BEFORE THE KAPITI COAST DISTRICT COUNCIL

IN THE MATTER	**of the Resource Management Act 1991, Subpart 6 concerning the Intensification Streamlined Planning Process.**
AND	
IN THE MATTER	**of Submission S104 by Waikanae Land Company Ltd on Plan Change 2, a Council led Proposed Plan Change to the Kapiti Coast District Plan under Schedule 1 Subpart 6 of the Resource Management Act**

STATEMENT OF EVIDENCE OF PAUL NORMAN THOMAS

Dated 10th March 2023

INTRODUCTION

1. My full name is Paul Norman Thomas.

Qualifications and Experience

2. I am currently a Director of Thomas Planning Ltd, a resource management planning consultancy. I have a B.A (Hons) Degree in Urban and Regional Planning from Oxford Brooks University and a Diploma in Business Management from Deakin University in Melbourne. I am a member of the New Zealand Planning Institute, the Resource Management Law Association and a former member of The Royal Town Planning Institute.

3. I have over 40 years' experience in planning and resource management, the last 30 or so years which have been in consultancy. From 1996 to 2016 I was a director of Environmental Management Services (EMS) providing a range of resource management advice and services. Prior to that I was the Manager of the Wellington Planning Group and National Discipline Head of Works Consultancy Services Ltd. In that capacity I was responsible for the development of a team of planners and landscape architects serving a wide range of public and private sector clients and for the technical standards of over 40 planning staff.

4. I am a Commissioner accredited as a Chair by the Ministry for the Environment and have been active as a Commissioner since 2008.

Code of Conduct

5. I confirm that I have read and agree to comply with the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2014. I confirm that I have considered all the material facts that I am aware of that might alter or detract from

the opinions that I express, and that this evidence is within my area of expertise.

Scope of Evidence

6. I was engaged by Waikanae Land Company in 2022 to advise on a resource consent application for subdivision of residential land south west of Barrett Drive in Waikanae Beach known as Stage 4B. This application is a direct referral to the Environment Court and was due to be heard in January 2023 but has now been deferred to June 2023.

7. I took part in Joint Witness Conferencing on that matter with Planners for Kapiti Coast District Council and Atiawa ki Whakarongotai. I also prepared rebuttal planning evidence.

8. This evidence considers the specific matter of the proposed amendment to Schedule 9, being Sites And Areas of Significance to Maori to add a further area which the Plan Change calls Karewarewa Urupa.

9. In particular, I focus on the effectiveness and efficiency of the proposed change in Section 32 terms and consider alternative planning frameworks that should be evaluated. I rely on the Archaeological evidence of Mr Russell Gibb and I have also read the evidence submitted to the Environment Court on Stage 4B for Atiawa ki Whakarongotai being statements by Dr Baker and Mr Ropata.

The Proposed Planning Framework

10. The land concerned is shown on the attached plan which is taken from Plan Change 2. As is apparent from the aerial photograph it involves a large rectangular area of 20 acres. Approximately 50% of the land has previously been developed for residential housing being some 37 single dwellings. This land has been categorised as Wahanga Rua and the remaining undeveloped land as Wahanga Tahi. Plan Change 2 has included giving immediate legal effect to this change.

11. The scheduled sites function as an overlay. The zoning that sits under the overlay is the General Residential Zone apart from the northern corner which is zoned Natural Open Space.

12. Plan Change 2 gives effect to the Medium Density Residential Standards as required by the Enabling Housing Supply Amendment Act. Historic heritage which includes sites and area of significance to Maori is identified as a qualifying matter which consequently excludes the application of the MDRS to this land. (Refer proposed policy GRZ-Px2 and the proposed definition of Qualifying Matter Area)

13. The existing operative residential zone provisions provide for the development of up to four residential units on an allotment subject to compliance with the permitted activity standards. Subdivision is a controlled activity with a minimum lot size of 450 m^2 for front lots and 550 m^2 for rear lots.

14. As a proposed qualifying matter it would be expected that it would be excluded from the application of the MDRS. However proposed rule GRZ-Rx1 which applies the density standards in Part 2 of Schedule 3A of the Act does not include Site and Areas of

Significance to Maori. It is limited to the Coastal Quaifying Matter Precinct, Residential Intensification Precincts, Marae Takiwa Precinct, papakainga and minor buildings.

15. There is currently in front of the Environment Court an application to develop land between Barrett Drive and Major Duries Place for 5 residential lots in accordance with these provisions. The eastern part of that site, including the vehicle access, is affected by the proposed Wahanga Tahi.

16. Permitted earthworks is enabled to a level of 50 m^3 volume per site and a maximum of 1m vertical change in ground level.

17. While the application for development of this area does not fully meet all standards the joint witness statement of planners records that, putting archaeological and cultural matters, aside the proposal is entirely consentable.

18. This smaller area which does have sloping land contrasts with the larger Wahanga Tahi area east of Tamati Place which is relatively flat.

19. The key features of the SASM provisions for Wahanga Tahi that now have legal effect on the area identified are:

- The only permitted activity is land disturbance, earthworks and fencing. This is limited to fencing the perimeter of the area and this is subject to the Accidental Discovery Protocol.

- Gardening, cultivation, tree planting or removal, building additions and alterations, roads and network utilities and fencing not meeting the permitted standards are all a

Restricted Discretionary Activity which is also subject to the Accidental Discovery Protocol.

- New buildings, excluding minor buildings, and intensive farming are classed as a Non Complying Activity. This would clearly include any building foundations footings and underground services.

20. The key policy for determining resource consent applications is SASM-P1 which is as follows:

Waahi tapu and other places and areas significant to Māori and their surroundings will be protected from inappropriate *subdivision*, *development*, *land disturbance*, *earthworks* or change in *land* use, which may affect the physical features and non-physical values of the place or area.

Residential Zone v SASM Overlay

21. The Wahanga Tahi provisions are clearly highly restrictive and infer a clear presumption against any changes to the land for any activity. New buildings being a non complying activity is in clear and obvious conflict with the policy and regulatory framework for the Residential Zone.

22. Fundamentally, in my opinion, the two regimes are so incompatible as to be a nonsense, or in section 32 terms highly inefficient and ineffective.

23. Mr Banks in the Section 42A report at para 580 contends that there are a range of overlays that apply to parts of the Residential Zone including flood hazards, earthquake hazards, nationally significant infrastructure, ecological sites and outstanding natural features and landscapes. He notes that these all require *"management in a different manner from the underlying zone*

provisions". I agree with that. However, generally these matters influence **how** land may be developed rather than **preventing** all forms of development. For example, development can occur in flood hazard areas subject to floor levels being above the 1% AEP flood event level.

24. Mr Banks also references section 4.2.3 of his evidence regarding waahi tapu sites located within the Residential Zone. This states at para 127 that there are four sites in Schedule 9 that are located within a Residential Intensification Precinct.

25. These are Mutikotiko puke and urupa (WTS0056), Te Rauparaha's Statue and Jubilee Monument (WTS0146A), both being Wahanga Toru. Also Makuratawhiti urupa (WTS0034) and Ruakohatu urupa (WTS0316A) both being Wahanga Tahi.

26. I have identified Ruakohatu on the Plan Maps but not Makuratawhiti Urupa. The former is a relatively small area of land north of Elizabeth Street in central Waikanae. The size of the latter I haven't established but I would doubt that it is comparable with the scale of undeveloped land involved at Waikanae Beach. Irrespective of this, I maintain my opinion that to apply a General Residential Zone, and then an overlay over yet to be developed land that effectively prevents any form of development is poor practice and does not stand scrutiny in s32 terms.

The Justification for the Scheduling

27. I note from the Section 32 report that the justification for this new qualifying matter relies heavily on the findings of the Waitangi Tribunal on this matter. This of course is an enquiry into grievances between iwi and the Crown. My understanding is that the process did not involve any other interested parties including

landowners and did not involve any expert archaeological evidence.

28. The fact that this area of land was partitioned off in 1919 for an urupa does not appear to be contested. Nor is it contested that the land was sold by the Maori Trustees to the Waikanae Land Company in 1969 with a view to urban development. What is contested is the extent to which burials occurred at the site and in what locations. The archaeological evidence of Mr Russell Gibb is clear that, while some koiwi has been disturbed through past works, the extent of possible remaining burials is limited and is limited to identifiable areas close to the location of the kōiwi discovered in 2000..

29. My understanding based on the evidence I have read for the current Environment Court proceeding is that Atiawa considers this land should be protected on the basis that it contains the remains of those who dies in the battle of Kuititanga which occurred over a wide area.

30. I also understand that in relation to the specific area of land identified as Karewarewa Urupa, Atiawa do not consider this to be an adequate representation of the boundaries of Kārewarewa which should relate to the areas and movements of the battle of Te Kuititanga.

31. What I take from that is that there is a historical cultural association that extends over a wide area, much wider that that now identified in Plan Change 2 as Kārewarewa.

32. The archaeological evidence identifies an area in the northern part of the site (of Wi Kingi Place) where there is possible evidence of burials and should be protected.

33. Beyond this, the cultural values associated with the site relate to the history of wider battle movements north of the Waikanae River.

34. I agree that cultural values relate to both tangible and non tangible values. In this case, the tangible values appear to be limited to a identifiable areas, while the non tangible cultural values relate to the history of the wider Waikanae and even Kapiti area.

35. As a planner I consider that it is important that the cultural values and history of the wider area are recognised and fully acknowledged. It is also important that where there is evidence of koiwi those remains are left undisturbed and protected. However, the archaeological evidence is that this requires protection of only a relatively small part of the land. Acknowledgement of the wider history of these areas can be done in a variety of ways including through creation of a cemetery reserve incorporating appropriate public information on the cultural history. However, that is a matter for the future discussion between the parties.

Section 32 Alternatives and Evaluation

36. The Council Section 32 evaluation of this aspect of PC 2 is addressed at Section 8.3.3 of the Report. The evaluation considers three alternatives as follows:

1. Proposed Approach

2. Apply the MDRS to the area without adding Karewarewa Urupa to Schedule 9.

3. Provide for lower density development provisions in the area.

37. The evaluation of Option 1 acknowledges that, given the restrictions applying, the land may be left unmaintained with adverse effects on character and amenity. It also recognises that, even if improvements were proposed, the restrictions may prevent planting and other natural environment improvements.

38. It also acknowledged that the restrictions will prevent the development of the land for housing which is consistent with my earlier assessment, with consequent economic and employment effects.

39. Importantly, the evaluation is based on the understanding that there may be koiwi throughout the entire area. That is not consistent with the archaeological evidence.

40. Consequently, unsurprisingly, given that Options 2 and 3 provide no degree of protection from possible development effects, the proposed approach is considered by council officers to be the most effective and efficient.

41. It is not uncommon for section 32 evaluations to identify alternatives that lead to an obvious conclusion. It is, therefore, important that full consideration is given to a wider range of alternatives that have regard to the technical evidence on this matter.

42. I have previously expressed the opinion that the SASM provisions and General Residential Zone provisions are so incompatible as to be a nonsense. The Council s32 assessment has acknowledged that houses would not be consentable on the undeveloped land.

43. Clearly, therefore, if the evidence supported maximum protection of the entire area then the Residential Zone should be deleted and replaced with a Cemetery Designation and underlying Open Space

Zone. I note that there are at least four Cemeteries designated in the District Plan.

44. This, of course, would present considerable difficulties for the owners of the existing residential properties. However, a variation of this option is to confine the designation to the proposed Wahanga Tahi land.

45. These alternatives, however, are not consistent with the archaeological evidence which confines the area that justifies protection to locations in the undeveloped northern part of the area, which is a small proportion of the area currently proposed as the SASM.

46. The purpose of Section 32 is to carefully justify regulating property rights and ensure that the level of regulation is justified, avoiding the costs of over regulation.

47. Alternatives relating to this position are:

1. Designate and acquire as reserve the areas of reinterred koiwi and potential other koiwi identified and ensure that any future development provides for management of that reserve by iwi. Apply the MDRS to the remaining area as required by the Amendment Act.

2. Option 1 but exclude the MDRS on a similar basis to the Coastal Qualifying Matter given that there remains a small risk of disturbing other archaeological material (i.e. middens) through higher density development.

48. These options both minimise costs by just protecting the area where there is evidence of possible koiwi and will provide housing

capacity benefits whist providing for development of a cemetery reserve.

49. Option 2 would exclude the entire 20 acre area from the application of the MDRS and provide for a similar density of development to that which currently exists, ie the existing operative framework.

50. The justification for this would be to discourage redevelopment of existing developed areas and minimise ground disturbance in the yet to be developed areas on the basis that there is a small risk of archaeological material being disturbed. This must be informed by the archaeological evidence. It is clearly important in all options that the Accidental Discovery Protocol applies. At this point, I do not have a firm opinion on which of these options is preferred, as it will be informed by other evidence including that from Atiawa in response to this evidence. I will provide further consideration of this at the hearing.

Paul Thomas
10 March 2022

Wahanga Tahi and Rua for Waikanae Beach

Kāpiti Coast DISTRICT COUNCIL

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0 60 120 Meters

Scale @ A4: 1:2,500

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