

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

Application 2022-136 Milbrow Estate 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: 29 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 Milbrow Estate Project (project) to an expert consenting panel (panel).

Proposed project

3. The applicant (Caland Holdings Limited) proposes to develop an approximately 83 hectare site into a subdivision and rural residential development 66 and 70 McFetridge Drive and 89 Tauranga Direct Rd, Hamurana, Bay of Plenty region.
4. The project will involve the creation of 91 rural residential lots, and 4 balance lots of approximately 16 hectares in total for native forest planting (to claim for carbon credits). The project will involve the construction of residential units by third parties.
5. The project includes enabling construction of residential units by third parties, construction of public roads, pedestrian and cycle accessways and three-waters infrastructure, and landscaping including planting. The project will also include associated works to upgrade the intersection of Jackson Road and State Highway 16 (SH16).
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.

| FTCA Section | Information required | Detail | |
|--------------|---|--------------------------------------|--|
| 17(3)(a) | Relevant iwi authorities | 3 | Refer relevant sections below. <i>Contact details are in Attachment 2</i> |
| 17(3)(b) | Treaty settlements that relate to the project area | 4 | |
| 17(3)(a) | Relevant Treaty settlement entities | 4 | |
| 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

8. The project site covers approximately 83 hectares of characteristically rural land. The site has frontage and access will be gained from McFetridge Drive to the northwest.
9. The project involves activities such as demolishing or relocating buildings, carrying out earthworks (including disturbing contaminated soils), discharging stormwater onto land, constructing or installing infrastructure including roads, vehicle and pedestrian accessways, and infrastructure for three-waters services, landscaping and restoring wetlands.
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. Bay of Plenty Regional Council (BOPRC) and Rotorua Lakes Council (RLC) as relevant local authorities.

Iwi authorities relevant to project

19. From the information sources, we have identified the relevant iwi authorities for the project area, as:
 - a. Te Arawa Lakes Trust, representing Te Arawa Iwi and Hapū
 - b. Te Maru o Ngāti Rangiwewehi Iwi Authority, representing Ngāti Rangiwewehi iwi
 - c. Raukawa Settlement Trust, representing Ngāti Raukawa iwi
20. We note BOPRC identified two of the same iwi and RLC identified one iwi of which we consider their representative bodies to be relevant.

Other iwi authorities, treaty settlement entities and parties which may have an interest in the project

21. From the information sources and invited comments, we have identified that the project lies near the area of interest of Affiliate Te Arawa. However this is not supported by any other available information. We recommend they be included and their representative bodies be identified as an 'other party' which may have an interest.
22. We recommend including the Te Arawa Lakes Strategy Group as a relevant treaty settlement entity and address this below.

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. The project site falls within the area of interest covered by Treaty settlements with the following iwi:
 - a. Te Arawa – settlement act
 - b. Ngāti Rangiwewehi – settlement act
 - c. Raukawa – settlement act
26. [Te Arawa Lakes Settlement Act 2006](#) is one settlement of historical Treaty claims relating to the project area. The Act gives effect to certain provisions of the deed of settlement signed by Te Arawa and the Crown on 18 December 2004. [Te Arawa Lakes deed of settlement documents](#) can be accessed on the NZ Government Treaty settlements website.
27. [Ngāti Rangiwewehi Claims Settlement Act 2014](#) is one settlement of historical Treaty claims relating to the project area. The Act gives effect to certain provisions of the deed of settlement signed by Te Maru o Ngāti Rangiwewehi and the Crown on 16 December

2012. [Ngāti Rangiwewehi deed of settlement documents](#) can be accessed on the NZ Government Treaty settlements website.

28. [Raukawa Claims Settlement Act 2014](#) is one settlement of historical Treaty claims relating to the project area. The Act gives effect to certain provisions of the deed of settlement signed by Raukawa and the Crown on 2 June 2012. [Raukawa deed of settlement documents](#) can be accessed on the NZ Government Treaty settlements website.

Relevant Treaty settlement entities

Post-settlement governance entities

29. 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.
30. We have identified the following post-settlement governance entities associated with the Treaty settlements:
- a. Te Arawa Lakes Trust under the [Te Arawa Lakes Settlement Act 2006](#)
 - b. Te Tāhuhu o Tawakeheimoa Trust under the [Ngāti Rangiwewehi Claims Settlement Act 2014](#)
 - c. Raukawa Settlement Trust under the [Raukawa Claims Settlement Act 2014](#).
31. A post-settlement governance entity may exist ahead of finalisation of a deed of settlement and/or enactment of Treaty settlement legislation.
32. There are no post-settlement governance entities in this category that are relevant.

Other bodies recognised or established under a Treaty settlement Act

33. 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.
34. We note and BOPRC advised Te Arawa Lakes Strategy Group was established under the Te Arawa Lakes Settlement Act 2006 as a committee which oversees the coordination of policy and actions to improve the Rotorua lakes. We note Hauraki Stream follows the northeast corner of the site and note the proximity of the project in relation to Lake Rotorua, to the southeast of the site. We have identified the Te Arawa Lakes Strategy Group as a relevant treaty settlement entity.

Relevant principles and provisions of the Treaty settlements for:

Te Arawa Lakes, Affiliate Te Arawa Iwi/Hapū, Ngāti Raukawa and Ngāti Rangiwewehi

Crown acknowledgements and apologies

35. 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 Te Arawa Lakes Treaty settlement

36. The Crown makes this apology to Te Arawa, to their ancestors, to their descendants and to the people and hapū of Te Arawa:
37. The Crown profoundly regrets and unreservedly apologises to Te Arawa for the breaches of [te Tiriti o Waitangi \(the Treaty of Waitangi\)](#) and its principles.

38. The Crown profoundly regrets that past Crown actions in relation to the lakes have had a negative impact on Te Arawa's rangatiratanga over the lakes and their use of lake resources, and have caused significant grievance within Te Arawa.
39. The Crown recognises that Te Arawa value the Te Arawa lakes and the lakes' resources as taonga. The Crown acknowledges the spiritual, cultural, economic, and traditional importance to Te Arawa of the lakes and the lakes' resources.
40. The Crown acknowledges that the introduction of exotic fish species significantly depleted the indigenous species upon which Te Arawa depended for food, hospitality, trade, and koha; and Te Arawa petitioned the Crown for several years concerning the depletion of the indigenous species and access to the new species; and some Te Arawa were prosecuted for fishing without a licence in the lakes during this time; and its failure to legislate for a sufficient number of licences for Te Arawa in 1908 (when it promoted legislation to address the problem of hardship) was in breach of [te Tiriti o Waitangi \(the Treaty of Waitangi\)](#) and its principles.
41. The Crown acknowledges that its deliberate delays in providing survey plans and public maps to Te Arawa for the Native Land Court hearings caused a sense of grievance within Te Arawa that is still held today. The Crown further acknowledges that it failed to review the annuity paid to Te Arawa as part of the 1922 agreement regarding the lakes when it materially lost value as a result of inflation and this was a breach of [te Tiriti o Waitangi \(the Treaty of Waitangi\)](#) and its principles.
42. The Crown acknowledges that Te Arawa has honoured its obligations and responsibilities under [te Tiriti o Waitangi \(the Treaty of Waitangi\)](#), especially, but not exclusively, in its war service overseas and the gifting of portions of the annuity for the national good in the 1930s and 1940s; and Te Arawa has demonstrated a record of co-operation with the Crown in relation to the lakes, but the benefits that Te Arawa expected to flow from its relationship with the Crown were not always realised; and past Crown actions in relation to the Te Arawa lakes have had a negative impact on Te Arawa's tino rangatiratanga over the lakes and their usage of the resources of the lakes; and the pollution and degradation of several of the lakes have caused a sense of grievance within Te Arawa.
43. The Crown acknowledges the significant contribution that the Te Arawa lakes have made to tourism and the wealth of New Zealand and of the Rotorua district in particular.
44. The Crown also recognises the longstanding grievances of Te Arawa in relation to Crown acts and omissions concerning the Te Arawa lakes, expressed through petitions to the Government and the Stout-Ngata Commission. The Crown acknowledges that it has failed to deal with those grievances in an appropriate way and that recognition of Te Arawa's grievances is long overdue.
45. Accordingly, with this apology, the Crown seeks to atone for these wrongs and begin the process of healing. The Crown looks forward to building a relationship of mutual trust and co-operation with Te Arawa in respect of the lakes.

Relevant principles and provisions of the Ngāti Raukawa Treaty settlement

46. The Crown makes this apology to Raukawa, to their ancestors, and to their descendants. The Crown profoundly regrets and unreservedly apologises to Raukawa for its actions and omissions that led to the virtual landlessness of Raukawa in the Waikato, and which caused suffering and hardship to generations of Raukawa.
47. The Crown deeply regrets its actions during the New Zealand wars of the 1860s, which resulted in the loss of life and was destructive and demoralising to Raukawa.

48. The Crown acknowledges that the loss of land had a negative impact on the ability of Raukawa to participate in new economic opportunities and challenges emerging within their rohe in the twentieth century.
49. The Crown acknowledges that it did not recognise the iwi status of Raukawa until the late twentieth century and this failure to respect the rangatiratanga of Raukawa created an ongoing grievance.
50. The Crown apologises for its past failures to acknowledge the mana and rangatiratanga of Raukawa and looks forward to building an enduring relationship of mutual trust and cooperation with Raukawa that is based on respect for the Treaty of Waitangi and its principles.

Relevant principles and provisions of the Ngāti Rangiwewehi Treaty settlement

51. The Crown hereby makes this apology to Ngāti Rangiwewehi, the people who descend from Tawakeheimoa and his son, Rangiwewehi.
52. For too many years, the Crown has failed to respond to your grievances in an appropriate way. The task of pursuing justice for the Crown's wrongs has been the work of generations of Ngāti Rangiwewehi. The Crown now recognises a solemn duty to apologise to you for its failure to honour its obligations to Ngāti Rangiwewehi under Te Tiriti o Waitangi/the [Treaty of Waitangi](#) and its principles.
53. In the 1850s, the bond between the great Ngāti Rangiwewehi leader Wiremu Maihi Te Rangikaheke and Governor George Grey was characterised by goodwill, respect, and co-operation. It was a partnership that should have set a tone for the overall relationship between Ngāti Rangiwewehi and the Crown, but history took a different, unhappy course.
54. Ngāti Rangiwewehi were drawn into, and divided by, the wars of the 1860s. Ngāti Rangiwewehi warriors died fighting against the Crown at Te Ranga in 1864. Through the Tauranga raupatu, the Crown extinguished customary title in Ngāti Rangiwewehi lands without the consent of Ngāti Rangiwewehi.
55. Time and again Ngāti Rangiwewehi sought to retain tribal authority over their lands, but the native land laws introduced by the Crown worked directly against their wishes and against their rangatiratanga. These laws, and the actions of Crown purchase agents, facilitated the loss of much of the rohe of Ngāti Rangiwewehi, including Hamurana Springs, one of the great treasures of Ngāti Rangiwewehi.
56. Through all these travails, Ngāti Rangiwewehi kept hold of another cherished taonga, Pekehāua Puna. Yet, in 1966, this too was taken from them. The Crown regrets deeply the trauma and anguish this loss caused for Ngāti Rangiwewehi.
57. Over the generations, the Crown's breaches of the Treaty compromised your social and traditional structures, your autonomy, and your ability to exercise your customary rights and your responsibilities. With great sorrow, the Crown apologises for its actions and for the impact they had on the individuals, whānau, and hapū of Ngāti Rangiwewehi.
58. A better future beckons. Through this apology, and this settlement, the Crown turns its face towards that future and hopes to establish a new relationship with Ngāti Rangiwewehi based on mutual trust, co-operation, and respect for Te Tiriti o Waitangi/the [Treaty of Waitangi](#) and its principles.

Cultural redress of the Treaty settlements

59. We have noted the project site drains to, flows into and could potentially affect Lake Rotorua and tributaries, including the Hauraki stream which runs in alignment with the northeast corner of the project site.
60. We have identified in the deed of settlement statements of the particular cultural, spiritual, historical and traditional association that the iwi has with the area, that is recognised within a statutory acknowledgements for Te Arawa Iwi and Hapū over the Rotorua lakes:
- Te Arawa
- In 1840, lake Rotorua provided food, shelter, economic resources and primary transport routes for Te Arawa. By 1880 Te Arawa was playing a major role in the developing tourism industry in the area. Little land had been sold to settlers and Te Arawa continued to exercise significant control over the lakes.*
61. We note that statutory acknowledgments are not indications of exclusive interest in a site, and sites subject to them may also hold importance for other iwi.

Other Redress within the Treaty settlements

Resource management matters

62. 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 settlements

63. The proposed project does not directly affect any specific commercial or cultural redress provided by the Treaty settlements.
64. 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.
65. 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

66. 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.
67. There are no current Treaty settlement negotiations affecting the project area.

Details in this report affect certain provisions of the FTCA

Notices of referral decisions

68. 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.

69. 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.
70. We have identified five relevant iwi authorities and five Treaty settlement entities for receipt of the notice of decisions. Contact details are in Attachment 2.
71. We have identified two 'other' parties who may have an interest in the project for receipt of notice of decisions if you decide to refer the project. Contact details are in Attachment 2.
72. There are no relevant joint management agreements or Mana Whakahono ā Rohe to consider.

Expert consenting panel membership and invitation to comment

73. 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.
74. 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.
75. 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).
76. We have identified five relevant iwi authorities and five Treaty settlement entities for the proposed project.
77. We have identified two 'other' parties which 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 the respective party if you decide to refer the project. Contact details are in Attachment 2.
78. A panel may also invite comments from any other person it considers appropriate.

Provision of cultural impact assessment

79. 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 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.

80. 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.

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

Attachment 1 – Project Location – Surrounding Area



Attachment 2 – Contact information

| Iwi/hapū | Settlement documents / Status | Representative body | RMA relevant iwi authority | Treaty settlement entity | Other parties | Contact person |
|--------------------|--|---|--------------------------------|--|----------------------------------|--|
| Te Arawa | Te Arawa Lakes Settlement Act 2006 | Te Arawa Lakes Trust | Iwi authority for RMA purposes | Post-settlement governance entity | | Chair: Geoff Rolleston reception@tearawa.iwi.nz cc: Environmental Manager – Nicola Douglas |
| | | Te Arawa Lakes Strategy Group | | Committee established under the Te Arawa Lakes Settlement Act 2006 | | rotorualakes@boprc.govt.nz |
| Ngāti Raukawa | Raukawa Claims Settlement Act 2014 | Raukawa Settlement Trust | Iwi authority for RMA purposes | Post-settlement governance entity | | Chair: Kataraina Hodge info@rauakawa.org.nz |
| Ngāti Rangiwewehi | Ngāti Rangiwewehi Claims Settlement Act 2014 | Te Maru o Ngāti Rangiwewehi Iwi Authority | Iwi authority for RMA purposes | | | Chair: Joseph Tuhakaraina office@rangiwewehi.com |
| | | Te Tāhuhu o Tawakeheimoa Trust | | Post-settlement governance entity | | Chair: Erin Thompson-Pou office@rangiwewehi.com |
| Affiliate Te Arawa | Affiliate Te Arawa Iwi and Hapū Claims Settlement Act 2008 | Te Pūmautanga o Te Arawa Trust | | | Other party may have an interest | GM: Wally Tangohau office@tpota.org.nz |
| | | Ngati Tuteaiti and Ngati Ngararanui (includes Ngati Rautao) | | | Other party may have an interest | GM: Wally Tangohau office@tpota.org.nz |

Attachment 3 – Proposed Layout

