

20 January 2025



# Assessment of Environmental Effects Report for the additional seating and fencing on Mauao.

Prepared by s 7(2)(f)(ii) Tauranga City Council Spaces and Places

## 1. Introduction

Tauranga City Council, Spaces and Places are seeking resource consent to install three new benches and two new fences within Mauao Historic Reserve at 1 Adams Avenue. It is also proposed to vary one fence by changing location and layout consented (but not yet constructed) under RC29606 pursuant to section 127 of the RMA.

### Background

The Mauao Historic Reserve is owned by three iwi, Ngai Te Rangi, Ngati Ranginui, and Ngati Pukenga in the form of the Mauao Trust. The Mauao Trust is the governance entity that oversees the care and protection of Mauao. The trust represents the three iwi of Tauranga Moana and associated hapu and has a co-management role with Tauranga City Council under Nga Poutiriao o Mauao.

The letter provided within **Appendix B** of this application provides confirmation that the Mauao Trust supports the proposed resource consent for the installation of additional benches, fencing, and interpretive signage. The approval is based on the placemaking document provided within **Appendix A** of this application.

For ease of reference, I have labelled each of the proposed installation items (1 to 8) on the plan provided in figure 1 below. Out of the eight items proposed, only six require resource consent (five under s88 and one as a s127 variation to RC29606).

The proposed installations are considered a continuation of the Mauao Placemaking Project, which gives effect to the Mauao Placemaking Implementation Plan. The core project works have already been undertaken through three consenting phases as set out below:

- Phase 1: Installation of signage undertaken as a Permitted Activity under the City Plan;
- Phase 2: Installation of sculptures, seating, artworks, memorials, picnic tables and pou requiring consent as a Restricted Discretionary Activity. These works were granted consent under RC29066 in May 2022;
- Phase 3: Construction of terracing, fencing, pou, and a viewing platform requiring consent as a Non-Complying Activity. These works were consented under RC29606 in October 2023.

### Site Context

Mauao is classified as a Historic Reserve under the Reserves Act 1977 due to the core cultural, historical, and archaeological values that it holds.

Vegetation on Mauao comprises a mix of regenerating forest, scrub, shrubland, and grazed pasture, with small pockets of remnant indigenous vegetation (predominantly large, old pōhutukawa). Mauao

is also home to a breeding colony of grey-faced petrel and northern little blue penguin (chronically threatened).

There are four known pa sites within the reserve which are represented by approximately 800-1000 visible surface archaeological features including pits, terraces, platforms, house floors, shell middens and shell mounds.

Under the Tauranga City Plan, Mauao is zoned as Open Space – Conservation. Mauao also has several overlays and scheduled sites, which includes:

- Significant Māori Area - M1 (Mauao)
- Special Ecological Area (SEA) - Category 1 and 2
- Significant Archaeological Area - A6 (Mauao – entire site)
- Scheduled Site - Mauao Recreation Reserve
- Natural Features and Landscapes - Outstanding Natural Features and Landscapes (ONFL) Plan Area (entire site)
- Natural Hazards - Coastal Hazard Erosion Plan Area (CHEPA) and Coastal Protection Plan Area (CPPA)
- Built Heritage Site-18 (Old Stone Steps and Former Military Camp, not affected by this proposal)

## Proposal

It is proposed to install three benches, four fences, and one storytelling pou/information sign. The plan below (Figure 1) shows the location of each installation.



Figure 1: Plan showing the location of the proposed installations.

It is noted that two of the eight installations are either a permitted activity or covered by an existing resource consent. The below table sets out which items are permitted in the and which items require resource consent.

Item and reference number	Permitted or Resource Consent required
1 – Seat (page 11 of Appendix A)	Requires Consent – park furniture within a SMA
2 – Fencing and Storytelling Pou (page 8 of Appendix A)	Permitted The fencing in this location was consented (albeit covering a wider area) under RC29606.  Interpretive signage is a permitted activity in all the applicable overlays (SEA, ONFL, SMA, SAA, Conservation Zone) as either a Minor Public Recreation Facility or a Minor Structure or Activity.
3 – Seating (page 12 of Appendix A)	Requires Consent - park furniture within a SMA
4 – Fencing (page 7 of Appendix A)	Requires Consent – New Structure within ONFL
5 – Fencing (page 6 of Appendix A)	Requires Consent – New Structure within ONFL and minor structure within a Category 2 SEA
6 – Seating (page 10 of Appendix A)	Requires Consent - Park furniture within a SMA
7 – Fencing (page 4 of Appendix A)	Requires s127 variation – RC29606 (Phase 3 consent) consented a fence in this location above the wall. After feedback from Heritage NZ, we need to move the fence to road level, below the wall. This change requires a variation to Condition 1 of RC29606.
8 – Fencing (page 5 of Appendix A)	Permitted - this fencing is located outside of the ONFL and therefore a permitted activity. The fencing is also located within the CERZ, but minor structures (such as fences) are permitted within this area, and within the Mauao Recreational Reserve Scheduled Site.

The proposed palisade fencing will be a maximum height of 1.8m, with the posts being 1.8m and the pickets in between being 1.5m high.

## 2. Resource Consents Required

A summary of resource consent requirements is outlined in the table below.

Section 88 reasons for consent - Tauranga City Plan

Rule/Provision	Complies/ Does Not Comply/Comment
<b>4C.5(b) – Earthworks</b>	Complies  Comment: No earthworks are required to install the items that are part of this proposal. To avoid earthworks and ground disturbing activities that would adversely affect the underlying archaeology, the Applicant proposes to install the structures using a ground screw system, with the exception of the fencing within area 5 that may be driven into existing post holes. This methodology is preferred

	<p>over the traditional digging, piling and concrete foundations. This methodology does not constitute earthworks as per the City Plan definition.</p>
<p><b>5A.4 and Table 5A.1: Status for Activities Within or Adjoining any Special Ecological Area</b></p>	<p>Complies for seating.</p> <p>Does not comply for fencing – Discretionary Activity (fence shown as item 5 in Figure 1 is within Category 2 SEA)</p> <p>Comment: Seating falls under the definition of “minor public recreational facilities and activities”. Minor public recreational activities are permitted in the Open Space Zone and therefore are permitted in the SEA. No vegetation removal is required to install the seating.</p> <p>Fencing falls under the definition of “minor structures and activities” in relation to Special Ecological Areas. Within a category 2 SEA minor structures are a Discretionary Activity. No vegetation removal is required to install the fencing.</p>
<p><b>6A.2 and table 6A.1 - Activity Status for Activities Occurring within the Outstanding Natural Features and Landscapes, Important Amenity Landscapes, the Coastal Environment Plan Area and the Mount Maunganui North Coastal Environment Plan Area</b></p>	<p>Complies for seating.</p> <p>Does not comply for fencing – Non-Complying Activity</p> <p>Comment: Seating falls under the definition of a “minor public recreational facilities and activities”, which is a permitted activity within the Open Space Zone and therefore a permitted activity as noted in Table 6A.1.</p> <p>Fencing doesn’t fall under the definition of a minor public recreation facility and would be considered a structure for the purpose of the rules in Chapter 6A. As such, the proposed fencing would be considered a building or structure on land zoned Open Space not otherwise provided for in Table 6A.1.</p>
<p><b>7C.5 and Table 7C.1: Historic and Heritage Activity Status – Significant Māori Areas.</b></p>	<p>Does not comply for seating – Restricted Discretionary</p> <p>Complies for fencing.</p> <p>Comment: Seating falls under “park furniture”, which is a RD activity and Fencing is a provided for under the definition of “Minor structures and Activities”, and therefore permitted.</p>
<p><b>7E.2 and Table 7E.1: Historic and Heritage Activity Status – Significant Archaeological Areas</b></p>	<p>Complies for seating.</p> <p>Complies for fencing.</p>

	<p>Comment: Seating and fencing both fall under the definition of "minor structures and activities" in relation to Significant Archaeological Areas.</p>
<p><b>13A.7 and Table 13A.1: Open Space Activity Status</b></p>	<p>Complies for seating.</p> <p>Complies for fencing.</p> <p>Comment: Minor public recreational facilities and new structures are permitted in the Conservation Zone.</p>

Section 127 variation required.

A fence at location 7 was previously consented as part of the Phase 3 placemaking consent (RC29606). Following feedback from Heritage New Zealand, the location of the fence needs to change from on the terrace, to the road level. This is to avoid effects on archaeology. The variation is illustrated in Figure 2 below.

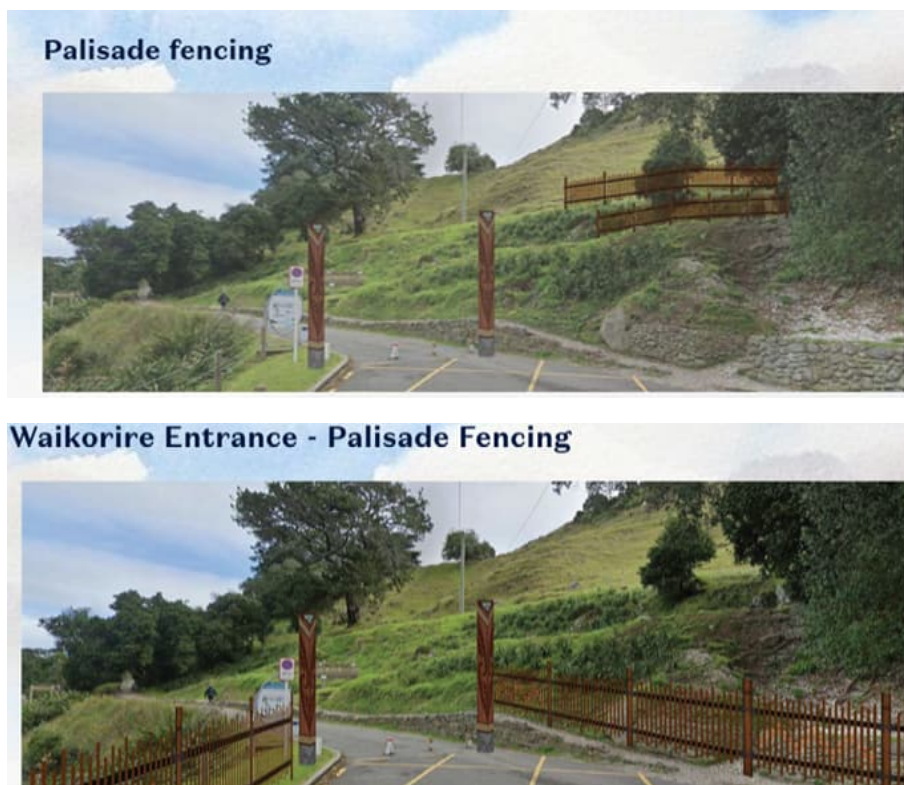


Figure 2: image showing the consented fence under RC29606 (top) and the proposed fence (bottom).

The purpose of having a fence in this location is to prevent people from climbing up the bank, causing erosion and damage to the hillside.

In summary, the following resource consents are applied for under s88:

- Under section 9(3)(a) of the RMA and Rule 5A.7(c) of the City Plan, for a Discretionary Activity being a new Minor Structure (fence) within a Category 2 Special Ecological Area as identified in Table 5A.1.
- Under section 9(3)(a) of the RMA and Rule 6A.6(b) of the City Plan, for a Non-Complying Activity being a new structure within an Outstanding Features and Landscapes Plan Area as identified in Table 6A.1.
- Under section 9(3)(a) of the RMA and Rule 7C.7(b) of the City Plan, for a Restricted Discretionary Activity being a park furniture within a Significant Māori Area as identified in Table 7C.1.

As all activities are inextricably linked, the Proposal is assessed as a non-complying activity in accordance with the bundling principle.

Variation under s127:

In addition to the above, the Applicant is also applying for a s127 application to vary Condition 1 of RC29606, to allow for an amendment to the fencing consented at the Pilot Bay Entrance. Pursuant to s127(3) of the RMA, this proposal is a Discretionary Activity.

National Environmental Standard for Assessment and Managing Contaminants in Soil to Protect Human Health 2011 (the NES-CS).

I have reviewed the most up-to-date information held by Tauranga City Council and the Bay of Plenty Regional Council, as provided for under Regulation 6(2) of the NES-CS, and I conclude that the Site is not a piece of land covered under Regulation 5(7) of the NES-CS.

### 3. Public Notification – Section 95A

To determine whether notification is required, the steps in sections 95A and 95B of the RMA must be followed, in the given order. The following is an assessment of the Proposal against these provisions of the RMA.

#### Step 1 – Mandatory Public Notification in Certain Circumstances

Public notification of an application for resource consent is mandatory under s95A(2) if it meets any of the following criteria contained within s95A(3):

Has the Applicant requested public notification?	No
Is public notification required under s95C due to the following? <ul style="list-style-type: none"> <li>• A request for further information has been made and that information had not been provided before the deadline or has refused the request (s95C(2)); or</li> <li>• Notice has been sent to the Applicant under s92(2)(b) of the commissioning of a report but the Applicant has either not responded before the deadline or has refused to agree to the commissioning (s95C(3))</li> </ul>	No

Is the application made jointly with an application to exchange recreation reserve land under section 15AA of the Reserves Act 1977?	No
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Public notification is not mandatory under Step 1 and s95A(2) on the basis that the application does not meet any of the criteria contained within s95A(3).

### Step 2 – Public Notification Precluded in Certain Circumstances

If public notification of an application for resource consent is not required under Step 1, it may be precluded under s95A(4) if it meets any of the following criteria contained within s95A(5).

Are all activities in the application subject to a rule in a Plan or National environmental standard that precludes public notification?	No
Is the application for one or more of the following (but no other) activities? <ul style="list-style-type: none"> <li>• A controlled activity; or</li> <li>• A “boundary activity” with a restricted discretionary, discretionary or non-complying activity status</li> </ul>	No

Public notification is not precluded under Step 2 and s95A(4) on the basis that the application does not meet any of the criteria contained within s95A(5).

### Step 3 – Public Notification is Required in Certain Circumstances

If public notification is not precluded under Step 2, public notification may be required under s95A(7) if it meets any of the following criteria under s95A(8):

Is any activity in the application subject to a rule in a Plan or national environmental standard that requires public notification?	No
Following an assessment carried out under s95D, has it been decided that the activity will have or is likely to have adverse effects on the environment that are more than minor?	No (see assessment below)

The following assessment will be split into an assessment of effects on the environment for the proposed new items (i.e. installations at locations 1 and 3-6) and a separate assessment for the varied fencing under s127 at location 7.

### Assessment of adverse effects of the proposal on the environment – new items

The proposal is to install seating and fencing at five specified locations within the Mauao Historic Reserve. Having regard to the relevant matters specific within the City Plan, I consider that the

proposal may generate adverse effects regarding ecology, natural character, landscape, and visual amenity and culture.

An assessment of adverse ecological, landscape character and visual amenity effects are set out below. Cultural effects are associated with specific groups (i.e. the iwi and/or hapu who have a connection to the land/site affected by the proposal), rather than affecting the wider environment. As such, an assessment of cultural effects will be provided for in the limited notified assessment in section 4 of this report.

### **Adverse Ecological Effects**

The proposed palisade fencing located at Waipatukakahu (shown as item/location 5 in figure 1) will be located partially within a Category 2 Special Ecological Area (SEA 32). Appendix 5A: Special Ecological Area Register identifies that this SEA contains numerous small areas of terrestrial vegetation (forest, tree land and scrub), generally on the lower southern and eastern slopes of Mauao. It contains examples of Pohutukawa forest, and two regionally uncommon plant species are present. This area is of significant wildlife value, as the Northern Little Blue Penguin breed here.

The area identified for the palisade fence within SEA 32 (location 5 in figure 1), is in a hilly grassed area used for grazing sheep. The proposed palisade fence will replace an existing post and wire fence that wraps around the back of Waipatutakakhu area, primarily to keep stock (sheep) out. No vegetation will be affected or removed by the proposed fence installation, and no earthworks required as the new fence will be installed with ground screws or posts driven into existing holes or the ground. No digging or excavation will be required to install the fence.

Adverse ecological effects on the environment are less than minor for the following reasons:

- The proposed fence will be situated in the same location as an existing post and wire fence, and therefore represents a low degree of modification within the SEA.
- Ground disturbance will be minimal due to the fence installation methodology (ground screws or driven posts).
- There will be no loss of vegetation, as the location of the fence is within a grazing area free vegetation. Vegetation located to the south of the fence (within the Waipatukakahu area) will be protected during construction. There will be some loss of grass where the fence posts are located, but this is negligible.

### **Adverse Landscape Character and Visual Amenity Affects**

This application is supported by a Landscape Visual Assessment prepared by s 7(2)(f)(ii) s 7(2)(f)(ii) Tauranga City Council. The following assessment is based on the findings of this Landscape Visual Assessment (LVA).

The LVA identifies the context of the site and its importance as a valued landmark in the region as well as its significance to Māori, and the important archaeological features that it contains. The LVA also acknowledges that this proposal is a continuation of the wider Mauao Placemaking Project and confirms that it is only the fencing that requires resource consent as a structure within the ONFL. As such, the LVA only assesses the proposed 1.8m high fencing in terms of landscape visual effects.

The LVA concludes that the proposal is considered an appropriate addition to Mauao's landscape. The expected landscape and visual effects are low-moderate, and that the proposal is consistent with the landscape values of Mauao and will contribute to the areas amenity without significantly

compromising its significance. Using the 7-point scale within the 'Te Tangi A Te Manu Aotearoa New Zealand Landscape Assessment Guidelines', a low-moderate landscape and visual effect can generally be translated as a minor adverse effect in RMA terms.

very low	low	low-mod	moderate	mod-high	high	very high
less than minor	minor		more than minor		significant	

Figure 2: 7-point effects scale from the 'Te Tangi a Te Manu: Aotearoa New Zealand Landscape Assessment Guidelines'.

In particular, landscape effects on the environment will be no more than minor for the following reasons:

- Mauao's landscape, with its ONFL status, is highly sensitive. However, the proposed palisade fencing is expected to have minimal impact. Its design ensures that it will not disrupt the natural terrain or other significant features and its scale ensures it remains a small-scale intervention within the broader landscape.
- Built elements such as fencing are compatible with the existing cultural features on Mauao, where similar structures are already present. As a result, introducing additional palisade fencing will not be interpreted as a significant departure from what currently exists.
- The palisade fencing also serves a functional role, offering protective benefits to areas of cultural significance, such as the terracing and planting near the water tank. These areas are more vulnerable to erosion or disturbance and the installation of fencing will enhance their preservation. By safeguarding these features, the fencing supports the integrity of the landscape while mitigating any potential environmental impacts.
- Overall, the proposal will not significantly alter the site's spatial qualities, such as expansive views or the sense of openness that characterises Mauao. Instead, it is believed that the palisade fencing will integrate into the environment in a manner that respects the natural terrain and ecological processes, while recognising the necessity for minor modification.

Visual effects of the proposal will be no more than minor on the environment for the following reasons:

- The visual catchment of the two areas where the new fencing is to be located is primarily defined by the walking tracks, beaches, harbour, and surrounding landscape. The most significant sightlines in relation to the proposal are those from the Te Ara Tūtanga (base track) and Motukauri walking tracks, as these areas are most likely to be impacted visually due to their proximity to the proposed palisade fencing.
- The design of the proposed palisade fencing has been conceived with visual permeability in mind. The spacing between the posts and pickets, along with the modest profile and dimensions of the pickets ensures that the fence allows for unobstructed sightlines through its structure.
- The colour palette has been selected to complement the existing seating and wayfinding signage suite in the area, ensuring that the palisade fencing integrates with the broader cultural elements and contributes to a cohesive visual character within the landscape.

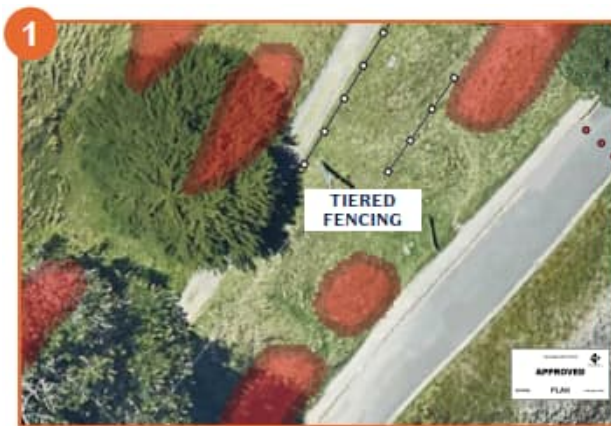
- the proposed fencing is expected to cause some noticeable visual effects. Users of the Te Ara Tūtanga (base) walking track, and particularly those on the Motukauri track, will directly interact with the additional palisade fencing near the water tank area where no fencing previously existed. In this location, the visual effect of the fencing will be more prominent as it introduces a new cultural element to the landscape. In contrast, the visual effect in the Waipatukakahu area is anticipated to be comparatively less significant, as an existing fence is already present and the proposed palisade fencing will be situated further from the viewer reducing its overall visual prominence.

### Landscape Visual Effects Conclusion

In conclusion, it is considered that the effects of the two fences within the ONFL will have low to moderate landscape visual effects. This is considered to mean that the proposal will have minor landscape visual effects and are acceptable due to the limited area and height of the fences, recessive/natural colours and materials, the permeability of the fence (spacing between posts), and the design of the fence being consistent with the other structures on Mauao, which have been installed through the Placemaking Project.

### Assessment of adverse effects of the proposal on the environment – variation (s127)

As noted, palisade fencing at location 7, which is the Waikorire Entrance at Pilot Bay, was consented as part of the Phase 3 placemaking project (RC29606). The plans referred to in Condition 1, show a two-tier fence on the hillside above the road (see image below):



Fencing in this location is required to prevent people from climbing up the hill, which causes erosion and damage to the hillside. There are heritage/archaeological features in this area, and the fencing will help to protect these special features.

It is considered that the change in the location of the fence will have less than minor adverse effects on the environment and will have less than minor adverse effects in terms of landscape character and visual amenity. The area in which the fence is located is within an ONFL.

Beca provided a Landscape Assessment<sup>1</sup> as part of the Phase 3 consent (RC29606). Section 3.4.1 of this report outlines the values of the Waikorire Entrance site. It is noted that the palisade fencing is located low down on the maunga and close to the urban environment, meaning that these elements will be readily visible, but viewed in the context of the adjacent urban environment and the grazed pasture hillslopes of the eastern side of the maunga above. Furthermore, section 5.1.2 of the assessment states *“The natural character of the immediate site is low, due to the high level of modification associated with the sealed vehicle access land, carpark, other adjacent local road, prevalence of exotic grasses on the embankment, and the proximity to the urban environment of Mount Maunganui township”*. The assessment concludes that given the low ‘baseline’ the effects of the proposed palisade fencing on natural character will be very low. The below image represents a fence in the consented location under RC29606.



The change in palisade fencing location and layout in the Waikorire Entrance site is also considered to have a very low impact on natural character. Bringing the fence down to the road level will mean that the fence is seen within the modified urban area of the site and will result in less than minor adverse effects on landscape character and amenity of the area. The proposed location of the fence is illustrated within the below image.

<sup>1</sup> Mauao Placemaking Improvements, Landscape Assessment, Beca, dated 11 December 2022.

## Waikorire Entrance - Palisade Fencing



The change, or the new location of a palisade fence on either side of the access road, has been assessed by s 7(2)(f)(ii) within the LVA appended to this application. The conclusions of this assessment are that the fencing would have low landscape and visual effects on the environment.

In conclusion, the proposed change will have less than minor adverse effects on the environment.

### Step 4 – Public Notification in Special Circumstances

If public notification is not required under Steps 2 or 3 it must be determined whether special circumstances exist that warrant public notification of an application.

Do special circumstances exist that warrant public notification?	No
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As I understand it, the main consideration that should determine whether special circumstances exist with respect to giving notification, is whether public notification (as opposed to limited notification) might elicit additional information which would inform the decision.

In this case, the effects of the Proposal are well understood, and it is considered that there are no special circumstances that would warrant public notification.

## 4. Limited Notification – Section 95B

Section 95B sets out a step by step process to determine whether limited notification of an application is required or precluded in certain circumstances. The following is an assessment of the Proposal against these provisions of the RMA.

### Step 1 – Mandatory Limited Notification to Certain Affected Groups and Affected Persons

Limited notification of an application of a resource consent to certain groups and persons is mandatory under s95B(4) if it meets any of the following criteria contained within s95B(2) and (3):

Are there any affected protected customary rights groups (refer to s95F)?	No
Are there any affected customary marine title groups with regard to a consent application for an “accommodated” activity as defined in the Marine and Coastal Area (Takutai Moana) Act 2011 (refer to s95G)?	No
Is the proposed activity on or adjacent to, or could it affect, land that is the subject of a statutory acknowledgement made in accordance with an Act specified in Schedule 11?	Yes
If the land affects or could affect land that is subject to a statutory acknowledgement, is the person(s) to whom the statutory acknowledgement is made an affected person under section 95E?	No

Mauao is located within the Statutory Area of Interest of Waitaha as shown in Appendix 2A.2 of the City Plan, and is located adjacent to the CMA, that is the subject of a statutory acknowledgement made in accordance with the Waitaha Claims Settlement Act 2013.

In accordance with section 32 of the Waitaha Claims Settlement Act 2013, Waitaha Iwi was provided with a summary of the Application. On 16 January 2025, Waitaha provided a letter of support to the project. This letter is contained in Appendix C.

It is not considered that limited notification is necessary under Step 1 and s95B(4) on the basis that the application does not meet the criteria contained within s95B(2) or (3).

## Step 2 – Limited Notification Precluded in Certain Circumstances

If none of the persons or groups in sections 95B(2) to (4) are affected, then s95B(5) precludes the limited notification of an application if it meets either of the following criteria contained within s95B(6):

Are all activities subject to a rule or national environmental standard that precludes limited notification?	No
Is the application for a controlled activity, but no other activities, that requires consent under a district plan (other than a subdivision of land)?	No

Limited notification is not precluded under Step 2 and s95B(5) on the basis that the application does not meet the criteria contained within s95B(6).

## Step 3 – Certain Other Affected Persons Must be Notified

If an application does not meet the criteria in section 95B(6), consideration of the provisions in s95B(7) and (8) must be given to determine whether other persons are affected (in terms of s95E) and therefore must be notified in accordance with section 95B(9) of the RMA.

Section 95E(1) of the RMA states that a person is an “affected person” if the consent authority decides that the adverse effects of the activity on a person are minor or more than minor (but are not less than minor).

## Section 95E Assessment of Affected Persons

This resource consent application has been made on behalf of the Mauao Trust. The Mauao Trust is made up of representatives of Ngai Te Rangi, Ngati Ranginui and Ngati Pukenga, who speak on behalf of their iwi and respective hapu. This arrangement is noted in the Mauao Trust Deed. A letter of support of the proposal has been provided by the Mauao Trust (see Appendix B).

Appendix 7B of the City Plan sets out the values of the Significant Maori Area covering Mauao. The description identifies that Mauao is Tapu, and sacred to the iwi of Tauranga Moana. This section of the City Plan also identifies that the iwi/hapu that are connected to Mauao are Ngai te Rangi, Ngati Ranginui, Ngati Pukenga, and Waitaha. Apart from Waitaha, the other three iwi are represented by the Mauao Trust and have provided written approval to the proposal. Written approval has also been provided by Waitaha (see Appendix C).

The letters of support from the iwi associated with the Significant Maori Area demonstrate that there are no affected parties to this application.

In terms of the s127 variation, it is noted that RC290606 was processed on a non-notified basis. As such, there are no persons that need to be considered affected who were involved/submitted on RC290606.

### Step 4 – Further Notification in Special Circumstances

If limited notification is not required under Steps 1, 2 or 3 it must be determined whether special circumstances exist that warrant limited notification of an application.

Do special circumstances exist that warrant limited notification?	No
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As the effects of the Proposal are well understood, and it is considered that there are no special circumstances that would warrant limited notification.

## 5. Non-Complying Activity Gateway Tests - Section 104D

Section 104D provides an additional layer of scrutiny to the consideration of applications for Non-Complying Activities. Under section 104D an application must pass one of the two following gateway or threshold tests to be eligible for approval:

- Under section 104D(1)(a) the effects of an activity on the environment (excluding those effects to which a written approval has been provided) must be no more than minor; or
- Under section 104D(1)(b) the application must be for an activity that is not contrary to the relevant objectives and policies of a District Plan or proposed District Plan.

Having considered these tests, it is considered that the application meets both of the gateway tests on the basis that the activity will have effects on the environment that are less than minor (i.e. no more than minor) and the activity is not considered to be contrary to the relevant objects and policies of the City Plan. An assessment of effects as well as an assessment of the proposal against the

relevant objectives and policies of the City Plan is provided in the section 6 and 7 below. As such, consideration of the application under section 104 can be made.

## 6. Actual and Potential Environmental Effects – Section 104(1)(a)

The actual and potential environment effects of the proposal are acceptable for the following reasons:

- In terms of cultural effects, the proposal is supported by tanagata whenua. The Mauao Trust who represent the Tauranga Moana iwi and hapu have been involved in the design and planning of the proposal, and have provided written confirmation of their support of this proposal. Furthermore, Waitaha have provided a letter of support. Given this, it is considered that cultural effects will be acceptable.
- Ecological effects on the environment are acceptable because the proposed fence will be situated in the same location as an existing post and wire fence, ground disturbance will be minimal due to the fence installation methodology, and there will be no loss of vegetation. Vegetation located to the south of the fence (within the Waipatukakahu area) will be protected during construction. There will be some negligible loss of grass where the fence posts will be located, but overall it is considered that the proposal will have a low degree of modification, with minimal damage or loss of vegetation within the SEA.
- In terms of landscape visual effects, the LVA confirms that the effects of the fences within the ONFL will have low to moderate landscape visual effects. This is considered to mean that the proposal will have minor landscape visual effects and are considered to be acceptable due to the limited area and height of the fences, recessive/natural colours and materials, the permeability of the fence (spacing between posts), and the design of the fence being consistent with the other structures on Mauao, which have been installed through the Placemaking Project. Furthermore, the fencing proposed within Waikorire Entrance area is within a modified environment with very low natural character. As such, the amended fence location and layout in this area will have acceptable effects on the environment.

It is recommended that a condition of consent be included that requires the finalised design of seating to be provided prior to construction to demonstrate general compliance with the designs indicated within the plans. As the final designs are yet to be provided, we require some flexibility in terms of detailed design, however the location and general sizing and materials will be as per the plans submitted with this application. The fencing will be as per the plans provided.

- The proposal will have positive cultural effects. The project enables the history and significance of Mauao (as a significant Māori site) to be told, and for the significance of the site to be portrayed and appreciated by all.

## 7. Relevant Provisions of Statutory Documents – Section 104(1)(b)

## Relevant Provisions of the Tauranga City Plan

Provision Reference	Objective/Policy Summary	Assessment
Policy 5A.3.2.2 – Maintaining and Enhancing Special Ecological Areas (Category 2)	maintaining and enhancing the particular factors, values and associations that make an area a Special Ecological Area (Category 2), from the adverse effects of inappropriate subdivision, use and development	The proposal includes a palisade fence within a Category 2 SEA. The proposed fence will replace an existing post and wire fence in this location. Therefore, the degree of modification will be low. The installation of the fence will have minimal ground disturbance and requires no vegetation removal. There proposal is therefore considered to be consistent with this policy.
Objective 6A.1.1 and Policy 6A.1.1.2 – Protection of Outstanding Natural Features and Landscapes	The factors, values, and associations that define the City's outstanding natural features and landscapes are identified and protected from inappropriate use and development.	The factors, values, and associations of Mauao will be protected from inappropriate use and development. The proposal is appropriate due to the low impact of the landscape. The installations tie in with the previous placemaking installations in terms of design and materials, and the items are designed to site within the environment without detracting from it. As such, I consider the proposal to be consistent with this policy.
Objective 7C.4.2 and Policy 7C.4.2.1 – Protection of Group 1 Significant Māori Areas	The values of Group 1 Significant Māori Areas, identified in accordance with the criteria in 7C.4.1.2 Policy – Grouping Significant Māori Areas, are protected from the adverse effects of subdivision, use and development.	The proposal is supported by the iwi/hapu who have associations or connections with Mauao. The Mauao Trust seek to protect and care of Mauao. The proposed installations are designed to be sympathetic to the area and enhance the site. The proposal is therefore consistent with these objectives and policies.
Objective 13A.5.1 and Policy 13A.5.1.1 – Maintenance and Enhancement of Conservation Values	The natural character, ecological and conservation values of the City's Conservation Zone land is maintained and enhanced.	The proposed installations have been designed to be sympathetic to the site, with particular regard to the landscape and cultural significance to the Reserve. The findings of the LVA, coupled with the support from relevant iwi means that the proposal will be consistent with this objective and policy.

## Bay of Plenty Regional Policy Statement

Provision Reference	Objective/Policy Summary	Assessment
Policy IW 2B	Recognising matters of significance to Māori	Iwi have been involved in the planning, design and deliver of

Policy IW 3B	Recognising the Treaty in the exercise of functions and powers under the Act	<p>the Mauao Placemaking Project through the Mauao Trust. The proposal is a continuation of this project, and one that the Trust have supported.</p> <p>In terms of adverse effects on matters of significance to Maori, it is acknowledged that Mauao contains numerous archaeological and cultural sites of significance. Ground screws will be used to install the structures to avoid excavation and damage to the sensitive landscape.</p>
Policy IW 4B	Resource management decisions have regard to iwi and hapu resource management planning documents	
Policy IW 5B	Adverse effects on matters of significance to Maori	
Policy IW 6B	Encourage tangata whenua to identify measures to avoid, remedy or mitigate adverse cultural effects	
Policy IW 7D	Cultivating partnerships between iwi and statutory management agencies	

## New Zealand Coastal Policy Statement

Provision Reference	Objective /Policy Summary	Assessment
Objective 2	Preserve natural character and protect natural features and landscapes	The proposal will preserve natural character and protect natural features and landscapes through design.
Objective 3	To take account of the principles of the Treaty of Waitangi, recognise the role of tangata whenua as kaitiaki and provide for tangata whenua involvement in management of the coastal environment	The Treaty is at the heart of this proposal, with tangata whenua being involved in design and delivery of the project.
Policy 1	Extent and Characteristics of the coastal environment	Mauao is located within the coastal environment.
Policy 2	Take account of the principles of the Treaty of Waitangi (Te Tiriti o Waitangi), and kaitiakitanga, in relation to the coastal environment.	The Proposal is consistent with this policy. Tangata whenua have been involved in the project, and the fundamental purpose of the Proposal being to tell the stories of the history of this important heritage sites, including Māori cultural heritage.
Policy 6	Activities in the coastal environment	Only subclause (1)(h) is relevant. In this regard the Proposal is consistent with this subclause, and this policy overall, on the basis that consideration has been had of how adverse visual effects can be avoided. The final design reflects this.
Policy 11	Indigenous biological diversity	I consider that the Proposal is consistent with this policy. No vegetation is affected or required to be removed.
Policy 13	Preservation of natural character	The proposal does represent a change to the existing environment. However, due to the

		location of the works, the design and the materials, and recognising that human modification has previously occurred across Mauao, adverse effects on the natural character are avoided.
Policy 15	Natural features and natural landscapes	The proposal does represent a change to the existing environment through the installation of new structures. However, due to the location of the works, the design and the materials, and recognising that human modification has previously occurred. across Mauao, it is considered that the effects are acceptable and the proposal is consistent with this policy.

## 8. Other Matters – Section 104(1)(c)

There are no applicable other matters that are relevant and reasonably necessary to be considered in the determination of this application.

## 9. Part 2 of the RMA

Those aspects of the Tauranga City Plan relevant to this application have been “competently prepared under the Act”, in the sense referred to by the Court of Appeal<sup>2</sup>. There is therefore no obligation to conduct an evaluation under Part 2 of the Act, and Part 2 considerations should not be used to override the plan provisions.

<sup>2</sup> R J Davidson Family Trust v Marlborough District Council [2018] NZCA 316, paras 74 and 75.