

Kāpiti Coast Proposed District Plan – Reporting Officer Closing Statement

CHAPTER 10: Historic Heritage (Waahi Tapu)

Prepared by Jerome Wyeth, consultant planner

1. Introduction

- 1.1 This closing statement provides a response to submitter evidence and oral submissions presented during the hearings on the waahi tapu provisions in Chapter 10 of the Kapiti Coast Proposed District Plan (PDP), which was held on 28 and 30 September 2016. This statement is focused on areas where issues raised and evidence presented has caused me to reconsider my views expressed in my Section 42A Report or opening statement. It also provides a response to questions and information requested by the Panel during the hearing.
- 1.2 The following submitters provided evidence prior to the hearing:
- Maypole Environmental Limited (submitter 263);
 - Heritage New Zealand (submitter 460); and
 - Daniel Castle (successor Jude Harris) – (submitter 557).
- 1.3 In order of appearance, the submitters who attended the hearing were:
- Jude Harris;
 - Paula Keene (submitter 350) and John Rice (submitter 344);
 - Peter Brownie / the Brownie Trust (submitter 78 / 171);
 - Ngā Hapū Ōaki – Ngāti Koroki (submitter 438) / Whakarongotai Marae – Te Ātiawa (submitter 559);
 - Waikanae Golf Club (submitter 2);
 - Te Anau Trust (submitter 272);
 - Maypole Environmental Limited;
 - Waikanae Christian Holiday Park (submitter 319); and
 - Heritage New Zealand.
- 1.4 Section 2 of this statement focuses on the specific issues raised by submitters in their evidence or during the hearing. Section 3 provides responses to questions raised by the Panel. Section 4 outlines my further recommended amendments in response to evidence presented and issues raised during the hearing. Any further recommended amendments to the PDP are highlighted in yellow.

2. Additional matters raised during the hearing

- 2.1 Submitters presented evidence and statements on a number of key issues, and the Panel directed further consideration and clarification on a number of these. The key issues raised during the hearing can be summarised as:
- **Waahi tapu:** use of the term in the PDP to schedule a range of sites and areas;
 - **Kaiwharehou:** the appropriateness of the boundary and associated provisions;
 - **Makahuri:** the appropriateness of the boundary and associated provisions;
 - **Taewapirau:** the appropriateness of the boundary and associated provisions;
 - **Takamore:** the agreed provisions for the wider Takamore waahi tapu area;
 - **Land disturbance:** clarification on what level of disturbance is permitted, whether a more permissive activity status should/can apply to sites with urupā, and proposed notification clause to Heritage New Zealand;
 - **Policy 10.10:** consultation with Heritage New Zealand;
 - **Matters of control and discretion:** whether design and colour of buildings should be retained as matters to consider and control; and
 - **Key access and viewpoints:** whether this should be a rule or matter of discretion.
- 2.2 I provide a response to each of these issues below focusing on those areas where I have reconsidered the recommendations in my Section 42A Report.

Waahi tapu – use of the term in PDP

- 2.3 A key issue raised during the hearing was the use of the term waahi tapu in the PDP and the scheduling of waahi tapu areas within a district plan. Waahi tapu is defined in Chapter 1 of the PDP as:

Waahi Tapu means a site or an area which is sacred or spiritually meaningful to tāngata whenua. Waahi tapu may be associated with creation stories of tāngata whenua, a particular event (such as a battle or ceremony); it may be where the whenua (placenta) was returned to the earth, or where a certain type of valued resource was found.

- 2.4 This definition appears to be based off an earlier scoping on plan provisions for Māori 'Te Haerenga Whahmua'¹ with some refinement.
- 2.5 The evidence of Mr Morris Love, Māori cultural expert witness acting for Maypole Environment Limited, focused on how waahi tapu were dealt with in the PDP. He states that, in his view, the PDP "takes a very broad approach to what they call waahi tapu, which are not necessarily tapu in the traditional sense (i.e. in accordance with tikanga)". He also references an Environment Court case where the Court found in favour of evidence that waahi tapu are small sites such as burial sites, birthplace of a founding member, or site of a significant historical event².
- 2.6 Te Kenehi Teira, National Māori Heritage Manager at Heritage New Zealand, also provided his perspective of how waahi tapu has been used by iwi and regulatory authorities. He emphasised how this has varied over time and between different districts. From my perspective, this demonstrates that waahi tapu as a concept should

¹ Hāpai Whenua Consultants (2012), 'Te Haerenga Whahmua: A Review of District Plan Provisions for Māori – A Vision to the Future' The Kāpiti Coast District Council District Plan Review 2009-12.

² *Winstone Aggregates Limited v Franklin District Council* [2002] A080/02 at paragraphs 274-277.

not be tightly defined or constrained as it can mean different things to iwi and hapū in different contexts.

- 2.7 Importantly, the schedule of sites and places in Chapter 10 does not just refer to waahi tapu – it refers to (with recommended amendments): *“Waahi tapu and Other Places and Areas of Significance to Iwi Māori (and surroundings/setting, if applicable). (including tauranga waka, historic marae, maunga, awa, mahinga kai, pā, midden, Māori archaeological sites).”*
- 2.8 Therefore, I consider that the debates on what constitutes waahi tapu at the hearing did not consider the holistic nature of how the PDP seeks to address these matters. The provisions in Chapter 10 are intended to protect places and areas that have been identified as being of significance to iwi. These sites may or may not be ‘tapu’ in the strict sense, but nevertheless have significant values for iwi.
- 2.9 I note that this approach to identify sites with significant cultural values is consistent with Policies 21 of the RPS. Policy 21 refers to the identification of sites and places with significant values based on a number of criteria, including *“(d) tangata whenua values: the place is sacred or important to Māori for spiritual, cultural or historical reasons.”* The policy is clearly intended to apply to sacred sites and sites that are important to Māori for wider spiritual, cultural and historic reasons.
- 2.10 Policy 21 is also clearly focused on the identification of places and sites with cultural values rather than the identification of physical features. The lack of certainty about the exact locations and physical boundaries of waahi tapu sites was a frequent issue raised at the hearing and something that I addressed in section 3.14 - 3.20 of my Section 42A Report.
- 2.11 None of the evidence presented at the hearing has caused me to change my recommendations about the use of waahi tapu, and the scheduling of waahi tapu and other places and sites of significance to Māori in the PDP. However, I do make further comments about specific waahi tapu sites below.

Kaiwarehou

- 2.12 John Rice and Paula Keene both presented oral submissions during the hearing and Paula Keene also tabled a written statement and presentation. A number of questions were raised during the hearing about the appropriateness of the boundary of Kaiwarehou based on the evidence presented and archaeological findings associated with the expressway to the east of their property.
- 2.13 Further consideration was directed as to whether it may be possible to schedule a smaller waahi tapu site in the eastern part of Mr Rice and Mrs Keene’s property based on what is now known about archaeological features in the area.
- 2.14 I am supportive of the potential refinement of the Kaiwarehou waahi tapu boundary in response to new information since the PDP was notified, provided it still maintains the recognition of the cultural significance of Kaiwarehou to Te Ātiawa.
- 2.15 Mr Rice and Ms Keene raised concerns regarding the impact of the Kaiwarehou waahi tapu on the ability to subdivide their site. However, Council officers have advised that the current location of the scheduled Kaiwarehou waahi tapu does not impact on the subdivision potential of Mr Rice’s and Mrs Keene’s property in terms of the number of lots. In particular, they have advised that the scheduled waahi tapu area does not necessarily reduce the overall development capacity that may be achieved through

subdivision and there are a variety of options that could potentially achieve a 7 lot subdivision on the site.

- 2.16 Based on this advice, there appears to be limited benefit in refining or moving the scheduled Kaiwarehou waahi tapu area in the PDP given that a loss of subdivision potential appears to be the key concern of Mr Rice and Ms Keene. However, I do consider that John Rice and Paula Keene could be provided with more guidance on the different options for subdivision and development on their land, which can occur through discussions with Council officers.

Makahuri

- 2.17 Similar to the issues raised in relation to Kaiwarehou, Mr Brownie raised a number of concerns about the accuracy of the Makahuri waahi tapu scheduled in the PDP during the course of the hearing. In addition, questions were raised about:

- Clarification over what has been recorded on NZAA on Makahuri, particularly whether there is a recorded pā site in the area; and
- Council transcripts that discuss Makahuri and identifying it in the PDP on the basis that it looks interesting.

- 2.18 The NZAA site record form of relevance is R25/36 by Cathryn Barr, as referred to in Dr Kahotea's report. The archaeological site is recorded as Haowhenua not Makahuri and the NZAA site record states that it is a pā site overlooking Te Horo Flats and Kaptiti Coast. It also records three pits and five possible terraces but notes that these features are not clearly defined due to cover with long grass and sand dunes.

- 2.19 I have reviewed the site reports on Makahuri and I cannot identify any reference to council representatives and iwi referring to Makahuri as "interesting". In Pataka Moore's site report on Makahuri, he notes that members of Ngāti Raukawa undertook site visits of the proposed highway during 2010 and 2011 where they "*pointed out the various terraces, pits, depressions, house sites and so on. The iwi member said that it became immediately obvious that this was a site used by his ancestors*". The report of Dr Kahotea on Makahuri focuses on the historical and cultural significance of Makahuri. He also discusses and some of the archaeological features identified during a site visit with Mr Brownie, a council representative and a representative from Ngāti Raukawa, but he makes no reference to the sites having previously been identified as waahi tapu on the basis that the site it interesting.

- 2.20 Overall, there was no new evidence or statements presented at the hearing on Makahuri that have led me to change my analysis and recommendations in my Section 42A Report. I continue to fully acknowledge the concerns of Mr Brownie about the impact of the schedule waahi tapu on his land but there are clear statutory directives in the RMA and in the RPS to identify and protect waahi tapu that the PDP must give effect to. I am satisfied the PDP effectively balances these statutory directives with the ability to use land for the permitted uses under the relevant zoning, and it ensures the waahi tapu values are suitably considered where a proposed activity may affect those values.

Taewapirau

- 2.21 Evidence and statements from the three submitters on Taewapirau (Waikanae Golf Club, Te Anau Trust and Maypole) raised similar concerns about the accuracy and robustness of scheduling Taewapirau in the PDP. This issue was addressed in my

Section 42A Report, which should be referred to. However, there were also new questions arising during the hearing relating to:

- The position of Te Ātiawa on Taewapirau and the report of Dr Kahotea; and
- Evidence on whether Taewapirau is considered to be a waahi tapu.

- 2.22 The position of Te Ātiawa on the report of Dr Kahotea was clarified in a memo prepared by Andre Baker, Chairman of Ātiawa ki Whakarongotai Charitable Trust on 27 September 'Review of Kahotea (2016) Report: Taewapirau'. I understand the Panel has a copy of that memo so I will not repeat the position of Te Ātiawa here.
- 2.23 However, it is important to note that Mr Baker does emphasise the waahi tapu status of Taewapirau in his memo and refers to the following quote from Mahina-a-rangi Baker's earlier cultural impact assessment "*The Taewapirau site therefore carries multiple layers of significance in terms of its value. It was a place of food cultivation and occupation, a site where large loss of life occurred, the likely site of graves and is a site that commemorates the Battle of Te Kuititanga and the confirmation of the mana whenua status of Te Ātiawa ki Whakarongotai. For these reasons, Taewapirau is considered a waahi tapu.*"
- 2.24 Overall, there was no evidence presented at the hearing that has changed, to alter my recommendations in relation to Taewapirau. As noted in my Section 42A Report, it is clear that there is some uncertainty about the exact boundaries of Taewapirau and some inconsistencies in the various historical, cultural and archaeological assessments of the site that have been undertaken, and this was further highlighted from submitter evidence and statements at the hearing. However, in my view, this uncertainty on the exact boundary of Taewapirau does not justify cause for inaction given the clear directives to identify and protect waahi tapu in section 6 of the RMA and the RPS.

Takamore

- 2.25 As signalled in my opening statement, it was expected that Waikanae Christian Holiday Park, Takamore Trust and Heritage New Zealand were going to outline their position on Takamore waahi tapu at the hearing. Following on-going discussions between these parties, they have agreed on a revised 'Group C' rule set for Takamore which has the support of all parties (with the exception of some minor matters discussed further below).
- 2.26 The main features of this proposed rule set are:
- Heritage site land disturbance is a permitted activity and the conditions allow for 100m³ of land disturbance within a 5 year period. This is based on the standard controls for earthworks within the rural zone;
 - New buildings require consent as a controlled activity with effects on historic heritage values a matter to control which would enable Waikanae Christian Holiday Park to engage with Takamore Trust; and
 - All subdivision is a restricted discretionary activity with effects on historic heritage values a matter to consider.
- 2.27 I fully support the outcome that these parties have agreed upon together to recognise their mutual needs and ensure the values of Takamore waahi tapu are protected. I also consider that there is scope within submission 460.37 from Heritage New Zealand and further submission 177 from Waikanae Christian Holiday to make these

amendments to the PDP. Submission 460.37 sought to expand to Takamore waahi tapu to provide greater protection of the cultural values associated with the extended area. Further submission 177 opposed this submission as the waahi tapu area was subject to judicial review at that time and also presumably because the waahi tapu area would affect their ability the ability to use and develop their land. The agreed outcome addressed the relief sought from both these parties by recognising the cultural values associated with the larger waahi tapu area while also allowing for a degree of flexibility for Waikanae Christian Holiday Park to develop their land in consultation with Takamore Trust.

- 2.28 Accordingly, I recommend amendments to the rule set to provide for a new waahi tapu group as outlined below. However, rather than refer to this new rule set as 'Group C', I recommend that it is referred to as 'Wāhanga Rima' consistent with recommended names for the other waahi tapu groups in the PDP.

Land disturbance

- 2.29 Land disturbance was addressed in my Section 42A Report but there was additional issues raised and amendments proposed by submitters during the hearing. In particular:

- Te Anau Trust sought greater clarification as to what is permitted on their site;
- Heritage New Zealand sought that a higher activity status apply to urupā within Group B and D waahi tapu; and
- Heritage NZ requested a notification clause for land disturbance to trigger the archaeological authority process.

- 2.30 In terms of clarifying what level of disturbance can occur on a waahi tapu site, I have recommended that the rules are amended to clarify that that 10m³ threshold applies per site per calendar year. This should provide for the small scale landscaping activities referred to by Te Anau Trust at the hearing. I also consider there would be merit in the Council working with affected landowners in the non-regulatory space (education, advice etc.) to clarify what can be done on their sites once decisions on submissions have been made.

- 2.31 There are 5 sites within Group B and D that have been identified as having a ūrupa within the site: Taewapirau (pā and urupā), Mūtikitiko (puke and urupā), Ōtaki pā (pā including urupā), Mataihuka pā (pā with kōiwi/burial sites), and Whareroa pā (pā and urupa). Council officers have advised that iwi have identified and reviewed the boundaries of these waahi tapu sites but the specific location of ūrupa within each is not information that iwi wish to be publicly available. I note this is not uncommon across New Zealand where iwi consider, on cultural grounds they do not wish to make sensitive information made public. As such, I do not consider any changes should be made to the PDP in response to the request of Heritage New Zealand in their evidence.

- 2.32 I also do not recommend that the land disturbance rules be amended to require the notification of Heritage New Zealand. The proposed definition 'heritage site land disturbance' is intentionally broad with no minimum threshold and includes "any new fencing, tree planting, tree removal and the formation of new driveways and paths". Requiring landowners to notify Heritage New Zealand for all types of land disturbance activities regardless of size would be overly onerous and potentially just result in unnecessary effort and costs for both parties.

- 2.33 I also note that the waahi tapu rules refer to the need to comply with Schedule 10.2 – Accidental Archaeological Requirements. This should ensure that Heritage New Zealand are notified of larger land disturbance activities that may disturb sub-surface archaeological material.

Policy 10.10

- 2.34 Heritage New Zealand supports the recommended deletion of the notification clauses in Chapter 10. However, they seek amendments to Policy 10.10 to also include Heritage New Zealand in the partnership arrangement to be consulted on all resource consent applications affecting waahi tapu. In the hearing, it was clarified that 'partnership' may be too strong a concept and consultation was what Heritage New Zealand was really seeking.
- 2.35 I do not recommend any changes to Policy 10.10 to refer to Heritage New Zealand being consulted on all applications affecting waahi tapu. I believe it is iwi that should be consulted in the first instance, and Council already has systems in place to ensure that this occurs. Consulting Heritage New Zealand on all applications affecting waahi tapu would be onerous and not always appropriate and, in my view, Heritage New Zealand should continue to be consulted on a case-by-case basis in accordance with sections 95D and 95E of the RMA.

Matters of control and discretion

- 2.36 The evidence of Heritage New Zealand stated that building design, colour and materials can cause adverse effects on waahi tapu sites, and requests this matter be retained in the Plan. This matter was further discussed during the hearing with Waikanae Christian Holiday Park and Heritage New Zealand both noting that the design of buildings may be a relevant consideration but that this was not a significant issue for them.
- 2.37 On reflection, I recognise that design may be relevant factor to consider when assessing the effects of new buildings and structures. For example, a building may be designed to be more sympathetic to the landscape and the cultural values associated with the area. I consider that 'design' is sufficiently broad to capture the effects of concern, therefore I recommend only a minor amendment from my Section 42A Report to retain the reference to the "design" of building and structures.

Key access and viewpoints

- 2.38 Heritage New Zealand seeks for this to be retained as a rule rather than a matter of discretion as recommended in the Section 42A Report. Heritage New Zealand considers that having these areas as a matter of control or discretion would create a gap for buildings and structures that are permitted activities.
- 2.39 New buildings are permitted activities in Group B (Taewapirau) and Group E (which includes two marae). However, the seven waahi tapu sites with key access and viewpoints are either in Group A or Group D and new buildings within these sites are either a non-complying activity (Group A) or controlled activity (Group D). Therefore, there is no gap in relation to permitted buildings as indicated by Heritage New Zealand in their evidence.

- 2.40 My Section 42A Report also outlined why is impractical to include the key access and viewpoints as rules given the areas are very loosely defined in the PDP. As such, I recommend no further changes to the request of Heritage New Zealand

3. Questions from panel

- 3.1 This section outlines specific questions and information requests that arose from the Panel during the course of the hearing and provides a response.

a) Clarification on the Group C waahi tapu group and why this was removed from the PDP.

- 3.2 As highlighted in section 3.7 of my section 42A Report 'Waahi Tapu Groupings', there was originally a Group C waahi tapu included in an earlier draft of the PDP. This was identified during a review of Council files and in particular a document prepared by Hannah Bateman (Policy Planner) and Pātaka Moore prepared in September 2012 summarising the purpose of the different groupings. This states:

"The waahi tapu identified across Kapiti Coast include a wide range of activities and sites. Due to the wide range of waahi tapu and existing activities undertaken on site, the waahi tapu have been classified into five groups: A, B, C, D and E for the purposes for the District Plan rules. The groups have been identified based on the type of waahi tapu, current activities on site, potential development threats to the waahi tapu, and the level of knowledge about the site³."

- 3.3 I have been unable to find any more information or clarification on why Group C was removed from the PDP prior to notification of the PDP, or what sites were included in Group C. Monica Fraser, Council Iwi Relationship Manager, is unable to confirm the reason Group C was removed. This matter was also discussed with Pātaka Moore in 2015 and he was unable to specifically recall the purpose of Group C and why it has been removed.
- 3.4 So it remains unclear why Group C was removed from the PDP. However, it is fair to assume that Group C was removed as the rule set was similar to other waahi tapu groups and/or there was insufficient knowledge on the sites at the time to include them in the PDP.

b) Clarification on Councils intended process to schedule additional waahi tapu sites and whether there is a formal process in place.

- 3.5 This request was discussed by Council and they advised that iwi intend to schedule additional sites in the future but the biggest priority at this point of time is ensuring that the current PDP process concludes first and the waahi tapu sites are retained. Following the conclusion of the PDP process, it is intended that there will be discussions between Council and Te Whakaminenga o Kāpiti in mid-2017 about the process to undertake further research on waahi tapu.

c) Further details and notes from meetings with Te Ohu Taiao to discuss waahi tapu rules and sites.

³ Memo to Te Āti Awa, 20 September 2012, 'Kapiti Coast District Plan Review and Waahi Tapu Project' from Hannah Bateman (Policy Planner, KCDC) and Pātaka Moore (Waahi Tapu Researcher, Whaiao Ltd).

3.6 As noted in my Section 42A Report, workshops and meetings were held with Te Ohu Taiao on the waahi tapu provisions on 15 and 29 September 2015, and 1 and 20 October 2015. Full notes from these meetings have been provided with this statement.

d) Whether the explanation table should refer to waahi tapu and other sites of significance to Māori rather than just refer to waahi tapu.

3.7 On reflection, the proposed explanation table provided in section 3.7.4 of my Section 42A Report should refer to “*waahi tapu and other places and areas of significance to Māori*” rather than “waahi tapu” to be consistent with the rest of Chapter 10.

3.8 As noted above, the reference to other places and areas of significance to Māori in the PDP signals that not all the sites in Chapter 10 may be ‘tapu’ in the strict sense but still have cultural significance to iwi. I have included this amendment in section 4 below and also amended the table to refer to “type” rather than “type of waahi tapu”.

3.9 In addition, I recommend that Policy 10.10 should be amended to also refer to places and areas of significance to Māori consistent with the rules and schedule in Chapter 10. I consider that there is scope to make this minor amendment for consistency under clause 16(2) Schedule 1. My recommended amendments are included below.

e) Consideration of whether there is merit in including a specific section within the introduction section of Chapter 10 explaining waahi tapu.

3.10 The second paragraph of the introduction to Chapter 10 highlights the fact that Māori cultural heritage is of significance to whanau, hapū and iwi, and that Māori values such as kaitiakitanga and tapu are inextricably linked to historic heritage. However, it does not explain the concept of waahi tapu or other sites of significance to Māori. The explanations of Objective 2.1 (tangata whenua) and 2.7 (historic heritage) also do not explain waahi tapu and how it is used in the PDP.

3.11 As noted in section 2 above, waahi tapu is defined in the PDP but the concept can mean different things and be used in different ways by iwi and regulatory authorities. This was noted in the research report of Pātaka Moore, refer to Appendix B of the Section 42A Report. This report noted that:

“...often Māori environmental values and terms are broad and defined in different ways depending on local contexts and iwi specific viewpoints. Narrow definitions of Māori environmental and heritage values tend to be too restrictive of their dynamic meaning, which can result in misinterpretations. (pg. 6)”

3.12 The report then provided some definitions of waahi tapu noting that there are many broad definitions of waahi tapu without advocating for a particular preference.

3.13 I consider that there is some benefit in broadly explaining the values and importance of waahi tapu and other sites of significance to Māori in the introduction to Chapter 10. This may help plan users understand the significance of these sites and the rationale for the waahi tapu rules in the PDP.

3.14 I note the explanation of Policy 10.10 included the following text relating to waahi tapu:

Waahi tapu has important historic heritage and living cultural value to tāngata whenua. Waahi tapu sit within a larger cultural landscape and convey important understandings of the environment and Māori cultural identity: whether they are

areas instilled with *tapu*, tell a story of settlement or migration, or are acknowledged as places of tribal success or defeat. The identification of these heritage values rests with iwi, hapū, whānau and marae in accordance with their *kaitiaki* responsibilities.

3.15 It was recommended that this be removed in the Section 42A Report consistent with the recommendations to other PDP plan chapters. However, I now recommend that this text is instead moved to the start of Chapter 10.

f) Clarification on weight given to RPS and whether the key policies (particularly 21 and 22) materially changed through the PDP process.

3.16 Council was required to “have regard to”⁴ the proposed RPS when preparing the PDP. Objective 15, Policy 21 and Policy 22 of the RPS relate to historic heritage and are particularly relevant to the waahi tapu provisions in the PDP. Also of particular relevance are Objective 28 and Policy 49 which relate to the relationship of tangata whenua with their ancestral lands, waahi tapu and other places of cultural value.

3.17 The section 32 report for Chapter 10 of the PDP referred to the Proposed RPS noting that Policy 20 “sets out the criteria for identifying historic heritage places, sites and areas for protection from inappropriate subdivision, use, and development in the District Plan” and that Policy 21 and 48 “provides specific direction to avoid the destruction of unidentified archaeological sites and waahi tapu with significant historic heritage values”. It later identified that Council had regard to those provisions when preparing Chapter 10 of the PDP.

3.18 Appendix A outlines the proposed and operative RPS provisions of particular relevance to historic heritage and waahi tapu. A comparison of these provisions shows that:

- *Objective 15 (historic heritage)* – this was not amended through the Schedule 1 process;
- *Policy 21 (identification of historic heritage places, sites and areas)* – there are no material amendments to this policy and clause (d) (tangata whenua values) has been retained as notified;
- *Policy 22 (protection of historic heritage values)* - this was not amended through the Schedule 1 process;
- *Objective 28 (cultural relationship of Māori with their ancestral lands, water, sites, wāhi tapu)* – this was amended from avoiding adverse effects on the cultural relationship, to maintaining the cultural relationship; and
- *Policy 49 (Recognising and providing for matters of significance to tangata whenua)* – this was changed from “particular regard shall be given to avoiding adverse effects on” to “recognise and provide for ... places, sites and areas with significant spiritual or cultural historic heritage value to tangata whenua.

3.19 Overall, this highlights that there were limited changes in the RPS provisions above from proposed to operative.

g) Consideration on whether the objectives in the PDP, particularly objectives 2.1 and 2.7, need to change in light of recommendations in the report.

⁴ Section 74(2)(a)(i).

- 3.20 Policy 2.1 and 2.7 (with amended recommended in the Section 42A Report are as follows:

Objective 2.1 – Tāngata whenua

To work in partnership with the tāngata whenua of the District in order to maintain kaitiakitanga of the District's resources and ensure that decisions affecting the natural environment in the District are made in accordance with the principles of the Te Tiriti o Waitangi (Treaty of Waitangi) (~~Te Tiriti o Waitangi~~).

Objective 2.7 Historic Heritage

To protect historic heritage in the District for the social, cultural and economic wellbeing of the Kāpiti Coast Community and future generations, ~~this including~~

a) supporting the contribution of historic heritage ~~values, features and areas~~ their values to the identity, character and amenity of places and landscapes;

and

b) recognising and protecting tāngata whenua historic heritage, including places, knowledge, histories and ngā taonga tuku iho.

- 3.21 I do not consider that any material changes are required to these objectives as a result of the recommendations in my Section 42A Report or subsequent statements. However, I do consider that Objective 2.7 (b) could refer to "waahi tapu and other places and areas of significance to Māori" to be more consistent with Chapter 10. This is included in my recommendations below.

h) Land disturbance – consideration of how this compares with protections to other significant sites in the PDP (e.g. ecological sites) and other district plans

- 3.22 Chapter 3 - Natural Environment of the PDP includes tighter controls on buildings and earthworks within scheduled 'ecological sites' comparable to the controls on land disturbance on scheduled waahi tapu in Chapter 10. Rule 3A.2.3 states that buildings and earthworks on sites containing an ecological site is a controlled activity where the building(s) is within 10 metres (living and working zones) or 20 meters (rural and open space zones) of the mapped ecological site. Controlled activity standards manage the distance of building platforms to the ecological site, and non-compliance with the controlled activity status is a discretionary activity (Rule 3A.4.5).
- 3.23 As part of the initial work to respond to submissions on the waahi tapu provisions in the PDP, I undertook a high-level review of selected district plans to identify how they manage earthworks or land disturbance on scheduled waahi tapu sites. This highlighted the variable approach to manage earthworks or land disturbance activities within scheduled waahi tapu areas.
- 3.24 Some plans only permit very minor earthworks or earthworks associated with burials in waahi tapu (e.g. Porirua, Whangarei) and other plans require consent for any earthworks within a scheduled waahi tapu. However, there are some plans that have permitted activity thresholds for land disturbance within scheduled heritage sites and areas which are comparable to those proposed under the PDP. For example, the South Taranaki District Plan permits 10m³ of earthworks within a scheduled heritage site per 12 month period, and the Hamilton District Plan permits of 40m³ of earthworks within a scheduled heritage site per 12 month period.

i) Clarification of whether the RMA process provides for compensation to landowners as a result of waahi tapu

3.25 Section 85 of the RMA “*Compensation not payable in respect of controls on land*” makes it clear that landowners cannot be compensated for controls on their land, such as a scheduled waahi tapu. It enables landowners to challenge a provision or proposed provision which they consider would render that interest in “land incapable of reasonable use”. In the event that the Environment Court agrees, they can direct the Council to modify, delete or replace the provision but the Court cannot direct the Council to pay the landowner or acquire the land.

j) Clarify the different grouping of Takamore cemetery and the wider Takamore waahi tapu area.

3.26 The PDP includes two scheduled Takamore waahi tapu:

- *Takamore Cemetery (W1)* – Group A and identified as an ūrupa; and
- *Takamore Waahi Tapu Area (W4)* – Group D and the “type” of waahi tapu is not identified in list of waahi tapu sites in Schedule 10.1 of the PDP.

3.27 These two scheduled Takamore waahi tapu sites were largely rolled over from the Operative District Plan. They are two of the four sites in the waahi tapu section of the Heritage Register of the Operative Plan. This register notes that Takamore Cemetery forms part of the wider Takamore waahi tapu area.

3.28 It is not clear why these two sites were allocated into different waahi tapu groups in the PDP but it is fair to assume that a higher level of protection was sought for the Takamore Cemetery which is a clearly defined ūrupa.

k) Clarification on why Council does not want to take ownership of proposed reserve in Maypole Environmental Limited’s property.

3.29 A response to the question was requested from Councils Open Space Team. They advised that Council has stipulated criteria for accepting land for reserves in lieu of a financial contribution in its Reserves Acquisition Strategy (2003), and the reserve contribution proposed by Maypole Environment Limited does not meet a number of these. In particular, it has some maintenance, accessibility, and connectivity issues that means that the proposed reserve is not particularly desirable as a Council reserve.

3.30 Whether or not the Council will accept land in lieu of a financial contribution for reserves contribution is a matter which is determined by the Council on a case by case basis as part of the subdivision consent process (preferably through discussions prior to lodging and application). The form of the contribution is at the Council’s discretion.

4. Change in recommendations as a result of hearing

4.1 I recommend the following amendments as a result of submission statements and evidence at the hearing (all amendments **highlighted**):

Explanation to Chapter 10

....The values of tāngata whenua are particularly important to defining the historic heritage of the district. Māori cultural heritage - as represented in the places and spaces that are of significance to whānau, hapū and iwi - cannot be separated from Māori environmental values generally. The ‘people’ and the ‘environment’ are not mutually exclusive groups in indigenous knowledge systems. In this sense, values such as rangatiratanga, kaitiakitanga, tikanga Māori, mauri, tapu and noa are inextricably connected to historic heritage.

Waahi tapu has important historic heritage and living cultural value to tāngata whenua. Waahi tapu sit within a larger cultural landscape and convey important understandings of the environment and Māori cultural identity: whether they are areas instilled with tapu, tell a story of settlement or migration, or are acknowledged as places of tribal success or defeat. The identification of these heritage values rests with iwi, hapū, whānau and marae in accordance with their kaitiaki responsibilities.

Comment [JW1]: Clause 16(2) – clarification and consistency. Moves text within PDP rather than add new content.

Objective 2.1 – Tāngata whenua

To work in partnership with the tāngata whenua of the District in order to maintain kaitiakitanga of the District's resources and ensure that decisions affecting the natural environment in the District are made in accordance with the principles of the Te Tiriti o Waitangi (Treaty of Waitangi) (Te Tiriti o Waitangi).

Comment [JW2]: Clause 16(2) – repeats “the” so that it reads “the the Treaty...”

Objective 2.7

To protect historic heritage in the District for the social, cultural and economic wellbeing of the Kāpiti Coast community and future generations, this includes:

- a) Supporting the contribution of historic heritage values, features and areas their values to the identity, character and amenity of places and landscapes; and
- b) Recognising and protecting tāngata whenua historic heritage, including waahi tapu and other places and areas of significant to Māori, places, knowledge, histories and ngā taonga tuku iho.

Comment [JW3]: Clause 16(2) – clarification and consistency

Policy 10.10

- 4.2 Waahi tapu and other places and areas of significance to Māori and their surroundings will be recognised as particularly sensitive to any protected from inappropriate subdivision, development or change in land use, as these activities which may affect the physical features and non-physical values of the place, or area, and will be protected from any adverse effects of these activities.

Comment [JW4]: Clause 16(2) – clarification and consistency

The council will work in partnership with the relevant iwi authority for the ongoing and long term management and protection of waahi tapu. Relevant iwi authorities will be consulted on all resource consent applications affecting waahi tapu identified in the Schedule of Historic Heritage.

Matters of control and discretion

- 4.3 Matters of control and discretion in Rules 10A.2 and 10A.3:

- Effects on historic heritage values.
- Effects on landscape, visual, character and amenity.
- Colour and materials of proposed building or structures.
- Layout, design and location of proposed building or structures.
- Effects on context and surroundings including any effects on 'key access and view points' listed in the Schedule of Historic Heritage.

Comment [JW5]: 272.5 Te Anau Trust

Explanation of waahi tapu table

4.4 Amend the explanation table in section 3.7.4 of my Section 42A report as follows:

Explanation of waahi tapu and other places and areas of significance to Māori wāhanga

<u>Wāhanga</u>	<u>Type of wāhi tapu</u>	<u>Key development threats</u>	<u>Sensitivity to development</u>	<u>Desired level of protection</u>

Comment [JW6]: Clause 16(2)

Comment [JW7]: Te Anau Trust 272 – raising concern about lack of explanation for waahi tapu groupings

Heritage NZ 460 – general submission on waahi tapu sites seeking greater clarity around the definition of the groupings to ensure they are appropriate and reflect the significance of the sites

Revised Rule Set- Takamore waahi tapu

4.5 Include new rule set (Wāhanga Rima) was follows:

10.A.1 Permitted Activities		
<u>Permitted Activities</u>	<u>Standards</u>	
<p>For activities in an area scheduled as waahi tapu and other places and areas of significance to Maori- Wāhanga Rima:</p> <p>a) <u>Heritage site land disturbance</u></p> <p>b) <u>Modifications and alterations to existing buildings</u></p> <p>c) <u>Fencing</u></p> <p>d) <u>Relocation of existing buildings within the waahi tapu</u></p>	<p>1. <u>Notice of proposed heritage site land disturbance is provided to Heritage New Zealand Pouhere Taonga at least 10 working days prior to work commencing.</u></p> <p>2. <u>The Archaeological Discovery Protocol, set out in Schedule 10.2, shall be followed.</u></p> <p>3. <u>Heritage site land disturbance in the rural zone that does not disturb more than 100m³ within a 5 year period, excluding land disturbance associated with the maintenance of a network utility.</u></p> <p>4. <u>Heritage site land disturbance in the river corridor zone that does not disturb more than 10m³ within a 10 year period, excluding land disturbance associated with stormwater control or the maintenance of a watercourse or network utility</u></p>	
10.A.2 Controlled Activities		
<u>Controlled Activities</u>	<u>Standards</u>	<u>Matters over which Council reserves control</u>
<p>For activities in an area scheduled as waahi tapu and other places and areas</p>	<p>1. <u>The Archaeological Discovery Protocol, set out in Schedule 10.2,</u></p>	<p>a) <u>Effects on historic heritage values</u></p>

Comment [JW8]: 460.37 Heritage NZ FS177 Waikanae Christian Holiday Park

<p><u>of significance to Maori- Wāhanga Rima:</u></p> <p>a) <u>New buildings</u></p>	<p><u>shall be followed.</u></p> <p>2. <u>All permitted activity standards under Rules 7A.1 and 9B.1</u></p>	<p>b) <u>Layout, design and location of proposed buildings or structures</u></p>
<p>10.A.3 Restricted Discretionary Activities</p>		
<p><u>Restricted Discretionary Activities</u></p>	<p><u>Standards</u></p>	<p><u>Matters over which Council reserves control</u></p>
<p><u>For activities in an area scheduled as waahi tapu and other places and areas of significance to Maori- Wāhanga Rima:</u></p> <p>a) <u>New buildings that do not comply with the controlled activity standards</u></p> <p>b) <u>Subdivision</u></p> <p>c) <u>New network utilities</u></p> <p>d) <u>Heritage site land disturbance, modifications and alterations to existing buildings, fencing, and relocation of existing buildings that do not comply with the permitted activity standards</u></p>	<p>1. <u>The Archaeological Discovery Protocol, set out in Schedule 10.2, shall be followed.</u></p>	<p>a) <u>Effects on historic heritage values</u></p> <p>b) <u>Layout, design and location of proposed buildings or structures</u></p>
<p>10.A.4 Non Complying Activities</p>		
<p><u>For activities in an area scheduled as waahi tapu and other places and areas of significance to Maori- Wāhanga Rima:</u></p> <p>a) <u>Intensive farming</u></p>		

APPENDIX A: PROVISIONS OF THE REGIONAL POLICY STATEMENT

Proposed provisions (when PDP notified)

Objective 15: *Historic heritage is identified and protected from inappropriate modification, use and development.*

Policy 20: Identifying places, sites and areas with significant historic heritage values – district and regional plans

District and regional plans shall identify places, sites and areas with significant historic heritage values that contribute to an understanding and appreciation of history and culture under one or more of the following criteria:

- (a) Historic values: these relate to the history of a place and how it demonstrates important historical themes, events, people or experiences.*
 - (i) Themes: the place is associated with important themes in history or patterns of development.*
 - (ii) Events: the place has an association with an important event or events in local, regional or national history.*
 - (iii) People: the place is associated with the life or works of an individual, group or organisation that has made a significant contribution to the district, region or nation.*
 - (iv) Social: the place is associated with everyday experiences from the past and contributes to our understanding of the culture and life of the district, region or nation.*
- (b) Physical values: these values relate to the physical evidence present.*
 - (i) Archaeological: there is potential for archaeological investigation to contribute new or important information about the human history of the district, region or nation.*
 - (ii) Architectural: the place is notable for its style, design, form, scale, materials, ornamentation, period, craftsmanship or other architectural values.*
 - (iii) Technological: the place provides evidence of the history of technological development or demonstrates innovation or important methods of construction or design.*
 - (iv) Integrity: the significant physical values of the place have been largely unmodified.*
 - (v) Age: the place is particularly old in the context of human occupation of the Wellington region.*
 - (v) Group or townscape values: the place is strongly associated with other natural or cultural features in the landscape or townscape, and/or contributes to the heritage values of a wider townscape or landscape setting, and/or it is a landmark.*
- (c) Social values: these values relate to the meanings that a place has for a particular community or communities.*
 - (i) Sentiment: the place has strong or special associations with a particular cultural group or community for spiritual, political, social, religious, ethnic, national, symbolic or commemorative reasons.*
 - (ii) Recognition: the place is held in high public esteem for its historic heritage values, or its contribution to the sense of identity of a community, to the extent that if it was damaged or destroyed it would cause a sense of loss.*
- (d) Tāngata whenua values: the place is sacred or important to Māori for spiritual, cultural or historical reasons.*
- (e) Surroundings: the setting or context of the place contributes to an appreciation and understanding of its character, history and/or development.*
- (f) Rarity: the place is unique or rare within the district or region.*
- (g) Representativeness: the place is a good example of its type or era.*

Policy 21: Protecting historic heritage values – district and regional plans

District and regional plans shall include policies, rules and/or other methods that:

- (a) protect the significant historic heritage values associated with places, sites and areas identified in accordance with policy 20, from inappropriate subdivision, use, and development; and
- (b) avoid the destruction of unidentified archaeological sites and waahi tapu with significant historic heritage values.

Objective 27: Adverse effects on the cultural relationship of Māori with their ancestral lands, water, sites, waahi tapu and other taonga are avoided.

Policy 48: Avoiding adverse effects on matters of significance to tāngata whenua - consideration

When considering a change, variation or review of a district or regional plan, particular regard shall be given to avoiding adverse effects on:

- (d) places, sites and areas with significant spiritual or cultural historic heritage value to tāngata whenua.

Operative provisions (September 2015)

Objective 15: Historic heritage is identified and protected from inappropriate modification, use and development.

Policy 21: Identifying places, sites and areas with significant historic heritage values – district and regional plans

District and regional plans shall identify places, sites and areas with significant historic heritage values that contribute to an understanding and appreciation of history and culture under one or more of the following criteria:

- (a) historic values: these relate to the history of a place and how it demonstrates important historical themes, events, people or experiences.
 - (i) themes: the place is associated with important themes in history or patterns of development.
 - (ii) events: the place has an association with an important event or events in local, regional or national history.
 - (iii) people: the place is associated with the life or works of an individual, group or organisation that has made a significant contribution to the district, region or nation.
 - (iv) social: the place is associated with everyday experiences from the past and contributes to our understanding of the culture and life of the district, region or nation.
- (b) physical values: these values relate to the physical evidence present.
 - (i) archaeological: there is potential for archaeological investigation to contribute new or important information about the human history of the district, region or nation.
 - (ii) architectural: the place is notable for its style, design, form, scale, materials, ornamentation, period, craftsmanship or other architectural values.
 - (iii) technological: the place provides evidence of the history of technological development or demonstrates innovation or important methods of construction or design.
 - (iv) integrity: the significant physical values of the place have been largely unmodified.
 - (iv) age: the place is particularly old in the context of human occupation of the

Wellington region.

(v) *group or townscape values: the place is strongly associated with other natural or cultural features in the landscape or townscape, and/or contributes to the heritage values of a wider townscape or landscape setting, and/or it is a landmark.*

(c) *social values: these values relate to the meanings that a place has for a particular community or communities.*

(i) *sentiment: the place has strong or special associations with a particular cultural group or community for spiritual, political, social, religious, ethnic, national, symbolic or commemorative reasons.*

(ii) *recognition: the place is held in high public esteem for its historic heritage values, or its contribution to the sense of identity of a community, to the extent that if it was damaged or destroyed it would cause a sense of loss.*

(d) *tangata whenua values: the place is sacred or important to Māori for spiritual, cultural or historical reasons.*

(e) *surroundings: the setting or context of the place contributes to an appreciation and understanding of its character, history and/or development.*

(f) *rarity: the place is unique or rare within the district or region.*

(g) *representativeness: the place is a good example of its type or era.*

Policy 22: Protecting historic heritage values – district and regional plans

District and regional plans shall include policies, rules and/or other methods that:

(a) *protect the significant historic heritage values associated with places, sites and areas identified in accordance with policy 21, from inappropriate subdivision, use, and development; and*

(b) *avoid the destruction of unidentified archaeological sites and wāhi tapu with significant historic heritage values.*

Objective 28: *The cultural relationship of Māori with their ancestral lands, water, sites, wāhi tapu and other taonga is maintained.*

Policy 49: Recognising and providing for matters of significance to tangata whenua – consideration

When preparing a change, variation or review of a district or regional plan, the following matters shall be recognised and provided for:

...

(d) *places, sites and areas with significant spiritual or cultural historic heritage value to tangata whenua.*