

Application 2022-104 Brackens Ridge Project (applicant)

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: 9 November 2022	

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 to accept the application to refer the Brackens Ridge Project (project) to an expert consenting panel (panel).

Proposed project

3. The applicant (Mount Soho Trust Limited) proposes to subdivide land (17.9ha) to create approximately 104 residential lots for future housing development (of up to 208 residential units to be constructed by third parties) and construct the associated infrastructure for the subdivision and development of the sections, including roading, walkways, connections to three waters services and reserves.
4. This is a proposal to undertake a subdivision that would enable approximately 104 residential lots, with a range of lot sizes. The applicant will undertake all of the subdivision works including connection to services, roading, access connections, street tree planting and landscaping of the open space areas. It is proposed that the terrace face and wetland open space areas will be vested as reserve, with other areas of open space retained in private ownership.

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

5. The land use component of this consent application will provide overarching approval for the construction of one primary and one secondary unit within each of the 104 lots. This is therefore a proposal to undertake a subdivision that then enables the development of up to 208 residential units.
6. A location map is in Attachment 1.

Essential information

7. 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 (1)	Te Rūnanga o Ngāi Tahu <i>Contact details are in Attachment 2</i>
s17(3)(b)	Treaty settlements that relate to the project area (1)	Ngāi Tahu Claims Settlement Act 1998
s17(3)(a)	Relevant Treaty settlement entities (1)	Te Rūnanga o Ngāi Tahu <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	None
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

8. The project site covers 17.9 hectares of rural land situated on the edge of the main suburban residential area of Arrowtown. The site access will be gained via internal roads from Centennial Avenue and from McDonnell Road.
9. The project intends to provide for residential housing. Attachment 4 shows the project layout comprising residential dwellings and amenities including public and provide open space, and wetlands.

Statutory matters relating to this report

10. 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.

11. 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

12. 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.
13. '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.
14. 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.
15. 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.
16. 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.
17. To identify iwi authorities associated with the identified areas of interest, we considered information from:
 - a. the TKM online directory noted above
 - b. Queenstown Lakes District Council and Otago Regional Council as the relevant local authorities.

Iwi authorities relevant to project

18. We have identified Te Rūnanga o Ngāi Tahu (TRoNT) as the sole iwi authority for the project area.

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.

19. TRoNT is made up of 18 Papatipu Rūnanga (rūnanga) to which members of Ngāi Tahu Whānui can belong.
20. Along with TRoNT, the rūnanga were established by Te Rūnanga o Ngāi Tahu Act 1996 (TRoNT Act). Each of the rūnanga hold the rights, interests and responsibilities to defined areas of land and waters within the Ngāi Tahu rohe.
21. Seven rūnanga have a shared interest in the Queenstown Lakes District:
 - a. Te Rūnanga o Moeraki
 - b. Kāti Huirapa Rūnaka ki Puketeraki
 - c. Te Rūnaka o Ōtākou
 - d. Hokonui Rūnanga
 - e. Te Rūnaka o Ōraka-Aparima
 - f. Te Rūnanga o Awarua
 - g. Waihōpai Rūnaka.
22. Section 15 of the TRoNT Act specifies that where any enactment requires consultation with any iwi or iwi authority in respect of matters affecting Ngāi Tahu Whānui, it will be held with TRoNT.
23. When TRoNT undertakes such consultation, the TRoNT Act also requires it to seek and have regard to the views of the rūnanga and hapū they consider may wish to comment on the matter being consulted on.
24. Two organisations undertake liaison between the rūnanga of the Otago/Southland regions and TRoNT, and on their behalf engage with the local authorities in these areas in relation to RMA matters:
 - a. Aukaha (1997) Limited – based in Dunedin, and which is owned by, and represents Te Rūnanga o Moeraki, Kāti Huirapa Rūnaka ki Puketeraki, Te Rūnaka o Ōtākou, Hokonui Rūnanga, and Te Rūnanga o Waihao.
 - b. Te Ao Mārama Incorporated – based at Murihiku Marae in Invercargill, and which represents Hokonui Rūnanga, Te Rūnaka o Ōraka-Aparima, Te Rūnanga o Awarua, and Waihōpai Rūnaka.

Treaty settlements and Treaty settlement entities

25. 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 14 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.
26. 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.
27. The Ngāi Tahu Claims Settlement Act 1998 is the only settlement of historical Treaty claims relating to the proposed project area. The Act gives effect to certain provisions of the deed of settlement between TRoNT and Her Majesty the Queen, dated 21 November 1997, and amendment deeds signed in 1998 and 1999. The [deeds and related documents](#) are available on the NZ Government's Treaty settlement website.

28. The settlement applies to the Takiwā of Ngāi Tahu, as defined in section 5 of the TRoNT Act, and which covers the majority of the South Island of Aotearoa (Te Waipounamu). A [settlement summary](#) is available on TRoNT's website.
29. TRoNT is the post-Treaty settlement governance entity associated with the Treaty settlement.
30. A Treaty settlement entity is also defined for the purposes of the Act as including a board, trust, committee, authority, or other body, recognised in or established under a Treaty settlement Act. No such entities established by the Ngāi Tahu Treaty settlement are relevant to the proposed project.

Relevant principles and provisions of the Ngāi Tahu Treaty settlement

31. As part of the Ngāi Tahu Treaty settlement, the Crown apologises to Ngāi Tahu for its past failures to acknowledge Ngāi Tahu rangatiratanga and mana over the South Island lands within its boundaries, and, in fulfilment of its Treaty obligations, the Crown states that it recognises Ngāi Tahu as the tāngata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.
32. Rangatiratanga as a concept and a practice encompasses rights, responsibilities and obligations, including kaitiakitanga in relation to the land and resources within the Takiwā. Respect for Ngāi Tahu views on resource management matters and enabling effective involvement of Ngāi Tahu as a Treaty partner in resource management decision-making within the Takiwā are important ways in which the Crown can give on-going effect to these acknowledgements and uphold its relationship with Ngāi Tahu.
33. The settlement did not create any new co-governance or co-management processes affecting 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 settlement.
34. 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. While the Treaty settlement identifies the Ngāi Tahu association with many named sites and areas, there are many other sites within the Ngāi Tahu Takiwā which are sacred or hold special significance for both local Ngāi Tahu tangata whenua and the iwi as a whole².
35. The relevant rūnanga and their agents are best placed to advise on such matters in the first instance.
36. Importantly, 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.

² For example, the Ngāi Tahu Atlas – Kā Huru Manu <https://www.kahurumanu.co.nz/atlas> – notes 'the Kawarau River was a traditional travel route that provided direct access between Whakatipu Waimāori (Lake Wakatipu) and Mata-au (the Clutha River). A natural rock bridge known as Pōtiki-whata-rumaki-nao once existed on the Kawarau, allowing people to cross the river. During the 1879 Smith Nairn Royal Commission of Inquiry into the Ngāi Tahu land claims, Ngāi Tahu kaumātua recorded Kawarau as a kāinga mahinga kai (food-gathering place) where weka, kākāpō, kea, and tuna (eel) were gathered.'

Current negotiation mandates and settlement negotiations

37. 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.
38. 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

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. We have identified TRoNT as the sole relevant iwi authority and Treaty settlement entity for receipt of the notice of decisions; contact details are in Attachment 2.
42. There are no relevant joint management agreements or Mana Whakahono ā Rohe to consider.
43. If you decide to refer the project, we recommend copying the notice of decisions to the relevant rūnanga, through their agents Aukaha and Te Ao Marama Incorporated, to facilitate these parties' preparedness for engagement in the panel process. Contact details are in Attachment 2.

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 the iwi authority nominates 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. We have identified TRoNT as the relevant iwi authority for the project.

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. We have identified TRoNT as the relevant iwi authority and Treaty settlement entity for the proposed project.
- 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 will not affect the coastal marine area and therefore we have not identified any relevant MACAA applicants.
- 50. A panel may also invite comments from any other person it considers appropriate. We recommend a panel invite comments from the appropriate rūnanga, through their representative agents Aukaha and Te Ao Marama Incorporated. This is because TRoNT is obliged to consult with the rūnanga when providing comments on local issues. Additionally, this consultative framework has been agreed between the iwi and local authorities and is well established under standard RMA process.

Provision of cultural impact assessment

- 51. 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.³ 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.

³ Clause 9(5) of Schedule 6 of the FTCA.

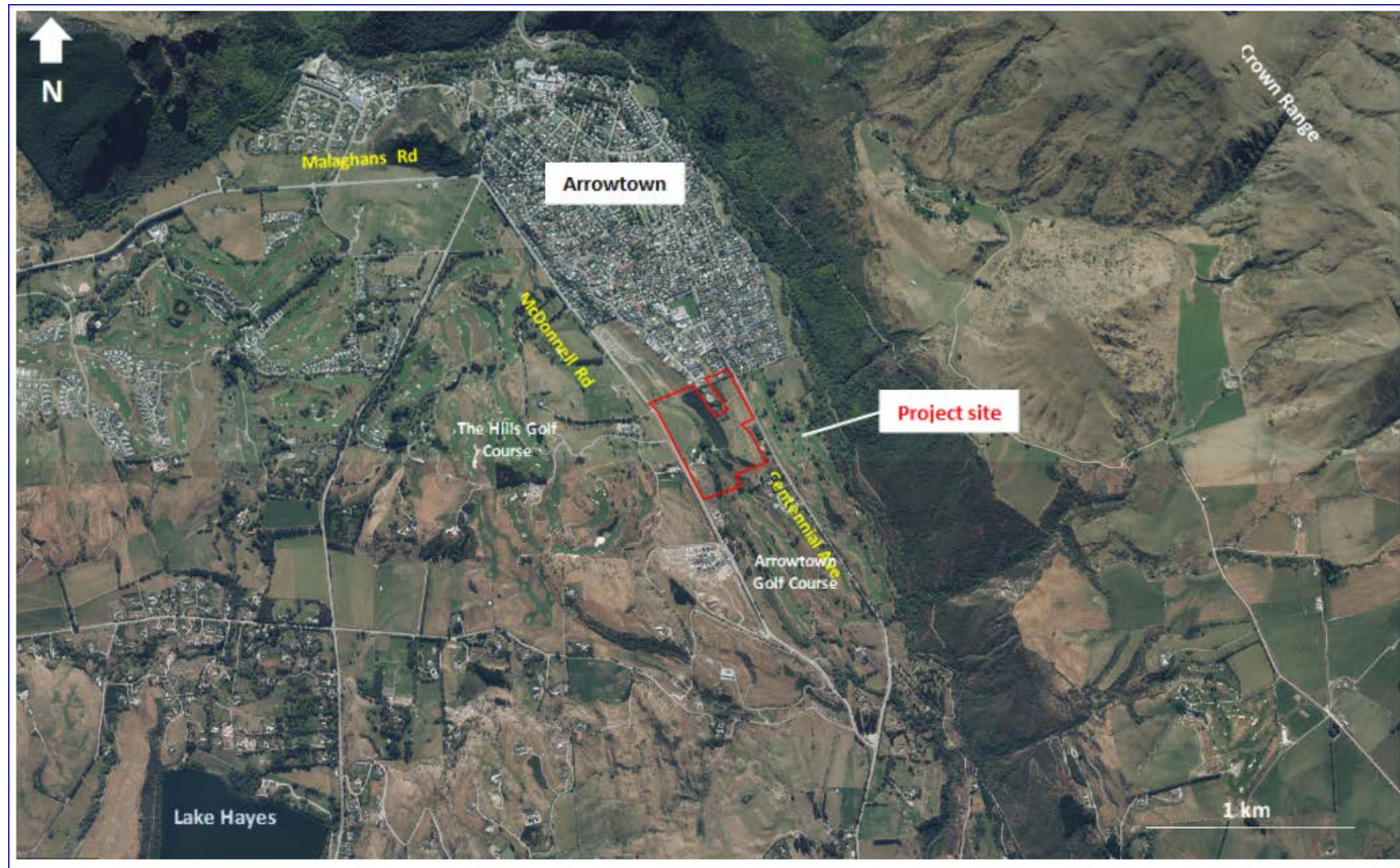
Attachment 1 – Location



Attachment 2 – Contact information

Iwi/hapū	Representative body	Contact details	Relevant Iwi authority	Relevant Treaty settlement entity	Other	Contact person	Copies to
Ngāi Tahu	Te Rūnanga o Ngāi Tahu (TRoNT)	P.O. Box 13 046 Christchurch 8141 Ph: 0800 524 8248	Represents Ngāi Tahu as an 'iwi authority' for RMA purposes	The post-Treaty settlement governance entity under the Ngāi Tahu Claims Settlement Act 1998		CEO/Kaihautū – Arihia Bennett	Ngāi Tahu fast-track team: TTW@ngaitahu.iwi.nz
Ngāi Tahu Papatipu Rūnanga with shared interests in Queenstown Lakes District:	Aukaha is an advisory company which represents 5 Papatipu Rūnanga	Aukaha PO Box 446 Dunedin 9054 Ph: 03 477 0071			Aukaha General Manager, Mana Taiao – Kate Timms-Dean s 9(2)(a)	Aukaha Principal Planner, Mana Taiao– Sandra McIntyre s 9(2)(a)	
Te Rūnanga o Moeraki Kāti Huirapa Rūnaka ki Puketeraki Te Rūnaka o Ōtākou Hokonui Rūnanga Te Rūnaka o Ōraka-Aparima Te Rūnanga o Awarua Te Rūnanga o Waihōpai	Te Ao Marama Inc represents the 4 Rūnanga in Murihiku (south of the Clutha River – Mata-au)	Te Ao Marama Inc C/- Murihiku Marae 408 Tramway Rd Invercargill 9844 Ph: 03 931 1242			Te Ao Marama Inc Kaupapa Taiao Manager – Dean Whaanga s 9(2)(a)		

Attachment 3 –Project site



Attachment 4 – Project Layout

