

Before the Hearings Committee

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*under:* the Resource Management Act 1991

*in the matter of:* a submission by the Parahirahi C1 Trust in respect of applications by Ngawha Generation Limited for resource consents required for the continued operation of the Ngawha Geothermal Power Station and the Ngawha Expansion Project and a notice of requirement to the Far North District Council by Top Energy Limited (*the Proposal*)

Statement of Amokura Kawharu for the Parahirahi C1 Trust

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Dated: 13 August 2015

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## STATEMENT OF AMOKURA KAWHARU

### INTRODUCTION

E nga rangatira o te Komiti, ka mihi atu ki a koutou.

Ka ahu ahau ki Takaparawhau, ki Maungakiekie, ki Tauwhare  
Ka rongō i Waitemata me te Kaipara  
Ka takoto a Tamaki makau-rau, Tamaki herenga waka, Tamaki  
kainga ika me nga wheua katoa  
Ka rere a Kahupokere, ka tu a Ngati Whatua.

Ka tu hoki te maunga whakahii a Pouerua  
Ka rere te moana o Waitangi  
Ko Ngapuhi te iwi  
Ko Ngati Rahiri me Ngati Kawa nga hapu.

- 1 My full name is Amokura Kawharu (Ngati Whatua and Ngapuhi). I am a Senior Lecturer in Law at the University of Auckland.
- 2 In 2012, I was elected as a trustee of Parahirahi C1 Trust (*the Trust*) to represent the interests of the descendants of my tupuna, Hone Tuhirangi. Hone Tuhirangi is one of the original owners of the Trust's land. I also whakapapa to (descend from) Te Tane Haratua, another such owner. As trustee, my roles include oversight of legal and governance matters. I am also a member of the Trust's sub-committee that was established to respond to Top Energy's expansion plans.
- 3 Here with me today to speak to the Commissioners on behalf of the Trust is Renata Tane, who is also a trustee of the Trust and member of the sub-committee referred to above.

### SCOPE OF STATEMENT

- 4 My statement addresses the cultural significance of the Ngawha geothermal resource (*Ngawha Waiariki*), including the Ngawha hot springs and pools (*the Springs*), to the Trust and the impacts of Top Energy's Proposal on Ngawha Waiariki and the Springs. In particular, I will discuss:
  - 4.1 The Trust and its relationship with Ngawha Waiariki and the Springs;
  - 4.2 The cultural effects of the Proposal;
  - 4.3 The Trust's position on the Proposal;

- 4.4 Consultation;
- 4.5 Resource consent conditions; and
- 4.6 The Notice of Requirement.

## **THE TRUST AND ITS RELATIONSHIP WITH NGAWHA WAIARIKI AND THE SPRINGS**

### **The cultural significance of Ngawha Waiariki and the Springs**

- 5 There is no natural resource that has more cultural value to Ngapuhi than Ngawha Waiariki and the Springs.<sup>1</sup> These Springs derive from a source which is deep within Papatuanuku. That is, the reservoir and the surface manifestation of Ngawha Waiariki at the springs and pools, are inseparable.
- 6 Ngapuhi history describes the origins of Ngawha Waiariki. That history begins with two women leaving Hawaiki on a white bird, Mokihi, and arriving at a place we now know as Ngawha. Suffering from the cold, they prayed – through karakia – for heat. Ariki in Hawaiki heard them, and blew heat under the sea that then surfaced at Ngawha, bubbling up through the ground. It kept them warm, and provided heat for cooking their food.
- 7 In addition to their use for warmth and cooking, Kareariki discovered the recuperative and curative powers of the Springs in around the 16<sup>th</sup> century (according to geneological reckoning). Kareariki, a famed tupuna, was the wife of Uenuku and lived in the area. Uenuku was a son of Rahiri, the eponymous warrior ancestor of Ngapuhi.
- 8 Each of the pools has a name. Perhaps the most unique (and hottest) is Pahou / Purutoke / Bulldog – originally named after one of Kareariki's dogs. The sound of the water percolating in the pool was said to be her dog barking over the centuries. The sound can no longer be heard because part of the pool was built over by the Trust some years ago to prevent Government attempts at carrying out exploration drilling at the Springs.
- 9 The Springs continue to offer their warmth and healing qualities to the community of Ngawha, Ngapuhi and beyond.
- 10 Ngapuhi history also reflects on the creation by ancestors of Takauere, a taniwha or metaphysical being and spiritual guardian; he cannot be seen, but exists within and near the Ngapuhi waterways, including the reservoir. His existence reminds us of our relationship with those waterways and our protective responsibilities

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<sup>1</sup> This was affirmed by the Waitangi Tribunal. See *Ngawha Geothermal Resource Report* (Wai 304, 1993) at paragraph 2.4.2.

towards them. The Springs are his eye and head. One of our major concerns regarding the Proposal is that his wairua (spirit), and therefore ours, would suffer from it.

### **The establishment of the Trust in 1926**

- 11 The Trust owns, and represents the descendants of the original eleven non-selling owners of, the Parahirahi C1 block (*PC1 block*). The majority of the original eleven non-selling owners were, inter alia, Te Uri o Hua and Ngati Rangi. The location of the PC1 block is shown on the map in **Appendix 1**. The size of the PC1 block is approximately 1 acre.
- 12 The PC1 block is only a small fraction of the original Parahirahi block that was Maori-owned but aggressively targeted by the Crown for acquisition in the late 19<sup>th</sup> century. That acquisition has been the subject of a claim to the Waitangi Tribunal and is discussed at length in the Tribunal's 1993 report.<sup>2</sup> It is also included within the pending Te Paparahi o Te Raki claim currently before the Tribunal.
- 13 The land alienation provides the context for the creation and purpose of the Trust. This is because, by the 1920s, all that remained in Maori ownership was the PC1 block. It was evident that even this land was under threat of Crown purchase. In response, representatives of the then eleven owners sought to make Parahirahi C1 inalienable, and as a result of their efforts, the block was gazetted as a reservation in 1926. The PC1 block is Maori freehold land which is now held by the Trust as a Maori Reservation under Te Ture Whenua Maori Act / Maori Land Act 1993.
- 14 The Trust manages the entire Springs complex, and has done so since 1996. The Springs complex is located partly on the PC1 block but also partly on Crown-owned land known as the "Four Acres" land (marked on Appendix 1). From 1926 onwards, numerous petitions were sent to Parliament seeking the return of the Four Acres. Eventually a claim was brought to the Waitangi Tribunal by the Trust and various individuals for and on behalf of the whanau and hapu having an interest in Ngawha Waiariki. The Trust led the claim, and has since led the efforts to secure implementation of the Tribunal's 1993 report.
- 15 In that 1993 report, the Tribunal recommended that the Crown return the Four Acres to Maori ownership. The Tribunal accepted that the Crown's failure to protect what it called the "most treasured taonga of the whole of Ngapuhi" was a clear breach of the Treaty of Waitangi.<sup>3</sup> The Tribunal also recognised the role of the Trust in representing the interests of the relevant whanau and hapu. Pending final settlement of the claim, the Four Acres was returned

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<sup>2</sup> *Ngawha Geothermal Resource Report*, Wai 304, 1993.

<sup>3</sup> *Ngawha Geothermal Resource Report*, Wai 304, at paragraph 3.19.3.

to the Trust by way of a 33 year lease with a nominal rental that was signed in February 2015 (with effect from August 2014).

- 16 In sum, the land alienation issues are part of the narrative of Ngapuhi and the Trust, and inform our perceptions about further harm to our precious taonga.

### **The Trust's role in respect of Ngawha Waiariki and the Springs**

- 17 The Trust is kaitiaki of Ngawha Waiariki and the Springs. Ngapuhi acknowledge the role of the Trust as the primary kaitiaki of Ngawha Springs, deriving from its original ownership and management of the resource and the expectations of the Tupuna who established the Trust to protect the resource. A letter from Te Runanga A Iwi O Ngapuhi is attached as **Appendix 2**.

- 18 As kaitiaki, the Trust has a responsibility to ensure the mauri and wairua of Ngawha Waiariki, which are integral to our wellbeing, are not diminished.

- 19 The broad objective of the Trust is enshrined in its Constitution, that is, to "see that Te Waiariki, its environs and historical values associated with these are cared for and preserved for the benefit of the descendants of the original owners".

- 20 This ethic of stewardship is also encompassed within the Trust's vision statement, agreed by Trustees in March 2013: "Kia tū tika ai Te Waiariki i roto i te pono me te tika mō ngā uri whakatipu" or "Te Waiariki will be self-sustaining into the future for the benefit of our mokopuna".

- 21 Trustees are responsible for giving effect to the Trust's purpose. To this end, the trustees are committed to:

21.1 promoting the cultural and spiritual values associated with Ngawha Waiariki and the Springs;

21.2 ensuring the taonga and its environs are protected and maintained;

21.3 generating income for the Trust's administration and the upkeep of the facilities at the Springs; and

21.4 providing the facilities at the Springs for the use and benefit of the community.

- 22 The "original owners" referred to in the Trust's Constitution are the eleven non-selling owners who constituted the Trust. In reality, the Trust does not maintain a list of beneficiaries or mokopuna, and instead ensures that the Springs continue to be made available to all

tangata whenua, the local community, and visitors. As already indicated, the relationship between Ngapuhi people and the Springs is a matter of deep cultural significance, and our role includes supporting that relationship. Consistent with this philosophy of kaitiakitanga and manākitanga (looking after the people), the Trust charges \$4.00 for a full admission to the Springs, less for the elderly, Community Services cardholders and children / students. This is the amount needed to ensure maintenance of the basic facilities at the Springs, and no more.

- 23 Trustee positions are unpaid, except that a small honorarium is provided to the secretary and treasurer. The Trust employs one staff member to work at the pools. All other workers at the pools are volunteers (including several trustees).
- 24 The Trust's kaitiaki responsibilities derive from the Trust's ownership and management of the Springs, and from the faith and expectations of our tupuna who created the Trust in 1926. Because of these factors, our kaitiaki responsibilities solely and directly relate to Ngawha Waiariki. We readily accept that other hapu and Ngapuhi more generally have responsibilities to the wider area, and are also affected by the planned Proposal. That said, we are most affected by any impact on Ngawha Waiariki as it surfaces to the Springs, and no one else has the same level or kind of responsibility that we have to protect them. For these reasons, our concerns and position regarding the Proposal may differ from that of others within Ngapuhi. Furthermore, it would be inconsistent with our distinct responsibilities regarding Ngawha Waiariki to accept the Proposal other than on the terms we are proposing in this hearing.

### **CULTURAL EFFECTS OF THE PROPOSAL**

- 25 From the Trust's perspective, the potential cultural effects of the Proposal are, broadly, twofold. First, there are the potential physical changes that may result at the Springs. Secondly (and related to the first) is the potential affront to cultural values and beliefs.
- 26 As observed above, the Springs have been enjoyed by generations of people who have visited them for their unique properties, whether for cooking, health or other reasons. They have been a place for people to gather in peace and have acted as a centre of gravity for Ngapuhi for centuries. They are iconic, so that any physical change brought about by the Proposal would represent an uninvited and unwelcome change to a natural cultural icon.
- 27 In particular, any changes to the physical characteristics of the water at the Springs resulting from the Proposal, including in relation to the look, feel, smell, healing power and other intrinsic characteristics, would detrimentally impact on the ability of people to visit and continue to enjoy and benefit from the Springs in their

natural state. Interference with the water may lead to a loss of confidence in the curative qualities of the Springs that people value so highly.

- 28 The very possibility of such physical changes would also bring about uncertainty for the Trust, and would challenge our ability to function effectively as kaitiaki.
- 29 The belief in the mauri of Ngawha Waiariki and the wairua of Takauere remains widespread and genuine. This is evidenced (for example) by the Trust's work in protecting the Springs over the decades and, in the pursuit of the return of the Four Acres, in the submissions of kaumatua to the Waitangi Tribunal. It is also evidenced by maintenance of customs such as in relation to the naming of pools, performance of waiata relating to the Springs, codes of conduct for visitors to the pools, karakia at and incantation of histories relating to the Springs, and in the conduct of Trust meetings, as well as by wider recognition within Ngapuhi of the Trust's kaitiaki responsibilities.
- 30 Cultural effects on these beliefs are difficult to measure in physical terms, even if the cause – the Proposal – is essentially physical.
- 31 For example, the Proposal has been likened by our kaumatua to spearing the taniwha. Kaumatua have also said on many occasions and in different contexts that diminishing the wairua of Takauere will weaken the wairua of Ngapuhi; we would be less as a people, regardless of whatever economic or other opportunities might come in the future through Top Energy's Proposal or otherwise.
- 32 Notwithstanding the loss of so much land, our view is that we retain rangatiratanga over Ngawha Waiariki. To the extent that rangatiratanga is not recognised in a meaningful way, particularly in relation to decision making with respect to the Proposal, then the Proposal also brings about a further negative cultural effect in the form of diminishing of our mana and our ability to fulfil our purpose in accordance with our cultural preferences.
- 33 Finally, there is an inescapable valuational disconnect between these cultural values and beliefs and the economic imperatives of the Proposal. In terms of a cultural effect, it arises from a corporate entity with no genealogical connection to or corresponding customary interest in Ngawha Waiariki benefitting from – in a harmful way – a resource that is regarded as belonging to, and is for the benefit of, others. The effect is a serious imbalance in the relationships between the Trust (as kaitiaki) and the people it serves, Top Energy, and the resources themselves.

- 34 In its opening legal submissions<sup>4</sup>, Top Energy says it has offered measures which recognise and provide for the cultural and spiritual matters that “the Trust holds dear”. Our relationship with Ngawha Waiariki, the Springs and the wider natural environment is not something we as a Trust “hold dear”; it is central to our identity as Māori, as tangata whenua. The Trust considers that the measures offered by Top Energy do not sufficiently address the cultural effects of the Proposal.

### **THE TRUST’S POSITION ON THE PROPOSAL**

- 35 In light of the foregoing, the Trust (as kaitiaki) is concerned about Top Energy’s proposed expansion. The Trust does acknowledge that the geothermal resource is already being exploited. However, the Trust’s view is that if the exploitation is to continue and particularly if it is to expand, (1) the resource consent conditions must protect Ngawha Waiariki and the Springs, and (2) as part of those conditions, the Proposal must have material cultural benefits to help balance out the negative cultural effects of exploiting these resources.
- 36 The Trust’s preference would be for Ngawha Waiariki and the Springs to remain in their natural state (to protect the resource, and to avoid spearing the taniwha). Therefore, the Trust’s position is that the Proposal should be declined consent, unless the conditions are amended as sought by the Trust.
- 37 The Trust is also concerned about and objects to the proposed designation in relation to access over the Four Acres. The Trust wants the Notice of Requirement in relation to the Four Acres to be withdrawn. If the Commissioners do not agree, at the very least it needs to be made clear that the purpose of the designation over the Four Acres is for access purposes only and with appropriate conditions imposed.

### **CONSULTATION**

- 38 A Cultural Impact Assessment (CIA) was commissioned by the Trust (with the financial support of Top Energy). The Trust received a final copy of the CIA on 1 October 2014. The CIA was prepared by third party consultants and accordingly provided a useful analysis and set of recommendations for the Trust to consider. The CIA contains extensive and detailed scientific analysis. The Commissioners will appreciate that it took time and considerable effort for the trustees to engage with that part of the report. Top Energy responded to the CIA recommendations on 23 October 2014 (three weeks after it was received). At that time we were still trying to analyse the document. When we were ready to respond, Top

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<sup>4</sup> Top Energy Opening Legal Submissions, paragraph 7.35.



Energy's position was that we were too late.<sup>5</sup> In any case, the Trust has reflected on the CIA recommendations when forming its view on the Proposal and the proposed consent conditions.

- 39 The Trust has participated in without prejudice discussions with Top Energy about the Proposal. These discussions have resulted in agreement being reached on some amendments to the consent conditions, but there are still some important areas of disagreement.
- 40 Top Energy continued to provide some financial support to cover the scientific expertise the Trust needs in order to be able to assess the implications of the Proposal through the various iterations of proposed consent conditions. However, that support did not extend to the evidence that the Trust obtained for the purpose of this hearing. Despite the Trust's very limited financial capacity to cover these costs, the Trust is committed to participating in this process fully, as part of its kaitiaki responsibilities.
- 41 The implication from Top Energy's evidence appears to be that the Trust has not always engaged in discussions with Top Energy in a helpful or responsive way. We reject any suggestion of lack of good faith. It needs to be said that most trustees (including myself) work full-time in other jobs, and again, our resources are limited. Once it became clear that we might not be able to agree to Top Energy's terms, which were stated to be final, we also needed to concentrate our efforts on preparing for this hearing – all the while continuing to be available for dialogue with Top Energy.
- 42 There was no consultation on the proposed designation over the Four Acres and that proposal came as a surprise to the Trust.

## **RESOURCE CONSENT CONDITIONS**

### **Technical conditions**

- 43 The Trust has sought expert advice on the conditions from Mr Tom Powell. I wish to comment on two key issues raised in Mr Powell's evidence: staging of the expansion and maintaining the chemistry of the Springs.
- 44 Given the cultural sensitivity of Ngawha Wairiki and the Springs and our kaitiaki responsibilities in respect of them, and in the context of Top Energy's proposed massive tripling of the generation from the reservoir, our position is very clear: the lowest risk approach needs to be taken. We remain very concerned that Top Energy has not been able to give us assurances about the effects of the Proposal and we therefore seek those assurances from the Commissioners in the terms of our proposed consent conditions.

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<sup>5</sup> See Top Energy Opening Legal Submissions, paragraph 7.32.

- 45 We understand that five year staging of the Proposal would present lower risks than any shorter period, as it would allow for better information to be made available for analysis. We note from Top Energy's evidence that five year staging would be commercially inconvenient, and we note also that Top Energy has therefore presented evidence to support alternative staging periods. However, we cannot support risk to the resource on commercial grounds.
- 46 Five year staging would lessen the 'pressure' on Takauere, and is more attractive to us for this reason also.
- 47 Maintaining the chemistry of the water feeding the Springs is necessary in order to maintain the cultural, physical and spiritual benefits that people seek from the pools when visiting them. Maintaining the natural state of the water is also necessary so as not to harm the water itself.

**Kaitiaki Advisor**

- 48 The Trust is pleased that Top Energy has agreed to conditions providing for a Kaitiaki Advisor role. This role would help enable the Trust to fulfil its role as kaitiaki, by ensuring our presence and participation in the oversight functions to be established in respect of the Top Energy facilities. In effect, our role would become somewhat institutionalised with respect to Top Energy's facilities, and protected as a result. The outcome would be a form of co-governance.
- 49 In its opening legal submissions, Top Energy acknowledges that the 2006 Memorandum of Understanding between it and the Trust has not been effective and "little was done by either party to breathe life into it".<sup>6</sup> If a Kaitiaki Advisor role had been created at that time, the outcome may have been different.
- 50 The Trust does however consider it important for the Kaitiaki Advisor's role to include participating as a full member of the Peer Review Panel, in relation to cultural implications associated with monitoring of cultural indicators and maintaining the characteristics of the Springs. This status is needed to ensure that our contributions on these key issues are meaningful rather than token, and to help address the negative cultural effects in terms of mana, discussed earlier. It perhaps goes without saying that the Trust has the appropriate expertise, and would carry out its role with diligence.
- 51 The Trust seeks that all reasonable costs incurred by the Kaitiaki Advisor be paid by Top Energy. This is a cost that the Trust simply should not have to bear, as it would not exist, but for the Proposal.

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<sup>6</sup> Top Energy Opening Legal Submissions, paragraph 7.28.

### **Cultural Indicators Monitoring Plan**

- 52 The Trust is also pleased that Top Energy has agreed to conditions providing for a Cultural Indicators Monitoring Plan. This plan would ensure that science-based monitoring results are considered within the cultural context and would help enable the Trust to fulfil its role as kaitiaki.

### **Ngawha Springs Management Plan**

- 53 The Trust has proposed conditions providing for a Ngawha Springs Management Plan. These conditions would also assist the Trust to fulfil its kaitiaki role as well as help to address the negative cultural effects discussed earlier, especially in regards to the imbalance that would be brought about through implementing the Proposal.
- 54 In the view of the Trust, the cultural effects of the Proposal are all negative. They are damaging to the resources in both physical and metaphysical ways. In turn this results in imbalanced relationships, and an impaired ability of the Trust to meet its fundamental cultural purpose.
- 55 The Trust has therefore proposed benefits to be provided by Top Energy so as to restore the balance. Under the Management Plan, this includes provision for financial support for maintenance, management and cultural monitoring activities provided for in the Management Plan. In addition, the provision for upgrading the facilities at the Springs (which is based on recent estimates) would enable the pools to be made available more widely, and visitors would benefit from better facilities. Those facilities would remain community focussed and be operated on the same basis as present.
- 56 The financial components to the Management Plan have been very carefully considered by the Trust. To restore balance in a culturally meaningful way (effectively, *utu*), the provision of a benefit needs to relate to the benefit taken and harm done. It is not an arbitrary exercise where a party can simply name a figure and hope to negotiate from there. Rather, it is an exercise that must be carried out with its underlying purpose in mind. Through the Proposal, Top Energy would derive a significant economic opportunity with equally significant negative cultural effects. A significant benefit is warranted in return. We propose the upgrade of the facilities at the Springs as the return benefit for the Trust and the people it serves.

## **THE NOTICE OF REQUIREMENT**

### **The Four Acres Land**

- 57 As I explained earlier, the Trust manages the entire Springs complex, which is located in part on land known as the "four acres" land (*the Four Acres*) and the Four Acres land is in the process of being returned to Maori ownership.

- 58 The Parahirahi C block was surveyed in around 1873, titles were issued and then, with the exception of the PC1 block, subsequently transferred to the Crown.
- 59 In 1934, the Four Acre part of the original Parahirahi C Block was declared a public domain under the Public Reserves, Domains and National Parks Act 1928.
- 60 During the 1960s, tangata whenua living on the Four Acres were found to be trespassers and evicted.
- 61 In 1993, the Waitangi Tribunal found that the Crown had breached the Treaty of Waitangi in relation to the Four Acres. It recommended that the Four Acres be returned to Māori ownership.
- 62 In view of the Tribunal's recommendation, in 1996, the day to day management of the Springs located on the Four Acres was transferred to the Trust.
- 63 In 2015, the Four Acres was leased to the Trust for a nominal rental as an interim settlement, and the process for return of the Four Acres to Māori ownership is ongoing.

**The Trust's position on the notice of requirement**

- 64 The Trust objects to the proposed designation for access over the Four Acres.
- 65 The Trust understands that Top Energy is seeking to designate that part of the Four Acres land that is subject to a right of way giving access to the Ginns land (which the Trust understands Top Energy has recently purchased).
- 66 Top Energy did not consult with the Trust regarding the proposed designation for access over the Four Acres.
- 67 The existing access easement was granted by the Crown in 1993, some years *after* the claim was submitted to the Waitangi Tribunal in 1989 seeking the return of the Four Acres. It was granted without the Trust's consent and for nominal consideration and has created a grievance all of its own. The proposed designation, if granted, would be an insult to our mana and to the efforts of our tupuna to secure the unfettered return of the land.
- 68 The Trust considers that Top Energy has not given adequate consideration to alternatives. There are other feasible alternative access solutions which should be considered by the Commissioners.
- 69 The existing formed road over the right of way is in poor condition and was never intended for use by large vehicles for construction purposes. Increasing the use of the road is likely to cause further

degradation. If the Commissioners recommend confirmation of the requirement, Top Energy should be required to carry out initial repairs and then upgrade the road once construction is completed.

- 70 The Trust is also concerned that use of the road by Top Energy could interfere with people coming to the pools and/or any works on the PC1 block or the Four Acres. If the Commissioners recommend confirmation of the requirement, conditions are required to prevent such interference.

#### **CONCLUSION**

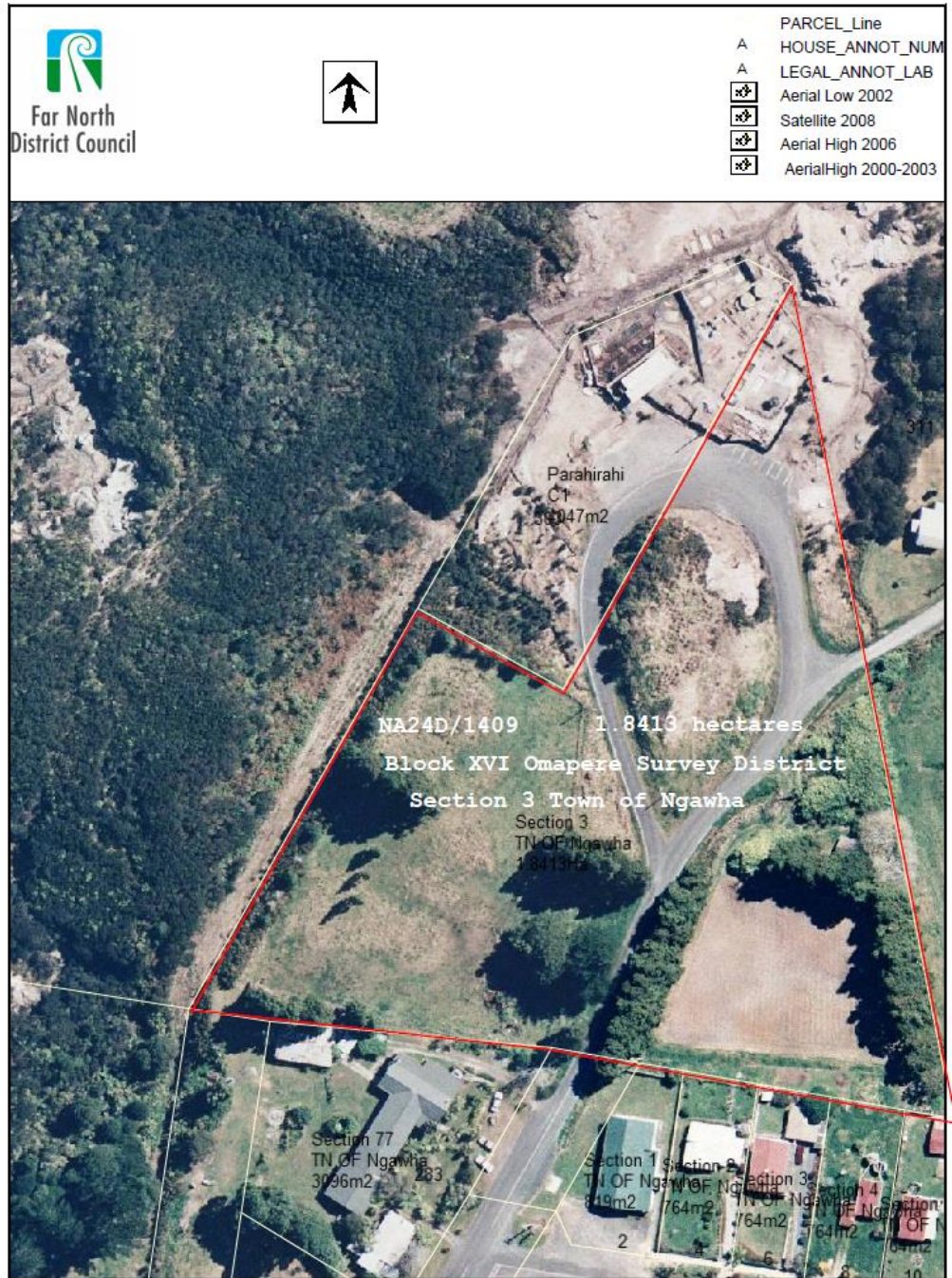
- 71 To conclude, there are many aspects of the Proposal which are of significant concern to the Trust. We would prefer Ngawha Waiariki to be left alone. Again, the Trust's position is that the Proposal should be declined consent, unless the conditions are amended as sought by us.
- 72 I thank the Commissioners for their time and consideration of the Trust's concerns.

**Amokura Kawharu**  
**13 August 2015**

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## APPENDIX ONE – MAP OF PARAHIRAHİ C1 BLOCK AND THE FOUR ACRES

Aerial map of Ngawha Springs Domain area



**APPENDIX TWO - LETTER FROM TE RUNANGA A IWI O NGAPUHI**

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