

Application 2022-105 Clive Residential 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: 2 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 Clive Residential Subdivision Project (project) to an expert consenting panel (panel).

Proposed project

3. The applicant (Tomorrow Developments Limited) proposes to develop an approximately 12.8-hectare site into residential housing located at 49 School Road, Clive, Hawke's Bay.
4. The project will involve the construction of 173 residential units and associated subdivision, including supporting infrastructure, public open space, landscape planting, roads, street lighting, vehicle and pedestrian, and cycle accessways and parking areas.
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 (2)	Heretaunga Tamatea Settlement Trust Ngāti Kahungunu Iwi Incorporated <i>Contact details are in Attachment 2</i>
17(3)(b)	Treaty settlements that relate to the project area (1)	Heretaunga Tamatea Claims Settlement Act 2018
17(3)(a)	Relevant Treaty settlement entities (2)	Heretaunga Tamatea Settlement Trust Ngāti Kahungunu Iwi Incorporated <i>Contact details are in Attachment 2</i>
17(3)(c)	Relevant principles and provisions of the Treaty settlements	<i>See details in blue-shaded section below</i>
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 12.8 hectares of semi-rural land situated on the edge of the small suburban residential area of Clive, located to the south of Clive River and State Highway 51, Hawke's Bay region. The site access will be gained primarily from School Road. The southern portion of the site will gain access from both School Road and Tucker Lane.
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 an 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

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.

- b. Hawkes 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:
- Heretaunga Tamatea Settlement Trust, representing Heretaunga Tamatea
 - Ngāti Kahungunu Iwi Incorporated, representing Ngāti Kahungunu
18. Hawkes Bay Regional Council identified the same relevant iwi authorities. Hastings District Council does not consider Ngāti Kahungunu to be a mandated iwi authority for this area. Both local authorities note Te Taiwhenua o Heretaunga, representing Ngāti Kahungunu Iwi Incorporated for RMA purposes.

Other iwi authorities which may have an interest in the project

19. Hawkes Bay Regional Council identified Mana Ahuriri Trust, representing Ahuriri Hapū². We have identified and included Mana Ahuriri Trust as an other iwi authority who may have an interest.

Treaty settlements and Treaty settlement entities

20. 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.
21. 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.
22. The [Heretaunga Tamatea Claims Settlement Act 2018](#) is the only settlement 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.
23. 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.
24. Heretaunga Settlement Trust is the post-settlement governance entity under the Heretaunga Tamatea Claims Settlement Act 2018.
25. 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.
26. No such entity established by the Heretaunga Tamatea Claims Settlement Act is relevant to the proposed project.

² Ahuriri Hapū Claims Settlement Act 2021

Relevant principles and provisions of the Heretaunga Tamatea Treaty settlement

Crown acknowledgements and apologies

27. As part of the Heretaunga Tamatea Treaty settlement, 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.
28. 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.
29. 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’.
30. 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.
31. Affording respect to the views of Heretaunga Tamatea iwi 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.

Other redress

32. The Treaty settlement does not create 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 settlement. We note the project site is adjacent to Muddy Creek which is a tributary which discharges into the Clive River near its mouth. Heretaunga Tamatea hold statutory acknowledgement and deed of recognition covering the Clive River and its tributaries.
33. 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.
34. 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 – 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

35. 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

36. 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.
37. 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.
38. We have identified Heretaunga Tamatea Settlement Trust (HTST) and Ngāti Kahungunu Iwi Incorporated as the relevant iwi authorities and HTST as the Treaty settlement entity for receipt of the notice of decisions. Contact details are in Attachment 2.
39. We have identified Mana Ahuriri Trust as an other iwi authority or Treaty settlement entity who may have an interest in the project for receipt of notices of decisions. Contact details are in Attachment 2.
40. There are no relevant joint management agreements or Mana Whakahono ā Rohe to consider.

Expert consenting panel membership and invitation to comment

41. 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.
42. 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.
43. 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).

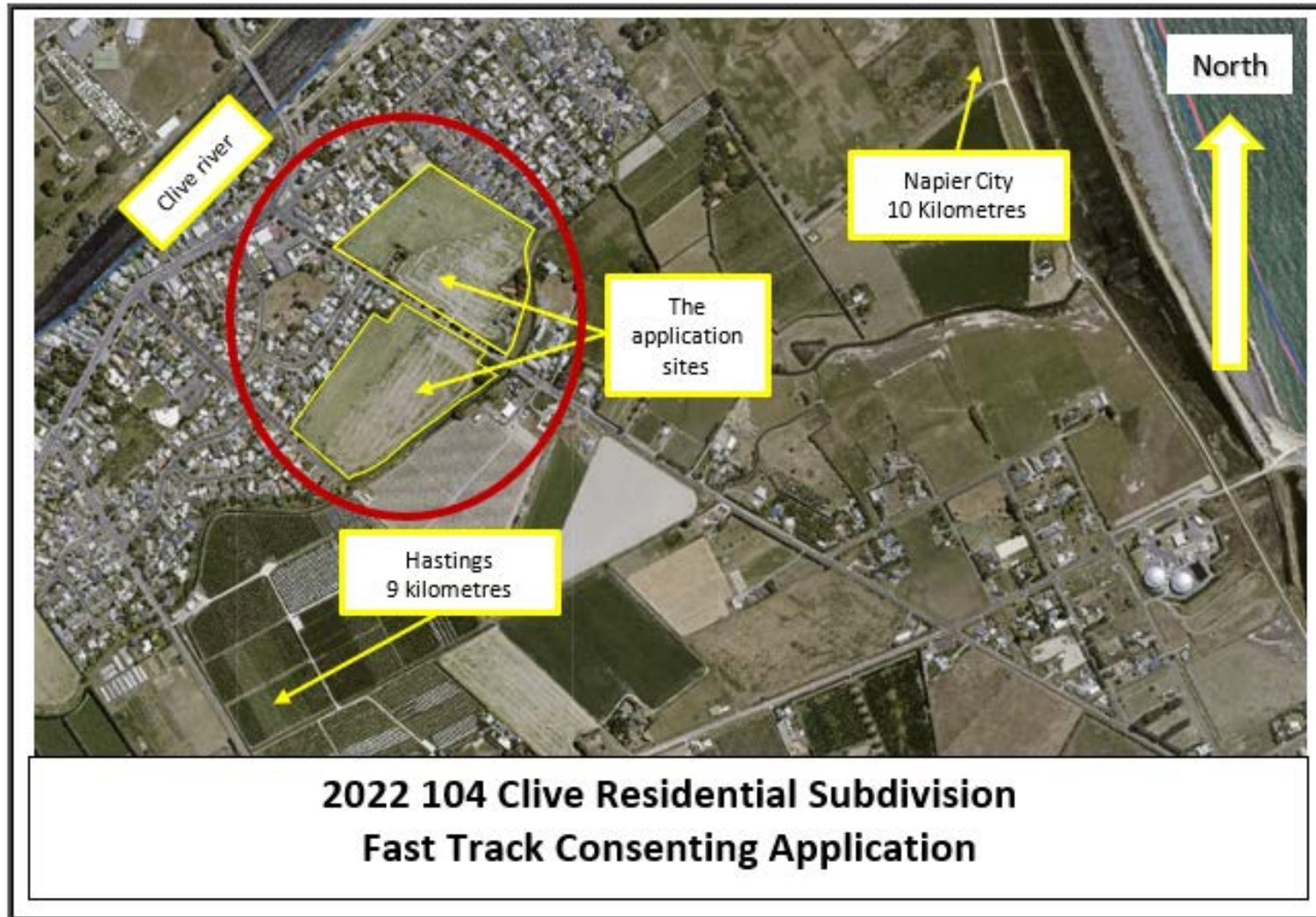
44. We have identified Heretaunga Tamatea Settlement Trust (HTST) and Ngāti Kahungunu as the relevant iwi authorities and HTST as the Treaty settlement entity for the proposed project. We have identified Manu Ahuriri Trust as an other iwi authority or Treaty settlement entity who may have an interest.
45. A panel may also invite comments from any other person it considers appropriate.

Provision of cultural impact assessment

46. 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.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 is satisfied.
47. 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.

³ Clause 9(5), 13(1)(k) and 13(1)(l) of Schedule 6 of the FTCA.

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: [REDACTED] RMA Contact: Joella Brown	PO Box 2192 Stortford Lodge Hastings 4156
Ahuriri Hapū	Mana Ahuriri Trust			Representing Ahuriri Hapū as other Iwi authority with an interest in the matter	Chair: Tania Eden info@manaahuriritrust.com	PO Box 12076 Ahuriri 4144
Ngāti Kahungunu	Ngāti Kahungunu Iwi Incorporated	Representing Ngāti Kahungunu as an Iwi authority for RMA purposes			Env. Director: Ngaio Tiuk S [REDACTED] 9	Level 1 304 Fitzroy Avenue Hastings PO Box 2406

Attachment 3 – Planned Layout

