

## Application 2022-084 Jervois Quay Project (MFC Development Limited Partnership)

To:	Required action:
Hon David Parker, Minister for the Environment	Consider this report prior to making a decision under section 24 of the FTCA
<b>Date submitted:</b> 25 August 2022	

### Ministry for the Environment contacts

Position	Name	Cell Phone	1 <sup>st</sup> Contact
Principal Author	Pip Lee		
Acting Manager	Madeleine Berry	s 9(2)(a)	✓
Acting Director	Stephanie Frame	s 9(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 Jervois Quay Project (project) to an expert consenting panel (panel).

### Proposed project

3. The applicant (MFC Development Limited Partnership) proposes to construct an eight-storey mixed-use building, providing for educational, cultural, retail and commercial activities, at the corner of Jervois Quay and Wakefield Street, Wellington.
4. The site is owned by Wellington City Council and is currently occupied by a temporary building used by the Royal New Zealand Ballet. A location map is in Attachment 1.

## 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 (2)	Port Nicholson Block Settlement Trust Te Rūnanga o Toa Rangatira Incorporated <i>Contact details are in Attachment 2</i>
s17(3)(b)	Treaty settlements that relate to the project area (2)	Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Act 2009 Ngāti Toa Rangatira Claims Settlement Act 2014
s17(3)(a)	Relevant Treaty settlement entities (2)	Port Nicholson Block Settlement Trust Toa Rangatira Trust <i>Contact details are in Attachment 2</i>
s17(3)(c)	Relevant principles and provisions of the Treaty settlements	<i>See details in blue-shaded section below</i>
s17(3)(d)	Groups with a negotiation mandate recognised by the Crown who are yet to commence Treaty settlement negotiations	Ngāti Tama (Wellington)
s17(3)(d)	Current Treaty settlement negotiations	None
s17(3)(e)	Court orders recognising customary marine title or protected customary rights under the Marine and Coastal Area (Takutai Moana) Act 2011 or another Act	None that are relevant as the project does not occur in the coastal marine area

## Supporting information

### Project details

- The project site is located at the corner of Jervois Quay and Wakefield Street, Wellington. It is part of the Wellington City Council-owned block bounded by Jervois Quay, and Wakefield, Victoria and Harris Streets, which contains significant civic structures including the Wellington Central Library/Te Matapihi, Town Hall, City Gallery and the Michael Fowler Centre (see Attachment 3).
- The site was formerly used as a car park, and currently is mostly occupied by a temporary building used by the Royal New Zealand Ballet. The site is to remain in council ownership and will be leased by the applicant.
- The project is to remove the existing building and other structures and construct an 8-storey building up to 39 metres high, along with associated infrastructure. Attachment 4 provides some visual depictions of the project concept. The proposed building will provide a centre for educational and cultural activities (including Victoria University of Wellington's New Zealand School of Music and the NZSO), along with retail and commercial office tenancies. The building will

include a plant room on the roof of the eighth storey, and a laneway providing for through-site pedestrian access.

9. The project also involves demolition of an existing overbridge across Wakefield Street.
10. As indicated in Attachment 3, the project site lies very close to the coastal marine area of Wellington Harbour. Consequently, there may be potential for effects on the harbour from the project, including discharge of stormwater or groundwater containing contaminants, unless these activities are appropriately managed.

## **Statutory matters relating to this report**

11. 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.
12. There are therefore no court orders granted under the MACAA or another Act to consider in your referral decision for this project.<sup>1</sup>

## **Iwi authorities**

### **Methodology and information sources**

13. This report must identify the relevant iwi authorities for the project, in accordance with section 17(3)(a) of the FTCA. 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.
14. 'Area of interest' can mean different things depending on context and perspective and can be indicative (such as an area identified at the outset of Treaty settlement negotiations), formally agreed (such as in a deed of settlement or memorandum of understanding) or self-nominated. An area of interest can be difficult to define precisely on a map, particularly where a boundary that has been depicted on a small-scale map is scaled up and used precisely in relation to an individual site or property.
15. For the purposes of this report, we have considered information from the following sources as a starting point for identifying iwi areas of interest:
  - a. the Te Arawhiti Internal Crown Asset Tracking Tool (i-Cat), an online database that records areas of interest associated with Treaty settlements and Treaty settlement negotiations
  - b. area of interest maps in signed Treaty settlement deeds or other Treaty settlement documents
  - c. the Iwi Areas of Interest viewer, an online application managed by the Ministry of Māori Development – Te Puni Kōkiri (TPK)

---

<sup>1</sup> 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.

- d. Te Kāhui Māngai (TKM), an online directory of iwi and Māori organisations maintained by TPK, which includes information on rohe (tribal areas) provided by those organisations.
16. Generally, the areas of interest shown on these databases for an iwi or group do not always completely align, and sometimes the differences can be significant. We consider carefully the reasons for such discrepancies, including the reliability or accuracy of the information shown and the local context and decision-making environment, before deciding which areas of interest we consider apply to a project under FTCA process.
17. The FTCA does not specifically define iwi authority but pursuant to section 7(2) of the FTCA, 'iwi authority' 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.
18. To identify iwi authorities associated with the identified areas of interest, we sourced and considered information from:
  - a. the TKM online directory noted above
  - b. the relevant local authorities – Greater Wellington Regional Council and Wellington City Council.

### **Iwi authorities relevant to project**

19. We consider the project site lies within the areas of interest of Taranaki Whānui ki Te Upoko o Te Ika, Ngāti Tama (Wellington) and Ngāti Toa Rangatira.
20. Two iwi authorities are associated with these iwi, and we consider these to be the relevant iwi authorities for the project, as follows:
  - a. Port Nicholson Settlement Block Trust, representing Taranaki Whānui ki Te Upoko o Te Ika and Ngāti Tama (Wellington)
  - b. Te Runanga o Toa Rangatira Incorporated, representing Ngāti Toa Rangatira.

### **Other iwi authorities which may have an interest in the project**

21. Muaūpoko assert historical associations with the wider Wellington area and the TKM database, which reflects information supplied by contributors, presents the project area as being within the iwi's area of interest. However, other descriptions of the Muaūpoko area of interest, including the Muaūpoko deed of mandate for Treaty settlement negotiations, do not support inclusion of the project area in a Muaūpoko area of interest.
22. We have therefore not identified the corresponding iwi authority for Muaūpoko – the Muaūpoko Tribal Authority Incorporated – as a relevant iwi authority for the project. Instead, we recommend that you consider this authority as an iwi authority which may have an interest in the project and take that into account in your decisions relating to project referral.

## **Treaty settlements and Treaty settlement entities**

23. This report must identify the Treaty settlements that relate to the project area and relevant Treaty settlement entities, in accordance with sections 17(3)(b) and 17(3)(a) respectively. Information from the first two sources in paragraph 14, the Office of Māori Crown Relations – Te Arawhiti and documents on the [NZ Government Treaty settlements website](#) were the primary information sources for our analysis.

## Treaty settlements relating to the project area

24. 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.
25. The project site falls within the area of interest covered by Treaty settlements with:
  - a. Taranaki Whānui ki Te Upoko o Te Ika
  - b. Ngāti Toa Rangatira.
26. The Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Act 2009 gives effect to certain provisions of the deed of settlement signed by Taranaki Whānui ki Te Upoko o Te Ika, the Port Nicholson Block Settlement Trust and the Crown on 19 August 2008, and an amendment deed signed in December 2018. The [deeds and other relevant documents](#) are available on the NZ Government Treaty settlement website.
27. The Ngāti Toa Rangatira Claims Settlement Act 2014 gives effect to certain provisions of the deed of settlement signed by Ngāti Toa Rangatira, Trustee of the Toa Rangatira Trust and the Crown on 7 December 2012 and an amendment deed signed in November 2013. The [deeds and associated documents](#) are available on the NZ Government Treaty settlement website.

## Relevant Treaty settlement entities

28. We have identified two relevant Treaty settlement entities for the project. These are listed in paragraph 5 and further explanation is provided below.

### ***Post-settlement governance entities***

29. Under the FTCA, a Treaty settlement entity includes a post-settlement governance entity, 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.
30. The respective post-settlement governance entities associated with the Treaty settlement Acts noted above are:
  - a. Port Nicholson Settlement Block Trust
  - b. Toa Rangatira Trust. Te Rūnanga o Toa Rangatira Incorporated is the trustee of this trust.

### ***Other bodies recognised or established under a Treaty settlement Act***

31. 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.
32. No such entities established by the above-named Treaty settlement Acts are relevant to the proposed project.

## Relevant principles and provisions of the Treaty settlements

### Taranaki Whānui and Ngāti Toa Treaty settlements

#### ***Crown acknowledgements and apologies***

33. The Crown offers acknowledgements and an apology as part of Treaty settlement redress to atone for historical wrongs, restore honour, and begin the process of healing.

34. The Taranaki Whānui ki Te Upoko o Te Ika Deed of Settlement contains the Crown's apology to Taranaki Whānui and their ancestors and descendants. This apology was delivered publicly by the then prime minister, Rt. Hon John Key, on 30 July 2009. It includes the following statements:

*The Crown is deeply sorry that it has not always lived up to its Treaty of Waitangi obligations and that it has breached the Treaty of Waitangi, and its principles, in its dealings with Taranaki Whānui.*

*The Crown profoundly regrets that over the generations to the present day its breaches of the Treaty of Waitangi have significantly impacted on your social and traditional structures, your autonomy, your ability to exercise your customary rights and responsibilities, your capacity for economic and social development and your physical, cultural and spiritual well-being.*

*Through this settlement the Crown is seeking to atone for its past wrongs towards you, restore its honour which has been tarnished by its actions, and to begin the process of healing. It is the Crown's hope that this apology will mark a pivotal point in the rebuilding and enhancement of our relationship with you. We look forward to building a relationship of mutual trust and co-operation that can flourish in the future.*

35. The Crown apology to Ngāti Toa expresses (among other things) deep regret for the cumulative effect of Crown actions and omissions, which severely damaged the iwi's social and traditional tribal structures, their autonomy and ability to exercise customary rights and responsibilities, their capacity for economic and social development and their physical, cultural and spiritual well-being.
36. The Crown says it hopes that the apology and settlement will mark the beginning of a new, positive and enduring relationship with Ngāti Toa Rangatira founded on mutual trust and co-operation and respect for Te Tiriti o Waitangi / the Treaty of Waitangi and its principles.
37. Respect for the views of each iwi on resource management matters and enabling their meaningful participation as Treaty partners in decision-making relating to the management and use of natural and physical resources within their areas of interest are important ways in which the Crown can give effect to these acknowledgements and uphold its relationship with the iwi.

#### **Other redress**

38. No other cultural or commercial redress provided under the two settlements would be directly affected by the project. Neither of the settlements create new co-governance or co-management processes that would affect decision-making under the RMA.
39. As a general principle, an absence of specific settlement redress does not indicate the absence of an iwi's cultural association with ancestral lands, sites, wāhi tapu or other taonga within an area. We also note that 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 settlement redress - 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. Local tangata whenua and their representatives would be best placed to advise on such matters in the first instance.

## **Current negotiation mandates and settlement negotiations**

40. Section 17(3)(d) of the FTCA requires this report to identify any recognised negotiation mandates for, or current negotiations for, Treaty settlements that relate to the project area.

41. Ngāti Tama (Wellington) are part of the Taranaki Whānui settlement but have the option to have their historical claims settled by another group holding a Crown-recognised mandate. Ngāti Tama Mandate Ltd (NTML) was established in 2009 to represent Ngāti Tama (Wellington) iwi members wishing to engage in direct negotiations with the Crown and had their mandate to negotiate a Treaty settlement recognised by the Crown in 2013.
42. NTML signed Terms of Negotiation with the Crown in 2014, however the process stalled before achieving any significant negotiation milestone. According to information available online, this company was dissolved on 9 September 2016. Ngāti Tama (Wellington) would need to renew its mandate before re-entering Treaty settlement negotiations.
43. There are no current Treaty settlement negotiations affecting the project site or surrounding area.

## **Details in this report affect certain provisions of the FTCA**

### **Notices of referral decisions**

44. 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.
45. 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.
46. The relevant iwi authorities and Treaty settlement entities for receipt of the notice are identified in paragraph 5; contact details are in Attachment 2.
47. As explained in paragraphs 21 and 22, we have identified the Muaūpoko Tribal Authority Incorporated as an iwi authority which may have an interest in the project. We recommend you consider Muaūpoko Tribal Authority Incorporated as such and provide it with a copy of the notice of decision if you decide to refer the project.
48. There are no relevant joint management agreements or Mana Whakahono ā Rohe to consider.
49. The Minister for Māori Crown Relations: Te Arawhiti has requested that you provide the Wellington Tenths Trust with a copy of the referral application and notice of decision, on the basis that the applicant has engaged with this group in relation to the application. We note that this trust is an Ahu Whenua Trust under Te Ture Whenua Maori Act 1993 and represents certain groups who are also more generally represented by the identified relevant iwi authority, the Port Nicholson Block Settlement Trust. Contact details (if you agree to the Minister's request) are in Attachment 2.
50. The Minister for Treaty of Waitangi Negotiations has requested that you forward the application and notice of decision to Te Ātiawa o te Ika a Māui Pōtiki Trust and Ngāti Toa Rangatira, who have applications under MACAA for customary marine title over Wellington Harbour, as identified in Attachment 5 of this report. Contact details for Te Ātiawa o te Ika a Māui Pōtiki Trust and Ngāti Toa Rangatira MACAA applicants, should you agree to the Minister's request, are in Attachment 5.

### **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 clauses 3(6)(a) – 3(6)(e) of Schedule 5 of the FTCA, which include matters unique to any relevant Treaty settlement Act.
53. Relevant iwi authorities for the project are identified in paragraph 5.

### **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
  - c. any applicant group under the MACAA identified in the report obtained under section 17(1).
55. The relevant iwi authorities and Treaty settlement entities for the proposed project are listed in paragraph 5.
56. 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 for Māori Crown Relations – Te Arawhiti). The groups who have applications under the MACAA in the common marine and coastal area of Wellington Harbour adjacent to the project site are listed in Attachment 5. These groups have been included in this report because of their potential interest in effects arising from the project, as noted in paragraph 10.
57. The Minister for Treaty of Waitangi Negotiations has requested that you direct a panel to invite comment from two MACAA applicants, Te Ātiawa o te Ika a Māui Pōtiki Trust and Ngāti Toa Rangatira, should you decide to refer the project. The requirement for a panel to seek comment from these parties is provided by clause 17(6)(f) of Schedule 6 of the FTCA pursuant to their identification in this report as applicant groups under the MACAA.
58. A panel may also invite comments from any other person it considers appropriate. We have identified that Muaūpoko Tribal Authority Incorporated may have an interest in the project area, and we recommend that you direct a panel to seek comment from this party if you decide to refer the project.
59. The Minister for Māori Crown Relations: Te Arawhiti has requested that you direct a panel to invite comments from the Wellington Tenth Trust, for the reason noted above.

### **Provision of cultural impact assessment**

60. Any resource consent application that is submitted to 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.<sup>2</sup> The Environmental Protection Authority (which 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.

61. Where there is more than one relevant iwi authority, the project applicant will need 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 to defer to another iwi in respect of the matter. The relevant iwi authorities for the Jervois Quay Project are listed in paragraph 5.
62. It would be advisable for the Environmental Protection Authority to ensure that any cultural impact assessment provided by a group other than the iwi authorities listed in paragraph 5 of this report satisfactorily represents the interests of the relevant iwi authority, before confirming any resource consent applications for the project as complete.

---

<sup>2</sup> Clause 9(5) of Schedule 6 of the FTCA.

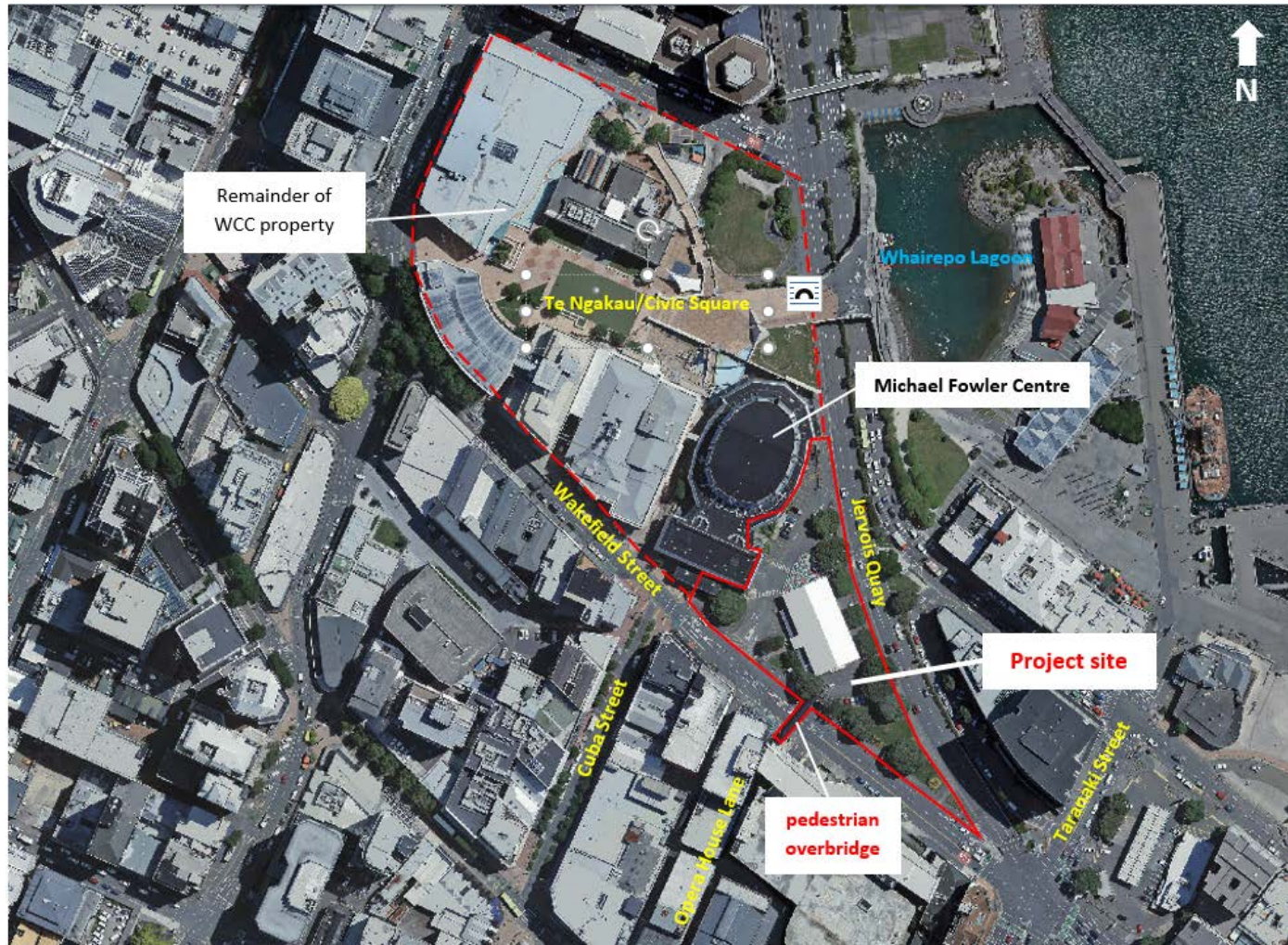
## Attachment 1 – Location



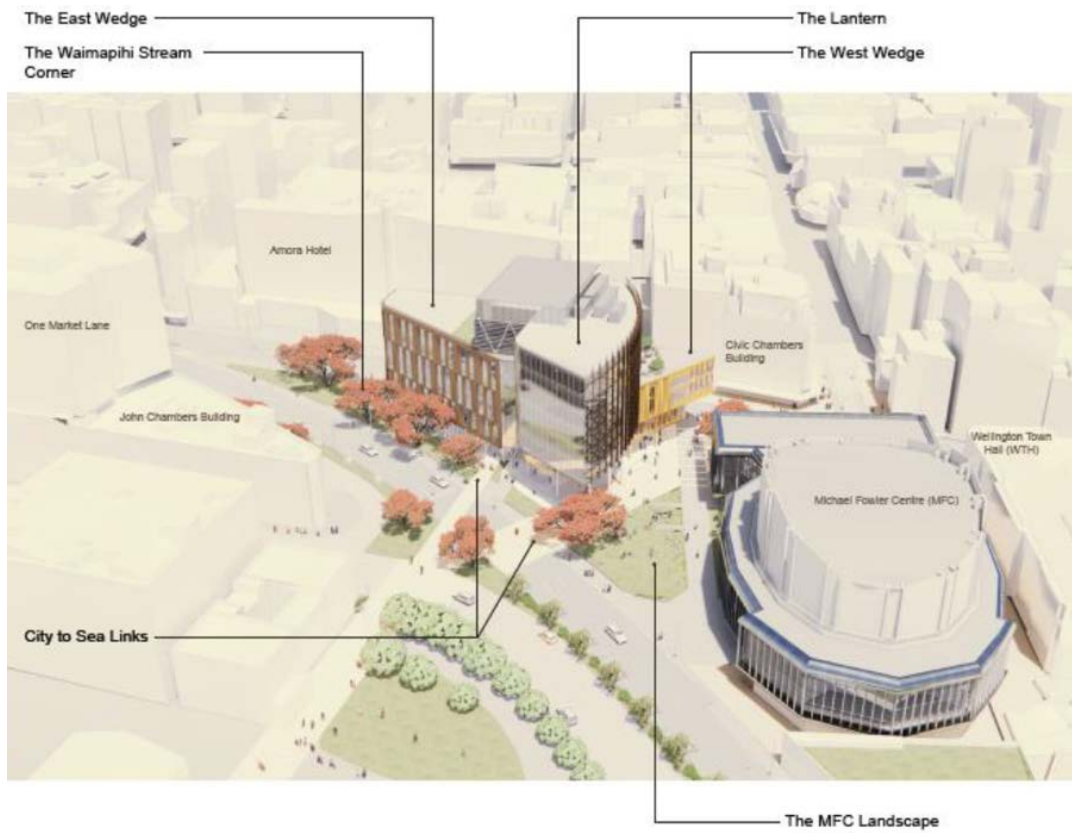
## Attachment 2 – Contact information

Iwi/hapū	Representative body	Contact details	Relevant RMA Iwi authority	Relevant Treaty settlement entity	Other	Contact person	Copies to
Ngāti Toa Rangatira	Te Rūnanga o Toa Rangatira Incorporated	PO Box 50355 Porirua 5240	Represents Ngāti Toa Rangatira as an iwi authority for RMA purposes	Trustee of post-settlement governance entity under Ngāti Toa Rangatira Claims Settlement Act 2014		CEO: Helmut Modlik s 9(2)(a)	RMA Contact: Debbie Rene <a href="mailto:resourcemanagement@ngatittoa.iwi.nz">resourcemanagement@ngatittoa.iwi.nz</a>
	Toa Rangatira Trust			Post-settlement governance entity under Ngāti Toa Rangatira Claims Settlement Act 2014			
Taranaki Whānui ki te Upoko o te Ika	Port Nicholson Block Settlement Trust	PO Box 12-164 Wellington 6144	Represents Taranaki Whānui as an iwi authority for RMA purposes	Post-settlement governance entity under Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Act 2009		GM   Kaiwhakahaere Pakihi: Kirsty Tamanui <a href="mailto:reception@portnicholson.org.nz">reception@portnicholson.org.nz</a>	
Muaūpoko	Muaūpoko Tribal Authority Incorporated	PO Box 1080 Levin 5510			Iwi authority which may have an interest in the matter	CEO: Di Rump <a href="mailto:ceo@muaupoko.iwi.nz">ceo@muaupoko.iwi.nz</a>	
descendants of Te Ātiawa, Ngāti Tama, Taranaki and Ngāti Ruanui tupuna living in the rohe in 1839	The Wellington Tenths Trust	PO Box 39294 Lower Hutt 5045 Ph: 0508 445 645 or 04 473 2502			Ahu Whenua Trust constituted under Section 244 of Te Ture Whenua Maori Act 1993	<a href="mailto:info@tekau.maori.nz">info@tekau.maori.nz</a>	

### Attachment 3 – Project site details



## Attachment 4 – Project concept



View from northern-most point of project site, looking south-west (Jervois Quay on left, Michael Fowler Centre on right)



**East Wedge, view from the corner of Taranaki and Wakefield Street**



**View looking north-east from corner of Cuba and Wakefield Street**

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

No	Application No	Applicant	Contact details	Track	Application status
1	MAC-01-11-014	Te Atiawa ki te Upoko o te Ika a Māui Pōtiki Trust	teri@atiawa.co.nz	Crown engagement	Active
	CIV-2017-485-260			High Court	Active
2	MAC-01-12-021	Ngati Toa Rangatira	m.rei@ngatitooa.iwi.nz takapuwahia@ngatitooa.iwi.nz	Crown engagement	Active

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