

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

Application 2022-127 Maraekakaho Quarry 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: 10 May 2023	

Ministry for the Environment contacts

Position	Name	Cell Phone	1 st Contact
Principal Author	Stephanie McNicholl		
Acting Manager	Rebecca Perrett	s 9(2)(a)	✓
Acting Director	Lorena Stephen	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 Maraekakaho Quarry Project (project) to an expert consenting panel (panel).

Proposed project

3. The applicant (R W & M C Gale Family Trust) proposes to develop an approximately 29.2-hectare site into an expansion of an existing quarry development located at State Highway 50, Maraekakaho, Hawke's Bay region.
4. The project will include extraction of up to 6.42 million cubic metres of gravel aggregate over a period of up to 20 years, stockpiling processed aggregate on site, construction of infrastructure, including upgrading an existing vehicle access off State Highway 50, structures associated with quarry operations, installing a new haul road, and site remediation upon completion.
5. The Ngaruroro River is directly north. The site is susceptible to flooding. 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	Refer Iwi authorities section below. <i>Contact details are in Attachment 2</i>
17(3)(b)	Treaty settlements that relate to the project area	2	
17(3)(a)	Relevant Treaty settlement entities	2	
17(3)(c)	Relevant principles and provisions of the Treaty settlements	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	N/A	
17(3)(d)	Current Treaty settlement negotiations	N/A	
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	N/A – not in CMA	

Supporting information

Project details

7. The project site covers approximately 29.2-hectares of characteristically rural land. The site has frontage to and access from State Highway 50 to the south.
8. The processing of the gravel aggregate will be undertaken on an adjacent site immediately to the north of the project site under existing consents held by Russel Roads Limited.
9. The project involves activities such as removing vegetation, extracting and stockpiling gravel aggregate, taking, diverting and discharging groundwater and discharging to land and water, diverting the surface water of the Ngaruroro River during flood events, discharging stormwater and contaminants to land and water, undertaking earthworks, undertaking remediation including creating artificial lakes and landscaping and planting, constructing roads and vehicle accessways, constructing or installing infrastructure or structures, storing hazardous materials.
10. The project layout is in Attachment 3.

Statutory matters relating to this report

11. 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.
12. 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

13. 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.
14. '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.
15. 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.
16. 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.
17. 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.

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.

18. To identify iwi authorities associated with the identified areas of interest, we considered information from:
 - a. the sources noted above including the TKM online directory
 - b. Hawkes Bay Regional Council (HBRC) and Hastings District Council (HDC) as the relevant local authorities.

Iwi authorities relevant to project

19. We have identified, using the information sources, the relevant iwi authorities for the project area, as:
 - a. Heretaunga Tamatea Settlement Trust, representing Heretaunga Tamatea iwi
 - b. Mana Ahuriri Trust, representing Ahuriri Hapū
 - c. Ngāti Kahungunu Iwi Incorporated, representing Ngāti Kahungunu iwi.
20. We note in their invited comments, both local authorities have identified the same iwi authorities.

Other iwi authorities which may have an interest in the project

21. HDC in their invited comments, agree with the applicant's list and note Te Taiwhenua o Heretaunga and Te Taiwhenua o Tamatea as hapū of Heretaunga Tamatea iwi and Te Taiwhenua o Te Whanganui ā Orotū Incorporated as hapū of Ahuriri Hapū. We recommend including the aforementioned as an 'other' iwi authority which may have an interest.

Treaty settlements and Treaty settlement entities

22. 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.
23. 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.
24. [Heretaunga Tamatea Claims Settlement Act 2018](#) is a 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.
25. [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.

Relevant Treaty settlement entities

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. Heretaunga Tamatea Settlement Trust is the post-settlement governance entity under the [Heretaunga Tamatea Claims Settlement Act 2018](#).
28. Mana Ahuriri Trust is the post-settlement governance entity under the [Ahuriri Hapū Claims Settlement Act 2021](#).

Other bodies recognised or established under a Treaty settlement Act

29. 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.
30. No such entity established by the Claims Settlement Act noted above is relevant to the proposed project.

Relevant principles and provisions of the Treaty settlements for:

[Heretaunga Tamatea and Ahuriri Hapū](#)

Crown acknowledgements and apologies

31. As part of all of the identified 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 Heretaunga Tamatea Treaty settlement

32. 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.
33. 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'.
34. 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.
35. 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.

Relevant principles and provisions of the Ahuriri Hapū Treaty settlement

36. 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.

37. 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.
38. 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.

Redress within the Treaty settlements

Resource management matters

39. Affording respect to the views of 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 of the Treaty settlement

40. 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.
41. 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.
42. 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

43. 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

44. 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.
45. 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.
46. If you decide to refer the project we have identified three relevant iwi authorities and two Treaty settlement entities for receipt of the notice of decisions. Contact details are in Attachment 2.
47. We have identified Te Taiwhenua o Heretaunga, Te Taiwhenua o Tamatea and Te Taiwhenua o Te Whanganui ā Orotū Incorporated, respectively, as an 'other' iwi authority or Treaty settlement entity who may have an interest in the project, for receipt of the notice of decisions, if you decide to refer the project. Contact details are in Attachment 2.
48. There are no relevant joint management agreements or Mana Whakahono ā Rohe to consider.

Expert consenting panel membership and invitation to comment

49. 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.
50. 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.
51. 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).
52. If you decide to refer, we have identified three relevant iwi authorities and two Treaty settlement entities for the proposed project, from whom a panel must invite comment.
53. A panel may also invite comments from any other person it considers appropriate.
54. We have identified Te Taiwhenua o Heretaunga, Te Taiwhenua o Tamatea and Te Taiwhenua o Te Whanganui ā Orotū Incorporated may have an interest in the project area. We recommend you direct a panel under section 24(2)(e) of the FTCA to invite comment from each iwi respectively if you decide to refer the project.

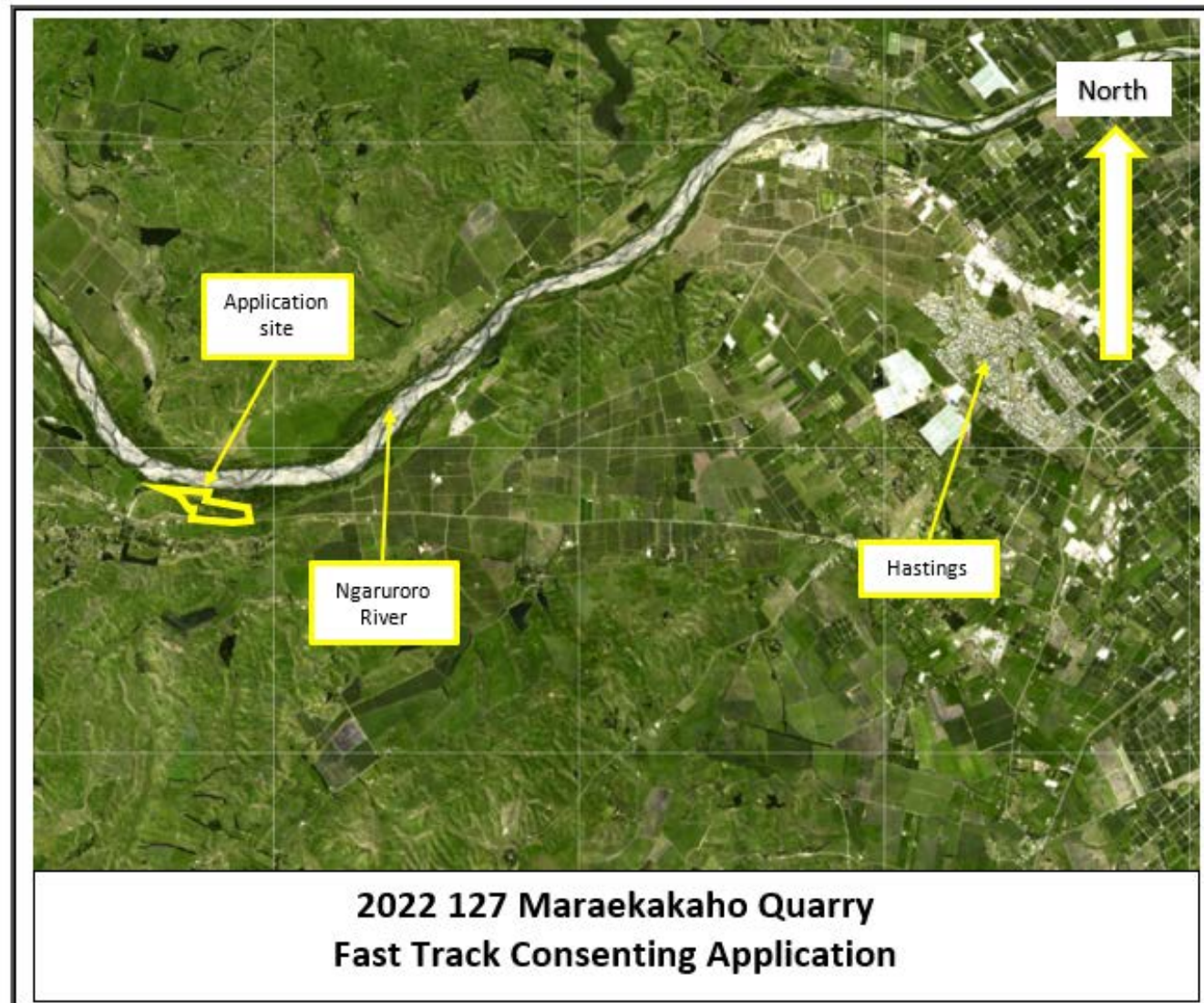
Provision of cultural impact assessment

55. 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.

56. 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.
57. 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 – Surrounding Area



Attachment 2 – Contact information

Iwi/hapū	Settlement documents / Status	Representative body	RMA relevant iwi authority	Treaty settlement entity (PSGE)	Other iwi authority interest	Contact person
Heretaunga Tamatea	Heretaunga Tamatea Claims Settlement Act 2018	Heretaunga Tamatea Settlement Trust	Iwi authority for RMA purposes	Post-settlement governance entity		CEO: Liz Munroe office@heretaungatamatea.iwi.nz cc: RMA Contact - Joella Brown
Ahuriri Hapū	Ahuriri Hapū Claims Settlement Act 2021	Mana Ahuriri Trust	Iwi authority for RMA purposes	Post-settlement governance entity		CEO: Tania Eden info@manaahuriritrust.com
Ngāti Kahungunu		Ngāti Kahungunu Iwi Incorporated	Iwi authority for RMA purposes			Env. Director: Ngaio Tiuka s 9(2)(a)
OTHER IWI WITH AN INTEREST						
Te Taiwhenua o Heretaunga		Te Taiwhenua o Heretaunga			Other iwi authority may have interest	taiwhenua.heretaunga@ttoh.iwi.nz
Te Taiwhenua o Tamatea		Te Taiwhenua o Tamatea			Other iwi authority may have interest	tamatea.taiwhenua@xtra.co.nz
Ahuriri (Napier)		Te Taiwhenua o Te Whanganui ā Orotū Incorporated			Other iwi authority may have interest	admin@taiwhenua.com

Attachment 3 – Planned Layout

