



Report on Section 17 Covid-19 Recovery (Fast-track Consenting) Act 2020 requirements

Application 2020.022 Whakatāne Commercial Boat Harbour (Whakatāne District Council & other applicants)

To:	Required action:
Hon David Parker, Minister for the Environment	Consider this report prior to making a decision jointly with the Minister of Conservation under section 24 of the Act
Hon Dr Ayesha Verrall, Acting Minister of Conservation	Consider this report prior to making a decision jointly with the Minister for the Environment under section 24 of the Act

Ministry for the Environment contacts

Position	Name	Cell Phone	1 st Contact
Principal Author	Pip Lee		
Responsible Manager	Madeleine Berry	s9(2)(a)	✓
Director	Sara Clarke	s9(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 deciding jointly under section 24 of the FTCA to accept the application to refer the Whakatāne Commercial Boat Harbour project to an expert consenting panel (a panel).

Proposed project

3. The applicant proposes to develop a boat harbour on Māori freehold land adjacent to State Highway 30 (SH30) and Keepa Road, close to the true left bank of the Whakatāne River. Although the boat harbour site lies outside the coastal marine area (CMA), establishing access to it from the Whakatāne River will involve works in the CMA. A location map is in Attachment 1.

Essential information

4. The following information is required under section 17(3) of the Act for the project area.

Section of the Act	Information required	Detail
s17(3)(a)	Relevant iwi authority	Te Rūnanga o Ngāti Awa <i>Contact details are in Attachment 2</i>
s17(3)(b)	Relevant Treaty settlement	Ngāti Awa Claims Settlement Act 2005
s17(3)(a)	Relevant Treaty settlement entity	Te Rūnanga o Ngāti Awa <i>Contact details are in Attachment 2</i>
s17(3)(c)	Relevant principles & provisions of the Treaty settlement	<i>See below</i>
s17(3)(d)	Negotiation mandates recognised by the Crown	None
s17(3)(d)	Current Treaty settlement negotiations	None
s17(3)(e)	Court orders recognising customary marine title or protected customary rights under the Marine & Coastal Area (Takutai Moana) Act 2011 or another Act	None relevant

Supporting material

Proposed project

5. The seven joint applicants to refer this project are:
- Whakatāne District Council
 - Te Rāhui Lands Trust
 - Te Rūnanga o Ngāti Awa
 - Ngāti Awa Group Holdings Limited
 - the Provincial Growth Fund Limited
 - Te Rāhui Lands General Partner Limited
 - Te Rāhui Herenga Waka Whakatane Limited.
6. Stage One is to construct berthage and maintenance facilities for commercial (tourism, fishing, aquaculture) users and a technical training centre. Stage Two will provide additional berthage along with recreational and community facilities.
7. Te Rāhui Lands Trust advises that the project offers an opportunity to restore the economic potential and mauri of the land involved, as well as enhancing the adjacent awa. This is because the proposed development will transform the site, which is currently in agricultural use of marginal

economic benefit, into a commercial and community asset. This work will include removal of wood waste from the Whakatāne Board Mill that has been dumped on the land over numerous decades.

Proposed project area

8. The proposed boat harbour site covers approximately 11 hectares of Māori freehold land administered by Te Rāhui Lands Trust (formerly Rangitāiki Lot 28B No 22 Ahu Whenua Land Trust) on behalf of approximately 1,100 Ngāti Awa owners, the majority of whom affiliate to Ngāti Hokopū, a hapū of Ngāti Awa. Te Hokowhitu a Tu ki Te Rāhui marae is sited across the road from the project – see Attachment 1.
9. Under the Bay of Plenty Regional Coastal Environment Plan the boat harbour site lies partially within the coastal environment¹, but outside the CMA – see Attachment 3. The CMA boundary is defined by an agreement between the Minister of Conservation and the five Bay of Plenty councils.² All of the Whakatāne River downstream of the State Highway 30 bridge lies within the CMA, in accordance with the same agreement. The position of the CMA boundary in the river cannot be changed until the next review of the regional coastal plan, unless the Minister of Conservation and the appropriate councils agree.
10. An access channel will need to be constructed across land lying between the proposed boat harbour and the river. Two options are shown on Attachment 3. The more northern option (Option 1) crosses:
 - a. public reserve land vested in the Bay of Plenty Regional Council and managed for soil and water conservation purposes (this includes stopbanks)
 - b. Crown-owned scenic reserve (Keepa Rd Scenic Reserve) managed by the Department of Conservation (DOC)
 - c. land with no title on the true left of the Whakatāne River which, by definition pursuant to the agreement between the Minister of Conservation and the five Bay of Plenty councils noted above, lies in the CMA.
11. Option 2 lies closer to the State Highway 30 bridge avoids the need to cross the scenic reserve.
12. Subject to confirmation of the final location of the new access channel from the river to the boat harbour, and any resultant changes to the CMA boundary, some works associated with access channel construction are likely occur in the CMA.
13. The applicant advises that there may also be a need to dredge or otherwise modify other parts of the riverbed (within the CMA) to improve access.

Statutory requirements relevant to this report

14. As parts of the proposed project will occur in the CMA, section 16(1) of the FTCA requires that decisions relating to the referral of the project to a panel must be made jointly by the Minister for the Environment and the Minister of Conservation.

¹ Map 24a – Whakatāne-Ōhope; Operative Regional Coastal Environment Plan – Landscape_2019

² Agreement for the Definition of River Mouths and Landward Boundary of the Coastal Marine Area within the Bay of Plenty Region, made pursuant to section 2 of the Resource Management Act 1991, dated 1 August 2008. A copy of the agreement can be accessed on the [regional council website](#).

15. Section 17(1) of the FTCA requires you both to consider this report before making a 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.
16. 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 confirm there are no such court orders relevant to the project area to consider in your referral decision.³

Iwi and iwi authorities

Information sources

17. Under section 7(1) of the FTCA, a relevant iwi authority means an iwi authority whose area of interest includes the area in which a project will occur.
18. The FTCA does not define iwi authority, so under section 7(2) of the FTCA, it 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. We have identified the relevant iwi authorities using information from the following sources:
 - a. The Iwi Areas of Interest viewer, an online application managed by the Ministry of Māori Development - Te Puni Kōkiri
 - b. Te Kāhui Māngai (TKM), an online directory of iwi and Māori organisations maintained by the Ministry of Māori Development - Te Puni Kōkiri
 - c. Ministry for the Environment
 - d. Whakatāne District Council and Bay of Plenty Regional Council, as the relevant local authorities.

Iwi authority relevant to project

20. Te Rūnanga o Ngāti Awa is the relevant iwi authority in relation RMA matters concerning the project area.

Treaty settlement and Treaty settlement entity

21. Information from the first two sources listed in paragraph 19, the [NZ Government Treaty settlements website](#), and the Office for Māori Crown Relations – Te Arawhiti were used to identify relevant Treaty settlements and any associated Treaty settlement entities of relevance to the proposed project.

Relevant Treaty settlement

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.

³ The Ngā Rohe Moana o Ngā Hapū o Ngāti Porou (Recognition of Customary Marine Title) Order 2020 came into force 1 February 2021. It establishes customary marine title areas for a specific part of ngā rohe moana o ngā hapū o Ngāti Porou (on the east coast of the North Island) 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.

23. The Treaty settlement with Ngāti Awa is the sole Treaty settlement relevant to the proposed project. The Ngāti Awa area of interest extends from the Waihi Estuary (in the west) to the Ōhiwa Harbour (in the east) within the central Bay of Plenty, as shown in Attachment 4.
24. Ngāti Awa and the Crown signed a deed of settlement on 27 March 2003. An amendment deed was signed 30 July 2004, and a second amendment deed on 15 March 2005. Legislation to enact the settlement is in the [Ngāti Awa Claims Settlement Act 2005](#).
25. The [settlement summary, deeds and related documents](#) are available on the NZ Government Treaty settlement website.

Relevant Treaty settlement entity

26. Under the FTCA, a Treaty settlement entity includes a post-settlement governance entity, which is 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.
27. Te Rūnanga o Ngāti Awa is the post-settlement governance entity for the Ngāti Awa settlement.
28. 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.
29. The Ngāti Awa settlement established a joint advisory committee for Matatā Scenic Reserve, Whakapaukorero and Te Awa a Te Atua (with the Department of Conservation), and a joint management committee for Moutohorā (Whale Island) Wildlife Management Reserve, Ōhope Scenic Reserve and Tauwhare Pā Scenic Reserve (with Department of Conservation and the Bay of Plenty Conservation Board). While these are Treaty settlement entities associated with the settlement, they are not relevant to the proposed project.

Relevant principles and provisions of the Treaty settlement

Crown acknowledgements and apologies

30. Acknowledgements by the Crown are an important part of a Treaty settlement as they provide context for the apology and the offers of redress which follow.
31. In the settlement with Ngāti Awa, the Crown acknowledges, among other things, that the ancestral lands and resources that were alienated from Ngāti Awa have made a significant contribution to the wealth and development of the nation, whilst Ngāti Awa has been alienated from and deprived of the benefits of those lands and resources. This loss of control over land has prejudiced Ngāti Awa and hindered its economic, social and cultural development. It has also impeded the ability of Ngāti Awa to exercise control over its taonga and wāhi tapu and maintain and foster spiritual connections with those ancestral lands.
32. As part of its apology to Ngāti Awa, the Crown says that it profoundly regrets and apologises unreservedly for:
 - a. the breaches of the Treaty of Waitangi and its principles as acknowledged in the settlement, and
 - b. the destructive impact and demoralising effects of its actions which have caused significant damage to the welfare, economy and development of Ngāti Awa as an iwi.
33. The Crown also says it profoundly regrets its failure to acknowledge the mana and rangatiratanga of Ngāti Awa. Through its apology, the Crown seeks to atone for these and other wrongs, and begin the process of healing and building a relationship of mutual trust and co-operation with Ngāti Awa.

34. Respect for Ngāti Awa views on resource management matters and enabling effective involvement of Ngāti Awa as a Treaty partner in resource management decision-making within their rohe are important ways in which the Crown can give on-going effect to these acknowledgements and uphold its relationship with Ngāti Awa.

Commercial redress

35. Commercial redress under the settlement gave Ngāti Awa a Right of First Refusal (RFR) to buy, at market value, Crown-owned properties in a specified area⁴, should the Crown decide to dispose of them. This right exists for a period of 50 years until 2055.
36. Although the proposed project lies within the specified RFR area, the Crown-owned land affected by the proposed project is a scenic reserve managed by DOC under the Reserves Act 1977. We understand that currently this land is not surplus to Crown requirements.

Cultural redress

37. Cultural redress is intended to restore and strengthen an iwi's traditional, historical and spiritual connection with its traditional lands and resources, and provide for the exercise of rangatiratanga and kaitiakitanga over them.

Statutory acknowledgement over Whakatāne River

38. Cultural redress in the Ngāti Awa settlement includes statutory acknowledgements over 11 areas, including parts of the Whakatāne River.
39. Statutory acknowledgements register the Crown's acknowledgement of the association an iwi has with an area or specific sites. They are recognised for certain purposes relating to standing and notification under the RMA and the Heritage New Zealand Pouhere Taonga Act 2014.
40. The statutory acknowledgement (in Schedule 5.7 of the deed of settlement)⁵ includes the statement that Ngāti Awa have always maintained a considerable knowledge of the Whakatāne River, its history, the traditional trails of the tipuna along the River, the landing places of waka, the places for gathering kai and other taonga and the ways in which to use the resources of the Whakatāne River. The river was valued by Ngāti Awa as a source of food including eels, kakahi, oysters, fish and whitebait. It was also used to transport goods to and from the inland settlements of the iwi. Proper and sustainable resource management has always been at the heart of the relationship of Ngāti Awa with the Whakatāne River.
41. Clause 3.13 of Schedule 5.7 of the deed of settlement states that mana, mauri, whakapapa and tapu are all important spiritual elements of the relationship of Ngāti Awa with the Whakatāne River. All of these values remain important to the people of Ngāti Awa today.

Deed of recognition over Whakatāne River

42. The Treaty settlement includes a deed of recognition covering the Crown-owned and managed parts of the Whakatāne riverbed. This provision requires DOC to consult with Ngāti Awa and have

⁴ The RFR area is shown on plan SO 306422 in: [Te Rūnanga o Ngāti Awa and Her Majesty the Queen - deed granting a right of first refusal over Crown Land, dated 15 April 2005](#)

⁵ <https://www.govt.nz/assets/Documents/OTS/Ngati-Awa/Ngati-Awa-Deed-of-Settlement-Schedules-27-Mar-2003.pdf>

regard for their views on any plans, strategies or programmes for the protection and management for these areas.

43. Since the Whakatāne riverbed downstream of the SH30 bridge lies in the CMA, which by definition is owned by no-one⁶, the proposed project will not affect any areas to which the deed of recognition relates.

Other redress

44. The settlement did not create any new co-governance or co-management processes which would affect decision-making under the RMA for the proposed project.
45. The project will not affect any other specific redress in the Ngāti Awa settlement.

Current negotiation mandates and settlement negotiations

46. 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 area.

Details in this report affect certain provisions of the FTCA

Notices of referral decision

47. Under section 25 of the FTCA, you must give notice of the decisions made on an application for referral, and the reasons for them, to the applicant and anyone invited to comment under section 21 of the FTCA.
48. The landowner of the proposed boat harbour, Te Rāhui Lands Trust, was invited under section 21(3) to comment on this application.
49. If you decide to refer this project to a panel, the notice of decisions and associated reasons must also 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.
50. Te Rūnanga o Ngāti Awa is the relevant iwi authority and Treaty settlement entity for receipt of the notice of decisions. Contact details are in Attachment 2.
51. We do not consider any other iwi authorities or Treaty settlement entities are likely to have an interest in the matter, and there are no relevant joint management agreements or Mana Whakahono ā Rohe to consider.
52. The Minister for Treaty of Waitangi Negotiations has requested that you copy the notice of decisions on the referral application to the MACAA applicants identified in this report; see paragraph 56 for further detail.

⁶ Section 11(2) MACAA

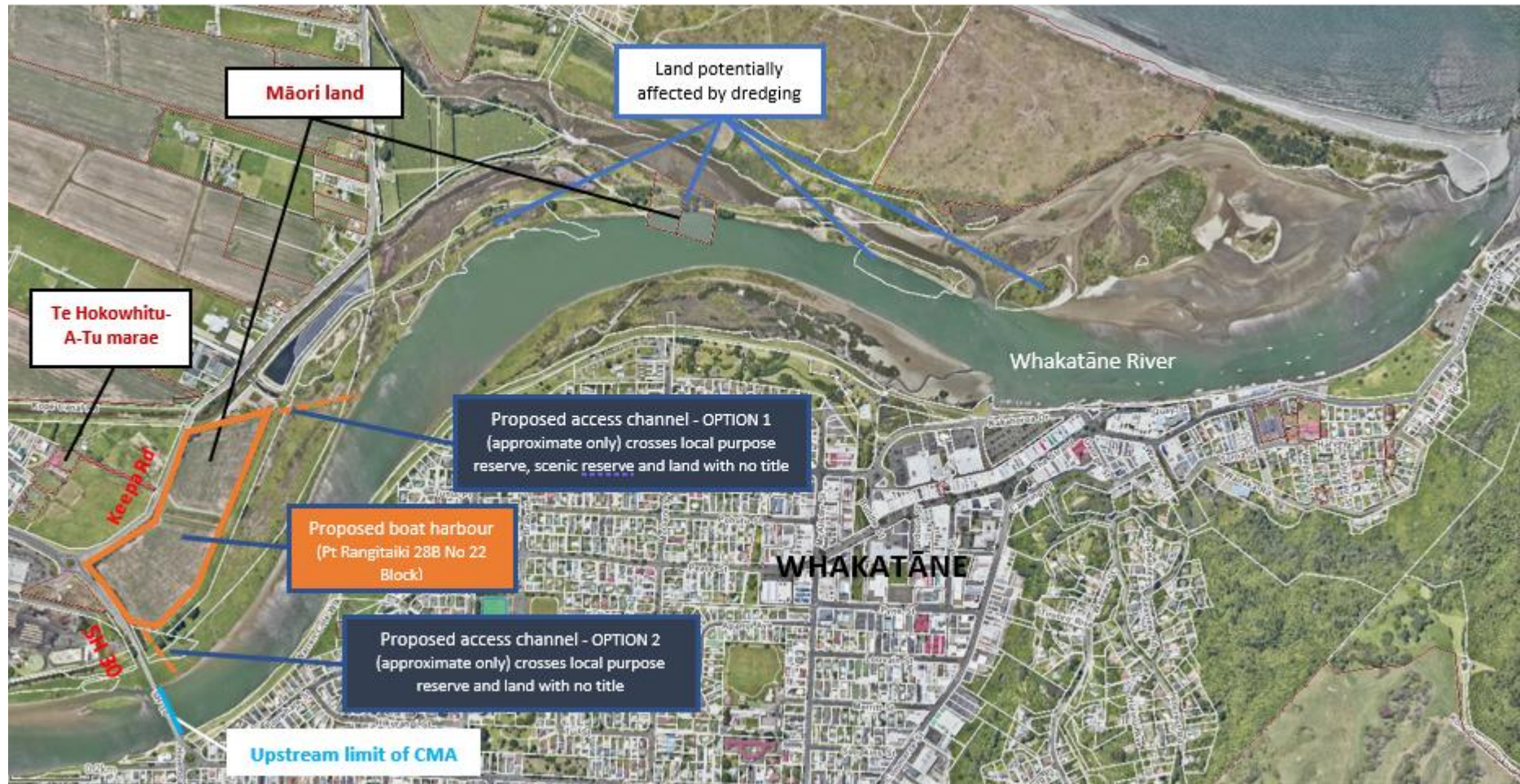
Expert consenting panel membership

53. 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.
54. In the case of the proposed project, the relevant iwi authority for panel nominations is Te Rūnanga o Ngāti Awa.

Panel invitations to comment

55. A panel must invite comments on a 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 MACAA applicant group identified in this report.
56. Te Rūnanga o Ngāti Awa is the relevant iwi authority and Treaty settlement entity for this application. There are twelve relevant MACAA applicant groups. Contact details are in Attachment 2.
57. A MACAA 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 of Māori Crown Relations – Te Arawhiti). The groups who have applications under the MACAA over the common marine and coastal area within the Whakatāne River are listed in Attachment 5.
58. The panel may also invite comments from any other person it considers appropriate. For this project, we have not identified any further parties.

Attachment 1 – Location map



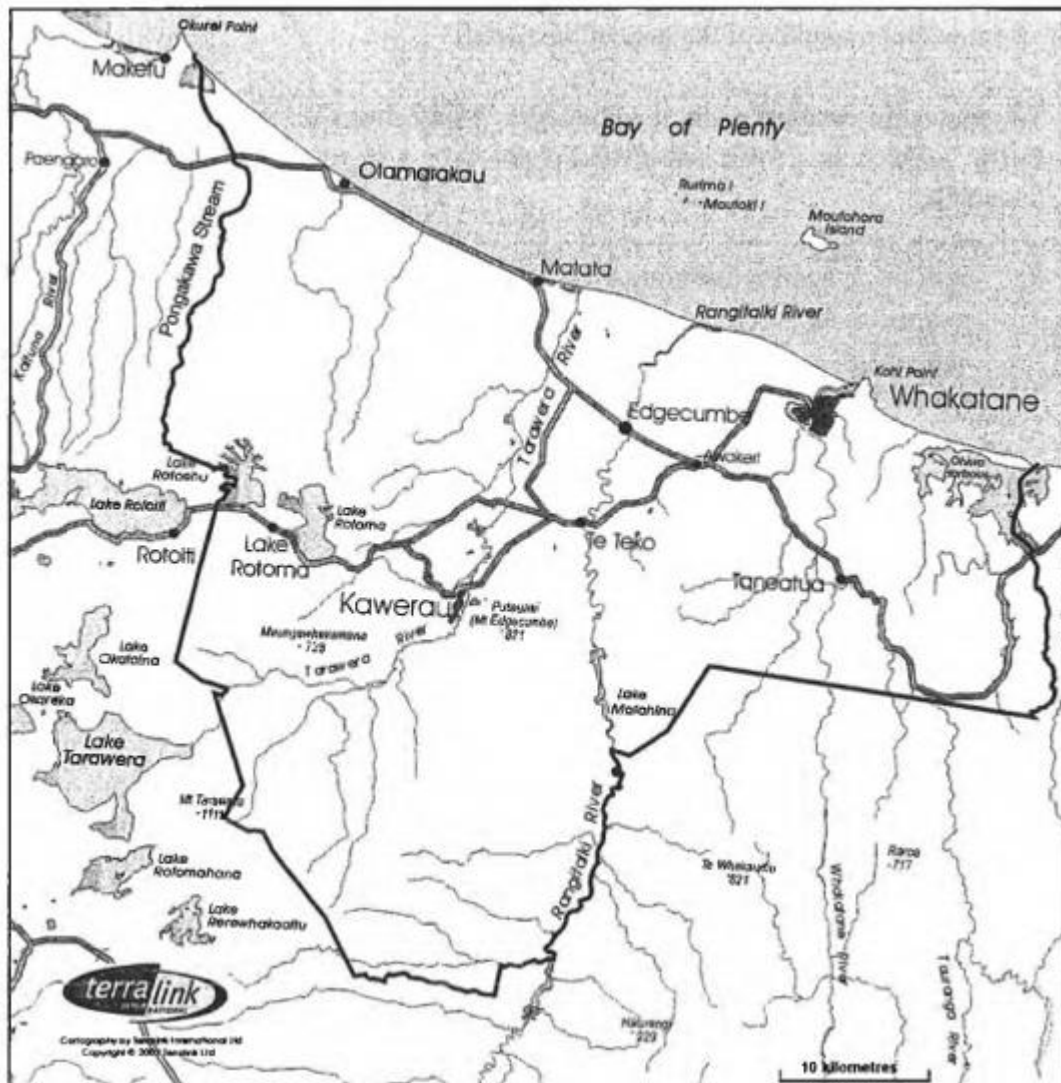
Attachment 2 – Contact information

Iwi/hapū	Representative body	Contact details	RMA Iwi authority	Treaty settlement entity	Other	Contact person	Copies to
Ngāti Awa	Te Rūnanga o Ngāti Awa	P O Box 76 Whakatāne 3158	Represents Ngāti Awa as an iwi authority for RMA purposes	Post-settlement governance entity under the Ngāti Awa Claims Settlement Act 2005		Leonie Simpson CEO s9(2)(a)	Michal Akurangi Taiao Manager s9(2)(a)
	Te Rāhui Lands Trust					Chair: Brian Simpson	Dayle Hunia Project Manager s9(2)(a)

Attachment 3 – Land status details



Attachment 4 – Ngāti Awa Area of Interest



Source: Attachment 1.1 to Ngāti Awa Deed of Settlement dated 27 March 2003

Attachment 5 – Applications for a customary marine title area or protected customary rights area

Application No	Applicant	Track	Contact details
MAC-01-05-021	Te Patuwai & Ngāti Maumoana Hapū	Crown engagement	Ruihi Shortland s9(2)(a)
MAC-01-05-023	Te Uri A Te Hapū	Crown engagement	Raemon Michael Parkinson te-uri-a-tehapu- maca@ranfurlychambers.co.nz
MAC-01-05-024	Te Whanau a Mokokoko	Crown engagement	Karen Mokokoko s9(2)(a)
MAC-01-05-025	Waaka & Holloway Whanau	Crown engagement	Lance Waaka s9(2)(a)
MAC-01-07-007	Ngāi Taiwhakaea, Te Patutaatahi, Te Whānau a Taiwhakaea	Crown engagement	Caroline Takotohiwi s9(2)(a)
MAC-01-07-009	Ngāi Tamahaua Hapū	Crown engagement	Tim Herewini s9(2)(a)
MAC-01-07-011	Te Rūnanga o Ngāti Awa	Crown engagement	Leonie Simpson s9(2)(a)
MAC-01-07-014	Ngāti Hōkōpū/Wharepaia	Crown engagement	Charles Bluett s9(2)(a)
CIV-2017-404-562	Te Uri A Te Hapū	High Court	Raemon Michael Parkinson te-uri-a-tehapu- maca@ranfurlychambers.co.nz
CIV-2017-485-185	Ngāi Taiwhakaea Hapū	High Court	Tom Castle, s9(2)(a)
CIV-2017-485-196	Te Rūnanga o Ngāti Awa (Ngāti Awa)	High Court	runanga@ngatiawa.iwi.nz
CIV-2017-485-377	Te Hapū O Titoko Ngāi Tama	High Court	Mark Milroy s9(2)(a)

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