

## SECTION 42A REPORT

Officer's written right of reply 8 July 2025

### Hearing 12 – Sites and Areas of Significance to Māori

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**Appendix 1A: Officer's Recommended Amendments (Sites and Areas of Significance to Māori)**

**Appendix 1B: Officers Recommended Amendments to Schedule 3: Schedule of Sites and Areas of Significance to Māori**

**Appendix 2: Decisions on Submissions Sites and Areas of Significance to Māori**

## **1 Introduction**

### **1.1 Background**

1. My full name is Theresa Annetta Burkhardt. I am the writer of the original Section 42A Report for Hearing on the Proposed District Plan: Sites and Areas of Significance to Māori.
2. It should be noted that in preparing this written right of reply of the matters raised in evidence, the analysis and recommendation on the Te Aupōuri Commercial Development Ltd evidence has been prepared by James R Witham, Team Leader District Plan, due to a potential or perceived conflict of interest. Mr Witham addresses Part A of this Right of Reply where I address the remaining aspects in Part B.
3. In the interests of succinctness, I do not repeat the information contained in Section 2.1 of the Section 42A Report and request that the Hearings Panel ("the Panel") take this as read.

## **2 Purpose of Report**

4. The purpose of this Report is primarily to respond to the evidence of the submitters and provide this right of reply to the Panel. In this Report I also seek to assist the Panel by providing responses to specific questions that the Panel directed to me during the hearing, under the relevant heading.

## **3 Procedural Matter**

5. At the hearing dated 27<sup>th</sup> and 28<sup>th</sup> of May 2025 I drew the Panels attention to an issue relating to Appendix 1B Officers Recommended Amendments to Schedule 3: Schedule of Sites and Areas of Significance Māori.
6. When publicly notified the appendix did not include the Clause 16 amendment published 23 August 2024, relating to the addition of a clause below in the Schedule 3 Overview as follows:

*Where the column headed "Requesting party" lists a party, which may be an Iwi authority, hapū or landowner, this is not intending to identify who has mana whenua over the site and area of cultural significance.<sup>1</sup>*

7. The clause has now been included in Appendix 1B.

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<sup>1</sup> Clause 16 Amendment 23 August 2024

## 4 Consideration of evidence received

8. The submitters who presented evidence at the hearing are as follows:
  - a) Te Aupōuri Commercial Development Ltd - Makarena Dalton (Planner), Tipene Kapa-Kingi (Pou Whakahaere, Te Rūnanga Nui o Te Aupōuri) and Pereniki Conrad (Poutakawaenga, Te Rūnanga Nui o Te Aupōuri) and Chairman of Pārengarenga Incorporation.
  - b) Arawai Limited – Steven Sanson (Director/Consultant Planner).
  - c) Top Energy Limited – David Badham (Consultant Planner, Partner and Northland Manager of Barker & Associates) and Melissa McGrath (Senior Associate, Barker & Associates).
9. I have only addressed those sections and evidence where I consider additional comment is required. I have grouped these matters into the following headings:
  - a) Key Issue 7: Schedule 3 and Planning Maps (Arawai Ltd & Te Aupōuri)
  - b) Key Issue 8: Infrastructure (Top Energy)
10. In order to distinguish between the recommendations made in the s42A Report and my revised recommendations contained in Appendix 1 of this Report:
  - a) Section 42A Report recommendations are shown in black text (with underline for new text and ~~strikethrough~~ for deleted text); and
  - b) Revised recommendations from this Report are shown in red text (with underline for new text and ~~strikethrough~~ for deleted text)
11. Where I reference provisions in this Report, I use the new reference number (consistent with renumbered provisions in red text in **Appendix 1A and 1B**).
12. For all other submissions not addressed in this Report, I maintain my position set out in my original s42A Report.
13. **Appendix 2** provides an overview of the updated Recommended Decisions on Submissions.

### 4.1 Key Issue 7: Schedule 3 and Planning Maps

#### Overview

Relevant Document	Relevant Section
<b>PART A</b>	
Section 42A Report	<b>Key Issue 7: Schedule 3 and Planning Maps</b>

Relevant Document	Relevant Section
<b>PART A</b>	
Evidence in chief Te Aupōuri Commercial Development Ltd [Makarena Dalton, Tipene Kapa-Kingi, Pereniki Conrad]	From Section 6 Schedule 3 of the PDP, Requesting Party, Names/Descriptions, paragraphs 6.1 to 6.3 and Attachment A of Ms Dalton's evidence.
<b>PART B</b>	
Evidence in chief Arawai Limited [Steven Sanson]	From paragraphs 15 to 21.
No submitter sought to be heard and no evidence in chief was provided for submissions relating to Moringaihe - 1 Wharo Way, Ahipara, Lot 1 DP 381292	A number of answers to questions for clarification were sought regarding the recommendation in the s42A Report to accept the submissions relating to the inclusion of Moringaihe in Schedule 3 – Schedule of Sites and Areas of Significance to Māori (see paragraph 316 (a)).  Following the Hearing the Report writer reached out to a community member who has provided interim answers to these questions.

## PART A

14. After reviewing the detailed evidence provided by Te Aupōuri at the Hearing, it was noted that some of the requests by the submitters included amendments to several sites where Ngāti Kurī is the 'Requesting Party'. I note that the s42A Report writer Theresa Burkardt has a whakapapa connection with Ngāti Kurī and provides technical support to the Iwi on a voluntary basis outside of her part-time role with FNDC. Therefore, it has been considered prudent to have another reporting planner assess the detail of the information provided by Te Aupōuri in the Right of Reply to avoid any possible perception of bias or conflict. Therefore, the response to evidence on Key Issue 7 has been divided in two with Part A responding to the evidence of Te Aupōuri authored by Mr Witham, and Part B authored by Ms Burkhardt.
15. While I did not write the s42A Report, I have read the Report and have approved it in my role as Team Leader – District Plan and was present when Te Aupōuri gave evidence at Hearing 12. In addition, I have read the evidence provided by Te Aupōuri. The following matters are my opinions on the matters under consideration.

## Matters raised in evidence

16. Te Aupōuri Commercial Development Ltd provided evidence at Hearing 12 addressing Schedule 3 – Schedule of Sites and Areas of Significance to Māori. Te Aupōuri stated generally that, after reviewing the PDP they were concerned to see that a number of sites that were identified in Schedule 3 – Schedule of Sites and Areas of Significance to Māori which were also significant to Te Aupōuri, did not include them as requesting party.

17. The evidence identifies 41 sites currently in the schedule where Te Aupōuri Iwi is not identified as a 'Requesting Party' and where they consider they have a cultural, spiritual, historic or traditional connection. The requests include amendments to Schedule 3 to include Te Aupōuri Iwi as a Requesting Party and delete the existing requesting party or parties for 26 of those. The evidence provided by Tipene Kapa Kingi and Pereniki Conrad presents a comprehensive review of Schedule 3 and those sites that relate to and are of significance to Te Aupōuri Iwi. It also identifies that many of Te Aupōuri's wāhi tapu, wāhi tupuna and wāhi taonga have been scheduled, but Te Aupōuri Iwi have not been included as a requesting party.
18. The comprehensive review of the schedule Mr Kapa Kingi and Mr Conrad have undertaken and provided as evidence, identifies the existing 41 sites and the Te Aupōuri values, relationship and connection to the sites.
19. Te Aupōuri also noted a recent example where they had been precluded from being considered an 'affected party' in the processing of a resource consent on a site containing a SASM site in their area of interest. Their view was that this was likely due to be the result of not being identified as the 'Requesting Party' for the Site and Area of Significance to Māori within that site.
20. A few spelling errors of the names of some of the sites and typographical errors in the Schedule were also identified.
21. Finally, difficulties with the spatial identification of MS01-23 Dog Island/ Motuwahangairehe on the GIS maps was also noted at the hearing.

## Analysis

22. In respect to the matters raised by Te Aupōuri Commercial Development Ltd, I have considered their evidence and summarise my analysis as follows:
23. The evidence provided regarding Te Aupōuri's connection to the sites is acknowledged as comprehensive and robust, as is the importance of the amendments proposed to the 41 existing SASM sites to Te Aupōuri.
24. The existing sites also appear to be significant to the requesting parties and the landowners of the 41 sites currently listed and identified in the Schedule, given they have requested them to be included.
25. In the interests of natural justice and to avoid further perceived injustices, I consider it would be prudent and preferable to undertake a robust and inclusive process to review the 41 sites identified by Te Aupōuri in their evidence.
26. I note that, of the 41 sites, Te Aupōuri has requested Ngāti Kurī Iwi & Te Hāpua Iwi/Hapū be deleted as the requesting party from approximately 26 sites and Te Aupōuri Iwi be added. The remaining sites Te Aupōuri has requested just Te Aupōuri Iwi be added to the requesting party. The remaining requesting parties are identified as 'Māori Owners' or a Māori land trust or incorporation.
27. I have not had any correspondence or evidence from those parties. While I do not dispute the evidence of Te Aupōuri of the significance of the 41 sites to them, I am not satisfied that there is sufficient information to support removing other requesting parties. I note that Te Aupōuri consider that if they are the sole owner of a property, they should be the sole requesting party, however requesting parties

for SASM are predominantly not the landowners, there may be other associations which are at this point unidentified.

28. For one of the 41 sites identified a submission (S1.001) was also received by the landowner to delete the site from the schedule. A recommendation to reject was made in the s42A Report due to lack of evidence and consultation with the requesting party.
29. Upon reviewing the evidence provided by Te Aupōuri regarding the Operative Plan and the consideration of affected parties, I have also reviewed the Operative Far North District Plan framework for managing SASM. Essentially, the framework manages sites identified in Appendix 1F and provides a rule framework set out in 12.5.6.2.2. As noted at the Hearing, the Appendix is very aged and has not incorporated the changing cultural landscape in the Far North, including matters such as treaty settlements. This is reflected in both the introductory material in the ODP and PDP.
30. The framework in the ODP is designed to both enable requesting parties undertake activities on SASM sites but also protect these sites from adverse effects from other parties. The enabling provisions are particularly important for owners who are also requesting parties for obvious reasons. This overall approach has been carried across to the PDP.
31. There is a 'notification provision' at the bottom of the rule in the ODP which reads as follows:

*Where an application is made in terms of this rule, the requesting party and the relevant iwi authority and the New Zealand Historic Places Trust shall be considered an affected party.*
32. In my opinion, the provisions relating to affected parties are not exclusionary. That is, they do not preclude other parties from appropriately being assessed as 'affected'. It is also arguable, that the term 'relevant iwi authority' which would include parties like Te Aupōuri where that SASM is within their area of interest. However, I acknowledge that, while Te Aupōuri could and perhaps should be considered affected in their area of interest for any applications under this rule, there are other deficiencies which are offensive to Te Aupōuri. Finally, I note that the PDP does not bring over the 'affected party' provision given the changes in procedure for determining who is and/or isn't affected subsequent to this framework being established.
33. For the reasons above I recommend that it is more appropriate that a review of the 41 sites be undertaken through a full Schedule 1 process as the most prudent approach. However, if the Panel were of a mind to include Te Aupōuri as a requesting party for the 41 sites only, particularly for sites they own, that there would be less, but no risk.
34. I acknowledge the spelling and typographical errors highlighted in the evidence of Te Aupōuri and recommend that these be updated as cl16 amendments.

35. Finally, I also acknowledge the difficulties in the identification of MS01-23 Dog Island/ Motuwangaikirehe site. Staff are progressing how this site is made more visible within the constraints of the National Planning Standards.

## **Section 32AA Evaluation**

### ***Effectiveness and efficiency***

I consider that the correction of spelling, typographical errors and amendment to the planning maps improves accuracy and achieves the objectives of the PDP and the RMA.

### ***Costs/Benefits***

Accurate language, descriptions and planning maps lead to a reduction in costs to landowners and maintains the integrity of Sites and Areas of Significance to Māori.

### ***Risk of acting or not acting***

The risk of not acting will be that result in continued inaccuracy of Sites and Areas of Significance to Māori and costs to landowners and compromised integrity of the sites.

### ***Decision about most appropriate option***

The recommended amendments to correct spelling, typographical errors and the planning maps are considered to be more appropriate in achieving the purpose of the RMA and the PDP objectives than the notified version of the PDP and the Section 42A Report recommendations.

## **PART B**

### **Matters raised in evidence**

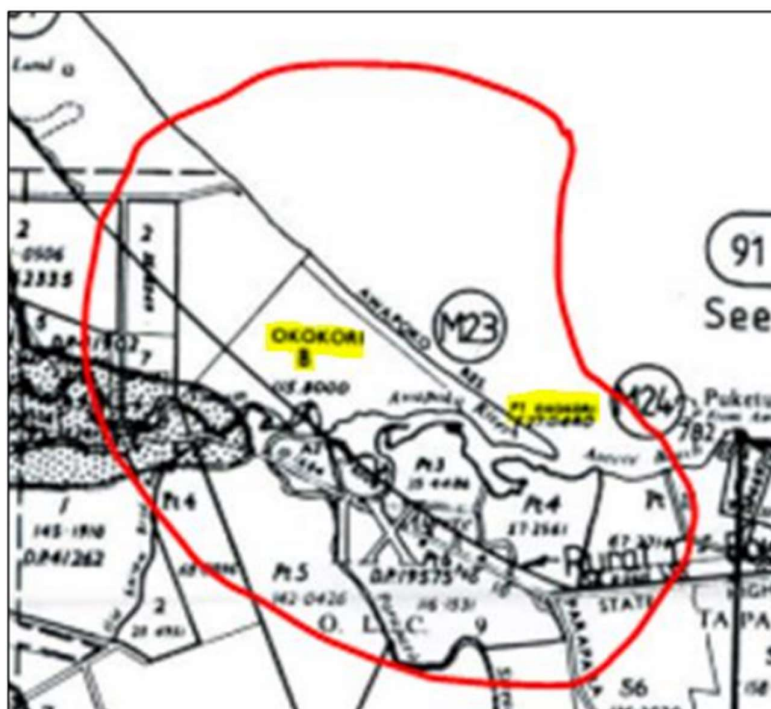
36. The issue raised in evidence by Arawai Ltd relates to Schedule 3 – Schedule of Sites and Areas of Significance to Māori site MS05-38 as it relates to the property legally described as Okokori B.
37. The request is that the extent of the mapping of MS05-38, as it applies to the site legally described as Okokori B, be removed.

### **Analysis**

38. In respect to the issue raised by Arawai Ltd which relates to the site identified in Schedule 3 – Schedule of Sites and Areas of Significance to Māori as MS05-08. Based on the evidence provided the following is determined:
39. A Māori Land Court partition order dated 11 March 1954 created Okokori A and Okokori B Blocks. Okokori A Block was formally identified as Pt Okokori Block.<sup>2</sup>

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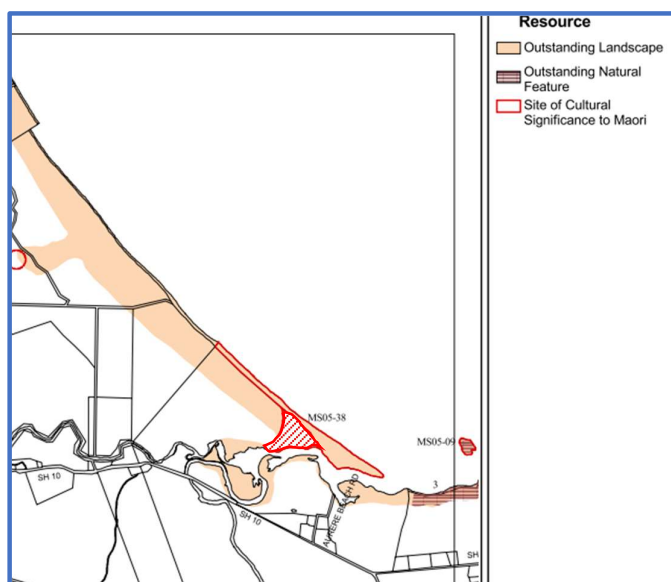
<sup>2</sup> Statement of Planning Evidence of Steven Sanson – paragraph 17



40. The Mangonui County Operative District Scheme Appendix F references the Site of Significance to Māori as M23 and identifies the site as Pt Okokori Block. See below for an excerpt from the planning maps and Appendix F.
41. It should be noted that the reference on the planning maps M23 is identified as Pt Okokori Block which became Okokori A Block when titled was issued in 2010.<sup>3</sup>

<sup>3</sup> Statement of Planning Evidence of Steven Sanson – paragraph 17





**Figure 1** - Site of Cultural Significance MS05-38 (area shown in red hatching recommended to be removed from spatial extent of SASM)

42. The Far North Operative District Plan (2009) Appendix 1F Schedule of Sites of Cultural Significance to Māori, references the Site of Significance as MS05-38 and the legal description is Pt Okokori Block or Okokori A Block.

Place #	Location	Name/Description	Requesting Party	Legal Description	Map
MS05-38	Awapoko Reserve	Okokori/Kaimaua Recreation Reserve & waahi tapu	Maori Owners	Pt Okokori Blk (Awapoko Reserve)	14

Reference on Planning Maps	Name of Reserve	Purpose	Identification	Administ-ering Body
M23	Okokori/Kaimaua	Recreation Reserve and Wahi Tapu	Pt Okokori Blk 27.04 ha (Awapoko Reserve)	Maori owners

- a) It should be noted that in the Far North Operative District Plan (2009) the planning maps show the extent of the map as being beyond Pt Okokori Block or Okokori A Block and into Okokori B Block.
- b) Evidence provided assesses that the extent of the mapping of MS05-38 may have been applied incorrectly to Okokori B Block.<sup>4</sup>
43. I concur with this assessment and recommend that the request to remove the extent of the mapping of MS05-38, as it has been applied to the property legally described as Okokori B, be accepted.
44. In respect to 1 Wharo Way, Ahipara, in the Section 42A Report for Sites and Areas of Significance to Māori I recommended submissions s576.002, s579.002,

<sup>4</sup> Email from Esther Powell, Team Leader – Resource Consents

s575.002, s577.00, s578.001 and s579.004 be accepted in principle and sought answers to the following questions:

- a) Considering that 1 Wharo Way, Ahipara is now in the ownership of FNDC and has been gazetted as Historic Reserve under the Reserves Act 1977, is including it in Schedule 3 still necessary or will it be adding another level of complexity to the site?
  - b) Considering that there is to be co-management plan for 1 Wharo Way, co-designed in collaboration with Ngā Hapū o Ahipara, is including them in Schedule 3 still necessary?
  - c) What is the name of the site? Is it Moringai/Moringaehe or both?
  - d) Who are the requesting parties? Is it all the submitters? Is it Ngā Hapū o Ahipara?
45. No submitter sought to be heard or provided evidence during the Hearing. Following the Hearing I was contacted by a hapū representative from the Ahipara community to seek the answers to the questions above.
46. Following phone calls and emails, I received the responses to the questions as follows:
- a) Yes, Moringaihe should be included in Schedule 3.
  - b) The correct name for the site is Moringaihe.
  - c) The requesting party is Moringaihe Management Committee.
47. The hapū representative is seeking confirmation from the wider whānau, hapū and marae of Ahipara regarding these responses and will confirm them with me via email by Monday the 30<sup>th</sup> of June 2025.
48. Based on the information above I am making an interim recommendation to include 1 Wharo Way, Ahipara in Schedule 3, with the details above. If the responses change any of the detail included in the schedule I will issue an addendum to this written right of reply by the 7<sup>th</sup> of July 2025.

## **Section 32AA Evaluation**

### ***Effectiveness and efficiency***

I consider that the amendment to the planning maps and spelling amendments improves accuracy and achieves the objectives of the PDP and the RMA.

### ***Costs/Benefits***

Accurate planning maps and schedules lead to a reduction in costs to landowners and maintains the integrity of Sites and Areas of Significance to Māori.

### ***Risk of acting or not acting***

The risk of not acting will be that result in continued inaccuracy of Sites and areas of Significance to Māori and costs to landowners and compromised integrity of the sites.

### ***Decision about most appropriate option***

The recommended amendments to the planning maps are considered to be more appropriate in achieving the purpose of the RMA and the PDP objectives than the notified version of the PDP and the Section 42A Report recommendations.

## **4.2 Key Issue 8: Infrastructure**

### **Overview**

<b>Relevant Document</b>	<b>Relevant Section</b>
Section 42A Report	Key Issue 8: Infrastructure
Evidence in chief Top Energy [David Badham, Melissa McGrath]	<b>New Objectives, Policies and Rules</b> From Section 6 Sites and Areas of Significance to Māori – Objectives, Policies and Rules Paragraphs 6.1 to 6.9 and Attachment 2.

### **Matters raised in evidence**

49. A matter raised in evidence with respect to Sites and Areas of Significance to Māori (SASM) relate to Top Energy Ltd's (TE Ltd) request to include additional objectives, policies and rules that recognise the need for the location of new infrastructure and upgrading of infrastructure within SASM.
50. An additional matter raised in evidence with respect to SASM relate to TE Ltd's request to include additional objectives, policies and rules that provide for the operation, maintenance of infrastructure within SASM.

### **Analysis**

51. Mr Badham and Ms McGrath are correct in pointing out that TE Ltd's original submission points were not explicitly addressed in the Section 42A Report, Infrastructure, as indicated in the Section 42A Report, Sites and Areas of Significance to Māori<sup>5</sup>.
52. It should be noted that the Section 42A Report, Infrastructure, does recommend an amendment to Advice Note 1 of the Overview of the Infrastructure chapter to clarify the relationship between the Infrastructure chapter and other PDP chapters, as follows:

*There may be rules in the following other District-Wide Matters chapters that apply to infrastructure and that apply to a proposed activity, in addition to the rules in this chapter. These other rules that apply to infrastructure activities and may be more stringent than the rules in this chapter: Heritage Area Overlays, Historic Heritage, Sites and Areas of Significance to Māori, Ecosystems and Indigenous*

<sup>5</sup> Section 42A Report, Sites and Areas of Significance to Māori – para. 329.

Biodiversity, Natural Character, Natural Features and Landscapes, and Coastal Environment.<sup>6</sup>

53. TE Ltd considers that there needs to be new objectives, policies and rules to enable new infrastructure and the upgrading of existing infrastructure in the SASM chapter and requests the following new objective and policies:

New Objective SASM-OX

Manage the adverse effects of the development of new infrastructure and upgrading of existing infrastructure within Sites and Areas of Significance to Māori.

New Policy SASM-PX

Provide for the establishment of new infrastructure and upgrading of existing infrastructure within Sites and Areas of Significance to Māori, where the following apply:

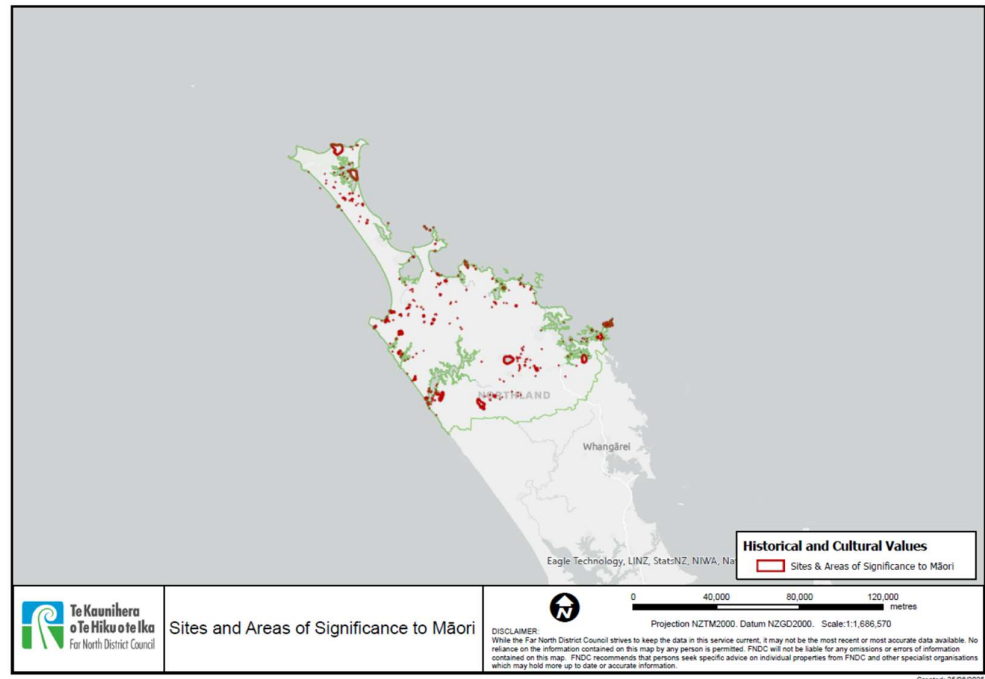
- a. There is a functional need or operational need for its establishment;
- b. There is no practicable alternative;
- c. The infrastructure will provide a public benefit that could not otherwise be achieved; and
- d. The significant adverse effects are avoided, and any other adverse effects are avoided, remedied or mitigated on the cultural values of the Site and Area of Significance to Māori.

54. For the following reasons I consider that establishment of new infrastructure within SASM should be avoided:

- c) The Section 42A Infrastructure Report recommends an amendment to Advice Note 1 which clarifies the relationship between the Infrastructure chapter and other chapters in the PDP and indicates that there may be more stringent rules in other chapters including SASM. I consider it appropriate that the SASM chapter is one such chapter where the rules should be more stringent and the establishment of new infrastructure within a SASM should be avoided.
- d) There are 380 SASM identified in Schedule 3 Schedule of Sites and Areas of Significance to Māori in the PDP. SASM cover an area of approx. 9,000 ha. Please see below for an extract from the PDP GIS maps which identifies the extent and location of the scheduled SASM:

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<sup>6</sup> Section 42A Report, Infrastructure – para. 49e.



- e) The total area of land in the Far North district which SASM occupy is approximately 9,000 ha. The Far North District comprises a land area of approximately 670,000 ha. Therefore, SASMs occupy approximately 1.3% of the total land area in the Far North District.
  - f) As SASM occupy such a small area of the district I consider that it is prudent to avoid the establishment of new infrastructure within these sensitive sites and therefore avoid any adverse effects on the cultural values of the sites.
  - g) I consider that the establishment of new infrastructure within SASM can and should be avoided and therefore recommend that this not be provided for through objectives, policies and rules in the SASAM chapter.
  - h) In addition to the above, the proposed objective does not provide any meaningful direction as to what a meaningful outcome is, other than to simply 'manage adverse effects'.
55. For the reasons provided above I recommend that no changes to the objectives, policies and rules relating to new infrastructure be made.
56. TE Ltd seeks the inclusion of new objectives, policies and rules to provide for the operation, maintenance, repair and upgrading of infrastructure in the SASM chapter as follows:

#### New Objective SASM-OX

*Enable the safe and efficient use, operation, maintenance and repair of existing infrastructure within Sites and Areas of Significance to Māori.*

#### New Policy SASM-PX

*Provide for the operation, maintenance, and repair of existing infrastructure within Sites and Areas of Significance to Māori in a manner that avoids, remedies or mitigates adverse effects on the cultural values of these sites and areas.*

#### Rule SASM-R1

*Activity status: Permitted Where:*

*PER-1 The activity is undertaken by the requesting party listed in Schedule 3.*

*PER-2: Any indigenous vegetation clearance is for customary purposes.*

*PER-3: The activity is undertaken by a network utility provider for the operation, maintenance or repair of existing above ground infrastructure*

57. For the following reasons I consider that maintenance and repair of infrastructure within SASM can be provided for:

- a) There are 380 SASM identified in Schedule 3 Schedule of Sites and Areas of Significance to Māori in the PDP. Of these there are 53 or 14% of SASMs that have Top Energy infrastructure within them.
- b) As such I consider that providing for the operation, maintenance, repair and upgrading of existing infrastructure which are located within SASM to be appropriate providing that adverse effects on the cultural values of the sites is avoided, remedied or mitigated.

58. For the reasons above I recommend that the abovementioned requested changes relating to the operation, maintenance, repair and upgrading of existing infrastructure are accepted in part with some changes, and I have made these amendments to the provisions in **Appendix 1** to this Report.

### **Section 32AA Evaluation**

#### ***Effectiveness and efficiency***

It is considered that the recommended amendments to the objective, policies and rules support the efficient operation of infrastructure networks.

#### ***Costs/Benefits***

It is considered that the benefits of the amendments outweigh the costs in that the operational and functional needs of infrastructure within the district will be better provided for.

#### ***Risk of acting or not acting***

It is considered that the risk of not acting may comprise the integrity of the infrastructure network in the district.



***Decision about most appropriate option***

The recommended amendments to the objectives, policies and rules are considered to be more appropriate in achieving the purpose of the RMA and the PDP objectives than the notified version of the PDP and the Section 42A Report recommendations.