

Application 2021-051 Tauranga Innovative Courthouse (Minister of Justice and Ministry of Justice)

To:	Required action:
Hon David Parker, Minister for the Environment	Consider this report prior to making a decision under section 24 of the FTCA
Date submitted: 5 August 2021	

Ministry for the Environment contacts

Position	Name	Cell Phone	1 st Contact
Principal Author	Pip Lee		
Manager	Stephanie Frame	s9(2)(a)	ü
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 consider this report before you make any decision under section 24 of the FTCA to accept the application to refer the Tauranga Innovative Courthouse project to an expert consenting panel (a panel).

Proposed project

3. The applicants propose to construct and operate a new Innovative Courthouse in central Tauranga, on a site immediately north of the current Justice precinct. A general location map is in Attachment 1.
4. The applicants seek a designation over the development site, via a notice of requirement decided by an expert consenting panel under the FTCA. This is needed to provide certainty for the further investment and detailed work required to progress and deliver the development.

Essential information

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

Section of the FTCA	Information required	Detail
s17(3)(a)	Relevant iwi authorities	Te Rūnanga o Ngāi Te Rangi Iwi Trust Ngā Hapū o Ngāti Ranginui Settlement Trust Ngāti Ranginui Iwi Society Incorporated Ngāti Pūkenga Iwi ki Tauranga Trust <i>Contact details are in Attachment 2</i>
s17(3)(b)	Relevant Treaty settlements	Ngāi Te Rangi and Ngā Pōtiki Deed of Settlement signed 14 Dec 2013 [Ngāi Te Rangi and Ngā Pōtiki Claims Settlement Bill - introduced 2 May 2016] Ngā Hapū o Ngāti Ranginui Deed of Settlement signed 21 June 2012 [Tauranga Moana Iwi Collective Redress and Ngā Hapū o Ngāti Ranginui Claims Settlement Bill - introduced Nov 2015] Ngāti Pūkenga Claims Settlement Act 2017
s17(3)(a)	Relevant Treaty settlement entities	Ngāi Te Rangi Settlement Trust Ngā Pōtiki a Tamapahore Trust Ngā Hapū o Ngāti Ranginui Settlement Trust Te Tāwharau o Ngāti Pūkenga <i>Contact details are in Attachment 2</i>
s17(3)(c)	Relevant principles & provisions of the Treaty settlements	<i>See below</i>
s17(3)(d)	Negotiation mandates recognised by the Crown	N/A
s17(3)(d)	Current Treaty settlement negotiations	N/A
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 that are relevant and the project does not occur in the coastal marine area.

Supporting material

Project area

6. The project site covers approximately 1 hectare in several land holdings that comprise over 50 percent of the inner-city block of the Tauranga CBD bounded by Monmouth, Willow and McLean Streets and Cameron Road. Currently the site is mostly occupied by several residential units and townhouses.

7. The project site lies on the Te Papa Peninsula, within the area of interest of Tauranga Moana iwi Ngāi Te Rangi, Ngāti Ranginui and Ngāti Pūkenga. According to the directory of iwi and hapū contacts on Tauranga City Council's website¹ the project site falls within the specific areas of interest for three Ngāi Te Rangi hapū (Ngāti Tapu, Ngāti Kuku and Ngāti Tukairangi) and for Ngāi Tamarāwaho hapū of Ngāti Ranginui.
8. There are four nearby marae, shown on Attachment 1, as follows:
 - a. Whareroa Marae, located between State Highway 2 and Tauranga Airport. The primary hapū for this marae are Ngāti Tukairangi and Ngāti Kuku, of Ngāi Te Rangi.
 - b. Hungahungatoroa (Whakahinga) Marae located east of the project site in Matapihi. The principal hapū is Ngāti Tukairangi.
 - c. Waikari Marae, also in Matapihi, which is associated with Ngāi Te Rangi hapū Ngāti Tapu.
 - d. Huria Marae, located to the west of the project site in the suburb of Brookfield. The primary hapū is Ngāi Tamarāwaho of Ngāti Ranginui.

Project details

9. The new courthouse will be the first such courthouse under the Ministry of Justice's Innovative Courthouses programme, which aims to re-design the concept of a 'court' to better enable operation and delivery of the justice system. It will be designed in partnership with iwi, the local community, the judiciary, legal profession, court staff and court users and will provide a model for future courthouse design in New Zealand.
10. The purpose of the designation sought by the applicant will be "Tauranga Moana Innovative Courthouse – Judicial, court, tribunal and related purposes including collection of fines and reparation, administration, support, custodial services, and ancillary activities".
11. The applicant anticipates physical site works would commence about September 2022, with construction completed in approximately three years. The applicants also need to complete site purchase and detailed project design ahead of commencing site works. Subject to, and following, a panel's approval of the designation the applicants will submit detailed outline plan/s to Tauranga City Council (TCC) for their consideration and input, in accordance with section 176A of the RMA.
12. The future use of the current courthouse site is subject to the Crown's obligations to Ngāi Te Rangi under the Ngāi Te Rangi and Ngā Pōtiki Deed of Settlement, as explained further in paragraphs 41 and 42.

Statutory matters relating to this report

13. No parts of the proposed project will occur in the coastal marine area, meaning:
 - a. pursuant to section 16(1) of the FTCA you are the sole party required to consider this report
 - b. the project is unaffected by the provisions of the Marine and Coastal Area (Takutai Moana) Act 2011 (MACAA) or any other Act pertaining to the grant of protected customary rights or customary marine title.

¹ <https://www.tauranga.govt.nz/community/tangata-whenua/resource-management-processes/iwi-and-hap%C5%AB-contacts>

14. There are therefore no court orders granted under the MACAA or another Act that you need to consider in your referral decision for this project.²

Iwi and iwi authorities

Information sources

15. Under section 7(1) of the FTCA, a relevant iwi authority for a referred project means an iwi authority whose area of interest includes the area in which a project will occur.
16. The FTCA does not define iwi authority, so under section 7(2) of the FTCA, it has the same meaning as in the RMA: the authority which represents an iwi and which is recognised by that iwi as having authority to do so.
17. To identify the iwi authorities for RMA purposes which are relevant to the project area, information was sourced from:
- a. The Iwi Areas of Interest viewer, an online application managed by the Ministry of Māori Development – Te Puni Kōkiri (TPK)
 - b. Te Kāhui Māngai (TKM), an online directory of iwi and Māori organisations maintained by TPK
 - c. Ministry for the Environment
 - d. Tauranga City Council and Bay of Plenty Regional Council as the relevant local authorities.

Iwi authorities relevant to project

18. Four iwi authorities have been identified via the TPK viewer and TKM website as relevant to the area in which the proposed project site lies:
- a. Te Rūnanga o Ngāi Te Rangi Iwi Trust, representing Ngāi Te Rangi
 - b. Ngā Hapū o Ngāti Ranginui Settlement Trust, representing Ngāti Ranginui
 - c. Ngāti Ranginui Iwi Society Incorporated, also representing Ngāti Ranginui
 - d. Ngāti Pūkenga Iwi ki Tauranga Trust, representing Ngāti Pūkenga.
19. The Ngā Pōtiki a Tamapahore Trust is also identified on the TKM website as an RMA iwi authority that serves the interests of the Ngāi Te Rangi hapū Ngā Pōtiki. According to the directory of iwi and hapū contacts on Tauranga City Council's website³ the project site does not fall within the area of interest for Ngā Pōtiki.

Treaty settlements and Treaty settlement entities

20. Information from the first two sources listed in paragraph 17, the [NZ Government Treaty settlements website](#), and the Office for Māori Crown Relations – Te Arawhiti was used to identify relevant Treaty settlements and any associated Treaty settlement entities of relevance to the proposed project.

² Section 17(3)(e) of the FTCA requires this report to identify any court orders granted under the MACAA or another Act which recognise, in relation to the project area, customary marine title or protected customary rights.

³ https://www.tauranga.govt.nz/Portals/0/data/community/tangata_whenua/file/ngaiterangi_iwi_map.pdf

Treaty settlements relating to the project area

21. 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.
22. The project site falls within the area of interest covered by Treaty settlements with the following iwi/groups:
 - a. Ngāi Te Rangi and Ngā Pōtiki
 - b. Ngāti Ranginui
 - c. Ngāti Pūkenga.
23. Ngāi Te Rangi and Ngā Pōtiki, together with the Ngāi Te Rangi Settlement Trust and Ngā Pōtiki a Tamapahore Trust, signed a deed of settlement with the Crown at Whareroa Marae on 14 December 2013. Subsequent amendment deeds were signed in 2014 and 2016. A [settlement summary, the deeds and accompanying documents](#) are on the NZ Government Treaty Settlement website. The Ngāi Te Rangi and Ngā Pōtiki Claims Settlement Bill was introduced to Parliament on 2 May 2016. It is awaiting its second reading, and until this and other legislation is enacted the settlement remains incomplete.
24. Ngā Hapū o Ngāti Ranginui and the Trustees of the Ngā Hapū o Ngāti Ranginui Settlement Trust signed a deed of settlement with the Crown on 21 June 2012, and deeds to amend on 26 September 2014 and 18 October 2015. A [settlement summary, the deeds and accompanying documents](#) are on the NZ Government Treaty settlement website. Legislation to enact certain provisions of the Ngāti Ranginui settlement and parts of the Tauranga Moana collective redress deed was introduced to Parliament as the Tauranga Moana Iwi Collective Redress and Ngā Hapū o Ngāti Ranginui Claims Settlement Bill in November 2015. It is also awaiting its second reading and until this and other legislation is enacted the settlement remains incomplete.
25. The Ngāti Pūkenga Claims Settlement Act 2017 gave effect to the deed of settlement between Ngāti Pūkenga, the Trustees of Te Tāwharu o Ngāti Pūkenga Trust and the Crown signed on 7 April 2013. Five subsequent amendment deeds were signed in 2013, 2014 (two), 2016 and 2017. A [settlement summary, the deeds and accompanying documents](#) are on the NZ Government Treaty settlement website.

Relevant Treaty settlement entities

Post-settlement governance entities

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 Tāwharau o Ngāti Pūkenga is the post-settlement governance entity under the Ngāti Pūkenga Claims Settlement Act 2017.
28. A post-settlement governance entity may exist ahead of finalisation and enactment of a Treaty settlement. The respective post-settlement governance entities for the first two Treaty settlements in paragraph 22 are:
 - a. Ngāi Te Rangi Settlement Trust and Ngā Pōtiki a Tamapahore Trust
 - b. Ngā Hapū o Ngāti Ranginui Settlement Trust.

Other bodies recognised or established under a Treaty settlement Act

29. 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.
30. No such entities established under the Ngāti Pūkenga Claims Settlement Act 2017 are relevant to the proposed project.

Relevant principles and provisions of the Treaty settlements

Crown acknowledgements and apologies

31. The Crown makes acknowledgments and offers an apology as part of Treaty settlement redress to atone for historical wrongs, restore its honour, and begin the process of healing. Acknowledgments and apologies associated with the three Treaty settlements listed in paragraph 22 are outlined below.

Ngāi Te Rangi and Ngā Pōtiki Treaty Settlement

32. The settlement includes numerous Crown acknowledgements, including that:
- a. the confiscation at Tauranga and the subsequent Tauranga District Lands Acts 1867 and 1868 were indiscriminate, unjust and a breach of the Treaty of Waitangi and its principles
 - b. land on the Te Papa Peninsula which today constitutes the Tauranga central business district was included within the confiscation district and was conveyed to the Crown by a private institution despite this institution previously insisting that it would always hold land for the benefit of Māori
 - c. the Crown further acknowledges that the confiscation and the subsequent Tauranga District Lands Acts 1867 and 1868:
 - i. had a devastating effect on the welfare and economy of Ngāi Te Rangi and Ngā Pōtiki
 - ii. deprived Ngāi Te Rangi and Ngā Pōtiki of wāhi tapu, access to significant parts of the cultural landscapes and seascapes, and opportunities for development at Tauranga
 - iii. restricted Ngāi Te Rangi and Ngā Pōtiki in the exercise of mana and rangatiratanga over their lands and resources within Tauranga Moana.
 - d. it breached the Treaty of Waitangi and its principles by failing to protect the interests of the owners in relation to the Whareroa lands taken for ‘better utilisation’.⁴
33. In the Crown apology offered as part of settlement redress to Ngāi Te Rangi and Ngā Pōtiki, their tūpuna and descendants, the Crown says it unreservedly apologises for not having fulfilled its obligations to Ngāi Te Rangi and Ngā Pōtiki under te Tiriti o Waitangi/the Treaty of Waitangi and for having shown disrespect for the mana and rangatiratanga of Ngāi Te Rangi and Ngā Pōtiki.
34. It also says it is deeply sorry for the marginalisation Ngāi Te Rangi and Ngā Pōtiki have endured while the city of Tauranga expanded on their customary lands. The Crown apologises for the lost

⁴ Clause 3.14 Ngāi Te Rangi and Ngā Pōtiki Deed of Settlement; the Whareroa land takings in the Port of Tauranga area which relate to Crown apology and acknowledgement redress are shown in the map on page 22; *Waitangi Tribunal Tauranga Moana 1886-2006 Report on the post Raupatu Claims, Vol. 1.*

opportunities for development, and for the significant harm its actions have caused to the social and economic wellbeing of Ngāi Te Rangi and Ngā Pōtiki.

35. Through its apology and the settlement the Crown seeks to address the wrongs of the past and to create a new platform from which to establish a relationship with Ngāi Te Rangi and Ngā Pōtiki, based on mutual respect and cooperation as was originally envisaged by the Treaty of Waitangi.

Ngāti Ranginui Treaty settlement

36. The Tauranga Moana Iwi Collective Redress and Ngā Hapū o Ngāti Ranginui Claims Settlement Bill records the Crown's apology to Ngāti Te Wai, Pirirakau, Ngāti Taka, the Wairoa hapū of Ngāti Rangi, Ngāti Pango, and Ngāti Kahu, Ngāti Hangarau, Ngāi Tamarāwaho, Ngāi Te Ahi and Ngāti Ruahine, the hapū of Ngāti Ranginui, their tūpuna and descendants. It unreservedly apologises for not having honoured its obligations to the hapū of Ngāti Ranginui under te Tiriti o Waitangi/the Treaty of Waitangi and says it profoundly regrets its failure to appropriately acknowledge the mana and rangatiratanga of Ngāti Ranginui for many generations.
37. The Crown deeply regrets that over time its actions severed Ngāti Ranginui hapū from their traditional lands, deprived them of opportunities for development, caused significant harm to the social and economic wellbeing of the iwi and its hapū, damaged their autonomy and ability to exercise customary rights and responsibilities, and marginalised them within their own rohe.
38. Through the apology the Crown seeks atonement for the wrongs of the past and to establish a new relationship with the hapū of Ngāti Ranginui based upon mutual trust, co-operation, and respect for te Tiriti o Waitangi/the Treaty of Waitangi and its principles.

Ngāti Pūkenga Treaty Settlement

39. In the apology offered to Ngāti Pūkenga in the Ngāti Pūkenga Claims Settlement Act 2017, the Crown says the historical marginalisation of Ngāti Pūkenga in Tauranga Moana and the harm this caused are sources of profound Crown regret, and it apologises for exacerbating this harm by consistently failing to respect the rangatiratanga of Ngāti Pūkenga in their remaining lands.
40. The Crown also acknowledges the suffering it caused Ngāti Pūkenga through its breaches of the Treaty of Waitangi and says it sincerely hopes that the settlement will mark the beginning of a new relationship between the Crown and Ngāti Pūkenga, founded on respect for the Treaty of Waitangi and its principles.

Commercial redress

41. The first Deed to Amend the Ngāi Te Rangi and Ngā Pōtiki Deed of Settlement⁵ provides for the current Tauranga courthouse to be purchased by Ngāi Te Rangi and leased back to the Crown. The Deed of Settlement has not yet been enacted and the sale and leaseback of the current Courthouse site has not yet occurred.
42. The proposed project would relocate the Tauranga courthouse to a new site. This will not alter the Crown's existing obligations to Ngāi Te Rangi under the Ngāi Te Rangi and Ngā Pōtiki Deed of Settlement in respect of the current courthouse site.

Other redress

43. The settlements do not create any new co-governance or co-management processes which would affect decision-making under the RMA for projects such as the one proposed.

⁵ [Ngāi Te Rangi and Ngā Pōtiki Deed to Amend the Deed of Settlement 6 Oct 2014](#)

44. No specific cultural redress, including areas covered by a statutory acknowledgement, would be directly affected by the proposed project.
45. Importantly however, cultural associations with ancestral lands, water, sites, wāhi tapu, and other taonga – regardless of whether or not they are specifically identified in a Treaty settlement or affected by a statutory acknowledgement - are deemed to be matters of national importance that must be recognised and provided for in decision-making under Part 2 section 6(e) of the RMA.

Current negotiation mandates and settlement negotiations

46. There are no further mandates or Treaty settlement negotiations relevant to the project site.

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 of a project to a panel, and the reasons for your decisions, to the applicant and anyone invited to comment under section 21 of the FTCA.
48. You did not invite comment on the referral application from iwi authorities or other Māori groups. However, if you decide to refer this project to a panel, the notice of decisions and associated reasons must 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.
49. The relevant iwi authorities and Treaty settlement entities for receipt of the notice are identified in paragraph 5; contact details are in Attachment 2.
50. We have not identified any other relevant iwi authorities or Treaty settlement entities who may have an interest in the project, and there are no relevant joint management agreements or Mana Whakahono ā Rohe to consider.

Expert consenting panel membership

51. 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.
52. In the event iwi authorities nominate more than one person, the panel convener must decide which nominee to appoint. The panel convener has discretion to increase the panel membership to accommodate the matters specified in clause 3(6)(a) – 3(6)(e), which include matters unique to any relevant Treaty settlement Act.
53. Relevant iwi authorities for the project are identified in paragraph 5; contact details are in Attachment 2.

Panel invitations to comment

54. A panel must invite comments on a resource 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

55. The relevant iwi authorities and Treaty settlement entities for the proposed project are listed in paragraph 5; contact details are in Attachment 2.

56. A panel may also invite comments from any other person it considers appropriate. We have not identified any further parties.

Provision of Cultural Impact Assessment

57. Any notice of requirement for a designation that is lodged with a panel for determination must include a cultural impact assessment prepared by or on behalf of the relevant iwi authority or a statement of any reasons given by the relevant iwi authority for not providing that assessment.⁶ The Environmental Protection Authority (that provides support services to a panel) will not confirm an application as complete and ready for consideration by a panel until this requirement has been satisfied.

58. Where there is more than one relevant iwi authority, it will be necessary for the project applicant to engage with each to determine their requirements for a cultural impact assessment, including whether they wish to prepare one individually or jointly, or whether they may wish defer to another iwi in respect of the matter. The relevant iwi authorities for the Tauranga Innovative Courthouse project are listed in paragraph 5.

⁶ Clause 13(1)(k) and 13(1)(l) of Schedule 6 to the FTCA

Attachment 1 - Location



Attachment 2 - Contact information

Iwi/hapū	Representative body	Contact details	RMA Iwi authority	Treaty settlement entity	Other	Contact person	Copies to
Ngāi Te Rangi	Te Rūnanga o Ngāi Te Rangi Iwi Trust	PO Box 4369 Mt Maunganui South Mt Maunganui 3149	Represents the interests of Ngāi Te Rangi as an iwi authority for RMA purposes			CEO: Paora Stanley reception@ngaiterangi.org.nz	RMA Contact: Pia Bennett s9(2)(a)
	Ngāi Te Rangi Settlement Trust			Post-settlement governance entity – deed of settlement signed 14 December 2013			
	Ngā Pōtiki a Tamapahore Trust	PO Box 11491 Papamoa 3151	Represents Ngā Pōtiki as an iwi authority for RMA purposes (within their hapū area of interest)	Represents Ngā Pōtiki as a post-settlement governance entity - deed of settlement signed 14 December 2013	Has been included in applicant's consultation to date	Chairperson: Colin Reeder kiaora@ngapotiki.org.nz	RMA Contact: Matire Duncan s9(2)(a)
Ngāti Ranginui	Ngā Hapū o Ngāti Ranginui Settlement Trust	PO Box 2230 Tauranga 3140	Represents Ngāti Ranginui as an iwi authority for RMA purposes	Post-settlement governance entity – deed of settlement signed 21 June 2012		Chairperson/RMA contact: Te Pio Kawe s9(2)(a)	
	Ngāti Ranginui Iwi Society Inc	PO Box 2526 Seventh Avenue Tauranga 3140	Represents Ngāti Ranginui as an iwi authority for RMA purposes			CEO: Melanie Tata info@ranginui.co.nz	RMA Contact: Des Heke s9(2)(a)
Ngāti Pūkenga	Ngāti Pūkenga Iwi ki Tauranga Trust	612 Welcome Bay Road RD 5 Tauranga 3175	Represents Ngāti Pūkenga as an iwi authority for RMA purposes			Chairperson: Rehua Smallman s9(2)(a)	RMA Contact: Buddy Mikaere s9(2)(a)
	Te Tāwharau o Ngāti Pūkenga	PO Box 13610 Tauranga 3141		Post-settlement governance entity under Ngāti Pūkenga Claims Settlement Act 2017		GM: Kylie Smallman tetawharau@ngatipukenga.com	

Attachment 3 – Project area details

