

Report prepared in accordance with Section 17 Covid-19 (Fast-track Consenting) Act 2020

Application 2022-102 Pohutukawa Drive Subdivision Project

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: 28 February 2023	

Ministry for the Environment contacts

Position	Name	Cell Phone	1 st Contact
Principal Author	Stephanie McNicholl		
Acting Manager	Madeline Berry	s 9(2)(a)	✓
Director	Caroline Hart	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 regarding the application request to refer the Pohutukawa Drive Subdivision Project (project) to an expert consenting panel (panel).

Proposed project

3. The applicant (Evans Family Trust) proposes to develop an approximately 12-hectare site into a residential subdivision located at 996 State Highway 2, Whirinaki, Hawke's Bay region.
4. The project will involve the staged subdivision of 81 residential lots for the construction of residential units, including a commercial (superette style retailer and café) development at ground level with provision for 2 upper level apartments and associated subdivision, including supporting infrastructure, restoration planting, bridge construction, diversion of the Whirinaki drain, 2-hectares of solar generation, landscape planting, roads, street lighting, vehicle and pedestrian, and cycle accessways.
5. A location map is in Attachment 1.

Essential information

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

FTCA Section	Information required	Detail
17(3)(a)	Relevant iwi authorities (3)	Maungaharuru Tangitū Trust Heretaunga Tamatea Settlement Trust Mana Ahuriri Trust <i>Contact details are in Attachment 2</i>
17(3)(b)	Treaty settlements that relate to the project area (3)	Maungaharuru-Tangitū Hapū Claims Settlement Act 2014 Heretaunga Tamatea Claims Settlement Act 2018 Ahuriri Hapū Claims Settlement Act 2021
17(3)(a)	Relevant Treaty settlement entities (3)	Maungaharuru Tangitū Trust Heretaunga Tamatea Settlement Trust Mana Ahuriri Trust <i>Contact details are in Attachment 2</i>
17(3)(c)	Relevant principles and provisions of the Treaty settlements	See details in blue-shaded section below
17(3)(d)	Groups with a negotiation mandate recognised by the Crown which are yet to commence Treaty settlement negotiations	-
17(3)(d)	Current Treaty settlement negotiations	-
17(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	-

Supporting information

Project details

7. The project site covers approximately 12 hectares of rural land situated to the east of State Highway 2 and west of Pohutukawa Drive, to the north of Napier and south of Whirinaki, Hawke's Bay region. The site access will be gained primarily from School Road. The southern portion of the site will have 3 access points from Pohutukawa Drive and one from North Shore Road to the north.
8. The project intends to provide for residential housing. Attachment 3 shows the project layout comprising residential dwellings, public open space, access and streetscape amenities.

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 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 purpose of this report, we have considered information from the following sources as a starting point for identifying iwi areas of interest:
 - a. 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 carefully consider 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.
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

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.

(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. Hawke's Bay Regional Council and Hastings District Council as relevant local authorities.

Iwi authorities relevant to project

17. We have identified, via the TPK viewer and TKM website the relevant iwi authorities for the project area, as:
 - Maungaharuru Tangitū Trust, representing Maungaharuru Tangitū Hapū
 - Heretaunga Tamatea Settlement Trust, representing Heretaunga Tamatea
 - Mana Ahuriri Trust, representing Ahuriri Hapū
18. Hawkes Bay Regional Council and Hastings District Council identified the same relevant iwi authorities.

Other iwi authorities which may have an interest in the project

19. Hawkes Bay Regional Council and Hastings District Council identified Ngāti Kahungunu Iwi Incorporated, representing Ngāti Kahungunu.
20. We have identified and included Ngāti Kahungunu Incorporated as an other iwi authority who may have an interest.

Other iwi parties which may have an interest in the project

21. Hawke's Bay Regional Council and Hastings District Council identified Te Taiwhenua o Te Whanganui-a-Orotū as a hapū of Ngāti Kahungunu.
22. We have identified and included Te Taiwhenua o Te Whanganui-a-Orotū as an other iwi party who may have an interest.

Treaty settlements and Treaty settlement entities

23. 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 iCat online database and [NZ Government Treaty settlements website](#), together with advice from the Office for Māori Crown Relations – Te Arawhiti.
24. 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.
25. [Maungaharuru-Tangitū Hapū Claims Settlement Act 2014](#) is one of the settlements of historical Treaty claims relating to the project area. The Act gives effect to certain provisions of the deed of settlement signed by Maungaharuru Tangitū Trust and the Crown on 25 May 2013. [Maungaharuru-Tangitū Hapū deed of settlement documents](#) can be accessed on the NZ Government Treaty settlements website.

26. The [Heretaunga Tamatea Claims Settlement Act 2018](#) is one of the settlements of historical Treaty claims relating to the project area. The Act gives effect to certain provisions of the deed of settlement signed by Heretaunga Tamatea and the Crown on 26 September 2015, and amendment deeds signed in February and June 2017. [Heretaunga deed of settlement documents](#) can be accessed on the NZ Government Treaty settlements website.
27. [Ahuriri Hapū Claims Settlement Act 2021](#) is one of the settlements of historical Treaty claims relating to the project area. The Act gives effect to certain provisions of the deed of settlement signed by Mana Ahuriri Trust and the Crown on 2 November 2016, and amendment deeds signed in February and June 2017. [Ahuriri Hapū deed of settlement documents](#) can be accessed on the NZ Government Treaty settlements website.
28. 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.
29. Maungaharuru Tangitū Trust is the post-settlement governance entity under the Maungaharuru-Tangitū Hapū Claims Settlement Act 2014.
30. Heretaunga Settlement Trust is the post-settlement governance entity under the Heretaunga Tamatea Claims Settlement Act 2018.
31. Mana Ahuriri Trust is the post-settlement governance entity under the Ahuriri Hapū Claims Settlement Act 2021.
32. 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.
33. No such entity established by either of the Claims Settlement Acts are relevant to the proposed project.

Relevant principles and provisions of the Treaty settlements

Crown acknowledgements and apologies

34. As part of the Treaty settlements, 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.

Relevant principles and provisions of the Maungaharuru Tangitū Hapū Treaty settlement

35. As part of the apology made by the Crown to the Hapū, their ancestors and their descendants in the Maungaharuru Tangitū Hapū Claims Settlement Act 2014, the Crown states it is deeply sorry that it has not always lived up to its Treaty of Waitangi obligations and that it has breached the Treaty of Waitangi, and its principles, in its dealings with the Hapū.
36. The Crown also says to Maungaharuru Tangitū Hapū that it is 'very sorry that it left the Hapū virtually landless (by proclamation of a confiscation district, the loss of Tangoio North, the exclusion of the Hapū from the ownership of Kaiwaka and by purchasing most of the remaining land of the Hapū before 1930), and for the harm this caused to your tribal structures and ability to exercise customary rights and responsibilities'. The Crown apologises for its failure to respect the rangatiratanga of the Hapū and for Crown acts

and omissions which have impacted on your lands, fisheries, and other taonga, and your capacity for social and economic development, as well as your physical, cultural and spiritual well-being.

37. Through the settlement and the apology, the Crown is seeking to atone for its past wrongs towards the Hapū, to restore its tarnished honour, and to begin the process of healing. The Crown hopes that this apology will mark the beginning of a new relationship between the Crown and the Hapū based on respect for the Treaty of Waitangi and its principles.

Relevant principles and provisions of the Heretaunga Tamatea Treaty settlement

38. As part of the apology offered by the Crown to the tīpuna, hapū, whānau, and mokopuna of Heretaunga Tamatea in the Heretaunga Tamatea Claims Settlement Act 2018, the Crown states it is profoundly sorry that it has repeatedly failed to uphold the partnership envisaged by the Treaty and sought by the tīpuna of Heretaunga Tamatea since the 1840s. The Crown unreservedly apologises for its repeated breaches of the Treaty of Waitangi, and for 'ngā mamae me ngā tūkino,' or the pain and damage, that these breaches have caused to generations of Heretaunga Tamatea.
39. The Crown also says to Heretaunga Tamatea that it is deeply sorry that its breaches of the Treaty of Waitangi 'have severely limited your economic and social opportunities, eroded your tribal structures and undermined your well-being, in stark contrast to the benefits of partnership that the Crown led you to expect in the 1850s'.
40. Through the settlement and the apology, the Crown states it hopes to ease the burden of grievance and sorrow that the whānau and hapū of Heretaunga Tamatea have carried for generations. The Crown looks forward to restoring a relationship with the hapū of Heretaunga Tamatea that is built on trust, co-operation, and respect for each other and the Treaty of Waitangi and its principles.

Relevant principles and provisions of the Ahuriri Hapū Treaty settlement

41. As part of the apology made by the Crown to the Hapū, to their tīpuna and to their mokopuna in the Ahuriri Hapū Claims Settlement Act 2021, the Crown states that it profoundly regrets its many failures to live up to its obligations under the Treaty of Waitangi in its dealings with Ahuriri Hapū, and unreservedly apologises for the immense damage caused by its breaches of the Treaty of Waitangi and its principles.
42. The Crown is deeply remorseful for the prejudice it created by purchasing so much Ahuriri Hapū land in the 1850s, and for using divisive purchasing methods that involved Ahuriri Hapū in conflict. The Crown deeply regrets that many Ahuriri Hapū were dispossessed by the operation of the 10-owner rule. The Crown solemnly apologises for its policies, acts, and omissions that have left Ahuriri Hapū virtually landless, and for the severe impacts the loss of ancestral lands and resources has had on the capacity of Ahuriri Hapū for economic and social development, and physical, cultural, and spiritual well-being.
43. The Crown also states that through this settlement and this apology it seeks to atone for its past wrongs and begin the process of healing. The Crown looks forward to building a new, positive, and enduring relationship with Ahuriri Hapū that fulfils the expectations of their tīpuna and mokopuna, a relationship based on mutual trust, partnership, and respect for the Treaty of Waitangi and its principles.

Other redress of the Treaty settlements

44. Affording respect to the views of Heretaunga Tamatea iwi, Maungaharuru Tangitū Hapū and Ahuiriri Hapū on resource management matters and enabling iwi to meaningfully participate as a Treaty partner in resource management decision-making within their takiwā/area of interest are important ways in which the Crown can give effect to these acknowledgements and apologies.
45. We note none of the Treaty settlements creates any new co-governance or co-management processes which would affect decision-making under the RMA for the project. The proposed project does not directly affect any specific commercial or cultural redress provided by the Treaty settlements.
46. We note the project area is adjacent to the Hawke's Bay coastline. Heretaunga Tamatea hold a coastal statutory acknowledgement covering the Hawke's Bay coastline.
47. As a general principle, an absence of specific settlement redress does not indicate the absence of an iwi cultural association with ancestral lands, sites, wāhi tapu or other taonga within an area. Local tangata whenua and their representatives would be best placed to advise on such matters in the first instance.
48. Importantly, cultural associations with ancestral lands, water, sites, wāhi tapu, and other taonga – irrespective of whether or not they are specifically identified in a Treaty settlement – 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.

Current negotiation mandates and settlement negotiations

49. There are no recognised mandates for negotiation of any further historical Treaty claims, or any current or anticipated negotiations for settlement of historical Treaty claims, affecting the proposed project site.

Details in this report affect certain provisions of the FTCA

Notices of referral decisions

50. 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.
51. 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.
52. We have identified Heretaunga Tamatea Settlement Trust (HTST), Maungaharuru Tangitū Trust and Mana Ahuriri Trust as the relevant iwi authorities and Treaty settlement entities for receipt of the notice of decisions. Contact details are in Attachment 2.

53. We have identified Ngāti Kahungunu Incorporated as an 'other' iwi authority or Treaty settlement entity; and Te Taiwhenua o Te Whanganui-a-Orotū Incorporated as an 'other' party – both who may have an interest in the project for receipt of notices of decisions. Contact details are in Attachment 2.
54. There are no relevant joint management agreements or Mana Whakahono ā Rohe to consider.

Expert consenting panel membership and invitation to comment

55. 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.
56. 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.
57. 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).
58. We have identified Heretaunga Tamatea Settlement Trust, Maungaharuru Tangitū Trust and Mana Ahuriri Trust as the relevant iwi authorities and Treaty settlement entities for the proposed project. We have identified Ngāti Kahungunu Incorporated as an 'other' iwi authority or Treaty settlement entity; and Te Taiwhenua o Te Whanganui-a-Orotū Incorporated as an 'other' party - who may have an interest.
59. Under the MACA Act, an applicant group identified under the Act 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 (via The Office for Māori Crown Relations – Te Arawhiti). The groups with applications under the MACAA in the common marine and coastal area of the project site who could be potentially affected from the project are listed in Attachment 4.
60. A panel may also invite comments from any other person it considers appropriate.

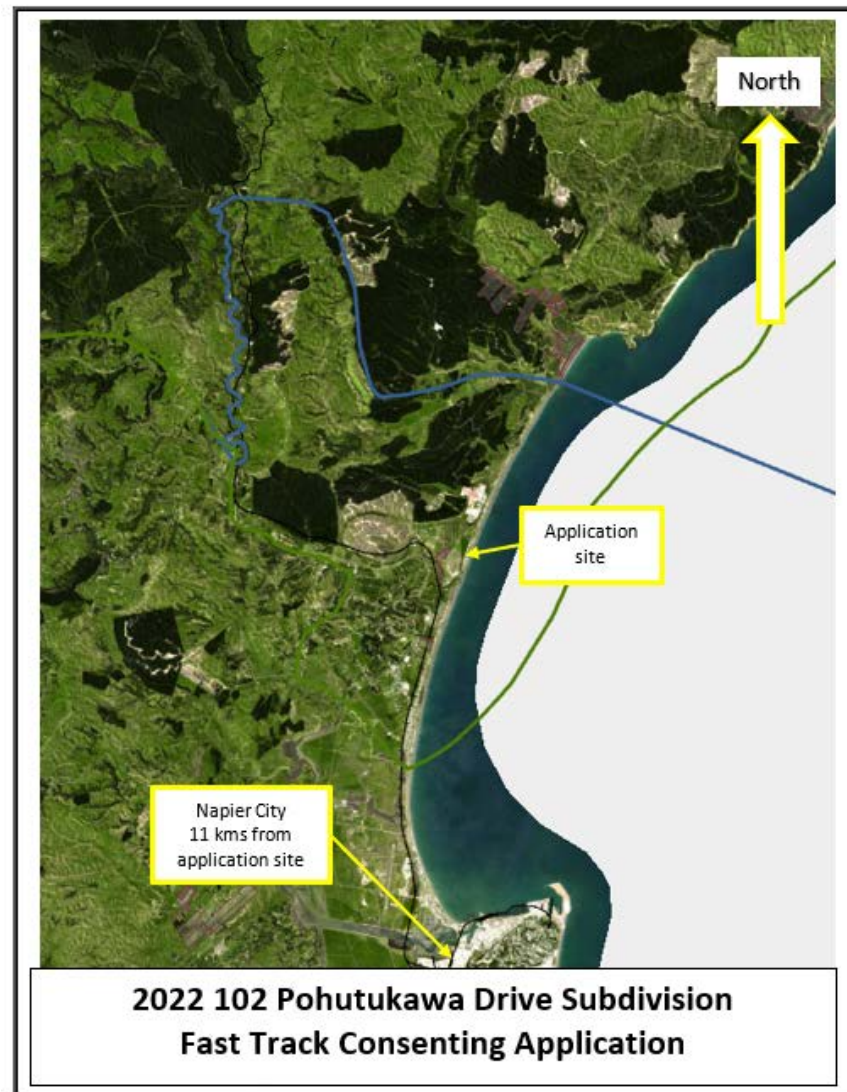
Provision of cultural impact assessment

61. Any resource consent application submitted to a panel for determination must include a cultural impact assessment prepared by or on behalf of the relevant iwi authorities, or a statement of any reasons given by the relevant iwi authorities for not providing that assessment.²

² Clause 9(5), 13(1)(k) and 13(1)(l) of Schedule 6 of the FTCA.

62. 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 is satisfied.
63. 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. Relevant iwi authorities are listed in Attachment 2.

Attachment 1 – Project Location



Attachment 2 – Contact information

Iwi/hapū	Representative body	RMA relevant Iwi authority	Treaty settlement entity (PSGE)	Other Iwi authority interest	Contact person	Contact details
Heretaunga Tamatea	Heretaunga Tamatea Settlement Trust	Representing Heretaunga Tamatea as an Iwi authority for RMA purposes	PSGE under Heretaunga Tamatea Claims Settlement Act 2018		CEO: Liz Munroe office@heretaungatamatea.iwi.nz Copies to: RMA Contact: Joella Brown	PO Box 2192 Stortford Lodge Hastings 4156
Ahuriri Hapū	Mana Ahuriri Trust	Representing Ahuriri Hapū as an Iwi authority for RMA purposes	PSGE under Ahuriri Hapū Claims Settlement Act 2021		CEO: Tania Eden info@manaahuriritrust.com	PO Box 12076 Ahuriri 4144
Maungaharuru Tangitū Hapū	Maungaharuru Tangitū Trust	Representing Maungaharuru Tangitū Hapū as an Iwi authority for RMA purposes	PSGE under Maungaharuru-Tangitū Hapū Claims Settlement Act 2014		GM: Lee Grace s 9(2)(a) Copies to: RMA Contact: Hayley Lawrence s 9(2)(a)	PO Box 3376 Hawke's Bay Mail Centre Napier 4142
Ngāti Kahungunu	Ngāti Kahungunu Iwi Incorporated			Representing Ngāti Kahungunu Iwi Incorporated as an other Iwi authority with an interest in the matter	Env. Director: Ngaio Tiuka s 9(2)(a)	Level 1 304 Fitzroy Avenue Hastings PO Box 2406
	Te Taiwhenua o Te Whanganui ā Orotū Incorporated - Kahungunu			Representing Te Taiwhenua o Te Whanganui ā Orotū Incorporated – Kahungunu as an other Iwi interested party	CEO: Tania Eden admin@taiwhenua.com	2 Wellesley Road Napier South Napier 4110

Attachment 3 – Planned Layout



Attachment 4 – Applicants for customary marine title or protected customary rights (Hawke’s Bay coastal region)

Applicant	Engagement		Application Status	Contact person
	Crown	High Court		
Mana Ahuriri	MAC-01-09-003	CIV-2017-404-537	Active	Representative: Bryce Lyall s 9(2)(a)
Ngāti Pāhauwera (Trustees of Ngāti Pāhauwera Development Trust)	MAC-01-09-015	CIV-2011-485-821	Active	Representative: The Trustees of the Ngāti Pāhauwera Development Trust admin@npdt.co.nz
Maungaharuru-Tangitū Hapū	MAC-01-09-004		Active	Representative: Maungaharuru-Tangitū Trust thopmans@xtra.co.nz ; info@tangoio.maori.nz ; tangoio2@hotmail.com
Ngāti Kurumōkihi, Ngāti Marangatūhetaua, Ngāti Whakaari, Ngāi Tauira, Ngāi Te Ruruku ki Tangoio, and Ngāi Tahu (Trustees of the Maungaharuru-Tangitū Trust)		CIV-2017-485-241	Active	Representative: Maungaharuru-Tangitū Trust s 9(2)(a) info@tangoio.maori.nz ; tangoio2@hotmail.com
Ngāi Tāhū O Mohaka-Waikare (Malcolm J. Kingi)		CIV-2017-485-235	Active	Representative: Malcolm J. Kingi s 9(2)(a)