

## Application 2021-061 Kaiwharawhara Wellington Ferry Terminal Redevelopment (KiwiRail Holdings Limited)

To:	Required action:
Hon David Parker, Minister for the Environment	Consider this report prior to making a decision jointly with the Minister of Conservation under section 24 of the FTCA
Hon Kiritapu Allan, Minister of Conservation	Consider this report prior to making a decision jointly with the Minister for the Environment under section 24 of the FTCA
<b>Date submitted:</b> 25 November 2021	

### Ministry for the Environment contacts

Position	Name	Cell Phone	1 <sup>st</sup> Contact
Principal Author	Pip Lee		
Manager	Stephanie Frame	s9(2)(a)	✓
Director	Sara Clarke	s9(2)(a)	

### Introduction

1. The Ministry for the Environment has prepared this report in consultation with the Office for Māori Crown Relations – Te Arawhiti and in accordance with section 17 of the Covid-19 Recovery (Fast-track Consenting) Act 2020 (the FTCA).
2. To satisfy obligations under section 6 of the FTCA, you must both consider this report before you make any decision under section 24 of the FTCA to accept the application to refer the Kaiwharawhara Wellington Ferry Terminal Redevelopment project to an expert consenting panel (a panel).

### Proposed project

3. KiwiRail Holdings Limited (KiwiRail) proposes to redevelop the existing Interislander Ferry Terminal at Kaiwharawhara, Wellington to accommodate larger ships and forecasted increases in rail, freight, vehicle and passenger volumes. A location map is in Attachment 1.
4. Parts of the project will occur in the coastal marine area (CMA).

## 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 (3)	Port Nicholson Block Settlement Trust Te Rūnanga o Toa Rangatira Incorporated Muaūpoko Tribal Authority Incorporated  <i>Contact details are in Attachment 2</i>
s17(3)(b)	Relevant Treaty settlements (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 (3)	Port Nicholson Block Settlement Trust Toa Rangatira Trust Te Atiawa ki te Upoko o te Ika a Māui Pōtiki Trust  <i>Contact details are in Attachment 2</i>
s17(3)(c)	Relevant principles and provisions of the Treaty settlements	<i>See below</i>
s17(3)(d)	Negotiation mandates recognised by the Crown	Ngāti Tama ki Te Upoko o Te Ika
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

## Supporting material

### Project site

- The project site is located at the northern end of Wellington’s commercial port area within Te Whanganui-a-Tara (Wellington Harbour). It is part of the heavily modified coastal environment at the western edge of the harbour. The site covers more than 30 hectares, and as shown in Attachment 3, includes dry land and land in the CMA.
- The majority of the site lying above mean high water springs is owned and operated by CentrePort, with the remainder mostly Crown land gazetted for railway purposes. The North Island Main Trunk Railway borders the site’s northern boundary, and the Wellington Urban Motorway crosses above the western part of the project footprint. Some pillars that support the motorway overpass

structure are founded in the project site and therefore have the potential to be affected by some project works.

8. The project site lies within the areas of interest for Taranaki Whānui o Te Upoko o Te Ika (Taranaki Whānui), Ngāti Toa Rangatira (Ngāti Toa), Te Atiawa, Muaūpoko and Ngāti Tama ki Te Upoko o Te Ika.

## **Project details**

9. KiwiRail proposes to do the following work in the CMA:
  - a. construct and operate a new wharf, approximately 250 metres long and approximately 14 metres wide, to the east of the existing wharf
  - b. construct a seawall and scour protection on the seabed in the vicinity of the new wharf
  - c. construct a rock revetment in the new wharf area and upgrade an existing revetment at Kaiwharawhara Point
  - d. construct a piled groyne structure to the north-east of the new wharf
  - e. construct and operate a two-level linkspan for rail and vehicle access to berthed ferries, and an access ramp to the upper linkspan level
  - f. construct and operate an elevated passenger walkway for access to berthed ferries from the new terminal building
  - g. upgrade the surface of existing rail and vehicle bridges over the Kaiwharawhara Stream
  - h. reclaim land and construct a rock revetment within the CMA to the north-east of Kaiwharawhara Point, to create an area to be used as a rail and vehicle marshalling yard
  - i. works on the bed of Kaiwharawhara Stream at the river mouth and estuary, and along the coastal edge of Kaiwharawhara Point, to enhance ecological values.
10. The project also includes the following work on land above mean high water springs:
  - a. ground improvement earthworks across the site, including under the sites for the new terminal building and access ramps, and behind the new seawall
  - b. rail track upgrades including alterations to the existing rail layout and installation of new infrastructure on the new rail marshalling yard at Kaiwharawhara Point
  - c. upgrade of infrastructure within existing vehicle marshalling areas and installation of new infrastructure on the new marshalling yard at Kaiwharawhara Point
  - d. upgrade of existing road access from Aotea Quay, to provide multi-modal access to the ferry terminal
  - e. demolition of structures including existing arrivals, departures and ancillary buildings, walkways and linkspans
  - f. construction and use of a new terminal building, and buildings for ancillary activities such as check-in kiosks, car rental facilities and small-scale retail activities
  - g. construction of temporary laydown areas for use during project construction
  - h. grading and resurfacing of the site

- i. installation of utilities (three-waters services, power and lighting) to support site operations.
11. The project is part of KiwiRail's Inter-Island Resilient Connection (iReX) Programme that is focused on ensuring continued delivery of freight and services across Cook Strait and integrating this with existing rail corridors and state highway networks. It also represents Stage 1 of a Multi-User Ferry Precinct (MUFP) masterplan under development by the Future Ports Forum, intended to provide a longer-term framework for relocating all Cook Strait ferry services to one purpose-built precinct at Kaiwharawhara.
12. KiwiRail intends to construct the project in a number of stages over a four-year period, during which the existing ferry terminal will continue to operate. The existing wharf at Kaiwharawhara will be retained as a component of the MUFP.

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

13. Parts of the proposed project will occur in the CMA, so, in accordance with section 16(1) of the FTCA, decisions relating to referral of the project to a panel must be made jointly by the Minister for the Environment and the Minister of Conservation.
14. Section 17(1) of the FTCA requires you both to consider this report before making a decision under section 24 of the Act to refer the project to a panel, in order to satisfy your joint obligations under section 6 (Treaty of Waitangi) of the FTCA.
15. Section 17(3)(e) of the FTCA requires this report to identify any court orders granted under the Marine and Coastal Area (Takutai Moana) Act 2011 (MACAA) or another Act which recognise, in relation to the project area, customary marine title or protected customary rights. We confirm that currently there are no such court orders relevant to the project area to consider in your referral decision.<sup>1</sup>

## **Iwi and iwi authorities**

### **Information sources**

16. 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.
17. The FTCA does not define iwi authority, so under section 7(2) of the FTCA, it has the same meaning as in the Resource Management Act 1991 (RMA): the authority which represents an iwi and which is recognised by that iwi as having authority to do so.
18. 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

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<sup>1</sup> To date three orders recognising customary interests have been made under the Marine and Coastal Area (Takutai Moana) Act 2011, and one under the Ngā Rohe Moana o Ngā Hapū o Ngāti Porou Act 2019. These do not affect the proposed project area.

- c. Ministry for the Environment
- d. Wellington City Council and Greater Wellington Regional Council – the relevant local authorities for the project.

### Iwi authorities relevant to project

19. Three iwi authorities, identified via the TPK viewer and TKM website, are relevant to the area in which the project site lies:
- a. Te Rūnanga o Toa Rangatira Incorporated, representing Ngāti Toa
  - b. Port Nicholson Block Settlement Trust, representing Taranaki Whānui
  - c. Muaūpoko Tribal Authority Incorporated, representing Muaūpoko.

### Treaty settlements and Treaty settlement entities

20. Information from the first two sources listed in paragraph 18, 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.

### 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. Taranaki Whānui
  - b. Ngāti Toa.
23. 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, 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.
24. The Ngāti Toa Rangatira Claims Settlement Act 2014 gives effect to certain provisions of the deed of settlement signed on 7 December 2012 and amendment deed signed in November 2013. The [deeds and associated documents](#) are available on the NZ Government Treaty settlement website.
25. For the purposes of the FTCA, Treaty settlements also include the Māori Commercial Aquaculture Claims Settlement Act 2004. This Act is primarily concerned with the allocation of space in the coastal marine area to Te Ohu Kaimoana Trustee Limited for distribution to iwi aquaculture organisations (IAOs)<sup>2</sup> for commercial aquacultural use. The proposed project site does not include any space that might be used for such purposes. This settlement Act is therefore unlikely to be of any direct relevance to the project, although IAOs recognised under this legislation may still have an interest in the project site and how it is managed.

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<sup>2</sup> As recognised under section 33 of the Māori Commercial Aquaculture Claims Settlement Act 2004.

## 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. 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

28. A Treaty settlement entity is also defined for the purposes of the FTCA as including a board, trust, committee, authority, or other body, recognised in, or established under a Treaty settlement Act.
29. This includes Te Atiawa ki te Upoko o te Ika a Māui Pōtiki Trust, which is a IAO under the Māori Commercial Aquaculture Claims Settlement Act 2004. According to information on TKM, the Trust deals only with RMA issues associated with fresh water and marine environments.
30. None of the entities in this category established under the two settlement Acts noted in paragraphs 23 and 24 are relevant to the project site.

## Relevant principles and provisions of the Treaty settlements

### Taranaki Whānui and Ngāti Toa Treaty settlements

#### Crown acknowledgements and apologies

31. The Crown offers an apology as part of Treaty settlement redress in order to atone for historical wrongs, restore its honour, and begin the process of healing.
32. 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.*

33. 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.

34. 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.
35. 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.

### **Cultural redress**

36. The Taranaki Whānui deed of settlement contains statements of the traditional, historical, cultural and spiritual associations of Taranaki Whānui with a number of particular areas and sites, including Kaiwharawhara Stream and Wellington Harbour.
37. Excerpts from these statements include:

*The Kaiwharawhara Stream has had a close association with Taranaki Whānui ki Te Upoko o Te Ika from its origins in Otari to its outlet to Wellington Harbour as one of the key source streams flowing to the harbour. Kaiwharawhara Pā, which was the early stronghold of Taringa Kuri (Te Kaeaea) and formed a gateway into Wellington Town, was located on the side of the Kaiwharawhara Stream at its mouth.*

*The harbour was one of the highways used by Taranaki Whānui ki Te Upoko o Te Ika. At the time of pākehā settlement in 1839, it was crowded with waka of all types and was used for transport, fishing and sometimes warfare.*

*The mouths of the streams held their special resources such as the inanga (whitebait), piharau (lamprey) kahawai and tuna (eel). The freshwater sources of the harbour were well known and highly prized not only by Taranaki Whānui ki Te Upoko o Te Ika, but also by the European traders who would fill water barrels while their sailing ships were anchored in the harbour.*

*The bed of the harbour is associated with the pā including ... Kaiwharawhara, Ngauranga and others which were around the harbour just prior to colonisation.*

38. The Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Act 2009 contains the Crown's acknowledgement of these statements of association. Any member of Taranaki Whānui can cite the statutory acknowledgements as evidence of their association with the area. Relevant consent authorities, the Environment Court and Heritage New Zealand Pouhere Taonga must have regard to them, and consent authorities must forward summaries of resource consent applications affecting the statutory area to the Port Nicholson Block Settlement Trust<sup>3</sup>.
39. The Ngāti Toa deed of settlement contains statements of coastal values, including in relation to the high cultural, historical, spiritual and traditional significance of Wellington Harbour to Ngāti Toa. The corresponding settlement legislation contains the Crown's acknowledgement of these statements.

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<sup>3</sup> Only for a period of 20 years from the effective date of the Port Nicholson Block (Taranaki Whānui ki Te Upoko o Te Ika) Claims Settlement Act 2009. The requirement to forward resource consent applications will cease on 5 August 2029.

40. Any member of Ngāti Toa can cite the statutory acknowledgements as evidence of their association with the area. Relevant consent authorities, the Environment Court and Heritage New Zealand Pouhere Taonga must have regard to them, and consent authorities must forward summaries of resource consent applications affecting the statutory area to the Toa Rangatira Trust<sup>4</sup>.
41. Importantly however, cultural associations with ancestral lands, water, sites, wāhi tapu, and other taonga – regardless of whether or not they are identified in a Treaty settlement or 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.

#### **Other redress**

42. 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.

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

43. Ngāti Tama ki Te Upoko o Te Ika 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 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.
44. Terms of Negotiation were signed 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 ki Te Upoko o Te Ika would need to renew its mandate before re-entering Treaty settlement negotiations with the Crown.

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

#### **Notices of referral decision**

45. 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.
46. 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.

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<sup>4</sup> Only for a period of 20 years from the effective date of the Ngāti Toa Rangatira Claims Settlement Act 2014. The requirement to forward resource consent applications will cease on 23 April 2034.



47. The relevant iwi authorities and Treaty settlement entities for receipt of the notice are identified in paragraph 5; contact details are in Attachment 2.
48. There are no relevant joint management agreements or Mana Whakahono ā Rohe to consider.

### **Expert consenting panel membership**

49. 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.
50. 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.
51. Relevant iwi authorities for the project are identified in paragraph 5 and Attachment 2.

### **Panel invitations to comment**

52. 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 MACCA identified in the report obtained under section 17(1).
53. The relevant iwi authorities and Treaty settlement entities for the proposed project are listed in paragraph 5; contact details are in Attachment 2.
54. A MACAA applicant group means one or more iwi, hapū, or whānau groups that seek recognition under Part 4 of the MACAA of their protected customary rights or customary marine title by either a recognition order granted by the High Court; or an agreement negotiated with the Crown (through The Office of Māori Crown Relations – Te Arawhiti). The two groups who have applications under the MACAA in the common marine and coastal area that includes the project site are listed in Attachment 4.
55. A panel may also invite comments from any other person it considers appropriate. We consider it would be appropriate for a panel invite comment from Ngāti Tama ki Te Upoko o Te Ika, as the project lies within their area of interest and the applicant has advised that they have expressed a desire to be consulted on the project.

### **Provision of Cultural Impact Assessment**

56. Any resource consent application or notice of requirement 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>5</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.

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<sup>5</sup> Clause 9(5), 13(1)(k) and 13(1)(l) of Schedule 6 of the FTCA.

57. Where there is more than one relevant iwi authority, it 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 defer to another iwi in respect of the matter. The relevant iwi authorities for the Kaiwharawhara Wellington Ferry Terminal Redevelopment project are listed in paragraph 5.

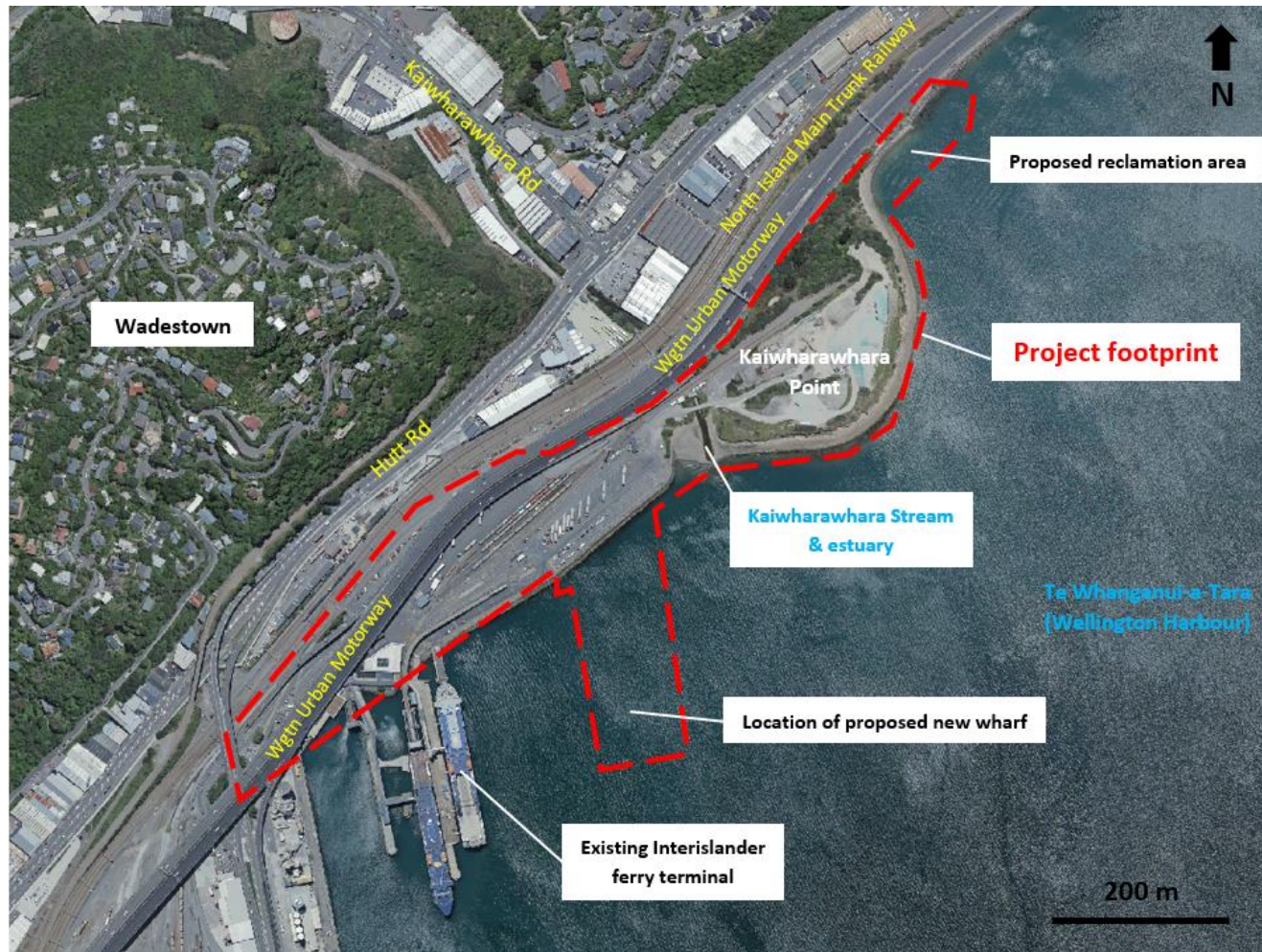
## Attachment 1 - Location



## Attachment 2 - Contact information

Iwi/hapū	Representative body	Contact details	RMA Iwi authority	Treaty settlement entity	Other	Contact person	Copies to
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>	
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 s9(2)(a)	RMA Contact: Naomi Solomon s9(2)(a)
	Toa Rangatira Trust			Post-settlement governance entity under Ngāti Toa Rangatira Claims Settlement Act 2014			
Te Atiawa	Te Atiawa ki te Upoko o te Ika a Māui Pōtiki Trust	PO Box 13368 Johnsonville Wellington 6440		Iwi Aquaculture Organisation in the Māori Commercial Aquaculture Claims Settlement Act 2004	The Trust advises (on TKM) that it deals only with RMA issues associated with fresh water and marine environments	Chairperson: Peter Reweti s9(2)(a)	
Muaūpoko	Muaūpoko Tribal Authority Incorporated	PO Box 1080 Levin 5510	Represents Muaūpoko as an iwi authority for RMA purposes			CEO: Di Rump <a href="mailto:admin@muaupoko.iwi.nz">admin@muaupoko.iwi.nz</a>	
Ngāti Tama ki Te Upoko o Te Ika						Liz Kelly s9(2)(a)	

## Attachment 3 – Project site details



## Attachment 4 - 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	s9(2)(a)	Crown engagement	Active
	CIV-2017-485-260			High Court	Active
2	MAC-01-12-021	Ngati Toa Rangatira	s9(2)(a) takapuwahia@ngatitooa.iwi.nz	Crown engagement	Active

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