

# Application 2020.021 Eastern Porirua Regeneration Project (Kāinga Ora & Porirua City Council)

To:	Required action:
Hon David Parker, Minister for the Environment	Consider this report prior to making a decision under section 24 of the Act

## Ministry for the Environment contacts

Position	Name	Cell Phone	1 <sup>st</sup> Contact
Principal Author	Pip Lee		
Responsible Manager	Sara Clarke	s9(2)(a)	ü
Director	Liz Moncrieff	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 Act).
2. To satisfy obligations under section 6 of the Act, you must consider this report before making a decision under section 24 of the Act on whether to refer a project to an expert consenting panel.

## Proposed project

3. The applicants propose to undertake the following three infrastructure developments, needed to expedite substantial housing development associated with the Eastern Porirua Regeneration Programme:

## Report prepared in accordance with Section 17 Covid-19 (Fast-track Consenting) Act 2020

- a. a new high-level water reservoir, adjacent to the existing reservoir on Stemhead Lane in Whitby,
  - b. replacement of the Bothamley Park wastewater trunk main, and
  - c. development of a wetland in Cannons Creek Park.
4. Location details are shown on Map 1 in Attachment 2.

### Essential information

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

Section of the Act	Information required	Detail
s17(3)(a)	Relevant iwi authority	Te Rūnanga o Toa Rangatira Incorporated <i>Contact details are in Attachment 1</i>
s17(3)(b)	Relevant Treaty settlement	Ngāti Toa Rangatira Claims Settlement Act 2014
s17(3)(a)	Relevant Treaty settlement entity	Toa Rangatira Trust <i>Contact details are in Attachment 1</i>
s17(3)(c)	Relevant principles & provisions of the Treaty settlement	<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	None

## Supporting material

### Proposed project area

6. The proposed project is located in eastern Porirua City, on the south-eastern side of Te Awarua-o-Porirua (Porirua Harbour).
7. The land parcels affected by the project are shown on Map 2 in Attachment 2. They include:
  - a. a 1.9 ha waterworks reserve (shown in blue), situated on high ground above the suburbs of Ascot Park and Waitangirua (to the west) and Whitby (to the east), where the new reservoir will be developed.
  - b. Bothamley Park (shown in purple), an 84 ha recreation reserve extending between the suburbs of Ascot Park and Aotea (to the west) and Waitangirua and Cannons Creek (to the east). The Kenepuru Stream runs through the park, before joining the Porirua Stream near the head of Porirua Harbour.
  - c. Cannons Creek Park (shown in green), a 13 ha recreation reserve containing sports fields, which adjoins Bothamley Park.
8. Although there is potential for sediment arising from the project works to discharge to Porirua Harbour, none of the proposed works themselves will occur in the coastal marine area of the harbour.
9. Hence, the project is unaffected by the provisions of the Marine & Coastal Area (Takutai Moana) Act 2011 (MACAA). Additionally, there are currently no court orders recognising customary marine title or protected customary rights under MACAA of relevance to consider.
10. You are therefore the sole party required to consider this report.

### Iwi and iwi authorities

#### Information sources

11. Under section 7(1) of the Act, a relevant iwi authority means an iwi authority whose area of interest includes the area in which a project will occur. The Act does not define iwi authority, so under section 7(2) of the Act, it has the same meaning as in the Resource Management Act 1991 (RMA).
12. Therefore, iwi authority means the authority which represents an iwi and which is recognised by that iwi as having authority to do so.
13. To identify the relevant iwi authorities, and to check if there were any groups that represent hapū, for RMA purposes, information was sourced from:
  - a. The Iwi Areas of Interest viewer, an online application managed by the Ministry of Māori Development - Te Puni Kōkiri,
  - b. Te Kāhui Māngai (TKM), an online directory of iwi and Māori organisations maintained by the Ministry of Māori Development - Te Puni Kōkiri,
  - c. Te Arawhiti,
  - d. Ministry for the Environment, and

- e. Greater Wellington Regional Council and Porirua City Council, as the relevant local authorities.

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

14. The TKM website identifies Te Rūnanga o Toa Rangatira as the iwi authority for the area in which the proposed project site lies.
15. Both Greater Wellington Regional Council and Porirua City Council also advised, in their responses to your invitation to comment under section 21, that they consider Te Rūnanga o Toa Rangatira to be the relevant iwi authority.

### **Treaty settlement and Treaty settlement entity**

16. The first four sources listed in paragraph 13 were also used to identify any relevant mandated bodies recognised by the Crown for Treaty of Waitangi settlement purposes, and Treaty negotiations and post-settlement governance entities, described below.

#### **Relevant Treaty settlement**

17. The Treaty settlement with Ngāti Toa Rangatira is the only settlement of relevance to the proposed project area. It applies to a wide area of interest extending over parts of the lower North Island, Cook Strait and the Marlborough Sounds, and much of the northern South Island, as shown in Attachment 3.
18. The Ngāti Toa Rangatira Claims Settlement Act 2014 gave effect to the deed of settlement signed on 7 December 2012. A summary of the settlement can be accessed at:

<https://www.govt.nz/assets/Documents/OTS/Ngati-Toa-Rangatira/Ngati-Toa-Rangatira-Deed-of-Settlement-Summary-7-Dec-2012.pdf> .

19. The deed, along with an amendment deed and associated documents are available at:

<https://www.govt.nz/treaty-settlement-documents/ngati-toa-rangatira/>.

#### **Relevant Treaty settlement entity**

20. Toa Rangatira Trust is the relevant post-settlement governance entity for the Ngāti Toa Rangatira Treaty settlement. Te Rūnanga o Toa Rangatira Incorporated is the trustee of this trust.
21. While a strategic advisory committee established for the Kāpiti Island reserves and a joint committee established for the Whitireia Recreation Reserve are also Treaty settlement entities associated with the settlement, they are not relevant to the proposed project.

### **Relevant principles and provisions of the Ngāti Toa Rangatira Treaty settlement**

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

22. Apologies are offered as part of settlements in order for the Crown to atone for historical wrongs, restore its honour, and begin the process of healing.
23. The Crown apology to Ngāti Toa Rangatira expressed (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.

24. The Crown said it hoped that the apology and settlement would 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.
25. Acknowledgements by the Crown are also an important part of the settlement as they complement and provide context for the apology and the offers of redress.
26. In the Ngāti Toa settlement the Crown acknowledged, among other things, that pollution, reclamation, and public works have had a damaging impact on the shellfish and other kai moana resources in the Porirua Harbour, and that the loss of this formerly abundant resource has adversely affected the cultural and spiritual well-being of Ngāti Toa Rangatira.
27. The Crown also acknowledged Ngāti Toa Rangatira's role as a kaitiaki over the coastal marine area within a poutiaki (guardianship) area, created under the settlement, which includes Porirua Harbour.
28. Respect for Ngāti Toa Rangatira views on resource management matters and their rights as an iwi authority and settlement entity to be involved in the expert consenting panel processes and decision-making are important ways in which the Crown can give effect to the statements it made in both its apology and acknowledgements.

### Commercial redress

29. Commercial redress under the settlement included opportunities to purchase certain Crown properties at the time of settlement or at a later time under a deferred selection process. Some were to be leased back to the Crown.
30. Deferred selection properties (DSP) are shown in yellow in Attachment 4. None are within the proposed project areas, although one – the Cannons Creek School – is adjacent to Cannons Creek Park, where the new wetland is proposed.
31. Commercial redress also included rights of first refusal (RFR) over a significant number of Crown properties in the North Island part of the Ngāti Toa Rangatira rohe. RFR properties near the proposed project areas are shown in blue in Attachment 4. None are within the proposed project areas associated with this application.
32. The applicant has indicated that in order to allow the wider Eastern Porirua Regeneration Programme to progress, Ngāti Toa has waived their RFR option to purchase or lease the Crown-owned land in eastern Porirua and are instead accepting land to the west of Porirua's city centre, closer to Takapuwahia, one of their four marae.

### Cultural redress

33. Cultural redress is intended to restore and strengthen an iwi's traditional, historical and spiritual connection with its traditional lands and resources, and provide for the exercise of rangatiratanga and kaitiakitanga over them – sometimes exclusively and sometimes in conjunction with others.

### *Statutory acknowledgement over Porirua Harbour*

34. The Ngāti Toa settlement included statutory acknowledgements over a number of sites and areas, including Porirua Harbour.

35. Relevant consent authorities, the Environment Court and Heritage New Zealand Pouhere Taonga must have regard to such acknowledgements in certain decision-making situations, and consent authorities must provide notices of resource consent applications affecting statutory areas to the Toa Rangatira Trust.
36. Although the works associated with the project proposal do not directly affect Porirua Harbour, there is potential for sediment or other contaminants generated by the project to make their way to the harbour. Under standard RMA process, this would likely trigger some of the decision-making considerations required of the relevant consent authorities by the statutory acknowledgement. This would include the affected person status of Ngāti Toa Rangatira under section 95E or the level of interest determined under section 274.
37. Importantly, it should also be noted 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 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.

### *Poutiaki plan*

38. The settlement made provision for Ngāti Toa Rangatira to prepare a plan for the poutiaki coastal marine area noted in paragraph 27, identifying:
  - a. Ngāti Toa Rangatira values and principles applying to the area,
  - b. the resource management issues of significance to Ngāti Toa Rangatira in the area, and
  - c. a Ngāti Toa Rangatira statement of kaitiakitanga relating to fisheries management in the area.
39. The poutiaki plan may be lodged with the relevant councils whose jurisdiction includes the poutiaki area. They must:
  - a. take it into account, to the extent that it is relevant to resource management issues within their jurisdiction,
  - b. include the statement of the resource management issues of significance to Ngāti Toa Rangatira as set out in the poutiaki plan in their regional policy statement or regional coastal plan, and
  - c. refer to the poutiaki plan, to the extent that it is relevant, in an evaluation of a proposed regional policy statement or proposed regional coastal plan under section 32 of the RMA.
40. To date no specific poutiaki plan has been lodged with Greater Wellington Regional Council in relation to Porirua Harbour.
41. However, in 2014 Ngāti Toa agreed to participate in the Te Awarua-o-Porirua Whaitua Committee, set up by Greater Wellington Regional Council to implement the National Policy Statement for Freshwater Management requirements in the Te Awarua-o-Porirua Whaitua area (Porirua harbour and its catchment).
42. The work of the committee culminated in the Te Awarua-o-Porirua Whaitua Implementation Programme (WIP) in April 2019 - a programme for cleaning up Porirua's waterways and harbour. A copy can be accessed at:

<http://www.gw.govt.nz/assets/Te-Awarua-o-Porirua-Whaitua-Implementation-Programme.pdf>.

43. This report notes that:

*Over the decades, the Iwi has been frustrated by the effects of intensified land use around the harbour, reclamations to the harbour's edge and contamination of its waters (from sediment, stormwater and raw sewage prior to the treatment plant being built). Ngāti Toa's cultural impact assessment for the Transmission Gully roading project documents the cumulative effect of these activities in undermining the health of the harbour to the point where the people of Ngāti Toa are no longer able to harvest kaimoana as their ancestors did.*

44. Prior to completion of the WIP, in 2018, Ngāti Toa withdrew from the Whaitua Committee, as it was uncomfortable with the committee's consensus-based approach, which Ngāti Toa considered compromised its values and its role as kaitiaki.

45. Ngāti Toa wanted to evaluate and articulate its views in relation to its aspirations for Porirua's waterways and harbour, and to this end it issued its own companion statement to the WIP. This can be accessed at:

<http://www.gw.govt.nz/assets/Whaitua/ngatitoataopwhaituastatement.pdf>.

46. This statement will have relevance to the consideration and management of any effects on Porirua Harbour arising from the proposed project, along with any specific comments made by Ngāti Toa.

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

47. There are no Crown-recognised mandates for negotiation of historical Treaty claims that cover the project area.

48. The outcome of the Porirua ki Manawatu Waitangi Tribunal District Inquiry may give rise to future negotiations for settlement of historical Treaty claims affecting the proposed project area, however the timing for release of the District Inquiry report is uncertain.

49. Muāupoko Tribal Authority has a Crown-recognised mandate that identifies an area of interest for settlement negotiations that does not include eastern Porirua. However, the areas of interest that are defined for Treaty settlement purposes only describe the extent of interests as they were at 1840. The Authority's mandate also maps a traditional area, extending from Rangitikei River to Sinclair Head and Turakirae in Wellington.

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

### **Notices of referral decision**

50. Under section 25 of the Act, you must give notice of the decisions made on an application for referral, and the reasons for them, to the applicant and anyone invited to comment under section 21 of the Act.

51. Te Rūnanga o Toa Rangatira Incorporated was invited under section 21(3) to comment on this application.

52. If the decision is to refer this project to an expert consenting panel, the notices of decision and reasons must also 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, and

- 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.
53. Te Rūnanga o Toa Rangatira Incorporated is the relevant iwi authority and Toa Rangatira Trust is the relevant Treaty settlement entity for this project.
54. No other iwi authorities or Treaty settlement entities have been identified as having an interest in the application, and there are no relevant joint management agreements or Mana Whakahono a Rohe to consider.

### **Expert consenting panel membership**

55. If a project is referred to an expert consenting panel the appointed panel must include one person nominated by the relevant iwi authorities under clause 3(2)(b) of Schedule 5 of the Act.
56. 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.
57. In the case of the proposed project, the relevant iwi authority for panel nominations is Te Rūnanga o Toa Rangatira Incorporated. Contact details are included in Attachment 1.

### **Panel invitations to comment**

58. An expert consenting panel must invite comments on a consent application or notice of requirement for a referred project from the parties listed in clause 17(6) of Schedule 6 of the Act. This includes:
- a. the relevant iwi authorities, including those identified in this report, and
  - 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, and
  - c. any applicant group under MACAA identified in this report.
59. Te Rūnanga o Toa Rangatira Incorporated is the relevant iwi authority and Toa Rangatira Trust is the relevant Treaty settlement entity for the proposed project.
60. Owing to the potential for sediment or other contaminants generated by the proposed project to affect Porirua Harbour, it is also relevant to identify both Ngāti Toa Rangatira and Muaupoko Tribal Authority Incorporated as applicants under the MACAA for customary title and/or protected customary rights in Porirua Harbour. Details are included in Attachment 5.
61. Accordingly, clause 17(6) of Schedule 6 of the Act requires these two groups to be invited to comment on the application. Contact details are included in Attachment 1.
62. The panel may also invite comments from any other person it considers appropriate. For this application, no additional relevant iwi or Māori groups have been identified.

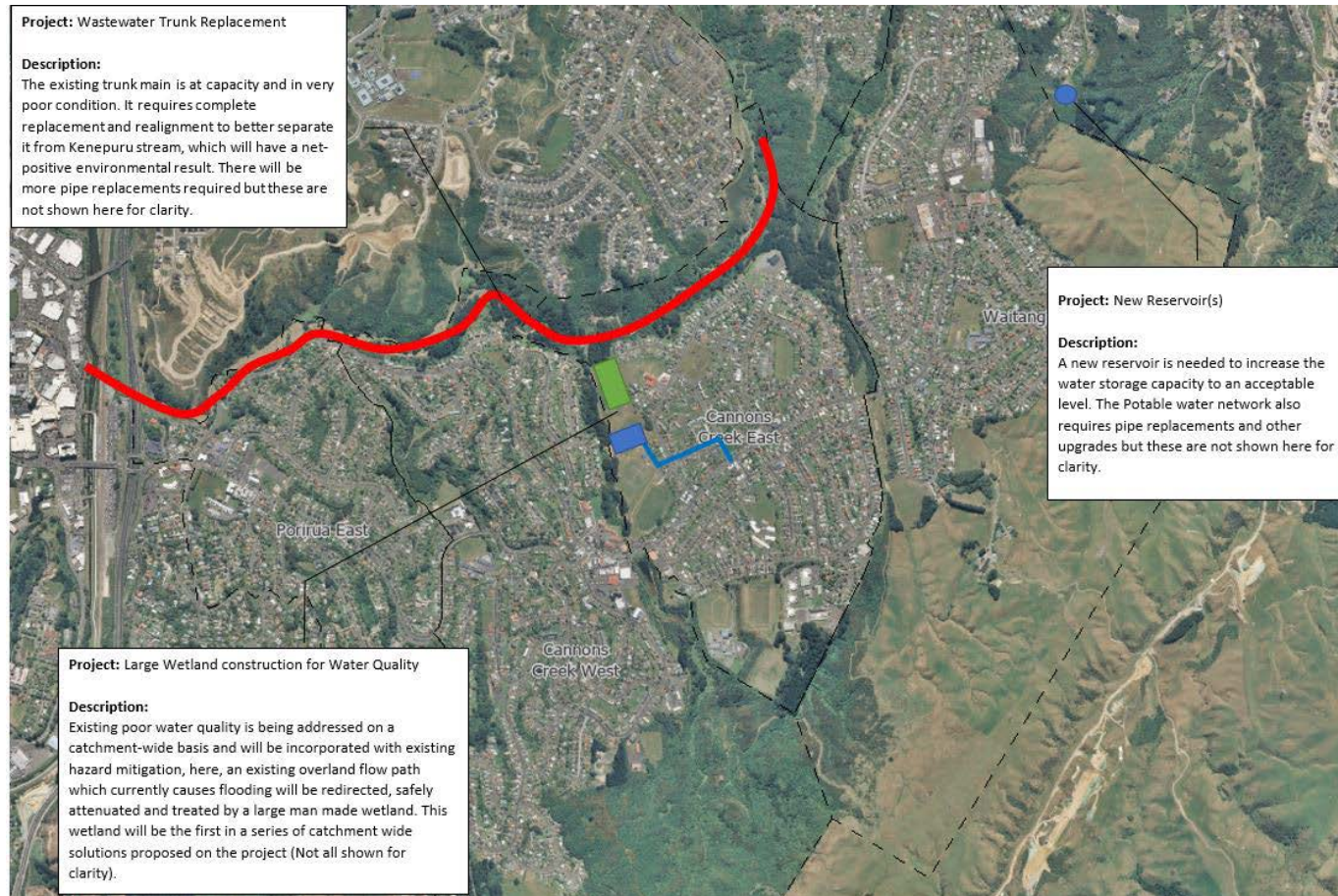


## Attachment 1 - Contact information

Iwi/hapū	Representative body	Contact details	Treaty settlement entity	RMA Iwi authority	Other	Contact person	Copies to
Ngāti Toa Rangatira	Te Rūnanga o Toa Rangatira Incorporated	PO Box 50355, Porirua 5240 Phone: s9(2)(a)		Represents the interests of Ngāti Toa Rangatira as an iwi authority for RMA purposes	Applicant under MACAA – Porirua harbour	Applicant under MACAA – Porirua harbour s9(2)(a)	RMA Contact: Naomi Solomon s9(2)(a)
	Toa Rangatira Trust		Post-settlement governance entity under the Ngāti Toa Rangatira Claims Settlement Act 2014			As above	As above
Muaupoko	Muaupoko Tribal Authority Inc	PO Box 1080, Levin 5510			Applicant under MACAA – Porirua harbour	CEO: Di Rump admin@muaupoko.iwi.nz	

## Attachment 2 – Project location and affected land

Map 1



## Map 2



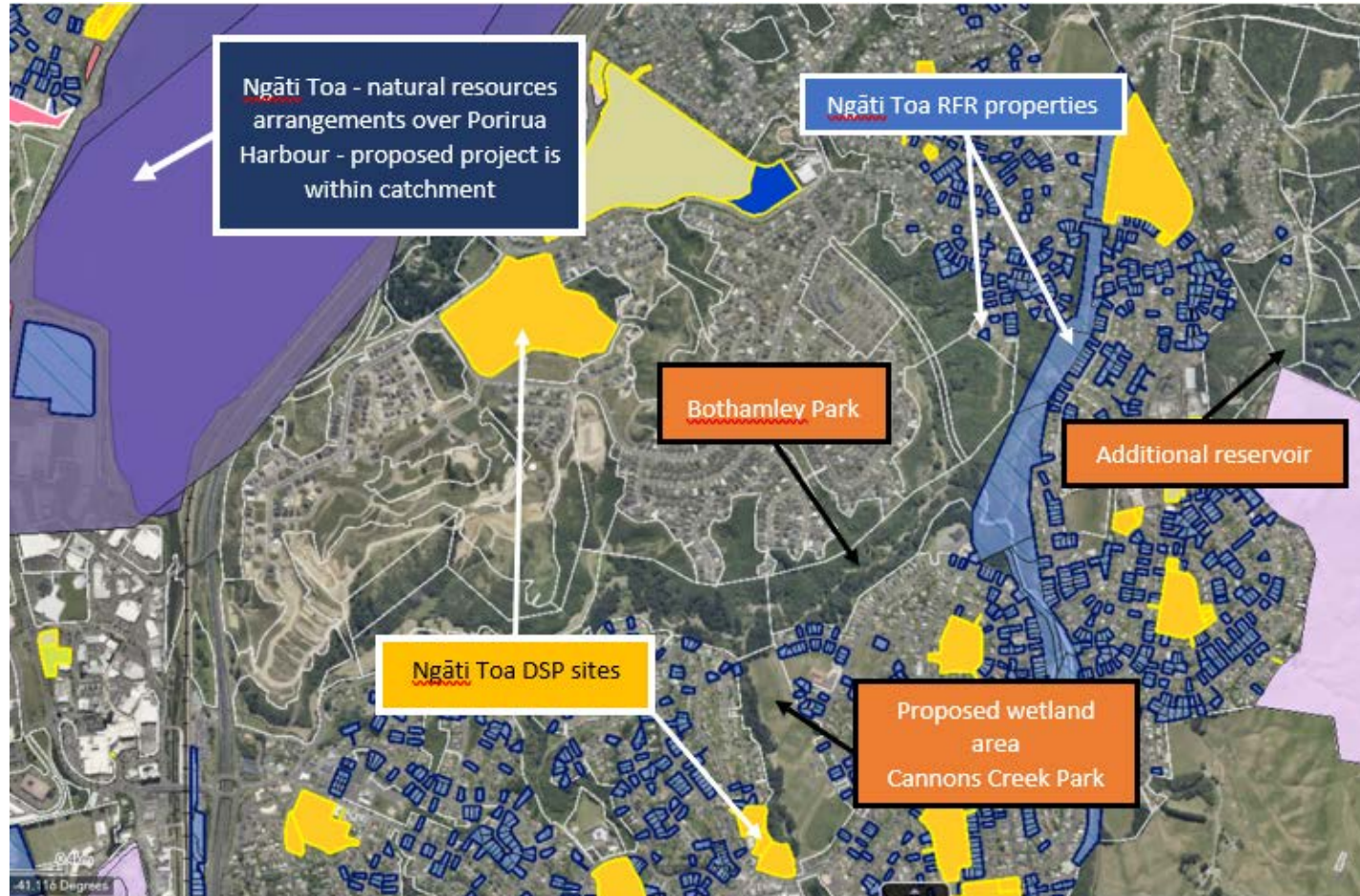
NB. This image shows legal parcel extents. In all instances, the extent of the legal parcel is larger than the areas of works.

# Attachment 3 – Ngāti Toa Rangatira Area of Interest



Source: Deed of Settlement of Historical Claims between Ngāti Toa Rangatira and Trustee of the Toa Rangatira Trust and the Crown, dated 7 December 2012: Attachments - Pt 1

## Attachment 4 – Treaty settlement redress properties



## Attachment 5 - Applications for a customary marine title area or protected customary rights area

MAC No	Applicant	Track	Application status
MAC-01-12-021	Ngāti Toa Rangatira	Crown engagement	Lodged
MAC- 01-11-003	Muaupoko	Crown engagement	Lodged
CIV-2017-485-261	Muaupoko Tribal Authority Inc	High Court engagement	Lodged

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