



# Comments on applications for referral under the COVID-19 Recovery (Fast-track Consenting) Act 2020

*This form is for local authorities to provide comments to the Minister for the Environment on an application to refer a project to an expert consenting panel under the COVID-19 Recovery (Fast-track Consenting) Act 2020.*

Local authority providing comment	Gisborne District Council
Contact person (if follow-up is required)	Joanna Noble
	s 9(2)(a)

## Comment form

Please use the table below to comment on the application.

Project name	Te Araroa Barge Facility 2022 Proposal
General comment – potential benefits	<ul style="list-style-type: none"> <li>Putting in this barge will remove the tyranny of distance, one of the reasons why the East Cape region is one of New Zealand's most economically deprived areas.</li> <li>Te Araroa is an isolated community on the East Coast with limited employment pathways. Te Rimu Trust would create employment opportunities in the area.</li> <li>The barge facility will also take most logging truck trips off the road, put tax money back into the local community and open up new economic opportunities in tourism, coastal shipping and more. Unused Land in Te Araroa holds potential for aquaculture, tourism and horticultural use.</li> <li>The Barge would manage pressure on the state highway network, reducing road safety risks from fewer truck trips and reducing negative environmental impacts, and poetically road maintenance costs.</li> <li>If the proposal includes measures to protect and enhance the adjacent wetland there are potential positive environmental outcomes.</li> </ul>
General comment – significant issues	<p>The land portion of the site is located within the <b>General Rural Zone</b>, with the following <u>overlays</u> affecting the site:</p> <ul style="list-style-type: none"> <li>Coastal environment (land)</li> <li>Outstanding landscape (Unit 2 – Hicks Bay)</li> <li>Protection management area (Te Whare Wetland)</li> <li>Area sensitive to coastal hazards and Outstanding landscape areas</li> <li>Heritage alert overlay</li> </ul>

	<ul style="list-style-type: none"> <li>Coastal environment management area - Significant values management area.</li> </ul> <p>The Karakatūwhero River is significant to tangata whenua.</p> <p>The Karakatūwhero Quarry is legally consented and is within the area</p> <p>Te Whare Wetlands, as well as coastal impacts and marine ecology may be impacted.</p> <p>In August 2021, a similar barge proposal sparked a 200 whanau protest/hikoi for the first barge facility at Te Araroa and the wider Matakaoa area. The hikoi was primarily a stance against the controversial proposal by the trust to build a barge facility at the mouth of Karakatuwhero River. However, it is noted that In May of the same year some East Cape residents are calling for "No barge in Te Araroa" in response to the Gisborne District Council's proposed Strategic 10-year plan.</p>
Is Fast-track appropriate?	<p>Fast track would be appropriate for the project for the following reasons:</p> <ul style="list-style-type: none"> <li>The inlet is surrounded by the Māori landowners of Te Rimu Trust and a pocket of it is under Crown ownership.</li> <li>The potential adverse environmental effects from the barging operation, which seeks to dredge the foreshore and cut into an unmodified beach has led to widespread opposition and protests from the Te Aroha community who are calling for an end to the barging project. This has created a politically turbulent environment amongst several iwi/hapū with particular interests in the area.</li> <li>The proposal is to provide infrastructure in order to improve economic, and employment outcomes, and increase productivity. Coastal shipping would provide additional transport resilience, improve intra-regional and inter-regional connectivity, and promote regional development and as such would benefit from a Fast-track application process.</li> <li>Whilst there will be adverse environmental effects during construction and potentially some ongoing effects, there could also be positive environmental outcomes if protection and enhancement of the adjacent wetland is included in the proposal.</li> </ul> <p>The proposal would require multiple consents under both District and Regional consenting departments triggering a bundled and relatively complex consent that would need to go through the stages of the RMA gateway tests under sections 95(a-e), presuming the political landscape, the proposal would highly likely be publicly notified and likely to be further subject to a joint hearing process with Ngāti Porou and other public. The timeframes are unknown at this stage as GDC would need to secure at least two independent commissioners with local knowledge and understanding of Maori values to facilitate such a joint hearing.</p>
Environmental compliance history	<ul style="list-style-type: none"> <li>Abatement notice issued to Te Rimu Trust in Jan 2022 for earthworks and land disturbance without consent in relation to regionally significant wetland</li> </ul>

	<p>and urupa on the foreshore (works occurred in June 2021). Landcare have now assessed and delineated the wetland – this report has been supplied to TRT and their consultants working on the barge proposal.</p> <ul style="list-style-type: none"> <li>• Late 2018/early 2019 unconsented works to create airstrip in same area. Effects on coastal ecosystems and wetland. Formal warning was issued as predominantly effects were on a modified landscape (grasses/grazed area). Retrospective consent applied for and issued Dec 2020.</li> <li>• Te Rimu Trust has water takes from Karakatuwhero River. Compliance has been patchy but not substantive enough to require enforcement action (education and engagement approach at this stage)</li> </ul>
<b>Reports and assessments normally required</b>	<p>In terms of reports and assessment normally required for a proposal of this nature:</p> <p>Circulate to GDC technical teams such as Science, Integrated Catchments, River, Land and Coastal Operations, Development Engineer, Geotechnical Engineer and Roding for technical assessment and comment.</p> <p>Depending on comments received - some key external reports may be required which include engineering – geotech and development reports, environmental – coastal processes e.g MHWS, noise, construction, traffic and cultural impact reports. For example, the following key 'effects' topics would include:</p> <ul style="list-style-type: none"> <li>• Positive effects</li> <li>• Groundwater quality effects</li> <li>• Ecological effects including on birds, wetland, and marine life</li> <li>• Mooring basin and breakwater investigation reports (engineering)</li> <li>• Natural hazards - effects on coastal processes; effects on flooding and coastal inundation; tsunami risk management</li> <li>• Traffic impacts</li> <li>• Navigational safety</li> <li>• Noise and lighting effects</li> <li>• Visual amenity and effects on natural character, natura features and natural landscape</li> <li>• Cultural/heritage and historical context e.g. proximity off Te Arawaipa Rd.</li> <li>• Tamaki Legal provided a cultural report commissioned by the Te Araroa Working Group for the consent application approved by GDC for geotechnical investigation. The report summarised that a more comprehensive CIA be completed and that an ecological assessment be commissioned.</li> </ul> <p>Note, GDC approved the consent application to undertake a geotechnical investigation to consider the feasibility of the project in August 2022 references LB-2022-111121-00 - LL-2022-111122-00 - CP-2022-111123-00. Resource consent was approved for a duration of 8 years.</p>
<b>Iwi and iwi authorities</b>	<ul style="list-style-type: none"> <li>• Ngāti Porou</li> </ul>

	<ul style="list-style-type: none"> <li>• Te Whanau a Kahu</li> <li>• Ngai Tamahaua</li> </ul>
<b>Relationship agreements under the RMA</b>	<ul style="list-style-type: none"> <li>• Joint Management Agreement (JMA) with Ngāti Porou over the Waiapū Catchment</li> </ul>
<b>Insert responses to other specific requests in the Minister's letter (if applicable)</b>	N/A
<b>Other considerations</b>	

Note: All comments, including your name and contact details, will be made available to the public and the applicant either in response to an Official Information Act request or as part of the Ministry's proactive release of information. Please advise if you object to the release of any information contained in your comments, including your name and contact details. You have the right to request access to or to correct any personal information you supply to the Ministry.















# Comments on applications for referral under the COVID-19 Recovery (Fast-track Consenting) Act 2020

*This form is for persons requested by the Minister for the Environment to provide comments on an application to refer a project to an expert consenting panel under the COVID-19 Recovery (Fast-track Consenting) Act 2020.*

Organisation providing comment	Potikirua ki Whangaokena Takutai Kaitiaki Trust
Contact person (if follow-up is required)	Rei Kohere, Chair
	1890 East Cape Road, Te Araroa
	Ph. s 9(2)(a)

## Comment form

Please use the table below to comment on the application.

Project name	Te Araroa Barge Facility Project
General comment	<p>The Potikirua ki Whangaokena Takutai Kaitiaki Trust does <b>not</b> support the application to refer the project to an expert consenting panel under the COVID-19 Recovery (Fast-track Consenting) Act 2020 ('the Act'), for the following reasons:</p> <p>1. <b>Social and cultural wellbeing of current and future generations - Sections 18(2) and 19(b) of the Act:</b></p> <p>While the social effect on, and any benefits to hapu that may eventuate from the proposed project are not truly known at this stage, the negative social and cultural impacts on hapu of fast-tracking the project's consenting process can be determined with much more certainty.</p> <p>Opinion amongst and within the hapu affected by the proposed development is sharply divided. The standard consenting process largely permits a methodical, timely, and inclusive consent process enabling hapu to participate directly, be fully informed of all relevant studies and reports, be able to commission their own research and peer review reports, and to have the time to clearly communicate over time their views for representation by the hapu trustees on our Trust. The fast-track consenting process essentially does not provide for any of this. The situation locally therefore could well be seriously exacerbated if the fast-track consenting process is adopted.</p> <p>The RMA 1991 consenting process - together with the terms of the Amended Deed of Agreement 2017 ('Deed of Agreement') between the Crown and Nga hapu o Ngati Porou relating to the Takutai Moana, along with the Nga Rohe Moana o Nga Hapu o Ngati Porou Act 2019, as well as the Trust deeds of each of the Ngati Porou hapu Management Arrangement Trusts, such as ours – is familiar to hapu and recognised as, at least, a transparent and relatively interactive process for them.</p> <p>Each of the Ngati Porou hapu-related documents referred to in the previous sentence are embedded with RMA references, including resource consent process references and</p>

	<p>procedures, some of them bespoke to Ngati Porou hapu participation. The (Fast-tracking) Act cuts across the terms and provisions of these documents, all of which were painstakingly negotiated over years by the Crown and Ngati Porou. There will be social and cultural consequences amongst the hapu arising from any bypassing of the RMA consenting process and the related procedures set out in the aforementioned Ngati Porou hapu-agreed and mandated documents relating to their takutai moana.</p> <p>2. <b>Customary Marine Title – Section 18(3)(c)(i) of the Act:</b> The Potikirua ki Whangaokena Takutai Kaitiaki Trust is an applicant for Customary Marine Title (CMT) on behalf of its constituent hapu, including hapu directly associated with the takutai moana area where the proposed Te Araroa Barge Facility is intended to be sited. Our Trust is concurrently involved in a direct negotiation process with the Crown for recognition of CMT for areas of Ngati Porou takutai moana, including the proposed barge site area, not yet recognised by the Crown. There is persuasive evidence that the takutai moana in this locality meets the requirements for achieving CMT status. It is acknowledged that customary marine title is not yet in place there but the fast-track consenting process (particularly the timeframes involved) would be a complicating factor in the negotiations for CMT recognition.</p> <p>3. <b>More appropriate for the project to go through the standard consenting process under the Resource Management Act 1991 – Section 23(5)(b) of the Act:</b> For the reasons set out above and considerations as set out in the next section below, our Trust considers that it would be more appropriate for the project to go through the standard consenting process under the RMA 1991.</p>
<p><b>Other considerations</b></p>	<p>1. The Potikirua ki Whangaokena Takutai Kaitiaki Trust and its constituent hapu are represented by Ngati Porou advisors in discussions with Crown officials on replacement legislation for the Resource Management Act 1991. Every effort is being made jointly to ensure that the intentions and integrity of RMA references and provisions contained in the various Ngati Porou hapu takutai moana-related documents and legislation are translated and/or transferred appropriately.</p> <p>It would be at odds with the care and consideration being applied in that work for an application for referral of the project to the fast-track consenting process to be approved. The COVID-19 (Fast-track Consenting) Act 2020 was enacted after the Nga Rohe Moana o Nga Hapu o Ngati Porou Act 2019 and does not of itself address or accommodate meaningfully, or at all, the important (to Ngati Porou hapu) provisions of 'their Act', the Deed of Agreement, and hapu Management Arrangements trust deeds.</p> <p>2. This submission is focused on matters of consenting process – the fast-track consenting process versus the standard RMA consenting process – and trustees' responsibilities and accountability to the hapu and hapu members they represent. It makes no comment on, or judgement of the merits or otherwise of the proposed Te Araroa Barge Facility. Rather, it advocates for holding the door open for hapu members to be meaningfully involved in the consent process in line with their expectations and entitlements under the standard consenting process and Ngati Porou hapu Takutai Moana-related documents.</p> <p>3. The provision in the Act that stipulates that the expert consenting panel must include one member nominated by the relevant iwi authorities – in this case, Te Runanganui o Ngati Porou, solely - is not necessarily a comfort to the hapu and our Trust. Indeed, it is known that Te Runanganui o Ngati Porou, through its commercial arm, is viewed by some (including Crown interests) as a potential investor, if not lead partner in an eventual Te Araroa barge facility development.</p>

The respective interests and focus of hapu and iwi are not necessarily aligned in this matter, hapu having a direct and localised interest as compared to the more collective, tribal interest of the iwi authority. This does not mean, however, that hapu and iwi interests cannot be aligned. It is just not possible for either to know if they are or not at this stage, which is also a point in favour of opting for the RMA consenting process over the Fast-track consenting process.

The whole basis of the Deed of Agreement between nga hapu o Ngati Porou and the Crown, as well as the Nga Rohe Moana o Nga Hapu o Ngati Porou Act 2019, is the primacy of **hapu** and recognition and acknowledgement of their “enduring mana” over the takutai moana within Ngati Porou iwi territory. The hapu affected by the proposed Te Araroa barge facility proposal, and formally represented by our Trust are, in the first instance, Te Whanau a Hinerupe, Te Whanau a Te Aopare, and Te Whanau a Kahu, with an overlay of interest by Te Whanau a Tamakoro and Ngai Tuere, hapu also represented by our Trust. The other hapu members of our Trust located farther along the takutai moana on either side of the proposed development site would be affected too, to varying degrees.

4. The Potikirua ki Whangaokena Takutai Kaitiaki Trust appreciates receiving an invitation from Minister Parker to provide comment on the application for referral of the Te Araroa Barge Facility project. The letter of invitation states that applicants [such as our Trust] for customary marine title under the Marine and Coastal Area (Takutai Moana) Act 2011 may have an interest in the project. Our Trust holds that, in addition to its status as an applicant for customary marine title (as well as, at the same time, being in direct negotiation with the Crown for the same) the Statutory Overlay provisions in the Deed of Agreement between nga hapu o Ngati Porou and the Crown also require serious consideration by the minister(s) before deciding on whether to refer the project or not.

The consent process relating to the Te Araroa Barge Facility project would in the normal course of events have presented hapu members with the opportunity for direct participation in the resource consent process for this project, likely to have a significant impact on themselves and their takutai moana. In such circumstances, the provisions of the Deed of Agreement would apply.

On page 52, in Part A: Statutory Overlay, of Schedule 2 at clause 4.1, the Deed of Agreement states *“The mana of nga hapu o Ngati Porou will be recognised by ensuring that nga hapu o Ngati Porou: a) Have an automatic right to be notified of, and participate in, local authority processes and Environment Court proceedings concerning any application for resource consent affecting nga rohe moana o nga hapu o Ngati Porou...”*

Further, at clause 5.2 a) of the same part of the Deed, the Deed states *“The relevant hapu of nga hapu o Ngati Porou will be deemed to be persons... who have an interest greater than the public generally in proceedings in respect of an application for resource consent for activities within, adjacent to, or impacting directly on all or any part of nga rohe moana o nga hapu o Ngati Porou. This is because nga hapu o Ngati Porou are recognised as having mana over nga rohe moana o nga hapu o Ngati Porou. The effect of this will be that the relevant hapu of nga hapu o Ngati Porou have the right to become a party to those proceedings.”*

These provisions hold good unless and until customary marine title is determined (in that part of the takutai moana at which it is proposed the Te Araroa barge facility be sited) whereupon the rights of hapu become significantly strengthened. However, the provisions as they apply under the RMA consenting process at present won’t apply at all essentially if the project is approved to go through under the Fast Track Consenting Act rather than the Resource Management Act. Our Trust takes the view that approval of the application to fast-track the project would be a form of disenfranchisement of the hapu we represent.

	<p>The trust deeds for the Ngati Porou hapu Management Arrangement [Takutai Kaitiaki] Trusts were drawn up to align with and enable implementation of the provisions of the Deed of Agreement. The trust deeds required Crown scrutiny and approval before they could go through a ratification process for each of the Ngati Porou hapu who had signed the Deed of Agreement.</p> <p>Each Takutai Kaitiaki trust deed requires the Trust “...in particular, to enable the Whanau [and] Hapu to be the effective decision makers in relation to their respective interests within nga rohe moana o nga hapu o Ngati Porou.” Fast-tracking of the consent process leaves hapu with no effective role in the decision-making process. It denies our Takutai Kaitiaki Trust the opportunity to work constructively with our hapu and run a safe and inclusive process that would permit the hapu to have the time and all the relevant information needed to reach a consensus on the matter of the Te Araroa barge facility project, whether in favour or against the project.</p> <p>The opportunity for our Trust to ‘comment’, now and later to a consenting panel, if the fast-track option is approved, is no substitute for the more measured and meaningful engagement by hapu that is possible under the standard consenting process. The urgency that appears to be associated with the perceived need for fast-tracking the consent process for the project would seem to be more internally driven than reflecting actual circumstances on the ground related to COVID-19 economic recovery.</p> <p><b>Conclusion</b></p> <p>Given all the points set out above, the Potikirua ki Whangaokena Takutai Kaitiaki Trust contends that it is “more appropriate for the project to go through the standard consenting process under the Resource Management Act 1991” as provided for in Section 23(5)(b) of the COVID-19 Recovery (Fast-track Consenting) Act 2020.</p>
<b>[Insert specific requests for comment]</b>	N/A

Note: All comments, including your name and contact details, will be made available to the public and the applicant either in response to an Official Information Act request or as part of the Ministry’s proactive release of information. Please advise if you object to the release of any information contained in your comments, including your name and contact details. You have the right to request access to or to correct any personal information you supply to the Ministry.





