BEFORE THE INDEPENDENT HEARINGS PANEL

UNDER THE	Resource Management Act 1991 ("**RMA**")
IN THE MATTER OF	The Proposed Kaipara District Plan ("**PDP**"): Hearing Topic 10 – Māori Purpose Zone, and Hearing Topic 11 Sites and Areas of Significance to Māori

MEMORANDUM OF LEGAL COUNSEL REGARDING MATTERS OF PROCESS FILED ON BEHALF OF

TE URI O HAU SETTLEMENT TRUST.

Date: 20 April 2026

INTRODUCTION

1. This memorandum is filed on behalf of Te Uri o Hau and Environs, who are a submitter on the Kaipara District Plan (KDP) and mana whenua/tangata whenua for the northern Kaipara and mana moana over the Kaipara.

2. Te Uri o Hau Settlement Trust is a Post Settlement Governance Entity (**PSGE**) with the mandated responsibility and empowered by the Te Uri o Hau Claims Settlement Act 2002 to advocate and promote the social, economic and cultural interests of Te Uri o Hau beneficiaries. Te Uri o Hau has a defined geographical area of interest within the Kaipara region and a number of statutory acknowledgements. Environs in the environmental arm of Te Uri o Hau Settlement Trust and has managed the relationship with the Kaipara District Council.

3. This memorandum addresses several procedural matters arising through the process of the Proposed District Plan, namely:
    (a) whether KDC has complied with its Schedule 1 consultation obligations;
    (b) gaps in s32 reporting of feedback provided to KDC by tangata whenua and less than transparent reporting on engagement;
    (c) the failure to notify Te Uri o Hau's submission until 24 February 2026 and now 17 April 2026 band the subsequent exclusion of Te Uri o Hau from relevant hearings held between 25 August 2025 and February 2026;
    (d) the question of scope for Te Uri o Hau's further submissions filed in March 2026, procedural fairness and the appropriate process for identifying and scheduling sites.

4. Te Uri o Hau wishes to take a pragmatic approach and to work constructively with KDC and the Panel to resolve the identified process errors. However, Te Uri o Hau considers that it has been prejudiced by the way in which KDC has engaged with it. This memorandum should be read alongside the evidence of Ms Kemp.

SUMMARY

5. Te Uri o Hau says a series of procedural failings have materially prejudiced its ability to engage in the district plan process. At the outset, it maintains its primary submission position that the Schedule 1 consultation obligations were not properly

discharged, and that there was a failure to undertake adequate and meaningful consultation on the Proposed Plan.

6. In particular, the section 32 reports are said to be misleading in suggesting that meaningful engagement occurred. They also fail to summarise "all advice" received, omitting significant and detailed feedback provided by Te Uri o Hau during the 2021–2022 engagement period.

7. Further prejudice arose because Te Uri o Hau's submission was not notified in the summary of submissions until 24 February 2026 and was not considered in the section 42A reports produced on 1 December 2025, due to not being part of the summary of submissions and not notified of hearings between August 2025 and March 2026 which included the introductory and general approach hearings. As of Friday 17 April 2026, Te Uri o Hau were notified of a further two submissions points which were not included in the summary of submissions and are now notified.

8. Additional procedural issues arise in relation to the identification of Sites of Significance to Māori. Te Uri o Hau filed further submissions seeking the scheduling of 17 additional sites. Te Uri o Hau accepts that these were not clearly identifiable to affected landowners at the time of its primary submission notified 13 days of each other. This raises natural justice and scope concerns. However, if those sites are excluded, the earlier consultation deficiencies will be compounded. Te Uri Hau suggest an alternative response.

9. Te Uri o Hau suggests separating site scheduling from the relevant provisions in hearing 11 and undertaking a discrete, structured submissions process on site identification. This would enable proper evidential development, ensure affected landowners are informed, and allow for submissions and replies in a manner that addresses natural justice concerns.

10. Regarding the other procedural matters, Te Uri o Hau seeks a pre-hearing meeting with Council to find an appropriate pathway to address these matters. Following which we can come back to the panel with some options. At a minimum, Te Uri o Hau submits that the section 32 analysis must be redrafted to include an accurate record of consultation.

11. Overall, the deficiencies in consultation are fundamental and go to the lawfulness and integrity of the plan-making process. In particular, the failure to engage meaningfully with Te Uri o Hau on key aspects of the Proposed Plan has resulted in an approach that does not adequately respond to tangata whenua interests or give proper effect to the requirements of Part 2.

SCHEDULE 1 CONSULTATION REQUIREMENTS

12. Te Uri o Hau is a recognised iwi authority regarding schedule 1 obligations of consultation under cl 3, 3B and 4A.

13. During the preparation of a proposed plan, the local authority must consult with iwi authorities who may be affected and tangata whenua through iwi authorities[1]. A local authority is to be treated as having consulted with iwi authorities if the local authority
    a. Considers ways in which it may foster the development of their capacity to respond to an invitation to consult; and
    b. Establishes and maintains processes to provide opportunities for those iwi authorities to consult it; and
    c. Consults with those iwi authorities; and
    d. Enables those iwi authorities to identify resource management issues of concern to them; and
    e. Indicates how those issues have been or are to be addressed.

    (emphasis added)

14. Clause 4A requires that following initial consultation on an exposure draft for example and once a draft plan has been put together a local "authority must:
    a. Provide a copy of the relevant draft plan to the iwi authorities consulted under clause 3(1)(d); and
    b. Have particular regard to any advice received on a draft proposed plan from iwi authorities.

15. And at clause 4(2) "when a local authority provides a copy of the relevant draft proposed policy statement or plan in accordance with subclause (1), it must allow

[1] Sch 1 cl 3 (1)(c), 3B and 4A RMA.

adequate time and opportunity for the iwi authorities to consider the draft and provide advice on it." (emphasis added)

16. Consultation must be meaningful and allow an opportunity for iwi to influence[2] the outcome of decision making on the plan. Iwi must have the time and opportunity to provide feedback, simply going through the motions of consultation is inadequate[3].

17. Consultation under Schedule 1 is to be assessed by reference to Treaty principles, including good faith, partnership, and active participation[4]. In *Onoke*, the Environment Court emphasised that Schedule 1 requires meaningful engagement with iwi and hapū. That decision also considered a situation where the district council had provided an undertaking to iwi and hapū regarding working collaboratively on the scheduling of sites of significance, which was not subsequently followed through and put into the district plan. The Court indicated that such conduct was a failure to uphold the principle of partnership and may amount to a breach of Schedule 1.[5]

18. Section 32(4A) of the RMA sets out that a section 32 report should provide a summary of all advice received from iwi authorities as well as the response to such advice.[6]

OTHER AGREEMENTS FOR ENGAGEMENT BETWEEN KDC AND TUoH

19. The memorandum of understanding between TUoH and KDC, now revoked, set out:
    a. Pursuant to s63 of the Te Uri o Hau claims Settlement Act 2002 the Kaipara District Council is required to attached information on s63 to all its statutory plans and policy statements. A process design will be developed between the parties that will comply with this section. (8.1.3)
    b. District Council will provide Te Uri o Hau Settlement Trust with involvement in the decision-making process from the beginning for the development of Long-Term Plans and annual plans. (8.3)
    c. Direct consultation, Kanohi ki kanohi will occur when either of the parties is preparing policies or plan changes that may affect the other party. (8.2)

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2 Consultation by itself without allowing the view of Māori to influence decision-making is no more than window-dressing"**.** *Te Runanga o Ati Awa ki Whakarongotai Inc & Takamore Trustees v Kapiti Coast District Council* (W50/2003) (High Court):
[3] *C Connor-Kingi v Whangārei District Council* [2024] NZEnvC 351 (**Onoke**).
[4] *C Connor-Kingi v Whangārei District Council* [2024] NZEnvC 351 at [129]: "*Although consultation is not defined in the RMA, we view its meaning is assessed by reference to the Treaty principles of good faith, consultation, partnership and participation."*
[5] Ibid at [130]-[133].
6 S32(4A) RMA.

20. At [24] of the section 32 report, it records that staff utilised the formal agreements that Council have with both Te Uri o Hau and Te Roroa as well as the principles of the Treaty of Waitangi to navigate direct and both collective aspirations for the protection of sites of significance to Māori. This fails to acknowledge that on 15 April 2024 Council unilaterally cancelled the formal MOU it had with Te Uri o Hau.

21. In 2021, KDC signed a short form agreement with Te Uri o Hau to provide funding for planning support in 2021. Phase 1 was to provide feedback on a number of relevant chapters of the plan and Phase 2 was for input and collaboration during the formal engagement period. This was all working towards a notification of the plan at the end of 2022. After 2023, there was no further work undertaken under this arrangement.

FAILURE TO CONSULT UNDER SCHEDULE 1

22. It is acknowledged by Te Uri o Hau that engagement in the years of 2021 and 2022 upheld the principles of partnership, good faith and active protection.

23. As set out in the timeline attached to Ms Kemp's evidence, a number of procedural deficiencies arose during the Schedule 1 consultation process from 2023 onwards:
    a. From May 2023, KDC adopted a materially different approach to engagement with tangata whenua. TUoH reasonably expected ongoing meaningful consultation with the opportunity to influence plan development. Instead, opportunities for meaningful engagement were effectively removed between 2023 and early 2025, despite TUoH's prior good faith involvement. Requests for further workshops — particularly on Māori Purpose Zones were not progressed, and TUoH was advised on 13 March 2024 to withhold engagement on site mapping. This conduct failed to uphold the principles of good faith and partnership.
    b. KDC failed to maintain the established process for engagement and maintain opportunities for TUoH to engage on the plan under (clause 3B, schedule 1). It further failed to make clear to TUoH or "indicate how those issues have been or are to be addressed" under clause 3B. For some areas where TUoH thought agreement had been achieved, this was reversed and engagement on those changes withheld and then did not occur.
    c. KDC delayed direct engagement on the draft proposed plan until the final month and only provided a draft 11 days before elected councillor sign-off.

This did not provide sufficient time or opportunity for TUoH to review and provide informed feedback under clause 4 of Schedule 1.

d. Reliance by Council on the submissions process as a substitute for consultation is inappropriate and does not satisfy the statutory requirements of Schedule 1.
e. KDC did not foster engagement under clause 3B or clause 4 of Schedule 1.

24. The inadequacy of this engagement is acknowledged in the Council's own section 32 report for the Sites of Significance to Māori. Attachment 1 of the report (undated) states under "Clause 4 consultation":

> *At the time of drafting this report, <u>this statutory consultation has not been undertaken</u> as the plan needs to be finalised and presented to council in a workshop on 12 February. Following the workshop, a meeting has been scheduled with iwi authorities on 21 February to discuss and cover the Clause 4A requirements. Whilst the requirements require iwi authorities to consider the draft and supply advice, it has been agreed with iwi that the focus will be on preparation of their submissions once the plan has been notified. Council is yet to obtain a formal acknowledgement of this agreement*.

25. As confirmed in Ms Kemp's evidence, no formal agreement was provided. In that context, the position of iwi represented an acceptance by iwi of the situation imposed by Council within timeframes that did not allow adequate time and opportunity for engagement.

Section 32 reports

26. 32(4A) of the Resource Management Act 1991 (RMA) states:
    If the proposal is a proposed policy statement, plan, or change prepared in accordance with any of the processes provided for in Schedule 1, the evaluation report must—
    (a) summarise all advice concerning the proposal received from iwi authorities under the relevant provisions of Schedule 1; and
    (b) summarise the response to the advice, including any provisions of the proposal that are intended to give effect to the advice.

27. The level of detail required goes beyond a mere tick-box exercise; it must be sufficient to enable a decision-maker to understand the nature and content of the iwi

feedback and to assess how the council has genuinely taken that advice into account. The words "summarise" and "all advice" are critical. The report is not required to reproduce every piece of correspondence verbatim, but it cannot omit or gloss over significant points raised by iwi. The summary must be accurate, balanced, and comprehensive enough to reflect the substance of the feedback.

INACCURACIES IN THE SECTION 32 REPORTING

28. The section 32 Reports are inaccurate in setting out how iwi have been engaged on the plan and the consultation record, including:
    a. Referring to engagement aligned with the memorandum of understanding but not recording that the MOU was cancelled on 15 April 2024[7].
    b. Failing to set out the material change in the way KDC engaged with iwi authority from 2023, including the broader context.
    c. Setting out that attempts with iwi had been made in 2023-2024[8], when in fact
        (a) Te Uri o Hau continued to engage and attend meetings with KDC on other matters throughout that period, i.e they were open and available for engagement,
        (b) Te Uri o Hau at the end of 2022 had made a request for further focused engagements on the Māori Purpose Zone, which did not occur[9]
        (c) There was several 1-hour hui in 2023 and an update on 5 November 2024 noted by Ms Kemp but TUoH were provided with no draft plans or material to give feedback on, these hui were more like high level updates of the current direction, this is not consultation.[10]
    d. And failing to set out the time constraints for council which were transferred to Te Uri o Hau when they provided the proposed draft district plan to Te Uri o Hau on 6 March 2025.

29. Te Uri o Hau and Te Roroa provided substantial and detailed advice reflecting significant engagement. The materials attached to Ms Kemp's evidence capture tracked changes to the Māori Purpose Zone and Sites of Significance to Māori

[7] At [24] of s 32 Report on Sites of Significance to Māori.

[8] At [11] of s 32 Report on Sites of Significance to Māori.

[9] Namely on Māori Purpose Zone, see xx and Sites of Significance see page 35, joint feedback of Te Roroa and Te Uri o Hau, 16 Oct 2022, Appendix 6 of SOE Ms Kemp.

[10] SOE Ms Kemp at [21] and [33].

chapters and a more fulsome joint response dated 16 October 2022[11] (this is not all of the advice provided by these iwi).

30. It is acknowledged that much of this joint feedback has been reflected in the s32 reports, however significant points have not been adequately captured. A s32 report is a summary document and need not record every individual point, but it must "summarise all advice received"; where matters are not meaningfully captured, they are effectively omitted.

31. Efforts have focused primarily on the Māori Purpose Zone and Sites of Significance chapters. In relation to those matters, and as an example, a number of issues raised by iwi have not been reflected in the summary of advice in the s32 reports, examples include:

Sites of Significance for Māori

a. Wording additions to introduction section, including that:[12]
    (a) not all sites are scheduled and there are many wahi tapu unscheduled. Interconnection with the heritage chapter.
b. Requested buffers and set-backs around wahi tapu which would impact development adjacent to sites of significance.[13] Te Uri o Hau provided draft wording.
c. In the exposure draft there was an objective for freshwater sites of significance which had been developed by KDC with tangata whenua. This was subsequently deleted in the proposed draft. TUoH also commented on an objective regarding access, cultural use areas and decision making. These have also been subsequently deleted.
d. Te Uri o Hau sought mapping of marae with buffer zones.[14]

[11] Note that there were other forms of feedback, and track change edits to other chapters.

[12] See Track change s42 Sites of Signficance Report, attachedment to Ms Kemp, Appendix 4

[13] See Track change s42 Sites of Signficance Report, attachedment to Ms Kemp, Appendix 4, Suggested Rule 12 wording.

[14] Page 1 of 38, Joint submissions Te Roroa and Te Uri o Hau, 16 October 2022, Appendix 6 to SOE of Ms Kemp.

e. Requests that further detail / policy be developed with KDC on how landowners engage with Te Uri o Hau and tangata whenua where a site of significance is on their land.
f. The s 32 report records (attachment 1, para [44]) that a collaborative approach was used to map sites of significance and that updates were made to Schedule 3. However, Ms Kemp notes there was always an expectation of ongoing engagement with tangata whenua to identify sites[15], and that an engagement methodology developed in 2021–2022 was not implemented. Instead, only statutorily recognised sites have been included, without final agreement from tangata whenua (further discussed below).

Māori Purpose Zone

g. Concerns about the underlying zoning in the MPZ provisions and a request for further hui on the Māori Purpose Zone to work through how it would apply in practice.[16]

32. The purpose of a section 32 report is to provide a clear trail of the reasoning behind a resource management decision. It ensures that, before any rule or policy is implemented, it has been thoroughly tested to determine whether it is the most appropriate, efficient, and effective means of managing our resources. Where these reports fail to accurately reflect tangata whenua input, they undermine future participation by presenting a flawed record. Such a record erodes trust and goodwill—elements critical to meaningful Māori participation.

Scope of commissioners' powers to address inconsistencies in schedule 1

33. Under s32A, a submitter can challenge the adequacy of Schedule 1, including s32 reporting. This is within the scope of Schedule 1 considerations for the Panel. However, s32A(2) clarifies that a challenge does not prevent those hearing submissions or appeals from considering the matters in a section 32 report.

34. Section 34A of the Resource Management Act 1991 (RMA) specifies the functions and powers that can be delegated to council employees or other persons such as commissioners, which are board. Sections 41A to 41C give decision makers certain

[15] At [55]-[61] SOE of Ms Kemp.

[16] Page 35 of 38, Joint submissions Te Roroa and Te Uri o Hau, 16 October 2022, Appendix 6 to SOE of Ms Kemp.

powers when conducting hearings. Section 41C provides the decision-making authority with powers to give directions and make requests before or at hearings. Common law principles of natural justice apply.

35. Te Uri o Hau seeks that the Commissioners direct a pre-hearing meeting with the Council to discuss options for addressing the procedural matters identified above. The purpose of that meeting would be to enable the parties to develop appropriate procedural responses, with those options to be reported back to the Panel for consideration and direction.

NOTIFICATION OF SUBMISSIONS AND HEARINGS

36. On 29 of June 2025, Te Uri o Hau provided a primary submission. Its primary submissions were not notified in the summary of submissions on 1 Dec 2025.

37. Te Uri o Hau was not notified of hearings between August 2025 and March 2026. Te Uri o Hau would have participated in hearings 1-4 had it been notified.

38. On 24 February 2026, Te Uri o Hau's primary submissions was properly notified. Thirteen days later it filed its further submission identifying 17 sites of significance to be scheduled in the plan. As of April 17, we received an email that a further two points of Te Uri o Hau submission were not included in the summary of submissions and that these two points will be notified, today, on Monday 20th of April.

OBLIGATION ON COUNCIL TO IDENTIFY SITES OF SIGNIFICANCE

39. Under s74(1)(b), a district plan must be prepared in accordance with the provisions of Pt 2 of the RMA. Part 2 include s6(e) providing for the relationship of Māori and their cultural and traditions with their ancestral lands, water, sites and wahi tapu and other taonga, s7(f) Kaitiakitanga and s8.

40. The failure to identify and protect sites of significance to Māori in the current planning framework is a serious concern, especially considering there have been documented incidents of desecration of these sites under the previous plan. Despite the fact that this issue has been known to the council for many years, it remains unaddressed. The need for proper recognition and scheduling of these sites is clearly identified in the Iwi/Hapū Environmental Management Plan (IHEMP) for Te Uri o Hau

(TUoH), and this has been reiterated in meetings with the council and Te Uri o Hau in 2021.

41. There has been an established process and ongoing discussions around identifying these sites, yet the council has failed to engage collaboratively with Te Uri o Hau to resolve this matter. This lack of action is a clear failure to meet the council's obligations under Part 2 of the Resource Management Act (RMA), particularly in relation to sections 6(e), 7, and 8, which require the protection of Māori cultural values and heritage, as well as the need for proper consultation with iwi.

42. The ongoing neglect of this issue puts both unscheduled and scheduled sites at risk, and the failure to work together with Te Uri o Hau undermines the council's responsibilities to protect s6(e) values.

43. In *Onoke*, the court linked consultation to the principles of *Te Tiriti o Waitangi*. It noted that when a council knows of significant sites and tangata whenua's desire to schedule them, it should engage meaningfully. In this case, while the council initially worked with tangata whenua to begin a process to identify sites (nothing that at least five of the 17 sites later identified by Te Uri o Hau are currently silent files held by Council), Council then failed to complete the scheduling process over the next two years, breaching both the Treaty principles and potentially Schedule 1 of the RMA.[17]

SCOPE OF FURTHER SUBMISSIONS

44. In the s42A report, the report writer sets out that Te Uri o Hau's further submissions may raise scope issues and that legal advice has been sought confirming that some matters might be out of scope. Nonetheless, the report writer noted that:
    a. Determination of scope is ultimately a matter for the Panel convenors;
    b. Where further information supports initial submissions, natural justice requires that affected property owners be notified; and
    c. The merits of the further information against relevant values may also need consideration.

45. Te Uri o Hau submits that an appropriate process would be to separate the scheduling of sites from the relevant provisions, and to undertake a discrete submissions process on the proposed scheduling. This would enable Te Uri o Hau to properly

[17] *C Connor-Kingi v Whangārei District Council* [2024] NZEnvC 351 at [5], [128]-[133].

prepare and present a comprehensive matrix of the sites it seeks to have included, including supporting information and mapping, and to ensure that affected landowners are clearly informed.

PATHWAY FORWARD

46. Te Uri o Hau requests the following directions:
    a. **Prehearing meeting:** to resolve the current procedural matters and provide option to address procedural errors.
    b. **Re-Hearings of certain matters**: hearings 2, 3, and 4 should be reheard and rescheduled with dates set for legal submissions and evidence. Te Uri were not notified of these hearings. However, Te Uri o Hau's interests in hearing 2 and 4 are narrow and these could be combined with re-hearing tangata whenua related matters in hearing 2 and heard in a half day.
    c. **Withdrawal and Redrafting of Section 32 Reports**: the s32 reports should be redrafted to ensure the correct consultation record and the full summary of the breath of matters that iwi provided feedback on are included.
    d. **Scheduling of Site Mapping and Re-notification**: The mapping of scheduled sites should be heard at the end of the hearings, with a timetable established for the notification of sites sought to be schedule and further submissions in reply.

20 April 2021

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