

Officer's Reply

Chapter 10 (Heritage – excluding waahi tapu)

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1. Background

- 1.1 The Chapter 10 (Heritage, excluding waahi tapu) hearing took place on 10 May 2016. In order of appearance, submitters or their representatives who attended the hearing were: Friends of Te Hapua [511]; Greater Wellington Regional Council [441]; Heritage New Zealand [460]; Land Matters [FS178]; Kāpiti Women's Centre [068]; Allan Smith [443]; Kerry Dalton [176]; and Collin Hope [306]. Graham Halstead [216] was scheduled to appear, but did not.
- 1.2 At the commencement of the hearing I presented an opening statement. My statement summarised issues related to heritage and how these are addressed in the Proposed District Plan (PDP). I also responded to matters raised in the written evidence that was lodged by some of the submitters before the hearing.
- 1.3 My written reply responds to questions asked by the Commissioners. I also respond to some of the matters raised by submitters at the hearing, especially where this has caused me to reconsider my views expressed in the section 42A report or my opening statement.
- 1.4 Please note that the s42A report recommended renumbering of policies. In my reply, where I refer to policy numbers, I give both the original (notified) number and the new number if it was changed in the s42A report. The format is "10.original/new", e.g., 10.6/5.

2. Appendix Two – s42A report

- 2.1 The s42A report was intended to include Appendix Two: Feedback from Te Ohu Taiao. That appendix was omitted in error, but is now appended to my reply as Attachment 1. Of particular relevance is that Te Ohu Taiao recommended the retention of the archaeological alert layer in the district plan. However, the originating report¹ for the archaeological alert layer ("the Subsurface Report") recommends (page 4) that to ensure greatest accuracy in relation to individual land parcels and cadastral boundaries, the GIS model should be used in preference to the material in printed form.

3. Archaeological alert layer

Background

- 3.1 In preparing the s42A report I did not review the technical work which led to introduction of the proposed alert layer. I have now reviewed the Subsurface Report which is also appended to my reply (Attachment 4) as background information for the Commissioners. The technical work which went into the report and the predictive model (resulting in the alert layer) is beyond my professional expertise. It requires experience in archaeology, statistical modelling, and the use of geographic information systems to truly understand its validity and the nuances of how the information can be used. However, I am able to understand the work in a general sense and have

¹ Predictive Model for Archaeology: Kāpiti Coast, Subsurface Limited, 2012

therefore made recommendations that relate to the use of the alert layer and other information in the report.

- 3.2 The predictive model builds on the data of a previous model prepared for the Wellington Region by GWRC, but the author states that it allows considerably better definition and consideration of localised environmental factors. In that context the model appears to have been constructed using a thorough approach, and it clearly takes into account a wide range of information. This includes data on 300 recorded archaeological sites in the District and consultation with mana whenua iwi in relation to 256 sites of known significance. Environmental data was also factored in, including slope, soil types, and proximity to rivers and the coast.
- 3.3 The Subsurface Report notes the predictive value of environmental factors, stating that there is a high statistical correlation of some factors with recorded sites. In other words, the presence of the same environmental factors can be used to indicate the potential for unrecorded sites in other locations.
- 3.4 The final model uses a weighting of 80% environmental data and 20% human factors. Various approaches to the modelling were tried, and the ultimately chosen approach scored highest in terms of statistical tests of predictive ability. However, as noted by the report author (Page 4) an area marked as high likelihood in the predictive model does not necessarily equate to the definite presence of archaeological deposits.
- 3.5 The final predictive model divides the District into 4 zones signifying likelihood of archaeological deposits. In order of likelihood from lowest to highest these are coloured: (1) dark green; (2) pale green; (3) orange; and (4) red. Only the red zone (highest likelihood) appears to be shown on the PDP maps. The red zone, as shown in the Subsurface Report and on the PDP maps, is very extensive. It covers a high percentage of the land between SH1 and the coast, including much of District's existing and proposed urban development areas – see Attachment 2.
- 3.6 The Subsurface Report includes recommendations about use of the alert levels, and the information to be supplied during consent processes. In summary, for land within the red zone, the report recommends:
 - An archaeological assessment and a cultural values assessment for proposed subdivision earthworks, other than boundary adjustments and small scale infill subdivision.
 - An archaeological assessment and a cultural values assessment for forestry and large infrastructure.
 - Notification of Heritage NZ and iwi in the above cases.
 - Standard advice notes appended to consents.
- 3.7 With regard to subdivision earthworks, the Subsurface Report (page 19) states that the recommended provisions need not apply to lots of less than 3,000m², in the interests of imposing “a less onerous consent process”.

An alternative approach

- 3.8 Mapping in the Subsurface Report indicates that up to nine positive risk classes could be shown – see Attachment 3², as well as four ‘paramount’ risk site types (see paragraph 3.33(1) below. This compares with the four classes adopted in the report

² The top 4 out of 9 risk classes, plus the ‘paramount’ sites, comprise the single red zone shown on the planning maps.

and the single red zone finally used in the District Plan. In other words, the chosen four classes could be subdivided to show a finer gradation of risk. 'Paramount' risk sites include land within 50 metres of recorded archaeological sites, and also land within 'polygons' (areas of different shapes) established around waahi tapu sites/areas. If those sites *alone* were to be shown, the 'high alert' class would be very much smaller. It appears that it is the inclusion of environmental data³ which contributes to the high alert areas being significantly enlarged.

- 3.9 I am concerned that the red zone covers such a substantial area, including affecting the majority of sites within the District's built up urban areas. I consider that applying an archaeological alert to a standard sized, already developed, suburban lot is probably unnecessary as many of those sites have already been substantially disturbed. If the alert layer is to be actively used in the District Plan, the very large number of affected sites may contribute to excessive processing costs for the Council and undue application costs for landowners.
- 3.10 Refining the red zone within already developed urban areas would therefore be a useful course of action to consider. One approach would be to confine it to the 'paramount' risk sites. This would effectively focus development in urban areas on archaeological risk related to known sites. Outside urban areas, the extent of the alert layer could remain as at present but subdivided to show the four classes (plus the paramount sites) which comprise it. Doing so will help to highlight the difference between risk associated with known factors (e.g., recorded sites) and risk associated with environmental factors (potential unrecorded sites).
- 3.11 In recommended rule amendments below, I have referred to the risk gradations as "highest" (being the paramount sites) and "classes 6 to 9", in line with the technical report that accompanied the work by Subsurface Limited. If necessary, better names could be found for each class in the final wording if the Commissioners accept the recommended concept.

Earthworks provisions

- 3.12 As noted in paragraph 3.6 above, the Subsurface Report recommends the need for investigative reporting and consent when subdivision is proposed in the red zone. In my opinion, the act of subdivision is not the matter of concern. Rather, it is the scale of earthworks that has the potential disturb subsurface archaeology. The Subsurface Report recommends (page 22) a 20m³ limit to any permitted activity earthworks within the red zone.
- 3.13 In my s42A report I responded to submitters who had objected to use of the term "land disturbance", by noting apparent confusion between that term and use of "earthworks" in other parts of the PDP. See section 3.21 of the s42A report for the relevant submissions and discussion. However, what I failed to appreciate is that some other parts of the PDP refer to earthworks in relation to "*land identified as having a ... historic heritage feature (eg waahi tapu)*". Specifically, Chapter 3 (Natural Environment) is relevant.
- 3.14 Under Rule 10A.1.6, the PDP sets a 10m³ threshold related to permitted earthworks on a waahi tapu site (i.e., sites within Schedule 10.1). A volume over 10m³ on those sites becomes a restricted discretionary activity. In other chapters of the PDP there are a

³ Slope, proximity to coast, soil type, river zones, ridges in the 35-70 metre zone, and elevation.

range of earthworks volume controls, some of which vary in response to environmental / amenity / cultural factors.

- 3.15 As a permitted activity, Chapter 3 allows 50m³ of earthworks in Living Zones and 100m³ in the Rural Zone. Where a rural site contains a historic heritage feature, controlled activity status is applied (Rule 3A.2.2), limiting earthworks associated with a permitted farming activity to 100m³ over a 10 year period. There are other specified standards related to earthworks depth and land slope. Similarly, Rule 3A.3.8 potentially allows, as a restricted discretionary activity, any other earthworks (i.e., those not associated with a permitted farming activity), where it occurs on land that has a historic heritage feature – subject to a volume limit of 50m³ in any 1 year period. These rules are not necessarily in conflict with the Chapter 10 earthworks threshold (which is specific to waahi tapu sites), but it could be considered somewhat disjointed.
- 3.16 The relationship between earthworks rules in Chapters 3 and 10 needs to be resolved. My recommendation is that cross-referral to Chapter 10 is to be preferred (e.g., Rule 3A.1.7) over the mixed approach signalled by Rule 3A.2.4 or Rule 3A.3.8.
- 3.17 Historic heritage issues do not seem to sit comfortably in a chapter (Chapter 3) that deals with the natural environment. I assume that the rules I referred to above are intended to give effect to Policy 3.23 – Earthworks, natural landforms. The policy states that “*Earthworks will be minimised to retain natural landforms, particularly ... surrounding historic heritage*”. This is a good policy direction but is just as easily achieved by heritage chapter Policy 10.4, which states that “*subdivision, development and land use affecting the District’s historic heritage and its surroundings will be managed in a way that protects historic heritage values from adverse effects*”. [emphasis added] If the historic heritage policy reference is removed from Chapter 3, all of the relevant earthworks controls can be transferred to Chapter 10.
- 3.18 The earthworks / historic heritage issues have been communicated to the Chapter 3 lead for further discussion. An agreed position will be tabled with the panel before the close of the hearings.
- 3.19 If the 20m³ threshold recommended in the Subsurface Report was adopted, and the sweeping extent of the red zone alert layer remains, then it will cut across the 50m³ permitted activity expectation in most of the District’s urban areas, and the 100m³ volume in rural areas. On already developed urban sites I consider that the tighter 20m³ threshold is an unnecessary additional restriction. If the alert layer is removed from such sites, I consider that the risk and response can be adequately addressed through the standard accidental discovery advice note placed on consents.
- 3.20 I consider that amendment of the rural earthworks provisions in Chapter 3 can be made under scope provided by the submissions of Heritage NZ which state:
- [In relation to Rule 3A.2.4] *The NZHPT seeks an additional matter over which Council can reserve control to ensure that historic heritage features are not damaged as part of permitted farming activities.*
- [In relation to Rule 3A.3.8] *The NZHPT seeks an additional matter over which Council can restrict its discretion to ensure that historic heritage features are not damaged as part of earthwork activities.*
- 3.21 In addition, a submission of Federated Farmers is that: *That the rule stream for earthworks on rural land be simplified.*

Forestry

- 3.22 As noted in paragraph 3.6 above, the Subsurface Report recommends the need for investigative reporting and resource consent when forestry is proposed in the red zone. The reasons for the recommendation are due to effects such as ground disturbance and compacting during harvesting activities, but also due to disturbance arising from root growth.
- 3.23 Chapter 7 (Rural Environment) manages the activity of plantation forestry. Under the Rural rules, planting or harvesting is a controlled activity on land where there are “historic heritage values” – but only if the activity exceeds 10 hectares in one calendar year. The rule does not specify any control in relation to historic heritage matters. In my opinion, these are weak provisions for considering the potential impact of forestry on historic heritage. In addition, it does not seem consistent with Policy 7.5 which states that “*Plantation forestry will be provided for in areas which are not characterised by ... c) identified historic heritage or cultural values*”. [emphasis added]
- 3.24 If it is accepted that plantation forestry requires specific control in relation to effects on historic heritage (as per Policy 7.5) then I consider that the relevant rules should be amended. A consideration of whether plantation forestry was appropriate in any particular location could be linked to the archaeological alert layer. If that was the case, then current rules (such as 7A.2.2) would need to be amended, and new rules developed.
- 3.25 Scope for amending historic heritage provisions related to forestry is less clear. However, I consider the submission of Heritage NZ may provide a potential avenue as it states:

The report titled Predictive Model for Archaeology, Kāpiti Coast, by Andy Dodd dated 25 October 2012 provides some recommendations for the types of information that should accompany resource consent applications for earthworks and subdivisions.

[Relief sought] *That Council develops clear rules and guidance in regard to archaeological sites in the District. With consideration been given to the types of information that should accompany resource consent applications for earthworks and subdivisions when archaeological sites maybe present.*

Recommendations and options

- 3.26 If the alert layer is retained, either on the PDP maps, or as a GIS layer, I think there is some substance to submitters’ fears that costly archaeological assessments and cultural assessments might be required. In the future, either Heritage NZ or Council processing officers might take the Subsurface Report into account, particularly as the PDP is silent about how the alert layer should be used. The silence of the plan, but the existence of the report, creates a future risk that aspects of the report may be used on an ad hoc basis. In my opinion, options to address the issues include:
- 1) Agreement between Heritage NZ and the Council about how the predictive model will be used to determine whether archaeological assessments are provided; or
 - 2) Amendment of PDP provisions to clarify the role and extent of the alert layer, and the circumstances in which certain types of information will be required; or
 - 3) Abandonment of the alert layer concept from being used either on the PDP maps or as a Council GIS layer.

- 3.27 Having regard to the issues and the submissions, I recommend that the alert layer is largely removed from already subdivided and developed urban land, but retained elsewhere. In areas where the alert layer is 'largely removed'⁴, I recommend retaining alert areas defined by the four sets of data referred to on page 13 of the Subsurface Report which are stated to have "paramount ranking as high alert areas".
- 3.28 I also recommend amendments to District Plan provisions to clarify the circumstances in which certain types of information will be required. If the amendments I recommend here are not made, then I stand by my original recommendation to delete the alert layer from the planning maps but retain them as a GIS layer, notwithstanding the risk of inconsistent use by the Council.
- 3.29 There may also be value in the Council discussing and agreeing consent processing policy with Heritage NZ, but this falls outside the ambit of changes to the PDP.
- 3.30 If clarifying amendments are to be made to the PDP, I consider that they should focus on earthworks or the potential of specific activities to disturb subsurface archaeology in the alert layer red zone.
- 3.31 Scope related to the specific matters of earthworks and forestry are referred to above in paragraphs 3.20, 3.21 and 3.25. The broader revision of the District Plan's approach to unidentified historic heritage can be made under the scope provided by the submission of Heritage NZ on Policy 10.11 which states:

An accidental discovery protocol is a tool which is used as a condition of resource consent when there is a low likelihood of encountering archaeological resources. It is not intended to be a policy. Nor should it replace the responsibility of an applicant to undertake an assessment of heritage values before beginning work. The policy seems to allow for development to take place under an accidental discovery protocol.

The NZHPT support the use of Archaeological Alert Areas on the District Plan Maps, however the NZHPT suggests that the District Plan provides guidance as to how this will work in a planning frame work and whether there are any rules around areas which are deemed to be of high significance. [emphasis added]

The report titled Predictive Model for Archaeology, 'Kāpiti Coast, by Andy Dodd dated 25 October 2012 provides some recommendations for the types of information that should accompany resource consent applications for earthworks and subdivisions.

[Relief sought] *That Council develops clear rules and guidance in regard to archaeological sites in the District. With consideration been given to the types of information that should accompany resource consent applications for earthworks and subdivisions when archaeological sites maybe present.*

- 3.32 *That Kāpiti Coast District Council includes the Archaeological Alert Area map in their GIS system to inform consent and land use processes.*
- 3.33 My recommendations in relation to matter of the archaeological alert area (and associated earthworks and forestry provisions) are:

⁴ Excluding urban lots over 3,000m²

1. Delete most of the archaeological alert layer from urban areas.

Alert information that would remain is the four sets of data given paramount ranking as high alert areas (identified in *Technical Report, Archaeological Prediction Maps, Kāpiti Coast* (Envision, 2012)). These are:

- point data with 50 metre buffers for recorded archaeological sites.
- the 1886 railway corridor with a 50 metre buffer.
- waahi tapu areas defined as polygons.
- the nineteenth century town extents defined as polygons.

This recommendation applies to lots of 3,000m² or less in the Living Zones of the District Plan. Where a lot is within the Living Zones and exceeds 3,000m², the extent of the alert layer would remain, but subject to showing the gradation as outlined in recommendation 2 below.

2. Retain the archaeological alert layer in rural areas, showing five gradations.

The extent of the alert area would remain as at present, but be subdivided to show its four component parts, being classes 6, 7, 8 and 9 in *Technical Report, Archaeological Prediction Maps, Kāpiti Coast* (Envision, 2012), plus the paramount sites referred to in recommendation 1 above.

This recommendation applies to all land outside the Living Zones of the District Plan, and any lot of over 3,000m² within the Living Zones.

3. Add a new permitted activity rule 10A.1.9:

The following activities in the [highest] *archaeological alert* area:

- a) Earthworks on Living Environment land, excluding heritage land disturbance subject to rules 10A.1.1 to 10A.1.8.
- b) Earthworks on land other than Living Environment, excluding heritage land disturbance on land subject to rules 10A.1.1 to 10A.1.8.

Standards:

1. The maximum extent of earthworks on Living Environment land shall not exceed 20m³.
2. The maximum extent of earthworks on land other than Living Environment shall not exceed 50m³.

4. Add a new restricted discretionary activity rule 10A.3.9

The following activities in the [highest] *archaeological alert* area:

- a) Earthworks not meeting permitted activity standard 10A.1.9.
- b) Plantation forestry [but see recommendation 8 below]

Standards:

1. The Archaeological Discovery Protocol, set out in Schedule 10.2, shall be followed.
2. The applicant must consult with Heritage NZ and with tāngata whenua.

Matters over which Council will restrict its discretion:

1. The need for an archaeological or cultural impact assessment.
2. The findings of an archaeological or cultural impact assessment.
3. Effect on historic heritage values.

5. Add a new restricted discretionary activity rule 10A.3.10

The following activities in the [classes 6 to 9] *archaeological alert* area:

- a) Earthworks not meeting permitted activity standard 10A.1.9.
- b) Plantation forestry [but see recommendation 8 below].

Standards:

1. The Archaeological Discovery Protocol, set out in Schedule 10.2, shall be followed.

Matters over which Council will restrict its discretion:

1. The need to consult with Heritage NZ and with tāngata whenua.
2. Effect on historic heritage values.
3. The need to consider the likelihood of archaeological material being disturbed, including through having regard to the alert class of the land.

6. Either delete the reference to historic heritage from Policy 3.23, or keep that reference but add notes to rules 3A.2.4 and 3A.3.8 to cross-refer to Chapter 10.
7. If deleting the historic heritage reference in Policy 3.23, transfer historic heritage earthworks rules to Chapter 10.
8. Either amend Chapter 7 to make plantation forestry a restricted discretionary activity on land in the rural zone archaeological alert areas, or delete historic heritage (in relation to forestry) from Chapter 7 and adopt recommendation 5b) above.

4. Plan complexity

- 4.1 The commissioners asked me to consider the question of complexity in the historic heritage provisions, and whether or not that complexity can be reduced. This question has two relevant considerations. The first is whether the submissions provide scope that allows a reduction in complexity. The second is to what degree can complexity be reduced.
- 4.2 In relation to scope I consider that there is no clear call to reduce the complexity of the rules suite as a whole. However, I note that some complexity may be reduced as a result of responses to individual submissions on individual rules.
- 4.3 The commissioners asked if the suite of rules would benefit by being reduced to two rules (or rule classes), being permitted and restricted discretionary. If the scope of submissions was found to allow it, I agree that reducing the complexity in any planning document is a good aim. However, in the case of Chapter 10, the use of permitted, controlled, restricted discretionary, discretionary, and non-complying reflects the language of the policies. That is, the policies require that effects are “managed” or “avoided” in various respects. In addition, the use of assessment criteria in policies 10.6/5 and 10.8/6 links to assessment under controlled, restricted discretionary and discretionary status. If a significant reduction in complexity in the rules (activity status) was to be contemplated, then it would also require the policies to be revisited.
- 4.4 The complexity question was also put to representatives from Greater Wellington Regional Council and Heritage NZ. GWRC responded that retaining the non-complying activity category is still important. Heritage NZ noted that restricted discretionary status can constrain flexibility of outcomes in some circumstances.

4.5 I agree with Heritage NZ, and the commissioners, that activity status can be overly complex or sometimes constrain flexibility in outcomes. However, I note that protection of historic heritage is a matter of national importance. In addition, the matters covered by Chapter 10 are diverse, including buildings, trees, and sites of significance to tāngata whenua. In that light, I think that any apparent complexity can be justified.

5. Friends of Te Hapua

5.1 Friends of Te Hapua suggested that the archaeological alert layer should be at least retained in the Te Hapua area. I have no recommendation to make on that specific location, but my recommendations outlined in this reply would achieve the outcome sought by the submitters.

6. Heritage New Zealand

6.1 Heritage NZ presented evidence in support of its submissions. A number of matters referred to in the evidence require comment from me.

6.2 At paragraph 9 of their evidence, the submitter refers to the terms “modification”, “alteration and additions” and “repair and maintenance” in Policy 10.6/5. The submitter requests wording to ensure that repair and maintenance is excluded from the policy. I consider that the request is outside the scope of the submitter’s original submission, and is not supported by any further submission. In addition, I consider that excluding repair and maintenance from the policy would be counterproductive, as the policy is intended to enable all types of “modification” where appropriate, subject to appropriate assessment.

6.3 At paragraph 16 of their evidence, the submitter refers to the definition of “partial demolition”. I covered this matter in section 3.12 of the s42A report. Having heard the submitter’s evidence, I now agree that there would be value in bringing some greater clarity to the definition. However, I still stand by my original assessment that some of the wording proposed by Heritage NZ in its submission is in the nature of assessment criteria – and therefore inappropriate in a definition. I recommend that the definition of partial demolition now read:

~~Partial demolition means to demolish a substantial part of any building or structure~~
permanently remove, deconstruct or demolish a part of any building. Partial demolition is distinct from alteration, which seeks to replace materials. Partial demolition includes façade retention which normally involves the demolition of the rear or a substantial part of a building or structure and the retention of the front or main façade and the construction of a new building or structure behind the preserved façade.

6.4 The recommended amendment is within the scope of Heritage NZ’s original submission.

6.5 At paragraph 22 of their evidence, the submitter refers to the wording of Policy 10.11/9. The s42A report already recommends changing the policy wording to clarify its intent. The submitter now suggests changing that wording further. Having heard the evidence of the submitter, I agree that there would be value in the further clarification proposed by Heritage NZ. I therefore recommend that Policy 10.11/9 now read:

~~A precautionary approach will be taken to protecting unidentified historic heritage. will be undertaken. Areas of high likelihood of identifying archaeology will be identified as Archaeological Alert Areas on the District Plan Maps. Development where the accidental discovery of any unidentified archaeological historic heritage occurs~~

Where no archaeological authority is in place and previously unidentified historic heritage is discovered, then work will be immediately stopped until the significance is assessed and adverse effects can be appropriately avoided or mitigated. The Accidental Archaeological Requirements Discovery Protocol, as set out in Schedule 10.2, will be followed in all development.

The Council will maintain publicly available information to highlight areas where there is a higher risk of unidentified historic heritage being encountered.

- 6.6 The recommended amendment is within the scope of Heritage NZ's original submission.
- 6.7 In my opening statement I noted that there are three historic heritage features on the NZ Heritage List that have not been transferred to Schedule 10.1 in the PDP. The submitter confirmed that two of the features (buildings) have been relocated from their original sites, and their current heritage value cannot be ascertained without further work. Heritage NZ is not in a position to prioritise that work at present. The third feature is a large group of raised-rim pits and the submitter seeks that the feature be included on Schedule 10.1. Heritage NZ states that archaeological sites such as the raised-rim pits have "very high evidential values and are also subject to additional regulation by HNZ".
- 6.8 The inclusion of the pits is not covered by the original submission of Heritage NZ and therefore cannot be considered within scope. However, if Heritage NZ were to provide evidence of the landowner's consent, I am prepared to recommend that the pits be included via RMA Schedule 1, clause 16 as a matter "where such an alteration is of minor effect". The submitter also noted that the pits are part of a suite of sites in the vicinity that might ultimately be appropriate as a waahi tupuna / waahi tapu area. I am not prepared to recommend that outcome under the clause 16 process, as more work would be required with relevant mana whenua, and a publicly notified process would also seem appropriate.
- 6.9 In answer to commissioner questioning regarding Policy 10.3, Heritage NZ expressed the opinion that Category 1 items on the NZ Heritage List / Rārangī Korero should be 'automatically' entered into Schedule 10.1 of Chapter 10. As noted in my opening statement I consider that the Heritage NZ legislation does not require the automatic district plan listing of NZ Heritage List items. I therefore recommended a change of wording so that NZ Heritage List items are "had regard to" as candidates for Schedule 10.1 of the district plan.
- 6.10 However, having heard the evidence presented by the submitter, I now recommend Category 1 items as being automatically included in Schedule 10.1. Category 1 items are relatively rare, and are entered on to the NZ Heritage List after thorough investigation and a publicly notified process. I therefore now recommend that Policy 10.3 be amended to read:

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 as Category 2 on the New Zealand Historic Places Trust Rarangi Taonga: the Register of Historic Places, Historic Areas, Wahi Tapu and Wahi Tapu Areas Heritage List Rārangī Kōrero.~~

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

- b) Items listed as Category 1 on the New Zealand Heritage List Rāranġi Kōrero.
- c) Places subject to a Heritage Order under the ~~Historic Places Act 1993~~ Heritage New Zealand Pouhere Taonga Act 2014.
- d) Historic heritage protected by a consent notice issued under ~~Section 221 of the Resource Management Act 1991~~ RMA.
- e) Historic heritage items specifically identified in the Regional Policy Statement or Regional Plans.

7. Land Matters

7.1 The submitter noted a potential problem with use of the word “surroundings” in Policy 10.7. The policy is that “inappropriate subdivision of historic heritage and its surroundings will be avoided”. The submitter considered it is unclear what “surroundings” means. “Surroundings” is also used in Policy 10.5/4.

7.2 I refer the commissioners to the following definition in the interpretation section of the PDP:

Surroundings associated with the natural and physical resources means an area of land (including land covered by water) surrounding a place, site or area of heritage significance which is essential for retaining and interpreting its heritage significance. It can apply either to land which is integral to the heritage significance of items or an area which includes buildings, sites, trees, and place/area of significance to Māori. The term surroundings is adopted to include curtilage and setting.

7.3 The word “setting” is also defined, being:

Setting means the area of land associated with an item listed within the Schedule of Historic Heritage. For a building or structure, setting is commonly up to 20 metres from the item or the adjacent lot (whichever is the lesser).

7.4 “Curtilage” is not defined by the PDP, but a Wikipedia definition is “the land immediately surrounding a house, including any closely associated buildings and structures, but excluding any associated “open fields beyond”.

7.5 In my opinion, the use of the word surroundings is adequately defined, although it does lead to the need for a case by case assessment of what comprises the land that is “essential for retaining and interpreting ... heritage significance”. The link in the definition of “surroundings” to the associated definition of “setting” brings in a more precise link to listed historic heritage. If any change was to be contemplated to Policy 10.7 for additional clarity, then I suggest that it simply be to change “surroundings” to “surroundings and setting”.

7.6 The submitter expressed concern that heritage policies will be brought into play during discretionary consent applications, even if the site in question was not on Schedule 10.1. The commissioners requested that I review and advise on the rules in relation to heritage ‘sites’.

7.7 The rules of Chapter 10 variously refer to:

- Historic heritage feature
- Scheduled historic building or structure
- Scheduled historic site
- Scheduled historic area
- Heritage site land disturbance

- 7.8 “Historic heritage feature” is a term defined by the PDP to mean “any item listed in the schedule of historic heritage (Schedule 10.1) in chapter 10”. In addition, the s42A report recommends amending the definition of “land disturbance” to “heritage site land disturbance”, with the new term to mean “earthworks on a site in Schedule 10.1 and also includes any new fencing, tree planting, tree removal, and the formation of new driveways and paths”.
- 7.9 Although different wording is used in some rules as outlined above, I consider that they are all clearly readable as relating only to land on which there is a listed historic heritage feature. That is, an item on Schedule 10.1 – which includes buildings, structures, archaeological features, sites and areas.
- 7.10 The submitter’s concern may relate to discretionary activity rule 10A.4.1. That rule reads:

Any activities which are not listed as Permitted, Controlled, Restricted Discretionary, Discretionary, Non Complying or Prohibited activities and do not comply with one or more permitted activity standards in this chapter unless otherwise specifically stated.

- 7.11 The wording could be amended to make it clear that only sites containing historic heritage features are subject to the Chapter 10 rules. Further clarification would be needed if my recommendations regarding rules for the archaeological alert layer are accepted. I therefore recommend that rule 10A.4.1 be amended to read:

Any activities affecting a historic heritage feature, or which involve earthworks within the archaeological alert area, and which are not listed as Permitted, Controlled, Restricted Discretionary, Discretionary, Non Complying or Prohibited activities and do not comply with one or more permitted activity standards in this chapter unless otherwise specifically stated.

8. Kāpiti Women’s Centre

- 8.1 Kāpiti Women’s Centre appeared in support of including the suffrage gardens as a historic heritage feature listed in Schedule 10.1. The commissioners requested that I consider how future maintenance / upgrade of the gardens would be treated by the Chapter 10 rules. The starting place for any consent assessment would be rule 10A.1.3 – repair and maintenance of a scheduled historic site or scheduled historic area. In the s42A report I recommended that the definition of “repair and maintenance” be amended to read as follows:

Repair and maintenance in relation to a protected historic heritage feature, means making good any decayed or damaged fabric to a documented earlier form. Repairs may include the use of retrieved heritage fabric, original materials and / or new materials, only where the use of new materials is necessary to provide significantly better performance as part of the repaired area. Repairs and maintenance also includes general maintenance and regular protective care such as cleaning or preparing and repainting already painted surfaces. Where the heritage item is a park, garden, or other setting, repairs and maintenance includes general grounds maintenance and pruning, it does not include the establishment of new paths, driveways, fencing or garden structures or the removal of mature specimen trees that are in a healthy condition. [emphasis added]

- 8.2 Given the definition, any proposal to change the garden from its “documented earlier form” would not meet the definition of repairs and maintenance. In that case, the proposed works would fall under rule 10A.3.2, requiring restricted discretionary

consent to be gained for “alterations or additions”. The Council would have discretion over effects on historic heritage values; visual, character and amenity; colour and materials; layout, design and location; and effects on context and surroundings.

9. Allan Smith

- 9.1 Allan Smith appeared at the hearing to express general support for the recommendations of the s42A report. However, he queried the use of 10m³ of land disturbance as a permitted activity threshold (rule 10A.1.6.2). The rule relates to works in a waahi tapu area or other area of iwi significance (Group B). He considers the threshold to be too restrictive, especially as the rule is intended to be permissive in relation to altering existing buildings, establishing new buildings, and the relocation of buildings within the property.
- 9.2 Rules specific to waahi tapu matters will be addressed by a subsequent s42A report. However, the commissioners requested that I clarify why 10m³ has been used as a threshold. I have made enquiries via Council officers, but it is unclear how the 10m³ threshold was selected.
- 9.3 Across NZ, there seems to be a very wide variation in the volume of earthworks allowed as a permitted activity on historic heritage sites. As examples, the Proposed Auckland Unitary Plan has a limit of 5m³, and the Wellington City District Plan has an implied⁵ limit of 150m³. In this context I remain comfortable with the use of 10m³ on sites that contain scheduled historic heritage features. This threshold also sits well in relation to the threshold of 20m³ I have recommended for earthworks on urban land within the archaeological alert area (i.e, potential containing unidentified historic heritage).

10. Kerry Dalton

- 10.1 Kerry Dalton appeared at the hearing to present a case for removal of tree T21 from Schedule 10.1. In the s42A report I declined to make a recommendation on tree T21, although I acknowledged that the tree has a significant shading effect on the submitter’s property. Having seen the submitter’s presentation at the hearing, it is clear that my initial assessment was correct; there are significant shading and other effects that need to be considered.
- 10.2 I understand that Council officers have now revisited the STEM evaluation for the tree, and agree that there has been a misinterpretation of the notable trees section. That section should not have applied in the case of tree T21 and the tree should only have been evaluated against condition and amenity values.
- 10.3 There are also some physical conflicts which mean that in the long term the tree cannot remain in its specimen form. The power lines running through the tree and the proximity of the tree to a residential building will necessitate ongoing remedial pruning to ensure that the safety and operation of the power lines are maintained, as well as preventing damage to the property’s foundations and roof. The long term heritage value of the tree would therefore be impossible to preserve even if the notable tree section of the STEM report were to apply.
- 10.4 Given these circumstances, I now recommend that tree T21 is removed from Schedule 10.1.

⁵ Permits up to 1.5m depth over 100m²

11. Collin Hope

- 11.1 Collin Hope's representative appeared at the hearing to seek removal of item B118 (Casa Esperanza) from Schedule 10.1. This building was put on the Schedule in response to a publicly advertised call for nominations in March 2012. The house was nominated by its architect / owner, Mr Collin Hope.
- 11.2 Heritage NZ has supported an amendment to Schedule 10.1 to clarify some of the wording related to B118. Other than that, there is no specific support from other parties for it to remain on the Schedule.
- 11.3 I understand that there is no process available under the RMA for 'withdrawing' an item from the Schedule in the way sought by the submitter. However, given that Mr Hope was the original nominee, I am happy to recommend that B118 is deleted from Schedule 10.1 if an appropriate legal means exists. One such avenue may be RMA Schedule 1, clause 16(2): *A local authority may make an amendment, without using the process in this schedule, to its proposed policy statement or plan to alter any information, where such an alteration is of minor effect, or may correct any minor errors.* [emphasis added]
- 11.4 In this particular case, I consider that no party other than Mr Hope would be affected by B118 being deleted from Schedule 10.1, and the alteration is therefore "of minor affect".

Mark Ashby
Reporting officer on Chapter 10
4Sight Consulting Limited
18 May 2016

Attachment 1 – Te Ohu Taiao Notes

Kāpiti Coast District Council

Proposed District Plan

Te Ohu Taiao Workshop Notes & Actions

| | |
|----------------------|--|
| Topic: | Workshop #7 Chapter 10 Historic Heritage |
| Meeting Date: | 20 October 2015 |
| Venue: | Kohekohe Room, Council Offices, Rimu Road, Paraparaumu |

Attendees

| Name | Title/Role |
|----------------------|--|
| Katherine Dorofaeff | Principal Planner |
| Mahinarangi Hakaraia | Ngā Hapū o Ōtaki Representative |
| Ann-Maree Ellison | Te Āti Awa ki Whakarongotai Representative |
| Hohepa Potini | Ngāti Toa Rangatira Representative |
| Michelle Conland | Planning Support for Te Ohu Taiao |

Workshop summary

Katherine explained the amendments proposed to the policies. The proposed removal of the Archaeological Alert Layer was discussed. Removal was proposed as there are no associated rules, and responds to requests by submitters, and a desire to reduce the number of mapping layers in the PDP. TOT recommends that the layer remain in the PDP as an alert to property owners that there may be an archaeological item on site, and a discovery protocol may need to be followed.

Katherine then explained other proposed changes including a definition for repair and maintenance in relation to historic heritage features, additions and deletions to the heritage schedule, overlap with the UTV, and Schedule 10.2 which is renamed Archaeological Discovery Protocol (previously called Accidental Discovery Protocol).

Matters discussed⁶

| Item |
|--|
| <p>12. <u>Actions from yesterday's workshop</u></p> <ul style="list-style-type: none">• Referred to Gina's email regarding earthworks provisions. |
| <p>13. <u>Key SEV changes – Amendments to Policy 10.8</u></p> <ul style="list-style-type: none">• To achieve better alignment between policy and Rules 10A.4.2 & 3, and 10A.5.1 & 2• Explanations removed/reduced plan wide – no legal weight. Makes plan shorter, more readable and didn't add a lot of value. Some text has remained where more explanation is needed. Explanations have been retained for objectives.• <i>Changes supported.</i> |
| <p>14. <u>Key SEV changes – Amendments to Policy 10.10</u></p> <ul style="list-style-type: none">• Wording changes to be more similar to RMA – protected from inappropriate subdivision. <i>Who determines what's appropriate?</i> If permitted then appropriate, if resource consent is needed, then will be assessed. <i>Do the rules support this wording change?</i> – yes, more relevant to the framework.• Submissions from Heritage NZ generally quite helpful – broad view of district plans across the country.• Land disturbance over 10m³ requires resource consent.• <i>Changes supported.</i> |
| <p>15. <u>Key SEV changes – Archaeological Alert Layer</u></p> <ul style="list-style-type: none">• Archaeological Alert Layer removed from planning maps and policy 10.11 (p10-12) amended• Responds to submissions• Lack of associated rules – rules not needed due to wāhi tapu rules and the Heritage Act.• The information can be provided by the Council as a GIS layer outside of the District Plan• Desire to reduce the number of mapping layers in the PDP• <i>So what does its removal mean?</i> – good question as there were no rules attached to it. In GIS means that it can be changed. <i>Who accesses this information?</i> Wouldn't be relevant to a permitted activity. If a resource consent, may need them to get an archaeological authority.• <i>What's the harm in leaving the layer there? If it's not causing extra costs – just a red light to flag that more investigation may be needed.</i>• Just an indication that there is more likely to be something there. The consent team would have to have some understanding about how it would be handled. Alert for the landowner and the consent team. Discovery protocol included on conditions of consent. Could also appear on a LIM.• Some of the sites are not included, could argue the entire coast could be included.• Policy said 'areas of high likelihood of identifying archaeology'• Submitters mostly concerned about their land. |

⁶ Te Ohu Taiao (TOT) comments are italicised.

- *Recommend that the layer remain in the PDP as an alert to property owners that there may be an archaeological item on site, and a discovery protocol may need to be followed. (Action 1)*

16. Key SEV changes – Repair and maintenance

- Replaces the term ‘minor work’

Repair and maintenance means, in relation to *historic heritage features*, making good any decayed or damaged fabric to a documented earlier form.

It includes:

- the use of retrieved heritage fabric, original materials and/or new materials, only where the use of new materials is necessary to provide significantly better performance as part of the repaired area
- general maintenance and regular protective care such as cleaning or preparing and repainting already painted surfaces
- general grounds maintenance and pruning where the historic heritage feature is a park or garden.

It excludes:

- the establishment of new paths, driveways, fencing or garden structures
- the removal of mature specimen trees that are in a healthy condition
- partial demolition.

Support changes

17. Key SEV changes – Heritage schedule – addition & deletion

- Stringer Wind Rain House - addition
 - Responds to HNZPT submission
 - Supported by owner – NZTA
 - Consistent with recognition in expressway approvals
- Kohekohe - removal of T55, two kohekohe, Maple Lane, Waikanae - deletion
 - Responds to submission
 - Assessment by Council arborist shows trees to be dead / dying
 - *Would like to be sure it can't recover. Pragmatic view though that if it's diseased or dying and at risk of harming people or buildings if it falls, then should be removed.*
- Norfolk Pine – submitter wanted deleted from the schedule but not recommended by chapter lead. Included as an example of a tree report.

18. Overlap with Urban Tree Variation

- Some amendments proposed in the UTV affect the notable tree provisions
- Amendments to definitions of modification, and trimming (Amdmt 7 & 8 UTV)
- Amendment to rules relating to:
 - Trimming / minor maintenance – P & RD (Amdmt 45 & 47 UTV)
 - Removal broken, dead, dying, diseased or damaged vegetation – new C rule (Amdmt 46 UTV)

- Ensure that one of the matters for discretion in the restricted discretionary rules includes historic heritage.
- *Look at this again when we have the follow up meeting with Paul (Action 2)*

- *How does the STEM assessment relate to the one used for UTV. Completely different. Notable trees and STEM criteria is much wider, included non-natives, planted trees etc for example for commemorative purposes. UTV has only had a biodiversity filter applied – as has the ecological sites so far.*

19. Minor SEV changes

- Heritage NZ name change – used to be Historic Places Trust.
- Signs provisions have moved to signs section.
- New defined terms for
 - Scheduled historic building or structure (p1-53)
 - Scheduled historic site
 - Scheduled historic area
 - Wāhi tapu and other places and areas of significance to iwi (p1-61)
- Schedule 10.2 renamed from **Accidental** Discovery Protocol to **Archaeological** Discovery Protocol

Changes supported

Actions

| # | Action Description | Responsibility | Timeframe (if applicable) |
|----------|--|-----------------------|-------------------------------------|
| 1 | To come back with some feedback on the removal of the Archaeological Alert Layer. | TOT | 23/10/15 |
| 2 | Overlap with Urban Tree Variation. Ensure that one of the matters for discretion in the restricted discretionary rules for Notable Trees includes historic heritage. | Paul, Katherine | |

| | | | |
|--|---|--|--|
| | Look at this again when we have the follow up meeting with Paul | | |
|--|---|--|--|

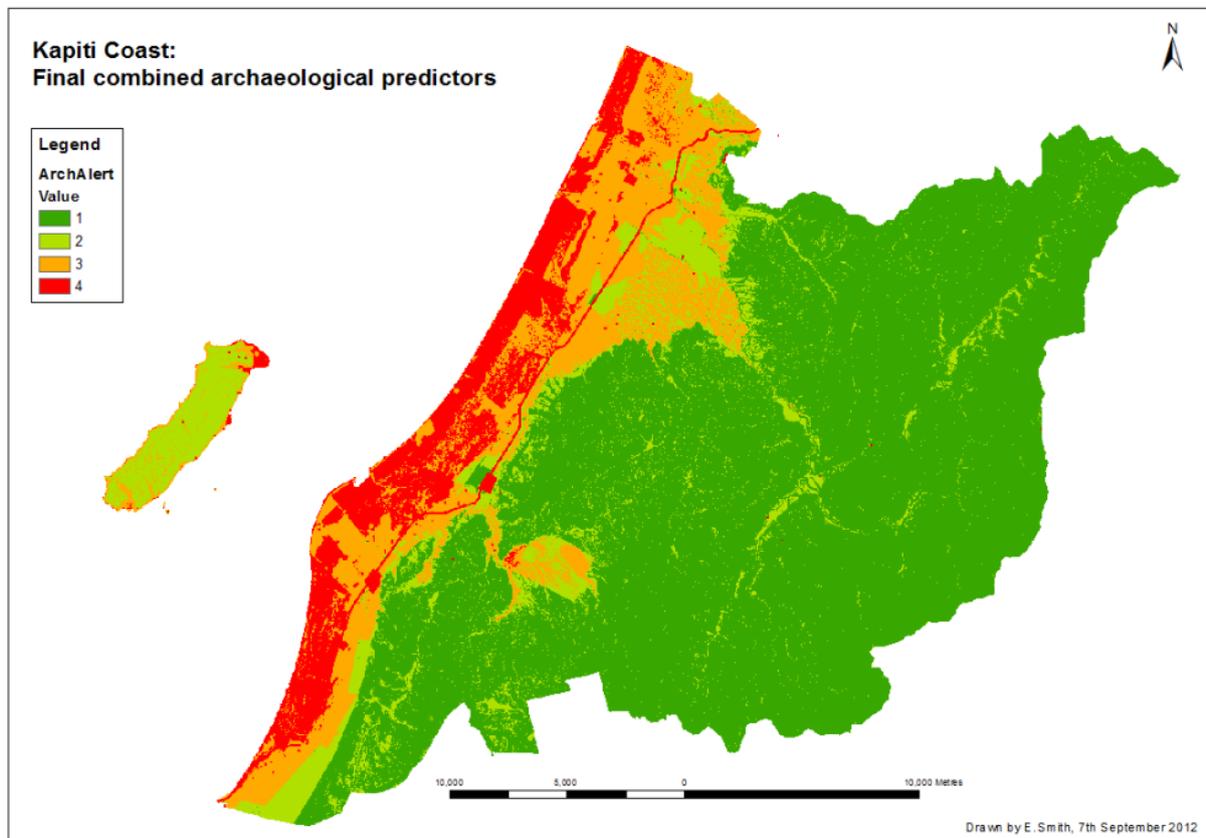
Completed Actions

| # | Action Description | Response |
|---|---|--|
| 1 | To come back with some feedback on the removal of the Archaeological Alert Layer. | <i>TOT - Recommend that the layer remain in the PDP as an alert to property owners that there may be an archaeological item on site, and a discovery protocol may need to be followed.</i> |
| 2 | Overlap with Urban Tree Variation. Ensure that one of the matters for discretion in the restricted discretionary rules for Notable Trees includes historic heritage. Look at this again when we have the follow up meeting with Paul | Paul, Katherine |

Meeting Close Out

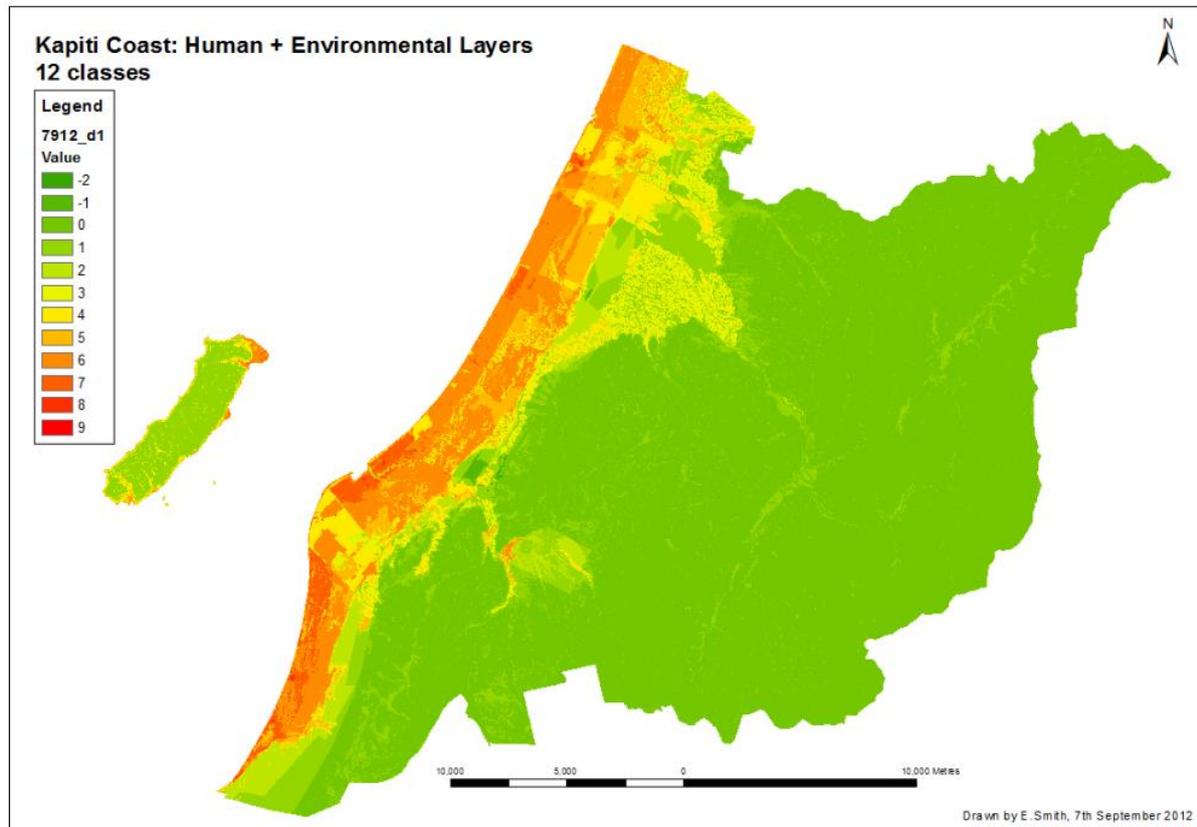
| | |
|-------------------------------------|-----------------|
| Date notes issued to parties | 28 October 2015 |
| Method of Issue | Email |

Attachment 2 – Four Zone Archaeological Alert Area

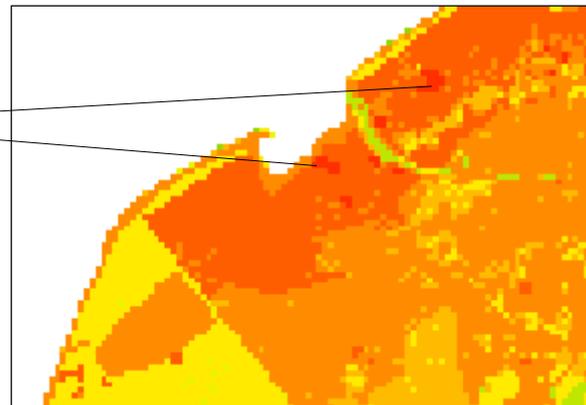


The red (value 4) zone has been adopted as the archaeological alert layer on the PDP maps.

Attachment 3 – Nine Zone Archaeological Alert Area



Inset showing examples of small localised areas of 'class 9' land



Note that the 'paramount' sites are not shown on this map.

Attachment 4 – Originating Reports for Archaeological Alert Area

1. Predictive Model for Archaeology: Kāpiti Coast (Subsurface Limited, 2012)
2. Technical Report, Archaeological Prediction Maps, Kāpiti Coast (Envision, 2012)