

**HEARINGS PANEL REPORT AND RECOMMENDATIONS
ON THE
PROPOSED KĀPITI COAST DISTRICT PLAN 2012**

Chapter 10 Historic Heritage

Report 12 of 16

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**Report and Recommendations of the Hearings Panel
Pursuant to s34A of the Resource Management Act 1991
on the
Proposed Kāpiti Coast District Plan 2012: Chapter 10 Historic
Heritage**

Report 12 of 16

Panel Members:

Alistair Aburn (Independent Commissioner and Chair)

David McMahon (Independent Commissioner)

Miria Pomare (Independent Commissioner)

Diane Ammundsen (Commissioner)

Mike Cardiff (Commissioner)

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Hearings Panel Report and Recommendations

Chapter 10 Historic Heritage

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PART A – INTRODUCTION AND OVERVIEW

1 Introduction

Report Purpose

- 1.1 At its meeting on 24 July 2014 the Kapiti Coast District Council (the Council or KCDC) resolved to appoint, pursuant to section 34A(1) of the Resource Management Act 1991 (RMA or Act), a Hearings Panel comprising five accredited commissioners to hear the submissions and further submissions on the Proposed District Plan (PDP). The Council subsequently confirmed a Hearings Panel comprising three independent commissioners and two KCDC councillor commissioners:
- (a) Alistair Aburn (Independent Commissioner and Chair)
 - (b) Miria Pomare (Independent Commissioner)
 - (c) David McMahon (Independent Commissioner)
 - (d) Diane Ammundsen (Commissioner)
 - (e) Mike Cardiff (Commissioner)
- 1.2 The Hearings Panel was delegated¹ the responsibility for hearing the submissions and further submissions on the PDP and to consider and make recommendations to the Council on the provisions and matters raised.²
- 1.3 This report sets out our recommendations to the Council in respect to all submissions lodged to Chapter 10 of the PDP dealing with Historic Heritage.
- 1.4 The PDP was initially drafted as a complete review of the Kapiti Coast Operative District Plan in accordance with Section 79 of the RMA. The PDP was publicly notified on 29 November 2012 in accordance with Clause 5 of Schedule 1 of the RMA. There were subsequent changes to the PDP including:
- (a) corrections under Clause 16 of Schedule 1 of the RMA on the 6 December 2012;
 - (b) the withdrawal of objectives, policies, rules, and map layers publicly notified on the 30 October 2014 for Coastal Hazard Management Areas, hazardous substances and facilities, and Priority Areas for Restoration; and

¹ Minute KCDC 14/06/128, 24 July 2014.

² Pursuant to Schedule 1, Clause 10(1) of the RMA.

(c) the withdrawal of one policy (Chapter 3) and seven rules (Chapter 4) on 3 May 2017 in response to an Environment Court declaration application.

1.5 The PDP has an extensive background which we will canvas in due course. All Chapters have had Section 32 (of the RMA) evaluations undertaken, along with public consultation, and public notification and hearings; culminating in a series of decision reports containing our recommendations to the Council. This Report is one of sixteen decision reports with each report generally aligning with a Chapter of the PDP. Where a given report contains provisions that have relevance to other Chapters of the PDP, we have endeavoured to make the appropriate cross references. Further commentary of the structure of each decision report is contained later in this section and also in Section 5 of this report.

1.6 Before setting out the details of the PDP, the submissions and our substantive evaluations, there are some procedural matters that we will address, beginning with our role as a Hearings Panel.

Role of the Hearings Panel

1.7 As noted above, our role is to make recommendations to the Council on the PDP. The final decision-making power rests with the Council; and in the event that the Council adopts our recommendations, then this report (and all sixteen decision reports) will become the Council Decision.

1.8 It is not our role for us to introduce our own evidence, and we have not done so – rather, our role has been to:

(a) establish that all relevant evidence is before us (or where it is not, consider whether we should commission additional reports or information);³ and

(b) test the evidence of others, and to determine the most appropriate outcome based on the views we consider best achieve sustainable management.

1.9 Council's decision-making power for the PDP is set out in Clause 10(1) of Schedule 1 of the RMA. Under this clause, the Council must give a decision on the provisions and matters raised in submissions. The Council must give reasons for the decision it reaches. Whilst we are 'recommenders' and not 'decision-makers' in this case, we have followed this structure so that our recommendations are valid, should they be adopted by Council.

1.10 In conducting this exercise, we have familiarised ourselves with the PDP and its associated background material, read all the submissions, read the Section 42A reports and any further assessments accompanying this, conducted the hearings, and undertaken many site and locality visits - both at the request of submitters and also to assist our understanding of various issues

³ Section 41C(4) of the Act.

raised by submitters and officers. Having undertaken all these tasks, we hereby record our recommendations.

Report Outline

1.11 Our report is generally organised into four broad parts:

Part A

This section is factually based with no evaluation. It outlines procedural matters as well as acknowledging the RMA statutory requirements that direct and guide our subsequent evaluation. For contextual reasons, it outlines the role of the PDP Chapter which this report covers; summarising the content and purpose of the Chapter. Essentially this background section provides a factual context for our consideration of the issues raised in submissions (Part B of this report). This section also contains a summary of the submissions and records and acknowledges the submitters that prepared evidence and presented to us. We provide a brief account of the hearing process itself and our subsequent deliberations. Where relevant, procedural matters such as minutes, directions, conferencing and caucusing are also referenced in this part of the report.

Part B

The second part of our report is structured around the main issues raised in submissions, and where relevant, summarises the evidence / statements presented at the hearing. This part of the report is evaluative and records the results of our deliberations on substantive matters.

Part C

This part of the report acknowledges the statutory requirements and records our evaluation of the PDP provisions against the relevant sections of the RMA, as well as all other relevant documents prepared under the RMA, in reaching our recommendations. There is other relevant legislation that we must have regard to, such as the Heritage New Zealand Pouhere Taonga Act 2014, any discussions of relevant legislation will also be contained in this part of the report.

Part D

We conclude with a summary of our recommendations, having had regard to the necessary statutory considerations that underpin our evaluation.

Submitter Engagement Version

1.12 Following the close of submissions, and during 2013-2015, Council officers undertook formal engagement with various submitters in an endeavour for the parties to fully understand the PDP provisions and the submissions on them. The basis for this exercise was the production of a Submitter Engagement Version (SEV) of the PDP dated 15 June 2015.

- 1.13 The purpose of the SEV was for reporting officers to consider all the submissions and make preliminary changes in response to those submissions where they considered amendments were appropriate. The SEV showed the preliminary changes recommended by the planners to the PDP in response to the submissions received and formed the base for engagement with submitters leading up to the hearing. The main purpose of the SEV was to facilitate discussions, and various methods were used to engage with submitters including newsletters, workshops, one-on-one meetings, and formal pre-hearing meetings under Clause 8AA to Schedule 1 of the RMA.
- 1.14 While all meetings were recorded and minutes produced, all the pre-hearing meetings were documented with reports prepared under Clause 8AA(5) to Schedule 1 of the RMA. These were appended to the relevant Section 42A reports.
- 1.15 Although our baseline document for consideration of submissions is the notified version of the PDP (minus those provisions withdrawn subsequently by Council), we acknowledge the value of the SEV. We recognise however that the SEV was for discussion purposes only and has no statutory status. This has proved a highly useful method for engaging further with submitters, and testing some of the preliminary thinking of the reporting planners. We also note that many of the altered provisions in the SEV made their way into the recommended changes in the Section 42A reports and have subsequently been adopted by the Hearings Panel.

Approach to Hearings

- 1.16 The RMA sets out a number of requirements for conducting hearings, including holding them in public, determining appropriate procedures and who may be heard at hearings.
- 1.17 To this end, prior to the commencement of the hearings, we issued several minutes to the parties to achieve various purposes. All minutes issued throughout the pre-hearing, hearing and post-hearing process are contained on the Council web page and files.
- 1.18 Our introductory Minute (dated 14 December 2015) introduced the Hearings Panel, outlined the background to the process and provided a draft hearing schedule. It also included a draft set of procedures for the hearings. In advance of the first hearing scheduled for Monday 4 April 2016, the Hearings Panel convened a one-day meeting to hear from submitters or their representatives on any 'procedural' points regarding the proposed hearing process, as outlined in Minute 1. That meeting was held on Wednesday 17 February 2016 in the Council Chamber, Rimu Road, Paraparaumu.
- 1.19 The procedural meeting was extremely useful and resulted in some agreed changes to the hearing procedures to reflect suggestions from submitters who attended. We set out our revised hearing procedures in Minute 3 issued on 10 March 2016, including a direction to require expert evidence to be pre-circulated in advance of the particular hearing(s) to which it relates. Whilst it

was not mandatory for non-expert / lay submitters to pre-circulate their evidence, we appreciated those who did.

1.20 We approached the hearing schedule on a topic-by-topic⁴ basis to allow us to hear all evidence relative to a given topic in one sitting,⁵ as opposed to having such evidence scattered throughout a multitude of hearings. We have structured our reports in a similar manner and there are sixteen reports outlining our recommendations:

- (a) Report 1: Chapter 1 - Introduction and Interpretation (including Plan Wide)
- (b) Report 2: Chapter 2 - Objectives
- (c) Report 3: Chapter 3 - Natural Environment: Landscape and Earthworks
- (d) Report 4: Chapter 3 - Natural Environment: Ecology and Vegetation
- (e) Report 5: Chapter 4 - Coastal Environment
- (f) Report 6: Chapter 5 - Living Environment
- (g) Report 7: Chapter 6 - Working Environment
- (h) Report 8: Chapter 7 - Rural Environment
- (i) Report 9: Rural Re-zoning Requests
- (j) Report 10: Chapter 8 - Open Space
- (k) Report 11: Chapter 9 - Hazards
- (l) Report 12: Chapter 10 - Heritage
- (m) Report 13: Chapter 11 - Infrastructure, Services and Associated Resources Use: Network Utilities and Services
- (n) Report 14: Chapter 11 - Infrastructure, Services and Associated Resources Use: Access and Transport
- (o) Report 15: Chapter 11 - Infrastructure, Services and Associated Resources Use: Community Facilities
- (p) Report 16: Chapter 12 - General District-wide Provisions (including Amateur Radio)

1.21 Each report takes a lead from the Objectives recommended in the Chapter 2 report. Other than that, each report is largely self-contained on all matters relevant to the Chapter it is reporting on. In some instances, however, cross references to relevant content in other reports are provided where necessary; for example, to illustrate a point about how a rule gives effect to a particular policy or to reference a particular point about the rationale for consistency in provisions across the Plan as a whole.

⁴ In most instances, each topic is synonymous with a single Chapter of the PDP.

⁵ Some sittings were confined to a single day whereas others extended over several days.

Comments on the Assistance Given to Us

- 1.22 In advance of setting out the PDP context, we would like to record our appreciation of all the organisations and individuals involved throughout the PDP process, but in particular those who took part in the hearings. We would like to acknowledge the following:
- (a) the constructive and helpful input provided by all the submitters appearing before us;
 - (b) the helpfulness of Council's Hearings Administrator, Leanne Taylor, in coordinating the scheduling of parties and general administrative assistance;
 - (c) the assistance of Council's Hearings Panel Support, Sally Match, for ensuring we had access to evidence as soon as it was lodged with Council;
 - (d) the reporting and planning input from the various Council planners and consultants who prepared the Section 42A reports;
 - (e) the advice provided by other experts appearing for the Council, including both internal and external advisors; and
 - (f) Koro Don the Council's kaumatua, assisted by Monica Fraser, Council's Iwi Relationship Manager, who assisted the Panel in opening and closing the hearings.
- 1.23 We are grateful for the efforts of the submitters, experts, and other witnesses for doing their very best to respond constructively to the challenges presented by the RMA's processes. We also wish to acknowledge the effort that has been put in by some submitters who have spent hours and hours reading and discussing the PDP and reports so that they were in a position to present knowledgeably to us about their concerns at the various hearings. We appreciate the conduct of the participants which allowed us to have a focused hearing process. This greatly assisted us in assessing and determining the issues, and delivering our recommendations.

2 Historic Heritage

Role of Chapter

- 2.1 Historic Heritage is defined in the RMA as:
- (a) those natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from any of the following qualities:
 - (i) archaeological:
 - (ii) architectural:
 - (iii) cultural:
 - (iv) historic:

- (v) scientific;
- (vi) technological; and
- (b) includes—
 - (i) historic sites, structures, places, and areas; and
 - (ii) archaeological sites; and
 - (iii) sites of significance to Māori, including wāhi tapu; and
 - (iv) surroundings associated with the natural and physical resources

- 2.2 We note that the protection of historic heritage from inappropriate subdivision, use, and development is a Part 2 “*matter of national importance*” in the RMA⁶ which shall be recognised and provided for by local authorities when administering the Act, including in the preparation of district planning documents.
- 2.3 The identification, protection and management of waahi tapu is an important part of achieving the purpose of the RMA. Waahi tapu is specifically recognised as a component of historic heritage in the RMA definition. In addition to Section 6(f), the RMA specifically identifies the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga (Section 6(e) of the RMA) as a matter of national importance that must be recognised and provided for.
- 2.4 In addition, the protection and management of waahi tapu directly also relates to kaitiakitanga which is identified as one “*other matters*” to have particular regard to under Section 7 of the RMA in achieving the purpose of the Act. Section 8 of the RMA also requires decision-makers to take into account the principles of the Treaty of Waitangi when exercising their functions and powers. The identification, protection and ongoing management of waahi tapu is a key aspect of meeting these obligations to tangata whenua under the RMA.
- 2.5 As historic heritage matters traverse the wider Wellington Region, including the coastal environment, we acknowledge that both the Regional Policy Statement (RPS) and the New Zealand Coastal Policy Statement (respectively) have been prepared to give effect to Sections 6, 7 and 8 and Part 2 of the Act generally. Accordingly, we also acknowledge that the PDP is required to give effect to those higher order statutes and instruments.
- 2.6 In terms of the RPS, the following provisions are particularly relevant to historic heritage in the PDP:
- (a) Objective 15: sets as a goal that historic heritage is to be identified and protected from inappropriate modification, use and development;
 - (b) Policy 21: sets out criteria for identifying places, sites and areas with significant historic heritage values;

⁶ Section 6(f) of the RMA.

- (c) Policy 22: seeks to protect the significant historic heritage values associated with identified places, sites and areas from inappropriate subdivision, use and development. Policy 21 also seeks to avoid destruction of unidentified archaeological sites and waahi tapu with significant historic heritage values; and
- (d) Policy 46: sets out matters for consideration in district plans in determining whether an activity is inappropriate in terms of places, sites or areas with historic heritage value.

2.7 Similarly, the New Zealand Coastal Policy Statement also recognises the importance of historic heritage in the following provisions:

- (a) Objective 6: recognises that historic heritage in the coastal environment is extensive but not fully known, and, as such, is vulnerable to loss or damage from inappropriate subdivision, use, and development;
- (b) Policy 6(g)(i): recognises the importance of Māori cultural and heritage values through such methods as historic heritage, landscape and cultural impact assessments;
- (c) Policy 6(g)(ii): provides for the identification, assessment, protection and management of areas or sites of significance or special value to Māori;
- (d) Policy 6(1)(j): recommends buffer areas and sites of significant indigenous biological diversity, or historic heritage value where appropriate;
- (e) Policy 17: seeks to protect historic heritage in the coastal environment from inappropriate subdivision, use and development and sets out ways this can be achieved;
- (f) Policy 19(3)(d): only restricts public walking access to or along the coast to protect historic heritage;
- (g) Policy 20(1)(e): enables control of vehicles on beaches, foreshore, seabed and adjacent public land to protect historic heritage; and
- (h) Policy 26: enables protection, restoration or enhancement of natural defences to protect historic heritage.

2.8 Chapter 10 of the PDP primarily implements the provisions of the RPS and NZCPS through Objective 2.7 of the PDP (as notified):

Objective 2.7 – Historic Heritage

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

- (a) supporting the contribution of historic heritage values, features and areas 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*.

2.9 Objective 2.1 Tangata Whenua is also relevant, particularly with regards to sites of significance to Maori including waahi tapu.

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- 2.10 The details of Objectives 2.1 and 2.7 are canvassed in Report 2 dealing with all Chapter 2 Objectives. It is sufficient to say that those two objectives have been largely reaffirmed by us in their original notified form with little or no modification, which reflects the significant support for those objectives by most submitters including, notably, iwi and Heritage New Zealand. We return to the policy thrust of Chapter 10 in Part B of this report as context for considering the submissions relating to the policies and rules for implementing Objectives 2.1 and 2.7.
- 2.11 The above framework represents the high level statutory context for our consideration of the submissions and further submissions lodged on the PDP. It is the statutory 'lens' that we have kept foremost in our mind when considering whether, under section 32 of the RMA, a particular provision of the PDP that has been submitted on:
- (a) is the most appropriate way to achieve the purpose of the RMA if it is an objective; and
 - (b) is the most appropriate way to achieve the objective if it is a policy, rule or method.
- 2.12 We return to these matters later in Section 13 of this report when we outline the statutory requirements of the RMA.

Summary of Historic Heritage Provisions

- 2.13 In giving effect to Objectives 2.1 and 2.7, Chapter 10 of the PDP contains policies and rules pertaining to historic heritage. In particular, Chapter 10 contains provisions that identify historic heritage items and places and outlines the criteria by which any proposal affecting those listings will be assessed.
- 2.14 The provisions of Chapter 10 apply across the District, regardless of the underlying zone. Scheduled historic heritage includes the following categories:
- (a) historic places, including buildings, structures, sites (and setting, if applicable);
 - (b) historic areas;
 - (c) notable trees; and
 - (d) waahi tapu and other places and areas of significance to iwi.
- 2.15 The scheduled historic heritage items and sites are specific to each location, and overlay any other Plan layers, including the relevant zone.
- 2.16 The policies seek to:
- (a) protect the District's historic heritage and its surroundings through managing subdivision, development and land use;
 - (b) enable the continued use and modification of scheduled historic heritage where it is in the original construction condition and intended purpose; and

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- (c) outline criteria for consideration by decision-makers when assessing the effects of a proposed development, destruction or demolition involving historic heritage.
- 2.17 The Chapter recognises that not all historic heritage will have been identified. In the notified version of the PDP areas with a high likelihood of containing archaeological features were identified as Archaeological Alert Areas on the District Plan Maps. The intent of Policy 10.11 was to use the Archaeological Alert Area as a trigger to ensure the accidental discovery protocol is added as an advice note to applicable resource consents.
- 2.18 The notified rules set out the activity status, standards and assessment criteria (where relevant) for a range of activities associated with scheduled historic heritage items. The activity status ranged from permitted activities for minor activities such as fencing through to non-complying activities for partial demolition, demolition or destruction of Heritage New Zealand Category I or II places or areas. We note there were no rules or standards for sites or activities within Archaeological Alert Areas.
- 2.19 Schedule 10.1 listed identified historic heritage items and areas and detailed information (District Plan identification number, Heritage New Zealand registration number and category schedule, name, address, legal description, GPS location, and the description / significance). Schedule 10.1 is linked to the PDP Maps, which identifies the spatial location of the scheduled items. Schedule 10.2 contains Accidental Discovery Protocols to be followed where the accidental discovery of any unidentified archaeological historic heritage occurs.

3 Submissions

- 3.1 As noted in the Section 42A report,⁷ twenty-nine submissions (comprising eighty-eight submission points) and seventy further submissions were received on Chapter 10 - Historic Heritage (excluding waahi tapu matters).⁸
- 3.2 In terms of waahi tapu, there were forty-two submissions and twenty-four further submissions.
- 3.3 We provide a summary of the submissions received in Appendix 2, including our recommendations on the relief sought by each submitter.
- 3.4 Submissions received sought a range of outcomes, with many submissions seeking amendments to the Chapter 10 provisions. The key topics/provisions to which submissions related include:
- (a) enabling appropriate use and development;

⁷ s42A Report: Part B - Objectives, Suzanne Rushmere, 2016.

⁸ s42A Report: Part B - Chapter 10 Historic Heritage (excluding waahi tapu), Mark Ashby, 2016.

- (b) the historic heritage policies;
- (c) accidental discovery protocol;
- (d) whether the archaeological alert layer should be in the PDP;
- (e) the schedule of heritage sites and buildings;
- (f) the schedule of notable trees;
- (g) clarification of terms and consequential amendments;
- (h) the content and approach of the proposed rules;
- (i) the physical extent of the waahi tapu sites; and
- (j) classification of waahi tapu sites and sites of significance to iwi.

3.5 We discuss the submissions and associated issues in greater detail under our evaluation in Section 5 below.

4 The Hearing

4.1 The hearing for the Historic Heritage Chapter was in three separate sessions:

- (a) Objective 2.7 - 12 and 15 April 2016;
- (b) Historic heritage excluding waahi tapu - 10 May 2016; and
- (c) Waahi tapu - 28 and 30 September 2016.

4.2 The hearing on each of these dates was convened at 9am in the Council Chambers, Kapiti Coast District Council, 175 Rimu Road, Paraparaumu.

4.3 We received Section 42A reports from Ms Rushmere pertaining to Chapter 2 Objectives and Mr Ashby pertaining to Chapter 10 Historic Heritage (excluding waahi tapu). These reports were circulated to submitters on these Chapters and made available on Council's website.

4.4 Written evidence and/or submissions were received from the following submitters or their representatives regarding Chapter 10:

- (a) Maypole Environmental Limited [263];
- (b) Anna Carter on behalf of Waikanae Christian Holiday Park Inc. [319 and FS177], Michael and Elizabeth Welch [FS58], Barry, Suzanne and Timothy Mansell [FS59], USNZ Forestry Group Ltd [FS102], Land Matters Ltd [FS178], Lutz Brothers Ltd [FS180], Bellcamp Trust Company Ltd [FS181], Mahaki Holdings Ltd [FS186], and Kennott Trust Company Ltd and Kauri Trust [FS183];

- (c) Caroline Watson on behalf of Greater Wellington Regional Council [441];
- (d) Mari Housiaux representing Friends of Te Hapua Dunes and Wetlands Society Incorporated [511 and FS 172];
- (e) Heritage New Zealand [460]; and
- (f) Transpower New Zealand Limited [208].

4.5 In terms of Chapter 10 (excluding waahi tapu), in addition to Mr Mark Ashby on behalf of Council, we heard from the following people:

- (a) Ms Mari Housiaux, John Gibson, Courtenay Sanft and Paul Crafar on behalf of Friends of Te Hapua [511];
- (b) Ms Caroline Watson on behalf of Greater Wellington Regional Council [441];
- (c) Ms Claire Craig on behalf of Heritage New Zealand [460];
- (d) Ms Anna Carter on behalf of Land Matters [FS178];
- (e) Ms Rae Lutman and Ms Laura van Peer on behalf of Kāpiti Women's Centre [068];
- (f) Mr Allan Smith [443];
- (g) Ms Kerry Dalton [176]; and
- (h) Ms Monique Leith on behalf of Mr Collin Hope [306].

4.6 Mr Graham Halstead [216] was scheduled to appear, but did not attend the hearing.

4.7 In terms of waahi tapu, we heard from the following people:

Council Advisors

- (a) Mr Jerome Wyeth; and
- (b) Dr Des Tātana Kohotea.

Submitters

- (a) Ms Jude Harris and Mr Ian Hadfield on behalf of Daniel Hardcastle's submission [557];
- (b) Ms Paula Keene [350];
- (c) Mr John Rice [344];
- (d) Mr Peter Brownie on behalf of his own submission [78] and the Brownie Trust [171];
- (e) Ms Queenie Hyland - Rikihana on behalf of Nga Hapu o Otaki - Koroki [438] and Whakarongotai Marae - Te Ati Awa [559];
- (f) Mr Ed Isaac and Mr Jim Lynch on behalf of Waikanae Golf (Inc) [2];

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- (g) Ms Lucy Hall on behalf of Te Anau Trust [272];
 - (h) Mr Robert Makgill, Mr Jonathon Smith, Mr Craig Martell, Mr Kevin Jones, Mr Morrie Love and Mr Chris Hansen on behalf of Maypole Environmental Ltd [263];
 - (i) Ms Anna Carter and Mr Ben Ngaia on behalf of Waikanae Christian Holiday Park Inc [319]; and
 - (j) Mr Finbar Kiddle and Ms Claire Craig on behalf of Heritage New Zealand [460].
- 4.8 There were matters we raised with Mr Ashby which required further consideration and response. These matters included the Archaeological Alert Layer, complexity of the historic heritage provisions, meaning of heritage 'sites' and future maintenance / upgrade of the suffrage gardens. Mr Ashby's responses to these matters were outlined in his Officer's Reply for Chapter 10 (excluding waahi tapu).
- 4.9 Similarly, Mr Wyeth prepared a closing statement for waahi tapu matters which addressed the key issues raised at the hearing:
- (a) Waahi tapu: use of the term in the PDP to schedule a range of sites and areas;
 - (b) Kaiwharehou: the appropriateness of the boundary and associated provisions;
 - (c) Makahuri: the appropriateness of the boundary and associated provisions;
 - (d) Taewapirau: the appropriateness of the boundary and associated provisions;
 - (e) Takamore: the agreed provisions for the wider Takamore waahi tapu area;
 - (f) 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;
 - (g) Policy 10.10: consultation with Heritage New Zealand;
 - (h) matters of control and discretion: whether design and colour of buildings should be retained as matters to consider and control; and
 - (i) key access and viewpoints: whether this should be a rule or matter of discretion.
- 4.10 Whilst not specific to just Chapter 10, there was an issue as to whether the chapter-by-chapter approach embodied in the PDP (and also adopted for the purpose of hearing submissions), represented the most effective process with regards to coastal management and coastal planning. In response to these concerns, we directed two sets of integration hearings as follows:
- (a) **Coastal Integration Hearing** - the purpose of this hearing was to consider the interrelationship between Chapters 3, 4, 8 and 9 (and also with relevant objectives in Chapter 2). This hearing was discussed and directed by way of Minute 5 dated 7 April 2016 and was in part response to concerns expressed by some submitters (Rob Crozier and

Joan Allin [451], Coastal Ratepayers United [378] and North Otaki Beach Residents' Group [38]) that the hearing schedule did not enable effective consideration of (and thus ultimately integration of) management of the coastal resource by any party (including submitters, Section 42A report writers or the Hearings Panel). The Coastal Integration Hearing schedule was established by way of Minute 11 dated 22 June 2016. The actual Coastal Integration Hearing was conducted on 16 July 2016. Full details on this hearing and the background to it are contained in our Report on Chapter 4 Coastal Environment (at Section 4).

- (b) **Whole of Plan Integration Hearing** - this was our initiative and was first signalled in Minute 5 dated 7 April 2016. Subsequent Minutes (Minute 15 dated 6 September 2016 and Minute 16 dated 18 October 2016) outlined the procedures and programming for this hearing. The purpose of the Whole of Plan Integration Hearing was to identify and consider cross-chapter linkages in an integrated manner given that previous hearings originated and were conducted on a chapter-by-chapter basis. It transpired that we required four separate sittings to complete the Whole of Plan Integration Hearing. The first sitting was held over two days, being 13-14 December, followed by two days on the 3 and 15 March 2016, and the last sitting was conducted on 5 April 2017.

4.11 There were a number of procedural matters which were raised relevant to Chapter 10. For example, on 14 September 2016, Council received an email from Ms Kristy McGregor on behalf of Federated Farmers. She drew to our attention the fact that although Federated Farmers had not submitted on Chapter 10 Historic Heritage, Federated Farmers did submit on the definition of land disturbance which is widely used in relation to waahi tapu sites. The submission sought that the term be deleted from the Plan. Ms McGregor noted that the term has since been recommended to be amended through earlier hearings on Chapter 10 to read "*heritage site land disturbance*". She wished to draw to our attention that some of the waahi tapu sites that are included in the Schedule are on farmland that is actively used for production, including cultivation and grazing. She expressed concern that these landowners were unaware of these sites on their property, and are unable to determine where they are on the ground because the mapping is imprecise, adding that it is important that regulation provides for existing activities and land uses to continue.

4.12 Ms McGregor also:

- (a) reiterated the submission points on the mapping - all mapping needs to be correct and at a scale that landowners can identify what rules apply to them and where they can conduct activities. In terms of the waahi tapu sites, she considered the mapping is of a 'zoomed out' scale and landscape features such as lakes are not shown such that it is impossible for a landowner to determine where the site is on the ground; and

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- (b) outlined concerns that the Wahanga Tahi sites are assumed to be undeveloped and largely unoccupied, indicating that these are perhaps separate properties owned by an iwi or the Crown, but questioning if this includes pasture and farmland which may appear to be undeveloped to urban eyes but in reality are used for grazing, cultivation and other farming activities.
- 4.13 Mr Robert Makgill as Legal Counsel for Maypole Environmental Limited filed a letter from Chairman Mr André Baker on the behalf of tangata whenua Te Ātiawa which supported Maypole's approach to the treatment of Taewapirau under the PDP. We sought comment from Mr Makgill in relation to two matters:
- (a) why Te Ātiawa did not attend the hearing; and
- (b) why Te Ātiawa describes Taewapirau as *waahi tapu*, whereas Maypole contends in its evidence that Taewapirau is not *waahi tapu*.
- 4.14 In response, we received a Joint Memorandum for Maypole Environmental Limited and Ātiawa ki Whakarongotai Charitable Trust on 25 November 2017. The Joint Memorandum sought directions from the Panel that Council officers meet with the parties to hold discussions on whether an agreement could be reached as to the treatment of Taewapirau under the PDP.
- 4.15 On 7 December 2016, we issued Minute 17 in response to the Joint Memorandum. In that Minute we:
- (a) outlined our disappointment in the reason given as to why Te Ātiawa chose not to attend the hearing;
- (b) stated that further Council officer input was not required and instead sought any further information and advice regarding the "constructive discussions" that Maypole and Te Ātiawa have held since the September 2016 hearing on Chapter 10 Historic Heritage; and
- (c) suggested that if Maypole or Te Ātiawa wished to present any further information on an agreed position this should be presented direct to the Hearings Panel,
- 4.16 We requested that both parties consider the following questions:
- (a) Is Taewapirau "*waahi tapu*"?
- (b) If the answer to (a) is "no", is Taewapirau "*a site of significance to Maori*"?
- (c) If the answer to (a) is "yes", please advise of the geographical extent of Taewapirau so that this can be accurately identified on the Planning Maps?
- 4.17 We received separate responses from both Te Ātiawa Whakarongotai Charitable Trust and Maypole Environmental Ltd on 20 January 2017 and would like to record our appreciation for the attention both parties gave to this matter.

- 4.18 On 20 January 2017, Council also received a letter from André Baker, Chairman of Te Ātiawa ki Whakarongotai Charitable Trust in response to our Minute 17. The letter outlined the concerns that Te Ātiawa ki Whakarongotai have with the process that has been used by Council to determine waahi tapu sites and policy connected to them, and the lack of appropriate consultation directly with mana whenua. The letter outlined the history of Taewapirau and clarified that it has a tapu status. The letter stated that it is not practical or appropriate to determine a clear boundary indicating the extent of Taewapirau, given the reason why it is waahi tapu. The letter opposed having to identify clear boundaries of waahi tapu and distinguish within a significant area precisely what is tapu and what is not. The letter suggested an alternative approach of designating 'trigger areas' which indicate proximity to waahi tapu and waahi tupuna.
- 4.19 Maypole Environmental Limited provided us with a Memorandum on 20 January 2017 in response to our Minute 17 request. Maypole Environmental outlined their position on whether the site is waahi tapu, and suggested a tiered planning response with an area delineated as waahi tapu and another identified as waahi tupuna.
- 4.20 We undertook site visits to Taewapirau and Kaiwharehou to familiarise ourselves with them.
- 4.21 For all parties who presented to us at the various fixtures, we took the opportunity to ask questions at the proceedings. In most instances, our questions were promptly and readily addressed on the spot. However, there were matters we raised with Council advisors at the integration hearings which required further consideration and response. We are satisfied that both the Coastal Integration and Whole of Plan Integration reports and hearings satisfied any outstanding matters on Chapter 10 Historic Heritage.

PART B – EVALUATION OF ISSUES

5 Evaluation

Overview

- 5.1 As in the Section 42A report, we have grouped our discussion of the submissions and the reasons for accepting, rejecting, or accepting them in part by the matters ⁹ to which they relate, rather than assessing each individual submission. We have adopted this approach to avoid unnecessary duplication with our focus being on the key themes and issues which underpin our recommendations.
- 5.2 Where we do not refer to a specific submission or further submission topic or recommended amendment to Chapter 10 it is because we concur with the analysis and recommendations contained within the Section 42A report and the closing statements provided to us by the report writer.
- 5.3 For those submitters who are interested in a particular matter as it pertains to their submission(s), reference can be made to the submitter-by-submitter summary of decisions requested in Appendix 2, which includes our recommendation on each relief point sought. Those specific decisions have been derived from our issues assessment below. Therefore, our recommendations on all Chapter 10 Plan provisions, and our recommendations on all Chapter 10 submissions and further submissions, are contained in Appendix 1 and Appendix 2 respectively.
- 5.4 This approach is not to downplay the importance of the input from submitters - we acknowledge the invaluable input of submitters in shaping our grouping of issues and our consideration of those matters. We considered it would be helpful for submitters as well as our own thinking to focus on the key issues.
- 5.5 We accept that having adopted this approach means that not every submission is specifically referenced in the discussions in this report. To have done so would have resulted in the reports being significantly longer as a result of simply listing out submitters and further submitters for no purposeful end. Accordingly, we have adopted the approach of grouping issues/matters in the reports as a basis for delivering decisions on individual submissions.
- 5.6 For those submitters who are interested in a particular matter as it pertains to their submission(s), reference can be made to the submitter-by-submitter summary of decisions requested in Appendix 2, which includes our recommendation on each relief point sought. Those specific decisions have been derived from our issues assessment below.

⁹ Clause 10(2)(a) of Schedule 1, RMA sets out that a Plan change decision may address submissions by grouping them according to either the provisions of the Plan change to which they relate, or to the matters to which they relate.

5.7 We have organised our discussion of issues as follows:

- Issue 1:** Historic Heritage Policies
- Issue 2:** Inventory of Identified Heritage
- Issue 3:** Archaeological Alert Layer
- Issue 4:** Accidental Discovery Protocol
- Issue 5:** Historic Heritage Rules
- Issue 6:** Waahi Tapu
- Issue 7:** Terms and Definitions

Evaluation Preamble - Statutory Framework

Context

5.8 Before formally recording our consideration of the issues, we summarise here the relevant statutory matters that frame our evaluation. This summary is organised into three parts as follows:

- (a) firstly, we set out the mandatory requirements of the RMA that frame our decision-making;
- (b) secondly, we clarify which 'version' of Section 32 (RMA) is applicable as part of our decision-making; and
- (c) finally, we provide clarification about the force of certain higher order documents that we must have regard to as part of our evaluation.

5.9 What follows represents just an initial factual commentary on these matters governing our evaluation. The specific statutory evaluation of the challenged provisions in this Chapter of the PDP are covered in greater detail later in this report. Specifically, the principal Section 32 consideration is provided in Section B of this report under the heading "Evidence and Evaluation" for each of the Issues (referred to in the RMA as "matters") that are canvassed for this Chapter; and ultimately the overall Section 32 evaluation is summarised and concluded in Part C..

Mandatory Requirements

5.10 The Environment Court gave a comprehensive summary of the mandatory requirements for the preparation of district plans in *Long Bay-Okura v North Shore City Council*.¹⁰ Subsequent cases have updated the 'Long Bay' summary following amendments to the Act in 2005 and 2009, with

¹⁰ Decision No. A 078/2008.

the most comprehensive and recent of which provided in *Colonial Vineyard Ltd v Marlborough District Council*.¹¹

5.11 The framework established by the Court sets out the relevant decision-making framework as follows:

General requirements

- a. the Plan should be designed to accord with,¹² and assist Council to carry out its functions¹³ so as to achieve the purpose of the Act;¹⁴
- b. when preparing/changing the Plan, Council must:
 - i. give effect to any NPS¹⁵, the NZCPS¹⁶ or any RPS;^{17,18}
 - ii. have regard to any *proposed* RPS;¹⁹
 - iii. have regard to any management plans and strategies under any other Acts and to any relevant entry on the NZ Heritage List and to various fisheries regulations (to the extent relevant), and to consistency with plans and proposed plans of adjacent authorities;²⁰
 - iv. take into account any relevant planning document recognised by an iwi authority;²¹
 - v. not have regard to trade competition or the effects of trade competition;²²
 - vi. be in accordance with any regulation;²³
- c. in relation to regional plans:
 - i. the Plan must not be inconsistent with an operative regional plan for any matter specified in s30(1) or any water conservation order;²⁴ and
 - ii. shall have regard to any proposed regional plan on any matter of regional significance;²⁵
- d. the Plan must also state its objectives, policies and the rules (if any) and may state other matters;²⁶

¹¹ Decision No. [2014] NZEnvC 55.

¹² s74(1), RMA.

¹³ s31, RMA.

¹⁴ ss 72, 74(1), RMA.

¹⁵ National Policy Statement.

¹⁶ New Zealand Coastal Policy Statement.

¹⁷ Wellington Regional Policy Statement.

¹⁸ s75(3)(a)-(c), RMA.

¹⁹ s74(2), RMA.

²⁰ s74(2)(b)-(c), RMA.

²¹ s74(2A), RMA.

²² s74(3), RMA.

²³ s74(1), RMA.

²⁴ s75(4), RMA.

²⁵ s74(2)(f), RMA.

²⁶ s75(1)-(2), RMA.

Objectives

- e. the objectives of the Plan are to be evaluated to the extent which they are the most appropriate way to achieve the RMA's purpose;²⁷

Provisions (policies, rules and methods)

- f. the policies are to implement the objectives, and the rules are to implement the policies;²⁸
- g. each provision is to be examined, having regard to its efficiency and effectiveness, as to whether it is the most appropriate method for achieving the objectives²⁹ of the Plan, taking into account:
 - i. the benefits and costs of the proposed policies and methods;
 - ii. the risk of acting or not acting if there is uncertainty or insufficient information about the subject matter of the provisions;³⁰ and
 - iii. if a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances;³¹

Rules

- h. in making a rule, Council shall have regard to the actual or potential effect of activities on the environment;³²
- i. rules have the force of regulations;³³
- j. rules may be made for the protection of property from the effects of surface water, and these may be more restrictive than those under the Building Act 2004;³⁴
- k. there are special provisions for rules about contaminated land;³⁵
- l. there must be no blanket rules about felling of trees³⁶ in any urban environment;³⁷ and

Other Statutes

- m. Council may be required to comply with other statutes.

5.12 The above Court established decision-making framework is adopted in our evaluation of challenged provisions for all Plan Chapters. The way we approach this is explained in more detail in Part C of this report. Suffice to say however, that the approach is adopted consistently across all our reports on the Plan Chapters. Whilst this may at first glance appear to be

²⁷ s74(1) and s32(3)(a), RMA.

²⁸ s75(1), RMA.

²⁹ s32(3)(b), RMA.

³⁰ s32(4), RMA.

³¹ s32(3A), RMA.

³² s76(3), RMA.

³³ s76(2), RMA.

³⁴ s76(2A), RMA.

³⁵ s76(5), RMA.

³⁶ s76(4A), RMA.

³⁷ s76(4B), RMA.

formulaic and/or repetitive, it does nonetheless ensure (importantly) that we have undertaken and recorded our evaluation in terms of the relevant statutory tests prescribed in the Act.

The Applicable Section 32 Framework

- 5.13 The unchallenged advice before us is that our evaluation of issues is to be structured to satisfy the requirements of Section 32 as it applied when the PDP was publicly notified in November 2012,³⁸ as opposed to the version of Section 32 as it currently sits.
- 5.14 That (now former) Section 32 requires the Council to carry out an evaluation at the following stages:
- (a) before a proposed plan is publicly notified; and
 - (b) before making a decision on provisions and matters raised in submissions for the proposed plan under clause 10 of Schedule 1 to the Act.
- 5.15 We record that the Council had already completed the Section 32 evaluation referred to in (a) above, prior to the PDP being notified on 29 November 2012, and therefore we do not need to repeat this evaluation further in this report.
- 5.16 The next juncture when an evaluation is required by the Act is before making the Decision referred to in (b) above.
- 5.17 Given that we have delegated authority to hear submissions and make a recommendation to the Council about what the Decision should be, the onus of making that further evaluation rests with us.
- 5.18 In this respect, we note that while Section 32(5) requires a report to be prepared summarising and giving reasons for the initial Section 32(1) evaluation prior to notification of a proposed plan, there is no equivalent provision requiring a Section 32 report to be prepared for the further evaluation required under Section 32(2). Nor is there an express requirement in the applicable version of Clause 10 of Schedule 1 of the Act for the Decision to address Section 32 matters.
- 5.19 This position differs from Clause 10 as it is currently worded in the Act (post-2013 Amendment Act), which expressly requires the Decision to include a further evaluation of the proposed plan in accordance with Section 32AA, and for the Council to have particular regard to that evaluation in making its decision.
- 5.20 Despite the absence of an express requirement to that effect in the Section 32 framework applicable to our report, we consider it essential for the Decision to address Section 32 matters. In practice, the requirement in Clause 10(2)(a) for the Decision to include reasons for accepting

³⁸ The version of Section 32 of the RMA that was in force between 1 October 2011 and 2 December 2013 applies to the current PDP process, despite Section 32 having since been amended in the Resource Management Amendment Act 2013.

or rejecting submissions should relate directly to the Section 32 matters and other statutory requirements that are applicable.

- 5.21 Notwithstanding that Section 32AA(1)(d)(ii) under the post-2013 Amendment Act version of the RMA is also not applicable to our evaluation, we find some utility in applying the scope of that Clause as it enables our Section 32(2) evaluation of the alterations we are recommending to be incorporated into this report as part of the decision-making record.
- 5.22 In adopting the above pragmatic approach, this means that in those instances where we have recommended an alteration to the notified PDP within our report, we have deliberately assessed the appropriateness of that alteration in the wider context of Section 32 (in specific detail in Part B and in summary form in Part C of this report).

Status of Higher Order Documents

- 5.23 Against the context established above, we acknowledge there is an obligation for the Plan to give effect to the higher order planning documents identified; however, we note our ability to achieve this through amendments is limited to instances where there is scope provided by submissions to do so.
- 5.24 We record here that five national policy statements (NPS) have been gazetted to date, being:
- (a) NPS on Electricity Transmission (2008);
 - (b) New Zealand Coastal Policy Statement (2010);
 - (c) NPS for Renewable Electricity Generation (2011);
 - (d) NPS for Freshwater Management (2014); and
 - (e) NPS for Urban Development Capacity (2016).³⁹
- 5.25 The NPS on Electricity Transmission, the New Zealand Coastal Policy Statement, and the NPS for Renewable Electricity Generation are all relevant and, as concluded in our decision report on Chapter 2, are appropriately represented in the Objectives of the PDP.
- 5.26 The NPS for Urban Development Capacity is of particular relevance to Living Zone and Working Zone objectives, and we have picked up those matters where relevant in our decision reports on Chapters 5 and 6 respectively, but again within the scope of submissions.
- 5.27 We note that a National Environmental Standard for Plantation Forestry was in a draft form at the time of the hearing, but has now been gazetted and comes into force on 1 May 2018.

³⁹ The NPSUDC came into force on 1 December 2016, which was after our Hearings had been largely concluded but prior to our deliberations concluding

Consequently, during our deliberations we did not give it any weight, other than be aware of the matters it was intending to cover.⁴⁰

- 5.28 When the PDP was first notified, the (then) *Proposed* Wellington Regional Policy Statement 2009 was still the subject of appeals to the Environment Court. In line with the general requirements outlined above, the PDP was required at that point to give effect to the *Operative* Regional Policy Statement 1999 by Section 75(3)(c) of the Act. The provisions of the *Proposed* Wellington Regional Policy were required to be given regard to by Section 74(2)(a)(i).
- 5.29 The *Proposed* Regional Policy Statement for the Wellington Region became the *Operative* Regional Policy Statement (RPS) on 24 April 2013. To the extent enabled by the scope of submissions, we have adopted recommendations from the Section 42A report authors to ensure the Plan gives effect to the now *Operative* RPS.
- 5.30 We have also endeavoured to ensure any proposed amendments are not inconsistent with the operative regional plans for the Wellington Region, and we have had regard to the *Proposed* Natural Resources Plan for the Wellington Region (notified May 2015).
- 5.31 We also have taken into account the relevant planning documents recognised by iwi authorities and lodged with KCDC, to the extent that their content has a bearing on the resource management issues of the District. We understand two documents have been prepared and lodged with the Council - the Ngati Raukawa Ōtaki River and Catchment Iwi Management Plan 2000, and Nga Korero Kaupapa mo Te Taiao Policy Statements Manual for Kapakapanui Te Runanga o Ati Awa 1999-2000.
- 5.32 With these contextual matters established, we now turn to our evaluation of issues, followed by our summary evaluation of the above statutory requirements.

6 Issue 1: Historic Heritage Policies

General Submissions and Recommended Amendments

- 6.1 As signalled in Section 5 of this report, we do not revisit all submissions, topics or recommended amendments to the PDP addressed within the Section 42A reports for Chapter 10 and integration matters. To avoid unnecessary duplication, we have focused our discussion on the key themes and issues which underpin or recommendations.

⁴⁰ Local authorities have until 1 May 2018 to identify any Plan rules that duplicate or conflict with the NES, or which deal with the same effects. As soon as practicable after 1 May 2018, those rules must be removed from the Plan without using Schedule 1 of the RMA.

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- 6.2 Where we do not refer to a specific submission, topic or recommended amendment to the PDP in this report, it is because we concur with the analysis and recommendations contained within the Section 42A reports and closing statements provided to us by the report writers.
- 6.3 Our recommendations on all Chapter 10 submissions, and our complete recommendations on all relevant PDP provisions, are attached to this report as Appendix 2 and Appendix 1 respectively.

Description of the Issue

- 6.4 A number of issues were raised in submission pertaining to the Historic Heritage policies. They range from the very specific (e.g. Heritage New Zealand [460] sought the heritage categories be referred to throughout Chapter 10 as “1” and “2”) to the very broad (e.g. Bryce Wilkinson [280] opposed the policies on the grounds that they fail to provide for community wellbeing and that the Section 32 evaluation failed to evaluate costs and benefits). While some submissions and evidence addressed policies in a broad manner, there were others seeking amendments to specific policies.
- 6.5 We have addressed each of the 12 proposed policies below in our evaluation.

Evidence and Evaluation

Historic Heritage Policies in General

- 6.6 Four submissions addressed the Historic Heritage policies in general. Heritage New Zealand [460.10] sought that the heritage categories referred to throughout Chapter 10 should be expressed as “1” and “2”, as opposed to “I” and “II”, to accord with their use in the relevant legislation. We agree with these amendments to align with the categories in the legislation. We therefore recommend that all references in Chapter 10 to the heritage categories be amended to “1” and “2”, rather than “I” and “II”.
- 6.7 Kapiti Coast Grey Power [480.48] expressed general support for the Historic Heritage policies.
- 6.8 Nga Hapū o Ōtaki [232.5 and 232.27] supported policies that ensure archaeological investigations are undertaken in partnership with tāngata whenua, and supported policies for the inclusion of both Māori and non-Māori heritage in the District Plan and rules to protect heritage. We acknowledge the support of these submitters.
- 6.9 Bryce Wilkinson [280.30 - 280.32] opposed Policies 10.5 to 10.10 on the grounds that they fail to provide for community wellbeing and that the Section 32 evaluation failed to evaluate costs and benefits of such policies. The submission sought a rule requiring injuriously affected landowners to be compensated. We wish to point out to Mr Wilkinson that here is an overarching legislative and policy framework that the PDP must give effect to - the RMA identifies the protection of historic heritage from inappropriate subdivision, use and development as a matter of national importance under Section 6(f). In addition, the Wellington Regional Policy Statement Objectives

and Policies build on the RMA requirements and place an emphasis on identifying and protecting historic heritage, including specific direction to avoid the destruction of unidentified archaeological sites with significant historic heritage values. Further, the Heritage New Zealand Pouhere Taonga Act 2014 provides an overlying legislative structure specific to the management of archaeological sites.

- 6.10 We consider the incorporation of historic heritage provisions in the PDP is a necessary reflection of Section 6 of the RMA, and the higher order planning documents such as the RPS and NZCPS, that the PDP must give effect to. While we recognise that such protection from “*inappropriate subdivision, use and development*” may constrain the development of a site or a building, it is clear the RMA elevates historic heritage as a matter of national importance that must be appropriately provided for in district plans.
- 6.11 On a similar matter, a group of further submitters represented by Land Matters Limited opposed all of the Historic Heritage policies, with the exception of Policy 10.7 - notable trees assessment criteria. Those submitters considered that the policies would, in combination, result in significant regulatory costs to resource consent applicant; for instance through requiring archaeological assessments for consent applications within the Alert Areas. They considered that the policy framework must provide for the reasonable use of land and the ability for fair assessment if a consent application is triggered. While we acknowledge submitters’ concerns, we consider that the policies do strike a balance between protecting historic heritage (as required by the RMA) whilst enabling appropriate use and development. We do not recommend any amendments to those policies in response to these submissions. However, and of relevance to these submitters, we do recommend some amendments to the role of the Alert Areas and we canvass those recommendations later in this report.

Policy 10.1 - Identify Historic Heritage

- 6.12 Submission 441.58 Greater Wellington Regional Council supported Policy 10.1, and considered it is consistent with the (then) proposed RPS Policy 20. Proposed RPS Policy 20 has since been renumbered as Policy 21 in the now operative RPS. Ms Caroline Watson presented evidence on behalf of the Regional Council’s restating its Council’s support for this policy for the reasons that the Policy 10.2 supports the purpose and principles of the RMA, specifically Section 6, and gives effect to the RPS, specifically Policies 21 and 22.
- 6.13 Waikanae Golf Club [002.2] opposed Policy 10.1 as it relates to the identification of WTS0318 (Taewapirau); but the policy was supported in principle by Te Rūnanga o Toa Rangatira Incorporated [150.11]. We consider there are clear directives in the RPS and Part 2 of the RMA for Council to identify and protect waahi tapu sites. Therefore, we agree with Ms Watson that Policy 10.1 is appropriate to give effect to the RPS and to recognise and provide for the matters

in Sections 6(e) and 6(f) of the RMA relating to waahi tapu and historic heritage. We deal with the identification of WTS0318 (Taewapirau) later in this report.

- 6.14 We also heard from Ms Anna Carter representing a range of submitters seeking amendments to Policy 10.1 to protect only known sites with “*significant values*”. In considering these amendments sought by Ms Carter, we turned our minds to Section 6(f) of the RMA and the definition of historic heritage in Section 2 of the RMA. We are satisfied that there is no subset of historic heritage in the RMA dealing with known sites with “*significant values*” (other than sites of significance to Māori in the definition of historic heritage) and therefore reject these submissions and further submissions.
- 6.15 Ms Carter included in her evidence discussion of “*surroundings*” as creating uncertainty. We address this matter in our discussion of Policy 10.5, but as a consequence of our recommendation on that matter, we recommend deletion of “*and setting, if applicable*” from Policy 10.1(a).
- 6.16 We agree with Heritage New Zealand’s observation that the District Plan should use consistent terminology when referring to sites of significance to iwi / Māori. The relevant definition in Chapter 1 notes that “*Māori*” includes “*iwi, hapū and whānau*”. We consider the wording of Policy 10.1(d) is amended to replace “*iwi*” with “*Māori*”. In terms of consistency with the definition in Chapter 1 and consistent use of the phrase throughout Chapter 10, we recommend that the phrase be amended to “*places and areas of significance to Māori*”.

Policy 10.2 - Criteria for Identifying Historic Heritage

- 6.17 We note that while Greater Wellington Regional Council [441] and Heritage New Zealand [460.44] supported Policy 10.2, Maypole Environmental Ltd. [263.29] considered that the criteria in the policy are too broad and sought that they be refined. Waikanae Golf Club [002.3] opposed Policy 10.2 on the basis that there are no tangible criteria in relation to the identification of WTS0318 (Taewapirau); but the policy was supported in principle by Te Rūnanga o Toa Rangatira Incorporated [150.11].
- 6.18 As stated in the submission from the Regional Council, we note the criteria for identifying historic heritage are consistent with those listed in Policy 21 of the Operative Wellington Regional Policy Statement (RPS). Policy 22 of the RPS requires that district plans “*protect the significant historic heritage values associated with places, sites and areas identified in accordance with Policy 21*”. We therefore disagree with Maypole Environmental Ltd. [263.29] and Waikanae Golf Club [002.3] that the criteria should be refined.
- 6.19 Maypole Environmental Ltd also sought a requirement for more than one criterion to be met to qualify for listing in the heritage schedule. We note the RPS Policy 21 refers to significance being established “*under one or more*” of the criteria. We consider that the PDP Policy 10.2 wording “*at least one of*” is equivalent to the intent of the RPS policy.

- 6.20 Ms Watson's evidence on behalf of the Regional Council confirmed the above interpretation and for these reasons we recommend accepting the submissions of Greater Wellington Regional Council [441] and Heritage New Zealand [460.44] and rejecting the submissions of both Maypole Environmental Ltd [263.29] and Waikanae Golf Club [002.3).
- 6.21 The only change we recommend is to improve clarity and avoid duplication in Clause a) of Policy 10.2 as follows:
- a) the values relating to the history of a feature and how it demonstrates ~~important historical themes, events, people or experiences associated with:~~ ...

Policy 10.3 - Additional Listings for the Schedule of Historic Heritage

- 6.22 Heritage New Zealand [460.45] and Greater Wellington Regional Council [441.58] supported the policy as proposed. In her evidence, Ms Watson confirmed the support for Policy 10.3 on behalf of Greater Wellington Regional Council. Heritage New Zealand also confirmed their support, although drew our attention to the incorrect reference to the legislation providing for Heritage Orders; the reference needs to be to the Resource Management Act not the Historic Places Act. We therefore recommend that Clause a) be amended as follows:

- a) ~~b)~~ places subject to a Heritage Order under the ~~Historic Places Act 1993~~ RMA;

- 6.23 We heard from Heritage New Zealand that Category 1 items on the NZ Heritage List / Rarangi Korero should be 'automatically' entered into Schedule 10.1. We note that after having heard Heritage New Zealand, Mr Ashby recommended changes in his closing statements to Policy 10.3 to differentiate between Category 1 items that should be included in Schedule 10.1 of the PDP, and Category 2 items that should be given regard to. We accept this need for distinction and consider it provides more clarity. We recommend that Policy 10.3 be amended to have two separate parts as follows:

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

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

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

- a) items listed as Category 1 on the New Zealand Heritage List Rārangī Kōrero:

...

In addition to the criteria set out in Policy 10.2, when listing items in the Schedule of Historic Heritage, regard shall be given to items listed as Category 2 on the New Zealand Heritage List Rārangī Kōrero.

6.24 Ms Carter in her role representing further submitters opposing the Heritage New Zealand submission, suggested amendments to Policy 10.3 that limit the applicability of Policy 10.3 to only historic heritage found to meet the significance criteria set out in Policy 10.2. We consider that using the sources of information listed in Policy 10.3 is consistent with the integrated responsibilities of Heritage New Zealand, the Regional Council, and the District Council. For clarity, we recommend amending Clause d) to refer to “*historic heritage items specifically identified in the Regional Policy Statement*”.

6.25 For the reasons set out above, we accept the submission from Heritage New Zealand [460.45] and Greater Wellington Regional Council [441.58] and reject the corresponding further submissions.

Policy 10.4 - Identification of Notable Trees

6.26 We note that only Kapiti Coast Grey Power [480.48] submitted on this Policy in support and there were no further submitters. Although we accept the submission, we recommend that Policy 10.4 be renumbered as Policy 10.10 as a consequential amendment of re-ordering the policies and making Clause a) more certain in its application by adding “see Schedule 10.3” at the end of the sentence.

Policy 10.5 - Protection of Historic Heritage

6.27 We note Greater Wellington Regional Council [441.58] supported the Policy, as did Heritage New Zealand [460.12], although the former submitter sought minor amendments for clarity.

6.28 Ms Carter included in her evidence amendments sought on behalf of the further submitters in opposition to Heritage New Zealand’s submission - inclusion of the word “*significant*”, and deletion of “*surroundings*” as not being appropriate to automatically be included as worthy of protection in the policy. As discussed earlier in respect to Policy 10.1, we consider that the RMA definition of historic heritage is sufficient without needing to include a subset of “*significant*” items in Policy 10.5.

6.29 Mr Ashby helpfully addressed the matter of “*surroundings*” in his closing statement but we do not agree with his recommendation to include “*surroundings and setting*” to introduce a more precise link to listed historic heritage. We agree with Ms Carter that to include “*surroundings*” introduces uncertainty as to how far the policies extend beyond the scheduled item or feature. In any event, we note that the definition of “*Historic Heritage*” as contained in the RMA includes:

(b)(iv) surroundings associated with the natural and physical resources

6.30 We therefore recommend deletion of “*surroundings*” and “*settings*” from the Chapter 10 policies.

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- 6.31 Heritage New Zealand sought replacement of the wording “*involving*” with wording that better reflects RMA terminology. We agree, and therefore recommend that Policy 10.5 be amended as follows:

Policy ~~10.5~~ 10.4 - Protection of Historic Heritage

Subdivision, development and land use ~~involving~~ affecting the District’s historic heritage and its surroundings will be managed in a way that protects historic heritage values from adverse effects.

Policy 10.6 - Use and Modification of Historic Heritage

- 6.32 Greater Wellington Regional Council [441.59] and Heritage New Zealand [460.13] sought similar wording changes to clarify that Policy 10.6 applies to all historic heritage, rather than just buildings. We agree that the policy should be broadened to all historic heritage rather than just buildings and recommend that the first sentence be deleted as requested by the submission from Greater Wellington Regional Council and Heritage New Zealand.
- 6.33 We note submissions of support from KiwiRail [447.12] and opposition from Bryce Wilkinson [280.30 - 280.32] to Policy 10.6.
- 6.34 While we were considering these submissions, it occurred to us that Policy 10.6 was trying to address too many matters. We feel that continuation of use of historic heritage should be encouraged - a point that was raised by the further submitters represented by Land Matters who sought a policy framework that provides for the reasonable use of land. However, the Policy seemed to be trying to encourage continued use and modification, whilst simultaneously outlining assessment criteria. Heritage New Zealand suggested that using criteria in a policy is not ‘usual practice’ for a district plan and asked for the criteria in this policy to be moved to a separate section of the Plan. We agree, and recommend that the assessment criteria in Clause A and B be deleted from Policy 10.6 as sought by the submission from Heritage New Zealand. We recommend the assessment criteria be transferred to Policy 10.8 (numbered as notified). We note that Ms Carter in her evidence on behalf of further submitters, sought significant alteration to the Policy. We agree that change to the Policy is appropriate.
- 6.35 Heritage New Zealand sought deletion of Clause (c), particularly in regards to interpretation of “*reasonable use*”. We agree and recommend that Clause (c) be deleted.
- 6.36 We also recommend that the Policy be amended to focus on the use, repair and maintenance rather than modification.
- 6.37 Heritage New Zealand made a submission point to Policy 10.12 which illustrated that the policies are not overly supportive of continuing use and adaptive re-use of historic heritage. We agree, and in response, recommend a new Clause c) be inserted in Policy 10.6.

6.38 Having considered all the submissions and evidence on Policy 10.6 (to be renumbered as Policy 10.5), we recommend that the Policy be amended as follows:

Policy 10.65 - Use, Repair and Maintenance ~~modification~~ of Historic Heritage

~~The continued use and modification of Scheduled *historic heritage* will be provided for where it is in the original construction condition and intended purpose. Modification repair and maintenance of scheduled *historic heritage*, including alteration of or additions to scheduled historic buildings, is appropriate to maintain the continuity of use, or provide for new uses, is ~~appropriate~~ where the ~~modification~~ repair or maintenance:~~

- a) is necessary to ensure liveability and utility is retained;
- b) retains *historic heritage* values; and
- c) will secure the long term viability and retention of the place.
- ~~e) involves minimum intervention to achieve reasonable use.~~

A. ~~The following assessment criteria will be considered when assessing the effects of a proposed development~~

- ~~a) the degree to which *historic heritage* values and integrity will be irreversibly lost, damaged, destroyed or enhanced and whether the relationships between distinct elements of the *historic heritage* and its surroundings (if relevant) will be maintained;~~
- ~~b) the opportunities to remedy or mitigate any proposed or previous damage to *historic heritage* values;~~
- ~~c) the importance attributed to the *historic heritage feature* resource by the wider community;~~
- ~~d) whether the activity will lead to cumulative adverse effects on *historic heritage*;~~
- ~~e) the degree to which public interpretation of *historic heritage* is enhanced by the proposed activities, in accordance with relevant cultural protocols and without effects on the tangible or intangible *historic heritage* values;~~
- ~~f) the immediate *risk* to public safety or any other *historic heritage* if activity/works are not undertaken, including the *risk* to life in the case of earthquake;~~
- ~~g) consistency with the conservation principles set out in the International Council on Monuments and Sites (ICOMOS) New Zealand Charter;~~
- ~~h) registration and the reasons for registration on the New Zealand Historic Places Trust Rarangi Taonga: the Register of Historic Places, Historic Areas, Wahi Tapu and Wahi Tapu Areas (if applicable); and~~
- ~~i) policies of any conservation plan and heritage inventory relating to the *historic heritage*.~~

B. ~~Consideration will also be given to:~~

- ~~a) recommendations made by the New Zealand Historic Places Trust and any other professionally recognised party in heritage conservation issues; and~~
~~b) the outcome of consultation with the relevant iwi authority and other parties.~~

Policy 10.7 - Notable Trees Assessment Criteria

6.39 We note only Kapiti Coast Grey Power [480.48] submitted in support this Policy, although the submission was both opposed and supported by various further submissions. Although we accept the submission, we recommend minor changes to Policy 10.7 to use defined terms and delete the cross reference to assessment criteria in Policy 10.6. We agree with the Section 42A report suggestion of re-organising the policies into more logical groupings and therefore recommend renumbering this Policy as 10.11.

Policy 10.8 - Relocation, Demolition, Destruction of Historic Heritage Features

6.40 The submission from Greater Wellington Regional Council [441.60] generally supported this policy, but expressed concern about use of the term “*partial demolition*”. The submitter preferred the term “*façadism*”. The submitter also sought relocation and façadism be elevated to the status of avoidance. We consider that “*partial demolition*” is a term more readily understood by the general public, and therefore do not consider a separate definition of façadism is necessary.

6.41 Heritage New Zealand [460.3] sought a new definition of the term “*partial demolition*”, which was opposed by the further submission from Crozier Family Trust and Allin Family Trust [FS29]. Heritage New Zealand [460.20] made a number of other points on Policy 10.8 including:

- (a) requested the relocation of historic heritage should be avoided, especially waahi tapu;
- (b) opposed use of the word “*avoided*” in Policy 10.8A, as the term does not provide certainty; and
- (c) opposed the use of “*best practicable option*” in Policy 10.8C(b) as this could lead to subjective judgements which prioritise demolition or relocation over repair.

6.42 The submissions of Heritage New Zealand [460.3] were opposed by the Land Matters Ltd further submissions.

6.43 At the hearing, Heritage New Zealand [460.3] expressed their support for the Section 42A recommended amendments to the hierarchy of relocation, demolition, destruction and removal. Heritage New Zealand drew our attention to the absence of waahi tapu and waahi tūpūna in the recommended new drafting, but deferred discussion of this matter at the hearing for waahi tapu. Heritage New Zealand also maintained their support for a definition of “*partial demolition*” to be included in the PDP, although considered that the definition needed expanding to provide clarity. We note that there is indeed a definition for “*partial demolition*” in the PDP, although we consider that the definition of partial demolition could be amended to better distinguish between alteration

and partial demolition. We therefore recommend the definition of “*partial demolition*” be amended as follows:

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 may include 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.

6.44 We heard from Ms Watson on behalf of Greater Wellington Regional Council [441.3 and FS60] who supported the Section 42A report recommendations in terms of the two tier approach for firstly “*avoiding*” demolition, partial demolition and destruction of Category 1 / 2 items on the Heritage New Zealand list and Schedule of Historic Heritage, and secondly “*minimising*” demolition, partial demolition and destruction of items only in the Schedule. Ms Watson considered this two- tier approach is consistent with the direction provided in the RPS to protect historic heritage from inappropriate subdivision, use and development.

6.45 In order to capture all the activities associated with historic heritage, we recommend that Policy 10.8 (to be renumbered as Policy 10.6) be expanded to capture additions, alterations and partial demolition. We therefore recommend that the title and first paragraph be amended as follows:

Policy 10.86 – Additions, Alterations, Relocation, Demolition, Partial Demolition and Destruction and removal from the Schedule of Historic Heritage of Historic Heritage Features

A. ~~The complete~~ Demolition, partial demolition, or and destruction of the following historic heritage will be avoided for historic heritage (excluding notable trees) which meets both of the following:

6.46 As noted by the submission from Heritage New Zealand in the context of Policy 10.6, there is a need for the policies to apply to all historic heritage items and features - not just buildings. We therefore recommend a new Clause A b) as follows:

- b) it is a scheduled historic building or structure, scheduled historic site, scheduled historic area, or waahi tapu and other places and areas of significance to Maori. Items listed on the Schedule of Historic Heritage; and
- e) ~~Waahi tapu and places and areas of significance to iwi.~~

6.47 Heritage New Zealand considered that historic heritage items should remain in their historical location, as cultural significance is often derived from the historical relationship of the place with its surrounds. Relocation of a historic place should be a last resort option. The submission sought that Clause B of the Policy is amended to avoid relocation of historic heritage. We agree and recommend inclusion of a new Clause B as follows:

B. Relocation will be avoided for historic heritage which meets both of the following:

- a) It is a Category 1 item on the New Zealand Heritage List Rārangī Kōrero; and
- b) It is a scheduled historic building or structure, scheduled historic site, scheduled historic area, or waahi tapu and other places and areas of significance to Maori.

6.48 In terms of ensuring a logical cascade, we recommend Clause B be deleted and replaced by the following new Clause C as follows:

C. The appropriateness of relocation, demolition, partial demolition or destruction of any scheduled historic building or structure, scheduled historic site, or scheduled historic area which is not covered by (A) and (B) above, will be considered using the assessment criteria in this policy.

6.48 The submission from Heritage New Zealand sought deletion of the words “*whether the item is of danger to public safety and repair is not the best practicable option*” from Clause C in this Policy (as numbered when notified). The submission considered this is subjective statement and provides the opportunity to demolish or relocate buildings without regard to a range of other matters. We agree but instead of deleting the words we recommend altering this Clause to read:

- ~~b)-i)~~ whether the item is a danger to public safety and repair is not the best practicable option. In determining that repair is not the best practicable option, regard will be given to:
- i) the economics of a range of reasonably practicable options; and
 - ii) ensuring that every reasonable alternative has been considered to minimise the effect on historic heritage values.

6.49 In light of our support of enabling continuing use of historic heritage features and items, we recommend the inclusion of a new Clause D to Policy 10.8 as follows:

- D. Alterations and additions to scheduled historic buildings, are appropriate to maintain the continuity of use, or provide for new uses where the alteration and additions:
- a) are necessary to ensure liveability and utility is retained; and
 - b) retain historic heritage values; and
 - c) will secure the long term viability and retention of the place.

6.50 Having simplified and focused Policy 10.6, we recommend that the assessment criteria are added to Policy 10.8. We note that Heritage New Zealand requested amendments to many of the assessment criteria and in most cases we agree. Ms Carter also outlined suggested changes to Policy 10.6 assessment criteria and we have incorporated those where we consider they are appropriate. Accordingly, we recommend Clause C of Policy 10.8 is renumbered and reworded:

CE. In any assessment of *resource consent* applications relating to the activities in A, and B, C and D above, the following matters will be considered:

- a) The assessment criteria set out in policy 10.6;
- a) the degree to which *historic heritage* values will be irreversibly lost, damaged, destroyed or enhanced and whether the relationships between distinct elements of the *historic heritage* and its surroundings (if relevant) will be maintained;
- b) the opportunities to remedy or mitigate any proposed or previous damage to *historic heritage* values;
- c) the importance attributed to the *historic heritage* feature by the wider community;
- d) whether the activity will lead to cumulative adverse effects on *historic heritage*;
- e) the degree to which public interpretation of *historic heritage* is enhanced by the proposed activities, in accordance with relevant cultural protocols and without effects on the tangible or intangible *historic heritage* values;
- f) the immediate risk to public safety or any other *historic heritage* if activity/works are not undertaken, such as the risk to life in the case of earthquake;
- g) registration and the reasons for registration on the New Zealand Heritage List Rārangī Kōrero (if applicable); and
- h) policies of any conservation plan and heritage inventory relating to the *historic heritage*.
- b)-i) whether the item is a danger to public safety and repair is not the best practicable option. In determining that repair is not the best practicable option, regard will be given to:
- (i) the economics of a range of reasonably practicable options; and
 - (ii) ensuring that every reasonable alternative has been considered to minimise the effect on *historic heritage* values.

F. Consideration will also be given to:

- a) recommendations made by Heritage New Zealand Pouhere Taonga and any suitably qualified expert in heritage identification and management;
- b) for *waahi tapu* sites or sites of significance to Maori, the outcome of consultation with the relevant *iwi* authority; and
- c) the conservation principles set out in the International Council on Monuments and Sites (ICOMOS) New Zealand Charter 2010.

Policy 10.9 - Subdivision Involving Historic Heritage

6.51 Both Greater Wellington Regional Council [441.61] and Heritage New Zealand [460.22] supported Policy 10.9, although Heritage New Zealand sought deletion of the word “*avoided*” - instead relying on a determination of whether the subdivision is “*inappropriate*”. We agree that

the amendments as sought by Heritage New Zealand better reflect Section 6(f) of the RMA. We therefore recommend Policy 10.9 be amended as follows:

Policy 10.9 - Subdivision Involving Historic Heritage

~~Inappropriate subdivision of historic heritage and its surroundings will be protected from inappropriate subdivision avoided.~~

6.52 Ms Watson on behalf of Greater Wellington Regional Council Submission [441.61] stated support for the minor changes recommended in the Section 42A report. Ms Carter outlined some alternative wording on behalf of the further submitters she represented, removing reference to the surroundings of historic heritage and providing clarity around what constitutes historic heritage. Given the definition of historic heritage in the RMA as we discuss earlier in this report, we agree that it is not necessary in this Policy.

6.53 We also recommend further minor grammatical amendments under Clause 16(2) of Schedule 1 of the RMA and consequential amendments to use defined terms and consistent language.

Policy 10.10 – Waahi Tapu

6.54 Five submissions were received on Policy 10.10. Waikanae Golf Club [002.4] opposed Policy 10.10, considering it to be a one-sided process with the identification of heritage values resting solely with iwi, hapū and whānau in accordance with their kaitiakitanga responsibilities. Te Rūnanga o Toa Rangatira Incorporated [150.11] supported the Policy in principle, as did Greater Wellington Regional Council [441.61].

6.55 Maypole Environmental Ltd [263.30] opposed the Policy, and considered that it is more onerous than Section 6 of the RMA and places unreasonable restrictions on the use of land.

6.56 Heritage New Zealand [460] considered the protection of places and areas of significance to Maori, including waahi tapu, is a matter of national importance and sought amendments to the wording to better reflect this. We are aware that Part 2 of the RMA requires councils, as a matter of national importance, to recognise and provide for:

(a) 6(e) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga; and

(b) 6(f) the protection of historic heritage from inappropriate subdivision, use, and development.

6.57 The RMA also requires councils to have particular regard to kaitiakitanga (section 7(a)), and take into account the principles of the Treaty of Waitangi (Section 8), one of which is active protection. We agree with the amendments sought by Heritage New Zealand and recommend that Policy 10.10 be amended as follows (including renumbering as Policy 10.8):

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, land disturbance 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.~~

- 6.58 The submission from Waikanae Golf Club appears to be concerned with the statement in the explanation to the policy as opposed to the policy itself. In particular the submission seems to be concerned with specific identification of an item as opposed to protection of waahi tapu (which is the focus of Policy 10.10). Given the directives in Part 2 of the RMA, we consider that Policy 10.10 is appropriate and therefore recommend rejecting the submissions opposing Policy 10.10.
- 6.59 As a consequential amendment of consideration of other submissions, we recommend that Policy 10.10 (to be renumbered as Policy 10.8) include the term “*and other places and areas of significance to Maori*”.

Policy 10.11 - Unidentified Historic Heritage

- 6.60 Three submissions were received regarding Policy 10.11.
- 6.61 Greater Wellington Regional Council [441.62] supported Policy 10.11, but sought an amendment to explicitly encourage archaeological assessments prior to works commencing.
- 6.62 Heritage NZ [460.24] opposed Policy 10.11 in part and sought redrafting to clarify whether the policy is solely directed at unidentified archaeological sites, or is intended to encompass all historic heritage as defined by the RMA.
- 6.63 Waikanae Christian Holiday Park (El Rancho) [319.32] sought deletion of reference in the policy to the Archaeological Alert Areas.
- 6.64 We have discussed the matters raised by these submissions in more detail in Sections 8 and 9 of our report addressing Archaeological Alert Areas and the Accidental Discovery Protocol. For the reasons discussed there we have recommended changes to Policy 10.11 (to be renumbered as Policy 10.9) as follows:

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 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.

Policy 10.12 - Voluntary and Non-Regulatory Methods

6.65 Heritage New Zealand [460.25] supported this Policy, but sought inclusion of examples of non-regulatory methods listed. The examples used by Heritage NZ demonstrate that facilitating the economic use of historic heritage has not been addressed by the PDP. We agree, but instead recommend amendments to Policy 10.6 (to be renumbered as Policy 10.5) rather than Policy 10.12. Heritage New Zealand confirmed support for these amendments. We therefore recommend the inclusion of Clause c) in Policy 10.6 (to be renumbered Policy 10.5) as follows:

c) will secure the long term viability and retention of the place.

Findings

6.66 We recommend that the policies are retained for the reasons outlined above, albeit with amendments as set out in Appendix 1.

6.67 We therefore recommend the following changes (as shown in full in Appendix 1):

- (a) the addition of explanatory text regarding waahi tapu to the Introduction;
- (b) simplifying and streamlining of the introductory text;
- (c) deletion of the Explanations to policies, except where there is need to reference a higher order planning document;
- (d) minor amendments to all policies to improve clarity and use consistent terminology;
- (e) renumbering and re-organising the order of the policies so they are grouped more logically;
- (f) changing the reference to “*areas of significance to Maori*” rather than “*iwi*”;
- (g) deletion of “*settings*” from Policy 10.1;
- (h) amendments to Policy 10.3 to create a two tiered approach to Category 1 and Category 2 items;
- (i) inclusion of references to Schedule 10.3 in Policy 10.4 (to be renumbered as Policy 10.10);
- (j) deletion of “*surroundings*” from Policies 10.5 (to be renumbered as Policy 10.4) and 10.9 (to be renumbered as Policy 10.7);
- (k) amending Policy 10.6 (to be renumbered as Policy 10.5) to be more enabling with regards to use, repair and maintenance;
- (l) refocusing of Policy 10.6 (to be renumbered as Policy 10.5) on “*use, repair and maintenance*” rather than “*use and modification*”;
- (m) deletion of the assessment criteria in Policy 10.6 (to be renumbered as Policy 10.5);
- (n) amendments to Policy 10.6 (to be renumbered as Policy 10.5) to give explicit recognition of long term viability and retention of the place;

-
- (o) inclusion of “*trimming*” in Policy 10.7 (to be renumbered as Policy 10.11);
 - (p) amending Policy 10.8 (to be renumbered as Policy 10.6) to allow a hierarchy of additions, alterations, relocation, partial demolition, demolition and destruction;
 - (q) further amendments to Policy 10.8 (to be renumbered as Policy 10.6) to include assessment criteria;
 - (r) exclusion of notable trees from Policy 10.8 (to be renumbered as Policy 10.6);
 - (s) insertion of Clause B in Policy 10.8 (to be renumbered as Policy 10.6) relating to relocation being avoided;
 - (t) inclusion of matters for consideration in Policy 10.8 (to be renumbered as Policy 10.6);
 - (u) refocusing Policy 10.9 (to be renumbered as Policy 10.7) on protection from inappropriate subdivision rather than avoidance;
 - (v) amendments to Policy 10.10 (to be renumbered as Policy 10.8) to protect waahi tapu from inappropriate subdivision, development, land disturbance or changes in land use;
 - (w) deletion of all references to the Archaeological Alert Areas from Policy 10.11 (to be renumbered as Policy 10.9) and clarification of situations where previously unidentified historic heritage is discovered; and
 - (x) amendments to Policy 10.11 (to be renumbered as Policy 10.9) to outline Council’s role in maintaining publicly available information in relation to areas of higher risk of unidentified historic heritage being encountered.

6.68 For the reasons discussed above in Evidence and Evaluation, those submissions relating to the policies in Chapter 10 (including those submissions not specifically referred to above but which are relevant to this issue) are either accepted, rejected or accepted in part as outlined in Appendix 2.

7 Issue 2: Inventory of Identified Heritage

Description of the Issue

7.1 The Historic Heritage Chapter contains Schedule 10.1 Schedule of Historic Heritage which has a number of a number of identified historic heritage buildings, features and areas as follows:

- (a) buildings and structures (and surroundings / settings if applicable);
- (b) archaeological sites;
- (c) notable trees;

-
- (d) historic areas, including historic precincts and streets (and surroundings / setting if applicable); and
 - (e) waahi tapu and other places and areas of significance to iwi (and surroundings / setting if applicable).

7.2 This section of our report addresses all the components of the Schedule apart from waahi tapu and other places and areas of significance to Maori which we address in Section 11 of this report. The significance of the Schedule is that various policies and rules in Chapter 10 pertain to the items in this Schedule.

7.3 There were various requests for items to be removed from the Schedule and for others to be added. Those items sought to be included by submissions were:

- (a) Kapiti Women's Electoral Lobby Suffrage Centennial Garden (Submission 68.1 Kapiti Women's Health Collective Inc.);
- (b) Perkins Farm Woolshed to the Schedule (Submission 406.20 Paekakariki Community Board);
- (c) Stringer Wind Rain House: 224 Main Road, Paraparaumu (Submission 460.37 Heritage New Zealand); and
- (d) stand of karaka trees at 14 - 18 Margaret Road (Submission 306.5 Collin Hope).

7.4 Those items subject to submissions seeking amendments to the Schedule were:

- (a) description of Casa Esperanza (also known as Hope House) as item B118 (Submission 306.3 Collin Hope);
- (b) various amendments to B10: Maori University Building; B37: William Jenkins' Cottage; B74: St Andrew's Church Scottish Kirk; B105: St Andrew's Church Hall (Scottish Kirk); A24 Paekakariki Railway Station and Yard Historic Area (Submission 460.37 Heritage New Zealand);
- (c) clarification of the difference between two listings, being B3: St Mary's Catholic Church and B14: Roman Catholic Church Pukekaraka Conservation Area Otaki (Submission 460.37 Heritage New Zealand); and
- (d) corrections to the notations of T52, T62, and T83 (Submission 139.20 Raumati South Residents Association).

7.5 Those items subject to submissions seeking their removal from the Schedule were:

- (a) two dead / dying kohekohe trees be removed from the Schedule item T55 (Submission 3.1 Tony Jack); and
- (b) Tree T21 (Submission 176.2 Kerry Dalton).

- 7.6 Heritage NZ [460.38] sought an additional column in Schedule 10.1, to display the New Zealand Archaeological Association site number (where relevant).
- 7.7 Jan Nisbet [133.20] noted in her submission that there are various groups that have museum collections and are wanting places to display collections and suggested that an area at the Turf Farm could be used for a Museum/ Historic display area.

Evidence and Evaluation

Scheduled Buildings

- 7.8 We heard from Heritage New Zealand who brought to our attention that three places listed as Category 2 in the New Zealand Heritage List / Rarangi Korero have not been included in Schedule 10.1 (being #4087 relocated house, #939 Former Union Parish Church and #6138 raised-rim pits). Heritage New Zealand clarified for us that the two buildings have been relocated from their original sites, and their current heritage value cannot be ascertained without further work. We heard that the third feature is a large group of raised-rim pits. Heritage New Zealand informed us that archaeological sites such as the raised-rim puts have *“very high evidential values and are also subject to additional regulation by HNZ”*.
- 7.9 Despite the raised rim pits having a high value, we agree with Mr Ashby in his closing statement that they are not addressed in Heritage New Zealand’s original submission and therefore cannot be included in Schedule 10.1 through this PDP process. We do not agree with Mr Ashby that the addition of the raised-rim pits could be added to Schedule 10.1 using Clause 16 of Schedule 1 to the RMA as we consider this would not satisfy the requirement of such an alteration having a minor effect. Due to this lack of scope provided by Heritage New Zealand’s submission, we do not recommend that the three places are included in the PDP. While we accept that there could potentially be value in including:
- (a) 4087 House [Relocated] now at 69 Taylors Road, Otaki;
 - (b) 939 Union Parish Church (former) now at 20-24 Reikorangi Road, Waikanae; and
 - (c) 6138 Raised-rim Pits, Paekakariki Hill Road
- in Schedule 10.1, we recommend this be progressed via a future Schedule 1 RMA process and be accompanied by an assessment of their historic heritage values in accordance with Policies 10.2 and 10.3 of the PDP.
- 7.10 The Stringer Wind Rain House is owned by the New Zealand Transport Agency and we are aware of a letter from the Agency (dated 30 June 2015) confirming support for the house’s inclusion in Schedule 10.1. Heritage New Zealand provided us with detailed information on the Stringer Wind Rain House at 224 Main Road, State Highway 2, Paraparaumu and explained that it is considered to be a unique house and rare nationally. On the basis of the information

provided by Heritage New Zealand and support from the landowner (New Zealand Transport Agency), we recommend inclusion of this building in Schedule 10.1 as follows:

B120

Stringer Wind Rain House

224 Main Highway, Paraparaumu

LOT 1 DP 18239 CT 8B/1139

Designed in 1984 by Nigel Cook. One of four wind rain houses in NZ. At the forefront of sustainable, ecology-centered architectural design in NZ.

- 7.11 We agree with Heritage New Zealand that adding a column of the schedule so as to include the New Zealand Archaeological Association site number in Schedule 10.1 (where relevant) would be useful. It would be consistent with amendments under Schedule 10.2 which refer to sources of information for determining whether an archaeological site is known or reasonably suspected to exist. While we acknowledge that a New Zealand Archaeological Association site number will not exist for all listings, we recommend that where an item or feature has a New Zealand Archaeological Association site number this is included in the Schedule. We recommend that the following text be included above Schedule 10.1 as follows:

The column "Other Identifiers" includes, where available, the Heritage NZ register number ("HNZ###"), the NZ Archaeological Association site number ("NZAA###"), and GPS coordinates ("GPS###").

- 7.12 We agree with the amendments to B10, B37, B74, B105 and A24 as sought by Heritage New Zealand, and consider the changes will assist with clarity and correctness. We therefore recommend the following amendments:

District Plan ID B10: Maori University Building. Amend Schedule Cat + 2

District Plan ID B37: William Jenkins' Cottage. Also known as Misses Jenkins' Cottage. NZHPT register No. 1321. Cat 2.

District Plan ID B74: St Andrew's Church ~~Scottish Kirk. NZHPT register No. 7422~~
~~Category 1~~

District Plan ID B105: St Andrew's Church Hall (Scottish Kirk). NZHPT Register NO.7422. Category 1

District Plan ID A24 Paekakariki Railway Station and Yard Historic Area. ~~North~~
~~End Signal Box. 2 water vates vats~~

~~District Plan ID B3: St Mary's Catholic Church and DPlan ID B14: Roman Catholic Church Pukekaraka Conservation Area Otaki~~

- 7.13 With regards to the requested addition to Schedule 10.1 of the Perkins Farm Woolshed, we understand that the building is currently owned by the New Zealand Transport Agency as the

land was purchased as part of the Transmission Gully project. We understand that the Agency does not support the building being part of Schedule 10.1 and therefore we do not recommend including it.

- 7.14 We heard from a representative of Collin Hope [306.3] seeking removal of Item B118 (Casa Esperanza) from Schedule 10.1. We note that is a significantly different stance from that contained in Mr Hope's original submission which supports inclusion of Casa Esperanza (also known as Hope House) as item B118 on the Schedule, but sought amendment of the description. Further submission FS175 Heritage New Zealand supported the inclusion of further description. While we have some sympathy with the challenges Mr Hope has with maintaining the house, we consider that neither the submission nor further submission provides us with scope to remove Casa Esperanza from Schedule 10.1. Within the scope of the submission we recommend the description of B118 is amended as follows:

Architect Built between 1991-1994, designed by registered architect Dave Launder and owner/artist Collin Hope. Notable for its internal and external form.

- 7.15 We recommend that the removal of B118 Casa Esperanza is considered for removal from Schedule 10.1, and if it is determined appropriate that a plan change be promulgated as part of a Schedule 1 RMA process.

Scheduled Trees

- 7.16 We heard from Kerry Dalton who helpfully provided us with photographs of tree T21 which is included in Schedule 10.1 of the PDP. We were persuaded by the significant shading effects of the tree as well as the compromised physical shape due to its proximity to power lines. We agree that 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. Accordingly, we recommend that tree T21 is removed from Schedule 10.1.
- 7.17 In relation to Tony Jack's [3.1] request to delete item T55 (2 kohekohe trees) from the Schedule, the submitter provided photographic evidence (as noted in the Section 42A report) of the state of the trees which we accept. The trees are clearly either dead or in very poor health and may be a danger to people and property; a state which was confirmed by Council's arborist through an inspection. We recommend removing T55 from Schedule 10.1.
- 7.18 With regards to the amendments sought to T52 and T83 by Raumati South Residents' Association [139.20], we consider they are consistent with addresses identified by NZ Post. We accept that the reference to T62 is possibly in error as it is a Waikanae address, whereas the amendment sought by the submitter is a Raumati address. We recommend that both T52 and

T83 are amended to read "*Raumati South*", and the address for tree T62 be amended to read "*51 Leinster Ave, Raumati South*".

- 7.19 With regards to the request by Collin Hope [306.5] to schedule 29 semi-mature karaka trees, we are aware the Council's arborist has assessed these trees. The arborist's conclusion is that the current condition, growth habit and quality of the trees following previous pruning (topping) has limited the ability for the trees to grow into significant specimens in this location. The arborist recommends that none of these trees be included on the Schedule. On this basis, we do not recommend their inclusion in Schedule 10.1.

Scheduled Features

- 7.20 Kāpiti Women's Centre appeared in support of including the suffrage gardens as a historic heritage feature listed in Schedule 10.1. We requested that Mr Ashby and the Kāpiti Women's Centre consider how future maintenance / upgrade of the gardens would be treated by the Chapter 10 rules in order for the Kāpiti Women's Centre to fully understand the constraints being scheduled may have on future repair and maintenance of the gardens. We therefore recommend the suffrage gardens as a feature remain in Schedule 10.1 as notified.
- 7.21 With regards to use of the Turf Farm for a museum / historic display, we consider this matter is most appropriately addressed through processes outside the PDP and therefore do not recommend any amendments in response to this submission.

Findings

- 7.22 We recommend that the Schedule and the features or items it contains are retained for the reasons outlined above as outlined in Appendix 1. We consider it is an effective way to clearly identify historic heritage features of importance and therefore gives effect to Objectives 2.1 and 2.7 of the PDP and the various objectives and policies of the RPS specifically referred to earlier in this report.
- 7.23 For the reasons outlined above in Evidence and Evaluation, we recommend the Schedules are amended as follows (and as shown in full in Appendix 2):
- (a) text is inserted above Schedule 10,1 to explain the matters that may be included in the column "*other identifiers*";
 - (b) inclusion of the Heritage New Zealand register number ("*HNZ####*"), the New Zealand Archaeological Association site number ("*NZAA####*"), and GPS coordinates ("*GPS####*") where relevant;
 - (c) references to the Heritage New Zealand Categories are updated;
 - (d) delete B14 Roman Catholic Church, Pukekaraka Conservation Area, Ōtaki;

- (e) update the naming of William Jenkins' cottage to reflect it is also known as Misses Jenkins' cottage;
- (f) minor amendments to B10, B74, B105, A24;
- (g) addition of B120 Stringer Wind Rain House;
- (h) deletion of T55 2 Kohekohe trees *Dysoxylum spectabile*;
- (i) delete tree T21;
- (j) amend the address for tree T52; and
- (k) amend the address for tree T62.

7.24 For the reasons discussed in Evidence and Evaluation, those submissions relating to Schedules (including those submissions not specifically referred to above but which are relevant to this issue) are either accepted, rejected or accepted in part as outlined in Appendix 2.

8 Issue 3: Archaeological Alert Areas

Description of the Issue

- 8.1 The Archaeological Alert Areas are a layer shown on the PDP maps, based on a technical report *Predictive Model for Archaeology: Kāpiti Coast, Subsurface Limited, 2012*. It brings together archaeology, statistical modelling, and the use of geographic information systems and is essentially a predictive model. It utilises data from a previous model prepared for the Wellington Region by Greater Wellington Regional Council, but the author states that it allows considerably better definition and consideration of localised environmental factors. The data includes 300 recorded archaeological sites in the District and information gathered during 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. The presence of the same environmental factors can be used to indicate the potential for unrecorded sites in other locations.
- 8.2 In the PDP as notified, the only provision relating to Archaeological Alert Areas (AAA) is Policy 10.11 which identifies those as areas of high likelihood of identifying archaeology. The submissions on this matter generally oppose the AAA Layer being applied to specific properties, with a preference for only identified scheduled historic heritage to appear on the PDP maps.
- 8.3 As the AAA Layer has no rules, the submissions mainly related to the concept of an alert layer and Policy 10.11. They sought the following relief:
- (a) deletion of the archaeological alert layer from particular properties;

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- (b) deletion of the alert layer and replacement with individual sites where these are known;
 - (c) support for the use of the AAA Layer, but requesting inclusion on the Council's GIS system to inform consent processes;
 - (d) redrafting of Policy 10.11 to clarify whether the policy is solely directed at unidentified archaeological sites, or is intended to encompass all historic heritage as defined by the RMA; and
 - (e) deletion of reference in Policy 10.11 to the Archaeological Alert Areas.

Evidence and Evaluation

- 8.4 We heard from Ms Watson on behalf of Greater Wellington Regional Council [441.62] who reiterated support for the AAA Layer. In her view, having such information available to the public along with the policy approach provides a robust means of avoiding the destruction of unidentified archaeological sites which is consistent with RPS Policy 22.
- 8.5 The evidence from Heritage New Zealand [460.24] supported removal of the AAA Layer from the District Plan Maps. The evidence instead supported this information being added to Council's GIS system instead, with references in Schedule 10.2 as a source of information on where archaeological sites may likely be located.
- 8.6 Ms Carter set out her concerns for the further submitters she represented and sought to have all references to the AAA Layer deleted from the PDP.
- 8.7 We heard from Ms Housiaux on behalf of Friends of Te Hapua Dunes and Wetlands who supported the AAA layer concept, who helpfully described to us the value of protection for unidentified archaeological sites. Ms Housiaux told us that it is likely that there are considerably more middens in Te Hapua than have been recognised or discovered due to limited excavations within the Te Hapua environment.
- 8.8 We asked Mr Ashby to review the AAA Layer having heard the evidence and provide us with further analysis. He summarised for us the information basis for the layer and the Subsurface Report. He also outlined an alternative approach, with particular attention to submitters' concerns about earthworks and forestry. We carefully considered Mr Ashby's recommended alternative approach; but we consider it would add an additional layer of complexity to the PDP and risk introducing inconsistencies with the existing earthworks rules in the PDP.
- 8.9 While we acknowledge support for the AAA Layer by Friends of Te Hapua Dunes and Wetlands, we consider there are other more effective methods for protecting undiscovered archaeological sites and items. Moreover, and as far as Te Hapua is concerned, we consider the rules in the PDP regarding earthworks will help protect the wetland.
- 8.10 We agree that there are difficulties with the Archaeological Alert Areas and based on the information presented to us we recommend removing the layer from the PDP Maps. We

consider Sections 6(e) and (f) of the RMA recognise historic heritage and waahi tapu as matters of national importance, however we consider there are other more effective means of protecting these than the AAA Layer. Other methods could be:

- (a) based within the District Plan (such as the Accidental Discovery Protocol as set out in Schedule 10.2 and often used as a condition or advice note on resource consents, and discussed in the next sub-section of this report); or
- (b) delivered by methods outside the District Plan (such as and the Archaeological Authority process under the Heritage New Zealand Pouhere Taonga Act 2014).

8.11 We consider that if the AAA Layer (or a similar approach) was to be further considered, additional investigation and refinement would be necessary, as in its current form we consider the approach is not sufficiently robust.

8.12 We therefore recommend Policy 10.11 (to be renumbered as Policy 10.9) be amended as follows:

Policy 10.449 - Unidentified Historic Heritage

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 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.

Findings

8.13 As outlined in detail in Appendix 1 we recommend removing all references in the PDP to the Archaeological Alert Areas, including the following amendments:

- (a) removing references to Archaeological Alert Areas from Policy 10.11 (to be renumbered as Policy 10.9); and
- (b) removing the Archaeological Alert Areas from the PDP Maps.

8.14 For the reasons discussed in Evidence and Evaluation, those submissions relating to the Archaeological Alert Areas (including those submissions not specifically referred to above but

which are relevant to this issue) are either accepted, rejected or accepted in part as outlined in Appendix 2.

9 Issue 4: Accidental Discovery Protocol

Description of the Issue

9.1 We understand that the Accidental Discovery Protocol is intended to protect previously undiscovered historic heritage occurs through establishing procedures when this occurs. The principal means for implementing this in the PDP is Policy 10.11 and Schedule 10.2. The main concerns raised by submitters were:

- (a) the involvement of Heritage New Zealand;
- (b) the name of the protocol; and
- (c) the risk of property owners undertaking works without obtaining the necessary authorities.

Evidence and Evaluation

9.2 Chris and Esmae Brown [53.2] opposed the use of the Accidental Discovery Protocol, or alternatively sought that there be an alternative process which does not involve Heritage New Zealand. The submission expressed concern that there are many middens throughout the District, and that investigation of them all is unlikely to lead to greater knowledge. While we understand the concerns of the submitter, the wording of the Heritage New Zealand Pouhere Taonga Act 2014 is that an archaeological authority must be obtained where it is “*known or reasonably suspected*” that a pre-1900 site of human activity would be affected. The Act overrides anything in the District Plan and must be complied with. In deciding whether or not a site might be “*known or reasonably suspected*” of being an archaeological site, there are various potential sources of information. These include Schedule 10.1 of the District Plan (historic heritage features), the New Zealand Archaeological Association records of sites (accessible via their website), or the knowledge of iwi. Heritage New Zealand is responsible for deciding whether an application for an archaeological authority is necessary in specific cases.

9.3 Greater Wellington Regional Council [441.66] supported the use of a discovery protocol. However, the submitter sought an amendment to remove reference to discoveries as “*accidental*”. This would result in Schedule 10.2 being titled the “*Archaeological Discovery Protocol*”. We heard from Ms Watson on behalf of Greater Wellington Regional Council [441.66] that the Council supports the recommendations in the Section 42A report for the reasons that it supports the purpose and principles of Section 6 of the RMA and gives effect to Policy 22 of the RPS.

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- 9.4 The submission from Heritage New Zealand [460.40 - 460.43] noted that an Accidental Discovery Protocol is a tool used as a condition of resource consents, where there is a low likelihood of encountering archaeological resources. Heritage New Zealand was concerned that its detail and inclusion in the PDP may mislead property owners into undertaking work without first having obtained an archaeological authority under the Heritage New Zealand Pouhere Taonga Act. The submitter therefore sought deletion of the protocol, but retention of the note (renamed as an “*advice note*”) which refers to Heritage NZ processes.
- 9.5 At the hearing we heard from Heritage New Zealand supporting the approach to bringing together the archaeological requirements in a single schedule and supporting the amended name of the schedule. Heritage New Zealand also outlined some wording amendments to the Schedule to make it more technically correct.
- 9.6 We also heard from Ms Carter on behalf of a number of further submitters who outlined the wording changes sought to Policy 10.11 and Schedule 10.2. One of Ms Carter’s concerns was that the obligation to obtain an archaeological authority under Heritage New Zealand Pouhere Taonga Act is the requirement of Heritage New Zealand and not KCDC.
- 9.7 We consider that greater clarity is required so that users of the District Plan understand the statutory processes managed by Heritage New Zealand, and its relationship to the consent processes managed by the Council. Having heard Heritage New Zealand, we recommend amending Policy 10.11 (to be renumbered as Policy 11.9) as follows:

Policy 10.11 - Unidentified Historic Heritage

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 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.

- 9.8 However, we feel that the name “*Accidental Discovery Protocol*” more accurately reflects the purpose and prefer this to “*Archaeological Requirements*” as the name for Schedule 10.2 as suggested in the Section 42A report, or “*Archaeological Discovery Protocol*” as sought by Greater Wellington Regional Council.

9.9 We recommend that Schedule 10.2 be amended as follows to more accurately describe what the Protocol is:

Schedule 10.2 - Accidental Discovery Protocol

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.

Consent required from Heritage New Zealand

An authority (consent) from Heritage New Zealand 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 Pouhere 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.

Accidental Discovery Protocol - without an authority

If an authority has not first been obtained, and an archaeological site is subsequently discovered, the following protocol must be followed:

- i. immediately cease operations;
- ii. inform the relevant iwi authority;
- iii. inform Heritage New Zealand and apply for the appropriate authority, if required;
- iv. inform the Council and apply for the appropriate resource consent, if required; and
- v. take appropriate action, after discussion with the Heritage New Zealand, Council and relevant iwi authority to remedy damage and/or restore the site.

Consent required from Kapiti Coast District Council

~~In addition to any authority required from Heritage New Zealand, resource consent may be required from the Council. Refer to the rules in section 10.1.2 of the District Plan.~~

~~The Accidental Discovery Protocol shall be followed for any accidental discovery of an archaeological site, waahi tapu or other cultural site.~~

~~Should an archaeological site, waahi tapu or other cultural site be unearthed during land disturbance or earthworks the contractor and/or owner shall:-~~

~~(i) immediately cease operations;~~

~~(ii) inform the relevant iwi authority;~~

~~(iii) inform the New Zealand Historic Places Trust and apply for the appropriate authority, if required;~~

~~(iv) take appropriate action, after discussion with the New Zealand Historic Places Trust, Council and relevant iwi authority to remedy damage and/or restore the site.~~

~~Advice Note: Work affecting archaeological sites is subject to a consenting process under the Historic Places Act 1993. An authority (consent) from the New Zealand Historic Places Trust must be obtained for the work prior to commencement. It is an offence to modify, damage or destroy a site for any purpose without an authority. The Historic Places Act 1993 contains penalties for unauthorised site damage. Contact the New Zealand Historic Places Trust for further information.~~

Findings

- 9.10 We agree with the retention of Accidental Discovery Protocol as outlined in Appendix 1, with the following amendments:
- (a) expansion of Schedule 10.2 - Accidental Discovery Protocol which sets out information to alert the public to their responsibilities regarding archaeological sites; and
 - (b) amending Policy 10.11 to more accurately describe what the Protocol is and when it applies.
- 9.11 For the reasons discussed in Evidence and Evaluation, those submissions relating to the Accidental Discovery Protocol (including those submissions not specifically referred to above but which are relevant to this issue) are either accepted, rejected or accepted in part as outlined in Appendix 2.

10 Issue 5: Historic Heritage Rules

Description of the Issue

- 10.1 We understand that the rules in Chapter 10 only apply to those buildings, areas, features and trees listed in Schedule 10.1. The rules include minor activities such as minor work through to more significant activities such as subdivision and demolition. The submissions regarding Chapter 10 rules are similarly varied. Matters raised in submissions include:
- (a) deletion and/or clarification of “*land disturbance*” to exclude normal activities such as gardening;
 - (b) deletion of particular standards;
 - (c) clarification of terms through the development of new definitions;
 - (d) enabling the trimming of scheduled trees (as part of protecting significant infrastructure) as a permitted activity;
 - (e) clarification of standards; and
 - (f) more stringent activity status for relocation, partial demolition and demolition of listed items.
- 10.2 The views about rules expressed by submitters are varied, but two broad themes emerged:
- (a) greater clarity is needed around the use of language as it influences the effect of particular rules, including the matters referred to in “*clarification of terms*” above; and
 - (b) what degree of physical effect should trigger restricted, fully discretionary, or non-complying activity status?

Evidence and Evaluation

Overview

- 10.3 Many of the submitters who submitted on the Chapter 10 rules did not attend the hearing. We would like to acknowledge Heritage New Zealand, Ms Watson from Greater Wellington Regional Council and Ms Carter representing various further submitters for their hearing attendance and assistance on the rules.
- 10.4 We asked Mr Ashby about the complexity of the rules and the potential for simplifying the range of activity status used. He responded in his closing statement that 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. He considered that the use of assessment criteria in Policies 10.6 and 10.7 (numbered as notified) links appropriately to the various assessments required under controlled, restricted discretionary and discretionary status.

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- 10.5 We asked Ms Watson from Greater Wellington Regional Council and Heritage New Zealand about the need for a variety of activity status. Ms Watson responded that retaining the non-complying activity category is still important. Heritage New Zealand noted that restricted discretionary status can constrain flexibility of outcomes in some circumstances.
- 10.6 We note that protection of historic heritage is a matter of national importance and accept that Chapter 10, particularly Schedule 10.1, covers a diverse range of historic heritage items including buildings, trees, and sites and areas of significance to tāngata whenua.
- 10.7 The presentation of additional evidence or information at the hearing was limited and in the most part we agree with the officer's recommendations identified in the Section 42A report for the reasons outlined therein. Thus, we have focused our discussion here on the information we heard at the hearing or areas where we depart from the recommendations in the Section 42A report. We note there are very few material changes to rules arising from our consideration of submissions.
- 10.8 Ms Carter drew to our attention the potential for heritage policies to be brought into play during discretionary consent applications, even if the site in question is not on Schedule 10.1. We requested Mr Ashby review this concern and advise on the rules in relation to heritage 'sites'. We agree with his assessment in his closing statement that the wording of various rules could be amended to make it clear that only sites containing historic heritage features are subject to the Chapter 10 rules. We have taken the opportunity to amend wording to the activities to ensure that it is clear that they only apply to sites that have a historic heritage feature.

Permitted Activities

- 10.9 There are eight permitted activities associated with the rules in Chapter 10 applying to those buildings, areas, features and trees listed in Schedule 10.1, including the catch-all rule which applies to all activities not listed as permitted, controlled, restricted discretionary, discretionary, non-complying or prohibited, provided they comply with all permitted activity standards. There were also a number of submissions pertaining to the use of terms in the rules, including "*land disturbance*", "*minor works*" and "*alterations and additions*".
- 10.10 We are aware the Operative District Plan (ODP) takes a permitted activity stance for activities that are not specifically listed, but can comply with all the permitted activity standards. After seeking clarification from the Council Section 42A writers as to whether this approach in the ODP caused any unintended consequences, we have adopted this same approach - if an activity is not specifically listed, and it can comply with all the permitted activity standards then it is a permitted activity. We therefore recommend amendments to Rule 10A.1.1 to clarify that any activity not specifically listed as a permitted, controlled, restricted discretionary, discretionary or non-complying activity in Chapter 10 is a permitted activity so long as it complies with all relevant permitted activity standards.

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- 10.11 In terms of “*land disturbance*”, some submissions expressed concern that it may include everyday activities such as planting trees and fencing.
- 10.12 We agree with submitters that land disturbance in the context of historic heritage could be better defined, given that Chapter 10 is where the term is solely used in the PDP. We recommend that the definition be significantly simplified to distinguish it from the more general term “*earthworks*” as follows:
- Land disturbance(s) (in relation to historic heritage features)** means the disturbance and damage of land by any means including *earthworks*; ~~tree planting or removal~~, blading, trenching, side-cutting, surface excavation, explosives, overburden and spoil disposal, reclamation, drainage, ground levelling, works associated with the construction or removal of buildings, earth dams, permanent inundation and the construction, maintenance, realignment or widening of *roads* or tracks. ~~Land disturbance includes:~~
- ~~(a) Any new fencing, tree planting or tree removal.~~
- ~~(b) Repair of any place or area of significance to Māori and any historic site.~~
- ~~(c) Maintenance work that does not comply with the standards outlined above.~~
- 10.13 Maypole Environmental Limited [263.32] stated that, due to the small threshold for land disturbance, activities that are in an approved Neighbourhood Development Plan should be exempt from permitted activity standards. We have addressed this matter in our report on Chapter 5.
- 10.14 The submitters that attended the hearing and spoke on this matter were:
- (a) Te Anau Trust sought greater clarification as to what is permitted on their site; and
- (b) Heritage New Zealand sought that a higher activity status apply to urupā within Group B and D waahi tapu, and also requested a notification clause for land disturbance to trigger the archaeological authority process.
- 10.16 Te Anau Trust [272.5] requested that Rule 10A.1.6 is amended to clarify the volume of land disturbance permitted (i.e. whether this applies to single activities or as a blanket restriction). Waikanae Christian Holiday Park Incorporated [319.34] requested that Rules 10A.1.7 and 10A.2 are amended to remove the volume limit from the land disturbance standard and instead require compliance with the permitted activity standard for earthworks in the respective zones. Heritage New Zealand [460-30] sought the opposite amendment to Rule 10.A.1 to delete “*The maximum extent of land disturbance shall not exceed 10m³*” for Group B and D waahi tapu, as this is considered to be a significant volume to occur as a permitted activity condition. The Heritage New Zealand submission also sought amendments to Rule 10A.2 so that land disturbance is a restricted discretionary activity.
- 10.17 With regards to the maximum level of land disturbance, we carefully considered the activities that are included in the definition of land disturbance. It is our understanding that the 10m³ limit

was intended to apply to single land disturbance activities (e.g. new paths) rather than as a total limit for any given site. We consider that the 10m³ permitted activity threshold for land disturbance for a property within a scheduled waahi tapu area is appropriate as the volume equates to approximately a large truck full of soil which is enough to allow landowners to undertake a reasonable amount of work on their site. We consider that a restricted discretionary activity status for all land disturbance activities (as requested by Heritage New Zealand) is overly onerous and would place undue constraints and costs on landowners.

- 10.18 We consider the 10m³ threshold for land disturbance in Group B and D waahi tapu should be applied across the site rather than to individual land disturbance activities, as the cumulative adverse effects from multiple instances of 10m³ land disturbance on the cultural values of a scheduled waahi tapu could be significant. We therefore recommend that the land disturbance threshold of 10m³ should specify that this limit is the maximum within the scheduled waahi tapu per site each calendar year.
- 10.19 Heritage New Zealand requested a new term “*repair and maintenance*” which would be specific to historic heritage. Under this submission the existing term “*minor work*”, which refers to historic heritage, would be deleted but a substantial part of the definition would remain unchanged for use in other circumstances. We consider a new definition would be a useful clarification, and would require consequential amendments to Rules 10A.1.2, 10A.1.3, and 10A.3.2(b) (to be renumbered as Rule 10A.3.3(b)). We therefore recommend a new definition as follows:

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

- 10.20 We recommend the term “*repair and maintenance*” replace “*minor work*” in terms of the definition and rules in Chapter 10 as it more accurately describes the scope of works. The PDP term “*alteration*” notes that it specifically excludes “*minor works*”. Therefore, for consistency, we recommend that the definition of “*alteration*” should now refer to “*repair and maintenance*” as follows:

Alteration means any changes to the fabric or characteristics of a *building* involving including (but not limited to) the removal and replacement of walls, windows, ceilings, floors or roofs, either internally or externally. It does not include additions, or minor works or repair and maintenance.

- 10.21 Heritage New Zealand sought a new definition of “*alterations and additions*”, specific to historic heritage. The PDP already includes separate definitions of “*alteration*” and “*addition*”. We consider the wording suggested by Heritage New Zealand introduces an element of subjectivity which is undesirable in a definition. In any case, we consider that the term is adequately covered by the definition of each term individually.

10.22 Some submitters sought amendments to the Standards for various reasons and we agree with the following:

- (a) deletion of 10A.1.3 Standard 4 because the archaeological authority process under the Historic Places Act (or its successor, the Heritage New Zealand Act) does not authorise maintenance work;
- (b) deletion of Rule 10A.1.2 Standard 1, and deletion of part of Standard 2; and
- (c) deletion or clarification of Rule 10A.1.2 Standard 4, which relates to internal alteration of buildings constructed prior to 1900.

10.23 Transpower New Zealand Ltd [208.51] sought addition of a standard to Rule 10A.1.4 to permit minor maintenance activities to notable trees. The submission sought *“the removal of branches which do not form part of the main structure of the tree to protect electricity transmission and associated telecommunication lines”*. The submission from KiwiRail Holdings Ltd. [447.11] is similar to that of Transpower, except that it pertains to buildings, structures, overhead wires or utility networks.

10.24 We were advised that the Urban Tree Variation proposes amending Rule 10A.1.4 to refer to *“trimming”* instead of *“minor maintenance activities”*. Under that variation, the rule would require that trimming is only undertaken to achieve compliance with the Electricity (Hazards from Trees) Regulations 2003, and must be undertaken by a Level 4 certified arborist. The 2003 Regulations set up a legal process of notification by Transpower or KiwiRail and an obligation on the owner to trim a tree if it encroaches on a growth limit zone. Both of these organisations are subject to the Regulations, as their works are designed for the conveyance of electricity. We therefore recommend amending Rule 10A.1.4 as follows:

~~Minor maintenance activities to *Trimming of notable trees identified in Schedule 10.1 identified in the Schedule of Historic Heritage as Historic Places (buildings and structures), Historic Places (sites) or Historic Areas.*~~

Standards:

~~1. The removal of broken branches, deadwood or diseased vegetation, as follows:~~

~~a) The removal of branches which do not form part of the main structure of the tree, that are interfering with or overhanging buildings, but only up to a maximum of one metre or the closest branch junction point beyond that distance from the external walls or roof of that building.~~

~~The removal of branches which do not form part of the main structure of the tree to maintain access along existing vehicle access ways.~~

1. Any *trimming* must be undertaken only:

- a) to achieve compliance with the requirements of the Electricity (Hazards from Trees) Regulations 2003 or its successor; or
- b) if it is compromising the safety and integrity of or obstructing an existing access leg, right of way or driveway; and
- c) by an arborist who has attained the New Zealand Qualifications Authority National Certificate in Arboriculture Level 4 or equivalent qualification.

2. All *trimming* must be undertaken in accordance with the New Zealand Arboricultural Association Incorporated Best Practice Guideline 'Amenity Tree Pruning' Version 3 dated April 2011.

10.25 The alteration of the above permitted activity rules (and subsequent activity rules) will, by necessity, involve the alteration to, and addition of, definitions in the PDP. Such changes are canvassed in Section 12 of this report.

10.26 The submission from Heritage New Zealand [460.29] also sought amendments to Rule 10A.1 permitted activities for 10A.1.6 (Group B), 10A.1.7 (Group D) and 10A.1.8 (Group E) to exclude modification and alterations to buildings that are Category 1 or Category 2 items on the New Zealand Heritage List/Rārangi Kōrero. We understand the submission sought an amendment to ensure modification of Category 1 and 2 buildings in waahi tapu areas are not treated as a permitted activity. We agree with the Section 42A report that this is an unnecessary amendment. If the waahi tapu site contains a scheduled building with a Category 1 or 2 classification then there are other rules that apply and the partial demolition, demolition, or destruction of these buildings is a non-complying activity (Rule 10A.5.1).

Controlled Activities

10.27 Heritage New Zealand [460.31 and 460.32] sought amendments to Rule 10A.2.1 to help clarify when consent is required for earthquake strengthening of listed buildings. Kapiti Coast Grey Power Association Inc [480.45, 480.46 and 480.47] also sought minor amendments to this rule to improve clarity. We agree and recommend the following amendments, along with other minor changes to improve the clarity of language:

Rule 10A.2.1: Alterations for ~~E~~earthquake strengthening of a scheduled historic place ~~(building or structure)~~ with a Heritage New Zealand Historic Places Trust Category ~~1 or 2~~ classification identified in the Schedule of *Historic Heritage*.

Restricted Discretionary Activities

10.28 The submission from Collin Hope [306.4] sought a rule to ensure that effects on historic heritage within the Working Environments are taken into account. Mr Hope is the owner of Casa Esperanza, a heritage building (B118) listed in Schedule 10.1, which is within the Raumati Local Centre Zone. While we understand Mr Hope's concerns, there is a risk that otherwise permitted

development would need a resource consent, simply due to its proximity to a property with a scheduled historic heritage feature. We note that the Working Environment (Local Centre Zone) already contains a relevant rule, where consent as a restricted discretionary activity is required where any new building or building alteration does not meet the permitted activity standards. Matters of discretion for such applications include “*visual, character, amenity ... and streetscape effects*”. We consider the effect on heritage could be added to this list of discretions in order to address Mr Hope’s concerns.

10.29 Heritage New Zealand [460.34] sought wording amendments to Rule 10A.3.2, replacing the word “*modification*” with “*additions*”; and clarification in Rule 10A.3.3 of the phrase “*Erection of a new sign ... obstructing historic heritage*”. We agree that the word “*additions*” should be added to Rule 10A.3.2 (to be renumbered as Rule 10A.3.3). The resulting phrase “*alterations or additions*” will be consistent with our other recommended changes to rules, and with definitions in the PDP. We therefore recommend Rule 10A.3.2 (to be renumbered as Rule 10A.3.3) read as follows:

~~2. 3. Alterations or additions to or modification of any historic heritage identified in the Schedule of Historic Heritage as Historic Places (buildings and structures), Historic Places (sites) or Historic Areas~~ scheduled historic building or structure, scheduled historic site, or scheduled historic area, including:

- a) construction of new *buildings or structures*; ~~and~~
- b) ~~minor work that does not comply with the permitted activity standards~~ work that does not meet the definition of *repair and maintenance*;
- c) internal and external ~~modification~~ alterations and additions to a *scheduled historic building*; ~~and~~
- d) earthquake strengthening activities that do not comply with one or more controlled activity standards in Rule 10A.2.1.

10.30 We agree that “*obstructing*” historic heritage in Rule 10A.3.3 is a subjective term open to interpretation. We recommend this is replaced with “*within*” historic heritage to capture historic heritage features and areas. As part of the integration hearing, officers recommended that all rules regarding signs are collated in Chapter 12. We agree that this would make the PDP easier to use and therefore recommend Rule 10A.3.3 be deleted from Chapter 10.

10.31 The submission from Ngatotara Farms Limited and Rod Agar [500.25] referred to rural subdivision standards under Rule 7A.3.2 and sought that the rule should also apply to Rule 10A.3.1. It is unclear from the submission how the relief sought by Ngatotara Farms in relation to Rule 7A.3.2 is also relevant to Rule 10A.3.1 and there was no hearing attendance by this submitter to enable clarification. Therefore we do not recommend any amendments in response to this submission.

10.32 The submission from Te Anau Trust [272.5] raised concerns with the matters of discretion in Rule 10A.3.6 stating that it is inappropriate for Council to reserve discretion over aesthetic

matters such as colour, building material, layout and design of buildings located on their property. Te Anau Trust also raised concerns that the list of matters is irrelevant to the assessment of the waahi tapu values and may also have cost implications for landowners if development is required to be carried out in a particular way. We heard from Heritage New Zealand who stated that building design, colour and materials can cause adverse effects on waahi tapu sites, and requested this matter of discretion be retained in the District Plan. This matter was further discussed during the hearing with Waikanae Christian Holiday Park and Heritage New Zealand with both noting that the design of buildings may be a relevant consideration, but that this was not a significant issue for them. We do consider that design may be a relevant factor to consider when assessing the effects of new buildings and structures. While we recommend retaining the reference to the *“layout, design and location”* of buildings and structures, we recommend deleting *“colour and materials of proposed building or structure”* as a matter over which Council will restrict its discretion for Rule 10A.3.6.

- 10.33 Te Anau Trust [272.5] requested that Rule 10A.3.6.d) be amended to remove the reference to key access or view points as there are none identified for Taewapirau (the only site in Group B waahi tapu). The schedule of waahi tapu in Schedule 10.1 of the PDP includes a column *“key access and viewpoints”* of which there are seven waahi tapu sites recognised as having *“key access or viewpoints”* associated with them (Ruakohatū Urupā, Paekākāriki Urupā, Hinetua, Tararua Kāinga, Te Rauparaha Memorial & Jubilee Monument, Paripari Pā, and Wainui Pā). Rule 10A.3.6 also states that *“any building or structure that obstructs views or existing access between key access and viewpoints”* is a restricted discretionary activity. We accept that there are no *“key access and viewpoints”* associated with Group B waahi tapu as Taewapirau is the only scheduled waahi tapu within Group B. We therefore recommend that the request to remove Clause (d) from Rule 10A.3.6 is accepted.
- 10.34 The submission by Te Anau Trust also highlighted some wider issues with the rules relating to the seven *“key access and viewpoints”* in Schedule 10.1. It occurs to us that these areas are not well described or mapped in the PDP, so it will difficult to determine where they stop and start. In addition, the waahi tapu rules only apply within *“areas identified in the Schedule of Historic Heritage”* and do not extend to areas adjacent to or in close proximity to the scheduled waahi tapu areas. The consequence is that there is actually no protection provided to the adjacent *“key access ways and view points”* that the rules are actually intended to protect. Given these difficulties, we recommend that the rules relating to structures and buildings between *“key access and viewpoints”* are removed and the effects on *“key access and viewpoints”* is included as a relevant matter to consider for any controlled or restricted discretionary activity. This will ensure the impacts on these areas are still considered when a resource consent is required within the seven identified waahi tapu sites that have key access ways and views associated with them.

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- 10.35 Waikanae Christian Holiday Park Incorporated [319.33] opposed provisions relating to waahi tapu sites including controls restricting earthworks, new buildings and subdivisions across an entire lot. Ms Carter elaborated on this concern at the hearing, explaining that provisions which restrict activities such as earthworks, new buildings and subdivision across an entire site when a waahi tapu may only affect a certain area. We note that the waahi tapu rules only apply within “*areas identified in the Schedule of Historic Heritage*” and do not extend across other areas of the site which do not fall within the scheduled area as identified in the PDP Maps. We have also recommended deletion of “*the surroundings*” in Chapter 10 where appropriate to ensure that the focus is on the scheduled area of the feature.
- 10.36 Waikanae Christian Holiday Park Incorporated [319.35] requested amendments to rules that manage Group D waahi tapu sites. Specifically, the submission requested that Rule 10A.3.7(a) and (f) are amended so that a trigger for a restricted discretionary status is the inability to comply with controlled activity standards rather than permitted activity standards. We note that the structure of the rules pertaining to Group D classifies alterations to buildings as a permitted activity (subject to standards) and new buildings as a controlled activity (subject to standards). In either case, if the standards cannot be complied with, we consider a restricted discretionary is appropriate. We note however that there is a drafting error with the activity status for new buildings under Rule 10.3.7(f) being incorrect. This rule refers to permitted activity standards not being met which is incorrect as new buildings within a Group D waahi tapu are a controlled activity. Therefore, we recommend the following amendments to Rule 10A.3.7(f):
- ~~New buildings and alterations~~ which does not comply with the ~~permitted~~ controlled activity standards
- 10.37 Transpower New Zealand Limited [208.53] supported Rules 10A.3.5 (e), 10A.3.6 (e), 10A.3.7 (c) and 10A.3.8 (d) and requested that these are retained as notified. We accept the submission to that extent that we have recommended these Rules be modified in response to other submissions.
- 10.38 The Waikanae Christian Holiday Park Incorporated [319.35] also requested that Rule 10A.3.7(c) be amended to require a restricted discretionary consent for “*New roads and network infrastructure*” not just “*roads and network infrastructure*”. Transpower New Zealand Limited [208.53] supported the waahi tapu rules in Table 10A.3 because “*roads and network infrastructure*” are specifically recognised and listed as a restricted discretionary activity within scheduled Group A, B, D and E waahi tapu sites.
- 10.39 We accept that roads and network utilities could affect waahi tapu and therefore recommend retaining the wording of the Rules 10A.3.5(e), 10A.3.6(e), 10A.3.7(c), 10A.3.8(d) as notified as they provide a ‘catch all’ requirement for a resource consent for roads and network infrastructure within a scheduled waahi tapu. These rules will apply in addition to the provisions in Chapter 11.

For consistency, we recommend this is amended to be “*network utilities*” rather than “*network infrastructure*”.

- 10.40 We have given the rule cascade throughout the PDP considerable thought for all rule based chapters not just Chapter 10, and recommend implementing a cascade of activity status. We consider that the most appropriate activity cascade is for permitted and controlled activities affecting a historic heritage feature which do not comply with one or more of the associated permitted or controlled activity standards, be classified as a restricted discretionary (Rule 10A.3.1) unless otherwise specified. As a consequence of this recommendation, we recommend that any restricted discretionary activity that cannot comply with one or more of its associated standards be classified as a discretionary activity in Rule 10A.4.1 unless otherwise specified.

Discretionary Activities

- 10.41 Greater Wellington Regional Council [441.64] requested that “*additions*” to scheduled buildings or structures be included as a discretionary activity. We consider that discretionary status is too stringent for additions, and therefore recommend that additions be grouped with alterations as a restricted discretionary activity under Rule 10A.3.2 (to be renumbered as Rule 10A.3.3).
- 10.42 Greater Wellington Regional Council [441.65] also requested that Rules 10A.4.2 and 10A.4.3 be deleted, with the relevant activities (relocation, partial demolition and demolition) being moved to non-complying activity status. We note those rules relate to relocation, partial demolition or demolition of any scheduled building, other than a HNZ Category 1 and 2 building (which would be non-complying) and relocation of any building other than a HNZ Category 1 building (which would also be non-complying). We consider discretionary activity status is appropriate for these activities and aligns with Policy 10.8 (to be renumbered as Policy 10.6) which clearly directs that relocation, partial demolition or demolition is to be avoided for HNZ Category 1 and 2 buildings. In this respect, we note that
- (a) for avoidance, HNZ Category 1 and 2 buildings are classified as non-complying activities under Rule 10A.5; and
 - (b) for minimisation (i.e. all other features and buildings), they are classified as discretionary activities under Rule 10A.4.

- 10.43 We note that at the hearing Heritage New Zealand [460.47] supported the discretionary activity rules, and sought that they be adopted as proposed.

- 10.44 We consider this is an appropriate tiered approach to an activity status that aligns with the policy approach and do not recommend any amendments in response to this submission.

Non-Complying Activities

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- 10.45 Three submissions were received including Heritage New Zealand [460.48] which supported the non-complying activity rules, and sought that they be adopted as proposed. We note this support and accept the submission subject to changes made as a result of other submissions.
- 10.46 Submissions were received from John Rice [344.11] and Paula Keene [350.08] which sought clarification on whether subdivision can be undertaken on their designated waahi tapu. The land owned by submitters Rice and Keene contains a Group D waahi tapu site (Kaiwarehou Pā - WTS0206) in the notified PDP. Rule 10A.3.1 establishes subdivision as a restricted discretionary activity, if the land contains a scheduled site or area. However, in order to be restricted discretionary activity status, the rules states that the subdivision must comply with the standard: the historic item shall be contained within one lot or where the historic item is contained within more than one lot the number of lots containing the Scheduled item will not be increased.
- 10.47 It is our understanding that if a proposed boundary does cut through a scheduled site, then subdivision is treated as either discretionary (Group A, B and E waahi tapu), or non-complying (Group D waahi tapu). Therefore, depending on the exact boundary of the subdivision on their land in relation to the scheduled waahi tapu, subdivision of a site with Group D waahi tapu would either be treated as restricted discretionary or non-complying activity. We think that this rule framework is an appropriate response to the policy direction and therefore do not recommend any changes in response to these submissions.
- 10.48 We return to the classification of the waahi tapu site (Kaiwarehou Pā - WTS0206) on the land owned by submitters Rice and Keene in Section 11 of this report.

Notification Clause

- 10.49 The submission from Te Anau Trust [272.5] considered that it is overly restrictive and unreasonable for all resource consent applications affecting their land to be publicly notified or notice served to relevant iwi authority and Heritage New Zealand, regardless of the extent of non-compliance. The submission seeks that their property be removed from Schedule 10.1 or the rules relating to Group B waahi tapu be significantly amended. Similarly, Waikanae Christian Holiday Park Incorporated [319.35] requested that the criteria for notification of resource applications is amended so that only limited notification is required.
- 10.50 Rules 10A3.5, 10A.3.6, 10A.3.7, 10A.3.8 (restricted discretionary activities) and Rules 10A.5.1, 10A.5.2, 10A.5.3, 10A.5.4, 10A.5.5 (non-complying activities) include a “*criteria for notification*” clause in the standards. This clause requires either public notification or notice served on the relevant iwi authority and Heritage New Zealand.
- 10.51 While we accept that it is important that iwi is involved in applications that involve the use, development or modification of waahi tapu and other sites of significance to them, the “*criteria for notification*” clause in Chapter 10 rules has some practical and legal issues. We note that it

specifies that notice must be served on the relevant iwi authority and Heritage New Zealand even when their written approval may have been included with the application when lodged. This may not have the effect of encouraging early engagement with iwi and Heritage New Zealand for activities that may impact on waahi tapu sites in order to obtain their approval prior to lodgement.

10.52 In addition, we understand that legal advice obtained by Council advised that the reference to notifying particular parties (i.e. limited notification to the relevant iwi authority and Heritage New Zealand) is not legally robust. Section 77D of the RMA allows councils to make a rule specifying that consent authorities:

- (a) must give public notification of an application;
- (b) preclude giving public notification of an application; and
- (c) preclude giving limited notification of an application.

10.53 Section 77D does not expressly allow councils to make a rule requiring that Council must give limited notification of an application. Further, the limited notification clause is problematic in that it pre-judges who will be adversely affected. We consider this is a decision that needs to be made in accordance with section 95E of the RMA for each application on a case by case basis. We therefore recommend that the notification clause in Rules 10A.3.5, 10A.3.6, 10A.3.7, 10A.3.8 (restricted discretionary activities) and Rules 10A.5.1, 10A.5.2, 10A.5.3, 10A.5.4, 10A.5.5 (non-complying activities) is deleted as follows:

~~Criteria for notification: Any application in respect to rules indicated shall be publicly notified or notice serviced on relevant iwi authority and the New Zealand Historic Places Trust as affected parties.~~

Notification Clause

10.54 The Urban Tree Variation proposed changes to Chapter 10, however we have addressed these in our report on Chapter 3 Natural Environment: Ecology and Vegetation.

Findings

10.55 As *discussed* above in Evidence and Evaluation, we recommend that the rules and standards are amended as outlined in Appendix 1, and include the following:

- (a) increased clarity to the applicability of the rules in Chapter 10;
- (b) inclusion of an advice note regarding trimming of trees near electricity lines;
- (c) redraft the catch-all permitted Rule 10A.1.1 for increased clarity;
- (d) delete Standards 1, 4 and 5 from Rule 10A.1.2;

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- (e) amend Rule 10A.1.2 and Rule 10A.1.3 to relate to “*repair and maintenance*” rather than “*minor work*”;
 - (f) deletion of references to the ICOMOS charter in Rule 10A.1.2;
 - (g) deletion of Standards 3 and 4 to Rule 10A.1.3;
 - (h) amend Rule 10A.1.4 to relate to “*trimming*” rather than “*minor maintenance*”;
 - (i) delete Standard 1 from Rule 10A.1.4 and replace with two new standards;
 - (j) replacement of Groups A, B, D and E with Wahanga Tahi, Rua, Toru, Wha and Rima and associated amendments to the rules regarding these Groups;
 - (k) amend Rule 10A.1.6 and associated standards to focus on “*alterations and additions*” rather than “*modifications*”;
 - (l) delete Standard 1 from Rule 10A.1.6;
 - (m) amendments to the standards regarding “*land disturbance*” to apply per calendar year;
 - (n) amend Rule 10A.1.7 and Rule 10A.1.8 and associated standards to focus on “*alterations and additions*” rather than “*modifications*”;
 - (o) amend Rule 10A.1.8 and associated standards to focus on “*alterations and additions*” rather than “*modifications*”;
 - (p) new rule and standards for activities in Wahanga Rima as Rule 10A.1.9;
 - (q) amend Standard 2 for Rule 10A.2.1 regarding the number of components;
 - (r) delete Matters for Control 3, insert three new Matters for Control to Rule 10A.2.1;
 - (s) amend Rule 10A.2.2 by deleting Matter for Control 3, amending Standard 2 to apply per calendar year, and amending Matter for Control 5 to recognise key access and viewpoints;
 - (t) insert Rule 10A.2.3 to apply to modification of any notable trees;
 - (u) insert Rule 10A.2.4 for activities in Wahanga Rima;
 - (v) insert new Rule 10A.3.1 to address permitted or controlled activities where one or more standards cannot be complied with (unless otherwise specified);
 - (w) amend Rule 10A.3.1 (to be renumbered as Rule 10A.3.2) for increased clarity, new standard and two new Matters of Discretion;
 - (x) amend Rule 10A.3.2 (to be renumbered as Rule 10A.3.3) to focus on alterations and additions rather than modifications, delete Matter of Discretion 3, insert new Matter of Discretion;

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- (y) amend Rule 10A.3.4 to focus on trimming rather than minor maintenance, delete Matter of Discretion 3, and insert two new Matters of Discretion;
 - (z) amend Rule 10A.3.5 to focus on alterations and additions rather than modifications, delete Matter of Discretion 3, insert new Matter of discretion, delete d), delete Criteria for notification;
 - (aa) amend Rule 10A.3.6 to focus on alterations and additions rather than modifications, delete Matter of Discretion 3, insert new Matter of Discretion, delete d), delete Criteria for notification, insert advice note;
 - (bb) amend Rule 10A.3.7 (to be renumbered as Rule 10A.3.8) to focus on alterations and additions rather than modifications, delete Matter of Discretion 3, insert new Matter of Discretion, delete b), delete Criteria for notification, insert advice note;
 - (cc) amend Rule 10A.3.8 by deleting Matter of Discretion 3, insert new Matter of Discretion, delete Criteria for Notification, inserting advice note;
 - (dd) insert new Rule 10A.3.9 relating to Wahanga Rima;
 - (ee) amend Rule 10A.4.1;
 - (ff) amend Rule 10A.4.2, including deleting assessment criteria;
 - (gg) amend Rule 10A.4.3 to include “*destruction*”, including deleting assessment criteria;
 - (hh) amend Rule 10A.5.1, including inserting advice note;
 - (ii) delete Criteria for Notification from Rules 10A.5.1, 10.5.2, 10.5.3, and 10.5.4;
 - (jj) clarification that all standards must be complied with for permitted activities; and
 - (kk) simplification of the language in the activity tables for increased clarity.
- 10.56 For the reasons discussed above in Evidence and Evaluation, those submissions relating to the rules and standards in Chapter 10 (including those submissions not specifically referred to above but which are relevant to this issue) are either accepted, rejected or accepted in part as outlined in Appendix 2.

11 Issue 6: Waahi Tapu

Description of the Issue

- 11.1 Schedule 10.1 has a section in it relating to Waahi Tapu and Other Places or Areas of *Significance* to Maori. The submissions on this part of the Schedule were varied - ranging from broad support for the identification and scheduling of waahi tapu in the PDP to seeking changes to the boundaries of specific sites. Seven submissions supported the protection of waahi tapu in the District Plan, the waahi tapu work of Pātaka Moore and its inclusion in the PDP.
- 11.2 We were advised that Council has a clear obligation under the RMA to protect historic heritage, including waahi tapu, from inappropriate subdivision, use and development as a matter of national importance. We understand identification in the PDP of waahi tapu and other sites or areas of significance to Maori was based on research undertaken by Pātaka Moore which resulted in a total of 42 sites being included in Schedule 10.1 (including tauranga waka, historic marae, maunga, awa, mahinga kai, pā, midden, archaeological sites)⁴¹. This represents a substantial increase from the Operative District Plan which includes only four waahi tapu sites.
- 11.3 We would like to express our appreciation for the experts who attended the hearings and their knowledge they shared with us. We took from the evidence of Te Kenehi Teira, National Māori Heritage Manager at Heritage New Zealand that waahi tapu as a concept should not be tightly defined or constrained as it can mean different things to iwi and hapū in different contexts.⁴¹
- 11.4 We have structured our discussion around the following topics:
- (a) general waahi tapu matters
 - (b) groupings of listings;
 - (c) Kaiwarehou;
 - (d) Makahuri;
 - (e) Takamore;
 - (f) Taewapirau;
 - (g) Taumanuka; and
 - (h) Te Pou O Tainui

⁴¹ Paragraph 2.6, Kāpiti Coast Proposed District Plan - Reporting Officer Closing Statement Chapter 10: Historic Heritage (Waahi Tapu), Jerome Wyeth.

Evidence and Evaluation

General Waahi Tapu Matters

- 11.5 Policy 10.1 seeks to identify historic heritage, and we are aware that the policy intent of Policy 10.1 is consistent with Policy 21 of the operative RPS. RPS Policy 21 directs district plans to identify historic heritage with particular values including “*tāngata whenua values: the place is sacred or important to Māori for spiritual, cultural or historical reasons*”. The RPS policy is clearly intended to apply to sacred sites and sites that are important to Māori for wider spiritual, cultural and historic reasons. We understand that the RPS Policy 21 is about the identification of places and sites with cultural values rather than the identification of physical features. This was a key issue raised at the hearing, and we accept that this may mean a lack of certainty about the exact locations and physical boundaries of waahi tapu sites.
- 11.6 Given the terminology used in RPS Policy 21, we recommend that the terminology through the PDP be aligned with the RPS, and therefore be amended to read “*Places or areas of significance to iwi Māori*” (which includes iwi, hapū and whānau).
- 11.7 We also recommend that waahi tapu is addressed in the Introduction to Chapter 10 to explain the significance of it:

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.

Groupings of Listings

- 11.8 Te Anau Trust [272] raised concerns about the lack of explanation for the waahi tapu groupings in the PDP stating that it is unclear why the ‘Group B’ classification and associated rules apply to their property and not others. The submission requested that WTS0318 (Taewapirau) be removed from their property or the waahi tapu provisions are significantly amended, including amendments to policies to include a section explaining each of the four waahi tapu groups in the PDP.
- 11.9 Heritage New Zealand expressed concern over the grouping and ranking of sites in the Schedule of Historic Heritage as Waahi Tapu and Other Places and Areas of Significance to Maori. The submission sought greater clarity around the definition of the groupings, to ensure they are appropriate and reflect the significance of the places.
- 11.10 We understand the notified PDP includes four groups of waahi tapu as follows

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- (a) Group A - Urupā: this group includes 15 sites which are all urupā (Māori burial grounds) with the exception of one site that has been identified as an urupā and parekura (battlefield). These sites are recognised as highly sensitive to development, largely unmodified and unoccupied by private landowners.
 - (b) Group B - Taewapirau: this group contains one site (Taewapirau) which is a pā and urupā.
 - (c) Group D - Other waahi tapu: this group contains 24 sites which are a mix of urupā, pā (village), taipū (sandhill), aituā (site of disaster/death), kāinga (village/settlement), niu/pou (pole, statute, monument), taumata (site of death of a rangatira), tauranga waka/ika (canoe), mahinga kai (traditional food gathering place), awa (river). These sites vary in terms of their characteristics, sensitivity and degree of modification.
 - (d) Group E - Marae: this group includes two marae.
- 11.11 We understand the level of protection given to these groups ranges from Group A rules being the most restrictive and the Group E rules the least restrictive. This reflects the highly sensitive and *unmodified* nature of Group A, and the more developed nature of the two marae in Group E. The corresponding rule structure in the notified PDP was therefore designed to provide a higher level of protection to particularly sensitive/unmodified sites, and allow a level of development to occur on other less sensitive sites (within limits).
- 11.12 We consider that the underlying approach in the PDP to group waahi tapu sites according to their *sensitivity* and develop corresponding rules to protect these sites is appropriate. We agree with the submissions of Heritage New Zealand and Te Anau Trust that the PDP would benefit from explaining the waahi tapu groupings. We therefore recommend Schedule 10.1 is amended to provide an explanation of the waahi tapu groupings, their level of sensitivity and intended levels of protection. We accept the Section 42A report recommendations to rename the waahi tapu groups as follows:
- (a) Wāhanga Tahī (Group A);
 - (b) Wāhanga Rua (Group B);
 - (c) Wāhanga Toru (Group D); and
 - (d) Wāhanga Wha (Group E).
- 11.13 John Rice [344.08] and Paula Keene [350.04] requested that the waahi tapu rules be deleted and *replaced* with rules specific to each waahi tapu with a site specific plan developed and agreed between relevant parties. The submissions sought individual assessments and restrictions rather than general restrictions.
- 11.14 While we agree that waahi tapu sites should be subject to individual assessments, we consider that the rules associated with waahi tapu sites should correspond to their sensitivity and level of protection sought. It would be overly and unnecessarily complex to develop specific rule sets for each of the 42 waahi tapu sites in the PDP as suggested by these submissions. The waahi tapu

groups also do not preclude landowners and iwi from working together to develop their own agreements around the future management and development of the scheduled waahi tapu sites. We do not recommend any amendments in response to these submissions.

Kaiwarehou

- 11.15 Two submissions were received on Kaiwarehou from two property owners at 68 Tieko Street, John Rice and Paula Keene. The submissions made specific to Kaiwarehou sought:
- (a) amend the proposed waahi tapu site boundary based on robust analysis and assessments;
 - (b) amendments to clarify what can be done within the scheduled Kaiwarehou site and to allow for further modification where significant disturbance has occurred;
 - (c) detailed archaeological assessments should be carried out if there is any doubt about whether the scheduled area is part of Kaiwarehou pā; and
 - (d) evidence to support the pā ridgeline but the proposed designation is too small as the whole ridgeline was used as a pā site.
- 11.16 Mr Rice and Ms Keene both presented oral submissions during the hearing and Ms Keene also tabled a written statement and presentation. The appropriateness of the boundary of Kaiwarehou was a key matter discussed, including 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.
- 11.17 We note Dr Kahotea's conclusions contained in his site report for Kaiwarehou that, while the boundary of Kaiwarehou is actually the cultivation area of Enoka and Ema Tini Hohepa', rather than the exact location of Kaiwarehou pā, it is appropriate to retain the Kaiwarehou boundary in the PDP to symbolically represent the former pā and kainga. It seems very unlikely to us that the exact boundary of Kaiwarehou pā will be able to be confirmed with a high level of confidence due to the nature of pā on the Kāpiti Coast and the modification that has occurred in this area.
- 11.18 Mr Rice and Ms Keene raised concerns regarding the impact of the Kaiwarehou waahi tapu on the ability to subdivide their site. Council officers 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. Based on this advice, there appears to us to be limited benefit in amending 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.
- 11.19 Having considered the various waahi tapu categories, it seems to us that Wahanga Rua would be a more appropriate classification. We consider that the site is only low to moderately sensitive to development, as the land is relatively modified. We consider a reasonable level of development should be allowed to occur provided that land disturbance volumes are reasonably low and discovery protocols are followed.

Makahuri

- 11.20 There were 16 submissions on Makahuri all seeking waahi tapu WTS0137 to be removed from the PDP. This *included* three submissions from the property owners at 84 Derham Road: Peter Brownie [78.1], Brownie Trust [171.1] and 207.1 Lorraine Brownie. The submitters opposed this waahi tapu site as they considered it has an unreasonable and unfair impact on the future use of land and property values in the area. They also consider that the scheduling of Makahuri is based on inaccurate and incomplete research.
- 11.21 We understand the site is significant to Ngāti Raukawa for a number of reasons including being an original pā site and the burial ground of iwi members. Based on the research of Pātaka Moore and Dr *Kahotea*, Makahuri signifies a historical, culturally significant place for Ngāti Raukawa both due to the fighting that took place around Haowhenua, and the subsequent occupation of the area by Ngāti Huia and Ngāti Pare hapū. However, we note that these findings also indicate that there is some uncertainty about the exact location of Makahuri.
- 11.22 Mr Brownie attended the hearing and raised a number of concerns about the accuracy of the Makahuri waahi tapu scheduled site. We note that the site is recorded as Haowhenua not Makahuri and *the* NZAA site record states that it is a pā site overlooking Te Horo Flats and Kapiti 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.
- 11.23 While we appreciate the concerns of Mr Brownie about the impact of the scheduled waahi tapu on his land, we are also cognisant of the clear statutory directives in the RMA and in the RPS to identify and protect waahi tapu that the PDP must give effect to. We consider that retaining Makahuri as a *scheduled* waahi tapu site will ensure that future activities are managed in a way that ensures the waahi tapu values are appropriately considered. Under the new classifications /groupings we agree with the Officer's recommendation that Makahuri should be classified Wahanga Toru.

Takamore

- 11.24 Heritage New Zealand [460.37] sought that the extent of Takamore Waahi Tapu Area be extended. *This* was opposed by a further submission Waikanae Christian Holiday Park [FS177] as the review of the Takamore Wahi Tapu Area to include all of El Rancho's land holdings has been the subject of a judicial review. The further submission considered Council should hold off including the revised boundaries of the waahi tapu area until a decision has come out of the High Court.
- 11.25 We understand that the cultural significance of Takamore has been the subject to a number of studies and legal proceedings, as well as detailed historical and archaeological studies. Given

this, and *at* the request of the parties, we delayed the hearings into this matter to enable further discussion and agreements to be reached.

11.26 At the hearing we were advised that the Waikanae Christian Holiday Park, Takamore Trust and Heritage New Zealand had discussed the matter and had agreed on a revised 'Group C' rule set for Takamore which has the support of all parties (with the exception of some minor matters). We understand the main features of this proposed rule set are:

- (a) land disturbance is a permitted activity and the conditions allow for 100m³ of land disturbance within a 5 year period;
- (b) 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
- (c) all subdivision is a restricted discretionary activity with effects on historic heritage values a matter for consideration.

11.27 We accept the agreed outcomes and consider they address 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. We therefore recommend that a two tiered approach is used where the urupa is classed as Wahanga Tahī and the waahi tapu is classed as Wahanga Rima. We realise this will result in an additional Wahanga but we consider this is the most appropriate approach to recognise the moderate level of modification and existing activities on the site whilst retaining controls on land disturbance, new buildings and subdivision.

11.28 We therefore *recommend* the following amendments in response to Takamore waahi tapu scheduled site:

- (a) a two-tiered approach where the urupa is classed as Wahanga Tahī and the waahi tapu is classed as Wahanga Rima;
- (b) description of Wahanga Rima; and
- (c) insertion of associated Rules 10A.1.9, 10A.2.4, 10A.3.9 and 10A.5.6.

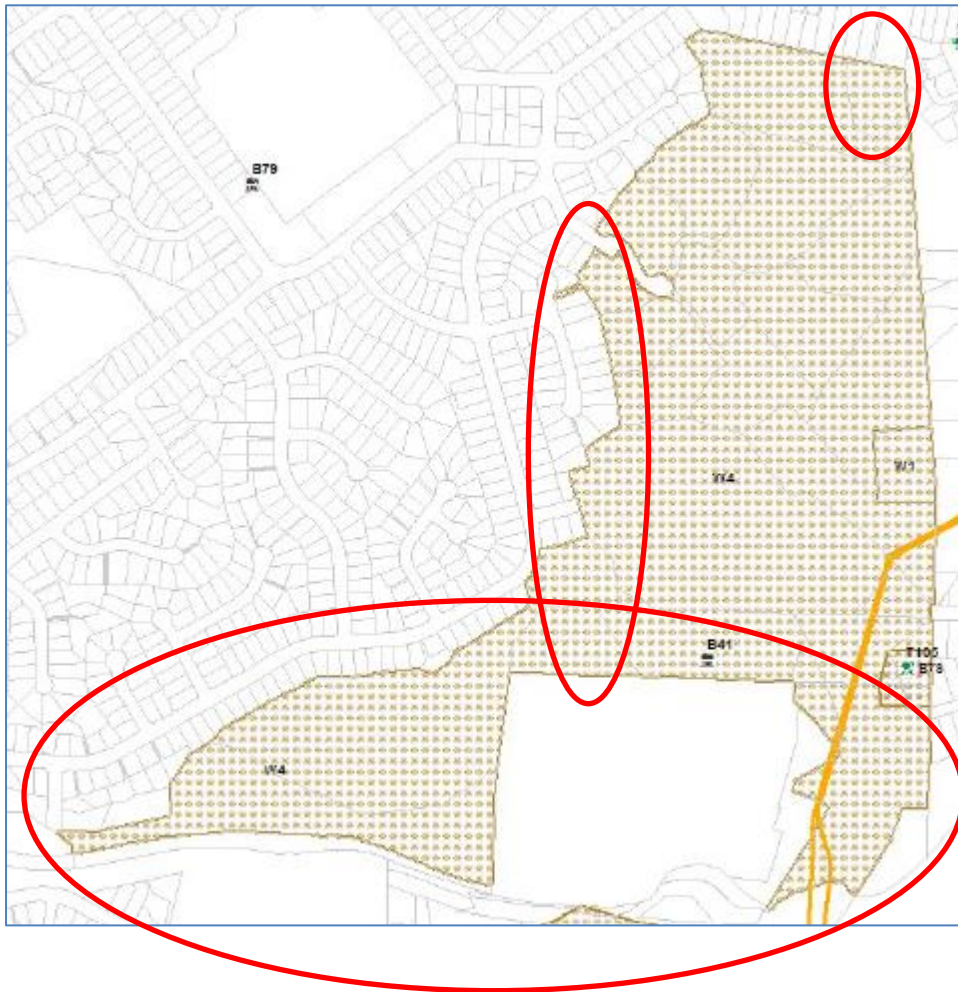


Figure 1: Extent of Waahi tapu Sites W4 (Takamore Area), W1 (Takamore Urupa) and WTS0214A (Makatu Grave) as shown on Maps 6B and 9B of Appendix 1

Taewapirau

- 11.29 There were three submitters on Taewapirau (WTS0318) who all own properties that are partially within the scheduled waahi tapu area in the notified PDP: Waikanae Golf Club [002], Maypole Environmental Limited [263], and Te Anau Trust [272]. The submission from Waikanae Golf Club opposed the *inclusion* of WTS0318, Maypole Environmental Limited sought removal of item WTS0318 from the Schedule 10.1 and from the PDP Maps as they relate to areas in the Ngarara Zone and/or Ngarara Precinct, and Te Anau Trust sought that WTS0318 be removed from Schedule 10.1 or for the Rules relating to Group B waahi tapu to be amended to be less restrictive.
- 11.30 We understand Taewapirau has been identified and named as a pā by Te Ātiawa in a number of reports and there are references to Taewapirau in Native Land Court hearings during the 19th century. We understand the site has been the subject of a number of assessments. It seems

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. We note that the cultural impact assessment undertaken by Mahina-arangi Baker differs from the reports of Mr Moore in 2012 and Dr Kohotea in 2015 who both identify Taewapirau as a pā. However, we note that all assessments conclude that the area has historical and cultural value to Te Ātiawa which indicates that Taewapirau warrants recognition and protection under Section 6(e) and 6(f) of the RMA.

11.31 At the hearing we heard evidence and received statements from all three submitters who raised similar *concerns* about the accuracy and robustness of scheduling Taewapirau in the PDP. More specifically, the issue that arose at the hearing was the position of Te Ātiawa on Taewapirau and the report of Dr Kahotea; and whether Taewapirau is considered to be a waahi tapu. These matters were the subject of considerable written statements including:

- (a) 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';
- (b) a Joint Memorandum for Maypole Environmental Limited and Ātiawa ki Whakarongotai Charitable Trust on 25 November 2017 seeking directions from the Panel that Council officers meet with the parties to hold discussions on whether an agreement can be reached as to the treatment of Taewapirau under the PDP;
- (c) on 7 December 2016, we issued Minute 17 in response to the Joint Memorandum posing three questions for consideration by the parties; and
- (d) separate responses from both Te Ātiawa Whakarongotai Charitable Trust and Maypole Environmental Ltd on 20 January 2017.

11.32 The letter on 20 January 2017 from André Baker, Chairman of Te Ātiawa ki Whakarongotai Charitable Trust outlined the history of Taewapirau and clarified that it has a tapu status. The letter stated that it is not practical or appropriate to determine a clear boundary indicating the extent of Taewapirau, given the reason why it is waahi tapu. The letter opposed having to identify *clear* boundaries of waahi tapu and distinguish within a significant area precisely what is tapu and what is not. The letter suggested an alternative approach of designating 'trigger areas' which indicate proximity to waahi tapu and waahi tupuna.

11.33 The *response* from Maypole Environmental Limited 20 January 2017 suggested a tiered planning response with an area delineated as waahi tapu and another identified as waahi tupuna.

11.34 While we accept that there is some uncertainty about the exact boundaries of Taewapirau, we consider there are clear directives to identify and protect waahi tapu in Section 6 of the RMA and the RPS to which we must give effect through the PDP. We therefore recommend a tiered

approach to Taewapirau, with a core area classed as Wahanga Tahī and a surrounding area classed as Wahanga Rua.

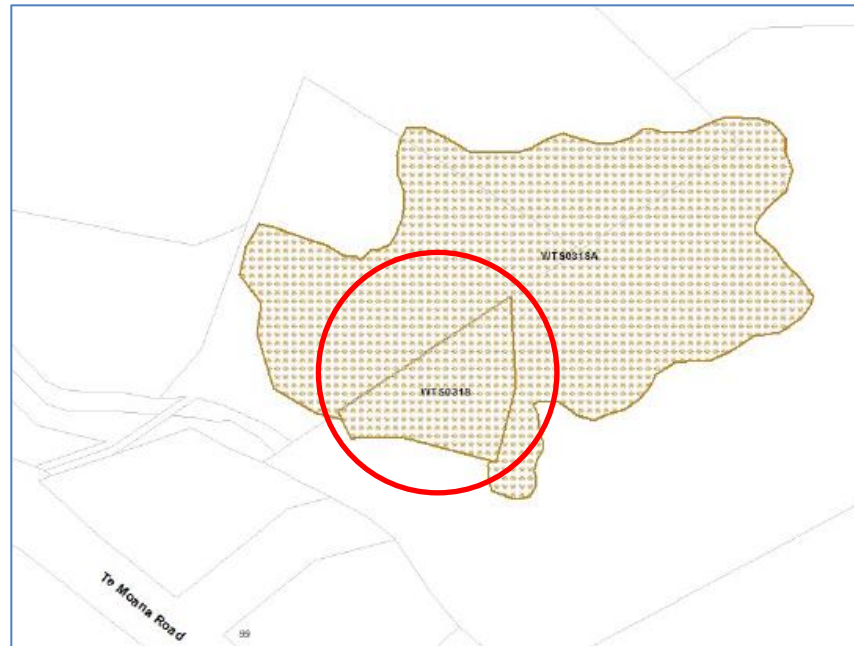


Figure 2: Extent of Taewapirau Waahi tapu areas as shown on Map 6B of Appendix 1

Taumanuka

- 11.35 Only one submission was received in respect to Taumanuka. It was from Daniel Castle [557.1] which requested that WTS0127B - Taumānuka be amended to exclude his property (Lots 8 and 9, DP 15133, 55 Kāpiti Lane, Ōtaki). The reasons given were due to the effects on property values and the identification of the site being based on inaccurate and incomplete research.
- 11.36 We understand Taumānuka 3F is described in the notified PDP as a Tauranga waka, Tauranga ika and Mahinga kai site. This means it was a location where resource gathering and fishing took place. We understand Dr Kahotea's research discovered that the property of Mr Daniel Castle (Lots 8 and 9 DP15133) was originally in a different block (Pāremata 2) and separated from the Taumānuka block by the Rangiuuru stream. We note Dr Kahotea recommended that Lots 7, 8 and 9 DP15133 are detached from the Taumānuka 3F waahi tapu.
- 11.37 We therefore recommend that the submission is accepted to the extent that Taumānuka (WTS0127B) Schedule 10.1 and Map 2B of the PDP is amended to remove properties Lots 7, 8 and 9 DP15133.

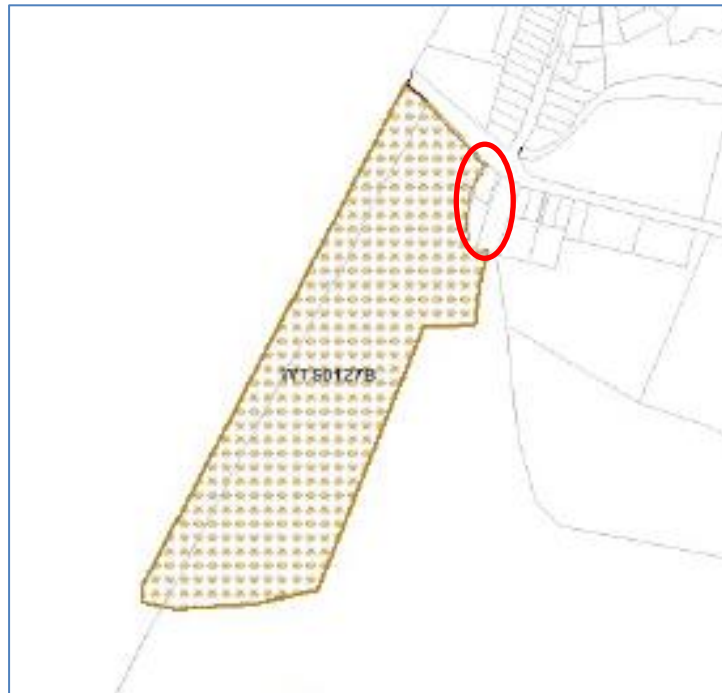


Figure 3: Extent of Taumanuka as shown on Maps 2B and 17B of Appendix 1

Te Pou O Tainui

- 11.38 Heritage New Zealand [460.37] requested Te Pou O Tainui be included in Schedule 10.1. This marae is listed on the New Zealand Heritage List/Rārangi Kōrero (number 7506) and the submitter sought inclusion of the land known as Pukekarakā 4B Māori Reservation (NZ Gazette, 1970, P.1201), Wellington Land District and the site known as Te Pou o Tainui thereon, including the Hauhau flagpole and the totara tree. The area includes ‘Te Pou o Tainui’, a Hauhau flagpole adjacent to that ‘Te Totara o Tawhiao’, a totara tree planted by King Tawhiao’ is included in the Notable Tree list.
- 11.39 We understand Heritage New Zealand did not consult Ngāti Raukawa when recommending that Te Pou O Tainui Marae be included in the PDP. We understand that Mahinarangi Hakaraia provided a response on behalf of Ngā Hapū o Ōtaki on 1 October 2015 that stated that *“there is no support, currently, for Te Pou o Tainui to be listed as a Waahi Tapu by the Marae Trustees. Ngā Hapū o Ōtaki, therefore, does not support this submissions recommendation to include Te Pou o Tainui as a Waahi Tapu”*.
- 11.40 We accept the position of Ngā Hapū o Ōtaki and therefore do not recommend that Te Pou O Tainui Marae is included in the PDP.

Findings

- 11.41 As discussed above in Evidence and Evaluation, we recommend that Schedule 10.1 and the rules pertaining to waahi tapu are amended as set out in Appendix 1, including the following:
- (a) inclusion of a paragraph in the Introduction explaining the significance of waahi tapu;
 - (b) all references are amended to “*waahi tapu and other places of significance to iwi Maori*”;
 - (c) amending categories A, B, D, E to Wahanga Tahī, Rua, Toru and Wha;
 - (d) addition of a new Wahanga Rima;
 - (e) delete Standard 1 of Rule 10A.1.6;
 - (f) new Rules 10A.1.9, 10A.2.4 and 10A.3.10 and associated standards;
 - (g) new table explaining waahi tapu and areas of significance to Maori;
 - (h) Kaiwarehou: this site is classed as Wahanga Rua;
 - (i) Takamore: the physical extent is amended and has a two-tiered approach where the urupa is classed as Wahanga Tahī and the waahi tapu is classed as Wahanga Rima;
 - (j) Taewapirau: the core area is classed as Wahanga Tahī and a surrounding area classed as Wahanga Rua and the District Plan Maps amended accordingly; and
 - (k) Taumānuka: this site is amended in Schedule 10.1 and the District Plan Maps to remove properties Lots 7, 8 and 9 DP15133.
- 11.42 For the reasons discussed above in Evidence and Evaluation, those submissions relating to the waahi tapu in Chapter 10 (including submissions not specifically referred to above but which are relevant to this issue) are either accepted, rejected or accepted in part as outlined in Appendix 2.

12 Issue 7: Terms and Definitions

Description of the Issue

- 12.1 A number of the submissions sought clarification of terms used by the PDP. Those existing or new terms addressed in submissions or at the hearing include:
- (a) partial demolition;
 - (b) repair and maintenance;
 - (c) alterations;
 - (d) additions;
 - (e) land disturbance;
 - (f) earthworks;
 - (g) surroundings; and
 - (h) minor work.

Evidence and Evaluation

- 12.2 Ms Carter alerted us to 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.
- 12.3 We agree with Ms Carter that use of the concept of “*surroundings*” creates uncertainty as to how far the area of influence of a scheduled historic heritage item or feature extends. We recommend deleting the term from Chapter 10 to focus the policies and rules on the scheduled items of features.
- 12.4 There are a number of consequential amendments to existing definitions and new terms have been defined. For the reasons outlined in the Section 42A report, we recommend the following amendments to historic heritage defined terms:

Addition means an extension or increase in floor area, number of stories, or *height* of a *building* or *structure*. It includes the construction of new floors, walls, ceilings, and roofs, but does not include *alterations, or minor work, or repair and maintenance*.

Alteration means any changes to the fabric or characteristics of a *building* ~~involving~~ including (but not limited to) the removal and replacement of walls, windows, ceilings, floors or roofs, either internally or externally. It does not include *additions, or minor works or repair and maintenance*.

Archaeological site means the same as in the ~~Historic Places Act 1993~~ Heritage New Zealand Pouhere Taonga Act 2014.

Modification of vegetation means the felling, disturbance, removal, damage or destruction of the vegetation ~~and including~~ the following activities within the vegetation drip line:

- a) Work that involves compaction, sealing or removal of soil; or
- b) Drilling or excavation; ~~and~~ or
- c) Discharge of toxic substances; but
- d) excludes any trimming authorised as a permitted activity under this Plan.

Places or areas of significance to Māori means places and areas of significance to Māori, including *iwi, hapū* and *whānau*, including any *waahi tapu* or *waahi tapu* area registered under the ~~Historic Places Act 1993~~ Heritage New Zealand Pouhere Taonga Act 2014. It may include any *archaeological site* of significance to Māori. For the avoidance of doubt, this includes places and areas listed in Schedule 10.1.

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; and
- 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; and
- *partial demolition*.

Scheduled historic building or structure

Means any item listed in Schedule 10.1 Schedule of Historic Heritage, under the heading 'Historic Places, including *buildings* and *structures*'.

Scheduled historic site

Means any item listed in Schedule 10.1 Schedule of Historic Heritage, under the heading 'Historic Places, including sites'.

Scheduled historic area

Means any area listed in Schedule 10.1 Schedule of Historic Heritage, under the heading 'Historic Areas, including historic precincts and streets'.

Trimming means:

- ~~1. the removal of broken branches, deadwood or diseased vegetation;~~
- ~~2. the removal of branches which do not form part of the main structure of the tree, that are interfering with or overhanging buildings, but only up to a maximum of one metre or the closest branch junction point beyond that distance from the external walls or roof of that building; or~~
- ~~3. the removal of branches which do not form part of the main structure of the tree to maintain access along existing vehicle access ways.~~

Trimming of vegetation means:

- pruning of vegetation and *trees* including the removal broken branches, deadwood or diseased vegetation; and
- selective branch removal to increase light and air movement or to improve *tree* health; but
- excludes *modification*.

Findings

- 12.5 We recommend that some definitions specific to historic heritage are amended, and further terms are defined for the reasons outlined above and in the Section 42A report.
- 12.6 We recommend definitions specific to historic heritage are amended as follows:
- (a) insert new definition for “*repair and maintenance*”;
 - (b) delete “*non-contributory buildings*”;
 - (c) delete the definition of “*minor works*”;
 - (d) amend the definition of “*addition*”;
 - (e) amend the definition of “*alteration*”;
 - (f) amend the definition of “*land disturbance*”;
 - (g) the definition of “*development*” is amended to include “*earthworks*” instead of “*land disturbance*”;
 - (h) amend the definition of “*archaeological site*” to reflect the correct name of the Act;
 - (i) amend the definition of “*Modification of vegetation*”;
 - (j) amend “*Places or areas of significance to Māori*”;
 - (k) insert new definitions for “*Scheduled historic building or structure*”, “*Scheduled historic site*” and “*Scheduled historic area*”; and
 - (l) delete the definition of “*trimming*” and replace with “*trimming of vegetation*”.
- 12.7 For the reasons discussed above in Evidence and Evaluation, those submissions relating to the definitions relevant to Chapter 10 (including those submissions not specifically referred to above but which are relevant to this issue) are either accepted, rejected or accepted in part as outlined in Appendix 2.

PART C – STATUTORY EVALUATION**13 Statutory Evaluation**

13.1 This part of our report addresses the mandatory requirements as summarised in Part A of this report, and draws on our detailed evaluation of the issues in Part B. In this respect, most of our substantive evaluation of the matters below has already been addressed above.

13.2 We acknowledge the analysis at notification of the PDP and further analysis as part of Section 42A reports in relation to the matters in Sections 32 and 32AA for provisions notified after 2014. To avoid unnecessary duplication, we have adopted this analysis where it accords with our recommendations and we have adopted a thematic approach to the summary of our evaluation here, and we have omitted from considering the general requirements which are not relevant.

Is the PDP designed to accord with, and assist KCDC to carry out its functions so as to achieve the Act's purpose?

13.3 The PDP contains policies, rules and other methods to achieve integrated management of the effects of the use, development or protection of land and associated natural and physical resources in the District. Likewise, the PDP adopts measures to control actual and potential environment effects. In terms of Chapter 10 of the PDP this includes provisions to provide for and to protect historic heritage.

13.4 We find that the PDP, including the amendments that we have made to the policies, rules and other methods across all Chapters will assist the Council to carry out its functions so as to achieve the sustainable management purposes of the RMA.

13.5 As set out in Section 72 of the RMA, the purpose of district plans is to assist territorial authorities to carry out their functions in order to achieve the purpose of this Act. We consider the PDP objective, policies, rules and other methods we recommend pertaining to historic heritage are the most appropriate means to achieve the Act's sustainable management purpose in respect of historic heritage within the Kāpiti Coast District.

13.6 In terms of Chapter 10 of the PDP, we are particularly mindful of Section 6(f) of the RMA which recognises and provides for the protection of historic heritage from inappropriate subdivision, use, and development as a matter of national importance. Overall we consider the PDP provisions, with the amendments we recommend, facilitate the use, development, and protection of historic heritage resources in a way that enables enhanced social, economic, and cultural well-being of the District. Similarly, we conclude that the provisions will protect historic heritage from inappropriate use and will therefore achieve the purpose of the Act.

Does the PDP give effect to any NPS or the NZCPS?

- 13.7 The PDP was designed to give effect to the NPSs and NZCPS in effect at the time of notification. Since that time, the NPS on Urban Development Capacity has been gazetted.⁴²
- 13.8 A number of amendments have been applied to the notified policies, rules and other methods in the PDP to better implement these higher order documents where enabled by submissions.
- 13.9 Overall, we consider that the amended PDP gives effect to the various NPSs and the NZCPS.
- 13.10 The NZCPS recognises that historic heritage in the coastal environment is extensive but not fully known, and is vulnerable to loss or damage from inappropriate subdivision, use, and development. The NZCPS provides a strong direction on managing the coastal edge in a way that protects historic heritage. The key PDP Objective pertaining to the management of historic heritage is:
- Objective 6: To enable people and communities to provide for their social, economic, and cultural wellbeing and their health and safety, through subdivision, use, and development, recognising that...
- historic heritage in the coastal environment is extensive but not fully known, and vulnerable to loss or damage from inappropriate subdivision, use, and development.
- 13.11 The relevant PDP policies pertaining to historic heritage include:
- (a) Policy 2: The Treaty of Waitangi, tangata whenua and Māori; and
 - (b) Policy 17: Historic heritage identification and protection.
- 13.12 This PDP objective and policy framework embodies a clear directive to:
- (a) protect places of historic heritage and manage “*inappropriate*” subdivision, use and development in the context of historic heritage this includes identifying and protecting places of historic heritage; and
 - (b) involve tangata whenua in the management of the coastal environment, including specifically the management of areas or sites of significance or special value to Maori.
- 13.13 While we have not recommended that historic heritage in the coastal environment is protected any differently from the historic heritage throughout the rest of the District, we are satisfied that the policies and rules in Chapter 10 manage inappropriate subdivision, use and development in accordance with the NZCPS. Chapter 10 achieves this through policies such as:

⁴² We also note that Council has an obligation to continue to monitor housing needs and demands against supply - particularly given the NPS-UDC requirements - and is able to review and update the district plan provisions as appropriate through future RMA Schedule 1 processes.

-
- (a) Policy 10.5 Protection of Historic Heritage (to be renumbered as Policy 10.4);
 - (b) Policy 10.8 Additions, Alterations, Relocation, Demolition, Partial Demolition and Destruction of Historic Heritage Features (to be renumbered as Policy 10.6);
 - (c) Policy 10.9 Subdivision Involving Historic Heritage (to be renumbered as Policy 10.7); and
 - (d) Policy 10.10 Waahi Tapu (to be renumbered as Policy 10.8).
- 13.14 In particular, our recommended amendments to Policy 10.10 (to be renumbered as Policy 10.8) will give effect to the NZCPS by ensuring waahi tapu and other places and areas of significance to Māori and their surroundings are protected from inappropriate subdivision, development and land disturbance. This is also given effect to by our recommended amendments to the rules. such as new Rule 10A.3.10 relating to waahi tapu sites within Wahanga Rima.
- 13.15 Overall, we consider that the amended Chapter 10 policies and rules give effect to the NZCPS provisions that relate to historic heritage.
- 13.16 We have had regard to the other NPS's and do not consider that these are particularly relevant to this Chapter.

Does the PDP give effect to the RPS?

- 13.17 As noted above, the current RPS was made operative after the PDP was notified. To the extent that we have scope to make amendments through the relief of submissions received, we have amended the PDP in order to give effect to the RPS.
- 13.18 We note that the RPS provisions relevant to historic heritage include:
- (a) Objective 15: Historic heritage is identified and protected from inappropriate modification, use and development;
 - (b) Policy 21: Identifying places, sites and areas with significant historic heritage values;
 - (c) Policy 22: Protecting historic heritage values; and
 - (d) Policy 46: Managing effects on historic heritage values.
- 13.19 We are very grateful to Ms Watson who clarified in her evidence areas where she considered Chapter 10 provisions in the Section 42A reports give effect to the RPS, and identified the relevant RPS policies. We have largely adopted the Section 42A report recommendations with some further refinements. We consider that our recommended amendments will more comprehensively give effect to the RPS objective and policies. Examples of this include our recommended amendments to Policy 10.8 (to be renumbered as Policy 10.6) which, in Clause A, seeks to avoid demolition, partial demolition, or destruction of historic heritage (in accordance with RPS Objective 15 and RPS Policy 22), while Clause E sets out the matters to be considered in resource consent applications (in accordance with RPS Policy 46).

In relation to Regional Plans, is the PDP inconsistent with the operative Regional Plans, and has regard been given to the proposed Natural Resources Regional Plan?

- 13.20 In our evaluation, the PDP is not inconsistent with any Regional Plan including the Regional Coastal Plan which contains specific heritage provisions. We have had regard to the proposed Natural Resources Regional Plan (PNRP), and do not consider any amendments to the PDP are necessary as a result.
- 13.21 The PNRP only seeks to protect and manage historic heritage within the coastal marine area. Relevant provisions include:
- (a) Objective O34: Significant historic heritage values are protected from inappropriate modification, use and development;
 - (b) Policy P4: Minimising adverse effects including avoiding areas in Schedule E (historic heritage);
 - (c) Policy P46: Managing adverse effects on sites with significant historic heritage value; and
 - (d) Policy P47: Enabling appropriate demolition.
- 13.22 We consider our recommended amendments are entirely consistent with the approach of the PNRP. Rule R169 of the PNRP classifies additions or alterations to structures identified in Schedule E1 or Schedule E2 (of the PNRP) as a restricted discretionary activity which is consistent with the PDP approach to protecting historic heritage.

Does the PDP satisfy the necessary requirements in relation to relevant plans and strategies under other acts, including the Heritage New Zealand Pouhere Taonga Act 2014, plans of adjacent territorial authorities and plans of iwi authorities?

- 13.23 We have applied appropriate consideration of these matters in amending the PDP policies, rules and other methods, including (for example) in relation to historic heritage and matters of significance to iwi.
- 13.24 We have recommended most of the changes sought by Heritage New Zealand, with many of these made to align with the terminology introduced by the Heritage New Zealand Pouhere Taonga Act 2014. An example of this is our recommendations to Policy 10.3 Additional Listings for the Schedule of Historic Heritage which requires items listed as Category 1 on the New Zealand Heritage List Rārangī Kōrero to be listed in the Schedule of Historic Heritage in the District Plan. In addition, we recommend that Policy 10.3 gives appropriate regard to items listed as Category 2 on the New Zealand Heritage List Rārangī Kōrero when listing items in the Schedule of Historic Heritage.
- 13.25 Section 74(2A) of the RMA states that the territorial authority must “*take into account*” any planning document recognised by an iwi authority and lodged with the territorial authority, to the extent that its content has a bearing on the resource management issues of the district. We are

aware that Kakapanui: Te Rununga o Ati Awa ki Whakaromgotai Inc: Nga Korero mo Te Taio: Policy Statements Manual (Manual) contains heritage protection and management policies. The Manual outlines discovery protocols should any archaeological material be uncovered during the course of earthworks. We are satisfied that the PDP approach to accidental discoveries of historic heritage is consistent with this, including PDP Policy 10.11 Unidentified Historic Heritage (to be renumbered as Policy 10.9) and Schedule 10.2 Accidental Discovery Protocol. We are also satisfied that the approach to identifying known historic heritage items in a schedule in the Plan and protecting them through rules and policies will assist in achieving Objective 2 of the Manual.

13.26 Overall, we are satisfied the recommended Historic Heritage Chapter is aligned with the objectives and policies of the Manual. While many of the policies in the Manual can only be undertaken by iwi, there are a number of objectives in the Manual that the objectives, policies and rules in the Historic Heritage Chapter of the PDP will assist in achieving.

13.27 We consider these requirements are met by the PDP.

Does the PDP state objectives, policies, rules and other methods?

13.28 This general requirement has been satisfied by the notified PDP and as amended by our evaluation and recommendations.

13.29 Chapter 10 contains policies and rules and satisfies this requirement.

Is each objective the most appropriate way to achieve the purpose of the RMA?

13.30 No objectives are considered as part of this decision. We have found in our Decision Report 2 that the PDP objectives, as amended by our recommendations, are the most appropriate to achieve the purpose of the Act.

Do the policies implement the objectives, do the rules implement the policies, and are the policies and rules the most appropriate for achieving the objectives?

13.31 This has been the primary focus of our report. In considering how the policies implement the objectives and in how the methods implement the policies, we were greatly assisted by the cascade and logic tables prepared by Council Officers. Those tables - which were presented at the integration hearings - were an invaluable resource and assisted us in confirming the appropriateness of various amendments we made through our deliberations, and highlighted areas where additional refinement was required.

13.32 Each of the amendments to the policies and methods we have proposed has been assessed in terms of its efficiency and effectiveness of implementing the higher order provision(s) to which they relate. For the reasons we have provided above, we consider that the proposed policies are the most appropriate for implementing the objectives and the rules are the most appropriate for implementing the policies.

13.33 When considering Chapter 10, we have been particularly mindful of the effectiveness and efficiency of policies and rules in achieving PDP Objective 2.7. While this is a test we have applied in our consideration of submissions and evidence, for efficiency we do not outline every provision here but provide some examples. Objective 2.7 has four parts to it. The first of these is:

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

13.24 Our amendments to Policy 10.8 (to be renumbered as Policy 10.6) seek to avoid partial demolition, or and destruction of the highest level historic heritage items and places. Similarly we recommend including “*destruction*” within Rule 10.4.3 to ensure that this is a discretionary activity along with partial demolition or demolition. We recommended that *partial demolition*, *demolition* and *destruction* of items listed as Heritage New Zealand Category 1 or 2 are a non-complying activity. We consider this is an effective approach to achieve Objective 2.7.

13.35 The second element is (clause a)):

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

13.36 This clause is particularly given effect to by Policies 10.1, 10.2 and 10.3 which require identification of significant historic heritage sites and features and list criteria upon which an assessment of the historic heritage value can be made.

13.37 As another example, we consider Objective 2.7(a) is achieved by Policy 10.5 Protection of Historic Heritage (to be renumbered Policy 10.4). This is further achieved by various matters of discretion for restricted discretionary activity rules such as:

- (a) effect on historic heritage values;
- (b) effect on visual, character and amenity;
- (c) colour and materials of proposed building or structures;
- (d) layout, design and location of proposed building or structures; and
- (e) effects on context and surroundings.

13.38 The third component of the Objective is (clause b)):

b) recognising and protecting tāngata whenua historic heritage, including waahi tapu and other places and areas significant to Māori;

13.39 We consider an effective and efficient way of achieving Objective 2.7(b) is our recommended Policy 10.10 Waahi Tapu (to be renumbered as Policy 10.8). The amended Policy seeks to protect waahi tapu and other places and areas of significance to Māori from inappropriate subdivision, development, land disturbance or change in land use, as these activities may affect the physical features and non-physical values of the place or area. This is then implemented

through the various rules associated with waahi tapu sites identified in Whanaga Tahī, Rua, Toru, Wha and Rima. Wahanga Tahī contains the most sensitive sites and this is reflected in the rule framework, e.g. the only permitted activities are land disturbance for the purpose of fencing the perimeter of the area or human burials. All other activities in Wahanga Tahī will require a resource consent.

13.40 The final element of the Objective is clause c):

- c) providing for appropriate use and development of natural and physical resources with historic heritage values while ensuring any adverse environmental effects are avoided, remedied or mitigated.

13.41 We consider that this clause is implemented by our recommended amendments to Policy 10.6 (to be renumbered as Policy 10.5) to enable the repair and maintenance of scheduled historic heritage features to maintain the continuity of use, or provide for new uses. We consider this strikes a balance between enabling historic heritage features to be used to ensure the long term viability of the place, whilst retaining *historic heritage* values. We consider this is an effective way of achieving Objective 2.7(c). It seeks to provide for appropriate use and development of natural and physical resources with historic heritage values while ensuring any adverse environmental effects are avoided, remedied or mitigated.

13.42 We are satisfied this Objective 2.7 is given effect to by Chapter 10 provisions including the examples provided above.

Do the PDP rules have sufficient regard to actual and potential environmental effects?

13.43 This is an additional consideration which has factored heavily in our evaluation of the issues under Part B. As per our conclusion in relation to the efficiency and effectiveness of the proposed policies, rules and methods, we find that these provisions will appropriately manage any actual and potential adverse effects on historic heritage. This will be through both the establishment of appropriate limits for permitted activities, and through the consideration of future resource consent applications.

13.44 We have recommended the full range of activity statuses as outlined in the Act. The cascade of rules range from permitted activities which have no effect on historic heritage to non-complying which we have applied to activities with a potentially significant adverse effect on historic heritage. Permitted activities include activities such as our recommended amendments to Rule 10A.1.2 - repair and maintenance of a scheduled historic that complies with various standards. Non-complying activities include Rule 10A.5.2 which relates to relocation of listed historic heritage features that are Heritage New Zealand Category 1 and 2. We consider this approach gives sufficient regard to actual and potential effects, while enabling a range of activities which have a low risk of significant adverse effects to be permitted or approved via a low-level consent application.

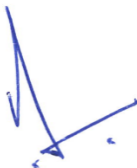
- 13.45 Finally, we have recommended that the Archaeological Alert Areas Layer should be removed from the District Plan Maps. A key factor influencing our recommendations was the officer advice that the original research that resulted in the AAA Layer was based more on statistical modelling and geographic information systems, and is, in effect, a “*predictive model*”. We consider that if the AAA Layer (or a similar approach) was to be further considered as part of a future Schedule 1 process, additional investigation and refinement would be necessary, as in its current form we consider the approach is not sufficiently robust. As a consequence of our recommendation to remove the AAA Layer from the District Plan Maps we have also recommended amendments to Policy 11 (to be renumbered Policy 10.9).
- 13.46 In our view, the removal of the AAA will not reduce the regard to be had to actual and potential environmental effects of the archaeological resource given the other legislative requirements that focus on those matters. In particular, the requirement for an Archaeological Authority from Heritage NZ for the potential disturbance of any pre-1900s archaeology will continue to apply and it is the more appropriate forum to deal with such matters. We also note that where relevant resource consent involving earthworks will refer to this requirement. We note that the PDP still contains provisions (policy, standards and an appendix) relating to an accidental discovery protocol that such conditions will draw on.

PART D - RECOMMENDATIONS

14 Recommendations

14.1 Based on our consideration of all the material before us, including the Kapiti Coast Proposed District Plan 2012 (PDP) as notified including the Section 32 reports, the submissions and further submissions, Section 42A report from the Council advisors, evidence and submissions presented at the hearing, and following consideration of the requirements of Clause 10(2)(a) and Section 32 and of other relevant statutory matters, we make the following statutory recommendations:

- (a) That Council adopt the recommendations of the Hearings Panel in respect of Chapter 10 (Historic Heritage) of the PDP as outlined in the Hearings Panel Report dated 11 September 2017.
- (b) That Council approve Chapter 10 (Historic Heritage) of the PDP as amended in Appendix 1 and for the reasons stated in the report and that accordingly all submissions and further submissions on Chapter 10 (Historic Heritage) of the PDP be accepted, accepted in part or rejected to the extent set out above and summarised in Appendix 2.
- (c) That pursuant to Clause 10 of the First Schedule of the Resource Management Act 1991 Council give public notice of its decision on submissions and further submissions on Chapter 10 (Historic Heritage) of the PDP.



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Alistair Aburn (Commissioner and Chair)
for and on behalf of the Kapiti Coast Proposed District Plan Hearings Panel

Commissioner Alistair Aburn
Commissioner Diane Ammundsen
Commissioner Miria Pomare
Commissioner David McMahon
Commissioner Mike Cardiff

11 September 2017

Appendix 1

Volume 1 - Plan

Volume 2 - Appendices

Volume 3 - Maps

Appendix 2

Recommendations on Submission and Further Submissions to Chapter 10 (Historic Heritage)