

Fullers Group Limited – Reconsideration Decision Report to Decision Maker

To: Mike Slater, Deputy Director General Operations

Action Required: To make a decision on the Reconsideration of the Fullers Group Limited Concession application as ordered by the Supreme Court

Concession Applicant: Fullers Group Limited

Permission Record Number: 38065-GUI

The purpose of this report is to reconsider the concession application made in 2013 by Fullers in relation to guiding activities on Rangitoto and Motutapu Islands as directed by the Supreme Court on 14 December 2018 as a result of a Judicial review taken by Ngāi Tai ki Tāmaki Tribal Trust. The Supreme Court ordered that the reconsideration is undertaken in light of its judgment.

Task Assignment: [DOC-6089016](#)



Di Clendon
Senior Permissions Advisor

Date: 26 November 2020

Executive Summary

1. The Supreme Court released its decision in *Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation [2018] NZSC 122* on 14 December 2018. The case concerned the Department's consideration of Treaty principles in the granting of two commercial concessions in 2015 on Motutapu and Rangitoto islands (the motu) to Fullers Group Limited (Fullers) and the Motutapu Island Restoration Trust (MRT).
2. The Ngāi Tai ki Tāmaki Tribal Trust (the Trust) argued that DOC had not properly given effect to Treaty principles when granting the concessions. The Trust argued that granting concessions other than to tangata whenua would limit or remove opportunities for Māori, whether economic or otherwise and economic opportunities should be preserved for iwi/hapū given their mana whenua over the islands.
3. The Court found that the statements made by the Department in the 2015 decision reports regarding consideration of economic benefits and the issue of preference for Treaty Partners were errors of law. The Court did not find that the decisions were necessarily wrong, but that we had not followed the correct process by not considering those two points. The Court noted that had we done so properly; we may have reached a different decision. It directed the Department to reconsider the applications.
4. While recognising that economic benefit and preference were relevant matters to be considered, the Court also confirmed that section 4 does not create a power of veto for an iwi or hapū over the granting of concessions, nor any exclusive right to concessions in their rohe.
5. In 2018 the MRT had not exercised its concession and the Court quashed it. In October 2019 the MRT formally withdrew its application for guiding. As a result, there is no need to proceed with the reconsideration for MRT.
6. Fullers Group Limited continued to operate their concession, while the reconsideration was carried out, as directed by the Supreme Court. This concession expired on 31 August 2020 prior to the Reconsideration being complete. During the Reconsideration process, in July 2020, Fullers also withdrew interest in applying for a renewed guiding licence. It is considered appropriate to continue with the reconsideration in order to meet the direction of the Supreme Court.
7. This reconsideration is not a normal 17ZJ reconsideration of a decision, it is a reconsideration ordered by the court. The Court judgement provided clear indications of the relevant legislation that needed to be reconsidered and provided key points of advice for the reconsideration process, which have been followed. The process steps have been determined by these key points and summarised below;
 - A review of the legislation and the circumstances of the parties involved.
 - A correction of the errors made in the 2015 decision report, that is, in giving effect to Section 4 of the conservation Acts preference and economic issues are relevant considerations.
 - Further consultation with Ngāi Tai Ki Tamaki and the other relevant iwi.
 - An opportunity for Fullers to comment on the draft report.
8. The report recommends that the application be declined. This is because in the circumstances of this application the best way to give effect to the Treaty of Waitangi under section 4 of the Conservation Act would be to decline this application. The reasons for this are:

- The principles of Active Protection and Partnership require in these particular circumstances that NTKT be given an opportunity to establish tikanga-based guiding on the motu and granting this application would not afford adequate space for NTKT to do that.
 - The reconsidered statutory analysis shows that the proposed activity is not consistent with the CMS, in particular the objective at section 5.1, that requires strengthening relationships with tangata whenua and recognition of mana. NTKT's mana is not appropriately recognised if the commentary provided to visitors does not include the story of NTKT's connection to the motu. Therefore granting the concession would be inconsistent with the CMS and contrary to s17W(1) of the Conservation Act 1987.
 - Part one of the CMS also requires that section 7 and 8 of the Hauraki Gulf Marine Park Act 2000 is implemented, and those sections of the Hauraki Gulf Marine Park Act 2000 have the same effects as general policy.
 - A review of the Hauraki Gulf Marine Park Act 2000 concludes the activity would be contrary to the purpose of the Hauraki Gulf Marine Park Act 2000 when considered alongside the principle of active protection.
 - This is because this Act requires that recognition and particular regard is given to the historic, traditional, cultural, and spiritual relationship of tangata whenua. Cultural and Interpretation conditions in the 2015 concession are not considered sufficient to ensure this, even if strengthened. The effect of this is that the activity is inconsistent with general policy (and part one of the CMS)
9. A decision to decline Fullers' application does not preclude other operators entering the market in time. Nor does it mean that only operators with a connection to the motu should be granted concessions, because other factors will also need to be considered, as discussed in this report. For example, if NTKT had been able to establish more of a presence on the motu it may have been sufficient to grant Fullers' concession with strengthened cultural and interpretation conditions. Also, other applicants may have strengths in Te Reo and may demonstrate an ability to more appropriately recognise the NTKT relationship, as well as the connections of other Treaty Partners to the motu.

1. Background and Context

- 1.1. Fullers Group Limited (Fullers) applied for a new concession on 18 December 2013 to continue to undertake existing guiding activities including use of a 'tractor train' on Rangitoto and guided walks on Rangitoto and Motutapu Islands. Fullers had been operating under a previous concession since 1998.
- 1.2. The Motutapu Restoration Trust (MRT) also applied for a concession to guide on Rangitoto and Motutapu. This was granted on 3 August 2015 commencing 1 July 2015 for a five-year term, the commencement date was varied after the first approval to 30 September 2016.
- 1.3. Ngāi Tai ki Tāmaki Tribal Trust (The Trust) was granted a guiding concession to operate on Rangitoto and Motutapu Islands on 29 May 2014. The term was 9 years 11 months commencing on 1 June 2014.

The First Decision on the Fullers Application:

- 1.4. A decision was made on the Fullers application on 31 August 2015 by the Conservation Partnerships Director for the Auckland region at that time to grant a concession for a term of 5 years commencing on 1 September 2015.
- 1.5. The shorter-term concessions granted to Fullers and MRT were intended to provide a future opportunity for more detailed consideration of The Trust's commercial position once the Tāmaki Makaurau motu plan ('the Inner Motu Conservation Management Plan') had been developed and the Ngāi Tai ki Tāmaki Settlement implemented.
- 1.6. Through the consultation process on the concessions applications, Ngāi Tai ki Tāmaki (NTKT) had requested that Fullers and MRT applications be declined on the basis of three main issues;
 - a. Economic benefit to iwi: that concession opportunities should be preserved for the economic benefit of iwi within whose rohe that opportunity was presented.
 - b. Active protection of Māori interests: NTKT identified that future opportunities on the Island are important to them, whether economic or otherwise and they noted concern that the granting of concessions to other parties is not 'active protection' of Māori interest by the Crown, and that the granting of other concessions may limit or remove opportunities for Māori.
 - c. Protection of Cultural Values: In addition, NTKT made submissions on the respect accorded to the cultural values of iwi in relation to the activities undertaken on the Islands and the representations made to visitors to the Islands by concessionaries. NTKT were concerned that visitors would receive a substandard experience that did not represent the Islands in the full context of Māori history and culture and that through individual Treaty settlement negotiations, NTKT had made it clear that they have a strong interest in welcoming and hosting visitors in the spirit of manaakitanga.

Economic Benefit to Iwi

- 1.7. Prior to the preparation of the decision report, the manager of Conservation Partnerships for the Auckland Region prepared a memorandum dated 30 April 2015 giving advice on the issues raised by NTKT. This advice included consideration that economic benefits to iwi, and declining on the basis of potential or real competition for provision of services to visitors such as guiding, were not relevant considerations for the decision maker and that the legislation did not provide for this under section 17U of the Conservation Act.
- 1.8. The 2015 concession decision report (decision report) in turn noted that applications are processed in chronological order and that there was no basis for preferential entitlement to concessions in favour of any party under the relevant legislation or current planning documents. Noting further that the activities in this case did not require a large degree of capital expenditure and had not been identified as a 'Limited Opportunity' (one in which a limit had been put on the number of operators) and that the granting of a concession to one party would not exclude any other party from applying for a similar activity for a similar amount of time.

- 1.9. The report recommended that the Department grant a 5-year term for the Fullers concession, aligning with the development of the Inner Motu CMP and any management direction that may result from that documentation.

Active Protection of Māori Interests

- 1.10. The decision report noted that the granting of the Fullers concession did not remove the opportunity for NTKT to apply for concessions that cover the same or similar activities, noting that the Department was committed to exploring any potential opportunities with iwi and that the Inner Motu CMP will provide guidance for future management of the resources. The report noted that a decline on the basis of active protection of Māori interests will not be recommended, instead recommending a shorter term to align with the development of policy documents.

Protection of Cultural values

- 1.11. The decision report noted that the Department accepted that there were clear cultural effects identified by NTKT however that the Department was wary of setting standards which effectively exclude all other providers of visitor experiences, if the standard set is such that no-one other than Iwi can meet the high test of knowledge and competency that has been identified. The decision report noted further that not all concessions are presenting the same experiences and that the Department needed to ensure that it was taking into account the scale and scope of each concession and that the obligations imposed through any contract are proportionate to the activity being undertaken.
- 1.12. The decision report noted the key was to find a balance and provided options for some additional clauses if the concession was approved which included:
- *“The Grantor may require that the Concessionaire and its staff attend a te reo course approved by the Grantor, with evidence of attendance to be submitted to the Department upon request.*
 - *The Grantor may require that the Concessionaire make all reasonable endeavours to attend any cultural induction or competency wananga offered by local Iwi.”*
- 1.13. The decision report noted further that rather than including a standard requirement, the clauses above were worded to reflect the discretion of the Department in ensuring that adherence to the clauses and the requirements imposed are proportionate to the activity.
- 1.14. The decision maker in 2015 decided to add these clauses to Fullers new contract.
- 1.15. Link to First Decision Report: [DOC-6164479](#)

The Approved Activity

- 1.16. The approved concession activity known as the Volcanic Explorer Tour, provides for a tractor transport shuttle and guided walks on Rangitoto and Motutapu Island and includes some routine maintenance of the roads and use of the Rangitoto Wharf Apartment for overnight stays for staff, equipment storage, use as a lunchroom and office. These activities are subject to a range of conditions outlined in the Schedules 1, 2 and 3 of the executed concession.
- 1.17. Current Concession contract: [DOC-2547189](#)

Judicial Review

- 1.18. The Trust challenged the decisions on both Fullers and MRT by way of a judicial review.
- 1.19. The High Court held that the decision maker had erred in law in accepting that preference and economic benefit issues were irrelevant. It nevertheless upheld the decisions. The High Court considered that the errors had not affected the outcome because the decision maker had given effect to section 4 of the Conservation Act. The Court of Appeal held that neither the provisions of the Hauraki Gulf Marine Park Act (HGMPA) or the Conservation Act required Fullers and MRT's applications be declined in the face of objections by NTKT; and that the High Court did not erroneously decline relief.

- 1.20. However on appeal to the Supreme Court, the Supreme Court held that the errors of law made in the concession report meant that the decision maker had excluded from consideration the possibility of deciding not to grant the applications by Fullers and MRT if a refusal to grant a concession was what section 4 required. The Court did not find that the decisions themselves were necessarily wrong, but did conclude that a different decision may have been reached had the decision maker considered those points.
- 1.21. The Supreme Court's judgment was to allow the appeal and it directed the Department to reconsider both Fullers and MRT concession applications, and that the licence awarded to Fullers on 31 August 2015 remain in force until that reconsideration has occurred.
- 1.22. The Supreme Court quashed the MRT decision (because MRT had never exercised the concession). MRT subsequently (11 November 2019) withdrew their application noting "*Given the current view for other concession opportunities expressed by NTKT, the Trust resolved to withdraw its application for a guided walk concession and pursue other revenue-generating opportunities to fund the restoration programme.*" Therefore, no Reconsideration was required.
- 1.23. Fullers confirmed continuing interest in their concession activity in 2019 and again in February 2020 and the reconsideration of the original decision proceeded. On 13 July 2020 Fullers changed their position and stated that they now intend to cease all activity on the expiry of the current concession. That concession expired on 31 August 2020. However, the Department determined it was appropriate to continue with the reconsideration in order to meet the direction of the Supreme Court.

Supreme Court Findings

- 1.24. Link to the Supreme Court Judgment:
https://www.courtsofnz.govt.nz/assets/cases/2018/sc-141218_jdg.pdf
- 1.25. In summary the Supreme Court found that;
- The errors of law (regarding economic considerations and a potential degree of preference) diverted the report writer and decision maker from a proper consideration of section 4 of the Conservation Act. (94)
 - The decisions should not be allowed to stand, and the decision maker must reconsider the applications and in doing so must apply section 4 correctly. (98)
 - The decision maker must consider whether the correct outcome is to decline to grant the concession applications, given the requirements of section 4 (despite the fact that there is no issue of over-capacity or risk of environmental degradation of the Motu from the operation of the proposed concessions). (99)
 - Section 4 does not create a power of veto by an iwi or hapū over granting concessions in an area in which it has mana whenua. (95)
 - Section 4 does not give iwi or hapū authority to require that only entities associated with them will be granted concessions in the area. (95)
 - There were no findings that the decisions were wrong; Nor was there any finding that only those with mana whenua should be granted concessions of the Motu, at least for a period of years. Rather the court concluded that the basis on which the concessions applications were considered was flawed. (100)
 - The context in which the reconsideration will be made will be different given that the Ngāi Tai ki Tāmaki Claims Settlement Act is in force and the Motu Plan will (possibly) be finalised. (98)

- The Court disagreed with the statement in the Conservation General Policy (CGP) and General Policy for National Parks (GPNP) that states under the heading of “Treaty of Waitangi Responsibilities”:

CGP Part 2. Treaty of Waitangi Responsibilities

‘The Conservation Act 1987, and all the Acts listed in its First Schedule, must be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi (section 4, Conservation Act 1987). Where, however, there is clearly an inconsistency between the provisions of any of these Acts and the principles of the Treaty, the provisions of the relevant Act will apply.’

and noted that rather what is required is that those other statutory provisions be applied consistently with the section 4 requirements. (77) It is important to note that removal of this paragraph from the CGP and GPNP did not create a ‘trump’ of s4 over other provisions of the Conservation Act or wider consideration legislation.

1.26. Key points:

- The reconsiderations must specifically address the errors of law identified by the court
- The factual context of this case is important to understand how section 4 influences the decision maker
- The re-considerations will depend on the interests and aspirations of all three parties: NTKT, Fullers and MRT, as those interests are now, which may have changed since 2014/15 when the applications were first considered
- Further consultation with all relevant iwi is required
- A proper consideration of the application of section 4 is required

Legislation and other Relevant documents/ matters to be considered

- Conservation Act - Section 4,
- Conservation Act Part 3B
- Conservation General Policy (CGP) (taking into consideration Court finding on the errors in the (CGP)
- The relevant provisions of the Reserves Act (ss 17 and 19);
- The Hauraki Gulf Marine Park Act (HGMPA), especially the preamble and, also ss 7, 8, 11 and 13; [HGMPA Link](#)
- The Auckland Conservation Management Strategy;
- Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014: [Collective Redress Act Link](#)
- The Ngāi Tai ki Tāmaki Claims Settlement Act: [The Ngāi Tai ki Tāmaki Claims Settlement Act](#)
- The Conservation Relationship Agreements;
- Ngāi Tai ki Tāmaki Conservation Relationship Agreement: [DOC-5604465](#)
- Ngā Mana Whenua o Tāmaki Makaurau Conservation Relationship Agreement: [DOC-5733459](#)
- Any claims to mana whenua and interests in the land. Even if mana whenua does not entail an exclusive interest in the Motu, this does not necessarily undermine NTKT’s position as to preference, ref [80] and [92]. Furthermore, this needs to be considered in the wider context of all iwi interests in the whenua.

2. Summary of proposal

- 2.1. The following description of the proposed activities were provided in the 2015 decision report:
- 2.2. Fullers run a ferry service to Rangitoto Island 364 days of the year, transporting approximately 80,000 visitors per annum. Visitors are transported to the Rangitoto Wharf and picked up by the tractor train. Trips are timed to coincide with the arrival and departure times of the ferry. Depending on numbers, sometimes two tractor trains are required to transport all passengers.
- 2.3. There are a number of walking tracks available on Rangitoto and Motutapu Islands, which are readily used by a number of visitors. For those who do not wish to walk, or who do not have the physical ability, the tractor train transports them around the Islands via the Islington Bay and

Summit Roads, as well as to the base of the summit walk on existing roads. Passengers then disembark and take the short walk up to the summit.

Additional Information on the proposal for clarity

- 2.4. Added to the reconsideration report for clarity the proposed concession activity on public conservation land includes a ten-year concession for;
- The use of a tractor train to transport passengers around Rangitoto Island (called the Volcanic Explorer)
 - Guided walks on both Rangitoto and Motutapu
 - Use of the Rangitoto Wharf apartment for a lunchroom and office and overnight staff accommodation
 - Use of 4WD vehicles on both Rangitoto and Motutapu for road Maintenance purposes and vehicle parking to support the activities
- 2.5. It is worth noting that during the term of the current concession, activity returns indicate (and supported by comment from the District) that no guiding on foot took place outside of the Volcanic Explorer tours on Rangitoto.

Information about Fullers: Fullers is a limited liability company, who has held a concession with the Department previously.

Type of concession sought: Non-notified Licence.

Term sought: 10 years.

Description of the activity: The Fullers 2013 application for the tractor transport shuttle and guided walks on Rangitoto Island Scenic Reserve, Ngā Pona-Toru-a-Peretū Scenic Reserve and Motutapu Island Recreation Reserve, contained the following information:

The Concession Maps can be seen at the following links:

[Concession Map - Rangitoto shuttle - 38065-OTH - Fullers Group](#)

[Concession Map - All tracks roads - 38065-OTH - Fullers Group](#)

[Concession Map - Rangitoto shuttle parking - 38065-OTH - Fullers Group](#)

The Application can be seen at the following links:

Application Covering Letter: [Application Letter](#)

Form 1a: [Form 1a](#)

Form 3a: [Form 3a](#)

Form 4a: [Form 4a](#)

Environmental Impact Assessment: [Environmental Impact Assessment](#)

Iwi Consultation Overview: [Overview](#)

Activity Overview – To accompany iwi Consultation: [Activity Overview](#)

Consultation Undertaken:

- Ngāi Tai ki Tāmaki: [Ngāi Tai ki Tāmaki](#)
- Te Kawerau ā Maki: [Te Kawerau ā Maki](#)
- Ngāti Maru: [Ngāti Maru](#)
- Ngāti Pāoa: [Ngāti Pāoa](#)
- Ngāti Tamaoho: [Ngāti Tamaoho](#)
- Ngāti Tamaterā: [Ngāti Tamaterā](#)
- Ngāti te Ata: [Ngāti te Ata](#)
- Ngāti Whanaunga: [Ngāti Whanaunga](#)
- Ngāti Whātua Ōrākei: [Ngāti Whātua Ōrākei](#)
- Te Marutūāhu: [Te Marutūāhu](#)
- Te Patukirikiri: [Te Patukirikiri](#)
- Ngā Mana Whenua o Tāmaki: [Ngā Mana Whenua o Tāmaki](#)
- Additional information to support application: [Additional Information](#)

Description of locations where activity is proposed:

Protected Area	Legal Description	Napalis ID
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Rangitoto Island Scenic Reserve	Section 2 SO 34085 Section 1 Block XI Rangitoto Survey District Section 3 SO 455194	2793729
Ngā Pona-Toru-a-Peretū Scenic Reserve	Section 1 So 45438	3060742
Motutapu Island Recreation Reserve	Section 10 Block V Rangitoto Survey District Section 11 Block V Rangitoto Survey District	2797363

3. Information available for consideration

3.1. Information received:

- From Applicant: Fullers submitted a complete application as per the links above.
- From Iwi:

Information from 2015 decision report

The applicant undertook consultation starting in 2013 prior to submitting their application. The District followed up with iwi to confirm the iwi's position at that time.

The consultation information and iwi comments on the 2013 application and presented in the 2015 decision report are linked here: [DOC-6394545](#)

Information for 2020 reconsideration process

It was considered necessary to consult with iwi again to make sure iwi context and views were current.

The Auckland Inner Islands District Office has provided an Iwi Consultation Report. This report summarises the Treaty settlement landscape and iwi consultation undertaken for the reconsideration and includes links to all the consultation emails and minutes from any meetings.

Link to the 2020 Iwi Consultation Report: [DOC-5993642](#)

The Department has consulted with all relevant iwi who have an interest in the area under application. The motu is within their rohe and/or they have indicated an interest in such activity/permissions (i.e. guiding).

Settlement Landscape and Consultation feedback

In recognition of the traditional, historical, cultural and spiritual association of the iwi/hapū of the Tāmaki Collective with the motu of the Tīkapa Moana o Hauraki/Hauraki Gulf, Rangitoto Island and Motutapu Island were two of four motu returned to iwi and then gifted back as reserves in accordance with the Ngā Mana Whenua o Tāmaki Makaurau Collective Treaty Settlement.

The summit/tihi of the Rangitoto Island was vested in fee simple in the Tūpuna Taonga o Tāmaki Makaurau Trust, however the scenic reserve status was retained, and the area continues to be administered by the Crown, as the Ngā-Pona-toru-a-Peretū Scenic Reserve. Two additional sites associated with historical waka mooring at Islington Bay (the Islington Bay Community Hall and Bach No.80) were also vested in fee simple in the Tūpuna Taonga o Tāmaki Makaurau Trust and continue to be subject to scenic reserve classification administered by the Trust. The following 12 of the 13 iwi from the Ngā Mana Whenua o Tāmaki Makaurau Collective (Tāmaki Collective) were consulted:

- Ngāi Tai ki Tāmaki
- Ngāti Maru
- Ngāti Pāoa
- Ngāti Tamaoho
- Ngāti Tamaterā
- Ngāti Te Ata
- Ngāti Whanaunga

- Ngāti Whātua o Kaipara
- Ngāti Whātua Ōrākei
- Te Ākitai Waiōhūa
- Te Kawerau ā Maki
- Te Patukirikiiri

Plus:

- Tūpuna Taonga o Tāmaki Makaurau Trust (Trustee for the delivery of collective cultural redress to the Collective)
- (Note: The 13th member of the Collective, Ngāti Whātua o Kaipara have advised through concession processes that they do not wish to receive consultation regarding Rangitoto Island).

Motutapu Island is a motu of great significance to NTKT. In accordance with their individual Treaty settlement, the following three areas of Motutapu Island Recreation Reserve were returned to NTKT, in fee simple to be administered as reserve:

- Hukunui Historic Reserve;
- Te Tauroa Recreation Reserve;
- Ororopupu Recreation Reserve.

The Trust is the administering body of these three reserves. The Ngāi Tai ki Tāmaki Claims Settlement Act also identifies Motutapu Island as a Statutory Acknowledgement Area, being an area of particular cultural, spiritual, historical and traditional association for NTKT.

Motutapu Island is also identified as a Statutory Acknowledgement Area of the Marutūāhu Iwi Collective in their Deed of Settlement, in recognition of the Collective's association with the motu. The Marutūāhu Iwi Collective have not yet reached final settlement.

The collective includes:

- Ngāti Maru
- Ngāti Pāoa
- Ngāti Tamaterā
- Ngāti Whanaunga
- Te Patukirikiri

The Marutūāhu Collective will have a statement of association for Motutapu in the documents schedule to their deed of settlement (page 5 of the documents), but the text of this will not be provided until the Deed is signed. The above individual iwi have been consulted.

The Ngā Mana Whenua of Tāmaki Makaurau Collective Treaty Settlement addresses collective redress and does not settle historical claims of the collective members. As iwi continue to progress their individual Treaty settlements, additional redress sites may be identified on the motu.

Post Settlement Conservation Relationship Agreements

In accordance with the relevant deeds of settlement, the Department has Conservation Relationship Agreements with the Ngā Mana Whenua o Tāmaki Makaurau Collective and the Trustees of the Tūpuna Taonga o Tāmaki Makaurau Trust (abbreviated to the Tāmaki Collective), NTKT and Ngāti Tamaoho. The Conservation Relationship Agreements relate to the management of public conservation land within their rohe/s, which includes Rangitoto Island. The agreements also outline agreed process steps for consultation on statutory authorisations.

The NTKT and Ngāti Tamaoho Conservation Relationship Agreements refer back to the provisions of the Tāmaki Collective Conservation Relationship Agreement in relation to the processing of statutory authorisations.

In this regard, the Tāmaki Collective Relationship Agreement recognises that the motu of the Hauraki Gulf have very high spiritual, ancestral, cultural, customary and historic significance to Ngā Mana Whenua, and details of the consultation process to be followed and states that "*the Department will, in making decisions, consider whether it is possible to reconcile any conflict*

between Ngā Mana Whenua interests and views and other considerations in the decision making process.”

NTKT Conservation Relationship Agreement: [DOC-5604465](#)

Tāmaki Collective Conservation Relationship Agreement: [DOC-5733459](#)

Ngāti Tamaoho Conservation Relationship Agreement: [DOC-5568434](#)

The settlements and agreements are discussed further later in this report under Consideration of other relevant legislation.

3.2. Five of the iwi consulted provided a response:

1 Ngāti Tamaterā:

Ngāti Tamaterā advised that they are [REDACTED] therefore their standard response is that they oppose any applications until their iwi have had the opportunity to review [REDACTED], the impacts on the environment, and future needs of their iwi. Ngāti Tamaterā stated: *“There are areas that have significant cultural value to our people and therefore we have not yet been able to address this with Ngāti Tamaterā whānau, hapū, and iwi.”*

Ngāti Tamaterā also stated that they require time to develop [REDACTED] for their people and future generations. However, Ngāti Tamaterā have also advised that they were ok for the current activity to continue until the end of their current permit.

Fullers have withdrawn their application to renew the activity and will cease to operate at the expiry of the current concession therefore Ngāti Tamaterā concerns will in part be satisfied. However, Ngāti Tamaterā’s implied potential commercial interest in tourism activities is noted and should be considered in the section 4 analysis under cultural effects.

2 Ngāti Whanaunga:

Ngāti Whanaunga have advised that they support NKTk and stand with them on this concession outcome.

3 Ngāti Paoa Trust Board:

Ngāti Paoa Trust Board have advised that they do not support the application for reasons previously given, to do with Fullers' unwillingness to allow Ngāti Paoa people concessions e.g. resident rates, on their ferries. The Ngāti Paoa Trust Board objected to the Fullers wharf licence application (to use the Rangitoto Wharf) as the Ngāti Paoa Trust Board have unsuccessfully sought discounted rates for mana whenua on the Fullers Ferry service to Waiheke Island. The objection was considered to be outside the scope of that permit/licence process.

They have also advised that if Fullers wish to discuss this, they are willing to do so.

The provision of discounts on the ferries is not a relevant consideration as that is not of direct relevance to the application under consideration. It may be indicative of a wider relationship issue with Fullers, but in light of the recommended decision it is not considered necessary to further explore this with the Ngāti Paoa Trust Board.

Therefore, no further discussion on this issue is required.

4 Ngāti Maru

Ngāti Maru advised that they did not have any specific issues in relation to the reconsideration of the Fullers concession but advised that;

- The Department must maintain a relationship with the collective 13 iwi who have settlement on Rangitoto, including the tihi, the batch and the land under the historic hall.
- The Department and Fullers need to be inclusive with all 13 iwi on any process.
- The Department must also respect and ensure protection of those places affected by the concession.

- Must also recognise and protect taonga and the traditional stories of those places.

Ngāti Maru also raised a matter of [REDACTED]

The [REDACTED] is not relevant to this decision. As above, it could be indicative of a wider relationship issue with Fullers, but in light of the recommended decision it is not considered necessary to further explore this with Ngāti Maru. Therefore, no further discussion on this issue is required.

5 Ngāi Tai ki Tāmaki (NTKT)

A meeting was held between the Department and NTKT on 11 February 2020. The meeting minutes are linked here: [DOC-6217142](#)

As a follow up to the meeting NTKT provided written comments on 29 July 2020. Link to letter from NKTK: [DOC-6385506](#)

Discussion and analysis on Section 4 of the Conservation Act requiring the Department to give effect to the Treaty of Waitangi are provided in Section 5 of this report under Cultural Effects.

- From Conservation Board (if sought) – as the application from 2013 was a re-issue, no comments were sought from the Conservation Board at that time. No further comment was sought from the Conservation Board for the reconsideration.
- From DOC staff (including Partnerships, technical and legal comments.)
 - District Office – For the 2013 application the District Office were involved and completed the request for comments form, which can be seen at the following link: [Fullers - Request for Area Feedback \[38065-GUI\].rtf](#)
 - The District Office undertook iwi consultation in 2015 and as outlined above undertook further consultation for the reconsideration.
 - The District staff have provided links to three monitoring reports completed during the term of the 2015 – 2020 concession.

[REDACTED]

The 2015 decision report noted that a cultural effects paper used in other Hauraki Gulf Island concession applications (at that time in 2015) was referenced and discussed in the original section 4 consideration.

The 2015 decision report also noted that updated biosecurity conditions that were applied in other Hauraki Gulf Island applications have been applied and that the Department had standard guiding conditions which addressed the effects of guiding on Public Conservation Land, and that those will be applied in this instance. These conditions are still relevant. Although a number of the conditions, including interpretation and cultural matters are discussed further in this reconsideration report.

- Science and Technical – no concerns outside of normal guiding effects were identified in the original 2015 decision report. The 2015 request for comments form, can be seen at the following link: [Fullers Group Limited - Request for Comments Form – S and C - \[38065-GUI\].doc](#)

In the 2015 report the technical advisor noted that motorised transport can present a risk to terrestrial wildlife, noting however due to the daytime nature of the operation and slow speed of the vehicle, this risk was greatly reduced.

The maintenance and upkeep of the roading was also discussed, as this was identified as potentially having the greatest impact, however it was noted that the conditions in the previous concession were adequate to address this risk.

- On receipt of Fuller's comments on the 2015 decision report, further information was sought from the District Office Partnerships and Services teams with regards to Fuller's request that the roading maintenance clauses only applied to the permitted route of the Tractor shuttle service. The District Office agreed with this proposal and the contract was amended accordingly.

3.3. Requested information not received:

No further information sought or received.

4. Acknowledgement of complete application (s17S)

- 4.1. The 2015 application was considered in the 2015 decision report to be complete for the purposes of s17S of the Conservation Act. This is still the case for the reconsideration report.

5. Analysis of proposal (s17T, 17U, 17V, 17W, 17X, 17Y)

Public notification s17T(5):

- 5.1. In the 2015 decision report it noted that Fullers requested a licence, which was recommended to be granted for a term of 5 years. At that time s17T(5) of the Conservation Act applied which did not require the public notification of licences for 5 years for activities that were well understood with effects able to be appropriately avoided, remedied or mitigated. The decision report was not notified. The relevant legislation has changed since 2015 and the requirement or not to publicly notify a concession is now covered by 17SC (1) and (2) however the specific tests are similar in that the Minister 'may' publicly notify a licence, having regard to the effects, if she considers it appropriate to do so.
- 5.2. The activity itself and its environmental effects are well understood. A reconsideration of the cultural effects of the activity has been informed further by the Supreme Court judgment, and through the more recent consultation with iwi. It is considered that all the information required to make a decision on the reconsideration is available in this report and notification is not required.

Analysis of Effects s17U(1) and (2):

- 5.3. The original 2015 decision report noted that in considering any application, the Minister is to have regard to the nature of the activity and the effects of that activity, or any structures or facilities required to undertake that activity.
- 5.4. Because the proposed activity was to continue with the existing activity at that time, no new effects were identified in the 2015 decision report. If Fullers had intended to continue with the proposed activity beyond August 31, 2020 then the following information provided in that report would have been still valid:

"The tractor train runs on roads, not walking tracks, namely the McKenzie Road, the Summit Road and the Islington Bay Road. The Islington Bay Road past the Summit Road turnoff is used for maintenance purposes and it is intended that sole use remain. Fullers undertakes some maintenance work on these roads to ensure they are safe for use. This is undertaken with the support of the Department.

People exiting the ferry are discharged to a relatively small area. The current pick up point is located away from this area so as not to interfere with visitors or produce a health and safety risk. Participants on the tractor train ride are able to see the gathering point for the tour. The tractor train speed is limited to a top speed of 20km per hour, reduced to 5km per hour when passing pedestrians, further reducing risk to other users of the facilities. This activity is run solely on roads, meaning that interaction with pedestrians is kept to a minimum. Where pedestrians are encountered, they have the right of way on the road. When other events, such as sporting events are undertaken, Fullers cancels the tractor train to ensure that there are no traffic safety issues.

Because roads are established there is very little work to be undertaken other than routine maintenance. The Department undertakes vegetation trimming as required. Fullers uses stockpiled metal from a quarry located on Rangitoto Island for road maintenance and repair. The current concession does not permit further extraction of metal, and continued supply will need to be made available for road maintenance.

The tractor train remains on Rangitoto Island, and metal used for track maintenance is sourced on the Island also, reducing the risk of pest plant species being inadvertently transferred. Biosecurity provisions are in place to ensure that animal pests are not transferred with the ferry trips.

In order to ensure that Islands are maintained at a high standard, Fullers operated under a 'pack in, pack out' policy to ensure that no waste is left behind on the Land. They also operate within the Treasure Island Programme and aim to educate passengers as to these policies.

It is considered that the effects of this activity would be minimal on the recreational experience of other users as there is a limited number of trips per day and the party sizes are a reasonable number. The numbers of trips and parties size are included as special conditions.

Fullers currently uses a small, self-contained apartment in the Department's structure at Rangitoto Wharf as a lunchroom and office. Fullers does not require exclusive use of this area, however noted that should another Concessionaire wish to use the area, then they would prefer a lease. At this point, there is no other party wishing to use this building, therefore a licence is sufficient. It is noted that the Department shares storage within this structure with the Concessionaire. The Department does not object to the continuation of this use.

Special conditions in the contract manage the use of this facility."

Cultural Effects- Reconsideration 2020

- 5.5. The cultural effects analysis from the 2015 decision report is linked here [DOC-6395008](#). A reconsideration of the cultural effects follows:
- 5.6. The Department considers that the key principles of the Treaty of Waitangi that apply to this decision are:
 - a. Partnership – mutual good faith and reasonableness: The Crown and Māori must act towards each other reasonably and in good faith;
 - b. Informed decision-making: Both the Crown and Māori need to be well informed of the other's interests and views;
 - c. Active protection: The Crown must actively protect Māori interests retained under the Treaty as part of the promises made in the Treaty for the right to govern;
 - d. Redress and reconciliation: This requires that the Treaty relationship should include processes to address differences of view between the Crown and Māori. The Crown must take reasonable steps to remedy past breaches.
- 5.7. As pointed out in the Supreme Court judgment, errors of law made in the first decision were in treating preference and economic benefit issues as irrelevant considerations. It is now clear as a result of this judgment that these considerations are relevant and should be considered under the principle of active protection of Māori interests. These interests are considered below along with the other Treaty principles.
- 5.8. As the Supreme Court stated, what is required is a process under which the meeting of the statutory and non-statutory objectives noted above is achieved, to the extent that this can be done consistently with section 4, in a way that best gives effect to Treaty principles.

NTKT Interests 2020

- 5.9. Consultation comments from NTKT for the reconsideration are summarised below:
- 5.10. Issues raised on the application at the 11 February 2020 meeting were:
- NTKT noted unacceptable pronunciation of Te Reo and that no -one from Fullers has attended a Te Reo Māori course 'as required by the Concession conditions,' they also noted that Ngāi Tai ki Tāmaki would not be opposed to other operators with capability in Te Reo Māori me ōna Tikanga.
 - The tractor was not currently being maintained and the use of tractors for the activity should have a limited life on the motu and has an unacceptable carbon footprint, although NTKT support the tractors as an interim option.
 - NTKT would like to [REDACTED].
 - NTKT was keen to have their own operation and there was not room for multiple operators, NTKT would like the Department to protect their commercial right.
 - NTKT agreed to provide a written comment outlining their position regarding the reconsideration.
- 5.11. NTKT provided their written comments on 29 July 2020.
- 5.12. Link to letter from NTKT: [REDACTED]
- 5.13. The written response outlined background information and context, including that NTKT:
- have immemorial customary interests and rights on the motu within Tikapa Moana, including Motutapu and Rangitoto and continually seek to exercise their kaitiakitanga and rangatiratanga responsibilities on the moana and the island;
 - have consistently advised the Department of their objection to the granting of the concession;
 - have concerns regarding the reconsideration process;
 - expect the Department to give effect to the Supreme Court's comments in relation to Section 4; and
 - expect that the Department take into account all of Ngāi Tai ki Tāmaki's previous correspondence and communications in relation to the matter, including Ngāi Tai ki Tāmaki's presentation to the Court throughout the judicial review process.
- 5.14. Specific reasons for strong opposition to the application provided in the written comments include:

Whenua and Kaitiakitanga

- Incorrect pronunciation of Te Reo (a taonga which the Crown must protect) and disregard of tikanga on the motu by the Concessionaire;
- Lack of cultural appreciation and competency on the part of the Concessionaire; and
- NTKT believe the number of activities of this type should be restricted to avoid additional stress on the environment and the whenua.

Commercial and economic aspirations

- NTKT are a newly settled iwi, in the process of establishing themselves, who want to run their own economic operations free of competition for a reasonable period to enable them to properly establish operations. All operations would be based on their own tikanga and reflecting their rangatiratanga. They wish to establish viable, authentic indigenous, commercial operations and have an expectation that they be able to operate free of competition for a reasonable period of time to enable establishment of such commercial ventures on the motu, noting that they are not currently in a position to compete financially with Fullers.
- These commercial and economic aspirations are reflected in the deed of settlement.
- NTKT note that NTKT will continue to fight an uphill battle if they are to compete against well-resourced competitors such as Fullers who have benefits of years of commercial operations on the motu.
- NTKT alleged that Fullers have not complied with the conditions of the concession and there has been lack of effective monitoring undertaken by the Department, and therefore NTKT do not have confidence that any new conditions would be adequate to satisfy the Section 4

requirements and cannot amount to active protection. They consider that this context has a bearing on the reconsideration.

- NTKT expect to see Section 4 of the Conservation Act properly applied and consider that Section 4 weighs so heavily that a concession cannot be granted.
- 5.15. These comments should be considered alongside the legislation and Conservation Relationship Agreements discussed later in this report. This includes the following settlement agreements and the relationship agreements that were not in place at the time of the 2015 decision on this application.
- Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014
 - The Ngāi Tai ki Tāmaki Claims Settlement Act 2018 and the subsequent Ngāi Tai ki Tāmaki Conservation Relationship Agreement, 2019
 - Ngā Mana Whenua o Tāmaki Makaurau Conservation Relationship Agreement, 2015

Proposed Activity in regard to cultural impacts

- 5.16. Fullers noted in their Environmental Impact Assessment that they did not intend to interpret Māori history without iwi consent and the application indicates that very basic information may be provided by the tractor guide and that might include reference to the origins of the name Rangitoto. The applicant also notes in the application that they recognise the opportunity to work with iwi to include more cultural content in their commentary.
- 5.17. Fullers also indicated they were working with iwi on how iwi stories could be told.
- 5.18. Further comments provided by Fullers on the draft 2015 decision report also notes that from the start of the process Fullers sought out how to work with iwi, acknowledging that they had very little prior experience in partnering in this manner.
- 5.19. Fullers noted they were eager to improve their staff's knowledge about the history, interpretation and pronunciation to ensure that tangata whenua are correctly acknowledged. They also noted they were working with the Tāmaki Collective on an agreement outside of the concession that would support improvements, this included consideration of signage to acknowledge customary interests of all iwi/hapū of Ngā Mana Whenua o Tāmaki Makaurau at Rangitoto.

Have Treaty Principles been met?

- 5.20. **Partnership:** mutual good faith and reasonableness: The Crown and Māori must act towards each other reasonably and in good faith.
- 5.21. The Department has carried out consultation with all relevant iwi on the concession in a fair and appropriate manner, this included by email and offering the opportunity to meet. Consultation with NTKT and the Tāmaki Collective has been undertaken in line with the process provided in the Conservation Relationship Agreements. Five iwi provided updated comments to the Department as requested and NTKT and Ngāti Maru had face to face meetings with the Department. Nine iwi parties did not provide a comment. The Department considers that the principle of partnership has been met in the consultation process.
- 5.22. However, the partnership principle also involves the expression of rangatiratanga, and recognising the mutual benefits that should accrue to both Māori and non-Māori as the economy develops. This is relevant to the assessment of NTKT's statements regarding the exercise of rangatiratanga on the motu, and their right to share in the benefits from development on and around the motu. These matters are considered in table 1 below.
- 5.23. **Informed decision-making:** Both the Crown and Māori need to be well informed of the other's interest and views.
- 5.24. A copy of the original application was provided again to all relevant iwi with interests in the activity and land under application. Five of the iwi consulted have provided their views and interest. Nine of the iwi consulted that did not provide comment are also parties to the Tāmaki Collective. The Tāmaki Collective Settlement and the Ngā Mana Whenua o Tāmaki Makaurau Collective Relationship Agreement has been considered. The Department considers that the principle of informed decision making has been met.

- 5.25. **Active protection:** The Crown must actively protect Māori interests retained under the Treaty as part of the promises made in the Treaty for the right to govern.
- 5.26. In this respect, NTKT's interest in the guiding opportunities meets the following features identified in the *Whales*¹ case:
- a. As stated in *Whales* case, "*guiding visitors to see natural resources of the country has been a natural role of the indigenous people*". It is an important expression of rangatiratanga, exercised through showing manaaki to visitors to the motu.
 - b. The guiding activities are tribal (operated by NTKT), rather than those of a few individuals.
- 5.27. NTKT may not be regarded as the pioneers of guiding on the motu per se, but this can be at least partly attributed to past Crown Treaty breaches that have alienated them from their whenua. They are recently settled and in the process of establishing themselves. In these circumstances, the Crown may be obliged to positively assist them to participate in opportunities on their motu. Also, as discussed below, NTKT's proposals offer some unique features that show an intention to innovate from existing opportunities. They have devoted their own energy and capital to developing tikanga-based guiding on the motu, which is a feature shared with the appellants in the *Whales* case.
- 5.28. It is important to note that supporting NTKT in establishing this opportunity does not require that they are the only party to offer services to visitors to the Island. Rather it is recognition that the Crown has a duty to support NTKT in this instance.
- 5.29. Further consideration of actively protecting relevant iwi interests are provided in table 1 below.
- 5.30. **Redress and reconciliation:** This requires that the Crown have processes to address differences of view and should provide remedies for past breaches. This principle is not directly at play. NTKT's historical claims have been settled and no other breaches have been identified as relevant. While NTKT's historical claims have been settled, however, the Crown is mindful of its continuing obligations under the Treaty in relation to their ability to participate in contemporary opportunities (which is more relevant to the principles of active protection).

¹ *Ngāi Tahu Māori Trust Board v Director-General of Conservation & Ors* (CA 18/92, 22 September 1995)

Summary of Key Interests, legislation discussed in this report and options/recommendations

Table 1

NTKT Key interests:	Legislative support for key interest	Options for mitigation or reconciliation of conflict
<p>Whenua and Kaitiakitanga Recognition of importance of the Islands to tangata whenua including the historic, traditional, cultural, and spiritual relationship of tangata whenua</p> <p>And specifically</p> <p>Protection of accurate tikanga and Te Reo, specifically incorrect pronunciation and a lack of cultural appreciation</p>	<p>Section 4 – partnership/ active protection of treaty interests</p> <p>Hauraki Gulf Marine Park Act 2000 – sections 7, 8 and 32 (c)</p> <p>CMS key management theme – ‘raising awareness of and managing island refuges in the Gulf that contain significant, natural, historic and cultural heritage’</p> <p>The Settlement Acts and NTKT Conservation relationship Agreement</p>	<p>Option 1 NTKT have a strong and acknowledged association with Rangitoto and Motutapu. In addition, the purpose of the Hauraki Gulf Marine Park Act (section 32 (c)) includes recognising and having particular regard to the historic, traditional, cultural, and spiritual relationship of tangata whenua with the Hauraki Gulf, its islands and coastal areas. This is discussed in detail later in this report under ‘Purpose for which the land is held’ and ‘Hauraki Gulf Marine Park Act 2000’.</p> <p>Section 4 requires that the Department gives effect to Treaty principles. In this instance, active protection may include supporting NTKT’s exercise of rangatiratanga in respect of manakitanga of visitors and the accurate use of tikanga and Te Reo.</p> <p>Fullers noted their intention to work with iwi and improve their knowledge about the history, interpretation and pronunciation to ensure that tangata whenua are correctly acknowledged. However, (following recent monitoring of the activity, discussed later in this report) Fullers’ transcript of their commentary on the tours does not appropriately recognise or even refer to NTKT’s historic, traditional, cultural, and spiritual relationship with the motu.</p> <p>Given the strength of NTKT’s association with Rangitoto and Motutapu, their desire and the legislative support for recognising the importance of the Islands to tangata whenua including the historic, traditional, cultural, and spiritual relationship of tangata whenua, and as Fullers have not demonstrated they have the ability to provide for this, the option which best protects these interests and gives effect to the Treaty principle of active protection is to decline to grant the concession.</p> <p>Option 2 The Department could increase the strength of the Cultural and Interpretation conditions as discussed later in this report under the analysis of the Purpose for which the land is held and Hauraki Gulf Marine Park Act 2000. This section concludes that it does not appear that strengthened conditions are sufficient, in this instance, to satisfy the requirements of the Hauraki Gulf Marine Park Act 2000 when considered alongside the principle of active protection. There is an opportunity here for tangata whenua to develop viable tikanga-based guiding businesses and provide a service to visitors to the motu which allows them to develop a general awareness of these connections.</p>

		<p>Therefore, this option does not seem to give best give effect to Treaty principles, because it does not provide NTKT with the space to be able to tell their own stories in relation to the motu. This is not to say that only operators with a connection to the motu should be granted concessions, because other factors will also need to be considered (as discussed below). For example, if NTKT had been able to establish more of a presence on the motu it may be sufficient to grant Fullers' concession with the above cultural and interpretation conditions. Also, other applicants may have strengths in Te Reo and may demonstrate an ability to more appropriately recognise the NTKT relationship, as well as the connections of other Treaty Partners to the motu.</p>
<p>Commercial and economic aspirations Protection of commercial and economic interest – NTKT want exclusive concessions for guiding on the area under application for a reasonable time period because they are not currently in a position to compete against well-resourced competitors, it is noted also that NTKT said they would not be opposed to other operators with capability in te reo me ōna tikanga.</p> <p>NTKT also stated that they believe the number of activities of this type should be restricted to avoid additional stress on the environment and the whenua</p>	<p>Section 4 – Active protection of treaty interests</p> <p>The Settlement Acts NTKT Conservation relationship Agreement</p>	<p>Numbers of guiding concessions on Rangitoto and Motutapu are not subject to any limitation through statutory plan policies.</p> <p>There has been no indication by District staff that there has been a change or increase of environmental effects and the 2015 decision report noted that there was no indication that the demand on the activity or concession opportunity exceeded environmental or social carrying capacity of the land, or has unacceptable cumulative effects.</p> <p>Monitoring reports from 2017, 2018 and 2020 indicate compliance with Island biosecurity conditions and do not note any additional effects on the environment. Given this there does not appear to be a strong reason to limit operator numbers based on environmental effects.</p> <p>The Supreme Court made it clear that the Department has to consider NTKT's commercial interest in guiding in the areas under application, under section 4 and the principle of active protection.</p> <p>Clause 7.2 of the Ngāi Tai ki Tāmaki Conservation Relationship Agreement reflects that NTKT has a strong interest in exploring Hikoi O Te Motu/Guided walking tours on Rangitoto and Motutapu.</p> <p>The Conservation Relationship Agreement also at 3.2.1 makes it clear that NTKT desire to welcome and host all visitors to Motutapu as part of a cultural guiding concession that NTKT acquires for Motutapu. Clause 3.2.1 also reflects NTKT's desire for exclusive access to these opportunities.</p> <p>Ngāi Tai ki Tāmaki Tribal Trust have a current guiding concession for Rangitoto and Motutapu which has been in place since 1 June 2014 and due to expire on 30 April 2024.</p>

		<p>In one sense, granting guiding concessions to Fullers or any other party does not restrict NTKT from continuing to carry out guiding activities on Rangitoto and Motutapu or from applying for further concessions to do so, because there is no current limit on carrying capacity. However, in practical terms NTKT have submitted that Fullers are well-resourced and have the benefits of years of commercial operations on the motu. They are a well-recognised brand and because they also operate the ferry service consumers may prefer their service simply on this basis. In addition, they are also better resourced to advertise their service and as they also operate the ferry service, consumers are likely to have a stronger association of the brand with Rangitoto Island. Also, while Ngāi Tai ki Tāmaki's current guiding concession is for guided walking only, they are increasingly entering into or exploring other opportunities [REDACTED]</p> <p>[REDACTED] Declining Fullers' concession could enable NTKT to establish a viable, authentic indigenous guiding business free from competition and raise the profile of their brand in the public mind. They want to run their own economic operations free of competition for a reasonable period to enable them to properly establish operations.</p> <p>There appear to be two options:</p> <p>Option 1: grant Fullers a concession for a limited period The original decision was to grant shorter-term concessions to Fullers and MRT to provide an opportunity for the Inner Motu CMP to be developed. As the Inner Motu CMP has not been developed in the 5-year timeframe, this rationale no longer applies.</p> <p>A concession for Fullers for a limited period does not appear to assist the development of NTKT's emergent business, as it still presents a barrier to them establishing themselves as a viable provider of tikanga-based guiding on the motu. That is not to say that it is the only barrier, but it may contribute to NTKT's ability to establish themselves in this space.</p> <p>Option 2: decline Fullers' concession In support of this option, it should be noted that NTKT have long been alienated from opportunities on their whenua, despite the growth of Auckland as New Zealand's largest city and the unique position of Rangitoto and Motutapu to benefit from resultant tourism opportunities. NTKT's expressions of tikanga through showing manaaki to visitors to the motu are fundamental to their identity and connection to the whenua. Declining this concession would best protect this emergent business, as an expression of the iwi's rangatiratanga and the principle of active protection, as NTKT are seeking.</p> <p>However, other factors also need to be considered, such as enabling the public to freely access and enjoy the reserves (sections 17 and 19 of the Reserves Act and p 15 of the CMS). If there are a number of operators on the motu providing different guiding experiences, this would promote a</p>
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		<p>range of recreational experiences for visitors and potentially more accessible outcomes (through competition on prices). During consultation, however, NTKT specifically expressed that they wanted the motu to be more accessible, particularly to everyday Aucklanders. They (under Te Haerenga o Ngai Tai Ki Tamaki Limited) have also in October 2019 been granted a concession for e-bike tours which include the tihi (summit) and have indicated an interest t [REDACTED]</p> <p>[REDACTED]</p> <p>Therefore, this option is considered to best promote NTKT's interests on the motu in line with the principles of active protection and partnership (mutual benefit) as described by the Supreme Court.</p> <p>If NTKT's longer-term objectives can be realised, it would also better promote recreational outcomes on the motu through continuing to offer [REDACTED]. NTKT's objective to decarbonise the motu is also a relevant factor to consider in support of this option, although less weight should be placed on this as it appears largely aspirational at present. It should be noted, however, that NTKT should not be the sole operator on the motu indefinitely, as this may have adverse outcomes in terms of competition for visitors.</p> <p>Ngāti Tamaterā have also noted that they have [REDACTED] and Ngāti Maru have also raised the need for inclusivity with all 13 iwi. It should be noted that the decision that is being recommended is not to decline concessions submitted by other iwi, as this decision relates only to Fullers (who are a well-established operator). It should not be taken as a recommendation that all other concession applications should be declined – particularly if they are also tikanga-based operations. NTKT have specifically stated that they would not be opposed to other operators with capability in te reo me ōna tikanga. There is no suggestion that other iwi would be disadvantaged by recommending that Fullers' application be declined for reasons of commercial preference.</p>
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Monitoring Conditions

- 5.31. The 2015 report noted that, the District Office had not included any specific request for monitoring, however a provision for up to 8 hours of monitoring per annum, to be cost recovered as and when undertaken was included. There was also a clause in the special conditions to the contract which allows for review of the concession to determine whether it is operating at the level permitted under the contract terms.
- 5.32. Although monitoring was undertaken in 2017, 2018 and 2020 the Department acknowledges that monitoring of the activity and conditions, could have been better.

Purpose for which the land is held s17U(3):

- 5.33. Section 17U(3) provides that the Minister shall not grant an application that is contrary to the provisions of the Act or the purposes for which the land concerned is held.
- 5.34. Both Rangitoto and Motutapu Islands are held under the Reserves Act 1977. Section 3(1) states land held under this Act is held for the purpose of ‘providing, for the preservation and management for the benefit and enjoyment of the public,’ areas of New Zealand possessing a number of values or features as set out by this section. Rangitoto Island and Ngā Pona-Toru-a-Peretū are held as Scenic Reserves, and Motutapu Island is held as a Recreation Reserve.
- Scenic Reserves are managed under Section 19(1)(a): ‘for the purpose of protecting and preserving in perpetuity for their intrinsic worth and for the benefit, enjoyment, and use of the public.’
 - Recreation Reserves are managed under Section 17(1)(a): ‘to provide areas for the recreation and sporting activities and the physical welfare and the enjoyment of the public, and for the protection of the natural environment and beauty of the countryside, with emphasis on the retention of open spaces and on outdoor recreational activities, including recreational tracks in the countryside.’
- 5.35. As guided walking meets the purpose of both Scenic and Recreation Reserves, the proposal is not contrary to the purpose for which the land is held under the Reserves Act 1977. However, the discussions elsewhere in this report show the proposal is contrary to the provisions of other parts of the Act.
- 5.36. Section 32 of the Hauraki Golf Marine Park Act 2000 also provides a range of purposes of the Hauraki Gulf Marine Park. Rangitoto and Motutapu Islands fall within the boundaries of the Hauraki Gulf Marine Park and is discussed below.

Hauraki Gulf Marine Park Act 2000

- 5.37. Rangitoto and Motutapu Islands fall within the boundaries of the Hauraki Gulf Marine Park as established by s33 of the Hauraki Gulf Marine Park Act 2000.
- 5.38. The 2015 decision report stated that “*The Act has no specific reference to either Rangitoto and Motutapu Islands or to the concession’s regime.*”
- 5.39. And stated: “*The previous report noted that “after having regard to the provisions of sections 7 and 8 of the Act, it is our opinion that the proposal is consistent with the purposes of the Act, as contract conditions will ensure that any adverse effects are adequately avoided, remedied or mitigated. The proposal is also consistent with the purposes of the Hauraki Gulf Maritime Part as set out in section 32 of the Act”*
- 5.40. On reconsidering this Act the following analysis is provided:
The Preamble to this Act recognises the Islands of the Hauraki Gulf as having valuable habitats for rare plants and animals. The Preamble also recognises the Gulf as one of the earliest places of human settlement in New Zealand and for generations it supported and was home to tangata whenua. The preamble notes the Treaty of Waitangi was signed on the shores of the Gulf and provides guarantees to both the Crown and tangata whenua and forms a basis for the protection, use, and management of the Gulf, its islands, and catchments.

Section 7 - Recognition of national significance of Hauraki Gulf

Section 7(2)(a) of the Act recognises that the life-supporting capacity of the Gulf and its islands includes the capacity to provide for:

- i. the historic, traditional, cultural, and spiritual relationship of the tangata whenua of the Gulf with the Gulf and its islands; and*
- ii. the social, economic, recreational, and cultural well-being of people and communities:*

7(2) (b) and (c) provides for both use of the resources of the Gulf for economic activities and recreation alongside the capacity to maintain the soil, air, water and ecosystems of the Gulf.

Section 8 - Management of Hauraki Gulf

Section 8 of the Act provides some objectives to recognise the national significance of the Gulf, islands and catchments.

(a) the protection and, where appropriate, the enhancement of the life-supporting capacity of the environment of the Hauraki Gulf, its islands, and catchments:

(b) the protection and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments:

(c) the protection and, where appropriate, the enhancement of those natural, historic, and physical resources (including kaimoana) of the Hauraki Gulf, its islands, and catchments with which tangata whenua have an historic, traditional, cultural, and spiritual relationship:

(d) the protection of the cultural and historic associations of people and communities in and around the Hauraki Gulf with its natural, historic, and physical resources:

(e) the maintenance and, where appropriate, the enhancement of the contribution of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments to the social and economic well-being of the people and communities of the Hauraki Gulf and New Zealand:

(f) the maintenance and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments, which contribute to the recreation and enjoyment of the Hauraki Gulf for the people and communities of the Hauraki Gulf and New Zealand.

The objectives focus on protection and where appropriate enhancement of life supporting capacity; natural, historic and physical resources. The objectives recognise tangata whenua historic, traditional, cultural and spiritual relationship with the Gulf, its islands and catchments, and the protection of cultural and historic associations with its resources.

The objectives also provides for the maintenance and where appropriate enhancement of the contribution of the natural, historic and physical resources of the Gulf, its islands and catchments to the social and economic well-being of the people and communities of the Gulf and New Zealand and to recreation and enjoyment of the same.

Section 11 - Statements of general policy under Conservation Act 1987 and Acts in Schedule 1 of that Act

Section 11 of the Act provides that sections 7 and 8 have the same effect as a statement of general policy approved under section 15A of the Reserves Act/section 17B of the Conservation act.

Section 13 - Obligation to have particular regard to sections 7 and 8

Section 13 of this Act requires that in considering concession applications under the Conservation Act, particular regard must be given to Sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000.

Section 32 Purposes of Hauraki Gulf Marine Park

Section 32 reads as follows:

The purposes of the Hauraki Gulf Marine Park are—

(a) to recognise and protect in perpetuity the international and national significance of the land and the natural and historic resources within the Park:

(b) to protect in perpetuity and for the benefit, use, and enjoyment of the people and communities of the Gulf and New Zealand, the natural and historic resources of the Park including scenery, ecological systems, or natural features that are so beautiful, unique, or scientifically important to be of national significance, for their intrinsic worth:

(c) to recognise and have particular regard to the historic, traditional, cultural, and spiritual relationship of tangata whenua with the Hauraki Gulf, its islands and coastal areas, and the natural and historic resources of the Park:

(d) to sustain the life-supporting capacity of the soil, air, water, and ecosystems of the Gulf in the Park.

The proposed activity is supported by section 7(2)(a)(ii) and would be consistent with providing the potential for enhanced economic well-being for the applicant and opportunities for enhancing recreation and enjoyment for people and communities.

This activity provides methods for the public to enjoy Rangitoto and Motutapu Islands in accordance with subsection 7(2)(b). Analysis of the activities, when first granted and also through the re-issue process, have noted that the activity can be appropriately managed to avoid, remedy or mitigate any adverse effects.

Compliance reports from 2017 and 2018 raise no issues in terms of adverse effects on natural and historic features. However, NTKT have stated that the carbon footprint of the tractors is unacceptable. As the Department has not carried out its own research into the tractors' actual carbon footprint, this is only considered as a factor in favour of Ngāi Tai's aspirations to decarbonise the motu.

The concerns raised by NTKT on the 2013 application include the recognition of the importance of the Island to tangata whenua and ensuring that any cultural or historical interpretation undertaken by the Concessionaire is sensitive to this history and is an accurate and respectful representation.

Of relevance the purpose outlined in Section 32 (c) requires the Minister to recognise and have 'particular regard' to the historic, traditional, cultural, and spiritual relationship of tangata whenua with the Hauraki Gulf, its Islands and coastal areas, and the natural and historic resources of the Park.

The Department included special conditions in the 2015 Concession designed to mitigate these types of concerns to ensure cultural information provided is accurate:

“Interpretation Materials

39. *The Concessionaire must consult with and seek the guidance of iwi claiming mana whenua over any parts of the Land prior to providing interpretation on matters of cultural significance to such iwi.*

40. *The Concessionaire must provide detailed information of any historical, cultural or natural science interpretation provided by the Concessionaire to its clients in the course of the Concession Activity, to the Grantor within thirty days of the date of any such written request by the Grantor.*

41. *If the Grantor considers the interpretative material provided by the Concessionaire above unsatisfactory, the Concessionaire must prepare an interpretation plan for approval by the Grantor within 60 days of advice from the Grantor that this is required.”*

In addition, the Department made a specific decision to add the following cultural conditions to the 2015 concession when it was granted:

“Cultural Conditions

59. *The Grantor may require that the Concessionaire and its staff attend a Te Reo course approved by the Grantor, with evidence of attendance to be submitted to the Department upon request.*
60. *The Grantor may require that the Concessionaire make all reasonable endeavours to attend any cultural induction or competency wānanga offered by local Iwi.”*

Issues raised by NTKT at the 2020 consultation meeting with the Department included unacceptable pronunciation of Te Reo and that no -one from Fullers has attended a Te Reo Māori course as required by the Concession conditions and that there has been a lack of effective monitoring and therefore they do not have any confidence that any new conditions would be adequate to satisfy the Section 4 requirements and cannot amount to active protection.

NTKT further supported this view through written comments for the reconsideration which also emphasise that the applicant has disregard of tikanga on the motu including incorrect pronunciation of Te Reo and a lack of cultural appreciation and competency.

It is noted that the cultural competency clauses in the contract were discretionary; Fullers do not appear to have attended Te Reo courses to improve the skill of their staff in this area, but nor did the Department require it. Likewise, there was a discretionary requirement that Fullers should make all reasonable endeavours to attend cultural induction or competency wānanga. It is not clear if any such learning opportunities were provided to Fullers, so the lost opportunity for improvement in this space should not be solely attributed to Fullers but to all parties.

It is apparent that Fullers’ current interpretation materials do not appear to recognise the historic, traditional, cultural, and spiritual relationship of NKTK (or other Treaty Partners) with the motu in any great detail.

Reconsidering the interpretation and cultural conditions

- 5.41. On reconsidering the concession application and the issues discussed above, one option is that the cultural conditions could have been (or could be) worded to give them more strength. If the reconsideration decision is to grant the Concession the following conditions are recommended:
- Prior to commencing the Concession, the Concessionaire must attend a Te Reo course approved by the grantor.
 - Prior to commencing the Concession, the Concessionaire must make all reasonable endeavours to attend any cultural induction or competency wānanga offered by local Iwi.
- 5.42. Additional conditions could be required to ensure the Concessionaire recognises the importance of the historic, traditional, cultural, and spiritual relationship of tangata whenua as part of their activity. Conditions could require the Concessionaire to provide the Department (prior to commencement) with interpretive material, for approval, demonstrating how they are going to do this. If the reconsideration decision is to grant, the following conditions are recommended:

- In carrying out the activity the Concessionaire must recognise the importance of the historic, traditional, cultural, and spiritual relationship of tangata whenua.
 - Prior to the commencement of the activity, the Concessionaire must provide for approval from the Grantor, interpretative material that would meet the requirements of condition X, and that will be provided by the Concessionaire to its clients in the course of the Concession Activity.
 - The Concessionaire must demonstrate that it has consulted and sought guidance from NTKT (or iwi claiming mana whenua over the land) on matters of cultural significance to such iwi.
- 5.43. These changes to the conditions might go some way to ensure particular regard was given to the historic, traditional, cultural, and spiritual relationship of tangata whenua as required by section 32(c) of the Hauraki Gulf Marine Park Act 2000. However, adherence to these conditions only partially addresses the principle of active protection; it is a period of non-competition which will allow NTKT to establish their voice in this space. There is an opportunity here for tangata whenua to develop viable tikanga-based guiding businesses and provide a service to visitors to the motu which allows them to develop a general awareness of these connections. Enabling the development of these tikanga-based businesses directly recognises the rangatiratanga of iwi and their relationship with the resource.
- 5.44. In conclusion it does not appear that strengthened conditions are in this instance sufficient to satisfy the requirements of the Hauraki Gulf Marine Park Act 2000 when considered alongside the principle of active protection. The effect of this is that the activity is inconsistent with general policy (section 11 Hauraki Gulf Marine Park Act 2000).
- 5.45. It should be noted that Fullers' transcript of their commentary does provide some commentary on other aspects of the Rangitoto community, such as the history of the baches, which are also relevant considerations under section 8 of the Hauraki Gulf Marine Park Act 2000. However, this commentary is generic in nature, rather than providing information that might not otherwise be available to visitors. Therefore, this does not weigh as a factor in favour of protecting the associations of the Hauraki Gulf community.

Consistency with Relevant Management Strategies and Plans s17W:

- 5.46. The 2015 decision report provided a comprehensive analysis on the CMS. While for the most part this analysis can remain the same, there are some updates required for reconsidering the current situation.
- 5.47. This application is to be analysed in accordance with the Auckland Conservation Management Strategy 2014 – 2024 (“the CMS”).

CMS Part One

- 5.48. Part One of the CMS notes as a key management theme for Auckland “*raising awareness of and managing island refuges in the Gulf that contain significant natural, historic and cultural heritage*” (page 15). Also noted as a theme is “*providing easily accessible, well-managed visitor destinations that showcase the conservation values that are quintessentially Auckland*” (page 15).
- 5.49. It is noted that two thirds of the land that the Department administers in Auckland is on islands within the Hauraki Gulf Marine Park, within which Rangitoto and Motutapu Islands fall.
- 5.50. Particular reference is made to the Hauraki Gulf Marine Park at page 17, as follows:
“The Hauraki Gulf Marine Park Act 2000 recognises that the natural and historic features of the Gulf are of national and international importance. It established the Hauraki Gulf Marine Park in order to integrate the management of the Gulf, its islands and catchments. The catchments of the Park encompass the most intensively developed parts of New Zealand—metropolitan Auckland and the Hauraki-Piako lowlands (the latter being within the Waikato region)—but also contains areas of significant natural and historic value, many of which are located on public conservation land. The islands of the Gulf are its centrepiece, with many being under active restoration that will increase the biodiversity of Auckland by providing refuges

for threatened species. The Gulf is also rich in historic sites, with Māori settlement sites, shipwrecks, baches and coastal military defences.”

- 5.51. More specific guidance on the Islands is found at page 19 where the Islands are noted as *“significant for their high natural values, as sites for ecological restoration programme... and as sites where the public can be involved and learn more about conservation.”* The importance of islands to tangata whenua is noted, recognising that many *“tangata whenua have a special spiritual, cultural and historic relationship with ngā motu/islands and many islands are considered taonga.”* The future of the Islands in respect of Treaty settlements and cultural redress is also noted.
- 5.52. The objectives at section 5.1 include *“Maintain and strengthen relationships with tangata whenua to enhance conservation and recognise mana”* (objective 5.1.1.1, page 24).
- 5.53. The importance of groups such as Fullers is also recognised in the CMS, as page 27 as follows: *“Inshore islands of the Gulf: From Motuora to Motuihe/Te Motu-a-Ihenga, these islands have actively engaged community groups undertaking restoration and nationally important species reintroductions. The Department is partnering with these groups by keeping islands free of mammalian pests, providing technical advice and supporting translocations of species.”*
- 5.54. This joint responsibility and opportunity is articulated at objective 6.1.1.10, where the objective is to: *“foster and develop positive and cooperative working relationships with tangata whenua and the community to achieve greater natural heritage outcomes on islands.”*
- 5.55. Section 6.3 of the CMS refers to the wider conservation objective of having more people participating in recreation. More specifically, objective 6.3.1.4 states that visitors should be provided with the opportunity for *“positive social, physical and learning experiences”* on public conservation land.
- 5.56. Recreational opportunities and the ability to engage in conservation through concessions such as this also meets with the wider objective set out at 6.4 which is that more people engage with conservation.
- 5.57. As noted previously in this report, Rangitoto and Motutapu Islands fall within the boundaries of the Hauraki Gulf Marine Park, which is referred to at section 7 of the CMS. Two key objectives in this respect can be noted as follows:
- 7.5.1 OBJECTIVES**
- 7.5.1.1 *Implement sections 7 and 8 of the Hauraki Gulf Marine Park Act 2000 (which have the same effect as a statement of general policy by virtue of section 11 of the same Act), insofar as implementing the sections does not derogate from the provisions of the Conservation Act 1987.*
- 7.5.1.2 *Support the Hauraki Gulf Forum, and particularly the development and implementation of a marine spatial plan, to promote and improve integrated conservation management within the Hauraki Gulf Marine Park.*
- 7.5.1.3 *Work with tangata whenua, councils, other organisations and the community to:*
- a) raise the profile of the Hauraki Gulf Marine Park and increase awareness of its special values;*
 - b) identify potential opportunities to include new areas of land within the Hauraki Gulf Marine Park;*
 - c) advocate for giving effect to the Hauraki Gulf Marine Park Act through policies and plans; and*
 - d) build partner support for the Hauraki Gulf Marine Park based on shared values.*
- 5.58. The 2015 decision report also stated, *“The work of the Concessionaire and the special conditions developed to manage the activity reflect the objectives contained within part one of the CMS.”* And *“The activity is not inconsistent with part one of the CMS.”*
- 5.59. Of particular relevance in this instance is section 7(2)(a) of the Hauraki Gulf Marine Parks Act 2000 (discussed earlier in this report at 5.40) which recognises *‘the historic, traditional,*

cultural, and spiritual relationship of the tangata whenua of the Gulf with the Gulf and its islands’ as well as *‘the social, economic, recreational, and cultural well-being of people and communities...’* As noted previously the lack of recognition of tangata whenua links to the island means the application is inconsistent with this policy.

- 5.60. As a result, this concluding statement from the 2015 report should be changed to: This activity is not consistent with part one of the CMS, and in particular the objective of strengthening relationships with tangata whenua. NTKT’s mana is not appropriately recognised if the commentary provided to visitors does not include the story of NTKT’s connection to the motu. It does not appear that declining the concession would have a detrimental effect on the range of recreational opportunities available; NTKT are proposing alternatives (as discussed in Table 1), and a decision to decline Fuller’s application does not preclude other operators entering the market in time.

CMS Part Two

- 5.61. Rangitoto and Motutapu Islands are recognised as a place in Part Two of the CMS, with details found at section 19. While the two Islands are biologically and geologically quite different, they are linked by a causeway, hence are considered together.
- 5.62. The description of the place notes that Rangitoto Island is an iconic landscape feature within the Hauraki Gulf. Under the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014, both Rangitoto and Motutapu Islands vested in the Trustee (meaning the Tūpuna Taonga o Tāmaki Makaurau Trust Limited, acting in its capacity as trustee of the Tūpuna Taonga o Tāmaki Makaurau Trust) for a period of one month, before being re-vested back in the Crown. The 5.4ha summit of Rangitoto (known as Ngā Pona-toru-a-Peretū) remains vested in the Trust but is managed by the Department.
- 5.63. Rangitoto Island is recognised for its unique ecosystems, which are home to nearly 750 species of native plants. The island houses the largest pohutukawa forest in New Zealand, as well as several threatened plant species. In contrast, Motutapu is largely pastoral, and is home to more than 300 archaeological sites. There has been concentrated ecological restoration effort on Motutapu in recent history, with an aim of bringing back threatened species in close proximity to a major metropolitan centre.
- 5.64. The CMS on page 103 states: *“Following the enactment of the Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014, iwi/hapū of Ngā Mana Whenua o Tāmaki Makaurau have a role in the co-governance of the islands. Opportunities to consider the application of the principles and values of mātauranga Māori, and understand the significant cultural values of the islands, should be further explored with mana whenua.”* Co-governance will be through the development of the Inner Motu CMP.
- 5.65. The value of the Island is also noted, with the CMS recognising that the proximity of Rangitoto and Motutapu to downtown Auckland as having great potential as a visitor destination and method of introducing a wide range of people to the natural heritage of New Zealand. The objectives of the CMS are noted as follows (as taken from page 103):
- *“develop a variety of experiences, services and programmes on the islands that will lead to greater awareness of their natural, cultural and historic values.*
 - *make it easier and more attractive for people to stay overnight on the islands, thereby enriching their conservation experience.*
 - *expand the range of accommodation options, utilising existing infrastructure as much as possible, to enable visitors to better explore both islands by foot, kayak, boat or mountain bike.*
 - *allow special events that broaden the appeal of the islands while avoiding adverse effects on the islands’ values and current visitors’ experiences.*
 - *contribute to developing the Hauraki Gulf Marine Park as a compelling visitor destination.”*
- 5.66. With the focus on raising the Islands’ profiles, it is essential that the Islands have the facilities to support any increased interest and visitor numbers.
- 5.67. The relevant policies in relation to this place are listed and discussed in turn. While there were specific policies in regards to both Rangitoto and Motutapu Islands, they were not relevant to the activity considered in this report.

General

19.2.2.1 Have regard to Motutapu when making management decisions for Rangitoto, and vice versa.

The operation of this activity crosses both Islands and is complementary to each.

19.2.2.2 Prepare a conservation management plan for the Hauraki Gulf/Tikapa Moana inner motu of Rangitoto, Motutapu, Motukorea (Browns) and Motuihe/Te Motu-a-Ihenga (the Tāmaki Makaurau motu plan or motu plan) in consultation with Tūpuna Taonga o Tāmaki Makaurau Trust Ltd. for the Tāmaki Collective, Auckland Conservation Board, Auckland Council and other persons and organisations.

The 2015 decision report noted that while this application does not specifically impact on the preparation and implementation of the Inner Motu CMP, the term of this concession, and others for the inner motu are recommended to be set at 5 years. It was thought in 2015 that 5 years would allow for the outcomes and policies of the plan to be implemented through concessions on the Islands once it is finalised.

The Motu Plan however is still not finalised at the time of this reconsideration.

19.2.2.12 Increase awareness of the threats posed by plant and animal pest incursions and dogs and work with ferry operators, concessionaires, permit holders and the boating community to manage these threats and maintain the animal pest-free status of the islands.

The special conditions to the concession contract contain biodiversity provisions which will protect the pest-free status of the Islands.

Part Three

5.68. Part three sets out policies which are specific requirements for the Auckland region.

5.69. The relevant general policies at page 129 are as follows:

Policy 24.1.1.2 Manage public conservation lands and waters consistently with the purpose for which they are held.

As noted above, while the concession does not appear to be consistent with the purpose of the Hauraki Gulf Marine Park Act 2000 in this respect it is consistent with the purpose for which the land is held under the Reserves Act 1977.

Policy 24.1.1.3 Manage public conservation lands and waters consistently with the outcomes, objectives and policies of this CMS.

As noted above, the activities applied for are inconsistent with Part One of the CMS.

5.70. The relevant policies in relation to the granting of authorisations (such as a concession under Part 3B of the Conservation Act, as in this instance) at page 131 are as follows:

Policy 24.2.1.1 Issue authorisations in accordance with relevant legislation and the provisions of the Conservation General Policy 2005.

Note that the CGP has been amended since the original concession was granted as an outcome of the Supreme Court judgment. In 2015 the CGP effectively said that, in the case of an inconsistency between provisions of the relevant Acts and the principles of the Treaty, (section 4 considerations) Section 4 considerations would be trumped by other statutory provisions. This was unlikely to have had any bearing on the decision in 2015. This paragraph has now been removed from the CGP.

Policy 24.2.1.2 Monitor authorised activities and their effects, including cumulative effects, on a regular and ongoing basis.

Policy 24.2.1.3 Establish limits for authorisations where demand approaches or exceeds the environmental or social carrying capacity of a place and/or cumulative effects on the

environment or other users are becoming unacceptable and manage through an allocative process.

Policy 24.2.1.4 Should not grant authorisations that are inconsistent with the objectives in Part One or the outcomes and policies in Parts Two and Three.

Policy 24.2.1.5 The following criteria will be used when considering applications to erect or retain structures or for the adaptive reuse of existing structures on public conservation lands and waters:

- a) the purposes for which the land concerned is held;*
- b) the outcomes and policies for the Place where the activity is proposed to occur;*
- c) whether the structure could reasonably be located outside public conservation lands;*
- d) whether the structure could reasonably be located in another location where fewer potential adverse effects would result from the activity;*
- e) whether the structure adversely affects conservation, including recreational, values;*
- f) whether the structure is readily available for public use;*
- g) whether the structure is consistent with the visitor management zone in Volume II, Map 3 and as described in Appendix 11;*
- h) whether the structure enhances the visitor experience;*
- i) whether the activity promotes or enhances the retention of a historic building; and*
- j) whether the activity is a suitable adaptive reuse of an existing building.*

- 5.71. In 2015 the District Office confirmed that monitoring of the activity would be undertaken. Feedback has not indicated that the demand on this activity and/or concession opportunity exceeds environmental or social carrying capacity of the Land or has unacceptable cumulative effects. In regards to visitor management zones, it is noted that concessions are permitted on this land subject to conditions to avoid, remedy or mitigate any adverse effects, and so long as they are not inconsistent with parts two or three of the CMS.
- 5.72. However, as noted above the activity is not consistent with the objectives of part one of the CMS. Therefore, the activity is not consistent with part 3 of the CMS.

Consideration of other relevant legislation:

Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014

- 5.73. The Ngā Mana Whenua o Tāmaki Makaurau Collective Redress Act 2014 (“the Tāmaki Collective Act”) came into force on 1 August 2014. [the Tāmaki Collective Act](#)
- 5.74. Under s11 of the Tāmaki Collective Act, Rangitoto Island Scenic Reserve and Motutapu Island Recreation Reserve both fit within the definition of both ‘motu’ and ‘Hauraki Gulf / Tikapa Moana inner motu’.
- 5.75. Under s68 of the Act there is provision for the vesting and vesting back of motu in the Crown. The effect of the vesting is described at s69 as follows:
- S69(3) The following matters apply as if the vestings had not occurred:*
- (a) each motu remains a reserve under the Reserves Act 1977 and that Act continues to apply to the motu; and*
 - (b) any other enactment or any instrument that applied to a motu immediately before the motu vesting date continues to apply to the motu; and*
 - (c) any interest that affected a motu immediately before the motu vesting date continues to affect the motu.*
- (4) To avoid doubt, as a result of subsection (3), the Crown retains, as if the vestings had not occurred,—*
- (a) all liability for the motu; and*
 - (b) all management and administrative authority for the motu.*
- 5.76. In respect of the requirement for the reserve to continue to be administered in accordance with the Reserves Act 1977, it is noted that the power to grant concessions on reserves managed under the Reserves Act is as follows:

59A - Granting of concessions on reserves administered by Crown

(1) The Minister may, in accordance with Part 3B of the Conservation Act 1987, grant a concession in respect of any reserve vested in the Crown, including any reserve controlled or managed by an administering body under any of sections 28, 29, 30, 35, and 36; and the said Part 3B apply as if references in that Part to a conservation area were references to such a reserve and with any other necessary modifications.

- 5.77. It is noted in the Tāmaki Collective Act that the land is to continue to be managed as a reserve under the Reserves Act. The Reserves Act requires that concessions are granted in accordance with Part 3B of the Conservation Act 1987. It appears that the process is not contrary to the Tāmaki Collective Act.
- 5.78. The summit of Rangitoto Island is now a newly created scenic reserve as per s70 of the Tāmaki Collective Act. Its status as part of Rangitoto Island Scenic Reserve was revoked, with fee simple title of this portion (approx 55 ha and known as Ngā pona-toru-a-Peretū Scenic Reserve) of the Island being vested in the Trustee (meaning the Tūpuna Taonga o Tāmaki Makaurau Trust Limited, acting in its capacity as trustee of the Tūpuna Taonga o Tāmaki Makaurau Trust). The Reserve is classified as a scenic reserve and despite the vesting, the Reserves Act 1977 applies to the land as if the reserve were vested in the Crown. More specifically, and as stated at s70(5) of the Settlement Act:
- (5) To avoid doubt, as a result of subsection (4),—*
- (a) the reserve is not vested in, or managed and controlled by, an administering body; and*
- (b) the Crown continues to administer, control, and manage the reserve; and*
- (c) the Crown continues to retain all income, and be responsible for all liabilities, in relation to the reserve; and*
- (d) the reserve continues to form part of the Hauraki Gulf Marine Park established under [section 33](#) of the Hauraki Gulf Marine Park Act 2000.*
- 5.79. Practically, this means that the provisions of [Part 3B](#) of the Conservation Act, as applied to the issuing of concessions for Reserves governed under the Reserves Act, apply in this instance.
- 5.80. There does not appear to be anything in the act expressly prohibiting the granting of concessions over any land within the definition of motu.
- 5.81. Under s89 of the Act there is provision for the preparation and approval of a conservation management plan for Hauraki Gulf / Tikapa Moana inner motu' (the Inner Motu CMP). The Reserves Act 1977 applies to the Inner Motu CMP as though it were a conservation plan approved under s40B of the Reserves Act. At the time of preparing this reconsideration report, to the best of the writer's knowledge, the Inner Motu CMP is not in place.

The Ngāi Tai ki Tāmaki Claims Settlement Act 2018

- 5.82. NTKT signed their deed of settlement with the Crown on 7 November 2015 after the 2015 decision on the Fullers Application and there is a subsequent Relationship Agreement with NTKT that was signed on 23 January 2019, as provided for in the Ngāi Tai ki Tāmaki Claims Settlement Act 2018.
- 5.83. NTKT's Deed of Settlement documents schedule (7 November 2015) on page 11 provides the statement of association for Motutapu. The statement demonstrates that Te Motu Tapu a Taikehu is a highly significant wāhi tapu of NTKT. At Page 61 and 68 there are further statutory acknowledgements for both Motutapu and Rangitoto, which are acknowledged by the Crown under section 17 of the Ngā Mana Whenua o Tāmaki Makaurau Collective Act.
- 5.84. Under the Ngāi Tai ki Tāmaki Settlement Act 2018 the Crown acknowledges the statements of association for the statutory areas (including Motutapu).

NTKT Relationship Agreement

- 5.85. The following sections in the relationship agreement are particularly relevant to concessions in the motu:

Clause 3.2 states that *“Ngāi Tai Ki Tāmaki have negotiated exclusive cultural settlement redress on Motutapu Island with the Crown. As such Ngāi Tai Ki Tāmaki:*

3.2.1: desire to welcome and host all visitors to Motutapu as part of any cultural guiding concession that Ngāi Tai Ki Tāmaki acquires for the Motutapu.”

- 5.86. Clause 7.1 in the Relationship Agreement includes the requirement, for statutory authorisations, to carry out consultation consistent with the process set out in clause 11 of the Tāmaki Collective Relationship Agreement, which requires;
- The Department to advise and encourage applicants to consult with Ngā Mana Whenua before filling in their applications; notification of NTKT, at an early stage of the application, with timeframes for a decision and the timeframe for NTKT response. Once the nature of NTKT interests and views have been provided, the Department will provide NTKT an opportunity to clarify or correct the Departments understanding of those interests and views and how the interest and views will be included in the decision making process and any apparent issues of conflicts that might arise.
 - Clause 11 also requires that the Department will, in making a decision, consider whether it is possible to reconcile any conflict between NTKT interests and views and other considerations. The Department will record in writing as part of the decision document the nature of the interests and views of NTKT as conveyed.
 - And that the Department will communicate its decision to Ngā Mana Whenua as soon as practicable after it is made.
- 5.87. Clause 7.2 of the Relationship Agreement advises that NTKT has a strong interest in exploring opportunities for concessions on public conservation land including opportunities for Hikoi o Te Motu/Guided walking tours, including on Rangitoto and Motutapu.
- 5.88. Clause 13.2 – Records that NTKT have a concern that all visitors to public conservation land are aware of the cultural history and significance of those landscapes, including visitors undertaking activities led by concessionaires.
- 5.89. Clause 13.3 – Notes that NTKT are particularly interested in enhancing visitor information for or at a list of places including Rangitoto and Motutapu.
- 5.90. Clause 10.2 – Notes that NTKT are interested in providing professional services, such as the cultural and environmental monitoring of concessions, particularly on the motu.
- 5.91. The clauses in this relationship agreement continue to reflect the strength of NTKT’s connection to the places under application and further articulates and supports NTKT’s desire to have acknowledged the historic, traditional, cultural, and spiritual relationship of tangata whenua to the places under application. Also reflected is NTKT’s commercial interest in concessions on the motu and their desire to host and welcome all visitors to Motutapu.

6. Relevant information about Fullers

- 6.1. The following information was provided in the 2015 report and there is no need to make changes.

Convictions on any charge related to the activity applied for or on any conservation related issue:

No convictions have been brought to the attention of the Department.

Past compliance with concession conditions:

The 2015 decision report noted that Fullers was an existing concessionaire and no compliance issues had been raised.

- 6.2. During consultation on the reconsideration NTKT commented on what they considered were breaches to Fullers concession conditions. NTKT stated that they had had confirmation from Fuller’s Management that no-one had attended a Te Reo Māori course as required by the concession and questioned the point of such a condition if the Department does not have the

capacity to monitor it. Note that the relevant condition did not actually require attendance by Fullers rather it stated “*The Grantor may require that the Concessionaire and its staff attend a Te Reo course...*” The Department did not require or ask Fullers to attend a Te Reo Course.

- 6.3. The full concession conditions being referred to by NTKT include:

“Cultural Conditions

59. *The Grantor may require that the Concessionaire and its staff attend a Te Reo course approved by the Grantor, with evidence of attendance to be submitted to the Department upon request.*
60. *The Grantor may require that the Concessionaire make all reasonable endeavours to attend any cultural induction or competency wānanga offered by local Iwi.”*
- 6.4. Compliance monitoring was carried out by the Department during the term of this concession in June 2017, May 2018 and June 2020.
- 6.5. The monitoring reports from 2017 and 2018 indicate the activity was generally well run with a few recommendations for follow ups on some specific items. The District has confirmed that the Department did not request that Fullers staff attend a Te Reo class or attend a cultural induction/wānanga.
- 6.6. Therefore, Fullers do not appear to have been in breach of conditions 59 and 60, because they were not required to attend a Te Reo course or attend cultural induction or competency wānanga.
- 6.7. The July 2020 monitoring was carried out by questionnaire as the Department was unable to undertake a field visit due to the Covid-19 restrictions. The report concludes that based on the comments given by the concessionaire and the documentation provided, it was assessed that Fullers was complying with the special conditions in concession 38065-GUI, relating to interpretation material, biosecurity and pest free warrants, but recommended at the end of August 2020 a check is conducted by the Department to ensure a road maintenance programme is generated for the following 6 month period. (There seems to be an assumption about this comment that the activity would have continued beyond the 31 August 2020 expiry date).
- Credit check result:**
- 6.8. The following comment from the 2015 report remains unchanged: “*The applicant is an existing concessionaire with a good credit history therefore no credit check is necessary.*”

7. Proposed operating conditions

- 7.1. Given the recommendation is to overturn the previous decision and decline the application the list of conditions that would apply if it was granted have been removed.

8. Summary of special conditions as listed in effects assessment above

- 8.1. Given the recommendation is to overturn the previous decision and decline the application the list of conditions that would apply if it was granted have been removed.

9. Applicant’s comments on draft report

- 9.1. The draft reconsideration report was forwarded to Fullers for comment on 21 September 2020. A response was received on 8 October 2020. Their full comment along with some questions they asked is provided below:

Comment

“Due to the withdrawal of the most recent application for a Guiding License Concession (No. 38065-GUI) and ongoing collaborative discussions with Ngāi Tai Ki Tāmaki, we have nothing further to add. However, we have reflected on the analysis of the Reconsideration Report and will continue to explore how to improve our cultural engagement and understanding and we understand the Deputy Director General Operations’ final decision.”

Questions

1. *“On Page 15 in the “Summary of Key Interests” table there’s an “Option 1” listed but I don’t quite understand what the option is. Can you please clarify what “Option 1” is, as opposed to “Option 2” which has a suggestion for increased conditions?”*

Response – Question 1

The following response was provided to the Fullers on 8 October 2020.

“The last part of the sentence under option one states “...the option which best protects these interests and give effects to the Treaty principle of active protection is to decline to grant the concession.” Therefore Option 1 is to decline the concession for the reasons explained, as opposed to option two which is to use cultural conditions to protect iwi’s interests, noting that it also concludes that this option does not best give effect to Treaty principles for the reasons explained.”

2. *“On Page 29 in 6.2 it is noted that “...no one attended a Te Reo Maori course as required by the concession...” Can it please also be noted here (I acknowledge it is later as well) that this was not a requirement of the concession, but merely a condition that “The Grantor may require that the Concessionaire and its staff attend a te reo course...” per the Concession? This was never actually required to our knowledge.”*

Response – Question 2

This is correct the condition did not require automatically that Fullers Group Limited attend a Te Reo Maori course. A comment has been added for the Final Report on page 29 to reflect this when the issue is first discussed.

3. *“On Page 30 in 6.7 the July 2020 monitoring report is referenced. I do not believe I have a copy of this report. Can you please send that through so we can review that in conjunction with this given it is referenced? The last correspondence I have from Rebecca re the monitor check is dated 18 August.”*

Response – Question 3

A copy of the July monitoring report has now been provided.

Final Comment

Fullers stated on 9 October 2020 that their final comments and feedback remain the same (as noted above).

10. Summary and Conclusions

- 10.1. The 2015 decision report concluded that the activity was consistent with the legislation and planning documents and that cultural effects were evaluated noting the scope of the proposed conditions to manage effects in this regard.
- 10.2. Reconsideration of this application has included consideration of;
 - changes in legislation and circumstances since the 2015 decision including the Ngāi Tai ki Tāmaki deed of settlement and Settlement Act, and Conservation Relationship Agreements with both NTKT and the Tāmaki Collective.
 - the outcome and directives from the Supreme Court Judgment [Ngāi Tai ki Tāmaki Tribal Trust v Minister of Conservation](#).
 - updated consultation with iwi.
 - a review of the legislation and planning elements considered in 2015 including a review of the Section 4 and the Treaty Principles.
 - updated iwi consultation.

- 10.3. It is also considered that the best way to give effect to the Treaty of Waitangi under section 4 of the Conservation Act would be to decline this application. Active protection and partnership require that NTKT be given an opportunity to establish tikanga-based guiding on the motu, and this particular application appears to present a barrier to that. Fullers do not currently appear to be in a position to offer commentary that provides appropriate recognition of the relationship of NTKT, or other tangata whenua, with the motu. In giving effect to section 4 of the Act and particularly the principles of Partnership and Active Protection, the application is therefore inconsistent with the provisions of the Act (section 17U(3) of the Conservation Act).
- 10.4. The reconsidered statutory analysis shows that the proposed activity is not consistent with the CMS and therefore granting it would be contrary to s17W(1) of the Conservation Act 1987. Section 17(W)(1) of the Conservation Act 1987 states that “*where a conservation management strategy or conservation management plan has been established for a conservation area and the strategy or plan provides for the issue of a concession, a concession shall not be granted in that case unless the concession and its granting is consistent with the strategy or plan.*”
- 10.5. Reconsideration of the Hauraki Gulf Marine Park Act 2000 concludes the activity would be contrary to the purpose of the Hauraki Gulf Marine Park Act 2000. The effect of this is that the activity is inconsistent with general policy (section 11 Hauraki Gulf Marine Park Act 2000).
- 10.6. While this report focuses on the guiding service offered by Fullers, it is noted that the permitted activities were wider than simply guiding. The concession in question (38065-GUI) included provisions for road maintenance, bridge maintenance and inspection, and the use of the ‘Rangitoto Wharf apartment.’ Should this application be declined, the Department will need to consider alternative maintenance arrangements.

11. Recommendations to decision maker

- 11.1. Pursuant to the delegation dated 29 August 2013 it is recommended that the Deputy Director General Operations:
1. Deem the Fullers Group Limited application of 18 December 2013 to be complete in terms of s17S of the Conservation Act 1987; and
 2. Decline the granting of a Non-notified Permit concession to Fullers Group Limited pursuant to 17U(3) of the conservation Act 1987, which requires the ‘*Minister shall not grant an application for a concession if the proposed activity is contrary to the provisions of this Act*’. In giving effect to section 4 of the Act and particularly the principles of partnership and active protection, the Department should allow NTKT the ability to develop their tikanga-based guiding business and tell their story in relation to the motu. Granting this application does not afford adequate space for NTKT to do this in the short term, and therefore the application is inconsistent with the provisions of the Act.
 3. Decline the granting of a Non-notified Permit concession to Fullers Group Limited Determine that the Fullers Group Limited application of 18 December 2013 should have been declined pursuant to 17W(1) of the Conservation Act 1987 because the application is inconsistent with the CMS on the basis that the inconsistency of the application with sections 7 and 8 of the HGMPA also means the application is inconsistent with general policy.

Recommendations:

1. **Agree / Disagree**
2. **Approved / Declined**
3. **Approved / Declined**



29 November 2020

Michael Slater
Deputy Director - General Operations

