

Chapter 10 (Heritage) Hearing Notes

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1. Background to the Section 42A Report

- 1.1 Chapter 10 (Historic Heritage) of the proposed district plan covers the control of development which would affect listed buildings, structures, areas, trees, and waahi tapu sites. However, in terms of reporting and hearings, waahi tapu matters have been separated from the other heritage matters and will be addressed at a hearing currently scheduled to take place on 28 September.
- 1.2 This separation of waahi tapu matters reflects a separate workstream in which parties with a direct interest in waahi tapu land are being consulted, and where technical reporting is taking place. The focus on waahi tapu matters is intended to help affected property owners better understand and appreciate district plan outcomes in light of the technical reports. The consultation and reporting is still ongoing.
- 1.3 This section 42A report therefore excludes responding to any submissions on waahi tapu matters, as they will be addressed in the s42A report for the 28 September hearing. An exception to this separation is Policy 10.10, which relates to waahi tapu as an overall issue but is not specific to any one particular site. I have addressed that policy in the report, to allow the hearings panel to see it in the context of the overall suite of policies.
- 1.4 Recommendations are made with regard to the policies and rules of Chapter 10. However, some matters raised in these submissions also have relevance to specific provisions of other PDP chapters, and also to the urban tree variation. Where relevant, recommendations have therefore been made in relation to those chapters or the variation. Recommendations made in the Chapter 10 s42A report will be factored into the section 42A reports for other relevant chapters.
- 1.5 Section 2.1 of the s42A report provides an overview of why the district plan includes provisions related to historic heritage. I consider it useful to repeat that section here, as it provides the context in which provisions have been developed. Section 2.1 (paragraphs 23 and 24) reads:

23. The management of historic heritage directly contributes to the purpose of the RMA by managing natural and physical resources that enable people and communities to provide for their social, economic, and cultural wellbeing, and health and safety. Historic heritage is important to the way the District's communities are shaped economically, aesthetically and culturally. As a finite resource, historic heritage contributes to the well-being of the Community by providing opportunities for cultural awareness, local character and identity, a sense of place and economic development. Furthermore, historic heritage contributes to the character and landscape (in particular cultural landscapes) values of the District's places.

24. The RMA specifically refers to historic heritage as a matter of national importance (section 6(f) RMA). In addition, heritage contributes to "other matters" under section 7 of the RMA including section 7(c) and 7(f), which deal with amenity and environmental quality. Being a finite resource, section 7(g) is also important. The cultural relationship of Māori to historic heritage is relevant under sections 6(e), 7(a) and 8. Aside from waahi tapu, which is addressed by

a separate section 42A report, many of the scheduled heritage items and notable trees are linked to the District's strong Māori heritage.

1.6 The matters set out in this statement of context were also noted in the section 32 report which I had regard to when analysing submissions and preparing the s42A report.

2. Structure of the s42A Report

2.1 The s42A report includes an introduction and a statutory section. The statutory section sets out how historic heritage fits within the framework of the Resource Management Act, Regional Policy Statement, and NZ Coastal Policy Statement. The starting point for heritage provisions in the district plan is the fact that the RMA identifies *“the protection of historic heritage from inappropriate subdivision, use, and development”* as a matter of national importance [RMA s6(f)].

2.2 A total of 29 submissions (comprising 88 submission points) and 70 further submissions were received. For the sake efficiency and to achieve an integrated consideration of related submissions, the report takes a topic based approach rather than addressing matters submission by submission. As a result, section 3 of the report is broken down into 24 sub sections (topics), each with its own assessment and recommendations. The topics relate to: the policies; accidental discovery protocol; the archaeological alert layer; the schedules of heritage sites, buildings and notable trees; clarification of terms; and the content and approach of the proposed rules.

2.3 Section 4 of the report shows each of the recommended amendments in the context of a marked up version of Chapter 10. Section 5 of the report is a table which sets out the responses to each of the numbered submission points that were assigned by Council in its 2013 summary of submissions.

2.4 An important aspect which was missed in the statutory section of the s42A report is the relationship between district plan heritage matters and the Heritage NZ Act. The relevance of the Heritage NZ Act is referred to at various places elsewhere in the report but, for the sake of clarity, I will now summarise the significance of that Act, and its relationship to the RMA framework.

- Heritage NZ (HNZ) is charged with promoting the identification, protection, preservation, and conservation of NZ's historical and cultural heritage.
- HNZ is required to establish and maintain a list (the NZ Heritage List / Rārangī Kōrero) of historic places, historic areas, wāhi tūpuna, wāhi tapu, and wāhi tapu areas.
- The entries on that list must be graded as either Category 1 or Category 2.
- Category 1 items are places of “special or outstanding ... significance or value”. Category 2 items are places of “significance or value”.
- HNZ is required to supply the information on the list to territorial authorities.
- The District Council “shall have regard to” that information when preparing its district plan. [RMA s74(2)(b)(ia)]
- HNZ may make recommendations to local authorities about appropriate measures related to conservation and protection of heritage areas or of wāhi tapu.
- Local authorities must have “particular regard” to those recommendations from HNZ.
- An “authority” (consent) is required from HNZ if any activity is likely to modify or destroy pre-1900 archaeology.
- HNZ can take steps to prevent works that have no authority and which may modify or destroy pre-1900 archaeology.

- 2.5 The wording of the Heritage NZ Act is that an archaeological authority must be obtained where it is 'known or suspected' that a pre-1900 site of human activity would be affected. The Act overrides anything in the district plan and must be complied with. In deciding whether or not a site might be 'known or reasonably suspected' of being an archaeological site, there are various potential sources of information. These include Schedule 10.1 of the district plan (historic heritage features), the NZ Archaeological Association records of sites (accessible via their website), the alert layer which currently exists on the proposed district plan maps, or the knowledge of iwi. Heritage NZ is responsible for deciding whether an application for an archaeological authority is necessary in any specific case.

3. Relationship to Other Chapters

- 3.1 In several instances the s42A report makes recommendations that relate to other chapters or processes of the Council. These are:
- The addition of a new definition ("repairs and maintenance") to Chapter 1.
 - The transfer of Rule 10A.3.3 to Chapter 12, because it deals with signs.
 - An amendment to the definition of "trimming" in the urban tree variation.
 - The use of the 'archaeological alert' maps as a publicly accessible (via the internet) layer of information on the Council's geographic information system (GIS).

4. Key Submission Topics

- 4.1 The key topic areas for the Chapter 10 (Historic Heritage) hearing are identified in paragraph 2.1 above. The following paragraphs of my evidence discuss these topics in more detail.

Historic Heritage Policies

- 4.2 Each of the historic heritage policies received submissions, and the s42A report deals with these on a policy by policy basis. The views about policy expressed by submitters are varied, but some broad themes include:
- General support of the built heritage policies by Heritage NZ and Greater Wellington Regional Council – subject to various requests for clarification / amendment.
 - General opposition to many of the policies by a group of submitters (collectively referred to in the s42A report as "the Land Matters submitters"). The concern of these submitters is that the policies would, in combination, result in significant regulatory costs to resource consent applicants.
 - General opposition to many of the policies by another group of submitters, on the grounds that affected landowners should not be 'taxed' unfairly for a measure that benefits the wider community. These submitters seek the inclusion of a rule to establish a right for injuriously affected land owners to be compensated.
 - Concerns about unidentified historic heritage and how that is addressed by the policies and other aspects of the district plan. This concern is linked to the 'alert layer' of mapping proposed in the plan, and the accidental discovery protocol (Schedule 10.2).

Accidental Discovery Protocol

- 4.3 The proposed district plan includes an accidental discovery protocol as Schedule 10.2. In effect it would formalise the 'stop work and notify' process which is typically referenced in resource consent conditions. Submitters – including Heritage NZ,

GWRC, and land owners – had concerns about how this was expressed and the implications of including it in the district plan.

- 4.4 Among other things, the use of an accidental discovery protocol links to the statutory processes managed by Heritage NZ. The section 42A report therefore identifies the need for the district plan to be clearer about those processes and how they link to the district plan and the need for resource consent. To address that need for clarity, the s42A report recommends a complete re-wording of Schedule 10.2.

Archaeological Alert Layer

- 4.5 The proposed district plan uses an ‘archaeological alert layer’, being a mapped area which covers significant parts of the District. The alert layer is based on a predictive model for determining the likelihood of archaeological sites being present in any given area. There is no link to rules, simply an explanatory statement that *“the Council will promote close cooperation with the New Zealand Historic Places Trust in relation to the archaeological authority process through the use of an Archaeological Alert Area and will include the archaeological advice notes in resource consent processes requiring accidental discovery protocols to be followed”*.
- 4.6 Despite its intention to be informative, the alert layer is source of concern to some submitters. The s42A report recommends that it be removed from the planning maps but still be available for public access via the Council’s GIS system.

Scheduled Items

- 4.7 Chapter 10 includes schedules that list 120 sites / buildings, and 126 trees. Of the 120 sites / buildings, 28 are items on the New Zealand Heritage list. Seven of those 28 items are Category 1, and 21 are Category 2. All of the sites / buildings and trees in the operative District Plan have been carried over into the PDP. Only two new buildings have been added, being B118 – Casa Esperanza, and B120 Stringer Wind Rain House. The other proposed addition to the list is B119, the Kāpiti Women’s Electoral Lobby Suffrage Centennial Garden. I understand that it is the Council’s policy to only include specific items on the schedule if the owner of the land agrees.
- 4.8 Submissions were received on a number of the scheduled sites, buildings and trees. In addition to the two proposed new buildings and the suffrage gardens, other submissions sought minor amendments to correct errors in the listing.
- 4.9 Since preparing the s42A report I have identified several Category 2 items listed by Heritage NZ which do not appear in the Chapter 10 schedule. These are:
- A house at 69 Taylors Road, Otaki (Relocated from 66-68 Weraroa Street).
 - Raised rim pits, Paekakariki Hill Road (Lot 1 DP 368307).
 - Union Parish Church (former), 20-24 Reikorangi Road.
- 4.10 It is unclear to me why these have been excluded from the Chapter 10 schedule. I have asked Heritage NZ for clarification about the status of those items and anticipate that this will be addressed in their evidence today.

Clarification of Terms

- 4.11 A number of the submissions sought clarification of terms used by the district plan. The s42A report responds to these submissions under the applicable rules. Examples of existing or new terms touched on by the report include “partial demolition”, “repair and maintenance”, alterations”, “additions”, “land disturbance”, “earthworks”, and “minor work”.

Proposed Rules

- 4.12 Many of the historic heritage rules received submissions, and the s42A report deals with these on a rule by rule basis. The views about rules expressed by submitters are varied, but two broad themes emerged:
- Greater clarity is needed around the use of language as it influences the effect of particular rules, including the matters referred to in “clarification of terms” above.
 - What degree of physical affect should trigger restricted, fully discretionary, or non-complying activity status?

5. Matters Resolved

- 5.1 Several submitters, on reading my report, have advised in writing (copies of the emails/letters have been provided to the panel) that they either: support the report recommendations in respect of their submission points; or they no longer have an interest in the heritage provisions. These submitters include:
- Transpower (not appearing)
 - Bunnings (not appearing)
 - Greater Wellington Regional Council (appearing)

6. Matters still to be resolved

Land Matters Limited, Submission and Evidence

- 6.1 You will receive evidence today from Land Matters Limited, on behalf of a group of nine submitters. I have read the Land Matters evidence and the following paragraphs are in response to some of the main points raised.
- 6.2 Land Matters seeks to amend several policies so that they refer to only “significant” heritage. Paragraph 4.2 of the submitter’s evidence states that this relief is sought so that:
- “there are no additional burdens beyond the legislative requirements imposed upon them”.*
- 6.3 In determining what those legislative requirements are, the submitter considers that the district plan is inconsistent with the Regional Policy Statement. The RPS, via Policies 20 and 21, refers to “significant” historic heritage values. The submitter states that the district plan should therefore confine itself only to historic heritage which has been identified as significant.
- 6.4 I agree that the RPS only refers to “significant” historic heritage. However, in my opinion, this is entirely consistent with the regional council’s role under RMA section 30(1)(b). That is: *“the preparation of objectives and policies in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance.”* [emphasis added]
- 6.5 The limitation to matters of significance at a regional level does not extend to a district council in its functions as set out by RMA section 31. With respect to historic heritage the Council must therefore be consistent with the RPS, but also of course with the wider direction under section 6(f) of the RMA. That is, historic heritage – without any limitation – must be addressed as a matter of national importance. In my opinion, the district plan is therefore free to include provisions that address historic heritage,

whether or not a heritage item has national, regional, or district significance. I therefore reject the need to rephrase any provisions so that they only deal with “significant” heritage.

6.6 The submitter takes issue with Policy 10.3 which states that any item listed on the New Zealand Heritage List will be automatically included on the district plan’s schedule of historic heritage. I agree with the submitter that the legislation does not require NZ Heritage List items to automatically be included in the district plan. I consider that the policy should be amended to reflect that fact. However, I note that there have been no submissions against specific NZ Heritage List items being included. I therefore conclude that the NZ Heritage List items, as they currently stand, are a valid and accepted source for inclusion in the district plan schedule.

6.7 If Policy 10.3 is to be amended, I recommend that the following changes are made:

Policy 10.3 – Additional listings for the Schedule of Historic Heritage

In addition to the criteria set out in Policy 10.2, the following *historic heritage* within the District shall be had regard to when listing ~~listed~~ in the Schedule of *Historic Heritage*:

- a) ~~Items listed on the New Zealand Historic Places Trust Rarangi Taonga: the Register of Historic Places, Historic Areas, Wahi Tapu and Wahi Tapu Areas~~ Heritage List Rārangi Kōrero.

The following *historic heritage* within the District shall be listed in the Schedule of *Historic Heritage*:

- b) ~~Places subject to a Heritage Order under the Historic Places Act 1993~~ Heritage New Zealand Pouhere Taonga Act 2014.
- c) ~~Historic heritage protected by a consent notice issued under Section 221 of the Resource Management Act 1991~~ RMA.
- d) ~~Historic heritage~~ items specifically identified in the Regional Policy Statement or Regional Plans.

6.8 The effect of the wording change is to make the NZ Heritage List a *consideration* when deciding on the items to include in the district plan schedule, rather than an automatic trigger. Clauses 10.3(b), (c), and (d) would remain as triggers for automatic inclusion, as they relate to items that have been subject to ‘higher order’ processes of identification.

6.9 Notwithstanding the proposed wording changes to reflect the legislation, I consider that Category 1 and 2 items on the NZ Heritage List should typically flow through to inclusion in the district plan. The items on the List are subject to a statutory process of assessment and recommendation, and have not been placed there on an ad hoc basis. There is therefore a strong case for them to also have district plan protection.

6.10 At paragraph 4.5, the submitter says there is no obvious hierarchy created by Policies 10.4, 10.5, and 10.7. I disagree, and note that some confusion on this matter may have been created by my re-numbering of policies. In summary, the hierarchy is as follows (showing original / re-numbered policies):

- Policy 10.5 / 10.4: This is a general policy stating that subdivision, development and land use will managed to protect historic heritage. The other two policies flow from this general statement.

- Policy 10.6 / 10.5: This policy is specific to modification or use of items on the schedule. It sets up assessment criteria related to *modification* (Part A), and assessment criteria related to *use* (Part B). The criteria help establish the circumstances in which modification or use may be appropriate. It is the basis for rules which permit or otherwise manage modification / use.
- Policy 10.8 / 10.6: This policy is specific to demolition, partial demolition, destruction, and relocation. It requires avoidance of demolition, partial demolition, destruction for scheduled Category 1 and 2 items. It also requires avoidance of relocation for Category 1 items. It requires minimisation in all other cases, for any item on the district plan schedule.

6.11 In addition, Policy 10.9 (now 10.7) requires avoidance of inappropriate subdivision.

6.12 On another matter, the submitter seeks the deletion of Policy 10.5 (previously 10.6) clause B(d), stating that it is not necessary as Policy 10.7 (previously 10.9) deals with subdivision. I agree with this point.

6.13 The submitter seeks to amend Policy 10.5 (previously 10.6) clause C(e), by minimising the role of Heritage NZ in favour of advice obtained from an independent heritage expert. In my opinion, the Policy is currently balanced and allows the council to consider advice from both Heritage NZ and independent experts. I do not agree that revising Heritage NZ's role as requested would be a good outcome.

6.14 The submitter seeks deletion of reference in Policy 10.5 clause C(g) to the ICOMOS principles (or setting the principles out in full). The reason given for this is that the district plan "*should be able to stand alone in terms of its provisions*". I agree that the ICOMOS Charter is only a guidance document, which is why it is referenced in clause C as one of the matters for "consideration". A possible amendment to address the matter raised by the submitter would be to rephrase clause C to read: "Consideration ~~will~~ may also be given".

6.15 The submitter objects to the words "*and its surroundings*" in Policy 10.7 (previously 10.9). This wording allows the surroundings of a heritage item to be taken into account when considering subdivision. The submitter states that "*this policy is outside the legislative framework*". I disagree with that view, given that the RMA's definition of historic heritage includes "*surroundings associated with the natural and physical resources*" which comprise any item of heritage under consideration.

6.16 The submitter proposes that Policy 10.12 (Voluntary and non-regulatory methods) be amended to encourage landowners and the Council to work in partnership on the protection of historic heritage. In stating this case, the submitter says that "*landowners are much more likely to come on board if Council looks to take into account the benefits of voluntary protection at the time of considering a resource consent application for example. This is a win win solution that is currently not provided for in the Proposed District Plan*". The submitter goes on to propose a substantial amendment of Policy 10.12 to give effect to the desired outcomes. The amended policy would read:

Policy 10.12 – ~~Voluntary and non-regulatory methods~~ Facilitating the voluntary protection of historic heritage

"The protection of historic heritage will be facilitated and encouraged by use of both regulatory and voluntary and non-regulatory methods as follows:

- a) The benefits of land uses will be taken into account when making a decision on a resource consent application where they meet the assessment criteria of Policy 10.5 and where it facilitates the voluntary protection of historic heritage;
- b) The benefits of subdivision will be taken into account when making a decision on a resource consent application where it meets the assessment criteria of Policy 10.7 and where it facilitates the voluntary protection of historic heritage;
- c) Support is provided for landowners who are looking to maintain and protect historic heritage with significant values, where it is located on their land”

- 6.17 I am in agreement with the submitter’s general intentions, as they are consistent with other aspects of the policies. For instance, the s42A report recommends a change to Policy 10.6 to bring in the consideration of economic viability. The s42A report recommends a change to Policy 10.5 to allow the consideration of less than minimum sized subdivision. In both cases, decisions could be made to facilitate practical outcomes for both heritage and landowners. Whether or not the suggested wording in (c) above is acceptable to Council is ultimately a political decision, as it implies outcomes such as funding or rates relief. Specifics aside, I endorse ‘support’ in general, as one of a range of possible methods to encourage heritage protection.
- 6.18 The submitter objects to the proposed approach to unidentified historic heritage. The specific provisions are policies 10.9 and Schedule 10.2. In summary, the submitter’s position is that any reference to an alert layer brings a risk of undue to cost to landowners. The submitter’s position is that the risk will arise regardless of whether the alert layer exists in the district plan or on the Council’s GIS system (as has been recommended). Where land is covered by the alert layer, the assumption is that an archaeological authority will always be required by Heritage NZ, and there will be significant attendant costs in preparing an application for an authority and in carrying out any investigative work related to the authority.
- 6.19 The proposed archaeological alert layer does cover large areas of the District. The section 42A report recommends that it should be removed from the planning maps, but remain in existence as a publicly available resource via the Council’s GIS system. The submitter (and the s42A report) notes that the alert layer has an inherent margin of error. I understand that the potential for archaeological sites within the alert layer varies from low to medium-high, but that distinction was not made on the planning maps.
- 6.20 The requirement for an archaeological authority to be sought arises under the Heritage NZ Act, and is enforceable by Heritage NZ. It is not a district council requirement. The Heritage Act requires an archaeological authority where an archaeological site is ‘known or reasonably suspected’ [HNZ Act, s42]. Given the district’s well known history of long and intensive occupation by Māori, I think that archaeological sites can be ‘reasonably suspected’ in many locations. The requirement to obtain an authority will therefore likely exist regardless of what is said in the district plan, or the existence of an alert layer.
- 6.21 Despite that, I consider that the district plan should seek to integrate historic heritage management where possible. That is the approach I have taken in the s42A report, in particular seeking to clarify via Schedule 10.2 the relationship between Council and Heritage NZ functions with regard to unidentified historic heritage. How Heritage NZ then enforces the ‘known or reasonably suspected’ requirement is a matter of law and its own policies.
- 6.22 I acknowledge that this situation may impose costs on landowners, but I doubt that the amendments sought by the submitter will change those outcomes. I therefore reject

the relief sought by the submitter. The only potential solution that I can suggest is for the Council and Heritage NZ to collaborate on a report to the hearings panel, setting out options for addressing the issues in a way that tries to balance certainty of implementation, protection of heritage, and reduction of cost and regulatory risk for landowners.

Te Hapua Road submitters

- 6.23 You will hear evidence today from Mari Housiaux, Submission 511 & FS 172, on behalf of Friends of Te Hapua Dunes and Wetlands. I acknowledge that these submissions are not addressed in the section 42A report.
- 6.24 The points raised by the submitter relate to unidentified historic heritage. The evidence refers to the known history of Māori occupation. I understand that the submitter also has concerns about a 'notional road' that appears on the planning maps. I take the submitter's evidence to be supportive of provisions in Chapter 10 which seek to protect unidentified heritage – in particular, Policy 10.2.
- 6.25 I acknowledge that support. I also suggest that some of the submitter's concerns may be relevant during the separate waahi tapu hearing, or during the hearing of Chapter 4 – Coastal Environment.

Kerry Dalton

- 6.26 You will hear evidence today from Kerry Dalton, submission 176.2. Ms Dalton's submission concerns tree T21, which I referred to in section 3.20 of the s42A report. You will have read at paragraph 258 of the report that I declined to make a recommendation whether the tree in question should be removed from or remain on the schedule.
- 6.27 The tree is on Council road reserve. I understand that Council officers may now be willing to reconsider the question of removal from the schedule. Having reviewed information related to the tree, I would also support a decision to remove it from the schedule. However, to assist the panel's decision on this matter, I recommend that the Council commission a further (independent) evaluation of the tree.

7. Conclusion

- 7.1 As with the reporting on all other chapters of the district plan, I endorse the need to ensure consistency across the entire document. That is, there should be no overlapping or inconsistent provisions, terms or definitions in the plan. The plan should strive for usability from a point of view of content, clarity and cross referencing.
- 7.2 Although I have considered some of these issues in the Chapter 10 section 42A report, there is still a need to consider the PDP, submissions and recommendations in their entirety before final recommendations can be made.
- 7.3 At this stage I am not recommending any further changes to my report, other than those I have referred to in my statement. However, I will of course listen objectively to evidence presented in this hearing and as a result I may alter my position on some matters.

7.4 I will be available to answer the panel's questions throughout the course of the hearing. If required by you, at the end of the hearing I will also provide an oral response to matters raised during the day.

Mark Ashby
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4Sight Consulting Limited
10 May 2016