

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

### Application 2022-103 Te Araroa Barge Facility Project

To:	Required action:
Hon David Parker, Minister for the Environment	Consider this report prior to making a joint decision under section 24 of the FTCA
Willow-Jean Prime, Minister of Conservation	
Date submitted: 28 February 2023	

### Ministry for the Environment contacts

Position	Name	Cell Phone	1 <sup>st</sup> Contact
Principal Author	Stephanie McNicholl		
Acting Manager	Madeline Berry	s 9(2)(a)	✓
Director	Caroline Hart	s 9(2)(a)	

### Introduction

1. The Ministry for the Environment has prepared this report in consultation with the Office for Māori Crown Relations – Te Arawhiti and in accordance with section 17 of the Covid-19 Recovery (Fast-track Consenting) Act 2020 (the FTCA).
2. To satisfy obligations under section 6 of the FTCA, you must both consider this report before you jointly make any decision under section 24 of the FTCA regarding the application request to refer the Te Araroa Barge Facility Project (project) to an expert consenting panel (panel).

### Proposed project

3. The applicant (Te Rimu Trust) proposes to develop an approximately 205.8563-hectare site into a barge facility located at Te Araroa Road, Te Araroa, Gisborne region.
4. The project will involve the construction and operation of a barge facility for the transportation of logs sourced from local forests. The facility will include an excavated mooring basin, dredged access channel, two breakwaters (sea walls), floating pontoons for commercial operations, as well as facilities for public recreation including water sports.
5. Parts of the project will occur in the coastal marine area (CMA).
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 (1)	Te Rūnanganui o Ngāti Porou Trust <i>Contact details are in Attachment 2</i>
17(3)(b)	Treaty settlements that relate to the project area (1)	Ngāti Porou Claims Settlement Act 2012
17(3)(a)	Relevant Treaty settlement entities (1)	Te Rūnanganui o Ngāti Porou Trust <i>Contact details are in Attachment 2</i>
17(3)(c)	Relevant principles and provisions of the Treaty settlements	See 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	-
17(3)(d)	Current Treaty settlement negotiations	-
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	Ngā Rohe Moana o Ngā Hapū o Ngāti Porou (Recognition of Customary Marine Title) Order 2020

## Supporting information

### Project details

8. The project site covers approximately 205.8563 hectares of Māori freehold land owned and managed by Te Rimu Trust on behalf of approximately 349 Ngāti Porou owners, characterised as large rural land blocks situated near the coast, located to the south of Karakatuwhero River and east of State Highway 35, Gisborne region. The site access will be gained primarily from Te Araroa Road (also identified as State Highway 35 and Pacific Coast Highway).
9. The project intends to provide for a barge facility operation. In addition, the project will include the construction and operation of a public boat ramp, boat moorings, rescue centre building, harbour control building, public toilet, parking and hardstand areas and ecological enhancement and restoration of wetlands.
10. Attachment 3 shows the project layout comprising locations of activities, access, public amenities, floating berths for recreational vessels, a recreational beach, a coastguard and surf lifesaving facility and a cross-section of the barge facility.

## Statutory matters relating to this report

11. Parts of the proposed project will occur in the coastal marine area (CMA), meaning: in accordance with section 16(1) of the FTCA, decisions relating to referral of the project to a panel must be made jointly by the Minister for the Environment and the Minister of Conservation.
12. Section 17(1) of the FTCA requires you both to consider this report before making a joint decision under section 24 of the Act to refer the project to a panel, in order to satisfy your joint obligations under section 6 (Treaty of Waitangi) of the FTCA.
13. Section 17(3)(e) of the FTCA requires this report to identify any court orders granted under the Marine and Coastal Area (Takutai Moana) Act 2011 (MACAA) or another Act which recognise, in relation to the project area, customary marine title or protected customary rights. We note there are no such court orders relevant to the project area to consider in your joint referral decision<sup>1</sup>.

## Iwi authorities

### Methodology and information sources

14. 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.
15. '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.
16. 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.

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<sup>1</sup> The Ngā Rohe Moana o Ngā Hapū o Ngāti Porou (Recognition of Customary Marine Title) Order 2020 came into force on 1 February 2021. It establishes customary marine title areas for a specific part of ngā rohe moana o ngā hapū o Ngāti Porou aligning with those in Schedule 2 to the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019. This does not affect the proposed project area as shown in Attachment 4.

17. 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.
18. 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.
19. To identify iwi authorities associated with the identified areas of interest, we considered information from:
  - a. the TKM online directory noted above
  - b. Gisborne District Council<sup>2</sup> as the sole relevant local authority.

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

20. We have identified, via the TPK viewer and TKM website the sole relevant iwi authority for the project area, as Te Rūnanganui o Ngāti Porou Trust, representing Ngāti Porou.
21. Gisborne District Council (GDC) identified the same relevant iwi authority. GDC identified Ngai Tamahaua, however, we note the project lies outside of their area of interest. GDC also identified Te Whānau a Kahu, who we note is represented by Pōtikirua ki Whangaōkena Takutai Kaitiaki Trust<sup>3</sup> who you invited to comment on the referral application.

### **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 Porou Claims Settlement Act 2012](#) is the only 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 Porou and the Crown on 22 December 2010. [Ngāti Porou Deed of Settlement documents](#) can be accessed on the NZ Government Treaty settlements website.
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.

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<sup>2</sup> Gisborne District Council is a Unitary local authority with regional and local government responsibilities.

<sup>3</sup> Established by Trust deed on 26 July 2017 to represent hapū with interests in the marine and coastal area from Pōtikirua to Whangaōkeno.

26. Te Rūnanganui o Ngāti Porou Trust is the post-settlement governance entity under the Ngāti Porou Claims Settlement Act 2012.
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. No such entity established by the Ngāti Porou Claims Settlement Act is relevant to the proposed project.

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

### ***Crown acknowledgements and apologies***

29. As part of the Ngāti Porou 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.
30. As part of the apology made by the Crown to Ngāti Porou in the Ngāti Porou Claims Settlement Act 2012, the Crown states it profoundly regrets that over the generations it has failed to respect Ngāti Porou rangatiratanga and has breached the Treaty of Waitangi in the manner described in the acknowledgements.
31. The Crown acknowledges that, as a Treaty partner, Ngāti Porou has fulfilled its obligations under the Treaty of Waitangi and acknowledges the significant contribution that Ngāti Porou, its rangatira, whanau and hapu have made to New Zealand.
32. The Crown acknowledges it did not consult Ngāti Porou about the introduction of the native land laws, individualisation of land tenure and Crown goals to make Ngāti Porou land available for European settlement, eventually detribalising Ngāti Porou and making their land more susceptible to alienation, which had a severe impact as nearly two thirds of Ngāti Porou land had its title individualised between 1874 and 1886.
33. The Crown acknowledges it: promoted legislation that allowed the sale of Ngāti Porou blocks despite failing to comply with all the requirements of the native land laws; did not allow Ngāti Porou to select any members of the Tairāwhiti Māori Land Board. The compulsory vesting of over 35,000 acres of Ngāti Porou land in this Board between 1906 and 1909 was an acknowledged breach of the Treaty of Waitangi and its principles.
34. The Crown acknowledges it compulsorily acquired Ngāti Porou land for public purposes on more than 2,000 occasions; some land was taken for roads without compensation; and some land of great importance, which is a significant grievance for Ngāti Porou.
35. The Crown acknowledges its administration of development schemes deprived Ngāti Porou of effective control of large areas of their land for many years and did not achieve the outcomes Ngāti Porou were led to expect. It was difficult for Ngāti Porou to farm profitably some of the land returned to them.
36. The Crown acknowledges deforestation in the late nineteenth and early twentieth centuries fuelled significant acceleration of erosion and flooding that has had a devastating impact on Ngāti Porou rohe wide and measures it adopted to address this problem failed effectively to resolve it.
37. The Crown acknowledges its policies contributed to most Ngāti Porou now living outside their rohe, that Ngāti Porou living on the East Coast endured social deprivation for too long; and that the health of Ngāti Porou living on the East Coast has been worse than



that of many other New Zealanders, and they have not had the same opportunities in life that many other New Zealanders have enjoyed.

38. Through the settlement and the apology, the Crown states it hopes to atone for its wrongs and hopes to build, improve and strengthen its relationship with Ngāti Porou based on respect for the Treaty of Waitangi and its principles.
39. Affording respect to the views of Ngāti Porou 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.

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

43. Under section 17(3)(d) of the FTCA 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 invited comment on the referral application for this project from Potikirua ki Whangaokena Takutai Kaitiaki Trust.
46. In addition, 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.

47. We have identified Te Rūnanganui o Ngāti Porou Trust as the sole relevant iwi authority and Treaty settlement entity for receipt of the notice of decisions. Contact details are in Attachment 2.
48. There are no relevant joint management agreements<sup>4</sup> 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. We have identified Te Rūnanganui o Ngāti Porou Trust as the sole relevant iwi authority and Treaty settlement entity for the proposed project.
53. Under the MACAA an applicant group means one or more iwi, hapū, or whānau groups that seek recognition under Part 4 of the MACAA of their protected customary rights or customary marine title by either a recognition order granted by the High Court; or an agreement negotiated with the Crown (through The Office for Māori Crown Relations – Te Arawhiti). The sole group that has applications under the MACAA in the common marine and coastal area adjacent to the project site is Potikirua ki Whangaokena Takutai Kaitiaki Trust. The customary marine title area and applicant details are shown in Attachments 4 and 5.
54. A panel may also invite comments from any other person it considers appropriate.

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

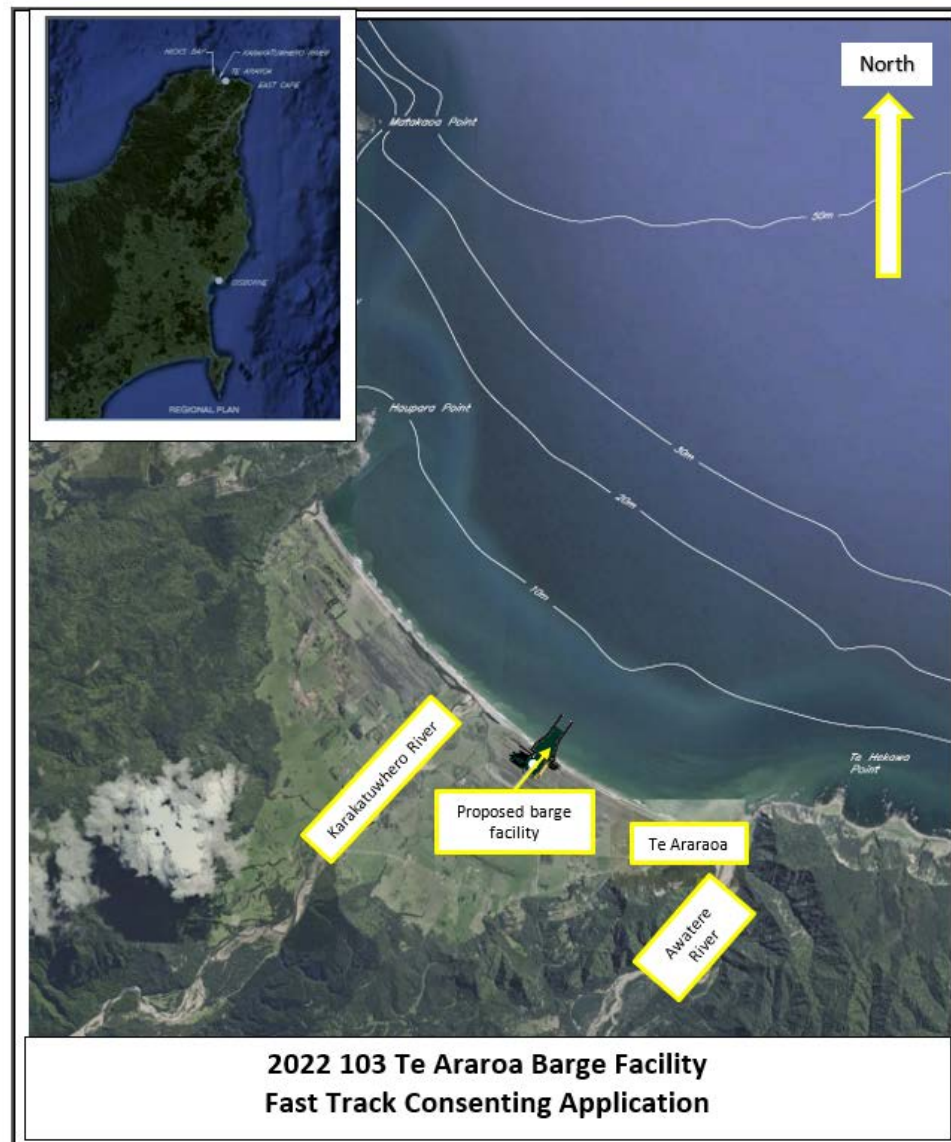
Any resource consent application submitted to a panel for determination must include a cultural impact assessment prepared by or on behalf of the relevant iwi authorities, or a statement of any reasons given by the relevant iwi authorities for not providing that assessment.<sup>5</sup> The Environmental Protection Authority which provides support services to a panel, will not confirm an application as complete and ready for consideration by a panel until this requirement is satisfied.

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<sup>4</sup>

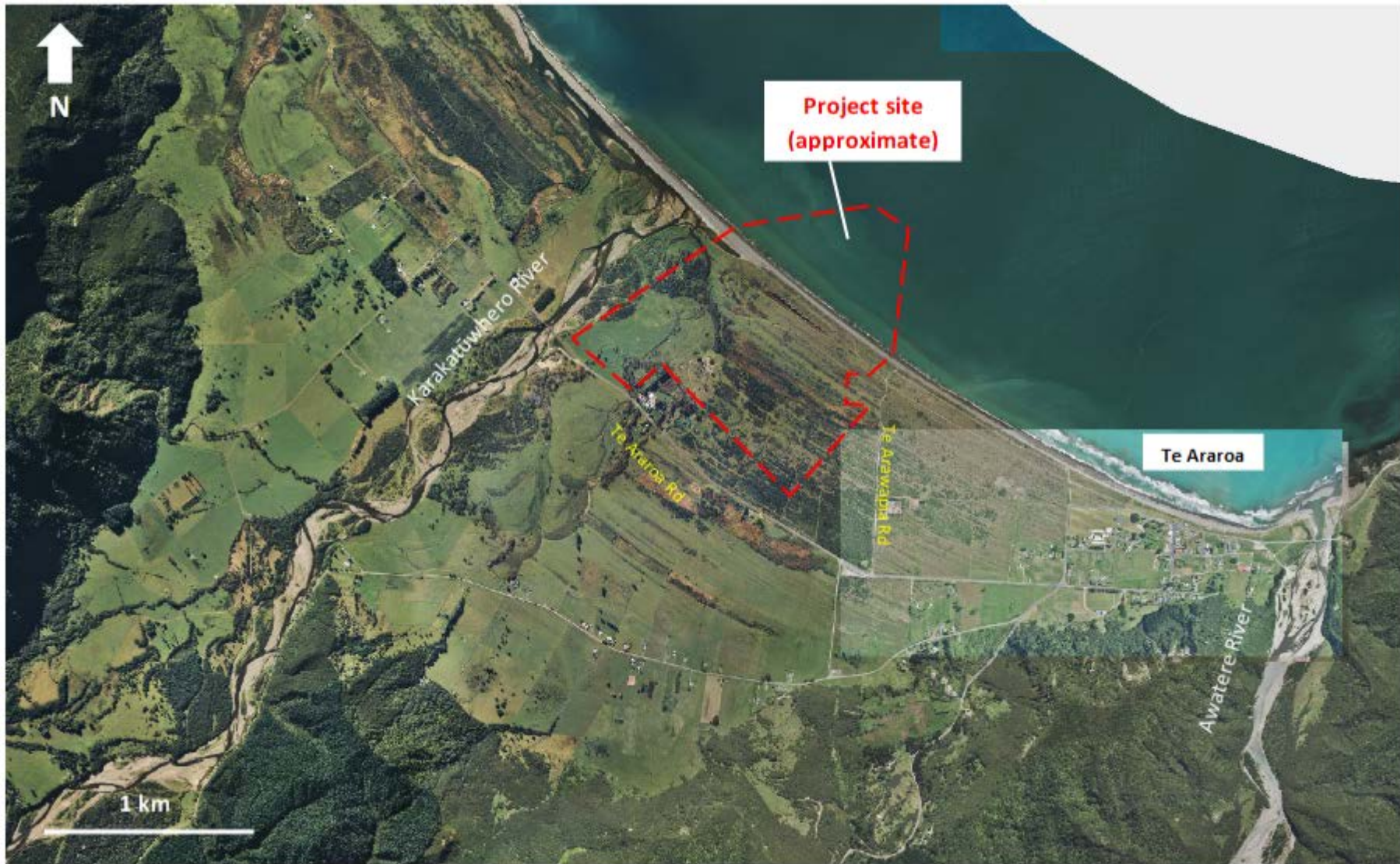
<sup>5</sup> Clause 9(5), 13(1)(k) and 13(1)(l) of Schedule 6 of the FTCA.

## Attachment 1 – Project Location





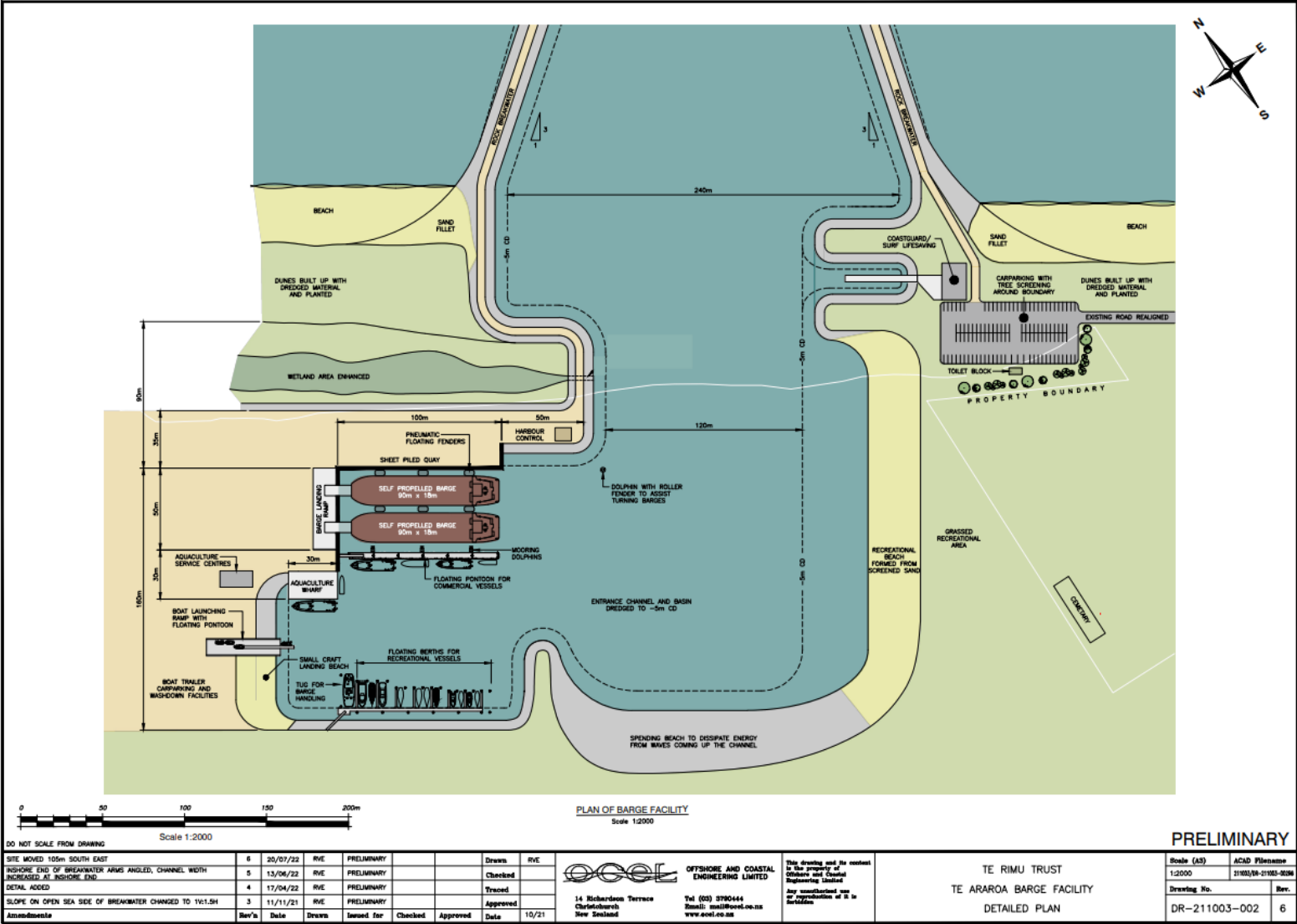
## Attachment 1 – Project Area



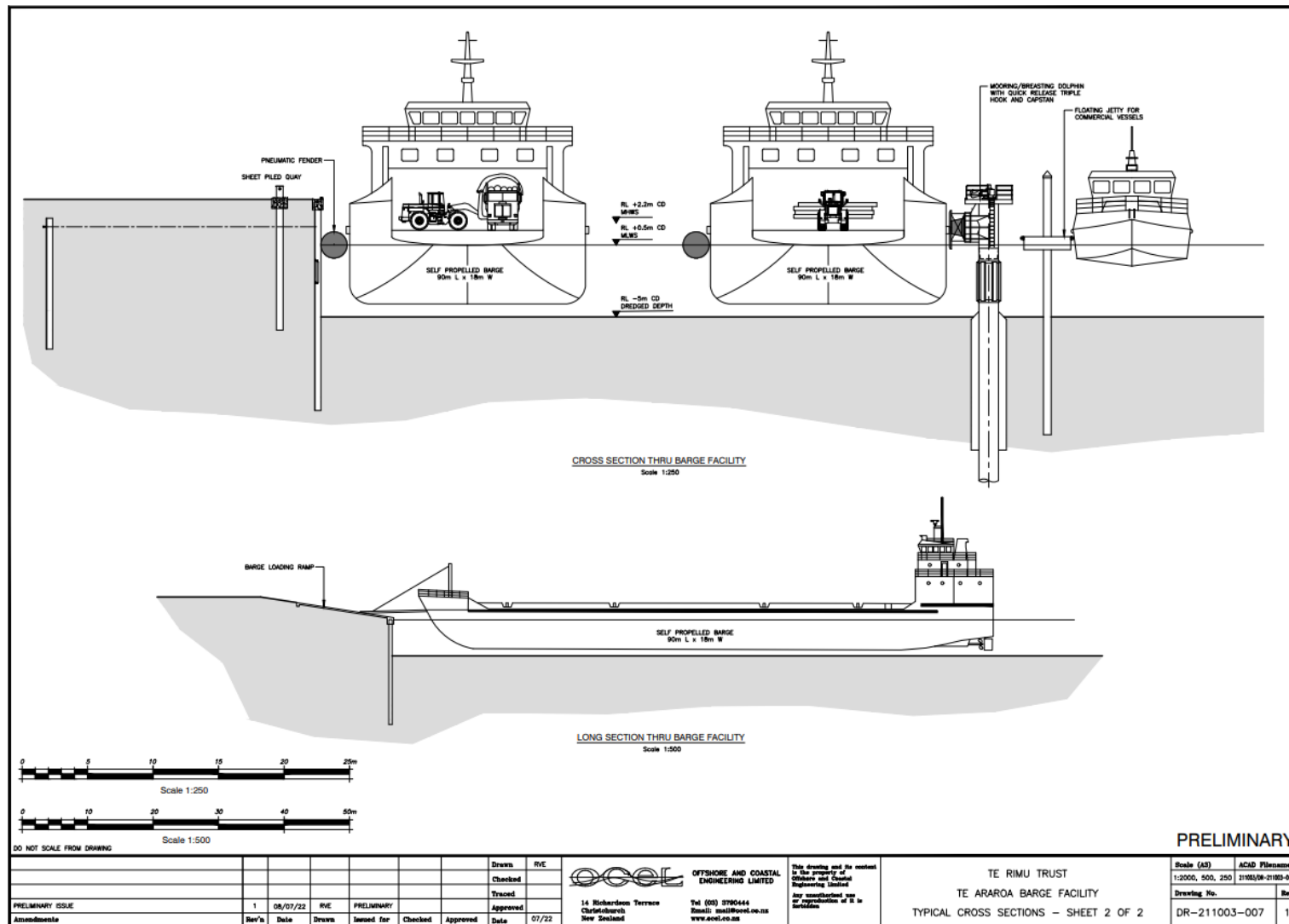
## Attachment 2 – Contact information

Iwi/hapū	Representative body	RMA relevant Iwi authority	Treaty settlement entity (PSGE)	Other Iwi authority interest	Contact person	Contact details
Ngāti Porou	Te Rūnanganui o Ngāti Porou Trust	Representing Ngāti Porou as an iwi authority for RMA purposes	PSGE under Ngāti Porou Claims Settlement Act 2012		CEO: George Reedy <a href="mailto:info@tronp.org.nz">info@tronp.org.nz</a>	PO Box 394 Kaiti Gisborne 4010

Attachment 3 – Planned Layout

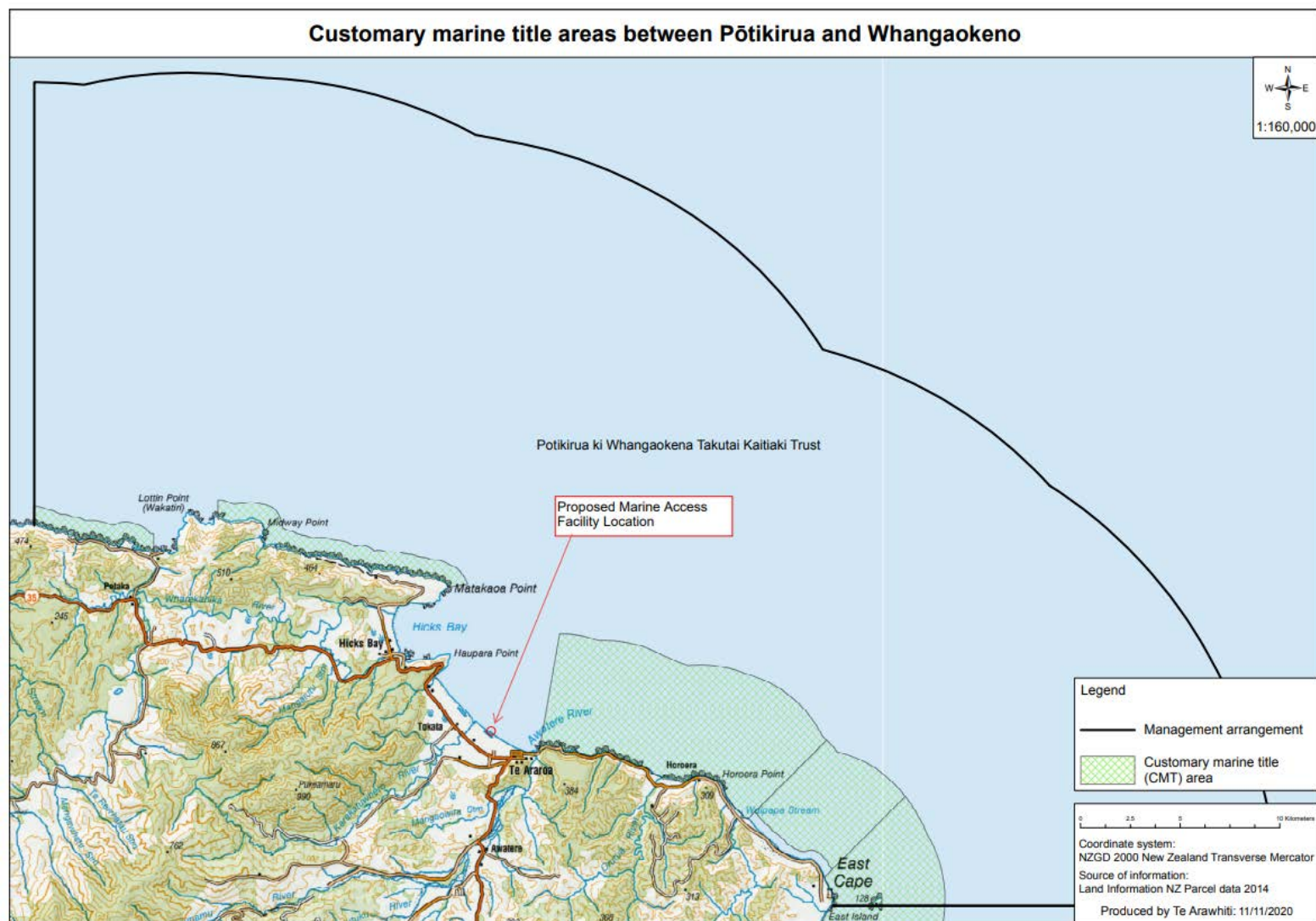


## Attachment 3 – Cross Section Barge Facility





## Attachment 4 – Customary marine title areas or protected customary rights between Pōtikirua and Whangaokeno





## Attachment 5 – Applicants for customary marine title or protected customary rights

Applicant Group Name	Engagement		Application Status	Contact person
	Crown	High Court		
Ngā Rohe Moana o Ngā Hapū o Ngāti Porou (Recognition of Customary Marine Title) Order 2020 (Potikirua ki Whangaokena Takutai Kaitiaki Trust)	FSB-36-16-005 MAC-01-08-012	CIV-2021-485-302 CIV-2017-485-225	In force	Representative: Angus Walker, Project Manager <a href="mailto:takutai@tronp.org.nz">takutai@tronp.org.nz</a>

Source: Kōrero Takutai (Te Kete Kōrero a Te Takutai Moana Information Hub – Te Arawhiti) & Te Arawhiti