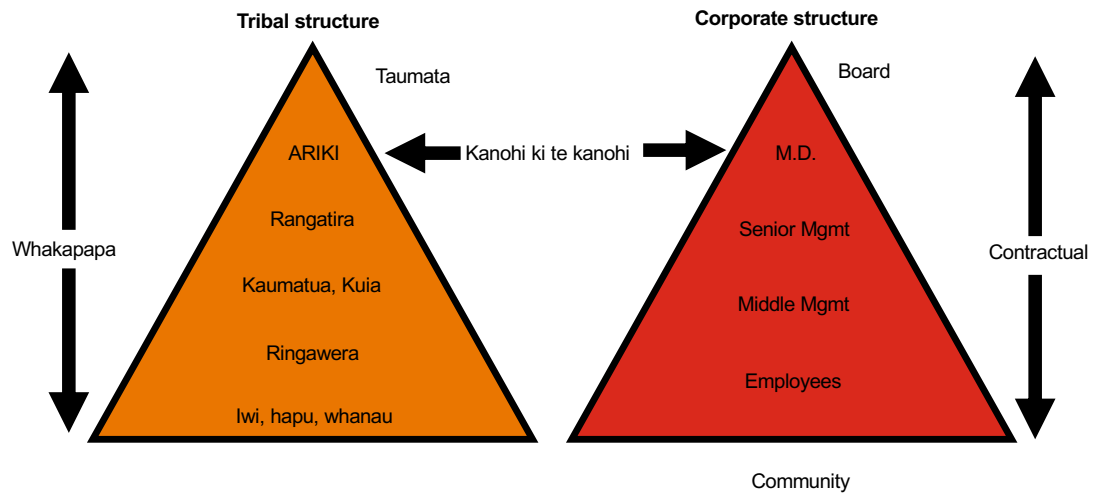
Māori all around Aotearoa, will tell you that food neutralises tapu and they would never grow food on sacred tapu land. I'm very familiar with these matter, I was the one responsible for cooking the food on such tapu occasions under the tutelage of my kaumatua.

AC were very calculated and clever, convincing the Environment Court that on this particular occasion that wasn't the case. These gardens were tapu, Māori said so, "it is not for Auckland Council or this court to contradict them... That position is consistent with the holistic character inherent in the Māori World View".

That single Environment Court decision is the most powerful statement a court has ever made, while Ngāti Rango may differ on the gardens aspect. We welcome with open arms that finding. Which is reiterated again under the heading cultural landscape.

The tapu claim would never have happened 20 years ago, the RMA kaitiaki back then had kaumātua to keep them on the straight and narrow. Today those checks and balances are sadly missing. It is important that Ngāti Rango understand that as well, opposing an application is one thing, stopping it being consented is another.

TRIBAL STRUCTURE VERSUS CORPORATE STRUCTURE



Mātauranga Māori v Western Science

On a personal note, I've completed the RMA circle in three decades much the same way as we are now seeing with western science. On Stewart Island and Muriwai, marram grass was introduced to subdue the movement of sand dunes in order to save the Pākehā farm lands despite objection from tangata whenua.

Today marram grass is being eradicated to restore nature's natural cycle and the sand dunes are once again being restored to their natural state. Today the Pākehā scientists are totally intrigued by how nature can look after itself and iwi tried to share that knowledge when they opposed the marram earlier, but they didn't want to know.

Within our tribal area of interest, the introduction of exotic species is well documented and estimated to cost this country \$1.7 b a year and that's not taking into account the cultural and social costs. It wasn't only the Marram the North American Radiata pine was also introduced with devastating environmental, cultural and social effects.

Tangata whenua lost vast areas of natural sand dune wetlands, home to plants and fish species that sustained them. The loss of those wetlands was due to the introduction of pines and that cause and effect went beyond the wetlands themselves.

Fresh water drained into the Moana providing sustenance for the toheroa another taonga no longer to be found on the Marae menu. It's all very well reseeded the beach's, but the toheroa needs fresh water to sustain it, just like the pipi and while the pine tree retains a \$ value. Restoration and recovery at Muriwai and other beaches will never happen.

This scenario also exists in the Dome Valley where the landfill is proposed. While it has been flagged with the applicant in bright RED at every opportunity a stand-off exists.

This application is laced with western science, protecting marginal wetlands, bats, lizards and where is the Mataranga Māori provision referenced in the AUP?

There are many more examples that iwi have experienced first-hand I could provide in respect to western science follies that have taken place in and around Auckland. Unfortunately, these science projects have had their rendering effect and there is no stitching it back together.

Taunaki Tāpiripiri, Cumulative Effects

As stated earlier, Ngāti Rango accepts Auckland's need for a future rubbish disposal option going forward. There are whispers of an incineration plant down south at Meremere, but that option has been mooted before and costs are likely to take it off the table. Especially with growth predicted to head even further north.

What hinders this situation is the general lack of understanding as to what is actually happening at that spacial planning level. The other spanner in the works for iwi in Auckland relates to the new age kaitiakitanga principles at play at the top mana whenua consultation table. Where large infrastructure projects are being presented to kaitiaki minus the detail who are none-the-wiser allowing them to be fast tracked.

A new 600 sewer line from Hobsonville crossing the upper Waitemata on its way to the Rosedale Road Treatment Plant is well underway and Ngāti Rango can only sit and observe.

A pending wastewater capacity issue at the treatment Plant will be exacerbated by the Northshore property boom. Infill housing and high-rise apartments draining into an existing and aging sewer infrastructure with a carrying capacity exceeded 15 years ago.

A permitted activity under Auckland Councils newly minted Unitary Plan to help solve Auckland housing crises. Over a decade ago Northshore was required to build sewage holding tanks in an attempt to manage flows in order to prevent untreated effluent discharging onto Northshore's beaches. Raw sewage discharges on the Northshore are happening more frequently today than ever before and Auckland Council continues to turn a blind eye.

As a resident living on the Northshore who spent 10 years as the Chair of Watercare's now disbanded Māori Advisory Group along with 20 years as a plumber/drain-layer

I know a thing or two about sewer networks. Enough to know that a health crisis is just around the corner and if anyone is wondering how this is relevant, it will happen within our tribal area of interest and it relates to cumulative effects and this is just the tip of the iceberg.

Heipū Tūtohu, Conditions of consent

Understanding the mitigation methodology is important as there are always competing interest at play. Conditions must also be fair, achievable and enforceable. In plain speak, conditions are the last cab of the rank for Māori.

Two decades ago when the Rosedale application was on the table, Ngāti Rongo were dealing with a very open RMA process. This was a new piece of legislation and avoid, remedy and mitigate was where one started back then and conditions never worked for Ngati Rango.

Those affected then had three options available to them: avoid being the first, it's not happening, end of story. Remedy was the next; could the effects be offset, a win-win solution and if that failed you looked at ways of mitigating the effects through conditions of consent.

Fast forward 20 years and it's a whole different ball game. Newly minted Plans, legislation and experts for Africa, out with the old and in with the new. Rather than taking a step forward, it's two steps back and as a result culture and tradition continues to erode.

Whiu Para, Waste disposal

The European's undignified disposal of bodily waste dates back centuries when it wasn't uncommon for them to toss their waste onto the street below and they arrived in this country with this mind-set. What follows is a true depiction of that attitude.

The Ligar Canal was an infamous open drain that ran down Queen Street, Auckland. Raw sewage discharged into an open drain that discharged directly into the Auckland Harbour leading to high rates of disease-driven death, circa 1860's. 100 years later Auckland's rubbish was also ending up in Auckland's inner harbour.



Traditional Maori waste disposal sites

Historically Ngāti Rango disposed of everything from the land back to the land including bodily waste. Their consumables were all natural and hundreds of years later those disposal sites “shell midden” are considered heritage sites of cultural significance today. They are also noa, uncontaminated and therefore, free from tapu.



Contemporary Landfills

Landfills then and now will never be that, they will be tapu for centuries. Today they are classified as contaminated sites never to be used again. Ngāti Rango currently have three contaminated coastal landfills, three or more decommissioned contaminated municipal landfills and one operational at Redvale.

These are hakihaki - festering skin sores that man has inflicted on Papatūānuku, Mother Earth, Ngāti Rango declare that as kaitiaki this must end. The people of Auckland must look for other ways to deal with waste. Landfills are not the answer in the way that they are being proposed and used today.



Papa Ahurea, Cultural Landscape

This is the slippery slope that culture and tradition is sitting on today and the Environment Courts findings below, tend to support this summation:

Iwi and hapū around New Zealand are, subject to resolution of Treaty of Waitangi claims, often obliged to be content with that sort of approach. However, where the mana whenua has been shrunk repeatedly there must be a line where the duty to accord “sufficient weight” to mana whenua values (including Mātauranga Māori) entails that a local authority (and or appeal, this court) should consider whether more is required.

The submission also misses a fundamental aspect of mana whenua which is that it is for tangata whenua group (defined as discussed earlier) to decide how their kaitiakitanga should be exercised. If Te Ākitai decides they consider the mauri of the area requires maintenance of all the land Te Kapua Kohuara and Pūkaki Peninsular, it is not for Auckland Council or this court to contradict them... That position is consistent with the holistic character inherent in the Māori World View.

Section 74 RMA as explained in the Bay of Plenty case. We consider the obligations to take into account the principles of the Treaty of Waitangi must not be ignored. Further, it is a matter of national importance under section 6 (e) RMA to recognise and provide for (and this means much more than lip service by future use of “overlays”) the relationship of Te Ākitai and their culture and traditions with their ancestral lands

and adjacent water and there wahi tapu. If that provision is not made now, there will be no further opportunity because the counterfactuals' proposed developments would lead to an irreversible fragmentation of the Te Ākitai cultural landscape.

Ngāti Rango welcomes these “*case law*” findings. “*The shrinking effects leading to the irreversible fragmentation of a people*”. While it may not have been Auckland Council's intention, it now puts Auckland Council on notice with respect to how they recognise and provide for culture and tradition.



Kapinga, Conclusion

Ngāti Rango are the first to acknowledge that we have a waste disposal problem in Auckland that isn't going away and our wider environment is at risk if we bury our heads in the sand.

Ngati Rango welcomes the debate around alternatives that prevents man from abusing Papatūānuku and that needs to happen before this application is considered by Auckland Council.

412.1

Ngāti Rango would like to be part of the solution in a meaningful way wherein culture and tradition is recognised and provided for, achieving a collective and collaborative approach to addressing Auckland's long-term needs.

412.2

It is difficult to see where understanding and provision for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu and other taonga resides in the application. This leaves Ngāti Rango with no other choice than to oppose this application.

412.3

2020 is the year of the rat

Chen said this legend explains both why the rat is the first animal in the Chinese zodiac and why cats appear to hate rats. Still, the rat is associated with more than just deceit. According to Chen, the rat is known for his speed and cunning, and the Year of the Rat brings careful planning and increased wealth.

Kāti ki konei.

☯ KATE VALLEY HĪKOI ☯

WASTE MANAGEMENT NEW ZEALAND
WAYBY VALLEY PROPOSAL
A NGATI RANGO RESPONSE



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Mā te rongo, ka mōhio
Mā te mōhio, ka mārama
Mā te mārama, ka mātau
Mā te mātau, ka ora!

Through listening, comes awareness
Through awareness, comes understanding
Through understanding, comes knowledge
Through Knowledge, comes life and well-being

Introduction

“Ngāti Rango are the first to acknowledge that we have a waste disposal problem in Auckland that isn’t going away and our wider environment is at risk if we bury our heads in the sand.”

The above statement is taken from Ngā Taonga o Tuku Iho. The first written response from Ngāti Rango to these two concurrent Waste Management (WMNZ) applications to construct and operate a landfill in the Wayby Valley. Ngā Taonga o Tuku Iho captured the heart felt feelings of the Ngāti Rango people. A factual snap shot of their traditional and cultural relationship covered in Part 2 section 6e of the Resource Management Act (RMA). Section 7a covers kaitiakitanga in part, simply because it falls short of implementing its traditional and cultural application, the critical component of kaitiakitanga as quoted below.

“When one considers kaitiaki, you have to consider for what purpose it is being used. If you have a pipi bed, for example, you cannot talk about kaitiaki until you know all the concepts and life of the pipi” [and it must be for the pipi’s wellbeing and not yours].”

When the analogy above is applied to the proposed WMNZ Wayby Valley Landfill applications Ngā Taonga Tuku Iho asserts that Ngāti Rango had **not fulfilled** their kaitiaki obligation and responsibilities. Noting, that a reciprocal site visit to Canterbury had been contemplated on a number of occasions over the engagement and consultation process with WMNZ. Ngāti Rango wishes to acknowledge this site-visit as we embark on the *Second-Generation* of this important partnership arrangement with WMNZ.

Kate Valley Site Visit

An opportunity arose to combine a site-visit to Kate Valley with another pre-arranged event in the Canterbury region. A proposition was put to WMNZ to support with assistance for a two-person delegation from Ngāti Rango to which an agreement was reached to proceed.

Meeting Ngai Tūahuriri / Ngai Tahu at Tuahiwi Marae affords a discharge of the customary obligation to establish their sanction for this site-visit. There are aspects of this *obligation* that will cast a distorted light on the flagrant disregard of such a base-line protocol of engagement from our Ngāti Rango view-point.

This site-visit also included a tākoha for the haukāinga of Tūahuriri in the form of copies of the group photo of Ngāti Rango, WMNZ as well as the Ngai Tahu representatives from the 25th May 2000 occasion at Redvale. That image had been taken to celebrate and capture that historic day “*that moment*”. Today a number of very important people in that photo are no longer with us. Acknowledgment of those people is part of the succession between the *generations* to be expressed in the proposed *Second-Generation-Relationship* that will *give real effect* to the purpose.

Our delegation landed at Christchurch 10.50am, 18th March 2020 where we were met by Mr Gareth James General Manager, WMNZ [South Island]. We then proceeded to Tuahiwi Marae where we were welcomed by the haukāinga. In our response we presented copies of the photo received prior from WMNZ with an explanation regarding the addition of names to the faces. They acknowledged by agreeing to provide the names of their people with Ngāti Rango along with WMNZ doing like-wise. The named photographs will then be distributed to the three parties and from a cultural perspective it introduces the *Second-Generation-Narrative*.

These special inter-tribal encounters do provide for *matters of focus* to be raised with a view to agree on next steps towards resolution. While Ngāti Rango may not have had direct involvement in respect to this sensitive matter there will always be a perception that as we are part of Ngāti Whātua. Ngāti Rango are implicated by association. During the reign of the Hon. Gerry Brownlee as Minister for the Christchurch Rebuild contractors were sought. One such company arrived wearing a Ngāti Whātua o Ōrākei korowai. Needless to say, it involved a reputable demolition company with connections to Ōrākei who indiscriminately dumped contaminated earthquake rubble and waste in the proximity of an awa. In light of the Fox River catastrophe Ngāi Tūahuriri shared their grave concerns for these past actions with the delegation. It also provides Ngāti Rango with a stark reminder of the impact when unscrupulous operators collect then dispose hard-fill waste **unconsented**, within their rohe.

The situation above is ironic in more ways than one, as the wonderful literature that Transwaste Canterbury Ltd [TCL] provides to all visitors states the KATE VALLEY 10 YEAR REVIEW 2005-2015 [Pg. 21] a picture of a beautifully carved swamp kauri table presented to Te Runanga o Ngāi Tūahuriri by **Ngāti Whātua o Ōrākei** facilitated by TLC. Someone had got that completely wrong. That reference by TLC is so incorrect. This situation pales in comparison to the indiscretion by our Ōrākei kin-folk and in due course we are confident TCL will rectify accordingly.

A critical **game changer** for Ngāti Rango as kaitiaki will undoubtedly be the impact of the Kate Valley Landfill experience. The recent site-visit revealed what had been achieved by TCL through this period that included the indelible period of seismic turmoil unprecedented in the geological history of Aotearoa *post-Māui*. That achievement, however, has come with a *high-price*. It is a world-class community amenity, operated and managed jointly by five councils, WMNZ along with meaningful ongoing input from the community and mana whenua. This is a Canterbury community that has gone

through tumultuous issues with the trials and tribulations of managing waste. The early 1980's saw city-wide rubbish piled-up at street level due to strike action. That period of turmoil saw the involvement of Ngāti Rango members as employees of Auckland-based rubbish collection contractors engaged by Christchurch City Council to provide the *clean-up* required. A compelling personal account will be articulated further in due course. One which saw them remain and raise families in Christchurch and having that knowledge on the site visit was invaluable. Having two sets of eyes and ears on this special occasion is also very important when it comes time to share this experience with uri of Ngāti Rango.

Ngāti Rango will strive for informed decision-making through this period of Second-Generation-Engagement that aligns with the practical expression of kaitiaki obligations as well as responsibilities. www.transwastecanterbury.co.nz, www.tiromoanabush.nz, and www.tiromoanawalkways.nz

**He aha te mea nui o te ao.
He tāngata, he tāngata, he tāngata
What is the most important thing in the world?
It is people, it is people, it is people.**

Inter-generational Succession

Anchored to the past, yet geared to the future is a modern day whakatauki / proverb that encapsulates the transition between the past, the present and the future. In 2000 the Ngāti Whātua korowai was uppermost in the context of our identity. Then came the era of Treaty of Waitangi Settlements which had a wide-bearing impact on Ngāti Whātua identity is best left for a far wider brief to do it all justice. This *Second-Generation-Quest* however, will mark the 2020 annals of Ngāti Rango with the extreme challenges to managed growth, the constant undue pressure on environmental well-being as well as the impact of this pandemic of unprecedented proportions as Covid-19.

Such a context typifies that this is not the time to procrastinate – we must act with pace with urgency. One critical action for Ngāti Rango will be the pursuit of *solutions-based options*. Landfill discussions will inevitably include the NIMBY syndrome, *not in my backyard* as a precursor for most deliberations. The extension to such discussions must include the management of waste for the largest resident population in Aotearoa New Zealand. The nature of the instruments of engagement for the *Second-Generation-Relationship with WMNZ* must surely rate at the top-end of the priority scale.

Ngāti Rango, as hosts, must now revert back to tradition and culture that considers the needs of their manuhiri, those non-mana-whenua that reside amongst us. Within that set of customary principles and values it includes the management of waste at a BIG picture level. TCL have a very strong example of how waste can be managed in the best possible way. That bench-mark provides options for an exploration of those aspects, values, provisions, benefits et al that have contributed to the strength of such an example.

Transition is not Translation

In May 2000 a delegation of Ngai Tahu was hosted at Redvale by WMNZ in partnership with Ngāti Rango. There were expressions of opposition to any such landfill in the Ngai Tahu rohe made during that historic day. The Redvale context was portrayed then as *a hakihaki on Papatūānuku that could be dressed and healed*. What was witnessed by Ngāti Rango representatives during the March 2020 site-visit to Kate Valley is that those *operations* have transcended the Redvale bench-mark. Ngāti Rango are now very keen to understand the marginal differences between these two operations along with exploring the opportunities that could be realised in the *Tē Awa o Hōteō* catchment, ridge-lines and river-systems.



Transwaste Canterbury Ltd

An innovative 50 / 50 public-private partnership set up to own and operate the Kate Valley Landfill on behalf of the shareholders of Christchurch's City and District Councils along with Ngai Tahu who have a firm foot in each camp. A public-private partnership that has taken waste collection, disposal and management to a whole new level, cementing itself as a must-see tourist attraction when visiting Christchurch. Auckland Council could learn a great deal from looking closely at the TLC model. Prolonging the inevitable by introducing community refuse recycling centres to support their zero-waste policy is flawed, as right now they are closed due to Covid 19 and rubbish is still being put out on the streets for collection.

The Kate Valley landfill operation and park like surroundings sets a breath-taking, TCL led creation of marvel. The site entrance is lined with geological fault-lines depicting layer upon layer of historic tectonic movements as well as weathered rock pitted with sea-shells providing a canvas for the portrayal of a most impressive TCL canvas. The site-office bears gratuitous acknowledgement in the welcome. Great pride is also taken in highlighting the step-by-step seamless operational package from rubbish pick-up to point of deposit. Energy conversion, leachate recharging efforts are both followed by insights to the environmental, social as well as the cultural initiatives along with the resultant achievements. It was an awe-inspiring session.

TCL have created a sustainable heritage park that is enlightening and humbling having languished in the first five years amidst the public out-cry. Opponents are now apologising for their lack of vision as to the TCL benefactors' role in the creation of this social, environmental and cultural remediated heritage park.



Impediments to Resolutions

Apart from the advent of pandemic proportions the impacts of apathy provide major challenges to productive engagement in the quest to resolve the issue of managing waste in Auckland. Then follows the myriad *of interest* groups that are *rather pop-up* by virtue of the whimsical fad of being *here today gone tomorrow*. It is a matter of real concern for Ngāti Rango to ensure that empathetic responsiveness is not translated as undivided agreement. The sources of locative cultural identity for Ngāti Rango accentuates values, place, power and narrative as iconic markers of a culture-base understanding of managing waste adaptation. At a fundamental level, it is the interaction of these iconic markers of culture that upholds the manner in which people respond to managing waste. Recycling aligned to the Auckland Council Zero Waste 2040 effort must continue to seek then to apply the adaptive measures for waste production within the context of managed growth and development. The matter of how waste is managed **does not end there**.

The risk of contaminants reaching *Te Awa o Hōteao* is the mega concern for Ngāti Rango. Any options that are inclined to minimising such risks must be prioritised. The practical innovations being applied in landfill operations must be scrutinised for consideration within the context of the *Wayby Valley Proposal*.

From a traditional, Ngāti Rango cultural perspective, the first principles for application relates that any matter derived from Papatūānuku being returned to those same origins at the *end-of-use*. In terms of the waste streams within landfills the Ministry for the Environment has the New Zealand Waste List which has been adapted from international lists then modified to reflect typical waste streams in New Zealand¹.

1 <https://www.mfe.govt.nz/waste/guidance-and-resources/waste-list>

The twenty categories within that waste list typifies waste derived from extractive, manufacturing or processing activities.

Understanding all sides of the cultural paradigm equation then moving-on to the phases of practical, balanced application provides a sound start-point. The application of Ngāti Rango kaitiaki values will be enhanced by the recent site-visit to the Kate Valley operations as a key component of such an equation. The transformational efforts of a partnership between mana whenua and an international corporate portrays a world class public facility operating as an amenity premised upon an innovative application of technology. The disposal of end-of-use material does provide an aspirational option for due consideration by uri of Ngāti Rango.

The values and the associated applications briefly outlined thus far are set-out in four key categories of economic, political, as well as cultural / spiritual when combined underpin the practice of kaitiakitanga or trusteeship for uri of Ngāti Rango. Implementing kaitiakitanga is as much about managing resources of the environment as it is about managing people including uri of Ngāti Rango. It applies to people, particularly between kin group leadership out to the wider kin group. An important reason for exercising kaitiakitanga is to promote as well as to enhance socio-political status of the uri of Ngāti Rango. Accountability, reciprocity, guardianship, trusteeship equally apply to leaders as well as their kin-folk as they also apply to the relationship between people and their environment.

Prioritising local initiatives within the context of this proposed landfill development will have the added incentive of a transactional engagement with Ngāti Rango across all facets of the phases of concept, design, construction, operation, maintenance as well as monitoring.

Repo, Wetlands

Whanga-repo is a probable name of the low-lying sub-catchment north of the Dome Valley ridgeline. A common anomaly from the early survey map recordings was the misplacement of vowels in reo Māori to then remain misspelt. *Whanga-repo* loosely translates to *harbour of wetlands*. The present-day landscape being far removed from what would have originally existed in that sub-catchment.

Wetlands have been variously described as *the kidneys of a catchments river systems*. The arterial functions of these catchment river systems must continue unimpeded across the entire Kaipara Moana catchment from the headwaters down through to the Tasman Sea. The *Te Awa o Hōteu* River system is one such network that must be prioritised in terms of the considered land-use options...

TCL have set about reversing that trend “*The Tiromoana bush concept revolves around a major conservation and bush restoration program that will see the area eventually restored to the original lowland and coastal forest that existed before people arrived in New Zealand*”.

WMNZ are considering a similar restoration enhancement program as mitigation sort by the consenting authority, Auckland Council and its experts which means very little in a tangible sense. Whereas TCL, put forward an ambitious plan to protect and regenerate bush, wetlands along with opening it up for public access proactive rather than reactive and the outcome speaks for itself. TCL’s consent was granted on the basis the company would protect, restore and manage a 407-hectare Conservation Management Area “Tiromoana Bush, wetlands and pathways.” Tiromoana Bush is protected in perpetuity a QE11 National Trust Open Space Covenant was gazetted on the title of the property in July 2006.

TCL have worked closely with the local Tangata Whenua in 2017/18 the ara / pathway was upgraded and an ika pou whenua acknowledging the importance of the area to Tangata Whenua was erected and unveiled at the coastal lookout overlooking Kā Poupou-a-Te Rakihouia. *Second-Generation* Kaitiakitanga in practice and president set for future reference a bench mark established on lands that move and crack as nature intended a feat that challenges the thinking of those who have their heads buried in the sand. Pride and ownership of these programs takes on a whole new meaning when the local community and Iwi are sitting alongside each other designing the legacy they wish to leave for those who follow. The model is up and running in Canterbury why would anyone want to recreate the wheel to success live local, work and play local is the recipe that feeds community unity, pride and prosperity.

Tātai tangata ki te whenua, ngaro noa, ngaro noa.

Tātai whetu ki te rangi mau tonu, mau tonu.

While people are here for a life time.

The stars in the sky are there for ever.

Ara Tupuna, Ancestral Pathways

These historical pathways mentioned in the previous Ngāti Rango response provide an opportunity for recreational open-space amenities in a managed form. The Kate Valley landfill layout provides such an opportunity for due consideration in the context of the Wayby Valley proposal.



Pou Rāhui

Following tradition and culture along with the acknowledgement by TCL expressed in Kā Poupou-a-Te Rakihouia, Ngāti Rango will explore options to express these special acknowledgements for the Redvale site post decommission date. While that expression may spell-out the closure of Redvale the ensuing *facility* will require similar oversight *per se* from the point of commencement.



Tuna- Hatchery and Factory

The establishment of a tuna hatchery, future proofed as a potentially viable production factory servicing the local and international markets. That is definitely *Second-Generation* kaitiaki vision based on the following.

Priority number 1 – restocking of a depleted fisheries in particular the threatened long finned variety;

Priority number 2 – restocking depleted tributaries as they are cleared of invasive biota;

Priority number 3 – restoring the status of *taonga species* thus making the resource accessible for catchment-based marae in the first instance;

Priority number 4 – development of sustainably viable options within the *proposed heritage option*; and,

Priority number 5 – the creation of local work-force development from entry-level to senior executive.

While this is also an ambitious plan the TCL operations have shown that these concepts are achievable within a committed partnership model. It is further asserted that socio-political status enhancement will attract sustainable resourcing for this Wayby proposal.

Restoration of Historical Heritage Sites

Restoring Māori tradition, culture and heritage sites is another priority that features prominently on the Ngāti Rango *Second-Generation* kaitiaki agenda and while Auckland is renowned for its volcanic cones and peaks where these sites prominently feature. Under the newly minted Auckland Unitary Plan there are provisions for protection, but not for restoration *per se* and Ngāti Rango wishes to pursue that line of enquiry and exploration.

Many of these heritage sites have been destroyed and ones that haven't are heavily modified through past and ongoing extractive activities. Successive authorities have not prioritised restoration of these *significant sites of Māori heritage*. Restoration possibilities could realise wider benefits to our society by minimising further perceived or real risks to the environment when disposing of contaminated waste in a contained and restorative restructuring.

**Tiakina mō ngā reanga āmuri ake nei –
look after it for the successive generations**

Retention of existing stands of pines

A major concern within the Hōteo River catchment is erosion, river-bank slump as well as river system overflow. Deforestation in the foothills, where native vegetation has been replaced by commercial pine plantations play a large role in unmanaged flooding. To continue such growth sustainably must first and foremost require more land-use planning policies on soil suitability.

On the market side, tools that reward sound land-use practices, such as sustainable certification schemes, should be promoted by consumers, producers, government bodies as well as development initiatives to safeguard the wealth of native forests. Simultaneously, Ngāti Rango must exercise influence on policy-makers at all levels to apply incentives that align with the goals of development across all forms of environmental sustainability.

Lack of alternative options can be a significant driver of unsustainable land use practices. A diversified rural economy which considers not only a wider variety of crops, but also non-agricultural activities such as forestry, eco-tourism or artisan wild-catch can generate resilient communities and jobs, reduce the rate of forced migration as well as protecting ecosystems along with their associated environmental services.

TCL have pine plantations on their vast land holdings and their explanation for retaining and harvesting made viable sense as opposed to what had previously been mooted by WMNZ. The TCL retention and harvesting program is all about sustainability. Maintenance, enhancement and restoration costs, offset by commercial pine plantation provides an uncluttered and transparent expression compared to the perceived state of uncertainty that currently exists within WMNZ proposal.

Kate Valley Operational Landfill and Construction Footprint

The operational landfill footprint stands alone while the cell fabrication of the new landfill footprint has to be seen to be believed and once again it appears seamless. The sheer size of the land holding is expansive with the central axis housing the landfill layout which is minute in comparison to the components of TCL **public facility including amenities**. The complex leachate collection and reticulation system, energy plant turning gas into electricity. The stand-alone container terminal where trucks unload sealed full containers and pick up empty ones are all carefully orchestrated to prevent the purpose-built trucks from entering the landfill or leaving the sealed road surface. These aspects are all measured and monitored within an elaborate operation of world class technology.

Clean and efficient transition is all controlled and managed by GPS satellite at home-base, a humble portable office-block overlooking the site. Specialised off-road tip-trucks collect the full containers to empty in dedicated disposal cell lined areas within the landfill. This disposal matrix allows a specific load to be located at any time during the life of the landfill then beyond. That value was demonstrated during the Canterbury earthquakes to assist Police murder investigations.



Big picture of operations. Gas on the left and Transfer on the right.



Above: Transfer Station
Below: Cell Lining





Above: Gas Plant

Below: Landfill Cells



Alternatives

Alternatives to landfills has been very topical and especially so since this proposed Dome Valley option hit the headlines. While that scepticism has been on the broil, there has been very limited public reference to viable alternatives. The one noticeable constant however, are the waste-bins out on the streets and rural roads come rubbish collection day.

Adding to the alternative confusion is Auckland Council's aspirational zero-waste 2040 strategy. A further major concern relates to those supporting the *Olivine incineration alternative* as presented at a meeting in Whangarei hosted by Te Rūnanga o Ngāti



Wayby Station Road Rubbish Bins

Whātua 28 January 2020. There are reputational credibility matters associated with this organisation to be seriously considered. The following relate some examples:

“*Olivine* NZ yesterday confirmed that it had canned its \$223 million scheme to re-fire the Meremere station to burn rubbish and generate electricity”. —NZ Herald 30th June 2000.

Similar pattern emerging today if we compare the article date being a month after the Ngati Rango 25 May inaugural meeting with WMNZ. Today we are seeing a grey cloud forming over incineration use.

“Satellite images have shown a dramatic decline in pollution levels over China, which is “at least partly” due to an economic slowdown prompted by the coronavirus, US space agency NASA says”. —www.npr.org Mar 04 2020

“*Environmental Possibilities: Zero Waste* features new ways of thinking, acting, and shaping government policy that are circling the globe. Each week, we highlight a success story in the zero waste movement, excerpted from the report *On the Road to Zero Waste: Successes and Lessons from Around the World* by the *Global Alliance for Incinerator Alternatives (GAIA)*. GAIA is a powerful worldwide alliance of more than 650 grassroots groups, non-governmental organizations, and individuals in over 90 countries. Their collective goal is a just, toxic-free world without incineration. Other Worlds is excited to promote the work of GAIA and the organized communities it works with, and hopes that the stories inspire you and others to begin moving your home, town or city, nation, and planet toward zero waste. —www.no-burn.org/zero-waste-by-2020.

Summary

There are two key aspects that sets out the immediate future:

1. Presenting findings from the Kate Valley site-visit to Ngāti Rango uri.
2. The two-step process to respond to the Wayby Valley Landfill Proposal.

There is, however, an **even more pressing matter** for Ngāti Rango uri. Uppermost in the minds and hearts of both Ngāti Rango along with Ngāti Whātua uri are the residual effects of this proposal on Te Awa o Hōteio that then meander on down to Kaipara Moana. Ngāti Rango do seek initial discussions with WMNZ around a proposed *Second-Generation relationship arrangement*. With such an understanding in place, Ngāti Rango uri can then approach the partnership with WMNZ with confidence to *give real effect* to the practical expression of kaitiakitanga.

The opportunities that lay ahead for this partnership approach is imbued with a *two-decade back story*. One critical aspect being the application of *lessons learnt* from that *First-Generation relationship* to the *Second-Generation context*. It is also critical to note that this time around still remains within the purview of Ngāti Rango. That position places even higher obligation upon uri of Ngāti Rango to discharge the utmost in the expression of host responsibilities to visitor's *rubbish and all*. There is a further traditional practice that should be added to these initial *Second-Generation deliberations* that is best left for that face-to-face exchange.

A key reason of critical importance for exercising kaitiakitanga is to promote to the expression of socio-political status for Ngāti Rango uri. The title of this paper expresses the context as *tiakina mō ngā reanga āmuri ake nei – look after it for the successive*

generations. This applies to the relationship between Ngāti Rango uri and their environment. The expression of kaitiakitanga has a base, threefold purpose for Ngāti Rango uri to:

- Secure the association with lands, resources and the status thereof;
- Access on-going *wild-catch* sustenance from nature's bounty; and,
- Maintain an economic and political resource-base for successive generation.

Ngāti Rango seek to consolidate a socio-environmental ethic for uri through the successive generations that binds the ancestral, environmental along with the iconic identity-markers. Moreover, the people – land relationship is synergistic; if the land is despoiled, human integrity is duly compromised, it is plain and simply harmed. On the basis of understanding to date, it would appear that the values, philosophies and principles that are an integral part of the Ngāti Rango world view can add further to the depth and breadth of understanding of values for successive generations. Essentially value for Ngāti Rango is a key function of relationships – between people and the natural environment, between tangible and intangible dimensions, between organic and inorganic material as well as past and future. These relationships constitute the cornerstones of a Ngāti Rango world view as we explore the immediate next steps.

**Tuia te here tangata, kia puta, kia ora
mō ake tonu ake, kāti ki konei.**

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