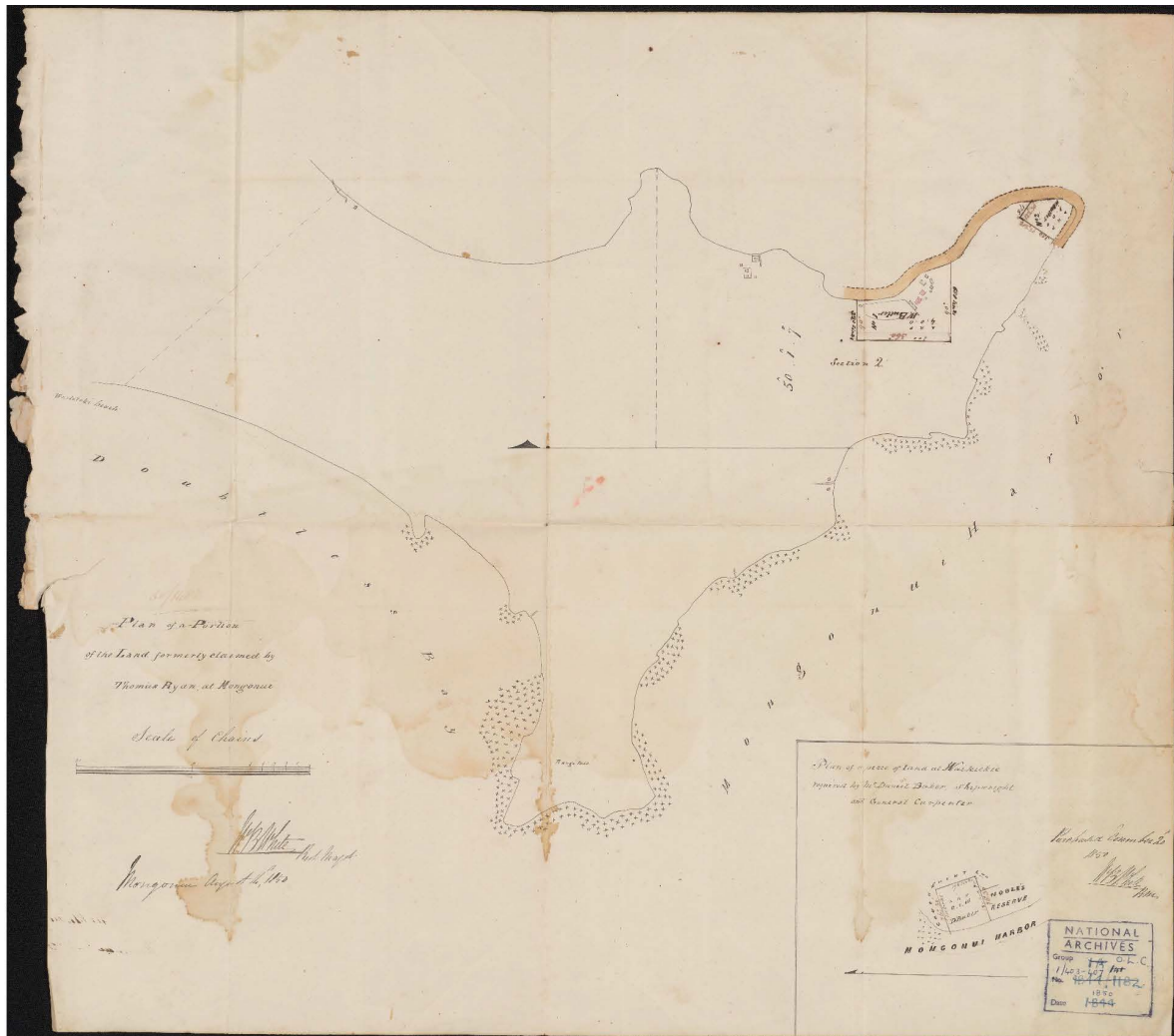


FNDC Proposed District Plan
Hearing 12: Historic and Cultural Values
Lay-Evidence Re Submission S-249

Concerning: 'Mangonui and Rangitoto Peninsula Heritage Area Overlay - Part B'
- only as it applies to the Rangitoto Peninsula (including Butler Point)



First cadastral plan of the Rangitoto Peninsula / Butler Point, dated August 14th, 1850
(drawn by William Bertram White, Mangonui Resident Magistrate from 1848 to 1878)

FNDC Proposed District Plan
Hearing 12: Historic and Cultural Values
Lay-Evidence Re Submission S-249

Background

We, Zejia Hu and Ian Diarmid Palmer, own and occupy a life-style property on the Rangitoto Peninsula comprised of three Sites totalling 17.3 Ha. We made a submission (S-249) in response to the FNDC's Notified Proposed District Plan (FNPDP) wherein we objected to the Mangōnui and Rangitoto Peninsula Heritage Area - part B Overlay (MRPHAB) extending over all of our Sites. We proposed instead that the HA Overlay be limited to land directly associated with, or proximal to, listed Heritage Resources.

Our submission only concerns the part of the MRPHAB that relates to the eastern side of Mangonui Harbour; i.e. that which covers most of the Rangitoto Peninsula, and in this document we refer to that portion of the MRPHAB as the RPHAB. Our submission noted that currently Butler House is the one and only listed Heritage Item in the area of the RPHAB, although, as discussed below, we support listing certain other regionally important Heritage Items and/or Sites of Significance to Māori on the Rangitoto Peninsula.

A submission that similarly objected to the RPHAB encompassing the majority of the Rangitoto Peninsula was made by our neighbours, the Ferguson family, on whose property the 'Butler House and Trading Station (Former)', as well as the Moehuri Māori Pā site lie¹. Their submission repeated some of our arguments for the above proposal, while also presenting additional arguments more specific to their property and their concerns.

It is relevant to note that 86% of the privately owned RPHAB land is owned and occupied by us and the Ferguson family. We and they have, over many years, extensively researched both the European colonial and pre-European Māori history of this whenua and have consequently developed a deep appreciation of its cultural and historic values.

No one has done more to protect the historic heritage associated with the Rangitoto Peninsula than the Fergusons and ourselves. As touched on in the Fergusons' original submission, multiple generations of their whanau have invested substantial mahi and family resources in relation to the Butler House and the Moehuri Pā sites on their property. This has included providing public access to, and education concerning, the historical contexts of those historically and culturally important sites. The late Lindo and Laetitia Ferguson were presented with a conservation award in December 2003 by the Department of Conservation in recognition of their work.

Both the Fergusons and ourselves have undertaken considerable work to enhance the peninsula's biodiversity by removal of pest plants and animals and replanting large areas mostly in native species, in line with the FNPDP's policy IB-P7 that promotes such

¹ Submission S-513 by the 'RHL and LM Ferguson Family Trust'

active management. It is pest animals and invasive pest plants that arguably are the greatest threat to the heritage values of the Rangitoto Peninsula when not actively managed.

Our whanau have also expended considerable efforts over the last eight years in conjunction with our local hapu, Ngati Ruaiti, in advocating for more appropriate kaitiaki of the Rangitoto Historic Reserve that is immediately adjacent to our land and on which sits the Rangitoto Pā site. We have also invested our own actual and sweat capital in the removal of invasive vegetation that has been compromising the values of that site. Our efforts were belatedly recognised by the elected FNDC Councillors passing a resolution in August 2023 instructing their staff to prepare a Management Plan for the reserve²; which directive is being actioned; albeit very slowly. We therefore respectfully suggest that the evidence and views of ourselves and the Fergusons on matters related to the protection of historic heritage values of the Rangitoto Peninsula deserve serious consideration. It is clear from the S.42A report that this has not thus far occurred in this district plan renewal process.

Original Submission as Evidence

Our S-249 submission document ran to 36 pages and set out six specific reasons in support of our objections to justify our proposal. We include that material as Appendix 1 as evidence to be considered by the Historic and Cultural Values Hearing Panel (Hearing 12) as we regard that as relevant evidence to be considered at this hearing stage of the process. We submit that that evidence should be accepted as being well-founded by the Hearing Panel when considering their recommendations as the arguments elucidated therein were not addressed in the S.42A report and hence have not been refuted by FNDC.

Additional Evidence

We submit further evidence as follows in support of our proposal in the light of what is stated in the S.42A report. In this additional evidence we have tried to avoid repeating what is stated in our original submission, and therefore to understand the context of our following evidence we suggest Hearing Panel members first review our attached original submission documents.

The S.42A report proposes rejecting our and the Fergusons' submissions' proposal entirely. The only justifications given by FNDC for this rejection are paras 98 and 99 of the S.42A report, which state:

98 "I disagree with the submissions from Ian Diarmid Palmer and Zejia Hu and RHL and LM Ferguson Family Trust requesting that the Mangōnui and Rangitoto Peninsula HA Overlay be deleted from the Rangitoto Peninsula entirely. Mr

² FNDC RESOLUTION 2023/98 passed on August 23rd, 2023 that states in part in relation to the Rangitoto Reserve: "c) staff develop a Management Plan under s41 of the Reserves Act to eradicate the invasive wattle trees and moth plants"

Brown is clear in the Plan.Heritage report that the Rangitoto Peninsula has heritage values that go beyond the land directly associated with and/or proximal to listed heritage resources, such as around Butlers Point. In Mr Brown’s view, the rich archaeological history of the Rangitoto Peninsula, including the potential for undiscovered archaeological sites, justifies the notified extent of the HA Overlay.

99 In Particular, the Rangitoto headland that forms part of a pair of Pā sites at the entrance to the Mangōnui Harbour is, in Mr Brown’s view, an underprotected site without specific scheduling of either historic features or sites of significance to Māori, making the retention of the Rangitoto Peninsula part of the overlay even more critical. Similarly to the submissions requesting less stringent provisions for the ‘part B’ area covering the Rangitoto Peninsula, my recommendations on amendments to rules and standards that apply in ‘part B’ HA overlays in Key Issue 17 below may address concerns about the stringency of these provisions raised by these submitters”

These rejection arguments in no way address the reasons for our objection and hence the bases for our proposal as set out in our original submission. We assert that the rationale for rejecting our proposal as documented in the S.42A report are invalid or inadequate for the eight reasons set out in this evidence; these reasons being:

Reason 1): Misrepresentation of our Proposal

Reason 2): No Community Support

Reason 3): Reliance on Defective Technical Expert Evidence

Reason 4): Technical Expert Key Recommendations Ignored

Reason 5): Problematic Tangata Whenua Consultation Provisions

Reason 6): Inadequate S.32 Analysis

Reason 7): Contra Vires Double-Counting

Reason 8): Stringency of Rules

The remainder of this evidence details each of these eight reasons in turn.

Reason 1): Misrepresentation of our Proposal

Contrary to what is stated in the S.42A report para 98, neither our submission or that of the Fergusons proposed that the RPHAB “be deleted from the Rangitoto Peninsula entirely”. On the contrary, we explicitly proposed that such an overlay be retained over parts of the Rangitoto Peninsula; but constrained to areas directly associated with and/or proximal to Heritage Resources; notably the Category 1 listed Historic Place ‘Butler House and Trading Station (Former)’³. The listing for that Historic Place in the New Zealand Heritage List/Rārangī Kōrero specifies that it includes 5.61 Ha of land comprised in three certificates of title⁴, each of which is a separate Site⁵ (as shown on Figure 2 on p12 below).

In the terminology used in the NPS, our reference to Heritage Resources can be taken to mean ‘Heritage Item Overlay’ points and ‘Heritage Item overlay extent’ polygons⁶. It is open to the FNDP to show the area defined as the ‘Butler House and Trading Station (Former)’ as a ‘Heritage Item overlay extent’ in the FNPDP.

We also suggest that additional ‘Heritage Items’ / ‘Heritage Item overlay extent’ polygons and/or Sites of Significance to Māori that we identify on the peninsula that are not currently scheduled could be added to the FNPDP⁷. Consistent with the thrust of our original submission and that of the Fergusons, we would not object to the RPHAB encompassing land proximal to and directly associated with such additional scheduled features.

³ [https://www.heritage.org.nz/list-details/447/Butler%20House%20and%20Trading%20Station%20\(Former\)](https://www.heritage.org.nz/list-details/447/Butler%20House%20and%20Trading%20Station%20(Former))

⁴ Allot 1 Sec 2 Vill of Mangonui (RT NA509/128), Allots 2, 4-8, and 10 Sec 2 Vill of Mangonui (RT NA509/127), and Allot 9 Sec 2 Vill of Mangonui (RT NA509/129), North Auckland Land District

⁵ As the term ‘Site’ is defined in the National Planning Standards (NPS) under Definitions List on p64, and as similarly defined in the FNPDP

⁶ National Planning Standards *ibid*, p52 re mapping standards

⁷ Refer to Reason 3, p17 below where we list three such additional features that could be scheduled

Reason 2): No Community Support

Seven submissions including ours and that of our neighbours (Fergusons) opposed extending the MRPHA beyond the existing Heritage Precinct in the ODP. This included a submission made by our local Te Hiku Community Board⁸. The community board had no doubt taken note of widespread public opposition to the proposed expansion of heritage protection in the Mangonui area; eg 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 proposal⁹.

The only 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 (HNZPTA)¹⁰. However, that submission supported our contention that there was no good rationale for the NE boundary of the RPHAB. That submission's proposal for an even more expansive HA for the Mangonui Harbour area (that FNDC proposes be rejected in its S.42A report) argued for it 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, particularly in relation to our two unoccupied Sites and the largest Site owned by the Fergusons that is also currently unoccupied, as it would '*render that interest in land incapable of reasonable use*'¹¹ which '*places an unfair and unreasonable burden on any person who has an interest in the land*'¹². More fundamentally, HNZPTA appear to be under the misconception that territorial authorities are empowered to protect 'vistas' under S.6(f) of the RMA, whereas RMA case law is clear that this is contra vires (refer Reason 7 below).

The only other submissions in support of the MRPHA that mentioned "Rangitoto" were from two persons from a single property on the western side of the harbour who made identical submissions¹³. However, their submissions focussed on matters concerned with the area around Rangikapiti Pā, and only referenced the Rangitoto Pā not the Rangitoto Peninsula as a whole. Our proposal to reduce the extent of the RPHAB, as explained in Reason 1) above, is not at odds with any of the points made in their submissions or any other submissions at all other than that of HNZPTA.

⁸Submission S-257

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

¹⁰ Submission S-409

¹¹ As that terminology is used in RMA S.85 (2) & (3B) (a)

¹² As that phrase is used in RMA S.85 (3B) (b)

¹³ Submissions S-13 & S-14

Reason 3): Reliance on Defective Technical Expert Evidence

Paras 98 & 99 of the S.42A report indicate that FNDC's basis for rejecting our proposal relies entirely on the "*Plan.Heritage report*" and "*Mr Brown's view*", which we take to be a reference to views documented in the three reports authored solely or in part by Mr John Brown of Plan Heritage Ltd that formed the technical expert justification for the extent of the RPHAB; ie:

- the June 2020 Stage 1 Background Research report¹⁴ (referred to by us in our original submission as the 'PH1' report and referred to herein as 'Browns' Background Research'),
- the June 2020 'Stage 2 Rapid Assessment report'¹⁵ (referred to by us in our original submission as the 'PH2' report and referred to herein as 'Browns' Rapid Assessment'), and
- the April 2025 dated report included as Appendix 3 to the S.42A report¹⁶ (and referred to herein as 'Brown's Technical Assessment')

(Collectively we refer to the above three reports as the 'Browns' Reports' and the first two listed as the 'Browns' 2020 Reports'.)

FNDC has acknowledged that the Browns' 2020 Reports were the basis for including the HA overlays and associated Objectives, Policies and Rules that appeared in its Draft PDP released in March 2021¹⁷. The draft HA overlay areas were carried into its Notified FNPDP without change, and only minor changes were made to the draft proposed rules. The FNDC has also acknowledged that the justification for the HA areas, Objectives, Policies and Rules as they appear in its FNPDP were based on the Browns' 2020 Reports¹⁸.

Our original submission high-lighted serious factual errors and other deficiencies in Browns' Rapid Assessment as it relates to the RPHAB area. In September 2021 we brought to the attention of the authors of Browns' Rapid Assessment (Adina and John Brown) what we and the Ferguson family had identified as 'deficiencies and inadequacies in the research work documented' in that report.¹⁹ No response was

¹⁴ John and Adina Brown, "Far North District Plan Review: Historic Heritage Stage One Background Research", Plan Heritage Ltd Report Prepared for Far North District Council, final version June 2020, referred to in this document as the "Browns' Background Research"

¹⁵ John and Adina Brown, "Far North District Plan Review: Historic Heritage Stage Two Rapid Assessment Reports.", Plan Heritage Ltd Report Prepared for Far North District Council, final version June 2020, referred to in this document as the "Browns' Rapid Assessment"

¹⁶ John Brown, "Far North District Plan Review Heritage Area Overlays: Technical Review of Submissions (to support section 42a report)" prepared by Plan Heritage Ltd for the Far North District Council, April 2025

¹⁷ FNDC undated (2021?) Briefing Note labelled "Heritage Areas" 2nd background point read in part: "*Council does not have an inhouse heritage expert, therefore consulting firm Plan Heritage was engaged to do this assessment. The Draft District Plan gives effect to those recommendations.*"

¹⁸ Per the Historic Heritage & Heritage Area Overlay Section 32 Report, p.15 where it is stated: "The Plan Heritage assessment reports were completed in June 2020 and have informed the section 32 evaluation."

¹⁹ Annexure B of Submission S-249 being the letter dated September 27th, 2021 addressed to John and Adina Brown, Plan Heritage Ltd, headed "Plan Heritage Ltd Reports prepared for the FNDC", signed by I.D. Palmer and cc'd to Jan and William Ferguson and Zejia Hu

received to our letter. FNDC was alerted to these deficiencies and inadequacies as our letter to the Browns was attached to our S-249 submission. Nevertheless, some of the misrepresentations from that report regarding the Rangitoto Peninsula have been carried into the actual text of the FNPDP and so have presumably misinformed the Objectives, Policies and Rules that have been adopted for the RPHAB in the FNPDP. In particular, the Overview of the Heritage Area Overlays section in summarising the historical context of the Rangitoto Peninsula states:

“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.”

The Rangitoto Peninsula never had a heavy involvement in:

- the timber trade, or
- the flax trade or
- with sealing, and
- was not involved in the whaling industry in the late seventeenth century, and
- the material on visible public display at the Whaling Museum at Butler House on Butler Point does not suggest any of the above.

A more accurate and appropriately nuanced description of the Rangitoto Peninsula’s involvement in the type of enterprises alluded to would be as follows:

The Rangitoto Peninsula’s involvement with the whaling Industry dates from the mid-19th century after the whaling fleet began preferencing Mangonui Harbour over the Bay of Islands as a result of the sacking of Kororareka in 1845²⁰. In 1848 Capt William Butler leased approximately 300-acres of land, including the entire Rangitoto Peninsula, from the land’s original OLC claimant Thomas Ryan²¹. Sometime shortly after that, Butler barged his house from Paewhenua Island to its present site and set up his whaling fleet provisioning and general trading enterprise on what became known as Butler Point²². Butler’s trading enterprise involved multiple commodities, purchased from Maori & European vendors, including kauri gum, dressed flax, timber, whale oil & bone for the export trade, as well as meat, fruit and vegetables to provision whaling and other visiting ships²³. These commodities no doubt passed through his warehouse on Butler Point, although there is no evidence that these commodities were

²⁰ Neva Clarke McKenna, ‘Mangonui Gateway to the Far North’, p4

²¹ As evidenced by the letter dated May 28th 1850 signed W. Butler addressed to the Colonial Secretary, included in Archives NZ item R18461577, Thomas Ryan Old Land Claim Case file’ per digital copy:

https://ndhadeliver.natlib.govt.nz/delivery/DeliveryManagerServlet?dps_pid=IE57115166 , File 37 which refers to Butler leasing claim 205 (later re numbered OLC 403) and File 5 of the same document states that claim 205 is 300 acres.

²² Janice C. Mogford, ‘The Butler House, Mangonui 1847-1990’, p17

²³ Ibid, p19

processed on, or heavily sourced from, the Rangitoto Peninsula, and no evidence to suggest that Butler's trading enterprises involved to any great extent any land on Rangitoto Peninsula other than a small area on Butler Point^{24, 25}.

Local flax processing by Māori was known to centre on the other (western) side of the Mangonui Harbour, to the south of the Mangonui township²⁶ and a number of mechanical flax mills were set up in the district, but none on the Rangitoto Peninsula²⁷. The nearest timber mill to Rangitoto Peninsula was the one constructed at Mill Bay in 1880²⁸ but it is highly improbable that timber Butler may have traded would have been processed or stored on Rangitoto Peninsula/Butler Point. Any merchantable standing timber present on the Rangitoto Peninsula would likely have been felled before 1840, if not by Māori, by Thomas Ryan (who was one of the European sawyers who arrived in the district in 1832²⁹) who transacted with Māori for the Rangitoto Peninsula land per a deed signed on May 14th, 1836³⁰. The land consequently became known for a time as "Ryan's Point".³¹ It was never known as "Waikiekie" (or various alternate spellings thereof) as claimed in some references³² due to confusion over another of Ryan's OLC claims that was located on the western (town) side of the Harbour in an area that had been known as Waikiekie³³.

The Browns appear to have erroneously deduced that Butler was utilising much of the Rangitoto Peninsula to grow produce for his trade enterprise as the Browns Rapid Assessment devotes a full page to a poor-quality image captioned: "*Deeds Plan C3 (North Auckland) (1840-1876) showing Butlers House and Trading Station, house and fields laid out (Quickmaps)*"³⁴. Deeds Plan C3, per Figure 1 below, does not show Butler's House and trading station, or any laid out fields. It

²⁴ Thomas Ryan Old Land Claim Case file *ibid*, file 2 (which is an 1850 plan showing the land Butler purchased from the Government that involved 4 acres around his house and 1 acre at the point).

²⁵ *Ibid* files 40-42, being a letter from Mangonui Resident Magistrate William Bertram White to the Colonial Secretary dated September 25th, 1850 in which he identifies the location of the five acres allotted by the Government to Butler including the one-acre lot at the point described as being required for his 'business purposes' and on which a store house was later constructed.

²⁶ Neva Clarke McKenna *ibid*, p6 & p63

²⁷ Daily Southern Cross, Volume XXV, Issue 3782, 2 October 1869, Page 5, per Paperspast:

<https://paperspast.natlib.govt.nz/newspapers/DSC18691002.2.41.2>

²⁸ Neva Clarke McKenna *ibid*, p7

²⁹ 'Muriwhenua Land Report', Waitangi Tribunal Wai45, 1997,

https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_68635760/Muriwhenua%20Land%201997.pdf , p85

³⁰ Thomas Ryan Old Land Claim Case file, *ibid*, file 8

³¹ "A REVIEW OF THE EVIDENCE IN THE MURIWHENUA LANDS CLAIMS, Professor Evelyn Stokes, WAITANGI TRIBUNAL Wai45 P002 Vol1 , p309 Fig 28.

³² Mogford *ibid*, p14 in which Butler Point is ascribed the Māori name "Wy Ke Ke" which presumably misled Heritage NZ in ascribing the name "Waikeke" to the Butler Point area in its entry for Butler House in the New Zealand Heritage List/Rārangī Kōrero ([https://www.heritage.org.nz/list-details/447/Butler%20House%20and%20Trading%20Station%20\(Former\)](https://www.heritage.org.nz/list-details/447/Butler%20House%20and%20Trading%20Station%20(Former))) which in turn misled the Rangitoto Peninsula being referred to as "Waikeke" in the Browns' Rapid Assessment on p230

³³ Muriwhenua Land Report *ibid*, pp218-220,

³⁴ Browns Rapid Assessment , p245

is in fact a cadastral plan from circa 1854 of the adjoining property to Butler's, owned then by John Payne Lloyd. Lloyd's 426-acre property, which included the majority of the Rangitoto Peninsula, was Crown granted in 1852. The rectangles that the Browns interpreted as Butler's '*fields laid out*' are in fact the mostly rectangular lots that Lloyd subdivided and sold between 1854 and 1863, as unambiguously evidenced by subsequent cadastral plans and the respective sales deeds and certificates of title for the 57 lots concerned.³⁵



Figure 1, Deeds Plan C3, Sketch Plan of John Payne Lloyd's subdivision of part of his 426-acre 1852 Crown Grant that included the majority of the Rangitoto Peninsula but which did not include Butler Point.

In relation to the first justification proffered in the S.42A report for rejecting our proposal; i.e. that: *"In Mr Brown's view, the rich archaeological history of the Rangitoto Peninsula, including the potential for undiscovered archaeological sites, justifies the notified extent of the HA Overlay."* we provide the following counter arguments as evidence in support of our proposal:

We assert that the FNDC has been misinformed as to the *"rich archaeological history of the Rangitoto Peninsula"* on account of the deficiencies we identified in Browns' Rapid

³⁵ For example, see the circa 1880 SO 1535C/1 and the 1963 deposited DP48582

Assessment and therefore FNDC did not have a sound basis for including the RPHAB overlay over the area proposed in its FNPDP. In Particular we note:

- a) The Rangitoto Peninsula (that includes Butler Point) does have some archaeologically defined features that relate to the historical and cultural values of the area. However, there are a maximum of four features on the peninsula that are either significant enough to meet the relevant definition of Historic Heritage Resources³⁶ or are arguably Sites of Significance to Māori, these being the already scheduled Butler House and Trading Station (Former), the two harbourside Pā sites and possibly a mid-20th century stone cottage, all of which are immediately proximal to, and historically linked to, the Mangonui Harbour. Beyond those sites (i.e. all features further to the NE) the only archaeologically defined features on the peninsular are archaeological sites of low significance, such as disturbed shell middens & terraces and ground depressions suggestive of kumara pits (but which could also be related to gum digging in the early 20th C.). Such sites are ubiquitous to the entire region. In no way do these, individually or collectively, meet the definition of Historic Heritage Resources having regard to the most relevant elements of that definition; i.e. that the features 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;³⁷*
- b) A recent archaeological study and associated report has been completed by two Mangonui based archaeologists, Dr Justin Maxwell and Dr Jennifer Huebert³⁸, which included a 42-page section focusing on the Rangitoto Pā and the surrounding Rangitoto Peninsula.³⁹ That report tabulates and describes all 22 recorded archaeological sites on the Rangitoto Peninsula (in addition to two on the Rangikapiti side of the Mangonui Harbour)⁴⁰. The table concerned is included in this evidence as Appendix A.

³⁶ NRC's May 2016 Regional Policy Statement, Policy 4.5.3

³⁷ *ibid*

³⁸ Dr Justin Maxwell and Dr Jennifer Huebert of Sunrise Archaeology; <https://sunarc.co.nz/about/>

³⁹ TE PAATU: WĀHI TAPU AND PORTABLE TAONGA VOLUME II: ARCHAEOLOGICAL REPORT A report commissioned by the Crown Forestry Rental Trust Justin Maxwell and Jennifer Huebert, 15 October 2024, Wai 45, #T27 (referred to herein as the "Maxwell & Huebert Report", pp362-404

⁴⁰ *ibid* pp369-370

Maxwell & Huebert only define two of the 22 Rangitoto Peninsula sites as ‘major features’; these being the two harbour-side Pās. As can be seen from the descriptions of the other sites, they are either long since destroyed, or are minor features such as disturbed terracing and shell middens. Of Particular note are Maxwell & Huebert’s findings in relation to a supposed ‘Cliff Pā’ (O04/17) that Browns’ Rapid Assessment listed as one of three pre- European archaeological “Key Sites” on the peninsula.⁴¹ That site’s ArchSite listing dates to 1968 in which it quotes a journal article titled ‘A Reconnaissance at Coopers Beach’ written by a holidaying archaeologist, D. W. Robinson, about his cursory visits to various sites in the area in January 1963 which included O04/17 (then numbered N7/5).⁴² Robinson devotes all of two words to describe the ‘features’ and ‘state’ of the site: “ditches” and “poor” respectively⁴³.

Maxwell & Huebert commented about this site:

- i) *“It was recorded in 1963, in a poor state of preservation (D.W. Robinson 1963). No site record updates have been made since. The Pā may be visible in a 1950 aerial photograph, as a hill adjacent to Hihi Beach, with a possible ditch or drain around the north side ending at the beach.”⁴⁴*
- ii) *“While the 1950 aerial does show some features consistent with a Pā in this location, all evidence examined suggests it has since been destroyed, most likely during the development of the Hihi Peninsula for residential housing after 1963. Anything that remained after that was likely compromised by large slips along the margin of the bay that have occurred in this area in recent decades.”⁴⁵*

Maxwell & Huebert’s conclusion that the ‘phantom Pā’ (O04/17) is effectively non-existent is consistent with our contention as documented in our September 2021 letter to Plan Heritage to which we got no reply or acknowledgement. The purported location of the ‘phantom Pā’ site appears to pin the NE corner point of the proposed RPHAB, as can be seen per Figure 2 below. Neither FNDC or the Browns have stated explicitly what the basis was for locating the NE boundary of the RPHAB. However, it would seem by elevating this two-word defined ‘phantom Pā’ to equal status to the Rangitoto Pā (O04/16) and Moehuri Pā (O04/56), the Browns Rapid Assessment has justified including all of the land triangulated by these three archaeologically defined sites plus the Butler House site.

If the NE boundary of the RPHAB wasn’t defined based on the ‘phantom Pā’ site, it has been placed arbitrarily having regard to the spread of identified archaeological sites on both sides of this boundary line. The land further to the NE including the Waiaua Māori land and the Whakaangi Peninsula has many documented Māori

⁴¹ NZAA site O04/17 listed in Mr Brown’s Report p227 as “Cliff Pā O04/17 Lot 1 DP 91523”

⁴² Robinson, D. W. 1963. "A Reconnaissance at Cooper's Beach, Doubtless Bay." New Zealand Archaeological Association Newsletter 6 (1): pp 11-15.

⁴³ Ibid, p15

⁴⁴ Maxwell & Huebert *ibid*, p383

⁴⁵ *Ibid*, p402

archaeological sites of much greater significance than all but two of the NZAA ArchSite listed archaeological features on the Rangitoto Peninsula (the two being the two harbour-side Pās as discussed above). For example, 31 ‘defended Pā villages’ have been identified within one study area of the Whakaangi peninsula.⁴⁶ So if high concentrations of significant pre-European archaeological sites should be the basis for defining the areal extent of a HA, then the RPHAB should extend to cover the Waiaua Māori land and Whakaangi Peninsula – but it does not.

Having regard to the above facts, we contend that there is no sound basis for extending the RPHAB far to the NE of the only two identifiable Pā sites and the one scheduled Heritage Resource (Butler House and Trading Station (Former)) that are located on the SW and SE harboursides of the peninsula.

Historic Heritage Resources and NZAA ArchSite Listings in and around RPHAB

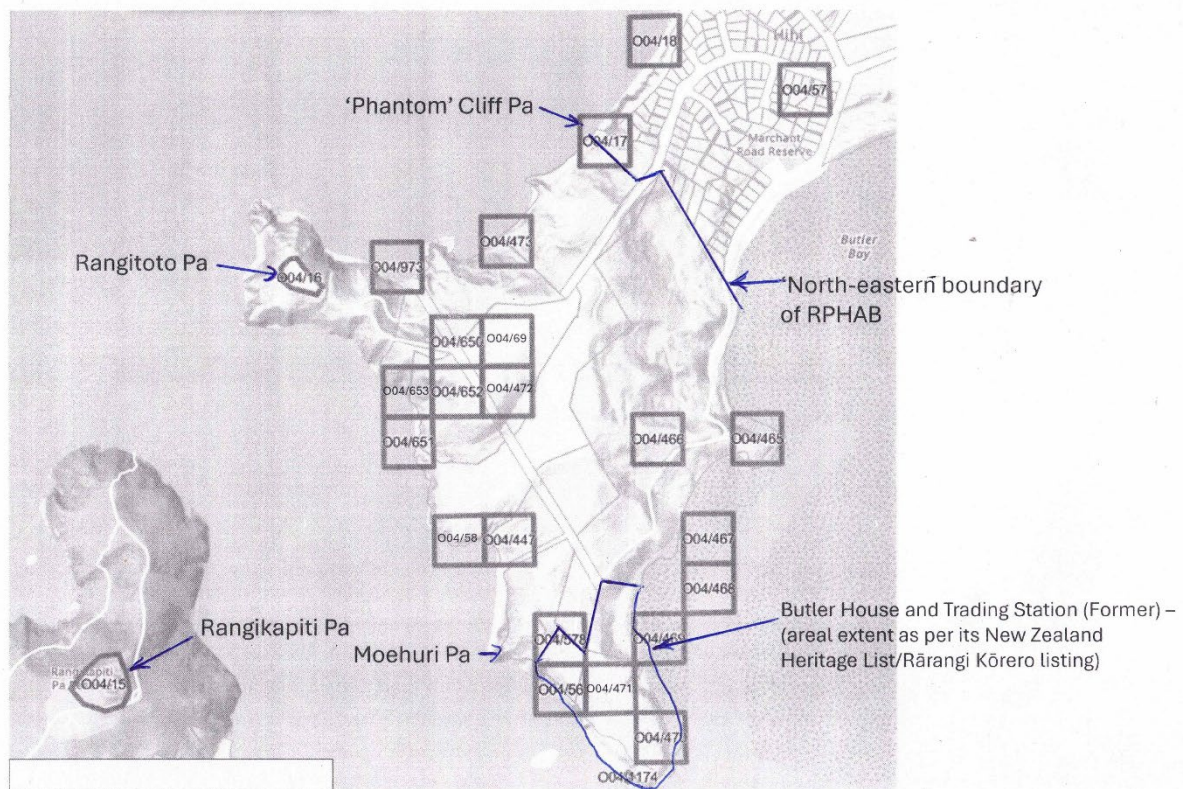


Figure 2, Approximate Locations of ArchSite listings in and around the RPHAB, and the north-eastern boundary line of the RPHAB per the FNPDP

- c) According to Maxwell & Huebert the RPHAB area is only a small part of the “Mangonui, Hihī, Waiaua, Taemaro, and Kohumaru cultural landscape”, which they

⁴⁶ James Robinson, “An Archaeological Survey of Whakaangi, Doubtless Bay. Northland Conservancy Historical Series No. 6, Department of Conservation”, 2007, p28

described as covering: “roughly triangular ~20,000 ha area east of the Mangonui Harbour to Taupo Bay, and south into the Otangaroa Forest”⁴⁷. The Maxwell & Huebert report identifies a large array of archaeologically defined sites of significant historical and cultural importance to Māori throughout this cultural landscape, with a higher density of such outside rather than inside the proposed RPHAB. This is illustrated in part by Figure 3 below from an earlier archaeological study of the area⁴⁸ that is referenced in the Maxwell & Huebert report.



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 Taemaro.

Figure 3, Map and its original caption from the 2007 Robinson Whakaangi Archaeological Survey⁴⁹

⁴⁷ Maxwell & Huebert *ibid*, p357

⁴⁸ James Robinson, *ibid*

⁴⁹ *Ibid* p27

The above evidence supports our arguments for our proposal per our original submission; i.e.: that:

- i) The rationale for, and the areal extent of, the RPHAB was based on inadequate and incomplete expert evidence and analysis.
 - ii) The boundaries for the RPHAB do not adhere to any self-consistent logic
- d) In relation to Mr Brown's view, that the FNDC appears to rely on per its S.42A report, that: *"....the potential for undiscovered archaeological sites, justifies the notified extent of the HA Overlay"*, we note the Maxwell & Huebert Report states⁵⁰:

"Much of the northeast head of the Mangonui Harbor, including both Pā on the headland, was surveyed c. 1991 (Maingay 1992)"

This refers to a focussed archaeological survey project completed by archaeologist Joan Maingay in 1991/92⁵¹ that encompassed the entire Rangitoto Peninsula. This project was initiated by Lindo and Laetitia Ferguson⁵² to put in context the Moehuri Pā site (O04/56) on their Butler Point property in the period when archaeological excavations of that Pā were being undertaken. Figure 4 below, copied from the 1992 Maingay report, shows the area of Maingay's survey and the archaeological sites located by, and/or re-examined as part of that project (noting however that the site numbering reflects a since superseded numbering system).

⁵⁰ Ibid Maxwell & Huebert report, p364

⁵¹ Maingay, 1992, "Archaeological Sites at Butler Point, Mangonui Harbour. Department of Conservation, Northland Conservancy",

⁵² Lindo and Laetitia Ferguson, since deceased, are survived by members of their family that made Submission S513 in the name of the 'RHL and LM Ferguson Family Trust'. That submission makes similar objections and a similar proposal as this submission

FIG.2 ARCHAEOLOGICAL SITES ON THE NORTH-EAST HEAD, MANGONUI HARBOUR

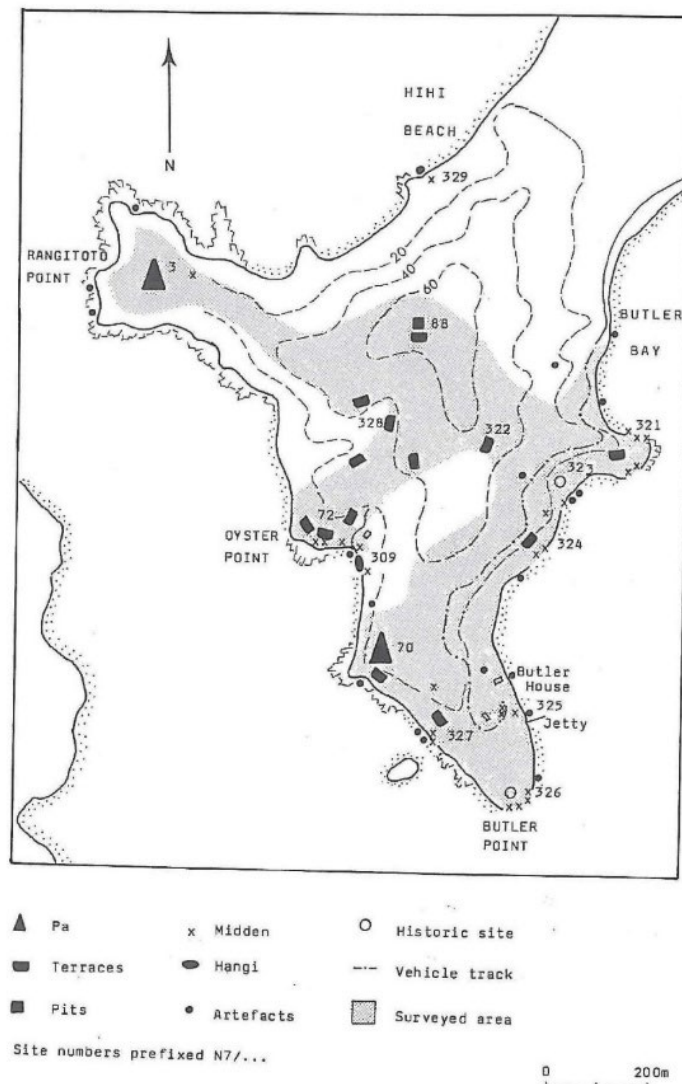


Figure 4. Identification of archaeological sites examined by Maingay in 1991⁵³

The ‘Recorded Revisited’ dates listed for all the NZAA ArchSite listed sites on the Rangitoto Peninsula (as shown in Attachment A) evidence a large amount of archaeological survey work across the peninsula even before Maingay’s 1991/92 project. We also know of five archaeological surveys of parts of the Rangitoto Peninsula post Maingay’s 1991/92 work, for which we can provide associated reports if requested.

The above evidence demonstrates that the proposed RPHAB is an area where the risk of “*the potential for undiscovered archaeological sites*” is lower than land outside of the proposed HA on account of the unusually high amount of archaeological survey work conducted over the area concerned.

⁵³ Maingay ibid p13, Fig 2

In any event, any such undiscovered sites have protection under the FNPDP independent of any HA overlay rules; in particular on account of the Accidental Discovery Protocol standard EW-S3 as well as per the very prescriptive provisions of the HNZPTA⁵⁴. Furthermore, any undiscovered sites are almost certainly going to be within bush covered areas where such features are hard to identify, rather than being on open pasture covered land. We have quarantined the vast majority of such bush covered areas on our property from any future development by registering conservation covenants over such areas. Given the above facts, Mr Brown's view that "... *the potential for undiscovered archaeological sites, justifies the notified extent of the HA Overlay.*" is not well founded.

With regard to the second justification proffered in the S.42A report for rejecting our proposal; ie: *"In Particular, the Rangitoto headland that forms part of a pair of Pā sites at the entrance to the Mangōnui Harbour is, in Mr Brown's view, an underprotected site without specific scheduling of either historic features or sites of significance to Māori, making the retention of the Rangitoto Peninsula part of the overlay even more critical" [emphasis added]*, we provide the following counter arguments as evidence in support of our proposal:

- a) Firstly, this comment erroneously conflates the Rangitoto headland and the two harbourside Pā sites with the entire Rangitoto Peninsula. A justification for protecting the headland and those two Pā sites is not a valid justification for 'protecting' by way of a HA overlay, an extensive area that extends way beyond those highly specific significant sites.

The Rangitoto headland that includes the Rangitoto Pā site is in fact entirely encompassed by the Rangitoto Historic Reserve (aka Allotment 71 Parish of Mangonui East) which is firmly protected from 'inappropriate subdivision, use, and development' on account of its 'Natural Open Space' zoning in the FNPDP, and more definitively per the provisions of the Reserves Act 1977 and provisions of the HNZPTA given the reserve encompasses a Māori Pā site.

It is a reserve for which ownership has been vested in the FNDC, and it is they who are responsible for managing and protecting what is regarded as a very significant site by local Iwi and hapu. Ironically, it is this very part of the proposed RPHAB area that has been suffering the most degradation to its historic, cultural, ecological and visual amenity values on account of the FNDC's refusal over many years to do anything to address the causes of that degradation – being predominantly the effect of uncontrolled growth and spread of invasive vegetation. After eight years of our campaigning, the FNDC has only recently taken the first legislated step⁵⁵ towards making good on its long ignored legal obligation to put in place a management plan for the reserve⁵⁶.

⁵⁴ Heritage New Zealand Pouhere Taonga Act 2014

⁵⁵ FNDC gazetted its intention to prepare a Management Plan for the Rangitoto Historic Reserve in May 2025

⁵⁶ Per S. 41 of the Reserves Act 1977

b) Secondly, the comment in Para 99 of the S.42A report attributed to Mr John Brown "... *without specific scheduling of either historic features or sites of significance to Māori...*" implies that a major justification for the RPHAB as proposed is the lack of scheduled features or sites within the area proposed for the overlay. However, the absence of scheduled sites is an entirely inappropriate justification for a HA overlay area. Either the absence of scheduled sites is indicative of the non-existence of sites of significance, or if the contrary is believed by the FNDC to be the case, then it can and should schedule whatever sites it believes are significant. In our view there are three currently unscheduled sites within the proposed RPHAB area that could reasonably be scheduled in the FNPDP as Sites of Significance to Maori and/or as Heritage Items, these being:

- (i) Rangitoto Pā (NZAA Site ID: O04/16)
- (ii) Moehuri Pā, referred to in some literature as the 'Butler Point Pā' (NZAA Site ID: O04/56)
- (iii) The stone cottage built by Clifford Edmonds between 1948 and 1951 located on what is now Lot 1 DP50419⁵⁷ (being the 2nd oldest built structure in the area concerned, Butler House being the oldest)

As with the Butler House site, the above sites are all on the SE or SW edges of the Rangitoto Peninsula, proximal to the Mangonui Harbour and their historical context's relate primarily to the harbour rather than to the rest of peninsula land.

⁵⁷ Archives NZ Item R25402892, Application 8230, https://ndhadeliver.natlib.govt.nz/delivery/DeliveryManagerServlet?dps_pid=IE88468654 files43-45 being an affidavit signed by Clifford Collins Edmonds on December 19th, 1955 in which he states, inter alia, that he erected the stone cottage after leasing the land in April 1948 and moved into the completed house in February 1951

Reason 4): Technical Expert Key Recommendations Ignored

The S.42A report's proposed amendments to HA-O1 and HA-P1 make clear that the overall objective and policy of all of the HAs is to protect these areas from *"inappropriate subdivision, use and development"*⁵⁸. This is consistent with language used in the RMA including in S.6(f) concerning the protection of historic heritage. But nowhere does FNDC define what 'appropriate' or 'inappropriate' means in the context of protecting the specific heritage values associated with the RPHAB (nor does it explicitly list what those values are). It may be tempting for FNDC management to quip: *"we might not have defined what 'inappropriate' is, but we'll know it when we see it"*. However, this is not OK, particularly having regard to the possible inexperience of the actual consenting officer who will be confronted with the responsibility of assessing a Resource Consent Application (RCA) and determining if it is proposing an 'appropriate' or an 'inappropriate' activity given the historical and value complexities associated with the RPHAB area.

We illustrate this issue with the following hypothetical scenario:

We submit a RCA to build a large house on high ground on one of our two currently vacant Sites on the Rangitoto Peninsula in similar style to our existing dwelling (i.e. American Cape Cod architectural style) that will be highly visible to the residents of Mill Bay.

How would the FNDC consenting officer considering our application know if that represents appropriate or inappropriate development?

The Browns had foreseen this dilemma, as the very last page of their Browns' Rapid Assessment included:

"RECOMMENDATIONS

The following key recommendations are made, on the basis of Stage 1 policy assessment, fieldwork and desk-top analysis:

.....

- 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"*⁵⁹

It may be argued that the differentiation of the HAs into A and B areas fulfilled the first of those recommendations. However, it is clear that the Browns' intent was to define sub-areas based on their particular dominant heritage values (eg

⁵⁸ S.42A Appendix 1.1 p7 HA-O1 as amended and HA-P1 a. as amended

⁵⁹ Browns' Rapid Assessment, p222

European colonial built heritage values or Māori cultural values) for which design guidance and management plans would be tailored accordingly. The Browns' Background Research report devoted one and a half pages to detailing what the design guidance and management plans, specific to each sub-area of each HA, would need to capture, concluding with the statement:

"The identified Heritage Values, Statement of Significance and Assessment Criteria will be key as most activities will probably be RD [Restricted Discretionary]"⁶⁰

The delineation of sub-areas, with explicitly defined heritage values and bespoke assessment criteria, was particularly relevant for the RPHAB because it encompasses both European colonial and pre-European Māori heritage and hence there are two sets of potentially conflicting values to consider when assessing what is 'appropriate' and 'inappropriate' subdivision, use and development. FNDC's failure to accept the Browns' advice in this regard, and hence the absence of sub-area specific design guidance and management plans, creates an unacceptable ambiguity as to what constitutes 'appropriate' or 'inappropriate' subdivision, use and development in the RPHAB. The only design rules in the FNPDP that approach to such guidance is the colour palate per HA-S2 "Heritage Colours". However, that in itself is problematic, as illustrated by the following hypothetical scenario:

We submit an RCA to construct a large colonial European style house reminiscent of Butler House on a prominent part of the RPHAB area (an area clearly included in the RPHAB on account of its Māori archaeology and associated Maori cultural values and sensitivities) and propose a colour scheme for it from the HS-S2 palate that is clearly associated with European colony-built heritage.

It can be expected that consultation with local Iwi and hapu representatives will result in their reasonably arguing that such development is an affront to their sensibilities having regard to the injustices perpetrated on them in this area by colonial Europeans in the 19th C. as evidenced by their well-founded claims established in the Waitangi Tribunal. How then is the FNDC officer, armed with the discretion given by the proposed HA rules, to decide whether such development is 'appropriate' or 'inappropriate' and hence whether to approve or decline such a RCA?

The FNPDP, having not defined what 'appropriate' and 'inappropriate' is in this context, provides no defensible basis for the RCA decision either way, and hence encourages subsequent appeals and litigation.

The above example demonstrates the problematic dilemmas that will arise by mixing European built heritage with Māori cultural heritage in any particular HA

⁶⁰ Browns' Background Research, pp73-74

when the stated aim is preventing undefined inappropriate subdivision, use and development.

Browns' 2020 Reports are replete with comments to the effect that the phase of work documented in those reports was intended by the Browns as a preliminary review and that more work was needed before FNDC would have a sound basis for deciding what to include in the FNPDP concerning Heritage Areas.⁶¹ Contrary to this advice, FNDC based the Heritage related elements of its FNPDP on the preliminary work documented in the Browns' 2020 Reports. FNDC now relies on the very expert whose key recommendations it ignored to defend the Heritage related provisions of its FNPDP. It's been more than five years since FNDC received Browns' 2020 Reports and they have made no effort to commission or undertake any of its key recommendations regarding more in-depth investigatory work and evaluation.

⁶¹ Refer to the referenced passages of the Mr Brown Report in Attachment 1 "Bases of Objection", Reason No 1.

Reason 5): Problematic Tangata Whenua Consultation Provisions

The S.42A report seeks to emphasis that consultation with ‘tangata whenua’ is not mandatory, however we have been advised it will be expected and is likely to be requested by the resource consents team in response to any RCA related to proposed subdivision, use or development within a HA⁶². The S.42A report also proposes to reinforce the role of ‘tangata whenua’ consultation by proposing to include the following additional policy wrt HAs:

“considering any historical, spiritual, or cultural association held by tangata whenua, with regard to the matters set out in Policy TW-P6 when assessing and managing the effects of land use and subdivision on the Heritage Area Overlay.”⁶³

Noting that TW-P6 states in part [with our emphasis added]:

“Consider the following 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:

- a. any consultation undertaken with Iwi, Hapū or marae with an association to the site or area;*
- b. any Iwi/Hapū environmental management plans lodged with Council;*
- c. any identified sites and areas of significance to Māori;*
- d. whether a cultural impact assessment has been undertaken by a suitably qualified person who is acknowledged/endorsed by the Iwi, Hapū or relevant marae, and any recommended conditions and/or monitoring to achieve desired outcomes;*

Given all land in NZ represents the ‘ancestral lands’ of one or more Iwi and hapu, the above provisions of the FNPDP specific to HAs will mean in practice Cultural Impact Assessments (CIAs) will be required for all RCAs affecting HAs, and FNDC’s assessment of those RCAs will presumably focus on Māori concerns and sensitivities. This is arguably contra vires having regard to RMA case law re ‘double-counting’ (as discussed in Reason 7 below). It also risks having FNDC’s consenting processes used as a forum for Māori to assert and gain acknowledgement of, and a form of relief for, the prejudices they suffered at the hands of European authorities in the 19th C. with regard land alienation and disregard of their taonga and other cultural sensitivities. However, that is not the intent of the RMA, particularly with respect to S.6(f) which the entire heritage chapter of the FNPDP comes under. Rather Government’s intent is that such grievances are to be addressed by the Waitangi Tribunal wherein it is the Crown

⁶² Email from FNDC’s Liz Searle, Policy Planner, to Ian Palmer October 10th, 2022

⁶³ Per Appendix 1.1 to the SECTION 42A REPORT re Heritage Area Overlay and Historic Heritage chapters, titled “S.42A report – Officers Recommended Amendments to the Heritage Area Overlay Chapter”, p7, proposed additional Policy HA-P1 (f).

on behalf of all New Zealander's that must answer to any such allegations, and if such are found to be 'well-founded' to provide some element of compensation to Maori where the cost of such falls on all New Zealander's, not on individuals who have Crown guaranteed indefeasible title to the land concerned.

This is particularly problematic for the RPHAB area as there are multiple competing claims by several disparate iwi and hapu groups that they have sole or joint mana whenua status over the area concerned.

Reason 6): Inadequate S.32 Analysis

Even if the FNDC could define what ‘inappropriate development’ means in the context of the RPHAB area, S.32 of the RMA makes clear that it would still not be appropriate to extend a HA as per the FNPDP unless it could:

- a) demonstrate that other mechanisms of protection within and without its FNPDP would not prevent such inappropriate development, and
- b) demonstrate there is an actual risk of such inappropriate development occurring; eg by providing examples of actual inappropriate development in the area concerned or a like area, or, if no such examples can be found, by providing evidence as to why the risk of such occurring in the future is sufficiently great to justify the additional overlay and associated additional rules in the FNPDP.

The above approach is what the Ministry for the Environment advises is required in its guidance provided to territorial authorities in relation to S.32 of the RMA⁶⁴. That guidance goes to great length to emphasise that the imposition of new rules and regulations, such as extending district plan overlays to cover areas not so affected previously, can only be justified when a real problem has been identified that necessitates new rules.

In particular MfE guidance to territorial authorities includes:

“The problem statement should identify what the key issue is, and in what way it isn’t being addressed well at present. As part of this, the current situation (or baseline) should be clearly defined and understood.”⁶⁵

and

“A well-defined problem forms a strong foundation for an evaluation. Proposed policies and methods should then demonstrate a clear link to this broader context.”⁶⁶

and

“Identify a sufficient range of options to address the problem or issue, and critically compare these before narrowing in on a preferred option or options.”⁶⁷

The S.32 report identified the ‘problems’ in relation to Historic Heritage matters in the ODP that needed to be addressed in the FNPDP were that the ODP wasn’t structured in accordance with the NPS, and it didn’t entirely satisfy requirements of certain higher-level policy documents. It concluded the only satisfactory option

⁶⁴ 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. Published in December 2014 by the Ministry for the Environment Manatū Mō Te Taiao PO Box 10362, Wellington 6143, New Zealand Updated April 2017

⁶⁵ Ibid, p5

⁶⁶ Ibid, p6

⁶⁷ Ibid, p6

to address these problems was to adopt “Statutory Mapping Based Upon Plan.Heritage”.⁶⁸ However, in so doing, the S.32 report focussed on form over substance, in that the substantive change between the ODP (and its Heritage Precincts) and the FNPDP (and its Heritage Areas) is that the latter cover large additional tracts of land not previously ‘protected’ by RMA S.6 (f) related district plan provisions. Our objection and proposed change does not argue against how Historic Heritage matters are organised in the FNPDP, or with the principle of adopting ‘Statutory Mapping’ of Heritage Areas. Our issue is that the RPHAB is too wide an area. The only justification offered in the S.32 report for the areal extent of the RPHAB was the comment in support of the proposed Statutory Mapping option: “*Technical evidence to support spatial extent.*” which presumably means the areal extent is justified by what is presented in Browns’ Rapid Assessment. The problem with that is:

1. the short comings of Browns Rapid Assessment that we have identified,
2. FNDC’s rejection of the key recommendations in Browns’ 2020 Reports, and
3. the absence of S.32 type analysis of the need to extend an HA over the entire Rangitoto Peninsula; i.e. what is the ‘problem’ requiring S.6(f) related protections of not extending it beyond areas proximal to and directly related to Heritage Resources?

One can only infer that the ‘problem’ that is being addressed is the absence of rules that give FNDC additional discretion to stop undefined inappropriate development use and subdivision in the RPHAB area. But this hardly represents an appropriate problem definition per MfE guidelines.

Our original submission high-lighted that the S.32 report didn’t do what is required of a S.32 analysis wrt to the issue of concern to us, particularly in relation to the lack of problem definition as discussed above. The S.42A report does not refute that observation or provide evidence to the contrary.

⁶⁸ S.32 p59

Reason 7) Contra Vires Double-Counting

Para 308 of the S.42A report states: “ ... *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 (that includes a mix of built features but also open pastoral landscapes) is the key objective.*” [with our emphasis added].

This statement is consistent with other FNDC commentary concerning its objective for the RPHAB including several statements in the S.32 report⁶⁹. This evidences that what FNDC is attempting with the RPHAB is contra vires having regard RMA case law and the National Planning Standards 2019 (NPS).

In regard to case law, as we discussed in Reason No. 4 in our original submission, 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)⁷⁰ of the RMA (re historic heritage) to regulate matters that are provided for under S.6(a)⁷¹ (preservation of the natural character of the coastal environment) and S.6(b)⁷² (protecting outstanding natural features and landscape) and S. 6(e)⁷³ (Māori concerns). It represents what the Courts have described as ‘double counting’ which their dicta make clear is not legal under the RMA.

For example, in a 2014 HC case (in which FNDC was respondent)⁷⁴ the judgement endorsed earlier EC dicta against ‘double-counting’, including where judge Moore J. stated [with our 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:

⁶⁹ “Section 32 Report, Historical Heritage & Heritage Area Overlay, p5: “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**”, p25: “Some of the heritage areas included **landscape values**, where these areas were identified in the Plan.Heritage.” & p26: “Some of the heritage areas include **landscape values**, and there is scope for submissions to be made to include other **cultural landscapes**”, p58: “Mangonui and Rangitoto Peninsula Heritage Area Overlay, Heritage Area Overlay Description: ‘Individual and interrelated places of significance to Māori, **outstanding landscape features and natural topography** which underlies the identity of the place as a historically important harbour town.’”

⁷⁰ RMA 6(f): “the protection of historic heritage from inappropriate subdivision, use, and development”

⁷¹ 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”

⁷² RMA 6(b): “the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development”

⁷³ RMA 6(e): “the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga”

⁷⁴ NZHC [2014] 3328 _TW Reed Appeal vs FNDC in which the appellant was appealing an EC decision

*‘[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.’*⁷⁵

In the same case Moore J. similarly endorsed the EC’s warning in a different case against double counting historic heritage and Maori 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.’*⁷⁶

The FNDC did prevail in the above referenced case in that the appeal was dismissed, but only because the HC found ‘double-counting’ of the type that it warned against did not arise in the particular circumstances. It is clear from the judgement however that had it found ‘double-counting’ on the part of FNDC the outcome would have been different. The FNPDP has clearly trespassed into the ‘no-go’ legal area of ‘double-counting’, by extending the area of the RPHAB so as to protect “*heritage landscapes*” and/or “*pastoral landscapes*”.

The legal position was further confirmed and clarified by Government per the NPS which states, inter alia [with our 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 “

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

⁷⁵ Ibid, at para [95]

⁷⁶ Ibid at para [97]

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

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

These NPS requirements clarify that matters related to S.6(e) of the RMA (Māori cultural value matters), including the associated rules to protect those values, are not permitted to be in any chapter of a District Plan other than the ‘Sites and areas of significance to Māori’ chapter. Similarly, the NPS clarifies that matters related to S.6(a) and S.(b) of the RMA (natural features and landscape values), and the associated rules to protect those values, are not permitted to be in any chapter of a District Plan other than the Natural features and landscapes chapter. The rules in the FNPDP in the Historic Heritage chapter that apply to the RPHAB run contrary to these legal requirements given that the area of the RPHAB that we are objecting to (i.e. the area beyond that which is proximal to and related to Heritage Resources) has been included in the HA on account of its landscape features and its Māori cultural connotations.

The FNPDP does include other overlays that extend over some or all of the RPHAB area; i.e.:

- Coastal Environment (CE) – over the entire Rangitoto Peninsula,
- Outstanding Natural Landscape (ONL)
- High Natural Character (HNC)

while also identifying in and around the area concerned:

- Heritage Items (HIs) and
- Sites of Significance to Māori (SSMs).

It was also open to the FNDC to identify additional HIs and SSMs within the RPHAB area, and it may still do so before the PDP becomes the Operative District Plan (ODP).

If FNDC had believed that “*heritage landscapes*” and/or “*pastoral landscapes*” needed protecting over the entire Rangitoto Peninsula it would have extended the relevant overlays (HNC and/or ONL) accordingly, and/or identified addition SSMs, but only if it could have justified doing so in the relevant S.32 reports. They did not do so, presumably because FNDC’s relevant subject experts and consultants could not justify extending those overlays or adding SSMs beyond what appears in the FNPDP. While the relevant subject matter experts (re natural features and Maori related matters) have been relatively cautious regarding the areas afforded protections, the historic heritage subject matter experts have in effect endeavoured to extend landscape and Maori issues related protections, which is not their prerogative. These extended areas of landscape and Maori issues protections are then attempted to be justified in the wrong (i.e. Historic Heritage) S.32 and S.42A reports. This is contrary to RMA case law and the NPS.

It is also notable that the term *“historical and cultural landscape”* that featured in the Historic Places Act 1993⁷⁷ does not appear in the equivalent clause of the HNZPTA that replaced it in 2014 in relation to the criteria for Heritage Resources to be registerable in the New Zealand Heritage List/Rārangī Kōrero⁷⁸. The 2014 published ‘RMA Quality Planning Resource’⁷⁹ noted this change and cautioned local authorities accordingly:

“The RMA does not explicitly refer to the terms cultural and heritage landscapes. Further, the reference to a wider historical and cultural landscape was replaced with ‘wider historical and cultural area’ as criteria for inclusion on the New Zealand Heritage List/Rārangī Kōrero. Consequently, local authorities need to ensure that any initiative to identify and protect cultural and heritage landscapes is within the scope of the legislation.” [and one might add *“and associated case law”*].

It appears that the FNDC has not taken heed of this caution in relation to its stated objective for the HA B areas such as the RPHAB where it has conceded: *“preserving a heritage landscape (that includes a mix of built features but also open pastoral landscapes) is the key objective.”*⁸⁰

It is also relevant to note that the Natural and Built Environment Act 2023 (NBA) that was repealed in December 2023 did include ‘cultural landscapes’ in its definition of ‘cultural heritage’⁸¹ (which was to replace the RMA’s ‘historic heritage’). This was clearly seen as being a substantive widening of what would have required protection under the NBA versus the RMA. FNDC responded to the exposure draft of the NBA expressing concern with such a potential expansion of the areas to be protected:

*“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.”*⁸²

Notwithstanding that ‘cultural landscape’ is pointedly excluded from the definition of Historic Heritage in the RMA, Browns’ Rapid Assessment justified extending what was the Mangonui Historic Precinct to encompass the Rangitoto Peninsula on ‘cultural landscape’ grounds⁸³. If the FNDC was genuine in the concern it expressed

⁷⁷ Historic Places Act 1993, Part 2 “Registration of historic places, historic areas, wahi tapu, and wahi tapu areas”, clause 23 (k)

⁷⁸ Heritage New Zealand Pouhere Taonga Act 2014 “Criteria for inclusion on New Zealand Heritage List/Rārangī Kōrero”, clause 66 (3) (k)

⁷⁹ <https://qualityplanning.org.nz/sites/default/files/2018-11/Historic%20Heritage.pdf>

⁸⁰ S.42A report *ibid*, p77, para 308

⁸¹ Natural and Built Environment Act 2023, within clause 11 ‘Interpretation’, the definition of ‘cultural heritage’ point (b) ‘includes ... (v) cultural landscapes’

⁸² Letter dated August 21st, 2021 addressed to Ministry of the Environment headed: “RE: Far North District Council submission on the exposure draft for the Natural and Built Environments Act”, signed by FNDC’s Darren Edwards General Manager Strategic Planning and Policy.

⁸³ Browns’ Rapid Assessment, p231: “Butler House and Trading Station (Former), established by William Butler has special significance for forming a key part of a notable historical and **cultural landscape** at the entrance to the

for the concept of protecting cultural landscapes in its district plans, it should avoid the hypocrisy of supporting Plan Heritage's proposals to do exactly that.

In response to a LGOIMA request questioning the Council's legal basis for proposing expansive HAs such as the RPHAB, FNDC stated, inter alia, that:

"Council relies upon the Resource Management Act 1993 ('RMA') and the Northland Regional Council Regional Policy Statement - which allow it to use this [Heritage Area Overlay] mechanism/tool to 'acknowledge or protect pre-European settlement by [...] designating broad areas as Heritage Area(s)'."

However the RPS says nothing about designating "*broad areas*" as Heritage Areas as a means of acknowledging or protecting the heritage values associated with pre-European settlement. Presumably therefore FNDC is relying on the definition of "historic heritage" in the RMA (which is explicitly adopted in the RPS & NPS) which states that it:

"includes:

- (i) historic sites, structures, places, and areas; and*
- (ii) archaeological sites; and*
- (iii) sites of significance to Māori, including wāhi tapu; and*
- (iv) surroundings associated with the natural and physical resources"*

[our emphasis added].

However, the clear intent of the words "*areas*" and "*surroundings*" in this context is to mean land areas proximal to and directly related to specific Heritage Resources or scheduled Heritage Items (eg the land surrounding Butler House), not much more expansive tracts of land that the words "*heritage landscape*", "*open pastoral landscapes*", "*cultural landscapes*", "*broad areas*" and "*vistas*" suggest.

FNDC was the respondent in an EC case that is pertinent to the above principle, which resulted in the FNDC being required to shrink an intended Heritage Precinct in large part as the judge declared that certain properties were: "*sufficiently distant from the ... historic heritage resources ... and are sufficiently devoid of historic heritage values as not to warrant management for the purposes of s.6(f) RMA*".⁸⁴ We suggest that the land we own can similarly be characterised as being sufficiently distant from any listed, or potentially listable, heritage resources, and are sufficiently devoid of historic heritage values relevant to S.6(f) to be subject to a HA overlay.

Mangonui Harbour...", and p243: "...from a **cultural landscape** perspective there is a clearly apparent relationship with the Rangitoto Headland opposite Mangonui..."

⁸⁴ NZEnvC [2014] 129_Guyco and PHPSS vs FNDC at para [88]

Reason 8): Stringency of Rules

In regard to the comment in the S.42a report para 99:

“... my recommendations on amendments to rules and standards that apply in ‘part B’ HA overlays in Key Issue 17 below may address concerns about the stringency of these provisions ...”

The referenced amendments do not allay our concerns. The main amendment promoted by the S.42a report is for a *“permitted pathway for new buildings and structures for the ‘part B’ type overlays”* which is reflected in proposed changes to HA-R4 ‘New Buildings and Structures’.

This does not allay our concerns for two reasons:

1. We are not confident this change will be reflected in the ultimate Operative District Plan as other parties may object to this ‘watering down’ of the stringency of the rules.
2. Even if the proposed ‘permitted pathway’ survives into the ODP, any RCA to construct a new dwelling or other significant building will inevitably include proposals for associated earthworks and building foundations which are unlikely to be a ‘permitted’ activity in a HA as they will likely conflict with HA-R5 PER-1 point 3.: *“do not result in disturbance of sub-soils below a depth of 500mm”* which will mean the RCA as a whole will be assessed as a Restricted Discretionary activity. The matters of discretion then applying include:
 - a. *“whether the proposed earthworks will adversely affect the heritage values of the Heritage Area Overlay”* (which is problematic as such values have not been explicitly defined and are potentially mutually-conflicting wrt the RPHAB as discussed above) and
 - b. *“any consultation with Heritage New Zealand Pouhere Taonga, Department of Conservation and tangata whenua”,*

As written, the ‘consultation’ per above appears not to be mandatory. However, as discussed previously, and from our direct experience with past RCAs concerning the land in question under the current ODP, such consultation will be expected by FNDC’s consenting officers. If not initiated by the RCA applicant initially, it will effectively be required by FNDC applying S.92(1) of the RMA to suspend the RCA assessment and request as ‘additional information’ the responses to consultation with those organisations, which in the case of tangata whenua can be expected to be a request for a Cultural Impact Assessment (CIA). Refusal by the applicant to supply such information requested per S.92(1); i.e. to undertake such consultation or commission a CIA, or if undertaken, refusal to provide what came from it, automatically triggers S.95C that requires the RCA to be Notified. This is a powerful lever councils tend to use to ensure any additional information they care to nominate is provided, even though its provision is not legally mandated. Refusing to provide requested information will obviously prejudice

the applicant in terms of the FNDC's planning officers' discretion to approve or not approve a RCA, and/or the consent conditions that may be applied.

Conclusion

Having regard to the evidence provided in our original submission and the additional evidence provided per Reasons 1) through 8) above, we conclude that what is proposed by the FNPDP concerning the extent of the RPHAB and the associated Objectives, Policies and Rules is ill-conceived, unjustified and is contra vires.

Justification for the extent of the RPHAB per the FNPDP relies solely on ill-informed opinions of Mr & Mrs Brown, consultant's from Auckland, based on a brief visit to the area in 2019 and a subsequent report that is replete with demonstrable factual errors, and which they themselves emphasised was a preliminary exercise. One would hope that Hearing Panel #12 will give more weight to those in our community, including our local community board, who possess a much deeper knowledge of the historic and cultural values of the land in question and can better reflect community views as to where additional layers of district plan protection are, and are not, appropriate.

The relief we seek is as per the intent of our original submission's proposal; i.e. to limit the area of the RPHAB to land proximal to and directly related to listed Heritage Items as well as other potentially listable Heritage Items and the two Harbourside Māori Pā Sites that we acknowledge are regionally important Sites of Significance to Māori.



Ian Diarmid Palmer



Zejia Hu

Appendix A**Archaeological Sites on Rangikapiti and Rangitoto Peninsulas⁸⁵**

Table 6.1. Archaeological sites in Rangitoto Pā case study area. Source: NZAA Archsite 2023. Shaded rows are major features.

NZAA Site No. O04/	Site Type	Recorded, Revisited	Description
15	Pa (Rangikapiti)	1963, 1993, 2011	Pa with small tihi and broad terraces, ditches, banks.
16	Pa (Rangitoto)	1963, 1986, 1991	Headland pa with ditch and bank, broad terraces.
17	Pa	1963	Cliff pa with ditches. Destroyed.
56	Pa (Moehuri)	1972, 1987-93	Ridge pa with surrounding ditch on 3 sides and raised-rim platform.
58	Terraces, Midden	1972, 1987, 2002	7 terraces on headland above Oyster Point (a small promontory south of Rangitoto Pā), 2 more terraces 30 m NE above stream, several areas of shell midden, mostly cockle, materials from earth ovens at foot of slope. Plan in Maingay 1991, Fig. 5.
69	Terraces, Pits	1976, 1986, 1991	Group of 10 pits and 3 small terraces on ridgetop; 3 more terraces E and S. Plan in Maingay 1991, Fig. 7. Good, but some midden disturbed by stream realignment in 2002.
447	Midden	1988, 1991	Midden (stratified) eroding at front of coastal terrace. Mainly cockle, with bottom layer with charcoal-stained soil and earth oven.
465	Terraces, Midden	1986, 1991	7 terraces on headland S slope, extensive stratified midden exposed in coastal bank below, cockle, pipi, oven stones, charcoal, and stone flakes. Plan and midden profile in Maingay 1991, Fig. 6 and 8.
466	Terraces	1987, 1991	2 long terraces and 1 smaller terrace on E slope above harbour.
467	Historic building foundation, orchard, artefacts	1987, 1991	Flat area above harbour with Norfolk pines, fruit trees, old foundations, historic artefacts.
468	Terraces, Midden, Taro	1987, 1991	3-4 terraces and 4 areas midden on shoreline and/or near terraces, shallow ditch, clump of taro.

⁸⁵ TE PAATU: WĀHI TAPU AND PORTABLE TAONGA VOLUME II: ARCHAEOLOGICAL REPORT A report commissioned by the Crown Forestry Rental Trust Justin Maxwell and Jennifer Huebert, 15 October 2024, Wai 45, #T27

Hearing 12 – Lay-Evidence re Submission S-249

NZAA Site No. O04/	Site Type	Recorded, Revisited	Description
469	Midden	1987, 1991	Shell midden, cockle and pipi, on shoreline and in road cut S of Butler house. Eroding.
470	Historic store; Shell midden	1986, 1991	Site of Butler's old store (1851). Extensive midden at shoreline, cockle, pipi, oven stones, Māori and possibly also European. Eroding.
471	Terraces	1987, 1991	6 terraces on steep bank, 4 near top and 2 near foot of slope.
472	Terraces	1986, 1991	Groups of terraces on hillslopes facing SW; 10 around stream gully, 5 on slope to E.
473	Midden, Findspot	1987, 1991	Above beach. Patches of shell midden, mostly cockle. Possible agricultural soil. Hammerstones and stone patu handle found previously in area. Disturbed by bulldozing and pines.
578	Ovens	1989	8 firepits or earth ovens, some in situ, fire-cracked rock, charcoal. Heavily disturbed / destroyed.
650	Terraces	1994	3 terraces down seaward facing slope.
651	Midden	1994	Shell scatter and water-rolled stones, possible terrace. Eroding.
652	Midden	1994	Shell scatter, mostly pipi and small cockle, some fire-cracked rock. Eroding.
653	Midden	1994	Shell scatter, mostly fragmentary cockle, and fire-cracked rock. Eroding.
942	Urupā, Pit	2001	Burials of David James Berghan (d.1869), his first wife Turikatuku, and several youths.
973	Midden	2002	Shell midden in several places, cockle, large pipi, charcoal, fire-cracked rock, probably slump from above, covered by old track works. Partly removed by track formation.
1174	Source-Ochre	2024 (this project)	A red ochre deposit/quarry >1 m deep, exposed at the base of an eroded coastal cliff.






_S-249 HA Lay Evidence_Final_idp signed

Final Audit Report

2025-05-18

Created:	2025-05-18
By:	Ian Palmer (ipal9718@bigpond.net.au)
Status:	Signed
Transaction ID:	CBJCHBCAABAAp8Jg_pP5oeheI6PhmxOTWwHni0gBbLhx

"_S-249 HA Lay Evidence_Final_idp signed" History

-  Document created by Ian Palmer (ipal9718@bigpond.net.au)
2025-05-18 - 8:49:01 PM GMT
-  Document emailed to Zejia Hu (zejia@bigpond.com) for signature
2025-05-18 - 8:49:07 PM GMT
-  Email viewed by Zejia Hu (zejia@bigpond.com)
2025-05-18 - 8:50:15 PM GMT
-  Document e-signed by Zejia Hu (zejia@bigpond.com)
Signature Date: 2025-05-18 - 8:51:04 PM GMT - Time Source: server
-  Agreement completed.
2025-05-18 - 8:51:04 PM GMT