

Hastings District Council

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PRE-CIRCULATED EXPERT SUBMITTER EVIDENCE

COMMISSIONER HEARING

Meeting Date: **Tuesday, 11 June 2019**

Time: **9.00am**

Venue: **Council Chamber
Ground Floor
Civic Administration Building
Lyndon Road East
Hastings**

Hearing Commissioners	Chair: Commissioner Paul Cooney Commissioner Rau Kirikiri
Officer Responsible	Group Manager: Planning & Regulatory Services
Reporting Planner	Consultant Planner – Philip Brown
Committee Secretary	Christine Hilton (Extn 5633)

HASTINGS DISTRICT COUNCIL

**A COMMISSIONER HEARING WILL BE HELD IN THE COUNCIL
CHAMBER, GROUND FLOOR, CIVIC ADMINISTRATION BUILDING,
LYNDON ROAD EAST, HASTINGS ON
TUESDAY, 11 JUNE 2019 AT 9.00AM.**

1. APOLOGIES

At the close of the agenda no requests for leave of absence had been received.

2. PRE-CIRCULATED EXPERT SUBMITTER EVIDENCE

DOCUMENTS CIRCULATED FOR HEARING - COMPILED AS ONE DOCUMENT

<u>Document 1</u>	The covering administrative report	Pg 1
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Attachments:

- | | | | |
|---|---|------------|-------|
| 1 | Attachment 1 - Letter re unlawful emergency works
- from Xan Harding, Te Mata Peak People's Track
Society Inc | 97017#0144 | Pg 3 |
| 2 | Attachment 2 - Letter re Track consent applications
and meeting - from Xan Harding, Te Mata Peak
Peoples' Track Society Inc | 97017#0145 | Pg 9 |
| 3 | Attachment 3 - Written expert submitter evidence
from Diane Lucas for Waimārama Māori Committee
and Waimārama Marae | 97017#0195 | Pg 13 |
| 4 | Attachment 4 - Attachments to the evidence of
Diane Lucas | 97017#0193 | Pg 31 |

The Application and Submissions can be viewed on the Council website and a reference hardcopy is held at the Council Civic Administration Building.

REPORT TO: COMMISSIONER HEARING

MEETING DATE: TUESDAY 11 JUNE 2019

**FROM: COMMITTEE SECRETARY
CHRISTINE HILTON**

**SUBJECT: PRE-CIRCULATED EXPERT SUBMITTER EVIDENCE IN
RELATION TO THE CRAGGY RANGE TRACK
REMEDICATION HEARING - 11 JUNE 2019**

1.0 SUMMARY

- 1.1 The purpose of this report is to have a means to attach the pre-circulated expert submitter evidence for the hearing to address the Craggy Range Track Remediation application and to put it onto the website prior to the 11 June 2019 hearing – as is required by the provisions of the Resource Management Act.

2.0 RECOMMENDATIONS AND REASONS

That the pre-circulated expert submitter evidence for the Craggy Range Track Remediation hearing, be put onto the website prior to the hearing commencing on 11 June 2019 so it can be viewed by the Applicant, other submitters and members of the public.

Attachments:

- | | | |
|---|--|------------|
| 1 | Letter re unlawful emergency works - from Xan Harding, Te Mata Peak People's Track Society Inc | 97017#0144 |
| 2 | Letter re Track consent applications and meeting - from Xan Harding, Te Mata Peak Peoples' Track Society Inc | 97017#0145 |
| 3 | Written expert submitter evidence from Diane Lucas for Waimārama Māori Committee and Waimārama Marae | 97017#0195 |
| 4 | Attachments to the evidence of Diane Lucas | 97017#0193 |



30 October 2018

Neil Taylor
Acting Chief Executive,
Hastings District Council
Private Bag 9002
HASTINGS 4156

By email: neilt@hdc.govt.nz; judyb@hdc.govt.nz

Copy to: Craggy Range (c/- michael.wilding@craggyrange.com); Ngati Kahungunu Iwi Incorporated (c/- chriessie@kahungunu.iwi.nz); Te Taiwhenua O Heretaunga (c/- Marei.Apatu@ttoh.iwi.nz); Te Mata Trust Board (c/- mikedevonshire@hotmail.com); Waimarama hapu (c/- robertmacd@xtra.co.nz); and John Stace (John@vexford.com)

UNLAWFUL WORKS EXTENDING BEYOND THE EMERGENCY POWERS OF THE RESOURCE MANAGEMENT ACT 1991

Introduction

1. I have been engaged by the Te Mata Peak Peoples' Track Society ("**Society**") to urgently consider your decision on behalf of the Hastings District Council ("**Council**") made on 24 October 2018 to "disestablish" or "remediate" the upper 500m of the Craggy Range Track ("**Decision**"). The Decision is contained in a "Record of Consideration" dated 24 October 2018, which attaches two reports by the Frame Group, as well as a Technical Specification report.
2. The Record of Consideration records the basis of the Council's Decision as being that:
 - ... the Craggy Range Track and immediately surrounding area:
 - are affected by an adverse effect on the environment which requires immediate preventive measures, namely the unstable track conditions which create a serious risk of harm, including risk of permanent disability and death, to track users and a risk of erosion and scour (s 330(1)(d));
 - are likely to be affected by a sudden event causing or likely to cause injury, namely, the failure of timber retaining walls which Mr Butler advises have already begun to move outward and are at risk of collapse without warning (s 330(1)(f)).
3. In addition, the Record of Consideration states (after considering the need for, and possible timeframes for obtaining consent):

Based on the advice received, the risk to users of the track, and the failure of less intrusive measures to deter people from using the track, I consider the need for the works is sufficiently pressing that it would be unreasonable and inappropriate to await the outcome of a resource consent process. Once the works are complete there will need to be an assessment as to whether there are any continuing adverse effects associated with the reinstatement works and if so, an application for resource consent will need to be prepared and lodged as required by s 330A(2).

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4. This letter records my opinion that the Decision is flawed and the works it proposes are unlawful works in excess of the Council's emergency powers under the Resource Management Act 1991.

Legal framework

5. As the Council identifies in the Record of Consideration, or can be inferred from it:
 - (a) Resource consent would ordinarily be required for the proposed works, at least as a restricted discretionary activity. In other words, consent could be declined.
 - (b) The works are in an outstanding natural landscape area, and could result in further effects that are more than minor. The grant of consent could subvert the outcomes sought by the relevant policies.
 - (c) In any event, the application would be likely to be notified, or at least limited notified (including to the Society); if not publicly notified for special circumstances.
 - (d) The reliance on the emergency works powers is intended to circumvent the notified process that would otherwise be required (including rights of appeal). This is contrary to the public participatory scheme of the RMA.
 - (e) The Council is relying on section 330(1)(d) and (f) that there is or is likely to be:
 - (d) ... an adverse effect on the environment which requires immediate preventive measures; and
 - (f) any sudden event causing or likely to cause loss of life, injury, or serious damage to property.
6. The leading case in respect section 330 is that of *Auckland City Council v Minister for the Environment* [1999] NZRMA 49. It was a judgment delivered jointly by Environment Judges Bollard and Whiting (ie a "full Environment Court"), and was intended to provide general guidance as to the approach to be taken to the scope of and approach to the exercise of emergency powers under the RMA. The statutory provisions have not materially changed since the decision and the tests established by the Court in that case remain binding. The key aspects of that case relevant to the present circumstances are stated below.
7. In respect of section 330(1)(d), the Court stated that:

... the adverse effect in question must be of a kind as to require not only preventive measures or remedial measures, but also the immediate carrying out of such measures. The words used are strong in their tenor, embracing as they do both a mandatory factor ("require") and the factor of immediacy.



... The nature of the effect and its adversity must be commensurate with the type of situation predicated by the mandatory and immediacy factors of [the] paragraph ...

8. In respect of section 330(1)(f), the Court stated:

... the event under para (f) must not only be sudden, but be such as to cause or be likely to cause loss of life, injury or serious damage to property.

9. The Court explained that the judgment required under sections 330(1)(d) and (f) has to be formed "objectively as a reasonable person or body in the circumstances". So too does the judgment as to whether the natural and physical resources of the area are affected by or likely to be affected by the perceived situation under either para (d) or (f). "Finally", in terms of the tests, the Court stated:

... the person or body concerned has to determine what activity should be undertaken in consequence — that is, whether to remove the cause of the emergency or to mitigate any actual or likely adverse effect of it. Here again, the judgment must be objective and that of a reasonable person or body acting in the particular circumstances. In some cases, removal of the cause of the emergency will be deemed appropriate, whereas in others the mitigation route will be seen as preferable depending on the background. From a general viewpoint, one would expect the chosen course to be one which is anticipated to deal adequately with "the emergency", while seeking not to interfere with private law rights to a greater degree than reasonably necessary.

10. The reference to "private law rights" in the last sentence could be replaced with the phrase "public rights of participation", to better fit the current circumstances.
11. The Court emphasised the importance for any action taken to be "immediately necessary" and only "sufficient" to respond to the emergency (rather than being a disproportionate or excessive response) as follows:

Importantly, the action taken ... must be of a kind that is "immediately necessary and sufficient to remove the cause of, or mitigate any actual or likely adverse effect of, the emergency". In other words, where the relevant public work, natural and physical resource or area is reasonably believed by the authority concerned to be affected by any of the conditions in paras (d) to (f) of subs (1), an "emergency" within the meaning of that word at the end of subs (2) is deemed to exist. Whether the Council chooses to remove the cause of the emergency as opposed to mitigating any actual or likely adverse effect of it will depend on the circumstances, bearing in mind the need to act responsibly having regard to public interest considerations for the environment and private rights of the individual. Whichever objective is sought to be pursued, however, the action taken must conform to that which is "immediately necessary and sufficient" for the relevant purpose.

12. The Court also cautioned in relying on section 330 as a "general fallback", stating:

... it is evident the section cannot be regarded as a general "fallback" provision that can automatically be relied on in any perceived "emergency" as an effective answer to complaints of unlawful interference with private rights. Because of the section's specifically defined circumstances of applicability, we agree with Mr Cavanagh's submission that local authorities and others should



not forsake or compromise their responsibilities under the Act's wider framework of regional and district planning and control on a footing that s 330 is "always available if things go wrong". Important though the section is, its terms are such that it cannot be viewed as an ultimate resort for every contingency.

Works do not objectively qualify / as a reasonable Council

13. While the Council might wish to err on the side of caution, the works do not qualify as objectively meeting the tests as would be considered by a reasonable council:
 - (a) *Under section 330(1)(d)*: as the retaining walls do not require "immediate" preventative measures. They are not likely to collapse in the near future and so immediate intervention is not warranted. Regular inspection and focused measures to shore up any retaining walls that do reach the point of requiring "immediate" attention is all that, objectively considered, a reasonable council would consider necessary to minimise the risk.
 - (b) *Under section 330(1)(f)*: although impact by falling rock "*possibly could happen*", it does not warrant remediation of the entire upper 500m of the Track. Rather, the track could be cleared of rocks most likely to be dislodged (naturally or otherwise). That is all that, objectively considered, a reasonable council would consider necessary to minimise the risk. In a similar way, basic track maintenance would be all that would be required to remove the risk of slips on the Track surface. If the same "risk" approach were taken to other tracks, then they too should be closed and remediated by the Council under its emergency powers
 - (c) *Beyond what is immediately necessary and sufficient*: In addition to the above two points, removal of the upper 500m of the track as proposed in the Decision is an excessive and disproportionate response the level of perceived risk, going well beyond what is '*immediately necessary and sufficient*' to remove the cause of or mitigate the effects of the apparent emergency, when (for example) significantly more targeted or confined works could effectively preclude access to the upper section of the track, or minimise the risks identified, without disestablishing that entire section.
14. Accordingly, the works as proposed cannot proceed lawfully under the emergency provisions of the RMA. They do not meet the relevant pre-conditions to the exercise of those powers.

Flawed process

15. The Council also followed a flawed consultation process, by undertaking consultation with Ngati Kahungunu and Craggy Range, but by excluding the Society from that process. Given the Council was well aware of the Society's interests, it should have consulted with the Society to ensure it was able to "give consideration to the views and preferences" of the Society as a person "likely to be affected by, or to have an interest in, the matter".



16. The Council's process also failed to:
- (a) seek to identify all reasonably practicable options for the achievement of the objective of a decision [such as more limited use of any emergency powers]; and
 - (b) assess the options in terms of their advantages and disadvantages.
17. These are breaches of the general decision making requirements under sections 77-78 of the Local Government Act 2002. That ability for breach of those requirements to found a case in judicial review has recently been confirmed in *Gwynn v Napier City Council* [2018] NZHC 1943.

Forward progress

18. The Society asks that the Council urgently reconsiders the extent of its proposed use of emergency powers in light of the significant flaws raised in this letter.
19. If the Council nonetheless proceeds, it will be proceeding unlawfully and runs the risk of challenge, including in respect of both the current proposed works and future matters. The Society fully reserves its rights in this regard. In respect of future matters, if works are completed that go beyond the lawful exercise of the Council's emergency powers, the Society specifically reserves its rights to challenge any reliance on those works to influence any future process or decisions, on the basis that those works were undertaken unlawfully.
20. The Society had considered seeking injunctive relief to restrain the unlawful works but has presently resolved not to, despite strong legal grounds in support of such action. This is because the Society remains committed to the wider process and finding an alternative track solution for the broader benefit of all parties. Accordingly, it currently wishes to focus its efforts, and those of the other parties, on that outcome rather than legal proceedings.
21. I would appreciate urgent confirmation of the Council's position in respect of all of the above.

Yours faithfully
James Gardner-Hopkins

A handwritten signature in blue ink, appearing to read 'James Gardner-Hopkins'.

JGH BARRISTER
BSC | LLB (hons) | MNZIOB

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13 February 2019

The Mayor – Hon Sandra Hazlehurst
Group Manager, Planning & Regulatory – John O'Shaughnessy
Hastings District Council
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johno@hdc.govt.nz

**TE MATA PEAK TRACK REMOVAL: TE MATA PEAK TRACK SOCIETY –
REQUEST FOR MEETING**

Introduction

1. I act for the Te Mata Peak Track Society Incorporated ("**Society**"). As you know, the Society has a significant interest in the Te Mata Peak Track issues – including the current applications for resource consent to remove the existing public access walking track. One of those applications is "retrospective", to authorise works already undertaken purportedly in reliance on the Council's emergency RMA powers ("**Retrospective Consent**"). The other application relates to the removal of the balance of the existing public access walking track ("**Main Consent**").
2. Integral to the consideration of the current applications for consent, which together seek removal of the entirety of the current track, is the consideration of alternatives. In that regard, a key object of the Society is to "promote different opportunities for public access to the Te Mata Peak recreational area". The Society is fiercely committed to working with the Council and other stakeholders to advance alternatives.
3. With this in mind, the Society wishes to meet with you, before 22 February 2019, to discuss what commitment the Council can give to the Society that the Council will continue the work undertaken to date by its Reference Group and advance an alternative, rather than simply let any such process languish.
4. The Society understands that the current applications for consent must be considered through the relevant statutory processes. The Society intends to participate as necessary through those processes to protect its position and interests in respect of alternatives, including through appeals if necessary. However, that does not preclude reaching agreement with the Council on a way forward in respect of alternatives.

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5. The balance of this letter records my opinion on relevant matters, to further inform the Council's understanding of the Society's position in advance of any meeting.

Notification

6. The Council as applicant has requested notification of the Main Consent application. In my opinion, it should similarly request notification of the Retrospective Consent application, so that the two applications can be heard and determined together. While it may be unlikely that the Retrospective Consent application would be declined,¹ if the Main Consent is to be granted it would be appropriate to align conditions across both consents, for example in respect of monitoring of recovery, additional maintenance, etc. This is critical for integrated and transparent decision making.

Relevant considerations

7. The Main Consent application identifies its activity status as "restricted discretionary". Assuming that is the case, that does not prevent access to Part 2 of the RMA to inform and interpret the matters reserved for discretion. The most relevant of those matters are:

- (a) visual impacts; and
- (b) effects on other land uses and adjoining properties.

8. While it may be "well known" to the Council, the extent of the visual impacts is abundantly illustrated by the following image showing the works that have been undertaken to date:



9. Key Part 2 matters relevant to the application, including section 6 considerations, are:

¹ Refer eg *Harris v Bay of Plenty Regional Council* W72/2008.



- (a) section 6(b): “the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development; and
 - (b) section 6(e): “the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga”.
- 10. The relevance of these Part 2 matters is significant, as there is longstanding authority that consideration of alternatives is required where an activity might impact on matters of national significance (as stated in section 6).²
- 11. In addition, “a description any possible alternative locations” (at least) is required where it is likely that the activity will result in any significant adverse effects.³ Furthermore, in any particular case, the circumstances may make consideration of alternatives not simply permissible but necessary.⁴
- 12. The circumstances of the Main Application are highly unusual and weigh heavily towards requiring a consideration of alternatives. This follows from the following facts:
 - (a) The consent that originally authorised the track was granted without notification.
 - (b) While the consent was challenged by way of judicial review, and a way forward agreed, the consent was not set aside.
 - (c) Accordingly, at law, the consent remains valid⁵ and the works undertaken under it part of the “existing environment” for the purposes of consideration of the current application.
- 13. The last point is important – as the proposal to remove the track will remove a major public amenity / benefit for the public. The significance of that effect cannot be assessed without some understanding of alternatives and whether that public amenity / benefit is likely to be able to be made available elsewhere. The potential for alternatives to be pursued later on other land is also a potential “effect on other land uses and adjoining properties” falling within the matters reserved for discretion.
- 14. Accordingly, in my opinion, there is a requirement for alternative track locations to be considered as part of the deciding whether to grant the

² eg *TV3 Network Services Ltd v Waikato District Council* [1998] 1 NZLR 360 (HC).
³ Clause 6(1)(a) of the First Schedule to the Act.

⁴ *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] 1 NZLR 593 (SC), at [166].

⁵ The general principle is that a decision remains lawful and of full effect unless and until set aside by an authority competent to do so.



Main Consent application (and on what conditions). If alternatives are not sufficiently considered, that could ground an appeal to the Environment Court (if not beyond). The application for the Main Consent does not currently address alternatives at all.

Forward progress

15. The Society is looking forward to meeting with the Council to discuss these issues. As foreshadowed above, the Society would prefer to reach agreement with the Council as to the Council's commitment to advance alternatives, than to have to vigorously pursue the consideration of alternatives through the consent application processes; or to seek decline of the Main Consent to allow that consideration to occur.
16. It might even be, if the Society has appropriate certainty about how the Council will advance alternatives, that the Society can support the current applications without raising significant reservations about the loss of the track in circumstances where there is no certainty of any alternatives being pursued.
17. I would be grateful if you could urgently confirm your willingness to meet with the Society prior to 22 February 2019, as requested.

Yours faithfully
James Gardner-Hopkins

A handwritten signature in blue ink, appearing to read 'James Gardner-Hopkins'.

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In the matter the Resource Management Act 1991

And

In the matter of an application by Hastings District
Council to the Hastings District
Council (RMA20190006) for resource
consent to remediate the remaining
sections of the Te Mata Peak Track
(Craggy Range Track)

**STATEMENT OF EVIDENCE OF DI LUCAS
(LANDSCAPE)**

June 2019

INTRODUCTION

1. My name is Diane Jean Lucas. I am a landscape architect and director of Lucas Associates Limited, a landscape planning, design and management practice established in 1979 and based in Ōtautahi Christchurch.
2. I hold a Post-Graduate Diploma and a Masters of Landscape Architecture, a Bachelor of Science, am a Fellow of the New Zealand Institute of Landscape Architects (1987), a Registered NZILA Landscape Architect, and, a certified Resource Management hearings commissioner. I work throughout Aotearoa New Zealand.
3. Through research and application, I have developed a number of landscape, ecological, natural character and heritage analysis and assessment approaches, including land typing as a planning and assessment basis.
4. I have researched vegetation management on cultural sites and in cultural landscapes, including a series of locations through Aotearoa New Zealand addressing "*Vegetation Management in the Archaeological Landscape*", a report for Department of Conservation Science & Research, Wellington (1996).
5. I confirm that I have read the 'Code of Conduct' for expert witnesses contained in the Environment Court Practice Note 2014. My evidence has been prepared in compliance with that Code. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

BACKGROUND AND ROLE

6. I have assessed landscapes in most regions in Aotearoa New Zealand. I first assessed the eastern flank to Te Matā in 1999, some twenty years ago. Over several decades I have reviewed various documents that address this maunga, including a number of landscape assessments by colleagues.
7. Since 2006 I have liaised with several hapū of the Hastings District regarding planning methods, landscape assessments and evidence to Council and Environment Court hearings addressing Te Waka and

Titikura through to Ahu-o-te-Atua on Maungaharuru, plus coastal landscapes of the District.

8. I have been asked by the Waimarama Maori Committee of Waimarama Marae to provide landscape evidence regarding the Council's proposed reinstatement and remediation works on Te Matā. HDC seeks to undertake earthworks to remove the remaining sections of the zigzag from high on the east face of Te Matā down to Waimarama Road and to restore the land to pasture.
9. I have recently re-visited Te Matā to view the ZigZag works undertaken. In preparing my evidence I have reviewed documents including Council assessments and evidence, met with and discussed hapū relationships with Te Matā, and, met with historian Patrick Parsons.
10. I have been involved in landscape assessment of various locales within the Hastings District since 1999. A number of these assessments, including of Te Matā, Te Matau a Māui (Cape Kidnappers), Te Waka (Te Waka-o-Ngārangikataka) – Maungahāuru, have involved ONFL (outstanding natural features and landscapes as per RMA s.6b) that demonstrate very high biophysical, experiential and associative attributes that were recognised in assessments by ISTHMUS (1996) and subsequently by Boffa Miskell (2013). All have been recognised for their importance to tangata whenua. These great landforms all stand stark as great natural features that are centre-pieces, symbols and signatures for the natural and cultural landscapes within which they project. They are wāhi taonga.
11. Through district planning processes the wāhi taonga have seldom been addressed comprehensively, instead divided into ONF, ONL and SAL (Significant Amenity Landscape) or only addressed in part. As identified in background studies (e.g. Barber 2012¹; Te Manaaki Taiao, 2018²), more comprehensive recognition would be appropriate. (refer Sheet 3)

¹ Bayden Barber. 2012. "A Maori Cultural Review of Current Schedule of Outstanding Natural Landscapes" Ipurangi Developments Ltd.

² Te Manaaki Taiao, Te Taiwhenua o Heretaunga. 2018. "Towards an understanding of the Māori (cultural) wellbeing and survival aspirations that Ngā Hapū o Heretaunga have for ... (Te Matā ... Te Mata te Tipuna)" Prepared for Hastings District Council. In association with Te Toi Ōhanga.

PROPOSAL

12. The 1.3km length of works includes addressing Sections B and C of the ZigZag that were constructed above Waimarama Road on the eastern flank to Te Matā in 2017 by Craggy Range Winery. These existing ZigZag environment involves some 10 lengths joined by hairpin bends from alongside the bluff formation high on the slope down to the wetland in the valley below.
13. The proposed remediation works involve:
 - Section A - the 195 metres from road boundary to base of hill.
 - Section B - from base of hill to Craggy Lookout.
 - Section C - from Craggy Lookout to Sheeps Rest, some 855 m.(refer Sheet 10)
14. As described by Mr Butler, the previously side-cast soil would be recovered from the slopes below. Additional soil will be brought in. Material from above the cut will be recovered and compacted on to the bench. Coconut matting will be laid over the bared and grass-sown surface to assist pasture re-establishment.
15. Thus existing cuts will be reduced, the natural landform will be sought to be reinstated, and no new cut faces created. Some limestone will be placed to armour runoff flow paths. However scavenging or damaging natural rock formations on site is required to be avoided (Specifications 3.2.3 and 4.2.2). As assessed by Mr Butler, without such remediation works, increased erosion is anticipated.
16. I have considered the proposal with regard to relevant objectives and policies of the Proposed Hastings District Plan. In particular Objectives and Policies that address the Te Matā ONFL. I have also assessed the proposal against the restricted discretionary consent provisions with respect to the proposed earthworks.
17. I note that Policy LSP2 states that *"Protection of the present landscape qualities of Te Mata Peak shall be afforded the highest priority through the District Plan."*
18. Accepted landscape assessment methods derive from the Boffa Miskell and Lucas Associates 'Canterbury Regional Landscape Study' 1993,

which resulted in the “Amended Pigeon Bay Criteria”. For that Canterbury study, the first under the RMA, I undertook discussions with tangata whenua and utilised information they provided, then spoke with runanga, and preliminary information and a schedule was then compiled to address s.6b, and further consultation recommended ‘*to define characteristics and scope of significance*’. There was certainly no confinement to assessing only what pakeha landscape architects considered landscapes of significance, which appears to have been the brief for the Hastings District Plan Review task regarding the 2012 ‘Māori cultural review’.

19. However, in considering the Boffa Miskell assessment for the remediation proposal (January 2019), with no reference to the cultural review in 2018 provided for HDC, I assume this was not available to inform their landscape methodology.
20. I have considered the critique provided in that cultural review (Te Manaaki Taiao, 2018), which reinforces my concerns with Eurocentric-dominated assessment approaches. With the visual, visibility and value focus of Landscape and Visual Effects Assessment undertaken for council, whilst typical and guided by their provisions, I consider the approach does not adequately encompass Mātauranga Māori. It is hoped that NZILA will soon progress improved landscape assessment guidance to more appropriately address the diversity and complexity of the attributes of the landscapes that comprise Aotearoa NZ and to assist councils in this regard.
21. However, I have reviewed the existing landscape, the proposal and the Plan provisions. And my assessment supports the Boffa Miskell conclusions, as provided by Ms Ryder, that the proposed remediation works are appropriate.
22. I have considered the previous ONFL assessments (1996 and 2013) and assessed the landscape recently to consider it with the landscape changes occurring in intervening years. In my opinion the ratings provided by Boffa Miskell in 2013 (page 46) are supported in the existing environment.
23. To assess the potential effects of the proposal on the ONFL1 existing environment, the biophysical, sensory and associative attributes are first considered, and then potential effects of the remediation proposal on these attributes are noted.

24. The ONFL attributes and ratings by Boffa Miskell 2013 are recorded as:

TE MATĀ OUTSTANDING NATURAL FEATURE AND LANDSCAPE (ONFL1)

BIOPHYSICAL ATTRIBUTES

- Natural Science Factors High

SENSORY ATTRIBUTES

- Aesthetic Values Very High
- Expressiveness (Legibility) Very High
- Transient Values Very High

ASSOCIATIVE ATTRIBUTES

- Shared and Recognised Very High
- Tangata Whenua Very High
- Historical High

BIOPHYSICAL ATTRIBUTES

25. In the Boffa Miskell Review (2013, page 29) the assessment method and assessment factors are outlined with Natural Science Factors addressed as:

- Representativeness
- Research and education
- Rarity.

I have seen no assessment for each of these, but they are rated in summary as of High Value. (Boffa Miskell 2013 page 46).

26. Boffa Miskell have described the biophysical features of the Te Matā ONFL in the AEE (January 2019, pages 57 – 58). I concur with the description of geodiversity and geomorphological processes. That land typology I show in my attachments at Sheet 2, the land type model for this type of country, with the photo above depicting the dramatic geodiversity of the eastern face of Te Matā.

27. However no recognition has been made in the landscape assessments of the Geopreservation Inventory recognition of Te Matā for natural science value. An extensive area has been delineated in the national database for a decade (refer Sheet 4). This contributes to research and education, it recognises representativeness and rarity.
28. The Geopreservation Site is described as: *A 15-km long jagged hogback of fossiliferous Te Aute Limestone dipping steeply west. It separates Heretaunga Plains from Tukituki River valley.* It is recognised as one of the most easily accessible high points in Hawkes Bay where young (Pliocene) marine fossils can be seen in rocks at the top, illustrating the rapid land uplift that has accompanied the plate boundary compression and accretion in the last few million years along the east coast of the North Island.
29. The area of Te Matā recognised as of geopreservation significance is referenced as the Te Mata Hogback. An accepted geomorphological term in NZ, the name "hogback" comes from the Hog's Back of the North Downs in Surrey, England, which refers to the landform's resemblance in outline to the back of a hog.³ That is, in western science, based on long local tradition in the UK, the Te Matā landform is compared to a pig.
30. However in mātauranga Māori (the body of knowledge originating from Maori ancestors) Te Matā is a person, he came from Waimārama. For the Waimārama hāpu, Te Matā is an ancestor. As the Hogback in western science seeks to inform through analogy, so too does Te Matā seek to inform through analogy. The landforms, the springs, the wildlife, these are addressed in lore. The research and education that is associated with the whare wananga of Te Matā, including as set up by Taewha, a tohunga of the Takitimu waka, and the teachings through the generations following, contribute importantly.
31. The dynamic cuesta landform of large uplifted lands with the broken surface on display, the chunks perched, fallen, worn, smoothed and forming the scarp slope. With the uplift tilt east, collapse and exposure, the former land-forming eras are on display in the lands below.
32. The relationship between Te Mata and the lower Tukituki valley is recognised in western science and in Mātauranga Māori. The east face of

³ Huggett, JR (2011) *Fundamentals of Geomorphology*, 3rd ed., Routledge, New York. 516 pp.

Te Matā defines and encloses the lower Tukituki. (refer cover and Sheet 1)

33. The evident mountain-shaping processes read as a story book for science and for Mātauranga Maori. Both traditions research, record and educate.
34. Whilst cultural histories and western science recognise former forests and shrublands (Sheet 7, left), at the time of European settlement the maunga was largely deforested (Sheet 8). The largely non-forested state forms an assessment baseline as natural cover, with most long since been converted to pastoral cover (Sheet 7, right).
35. The ZigZag works implemented in 2017 overlaid a non-natural chapter involving patterns that are contrary to the natural patterns of the face. Underlying the length of Sections B and C, the natural landform shapes, their slopes, their materials, their drainage are part of a natural system that evolved over millennia, and have been variously lived with and utilised over the past millennium. Their natural patterns, processes and elements are known and respected by hapū associated. The ZigZag works overlaid conflict with the valued biophysical attributes of the land and waters of this flank. The natural patterns, processes and elements have been significantly disrupted on this flank of the Maunga.
36. Whilst Boffa Miskell rated the natural science factors as high, in my opinion, recognising their recognition both as a Geopreservation Site on the national database, and recognising their biophysical features addressed in mātauranga Māori, I assess this attribute to rate as Very High.

SENSORY ATTRIBUTES

AESTHETIC VALUES

37. Aesthetic is not limited to the visual, for as well as sight, sound, smell and movement can all have aesthetic expression. For 'aesthetic' addresses all senses, including time. The aesthetic experience might be current, or it might be in memory, and may be recounted in waiata, in whakatauki, in oratory and in names.
38. The Boffa Miskell Review (2013) addresses Aesthetic Values as:
 - a. Coherence

- b. Vividness
 - c. Intactness
39. As defined by Boffa Miskell (2013, page 29) “**Coherence**” involves “*The patterns of landcover and land use are largely in harmony with the underlying natural patterns of the landform of the area and there are no significant discordant elements of landcover or landuse.*”
 40. Considering the site, the pastoral landcover is largely in harmony with the underlying natural patterning. The natural patterning of the landforms clothed in pasture has high aesthetic coherence through a scenic lens. The pastoral landuse of the wetlands has lesser coherence when assessed as cultured nature, with the evident stock access there. Similarly for mana whenua, and those that whakapapa to this land and the associated kainga, the wetland management has less coherence.
 41. The ZigZag installation has overlain a discordant pattern onto the complex of landforms, seemingly with patterning regardless of the underlying natural character. ZigZagging through the wetland area and the steep erodible slopes above, the existing works are not in harmony with the natural patterns. For Waimarama, the Zig-Zag cuts across the slopes are a stark reference or snub to the korero regarding the whakahaehae, the slashing of the female ancestor on Te Matā. Since the 2017 installation of the ZigZag works, the landscape coherence of this area is considerably lowered.
 42. In the ONFL assessment methodology, “**Vividness**” is defined as “*Natural features and landscapes that are widely recognised across the community and beyond the local area and remain clearly in the memory: striking landscapes are symbolic of an area due to their recognisable and memorable qualities.*”
 43. For the hapū that whakapapa to the Heretaunga, Te Matā is highly symbolic, recognisable and memorable. As recorded by Te Manaaki Taiao (page 61), “*this maunga is like a beacon.*” However such aesthetic “Vividness” may not necessarily be addressing the visual aesthetic, or only the visual aesthetic. The associated sounds or memories may be as vivid. And as significant.

44. With the existence of the ZigZag, the vividness is besmirched. The sight, symbolism and memories of this maunga are very significantly disrupted for mana whenua. Their ancestor is hurt. Their wāhi taonga damaged. For others, the vividness of the mountain flank is disrupted by the zigzagging up the slope. The landscape vividness of Te Matā is significantly lowered by the existing works.
45. **"Intactness"** is defined in the method as *"Natural systems that are intact and aesthetically coherent and do not display significant visual signs of human modification, intervention or manipulation: visually intact and highly aesthetic natural landscapes."* As defined, the intactness attribute emphasises the visual at the expense of other aesthetic dimensions.
46. For intactness of a natural system may be disrupted by modification, intervention or manipulation that may significantly adversely affect non-visual aesthetic dimensions. For example silence rather than birdsong; odours rather than naturally clean air; or, a wāhi tapu recognised on part of that natural system.
47. Long forest-free (refer Sheets 7 and 8) the open character reveals the lands nuances, the dry, the rock, the rubble, the seepages.
48. The ZigZag that forms part of the existing environment is displayed on the mountain flank as a significant visual sign of human modification, intervention and manipulation. The associated slopes are visually intact and contribute to a highly aesthetic natural landscape. However the integrity, the intactness, the wholeness and wellness of the maunga is affected by the ZigZag incursion. The ZigZag works disrupt, modify and intervene in the high intactness.
49. These three aspects of Aesthetic Values – Coherence, Vividness and Intactness - were together rated in the 2013 assessment as a summary value. Whilst rated as Very High for the Te Matā ONFL, there is no explanation provided to assist with an understanding or to assist with effects assessments.
50. With the addition of the ZigZag, these three Associative attributes have each been adversely affected; their value reduced.
51. The Boffa Miskell ONFL methodology separately addresses Expressiveness (Legibility) and Transient Values as further Sensory Attributes, and both were rated in 2013 as Very High for Te Matā.

52. **Expressiveness (legibility)** is defined as *“Natural features and landscapes that clearly demonstrate the natural processes that formed them.”* In Mātauranga Maori, legibility is often an important attribute, with waiata and lore often referencing such processes.
53. The expressiveness of Te Matā as a natural feature and landscape very clearly demonstrates natural landforming processes - the classic cuesta formation, as modelled at Sheet 2. The korero from the different hapu surrounding the maunga understandably and interestingly express their differing readings of the natural landforming demonstration. They variously address the lifts, breaks, forms and drops of the cuesta natural landforms.
54. The presence of the ZigZag is an evident physical disruption to the natural land forming processes. The incisions are both disrupting and instigating erosion and drainage patterning. The ZigZag presence thus adversely affects the natural landscape legibility.

ASSOCIATIVE ATTRIBUTES

55. Associative Attributes of Shared and Recognised Values, Maori Values and Historical Associations are addressed. These three are all defined by Boffa Miskell as natural features and landscapes that are clearly (special) and widely known. The “Maori Values” are defined as being *“Natural features and landscapes are clearly special or widely known and influenced by their connection to the Maori values inherent in the place.”* For the 2013 assessment, *“Values associated with tangata whenua are drawn from a study undertaken by Boyd Barber, October 2012.”*
56. As recognised by Te Manaaki Taiao (page 27), Te Matā comprises a significant cultural landscape. There are diverse relationships with the maunga, through differing histories and spatial relationships for the different hapū. As identified by the Waimārama Maori Committee, Te Matā as a whole is Wāhi Tapu. The maunga is Wāhi Taonga.
57. Shared and Recognised and the Tangata Whenua Attributes were both rated by Boffa Miskell as Very High for Te Matā, and these ratings are supported.
58. As recognised in submissions, the addition of the ZigZag has significantly disrupted both Shared and Recognised and Tangata Whenua Attributes.

59. Considering historic associations, Archaeologist Ms Carter's site visit identified potential pit clusters and terracing. A recorded kainga is within 50 m of the track includes pits, drains and house sites. Ms Carter notes (para. 3.3 iv) the locale to be *"an archaeologically rich landscape, albeit under-recorded in the NZAA Site Record Database."*
60. For Ngā Hapū o Waimārama who trace their ancestry in these lands back to Kupe, and later to the arrival of the Takitimu waka at Waimārama, Te Matā is one of their family. He was from Waimarama and remains part of their 800 – 1000 year relationship with these lands as recognised by Ngā Hapū. As is recognised in the report by Te Manaaki Taiao for council last year⁴, Pā and kainga were positioned on Te Matā that overlooked the Tukituki valley.
61. I agree the Historic Associations to Te Matā are at least High.
62. The construction of the ZigZag within the Wahi Tapu and close alongside former kainga has adversely affected the historic associations. The patterning of the 2017 works bears no relation to the natural or historic character. The Historic Associations are not confined to archaeological sites, but to the historic landscape that holds and demonstrates those associations.

EFFECTS

63. For considering earthworks within the ONF, the proposed land disturbance and vegetation clearance are assessed with particular regard to effects on natural landforms, significant cultural, ecological and historic heritage sites (27.1.17).
64. As per s 6(b), ONF and ONL are matters of national importance for which there is to be protection from inappropriate use. Given the existing environment with the excavated zigzag, the proposal to remediate this excavation through careful repositioning of soil, fill, organic mulch and seeding with browntop, or similar pasture grass, I assess to be appropriate.

⁴ Te Manaaki Taiao, Te Taiwhenua o Heretaunga. 2018. *"Towards an understanding of the Māori (cultural) wellbeing and survival aspirations that Ngā Hapū o Heretaunga have for ... (Te Matā ... Te Mata te Tipuna)"* Prepared for Hastings District Council. In association with Te Toi Ōhanga.

65. As identified in considering the ONL at Matakana Island the Court identified (para 115) *"The presence of a hut, or even the Chateau, may not diminish the quality of a national park; a lighthouse may be appropriate on a notable headland; and perhaps a track or lookout which facilitates people's access to an appreciation of an ONFL may serve in that way to enhance the landscape. ... As always, context is everything."*
66. Matakana para 137. *"The admonition to stand back begs the question of the most appropriate point of view. This is an issue not only of a viewpoint in space but also in time or over a period of time, given the four-dimensional existence of a landscape. Just as a viewer can see a landscape from close up, or in the fore- or middle ground or from a long distance, so the time dimension may be fleeting, or last for few years, or the life of the relevant plan, or for a generation, or over a much longer term: the process elements of a landscape or feature may be appropriately considered over geological epochs."* *"So one must stand back conceptually and bring together in one's mind the full range of views, along with whatever one may know of relevant processes and associations which can inform one's understanding of those views."*

DISTRICT PLAN PROVISIONS

67. I have considered the Proposed District Plan provisions and the Boffa Miskell 2013 *"Review of Landscape areas and Implications for Plan Review"*. The application involves sections B and C of the zigzag located within ONFL1 and Section A located within a Significant Amenity Landscape – Te Matā (SAL).
68. As identified in the Council planner's report, actual and potential effects identified include:
- (i) Landscape character and visual amenity effects, and
 - (ii) Effects on Maori spiritual and cultural values.
69. I note the Operative Hastings District Plan set a 240 m contour line as a change point for activities on Te Matā which is high on the east face. I note that the original ISTHMUS study had recommended a lower elevation. I also note that traditional pounamu markers are referenced by hapū as delineating a lower limit to their wāhi tapu. (refer Sheets 5 and 6)

70. I note, as per the RPS, Objective 36 is *"To protect and where necessary aid the preservation of waahi tapu (sacred places) ..."*

PROPOSED HASTINGS DISTRICT PLAN

OBJECTIVE LSO1

71. *The factors, values and associations that define the District's Outstanding Natural Features and Landscapes are identified, and are protected from inappropriate subdivision, use, and development.*

The factors, values and associations have been considered above in terms of the existing environment of the Te Matā ONFL1. Considering the proposed works, I consider there will be temporary adverse effects through the undertaking of works along the ZigZag. These will have greatest adverse effect on sensory attributes, but I do not rate them as significant. Considering the scale and character of the proposed works, and the landforms being manipulated, I assess that once the land has been brought close to the original slope and re-grassed, then the adverse sensory effects will be positive. For the biophysical and associative attributes, I assess that the works will have adverse effects that are less than minor.

72. Policy LSP1

As per Policy LSP1 addressing *Mana Whenua Values*

Natural features and landscapes are clearly special or widely known and exceptionally influenced by their connection to the Maori values inherent in the place.

I assess that as well as associative aspects, Matauranga Māori assists in the assessment of biophysical and sensory attributes. In considering these attributes, these Mana Whenua values, the proposed works are assessed will largely have positive effects.

POLICY LSP2

73. *Protection of the present landscape qualities of Te Mata Peak shall be afforded the highest priority through the District Plan.*

As per the RPS, Objective 36 is “*To protect and where necessary aid the preservation of waahi tapu (sacred places) ...*”

The proposed works endeavour to remedy past activities that have resulted in adverse effects on the landscape qualities of Te Matā. The works are designed to protect the biophysical, sensory and associative landscape attributes, including preserving the associated wāhi tapu.

POLICY LSP3

74. ... *Earthworks will be regulated on identified Outstanding Natural Features and Landscapes throughout the District taking into account the ability of the activity to integrate into the receiving landscape and the sensitivity of that landscape.*

The works proposed include specifications that recognise the sensitivity of the Te Matā landscape and endeavour to achieve careful integration.

RESTRICTED DISCRETIONARY ACTIVITY

Considered as a restricted discretionary activity, PDP assessment criteria include:

75. Section 27.1 – Earthworks,

27.1.7F Earthworks within Outstanding Natural Landscapes (ONFL)

Earthworks within an ONFL will be designed and located to minimise adverse visual effects. In particular, the extent to which any such development will:

- a. Where practicable, minimise the location of large scale earthworks on prominent rural ridgelines, hill faces and spurs.*
- b. Be designed to minimise cuttings across hill faces and spurs.*
- c. Where practicable, minimise the number of finished contours that are out of character with the natural contour.*
- d. Demonstrate what visual mitigation is proposed to minimise the visual intrusion of the work, including proposals to ensure the successful establishment of any plantings.*

I have carefully considered the ONFL1, the site of the proposed activity, and the remediation works proposed with respect to these measures. I

assess that the works are designed and located to minimise adverse visual effects. I assess that whilst temporary adverse effects will result, long term the landscape effects of the works will be positive.

76. 27.1.7A Land Disturbance and Vegetation Clearance

Considering effects on

- (ii) *soil erosion and stability;*
- (iv) *natural landforms and contours, and*
- (i) *Significant cultural, ecological and historic heritage sites*

The proposed remediation works will have temporary adverse landscape effects and once successfully recontoured and re-grassed, the landscape effects of the earthworks on land disturbance and vegetation clearance are assessed will be positive.

As directed by (b), regard has been had to:

- (i) *The extent of removal of vegetation, topsoil and subsoils at any one time;*
- (v) *Sediment control measures.*
- (vi) *Rehabilitation of site.*
- (x) *Effect on flow paths and floodways.*
- (xi) *Measures to avoid disturbance of archaeological sites.*

Whilst not involved in the design detail, I have considered the proposed rehabilitation measures and assess that properly implemented and managed, the remediation will not result in adverse landscape effects.

77. 27.1.7B Visual Impact

The visual effects of the activity will be assessed in terms of its potential effect on:

- (i) *The existing character of the locality and amenity values.*

In making that assessment regard shall be had to:

- (ii) *Site location including locality, topography, geographical features, adjoining land uses.*

(iii) *Rehabilitation of the site, including contouring, landscaping and revegetation.*

(iv) *Duration, rate and extent of the extraction.*

I have assessed the existing environment and the proposed remediation works. In my opinion the existing character, the amenity values, the topography and the geographic features will all be positively affected by the proposed works. Whilst there will be temporary adverse effects during the works and until the pasture re-establishes, these will not be significant.

CONCLUSION

78. Considered as a restricted discretionary activity, addressing the plan provisions, Objectives and Policies, I assess that the proposed remediation will have temporary adverse effects that are not significant, and once the land is recontoured and re-grassed, the works will have largely positive landscape effects.
79. If considered as a fully discretionary activity, I assess that the works as defined would be appropriate.
80. I assess that the proposed works to remediate the ZigZag, carefully implemented and appropriately managed, will provide necessary protection for the valued landscape qualities of Te Matā.
81. Considering Part 2 matters, I assess that the proposed remediation works would avoid, remedy or mitigate adverse effects on the ONFL and SAL, and on the wāhi taonga, and thus satisfying s.6b, s.6e and s.7c.



Te Matā from Waimārama Road. Photo taken 27 May 2019 (view point 1)



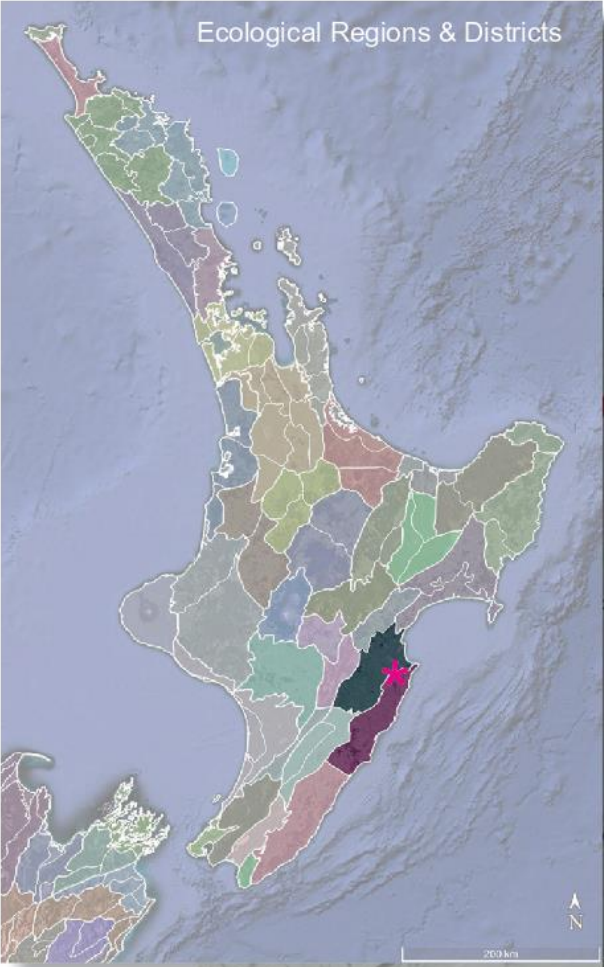
Kohinurākau from Waimārama Road. Collage: Photos taken 27 May 2019 (view point 1)

attachments

to the evidence of Di Lucas Registered NZILA Landscape Architect

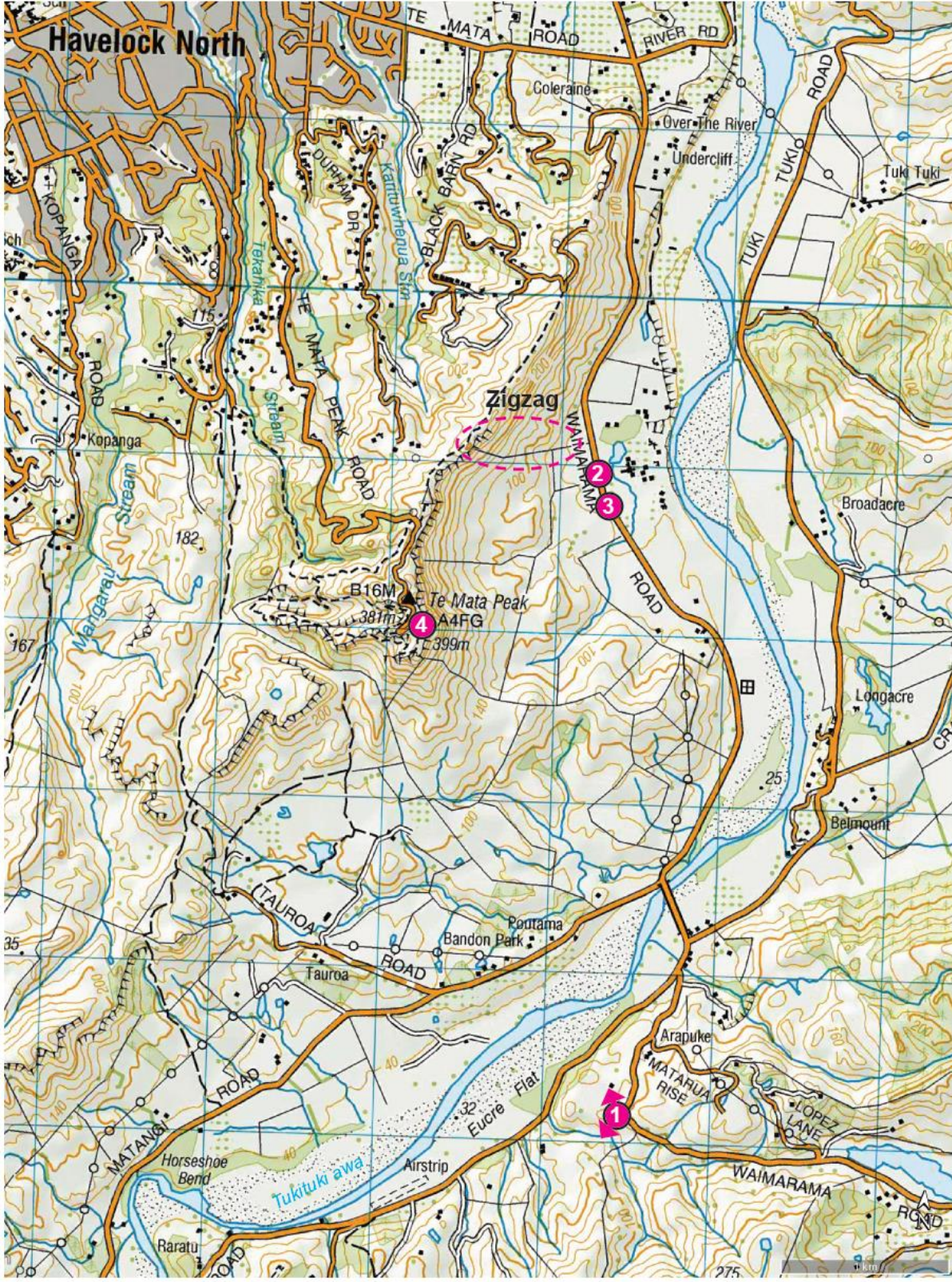
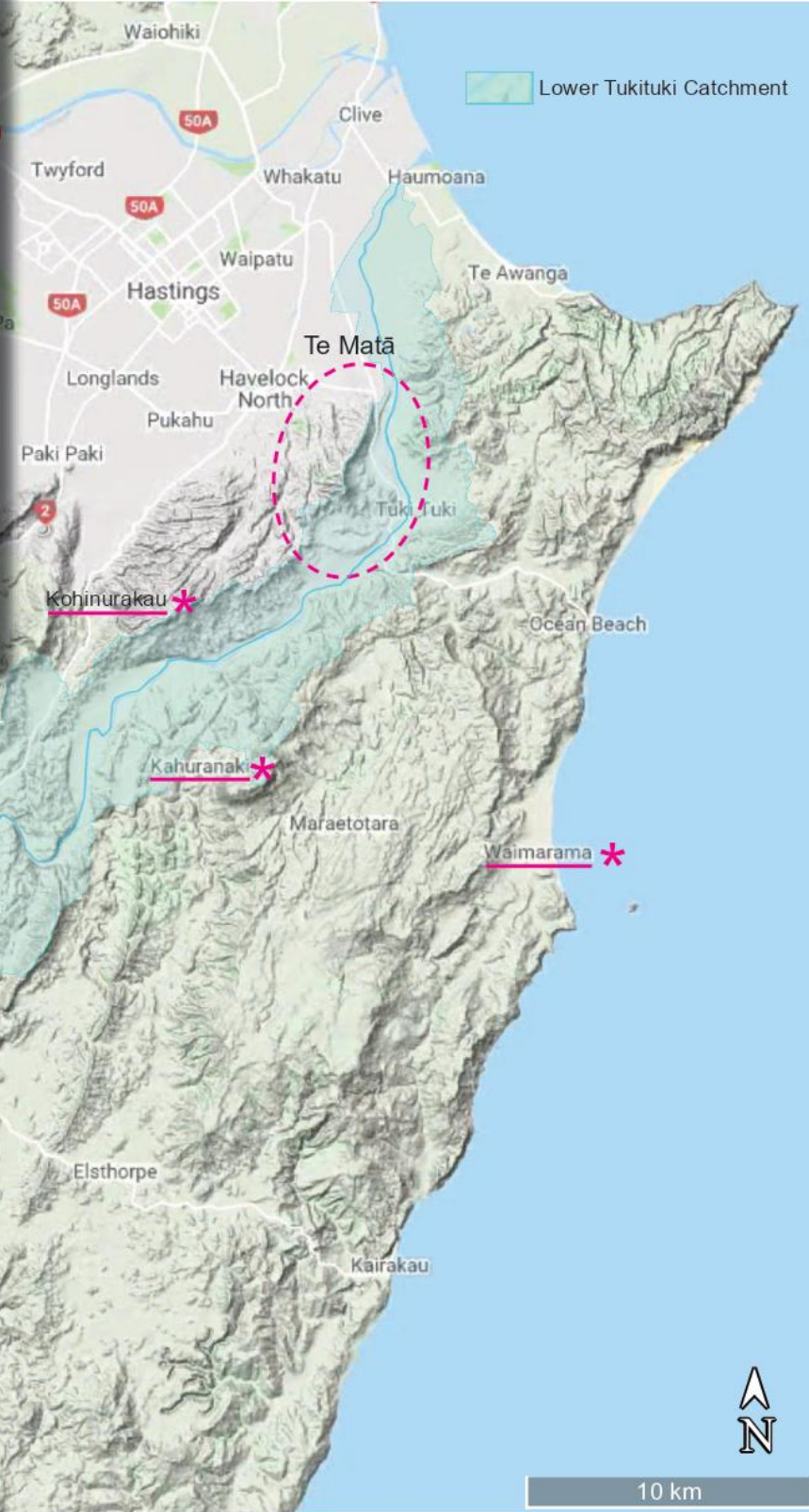
(Print @ A3 size, double sided and bind on left)

Te Matā ZigZag Remediation, Hastings District. Prepared for Waimārama Māori Committee, June 2019



34.01
ECOLOGICAL DISTRICT: Eastern Hawkes Bay
ECOLOGICAL REGION: Eastern Hawkes Bay

29.02
ECOLOGICAL DISTRICT: Heretaunga
ECOLOGICAL REGION: Hawkes Bay



View points

sheet 1

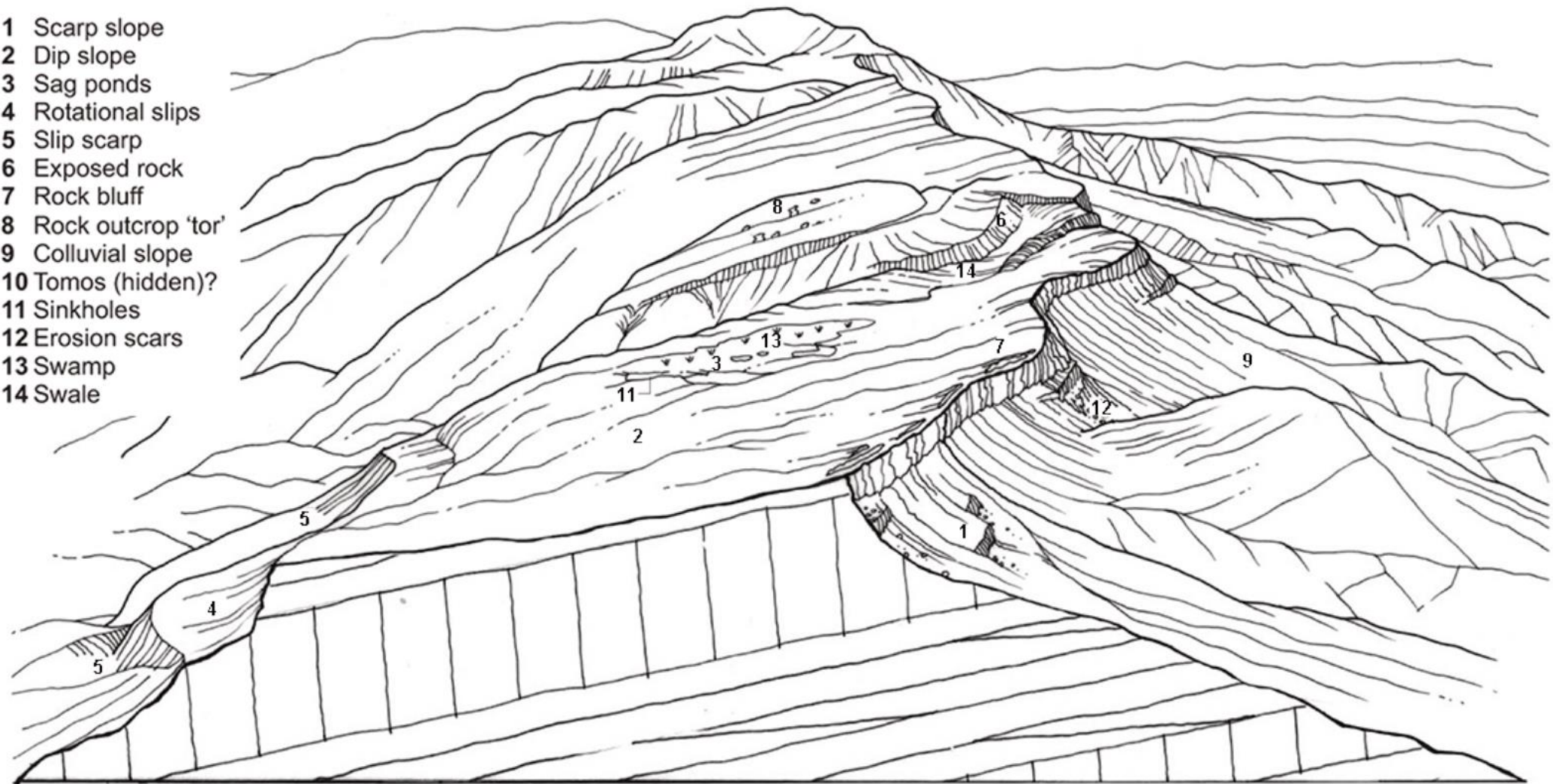
Google Earth
Data SIO, NOAA, U.S. Navy, NGA, GEBCO



View toward Te Matā from Waimārama Road. Photo taken 26 May 2019 (view point 2)

KEY landform components

- 1 Scarp slope
- 2 Dip slope
- 3 Sag ponds
- 4 Rotational slips
- 5 Slip scarp
- 6 Exposed rock
- 7 Rock bluff
- 8 Rock outcrop 'tor'
- * 9 Colluvial slope
- 10 Tomos (hidden)?
- 11 Sinkholes
- 12 Erosion scars
- 13 Swamp
- 14 Swale



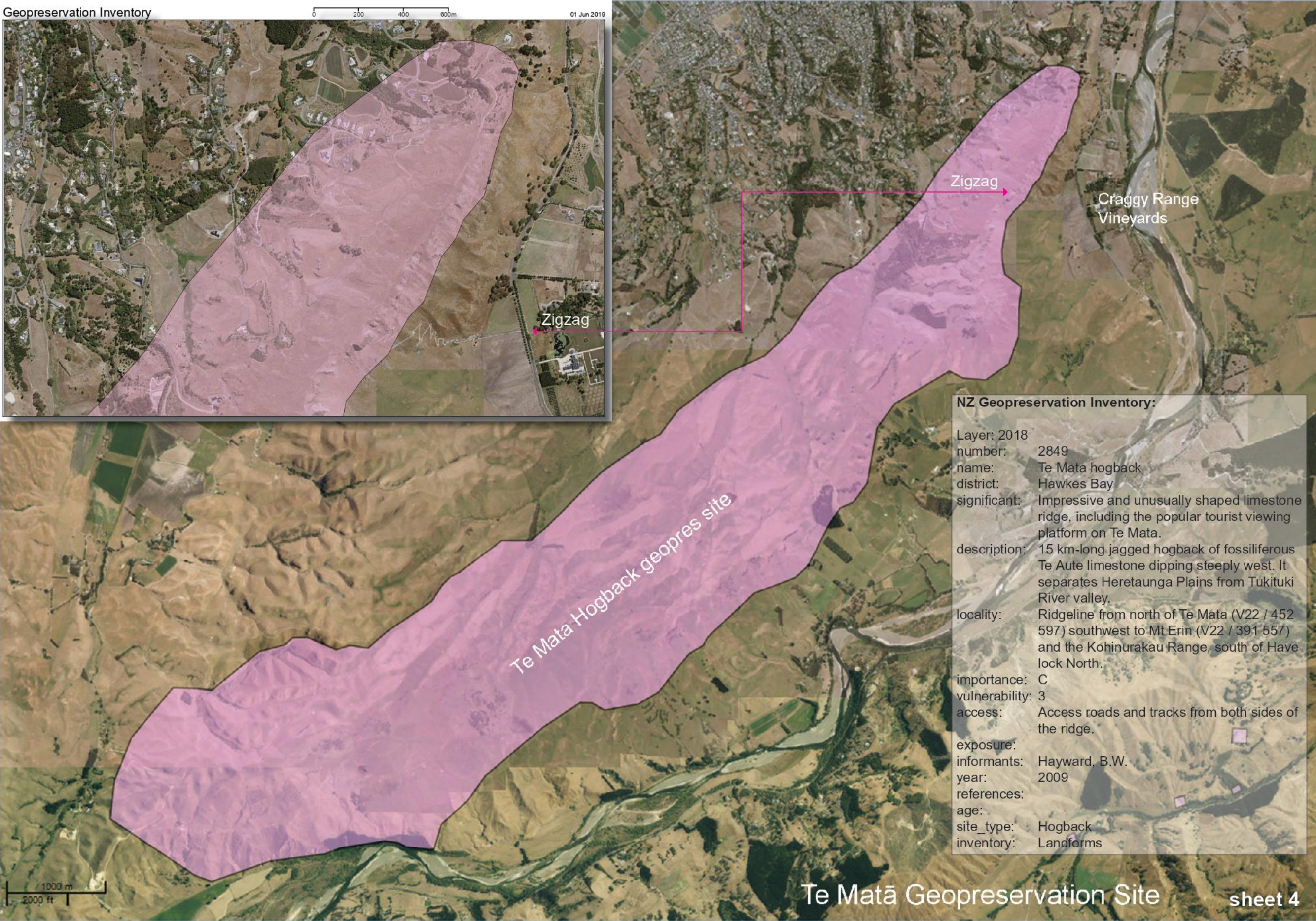
West

land type model Maungaharuru limestone

East

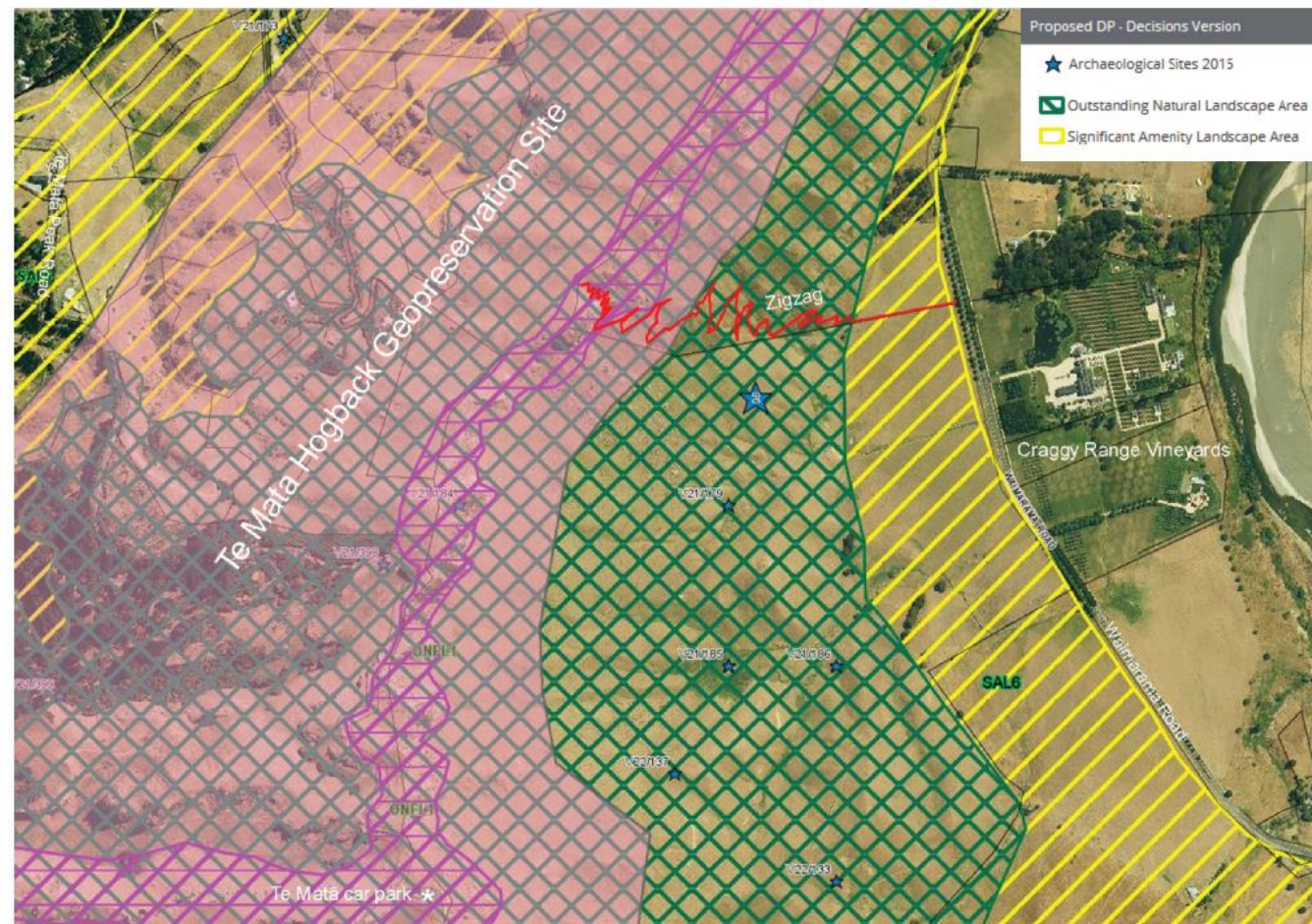
sheet 2





Item 2

Attachment 4

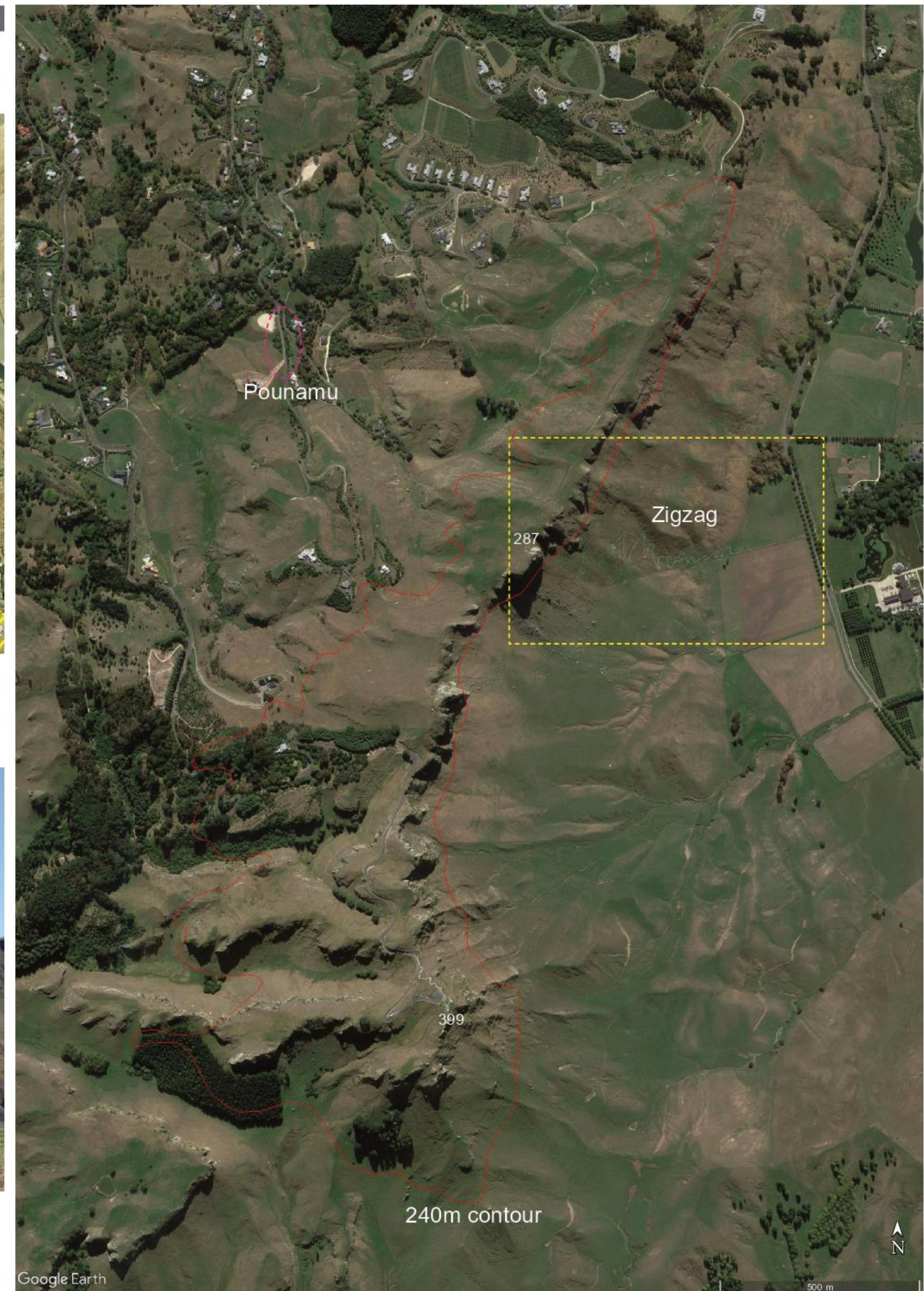


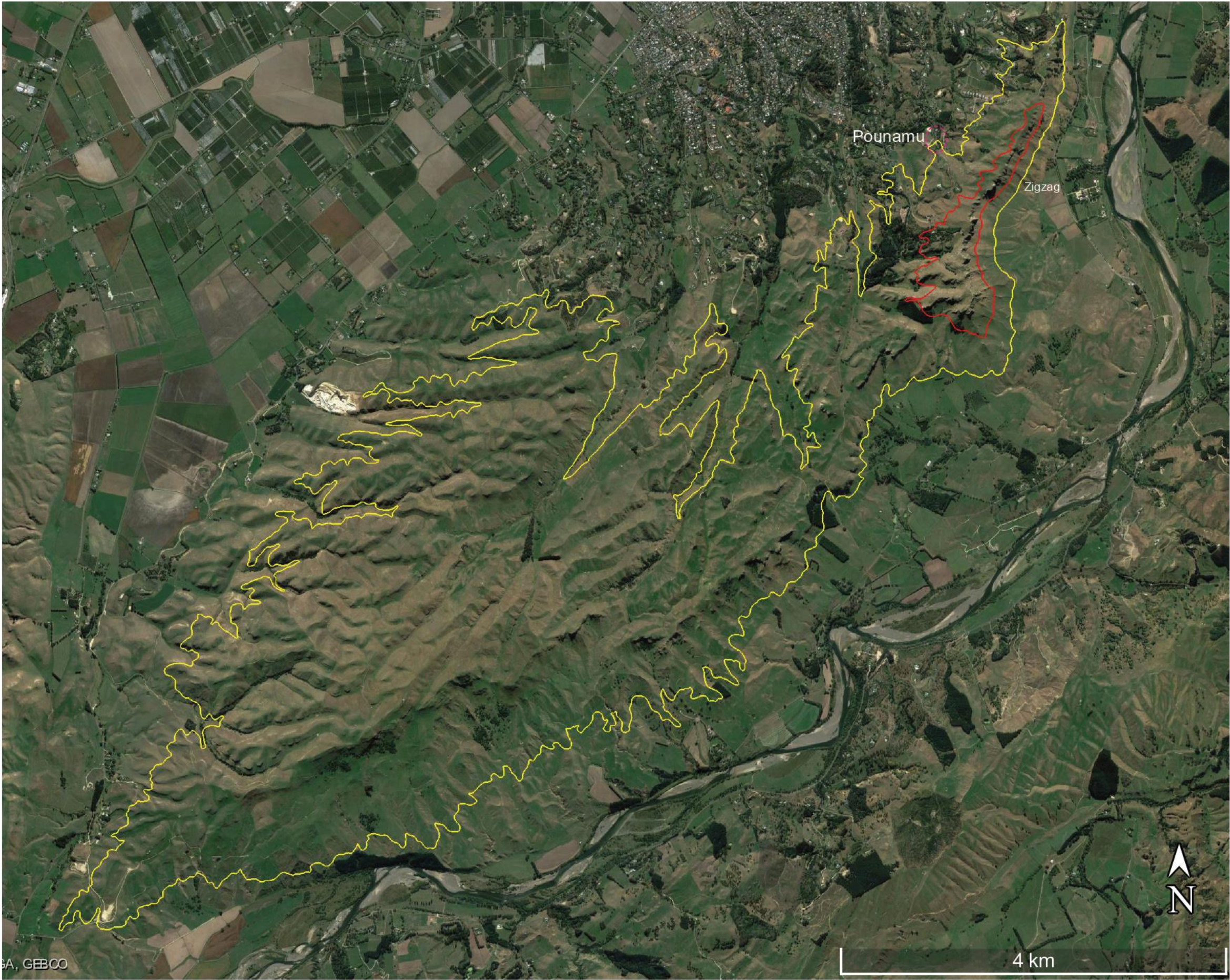
Te Matā Geopreservation Site



View toward zigzag from Waimārama Road. Photo taken 27 May 2019 (view point 3)

sheet 5





Item 2

Attachment 4

sheet 6

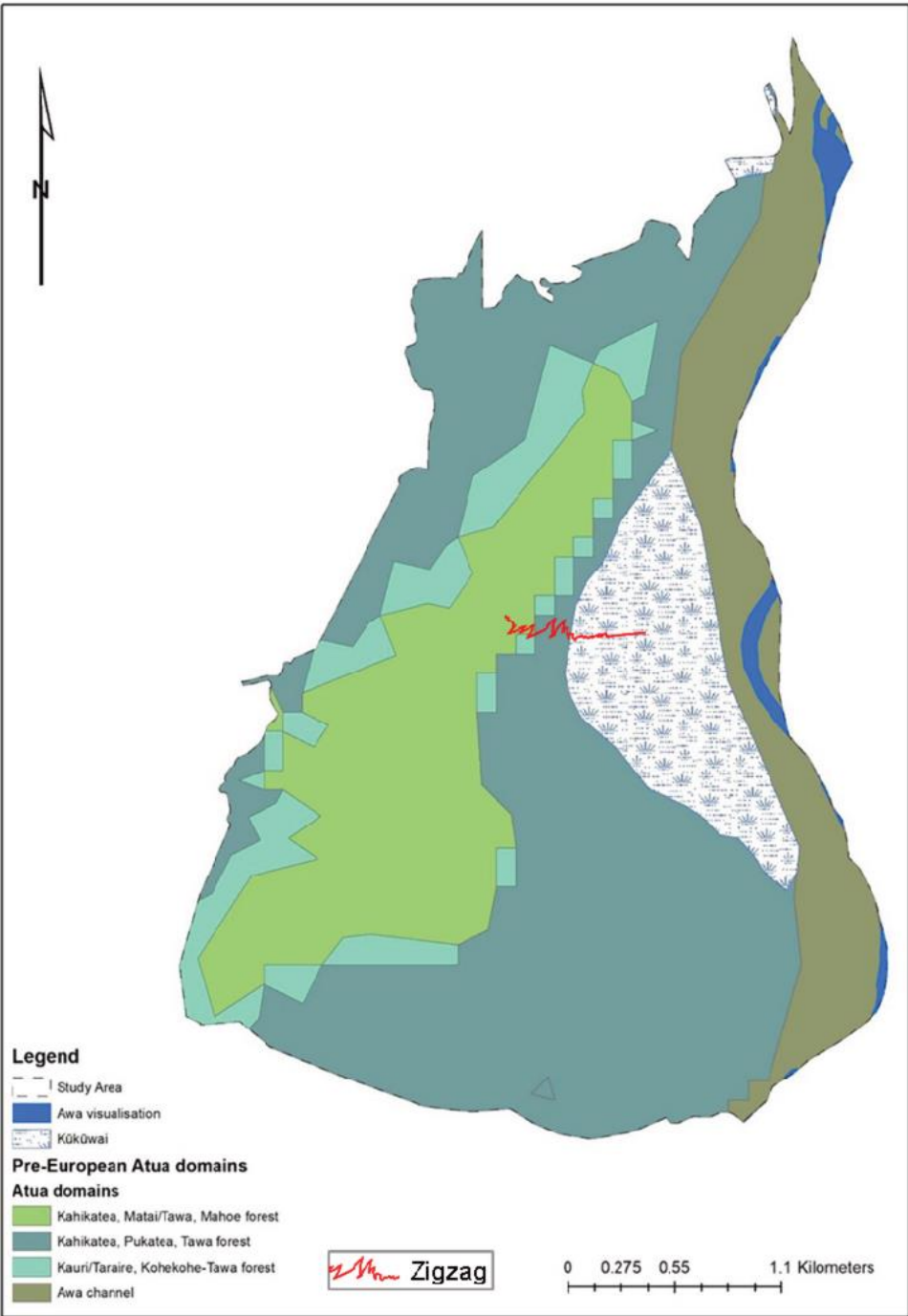


Figure 9 A visual depiction of Atua domains that previously provided a korowai for Te Matā ... Te Mata te Tipuna during the 800–1,000 years of relative isolation that our tīpuna spent in Heretaunga (Source: Landcare Research PNW, PNW)

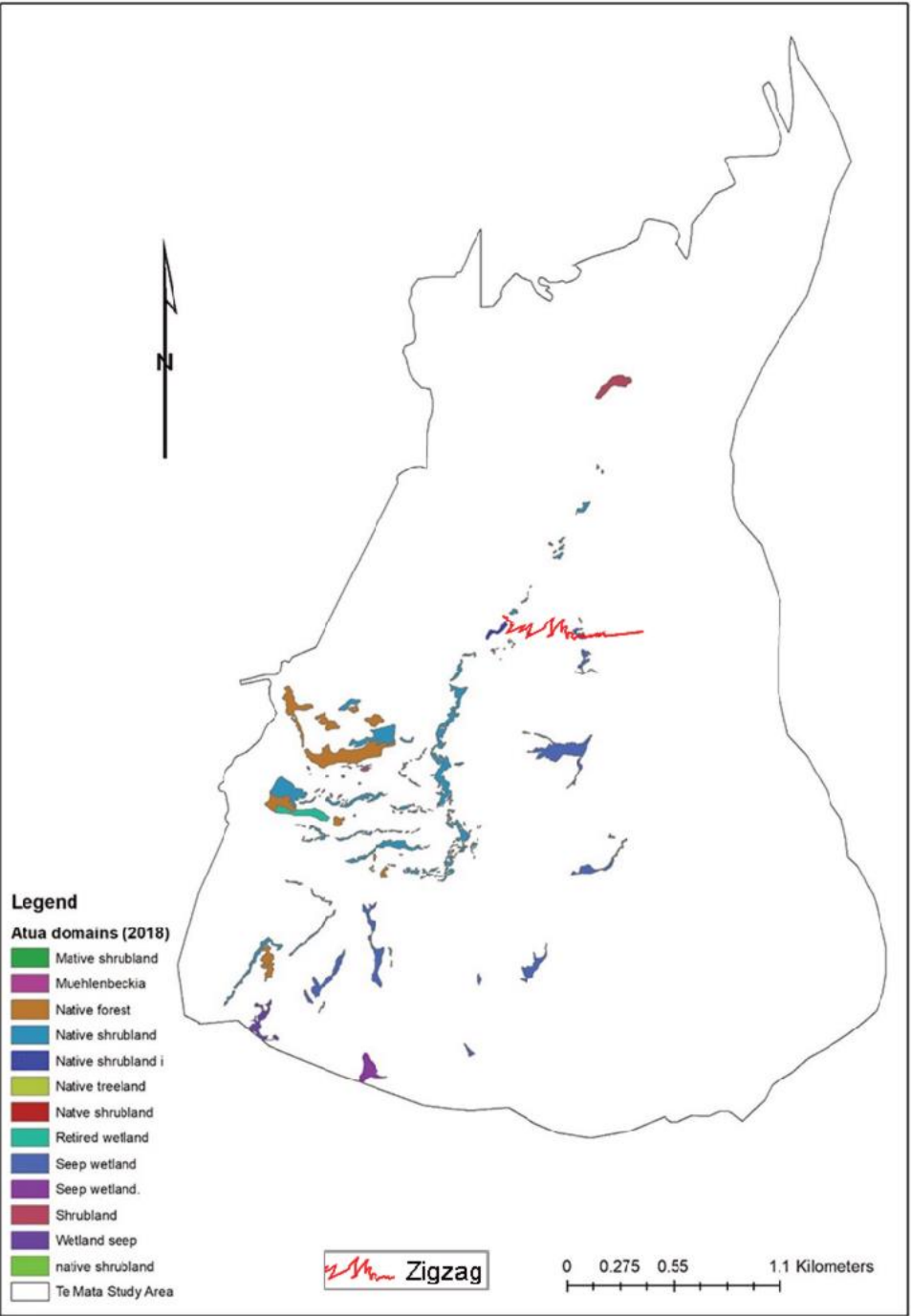
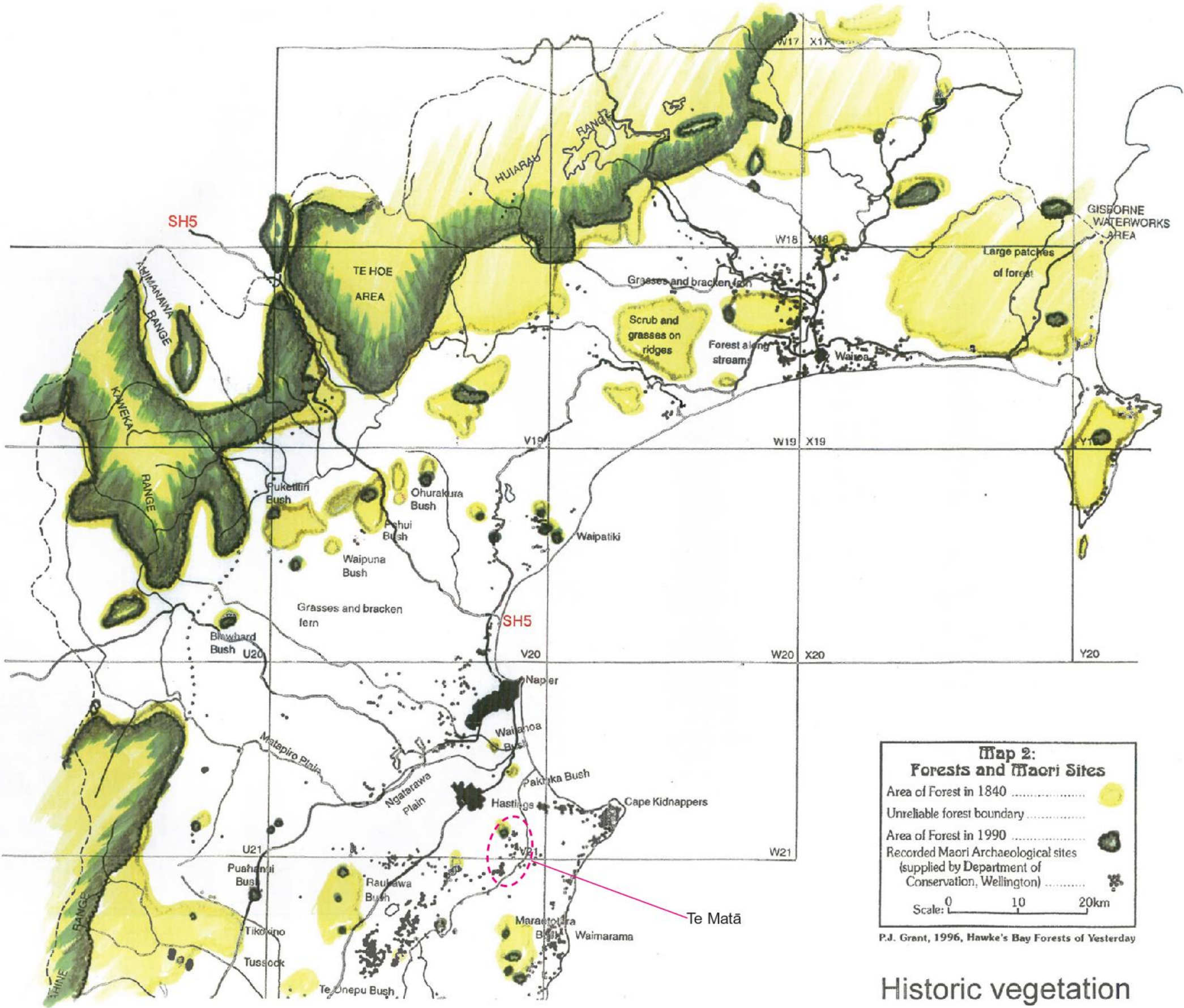


Figure 11 A visual depiction of Atua domains that provided a korowai for Te Matā ... Te Mata te Tipuna, as mapped in 2018, as part of ecological survey activities commissioned by Hastings District Council (Source: Adam Forbes 2018).

Source: Towards an understanding of the Māori (cultural) wellbeing and survival aspirations that Ngā Hapū o Heretaunga have for Te Mata, Te Mata, Te Mata o Rongokako, Te Karanemanema Te Mata o Rongokako (Herein referred to as Te Matā ... Te Mata te Tipuna) 2018. Prepared for the Hastings District Council By Te Manaaki Taiao, Te Taiwhenua o Heretaunga In association with Te Toi Ohanga





View north from Te Matā overlooking Tuktuki.
Photo taken 27 May 2019 (view point 4)



View south from Te Matā
Photo taken 27 May 2019 (view point 4)



View east from Te Matā overlooking Tuktuki toward Cape Kidnappers and Maraetotara Plateau.
Photo collage taken 27 May 2019 (view point 4)



View south east toward Kahuranaki and Maraetotara Plateau from Te Matā.
Photo taken 27 May 2019 (view point 4)



ZigZag viewed from Waimārama Road. Photo taken 26 May 2019 (view point 1)