

The Ngunguru Sandspit and the protection of wahi tapu

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In June 1996 the Parliamentary Commissioner for the Environment produced a 150-page document, "Historic and Cultural Heritage management in New Zealand". One of the case studies in that document concerned the Ngunguru Sandspit. Not only does the document give a good summary of attempts in the early 90s to protect the historic and cultural heritage of the sandspit, it also gives details of attempts to bring the land into public ownership.

Chapter 2: Historic and cultural heritage case study summaries (1)

2.1 The Ngunguru Sandspit and the protection of wahi tapu

The Ngunguru Sandspit (119 ha) is located on the east coast of Northland, approximately 25 km north-east of Whangarei. The sandspit is a unique combination of historic and cultural heritage and natural heritage and it is one of only a few unmodified and unprotected sandspits remaining in New Zealand. Ngunguru Sandspit is of considerable significance to tangata whenua as it had a long history of occupation and has significant cultural, spiritual, historical, and environmental values. Three tangata whenua groups have associations with the sandspit - Ngatiwai, Ngati Taka, and Te Waiariki.

Ngunguru Sandspit has been assessed as a significant ecological site and an outstanding landscape. The sandspit is a significant archaeological area with a headland pa, terraces, urupa, and numerous middens but no comprehensive archaeological survey has been performed. No archaeological sites or wahi tapu at the sandspit have been assessed for registration under the Historic Places Act 1993 (WA). The area is in private ownership and development including subdivision is likely to influence many of the historic and natural values, and would in turn be influenced by dune movement, coastal erosion and flooding.

Designation history and attempts to acquire the land for public ownership

The Ngunguru Sandspit was first designated in 1967 by the Whangarei County Council (WCC) as a proposed public open space reserve. The Department of Lands and Survey then took responsibility for the designation before it was transferred to the Department of Conservation (DOC) in 1987. Between 1975 and 1991 there were many discussions and attempts to purchase or exchange the land at the sandspit initiated by either the landowner or various government departments. However no satisfactory agreement over the sale of the property was ever reached between the various agencies and the landowner. At various times, a lack of finance, different valuations, and changes of attitude to the sale and purchase of the land by all parties hindered agreement.

In 1992 DOC commenced a national review of the conservation values of all existing designations where it was the requiring authority to assess if the designation should be retained (under the Resource Management Act 1991 (RMA), requiring authorities were expected to take reasonable steps to acquire any designated property or the designation would lapse after five years). In 1994 a final attempt was made by DOC Northland to get funding support from DOC Head Office land acquisition fund, Whangarei District Council (WDC) and Northland Regional Council (NRC) but this was not forthcoming. As DOC could not fund the total purchase of the area it withdrew the designation in July 1994. There was widespread concern from tangata whenua and sections of the community over DOC's decision to lift the designation.

Resource consent application to the Whangarei District Council

In the transitional Whangarei District Plan the Ngunguru Sandspit area is zoned Rural AC, the purpose of which was to preserve the natural character of the coastal environment and to protect it from unnecessary development. For many years the designation had provided de facto protection to the area.

After the decision to lift the designation, a resource consent application was made to the WDC by the owner of the sandspit for a boundary Adjustment (controlled activity) to allow for the building of a house on four reshaped titles. The WDC responded to the application by requesting a comprehensive engineering report and confirmation that the proposed development would not affect any archaeological sites. The WDC informed the Northern Regional Office of the Trust, DOC, and the NRC of the application and requested their comments. The various agencies responded with comments on

the significant values of the area and the potential risks from coastal flooding or erosion.

Additional information on site suitability, stability, effluent and stormwater disposal, access and archaeological details was provided to the WD. The WDC then requested the applicant to provide a record of consultation with tangata whenua; a record of consultation with the Trust and authorities for any archaeological sites that were to be affected; and information on the location of building sites and potential hazards.

The Ngatiwai Trust Board (NWTB) and Te Waiariki commented that they were unable to condone any development of the sandspit because of its immense cultural, spiritual and historical significance. There was no comment provided on the views of Ngati Taka, and some members of Te Waiariki expressed an alternative view that they had no concerns about the middens but they wanted the pa and urupa protected.

The landowner also applied to the WDC for four certificates of compliance to enable building development on the existing titles. However the WDC was not satisfied about its previous concerns and deferred issuing the certificates of compliance pending further information. The resource consent application has not yet been accepted by WDC.

HPA authority application, assessment and decision

In March 1995, the Trust accepted an application for a MPA authority to destroy, damage, or modify seven archaeological sites as part of the proposed development of the area which included a right of way, four house sites and access roads. The application was accompanied by an archaeological assessment, a record of consultation with tangata whenua (consultation with representatives of the Ngati Taka hapu and the NWTB), and a NWTB report on the cultural values of the area.

The Trust believed that sufficient archaeological information was supplied with the application but further information on Maori cultural values and consultation was requested from the applicant. The Trust checked the applicant's consultation with Ngatiwai and Ngati Taka, and Ngatiwai confirmed to the Trust that the entire sandspit was wahi tapu and that they opposed the development. Officers of the Trust did not visit the sandspit. The Maori Heritage Council (MHC) was informed of the application at its April 1995 meeting in order for Trust staff to receive MHC advice. The MHC did not comment on whether or not it supported the granting of the authority, but the Chair of the MHC was independently consulted about the application.

The Trust report assessing the application stated that the cultural heritage value of the individual sites under consideration was not sufficient to require their preservation although they could prove to have more intact remains that were not visible; no archaeological sites or wahi tapu sites on the sandspit had been ever registered with the Trust; and remains could be found over the entire sandspit. However the Trust report recognised that the sandspit as a whole had significant Maori and other values and that these needed to be taken into account by the landowner and the WDC when making any decisions or plans on developments that may affect these values.

In June 1995 the Trust granted the authority under s 14 of the HPA. The Trust hoped that the issue of an authority to restrict use to 5% of the total holding would enable the protection of customary values and allow the owner the right to reasonable use of the property. The authority was granted only for the specified sites and stated that new sites or further development (eg building, landscaping, and tree planting) would require a new assessment and further applications to the Trust. Any variation to, or development outside, the application area including building, landscaping, and tree planting would require a new assessment to be performed and would be subject to new authority applications.

The Trust strongly advocated to the applicant and to the WDC that the right of way should be stopped short of the

boundary of the outermost of the four existing titles, which should then become a historic reserve, and that one boundary should be altered to avoid a midden. The Trust asked the WDC to notify the resource consent application.

DOC's Northland Conservancy informed the Trust of its concerns with the Trust decision and submitted that the Trust was setting a dangerous precedent by allowing the destruction of a significant archaeological site before the entire property had been adequately assessed. DOC suggested that Trust had not addressed issues including the effects of future development and that the Trust was not protecting and conserving wahi tapu and traditional sites.

In July 1995 the NWTB filed an appeal to the Planning Tribunal over the granting of the authority on the grounds that the decision did not promote the protection of historical and cultural heritage; Maori values of the sandspit had not been taken into full consideration by the Trust; and the Trust had inadequate information to reach a decision. In the Tribunal's decision released in March 1996 (*Ngatiwai Trust Board v New Zealand Historic Places Trust A13/96*), the Tribunal considered that the NWTB was not a person directly affected for the purposes of bringing the appeal under s 20(1) HPA. As a body corporate the NWTB was not the same person as its members, it was not itself tangata whenua and it was not eligible to bring an appeal.

The Tribunal thus ruled the appellant lacked the required status to bring an appeal and the appeal was dismissed. If it had not been dismissed on that ground it would be disallowed on the merits. The Tribunal ruled it could only have regard to the particular archaeological sites that were affected and on the evidence submitted the values of those sites were not as many as other middens on the sandspit that were bigger or more intact. Although s 4 HPA was entitled "purpose and principles" s 4(2)(c) "the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga" was not a principle of the HPA. The Tribunal ruled that the Trust gave the application careful and systematic consideration, the Trust's report had shown full recognition of, and attention to, the principles of the Act, and that the interests of tangata whenua had been recognised and provided for in the Trust's decision.

Issues arising from the Ngunguru Sandspit case study

The lifting of the designation and the granting of authorities have been widely criticised for allowing inappropriate development. However, prior to these events the sandspit had been designated for over 20 years, and in that period the owner was unable to develop the land, there was no compensation available, and no steps were taken by relevant authorities to exercise statutory powers of purchase and acquire the land through the Public Works Act 1981. No public authority has ever been able to purchase the area or provide it with specific planning protection in order to manage the multiple values of the sandspit and allow tangata whenua to have legal access to the area. In effect, the Trust's decision to grant the HPA authority has shifted the onus for protection on to the WDC under the RMA.

Other relevant issues include:

- The debate about the historical significance of the area can be partly attributed to the lack of historical records and the limited research of the area.
- there was no dedicated national land acquisition fund for historic and cultural heritage to assist the purchase of the area.
- a cooperative approach between all the authorities (ie DOC, the Trust, regional council, and the territorial local authority) was required to provide sufficient funding and complete negotiations and purchase.
- a majority of archaeological sites are also of Maori interest but whereas the provisions in Part I of the HPA provide for the automatic protection of archaeological sites, they do not provide for the automatic protection of wahi tapu.
- the HPA does not distinguish or give priority to older or more important archaeological sites and no specific criteria are provided by the Act or by Trust policy to assist the Trust assessing and making a decision on an authority application.

- the authorities were granted for discrete areas and the Trust signalled to the landowner that any further development would require new applications to the Trust. However such a process does not recognise the cumulative effects of development, it is bureaucratic and inefficient and there is no guidance in either Act on the timing of approvals under the HP A and the RMA.

Footnote

- Refer to Historical and Cultural Heritage Management in New Zealand. Background Report: Case studies. (Parliamentary Commissioner for the Environment 1996) for a full description of each case study.