

Fast-track Approvals Act 2024 – Treaty settlements and other obligations (Section 18) report

Project Name: FTAA-2503-1035 Tekapō Power Scheme – Applications for Replacement Resource Consents

To:	Date:
Panel Convener, Jane Borthwick	5/06/2025

Number of attachments: 3	Attachments: <ol style="list-style-type: none"> Provisions of section 18 of the Fast-track Approvals Act 2024 Project location maps List of relevant Māori groups
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Ministry for the Environment contacts:

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Key points

- As required by section 49 of the Fast-track Approvals Act 2024 (the Act), the Ministry for the Environment (on behalf of the Secretary for the Environment) has prepared this report on Treaty settlements and other obligations (section 18 of the Act) in relation to the substantive application FTAA-2503-1035 Tekapō Power Scheme – Applications for Replacement Resource Consents.
- The applicant, Genesis Energy Limited (Genesis Energy), is seeking replacement consents to enable the continued operation of the Tekapō Power Scheme. Genesis Energy owns the land on which the Power Scheme is situated. The applicant seeks approvals for a water permit and a discharge permit under the Resource Management Act 1991 (RMA).
- Section 18(2) of the Act requires that the report provide a list of Māori groups relevant to the project area. We have identified Te Rūnanga o Ngāi Tahu, Te Rūnanga o Arowhenua, Te Rūnanga o Waihao, and Te Rūnanga o Moeraki as relevant Treaty settlement entities, and Aoraki Environmental Consultancy Limited and Aukaha as other Māori groups with relevant interests, which we have listed at **Attachment 3**.

4. The Treaty settlement relevant to this application is the Ngāi Tahu Claims Settlement Act 1998.
5. The Ngai Tahu Claims Settlement Act 1998 includes a statutory acknowledgement over Takapō (Lake Tekapō). The Tekapō Power Scheme uses water from Takapō to generate hydroelectricity, and some physical structures (e.g. water intake works and dam) associated with the Scheme were built in the bed of Takapō. The statutory acknowledgement requires a consent authority to provide a summary of the application to the holder of the statutory acknowledgement (Te Rūnanga o Ngāi Tahu), and the consent authority must have regard to the statutory acknowledgement in making notification decisions under the RMA. The panel acts as the consent authority in this instance, and we consider this obligation may be met through the panel's consultation process under section 53 of the Act.
6. The applicant reports they have engaged with Māori groups, including Te Rūnanga o Ngāi Tahu, Te Rūnanga o Arowhenua, Te Rūnanga o Waihao and Te Rūnanga o Moeraki, regarding the proposed development.
7. We do not consider there are any matters raised in this report which make it more appropriate for the proposed approvals to be authorised under another Act or Acts.

Signature

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Ilana Miller
General Manager – Delivery and Operations

Introduction

8. For a substantive application that relates to a listed project, under section 49 of the Act, the Environmental Protection Authority (EPA) must request a report from the responsible agency (Secretary for the Environment) that is prepared in accordance with section 18(2) and (3)(a) of the Act (but does not contain the matters in section 18(2)(l) and (m)).
9. The information which must be provided in this report includes:
 - a. relevant iwi authorities, Treaty settlement entities, applicant groups under the Marine and Coastal Area (Takutai Moana) Act 2011 (MACA), and other Māori groups with interests in the project area; and
 - b. relevant principles and provisions in Treaty settlements and other arrangements.
10. This report is structured accordingly. We have provided a list of the relevant provisions of section 18 at **Attachment 1**.

Proposed project

11. The applicant, Genesis Energy, proposes to obtain replacement consents to enable the continued operation of the Tekapō Power Scheme, whilst appropriately mitigating and compensating effects by way of the proposed consent conditions (that are largely agreed by mana whenua and key stakeholders, according to the applicant). The Tekapō Power Scheme is located at Takapō in the MacKenzie Basin, inland South Canterbury, and utilises the outflow of Takapō to generate hydroelectricity. The land and easements occupied by the Tekapō Power Scheme are owned by Genesis Energy.
12. The approvals being sought are under the RMA, for a water permit to dam, take, divert and use water associated with the operation of the Tekapō Power Scheme, and a discharge permit to discharge water and contaminants associated with the operation of the Tekapō Power Scheme. No additional structures or physical works are proposed in the application.
13. We have provided location maps at **Attachment 2**.

Relevant iwi authorities, Treaty settlement entities, and other Māori groups

14. We note that some entities identified below may be included in more than one category. We have included a composite list of all groups at **Attachment 3**, including contact details.

Iwi authorities

15. We consider the following groups to be the relevant iwi authorities for the project area:
 - a. Te Rūnanga o Ngāi Tahu, representing Ngāi Tahu.

Treaty settlement entities

16. Under section 4(1) of the Act, “Treaty settlement entity” means any of the following:
 - (a) a post-settlement governance entity (PSGE);
 - (b) a board, trust, committee, authority, or other body, incorporated or unincorporated, that is recognised in or established under any Treaty settlement Act;
 - (c) an entity or a person that is authorised by a Treaty settlement Act to act for a natural resource feature with legal personhood:

(d) Te Ohu Kai Moana or a mandated iwi organisation (as those terms are defined in section 5(1) of the Maori Fisheries Act 2004):

(e) an iwi aquaculture organisation (as defined in section 4 of the Maori Commercial Aquaculture Claims Settlement Act 2004).

17. We have identified the following relevant Treaty settlement entities for this project area:

- a. Te Rūnanga o Ngāi Tahu, representing Ngāi Tahu, PSGE for the Ngāi Tahu Claims Settlement Act 1998;
- b. Te Rūnanga o Arowhenua, Papatipu Rūnanga of Ngāi Tahu Whānui as recognised in the Ngāi Tahu Claims Settlement Act 1998;
- c. Te Rūnanga o Waihao, Papatipu Rūnanga of Ngāi Tahu Whānui as recognised in the Ngāi Tahu Claims Settlement Act 1998; and
- d. Te Rūnanga o Moeraki, Papatipu Rūnanga of Ngāi Tahu Whānui as recognised in the Ngāi Tahu Claims Settlement Act 1998.

18. The applicant has advised they have undertaken consultation with all of the identified Treaty settlement entities, and that there has been more in-depth engagement with Te Rūnanga o Arowhenua, Te Rūnanga o Waihao, and Te Rūnanga o Moeraki.

Groups mandated to negotiate Treaty settlements

19. There are no groups which have recognised mandates to negotiate a Treaty settlement over an area which may include the project area. All historical claims under te Tiriti o Waitangi / the Treaty of Waitangi have been settled in respect of the project area.

Takutai Moana groups and ngā hapū o Ngāti Porou

20. The project area does not include the common marine and coastal area, and accordingly there are no relevant applicant groups under MACA, and no court orders or agreements that recognise protected customary rights or customary marine title within the project area.

21. The project area is not within ngā rohe moana o ngā hapū o Ngāti Porou (as set out in the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019).

Iwi or hapū whose practices are recognised under the Fisheries Act 1996 through customary management areas

22. The project area is not within a taiāpure-local fisheries area, mātaimai reserve, or area subject to a bylaw made under Part 9 of the Fisheries Act 1996.

Owners of identified Māori land where electricity infrastructure or land transport infrastructure is proposed

23. Section 23 of the Act provides that, in making a decision on a referral application under section 21, the Minister may determine that, for the purposes of the project, an activity described in section 5(1)(a) is not an ineligible activity if it:

- a. is the construction of electricity lines or land transport infrastructure by (or to be operated by) a network utility operator that is a requiring authority; and
- b. would occur on identified Māori land that is Māori freehold land or General land owned by Māori that was previously Māori freehold land.

24. This project does not involve an activity described in section 23(1) (i.e. including both (a) and (b)) of the Act.

Iwi authorities and groups representing hapū who are party to relevant Mana Whakahono ā Rohe or joint management agreements

25. If the project area is within the boundaries of either a Mana Whakahono ā Rohe or joint management agreement, and the application includes a proposed RMA approval described in section 42(4)(a) to (d) (resource consent, certificate of compliance, or designation), we are required to identify the relevant iwi authority/group that represent hapū that are parties to these arrangements.
26. We have not identified any Mana Whakahono ā Rohe or joint management agreements that are relevant to the project area, and accordingly there no parties to these arrangements to identify.

Any other Māori groups with relevant interests

27. We consider the following entities, owned by the relevant papatipu rūnanga, to be other Māori groups with relevant interests, as they represent the papatipu rūnanga on environmental and other matters in the project area:
- a. Aoraki Environmental Consultancy Limited (owned by Te Rūnanga o Arowhenua); and
 - b. Aukaha (owned by Te Rūnanga o Waihao, Te Rūnanga o Moeraki, and three other papatipu rūnanga).

Relevant principles and provisions in Treaty settlements and other arrangements

Treaty settlements

28. Under section 4(1) of the Act, a Treaty settlement includes both a Treaty settlement Act and a Treaty settlement deed which is signed by both the Crown and representatives of a group of Māori.
29. The following Treaty settlements relate to land, species of plants or animals, or other resources within the project area:
- a. Ngāi Tahu Claims Settlement Act 1998.

Relevant principles and provisions

30. Section 7 of the Act requires all persons exercising powers and functions under the Act to act in a manner consistent with Treaty settlements. The relevant principles and provisions for each of these settlements are set out below.

Crown acknowledgements and apologies

31. Through a series of acknowledgements and an apology to Ngāi Tahu, the Crown acknowledged its historical actions that breached te Tiriti o Waitangi/the Treaty of Waitangi. The Crown apologised to Ngāi Tahu for its past failures to acknowledge Ngāi Tahu rangatiratanga and mana over the South Island lands within its boundaries, and, in fulfilment of its Treaty obligations, the Crown recognised Ngāi Tahu as the tāngata whenua of, and as holding rangatiratanga within, the Takiwā of Ngāi Tahu Whānui.

32. The Crown apology also stated that the Crown intended to atone for these acknowledged injustices, and to begin the process of healing and to enter a new age of co-operation with Ngāi Tahu. The redress provided for in the Treaty settlement should be viewed in the context of these intentions.

Statutory acknowledgment

33. As one of the first comprehensive settlements of historical claims, the Ngāi Tahu settlement pre-dated some of the redress mechanisms which have subsequently been developed for use in later settlements to provide for participation by iwi and hapū in decision-making over natural resources. However, the Ngāi Tahu settlement was the first settlement to include statutory acknowledgements, which are an acknowledgement by the Crown of a 'statement of association' between the iwi and an identified area (the 'statutory area').
34. We have checked the project area in relation to any statutory acknowledgements held by Te Rūnanga o Ngāi Tahu, particularly over waterways. Schedule 57 of the Ngāi Tahu Claims Settlement Act 1998 establishes a statutory acknowledgement in relation to Takapō.
35. The Tekapō Power Scheme diverts and uses water from Takapō to generate hydroelectricity. Furthermore, parts of the Scheme are physically situated within the bed of Takapō, for example, the intake structure for the water tunnel to Tekapō A power station, and a dam across the lake outlet where the Takapō River begins. Depending on the operational needs of the broader Waitaki hydropower system, the Tekapō A power station discharges its tailrace water into a hydro canal feeding Tekapō B power station or into Takapō River downstream of the lake. The Tekapō Power Scheme includes elements that lie within, and directly impact on, the statutory area of Takapō.
36. Under the RMA and relevant Treaty settlement Acts, a consent authority must, when considering a resource consent for a proposed activity that is within, adjacent to, or affecting a statutory area:
- a. provide a summary of the application to the holder of the statutory acknowledgement. The summary of the application must be the same as would be given to an affected person by limited notification under the RMA. The summary must be provided as soon as is reasonably practicable after the relevant consent authority receives the application, but before they decide whether to notify the application¹; and
 - b. have regard to the statutory acknowledgement when deciding whether the holder (generally a PSGE) is an 'affected person' for the purposes of notification decisions under the RMA.²
37. The holder of a statutory acknowledgment may also cite the statutory acknowledgment as evidence of their association with a statutory area in any submission before a relevant consent authority (or the EPA, board of inquiry, Environment Court, Heritage New Zealand Pouhere Taonga), who may, in turn, take that statutory acknowledgement into account.
38. Under section 53(2)(c) of the Act, the panel must direct the EPA to invite written comments on a substantive application from any relevant Treaty settlement entities including, to avoid

¹ In the case of the Ngāi Tahu settlement this was provided for through regulations in 1999. Statutory acknowledgment drafting has evolved and more modern settlements include these provisions in the settlement legislation

² In addition to consent authorities, the Environment Court and Heritage New Zealand Pouhere Taonga must also have regard to statutory acknowledgements in relation to some of their processes.

doubt, an entity that has an interest under a Treaty settlement (or an entity operating in a collective arrangement provided for under a Treaty settlement) within the area to which the application relates. Those invited to comment, including relevant Treaty settlement entities, will be provided access to the application information.

39. Te Rūnanga o Ngāi Tahu, Te Rūnanga o Arowhenua, Te Rūnanga o Waihao, and Te Rūnanga o Moeraki have been identified earlier in this report as relevant Treaty settlement entities to be invited for comment by the panel under section 53(2)(c) of the Act. We consider the process of inviting comment (including providing information about the application) is comparable to the process under Treaty settlements and the RMA of providing those who hold statutory acknowledgements with a summary of the application. This does not prevent the panel from inviting other relevant Māori groups, such as the others identified in this report, to comment on the application.
40. The Ngāi Tahu Claims Settlement Act 1998 also includes statutory acknowledgements over Lake Pūkaki, Lake Benmore and the Waitaki River. As the entire MacKenzie Basin (where the Tekapō Power Scheme is located) falls within the Waitaki River catchment, all lakes and rivers in the Basin ultimately drain to the Waitaki River. Hydro water passing through Tekapō A and B power stations flows into Lake Pūkaki, then Lake Benmore, and the Waitaki River. Takapō River flows directly into Lake Benmore.
41. However, under section 205 of the Ngāi Tahu Claims Settlement Act 1998 these acknowledgements do not extend to:
- a. any river or watercourse, artificial or otherwise, draining into or out of a lake; or
 - b. any tributary flowing into a river, unless expressly provided to the contrary in the description of a particular river contained in the relevant schedule of the Act which relates to a statutory acknowledgement (Schedule 74 provides for the statutory acknowledgement over the Waitaki River but does not refer to tributaries).
42. In light of this, we do not consider the panel is required to comply with procedural requirements concerning statutory acknowledgements in relation to Lake Pūkaki, Lake Benmore, and the Waitaki River. Nevertheless, it has become common practice in subsequent Treaty settlements for statutory acknowledgements over waterways to include tributaries. This approach is consistent with the concept in Te Ao Māori of ki uta ki tai (from the mountains to the sea), whereby water is viewed in a holistic way, and should be managed accordingly. The panel may wish to consider this in the context of the statutory acknowledgements held by Te Rūnanga o Ngāi Tahu over waterways downstream of the project area. The procedural requirements are the same regardless of whether one or more statutory acknowledgments are relevant i.e. the panel must provide the application to Te Rūnanga o Ngāi Tahu.

Taonga species

43. The Crown has also acknowledged the special association of Ngāi Tahu with certain taonga species of birds, plants and animals. The Ngāi Tahu Claims Settlement Act 1998 contains several other provisions relating to taonga species, including a requirement that the Minister of Conservation consult with, and have particular regard to, the views of, Te Rūnanga o Ngāi Tahu when making policy decisions concerning the protection, management, or conservation of a taonga species.
44. The applicant has identified several birds, plants and animals in the project area which are included amongst the taonga species, such as kakī/black stilts (nationally critical), tara pirohe/black fronted terns (nationally endangered), and kāmana/southern crested grebe (nationally vulnerable). Although the settlement provisions regarding taonga species do

not place any procedural obligations on the applicant or consent authority in relation to the approvals being sought by the applicant, the redress illustrates the importance of these species to Ngāi Tahu. Accordingly, the panel may wish to take taonga species into consideration.

45. Finally, we note that iwi and hapū are likely to have cultural associations with ancestral lands, water, sites, wāhi tapu, and other taonga beyond what is specifically identified in a Treaty settlement or other arrangements. Local tangata whenua and their representatives would be best placed to advise on such matters in the first instance.

Customary Marine Title/Protected Customary Rights

46. As noted above, the project area is not within a customary marine title area, protected customary rights area, or within or adjacent to ngā rohe moana o ngā hapū o Ngāti Porou.

Taiāpure-local fisheries/mātaitai reserves/areas subject to bylaws or regulations made under Part 9 of the Fisheries Act 1996

47. As noted above, the project area is not within a Taiāpure-local fishery, mātaitai reserve, or area subject to bylaws or regulations made under Part 9 of the Fisheries Act 1996.

Mana Whakahono ā Rohe/Joint management agreement

48. As noted above, we have not identified any Mana Whakahono ā Rohe or joint management agreements that are relevant to the project area.

Consultation with departments

49. In preparing this report, we are required to consult relevant departments. We have previously sought advice from Te Puni Kōkiri and The Office of Treaty Settlements and Takutai Moana – Te Tari Whakatau regarding the relevant Māori groups for other applications in this same area, and have incorporated their views into this report.

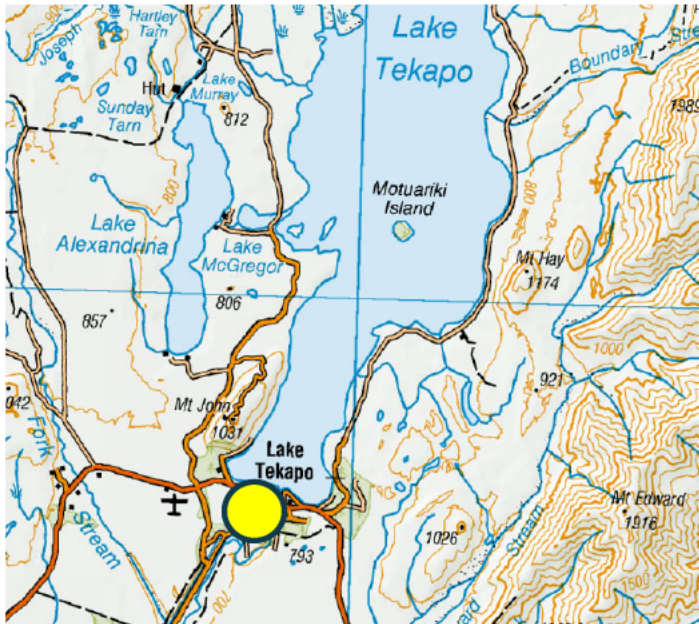
Attachment 1: Provisions of section 18 of the Fast-track Approvals Act 2024

Section	Information required	Paragraph reference in this report
18(1)	The Minister must, for a referral application, obtain and consider a report that is prepared by the responsible agency in accordance with this section.	Not applicable to substantive applications – s 18 report is required by s 49.
18(2)(a)	Any relevant iwi authorities and relevant Treaty settlement entities	15-18
18(2)(b)	Any Treaty settlements that relate to land, species of plants or animals, or other resources within the project area	30
18(2)(c)	The relevant principles and provisions in those Treaty settlements, including those that relate to the composition of a decision-making body for the purposes of the Resource Management Act 1991	31-46
18(2)(d)	Any recognised negotiation mandates for, or current negotiations for, Treaty settlements that relate to the project area.	20
18(2)(e)	Any court orders or agreements that recognise protected customary rights or customary marine title within the project area.	21, 47
18(2)(f)	Any applicant groups under the Marine and Coastal Area (Takutai Moana) Act 2011 that seek recognition of customary marine title or protected customary rights within the project area.	21, 47
18(2)(g)	Whether the project area would be within or adjacent to, or the project would directly affect, ngā rohe moana o ngā hapū o Ngāti Porou (and, if so, the relevant provisions of the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019).	22, 47
18(2)(h)	Whether the project area includes any taiāpure-local fisheries, mātaihai reserves, or areas that are subject to bylaws or regulations made under Part 9 of the Fisheries Act 1996 (and, if so, who the tangata whenua are).	23, 48
18(2)(i)	Whether the project involves an activity that could be the subject of a determination under 23 (and, if so, who the owners of the land are).	24-25
18(2)(j)	If the proposed approvals include an approval described in any of section 42C(4)(a) to (d) (resource consent, certificate of compliance, or designation),	26-27, 49

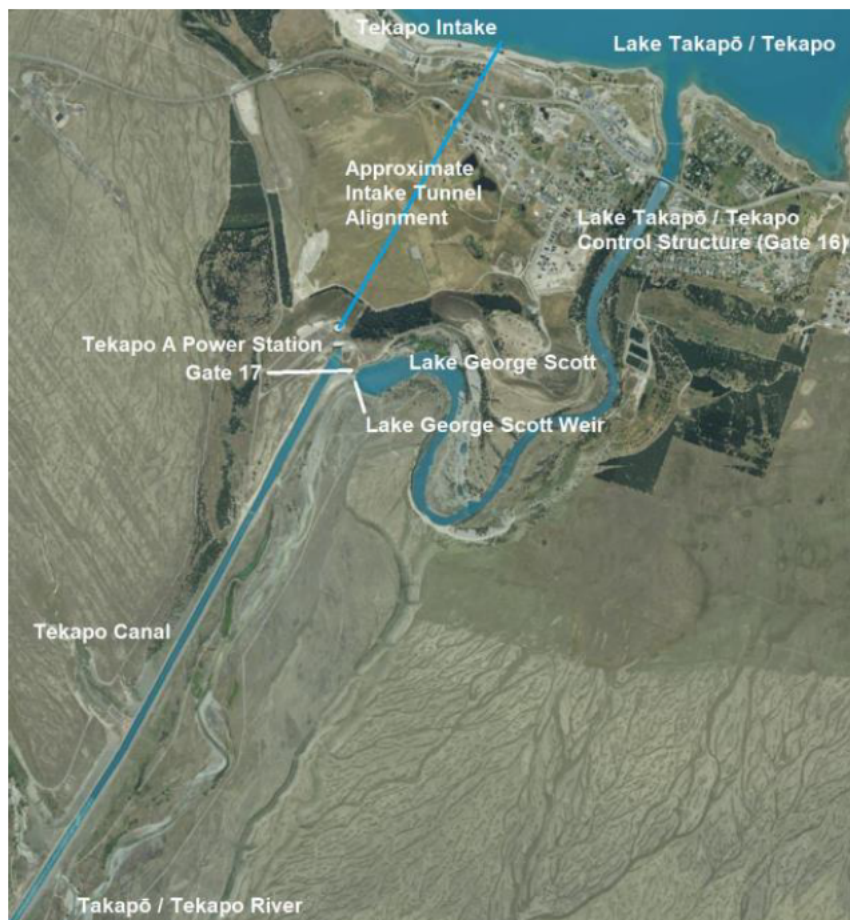
	<ul style="list-style-type: none"> (i) iwi authorities and groups that represent hapū that are parties to any relevant Mana Whakahono ā Rohe or joint management agreements. (ii) The relevant principles and provisions in those Mana Whakahono ā Rohe and joint management agreements. 	
18(2)(k)	Any other Māori groups with relevant interests.	28
18(2)(l)	<p>A summary of—</p> <ul style="list-style-type: none"> (i) comments received by the Minister after inviting comments from Māori groups under section 17(1)(d) and (e); (ii) any further information received by the Minister from those groups 	Not applicable to substantive applications
18(2)(m)	The responsible agency's advice on whether, due to any of the matters identified in this section, it may be more appropriate to deal with the matters that would be authorised by the proposed approvals under another Act or Acts.	Not applicable to substantive applications
18(3)	<p>In preparing the report required by this section, the responsible agency must—</p> <ul style="list-style-type: none"> (a) consult relevant departments; and (b) provide a draft of the report to the Minister for Māori Development and the Minister for Māori Crown Relations: Te Arawhiti. 	Section 18(3)(b) not applicable to substantive applications
18(4)	Those Ministers must respond to the responsible agency within 10 working days after receiving the draft report	Not applicable to substantive applications

Attachment 2: Project location maps

Location of Tekapō Power Scheme indicated by yellow circle below



Key features of the Tekapō Power Scheme are shown below



Attachment 3: List of relevant Māori groups

Name of group	Type of group (section of Act)	Contact persons	Contact email
Te Rūnanga o Ngāi Tahu	iwi authority (s18(2)(a)), Treaty settlement entity (s18(2)(a) – Ngāi Tahu Claims Settlement Act 1998)	Justin Tipa, Chair Amy Beran, Senior Environmental Advisor Lisa Mackenzie, Senior Environmental Advisor Te Rūnanga o Ngāi Tahu	
Te Rūnanga o Arowhenua	iwi authority (s18(2)(a)), Treaty settlement entity (s18(2)(a) – Ngāi Tahu Claims Settlement Act 1998)	Ally Crane, General Manager	
Te Rūnanga o Waihao	iwi authority (s18(2)(a)), Treaty settlement entity (s18(2)(a) – Ngāi Tahu Claims Settlement Act 1998)	Jo McLean, Te Rūnanga o Ngāi Tahu representative Melissa Slatter	
Te Rūnanga o Moeraki	iwi authority (s18(2)(a)), Treaty settlement entity (s18(2)(a) – Ngāi Tahu Claims Settlement Act 1998)	Justin Tipa, Te Rūnanga o Ngāi Tahu representative	
Aoraki Environmental Consultancy Limited	other Māori group with relevant interests (s18(2)(k))	Ally Crane	
Aukaha (1997) Limited	other Māori group with relevant interests (s18(2)(k))	Kate Timms-Dean - General Manager Mana Taiao Pam Walker, Senior Planner Consents Mereana Goodman, Consents Officer Mana Taiao	