

14 February 2023
Job No: 1090572.0000

Poukura Marae Committee
by email

Attention: Sarah-Jane Cuthers

Dear Sarah-Jane

Letter of Engagement

Poukura Marae Foreshore Erosion – Desktop Options Assessment

Introduction

Following recent discussions with Reuben Hansen, and as you requested, we are pleased to confirm the basis on which we will undertake a desktop options assessment relating to foreshore erosion management at the Poukura Marae foreshore for you as our client.

Background

There is an existing timber seawall in front of Poukura Marae. We understand from information provided to us that the timber lagging and geotextile on this structure has failed and the shoreline has retreated landward; see Figure 1. The access road to the Marae, Urupa and Partitions to the north are now compromised by the erosion.

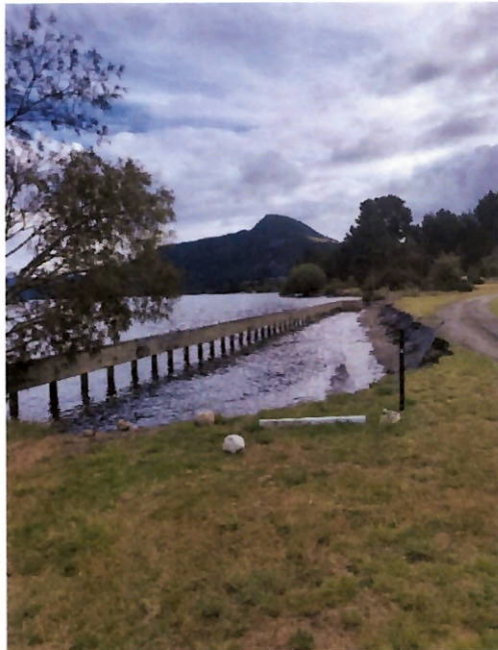


Figure 1: Existing timber wall, shoreline and access road to right of frame. Source: Tuwharetoa Maori Trust Board

The shoreline retreat is causing significant concern to the Marae Committee. This factor, in combination with sustained elevated water levels in the Lake and prevalence of extreme wave events have led the Marae Committee to request that Tonkin & Taylor Ltd ("T+T") prepare an options assessment.

Scope of work

The options assessment is required for the length of shoreline behind the existing timber seawall. The Marae Committee is aware of the rock revetment and nearshore breakwater options presented in the Kuratau Options Assessment prepared for Taupo District Council ("TDC") and want T+T to focus on these engineered responses, as well as other "softer" nature-based solutions. We will not consider managed retreat or "doing nothing", as we understand these are not viable options to the Marae Committee for the erosion threat to these multi-generational ancestral resources.

We will undertake the following:

- 1 Discuss the outcome of the briefing meeting held between the Marae Committee, Tuwharetoa Maori Trust Board and TDC (complete).
- 2 Undertake wave climate assessment.
- 3 Prepare a draft options assessment for your review containing:
 - Sketches of options.
 - Accompanying commentary regarding engineering, environmental and regulatory constraints and opportunities associated with the options.
 - High level rough order cost estimates associated with implementing/constructing the options.
- 4 Finalise and issue options report following receipt of your feedback on the draft report.

We have assumed Waikato Regional Council will supply LiDAR or UAV derived survey data for us to use in our options assessment.

To do this work we may use relevant existing data and information in our T+T databases as well as from publicly available databases. Data and factual information collected for the project is also potentially of value to wider scientific/ engineering research and understanding. By accepting this proposal you agree to us retaining the relevant data collected from your project in our T+T databases for use in future scientific/ engineering analyses. Also, where we are using relevant existing data from a publicly available database, and the terms of use of that database require that we upload to it the equivalent type of data that we collect for your project, you agree that we may do this.

We will use all reasonable endeavours to meet our responsibilities to you, however we cannot be responsible for any delay, event or circumstance outside our reasonable control due to the impact of COVID-19 (including travel disruptions, quarantine or self-isolation requirements, ill health or other delay or inability of our staff or subcontractors to perform or access a site for any reason). If any of these circumstances do arise, we may seek to negotiate with you a variation to this proposal which enables us to complete our work for you on mutually acceptable terms, failing which either party may terminate our engagement.

Programme

We will start work immediately upon receiving your instruction to proceed and expect to present our draft report for review within four weeks of commencing.

Fees

We will do the work required on a time and expenses basis. Our indicative budget estimate is \$16,700 (excluding GST).

We aim to complete the work within our total indicative budget estimate. However, because of the nature of the work being undertaken, we can't always accurately estimate the time required. We will inform you if it is likely that the total indicative budget estimate is to be exceeded.

We have developed a range of unique, market leading software applications that allow us to improve efficiency by reducing the number of chargeable hours of input that would otherwise be required for certain types of work. Where our scope of services allows for the use of this software and the relevant fee basis is time and expenses, we will charge a disbursement for this. Our pricing of any such disbursement reflects the value to you of the chargeable hours avoided by our using the software.

We will invoice monthly, on or after the first working day of the month, for work undertaken in the preceding month. If payment becomes overdue and we are unable to agree alternative payment terms with you, we reserve the right to suspend work and to withhold deliverables. This will not apply in the case where you have advised us that you have a genuine dispute with our invoice (or part of our invoice) and you have paid any undisputed amounts.

Terms and conditions

We will carry out the work in accordance with our attached Conditions of Engagement. These terms place certain limitations on our liability and, unless agreed otherwise, they will apply instead of any terms and conditions in any purchase order or other confirming document that you may issue to us.

We provide our reports and other deliverables for your benefit only and they cannot be relied upon by any third parties. However, if you want us to, we may allow a third party to rely on them after signing an appropriate reliance statement with us (so that they acknowledge and accept the limitations of our work and the terms and conditions of our engagement with you).

We understand and agree that you may submit our Options Assessment as part of an application for resource consent and that Waikato Regional Council and Taupo District Council as the consenting authorities will use the report for the purpose of assessing that application.

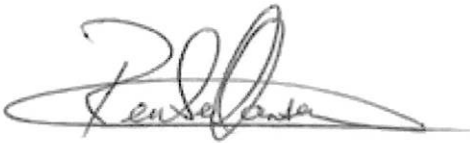
This offer is valid for one month from the date of this letter.

Closing remarks

We trust that this satisfactorily meets your needs. We look forward to receiving your instruction to proceed and to working with you on this project. You can confirm your acceptance by returning the attached signatory form. Alternatively, we will take your instruction to proceed as confirmation that you accept this proposal.

Please contact Reuben Hansen at rhansen@tonkintaylor.co.nz if you would like to discuss anything about this project.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Reuben Hansen', with a long horizontal flourish extending to the right.

Reuben Hansen
Project Director

Attached:

- 1 Signatory page
- 2 ACENZ Short Form Agreement Feb 2019

Signatory form

T+T Ref: 1090572.0000
 Date: 14 February 2023
 Contract: Poukura Marae Foreshore Erosion - Options Assessment

Confirmation by Client: I/we acknowledge that I/we have read the proposal for the above contract and the attached Conditions of Engagement, (including the Limitations of Liability), and I/we accept those terms and authorise the above.

Client name: Poukura Marae Committee
 Address: by email
 Attention: Sarah-Jane Cuthers

Signature: [Handwritten Signature]
 Name: Sarah-Jane Cuthers
 Date: 1 March 2023

Please provide the following information if different:

Client Name and Address	<u>N/A</u>	Invoicing Entity Name* and Address (if different to Client)
_____		_____
_____		_____
_____		_____
_____		_____

* Invoicing entity to also give the "Confirmation by Client" above by signing below

Signature: _____
 Name: _____
 Date: _____

Please return one signed copy to Reuben Hansen of T+T at email rhansen@tonkintaylor.co.nz or to the address on the letterhead.

Privacy Notice

In your dealings with us, we will collect, use, disclose and hold personal information in accordance with our Privacy Statement (<https://www.tonkintaylor.co.nz/about-us/tonkin-plus-taylor-privacy-statement/>). Unless you advise us otherwise, we will assume that you consent for your information to be used for the purposes outlined in our Privacy Statement. If at any time you wish us to stop using your information for any of the purposes outlined in our Privacy Statement, please email us at privacy@tonkintaylor.co.nz or use the "unsubscribe" facility in the relevant email message.

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SHORT FORM MODEL CONDITIONS OF ENGAGEMENT

1. The Consultant shall perform the Services as described in the attached documents.
2. The Client and the Consultant agree that where all or any of, the Services are acquired for the purposes of a business the provisions of the Consumer Guarantees Act 1993 are excluded in relation to those Services. However, nothing in this Agreement shall restrict, negate, modify or limit any of the Client's rights under the Consumer Guarantees Act 1993 where the Services acquired are of a kind ordinarily acquired for personal, domestic or household use or consumption and the Client is not acquiring the Services for the purpose of a business.
3. In providing the Services, the Consultant must use the degree of skill, care and diligence reasonably expected of a professional consultant providing services similar to the Services.
4. The Client shall provide to the Consultant, free of cost, as soon as practicable following any request for information, all information in the Client's power to obtain which may relate to the Services. The Consultant shall not, without the Client's prior consent, use information provided by the Client for purposes unrelated to the Services. In providing the information to the Consultant, the Client shall ensure compliance with the Copyright Act 1994 and shall identify any proprietary rights that any other person may have in any information provided.
5. As soon as either Party becomes aware of anything that will materially affect the scope or timing of the Services, the Party must notify the other Party in writing and where the Consultant considers a direction from the Client or any other circumstance is a variation the Consultant shall notify the Client accordingly.
6. The Client may order variations to the Services in writing or may request the Consultant to submit proposals for variations to the Services.
7. The Client shall pay the Consultant for the Services the fees and expenses at the times and in the manner set out in the attached documents. Where this Agreement has been entered by an agent (or a person purporting to act as agent) on behalf of the Client, the agent and Client shall be jointly and severally liable for payment of all fees and expenses due to the Consultant under this Agreement.
8. All amounts payable by the Client shall be due on the 20th of the month following the month of issue of each GST Invoice or at such other timing as stated elsewhere in this Agreement. If the Client fails to make the payment that is due and payable and that default continues for 14 days, the Consultant may provide written notice to the Client specifying the default and requiring payment within 7 days from the date of the notice. Unless payment has been made by the Client in full, the Consultant may suspend performance of the Services any time after expiration of the notice period. The Consultant must promptly lift the suspension after the Client has made the payment. Regardless of whether or not the Consultant suspends the performance of the Services in accordance with this clause, the Consultant may charge interest on overdue amounts from the date payment falls due to the date of payment at the rate of the Consultant's overdraft rate plus 2% and in addition the costs of any actions taken by the Consultant to recover the debt.
9. Where the nature of the Services is such that it is covered by the Construction Contracts Act 2002 (CCA) and the Consultant has issued a payment claim in accordance with the CCA, the provisions of the CCA shall apply. In all other cases, if the Client, acting reasonably, disputes an invoice, or part of an invoice, the Client must promptly give the reasons for withholding the disputed amount and pay any undisputed amount in accordance with clause 8.
10. Where Services are carried out on a time charge basis, the Consultant may purchase such incidental goods and/or Services as are reasonably required for the Consultant to perform the Services. The cost of obtaining such incidental goods and/or Services shall be payable by the Client. The Consultant shall maintain records which clearly identify time and expenses incurred.
11. Where the Consultant breaches this Agreement, the Consultant is liable to the Client for reasonably foreseeable claims, damages, liabilities, losses or expenses caused directly by the breach. The Consultant shall not be liable to the Client under this Agreement for the Client's indirect, consequential or special loss, or loss of profit, however arising, whether under contract, in tort or otherwise.
12. The maximum aggregate amount payable, whether in contract, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, shall be five times the fee (exclusive of GST and disbursements) with a minimum of \$100,000 and a maximum limit of \$NZ500,000.
13. Without limiting any defences a Party may have under the Limitation Act 2010, neither Party shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on a Party within 6 years from completion of the Services.
14. The Consultant shall take out and maintain for the duration of the Services a policy of Professional Indemnity insurance for the amount of liability under clause 12. The Consultant undertakes to use all reasonable endeavours to maintain a similar policy of insurance for six years after the completion of the Services.
15. If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a Third Party has contributed to the loss or damage, the liable Party shall only be liable to the proportional extent of its own contribution.
16. Intellectual property prepared or created by the Consultant in carrying out the Services, and provided to the Client as a deliverable, ("New Intellectual Property") shall be jointly owned by the Client and the Consultant. The Client and Consultant hereby grant to the other an unrestricted royalty-free license in perpetuity to copy or use New Intellectual Property. The Clients' rights in relation to this New Intellectual Property are conditional upon the Client having paid all amounts due and owing to the Consultant in accordance with clauses 7 and 8. Intellectual property owned by a Party prior to the commencement of this Agreement (Pre-existing Intellectual Property) and intellectual property created by a Party independently of this Agreement remains the property of that Party. The Consultant accepts no liability for the use of New Intellectual Property or Pre-existing Intellectual Property other than to the extent reasonably required for the intended purposes.
17. The Consultant has not and will not assume any duty imposed on the Client pursuant to the Health and Safety at Work Act 2015 ("the Act") in connection with the Agreement.
18. The Client may suspend all or part of the Services by notice to the Consultant who shall immediately make arrangements to stop the Services and minimise further expenditure. The Client and the Consultant may (in the event the other Party is in material default that has not been remedied within 14 days of receiving the other Party's notice of breach) either suspend or terminate the Agreement by notice to the other Party. If the suspension has not been lifted after 2 months the Consultant has the right to terminate the Agreement and claim reasonable costs as a result of the suspension. Suspension or termination shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.
19. The Parties shall attempt in good faith to settle any dispute by mediation.
20. This Agreement is governed by the New Zealand law, the New Zealand courts have jurisdiction in respect of this Agreement, and all amounts are payable in New Zealand dollars.

February 2019

