

Application 2022-100 Waikanae North Project (Bulletin Trust)

To:	Required action:
Hon David Parker, Minister for the Environment	Consider this report prior to making a decision under section 24 of the FTCA
Date submitted: 22 September 2022	

Ministry for the Environment contacts

Position	Name	Cell Phone	1 st Contact
Principal Author	Pip Lee		
Manager	Stephanie Frame	s 9(2)(a)	✓
Acting Director	Matthew Barbati-Ross	s 9(2)(a)	

Introduction

1. The Ministry for the Environment has prepared this report in consultation with the Office for Māori Crown Relations – Te Arawhiti and in accordance with section 17 of the Covid-19 Recovery (Fast-track Consenting) Act 2020 (the FTCA).
2. To satisfy obligations under section 6 of the FTCA, you must consider this report before you make any decision under section 24 of the FTCA to accept the application to refer the Waikanae North Project (project) to an expert consenting panel (panel).

Proposed project

3. The applicant (Bulletin Trust) proposes to subdivide approximately 33 hectares of rural land on the northern outskirts of Waikanae, Wellington and construct approximately 410 residential units and supporting infrastructure.
4. A location map is in Attachment 1.

Essential information

5. The following information is required under section 17(3) of the FTCA for the project area.

Section of the FTCA	Information required	Detail
s17(3)(a)	Relevant iwi authorities (3)	Te Rūnanga o Toa Rangatira Incorporated Ātiawa ki Whakarongotai Charitable Trust Muaūpoko Tribal Authority Incorporated <i>Contact details are in Attachment 2</i>
s17(3)(b)	Treaty settlements that relate to the project area (1)	Ngāti Toa Rangatira Claims Settlement Act 2014
s17(3)(a)	Relevant Treaty settlement entities (1)	Toa Rangatira Trust <i>Contact details are in Attachment 2</i>
s17(3)(c)	Relevant principles and provisions of the Treaty settlements	<i>See details in blue-shaded section below</i>
s17(3)(d)	Groups with a negotiation mandate recognised by the Crown which are yet to commence Treaty settlement negotiations	Muaūpoko (Muaūpoko Tribal Authority Incorporated)
s17(3)(d)	Current Treaty settlement negotiations	none
s17(3)(e)	Court orders recognising customary marine title or protected customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011 or another Act	None that are relevant as the project does not occur in the coastal marine area

Supporting information

Project details

6. The project site is located on a section of State Highway 1 currently subject to a renaming process (as a result of construction of the Mackays to Peka Peka Expressway), approximately 1.5 kilometres from the Waikanae town centre – see Attachment 3.
7. The topography on-site is relatively flat, and the site is drained by a number of tributaries of the Waimeha Stream, some of which are highly modified. The project layout is shown in Attachment 4. While some modified streams will be infilled, the project also will create open space areas and enhance natural wetlands within the site.
8. The proposed residential units will be in a mix of terrace and standalone buildings.

Statutory matters relating to this report

9. No parts of the proposed project will occur in the coastal marine area, meaning:
 - a. pursuant to section 16(1) of the FTCA you are the sole party required to consider this report
 - b. the project is unaffected by the provisions of the Marine and Coastal Area (Takutai Moana) Act 2011 (MACAA) or any other Act pertaining to the grant of protected customary rights or customary marine title.
10. There are therefore no court orders granted under the MACAA or another Act to consider in your referral decision for this project.¹

Iwi authorities

Methodology and information sources

11. This report must identify the relevant iwi authorities for the project, in accordance with section 17(3)(a) of the FTCA. Under section 7(1) of the FTCA, a relevant iwi authority for a referred project means an iwi authority whose area of interest includes the area in which a project will occur.
12. 'Area of interest' can mean different things depending on context and perspective and can be indicative (such as an area identified at the outset of Treaty settlement negotiations), formally agreed (such as in a deed of settlement or memorandum of understanding) or self-nominated. An area of interest can be difficult to define precisely on a map, particularly where a boundary that has been depicted on a small-scale map is scaled up and used precisely in relation to an individual site or property.
13. For the purposes of this report, we have considered information from the following sources as a starting point for identifying iwi areas of interest:
 - a. the Te Arawhiti Internal Crown Asset Tracking Tool (i-Cat), an online database that records areas of interest associated with Treaty settlements and Treaty settlement negotiations
 - b. area of interest maps in signed Treaty settlement deeds or other Treaty settlement negotiation documents (including deeds of mandate)
 - c. the Iwi Areas of Interest viewer, an online application managed by the Ministry of Māori Development – Te Puni Kōkiri (TPK)
 - d. Te Kāhui Māngai (TKM), an online directory of iwi and Māori organisations maintained by TPK, which includes information on rohe (tribal areas) provided by those organisations.
14. Generally, the areas of interest shown on these databases for an iwi or group do not always completely align, and sometimes the differences can be significant. We consider carefully the reasons for such discrepancies, including the reliability or accuracy of the information shown and the local context and decision-making environment, before deciding which areas of interest we consider apply to a project under FTCA process.

¹ Section 17(3)(e) of the FTCA requires this report to identify any court orders granted under the MACAA or another Act which recognise, in relation to the project area, customary marine title or protected customary rights.

15. The FTCA does not specifically define iwi authority but pursuant to section 7(2) of the FTCA, 'iwi authority' has the same meaning as in the Resource Management Act 1991 (RMA): the authority which represents an iwi and which is recognised by that iwi as having authority to do so.
16. To identify iwi authorities associated with the identified areas of interest, we considered information from:
 - a. the TKM online directory noted above
 - b. responses to the invitation to comment on the referral application under section 21(2)(a) of the FTCA from the relevant local authorities: Kāpiti Coast District Council and Greater Wellington Regional Council.

Iwi authorities relevant to project

17. We consider the project site lies within the areas of interest of Ngāti Toa Rangatira, Te Ātiawa ki Kāpiti and Muaūpoko.
18. The following three iwi authorities are therefore identified as the relevant iwi authorities for the project:
 - a. Te Rūnanga o Toa Rangatira Incorporated, representing Ngāti Toa Rangatira
 - b. Ātiawa ki Whakarongotai Charitable Trust, representing Te Ātiawa ki Kāpiti
 - c. Muaūpoko Tribal Authority Incorporated, representing Muaūpoko.

Other iwi authorities which may have an interest in the project

19. The TPK database indicates the project site also lies in the area of interest of Ngāti Raukawa ki te Tonga, although this does not correspond with other information shown on TKM and i-Cat.
20. We have therefore not identified the corresponding iwi authority for Ngāti Raukawa – Te Rūnanga o Raukawa Incorporated – as a relevant iwi authority for the project. Instead, we recommend that you consider this authority as an iwi authority which may have an interest in the project and take that into account in your decisions relating to project referral.

Treaty settlements and Treaty settlement entities

21. This report must identify the Treaty settlements that relate to the project area and relevant Treaty settlement entities, in accordance with sections 17(3)(b) and 17(3)(a) respectively. We use information relevant to the project area from the first two sources listed in paragraph 13 and relevant documents on the [NZ Government Treaty settlements website](#), together with advice from the Office for Māori Crown Relations – Te Arawhiti, for this task.

Treaty settlements relating to the project area

22. Under the FTCA, a Treaty settlement includes both a Treaty settlement Act and a Treaty settlement deed which is signed by both the Crown and the representative Māori group.
23. The project site falls within the area of interest covered by the Treaty settlement with Ngāti Toa Rangatira.
24. The Ngāti Toa Rangatira Claims Settlement Act 2014 gives effect to certain provisions of the deed of settlement signed by Ngāti Toa Rangatira, Trustee of the Toa Rangatira Trust and the Crown on 7 December 2012 and an amendment deed signed in November 2013. The [deeds and associated documents](#) are available on the NZ Government Treaty settlement website.

Relevant Treaty settlement entities

25. We have identified one relevant Treaty settlement entity – the Toa Rangatira Trust – for the project. Further explanation is provided below.

Post-settlement governance entities

26. Under the FTCA, a Treaty settlement entity includes a post-settlement governance entity, defined as a body corporate or trustees of a trust established by a claimant group for receiving redress, or for participating in arrangements established under a Treaty settlement Act.

27. The post-settlement governance entity associated with the Ngāti Toa Rangatira Treaty settlement is the Toa Rangatira Trust. Te Rūnanga o Toa Rangatira Incorporated is the trustee of this trust.

Other bodies recognised or established under a Treaty settlement Act

28. A Treaty settlement entity is also defined for the purposes of the FTCA as including a board, trust, committee, authority, or other body, recognised in or established under a Treaty settlement Act.

29. No such entities established by the Ngāti Toa Rangatira Claims Settlement Act 2014 are relevant to the proposed project.

Relevant principles and provisions of the Ngāti Toa Rangatira Treaty settlement

Crown acknowledgements and apology

30. The Crown offers acknowledgements and an apology as part of Treaty settlement redress to atone for historical wrongs, restore honour, and begin the process of healing.

31. The Crown apology to Ngāti Toa expresses (among other things) deep regret for the cumulative effect of Crown actions and omissions, which severely damaged the iwi's social and traditional tribal structures, their autonomy and ability to exercise customary rights and responsibilities, their capacity for economic and social development and their physical, cultural and spiritual well-being.

32. The Crown says it hopes that the apology and settlement will mark the beginning of a new, positive and enduring relationship with Ngāti Toa Rangatira founded on mutual trust and co-operation and respect for Te Tiriti o Waitangi / the Treaty of Waitangi and its principles.

33. Affording respect to the views of the iwi on resource management matters and enabling its meaningful participation as a Treaty partner in resource management decision-making within its area of interest are important ways in which the Crown can give effect to these statements and aspirations.

Other redress

34. No other cultural or commercial redress provided under the settlement would be directly affected by the project. The settlement does not create new co-governance or co-management processes which would affect decision-making under the RMA for the project.

35. As a general principle, an absence of specific settlement redress does not indicate the absence of an iwi's cultural association with ancestral lands, sites, wāhi tapu or other taonga within an area. We note also that cultural associations with ancestral lands, water, sites, wāhi tapu, and other taonga – regardless of whether or not they are specifically identified in a Treaty settlement or affected by settlement redress – are deemed to be matters of national importance that must be recognised and provided for in decision-making under Part 2 section 6(e) of the RMA. Local tangata

whenua and their representatives would be best placed to advise on such matters in the first instance.

Current negotiation mandates and settlement negotiations

36. Section 17(3)(d) of the FTCA requires this report to identify any recognised negotiation mandates for, or current negotiations for, Treaty settlements that relate to the project area.
37. Muāupoko Tribal Authority Incorporated has a Crown-recognised mandate that identifies an area of interest for settlement negotiations which includes the project site. Treaty settlement negotiations between the Crown and Muāupoko Tribal Authority Incorporated are not active and no significant negotiation milestones have yet been achieved.
38. There are no other Crown-recognised mandates for negotiation of historical Treaty claims that cover the project area. However, Waikanae is a core part of the area of interest to Te Ātiawa ki Kāpiti for their future Treaty settlement negotiations. Raukawa ki te Tonga also have interest in the area. A decision of the final make-up involving Raukawa ki te Tonga and its related hapū as a large natural group for future Treaty settlement negotiations is still to be confirmed.

Details in this report affect certain provisions of the FTCA

Notices of referral decisions

39. Under section 25 of the FTCA, you must give notice of the decisions made on an application for referral of a project to a panel, and the reasons for your decisions, to the applicant and anyone invited to comment under section 21 of the FTCA.
40. You did not invite comment on the referral application from iwi authorities or other Māori groups. However, if you decide to refer this project to a panel, the notice of decisions and associated reasons must be given to:
 - a. the relevant iwi authorities and Treaty settlement entities identified in this report
 - b. any other iwi authorities or Treaty settlement entities you consider have an interest in the matter
 - c. any group that is or party to either a joint management agreement or Mana Whakahono ā Rohe under the RMA that relates to the project area.
41. The relevant iwi authorities and Treaty settlement entities for receipt of the notice are identified in paragraph 5; contact details are in Attachment 2.
42. As explained in paragraphs 19 and 20, we recommend that you consider Te Rūnanga o Raukawa Incorporated as an iwi authority which may have an interest in the project. Accordingly, we also recommend that you provide them with a copy of the notice of decision if you decide to refer the project.
43. There are no relevant joint management agreements or Mana Whakahono ā Rohe to consider.

Expert consenting panel membership

44. If a project is referred to a panel, the appointed panel must include one person nominated by the relevant iwi authorities under clause 3(2)(b) of Schedule 5 of the FTCA.
45. In the event iwi authorities nominate more than one person, the panel convener must decide which nominee to appoint. The panel convener has discretion to increase the panel membership

to accommodate the matters specified in clauses 3(6)(a) – 3(6)(e) of Schedule 5 of the FTCA, which include matters unique to any relevant Treaty settlement Act.

46. Relevant iwi authorities for the project are identified in paragraph 5.

Panel invitations to comment

47. A panel must invite comments on a resource consent application or notice of requirement for a referred project from the parties listed in clause 17(6) of Schedule 6 of the FTCA. This includes:

- a. the relevant iwi authorities, including those identified in this report
- b. a Treaty settlement entity relevant to the referred project, including an entity that has an interest under a Treaty settlement in an area where a referred project is to occur, and an entity identified in this report
- c. any applicant group under the MACAA identified in the report obtained under section 17(1).

48. The relevant iwi authorities and Treaty settlement entities for the proposed project are listed in paragraph 5.

49. A MACAA applicant group means one or more iwi, hapū, or whānau groups that seek recognition under Part 4 of the MACAA of their protected customary rights or customary marine title by either a recognition order granted by the High Court; or an agreement negotiated with the Crown (through The Office for Māori Crown Relations – Te Arawhiti). The project is unlikely to affect the coastal marine area and we have not identified any relevant MACAA applicant groups.

50. A panel may also invite comments from any other person it considers appropriate.

51. We have identified that Te Rūnanga o Raukawa Incorporated may have an interest in the project area. We therefore recommend that you direct a panel to seek comment from this party if you decide to refer the project.

Provision of cultural impact assessment

52. Any resource consent application that is submitted to a panel for determination must include a cultural impact assessment prepared by or on behalf of the relevant iwi authority, or a statement of any reasons given by the relevant iwi authority for not providing that assessment.² The Environmental Protection Authority (which provides support services to a panel) will not confirm an application as complete and ready for consideration by a panel until this requirement has been satisfied.

53. Where there is more than one relevant iwi authority, the project applicant will need to engage with each to determine their requirements for a cultural impact assessment, including whether they wish to prepare one individually or jointly, or whether they may wish to defer to another iwi in respect of the matter. The relevant iwi authorities for the project are listed in paragraph 5.

² Clause 9(5) of Schedule 6 of the FTCA.

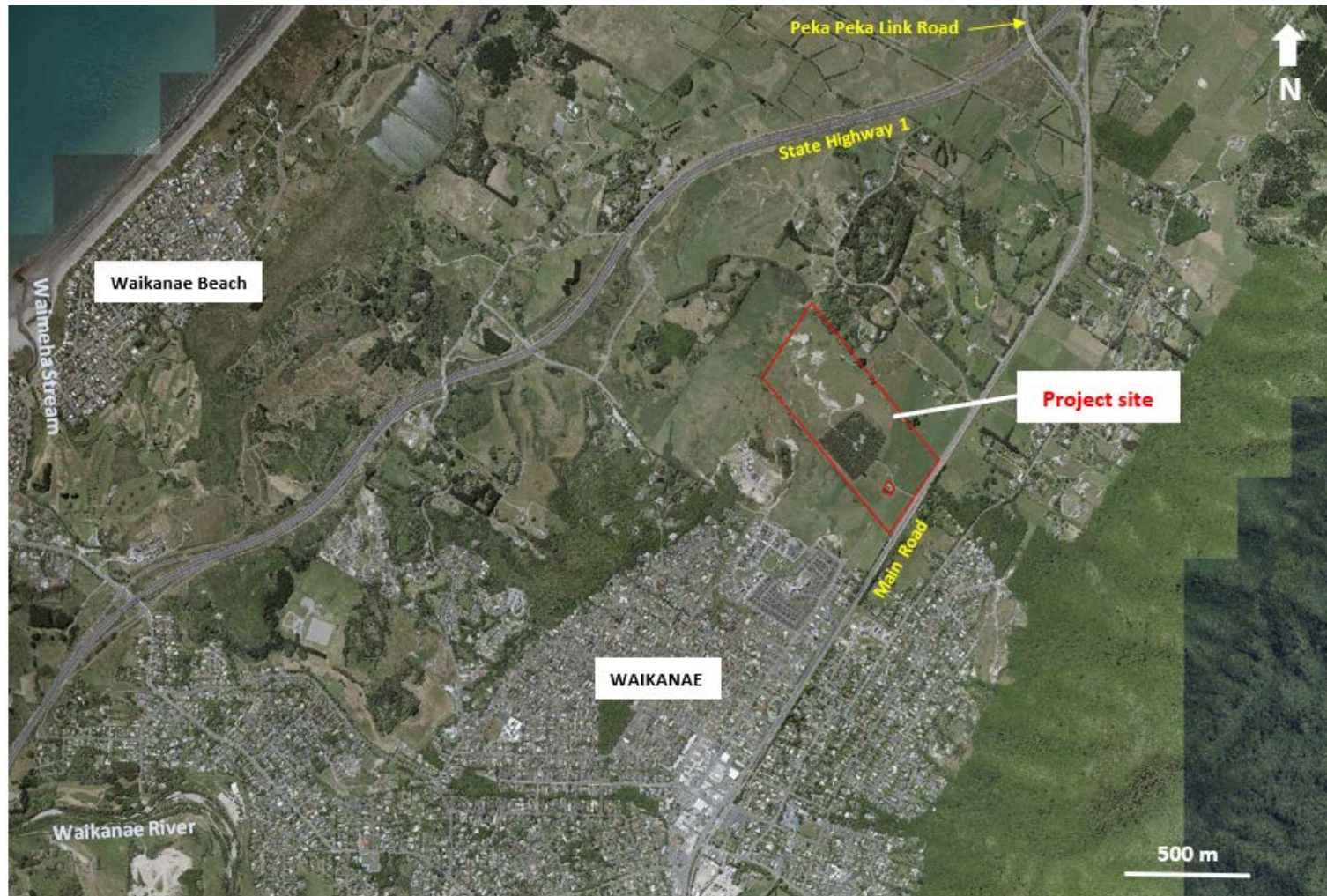
Attachment 1 – Location



Attachment 2 – Contact information

Iwi/hapū	Representative body	Contact details	RMA Iwi authority	Treaty settlement entity	Other	Contact person	Copies to
Ngāti Toa Rangatira	Te Rūnanga o Toa Rangatira Inc	PO Box 50355 Porirua 5240	Represents Ngāti Toa Rangatira as an iwi authority for RMA purposes	Trustee of post-settlement governance entity under Ngāti Toa Rangatira Claims Settlement Act 2014		CEO: Helmut Modlik runanga@ngatitoea.iwi.nz	RMA contact: Debbie Rene resourcemanagement@ngatitoea.iwi.nz
	Toa Rangatira Trust			Post-settlement governance entity under Ngāti Toa Rangatira Claims Settlement Act 2014			
Te Ātiawa ki Kāpiti	Ātiawa ki Whakarongotai Charitable Trust	PO Box 509 Waikanae 5250	Represents Te Ātiawa ki Kāpiti as an iwi authority for RMA purposes	Not settled		Chair: Andre Baker admin@teatiawakikapiti.co.nz	
Muaūpoko	Muaūpoko Tribal Authority Incorporated	PO Box 1080 Levin 5510	Represents Muaūpoko as an iwi authority for RMA purposes	Not settled		CEO & RMA contact: Di Rump ceo@muaupoko.iwi.nz	

Attachment 3 – Project area detail



Attachment 4 – Project layout

