

## Application 2021-049 Riverbend Residential Development (Tawanui Developments Ltd, K3 Property Ltd & Mana Ahuriri Holdings Ltd)

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 <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 consider this report before you make any decision under section 24 of the FTCA to accept the application to refer the Riverbend Residential Development project to an expert consenting panel (a panel).

### Proposed project

3. The project is to undertake a staged subdivision and construct a housing development on a 22 hectare greenfield site in southern Napier. A location map is in Attachment 1.
4. The development will include up to 670 residential units (approximately), space for commercial activities, open space and associated infrastructure.

## 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	Heretaunga Tamatea Settlement Trust Mana Ahuriri Trust Ngāti Kahungunu Iwi Incorporated <i>Contact details are in Attachment 2</i>
s17(3)(b)	Relevant Treaty settlements	Heretaunga Tamatea Claims Settlement Act 2018 Ahuriri Hapū Deed of Settlement signed 2 November 2016 (Ahuriri Hapū Claims Settlement Bill – second reading 29 June 2021)
s17(3)(a)	Relevant Treaty settlement entities	Heretaunga Tamatea Settlement Trust Mana Ahuriri Trust <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	None
s17(3)(d)	Current Treaty settlement negotiations	None
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

- The project site covers 22.27 hectares of predominantly rural land at the southern limit of suburban development in the Napier suburbs of Maraenui and Onekawa. It is bounded by Waterworth Avenue, Maraenui Park and Pukemokimoki Marae to the north, Riverbend Road to the east, the Cross Country Drain to the south and the Beatson Drain to the west – see Attachment 3.
- The applicant advises that much of the land is currently cropped and has historically been used for rural and horticultural activities; a small orchard remains at the eastern end of the site. Built development is limited to three homes and ancillary buildings, also at the eastern end of the site.
- Maraenui Park is a recreation reserve owned by Napier City Council. Covering approximately five hectares, it accommodates the Maraenui Rugby and Sports Association clubrooms, a parking area and a netball court.

9. Pukemokimoki Marae is a mataa waka marae (urban marae) that was developed in response to the needs of the communities in Maraenui, Onekawa, Pirimai and Napier South that had grown from migration of people from rural areas during the 1960s onwards. The marae was opened in 2007. It is managed by the Pukemokimoki Marae Trust, whose role is to set future strategies and develop the systems to support the marae long term. The trustees include a tangata whenua representative, a local councillor (representing the Napier City Council's long-term investment) and community representatives with a specific interest in the marae.<sup>1</sup>
10. The project site lies within the areas of interest of Ngāti Kahungunu iwi, Ngāti Kahungunu ki Heretaunga Tamatea<sup>2</sup> and Ahuriri Hapū<sup>3</sup>. In addition to Pukemokimoki (urban/community) marae, two iwi-affiliated marae are shown on Attachment 1:
  - a. Wharerangi Marae, in Puketapu, approximately 12 km west of Napier. Its principal hapū are Ngāi Tāwhao and Ngāti Hinepare of Ngāti Kahungunu iwi.
  - b. Waiohiki Marae is located in Waiohiki, south of Taradale. Its principal hapū is Ngāti Pārau of Ngāti Kahungunu iwi.

## Project details

11. A concept layout of the proposed development is included in Attachment 4. It will provide:
  - a. a potential addition of 1.5 hectares to the adjacent Maraenui Park, if sought by Napier City Council (this has yet to be confirmed)
  - b. up to 606 residential lots, or 648 lots if the proposed Maraenui Park expansion does not occur.
12. Project activities will include:
  - a. construction of up to 670 residential units, with different housing typologies, ranging from single level to three storeys in height
  - b. provision for up to 4500 square metres of commercial floorspace on the ground floor of some of the residential units, for retail, childcare and other commercial activities and facilities
  - c. construction of roading and three-waters infrastructure for the development
  - d. development of a series of small parks and open spaces throughout the site.

## Statutory matters relating to this report

13. No parts of the proposed project will occur in the coastal marine area, meaning:

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<sup>1</sup> <https://www.pukemokimoki.co.nz/about>

<sup>2</sup> Heretaunga Tamatea and its hapū is one of six large natural groupings negotiating the settlement of the historical Treaty of Waitangi claims of Ngāti Kahungunu. Heretaunga Tamatea's area of interest extends from the Tūtaekurī River in the north following the ridge of the Ruahine Range south to Takapau and turns seawards to Pōrangahau in the south.

<sup>3</sup> Ahuriri Hapū are a group of seven Ngāti Kahungunu hapū who joined together for Treaty of Waitangi settlement negotiations: Ngāti Hinepare, Ngāti Māhu, Ngāti Matepū, Ngāti Paarau (which includes Ngāi Tahu Ahi), Ngāi Tāwhao, Ngāti Tū and Ngāi Te Ruruku.

- 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.
14. There are therefore no court orders granted under the MACAA or another Act for you to consider in your referral decision for this project.<sup>4</sup>

## **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 Resource Management Act 1991 (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. Napier City Council and Hawkes Bay Regional Council, as the relevant local authorities.

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

18. Three iwi authorities, identified via the TPK viewer and TKM website, are relevant to the area in which the proposed project site lies:
  - a. Heretaunga Tamatea Settlement Trust, representing Heretaunga Tamatea
  - b. Mana Ahuriri Trust, representing Ahuriri Hapū
  - c. Ngāti Kahungunu Iwi Incorporated, representing Ngāti Kahungunu iwi.
19. Napier City Council and Hawkes Bay Regional Council both identified Te Taiwhenua o Te Whanganui a Orotū as an iwi authority. We note that according to information on TKM, Te Taiwhenua o Te Whanganui-a-Orotū Incorporated represents Te Whanganui-a-Orotū hapū for RMA purposes. The project area lies outside their area of interest as depicted on the map on TKM.
20. Napier City Council also identified Maungaharuru-Tangitū Trust (which represents Maungaharuru Tangitū Hapū) as a relevant iwi authority. The Maungaharuru Tangitū area of interest is included

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<sup>4</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.

in the deed of settlement signed by Maungaharuru Tangitū Hapū, the Maungaharuru Tangitū Trust and the Crown on 25 May 2013. It lies to the north of Napier and does not contain the project site.<sup>5</sup>

## Treaty settlements and Treaty settlement entities

21. 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.

### Treaty settlements relating to the project area

22. 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.

23. The project site falls within the area of interest covered by Treaty settlements with the following iwi/groups:

- a. Heretaunga Tamatea
- b. Ahuriri Hapū.

24. The [Heretaunga Tamatea Claims Settlement Act 2018](#) gave effect to certain provisions of the deed of settlement signed by Heretaunga Tamatea and the Crown on 26 September 2015, and amendment deeds signed in February and June 2017. [Relevant settlement documents](#) can be accessed on the NZ Government Treaty settlements website.

25. Ahuriri Hapū and the Crown signed a deed of settlement on 2 November 2016. Further deeds to amend the settlement were signed in February and June 2017. [A settlement summary, the deeds and associated documents](#) can be accessed on the NZ Government Treaty settlements website. The Ahuriri Hapū Claims Settlement Bill passed its second reading on 29 June 2021 and is scheduled to be enacted within the next few months.

### 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. Heretaunga Settlement Trust is the post-settlement governance entity under the Heretaunga Tamatea Claims Settlement Act 2018.

28. Post-settlement governance entities may be established exist ahead of associated finalised Treaty settlements. Mana Ahuriri Trust has been established as the post-settlement governance entity for the Treaty settlement with Ahuriri Hapū.

#### 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.

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<sup>5</sup> See Pt 1 of the [Maungaharuru-Tangitū Hapū Deed of Settlement Attachments 25 May 2013](#)

30. No such entity established by the Heretaunga Tamatea Claims Settlement Act (or to be established with the enactment of the Ahuriri Hapū Claims Settlement Bill) are relevant to the proposed project.

## **Relevant principles and provisions of the Treaty settlements**

### **Heretaunga Tamatea and Ahuriri Hapū 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. As part of the apology offered by the Crown to the tīpuna, hapū, whānau, and mokopuna of Heretaunga Tamatea in the Heretaunga Tamatea Claims Settlement Act 2018, the Crown states it is profoundly sorry that it has repeatedly failed to uphold the partnership envisaged by the Treaty and sought by the tīpuna of Heretaunga Tamatea since the 1840s. The Crown unreservedly apologises for its repeated breaches of the Treaty of Waitangi, and for ‘ngā mamae me ngā tūkino’, or the pain and damage, that these breaches have caused to generations of Heretaunga Tamatea.
33. The Crown also says to Heretaunga Tamatea that it is deeply sorry that its breaches of the Treaty of Waitangi ‘have severely limited your economic and social opportunities, eroded your tribal structures and undermined your well-being, in stark contrast to the benefits of partnership that the Crown led you to expect in the 1850s’.
34. Through the settlement and the apology, the Crown states it hopes to ease the burden of grievance and sorrow that the whānau and hapū of Heretaunga Tamatea have carried for generations. The Crown looks forward to restoring a relationship with the hapū of Heretaunga Tamatea that is built on trust, co-operation, and respect for each other and the Treaty of Waitangi and its principles.
35. In its apology to Ahuriri Hapū, their tīpuna and mokopuna in the Ahuriri Hapū Deed of Settlement, the Crown states (among other things) that it profoundly regrets its many failures to live up to its obligations under the Treaty of Waitangi in its dealings with Ahuriri Hapū, and unreservedly apologises for the immense damage caused by its breaches of the Treaty of Waitangi and its principles.
36. The Crown is deeply remorseful for the prejudice it created by purchasing so much Ahuriri Hapū land in the 1850s, and for using divisive purchasing methods that involved Ahuriri Hapū in conflict. The Crown deeply regrets that many Ahuriri Hapū were dispossessed by the operation of the 10-owner rule. The Crown solemnly apologises for its policies, acts, and omissions that have left Ahuriri Hapū virtually landless, and for the severe impacts the loss of ancestral lands and resources has had on the capacity of Ahuriri Hapū for economic and social development, and physical, cultural, and spiritual well-being.
37. The Crown also states that through this settlement and this apology it seeks to atone for its past wrongs and begin the process of healing. The Crown looks forward to building a new, positive, and enduring relationship with Ahuriri Hapū that fulfils the expectations of their tīpuna and mokopuna, a relationship based on mutual trust, partnership, and respect for the Treaty of Waitangi and its principles.
38. Respect for the views of both Heretaunga Tamatea and Ahuriri hapū on resource management matters and enabling their meaningful participation as a Treaty partner 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 both iwi.

### **Other redress**

39. Neither Treaty settlement creates new co-governance or co-management processes that would affect decision-making under the RMA for the proposed project.
40. No areas covered by any specific commercial or cultural redress in the two settlements would be directly affected by the proposed project.
41. 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**

42. There are no recognised mandates for negotiation of any further historical Treaty claims, or any current or anticipated negotiations for settlement of historical Treaty claims, affecting the proposed project area.

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

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

43. 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.
44. 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.
45. The relevant iwi authorities and Treaty settlement entities for receipt of the notice are identified in paragraph 5; contact details are in Attachment 2.
46. 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.
47. We consider that if you decide to refer the project to a panel and you also agree to directing a panel to seek comments on resource consent applications for the project from the Ngāti Pārau Hapū Trust (as recommended in paragraph 54), then it would be appropriate to also copy the notice of decision to this Trust.
48. Should you decide to refer the project to a panel, we also recommend copying the notice of decision to the Pukemokimoki Marae Trust as requested by the Minister for Māori-Crown

Relations: Te Arawhiti, as this party will be included in a panel's consultation (see paragraph 55) and early notification may facilitate preparedness for this engagement.

### **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; contact details are in 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.
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 panel may also invite comments from any other person it considers appropriate. The TKM website indicates that the project site lies within the area of interest of Ngāti Pārau Hapū, one of the seven hapū of Ahuriri Hapū. The website also indicates that Ngāti Pārau Hapū is represented by the Ngāti Pārau Hapū Trust for RMA purposes. We consider it would be appropriate for a panel to seek comments from this entity.
55. We note that Pukemokimoki Marae is sited on part of Maraenui Park, adjacent to the project site. We consider it would be appropriate for the Pukemokimoki Marae Trust (as representatives of the Marae) to comment on the applicants' resource consent applications and note that a panel would be required under clause 17(6)(h) of Schedule 6 of the FTCA to invite comments from the Marae representatives as the occupiers of the land adjacent to the project site. There is therefore no need for you to make a specific direction to a panel in order to ensure that representatives of Pukemokimoki Marae are provided with this opportunity to comment.

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

56. 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>6</sup> 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.

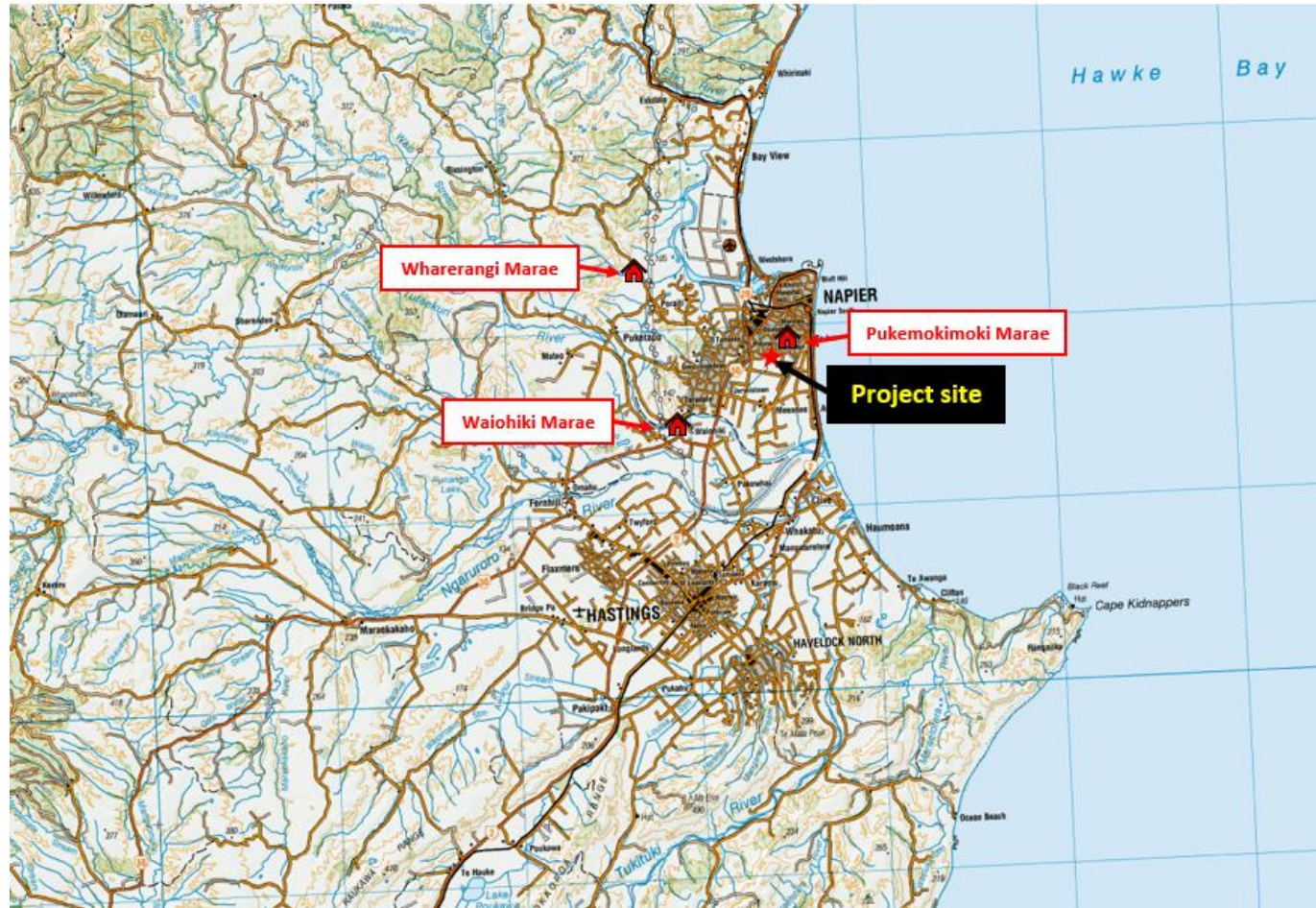
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<sup>6</sup> Clause 9(5) of Schedule 6 to the FTCA.



57. 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 authority in respect of the matter. The two relevant iwi authorities for the Riverbend Residential Development project are listed in paragraph 5.

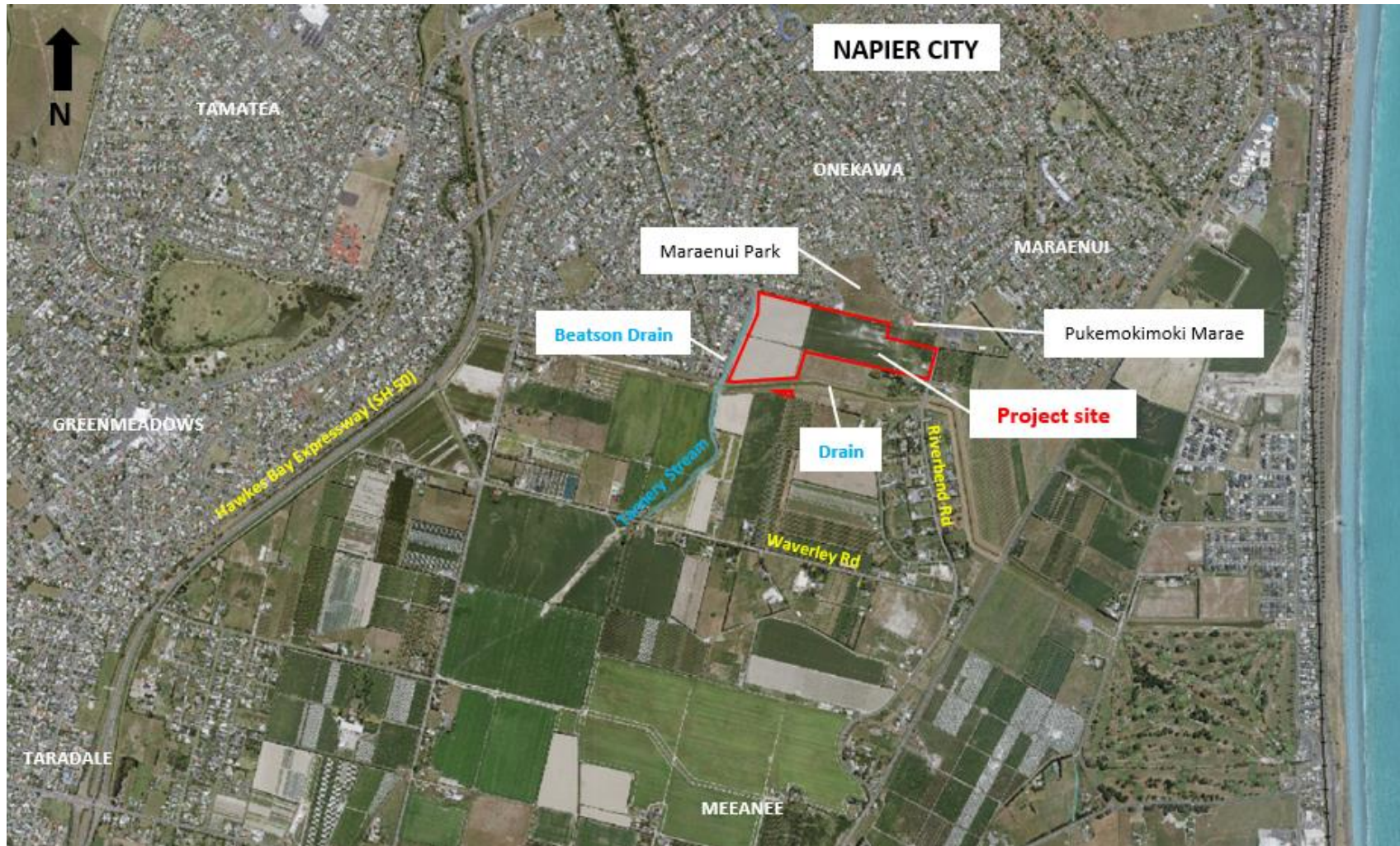
## Attachment 1 - Location



## Attachment 2 - Contact information

Iwi/hapū	Representative body	Contact details	RMA Iwi authority	Treaty settlement entity	Other	Contact person	Copies to
Heretaunga Tamatea	Heretaunga Tamatea Settlement Trust	PO Box 2192 Stortford Lodge Hastings 4156	Represents Heretaunga Tamatea as an iwi authority for the purposes of the Resource Management Act 1991	Post-Treaty settlement governance entity under Heretaunga Tamatea Claims Settlement Act 2018		CEO: Liz Munroe <a href="mailto:office@heretaungatamatea.iwi.nz">office@heretaungatamatea.iwi.nz</a>	RMA Contact: Joella Brown
Ahuriri Hapū	Mana Ahuriri Trust	PO Box 12076 Ahuriri 4144	Represents Ahuriri Hapū as an iwi authority for the purposes of the Resource Management Act 1991	Post-Treaty settlement governance entity under the Ahuriri Hapū Deed of Settlement [signed 2 November 2016]		Chairman: Piri Prentice <a href="mailto:info@manaahuriritrust.com">info@manaahuriritrust.com</a>	
	Ngāti Pārau Hapū Trust	8 Sloane Place Knightsbridge Taradale 4112	Represents Ngāti Pārau Hapū as an iwi authority for the purposes of the Resource Management Act 1991			Chairperson: Chad Tareha s9(2)(a)	
Ngāti Kahungunu iwi	Ngāti Kahungunu Iwi Incorporated	Level 1 304 Fitzroy Avenue Hastings PO Box 2406	Represents Ngāti Kahungunu as an iwi authority for the purposes of the Resource Management Act 1991			Environmental director: Ngaio Tiuka s9(2)(a)	
	Pukemokimoki Marae Trust	191 Riverbend Rd Maraenui Napier 06-843 1590			Mataa waka urban marae		

## Attachment 3 – Project area details



## Attachment 4 – Project concept

