

Form 7

Notice of appeal to Environment Court against decision
on proposed policy statement or plan

Clause 14(1) of First Schedule, Resource Management Act 1991

To the Registrar
Environment Court
Auckland

I, Ian Diarmid Palmer and Zejia Hu appeal against a decision of the Far North District Council ('FNDC') on its Proposed District Plan ('PDP').

We made a submission on the PDP¹.

We received notice of the decision on our submission on June 30th 2026. The decision was made by the FNDC.²

The decision that we are appealing is:

FNDC's decision to reject in part our submission point S249.001 that requested the removal of the Mangonui and Rangitoto Peninsula Heritage Area Overlay Part B ('MRHAB') from most of the Rangitoto Peninsula, as further detailed in Attachment C 'Detailed Submission'.

The reasons for our appeal are:

Certain areas of land that we own have been retained in the MRHAB in the Decisions Version PDP ('Appeal Areas') that are not appropriate to be encumbered by such an overlay for a variety of reasons as summarised below and as detailed more fully in Attachment C:

- 1. The Appeal Areas contain no Historic Heritage Resources or any other known items of notable cultural or heritage significance, and consequently they are devoid of historic heritage values warranting management for the purposes of s.6(f) of the RMA.**
- 2. Including the Appeal Areas in the MRHAB on account of purported landscape values and Māori cultural values amounts to *contra vires* Double Counting.**
- 3. The Appeal Areas are subject to a sufficiency of restrictive planning rules designed to avoid inappropriate development independent of the HA Overlay**

¹ FNDC refers to our submission as S249

² Notice was received by way of a Public Notice posted by the FNDC headed 'Decisions on Submissions Far North Proposed District Plan' which referenced its Decision Version of the Proposed District Plan and 'Council's Decision' (see Attachment B_2).

chapter, so as to make superfluous the additional rules applying to the Appeal Areas that derive specifically from the HA Overlay chapter.

4. Mixing protection of European colonial-era built-heritage and Māori heritage in a single HA with a single set of objectives, policies and rules (eg rules stipulating the use of European colonial paint colours) is non-sensical & potentially offensive to Māori.
5. There is no support in the general community or from local iwi and hapu for the Appeal Areas being within a HA Overlay.
6. FNDC's reliance on an argument that the DVPDP rules that apply to HA Part B areas, including the Appeal Areas, are few in number and not onerous, ignores the negative implications for property owners of having an HA Overlay designation on their properties that go beyond the actual HA Overlay chapter rules.
7. The area that the MRHAB will encompass if our appeal is acceded to is broadly consistent with FNDC's heritage expert's conceptual rationale for what area should be encompassed by the MRHAB.

We seek the following relief:

That the MRHAB be reduced in its areal extent by the removal of the Appeal Areas.

We attach the following documents to this notice:

- Attachment A: copy of our relevant submission (that FNDC refer to as S249)
- As evidence of FNDC's partial rejection of our submission point S249.001:
 - Attachment B_1: Recommendation Report 12 Appendix 4 – Hearings Panel Recommended Mapping Amendments – p4
 - Attachment B_2: Council's Decision as published on its website
- Attachment C: 'Detailed Submission'.

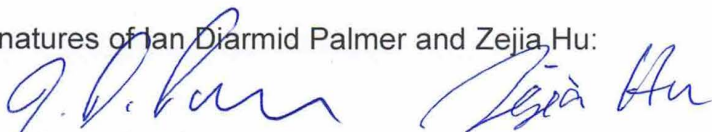
This Notice of Appeal including the above listed attachments will be served on:

Far North District Council (via email to pdp@fndc.govt.nz)

Address: 5 Memorial Avenue, Kaikohe 0405

Postal Address: Private Bag 752, Kaikohe 0440

Signatures of Ian Diarmid Palmer and Zejia Hu:



Date: August 12th, 2026

Address for service of appellant: 150 Peninsula Pde, RD1, Mangonui 0494

Telephone: +64 21 024 77 985

Email: ipal9718@bigpond.net.au

Contact Person: Ian Palmer



Remember
submissions
close at 5pm,
Friday 21
October 2022

Proposed District Plan submission form

Clause 6 of Schedule 1, Resource Management Act 1991

Feel free to add more pages to your submission to provide a fuller response.

Form 5: Submission on Proposed Far North District Plan

TO: Far North District Council

This is a submission on the Proposed District Plan for the Far North District.

1. Submitter details:

Full Name:	Ian Diarmid Palmer and Zejia Hu		
Company / Organisation Name: (if applicable)			
Contact person (if different):	Ian Diarmid Palmer		
Full Postal Address:	PO Box 273, Mangonui 0442		
Phone contact:	Mobile: 021 024 77 985	Home:	Work:
Email (please print):	ipal9718@bigpond.net.au		

2. (Please select one of the two options below)

- ☒ I could not gain an advantage in trade competition through this submission
☐ I could gain an advantage in trade competition through this submission

If you could gain an advantage in trade competition through this submission, please complete point 3 below

3. ☒ I am directly affected by an effect of the subject matter of the submission that:
 (A) Adversely affects the environment; and
 (B) Does not relate to trade competition or the effect of trade competition
- ☐ I am not directly affected by an effect of the subject matter of the submission that:
 (A) Adversely affects the environment; and
 (B) Does not relate to trade competition or the effect of trade competition

Note: if you are a person who could gain advantage in trade competition through the submission, your right to make a submission may be limited by clause 6(4) of Part 1 of Schedule 1 of the Resource Management Act 1991

The specific provisions of the Plan that my submission relates to are:

(please provide details including the reference number of the specific provision you are submitting on)

The Heritage Area Overlay Chapter; and in particular the Mangōnui and Rangitoto Peninsula Heritage Area - Part B Overlay in so far as it relates to the Rangitoto Peninsula



Confirm your position: ☐ Support ☐ Support In-part ☒ Oppose
(please tick relevant box)

My submission is:

(Include details and reasons for your position)

We object to our Sites being subject to a Heritage Area overlay, as it is contrary to Part 2 of the RMA, as summarised below and as discussed in detail in Attachment 1 and the annexures thereto.

Context:

All of the circa 60 hectares of land on the **Rangitoto Peninsula** ('RP') (i.e. land on the eastern side of the Mangonui Harbour to the west of the Hihi urban area, and including Butler Point) is proposed to be subject to the 'Mangōnui and Rangitoto Peninsula Heritage Area ('MRPHA') – Part B Overlay'. In this submission only the portion of this Part B overlay that relates to the RP is addressed, and this subset of that overlay is referred to as '**RPHAB**'.

The RP includes 12 privately owned 'Sites' (as that term is defined in the PDP) as listed in Annexure A of Attachment 1; three of which are owned by us (the submitters).

We consider it inappropriate and non-compliant with Part 2 of the RMA, as well as contrary to the principles of fair and equitable regulatory practice, to extend the RPHAB over the whole of the RP for the following six reasons:

1. **The rationale for, and the areal extent of, the RPHAB was based on inadequate and incomplete expert evidence and analysis.**
2. **The boundaries for the RPHAB do not adhere to any self-consistent logic.**
3. **It is inappropriate to combine areas featuring colonial period European built Historic Heritage resources with areas featuring pre-contact Māori Historic Heritage resources in a single HA.**
4. **Designating an area of land as a 'Heritage Area' based on its Māori cultural connections and/or landscape attributes amounts to 'Double Counting' contrary to the RMA according to Environment Court and High Court rulings.**
5. **Justification for the entire RP land being subject to the RPHAB overlay was in part based on an erroneous premise regarding the land's involvement in historically significant colonial European industrial enterprises.**
6. **The Section 32 Heritage assessment did not evaluate the economic impact of imposing HA overlays over large tracts of land for the first time or assess the risk of not acting.**



The above six reasons in support of our objection are explained in detail with supporting evidence in Attachment 1 and its associated annexures.

I seek the following decision from the Council:

(Give precise details. If seeking amendments, how would you like to see the provision amended?)

1. Remove the HA overlay from the RP except for the land directly associated with and/or proximal to listed Heritage Resources. At this time the only listed Heritage Resource on the RP is 'Butler's House' that is historically significant in large part due to the whaling ship provisioning enterprise that Captain William Butler conducted in the mid-19th Century. The land that this resource and that enterprise is on, or directly relates to, is Lots 1 & 2 of Section 2 Village of Mangonui.

S249.001

2. In regards to consultation with tangata whenua as referenced in the Heritage Area Overlay Chapter of the PDP, and to address issues of ambiguity as to which Iwi, or hapu holds mana whenua over an area the subject of consultation, add the following definition to the PDP:

Tangata whenua for the purposes of consultation on Historic Heritage matters means:

- a. Iwi Authorities that are Participating Authorities who have a Mana Whakahono a Rohe that has been signed on behalf of the relevant Iwi Authority and the FNDC in which an Area of Interest or Rohe is set out that encompasses the land that is the subject of the consultation (as those underlined terms are used in S.58O (5) of the RMA), and
- b. Iwi Authorities that are parties to any formal cooperation or consultation agreement signed on behalf of the relevant Iwi Authority and the FNDC in which an Area of Interest or Rohe is set out that encompasses the land that is the subject of the consultation, and
- c. Iwi Authorities where the Iwi concerned is the subject of a Claims Settlement Act of Parliament which incorporates a signed Deed of Settlement with the Crown which includes a defined Area of Interest or Rohe that encompasses the land that is the subject of the consultation (and in which case the Iwi Authority is deemed to be the relevant Iwi Trust organisation defined in that Act of Parliament or that Trust's delegate), and
- d. where the activity affects a part of the Marine and Coastal Area, any Customary Marine Title Group or Protected Customary Rights Group who's rights encompass the area that is the subject of the consultation (as those underlined terms are defined in the Marine and Coastal Area (Takutai Moana) Act 2011).

☒ I wish to be heard in support of my submission

☐ I do not wish to be heard in support of my submission

(Please tick relevant box)

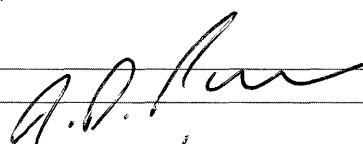
If others make a similar submission, I will consider presenting a joint case with them at a hearing

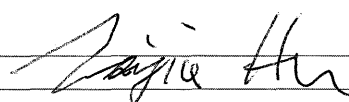
☒ Yes ☐ No

Do you wish to present your submission via Microsoft Teams?

☐ Yes ☒ No

Signature of submitter:





20/10/22

Attachment 1

Mangōnui and Rangitoto Peninsula Heritage Area ('MRPHA') - Part B Overlay on Rangitoto Peninsula

Bases of Objection

It is inappropriate and contrary to Part 2 of the RMA for the MRPHA-Part B overlay proposed for the eastern side of the Mangonui Harbour ('RPHAB') to encompass the whole of the Rangitoto Peninsula ('RP') and in particular to encompass the three Sites we own (as listed in Annexure A), for the following reasons:

Reason No. 1:

The rationale for, and the areal extent of, the RPHAB was based on inadequate and incomplete expert evidence and analysis.

The 'Historic Heritage & Heritage Area Overlay Section 32 Report' associated with the PDP ("S.32 HR") states:

*"The Plan Heritage assessment reports were completed in June 2020 and **have informed the section 32 evaluation.**"*¹ [emphasis added]

The Plan Heritage reports being:

- 'Plan.Heritage Stage 1 Background Report' (Attachment 2 to the S.32 HR) referred to here as "**PH1**", and
- 'Plan.Heritage Stage 2 Rapid Assessment Reports' (Attachment 3 to the S.32 HR) referred to here as "**PH2**".

The work undertaken by the Plan Heritage consultants for the FNDC as documented in the PH1 & PH2 reports was intended to be preliminary and not used as the definitive basis for establishing policies and rules in a Notified District Plan (DP). The reports include many comments that support this contention, including in PH2:

- *"For each Historic Heritage Area the following is presented• High level management/ risk information, which requires further ground truthing and stakeholder engagement."*²
- Under the Chapter headed: "**METHODS FOR FURTHER ASSESSMENT**":
"The evaluations in this report are based on high-level research and a single site visit, so further assessment is required. In particular, there has been no stakeholder engagement to date. The following are preliminary recommendations in terms of developing the methodology, fieldwork and

¹ S.32 HR, p15

² PH2, p4

stakeholder engagement to finalise the evaluations.”³ [This statement was followed by three pages detailing what further work was recommended], and

- *“Further work is required to define ‘sub-areas’ • This will include review of design guidance for those areas; • Historic Heritage Management Plans should be prepared which detail management responses and specific policies for heritage areas and sub areas”⁴,*

We understand none of the recommended further work has been undertaken or commissioned by the FNDC (or if it has, it has not informed the S.32 HR or the Heritage Area Overlays chapter of the Notified PDP).

We understand the Auckland based consultants never ventured onto the RP during their single visit to the district, but only looked at it from across the harbour. They never contacted any of the RP owners, some of whom (including ourselves) have accumulated substantial historical information relating to the physical and cultural history of this land.

We identified and documented a number of untrue, misleading or questionable assertions in the PH2 report and wrote a letter to Plan Heritage in September 2020 on behalf of ourselves and our neighbours, the Ferguson family⁵ (included here as Annexure B) asking Plan Heritage to either evidence their assertions or retract them. We understand Plan Heritage shared that letter with FNDC Planning Department staff. We received no response to that letter from either Plan Heritage or FNDC, from which we conclude all of the matters we listed in that document represent valid deficiencies of the PH2 report, and hence deficiencies of the S.32 HR evaluation that was basis for the RPHAB.

Reason No.2:

The boundaries for the RPHAB do not adhere to any self-consistent logic.

A HA must clearly encompass scheduled **Heritage Resources** (as listed in the PDP) and any other significant concentrations of **‘Historic Heritage** natural and physical resources’ (per the relevant definition in the RMA) that relate to each other, and not include areas which do not have a reasonable concentration of such resources, or conversely not arbitrarily exclude immediately neighbouring areas that do contain a high concentration of such resources.

Neither Heritage New Zealand Pouhere Taonga (HNZ) or local Iwi/hapu were consulted by Plan Heritage or the FNDC in relation to where the boundaries should

³ Ibid, p248

⁴ Ibid, p252

⁵ Letter signed by Ian Palmer to John and Adina Brown, Plan Heritage Ltd. Subject: ‘Plan Heritage Ltd Reports prepared for the FNDC’, dated September 27th, 2021

be placed prior to the boundaries of the RPHAB that appear in the Notified PDP being fixed.

HNZ (who supported the concept of combining areas of colonial European built heritage and pre-contact Māori heritage in a single HA) in their submission on the draft PDP suggested in relation to the entire MRPHA that:

“... the boundary needs to be extended to include the entire harbour and associated adjacent ridge line perimeter”⁶.

This would include, inter-alia, the land to the west and north of Hihi including the Whakaangi maunga. While we don't agree with HNZ's premise of combining the two types of heritage (as discussed below under Reason No. 4), what they proposed based on that premise is logical given that the distribution of known Māori archaeological sites and Sites of Significance to Māori are more concentrated on the lands that HNZ's proposed extension would cover, as compared to the RP⁷. HNZ's feed-back was not acted on by the FNDC as the RPHAB boundaries first proposed by Plan Heritage were not subsequently changed.

In response to a Local Government Official Information and Meetings Act (LGOIMA) request, the FNDC advised⁸ in relation to the MRPHA it had only consulted with two Iwi organisations (corresponding with the two listed as a. & b. under Reason No. 4 below). It was also stated in that LGOIMA response to a request for “A list of the issues or questions put to (or intended to be put to) [such organisations]:

“The issue to be explored with these representative organisations is the inclusion of Māori heritage resources in the draft heritage areas”.

This response indicates that the question of what land should (or should not) be encompassed by the MRPHA on account of its Māori cultural or heritage associations was not canvassed with anyone representing tangata whenua. No additional Heritage Resources have been listed for the RP in the Notified PDP versus the draft, suggesting that those consulted didn't propose any.

This is perhaps not surprising, as there is a paucity of regionally significant Māori archaeological sites or Sites of Significance to Māori, or any other resources that could legitimately be defined as Historic Heritage on the RP, at least wrt our RP Sites. By contrast, slightly further to the east on Māori Waiaua land and the Whakaangi maunga there is a high concentration of such Historic Heritage resources.⁹

The Rangitoto Pa site to the west of our RP Sites (on the FNDC administered ‘Rangitoto Recreation Reserve’, aka ‘Allotment 71 Parish of Mangonui East’) is a

⁶ Letter signed by Bill Edwards, HNZ's Area Manager Northland, to the attn of FNDC's Greg Wilson, Subject: 'Feedback of HNZ on the Draft Heritage Areas in the Far North': dated October 26th, 2021, p6

⁷ As documented in: 'Northland Conservancy Historical Series No.6 "An Archaeological Survey Of Whakaangi, Doubtless Bay"', J. Robinson for DoC, 2007

⁸ LGOIMA response by email dated October 22nd, 2022 addressed to Ian Palmer from FNDC's solicitor Erica Cooney

⁹ For example as documented by Robinson *ibid*.

significant site, however the RPHAB appears to have been extended from that site east across our Sites to encompass a purported Māori 'Cliff Pa' site (NZAA O04/17) supposedly located to the east of our land on our neighbour's Site (Lot 1, DP91523). We understand that this purported Pa site is unknown to the owner of that Site, who has owned that site for some 40 years. Our above referenced September 2021 document gave evidence that the purported Pa site is non-existent. Possibly it was wiped out by the large slip that clearly has occurred in that area many decades ago, or by the earthworks associated with the establishment of the Hihi township. Certainly no one has been able to reliably define its location. (We invited HNZ's James Robinson to visit the area in September 2021 to clarify the matter, but that invitation was not taken up).

There are other inconsistencies with the proposed MRPHA, including its exclusion of the area known to be the site of historically important Māori flax workings on the Mangonui town side of the harbour.

Reason No.3:

It is inappropriate to combine areas featuring colonial period European built Historic Heritage resources with areas featuring pre contact Māori Historic Heritage resources in a single HA.

We concur in principle that both colonial period European built heritage and pre contact Māori heritage (particularly archaeological features and identified Sites of Significance to Māori) are equally deserving of protection. However, combining the two disparate types of Historic Heritage in a single HA is highly problematic, particularly in this region, having regard to the discordant relationship between the tangata whenua and the colonially settlers and government authorities in this area in the 19th and early 20th centuries¹⁰.

Combining the two disparate types of Historic Heritage leads to ambiguities as to what heritage attributes or heritage 'stories' are intended to be preserved, encouraged or 'honoured' across the RPHAB. For example, is building a colonial style dwelling in the style and scale of the kind being protected in the Mangonui township on our RP Sites (included in the RPHAB on account of their pre-colonial Māori heritage features) to be supported by the consenting authority, or is it to be opposed as an affront to tangata whenua?

In response to a query as to the requirement to consult with tangata whenua in relation to related Resource Consent (RC) applications (which could for example be an application to construct a European colonial style residence on RP land), the PDP team response¹¹ was:

"At this stage there is no mandatory requirement in the Proposed District Plan requiring consultation with tangata whenua in relation to resource

¹⁰ As for example documented in the Waitangi Tribunal's 1997 published 'Muriwhenua Land Report'.

¹¹ Email from FNDC's Liz Searle, Policy Planner, to Ian Palmer, October 10th, 2022

*consent applications. I would however refer you to TW-P6 in the tangata whenua chapter which outlines matters to consider when assessing applications for land use and subdivision that may result in **adverse effects on the relationship of tangata whenua with their ancestral lands**, water, sites, wāhi tapu and other taonga. Depending on the consent being sought and/or site-specific matters, consultation is regarded as good practice and **it may be requested by the resource consents team.***” [emphasis added].

Which clearly indicates such consultation is to be expected for RC applications where the land concerned has been included under a HA overlay on account of Māori Historic Heritage and/or cultural value reasons, as is the case for our RP Sites.

We also note that FNDC planners considering subdivision RC applications in HA overlay areas (where such activity is to be classed as “Restricted Discretionary”) are to have particular regard to such tangata whenua consultation feedback¹².

The Accidental Discovery protocol (HA-S3) states in part [with emphasis added]:

*“Within 24 hours of the discovery the owner of the site, tenant or the contractor must: inform Tangata Whenua if the discovery is an **archaeological site**, Māori cultural artefact, or kōiwi.”* [Noting archaeological site is not a defined term in the PDP so presumably it equates to the definition in the Heritage Act which is very broad], and:

*“**No works shall recommence until the discovery area is inspected by the relevant authority or agency, this shall includeIf the discovery is of archaeological material other than evidence of contaminants, a site inspection for the purpose of initial assessment and response will be arranged by the Council in consultation with Heritage New Zealand Pouhere Taonga and appropriate Tangata Whenua representatives**”*

Tangata whenua consultation for proposed or approved activities in the RPHAB area is highly problematic for a number of reasons, including:

- 1) The overlapping and competing claims of mana whenua over the RP land as between at least three disparate ‘tangata whenua’ groups, being:
 - a. The Ngati Kahu ki Whangaroa Iwi¹³,
 - b. The hapu of Ngati Ruaiti, Matarahurahu and Ngai Takiora who affiliate with the Ngati Kahu Iwi and its representative body ‘Te Runanga-a-Iwi o Ngati Kahu’(TRINK)¹⁴, and

¹² per rule SUB-R13, Matters of discretion item d.

¹³ Ngāti Kahu ki Whangaroa are said to exercise kaitiakitanga for the purposes of the RMA based on the Area of Interest agreed between Ngāti Kahu ki Whangaroa and the Crown in the Deed of Settlement signed on 18 December 2015 (which includes all of the RP); refer: <https://www.tkm.govt.nz/iwi/ngati-kahu-ki-whangaroa> .

¹⁴ Refer Professor Margaret Mutu et al’s 2017 book ‘Ngati Kahu, Portrait of a Sovereign Nation’, Map 8 re the Rohe of listed hapu (which includes all of the RP);

- c. the largest Ngati Kahu hapu Te Paatu and their associated Kauhanga Trust that do not affiliate with TRINK¹⁵.

Having to transparently approach such multiple groups all claiming to be the relevant tangata whenua, or the Iwi/hapu who has mana whenua over the land in question, will unnecessarily aggravate animosities and contribute to community disharmony. Any RC feed-back is liable to be inconsistent or contradictory.

- 2) The representatives of such tangata whenua groups that are expected to review such RC applications or be involved in site inspections and respond to associated consultation requests are not resourced to do so, leading to either no well-considered responses and/or a tendency for informal payments to be expected/made to obtain feed-back supportive of the landowner's plans,
- 3) It will encourage, and likely result in, negative responses on account of long standing (and well founded in our view) grievances as to the way the land was originally alienated from Māori in the mid-19th Century¹⁶.

How the FNDC's planners should weigh-up such problematic consultation feed-back is ill-defined in the PDP and highly problematic in itself.

The latter point 3) listed above, risks undermining the key principle on which the New Zealand 'Torrens' system of land titling is built; that being the pivotal concept of Indefeasibility of Title¹⁷. The interests of the current private owners of land whose title is guaranteed by the Crown should not be prejudiced by matters concerning grievances related to '*the relationship of tangata whenua with their ancestral lands*'. These are matters as between the aggrieved parties and the Crown; the Crown being the party responsible for how it alienated Māori from the land in the mid-19th Century. The legislative underpinnings of the Historic Heritage chapters of DPs (ie Section 6(f) of the RMA) does not support allowing such sensitive Māori-pakeha relationship issues to be drawn in to Historic Heritage planning (for the reasons espoused in Reason No.4 below).

The most tangible legitimate potential concerns of tangata whenua, related to protection of pre-colonial archaeological sites and Sites of Significance to Māori, are already addressed fully by other means; including other (non-Heritage) sections of the PDP and by the Heritage New Zealand Pouhere Taonga Act 2014

¹⁵ Refer the map associated the 'Marine and Coastal Area (Takutai Moana) Act 2011' application for Protected Customary Rights (PCRs) and Customary Marine Title (CMT) by the Te Paatu/Kauhanga affiliated application group "Nga Hapu o Ngati Kahu" (application Ref No. CIV-2017-485-268), (which encompasses all of the RP);

¹⁶ As enunciated in 'Ngati Kahu, Portrait of a Sovereign Nation', (ibid). Refer particularly to Table 11, p308, that lists Rangitoto as one of the "Lands to be relinquished in full and final settlement" of Ngati Kahu's unresolved Te Tiriti o Waitangi grievances claim.

¹⁷ For explanation of Indefeasibility of Title and its importance refer: <https://legalvision.co.nz/property-and-leasing/indefeasibility-of-title-new-zealand/>

(‘Heritage Act’). We note in this regard from our own experience that the FNDC routinely asks for HNZ comment on RC applications associated with RP land and the FNDC routinely reminds applicants of relevant provisions of the Heritage Act and the current Accidental Discovery Protocol in its responses to RC applications, without the land needing to be subject of a HA overlay.

If having received feed-back from some or all of multiple disparate tangata whenua groups, it is likely in many cases that the FNDC planners will subsequently make decisions that don’t accord with some or all of that feedback, owing to the likely problematic issues with such consultation and feedback as discussed above, and owing to the RMA strictures that the planners must abide by. This will only add to the prevailing antagonism between many parts of Maoridom in this district and the FNDC.

Reason No.4:

Designating an area of land as a ‘Heritage Area’ based on its Māori cultural connections and/or landscape attributes amounts to ‘Double Counting’ contrary to the RMA according to Environment Court and High Court rulings.

The RMA requires DPs to address certain *‘matters of national importance’*, including:

- protecting natural character of the environment and landscapes per RMA Sections 6(a) and 6(b),
- Māori cultural issues and values per 6(e), and
- Historic Heritage resources per 6(f).

The National Planning Standards (NPS)¹⁸ requires these matters to be addressed in their own specific chapters of a DP where all of the policies and rules related to these matters must be located. For example, the NPS states¹⁹[with emphasis added]:

“If the following matters are addressed, they must be located in the Natural features and landscapes chapter:

a. identification of features and landscapes that are outstanding, significant or otherwise valued

b. provisions to protect and manage outstanding natural features and landscapes

c. provisions to manage other valued features and landscapes.”

¹⁸ Ministry for the Environment. November 2019. “National Planning Standards”. Wellington: Ministry for the Environment. (as updated February 2022): <https://environment.govt.nz/publications/national-planning-standards/>

¹⁹ *ibid*, p34

The Environment Court (EC), and the High Court (HC) on appeal against EC rulings, has, in several key cases, ruled against, or cautioned against, ‘**double-counting**’ (their term) either Māori issues or natural character/landscape issues under the umbrella of Historic Heritage protection.²⁰ The EC & HC have also cautioned against the use of the terms such as “heritage landscape”, “cultural landscape” & “cultural heritage landscape” (here referred to collectively as “HLs”) in regards classifying wide areas of land as Historic Heritage resources.²¹ The courts have indicated that a high threshold test needs to be passed in order for a HL to be protected under the authority of Section 6(f). Judge Whiting R in ‘Clevedon vs Manukau City Council’ stated [with emphasis added]:

*“Because of the strong direction in the Act to recognise and provide for matters of national importance, decision makers under the Act should not hold that a landscape qualifies as a **cultural heritage landscape** under Section 6(f) **without adequate expert evidence of a probative nature**. There requires **sufficient intensity of heritage fabric woven into the landscape** to warrant the application of Section 6(f).”²²*

This is what we refer to below as the “Whiting Test”.

It is very pertinent that in ‘Guyco vs FNDC’ the EC ruled (in part) against the FNDC and required the then proposed ‘Paihia Mission Heritage Area’ (that was already of modest dimensions compared to the new HAs in the PDP), be shrunk to only encompass land in close proximity to specific Heritage Resources²³. The PDP, by proposing to extend HAs, including the RPHAB, to encompass land far away from any listed Heritage Resources or any other significant Historic Heritage resources (and specifically proposing to capture the RP land in the RPHAB on account of it being ‘heritage landscape’) is a direct affront to prior EC and HC cautions and rulings.

It is clear from the PH2 report (in which the word *landscape(s)* appears 138 times) and comments in the S.32 HR (in which the word *landscape(s)* appears 52 times) that the basis for defining the RPHAB as Historic Heritage to be protected under the legislative authority of Section 6(f), is due to its purported Māori cultural associations and visual amenity landscape attributes. This amounts to ‘double counting’ unless it can be demonstrated that the “*landscape qualifies as a cultural heritage landscape*”, per the above referenced Whiting Test; however, it fails this test on two counts, as explained below:

²⁰ For example, see:

[2009] NZEnvC 103_Maniototo Env Soc et al vs Central Otago District Council And Otago Regional Council, at [208],

[2010] NZEnvC 211_Clevedon et al vs Manukau City Council, at [185] and [193],

[2012] NZEnvC 120_Wallace vs AKL Council, at [65], [66] & [67],

[2014] NZEnvC 129_Guyco and PHPSS vs FNDC, at [88] and Outcome at [101], and

[2014] NZHC 3328_TW Reed Appeal vs FNDC, at [49], [50], [51], [95], [96] & [97]

²¹ For example, see: [2009] NZEnvC 103 *ibid*, [2012] NZEnvC 120 *ibid*, & [2014] NZHC 3328 *ibid* [49] & [50],

²² [2010] NZEnvC 211 *ibid*, [193]

²³ [2014] NZEnvC 129 *ibid*,

The assertion of the RP's Māori cultural associations derives from the PH2 report's comments regarding a purported high concentration of recorded archaeological sites on this land. However, the consultants failed to evaluate the location and nature of any sites relevant to our RP Sites, or even list them, stating²⁴: *"there are too many sites recorded on the Rangitoto Peninsula to record individually"*. In contrast, HNZ informed our planning consultant in March 2016²⁵ that there are *"10 archaeological sites recorded in the vicinity of your client's property"* and listed them all by their NZAA Site No.s. Our careful examination of the full site records for these 10 sites²⁶ (as summarised in Annexure C) reveals that only six and part of a seventh are located on any of our RP Sites, and almost all of those are located in fenced off bush areas that are protected by various (non-Heritage) PDP overlay rules and by (our applied for) Conservation Covenant, in addition to being protected by the Heritage Act. The sites are also of relatively low regional archaeological significance (typically disturbed shell middens and ground depressions related to remnant kumara pits) of the type ubiquitous over the Northland District. HNZ state²⁷ there are over 11,000 NZAA recorded sites in Northland. No doubt there are a far greater number of unrecorded sites of such low regional significance level as the ones on our RP Sites.

The only two genuinely significant Māori related sites on the RP are two Māori Pa²⁸, both on the harbour side of the RP. These are not on, or proximal to, our land and they are not listed in the PDP as either Heritage Resources or Sites of Significance to Māori. There are in fact no 'Sites of Significance to Māori' at all listed in the PDP in relation to the RP. The only listed Heritage Resource on the RP is a European colonial built heritage item being 'Butler's House'²⁹ on a neighbouring property, but that is not visible from our property and not proximal to any of our boundaries.

The valuable parts of our RP Sites, where development activity is at least practical, are our largely featureless cow paddocks. The NZAA listed sites that are to some extent located in our cow paddocks represent a very small fraction of that developable land. Therefore, our cow paddocks clearly cannot be defined as Historic Heritage resources as they do not meet the key arm of the Whiting Test; i.e. re having: *'sufficient intensity of heritage fabric woven into the landscape to warrant the application of Section 6(f)'*.

²⁴ PH2 report *ibid*, p226

²⁵ Letter from HNZ signed by James Robinson, Regional Archaeologist, Subject: "Archaeological values at Hihi Lot 1 DP322506; Lot 1 & 2 DP 391076; Lot 1 DP 204980; and Allot 79 PSH of Mangonui East", addressed to Emma Miller, Reyburn and Bryant, dated March 29th, 2016

²⁶ O04/58, O04/69, O04/447, O04/472, O04/473, O04/650, O04/651, O04/652, O04/653, and O04/973.

²⁷ Letter from HNZ *ibid*, p2

²⁸ The two Pa being: Rangitoto within the Rangitoto Recreation Reserve aka Allotment 71 Parish of Mangonui East and a Pa on Allotment 67 Parish of Mangonui East that some local kaumatua have suggested should be referred to as "Moehuri".

²⁹ "Butler's House" is listed in the PDP Appendix 3: Schedule Of Historic Sites, Buildings And Objects, as item No. 16 and is located on 'Allotment 1 Section 2 Village of Mangonui'.

The deficiencies identified in the consultant's PH2 report discussed under Reason No. 1 above, evidences that the Whiting Test is failed on a second count, i.e. the requirement that there be: *'adequate expert evidence of a probative nature'* in order to assert that the RPHAB land reaches the threshold of a *'cultural heritage landscape'*.

Therefore, the evidence evinces that our RP developable land (i.e. our largely featureless cow paddocks) are not Historic Heritage resources and therefore cannot be included within a HA overlay in the PDP.

Arguably, the FNDC's entire philosophy underlying its proposal to apply HA overlays over large areas of rural land in the Far North District for the first time, is in breach of the RMA (as interpreted by the EC) as in most cases it amounts to 'double counting' of the kind discussed above. This philosophical approach of wanting to protect landscapes and Māori cultural values under the guise of Historic Heritage protection by authority of RMA Section 6(f) is evidenced by numerous statements in the S.32 HR, for example: [with emphasis added]:

*"Heritage Area Overlays, are proposed to afford protection to areas within the district where there is an identified cluster of Heritage Resources and there is potentially a mix of Significant Natural Areas (SNA), Outstanding Natural Features and Landscapes (ONFL), Coastal Environment, Notable Trees and places of significance to various Māori iwi and hapū groups."*³⁰

and:

*"It is considered that the extension of the areas will protect the historic heritage, values and **landscapes** from inappropriate use, development and subdivision."*³¹

and:

"The table below outlines the provisions in the RPS that are directly relevant to Historic Heritage and Heritage Area Overlay chapters

*Objective 3.14 **Natural character, outstanding natural features, outstanding natural landscapes and Historic Heritage**"*³²

and:

"The key issues in these plans that have been taken into account in the preparation of the provisions for the Historic Heritage and Heritage Area Overlay chapters are as follows:

³⁰ S.32 HR, p8

³¹ Ibid, p5

³² Ibid, p11

- Including hapū and iwi groups in consultation of development plans and to recognise them as the kaitiaki of the heritage areas in their rohe (tribal territory);
- Avoiding earthworks, to protect wāhi tapu and sites of cultural and historical significance;
- Protecting mauri of coastal waters; and
- Recognising the importance of protecting cultural landscape³³.

and:

*“Disturbance of heritage resources have the potential to cause significant and detrimental short and long-term effects that are often associated with construction, development, land use and subdivision. These can result in adverse effects such as damage to **cultural areas, values, landscapes** and resources.”³⁴*

and (in specific reference to the MRPFA and the perceived risk if the RPHAB was not extended over the entire RP):

*“No protection of Rangitoto Peninsular and **consideration of the Sites of Significance to Māori and Outstanding Landscape.**”³⁵*

In our case, where there are no Heritage Resources at all on our Sites, the only basis for extending the RPHAB over our Sites (and most of the neighbouring properties) appears to be the land’s purported environmental/landscape and Māori cultural values. However, these values and resources, in so far as they require protection and are not otherwise protected by other laws, must be given such protection in their own (non-Heritage) chapters of the PDP; and they are; hence the double counting.

Even the FNDC has determined that protecting ‘cultural landscapes’, if and when that becomes authorised and required by legislation that may replace the RMA, is problematic, as evidenced in its response to the Government’s ‘Natural and Built Environments Act’ exposure draft where it was stated³⁶:

“With the further introduction of cultural landscapes in a district known as the birthplace of the Nation and where Māori settlement first occurred, the majority of the district could be identified with those values. Protection of such resources need to be proportionate to the communities that are protecting them for the benefit of the nation.

It would appear that the FND is over represented in this regard and it would not seem equitable for the FND to be the part of the country ‘carrying the

³³ Ibid, p13

³⁴ Ibid, p14

³⁵ Ibid, p59

³⁶ FNDC submission to the MfE RE: “Far North District Council submission on the exposure draft for the Natural and Built Environments Act”, dated 3 August 2021, p5.

can' to protect these areas in perpetuity while other areas of the country do not."

Notwithstanding, the above expressed concerns, the FNDC appears to be 'jumping the gun' in endeavouring to apply protections for HLs (e.g. 'cultural landscapes') by way of its proposed HAs, even before such is authorised by legislation.

Reason No.5:

Justification for the entire RP land being subject to the RPHAB overlay was in part based on an erroneous premise regarding the land's involvement in historically significant colonial European industrial enterprises.

The S.32 HR states [with emphasis added]³⁷:

*"The Rangitoto peninsula is known for its archaeological values through **heavy involvement in the timber trade, its flax industry, and whalers and sealers in the late seventeenth century**, visible today in Butler House and the Whaling Museum on Butler Point."*

This is entirely untrue and/or misleading. There is no archaeological or historical written evidence that the RP was involved in either the timber or flax trades post 1840. These were significant industrial activities of the Mangonui region, however they were activities centred on the other (Mangonui town) side of the harbour.³⁸ Certainly, no whalers or sealers came to the area in the '*late seventeen[sic] century*'!

Butler House is a Heritage Resource directly associated with Captain William Butler's mid-19th C. whaling ship provisioning enterprise. However, Butler's commercial and domestic premises were constrained, at least initially, to two lots of four and one acres (1.6 & 0.4 hectares respectively) on Butler Point.³⁹

Butler and his family members and later assigns subsequently acquired additional land at Butler Point leading to the Butler Point estate of some 26 hectares, now owned by the Ferguson family.

³⁷ S.32 HR, p2

³⁸ Refer for example: "Mangonui Gateway to the Far North", Neva Clarke McKenna's most substantive documentation of the early colonial history of this area. See particularly commentary on pp 5,6,52 & 63 re flax industry and 6, 7 and 139 re timber industry.

³⁹ Refer Survey Plan dated August 14th, 1850 depicting the 4 acre and 1 acre lots that William Butler was Crown Granted that surrounded both his domestic and commercial premises. The original of this plan is extant in the NZ Archives file titled: "Case files [Thomas Ryan, Mangonui]" (OLC 403-407) and a copy can be accessed electronically per: https://ndhadeliver.natlib.govt.nz/delivery/DeliveryManagerServlet?dps_pid=IE57115166 (as File 2). These two lots remain today as: 'Lot 1 Section 2 Village of Mangonui' (re the 4 acres surrounding Butler House) and 'Lot 2, Section 2 Village of Mangonui' (located at the tip of Butler Point and which was granted to Butler for his "business purposes" according to other documents in the ibid file - there is some evidence to suggest Butler constructed a bond store on this latter lot).

Butler Point however is regarded locally as its own distinct locality, not ordinarily associated with the term 'Rangitoto Peninsula', whereas the Rangitoto Peninsula is a much larger area (of circa 60 hectares) almost entirely unconnected to Butler and his Butler Point historical activities or to the other historical activities ascribed to it in the above quoted S.32 HR passage.

Reason No.6:

The S.32 HR assessment did not evaluate the economic impact of imposing HA overlays over large tracts of land for the first time or assess the risk of not acting.

RMA S. 32 (2) requires that [with emphasis added]:

“An assessment under subsection (1)(b)(ii) must—

*(a) identify and assess the benefits and costs of the environmental, **economic**, social, and cultural effects that are anticipated from the implementation of the provisions, including the opportunities for—*

*(i) **economic growth that are anticipated to be provided or reduced and***

*(ii) **employment that are anticipated to be provided or reduced; and***

(b) if practicable, quantify the benefits and costs referred to in paragraph (a);

and

*(c) **assess the risk of acting or not acting** if there is uncertain or insufficient information about the subject matter of the provisions.”*

The FNDC's primary stated objectives for extending HA areas over additional land is the:

“protection from inappropriate subdivision, use and development”⁴⁰

Therefore, the intended result must be a reduction of subdivision, use and development. This clearly has an economic impact including a negative impact on growth and employment. Nevertheless, this key impact was not addressed in the S.32 HR, either qualitatively or quantitatively.

What is to be regarded as *“**inappropriate subdivision, use and development**”* is also not meaningfully defined. Many references are made to *“protecting heritage values”* but what that means in practical terms is left ill-defined. For example, for the RP land we own, would building a colonial European style dwelling be seen as compromising or honouring the heritage

⁴⁰ S.32 HR, p5

values of this particular land? Would subdivision to create additional new Sites and dwellings to provide for accommodating district population growth be regarded as compromising the purported heritage values of our cow paddocks, assuming it was in compliance with all of the non-Heritage provisions of the PDP?

In terms of assessing the risk of not imposing the HAs over all of the RP (as well as other additional HA areas), the S.32 HR did not give any evidence to demonstrate that *'inappropriate subdivision, use and development'* has been occurring in the areas concerned, or provide any evidence or reason to believe such inappropriate activity should be expected to any significant extent without the additional rules.

MfE Guidance on Section 32 evaluations⁴¹ emphasises the importance of *'defining the problem'* (i.e. what is currently going wrong that new rules might rectify). The word 'problem' appears 32 times in this context in that key guidance document, however it doesn't appear once in the S.32 HR report. The implied problem per the S.32 HR report is the absence of restricting rules. But creating rules simply because there aren't such rules already is not a valid reason if the absence of such rules is not proving to be deleterious. Essentially the new HA overlays and their associated rules represent a solution to a non-existent problem; or at least to a problem that hasn't been evidenced.

In conclusion, the FNDC has not evinced a valid case (in its S.32 HR or otherwise) for the RPHAB to encompass all of the RP, in particular to encompass the three Sites we own.

⁴¹ Ministry for the Environment. 2017. A guide to section 32 of the Resource Management Act: Incorporating changes as a result of the Resource Legislation Amendment Act 2017. Wellington: Ministry for the Environment.

Annexure A

List of all Privately Owned 'Sites' on Rangitoto Peninsula (the three yellow high-lighted sites are owned by the Submitters)

("Site" as defined in the FNDC PDP)

Property Address (Rating Unit)	Certificates of Title	Legal Descriptions of Primary Parcels	Title Ltd as to Parcels (i.e. Tital Area not trustworthy)	Site Areas per Titles (hectares)	Best Est. Site Areas (per LINZ for LTD Titles) (hectares)	Owner	Valuation Numbers	Rate Account Numbers
70 Peninsula Parade, Hihi 0494	NA-48A/271	Lot 1 DP 91523	No	4.1920	4.1920	Reece & Raewyn Foote	00085-07302	2409026
79A Peninsula Parade, Hihi 0494	365565	Lot 3 DP 391076	No	1.6650	1.6650	Stewart & Lisa Hampton	00085-07304	5008703
79B Peninsula Parade, Hihi 0557	NA-2021/63	Lot 1 DP 50149	No	1.1508	1.1508	Philippa Moran & Neil Adcock	00085-07200	2409022
79C Peninsula Parade, Hihi 0494	89829	Lot 1 DP 322506	No	6.4700	6.4700	Zeja Hu	00085-07303	2439079
Lot 1, Peninsula Parade, Hihi 0494	365563	Lot 1 DP 391076	No	13.8794	10.3578	Ian D. Palmer	00085-07301	5013476
		Lot 2 DP 391076	No					
	NA-134D/247	Lot 1 DP 204980	Yes					
150 Peninsula Parade, Hihi 0494	NA-134D/248	Allotment 79 Parish of Mangonui East	No	0.6399	0.6399	Ian D. Palmer	00085-07305	5013477
95 Marchant Road, Hihi 0494	NA-509/127	Lots 2,4,5,6,7,8 & 10 Section 2 Village of Mangonui	Yes	3.336	3.404	Ferguson Family Trust	00085-07400	2409027
	NA-509/128	Lot 1 Section 2 Village of Mangonui	Yes	1.619	1.414	Ferguson Family Trust		
	NA-509/129	Lot 9 Section 2 Village of Mangonui	Yes	0.650	0.776	Ferguson Family Trust		
	NA-509/130	All the land in Crown Grant 57H (H.1.37)	Yes	1.214	0.973	Ferguson Family Trust		
	NA-509/131	Allotment 67 Parish of Mangonui East	Yes	2.911	2.263	Ferguson Family Trust		
	NA-5C/517	Part Allotment 2 Parish of Mangonui East and Part Lot 1 Deposited Plan 48582	Yes	15.985	17.360	Ferguson Family Trust		

PO Box 273
Mangonui 0442
September 27th, 2021

John and Adina Brown,
Plan Heritage Ltd

Plan Heritage Ltd Reports prepared for the FNDC

Dear John & Adina,

I'm writing to you on behalf of my neighbours, the Ferguson family of Butler Point (Jan who lives on the property and William who lives elsewhere) as well as my wife (Zeja Hu) and myself.

Collectively, we own about 100 acres of land on Butler Point/Rangitoto Peninsula. As you would appreciate this is a substantial portion of the land that the FNDC proposes to be subject to the 'Mangonui and Rangitoto Peninsula Historic Heritage Area' (MRPHA), being one of several Heritage Area (HA) overlays in their draft Proposed District Plan (PDP).

The FNDC has indicated that the MRPHA proposal, and particularly its proposed area, is as a direct result of recommendations in your (i.e. Plan Heritage Ltd) June 2020 finalised Stage 2 report which they have recently made public.

We consider ourselves principal 'affected parties' who should have been consulted on the content of your reports before they were made public or used by the FNDC to base its MRPHA proposal as published in a draft PDP.

We appreciate your report makes various recommendations and proposes additional professional work, however the FNDC have indicated their intent to Notify their PDP before the end of this year (at which point the relevant PDP rules become legally enforceable) and they have not indicated what if any of your recommendations and additional work will be undertaken before then, or at all. They have also thus far not proposed any changes to the Heritage Area (HA) policies and rules in the draft PDP, or to the proposed area of the MRPHA, despite receiving community feedback in May this year, urging changes and/or withdrawal of the MRPHA proposal. A new deadline of October 13th has been set for public submissions on the HA aspects of draft PDP and in order for our submissions to be properly informed we are seeking certain information from yourselves concerning your Stage 2 report. (We have also submitted Official Information requests to both HNZPT and the FNDC for information to inform our submissions).

Our concerns with the MRPHA proposal may well lead to formal submissions and objections after the PDP is Notified. If your report were to stand unamended and not superseded by a more in-depth report, then it's likely we would find ourselves publicly challenging some of the assertions in that report and pointing to what we see as deficiencies and inadequacies in the research work documented in it. This public forum

challenging seems particularly likely as the FNDC are now relying heavily on your report in publicly defending their HA proposals.

To avoid such public forum challenge and criticism, we'd like to give you the opportunity now to respond to our set of questions and issues as attached. If after considering our questions you were to agree that some or all of our concerns are valid and need to be resolved before the FNDC's PDP is Notified, we would be looking to you to advise both ourselves and the FNDC of your considered position on such matters.

We would also be happy to discuss our concerns with you if you thought that would be helpful and appropriate.

Ngā mihi,

A handwritten signature in dark ink, appearing to read 'I. Palmer', with a long horizontal flourish extending to the right.

Ian Palmer

Cc Jan Ferguson

William Ferguson

Zeja Hu

Plan Heritage Report Queries & Concerns

The Plan Heritage report titled: “Far North District Plan Review Historic Heritage Stage Two Rapid Assessment Reports” (PH S2) was made public by the FNDC in early September 2021. The list of queries and concerns below relates to that report’s proposal for a Mangonui and Rangitoto Peninsula Historic Heritage Area (MRPHA) and in particular to the proposal that the MRPHA extend over the entire Rangitoto Peninsula and Butler Point.

1. PH S2 report uses the term “Butler Point” as if it is part of a wider area referred to as “Rangitoto Peninsula”. It is questionable whether this is topographically correct. In any event, “Butler Point” is an area well known locally, and locals perceive it as an area distinct from such wider area which may or may not be correctly described as “Rangitoto Peninsula”. There is a consequential potential for confusion in the proposed naming of the MRPHA. Has LINZ been consulted as to whether this is the most appropriate descriptor of the areas proposed to be encompassed by the MRPHA?

Notwithstanding the above concern, for the sake of brevity the abbreviation “RP” is used below to refer to all of the land on the eastern side of the Mangonui Harbour that is proposed to be within the MRPHA including, unless stated otherwise, Butler Point.

2. PH S2 (p227) refers to:

Cliff Pa (O04/17) located on Lot 1 DP91523

- Heritage New Zealand Pouhere Taonga (HNZPT) have advised that this is the same site as described in O04/57. Both NZAA Site records suggest the most recent site inspection was in the 1960s and neither records accurately define the location, but presumably it corresponds to the spine of the ridge that runs NE-SW from the Hihi sub-division; i.e. approximately coincident with present day Peninsula Parade. Local residents see no evidence of this site and suggest its remnants were probably destroyed as a result of the Hihi subdivision and/or the creation of the Peninsula Parade public road in the 1970s. This contention is supported by the fact that the site is not mentioned in Joan Maingay’s “Mangonui Sites at Butler Point Mangonui” (DoC 1992) which she published following her extensive site surveys of the entire RP. In the NZ context, a Pa site is a very significant archaeological site, and to suggest one exists near the NE extremity of the proposed MRPHA area will be seen as a major justification for the MRPHA extending to that area, which is otherwise far away from any recognised Pa sites on the RP. Aren’t the uncertainties associated with this site and the lack of reliable commentary as to its present-day condition (if it still exists in any meaningful sense at all) a very weak

basis on which to propose a HA extending over a substantial area of private land be formalised as an overlay in a Notified PDP?

3. PH S2 (p226) states:

- *“Note that there are too many sites recorded on the Rangitoto Peninsula to record individually”*
- Why could all such sites not be listed in the report? As written, this statement implies a plethora of sites at an extraordinary density compared to surrounding areas and the Northland region in general. This premise appears to be a primary reason for proposing the whole RP (but not areas beyond) being included in the MRPHA. Joan Maingay (1992) did list and describe all sites recognisable on the RP based on her fieldwork between 1986 and 1992. Maingay’s list comprises two only Pa and 12 sites of lesser historic and archaeological significance (middens, pits, terraces, orchards etc). Robinson (2007 “An Archaeological Survey of Whakaangi, Doubtless Bay”) documented a similar number of archaeological sites on the RP while documenting an order or magnitude more than this number in the adjacent, and culturally related, Whakaangi area. In terms of regional context, it is noted that there are over 12,000 NZAA recorded sites in Northland.
- Would it not have been more transparent to include some of the above context and perhaps also the attached NZAA Site viewer image which illustrates that the density of recorded archaeological sites on the RP is not extraordinary in this region?
- Is it not correct that the density of such NZAA recorded sites is as much a function of how much archaeological examination has been focussed on a particular area, as it is on the density of remnants of pre-colonial period land occupation? Noting that in the case of the RP, it has been the subject of intensive archaeological examination instigated in large part by its residents, particularly the late Lindo and Laetitia Ferguson (who were presented with a conservation award by DoC in December 1993 for their efforts) and Jan Ferguson who is a qualified archaeologist.
- Don’t surrounding areas have a similar or greater density of NZAA recorded archaeological sites and more sites of significance to Māori, particularly re Whakaangi (as evidenced by Robinson 2007) and also Paewhenua Island?

4. PH S2 (p229) states:

*“Butlers House and Trading Station (Former) on the eastern side of the inner harbour contains a **range of** mid—late 19th century buildings and structures of national importance” [emphasis added]*

What is “a range of” referring to? Local understanding is that there is only one built historic Heritage Resource of national importance present on the RP and that is Butler House at Butler Point.

5. PH S2 (p230) states:

“Rangikapiti Pa and Rangitoto Pas are well-preserved examples of pre-European Headland Pa sites”.

- Doesn't this suggest both Pa are equally well preserved and are both in good condition and are well cared for? While Rangikapiti can fairly be regarded that way, (on account of a huge amount of volunteer work over several decades by the Friends of Rangikapiti group), the same cannot be said of Rangitoto, that has been entirely neglected by the party in whose custody it has been entrusted (i.e. the FNDC). The attached letter from NZHPT, which has been provided to the FNDC, attests to the issues that are compromising The Rangitoto Pa's integrity and preservation.
- Given that Rangitoto Pa would undoubtedly be the principal non-European historic Heritage Resource within the eastern portion of proposed MRPHA, shouldn't its relatively poor current condition and threats to its archaeological features be worthy of mention in the PH S2 report? Aren't HNZPT's recommendations, particularly wrt the urgent need for a Management Plan, relevant and noteworthy information, as is the fact that the site's administering body has ignored such advice and has for many years been in default of Section 41 of the Reserves Act 1977 for not having developed and then acted on such a MP?

6. PH S2 (p230) states:

“On the Rangitoto (Waikeke) Peninsula there are remnants of the original Kauri forests which attracted European settlers to establish a saw mill at Mill Bay, the timber trade fuelling the development of Mangonui in the 1880s.”

and (p233):

” Rangitoto Peninsula and Butlers Point include areas of surviving and regenerating Kauri forest and bush, which provide strong natural character and context to the shoreline, substantially unchanged for the last 200 years.”

- What is the basis for implying the RP was known as “Waikeke”? It is acknowledged that some references (e.g. Maingay 1992 and Mogford “The Butler House, Mangonui 1847-1990”, 1992), do suggest this association), however more recent research evidences that “Waikiekie” (sometimes ‘Waikeke’ and other derivatives) was the original Māori name of the area now known as Mill Bay and the associated headland between that bay and the Mangonui township. For example, see the attached Waitangi Tribunal (WT) published sketch map of Mangonui town circa 1840 overlain by approximate location of relevant OLCs.¹ (The confusion arose as Captain William Butler was granted a 3-acre block of land (per Deed 57H H1.37) on Butler Point in 1859 in exchange for the surrender of his derivative claim to some or all of Thomas Ryan’s OLC 407 which was land Ryan had claimed on the town side of the Harbour i.e. at Waikiekie, now Mill Bay²).
- What evidence is there to assert that there are ‘remnants of the original Kauri forests’ on the RP? Local knowledge suggests there are none (but there are in the Whakaangi area on the other side of Hihi). The oldest known Kauri tree on RP is thought to be circa 60 yo (located on the Ferguson family’s Butler Point estate).
- The RP and adjoining Hihi, Waiaua Māori land and much of the maunga Whakaangi was ‘sold’³ by certain Māori chiefs to European sawyers, including James Berghan and Thomas Ryan in the 1830s, largely to facilitate harvesting of Kauri timber. Isn’t it reasonable to assume the more accessible Kauri on this land, particularly the RP, would have been long gone when the mill at Mill Bay was constructed in 1880 (fully operational in 1901 and closed in 1915)? Shouldn’t the limitations in these heritage relationships have been more clearly represented in the PH S2 report?
- What evidence is there that the RP shoreline is substantially unchanged relative to pre-colonial times? Consistent with the previous point, John Kinder’s 1858 water colour painting of the RP (now in the Auckland City Art Gallery) shows a largely cleared landscape including the shoreline.

¹ Fig 29 from Professor Dame Evelyn Stokes (DNZM)’s 1997 Waitangi Tribunal published research report: “A Review of The Evidence In The Muriwhenua Lands Claims”, Wai 45 P002 Vol1 p359.

² Direction of the Court of Land Claims signed by Commissioner Francis Dillion Bell, September 26th 1859, p81 from the file: “Thomas Ryan Mangonui [ACFC 16153 OLC1/17 OLC 403-407] Archives New Zealand The Department of Internal Affairs Te Tari Taiwhenua”

³ Waitangi Tribunal research papers suggest that the Māori ‘sellers’ didn’t see these transactions as sales in a conventional European sense, but rather licences to occupy the land and share in the exploitation of the land’s resources, which in the 1830s and 40s was principally timber.

- Most of the vegetation visible today on the RP is as a result of plantings by landowners since 1970 (when the Ferguson family acquired the Butler Point estate). These plantings, as well as the few pre-colonial aged specimens, will remain well protected by current planning laws/rules (and other proposed PDP rules), but more importantly by landowner veneration for such, with or without being subject to a HA overlay. Shouldn't the evidence of this long standing and ongoing manaaki whenua have been acknowledged in the report?

7. PH S2 (p232) states:

"The maunga Whakaangi is acknowledged as a place of great cultural significance to Ngati Kahu, and is closely related both visually and contextually to the historic heritage area."

So why isn't the maunga Whakaangi and the three associated historically important Māori land areas of Waiaua, Taemaro and Waimahana proposed to be included in the MRPHA? (Noting that these three areas were established as 'Native Reserves' in association with the Crown's historically significant 1863 'Mangonui Purchase').

8. PH S2 (p233) states:

*"Mangonui and Rangitoto Peninsula historic heritage area is of high significance historically, at the regional and national level, as a place of Māori settlement for at least 500 years prior to the arrival of the first Europeans. **There are associations with early waka landings**, and the pa sites on either side of the harbour have a strong associations with the Māori Rangatira Moehuri and his wife Rangikapiti."*

Which early waka landings is this a reference to and where are those landing places considered to be? Local understanding is that traditional Māori accounts of their early history place such waka landings at locations other than on the RP. The above quoted text is liable to be construed as suggesting such waka landings were on the RP, giving weight to the argument that the whole of the RP should be included in the HA.

9. PH S2 (p233) states:

"... the American whaler Captain Butler".

Captain William Butler was born in Dorset England in 1814.

10. PH S2 (p238) states:

*“...Rangitoto Peninsular /Butlers Point Area: includes [sic] **several** pa sites ...”*
[emphasis added]

Per Point 2 above, local knowledge only recognises two Pa on the RP: “Rangitoto” (O04/16 formerly N7/3) and the Pa on Butler Point (O04/56 formerly N7/70) of uncertain name (Robinson (2007) and Maingay (1992) suggest possibly “Moehuri” or “Hurimoe”).

11. PH S2 (p238) states:

“Rangitoto Peninsular /Butlers Point Area: The proposed area covers largely [sic] undeveloped coastal and conservation land,..”

- What conservation land is this referring to? Local knowledge only identifies one piece of conservation land on the entire RP, that being the land that DoC grandiosely refer to as the “Oyster Point Conservation Area” (and locals refer to as the “DoC Strip”).
- There is a 13-acre FNDC administered recreation reserve (Rangitoto Recreation Reserve) and some ‘Paper’ Roads and small esplanade strips on the RP, but almost all of the privately owned land has riparian rights.
- If a reference is to be made to ‘conservation land’; i.e. to the DoC Strip (aka Oyster Point Conservation Area), shouldn’t it be pointed out that this is a tiny (0.14 hectare) piece of inaccessible land not actually located at or on Oyster Point that has long been entirely ignored by DoC and currently supports an abundance of invasive non indigenous weeds? (It might also be mentioned that it is subject of a RoFR offer to Ngati Kahu as part of a proposed Waitangi Treaty settlement, notwithstanding its diminutive size and lack of apparent significance.).
- The RP is comprised of circa 20 titles on which there are at least seven dwellings and numerous utility buildings and other ‘improvements’, so does ‘largely undeveloped’ fairly convey this present-day reality?

12. PH S2 (p245) states:

“Deeds Plan C3 (North Auckland) (1840-1876) showing Butlers House and Trading Station, house and fields laid out”.

- What is intended by the quoted date range and what reference is this based on?

- What evidence is there that Deeds Plan C3 shows either Butler House, the associated Trading Station or fields associated with Butler? (We see no such evidence from a close examination of a recently acquired high-resolution copy of Deeds Plan C3).
- Local knowledge of the cadastral history of this land indicates the Butler family never owned most of the land that is the subject of Deeds Plan C3, but rather that document is a set of sketches of the circa 1859-1863 subdivisions of land that the Crown sold to John Payne Lloyd in 1852 (see SO 1535B). These subdivisions and sales included 46 small sized 'town lots' (more clearly portrayed on SO 1535C1). These lots were never occupied as such and remained abandoned until claimed by a neighbouring landowner by adverse possession in the 1950s. Aren't the lineaments on Deeds Plan C3 purported to delineate Butler's fields etc, actually the cadastral boundaries of John Payne Lloyd's subdivided lots?
- Archival records including the attached survey plan⁴ show that the Government denied Captain Butler's request in 1850 to purchase 50 or 100 acres of RP land and instead agreed to sell just 5 acres to him (prior to a public auction of adjacent land). This first sale by the Government of land on the eastern side of the Mangonui Harbour comprised a four-acre lot on which Butler's house and buildings were already located ('Lot 1 of Section 2 Village of Mangonui') and the one-acre lot at the point ('Lot 2 of Section 2 Village of Mangonui'). The latter block was granted on the basis that it was required for Butler's 'business purposes' and probably was the site of a bond store as gazetted in 1851. Isn't this 5 acres of land the most deserving on the RP of being included in a District Plan HA and the rest of the circa 130 acres of RP land commensurately less deserving (except possibly for the two Pa sites referred above)? (It is acknowledged that Butler subsequently acquired additional land via public auction and a series of private conveyances between 1852 and 1867, leading to the circa 52-acre estate now owned by the Ferguson family).

13. PH S2 (p246) states (in relation to a 1948 aerial photograph):

*"Butler's trading post **and the small bach to the north** are the only settlement visible on the Rangitoto Peninsula, despite some early subdivisions."*[emphasis added]

Where and what is the 'small batch'? Local knowledge is not familiar with any 19th C. built structure on the RP other than Butler House. An extant stone cottage was built by Clifford Collins Edmonds in Te Kau Bay (on present day Lot 1 DP50149)

⁴ Thomas Ryan OLC file

which was occupied from 1951⁵, but nothing of that appears on any 1948 photograph.

14. PH S2 (p252) states:

“Further work is required to define ‘sub-areas’.

This will include review of design guidance for those areas;

Historic Heritage Management Plans should be prepared which detail management responses and specific policies for heritage areas and sub areas; “

- Can you please provide examples of ‘design guidance’ and ‘Historic Heritage Management Plans’ so that we have a better understanding of what you are proposing.
- Would it be inappropriate for the FNDC to Notify its PDP with the MRPHA as per its draft PDP without completing the above proposed work and without having produced such proposed Design Guidance and Historic Heritage Management Plan documents (and without consulting with affected landowners and other relevant stakeholders on the content of such)?

15. PH S2 (p248) states:

“The evaluations in this report are based on high-level research and a single site visit, so further assessment is required. In particular, there has been no stakeholder engagement to date. The following are preliminary recommendations in terms of developing the methodology, fieldwork and stakeholder engagement to finalise the evaluations.”

- Did the site visit on 19th Sept 2019 involve anyone visiting the RP?
- What engagement with and/or input from HNZPT helped informed what was written in the report?
- What additional work is required before the ‘preliminary recommendations’ for a MRPHA could be considered sufficiently robust and defensible to be included as a Heritage Area overlay in a Notified PDP?

⁵ Affidavit by Clifford Collins Edmonds 19th December 1955, Application 8230 p62-64

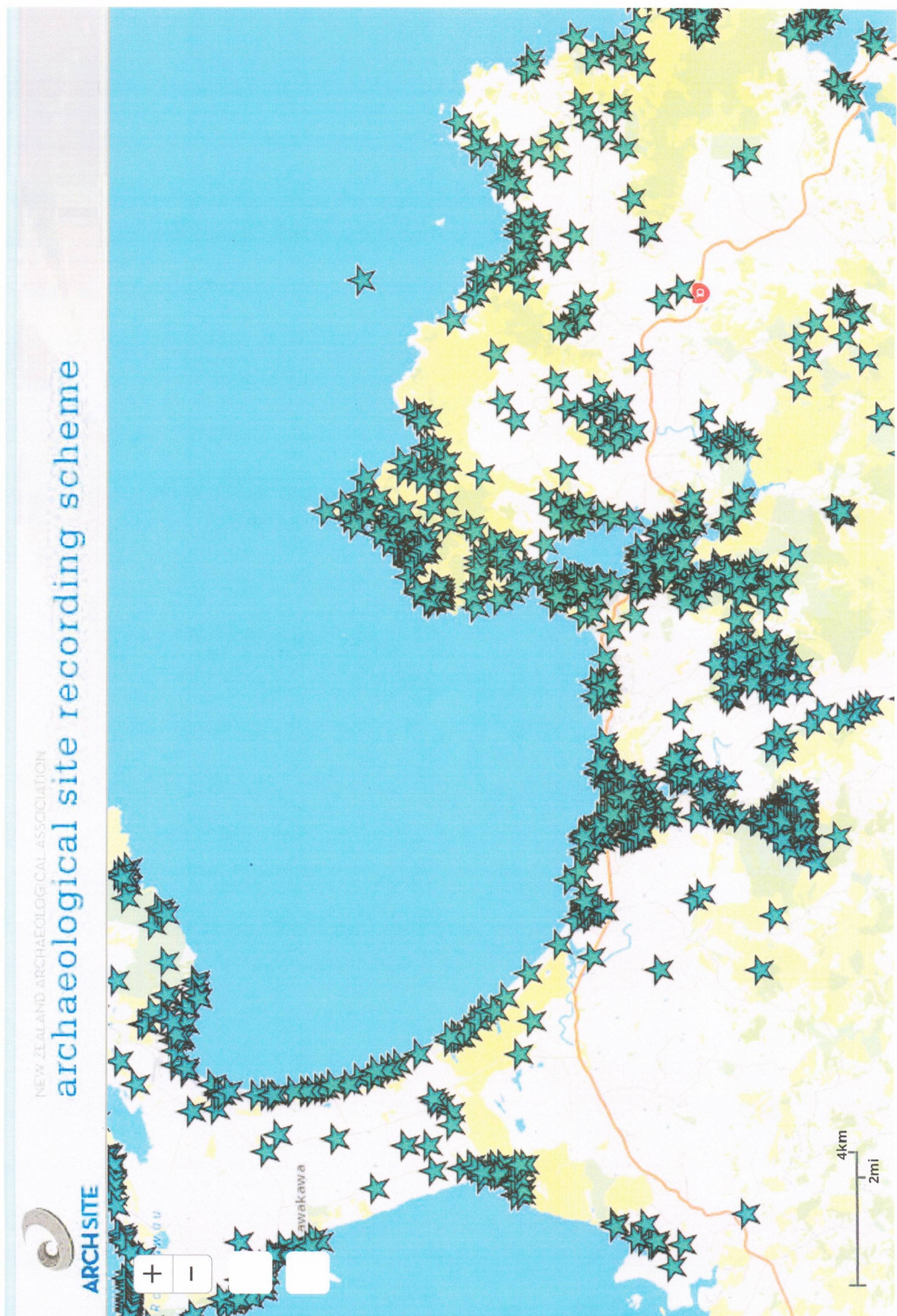
16. PH S2 promotes the concept that the MRPHA should embrace both built colonial period European Heritage Resources and pre-colonial Māori Heritage Resources and 'tell' their respective stories. The FNDC's resulting proposed MRPHA has a single set of conflated policies and rules which don't differentiate between areas included for one heritage reason or the other. Is this not problematic given the lingering sensitivities and unresolved issues associated with the early colonial history of this area? Numerous publicly available WT reports document a substantial volume of well-founded historic claims, which in the case of Ngati Kahu (other than Ngati Kahu ki Whangaroa) are yet to be settled. Ngati Kahu leadership have documented their sense of grievance associated with these well-founded claims in more passionate terms⁶. This history is seen by at least some in this community in terms of the area's development and growth of prosperity enjoyed by European colonial period settlers being at the expense of its Māori inhabitants. Given that background, to define a HA with this combination of Heritage Resources may lead to perverse outcomes. For example, consent conditions for buildings on areas of the RP included due to their pre-colonial Māori heritage associations, may be required to adopt European colonial architectural styles; arguably an insult to local Māori not an honouring of their heritage.
17. Shouldn't PH S2 have taken account of inter Māori Iwi sensitivities associated with the history of the RP in the early 19th C.? WT documents⁷ summarise primary source references that describe a decisive battle at the Rangitoto Pa in the early 19th C (possibly circa 1828). In this episode the Ngati Kahu occupiers are said to have suffered heavily at the hands of Ngapuhi attackers. It is assumed that this episode largely ended Māori occupation of Rangitoto Pa and its immediate surroundings and subsequently facilitated the 'sale' of this land by Ngapuhi chiefs to the European sawyers in the 1830s. The right to sell was highly contentious as between the leading Māori chiefs of the day representing opposing Iwi, which is an aspect that is still relevant in current proceedings in the WT⁸.

These are obviously sensitive matters that need to be carefully considered and addressed accordingly in consultation with relevant Māori representatives before finalising any MRPHA.

⁶ Professor Margaret Mutu et al: "Ngāti Kahu: Portrait of a Sovereign Nation", 2018.

⁷ Wai 45 reports: D005, P002, R001, T004 and others

⁸ Applications to the Renewed Muriwhenua Land Tribunal for binding recommendations





HERITAGE NEW ZEALAND
POUHERE TAONGA

S:\Archaeology\Archaeological Authorities

3 November 2020

File ref:
11013-014

To Whom It May Concern

RANGITOTO RECREATION RESERVE: PROPOSED MANAGEMENT PLAN

Heritage New Zealand Pouhere Taonga is the statutory authority established under the *Heritage New Zealand Pouhere Taonga Act* (the Act) to promote the identification, protection, preservation, and conservation of New Zealand's historic and cultural heritage. Heritage New Zealand's powers extend to all land in New Zealand.

Rangitoto Recreation Reserve is managed by the Far north District Council. It covers 5.5ha and contains two archaeological sites; a midden (O04/973) and a prominent headland pa (O04/16). Rangitoto Pa along with Rangikapiti Pa located immediately opposite across the narrow harbour, effectively controlled access into Mangonui Harbour and the important horticultural resources of the Oruaiti River prior to European arrival in the area and the establishment of the Mangonui as a whaling fleet provisioning town. Today these two pa provide a special visual experience for tourists visiting the area.

At the request of the adjacent landowner I inspected the archaeological features of the pa in early 2020. The pa is one of the larger defensive pa sites in the area and covers much of the reserve with well-preserved terraces, a large 52 x 16m tihi platform and uses both steep natural slope and a deep ditch for defensive purposes (see Maingay plan Fig. 1 below). The site is traditionally significant to Ngati Kahu Ki Whaingaroa and is associated with a battle late in the prehistoric period.

In the last 30 years the grass cover on the headland has given way to weed shrubs and quick growing wattles that now obscure many of the pa features. These weed species will eventually cause significant damage to it through tree blow and root action. There is an urgent need to have a management plan to guide the removal of weed species, identify those areas that should be planted in native trees and set aside from planting the impressive earthworks of the pa that should be again covered in grass.

Heritage New Zealand has provided some initial advice to Mr Palmer as to how the archaeology of the pa could be enhanced through weed control and focused grass and native tree replanting (see suggestions in Figs 2-4 below). However a professionally produced vegetation management plan is required that can incorporate archaeological and other values to enhance visitor enjoyment values. Should the Far North District Council agree to fund such a plan Heritage New Zealand is happy to continue to support this project by providing archaeological advice and expertise as required.

Yours sincerely,

Dr James Robinson
Archaeologist, Heritage New Zealand Pouhere Taonga

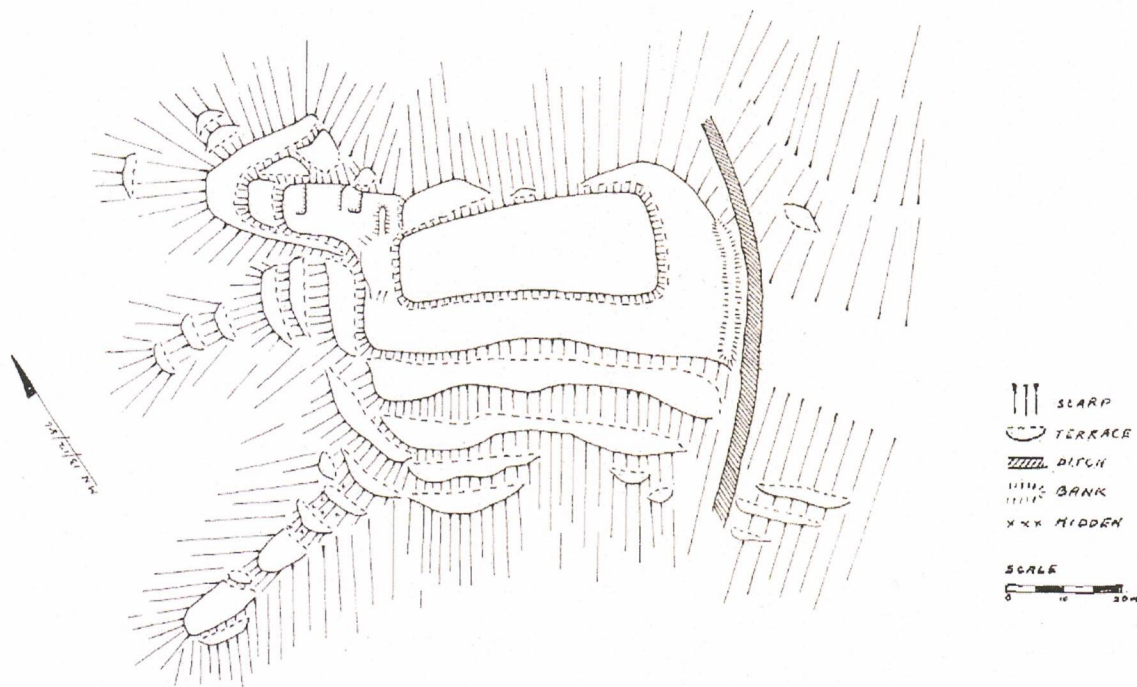


Fig. 1: Maingay 1986 sketch drawing of Rangitoto Pa (O04/16)



Fig. 2: Maingay sketch plan of Rangitoto Pa superimposed on google earth image. Note the sketch is not to scale and so the northern most terraces need adjusting to the north and east to fit the land.



Grass Fig. 3: possible vegetation boundary proposal over google earth 2020 image. This is a starting point for a proper vegetation management document.



Fig. 4: Proposed boundary of the area to have weed species removed and re-grassed (inside the green polygon). The green polygon is overlaid over the 1986 Maingay archaeological plan and this in turn has been overlaid over the 1950 aerial photo that clearly shows archaeological features of the pa.

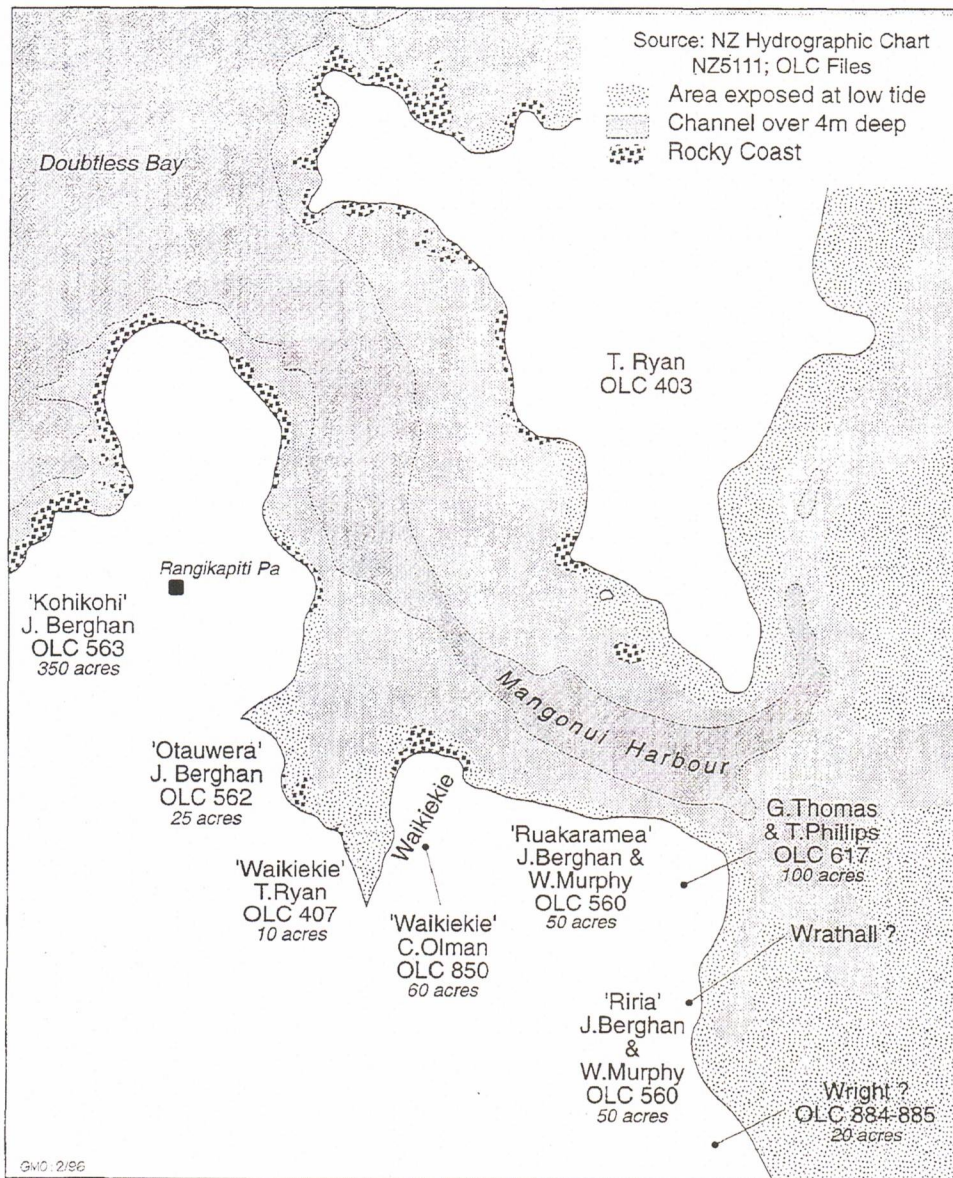


Figure 29: Mangonui, circa 1840

14.1.2 Thomas Ryan (OLC 403–407; Doc D5, p 1160)

Old land claim 407 'Wykeke' (Waikiekie) 21 June 1838 – 10 acres:

bounded on the north by a small Bay on the east by land belonging to Charles Holman [sic] and on the south and west by land belonging to James Berghan and Thomas Ryan.



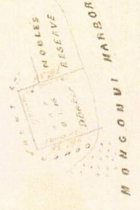
Plan of a Port
of the land formerly claimed by
Thomas Ryan, at Mungana

Scale of Chart



Handwritten signature and date:
J. W. M. 1844

*Plan of a Port of land at Mungana
formerly claimed by Thomas Ryan, at Mungana
and General Company*



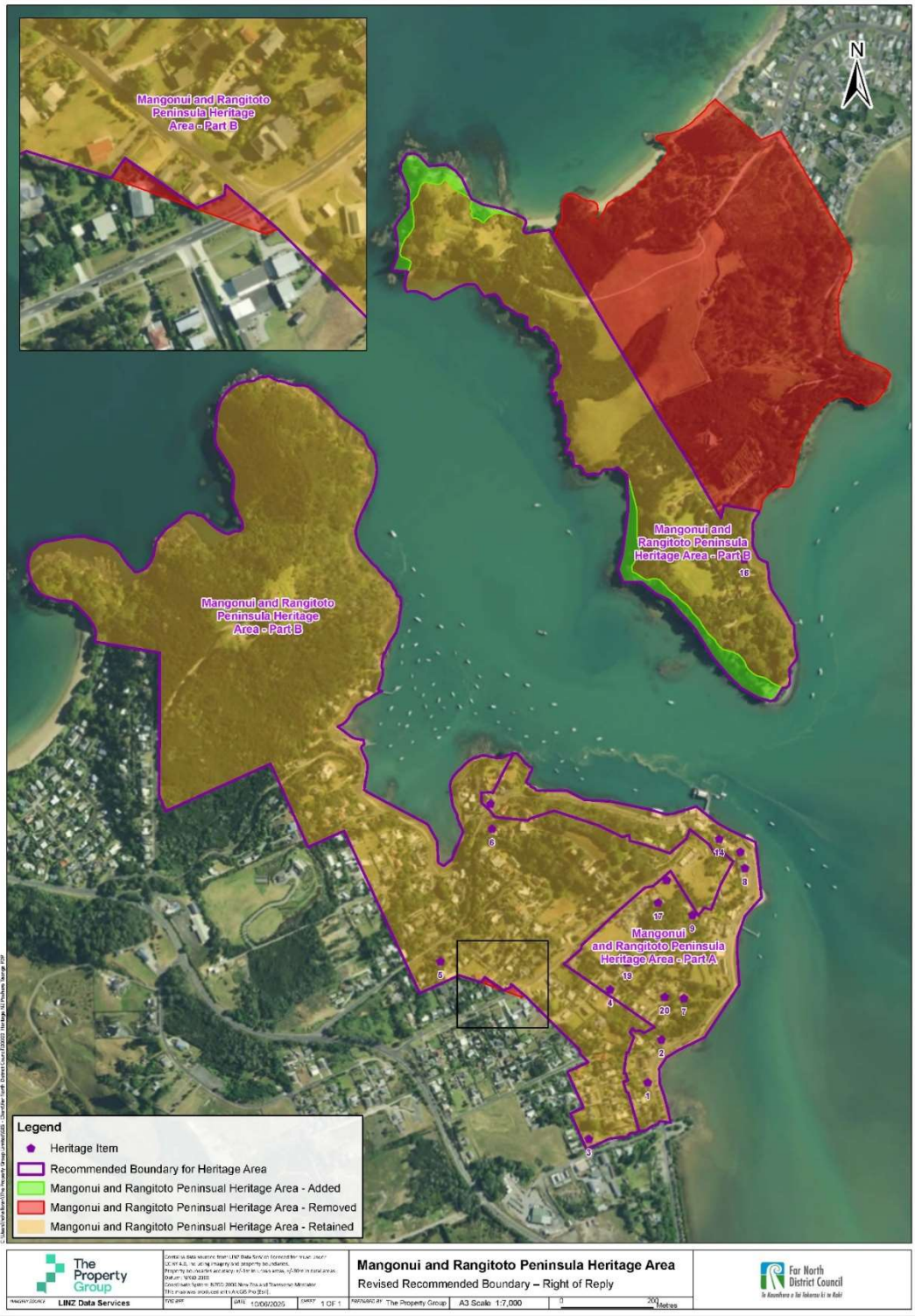
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Page	100-100-100
Date	1844

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Mungana Harbor
1844

Annexure C

Archaeological Sites "in the vicinity" of Sites owned by Zejia Hu and Ian Palmer on Rangitoto Peninsula (as advised by Heritage NZ per letter dated March 29th, 2016)

Count	NZAA ID		Location		On our property?	In our fenced off bush areas?	Reports?	Comments	
1	O04/58	Disturbed terraces and midden	SW corner of:	Lot 1, DP322506	yes	No	Aug 2006 Assessment & Apr 2008 Field Report and Aug 2007 Historic Places Trust authority to disturb Re RC 2080541	Aug 2006: "site is considered to be of relatively low significance"	Apr 2008: "This present archaeological assessment reconfirms the status of the statement and further notes that the midden to be affected by the intended earthworks is a secondary deposition with a suspect provenance, although it probably originates from previous earthworks relating to the earlier farm track higher up the slope."
2	O04/69	pits	Nth end of:	Lot 2, DP391076	yes	No			
3	O04/447	midden	Foreshore bank in front of Stone cottage:	Lot 1, DP50149	No	n/a			
4	O04/472	terraces & possible pit	In bush above stream extending into paddock to the east. SE side of:	Lot 2, DP391076	yes	Mostly			
5	O04/473	midden	on flatish area above beach on small promotory	Lot 1, DP91523	No	n/a		"Disturbed by bulldozing and pine plantation"	
6	O04/650	terraces	On Paper Rd and bush area of:	Lot 79 Parish of Mangonui East	partially	Yes	Site Appraisal, Oct 2020 Re RC 2300099		
7	O04/651	small eroding midden scatter	3m above high tide mark:	Lot 1, DP322506	yes	Yes			
8	O04/652	midden scatter	20m Nth of stream, 10m above beach:	Lot 1, DP322506	yes	Yes			
9	O04/653	small eroding midden scatter	50 Nth of O04/652 on harbour-side bank	Lot 1, DP322506	yes	Yes			
10	O04/973	disturbed midden	east side of:	Lot 71 Parish of Mangonui East (Rangitoto Recreation Reserve)	No	n/a			

Heritage Area Overlays - Mapping Amendments			
Identifier	Overlay Name	Planning Map (Panel Recommendation)	Description of change
Hearing 12	Mangōnui and Rangitoto Peninsula Heritage Area Overlay		Add area shown in green to the overlay. Remove area shown in red from the overlay. Retain area shown in orange in the overlay. Refer Recommendation Report 12 at section 4.5 recommendation 4(a).

[Home](#) > [Council](#) > [District plan](#) > [Proposed district plan](#) > **Council decisions on submissions**

Council decisions on submissions

Decisions on the Proposed District Plan (PDP)

The Far North District Council has made decisions on submissions for the Proposed District Plan. At the [11 June 2026 Extraordinary Council meeting](#) the council adopted the [Hearing Panel's recommendations](#) and reasoning, except for two amendments relating to:

- Amending the Infrastructure Chapter and Planning Maps to recognise and provide for district land drainage infrastructure within the Kaitāia, Waiharara, Kaikino and Motutangi drainage districts (S257.023, Te Hiku Community Board).
- Rezoning Section 25 SBRS of Kawakawa from Rural Residential Zone to General Residential Zone with the Te Mataora Precinct overlay (PREC-9) and associated provisions (S555.001, Ngā Kaingamaha o Ngāti Hine Charitable Trust).

On the 30 June 2026 pursuant to Clauses 10 and 11 of Schedule 1 of the Resource Management Act 1991 (RMA), Far North District Council advises that decisions on submissions to the Proposed District Plan have been released.

[Proposed District Plan - Decisions Version Public Notice.](#)

Right of appeal

Under Clause 14 of Schedule 1 of the Resource Management Act 1991 (RMA), submitters may appeal the council's decisions to the Environment Court. Submitters have 30 working days from 30 June (until 12 August) to

Attachment C

Detailed Submission

Appeal Areas

This appeal is against FNDC's decision to reject our submission point S249.001 which read (in relation to the June 2022 Notified PDP):

*"Remove the HA overlay from the RP [Rangitoto Peninsula] except for the land directly associated with and/or proximal to listed Heritage Resources. At this time the only listed Heritage Resource on the RP is 'Butler's House' that is historically significant in large part due to the whaling ship provisioning enterprise that Captain William Butler conducted in the mid-19th Century. The land that this resource and that enterprise is on, or directly relates to, is Lots 1 & 2 of Section 2 Village of Mangonui."*¹

The Decisions Version PDP as notified on June 30th, 2026 ('DVPDP') did partly accede to our S249.001 request in that the areal extent of the Mangonui and Rangitoto Peninsula Heritage Area Part B Overlay (MRHAB) that covered the whole of the Rangitoto Peninsula in the Notified PDP was reduced. In the DVPDP the MRHAB now covers that part of the Rangitoto Peninsula that lies between the Mangonui Harbour and the 1-chain wide unformed legal road ('paper road') that runs NW-SE across most of the peninsula; i.e. it includes all of the land to the SW of the paper road as shown as the Yellow + Green areas on Figure 1 overpage.

¹ Submission dated 20/10/2022 signed by Ian Palmer and Zejia Hu, accessible digitally per: https://www.fndc.govt.nz/_data/assets/pdf_file/0022/17662/Proposed-District-Plan-Submission-249-ian-diarmid-palmer-and-zejia-hu.pdf, (hereinafter 'Our Original Submission S249'), Point 1 on p3 under the heading: 'I seek the following decision from council'



Figure 1, Rangitoto Peninsula portion of the (MRHAB).

Red + Yellow = Notified PDP. Yellow + Green = DVPDP.

As discussed in the S.42A RoR Rpt², the rationale for reducing the areal extent of the MRHAB to how it appears in the DVPDP was largely based on a note written by FNDC's heritage expert, Mr John Brown of Plan.Heritage Limited ('Brown's Note'). We take it that Mr Brown's recommendation in that note was mostly in response to evidence presented to, and discussed at, the Heritage Hearing held on May 27th, 2025³ but also, we would suppose, it took account of the multiple submissions we and others have made in relation to this issue during the whole PDP process spanning the last five years. The relevant section of Brown's Note is included in full as Annexure 1 herewith.

Our appeal is for the MRHAB to be further reduced in area by removing the areas shown on Figure 2 below outlined in red ('Appeal Areas').

² Report titled: 'SECTION 42A REPORT Officer's written right of reply, 26 June 2025, Hearing 12 – Historic Heritage and Kororāreka Russell Township Zone' (hereinafter 'S.42A RoR Rpt') at para 49 p15

³ Note headed: ' 16/06/2025, Attention: Melissa Pearson; James Witham, REGARDING: Proposed Far North District Plan – Historic Heritage topic' and included as Appendix 4 to the S.42A RoR (hereinafter referred to as 'Brown's Note')

It should be appreciated that removing the Appeal Areas from the MRHAB will result in much less of a reduction to the MRHAB area than our S249.001 submission called for; i.e. we are proposing a compromise.

The Appeal Areas are legally defined as the portions of Lots 2, 4 & 6 DP 573386 that are not as of the date of lodgement of this appeal subject to Conservation Covenants (noting the green shaded areas high-lighted in Figure 2 are the areas that are subject to Conservation Covenants under the Reserves Act 1977).

The Appeal Areas are more precisely defined by reference to DP 573386 from which it can be determined that the Appeal Areas are comprised as follows:

- Within Lot 2 DP 573386 (part of RT 1044493): 0.6816 Ha
- Within Lot 4 DP 573386 (part of RT 1044494): 2.3326 Ha
- Within Lot 6 DP 573386 (part of RT 1044495): 0.1816 Ha
- **Total area of Appeal Areas: 3.1958 Ha**

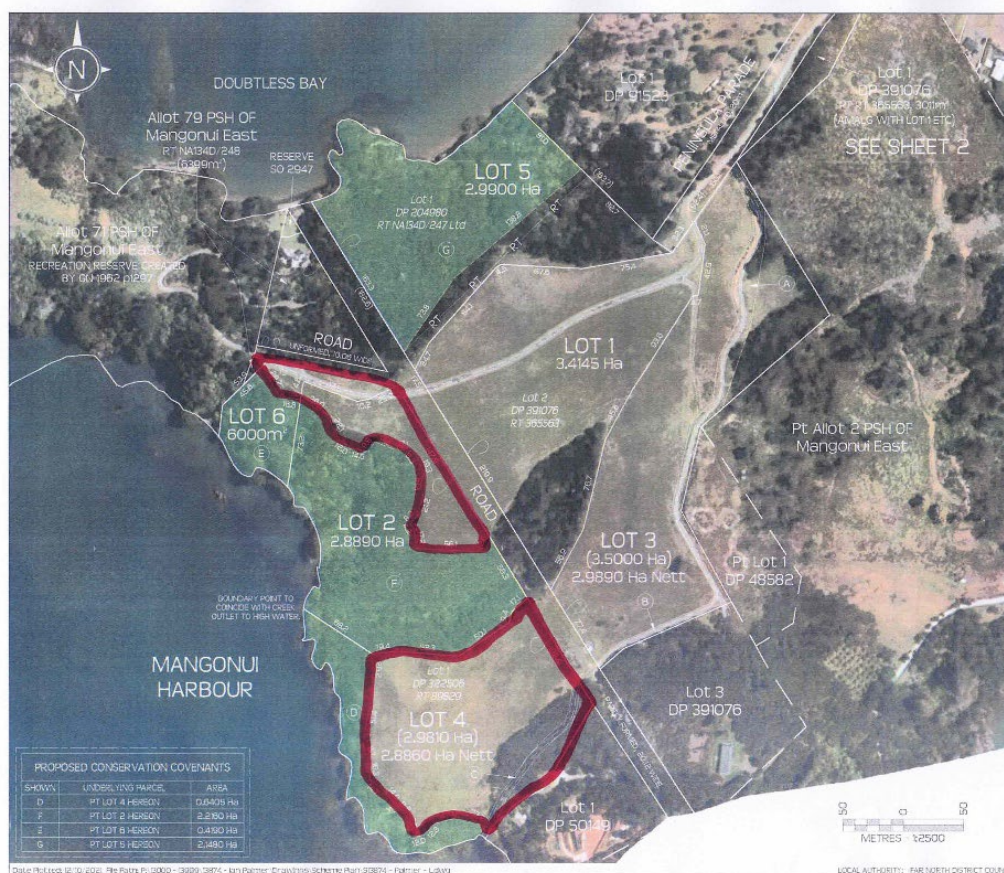


Figure 2, Appeal Areas drawn on approved scheme plan that gave rise to DP 573386

The vast majority of the Appeal Areas are comprised of featureless pastured stock paddocks. The paddocks are fenced to contain sheep and cows, including to exclude the stock from accessing the Conservation Covenanted areas.

A farm shed and stock yard is located within the Appeal Areas on Lot 2 DP 573386 (part of RT 1044493). That lot is subject to a Consent Notice⁴ that states, inter alia that: “No residential unit shall be located within this land area.”

Approximately half of the Appeal Area that is within Lot 6 DP 573386 (part of RT 1044495) is occupied by a domestic orchard area, duck pond and vehicle accessway.

A small portion of Lot 4 DP 573386 (part of RT 1044494) is occupied by a Right of Way that provides access to the Mangonui Harbour to certain neighbouring titles.

Reasons for Appeal

We have set out reasons and supporting evidence as to why areas of land we own and occupy on the Rangitoto Peninsula (RP) should not be encompassed by a HA Overlay in the PDP in five separate documents submitted to FNDC to date:

- May 2021: Our first submission in response to the Draft PDP that FNDC released for comment in April 2021 (Draft PDP Submission)⁵,
- October 2021: A further submission after FNDC allowed an additional consultation period specifically in relation to Heritage aspects of the Draft PDP (Further Draft PDP Submission)⁶,
- October 2022: Our Original Submission S249⁷ responding to the June 2022 formerly Notified PDP,
- May 2025: Our Heritage Hearing Evidence⁸,
- May 2025: Our Hearing Presentation⁹.

A reduction to the MRHAB was subsequently decided on in the DVPDP, we assume at least in part on account of the reasoning and evidence we presented in the above referenced documents. The reduction was however not as large a reduction as we consider our reasoning and evidence justified. Most of our previously submitted reasoning and evidence remains relevant to the current appeal that argues for a modest

⁴ Instrument 12828466.7, being a Consent Notice issued pursuant to s.221(4)(a) of the RMA

⁵ Document headed: “Submission Regarding FNDC’s Draft District Plan” emailed on 7 May 2021 by Ian Palmer to submissions@fndc.govt.nz, pp2-5

⁶ 10 October 2021 email from Ian Palmer to submissions@fndc.govt.nz with attachments

⁷ Our Original Submission S249, pp4-36

⁸ Document titled: “FNDC Proposed District Plan Hearing 12: Historic and Cultural Values Lay-Evidence Re Submission S-249”, e-signed by Ian Palmer and Zejia Hu on 18 May 2025 accessible digitally per: https://www.fndc.govt.nz/data/assets/pdf_file/0024/40569/Ian-Diarmid-Palmer-and-Zejia-Hu,-S249-L-Palmer,-Lay-evidence.pdf (hereinafter ‘Our Heritage Hearing Evidence’), pp2-31

⁹ https://www.fndc.govt.nz/data/assets/pdf_file/0026/40877/Ian-Palmer-Presentation.pdf

further reduction to the MRHAB area. We therefore ask that the arguments and evidence provided in those previously submitted documents should be given due consideration to in these appeal proceedings. However, we also note that our five prior submitted documents concerning this matter predate:

- FNDC's heritage expert's post hearing responses ('Brown's Note' - Annexure 1),
- FNDC's S.42A RoR Rpt, and
- the Hearings' Panel Heritage Report.¹⁰

We understand that the content of those three documents led to FNDC's decision that we are appealing against. Therefore, this document provides our first response to, and in some instances refutes, what was presented in those documents. The reasons and evidence presented here are also largely either more specific to the Appeal Areas than canvassed in our previous documents, or where it appears to us that our prior evidence wasn't recognised or fully understood by FNDC's heritage expert, Reporting Officer and/or the Heritage Hearing Panel.

Having regard to the above explanations, we present below seven particular reasons why the MRHAB per the DVPDP should be reduced in area by the removal of the Appeal Areas.

Reason #1:

In Summary: The Appeal Areas contain no Historic Heritage Resources or any other known items of notable cultural or heritage significance, and consequently they are devoid of historic heritage values warranting management for the purposes of s.6(f) of the RMA.

Supporting Information:

There are no items that could be regarded as Significant Cultural or Heritage Items warranting management per s.6(f) of the RMA on, or proximal to, the Appeal Areas. By 'Significant Cultural or Heritage Items' we mean items which would be one or more of:

- i) Scheduled Heritage Resources¹¹, or
- ii) Scheduled Sites or Areas of Significance to Māori¹², or
- iii) Scheduled Notable Trees¹³, or

¹⁰ PROPOSED FAR NORTH DISTRICT PLAN, RECOMMENDATIONS OF THE INDEPENDENT HEARINGS PANEL RECOMMENDATION REPORT 12, Hearing 12: Historic and Cultural Values, March 2026, (hereinafter 'Hearings' Panel Heritage Report')

¹¹ As 'Scheduled Heritage Resources' is defined in the DVPDP Definitions chapter on p23 and as listed in its Schedule 2

¹² As 'Site and Area of Significance to Māori' is defined in the DVPDP Definitions chapter on p24 and as listed in its Schedule 3

¹³ 'Notable Tree' as such are listed in DVPDP Schedule 1

- iv) Heritage List items¹⁴, or
- v) Archaeological sites or items that are of national or regional significance.

There are in fact no Scheduled Sites or Areas of Significance to Māori anywhere on the entire Rangitoto Peninsula (RP). We have however previously proposed¹⁵ that the two Māori Pā sites on the RP that overlook the Mangonui Harbour do deserve to be scheduled in the PDP as Sites or Areas of Significance to Māori, and we consider them to be archaeological sites of regional significance. These Pā sites being the Rangitoto Pā (NZAA Archsite O04/16) within the Rangitoto Historic Reserve (Allotment 71 Parish of Mangonui East) and the Moehuri Pā (NZAA ArchSite O04/56) within Allotment 67 Parish of Mangonui East that is on Butler Point. Neither of those Pā are proximal to the Appeal Areas and our appeal does not object to the MRHAB encompassing those Pā sites and the land proximal to them.

The only Scheduled Heritage Resource (that is also a Heritage List Item) on the RP is *'Butler House and Trading Station (Former)'* on Butler Point. There are also two Scheduled Notable Trees on Butler Point. Those three scheduled items are hundreds of metres away from the Appeal Areas and not visible from the Appeal Areas and vice versa. Our appeal does not object to the MRHAB encompassing those scheduled items and the land proximal to them as we concur that they are Significant Cultural or Heritage Items.

We identify eight other items of lesser significance within the general vicinity of the Appeal Areas, per Figure 3 and Table 1 below, that could be regarded as cultural or heritage items. These are all listed archaeological sites per the NZAA ArchSite database.¹⁶

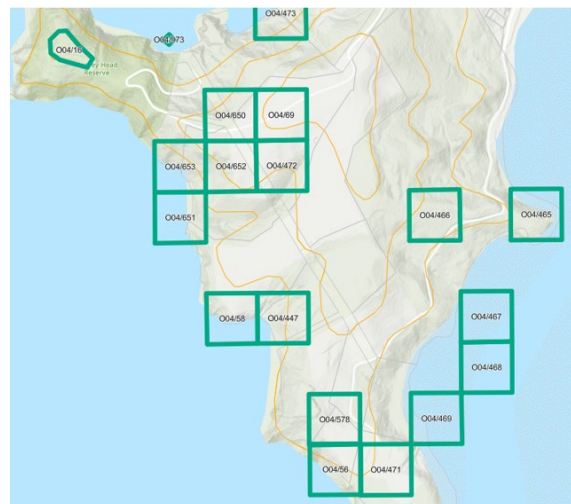


Figure 3, NZAA ArchSite map showing approximate locations of listed archaeological sites in the general vicinity of the Appeal Areas

¹⁴ 'Heritage List' meaning the 'New Zealand Heritage List/Rāangi Kōrero' as defined in the Heritage New Zealand Pouhere Taonga Act, 2014 (herein 'HNZPT Act')

¹⁵ Our Heritage Hearing Evidence *ibid*, p10 point a)

¹⁶ NZAA ArchSite: The New Zealand Archaeological Association Site Recording Scheme online database; <http://www.archsite.org.nz>

Table 1									
Archaeological Sites in the vicinity of Appeal Areas									
Count	NZAA ArchSite Data Entries							Location wrt current allotments (where determinable)	Within Appeal Areas?
	NZAA ArchSite ID	Site Type	Site Features	Ethnicity	Site Periods	Condition Value	Latest Recorded Site Visit		
1	O04/58	Pit/Terrace	Midden, Terrace	Māori	Indigenous pre-1769	No Recent Info	30-August-2002	SW corner of Lot 4 DP573386	Small portion (mostly within Conservation Covenanted Area)
2	O04/69	Pit/Terrace	Pit	Māori	Not recorded but presumably Indigenous pre-1769	No Recent Info	November 1986	NE end of Lot 3 DP573386	No
3	O04/447	Midden/Oven	Midden	Māori	Indigenous pre-1769	No Recent Info	07-January-1988	harbour foreshore of Lot 1 DP50149	No
4	O04/472	Pit/Terrace	Terrace	Māori	Not recorded but presumably Indigenous pre-1769	No Recent Info	November 1986	mostly in bush area Sth part of Lot 1 DP573386 extending into paddock in Lot 3	No
5	O04/650	Pit/Terrace	Terrace	Māori	Not recorded but presumably Indigenous pre-1769	No Recent Info	13-March-1994	On Paper Rd and bush area of Lot 79 Parish of Mangonui East	No
6	O04/651	Midden/Oven	Midden	Māori	Not recorded but presumably Indigenous pre-1769	No Recent Info	13-March-1994	3m above high tide mark so probably covenanted portion of Lot 2 DP 573386:	No
7	O04/652	Midden/Oven	Midden	Māori	Not recorded but presumably Indigenous pre-1769	No Recent Info	13-March-1994	20m Nth of stream, 10m above beach so within covenanted part of Lot 2 DP 573386:	No
8	O04/653	Midden/Oven	Midden	Māori	Not recorded but presumably Indigenous pre-1769	No Recent Info	13-March-1994	50m Nth of O04/652 on harbour-side bank so either covenanted portion of Lot 2 or Lot 6 DP 573386	No

As FNDC pointed out in the 2013 Guyco EC Appeal¹⁷, not every historic site or item rises to the level of significance to require protection under s.6(f) of the RMA. As Ms Baguley, Counsel for FNDC, stated in reference to the definition of Historic Heritage per s.2 of the RMA:

*"Not every historic site, structure, place or surrounding will meet the threshold test of being 'historic heritage'. It is only those sites, structures, places, surroundings "which contribute to an understanding and appreciation of New Zealand's history and cultures"."*¹⁸

We also note that the RPS defines Historic Heritage Resources deserving of district plan measures to protect as those features that exhibit:

- (a) Archaeological and / or scientific importance: the resource contributes significantly to our understanding of human history or archaeological research;*
- (b) (not relevant)*
- (c) Rarity: the resource or site is unique, uncommon or rare at a district, regional or national level;*
- (d) Representativeness: the resource is an excellent example of its class in terms of design, type, use, technology, time period or other characteristic;*
- (e) Integrity: the resource retains a high proportion of its original characteristics and integrity compared with other examples in the district or region;*¹⁹

Clearly the eight known NZAA listed sites that are in the vicinity of the Appeal Areas aren't in that league. They are in fact the type of sites that are ubiquitous to most coastal areas of the Far North, as illustrated in Figure 4 below.

There are in fact a far higher density of, and more culturally significant, recorded archaeological sites outside of the MRHAB to the east of Hihi over the Whakaangi peninsula as shown in Figure 5 below.

¹⁷ [2014] NZEnvC 129, Guyco Holdings Limited & others and Paihia Heritage Precinct Support Society vs the Far North District Council, (hereinafter '2013 Guyco EC Appeal and '2014 Guyco EC Judgement')

¹⁸ 'OPENING SUBMISSIONS FOR FAR NORTH DISTRICT COUNCIL' (re 2013 Guyco EC Appeal), 4 November 2013, (hereinafter 'Guyco FNDC Opening') at para 36

¹⁹ NRC's May 2016 Regional Policy Statement, Policy 4.5.3

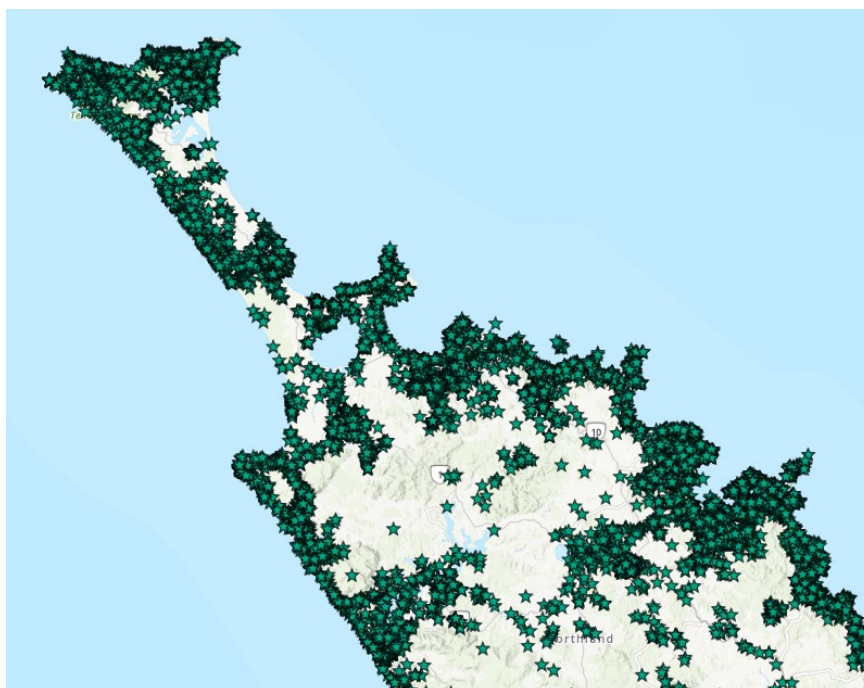


Figure 4, NZAA ArchSite map of listed Archaeological Sites in the Far North District



Figure 8: Shows the location of all recorded or updated archaeological sites from the Whakaangi survey (in the blue bounded area). Previously recorded sites outside the survey area are also shown because they still fall within the larger rohe of Ngati Kahu ki Taumaro.

Figure 5, Map and its original caption from the 2007 Robinson Whakaangi Archaeological Survey²⁰

²⁰ Ibid p27

It is nevertheless important to look closely at the eight NZAA listed sites in the general vicinity of the Appeal Areas as the S.42 RoR justifies retaining the Appeal Areas within the MRHAB on the grounds that they are part of the: *“areas of the Rangitoto Peninsula with the most significant historic heritage values”*.²¹

As can be seen from Table 1, none of the eight known sites could credibly be claimed to be of such regional or national significance to materially contribute to an *‘understanding and appreciation of New Zealand’s history and cultures’* or to meet the RPS definition of *Historic Heritage Resources*. Seven of the sites are not even within the Appeal Areas.

There is just one site (O04/58) for which a portion encroaches into the Appeal Areas; this being an area of disturbed midden and terracing at Oyster Point. That particular site has been the subject of multiple archaeological investigations and inspections as noted in Table 1. They reveal that the site has been highly modified and largely destroyed by land use and earthworks since the land was first occupied and farmed by European settlers from the mid-19th century. In particular an August 2006 assessment concluded that:

“the site is considered to be of relatively low significance”.²²

Subsequently, the NZ Historic Places Trust issued an authority to *‘modify or damage’* part of the site in relation to the formation of the accessway that leads to the harbour on what is now Lot 4 DP 573386.²³ A subsequent April 2008 archaeological field report concluded:

*“The significance statement of this [previous] document (2006:15) notes that the midden scatter impacted by this proposal is of low archaeological significance. This present archaeological assessment reconfirms the status of the statement and further notes that the midden to be affected by the intended earthworks is a secondary deposition with a suspect provenance, although it probably originates from previous earthworks relating to the earlier farm track higher up the slope.”*²⁴

Very little of the remnants of the site is within the fenced paddock that is the substantive part of the Appeal Areas; most of the remnants being located on the harbour-side bank which is within the fenced off area protected by Conservation Covenant, which would remain in the MRHAB if our appeal is acceded to.

²¹ S.42A RoR Rpt at para 50 p15

²² Report titled: “LOT 1 DP 322506, OYSTER POINT, MANGONUI EAST, NORTHLAND: ARCHAEOLOGICAL ASSESSMENT, Report prepared for Lloyd Family Trust By Glen Farley (MA Hons) & Rod Clough (PhD), August 2006, p15 (Prepared in connection with a track construction approved by FNDC per Resource Consent RC2080541)

²³ Letter dated 2 August 2007 addressed to Lloyd Family Trust signed by NZHPT’s Joanna Wylie Acting Senior Archaeologist.

²⁴ OYSTER POINT MANGONUI HARBOUR NORTHLAND, Archaeological Assessment Field Report, O04/58 TERRACES/MIDDEN (SHELL) For Lloyd Family Trust By Barry Baquié & Rod Clough, April 2008, under heading ‘Discussion & Conclusion’, p7

A large part of FNDC's justification for the Appeal Areas to be retained in the MRHAB relates to speculation that there could be undiscovered archeological sites in the area. In particular, the s.42a RoR stated:

*"While some potential undiscovered archaeological sites may be more at risk of being damaged or destroyed than if they were included in the HA Overlay, I consider that the benefits of landowners being engaged and supportive of protecting the most vulnerable and valuable areas of heritage outweigh the lost opportunity for further protection of undiscovered heritage."*²⁵

Despite the awkward syntax of the above statement, the sentiment is clear that the justification for retaining the Appeal Areas in the MRHAB is on account of the speculation, encouraged by FNDC's heritage expert Mr Brown, that additional archaeological features could be hiding in the Appeal Areas. However, this is highly unlikely as the area concerned has been subject to an unusually high number of archeological surveys and studies spanning many years, including:

- Robinson 1963²⁶
- Maingay 1992²⁷
- Nevin 1999²⁸
- Maingay 2003²⁹
- Farley & Clough 2006³⁰
- Robinson 2007³¹
- Maxwell and Huebert 2024³²

The Appeal Areas are almost all cleared pastured paddocks where identification of archaeological sites related to pre-colonial Maori occupation is relatively easy. Accordingly, it is unlikely that the above referenced archaeologists would have missed any significant sites located within the Appeal Areas. Identification of sites within bush-covered areas is somewhat more difficult, and this is one reason why we have proposed that our bush covered areas that are subject to Conservation Covenants remain in the MRHAB per this appeal.

It also needs to be recognized that the area concerned has been occupied and farmed since at least 1847 when William Butler moved on to Butler Point and leased all of the

²⁵ s.42a RoR Rpt, para 35, p11 under the heading: 'Section 32AA Evaluation'

²⁶ 'A Reconnaissance at Cooper's Beach Doubtless Bay', D.W. Robinson, January 1963

²⁷ 'Archaeological Sites at Butler Point, Mangonui Harbour', Joan Maigay, January 1992

²⁸ 'Archaeological Appraisal Proposed house site', Mr and Mrs K Lloyd, Mangonui Heads East, Pt Lot 1 DP48582, David Nevin, July 1999

²⁹ 'Archaeological Inspection of a Proposed House Site, Butler Point, Mangonui Harbour', Joan Maingay, June 2003

³⁰ 'LOT 1 DP 322506, Oyster Point, Mangonui East, Northland: Archaeological Assessment' Report prepared for Lloyd Family Trust, Glen Farley (MA Hons) & Rod Clough (PhD), August 2006

³¹ 'An Archaeological Survey of Whakaangi, Doubtless Bay', James Robinson, Department of Conservation Northland Conservancy, 2007

³² 'Te Paatu: Wahi Tapu and Portable Taonga Volume II: Archaeological Report', Commissioned by the Crown Forestry Rental Trust, Justin Maxwell and Jennifer Huebert, 15 October 2024

RP for stock grazing³³. So, any such postulated '*undiscovered archaeological sites*' that may have once existed are now highly likely to have been destroyed or highly modified by subsequent land use.

Furthermore, s.6(f) of the RMA is not intended to apply restrictive development controls on land based on speculation that some heritage resources could exist when there is no tangible evidence that there is any actual heritage resources present deserving of such protection. There are other more relevant and appropriate legal protections for heritage items that could be discovered in the future, but these do not entail imposition of heritage area overlays as part of a district plan. All Archaeological Sites³⁴, whether currently known or unknown, are protected under the HNZPT Act as well as by the Accidental Discovery Protocol included in the DVPDP in chapters other than the HA Overlay chapter (i.e. per rules HH-R4 & EW-R1).

The 2013 Guyco Environment Court Case as Legal Precedent:

The 2013 Guyco EC Appeal and resulting 2014 judgement, which was confirmed after an unsuccessful 2014 High Court appeal, clearly shows the Environment Court and the High Court are unwilling to countenance subjecting land areas to s.6(f) management by way of HA Overlays where the land in question is not proximal to actual known Heritage Resources.

Reason #2:

In Summary: Including the Appeal Areas in the MRHAB on account of purported landscape values and Māori cultural values amounts to *contra vires* Double Counting.

Supporting Information:

We advanced the *contra vires* double-counting argument in our Original Submission S249³⁵ and expanded on it in Our Heritage Hearing Evidence³⁶, however the argument was nevertheless rejected by FNDC's Reporting Officer and the Hearings' Panel. We contend that they both misconstrued our argument and exhibited a poor awareness or understanding of the case law that underpins it.

Contrary to their interpretation of our argument, we were not suggesting that an area might in certain circumstances justify protections in line with s.6(f) (re its Historic

³³ Letter from William Butler to the Colonial Secretary dated May 28th, 1850 in which he states he had been leasing the land subject to Thomas Ryan's Old Land Claims for three years., NZ Archives item R18461577 "Case files [Thomas Ryan, Mangonui]",

https://ndhadeliver.natlib.govt.nz/delivery/DeliveryManagerServlet?dps_pid=IE57115166, File 37

³⁴ As 'Archaeological Site' is defined in the Heritage New Zealand Pouhere Taonga Act, 2014 ('HNZPT Act'),

³⁵ Original Submission S249 *ibid*, pp7-12

³⁶ Our Hearing Evidence *ibid*, p25-29

Heritage values) and also justify additional separate protections in line with one or more of:

- s.6(a) (preservation of the natural character of the coastal environment etc),
- s.6(b) (protection of outstanding natural features and landscapes),
- 6(e) (the relationship of Maori and their culture and traditions with their ancestral lands etc)
- 7(a) (kaitiakitanga)
- s.8 (taking account of the principles of the Treaty of Waitangi).

Rather, what we are contending is that it is improper to use protections that derive from s.6(f) to protect values other than Historic Heritage; eg to endeavour to protect the landscape visual amenity of a piece of land by a HA Overlay. If the visual amenity of the land justifies protection (as empowered by s.6(a) and/or s.6(b)) then it can and should be so protected; eg by an Outstanding Natural Landscape (ONL) Overlay. Applying an HA Overlay to it either instead of, or in addition to, an ONL Overlay, is what the Courts have described as *contra vires* 'double-counting'. This is what we argue has occurred in this case including specifically wrongly justifying the Appeal Areas being kept within the MRHAB.

We further articulate the *contra vires* Double-Counting argument in the context of this appeal and the Appeal Areas, as follows:

FNDC has made clear that much of the area of the HAs in the DVPDP, and in particular the Appeal Areas, were included in HA Overlays in large part to protect the landscape aesthetic values of the areas concerned and to protect and honour Māori interests and values associated with the areas rather than to protect their Historic Heritage Values. For example:

I. The Heritage s.32 report states [with emphasis added]:

*"The Heritage Area Overlays predominantly encompass larger areas of land than the heritage precincts and areas identified in the ODP. It is considered that the extension of the areas will protect the historic heritage, values and landscapes from inappropriate use, development and subdivision."*³⁷

II. the Heritage s.42A Report states [with emphasis added]:

"... there are two types of HA Overlays – those that are predominantly covering established urban areas where protecting the heritage values of the built environment is the priority, and those where preserving a heritage landscape

³⁷ s.32 Heritage Report *ibid*, chapter 1 "Executive Summary", p5

(that includes a mix of built features but also open pastoral landscapes) is the key objective."³⁸.

III. the DVPDP HA Overlay chapter states [with emphasis added]:

*"Heritage Area Overlays also contain cultural landscapes, and clusters of Sites and Areas of Significance to Māori."*³⁹

IV. the DVPDP HA Overlay chapter states in regards to what is being encompassed by the MRHAB [with emphasis added]:

*"Individual and interrelated Sites and Areas of Significance to Māori, outstanding natural features and landscapes and natural topography underlay the identity of the place, as a historically important harbour town. There are clusters of Sites of Significance to Māori on surrounding headlands and islands which attest to earlier Māori settlement of the area generally..... The Rangitoto peninsula is known for its archaeological values through heavy involvement in the timber trade, its flax industry, and whalers and sealers in the late seventeenth century,"*⁴⁰

(As an aside; these above last quoted statements in the DVPDP are particularly inappropriate and misleading given that there are in fact no scheduled 'Sites or Areas of Significance to Māori' anywhere on the entire Rangitoto Peninsula and there is no documentary evidence that the RP was ever associated with the timber trade, or the flax industry, or sealers, and its association with the whaling industry certainly didn't begin in the late seventeenth century!)

The Environment Court (EC) and the High Court (HC) have repeatedly warned territorial authorities not to attempt to use the authority given to them under s.6(f)⁴¹ of the RMA (re historic heritage) to regulate matters that are provided for under s.6(a)⁴² (preservation of the natural character of the coastal environment) and s.6(b)⁴³ (protecting outstanding natural features and landscapes) and

³⁸ Heritage s.42a Report ibid at para 308, p77

³⁹ DVPDP Heritage Area Overlay chapter under the "Overview" heading on p1.

⁴⁰ DVPDP Heritage Area Overlay chapter, under the headings and subheadings "Overview", "Mangōnui and Rangitoto Peninsula Heritage Area Overlay" on p2

⁴¹ RMA 6(f): "the protection of historic heritage from inappropriate subdivision, use, and development"

⁴² RMA 6(a): "the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development"

⁴³ RMA 6(b): "the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development"

s.6(e)⁴⁴(Māori issues). It represents what the Courts have described as ‘double counting’, which their dicta make clear is not legal under the RMA.

In the 2014 HC case in which FNDC was respondent⁴⁵ the judgement endorsed earlier EC dicta against ‘double counting’, including where judge Moore J. stated [with emphasis added]:

“The Environment Court has urged caution not to “double count” when considering a heritage landscape, in other words to ensure that the consideration of outstanding natural features and landscapes is quarantined from the considerations and assessment of historic heritage and its protection. This principle was discussed in Maniototo Environmental Society Inc where the Environment Court observed:

‘[W]e consider this [‘historic landscape’] usage may be dangerous under the RMA where the word “landscape” is used only in section 6(b). Further, the concept of a landscape includes heritage values, so there is a danger of double-counting as well as of confusion if the word “landscape” is used generally in respect of section 6(f) of the Act.’”⁴⁶

In the same case Moore J. also endorsed the EC’s prior warning against double counting historic heritage and Māori issues, in stating:

“The question of double counting has also been discussed in relation to s.6(e) which requires the Environment Court to recognise and provide for the relationship of Māori and their culture and traditions, being matters of national importance. This was discussed by the Environment Court in Clevedon Cares Inc which determined that the Wairoa Valley was a cultural heritage landscape but noted that:

‘It is also important to recognise the need to avoid the double counting of Maori issues which are specifically provided for in Sections 6(e), 7(a) and 8 of the Act.’”⁴⁷

FNDC prevailed in the above referenced HC case, but only because the HC found ‘double counting’ of the type that it made clear it would not have tolerated did not arise in the particular circumstances associated with that case at that time (in 2013/14). Those particular circumstances being that the HC case related only to the Paihia Mission Heritage Area (PMHA) per the ODP which is a compact area surrounding particular Heritage Resources, for which it was a stretch for the appellants to argue that it had been established for its landscape values rather than its heritage values. This contrasts starkly with the Appeal Areas, which are areas totalling nearly 3.2 Ha that do not contain or are proximal to any Significant

⁴⁴ RMA 6(e): “the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga”

⁴⁵ NZHC [2014] 3328 _TW Reed Appeal & Dalling Investments vs FNDC in which the appellants were appealing the EC decision

⁴⁶ Ibid, at para [95]

⁴⁷ Ibid at para [97]

Heritage or Cultural Items. It can reasonably therefore be inferred that the Appeal Areas have actually been included in the MRHAB on account of them:

- a) being an attractive green landscape as viewed from residential areas of Mangonui township and Mill Bay, and
- b) containing speculated undiscovered archaeological evidence of pre-colonial Māori occupation.

If that inference is accepted, then the DVPDP has clearly trespassed into the *contra vires* domain of ‘double-counting’ by including the Appeal Areas in the MRHAB on account of its landscape and purported Māori values, rather than any intrinsic tangible historic heritage values.

The Government gave further guidance to territorial authorities on avoiding ‘Double-Counting’ by its publication of the 2019 National Planning Standards (‘NPS’)⁴⁸ which includes the following mandatory directions to territorial authorities with regard all district plans [with emphasis added]:

“17. If the following matters are addressed, they must be located in the Sites and areas of significance to Māori chapter:

- a) descriptions of the sites and areas (eg, wāhi tapu, wāhi tūpuna, statutory acknowledgement, customary rights, historic site, cultural landscapes, taonga and other culturally important sites and areas) when there is agreement by Māori to include this information*
- b) provisions to manage sites and areas of significance to Māori “⁴⁹*

and:

“21. If the following matters are addressed, they must be located in the Natural features and landscapes chapter:

- a) identification of features and landscapes that are outstanding, significant or otherwise valued*
- b) provisions to protect and manage outstanding natural features and landscapes*
- c) provisions to manage other valued features and landscapes.”⁵⁰*

In so far as there are aspects of the landscape encompassed by the Appeal Areas that were so significant to warrant management in accordance with s.6(a)

⁴⁸ Ministry for the Environment. November 2019. National Planning Standards. Wellington: Ministry for the Environment (as updated February 2022).

⁴⁹ Ibid p33 in chapter 7 “District-wide Matters Standard” under the Heading: “Mandatory directions” and the subheading: “ Historical and cultural values”

⁵⁰ Ibid p34 under the sub-heading: “Natural environment values”

and/or s.6(b) requiring protection by particular planning rules in the PDP, then they should have been (and in fact were) addressed in the DVPDP's 'Coastal Environment' chapter and the 'Natural Features and Landscapes' chapter; i.e. by imposing Coastal Environment (CE) and ONL Overlays over them. And indeed, the area is encompassed by both CE and ONL Overlays in the DVPDP as illustrated in Figure 3 below.

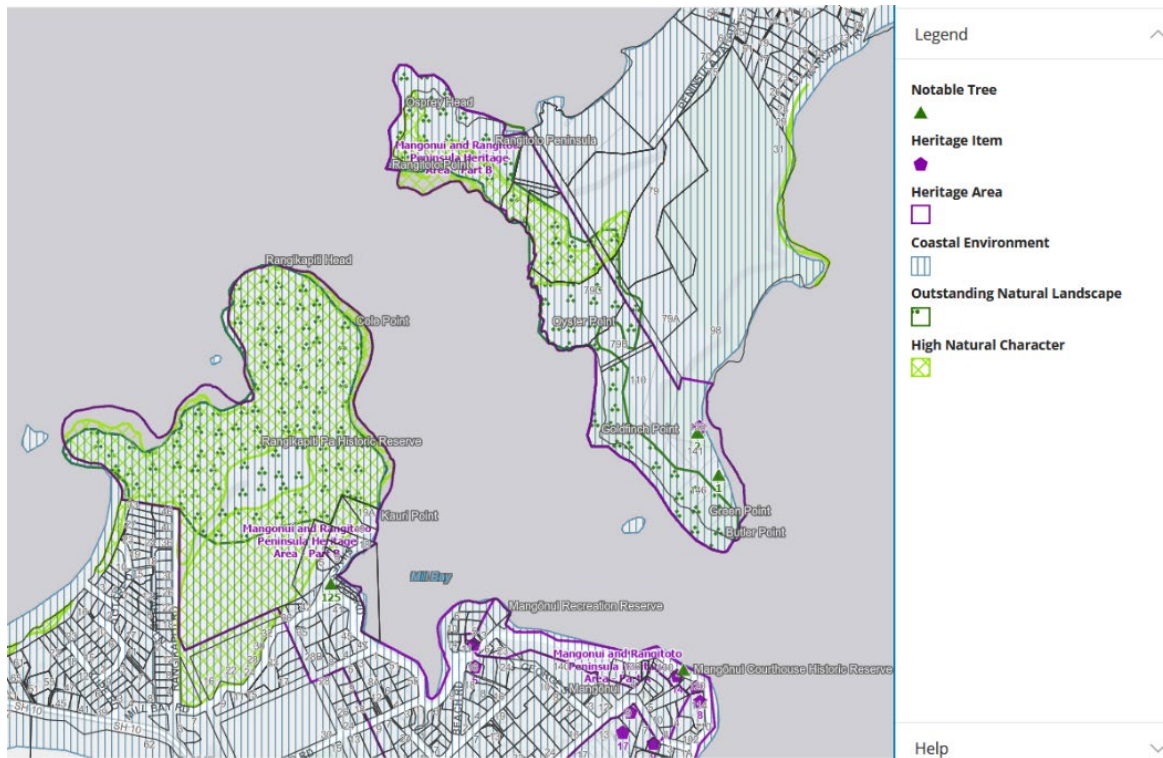


Figure 3, Map of Mangonui and Rangitoto Peninsula showing relevant DVPDP Overlays

If there had been known, or reasonably postulated, sites evidencing Māori pre-colonial occupation in the Appeal Areas so significant to warrant management in accordance with s.6(e), s.7(a) or s.8 requiring protection by particular planning rules in the PDP, then that matter needed to have been addressed in the DVPDP's 'Sites and areas of significance to Māori' chapter; eg by scheduling the particular sites and features in the DVPDP's Schedule 3 – but none were so scheduled.

What FNDC are attempting to do in the DVPDP under the guise of Historic Heritage protection empowered by s.6(f), is to restrict development on a landscape area due to its attractive green aesthetic and non-evident Māori related heritage. That is *contra vires* Double-Counting.

Reason #3:

In Summary: The Appeal Areas are subject to a sufficiency of restrictive planning rules designed to avoid inappropriate development independent of the HA Overlay chapter, so as to make superfluous the additional rules applying to the Appeal Areas that derive specifically from the HA Overlay chapter.

Supporting Information:

This appeal does not challenge the vast majority of the planning controls that the Appeal Areas are subject to under the DVPDP. Those controls are found in rules written into multiple chapters of the DVPDP other than the HA Overlay chapter. The applicable rules arise in large part from the underlying zoning of the Appeal Areas (as Rural Lifestyle) and DVPDP Overlays besides the HA Overlay. In this regard what is most important to note is that the only realistically developable area of the Appeal Areas (eg for building a dwelling) is the fenced paddock within Lot 4 DP 573386 (part of RT 1044494). This entire 2.33 HA is however covered by both CE and ONL Overlays, both of which impose substantive constraints on any development and give FNDC discretion in any imaginable Resource Consent applications.

Ironically, the only additional rule that applies to the Appeal Areas that derives specifically from the HA Overlays chapter is a rule prescribing heritage colours; i.e. if a building is to be constructed in the Appeal Areas it must be painted in a colonial European heritage colour.⁵¹ The irony derives from FNDC's stated rationale for the MRHAB covering a far greater area than the Mangonui Heritage Precinct in the ODP which was that: *"The existing precinct doesn't acknowledge or protect pre-European settlement of this historically significant area"*⁵². So, they seek to acknowledge and protect imagined pre-colonial Māori archaeological sites by painting buildings around them in European colonial colours!

The only other rule potentially applying to the Appeal Areas that derives from the HA Overlay chapter relates to building and earthwork activities within 20m of a Scheduled Heritage Resource.⁵³ But, none of the Appeal Areas are within 20m of a Scheduled Heritage Resource. In any event, the 20m earthworks rules would still apply to the Appeal Areas without the area being within the MRHAB, as the very same rules are repeated in the Historic Heritage chapter of the DVPDP for all areas not subject to an HA Overlay.⁵⁴

⁵¹ Per rule HA-R1, HA-R2 & HA-R4 which all reference HA-S2 "Heritage Colours"

⁵² FNDC's Weekender publication 16 April 2021, commentary by FNDC's then CEO Shaun Clarke ONZM

⁵³ Per Rule HA-R2, HA-R4, HA-R5 which all reference HA-S1 "Setback from a scheduled Heritage Resource"

⁵⁴ Per Rules HH-R3 & HH-R4.

Reason #4:

In Summary: Mixing protection of European colonial-era built-heritage and Māori heritage in a single HA with a single set of objectives, policies and rules (eg rules stipulating the use of European colonial paint colours) is non-sensical & potentially offensive to Māori.

Supporting Information:

We do not dispute that both colonial period European built-heritage and pre-colonial Māori heritage are deserving of protection, including where appropriate, by restrictive rules in a district plan. Māori heritage deserving of protection clearly includes Scheduled Sites or Areas of Significance to Māori as well as significant archaeologically evidenced features such as Pā sites, that may or may not have been scheduled. However, combining the two disparate types of historic heritage in a single HA is highly problematic, particularly in this region having regard to the acrimonious relationship between tangata whenua and the colonial settlers and government authorities in Tai Tokerau in the 19th and early 20th centuries⁵⁵.

Combining the two disparate types of historic heritage leads to ambiguities as to what heritage values are intended to be preserved and what cultural kōrero is intended to be honoured. For example, is building a colonial style dwelling in European colonial colours within a HA defined as such in large part on account of its Māori pre-colonial heritage values to be supported by the consenting authority, or is it to be opposed as an affront to tangata whenua?

FNDC's purported heritage experts, the Browns, recommended a partial solution to the dilemma created by their proposals that do combine the two disparate types of historic heritage in one HA, in that they recommended:

*"... that sub-areas [be] identified within Historic Heritage Areas to improve plan provisions ... This would look at different 'character areas' in more detail which might require slightly different management. Such variations may be the expression of different phases of development or of different patterns of ownership, or they may reflect the operation of different 'themes' from the past."*⁵⁶

However, that was one of the many recommendations of its heritage experts that FNDC rejected and refused to action.

Reason #5:

In Summary: There is no support in the general community or from local Iwi and hapu for the Appeal Areas being within a HA Overlay.

Supporting Information:

⁵⁵ As for example documented in the Waitangi Tribunal's 1997 published 'Muriwhenua Land Report'.

⁵⁶ Rapid Assessment Reports *ibid*, p249

FNDC's Heritage Reporting Officer made one very insightful statement in her closing address at the public Hearing⁵⁷ when she observed:

*"the importance of bringing your communities and your Iwi and Hapu along on the journey when you are introducing provisions that manage historic heritage and that these provisions need buy-in ... They don't work if you've alienated the very community that you are asking to be kaitiaki of these places"*⁵⁸

We fully concur with that view, as did the Hearings' Panel as they echoed the same sentiment in their Heritage Recommendations Report:

*"... we note that generally, when introducing new heritage areas, there needs to be a degree of community support for such an outcome, including an agreed acknowledgment of the values that are within the area and which need to be protected".*⁵⁹

and

*"At the hearing, we heard from the Council officers acknowledging the importance of bringing communities, iwi/hapu/whanau along on the journey..." and that it "... doesn't work for kaitiaki of whenua if you alienate the very people that need to be on board".*⁶⁰

There is considerable evidence that the Mangonui and Rangitoto Peninsula community overwhelmingly did not support replacing the relatively small Mangonui Heritage Precinct that features in the ODP with the greatly expanded MRHAB in the PDP.

Seven original submissions including ours and that of our neighbours, the Fergusons⁶¹ objected to the large areal extent of the MRHAB. This included a submission made by our local Te Hiku Community Board who requested deletion of the entire MRHAB; i.e. the Community Board considered that the HA Overlay be no more extensive than the existing Heritage Precinct in the ODP⁶². The Community Board had no doubt taken note of widespread public opposition to the proposed expansion of heritage protection in the Mangonui area as witnessed by the unanimously passed resolution of circa 200 attendees at the public meeting in the Mangonui Hall on May 4th, 2021 soon after the local community learned of the proposal⁶³.

The only original submission that referred to the extent of the RPHAB (and argued it should be much larger) was that made by Heritage New Zealand Pouhere Taonga

⁵⁷ FNDC PDP Hearing-12 'Historic and Cultural Values', May 27-18 2025, Tahuaroa Function Centre, Tau Henare Drive, Waitangi, Bay of Islands

⁵⁸ Hearing-12 final session video recording: <https://www.youtube.com/watch?v=KmpP5egbvHog> at minute 14-minute 15

⁵⁹ PROPOSED FAR NORTH DISTRICT PLAN, RECOMMENDATIONS OF THE INDEPENDENT HEARINGS PANEL RECOMMENDATION REPORT 12, Hearing 12: Historic and Cultural Values, March 2026, (hereinafter 'Hearings' Panel Heritage Report'), p17

⁶⁰ Hearings' Panel Heritage Report *ibid*, p18

⁶¹ Submission S513

⁶² Submission S-257, particularly submission point S257.011 and other related points

⁶³ As recounted on the front page of the September 9th 2021 edition of Northland Age newspaper

(HNZPT)⁶⁴. However HNZPT is an autonomous Crown entity which promotes a particular special interest - as is its legitimate *raison d'être*. But it is not a community led organisation, and in this case its position was not supported by the Mangonui and Rangitoto Peninsula communities. In any event, the rationale HNZPT presented for an expansive MRHAB was, we contend, invalid. They argued for an even more expansive HA than the MRHAB as notified on the grounds that *“vistas”* should be protected by prohibiting any further development on *“ridgelines, or protruding above the ridgelines”* or on *“open areas”* that are the *“backdrop to Mangonui Township and Rangitoto Pā”*. Such proposed prohibitions are *contra vires* having regard to s.85 of the RMA as it would, wrt a number of Sites in the area described by HNZPT *‘render that interest in land incapable of reasonable use’*⁶⁵ which *‘places an unfair and unreasonable burden on any person who has an interest in the land’*⁶⁶. Also, HNZPT’s proposal to protect *‘vistas’* under S.6(f) is *contra vires* for the reasons detailed in Reason #2 above. We understand HNZPT do not intend to lodge any appeal against FNDC’s rejection of their request for a larger MRHAB.

The only other original submissions in support of the MRHAB that mentioned “Rangitoto” were from two persons from the same address on the western side of the Mangonui Harbour who made identical submissions⁶⁷. However, their submissions focussed on matters concerned with the area around Rangikapiti Pā located on the western side of the harbour, and only referenced the Rangitoto Pā, not the Rangitoto Peninsula as a whole. Inclusion of those two Pā sites and areas of the land proximal to them as promoted by those two submitters is consistent with our current appeal.

Our neighbours, the Fergusons who own land at Butler Point, have we understand, chosen not to appeal what’s proposed in the DVPDP in which the reduced MRHAB area encompasses a limited amount of their property mostly associated with the historic Butler House and the Moehuri Pā site. That outcome is also broadly in line with what our Original Submission S249 had proposed.

Given the above, there appears to be no PDP submissions made by our community that are at odds with our current appeal that seeks to make a further modest reduction to the extent of the MRHAB.

Iwi and Hapu input regarding the MRHAP

We submit that it was entirely inappropriate for the HAs including MRHAB, that were justified in large part to protect purported Māori heritage and cultural values, to have been fixed on by FNDC’s heritage experts, the Browns, without first consulting Māori tangata whenua as to what areas they considered should be subject to that form of management. In general, as was seen in the furore over FNDC’s proposal for SNAs in the Draft PDP, Māori oppose FNDC usurping their kaitiaki for Māori heritage and whenua by imposing restrictive district plan overlays and rules. So had the relevant Iwi

⁶⁴ Submission S-409

⁶⁵ As that terminology is used in RMA S.85 (2) & (3B) (a)

⁶⁶ As that phrase is used in RMA S.85 (3B) (b)

⁶⁷ Submissions S-13 & S-14

and Hapu been consulted at the outset (eg during the Browns only two-day visit to the Far North in September 2019) it is likely that the Browns, and FNDC as their client, would have discovered a lack of support from Iwi and Hapu for the imposition of such broad HAs that proposed combining European colonial built heritage with supposed archaeological remnants evidencing Māori pre-colonial land use.

FNDC will no doubt argue that it met its legal obligations to consult Iwi Authorities and other Iwi and Hapu organisations per s.4A of Schedule 1 of the RMA. However, FNDC's consultation with Iwi and Hapu on the PDP was only initiated in May 2021, 2 months after the Draft PDP was published and almost a year after the Browns reports, which had largely settled on the HA areas which feature in the DVPDP⁶⁸.

FNDC and its consultants never asked any Iwi or Hapu representatives directly did they support including the Appeal Areas in a HA, and no Iwi or Hapu representative ever communicated to FNDC or its consultants that they did support the Appeal Areas being in a HA.

FNDC's approach to PDP consultation with Iwi and Hapu, and in particular its sequencing of that consultation in the whole PDP development process, falls short of what FNDC described in its s.32 analysis as one of the key expectations of Iwi and Hapu, being:

*"Including hapū and iwi groups in consultation of development plans and to recognise them as the kaitiaki of the heritage areas in their rohe (tribal territory)"*⁶⁹

The s.32 Heritage Report documents much dissatisfaction by Iwi and Hapu as to how FNDC had treated Māori heritage and cultural issues in the Draft PDP and the associated poor and late consultation with them. However no substantive changes were made to the HA Overlays chapter in the Notified PDP or in the DVPDP as compared to the Draft PDP in response to Iwi and Hapu feed-back.

Reason #6:

In Summary: FNDC's reliance on an argument that the DVPDP rules that apply to HA Part B areas, including the Appeal Areas, are few in number and not onerous, ignores the negative implications for property owners of having an HA Overlay designation on their properties that go beyond the actual HA Overlay chapter rules.

Supporting Information:

⁶⁸ s.32 Heritage Report *ibid*, Section 6.3 "Consultation with Iwi Authorities", p37: "In May 2021 letters were sent to the 11 mandated iwi authorities for the purposes of the RMA, 8 hapū who have hapū environmental management plans lodged with council, and who are not mandated iwi authorities and 3 Māori Land Incorporations and 1 Ahu Whenua Trust"

⁶⁹ s.32 Heritage Report *ibid*, section 3.4 "Iwi and Hapū Environmental Management Plans", p13

The HA Overlay chapter rules imposed on Part B HA Overlays, including the Appeal Areas, are so inconsequential as to be reason in itself not to have any Part B area in the MRHAB. No doubt FNDC will seek to run the converse argument that the insubstantial nature of the rules is reason to dismiss this appeal. However, we have not brought this appeal due to a concern about the specific HA Overlay chapter rules that apply to the Appeal Areas. Rather, the concern relates primarily to the implications of imposing a HA Overlay on any property that derives other than from the specifics of the HA Overlay chapter rules.

The success or failure of this appeal should not rest on any critique of our motivations for bringing the appeal; it should rest on the merits, in law and in equity, of the inclusion of the Appeal Areas in a HA Overlay of a district plan. However, there is one aspect of our motivations for this appeal that is relevant, as discussed below.

A potential real estate purchaser can reasonably be expected to be concerned when discovering a property of interest is subject to a HA Overlay. It is generally seen in the community as a 'red flag' relating to fear (well-founded or not) that such an overlay designation impinges on property rights restricting the owner's freedom to use and develop the property. People also become concerned that such an overlay designation will make resource consenting and building permitting more time-consuming, expensive and problematic, irrespective of the actual rules specific to the overlay – which typically such a potential purchaser won't delve into. The net result is a reduction in value of the property and greater difficulty in selling it.

Such fears are in fact likely to be well founded wrt to Resource Consent (RC) applications pertaining to the Appeal Areas. We have had direct experience of FNDC's responses to RC applications when there is any suggestion of archaeological features being present or Māori interests in the whenua, which is more likely to be triggered if the property is within an HA. FNDC's RC officer can be expected to respond to any such RC application by stating:

*"An assessment has been undertaken and it has been determined that further information is required to process the application. The additional information, requested under Section 92(1) of the Resource Management Act 1991, will help us to better understand the effects of the proposed activity on people and the environment."*⁷⁰

The further information requested is likely to require the applicant to consult with Iwi or Hapu organisations, HNZPT and a private archaeologist to obtain an archaeological assessment of the site.

Such a s.92(1) request for additional information stops the 21-day clock for a decision to be made on the RC application for an indefinite period.

⁷⁰ This generic text was as used for example in FNDC's letter dated 15 September 2020 in relation to Resource Consent Application No: 2300099-RMALUC

FNDC emphasised in responses to concerns about the requirement for such consultation by pointing out that it would be entirely voluntary in accordance with the RMA. This they reinforced by adding the caveating words “*if provided*” in the DVPDP in relation to such consultation for the purposes of FNDC’s assessment of RC applications. However, this is entirely disingenuous on FNDC’s behalf. FNDC well knows that s.95C of the RMA ensures the consequences for not complying with a s.92(1) request for further information is so severe on the applicant that it is in effect compulsory, as s.95C states in relevant part:

“A consent authority must publicly notify an application for a resource consent if the consent authority requests further information on the application under section 92(1), but the applicant—

(a) does not provide the information before the deadline concerned; or

(b) refuses to provide the information”

Public Notification triggers a lengthy process involving advertising the RC application and inviting all and sundry to make submissions on it. It also immediately triggers the requirement to pay FNDC a \$8,599 fee, plus a \$10,000 deposit for a hearing.⁷¹ (A hearing is required if anyone making a submission on a Publicly Notified RC application requests such). These and other well-known implications of having a RC application progressed as a Publicly Notified application, are so onerous that the applicant’s only reasonable choice is to ‘voluntarily’ provide the further information requested.

Approaching Iwi and Hapu organisations to obtain their views on RC applications is problematic in that such groups in our area are claimants in unresolved Waitangi Tribunal claims that relate to the land in question; i.e. claims that the Crown alienated the land contrary to the principles of Te Tiriti. It is to be expected and understandable that such groups will oppose, or at least not support, any RC application that looks to benefit the current legal owners of the land when they contend that the land was unjustly alienated from their tupuna. Consequently, the obligation to consult Iwi and Hapu risks conflating RMA processes with legitimate historic land related grievances when such grievances are more appropriately confined to the Waitangi Tribunal forum. Therefore, such consultation risks provoking community disharmony that an RMA process has no way of resolving and more likely will inflame.

The above-described negative implications are not balanced by any wider community benefit for having the Appeal Areas in the DVPDP, especially when the actual rules are largely inconsequential.

Reason #7:

⁷¹ FNDC Document title: “NGĀ UTU FEES AND CHARGES 2026/27”, p13

In Summary: The area that the MRHAB will encompass if our appeal is acceded to is broadly consistent with FNDC's heritage expert's conceptual rationale for what area should be encompassed by the MRHAB.

Supporting Information: In describing conceptually what should be the boundaries of the MRHAB on the RP, Mr Brown stated [with emphasis added]:

*"Acknowledging the submission presented by Mr Palmer, and additional evidence, I consider that the headlands and ridgeline west of the paper road, including the two pa sites, the headland of Butlers Point, and the trading settlement form the key area of high potential for finding additional archaeological sites. I note that part of this area includes covenanted bush which Mr Palmer has indicated he has no objection to being included in the HA overlay. This area also includes the land parcel that the Butler house was established on, and I understand that there is no objection from the landowners to this parcel being included either."*⁷²

Other than the 'ridgeline' and 'potential for finding additional archaeological sites' comments, the area of the MRHAB per our appeal is consistent with what Mr Brown is suggesting. The 'ridgeline' comment relates to the inappropriate attempt to achieve landscape protection under the guise of historic heritage that we have addressed in Reason #2 above. We have also addressed the weaknesses in Mr Brown's 'additional archaeological sites' argument in Reason #1 above.

There is no logic for why an unformed 'paper road' should define the boundary of a HA, as such a feature exists only on paper and is entirely unrelated to actual tangible historic heritage features. It just happened to be in the general vicinity of the extent of features that Mr Brown considered should be encompassed by the HA. What this appeal proposes is simply to refine that north-eastern boundary of the MRHAB having regard to the detailed examination of the relevant aspects of the area that we have undertaken as documented herein and per our above referenced earlier five submitted documents. Our examination has gone well beyond the broad brush, but not particularly in-depth, examination documented in Mr Brown's Note and in the earlier Plan. Heritage reports that first proposed a MRHAB.

⁷² Brown's Note *ibid*, para 23, p8

Annexure 1

Brown's Note Excerpt

Excerpt from Note headed:

From: John Brown MA ACIFA

16/06/2025

Attention: Melissa Pearson; James Witham

REGARDING: **Proposed Far North District Plan – Historic Heritage topic**

Dear Melissa,

Please find following my technical commentary on the points raised during Hearing 12 – Historic Heritage

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Issue 5: Mangonui and Rangitoto Heritage Area overlay

19. Mr Palmer raised concerns with factual inaccuracies in Plan.Heritage reports, including misinterpretations of historical land use and incorrect assumptions about archaeological features. Mr Palmer referenced more recent archaeological work by Maxwell and Huebert, which identifies only two significant pa sites on the peninsula—both already known and scheduled. Mr Palmer also noted that key recommendations from the Plan.Heritage reports—such as the need for sub-area-specific design guidance and management plans were not implemented.

20. I acknowledge that there are some small errors in the initial draft reports, which have unfortunately carried over into the final published report. For example, Mr Palmer refers to the report sheet stating ‘too many sites to list individually. This was a working note relating to the design of the form, indicating that summaries should be included rather than full descriptions. Similarly, a reference to William Butler and American Whalers is missing a grammatical point, changing the meaning of the sentence and thus inferring William Butler

was American. This is of course not the case. Reference to Kauri timber milling was meant in relation to the Mangonui portion of the HA overlay, not the Rangitoto Peninsula.

21. I also acknowledge the recent archaeological work undertaken by Maxwell and Huebert, which has determined the Cliff Pa O04/17 was originally incorrectly recorded.

22. Notwithstanding these reporting errors, there is clear and recorded evidence that the Rangitoto Peninsula was occupied extensively prior to 1900, and there remains the likelihood that previously unrecorded sites may be exposed by earthworks, even in areas that have been previously surveyed. Mr Palmer himself acknowledged through his oral and written submissions that the Rangitoto Peninsula contains historic and culturally significant sites.

23. Acknowledging the submission presented by Mr Palmer, and additional evidence, I consider that the headlands and ridgeline west of the paper road, including the two pa sites, the headland of Butlers Point, and the trading settlement form the key area of high potential for finding additional archaeological sites. I note that part of this area includes covenanted bush which Mr Palmer has indicated he has no objection to being included in the HA overlay. This area also includes the land parcel that the Butler house was established on, and I understand that there is no objection from the landowners to this parcel being included either.

24. I recommend that, in light of additional evidence presented by Mr Plamer, the overlay on the Rangitoto Peninsula is reduced to the historic reserve which contains Rangitoto Pa, and land up to the paper road alignment. A map showing the revised boundary is included in the section 42A officer's right of reply.