

IN THE DISTRICT COURT / I TE KŌTI Ā ROHE
ROTORUA / TE ROTORUA-NUI-A-KAHUMATAMOMOE

CIV-2024-063-000364

UNDER THE LOCAL GOVERNMENT ACT 2002

IN THE MATTER of an application for an injunction to restrain commission
of an offence under s 162

BETWEEN ROTORUA DISTRICT COUNCIL

Applicant

AND ROTOKAKAHI BOARD OF CONTROL

First Respondent

AND UNKNOWN PERSONS

Second Respondent

SECOND AFFIDAVIT OF GERHARDUS MOSTERT IN SUPPORT OF APPLICATION
FOR AN INJUNCTION
Sworn: 30th September 2024

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3461-9951-9023-V18

**SECOND AFFIDAVIT OF GERHARDUS MOSTERT IN SUPPORT OF APPLICATION
FOR AN INJUNCTION**

I, **GERHARDUS MOSTERT**, of Rotorua, Senior Project Manager at Rotorua Lakes Council, swear –

1. I am a Senior Project Manager employed by Rotorua District Council (operating as Rotorua Lakes Council) (**RLC**), the applicant in this proceeding. I have been employed by RLC since October 2020 and am authorised to make this affidavit on behalf of RLC.
2. I am the engineer representative appointed by RLC to oversee the wastewater works, which are the subject of this proceeding, and am familiar with the events and information in this affidavit.
3. This is the second affidavit I have filed in this proceeding. My first affidavit is dated 11 July 2024.
4. Annexed to this affidavit and marked "**A**" is a paginated bundle of exhibits. Where I wish to refer to a certain document contained in the bundle, I will refer to the bundle and a page number upon which the document commences in brackets in bold font (for example, [**GM:001**]).
5. The purpose of this affidavit is to:
 - (a) Update the Court on RLC's preparations in the lead up to the re-commencement of works on 19 August 2024. Below I explain RLC's and Fulton Hogan's (**FH**) engagement with the Rotorua Police and further steps taken to mitigate risk at the work site on Tarawera Road;
 - (b) Describe the further incidents involving protesters at the work site that have been reported to me by Fulton Hogan Limited (**FH**), Watchdog Security and the Rotorua Police; and
 - (c) Explain why an injunction is necessary to enable the safe completion of the works.



Meetings with Rotorua Police

6. On 6 August 2024 and again on 14 August 2024, RLC and FH representatives met with the Rotorua Police to discuss the Court's Judgment of 17 July 2024 and how FH could recommence works safely. I attended both of these meetings on behalf of RLC.
7. Following consideration of the evidence presented in Court, RLC and FH agreed to amend the traffic management plan so that access to the Tarawera Road boat ramp would remain available. The intention behind this change was to allow access to Lake Rotokakāhi while works were ongoing.
8. RLC and FH also took the following steps to further protect the health and safety of the works, protesters, and general public:
 - (a) Body cameras were provided to traffic management workers and fixed CCTV cameras were installed across the work site.
 - (b) A separate compound for FH was set up nearby to house all equipment overnight.
 - (c) Refresher health and safety sessions were conducted with FH staff and subcontractors.
 - (d) Screened security fencing was installed to physically and visually separate the work site from traffic and protesters. The fencing was to be interlinked to best protect the works and FH staff.
 - (e) A security company (Watchdog Security) was engaged to provide daytime security between 15 August and 23 August 2024 and 24-hour security from 26 August 2024 as night works were planned from that point.
 - (f) Satellite phones were provided to staff on site so that the poor cell phone reception at the work site was no longer an issue.

9. Most of these actions were implemented on site over the week of 19 August 2024.
10. Further to the above, RLC and FH sought further clarity from the Police on incident reporting processes and expected response times to 111 calls regarding incidents at Tarawera Road.

Protest action before recommencement of the works

11. Over the weekend of 24 August 2024 RLC and FH became aware of a protester-organized 'hikoi' planned along Tarawera Road in opposition to the works continuing. This hikoi was planned for the morning of 26 August 2024 (the day the works were set to recommence) and was planned to proceed past Lake Rotokakāhi where substantive drilling works were planned to take place.
12. RLC consulted with FH, and the decision was made to postpone the recommencement of the works until after the hikoi to minimise the risk of confrontation between workers and participants of the hikoi.
13. It was reported to me that around 100 individuals attended the hikoi and that no incidents occurred as a result of the march. I am aware that police were present to ensure the safety of the protesters and public alike. A video of the hikoi posted to social media is provided on a USB annexed to this affidavit and marked "B",¹ with the specific video file showing the hikoi labelled as "003".
14. If the protesters' conduct had remained of the nature of the hikoi, it is unlikely that this renewed application for injunction would have been filed (provided that the open traffic lane was kept clear). However, as I go on to explain, this was not the case once works recommenced.

¹ Exhibited via a USB in accordance with rule 9.67(3) of the District Court Rules 2014 and *Davis v Hogg* [2024] NZHC 2621.



Resumption of the works

15. I was aware that FH and its subcontractors began their preparation to resume the works on 19 August 2024. The substantive works were to resume on 26 August 2024 and were to be undertaken at day and night to complete the works more quickly and minimise disruption. The goal was to expedite the works past the boat access ramp to Lake Rotokakāhi as shown on the plan at [GM:001]. This would ensure minimal disruption to lake access via this boat ramp.

26 August 2024 incidents

16. On Monday 26 August 2024, I was informed that the protests had resumed with incidents that caused concern to FH and interfered with FH's completion of the works.
17. I became aware of the incidents because I received several incident reports which are corroborated by affidavits filed in support of this application, including:
- (a) Protesters unplugging and switching off spotlights;
 - (b) Protesters entering the worksite in large numbers;
 - (c) Protesters blocking worker vehicles by standing in front of them and boxing workers into the worksite;
 - (d) Protesters parking along Tarawera Road despite "no parking" signs, in breach of the traffic management plan;
 - (e) Protesters attempting to push down fences along the border of the worksite; and
 - (f) Various threats of violence and verbal abuse towards workers and the public, as well as social media posts encouraging interference with the works.



18. I understand that the above incidents have been outlined in other affidavits also filed in support of this injunction application.
19. I have also seen videos posted on social media showing some of the behaviour FH is concerned about. Some of these videos are provided on the USB I refer to above (marked "B"). Referring to the file numbers for the individual videos:
- (a) "001" refers to whānau having been able to "peaceably breach the fence perimeter".
 - (b) "002" shows vehicles parked in areas marked by cones as no-parking areas and shows protesters crossing the open traffic lane to approach the fence of the worksite.
20. On 27 August 2024, I was advised that works had been discontinued early, around 9:00 pm on 26 August 2024, due to the incidents outlined in the affidavit of Baden Neylon. FH attempted to continue the works the following days with Police present on site. However, I was advised that as extensive drilling operations began again on 28 August 2024, tensions began to flare up and the works were paused once again on the advice of the Police present.

Actions taken post Monday 26 August 2024

21. Following the incidents on 26 August 2024, I formed the view that protesters were not merely engaged in peaceful protest along Tarawera Road.
22. On 29 August 2024, I attended a further meeting between RLC, FH and Rotorua Police to discuss the incidents that had occurred and how the works could proceed.
23. It was agreed at the meeting that an RLC Iwi liaison officer would attend site again and attempt to engage with the protesters and encourage peaceful protest while the works continued.

24. Works have since (again) been temporarily halted in order to allow RLC to reevaluate how to manage the protests in light of the incidents on 26 August 2024.
25. This pause has been utilised by RLC to attempt to engage in further discussions with protesters about safety measures and to address safety concerns raised by FH following the incidents on 26 August 2024.

Protester presence following halting of the works

26. Rotorua Police have taken aerial photographs of the protest site exhibited at [GM:002].
27. Following the events on 26 August 2024 and the halting of the works on 28 August 2024, protesters have set up two camps parallel with each other, one on the lakeward side of Tarawera Road (next to the boat ramp access to Lake Rotokakāhi) and one on the landward side of Tarawera Road. I attach images taken of the protest camps from Tarawera Road which show the structures I refer to above, as well as tents situated in the bush on the landward side of Tarawera Road at [GM:003] to [GM:008].
28. Across various visits I have made to the protest site, I noticed the following changes which I believe have been taken by protesters:
 - (a) Sections of bush on land within the road reserve and adjacent DOC land have been cleared and “camps” set up including tents, marquees, portable toilets, cooking facilities (such as stoves powered by a generator or pit fires).
 - (b) Structures made of wooden pallets, sticks, and/or logs have been constructed. I understand that these are used to look over the worksite’s fences.
 - (c) The protest camp on the lakeward side of Tarawera Road is delineated by an already established fence, which has been covered by tarpaulin. This camp is directly adjacent to the first 400



meters of the worksite that contractors recommenced works on, on 26 August 2024 (pictured at [GM:001] and [GM:002]).

- (d) The protest camp on the landward side of Tarawera Road is situated partly in the road reserve and partly on DOC land. Protesters have set up tents and erected wooden structures in the road reserve used to gain a view into the worksite, as well as portable toilets.
29. Interviews with members of the Rotokakāhi Board of Control (and other protesters) published online state that protesters are planning to maintain a strong presence until they are guaranteed that the works will not continue. One example of such an interview is contained in a New Zealand Herald article exhibited at [GM:009].
30. I have seen social media statements posted by protesters which lead me to believe that protesters are committed to remaining on site until they are guaranteed that the work will not continue. I refer for example to various "Tiktok" videos which are provided on the USB previously referred to and marked "B".
- (a) "004" shows a woman speaking, with a message directed at RLC. I interpret her comment "I will have no choice but to unleash every single kaitiaki of that whenua onto you, your machinery and your council" as a threat to take steps to interfere with the works and/or machinery.
- (b) "005" shows FH workers being approached and shouted at by protesters through the fence on the worksite (in an area that would have come within the 'buffer zone' referenced in RLC's original injunction application).
- (c) [GM:013] shows a post requesting further resources and money to improve upon the protest camps, including petrol for a



generator, firewood, batteries and miscellaneous materials. The post was uploaded to Facebook on 20 September 2024.

Injunction

31. While RLC acknowledges the right to protest peacefully, the recent incidents that have been reported to me are interfering with RLC's ability to complete RLC's lawful and necessary works.
32. While RLC has endeavoured to take additional security measures to facilitate safe completion of the works, protest action and interference has once again forced FH to pause the works.
33. The incidents of protesters entering the work site to tamper with lighting and intimidate workers are of particular concern to me, as it is these types of incidents that present a very real health and safety risk to contractors, subcontractors, and public road users as well as the protesters themselves.
34. Despite commencing the work in January 2024, no substantial progress has been made on the works on the stretch of Tarawera Road running parallel to Lake Rotokakāhi due to protester interference and steps taken by RLC and FH to respond to that interference. This has come at a very substantial cost to RLC (and the Tarawera and Rotorua communities).
35. RLC also remains concerned about the risk to the \$6.5m of funding RLC has obtained from the Ministry for the Environment, and about any additional costs if the contract with FH is required to be extended.² Since RLC's previous evidence, there has been an extension of the Ministry for the Environment funding to June 2025 but it is not certain that it will cover additional costs due to delay or works stopping/starting.
36. I therefore believe that interference with the works is highly likely to continue and that an injunction is now required in order to facilitate the

² Affidavit of Stavros Michael dated 10 May 2024, para 69.



safe completion the works. RLC intends to use its other statutory powers to respond to unlawful acts (including impounding property involved in the commission of offences and restricting traffic on Tarawera Road) but the reasons for seeking an injunction still stand.³

37. RLC has sought broader orders than under the original application. This is because the scale of the protest (including vehicles parked in the vicinity of the worksite and 'camps' being established) is larger than originally expected and because we have now witnessed the actual conduct of protesters. Having multiple vehicles parked in the traffic management area and having pedestrians crossing and re-crossing the open traffic lane presents additional challenges (as compared to having people protesting on a grass verge).
38. RLC is therefore seeking orders that cover the whole road reserve from the lakeward side to the bush side for the whole section of Tarawera Road in which works will be taking place, i.e. between the entrance to the Blue and Green Lakes Lookout (so that the public can still access the lookout) and the Mead Road intersection. This section covers approximately 1.6 kilometres, as displayed by a Google Maps screenshot which is exhibited at **[GM:014]**. The original orders sought primarily covered the worksite and a buffer area, but this is now believed to be insufficient given that the protest along the lakeward side is spilling over to the active worksite and the open traffic lane.
39. RLC expects to carry out the work in this section from the Blue and Green Lakes Lookout point access, up to Mead Road (as discussed with Police) until the works are completed without further incident. The worksite area will be identified by using traffic management cones, fencing and tape to delineate the boundaries of the restricted area. This would mean that, on the date that the orders come into effect, any unauthorised individuals or vehicles located within the road reserve will be required to vacate the

³ As set out in the affidavit of Stavros Michael dated 10 October 2024 and my previous affidavit filed in these proceedings dated 11 July 2024.



defined stretch of the Tarawera Road and reserve until works are completed. Protesters outside the road reserve boundary or the area of operation would still be bound by the more general orders relating to interference.

40. RLC initially considered closing the road and restricting access to the road reserve in 400-metre sections (as had been sought in RLC's original application). This approach was intended to have the effect of moving the restricted area with the worksite, so that any issues as to access that may arise from the closure would be as brief as possible as the works naturally progressed along Tarawera Road.
41. RLC has since consulted with Rotorua Police. Given that protesters have set up physical camps, a 'rolling worksite' risks creating additional points of conflict and tension between Fulton Hogan, members of the public, road users and protesters.
42. Should RLC succeed in attaining these orders, access will be permitted along Tarawera Road for authorised traffic, which will likely be restricted to residents of the Tarawera community and RLC staff and contractors. Otherwise, access to the road and reserve (including the use of Tarawera road for general transport) will be restricted for all but authorised traffic, as above. These orders would likely need to be in place for four weeks to complete the works.
43. RLC acknowledges that the orders would temporarily restrict access to the boat ramp used to access Lake Rotokakāhi, however I am aware that a second boat ramp on the far side of Lake Rotokakāhi (access from Waipa Mill Road) can be used for access while this restriction remains.
44. While RLC acknowledges the right to protest under the New Zealand Bill of Rights Act 1990, it is RLC's position that interferences by protesters have progressed to a level that are too severe to continue the works

without restricting access to the road reserve so that protesters are unable to repeat the incidents that occurred on 26 August 2024.

Signature of Deponent:



Gerhardus Mostert

Sworn by the abovenamed **Gerhardus Mostert** at **Rotorua** this ²⁵ day of September 2024 before me:


Tracey O'Brien

Deputy Registrar

District Court of New Zealand

A Solicitor of the High Court of New Zealand

A



SDP93982

Lake Rotokākahi (Green Lake)

NZTM Projection



Road Parcel 
 Other Parcel 

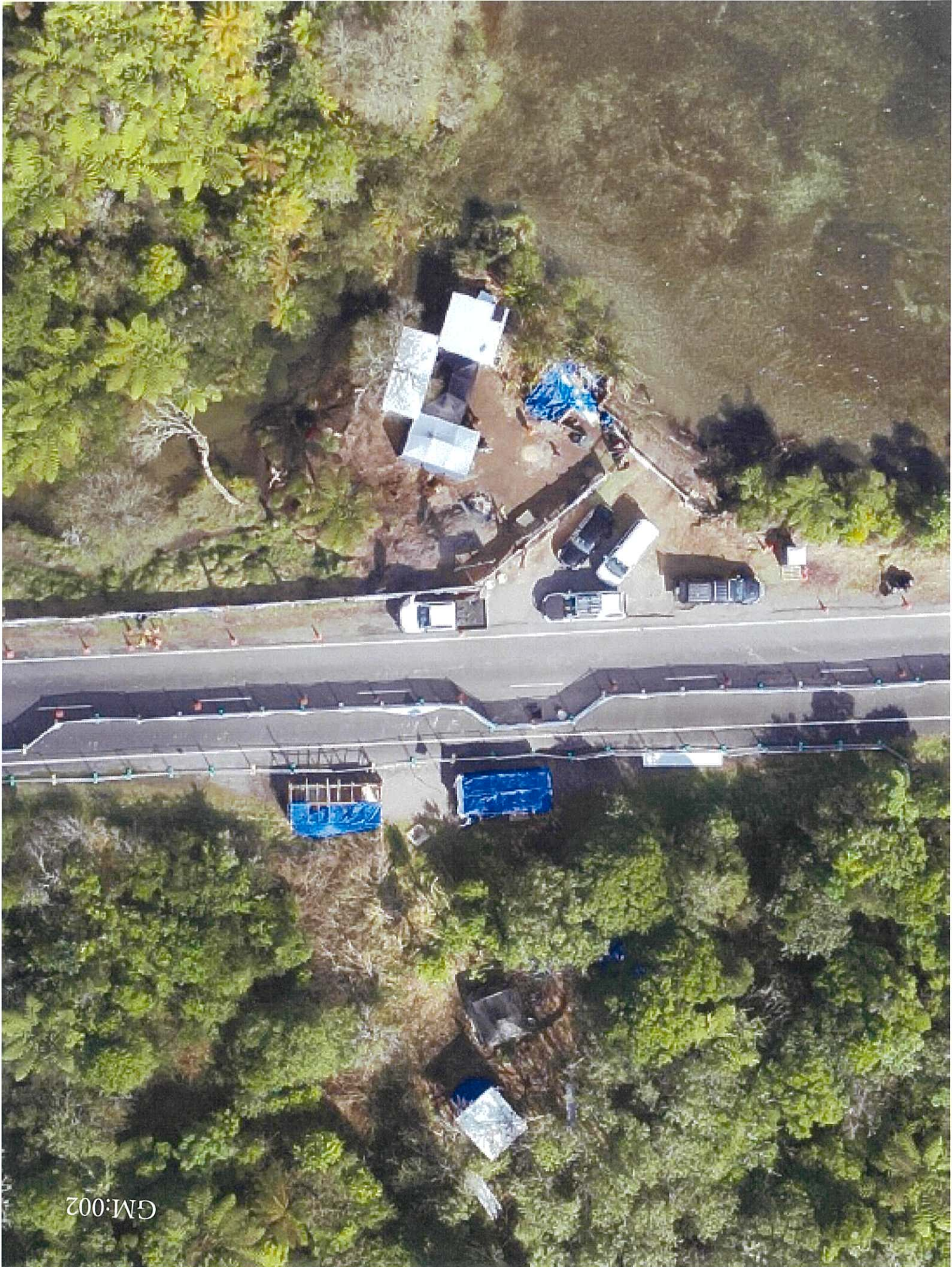
ROTORUA
LAKES COUNCIL

"A"

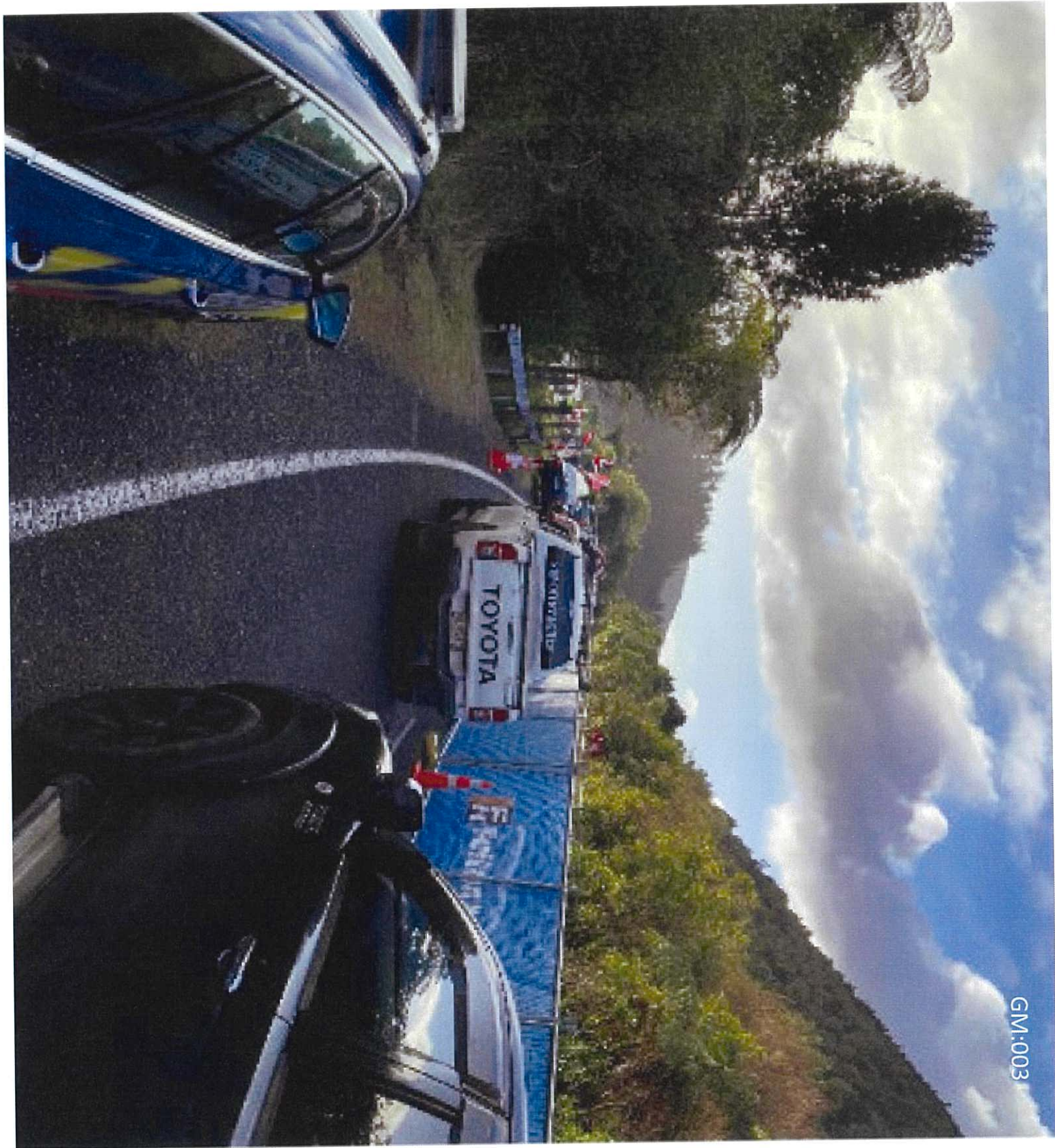
GM:001



This is the **EXHIBIT** marked "A" referred to in the annexed Declaration/ Affidavit of **GERHARDUS MOSTERT** Sworn/Declared at ROTORUA this **30th** day of **September 2004**.
before me:- **Tracey O'Brien**
Deputy Registrar
District Court of New Zealand
DEPUTY REGISTRAR, HIGH/DISTRICT COURT, ROTORUA



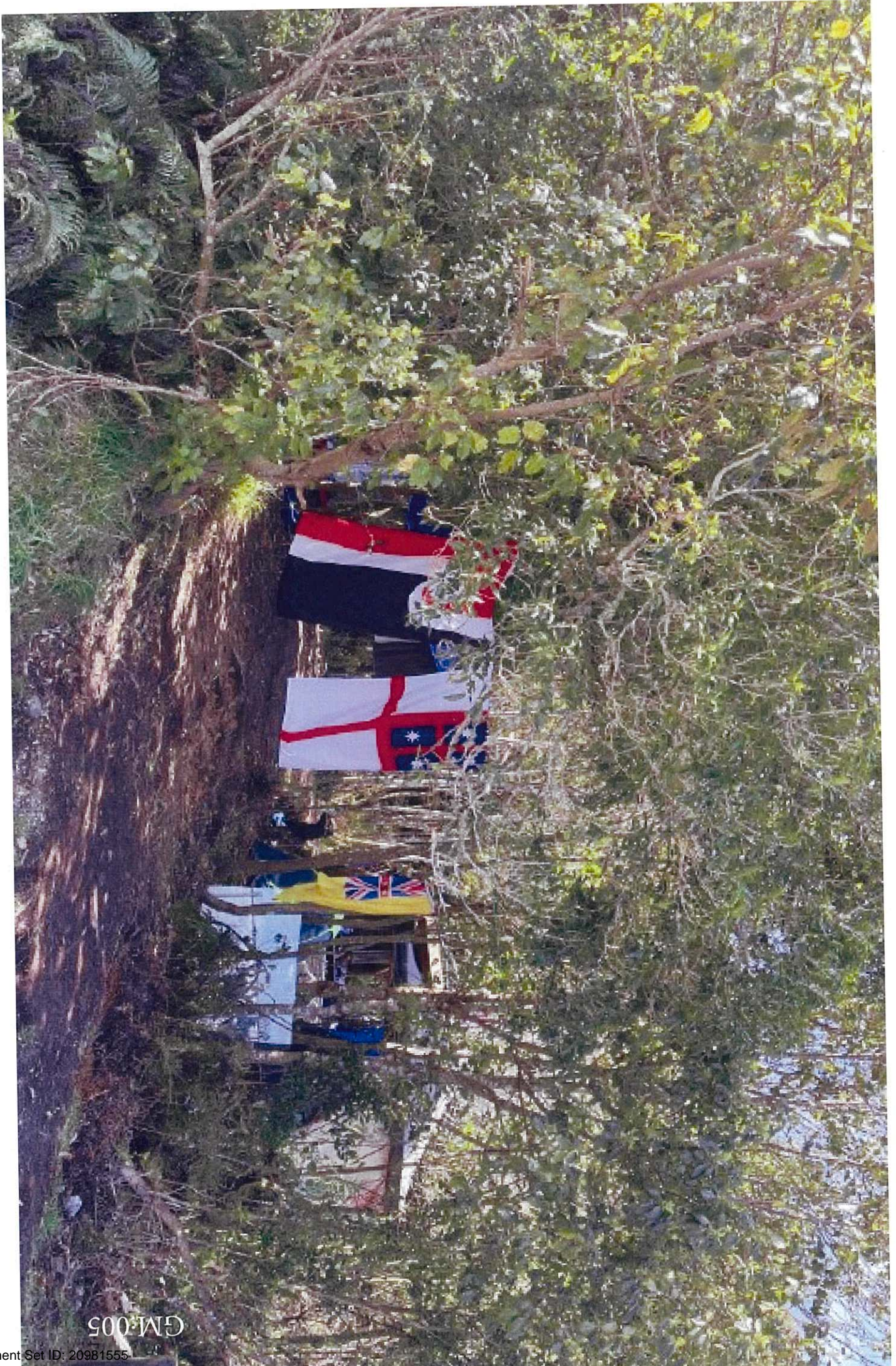
GM:002



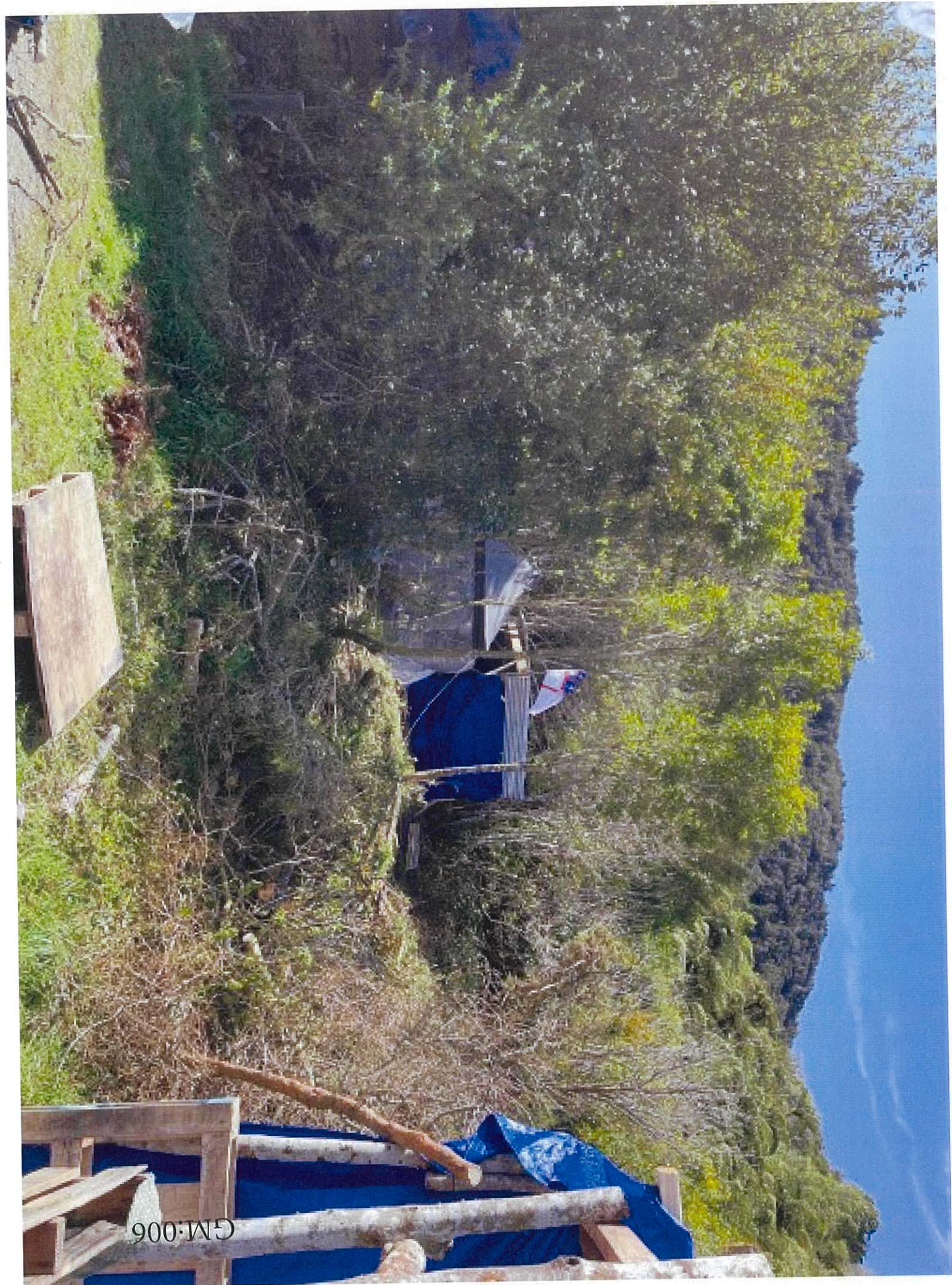
GM:003



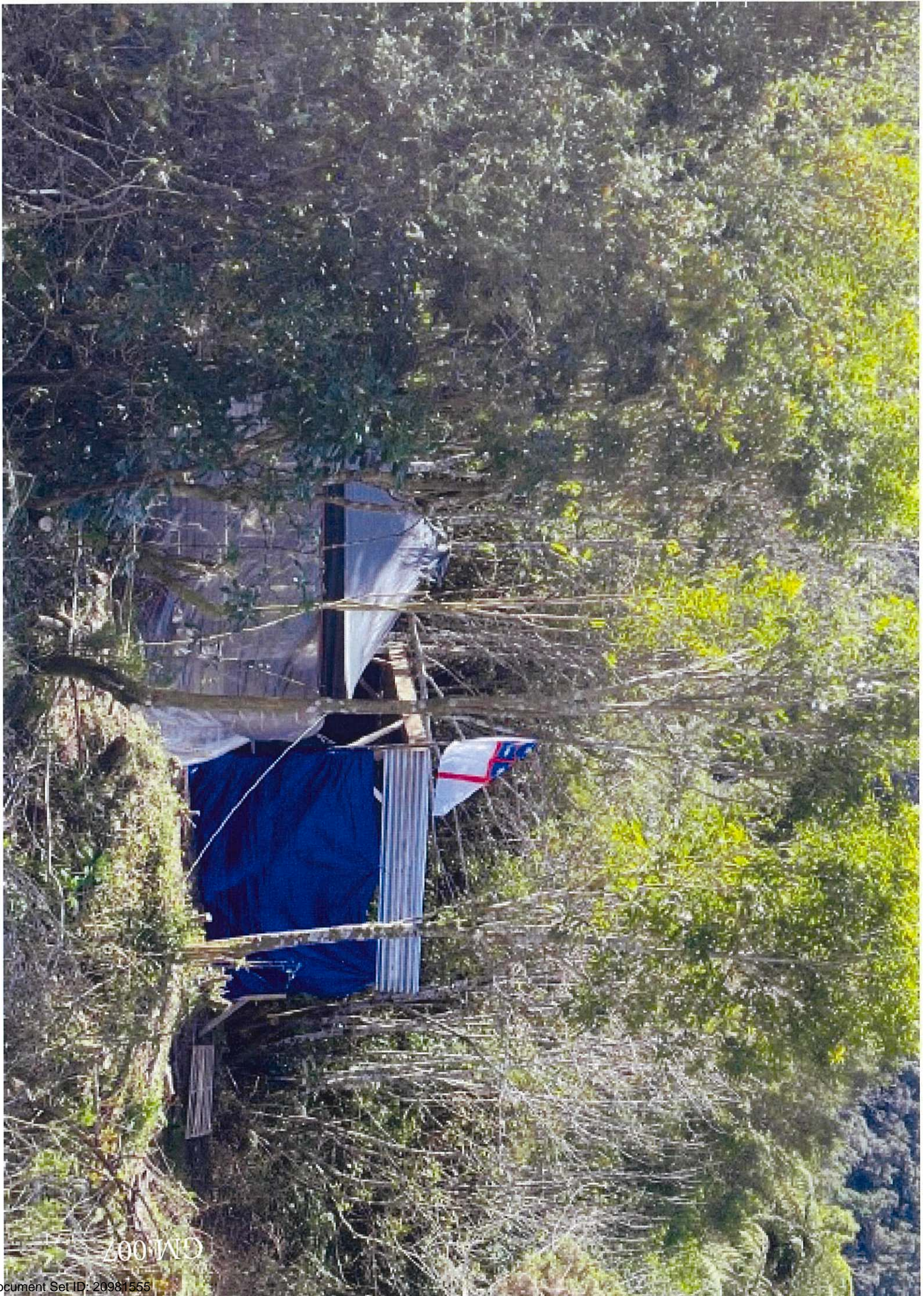
GM:004



GM:005



900.WG



GM-007

GM:008



Rotorua sewerage pipeline work halted amid protester concerns over sacred sites



By **Kelly Makiha**

Multimedia Journalist · Rotorua Daily Post · 31 Aug, 2024 02:19 PM 6 mins to read

Rotorua Lakes Council has halted work on a [sewerage pipeline](#) under Tarawera Rd to allow more direct discussions with [iwi and mana whenua](#) amid concerns from protesters about [sacred sites](#) at Lake Rotokākahi.

The work, which is 90% complete, is now paused after 100 people attended a hīkoi to wāhi tapu (sacred) Lake Rotokākahi on Monday in a stand against the pipeline route. Those opposing the work have remained camped at the site this week have told the [Rotorua Daily Post](#) they will continue to do so, despite the halt in work.

The opposers say they believe the \$29 million Tarawera sewerage scheme pipes being laid parallel to a section of the lake could risk environmental damage in a culturally significant area. Tūpuna (ancestors) were buried nearby during the 1886 Mount Tarawera eruption.

In a statement released late on Friday the council said it understood there was concern arising from insufficient information and it would be beneficial to provide the time and space to address the concerns.

To allow that to happen, work on the pipe installation along Tarawera Rd (opposite Lake Rotokākahi) was being paused while there were further direct discussions, the statement said.

“This is a vital project to protect the health of the lakes and natural environment. We have constantly heard how highly valued these lakes are by our residents, visitors and mana whenua.”

The council said it acknowledged the current stage of work was a concern for some, resulting in protests at the worksite. But it said it remained committed to pursuing its priorities – protecting the health of the people who lived and worked in the rohe and the taiao (environment).

The statement said traffic management and security at the work site would remain during the pause.

They asked those in the area to take care using the road corridor, as it was still mobilised as a work site.

“Allowing the declining water quality of any of the Te Arawa lakes is not an acceptable option by our communities. We will continue to work with all our partners in delivering the corrective actions that are needed to protect the lakes,” the council’s statement said.

It thanked the community for their patience and understanding as it engaged in “meaningful dialogue with our project partners and mana whenua”.

Addressing concerns

On Thursday, the council issued a statement explaining the work, saying in its Facebook post with the attached statement there was “disinformation circulating”.

The Facebook post said: “We respect all people’s right to peacefully protest and remind all that the purpose of the Tarawera Sewerage Scheme is to protect the health of the community and the health of Lake Tarawera”.

Thursday’s statement said without the scheme, untreated human wastewater would continue to leach into Lake Tarawera, which was unacceptable to all and a priority to address.

The statement outlined the consultation process, saying the council had been in discussions with iwi and hapū since 2015, beginning with the establishment of the Lake Tarawera Sewerage Scheme Steering Committee which included representatives from Tūhourangi Tribal Authority, Te Mana o Ngāti Rangitihī, Māori landowners, the Lake Tarawera Ratepayers Association, Te Arawa Lakes Trust, Bay of Plenty Regional Council and Rotorua Lakes Council.

In 2018, of the six options considered, the committee voted to adopt the low-pressure grinder pumps and to connect the new network to Rotorua through the Tarawera Rd corridor.

Thursday’s statement said the feasibility of an in-catchment treatment plant at Tarawera was investigated and proven not feasible for a variety of reasons including the availability of land, geological conditions, resource consent challenges and significant additional costs to local and wider communities and the significant delay which would affect the health of Lake Tarawera.

Two cultural impact assessments and an archaeological report have been undertaken as well as extensive community consultation with residents and Māori landowners at Tarawera.

The statement said the reports identified the road corridor was the least likely to contain wāhi tapu sites of hapū cultural significance, therefore it was recommended to be used for the mains pipelines because the risk of disturbing archaeological sites within the existing road reserves was “very low” compared with other options.

Direct consultation with Rotokākahi Board of Control has been undertaken since 2023 which has included hui with engineers detailing the works, equipment to be used and how the preferred option was arrived at, the statement said.

The opposition

The *Rotorua Daily Post* reported on Monday that the site was shut down in February after alleged incidents – including claims of a vehicle being driven at a contractor, verbal abuse and intimidation – prompting the [Rotorua Lakes Council](#) to seek an injunction against “interference” with the construction of the pipeline.

The application named the organiser of a January protest – the [Lake Rotokākahi Board of Control](#) – and “persons unknown” as respondents. The board denied involvement in the alleged incidents.

The [injunction application was indefinitely adjourned](#) – neither granted nor dismissed – a month ago.

The board acts as kaitiaki of the lake, which is iwi-owned and closed to the public.

Protests began again the week before the hīkoi when work recommenced, [this time with a council camera](#), and on Monday people held signs and flags in opposition to the scheme’s route as they journeyed from the Lake Tikitapu lookout point to the sacred lake’s edge.

Rotokākahi Board of Control spokesman Te Whatanui Leka Skipwith told the *Rotorua Daily Post* on Sunday mana whenua were taking the halt as a time to rest but a strong presence would remain until they could be guaranteed the work would not continue.

He said there was a roster system to ensure there would always be people there.

He thanked the protesters for engaging in what he said had been a peaceful demonstration. He said the odd comment had been yelled out to workers but that, in his view, only indicated the “high emotion” of the situation and he was pleased there had been no physical threats.

He said they would use the halt in work as a time to restock, rest and regather resources for the next phase.

He told the *Rotorua Daily Post* last week following the hīkoi about 100 people were involved and they were comparing what happened to another Ihumātao. Ihumātao was the site of a high-profile occupation protest in 2019, which drew in supporters from across the country.

Kelly Makiha is a senior journalist who has reported for the *Rotorua Daily Post* for more than 25 years, covering mainly police, court, human interest and social issues.

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🔔🔔 nga mihi, heoi we still need your help 🔔🔔

List of ways you can help if you're unable to join us on the whenua.

- 20-30 lengths 4x 2 at 4.8m long
- More corrugated iron.
- 15-20 sheets 12mil ply
- any insulation
- Deep cycle battery for solar panels
- Firewood
- Security cameras to keep mana I te whenua safe and to keep RLC via Their contractors Fulton hogan accountable.
- water catching containers
- Jerry cans of petrol for generator

🇳🇿🇳🇿 We would also be grateful for any and all putea koha as well as we possibly look at a different kind of whawhai in a different wāhi



Home



Video



Marketplace



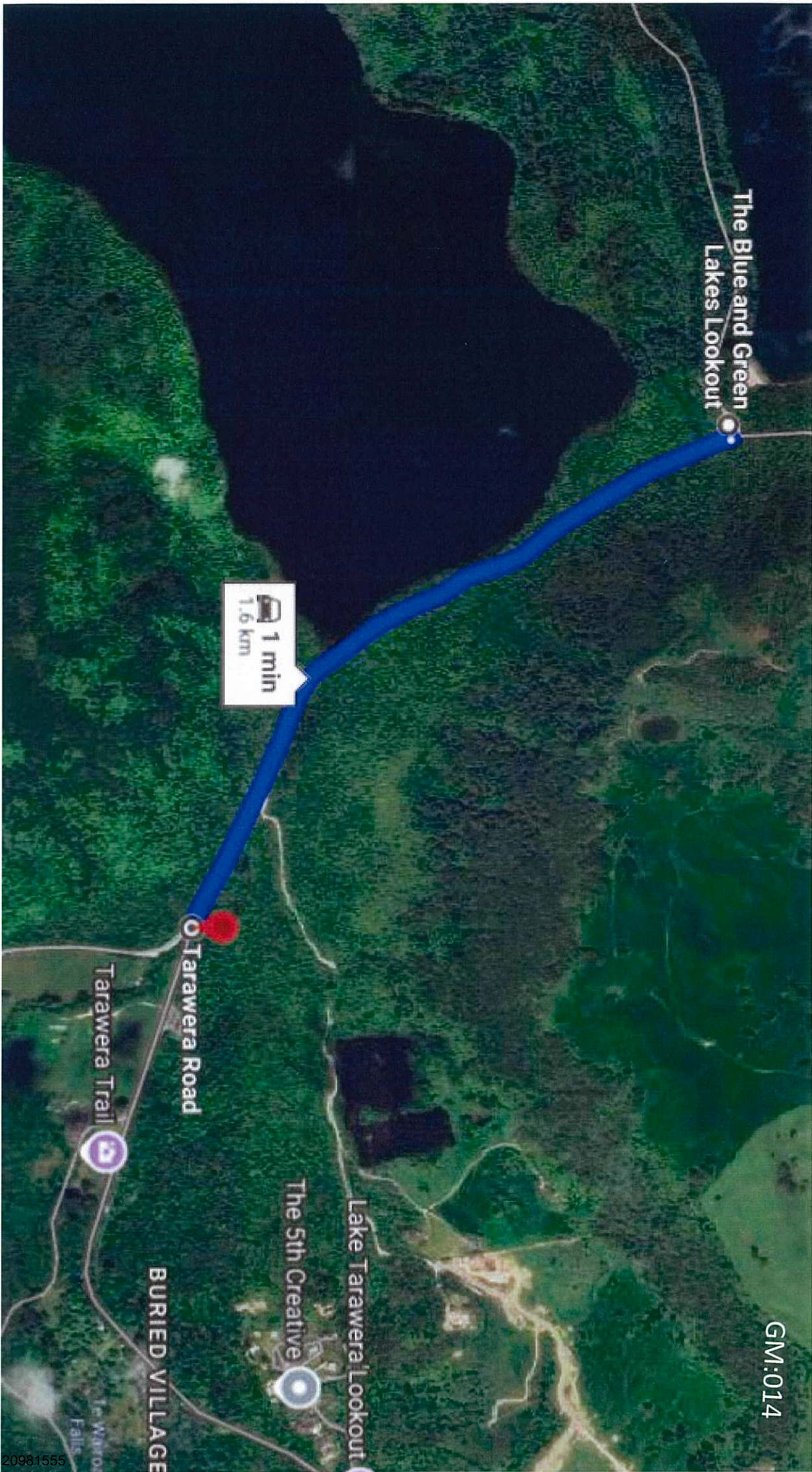
Explore



Notifications



Menu



The Blue and Green
Lakes Lookout

1.6 km
1 min

Tarawera Road

Tarawera Trail

The 5th Creative

Lake Tarawera Lookout

BURIED VILLAGE

GM:014

"B"

EXHIBIT NOTE

This is the USB marked "B" referred
to in the affidavit of **GERHARDUS
MOSTERT**

affirmed at ^{30th} this day of September 2024, before me:

Robina

Tracey O'Brien
Deputy Registrar
District Court of New Zealand

A Solicitor of the High Court of New Zealand

