



**BEFORE THE KĀPITI COAST DISTRICT COUNCIL HEARING COMMITTEE**  
**Commissioners Mike Cardiff, Diane Ammundsen, Miria Pomare, David McMahon and**  
**Chair Alistair Aburn**

IN THE MATTER: of the Resource Management Act 1991 (“the Act”) and the Hearings into the Kāpiti Coast District Council’s Proposed District Plan

AND

Chapter 10 – Historic Heritage (excluding Wahi Tapu Provisions)

IN RESPECT OF SUBMITTOR:

 #319 and FS#177 Waikanae Christian Holiday Park Inc.

 FS#58 Michael and Elizabeth Welch

 FS#59 Barry, Suzanne and Timothy Mansell

 FS#102 USNZ Forestry Group Ltd

 FS#178 Land Matters Ltd

 FS#180 Lutz Brothers Ltd

 FS#181 Bellcamp Trust Company Ltd

 FS186 Mahaki Holdings Ltd

 FS#183 Kennott Trust Company Ltd and Kauri Trust

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STATEMENT OF EVIDENCE OF ANNA P. SISARICH CARTER (MNZPI) ON:

Kāpiti Coast District Council Proposed District Plan – Chapter 10 Historic Heritage (excluding wahi tapu)

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## 1. INTRODUCTION

- 1.1 Tēna koutou katoa. Ko Anna Carter tōku ingoa. Nō Kāpiti Coast ahau. I am the author of this evidence. I am employed by Land Matters Ltd (“Land Matters”) as their Senior Resource Management Consultant.
- 1.2 I have been employed by Land Matters since January 2014. Land Matters represents a number of landowners who made submissions on Kāpiti Coast District Council’s (“the Council”) Proposed District Plan (PDP). Those Submitters are listed on the front page (“the Submitters”) of this evidence. The Submitters have commissioned Land Matters Ltd to represent their submission at the relevant hearings on the PDP.
- 1.3 We acknowledge that this hearing is considering the provisions of the PDP as it was publicly notified and not the SEV PDP. We also note that this hearing is in respect of all provisions in Chapter 10 excluding those relating to wahi tapu.
- 1.4 This evidence is responding to the recommendations made in the s42A Report: Part B – Historic Heritage and the recommendations set out in that report.

### Qualifications and Experience

- 1.5 While at Land Matters I have prepared submissions for a number of landowners on statutory planning documents (such as Greater Wellington Regional Council’s Proposed Natural Resources Plan and Kāpiti Coast District Council’s Proposed District Plan). I have also prepared submissions for landowners affected by the Board of Inquiry for the McKays to Peka Peka expressway.

Predominantly I am involved in preparing and representing landowners seeking resource consents and private plan changes/structure plans from both local authorities and regional councils. I represent clients throughout the Wellington Region but also from the Manawatu and Auckland regions. I have been involved in the structure planning for the Ministry of Defence in Wellington (Shelley Bay) and Auckland (Hobsonville Point). The consents I have been involved in include construction of new apartment buildings, land use consents for commercial activities, tourism operations, construction of new roads, subdivision applications and forest harvesting applications to name a few.

- 1.6 Prior to working at Land Matters I was a consultant resource management advisor. In that role I provided planning policy advice to Kāpiti Coast District Council on previous plan changes, Porirua City Council on their Water Strategy and Rural Review, Greater Wellington Regional Council on their regional bylaws and I was contracted to Ministry for the Environment on the Land and Water Forum for a period of eight months. I have also held positions at the Department of Conservation as a community advisor programme manager, at Local Government New Zealand in their environmental policy team, and as a policy planner and resource consents planner at Kāpiti Coast District Council.

- 1.7 I obtained a Bachelor of Resource and Environmental Planning degree majoring in Ecology from Massey University in 1997. I have been a full member of the New Zealand Planning Institute and since 1999.

### Scope of Evidence

- 1.8 This evidence relates to submissions and further submissions made on the PDP where they relate to policies 10.1 to 10.6 and policies 10.8, 10.9, 10.10 and 10.12. It also relates to the relevant rules following out of those policies and Schedule 10.2 the archaeological discovery protocol.
- 1.9 I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2011 and agree to comply with it. The evidence provided is within my area of expertise and I have not omitted to consider material facts known to me that may invalidate or detract from the opinions expressed.
- 1.10 My evidence considers the submitters submission and further submission points with specific regard to the regulatory framework.

## 2.0 SUBMISSIONS AND FURTHER SUBMISSIONS

- 2.1 The further submissions of Submitters listed on the front page of this evidence opposed the submissions of Greater Wellington Regional Council #441 and Heritage New Zealand *Pouhere Taonga* #460 on the basis that the provisions those organisations sought would significantly increase regulatory costs and represent a 'restrictive planning regime' as opposed to a permissive planning regime as provided for under the Resource Management Act 1991. All these submitters opposed any reference to the Archaeological Alert Layer being retained in the Proposed District Plan (PDP) in any form.
- 2.2 The submission of Waikanae Christian Holiday Park Inc (WCHP) #319 is in the same vein as the submissions referenced above. WCHP opposed the Archaeological Alert layer on the basis that there is no evidence it will achieve the protection of unidentified archaeological sites; there is no basis that it is necessary and that the current process (of employing the accidental discovery protocol) is resulting in archaeological or cultural sites being recklessly damaged; and that there are potentially significant costs to resource consent applicants when required to obtain archaeological assessments and potentially cultural impact assessments for these areas when they do not necessarily meet the criteria as required by the legislation.

Submission #319 supports the rewording of Policy 10.11 *Unidentified Historic Heritage* provided its intention is to use the accidental discovery protocol to manage effects without any reference to the Archaeological Alert layer.

- 2.3 Waikanae Christian Holiday Park's further submission #177 specifically opposed Heritage New Zealand *Pouhere Taonga* submission to include the Takamore Wahi Tapu area across all of WCHP's land. WCHP is now working closely with Takamore Trustees to formulate a response that would recognise and provide for the wahi tapu values within El Rancho's land. A hearing

has been set aside for the 28 – 30 September specifically to address this issue in the Proposed District Plan. Any evidence relating to the Takamore wahi tapu area will be addressed at that September hearing.

### 3.0 KEY POINTS OF EVIDENCE

3.1 There are three key functions in respect of historic heritage the Council has in respect of preparing this District Plan and they are to:

1. **Protect known** historic heritage with identified significant values;

AND

2. **Avoid the destruction of unidentified** archaeological and waahi tapu sites with known **significant** historic heritage values;

AND

3. **Manage adverse effects** on historic heritage by determining whether an activity is appropriate

### 4.0 PROTECTION OF KNOWN HISTORIC HERITAGE WITH SIGNIFICANT VALUES

4.1 As stated in the WCHP's submission, the District Plan **must give effect to the** Regional Policy Statement, and Proposed Regional Policy Statement; and **must not be inconsistent with any** Regional Plans and Proposed Regional Plans.

As noted in the section 42A report, the Regional Policy Statement 1999 ("RPS") which was operative at the time of the notification of the Proposed District Plan is the relevant Regional Policy Statement that this Proposed District Plan must give effect to. The relevant policies of the RPS are discussed in the Council's own Section 32 Analysis document, "*Summary Report Historic Heritage*" and include:

-  **Policy 20** – identifying places, sites and areas with **significant** historic heritage values; and
-  **Policy 21** – **protecting known significant** historic heritage values; and **avoiding destruction of unidentified** archaeological sites and waahi tapu **with significant historic heritage values**
-  **Policy 45** Managing effects on historic heritage values

4.2 Given the submitters point that they are seeking relief that there are no additional burdens beyond the legislative requirements imposed upon them (being those three – they are seeking that in terms of all **known historic heritage values, only those that have meet the identified 'significance criteria' set out in Policy 10.2 of the PDP should be "protected" via the Schedule and via the rules in the Proposed District Plan.**

#### 4.3 Policy 10.1 – Identify historic heritage

The submitters are seeking amendments to ensure the PDP’s policies that seek to “protect” known historic heritage, are in respect of those sites with “significant values only.” They are seeking the following amendments to Policy 10.1:

##### ***Policy 10.1 – Identify historic heritage***

***“Significant historic heritage values that contributes to an understanding and appreciation of the District’s history and culture will be identified in the Schedule of Historic Heritage and on the District Plan Maps. The schedule will include the following places:***

- a)...***
- b) ...***
- c) ...***
- d) ...”***

It is important that the provisions of the District Plan give effect to the Council’s legislative responsibilities. Protecting historic heritage should only be in respect of those sites that hold “significant” historic heritage values. Policy 10.1 should reflect this.

#### 4.4 Policy 10.3 – Additional Listings for the Schedule of Historic Heritage

***“In addition to the criteria set out in Policy 10.2, ~~the~~ the following Historic heritage within the District found to meet the significance criteria set out in Policy 10.2 within the District shall be listed in the Schedule of Historic Heritage:***

- a) items listed on the New Zealand Heritage List Rārangī Kōrero;***
- b) ....***
- c) ...***
- d) ...”***

In terms of giving effect to any relevant entry on the New Zealand Heritage List/Rārangī Kōrero listed under the Heritage New Zealand Pouhere Taonga Act 2014 the RMA is clear that **the Council’s role is to “have regard to” this list.** This requirement speaks to the obligation the Council has “at the time of preparing or reviewing its District Plan” to **review the New Zealand Heritage List** and include entries from that list where they meet the ‘significance’ criteria set out in their District Plan. The obligation of Council in reviewing its PDP is not the same as the obligations Heritage New Zealand has in preparing its list and I think the statement of the author of the section 42A report at paragraph 90 where he states that “*using these sources [i.e. the New Zealand Heritage List] is consistent with the integrated responsibilities of Heritage NZ, the Regional Council and the District Council*” should be qualified with “where those responsibilities meet the PDP’s own significance criteria.”

Heritage New Zealand *Pouhere Taonga* Act 2014 section 65 clause 3 states the purposes of the Heritage List:

- The purposes of the New Zealand Heritage List/Rārangī Kōrero are—*
- (a) to inform members of the public about historic places, historic areas, wāhi tūpuna, wāhi tapu, and wāhi tapu areas:*

(b) to notify the owners of historic places, historic areas, wāhi tūpuna, wāhi tapu, and wāhi tapu areas, as needed, for the purposes of this Act:

(c) to be a **source of information** about historic places, historic areas, wāhi tūpuna, wāhi tapu, and wāhi tapu areas for the purposes of the Resource Management Act 1991.

Policy 10.3 assumes that all entries in the New Zealand Heritage list should automatically be included in a District Plan's schedule of protected historic heritage sites and features. This is not the intention of section 74 of the RMA nor of section 65 of the Heritage NZ *Pouhere Taonga* Act 2014. The list is to **inform** Council who then need to decide whether it meets its *significance criteria*. This view is supported by the judgement given in *Waikane Christian Holiday Park v. Historic Places Trust*<sup>1</sup> where the judge found that:

*"[84] For instance, under s 32D of the Act, district and regional councils must have particular regard to any recommendations the Council may make as to appropriate measures that should be taken to assist in the conservation and protection of a registered wahi tapu area. Under the RMA, territorial authorities must have regard to the register in preparing their district plans and regional policy statements*

...

*[88] The above provisions, however, are no more than vehicles for notifying or recording heritage value. They do not of themselves create legal rights, nor do they impose legal prohibitions on the subject land.*

...

*[90] The central purpose of the registration provisions, however, is confined to preservation and conservation, as per s 22(2)(c) of the Act, in which the operative word "assist" underscores the fact that registration alone is no more than a signifier of heritage value.*

..."

In other words, for every entry included in New Zealand Heritage List/Rārangi Kōrero required by the Heritage New Zealand Pouhere Taonga Act 2014, the Council is required to evaluate against its own District Plan criteria and the Regional Policy Statement criteria as to whether the listing should be included in the District Plan Schedule Sites register. Policy 10.3 does not take this approach and instead assumes a 'compulsory' value that all sites in the New Zealand Heritage List/Rārangi Kōrero meet the significance criteria when they may well not.

Policy 10.3 should specifically reference only sites to be included in the Schedule where they meet the significance criteria set out in Policy 10.2. All sites listed in the Schedule of the PDP should have been evaluated against the 'significance criteria in Policy 10.2' and the evaluations should be made available to all landowners for their review and consideration.

#### 4.5 Policy 10.4 – Protection of Historic Heritage

It is questionable whether this policy is even necessary given policies 10.5, 10.6 and 10.7 which provide for effects from land use and subdivision on historic heritage. I also disagree with the comment made by the author of the Section 42A report at paragraph 101, that "*the protective presumption of Policy 10.5 [now 10.4] is offset in some instances by the joint operation of policies 10.6 [now 10.5] and 10.8 [now 10.7]*". There is no obvious hierarchy and so the combination of all the policies will potentially create conflict as to which has primacy.

<sup>1</sup> Before Judge Goddard at the High Court (C I V -2012-485-515 [2013] N Z H C 2319)

I would recommend deleting this policy. However if the Hearing Commissioners chose to keep it then I would recommend including the words “significant” to ensure it complies with the legislative framework. Unless the ‘surroundings’ of the significant historic heritage values are critical to the protection of the historic heritage values they should not automatically be included as worthy of protection. In our view this policy goes beyond the legislative requirements of the Act and those words “and its surrounds” should be deleted.

The submitters are seeking policy 10.4 to be deleted. If it is not deleted they are seeking it to be amended as follows:

***Policy 10.4 – Protection of Significant Historic Heritage***

***“Subdivision, development and land use affecting the District’s significant historic heritage values ~~and its surrounds~~ will be managed in a way that protects those historic heritage values from adverse effects”***

4.6 **Policy 10.5 Use and modification of historic heritage**

This policy gives effect to Policy 45 of the RPS (managing effects on historic heritage values). We are of the view that sub-clause (B)(d) should be deleted it is not necessary as Policy 10.7 deals with subdivision.

The submitters are also requesting a change to subclause (C)(e). It is our view that it should allow for resource consent applicants to obtain advice from a suitably qualified expert in heritage identification (i.e. archaeologist or historian) and/or heritage conservation (a heritage conservator). If any effects are then still considered more than minor, Heritage New Zealand Pouhere Taonga may be considered an affected party and the application could be served on them.

Subclause (f) should only apply in respect of waahi tapu sites or sites of significance to iwi.

Subclause (g) should either reference the ICOMOS principles or not reference them at all as the District Plan should be able to stand alone in terms of its provisions.

The submitters are seeking amendments to Policy 10.5 as follows:

***Policy 10.5 Use and modification of historic heritage***

***“Modification or use of scheduled historic heritage, including alteration of or additions to scheduled buildings, is appropriate to maintain the continuity of use, or for new uses where the modification or use:***

***a)...***

***b)...***

c)...

**A) the following assessment criteria will be considered when assessing effects of modification on historic heritage:**

- a) ...
- b) ...
- c) ...
- d) ...
- e) ...
- f) ...
- g) ...
- h) ...
- i) ...

**B) the following assessment criteria will be considered when assessing the effects of use on historic heritage:**

- a) ...
- b) ...
- c) ...
- d) ~~In relation to subdivision, whether a lot less than the minimum size will contribute to preservation of heritage values~~

**€—consideration will also be given to:**

- e) recommendations made by Heritage New Zealand Pouhere Taonga or a suitably qualified expert ~~professionally recognised party~~ expertise in heritage identification and/or management conservation;
- f) for waahi tapu sites or sites of significance to iwi – the outcome of consultation with the relevant iwi authority ~~and other parties;~~
- g) ~~the conservation principles set out in the International Council on Monuments and Sites (ICOMOS) New Zealand Charter 2010”~~

#### 4.7 Policy 10.7 – Subdivision involving historic heritage

We are of the view that the current wording of this policy is outside the legislative framework. Of particular concern is inclusion of the words “and its surroundings”. The matters of consideration listed in (a) through to (f) should be sufficient to enable a consent authority to determine whether the surroundings need to be taken into account. The submitters are seeking this policy be amended as follows:

##### ***Policy 10.7 – Subdivision involving historic heritage***

***“Inappropriate subdivision of historic heritage ~~and its surroundings~~ will be avoided.***

***Where any subdivision is proposed on sites containing a scheduled building or structure, scheduled historic sites, scheduled historic area, or waahi tapu and other places and areas***

**with significant heritage value to iwi specific consideration will be given to the following matters:**

- a) ...
- b) ...
- c) ...
- d) ...
- e) ...
- f) ...”

#### 4.8 Policy 10.12 – Voluntary and non-regulatory methods

As with the argument put forward for the long-term management to halt biodiversity decline, working alongside landowners who have significant historic heritage values on their properties, is crucial to halting the potential damage and loss of our unique New Zealand historic heritage.

Just as the wording of Policy 10.8 – Wahi Tapu is that, “Council will work in partnership with the relevant iwi authority for the ongoing and long term management and protection of wahi tapu...” a similar policy direction should be provided to landowners with significant historic heritage on their land.

Heritage New Zealand *Pouhere Taonga*, Greater Wellington Regional Council and territorial authorities have had very little resources with which to physically protect and manage historic heritage. It appears that this PDP is looking simply to imposing rules as its main method to address the loss of our historic heritage when in fact another alternative is to work with landowners at the time that they seek to develop their land to protect and manage historic heritage. 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 currently is not provided for in the Proposed District Plan and should be.

The submitters are seeking Policy 10.12 be amended as follows:

**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~~ 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”**

## 5.0 AVOIDING DESTRUCTION OF UNIDENTIFIED ARCHAEOLOGICAL SITES AND WAHI TAPU SITES WITH SIGNIFICANT HISTORIC HERITAGE VALUES

5.1 The objectives of the Council in preparing its District Plan in respect of this function should:

- 1) only be in relation to potential sites with *significant* historic heritage values, that include wahi tapu sites which should only be identified where they are likely to contain known significant values to iwi;

AND

- 2) should look to “avoid” adverse effects where those ‘significant’ values are present

5.2 The recommendations in Section 42A report goes beyond the legislative framework for both points 1 and 2 above in that Policy 10.9 has adopting a ‘precautionary approach’ across **all historic heritage values** that assumes all historic heritage is required to be protected.

Policy 10.9 is applying a ‘precautionary approach’ to all historic heritage and the reality is that the archaeological alert layer will be the tool used by Council planners in assessing risk – regardless of whether the potential historic heritage has significant values or not.

5.3 According to the predictive modelling report prepared by enVISON and Subsurface Ltd (Andy Dodd) in 2012 for KCDC that is behind the archaeological alert layer area, the modelling was based on environmental and cultural variables in order to assist the Council in identifying likely areas of historic heritage values. However the values that made up the brief did not include “significance criteria” instead it models the “potential” for archaeological sites based on variables including dune intactness, distance from the coast and elevation. According to Andy Dodd the potential varies between low to medium to medium-high.

5.4 According to Council’s own section 32 report<sup>2</sup> and as acknowledged in the section 42A report, there are a number of risk factors in using the information in the archaeological alert layer including:

- *“The alert layer has an inherent margin of error.*
- *...*
- *...*
- *The model **does not assess the significance** of archaeological sites*
- *...*
- *Additional costs to developers of sites identified as being within the alert layer. Consent applications for earthworks or subdivision will need to be accompanied by an archaeological assessment and cultural values assessment.”*

But then I note that the author of the Section 42A report at paragraph 67 disagrees with the risk factors listed in Council’s own section 32 report where he notes that “*I note the intent of Policy 10.11 [now 10.9] – Unidentified Historic Heritage, is to use the Archaeological Alert Area as a*

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<sup>2</sup> Page 41. Kāpiti Coast District Plan Review. Section 32 Analysis – Summary Report Historic Heritage

*trigger to ensure the accidental discovery protocol is added as an advice note to applicable resource consents. Therefore I do not agree with the further submitters concerns that it “would be more than likely” for such applications to be accompanied by an Archaeological Assessment. In my opinion, if this was the intent of the policy, there would be rules and standards which specifically refer to the Archaeological Alert Areas, and the need for an archaeological assessment. There are no such rules or standards.”*

The PDP did not contain rules or standards in relation to the archaeological alert layer/area when the section 32 report was written and yet the author of that report was well aware that it could trigger the need for archaeological assessments as well as cultural impact assessments for resource consent applications sought within these areas.

The SEV PDP has effectively ‘hookwinked’ submitters into believing that the archaeological alert layer was to be removed in its entirety (refer the Submitter Engagement Version of the PDP). This has not occurred and it is now intended that the Alert Layer will remain alive in Council’s geographic information system (GIS).

The recommendation in the Section 42A report for Policy 10.9 is to use the alert layer as a means of giving effect to the RPS’s Policy 21 as highlighted in that report where it is written, “[it will] *maintain publicly available information to highlight areas where there is a high risk of unidentified heritage being encountered.*”

- 5.5 Waikanae Christian Holiday Park’s submission<sup>3</sup> highlights the different legislative requirements under the RMA in preparing District Plans and under Heritage New Zealand Pouhere Taonga 2014 Act that require archaeological authorities. The trigger for an archaeological authority is if a person, “knowing or having reasonable cause to suspect that it is an archaeological site.” An archaeological authority is sought from Heritage New Zealand Pouhere Taonga not the District Council.

Under the RPS however, the function of a District Plan is to ensure that “damage to unidentified archaeological sites or wahi tapu or other sites with “**significant**” historic heritage values is **avoided.**” Policy 10.9 is implying that the Archaeological Alert Layer will identify those significance values for historic heritage and wahi tapu when in fact the Archaeological Alert Layer is simply predicting the presence or not of suspected archaeological sites.

- 5.6 The archaeological alert layer area should be a tool used by Heritage New Zealand and not Kāpiti Coast District Council. The Council has no legislative requirements to comply with Heritage New Zealand Pouhere Taonga Act 2014. It may wish to highlight as a note the legal obligations people have under that Act but the Council is not the enforcer of that Act.

The way Policy 10.9 and the Schedule 10.2 is written, it appears as if the PDP is functioning as a regulatory arm of Heritage New Zealand Pouhere Taonga. I note that was raised as a risk by the author of the Section 42A report where in paragraph 181 he writes, “*I also agree with RNR Trust that the policy may duplicate or overlap Heritage NZ Act processes related to an archaeological authority.*” Given this, I am surprised that he goes on to state that, “*notwithstanding that fact,*

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<sup>3</sup> see pages 16 and 17 of that submission

*an alert layer does have value but I consider it should only exist in the Council's public GIS system, given that knowledge about the District's archaeological features will change over time."*

- 5.7 The reality is that without an appropriate 'significance' criteria being one of the factors in the predictive modelling behind the Archaeological Alert Layer Area (AAA), the assumption will be that all the identified areas on the GIS maps will be significant. Another risk to Council is that sites with "low potential" could be equated with a site having "low significance" when this may not be the case.

*To reiterate Waikanae Christian Holiday Park's submission, "there are significant costs involved in obtaining an archaeological authority from the Trust. El Rancho has recently obtained an authority from the Trust for a small areas of earthworks proposed within the River Corridor. We received quotes ranging in price from \$1,500 to \$5,000..."*

The cost to WCHP has continued to grow in terms of funding archaeological authorities. Another authority they obtained for earthworks in their back paddock (where they wanted to flatten out a dune so they could relocate some of their activities that had to be moved because of the Expressway) ended up costing an excessive amount when compared to the "significance" (or lack of significance) of the archaeological site. During the earthworks the archaeologist and iwi monitor had to be on-site during the entire operation. The cost of this work and the original application cost WCHP \$5,500.

When a small midden was found in an area of earthworks (it was subsequently destroyed as allowed by the Trust), the contents of that midden had to be tested. The shell fragments were sent away to a specialist analyst to identify – they had an hourly charge-out rate of \$525 per hour; the fish bones were sent away to a microfossil specialist to be identified at an hourly charge out rate of \$525; the charcoal fragments were sent away to be carbon dated at an hourly charge out rate of \$120 an hour; and other elements were sent to a C14 specialist with an hourly charge out rate of \$75 per hour.

The information was then collated into a report by the archaeologist and sent back to the Trust at a total cost of \$11, 136 (GST inclusive). The total cost of the archaeological authority (not including obtaining resource consent) was just under \$17,000. For a not-for-profit organisation that is a lot of money particularly given the midden was not kept in-tact and there were no significant finds in the midden.

- 5.8 At this point I would also like to highlight the case of Trevor and Nanette Wright who have had a 13 year battle with Council over what is contained in their Land Information Memorandum (LIM) report. The Wright's disputed the scientific basis of a GNS Science Report identifying an earthquake track on their land. Following two further reports that was commissioned on the topic, the disputed information was removed from the District Plan maps but kept on the Council database which would be accessed when preparing a LIM report. The couple continued to battle Council to remove the information from the LIM report and following a legal ruling by Richard Fowler QC who stated that the GNS Science information didn't "meet the threshold of credibility," the Council were advised to remove the risk tag from the property<sup>4</sup>.

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<sup>4</sup> Refer attached newspaper article from the Herald. Thursday 24 March 2016.

There is the same risk to Council that other landowners will do the same thing that the Wright's did over the Archaeological Alert Layer should it be found to not meet the threshold of credibility.

- 5.9 Given the potential costs to landowners, careful consideration should be given to the use of the Archaeological Alert Layer Area and consider whether it is actually giving effect to its functions under the RMA and the RPS or whether it is being used to assist Heritage New Zealand Pouhere Taonga to give effect to its functions.
- 5.10 For these reasons the submitters are seeking amendments to Policy 10.9 and Schedule 10.2 to remove all references to the archaeological alert layer and to bring the policy back into line with the intentions of the RPS Policy 21(b). The amended policy is as follows:

**Policy 10.9 - Avoiding Destruction of Unidentified Historic Heritage, Archaeological Sites and Wahi Tapu Areas**

**A precautionary approach will be taken to protecting unidentified historic heritage that seeks to avoid the destruction of unidentified archaeological sites and wahi tapu with significant historic heritage values.**

**Development where the discovery of any unidentified archaeological historic heritage occurs will be immediately stopped until the significance is assessed using the ~~And adverse effects avoided or mitigated~~ the Archaeological Assessment as set out in Schedule 10.2 Archaeological Discovery Protocol.**

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

Again the focus must remain on protecting those sites which may have significant historic values present.

- 5.11 In the same manner, Schedule 2 should be amended to exclude any reference to the Archaeological Alert Layer Area. Submitters are seeking the following amendments:

***Schedule 10.2 – Archaeological Requirements***

***“This schedule sets out information to alert the public to their responsibilities regarding archaeological sites. This is relevant with regard to:***

- 1) Demolition/destruction of any structure associated with human activity prior to 1900, whether or not it is listed by the district plan as historic heritage;***
- 2) Earthworks or other works that may disturb pre-1900 sub-surface archaeological material***

**ADVICE NOTE:**

**Consent required from Heritage NZ**

*An authority (consent) from Heritage NZ must be obtained prior to the commencement of works noted in (1) or (2) above. It is an offence to modify or destroy sub-surface archaeology, or demolish/destroy a whole building without an authority if the person knows or reasonably suspects it to be an archaeological site. For further information, contact Heritage New Zealand. The relevant legislation is the Heritage New Zealand Taonga Act 2014, in particular sections 42 and 44 of that Act.*

**Known or suspected archaeological sites**

*An archaeological authority must be obtained if the person undertaking the works knows or reasonably suspects it to be an archaeological site. The following resources may assist in that determination:*

- \* ~~Historic heritage listed in Schedule 10.1 of the district plan~~*
- \* ~~Sites listed by the New Zealand Archaeological Association's Archaeological Site Recording Scheme (latest information is on the NZAA website, but some site numbers are also included in Schedule 10.1)~~*
- \* ~~Kapiti Coast District Council GIS information, which highlights areas where there is a higher risk of unidentified historic heritage being encountered.~~*

*.....”*

The obligations to obtain an archaeological authority under Heritage New Zealand Pouhere Taonga are the responsibility of Heritage New Zealand and not KCDC.

I note that the author of the section 42A report at paragraph 193 stated that Waikanae Christian Holiday Park supported Schedule 10.2. That was only on the proviso that there was no reference to the Archaeological Alert Layer Area.

**END E noho rā**