

## Application 2021-078 Whisper Creek Residential Subdivision Project (Mike Greer Homes North Canterbury Limited and LMM Investments 2012 Limited)

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: 5 May 2022	

### Ministry for the Environment contacts

Position	Name	Cell Phone	1 <sup>st</sup> Contact
Principal Author	Pip Lee		
Manager	Stephanie Frame	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 Whisper Creek Residential Subdivision Project (project) to an expert consenting panel (panel).

## Proposed project

3. The applicants (Mike Greer Homes North Canterbury Limited and LMM Investments 2012 Limited) propose to subdivide a 64-hectare site near Spencerville, Christchurch and construct a housing development on part of the site, comprising approximately 217 residential units and associated infrastructure on part of the site.
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 (1)	Te Rūnanga o Ngāi Tahu (TRoNT) <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)	TRoNT <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 who 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

6. As shown on Attachment 3, the project site lies on pastoral land close to the small coastal town of Spencerville, on the northern outskirts of Christchurch City. The site is bounded by the Styx River along the south-eastern boundary and Spencerville Road on its northern boundary.
7. The applicants intend to develop only the north-western part of the project site for residential use and develop the balance into ecological and stormwater treatment areas and landscaped open space – see Attachment 4.
8. The residential area will contain approximately 188 lots of varying sizes, providing for approximately 217 residential units in a range of housing density and housing typologies. The applicants advise one of the applicant parties – Mike Greer Homes North Canterbury Limited will construct these dwellings.

### 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.<sup>1</sup>

## **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 can be difficult to define precisely on a map, particularly on small scale maps depicting large geographical areas. For the purposes of this report, we have used information from the following sources as a basis for identifying iwi areas of interest:
  - a. the Iwi Areas of Interest viewer, an online application managed by the Ministry of Māori Development - Te Puni Kōkiri (TPK)
  - b. 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
  - c. 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
  - d. area of interest maps in signed Treaty settlement deeds or other Treaty settlement documents.
13. The FTCA does not define iwi authority, so under section 7(2) of the FTCA, it 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.
14. To identify the relevant iwi authorities for the identified area of interest (and their appropriate contact details), we considered information from:
  - a. the TKM online directory noted above
  - b. comments provided by Te Rūnanga o Ngāi Tahu in response to your invitation under section 21(3) of the FTCA.

### **Iwi authorities relevant to project**

15. Te Rūnanga o Ngāi Tahu (TRoNT) is the sole iwi authority for the project area.
16. TRoNT is the governing council of Ngāi Tahu iwi, established by the Te Rūnanga o Ngāi Tahu Act 1996 (TRoNT Act) to protect and advance the collective rights and interests of the iwi.

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<sup>1</sup> 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.

17. TRoNT is made up of 18 Papatipu Rūnanga (rūnanga) to which members of Ngāi Tahu Whānui can belong. Each rūnanga holds the rights, interests and responsibilities to specific takiwā (areas of land and waters) within the Ngāi Tahu Takiwā. Each rūnanga has its own governance structure and it is through this mechanism that the collective Ngāi Tahu voice in a region is represented and heard at local government and community level.
18. 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.
19. When TRoNT undertakes such consultation, the TRoNT Act also requires it to seek and have regard to the views of the rūnanga and hapū<sup>2</sup> they consider may wish to comment on the matter being consulted on.
20. Te Ngāi Tūāhuriri Rūnanga is the rūnanga which has particular rights and interests over the area including the project site. They are represented by Mahaanui Kurataiao Limited (MKT), an environmental advisory company established by the six Ngāi Tahu rūnanga based around Christchurch, Banks Peninsula and north Canterbury (including Te Rūnanga o Ngāi Tūāhuriri). MKT liaises between the rūnanga and TRoNT, and on their behalf engages with the relevant local authorities and others in relation to RMA matters.

## **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. The Te Arawhiti i-Cat database listed in paragraph 12(c) and documents on the [NZ Government Treaty settlements website](#) were the primary information sources for our analysis.

### **Treaty settlements relating to the project area**

22. 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.
23. 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.

### **Relevant Treaty settlement entities**

24. TRoNT is the post-Treaty settlement governance entity associated with the Treaty settlement.
25. 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.

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<sup>2</sup> There are five primary Ngāi Tahu hapū - Kāti Kurī, Ngāti Irakehu, Kāti Huirapa, Ngāi Tūāhuriri and Ngāi Te Ruahikihiki.

## **Relevant principles and provisions of the Ngāi Tahu Treaty settlement**

26. 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.
27. 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.
28. The settlement did not create any new co-governance or co-management processes affecting decision-making under the RMA.
29. The proposed project does not directly affect any specific commercial or cultural redress provided by the Treaty settlement.
30. Importantly however, 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.
31. 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 Ngāi Tahu 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 whole.
32. The relevant rūnanga and their agents are best placed to advise on such matters in the first instance.

## **Current negotiation mandates and settlement negotiations**

33. 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.
34. 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 area.

## **Details in this report affect certain provisions of the FTCA**

### **Notices of referral decisions**

35. 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.

36. You invited TRoNT (as a member of the Greater Christchurch Partnership<sup>3</sup>) to comment on the referral application for the Whisper Creek Residential Subdivision Project.
37. If you decide to refer this project to a panel, the notice of decisions and associated reasons must also be given to:
- a. 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. TRoNT is the sole relevant iwi authority and Treaty settlement entity for receipt of the notice of decisions; contact details are in Attachment 2.
39. We have not identified any other iwi authorities or Treaty settlement entities who may have an interest in the project, and there are no relevant joint management agreements or Mana Whakahono ā Rohe to consider.
40. If you decide to refer this project, we recommend copying the application and the notice of decisions to the relevant rūnanga, Te Rūnanga o Ngāi Tūāhuriri, and their agent Mahaanui Kurataiao Ltd, to facilitate their preparedness for engagement in the panel process (should they wish to do so). Contact details are in Attachment 2.

#### **Expert consenting panel membership**

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. TRoNT is the sole relevant iwi authority to make panel nominations for the proposed project. Contact details are in Attachment 2.

#### **Panel invitations to comment**

44. 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.
45. TRoNT is the sole relevant iwi authority and Treaty settlement entity for receipt of these invitations.

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<sup>3</sup> The Greater Christchurch Partnership has been established to create a strategic plan for development of the Greater Christchurch area to 2050. Partners include Environment Canterbury, Te Rūnanga o Ngāi Tahu, Christchurch City Council, Waimakariri District Council, Selwyn District Council, Canterbury District Health Board and Waka Kotahi (New Zealand Transport Agency).

46. In their comments on the referral application, TRoNT indicated that should the project be referred to a panel, Te Rūnanga o Ngāi Tūāhuriri may wish to consider consent applications for the project and provide comment to the panel.
47. To ensure that this is given effect, we recommend that if you decide to refer the project, you direct a panel to invite comment from Te Rūnanga o Ngāi Tūāhuriri, through their agent Mahaanui Kurataiao Ltd, in addition to the consultation a panel must conduct with TRoNT. Contact details are in Attachment 2.
48. The panel may also invite comments from any other person it considers appropriate. We have not identified any further relevant parties.

### **Provision of cultural impact assessment**

49. 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.<sup>4</sup> 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.

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<sup>4</sup> 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
Ngāi Tahu	Te Rūnanga o Ngāi Tahu (TRoNT)	P.O. Box 13 046 Christchurch 8141  0800 524 8248	Represents Ngāi Tahu as an iwi authority for RMA purposes	The post-settlement governance entity under the Ngāi Tahu Claims Settlement Act 1998		Ngāi Tahu fast-track consenting team: <a href="mailto:TTW@ngaitahu.iwi.nz">TTW@ngaitahu.iwi.nz</a>	General Manager Te Ao Turoa: Trudy Heath s 9(2)(a)
	Mahaanui Kurataiao Ltd				Agent for the Papatipu Rūnanga below	Kaihautū/CEO - Tania Wati <a href="mailto:mahaanui.admin@ngaitahu.iwi.nz">mahaanui.admin@ngaitahu.iwi.nz</a>	
	Te Rūnanga o Ngāi Tūāhuriri	Tuahiwi Marae 219 Tuahiwi Road Kaiapoi Canterbury 7691			Papatipu Rūnanga with interests in Rangiora	Representative: Tania Wati	

## Attachment 3 – Project area details



## Attachment 4 – Project concept

