

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

### Application 2023-150 Arawhata Wetland 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: 30 May 2023                    |                                                                              |

### Ministry for the Environment contacts

| Position         | Name                | Cell Phone | 1 <sup>st</sup> 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 Arawhata Wetland Project (project) to an expert consenting panel (panel).

### Proposed project

3. The applicant (Manawatū-Whanganui Regional Council (Horizons)) proposes to develop an approximately 119 hectare area into a wetland in the Arawhata Stream catchment located at 269 and 308 Hokio Beach Road, 217 Arawhata Road, Levin and adjacent land (legally described as Section 4 Survey Office Plan 465440). The project will include works within the Hokio Beach Road and Arawhata Road reserves.
4. The project is to construct engineered treatment wetlands and restore previously drained natural wetlands in the Arawhata Stream catchment of Punahau/Lake Horowhenua in Manawatū-Whanganui.
5. The project is to improve the water quality of Lake Horowhenua by reducing nitrogen, phosphorus and sediment loads entering the lake.
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.<br>Contact details are in Attachment 2 |
| 17(3)(b)     | Treaty settlements that relate to the project area                                                                                                      | 1                                    |                                                                       |
| 17(3)(a)     | Relevant Treaty settlement entities                                                                                                                     | 1                                    |                                                                       |
| 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 119 hectares within the Arawhata Stream catchment.
9. The project involves activities such as carrying out earthworks (including disturbing contaminated soils), constructing weir in the river, upgrading existing culverts, constructing bund/stopbank, discharging of water (which may contain contaminants) into water and onto land, taking and using of groundwater, planting and landscaping.
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.<sup>1</sup>

## 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.

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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.

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. Horizons Regional Council (HRC) and Horowhenua District Council (HDC) 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 Rūnanga o Toa Rangātira Incorporated, representing Ngāti Toa Rangātira iwi
  - b. Muaūpoko Tribal Authority Incorporated, representing Muaūpoko iwi
  - c. Te Runanga o Raukawa Incorporated, representing Ngāti Raukawa ki te Tonga iwi
20. We note HRC identified two of the same iwi, for 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. We have not identified or recommended any 'other' parties.

### **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. [Ngāti Toa Rangātira Claims Settlement Act 2014](#) is the settlement of historical Treaty claims relating to the project area. The Act gives effect to certain provisions of the deed of settlement signed by Ngāti Toa Rangātira, Trustee of the Toa Rangātira Trust and the Crown on 7 December 2012 and amendment dated November 2013. [Ngāti Toa Rangātira deed of settlement documents](#) can be accessed on the NZ Government Treaty settlements website.

### **Relevant Treaty settlement entities**

#### ***Post-settlement governance entities***

25. 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.
26. Toa Rangātira Trust<sup>2</sup> is the post-settlement governance entity under the [Ngāti Toa Rangātira Claims Settlement Act 2014](#).

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<sup>2</sup> Te Rūnanga o Toa Rangātira Incorporated is the trustee of this trust.

27. 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.
28. A post-settlement governance entity may exist ahead of finalisation of a deed of settlement and/or enactment of Treaty settlement legislation.
29. There are no post-settlement governance entities in this category that are relevant.

***Other bodies recognised or established under a Treaty settlement Act***

30. 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.
31. No such entity established by the Ngāti Toa Rangatira Claims Settlement Act is relevant to the proposed project.

**Relevant principles and provisions of the Ngāti Toa Rangatira Treaty settlement**

***Crown acknowledgements and apologies***

32. As part of the Ngāti Toa Rangatira 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.
33. The Crown recognises that a number of Ngati Toa Rangatira, including Te Rauparaha and Te Rangihaeata, signed Te Tiriti o Waitangi/the [Treaty of Waitangi](#) in 1840. The Crown profoundly regrets that it has not always lived up to its obligations to Ngati Toa Rangatira under Te Tiriti o Waitangi/the Treaty of Waitangi.
34. As part of the apology offered by the Crown to Ngāti Toa Rangatira, to their ancestors, and to their descendants in the Ngāti Toa Rangatira Claims Settlement Act 2014, the Crown unreservedly apologises for failing its obligations and for breaching Te Tiriti o Waitangi/the Treaty of Waitangi and its principles which have hurt and caused prejudice to Ngati Toa Rangatira.
35. The Crown says it is deeply sorry for its actions that intentionally undermined the mana and rangatiratanga of leading Ngati Toa Rangatira chiefs, in particular, for its indefinite detention of Te Rauparaha, and deeply regrets it has failed, until now, to acknowledge this injustice in an appropriate manner.
36. The Crown profoundly regrets and apologises for leaving Ngati Toa Rangatira virtually landless and unable to access customary resources and significant sites.
37. The Crown deeply regrets the cumulative effect of its actions and omissions which severely damaged Ngati Toa Rangatira social and traditional tribal structures, their autonomy and ability to exercise customary rights and responsibilities, their capacity for economic and social development, and physical, cultural, and spiritual well-being.
38. Through the settlement and the apology, the Crown states it hopes the apology and settlement will mark the beginning of a new, positive and enduring relationship with Ngāti Toa Rangatira founded on mutual trust and co-operation and respect for Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.
39. Affording respect to the views of Ngāti Toa Rangatira 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***



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.

## **Other Redress within the Treaty settlement**

### ***Resource management matters***

43. 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***

44. The proposed project does not directly affect any specific commercial or cultural redress provided by the Treaty settlements.
45. 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.
46. 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**

47. 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.
48. We have identified the recognised negotiation mandates that relate to the project area for Muaūpoko Tribal Authority Incorporated. Muaūpoko has recorded a traditional area of interest extending from the Rangitikei River to Sinclair and Turakirae Heads in Wellington.
49. The Crown recognised the mandate of Muaūpoko Tribal Authority Incorporated to negotiate a Treaty settlement in September 2013. Negotiations have not yet commenced. The Crown recognition of the mandate has not been withdrawn. Muaūpoko has yet to establish a post-settlement governance entity to receive redress under their settlement.
50. 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**

51. 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.
52. 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.
53. We have identified three relevant iwi authorities and one Treaty settlement entity for receipt of the notice of decisions. Contact details are in Attachment 2.
54. There are no relevant joint management agreements or Mana Whakahono ā Rohe to consider.

### **Expert consenting panel membership and invitation to comment**

55. 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.
56. 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.
57. 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).
58. We have identified three relevant iwi authorities and one Treaty settlement entity for the proposed project.
59. A panel may also invite comments from any other person it considers appropriate.

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

60. 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.<sup>3</sup> The Environmental Protection Authority which provides support services

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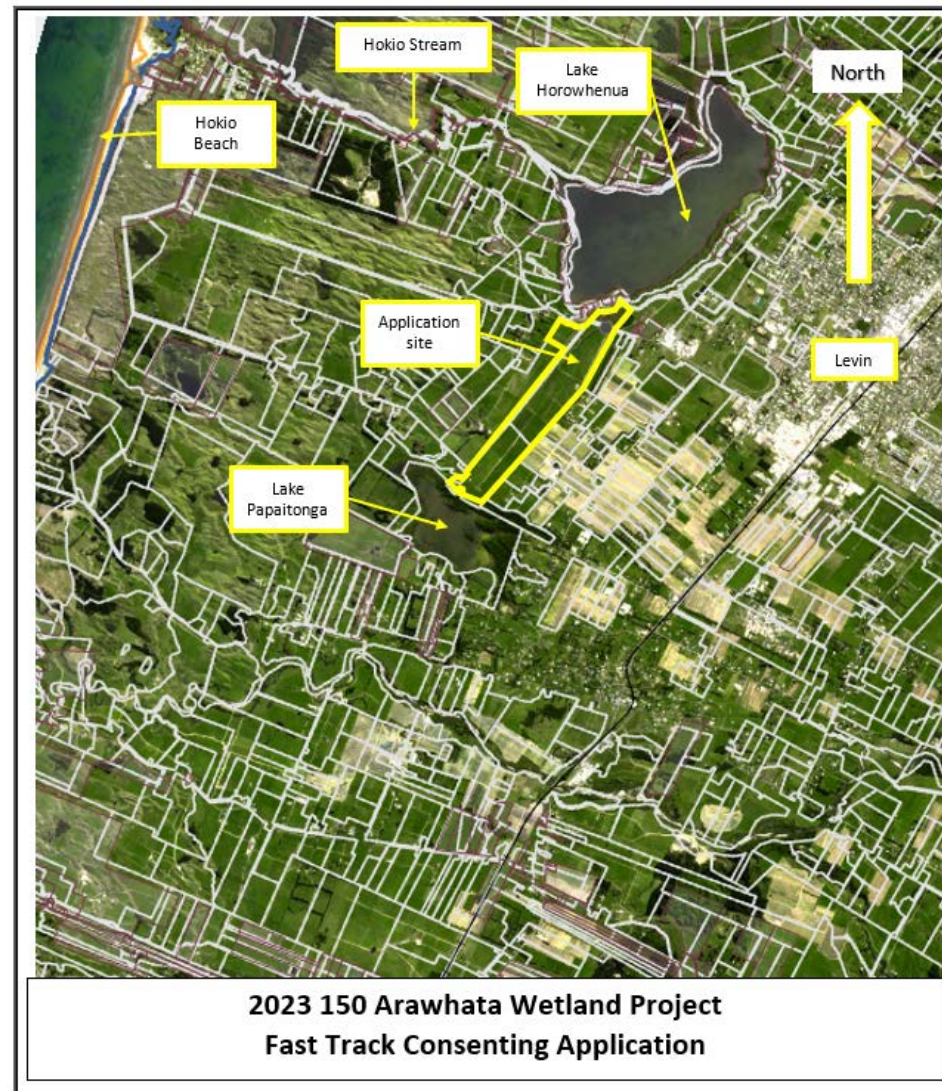
<sup>3</sup> Clause 9(5), 13(1)(k) and 13(1)(l) of Schedule 6 of the FTCA.

to a panel, will not confirm an application as complete and ready for consideration by a panel until this requirement is satisfied.

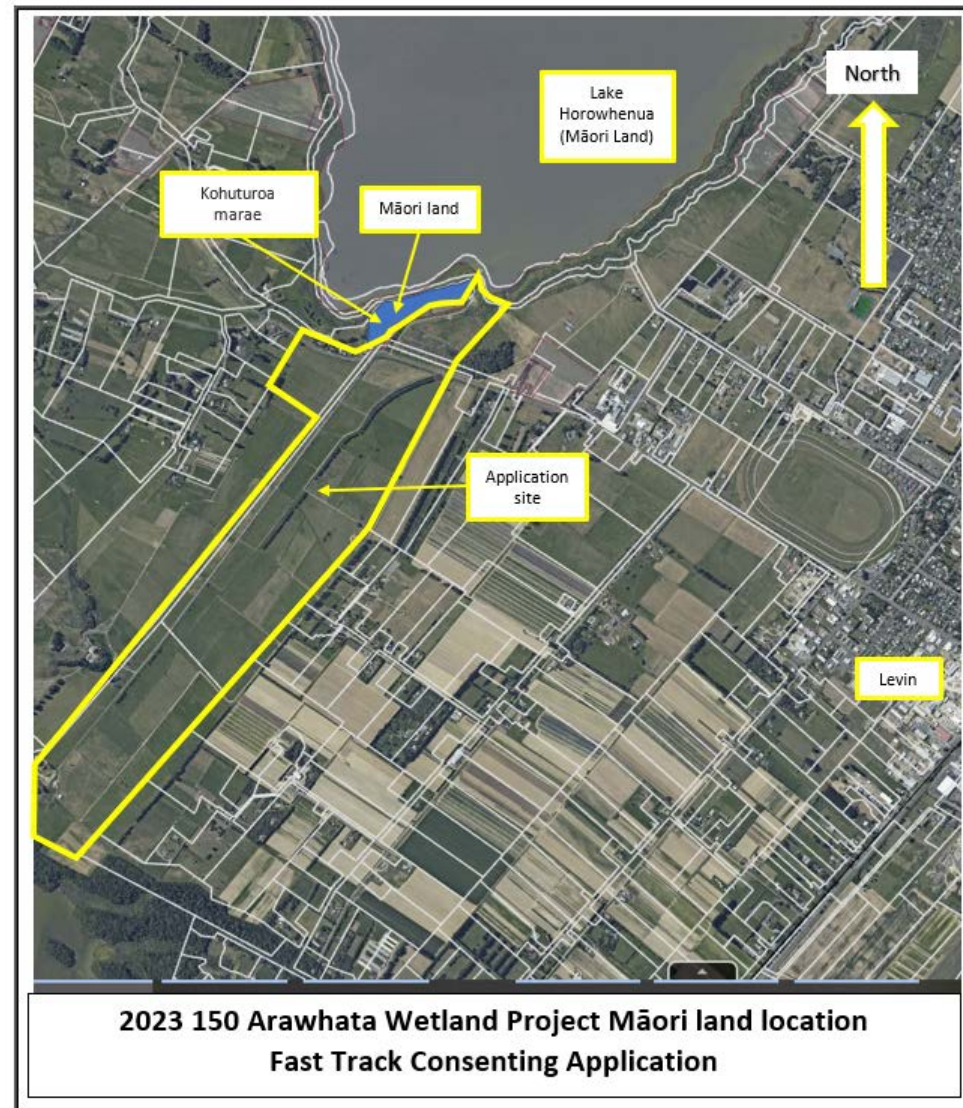
61. There is more than one relevant iwi authority. The project applicant will need to engage with each to determine their requirements for a cultural impact assessment, including whether they wish to prepare one individually or jointly, or whether they may wish to defer to another iwi in respect of the matter. Relevant iwi authorities are listed in Attachment 2.



## Attachment 1 – Project Location – Surrounding Area



## Attachment 1 – Project Location – Site proximity to Māori land



## Attachment 2 – Contact information

| Iwi/hapū                  | Settlement documents / Status                  | Representative body                     | RMA relevant iwi authority     | Treaty settlement entity          | Other parties | Contact person                                                                                                                                   |
|---------------------------|------------------------------------------------|-----------------------------------------|--------------------------------|-----------------------------------|---------------|--------------------------------------------------------------------------------------------------------------------------------------------------|
| Ngāti Toa                 |                                                | Te Runanga o Toa Rangātira Incorporated | Iwi authority for RMA purposes |                                   |               | CEO: Helmut Modlik<br>s 9(2)(a)<br>cc: Debbie Rene<br><a href="mailto:resourcemanagement@ngatitoa.iwi.nz">resourcemanagement@ngatitoa.iwi.nz</a> |
|                           | Ngāti Toa Rangātira Claims Settlement Act 2014 | Toa Rangatira Trust                     |                                | Post-settlement governance entity |               | CEO: Helmut Modlik<br>s 9(2)(a)                                                                                                                  |
| Muaūpoko                  |                                                | Muaūpoko Tribal Authority Incorporated  | Iwi authority for RMA purposes |                                   |               | CEO: Di Rump<br><a href="mailto:ceo@muaupoko.iwi.nz">ceo@muaupoko.iwi.nz</a>                                                                     |
| Ngāti Raukawa ki te Tonga |                                                | Te Runanga o Raukawa Incorporated       | Iwi authority for RMA purposes |                                   |               | CEO: Rārite Matakī<br>s 9(2)(a)<br>cc: Jessica Kereama<br>s 9(2)(a)                                                                              |



## Attachment 3 – Proposed Layout

