

FTA#278: Application for listed project under the Fast-track Approvals Bill – Tokomaru Bay Legacy Landfill Contaminated Land Remediation Project for Schedule 2A

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| Date submitted to secretariat: | 27 June 2024 |
| Security level: | In-Confidence |
| To: | David TAPSELL, Chair – Fast-track Projects Advisory Group |

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| Number of attachments: # | Attachments: 1. Application documents for Tokomaru Bay Legacy Landfill Contaminated Land Remediation Project |
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| Applicant | Sector | Region | Identified in a priority/strategy? |
|---------------------------|-----------------------|----------|------------------------------------|
| Gisborne District Council | Public infrastructure | Gisborne | Yes |

Ministry for the Environment contacts

| Position | Name | Mobile | 1 st contact |
|-------------------|------------------------------|-----------|-------------------------|
| Principal Authors | Oliver Sangster, Anna Galvin | | |
| Manager | Stephanie Frame | s 9(2)(a) | ✓ |
| Director | Ilana Miller | s 9(2)(a) | |

Project location



Key messages

1. The Tokomaru Bay Legacy Landfill Contaminated Land Remediation project is to remediate/remove the historic landfill at 31 Paikea Street, Tokomaru Bay, Gisborne, and to improve the environmental integrity of the site due to the ongoing risk of erosion by Mangahauini River following heavy rainfall events.
2. The project will comprise removal of the historic contaminated landfill, and the site will be remediated and returned to its original floodplain state.
3. The project will require resource consent under the Resource Management Act 1991 (RMA), for land disturbance on a verified HAIL (Hazardous Activities and Industries List) site.
4. Gisborne District Council is the landowner.
5. We have undertaken an initial (Stage 1) analysis of the application, and this is provided in Table A.
6. We consider the applicant **has** provided sufficient information to consider the project for inclusion on Schedule 2A (although we note it could still be included on Schedule 2B based on the information provided). The application is light on detail in a number of areas, but an expert consenting panel has an opportunity to request further information from an applicant as part of their assessment (should the application proceed to that point).
7. The project does not trigger the ineligibility criteria in clause 18 of the Fast-track Approvals Bill (the Bill).
8. Advice on PSGE development priorities and Māori development is provided in Table A. Table A also includes the relevant PSGEs or Māori groups and the settlement mechanisms, that will/may be impacted by the project and whether the project is low, medium or high impact on Treaty settlement/s and other relevant arrangements. Appendix

1 provides further detail on how this advice should be considered and our approach to analysis.

Signature

A handwritten signature in blue ink, appearing to read 'S. Frame', is centered on a light gray grid background. The signature is fluid and cursive, with a large initial 'S' and a long horizontal stroke at the end.

Stephanie Frame
Manager – Listed Projects

Table A: Stage 1 initial assessment of project eligibility and Treaty settlement assessment and advice¹

| Project details | Project description | Approvals sought | Consultation undertaken | Does the project trigger the ineligibility criteria [clause 18]? | | | | Discretionary ground to decline [clause 21(2)] | Eligibility [clause 17] | |
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| | | | | Treaty settlement land, Māori customary land, customary marine title, customary rights, aquaculture settlement area, or prevented by RMA clauses [clauses 18(a-e, g)] | Access arrangement under CMA where a permit can't be granted, or is listed in items 1-11, 14 [clauses 18(f,h)] | Activity on a national reserve under Reserves Act which requires approval under that Act [clause 18(i)] | Prohibited activity under EEZA or regulations under that Act, decommissioning-related activities, offshore renewable energy progressing ahead of permitting legislation [clause 18(j-l)] | | Is the project eligible [clause 17(2)] | Would the project have significant regional or national benefits [clause 17(3)] |
| High level summary | | | Y | N | N | N | N | | | |
| <p>Schedule requested 2A</p> <p>Project Name Tokomaru Bay Legacy Landfill Contaminated Land Remediation Project</p> <p>Applicant Gisborne District Council</p> <p>Location Refuse Transfer Station site at the end of Paikea St, Tokomaru Bay, and abutting the true left bank of a meander in the Manahawkin River.</p> <p>The site is in an area of Historic and Cultural Heritage significance (Heritage Alert Overlay)</p> <p>Land Status The applicant states it is the</p> | <p>The project will comprise removal of the historic contaminated landfill, and the site will be remediated and returned to its original floodplain state.</p> | <p>The applicant seeks approval under the:</p> <ul style="list-style-type: none"> Resource Management Act 1991 | <p>The applicant states "Focussed engagement has been undertaken with the community, hapu and Te Runanganui o Ngāti Porou, the statutory body responsible for administering RMA related issues for hapū within the settlement area of interest. Both hapū (Te Whānau a Ruataupare and Te Whānau a Te Aotāwarirangi) have been formally represented through local kaumatua Jack Chambers as part of the project to date.</p> <p>The legacy landfill along with the current location of the transfer station has long provided a point of tension between GDC and local mana whenua and community members."</p> | No | No | No | No | <p>The project, or any part of it, is inconsistent with a relevant Treaty settlement, the NHNP Act, the Marine and Coastal Area (Takutai Moana) Act 2011, a Mana Whakahono ā Rohe, or a joint management agreement.</p> <p>This is discussed further in the substantive Treaty analysis.</p> <p>It is more appropriate to deal with the application under another Act.</p> <p>Maybe – The consent authority under the standard process would be Gisborne District Council.</p> <p>The project may have significant adverse effects on the environment.</p> <p>No – Application states "there are no adverse effects"</p> <p>The applicant has a poor compliance history under the relevant legislation.</p> <p>Maybe – The applicant did not provide a summary, but stated "please refer to Joanna Noble if required".</p> <p>The project involves an activity that would occur on land that the Minister for Treaty of Waitangi Negotiations considers</p> | <p>Whether access to the fast-track process will enable the project to be processed in a more timely and cost-efficient way than under normal processes.</p> <p>Maybe – The applicant states the fast track process will allow physical works to commence much sooner and reduce current estimated consultant costs to prepare the consent application.</p> <p>The application does not detail the extent to which the fast-track process would reduce estimate consultant costs, or how long consenting would take under the standard RMA process (the consent authority for a standard process is Gisborne District Council).</p> <p>The impact referring this project will have on the efficient operation of the fast-track process.</p> | <p>The project has been identified as a priority project in a central government, local government, or sector plan or strategy (for example, in a general policy statement or spatial strategy) or central government infrastructure priority list.</p> <p>Yes– The application states "local government plan or strategy" but does not specify which (the applicant is the Gisborne District Council).</p> <p>The applicant successfully obtained funding from the Ministry for the Environment's Contaminated Sites Remediation Fund for the project.</p> <p>The project will deliver regionally or nationally significant infrastructure.</p> <p>No – Question was not answered</p> <p>The project will increase the supply of housing, address housing needs, or contribute to a well-functioning urban environment.</p> <p>No</p> <p>The project will deliver significant economic benefits.</p> <p>No</p> <p>The project will support primary industries, including aquaculture.</p> <p>No</p> <p>The project will support development of natural resources, including minerals and petroleum.</p> <p>No</p> |

¹ **Disclaimer:** Given time and scope constraints, the initial assessment is solely based on information provided by applicants. There may be additional relevant information which has not been provided to MfE.

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| landowner. No title provided. | | | | | | | | | <p>necessary for Treaty settlement purposes.</p> <p>No</p> <p>The project includes an activity that is a prohibited activity under the RMA.</p> <p>No</p> | <p>Yes – The application states “no impact”.</p> <p>Whether the application contains sufficient information to inform the referral decision.</p> <p>Yes - The application is light on detail but an expert panel will have the ability to request any further information they deem necessary.</p> | <p>The project will support climate change mitigation, including the reduction or removal of greenhouse gas emissions.</p> <p>No</p> <p>The project will support adaptation, resilience, and recovery from natural hazards.</p> <p>Yes – The project would remove the environmental risks posed by waste contaminating the river and coastal areas in light of natural hazards.</p> <p>The project will address significant environmental issues.</p> <p>Yes – The project will remediate the landfill that is currently eroding and leaching contaminants into the surrounding environment.</p> <p>The project is consistent with local or regional planning documents, including spatial strategies.</p> <p>Yes – No detail provided in application. Applicant is Gisborne District Council.</p> |
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PSGE Settlement Priorities and Māori Development assessment –

This table provides an overview. In the time available, it has not been possible to undertake a detailed review of all Treaty settlement and related matters, or to engage with the relevant PSGE, iwi or Māori groups in relation to the potential impacts of the project. If the project does progress through the fast-track process, it will be important this more detailed and comprehensive analysis and engagement is undertaken (there are some mechanisms in the proposed legislation, such as the clause 13 report (which will apply to Schedule 2 Part B (but not Part A) applications) and the requirements to invite comment from these groups, which are intended to address these matters).

Advice on Māori development and PSGE settlement priorities includes information relating to:

- where projects align explicitly with PSGE or iwi strategic objectives/vision/other strategic documents.
- where projects contribute towards addressing historical or systemic inequities faced by Māori. This would be undertaken through an equity assessment; and/or are being led by or in partnership with a Māori entity or business;
- to relevant provisions in Treaty settlements, Joint Management Agreements outside of settlement; Mana Whakahono ā Rohe; Iwi Environment Management plans; implications for groups yet to settle their historical Treaty of Waitangi claims; and implications arising under the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019.

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| Ineligible projects - based on the considerations at c118(a–e) of the Fast Track Approvals Bill (version as at introduction) | The project does not appear to be ineligible according to the information provided in the application. |
| Affected Māori group/s | <p>The applicant has identified the following groups with interests in the project area:</p> <ul style="list-style-type: none"> • Te Whānau a Ruataupare • Te Whānau a Te Aotāwarirangi • Te Runanganui o Ngāti Porou <p><u>Ngāti Porou</u></p> <p>Ngāti Porou is an iwi whose area of interest includes the proposed project site, based on the area of interest agreed between Ngāti Porou and the Crown in a Deed of Settlement signed on 22 December 2010.² Te Whānau a Ruataupare and Te Whānau a Te Aotāwarirangi are hapū of Ngāti Porou and exercise mana whenua over the area.</p> <p>We have not identified any additional groups beyond those identified by the applicant.</p> <p><u>Marine and Coastal Area (Takutai Moana) Act 2011 applicants</u></p> <p>The proposed project site is near to the Mangahauini River and the effects of the landfill affect the River and associated coastal marine area. There are a number of groups with applications under the Marine and Coastal Area (Takutai Moana) Act 2011 in that area that may therefore be affected.</p> |

² AOI-NgatiPorou.jpg (1052x1488) (tkm.govt.nz)

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| <p>Has the applicant consulted with those Māori groups?</p> | <p>The applicant states that focussed engagement has been undertaken with the hapu and Te Runanganui o Ngāti Porou. Both hapu are formally represented by a kaumatua as part of the project. The project proposes to remove the legacy landfill and remediate the site. The applicant notes that the landfill has historically been a point of tension between the Council and local hapu / iwi.</p> |
| <p>Impact/s of the project on Māori development and PSGE settlement priorities and related matters</p> | <p><u>Impacts on PSGE settlement priorities and Māori development</u></p> <p>There is no information in the application to suggest that this application is made by or on behalf of a Māori organisation, or that the project will have a direct benefit in terms of Māori development. Officials note that the landfill has historically been a point of tension and this project proposes to remove the landfill and remediate the land, which may align with iwi and hapu aspirations, however, this would need to be confirmed directly with the relevant groups.</p> <p>In the time available, we have not identified any relevant iwi management plans.</p> <p><u>Impact on Treaty settlements and other relevant arrangements</u></p> <p><u>Ngāti Porou Claims Settlement Act 2012</u></p> <p><u>Statutory acknowledgements</u></p> <p>This Treaty settlement contains a number of statutory acknowledgements. It is not clear from the application whether a statutory acknowledgement covers or is adjacent to the project site or is directly impacted by the proposed project. However, there is a statutory acknowledgement over the Uawa River and tributaries which may be relevant.</p> <p>If the project activity is within or adjacent to, or directly affects, the area of the statutory acknowledgement, the following text applies. Generally, a statutory acknowledgement by the Crown of a 'statement of association' between the iwi and an identified area. A council must have regard to the statutory acknowledgement when deciding whether the iwi is an 'affected person' for the purposes of notification decisions under the Resource Management Act 1991 (the RMA). The same applies to the Environment Court when considering participation in hearings under s274 of the RMA. A council must send summaries of applications for resource consents to the iwi. The PSGE (or any member of the iwi) may, as evidence of the association with a statutory area, cite the statutory acknowledgement in submissions that are made to a consent authority, the Environment Court or the Environmental Protection Authority.</p> <p>An impact of listing this project under Schedule 2 Part A is that the Ministers will not have to exercise their 'referral discretion' including considering the Treaty settlement impacts through that process, nor will they have the benefit of the clause 13 report. There is a requirement on the expert panel to invite comment from the PSGE on the application (noting this is an automatic right to participate, which is currently discretionary under the statutory acknowledgement). For a Schedule 2 Part B listing, Ministers will have to exercise their 'referral discretion' including considering the Treaty settlement impacts through that process, and they will have the benefit of the clause 13 report. The expert panel will also be required to invite comment from the PSGE on the application (again, noting this is an automatic right to participate, which is currently discretionary under the statutory acknowledgement).</p> <p>Listing this project, and the fast-track process generally, will not provide equivalent weight to the statutory acknowledgement, which may limit the influence of the iwi compared to the usual consenting regime. For example, under the RMA process, if a PSGE is notified due to the statutory acknowledgement, the PSGE has the right to make a submission, attend a hearing, appeal to the Environment Court, and appeal to the High Court and higher courts. The fast-track process does not provide exactly the same rights to the PSGE (particularly the potential right to make a submission and then participate in a hearing and de novo appeal), but as noted above there are some other enhanced rights of participation.</p> <p><u>Joint Management Agreements outside of settlement</u></p> <p>Ngāti Porou has entered into a joint management agreement outside of settlement with Gisborne District Council for the Waiapu River. However, the proposed project site does not appear to be within the catchment of this River (instead it is in the catchment of the Uawa River).</p> <p><u>Iwi Environment Management plans</u></p> <p>Note the comments above in relation to iwi management plans.</p> <p><u>Implications for groups yet to settle their historical Treaty of Waitangi claims</u></p> <p>While we have not identified any other groups with interests in the area, there may be other groups that are still working through their Treaty settlement processes. If so, it will be important that these interests are considered in more detail if the project progresses through the fast-track process, but in the time available there are no further impacts noted.</p> <p><u>Implications arising under the Marine and Coastal Area (Takutai Moana) Act 2011 and Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019</u></p> <p>The project is not located in the common marine and coastal area, but may have downstream impacts on those areas. Within this area there are no customary marine title or protected customary rights holders under the Marine and Coastal Area (Takutai Moana) Act 2011 recorded on the register – Marine and Coastal Area Register Toitū Te Whenua - Land Information New Zealand (linz.govt.nz). There are however two applicant groups who have been recognised by the High Court as meeting the tests for customary marine title and protected customary rights, although those orders have not yet been finalised.</p> <p>Under the Act, takutai moana applicant groups have certain rights in relation to consenting processes under the Resource Management Act 1991, including the right to be consulted on resource consent applications in their takutai moana application area. The Fast-track Approvals Bill currently provides for consultation with takutai moana applicant groups on Schedule 2B projects at the Ministerial referral stage, and the clause 13 report must include information about the relevant takutai moana applicant groups in the project area. For schedule 2A projects (such as this) these steps would not apply. For listed projects (both Schedule 2A and 2B), the Fast-track Approvals Bill as currently drafted, does not provide for consultation with takutai moana applicant groups at the expert panel stage.</p> <p>This means that an implication of listing a project under Schedule 2A is that takutai moana applicants would not have the ability to input into the process at all, and for Schedule 2B listing the only opportunity for any input is at the Ministerial referral stage.</p> <p>As the project area is outside of ngā rohe moana o ngā hapū o Ngāti Porou there are no implications for the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019 arising from this application. For completeness, we note that Tokomaru Bay is one of the areas in the East Coast that falls outside of the definition of ngā rohe moana o ngā hapū o Ngāti Porou.</p> <p><u>Other matters</u></p> <p>In the time available, officials have not identified any other impacts for Mana Whakahono ā Rohe.</p> |

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| Is the project considered low, medium or high impact (based on assessment criteria above) | <p>From the information available we consider this project is likely to be of medium impact. This is due to the nature and range of interests present in the project area.</p> <p>An impact of listing this project under Schedule 2 Part A is that the Ministers will not have to exercise their 'referral discretion' including considering the Treaty settlement impacts through that process, nor will they have the benefit of the clause 13 report. For Part A projects, there is a requirement on the expert panel to invite comment from the PSGE on the application.</p> |
| Has the Ministry for the Environment undertaken engagement? | <p>Officials consider engagement would be beneficial given the nature and range of interests present in the project area but were unable to undertake this in the time available.</p> |
| Additional comments/context | <p>N/A</p> |

Appendix One: Approach and considerations for Treaty settlement advice on listed project applications advice in Table A

1. Ministers have advised the Advisory Group should receive advice from officials on “Māori development and PSGE settlement priorities” relevant to each application. Note this differs from section 13 requirements of the current Fast Track Consenting Bill that ‘Ministers must consider Treaty settlements and other obligations report’ as these reports will not be in existence at the time, although matters identified in section 13 (2)(a)-(j) will be considered as part of official's analysis.
2. We have interpreted “Māori development” and “PSGE priorities” to mean primarily projects that:
 - a. align explicitly with PSGE or iwi strategic objectives/vision/other strategic documents; and/or
 - b. contribute towards addressing historical or systemic inequities faced by Māori. This would be undertaken through an equity assessment; and/or
 - c. the project is being led by or in partnership with a Māori entity or business.
3. Given the time constraints and limited engagement this advice cannot be considered as comprehensive and does not intend to reflect their views and should not be read as such.
4. Engagement with PSGEs and other relevant groups has been considered based on potential high-risk factors including, but not limited to, if:
 - a. a project will take place on or effect any taonga or areas of significance that are protected by Treaty settlement arrangements.
 - b. a project will have a substantive and/or ongoing environment impact on any taonga or areas of significance.
 - c. a project will include a consenting arrangement that will require a significant take, or be ongoing for an extended period, in relation to a taonga or area of significance, or in regions where PSGEs have specific planning mechanisms in place.
 - d. PSGEs or other Māori entities have previously strongly contested the project or a similar type of project, particularly where court action has been taken.
 - e. The project is clearly in conflict with or undermines PSGE priorities.
 - f. Engagement would be required to maintain and uphold the Te Tiriti Crown relationship.
5. In limited circumstances where engagement occurs, it has been brief. Where engagement has been undertaken it is reflected in our analysis but should not be taken to mean that our Treaty Partners endorse our advice.