

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

### Application 2023-162 The Pitau 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 June 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 Pitau Project (project) to an expert consenting panel (panel).

### Proposed project

3. The applicant (The Pitau LP) proposes to develop an approximately 20.5 hectare project area into a retirement village and aged-care facility located at located at 53, 55, 55A, 57, 59, 61A and 61B Pitau Road, Mount Maunganui, Tauranga.
4. The project provides approximately 167 apartments, 60 hospital-level care suites, ancillary facilities for the retirement village (including office/administration, a café, lounges, library, wellness space, theatre, swimming pool, spa and gym). It also includes 220 basement-level carparks, vehicle and pedestrian accessways, open space areas and infrastructure for three-waters services.
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	4	Refer relevant sections below. Contact details are in Attachment 2
17(3)(b)	Treaty settlements that relate to the project area	3	
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

7. The project site covers approximately 20.5 hectares within the Arawhata Stream catchment.
8. The project involves activities such as carrying out earthworks (including earthworks that disturb potentially contaminated soils), discharging stormwater onto land, constructing units, landscaping and planting of open space, constructing or installing infrastructure or structures including roads and accessways, and infrastructure for three waters services.
9. The project layout is in Attachment 3.

## Statutory matters relating to this report

10. 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.
11. 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

12. 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.
13. '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.
14. 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.
15. 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.
16. 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.

17. 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 Tauranga City Council (TCC) as relevant local authorities.

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

18. From the information sources, we have identified the relevant iwi authorities for the project area, as:
  - a. Te Kapu o Waitaha Trust, representing Waitaha iwi
  - b. Ngāti Pūkenga Iwi ki Tauranga Trust, representing Ngāti Pūkenga iwi
  - c. Ngā Pōtiki ā Tamapahore Trust, representing Ngā Pōtiki iwi
  - d. Te Rūnanga o Ngāi Te Rangi Iwi Trust, representing Ngāi Te Rangi iwi.
19. We note BOPRC identified three of the same relevant iwi, and three iwi that we consider may have an interest, addressed below. We note TCC identified two of the same relevant iwi, and two iwi that we consider may have an interest, addressed below.

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

20. From the information sources and invited comments, we have identified that the project lies within the area of interest of Ngāi Te Rangi hapū Ngāi Tukairangi and Ngāti Kuku. We consider they may have an interest in the project and recommend their representative bodies be included as 'other' parties.

### **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. 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.
22. 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.
23. The project site falls within the area of interest covered by Treaty settlements with the following iwi:
  - a. Waitaha – settlement act
  - b. Ngāti Pūkenga – settlement act
  - c. Ngāi Te Rangi and Ngā Pōtiki – deed of settlement
24. [Waitaha Claims Settlement Act 2013](#) gives effect to certain provisions of the deed of settlement signed by Waitaha and the Crown on 20 September 2011. [Ngāti Whātua o Kaipara deed of settlement documents](#) [Waitaha deed of settlement documents](#) are on the NZ Government Treaty settlements website.
25. [Ngāti Pūkenga Claims Settlement Act 2017](#) gives effect to certain provisions of the deed of settlement signed on 7 April 2013 and amendment deeds signed in October 2013, October 2014, March 2016 and August 2017. [Ngāti Pūkenga deed of settlement documents](#) are accessible on the NZ Government Treaty settlements website.

26. Ngāi Te Rangi and Ngā Pōtiki and the Crown signed a deed of settlement on 14 December 2013 and amendment deed in October 2014. Legislation has not yet been enacted. [Ngāi Te Rangi and Ngā Pōtiki deed of settlement documents](#) can be accessed on the NZ Government Treaty settlements website.

## **Relevant Treaty settlement entities**

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

27. 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.
28. Te Kapu o Waitaha Trust is the post-settlement governance entity under the [Waitaha Claims Settlement Act 2013](#)
29. Te Tāwharau o Ngāti Pūkenga is the post-settlement governance entity under the [Ngāti Pūkenga Claims Settlement Act 2017](#)
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. A post-settlement governance entity may exist ahead of finalisation of a deed of settlement and/or enactment of Treaty settlement legislation.
32. We have identified the following post-settlement governance entities in this category are relevant. Under the deed of settlement for [Ngāi Te Rangi and Ngā Pōtiki deed of settlement documents](#):
- a. Ngā Pōtiki ā Tamapahore Trust was ratified as the post-settlement governance entity for the Ngā Pōtiki in May 2011
  - b. Ngāi Te Rangi Settlement Trust was ratified as the post-settlement governance entity for Ngāi Te Rangi in October 2008.

### ***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. No such entity established by the Ngāti Pūkenga Claims Settlement Act 2017 are relevant to the proposed project.

## **Relevant principles and provisions of the Treaty settlements for:**

### ***Waitaha, Ngāti Pūkenga and Ngāi Te Rangi (and Ngā Pōtiki)***

#### ***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 Waitaha Treaty settlement**

36. The Crown makes the following apology to the descendants of Hei and Waitaha known as Waitaha. The Crown is deeply sorry that it has failed to fulfil its obligations to Waitaha under Te Tiriti o Waitangi/the Treaty of Waitangi.



37. The Crown acknowledges that Waitaha, an ancient iwi descending from Hei and Waitaha of the waka Te Arawa, has long sought acknowledgement and redress for its grievances. The Crown has failed to deal with these grievances in an appropriate way. The Crown hereby recognises the legitimacy of the historical grievances of Waitaha and makes the following acknowledgements.
38. The Crown acknowledges that the coming of war to the Bay of Plenty in the 1860s split Waitaha internally. Individuals and hapū were compelled to align themselves with different sides in the conflict and this caused discord and enmity within the iwi, and in the relationships Waitaha had with other iwi and with the Crown.
39. The Crown acknowledges that it did not consult with Waitaha on the Native Land Acts of 1862 and 1865; and the workings of the native land laws, in particular in the awarding of land to individuals rather than iwi or hapū and the enabling of individuals to deal with that land without reference to the iwi or hapū, made the lands of Waitaha more susceptible to alienation. As a result, the traditional social structures, mana and rangatiratanga of Waitaha were eroded. The Crown acknowledges it failed to take adequate steps to protect these structures, and this was a breach of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles.
40. The Crown's acts and omissions have severed you from almost all of your traditional lands and driven your ancient iwi to the point where it nearly ceased to exist. For these acts and omissions, and for the suffering they caused and continue to cause, the Crown apologises.
41. The Tauranga confiscation/raupatu was unjust and Hakaraia Mahika opposed it. For this, the Crown labelled him a rebel. In seeking to punish him, the Crown destroyed your houses, crops and livestock, and ultimately took his life. The Crown inflicted further punishment even after his death by unfairly withholding a large amount of land from you. For these misdeeds the Crown apologises to Waitaha and to Hakaraia.
42. The stigma of rebellion has diminished the mana of Waitaha and forced deep divisions among you, and between you and your neighbours. The Crown recognises that this burden has pressed most heavily on the descendants of Hakaraia, but has affected all of Waitaha. The Crown regrets that you have been forced to bear this stigma, and wishes the mana and reputation of Hakaraia and Waitaha to be restored. Accordingly, the Crown apologises for the part it played in placing this burden upon you.
43. The Crown acknowledges that the cumulative effect of its breaches of Te Tiriti o Waitangi/the Treaty of Waitangi and its principles undermined the physical, cultural, social, economic and spiritual well-being of Waitaha to the point where the iwi itself nearly vanished. The suffering and marginalisation caused to Waitaha over the generations have continued to the present day.
44. The Crown wishes to restore its own tarnished honour too and hopes that this apology will mark the beginning of a stronger relationship with Waitaha, a relationship based on trust, co-operation, and respect for Te Tiriti o Waitangi/the Treaty of Waitangi. Accordingly, the Crown echoes the following Waitaha whakatauki:

Kua tau te rangimārie	The peace has been settled
Ki te whare o Hakaraia	In the house of Hakaraia
Āke, āke, āke.	Now and forever more.

### **Relevant principles and provisions of the Ngāti Pūkenga Treaty settlement**

45. The Crown makes this apology to Ngāti Pūkenga and their ancestors and descendants.
46. The Crown acknowledges that the Ngāti Pūkenga rangatira Te Kou o Rehua made a commitment to te Tiriti o Waitangi/the Treaty of Waitangi and the relationship with the

Crown that flowed from it. The Crown further acknowledges that Ngāti Pūkenga have always maintained this commitment through to the present day.

47. The Crown acknowledges that, despite the promise of te Tiriti o Waitangi/the Treaty of Waitangi, many Crown actions created long-standing grievances for Ngāti Pūkenga; and that the Crown failed to deal in an appropriate way with grievances raised by successive generations of Ngāti Pūkenga; and that recognition of Ngāti Pūkenga grievances is long overdue.
48. The Crown acknowledges that Ngāti Pūkenga, as an iwi, did not take part in the war in Tauranga because they were committed to upholding te Tiriti o Waitangi/the Treaty of Waitangi; and the Crown was ultimately responsible for the outbreak of war in Tauranga in 1864 and its actions were a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles.
49. The Crown unreservedly apologises for bringing war to Tauranga Moana and unjustly extinguishing all customary title to land within the Tauranga Moana confiscation district. The Crown is sorry that Ngāti Pūkenga did not receive the same opportunity as others to protect and nurture their interests in Tauranga Moana after the raupatu, and that Ngāti Pūkenga were left increasingly dependent on lands outside Tauranga Moana for their support. For the Crown, the marginalisation of Ngāti Pūkenga in Tauranga Moana, and the harm this caused, are sources of profound regret.
50. The Crown acknowledges that it failed to ensure that Ngāti Pūkenga were left with sufficient land at Tauranga for their present and future needs and that this failure was a breach of te Tiriti o Waitangi/the Treaty of Waitangi and its principles. The Crown apologises for exacerbating this harm by consistently failing to respect the rangatiratanga of Ngāti Pūkenga in their remaining lands.
51. The Crown acknowledges that Ngāti Pūkenga describe Tauranga Moana and the Maketū and Little Waihi estuaries as significant taonga and sources of spiritual and material well-being; and that Ngāti Pūkenga also describe Whangarei Harbour as of great importance to them; and the significance of the land, awa, and harbour at Manaia to Ngāti Pūkenga as a pataka kai; and that environmental degradation has been a source of distress to Ngāti Pūkenga because of adverse impacts on Tauranga Moana, especially the Waitao awa and Rangataua arm of the harbour and the Maketū and Little Waihi estuaries; and the land, awa, and harbour at Manaia; and the quantity and quality of species at those locations that were important to Ngāti Pūkenga.
52. The Crown acknowledges the suffering it caused Ngāti Pūkenga through its breaches of te Tiriti o Waitangi/the Treaty of Waitangi. This settlement will, the Crown sincerely hopes, mark the beginning of a new relationship between the Crown and Ngāti Pūkenga that is founded on respect for te Tiriti o Waitangi/the Treaty of Waitangi and its principles.”

### ***Relevant principles and provisions of the Ngāi Te Rangi and Ngā Pōtiki Treaty settlement***

53. The Crown makes this apology to Ngai Te Rangi and Nga Potikij to your tupuna and to your descendants. The Crown unreservedly apologises for not having fulfilled its obligations to Ngai Te Rangi and Nga Potiki under te Tiriti o Waitangi/the Treaty of Waitangi and for having shown disrespect for the mana and rangatiratanga of Ngai Te Rangi and Nga Potiki.
54. The Crown’s acts and omissions since the signing of the Treaty of Waitangi have dishonoured the spirit with which Ngai Te Rangi and Nga Potiki entered the Treaty with the Crown. At the Crown’s hands Ngai Te Rangi and Nga Potiki suffered because of war and raupatu in Tauranga and the serious deprivations that followed. The Crown is profoundly sorry for its actions and that your people have carried the heavy burden of these Crown actions over successive generations.

55. The Crown deeply regrets its acts and omissions which have led to the loss of so much of the lands of Ngai Te Rangi and Nga Potiki. The Crown apologises for the loss of sacred sites and key resources its acts and omissions have caused Ngai Te Rangi and Nga Potiki. In particular the Crown is profoundly sorry that Ngai Te Rangi lost ownership of Mauao for 120 years and lost access to coastal lands, and that Nga Potiki lost access to coastal lands at Papamoa.
56. The Crown is deeply sorry for the marginalisation Ngai Te Rangi and Nga Potiki have endured while the city of Tauranga expanded on their customary lands. The Crown apologises for the lost opportunities for development, and for the significant harm its actions have caused to the social and economic wellbeing of Ngai Te Rangi and Nga Potiki.
57. Through this apology and this settlement the Crown seeks to address the wrongs of the past and to create a new platform from which to establish a relationship with Ngai Te Rangi and Nga Potiki, a relationship based on mutual respect and cooperation as was originally envisaged by the Treaty of Waitangi.

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

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

58. 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***

59. The proposed project does not directly affect any specific commercial or cultural redress provided by the Treaty settlements.
60. 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.
61. 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**

62. 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.
63. 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**

64. 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.



65. 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.
66. We have identified four relevant iwi authorities and four Treaty settlement entity for receipt of the notice of decisions. Contact details are in Attachment 2.
67. There are no relevant joint management agreements or Mana Whakahono ā Rohe to consider.
68. We have identified two 'other' parties who may have an interest in the project, and whom we recommend receive the notice of decisions if you decide to refer the project. Contact details are in Attachment 2.

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

69. 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.
70. 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.
71. 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).
72. We have identified four relevant iwi authorities and four Treaty settlement entity for the proposed project.
73. A panel may also invite comments from any other person it considers appropriate.
74. We have identified two 'other' parties who 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 this party if you decide to refer the project.

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

75. 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>2</sup> The Environmental Protection Authority which provides support services

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<sup>2</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.

76. 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



## Attachment 2 – Contact information

Iwi/hapū	Settlement documents / Status	Representative body	RMA relevant iwi authority	Treaty settlement entity	Other parties	Contact person
Ngāti Pūkenga		Ngāti Pūkenga Iwi ki Tauranga Trust	Iwi authority for RMA purposes			Chair: Rehua Smallman <a href="mailto:pukenga1@xtra.co.nz">pukenga1@xtra.co.nz</a>
	Ngāti Pūkenga Claims Settlement Act 2017	Te Tāwharau o Ngāti Pūkenga		Post-settlement governance entity		GM: Hemi Dawson <a href="mailto:tetawharau@ngatipukenga.com">tetawharau@ngatipukenga.com</a>
Waitaha	Waitaha Claims Settlement Act 2013	Te Kapu o Waitaha Trust	Iwi authority for RMA purposes	Post-settlement governance entity		GM: Vivienne Robinson <a href="mailto:info@waitaha-iwi.org.nz">info@waitaha-iwi.org.nz</a>
Ngāi Te Rangi (and Ngā Potiki)		Te Rūnanga o Ngāi Te Rangi Iwi Trust	Iwi authority for RMA purposes			CEO: Paora Stanley <a href="mailto:reception@ngaiterangi.org.nz">reception@ngaiterangi.org.nz</a>
		Ngāi Te Rangi Settlement Trust		Post-settlement governance entity		
		Ngā Pōtiki a Tamapahore Trust	Iwi authority for RMA purposes	Post-settlement governance entity		Chairperson: Colin Reeder <a href="mailto:kiaora@ngapotiki.org.nz">kiaora@ngapotiki.org.nz</a>
Ngāi Tukairangi					Other party may have an interest	RM Contact: Ms Ngawiki Dickson (Administrator's 9(2)(a))
Ngāti Kuku					Other party may have an interest	RM Contact: Mr Nathan James <a href="mailto:harau@gmail.com">harau@gmail.com</a>

## Attachment 3 – Proposed Layout





## Attachment 3 – Perspective

PITAU ROAD | LUXURY RETIREMENT  
PITAU ROAD - MAIN ELEVATION

