

SECTION 42A REPORT

Closing Statement

Hearing 14: Historic Heritage and Notable Trees

Prepared by: Alice Morris

Date: 4 September 2020



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INTRODUCTION

1. My full name is Alice Jane Morris, I am a Principal Planner in the City Planning Unit at Hamilton City Council ('HCC').
2. I am the writer of the s42A report for Hearing 14: Historic Heritage and Notable Trees; the author of the rebuttal evidence; presenter of the s.42A report at the hearing on the 28 July 2020; and the author of this closing statement.

Qualifications and experience

3. I hold the qualification of a Bachelor of Regional Planning from Massey University, New Zealand and completed a Masters in Heritage Conservation in Built Heritage from the University of Auckland in 2019 (graduation - 7 October 2020). I am a full member of the New Zealand Planning Institute.
4. I have over 29 years' planning and resource management experience, including policy development, formation of plan changes and associated s.32 assessments; s.42a report preparation and associated evidence; the preparation of Environment Court evidence; and the preparation of submissions to and the processing of resource consent applications.

Code of Conduct

5. I confirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014 and that I complied with it when preparing the s.42A report, rebuttal; at the hearing and now in preparing this closing statement.
6. I am authorised to give this evidence on the Council's behalf to the Proposed District Plan hearings commissioners.

Conflict of Interest

7. I have assisted HCC with its own submission to the Waikato District Plan process and presented evidence on behalf of HCC at Hearing 3 – Strategic Matters. However, the matters of opinion expressed in my evidence for Hearing 3 do not, in my opinion, create conflict for my assessment and preparation of recommendations regarding the topic of historic heritage on behalf of WDC.
8. As previously set out, I have not assessed or made recommendations on HCC's specific submission point [535.85] (refer to the Addendum to my s.42A report).
9. Other than stated above, I confirm that I have no real or perceived conflict of interest.

Purpose of this Closing Statement

10. The purpose of my closing statement is to outline the re-examination I have undertaken, in consultation with Council's technical experts of the recommendations I proposed in either my s.42A report or rebuttal evidence. This re-examination is in response to the submitter evidence given at the hearing and/or questions from the Hearings Panel.

MATTERS FOR CONSIDERATION

11. I have considered all matters presented at Hearing 14 - Historic Heritage and Notable Trees on 28 July 2020. I have also sought guidance from the technical experts on whether they have had cause to amend their recommendations following hearing evidence at the hearing:
 - Dr McEwan has advised that there was no evidence presented that either changed her assessment or prompted her to revise an assessment.
 - Messrs Sirl and Gordon noted the additional information and clarification of the trees Tainui O Tainui [942.63] were seeking to be scheduled and have assessed each tree under the STEM method.
12. As a result of matters raised at the hearing, I have revisited the recommendations set out in the s.42A report for the following:
 - Historic Heritage
 - Chapter 12 archaeological site management advice in 12.1
 - Policies 7.1.2, 7.1.3(a), 7.1.3(b), 7.1.3(c), 7.1.3(e)
 - Rule Structure
 - Consideration of Setting
 - Heritage Precincts
 - Review Schedule 30.1 - Historic Heritage Items
 - Individual scheduled sites
 - Notable Trees
 - Definition for 'Dripline'
 - Rule Structure
 - Schedule 30.2 - Notable Trees
 - Individual scheduled sites
13. For reference purposes, the amendments proposed in this closing statement are notated as follows:
 - black = notified text;
 - red = s.42A/rebuttal recommended text;
 - blue = revised text now being recommended.

HISTORIC HERITAGE

Policy Framework

Chapter 12 - Archaeological Site Management

14. Heritage New Zealand Pouhere Taonga (HNZPT) [559.285] sought the inclusion of an additional clause to Chapter 12 to raise awareness on how archaeological sites should be managed. The specific wording sought was:

(k) The New Zealand Archaeological Association archaeological sites are included on the planning maps for District Plan information purposes only. However, these sites are subject to the requirements of the Heritage New Zealand Pouhere Taonga Act 2014. Heritage New Zealand Pouhere Taonga must be contacted regarding development on or in proximity to these sites and the need to undertake an archaeological assessment to determine the need for an archaeological authority. The Heritage New Zealand Pouhere Taonga Act 2014 protects both recorded and unrecorded archaeological sites.

15. I recommended a reworded advisory clause via the s.42A report (Section 4.1.3, paragraph 37). This was further refined through evidence submitted by Ms McAlley for HNZPT, and which I adopted through my rebuttal evidence (section 5.2, paragraph 20, page 5):

12.1(k) The district plan identifies heritage items, notable trees and Maaori sites and areas of significance on the planning maps. Effects on archaeological sites, both recorded (identified by the New Zealand Archaeological Association) and unrecorded, are regulated under the Heritage New Zealand Pouhere Taonga Act 2014. Heritage New Zealand Pouhere Taonga must be contacted regarding development on or in proximity to these sites and the need to undertake an archaeological assessment to determine the need for an archaeological authority.

16. The Hearings Panel have questioned whether the above advice is strictly correct and how could 'in proximity to' be determined. Accordingly, I have reviewed the recommended wording and advise the following:

17. The Heritage New Zealand Pouhere Taonga Act 2014 defines an archaeological site as being any place in New Zealand, including any building or structure (or part of a building or structure), that was associated with human activity that occurred before 1900 and provides or may provide evidence relating to the history of New Zealand.¹ The definition applies whether or not an archaeological site is recorded or not.²

18. In forming the text of 12.(k) presented in the s.42A report and refined in my rebuttal evidence, I applied the language originally sought by HNZPT [559.285], which included 'in proximity to', to convey that if there is an identified archaeological site the surroundings would also be deemed to be an area associated with pre-1900 human activity and so contact with HNZPT is necessary.

¹ HNZPTA, Section 6 Interpretation, Archaeological site:

archaeological site means, subject to [section 42\(3\)](#),—

(a) any place in New Zealand, including any building or structure (or part of a building or structure), that—
(i) was associated with human activity that occurred before 1900 or is the site of the wreck of any vessel where the wreck occurred before 1900; and

(ii) provides or may provide, through investigation by archaeological methods, evidence relating to the history of New Zealand; and

(b) includes a site for which a declaration is made under [section 43\(1\)](#)

² HNZPTA, Section 42 Archaeological sites not to be modified or destroyed

19. Chapter 12 provides useful information on how to use and interpret the rules in the district plan; and that each clause under 12.1 are directional about particular activities. I continue to support my recommendation for the inclusion of the clause (k) into Chapter 12 to advise plan users of the obligations to ensure the protection of archaeological sites. However, I have taken onboard the concerns raised by the Hearings Panel through the use of “in proximity to” and recommend the following amendments to remove any potential for confusion and provide clarity on the actions necessary to take:

12.1(k) The effects of activity on archaeological sites, both recorded (identified by the New Zealand Archaeological Association) and unrecorded, are regulated under the Heritage New Zealand Pouhere Taonga Act 2014. Contact with Heritage New Zealand Pouhere Taonga is required to determine the need to undertake an archaeological assessment to determine the need for an archaeological authority under that Act.

Policy 7.1.2 - Identification

20. The Hearings Panel asked whether the listed values recommended to be added to Policy 7.1.2 was an inclusive or non-inclusive list? At the hearing I advised that although the text in the policy implied a non-inclusive list, the intent is for it to be an inclusive list to align with the criteria used for the ranking assessment process undertaken in accordance with the Waikato Regional Policy Statement. Therefore the wording of the policy needs to be tightened to remove any ambiguity.
21. Dr McEwan has also highlighted to me that the list, as notified and the one I recommended to be incorporated into Policy 7.1.2 in response to HNZPT’s submission point [559.67] did not align fully with the qualities set under the WRPS or those she had used in preparing the individual heritage records for each scheduled item. Accordingly, it is important that there is clear correlation with terminology to ensure alignment and the avoidance of confusion in the administration of the policy. I consider this continues to be within the scope of the HNZPT submission point. Therefore, I now recommend the following amendments to Policy 7.1.2:

7.1.2 Policy – Identification

- (a) Identify and schedule historic heritage throughout the District that represent the ~~heritage values~~ Heritage Values important to the district’s identity, and cultural themes and activities of the district, Those values are limited to:
- (i) Archaeological
 - (ii) Architectural
 - (iii) Cultural
 - (iv) Historic
 - (v) Scientific;
 - (vi) Technological

~~Identify and schedule historic heritage throughout the District that represent the heritage and cultural themes and activities of the district.~~ Where the values may include:

- ~~(i) Architectural;~~
- ~~(ii) Archaeological;~~
- ~~(iii) Cultural;~~
- ~~(iv) Technological~~
- ~~(v) Scientific;~~
- ~~(vi) Intrinsic or amenity values; and~~
- ~~(vii) Any other significant features.~~

Policy 7.1.3 Historic Heritage Items

22. In response to the Hearing Panel's query about inclusiveness of the list of values proposed under Policy 7.1.2, the same concern arises with Policy 7.1.3(b). Accordingly, as a consequence of the recommendations for Policy 7.1.2, I recommend that those same amendments are made to Policy 7.1.3(b) for consistency and good plan administration. Noting however, I recommend retaining 'intrinsic or amenity values' to assist with the consideration of a heritage item's setting.

7.1.3(b) Protect Historic Heritage Items ~~scheduled heritage items~~ and their Heritage Vvalues from inappropriate subdivision, use and development of land where the Heritage Vvalues ~~may include~~ relate to:

- (i) Architectural Archaeological
- (ii) Archaeological Architectural
- (iii) Cultural
- (iv) Technological Historic
- (v) Scientific
- (vi) Technological
- (vii) Intrinsic or amenity values ~~and~~
- ~~(viii) Any other significant features.~~

23. The Hearings Panel queried the intent of Policy 7.1.3(c); in particular its focus on retaining the view of the heritage item. At the hearing I advised that while there are no specific submission points relating to this policy matter it was my opinion that the text could be refined. As a heritage item has not been scheduled for their visual appearance it is important that the policy direction reflects this. Amending the policy by deleting the text after the word 'setting' will ensure greater linkage between a scheduled item and its setting and the heritage values attributed to its heritage significance. As I stated, there is no specific submission point to Policy 7.1.3 (c); however there are submission points relating to setting and site development. Accordingly, ensuring strong alignment between policy and standards ensure good plan administration. The request to refine the site development provision necessitates revisiting the corresponding policy framework. The reworded Policy 7.1.3(c) would read as follows:

7.1.3(c) Relationships between heritage buildings, sites, structures, places and their settings, ~~including the view of the identified heritage item,~~ are retained.

24. In the s.42A report I recommended modifying Policy 7.1.3(e) by deleting the exemptions and inserting 'relocation' alongside demolition and removal. The Hearings Panel questioned whether having such a policy threshold actually meant none of these activities could occur, yet there could be circumstances when the removal, relocation or demolition was valid.
25. As stated in my s.42A report, Council's obligation under the RMA is to protect historic heritage from being lost through inappropriate subdivision, development or land use. The activity status of discretionary for B ranked and non-complying activity for A ranked heritage items clearly articulates that demolition, relocation and removal should not be promoted.
26. Therefore, I continue to consider anchoring the exemption into the policy provides an enabling tool which is problematic. I do not consider the removal of the notified exemptions effectively causes a prohibition of the removal, demolition or relocation. It instead ensure the threshold for such an activity is fully tested on its particular merits, considering the individual item, its heritage significance, and what it would mean to lose that heritage resource.

27. Having the higher policy stance also aligns with intentional differentiation between A and B ranked buildings and the types of activities that can occur to heritage items with or without a resource consent (the cascade from permitted through to non-complying).
28. Notwithstanding my position on this, I agree with the observations by the Hearings Panel that there is a lack of focus on encouraging adaptive re-use. While adaptive re-use is implied through the use of the term 'reusing' in Policy 7.1.3(a), I agree that it would be preferable to strengthen this for protection purposes. As a result, I have revisited the submission points from HNZPT [559.78, 559.79 and 559.113] who sought the incentivisation of earthquake strengthening and fire safety requirements. While I continue to support my original approach that fire safety and earthquake strengthening works can be adequately addressed under the umbrella of the rule framework for additions and alterations I consider the addition of a policy expressly acknowledging these activities in the retention and adaptive reuse of heritage buildings is appropriate.
29. Directing incentivisation through the policy framework strengthens the existing rule framework, particularly when additions and alteration activities include earthquake strengthening or fire safety works. These activities encourage the continued use or adaptive re-use of heritage buildings. To address this I am recommending the addition of the following policy to Policy 7.3.1:

7.1.3(l) Ensure the long-term viability, vitality, retention, and on-going functional use of the Historic Heritage Items, through matters including:

- (i) Maintenance and repair
- (ii) Earthquake strengthening
- (iii) Compliance with fire safety requirements
- (iv) Adaptive re-use

Rule Structure

30. As a consequent of reconsidering the policies, I have reviewed the standards to ensure there is correlation between the anticipated outcomes set by the policy framework and the standards. It remains my opinion that the amendments I recommended through the s.42A report continue to ensure best practice is applied in the protection and use of the scheduled heritage items. Nevertheless, in considering the matters raised by the Hearings Panel I am recommending the following minor amendments for consistency and good plan administration:
31. The word 'historic' be applied to all references for 'heritage items' to ensure clear consistency with terminology both throughout the district plan and with the RMA.
32. The reorganisation of the order of the historic heritage standards to reflect the cascade of these activities:
 - maintenance and repair - a permitted activity
 - alterations or additions - a restricted discretionary activity.
33. In response to the submission point by WDC [697.669] in my s.42A report I recommended including a reference to Schedule 30.3 - Maaori Sites of Significance and Schedule 30.4 Maaori Areas of Significance in Rule 20.4.5 *Subdivision of land containing heritage items* in the Industrial zone:

Rule 20.4.5 Subdivision of land containing heritage items³

RD1	(a) <u>The boundaries of every proposed lot must not divide any of the following:</u>
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³ [559.248], [697.667] and [FS1323.79]

	<p>Subdivision of land containing a</p> <p>(i) A <u>Historic Heritage Item</u> heritage item listed in Schedule 30.1 (<u>Historic Heritage Items</u>) where the heritage item is wholly contained within one lot.</p> <p>(ii) <u>Maaori Sites of Significance in Schedule 30.3 (Maori Sites of Significance);</u></p> <p>(iii) <u>Maaori Area of Significance in Schedule 30.4 (Maori Areas of Significance).</u></p> <p>(b) Council's discretion is restricted to the following matters:</p> <p>(i) effects on <u>Heritage Values</u> heritage values;</p> <p>(ii) context and setting of the <u>Historic Heritage Item</u> heritage item;</p> <p>and</p> <p>(iii) the extent to which the relationship of the <u>Historic Heritage Item</u> heritage item with its setting is maintained within one lot.</p>
NC1	Subdivision that does not comply with Rule 20.4.5 RD1

34. The Hearings Panel questioned the rationale for the change only being applied to Rule 20.4.5 and not to the other corresponding zone provisions. At the hearing I advised that the change sought had only been requested for the Industrial zone. I now wish to expand on that answer by highlighting that the other zones have specific subdivision provisions for both Maaori Sites of Significance and Maaori Areas of Significance.

Consideration of Setting

35. During the hearing, the extent of setting was highlighted as the tool to ensure the:
- protection of the heritage values of the item;
 - sustainable use of the surrounding land resource while retaining and protecting the heritage resource.
36. As a result of the discussions at the hearing it became apparent that further work was required to ensure greater clarity on what the extent of setting meant, how it was defined and how should it be applied. An example of this potential confusion was highlighted at the hearing when the parties were discussing the Otua Bowling Green and what was proposed to be scheduled verses what was captured under the item's setting. From a planning perspective this is problematic and must be tightened up to ensure consistent plan administration and robust, defensible provisions.
37. The consideration of setting is one of the fundamental matters in considering the impacts proposed activities may have on scheduled heritage items. In my s.42A report I recommended the inclusion of individual heritage reports, in which setting is identified to be anchored into the district plan via Schedule 30.1.⁴ Having further considered how the setting needs to be articulated in planning terms, I no longer recommend linking the individual heritage reports to Schedule 30.1. Instead, the meaning of 'extent of setting' and how that is applied must be clearly articulated via specific plan provisions.
38. The heritage reports should be made available outside the parameters of the district plan through the Waikato District Heritage Inventory. This inventory would contain all relevant material that has informed the s.32 process to date (e.g. the Waikato Thematic report, background research material and the individual heritage reports). Doing this will also allow Council to add further information pertaining to each item as it comes to hand without the

⁴ S.42A report. Section 9.1.3, paragraphs 473-492, pages 144 - 147

need for future plan changes. It also avoids the heritage reports being deemed a rule under the district plan and be subject to the same resource management scrutiny.

39. The consequence of this approach is that the setting of a heritage item will be defined within the framework of the district plan to ensure they are robust and defensible.

40. Accordingly, I recommend the following amendments:

- Remove all references and links to heritage reports from Schedule 30.1;
- Provide additional definitions to assist plan users (Historic Heritage Item, Heritage Values and Extent of Setting);
- Provide detail in Schedule 30.1 of the extent of setting - either legal boundaries, building footprint, or as a diagram or measurable notation on the planning maps of the extent of setting for items where the legal boundaries do not define that extent.
- Provide a new schedule - Schedule 30.1A - Extent of Setting for a Historic Heritage Item. This schedule will contain diagrams to show the settings of those Historic Heritage Items where the Record of Title does not define the extent of setting.

41. The three additional definitions I am recommending are:

<u>Historic Heritage Item</u>	<u>For heritage items listed in Schedule 30.1 - Historic Heritage Items, means a building, structure or group of buildings or structures that has met the significance threshold for scheduling in the District Plan.</u>
<u>Heritage Values</u>	<u>For Historic Heritage Items, means the tangible and intangible attributes which contribute to an understanding and appreciation of the level of significance of a Historic Heritage Item; and are derived from any of the following qualities:</u> <ul style="list-style-type: none"> i) <u>archaeological;</u> ii) <u>architectural;</u> iii) <u>cultural;</u> iv) <u>historic;</u> v) <u>scientific;</u> vi) <u>technological.</u>
<u>Extent of Setting</u>	<u>For Historic Heritage Items, means the land directly surrounding the Historic Heritage Item that has a direct relationship with the Heritage Values and significance for a scheduled item. The Extent of Setting for some Historic Heritage Items is specifically identified in Schedule 30.1A - Extent of Setting for a Historic Heritage Item. Where it is not identified in Schedule 30.1A - Extent of Setting for a Historic Heritage Item, the Extent of Setting is deemed to be delineated by the legal boundaries of the Record of Title. The Extent of Setting may also contain other buildings, structures, driveways, fencing and garden areas.</u>

42. As a consequence of the above recommendations, I consider it is necessary to provide further modifications to both the Policy 7.1.5 - Subdivision and the site development rule for each zone:

- 7.1.5 Policy – Subdivision and Development
 Ensure subdivision and development ~~within an identified precinct do not compromise and are sympathetic to the existing historic heritage items or features. does not compromise the Heritage Values of Historic Heritage Items or the Extent of Setting.~~ by:
 - (i) Managing activities that occur within the Extent of Setting for each Historic Heritage Item;
 - (ii) Having regard to the degree to which the Extent of Setting necessary to retain and protect the Historic Heritage Item’s Heritage Values is contained within one lot.
- All Historic Heritage Items - All site Site development**

PI	<p>(a) Development on a site containing a <u>Historic Heritage Item heritage item</u> listed in Schedule 30.1 (<u>Historic Heritage Items</u>) must comply with all of the following conditions:</p> <p>(i) Development does not involve the placement or construction of a building or buildings within the Extent of Setting as defined in the Heritage Report for the Historic Heritage Item. be set back at least 10m from the heritage item;</p> <p>(ii) not locate a building between the front of the heritage item and the road.</p>
RDI	<p>(a) Development on a site containing a Historic Heritage Item heritage item listed in Schedule 30.1 (Historic Heritage Items) Any activity that does not comply with one or more conditions of Rule #####PI.</p> <p>(b) Council’s discretion is shall be restricted to the following matters:</p> <ul style="list-style-type: none"> (i) effects on the <u>Heritage V</u>values, context and <u>Extent of S</u>setting of the <u>Historic Heritage Item heritage item</u>; (ii) location, design, size, materials and finish; (iii) landscaping; (iv) The relationship of the <u>Historic Heritage Item heritage item</u> with its the <u>Extent of S</u>setting, including the area between the front of the heritage item and the road.

43. I consider the above recommendations continues to address the relief sought by HNZPT [559.216, 559.217 and 559.218] and WDC [697.307].

Heritage Precincts

44. There was nothing from the evidence presented at the hearing by Ms Jenny Kelly [590], Waikato District Heritage Forum [620], Ms Christine Madsen [678] and [980], and Ms Cathy Miller [264] that has caused me to reconsider my recommendations as set out in the s.42A report.⁵
45. Notwithstanding this, I wish to respond to the general matters raised by the Hearings Panel in questioning the need for the precincts, and why the two precincts in the district plan have been identified.
46. Applying the precinct overlay is the protection mechanism employed by the Council to acknowledge the collective importance these two areas have in contributing to both the history of their immediate areas and that of the Waikato District. The precincts also ensure the continued protection of that collective heritage fabric and character. As Dr McEwan

⁵ S.42A report, section 8, paragraphs 450 - 469, pages 136 - 142

indicated at the hearing, they are existing precincts under the operative district plan and have been replicated into the proposed district plan.

47. The management of these two precincts relies on the policy framework and the respective design guides (Appendix 3.5: Huntly Heritage Precinct Design Guide and Appendix 3.6: Matangi Heritage Precinct Design Guide) to protect the collective heritage fabric and character of the precincts.
48. While, in responding to a question from the Hearings Panel, Dr McEwan provided her professional opinion on the use of precincts; I have been advised by WDC planning staff that if precincts were removed from the district plan there would be no ability for the identified character, fabric, layout and streetscape to be retained, and development managed through the suite of standards. Noting that not all buildings within these precincts are scheduled heritage items. Further, unlike the precinct standards, the scheduling of the items within the precincts does not consider amenity values, character of precinct, building envelope or streetscape.
49. It is my opinion that the precinct framework proposed through the notified version of the proposed district plan along with the recommended amendments set out in the s.42A report are valid tools to ensure the management of specifically identified areas. Noting also that there were no submissions seeking the removal of the framework providing for heritage precincts.

Schedule 30.1 Historic Heritage Items

50. As a consequence of my recommendations outlined in the above section 'Consideration of Setting', amendments are needed to the guidance information I proposed in my s.42A report to accompany Schedule 30.1 - Historic Heritage Items.
51. The further refinements will ensure terminology used in the district plan aligns with the Waikato Regional Policy Statement (Section 10); and articulates the parameters of significance used in determining the ranking set out in the heritage reports. I have also used this opportunity to seek further comment about the proposed wording for Schedule 30.1 from Dr McEwan; who recommended removing reference to 'significance' and advised that she had not assessed the buildings for their international value. Accordingly, I have made those changes.
52. Below is the reworded section I now recommend for Schedule 30.1:

Schedule 30.1 Historic Heritage Items

Assessment of Historic Buildings and Structures

Heritage Assessment Criteria

~~The heritage significance and the value of the historic heritage has been assessed based on evaluation against the following heritage qualities:~~

The heritage significance of an item determines whether it has either a local, district or national context. Heritage values are used to establish a 'Statement of Significance' that provides evidence to determine the level of heritage significance an item has. The 'Statement of Significance' for each Historic Heritage Item in Schedule 30.1 is contained in the Waikato District Council Historic Heritage Item Record. These records are contained in the Waikato District Heritage Inventory.

The heritage reports examine an Historic Heritage Item's significance against the heritage qualities from the Waikato Regional Policy Statement; it also identifies the geographical

boundaries ('Extent of Setting') for an item. 'Extent of Setting' is identified in Schedule 30.1A and notated on the planning maps.

Relevant heritage values and the level of heritage significance of the Historic Heritage Items is based on an evaluation of the items against the following heritage qualities:

Archaeological Significance

- The potential of the building, structure and setting to define or expand the knowledge of earlier human occupation, activities or events
- The potential for the building, structure and setting to provide evidence to address archaeological research
- The building, structure and setting is registered by Heritage New Zealand Pouhere Taonga, or recorded by the New Zealand Archaeological Association Site Recording Scheme

Architectural Significance

- The style of the building or structure is representative of a significant development period in the Waikato District and associated with a significant activity (e.g. institutional, industrial, commercial or transportation)
- The building or structure has distinctive or special attributes of an aesthetic or functional nature (e.g. materials, detailing, functional layout, landmark status or symbolic value)
- The building or structure uses unique or uncommon building materials or demonstrates an innovative method of construction, or is an early example of the use of particular building technique.
- The building or structure's architect, designer, engineer or builder as a notable practitioner or made a significant contribution to Waikato District.

Cultural Significance

- The building, structure and setting is important as a focus of spiritual, political, national or other cultural sentiment
- The building, structure and setting is a context for community identity or sense of place and provides evidence of cultural or historical continuity.
- The building, structure and setting has symbolic or commemorative significance to people who use or have used it, or to the descendants of such people. The interpretative capacity of the place or area and its potential to increase the understanding or past lifestyles or events.

Historic Significance

- The building or structure has a direct association with, or relationship to a person, group, institution, event, or activity that is of historical significance to Waikato District.
- The building or structure is associated with broad patterns of local or national history, including development and settlement patterns, early or important transportation routes, social or economic trends and activities.

Scientific Significance

- The potential for the building, structure and setting to contribute information about an historic figure, event, phase or activity.
- The degree to which the building, structure and setting contributes information and the importance of the data involved, its rarity, quality or representativeness.

Technical Significance

- The building or structure shows a high degree of creative or technical achievement at a particular time or is associated with scientific or technical innovations or achievements.

Ranking of Historic Heritage Items

~~The heritage assessment undertaken acknowledged the importance of the built heritage items in an international, national, regional and local context. The determination of the significance and the level of significance(A or B ranking) to determine the ranking of a built heritage item was primarily determined by the item's significance to the Waikato District. The ranking used in Schedule 30.1 has been determined by an individual item's level of significance to the Waikato District.~~

~~A Ranking: historic buildings and structures with a 'high level' of significant heritage value important to the understanding of Waikato District's development and identity.~~

A Ranking: historic buildings and structures with one or more criterion from the qualities have been determined to have a 'high level' of significance; the item is important to understand Waikato District's development and identity; and the item has a high degree of integrity.

~~B Ranking: historic buildings and structures with significant heritage value that contributes to the understandings of Waikato District's development and identity~~

B Ranking: historic buildings and structures with one or more criterion from the qualities; the item contributes to the understandings of Waikato District's development and identity, and the item has a good degree of integrity.

53. As set out above (paragraphs 35 - 43), I have revisited the format of Schedule 30.1 and now recommend the removal of the link to individual heritage reports. However, the information contained in the heritage reports is important information about each heritage item, its heritage significance and why it has either an A or B ranking. Therefore, instead of the direct link via Schedule 30.1, I recommend the inclusion of an advice note to guide plan users to Waikato District Heritage Inventory that will contain that information:
54. Below is the reworded Advice Notes section I now recommend for Schedule 30.1:

Schedule 30.1 Historic Heritage Items

Advice Notes:

- ~~The all~~ All exteriors of the Historic Heritage Item scheduled heritage item is are protected. Any exceptions are notated in Schedule 30.1
- ~~The extent of setting of the scheduled heritage item has been identified on the Heritage Record to protect the surroundings of the item and is important to ensure the context and heritage value of the scheduled item are not eroded.~~
- The 'Extent of Setting' provides the context when considering effects pertaining to the setting of an item under the zone provisions. The 'Extent of Setting' is either identified as being the title boundary of the Historic Heritage Item or, a specifically identified area surrounding the item. When the Extent of Setting' does not align with the legal boundaries as identified by the Record of Title the area is identified in Scheduled 30.1 A - Heritage Item Extent of Setting diagram.

- The information contained in Schedule 30.1 is the not comprehensive or exclusive record of an item. Detailed information, including the individual Waikato District Council Historic Heritage Item Record for each item is contained in the Waikato District Heritage Inventory. Absence of any reference to a feature of a Historic Heritage item **does not** indicate that the feature is of no interest and can therefore be altered or removed without consent.
- The Waikato District Heritage Inventory provides information on an Historic Heritage Item's significance, a description of the Historic Heritage Item's setting, and in some instances pictorial evidence. However, it does not form part of any rule in the district plan.
- ~~Reference needs to be made to the assessment reports prepared for each individual heritage item to determine their heritage values (Waikato District Council Historic Heritage Item Record Form,~~ should be made to the Waikato District Heritage Inventory when considering works to a Historic Heritage Item or within the 'Extent of Setting' of an item. The heritage reports will assist with assessing the effects of development proposals (land use and subdivision) on the heritage values of a Historic Heritage Item.
- The Waikato District Heritage Inventory is a living document and will be updated and revised from time to time as additional information becomes available. This does not affect the listing of Historic Heritage Items in the District Plan.

55. The final change recommended to Schedule 30.1 is the actual format of the table to remove the reference to the heritage records, and replace that with how the extent of setting is defined (either via the legal boundaries of the site; a diagram or building footprint, and that information being shown as a notation on the planning maps, and when the extent of setting does not align with the Record of Title boundaries a diagram will be provided in a new Schedule 30.1A). I have also taken to opportunity to renumber the items and add the Waikato District property ID reference to assist with the administration of the information.

56. Below is the reworded section I now recommend for the Schedule 30.1 table (refer to Appendix 5a):

Schedule 30.1 Historic Heritage Items

TUAKAU								
NEW ID #	Historic Heritage Item	Property location Address	Property Number	Ranking	H.P.T. CAT HNZPT List Classification	Planning Map Number	Summary of Heritage Significance	Significant Features to be Protected WDC <u>Historic Heritage Item Record Form-Hyperlink Extent of Setting (Legal boundaries; or refer to Schedule 30.1 A diagrams)</u>

57. Below is the new Section 30.1A I now recommending to accompany Schedule 30.1 table (refer to Appendix 5b):

Schedule 30.1A - Extent of Setting for a Historic Heritage Item

<u>TUAKAU</u>		
<u>ID #</u>	<u>Historic Heritage Item</u>	<u>Extent of Setting for a Historic Heritage Item</u>

58. As a result of this recommendation, the preparation of the individual Extent of Setting diagrams will need staff resources. This work is underway and will be completed before decisions deliberations occur.⁶

Individual scheduled sites

59. Dr McEwan has advised that there was no evidence presented at the hearing that either changed her assessment or prompted her to revise an assessment

Kosoof House, 40 Main Street, Huntly

60. At the hearing the Kosoofs' spoke in support of their further submission [FS1097.1]. With a particular focus on the matter of an oral agreement between themselves and Council. They also provided historic background about their family, who designed the house at 40 Main Street, Huntly and the reasons for its design.
61. Dr McEwan has advised that the additional information about the building's history added to the building's heritage significance.
62. I have been advised that Council have checked the property files and have not found evidence of an agreement. Council's legal advisor, Ms Parham, has advised that even if an agreement existed, it would not be a jurisdictional barrier to the Hearings Panel determining that 40 Main Street, Huntly should be scheduled in the district plan as a historic heritage item. Any agreement, if it existed, sits outside the RMA and is a civil matter between the parties.
63. Ms Parham has advised that in making decisions on submissions, the Panel must have regard to the matters set out in the RMA including an evaluation under section 32AA; and that there is no legal ability for Council to contract out of those statutory requirements (in circumstances where a building would otherwise meet the heritage significance warranting protection). Accordingly, the RMA enables restrictions to be placed on the rights of private landowners provided the provisions meet an evaluation test under section 32AA. The evaluation supporting the scheduling of the Kosoof House is in Section 9.1.10, page 178 of my s.42A report.

Te Mata School Building, Harrisville School Teacher's house and the Tamahere School Building

64. In responding to the Hearings Panel query regarding the scheduling of the Te Mata School Building, Harrisville School Teacher's house and the Tamahere School Building within Ministry of Education's designated sites, Council's legal advisor, Ms Parham, provided advice, in particular highlighting the decision to Plan Change 7 to the Auckland Unitary Plan : Additions to Schedule 14 Historic Heritage. This plan change is relevant in considering the

⁶ Due to the additional work required to translate the extent of setting into diagrammatic form this work has yet to be completed. Carolyn Wratt to advise of timeframes.

scheduling of the three school buildings. Ms Parham highlighted the decision made by the Independent Commissioners for the Auckland Council dated 20 February 2019 that:

“[168] We find that the buildings should be incorporated in Schedule 14.1. We do not consider that the presence of a designation is reason to not schedule a building (even if the ultimate consequence of the designation could mean removal or demolition of a heritage building). We accept that the scheduling of the building is likely to introduce additional matters that may need to be transacted with Outline Plans are submitted to Council for comment. However, we do not consider that this uncertainty is sufficient to over-turn the scheduling of what are clearly important heritage buildings.”

65. Notwithstanding the above, to avoid the degree of confusion the Ministry is concerned will occur. Ms Parham suggested to the Hearing Panel that an advice note could be added to Schedule 30.1 to address the effect of the designation on these three scheduled items.
66. In considering Ms Parham’s advice, I consider this would ensure all parties are made aware of the site specific dynamics for the three scheduled items. Therefore, I recommend the following advice note be added to the entry in Schedule 30.1 for Te Mata School Building, Harrisville School Teacher’s house and the Tamahere School Building:

[The setting is subject to a designation for ‘Education Purposes’. Any proposed works undertaken in accordance with the designation purpose will prevail over the historic heritage provisions in the district plan, including the scheduling in this schedule.](#)

Scheduling Confirmation

67. Council has taken the opportunity, between the hearing and tabling of this closing statement to have an independent heritage expert review the five items Dr McEwan and I disagreed about scheduling, being:
- 14 Galileo Street, Ngaruawahia⁷
 - 11 Bow Street, Raglan
 - 19 Bow Street, Raglan⁸
 - Whatawhata Cemetery NZ War Memorial
 - Ngaruawahia NZ War Memorial⁹
68. Ms Chessa Stevens, Principal Conservation Architect & Heritage Consultant, WSP visited and prepared an assessment on all five items in August and furnished her report to Council on 26 August 2020 (Appendix 7).
69. Ms Stevens has recommended four of the five should be scheduled. Ms Stevens has not recommended the scheduling 19 Bow Street, Raglan. She states that while it has “some architectural, historic and cultural significance in the local context,” the building has been modified and “*the impact that these modifications have had on its architectural significance and its contribution to Bow Street, mean that it is difficult to justify its inclusion in Schedule 30.1, even as a Category B building*”. Noting that Ms Stevens commented that if rescheduling was pursued she would “recommend that the scheduling is limited to the extent of the footprint of the historic building only”.¹⁰
70. As a result, I now recommend removing 19 Bow Street, Raglan from Schedule 30.1; and apply the B ranking as determined by Ms Stevens for the other four items.

⁷ Schedule 30.1 Historic heritage s.42A report, section 9.1, paragraph 518-526, pages 157-158

⁸ Schedule 30.1 Historic heritage s.42A report, section 9.1, paragraph 527-538, pages 158-159

⁹ Schedule 30.1 Historic heritage s.42A report, section 9.1, paragraph 622 - 630 pages 170-172

¹⁰ WSP report - Waikato District Council: Heritage Significance Assessments for District Plan Review, August 2020, page 26

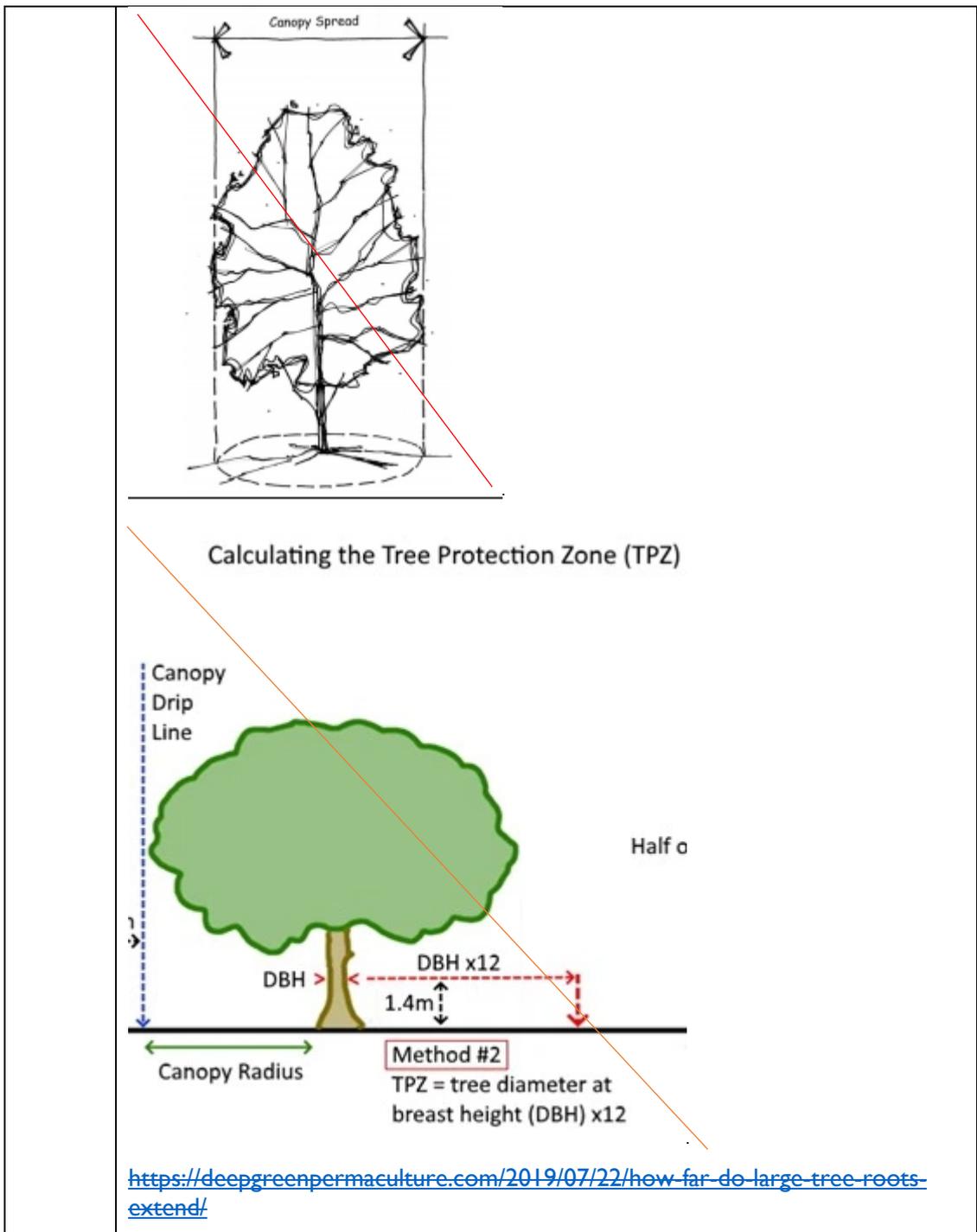
NOTABLE TREES

Definition of ‘dripline’

71. The Hearings Panel sought clarification on the proposed wording for the definition of ‘dripline, specifically querying why there was the use of the ‘tree protection zone’ within the definition; and questioned the clarity of the proposed diagram that accompanied the definition.
72. In consultation with Mr Sirl and Mr Gordon, the following revised definition is recommended. This revised definition removes the potential for confusion to apply a formula and specifically addresses how to determine the dripline for either a spreading or columnar canopy tree species; it also provides a simplified diagram and highlights the definition applies to both deciduous and evergreen tree species.
73. The revised wording recommended¹¹:

Dripline	<p>Means the circular area of ground surrounding a notable tree. For trees with:</p> <p>A spreading canopy - the area that extends from the trunk to the outer most extent of the tree’s canopy spread (branch structure with or without leaf coverage);</p> <p>An upright or fastigiated or columnar canopy - the area that extends from the trunk to a radius half the height of the tree.</p> <div style="text-align: center;"> </div> <p>Means the ground beneath the foliage of a tree area surrounding a tree known as the Tree Protection Zone (TPZ). The extent of the TPZ is determined by the canopy spread (branch structure with or without leaf coverage), or the formula as identified below for an upright or fastigiated tree:</p>
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¹¹ Diagram taken from the New Plymouth Proposed District Plan, copied August 2020



Notable Tree Rules

74. The Hearings Panel sought clarification on the proposed wording of the Notable Tree - Trimming rule. In particular, the use of the phrase “best arboricultural practise” because of the difficulty of administering the standard if that phrase was used.
75. In consultation with Mr Sirl and Mr Gordon, it is acknowledged that stating “best arboricultural practice” could be problematic. However, they have advised me that any works to notable trees must be undertaken correctly to ensure both the health of the tree and its STEM score is maintained. Accordingly, there is a need for a level of control to guide plan users as to the expectations when carrying out works on a notable tree. As a result, it is recommended that the rule is further modified to provide greater clarity about

the level of expertise necessary to do works to a notable tree. As a consequent of this amendment, I also recommend the reference to “works” in the permitted activity standard for Notable Tree - removal or destruction is deleted to ensure consistent use of terminology.

76. I have also taken this opportunity to refine the recommended language of the standards in consultation with Messrs Sirl and Gordon to ensure best practice, easy of interpretation, and good plan administration through consistency across the zones.
77. Below sets out the recommended modifications to the notable tree standards under each zone:

Notable tree – Trimming

PI	(a) The trimming of a notable tree identified in Schedule 30.2 (Notable Trees) to remove dead, dying, or diseased branches; or <u>no more than 10% of live foliage with a maximum branch diameter-not exceeding 50mm at the point of severance in any single consecutive 12 month period must comply with the following conditions:</u> (i) <u>All trimming must retain the natural shape, form and growth habit of the tree species.</u> (ii) <u>All tree works are undertaken by a competent arborist.</u>
RD1	(a) The trimming of a notable tree that does not comply with Rule ##### PI. (b) Council’s discretion is restricted to the following matters: (i) Timing and manner in which the activity is carried out; <u>and</u> (ii) Effects on amenity values; <u>and</u> (iii) <u>Effects on heritage values; and</u> (iii) <u>Effects on the natural shape, form and growth habit of the tree species.</u>

Notable tree – removal or destruction

PI	Removal or destruction of a notable tree identified in Schedule 30.2 (Notable Trees) where certification is provided to Council from an <u>an works</u> arborist that states that the tree is dead, dying, diseased or unsafe <u>in accordance with Appendix 11 Tree Removal Certificate.</u>
C+ <u>RD1</u>	(a) Removal or destruction of a tree identified in Schedule 30.2 (Notable Trees) that does not comply with Rule ##### PI. (b) Council's control <u>discretion</u> is limited <u>restricted</u> to the following matters: (i) Timing and manner in which the activity is carried out; (ii) Effects on amenity values; and (iii) Effects on heritage values.

Notable tree – Activities within the dripline

PI	(a) Any activity within the dripline of a notable tree identified in Schedule 30.2 (Notable Trees) must <u>not comply with all of the following conditions:</u> (i) No <u>involve</u> excavation, compaction, sealing or soil disturbance <u>and or</u> placement of fill material <u>or cleanfill</u> , except for the sealing of an existing road or footpath; (ii) No <u>involve</u> parking or storage of materials, vehicles or machinery; (iii) Discharge of an eco-toxic substance; and (iv) No <u>Involve</u> construction of structures.
RD1	(a) Any activity <u>within the dripline of the notable tree</u> that does not comply with

	<p>Rule ##### PI.</p> <p>(b) Council’s discretion shall be restricted to the following matters:</p> <p>(i) Location of activity in relation to the tree;</p> <p>(ii) Timing and manner in which the activity is carried out;</p> <p>(iii) Remedial measures;</p> <p>(iv) Effect on the health <u>and vitality</u> of the tree; and</p> <p>(v) Amenity values.</p>
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Schedule 30.2 Notable Trees

78. At the hearing, and outlined in the s.42A report, the Hearings Panel were advised that a further technical review of Schedule 30.2 was required to remove any remaining inaccuracies Council’s arborists had identified since the release of the s.42A report. The WDC submission [697] provides the scope for amendments to Schedule 30.2 to correct duplications, editorial errors and improve the accuracy of the information provided by the schedule.
79. Mr Sirl and Mr Gordon have, as outlined at the hearing, undertaken a full review of Schedule 30.2 Notable Trees to check the accuracy of the listings; that the trees proposed to be scheduled meet the minimum 160 STEM point criteria for protection along with checking site details and removing any trees that no longer physically exist (are dead or been felled). All trees scheduled now have an up-to-date STEM sheet supporting section 32AA. Noting I am not recommended that these sheets be anchored into the district plan.
80. The attached Schedule 30.2 - Notable Trees format has also been revised to enable better plan administration and site identification. (Appendix 6 - Schedule 30.2). Like the item order proposed for historic heritage, the Notable Tree Schedule is now organised in areas (Tuakau, Pokeno, Te Kauwhata, Huntly, Ngaruawahia, Raglan and Eastern Sector). The format recommended for the revised Schedule 30.2 table:

Tuakau			
New ID	Description	Address	Property Number

81. As a result of the review, 23 inventories from the notified version of Schedule 30.2 have been removed (refer to Appendix 8 - WDC Arborist Schedule). These being:

Notified Schedule #	Description	Address
9	Oak	High Street Pokeno
13	Oak tree	26 Gateway Park Drive Pokeno
23	Norfolk pine and liquidambar trees	733 Waiuku-Otaua Road Otaua
31	Red flowering Gum	37 Waerenga Road Te Kauwhata
36	Horizontal elm	59 Te Kauwhata Road Te Kauwhata

41	Assorted	75 Te Kauwhata Road Te Kauwhata
46	Pohutukawa	270 Hetherington Road Rotongaro
47	Gum, redwood, blackwood, chestnut and poplar	Rosser Street Huntly
50	Liquidambar, pin oaks, tulip tree	26 Harlock Place Huntly
64	Eucalyptus	629 Hakarimata Road Ngaruawahia
66	Rimu (female)	22 Wadham Road Ngaruawahia
80	Lime	8 Sampson Street Road Berm Berm
85	London plane	Market Street Ngaruawahia
95	Eucalyptus	Galileo Street Ngaruawahia
110	Indian cedar	455 State Highway 26 Newstead
127	White poplar	61 Marine Parade Raglan
138	Cedar	8 Titoki Drive Tamahere
139	Magnolia	8 Titoki Drive Tamahere
149	Rhododendron 'Sir Robert Peel'	14 Tamahere Drive Tamahere
150	Horsetail or Sheoak	92 Tamahere Drive Tamahere
154	English oak	47B Pencarrow Road Tamahere
155	English oak	69C Pencarrow Road Tamahere

82. As outlined in the s.42A report, due to the mapping work involved, the map notations for the revised list of scheduled trees will be incorporated into the final set of decision maps.

Individual scheduled trees

83. At the hearing, Ms Angeline Greensill on behalf of Tainui o Tainui [942] identified three specific trees at Raglan that should be scheduled for their cultural significance as marker

trees, noting that over time a number of marker trees have been felled.¹² The three trees being a:

- White-flowering Puriri tree at 166 Whaanga Road
- Puriri tree opposite 656 Wainui Road
- Pohutukawa tree at Whale Bay (off Whaanga Road)

84. Messrs Sirl and Gordon have undertaken STEM assessments on those three trees. As a result of the STEM assessment only the White-flowering Puriri tree met the minimum 160 score.
85. However, because 'cultural significance' is not a STEM assessment criteria the matters raised by the submitter as important for the scheduling could not be attributed to their score.
86. Nevertheless, as it has been confirmed that all three trees have cultural significance to Mana Whenua of the area, I recommend taking a conservative approach and schedule all three trees in Schedule 30.2 to ensure they are afforded protection.

CONCLUSION

87. Heritage protection is achieved by promoting the sustainable management of this physical resource and encouraging adaptive re-use while avoiding the possibility of sterilising the associated land resource.
88. As I stated in my opening statement the forefront in my consideration of the above amendments to the recommendations I proposed in my s.42A report or modified through my rebuttal evidence is to ensure the balance of the protection and the sustainability of resources, being either the heritage resource or the land resource the actual building or tree is located on.
89. My recommended amendments apply best practice for the protection of historic heritage; efficiently and effectively achieve the purpose of the RMA, achieves the directions for the protection of historic heritage under the Waikato Regional Policy Statement and provides the framework to enable adaptive re-use and encourage the continued use of scheduled items.
90. The revised planning provisions ensures best practice is applied, good plan administration can be achieved, the historic heritage and notable tree provisions have consistency of terminology, and are robust and defensible. In my opinion, reformatting the information provided through Schedule 30.1 will ensure greater certainty of there being defensible, robust planning provisions and plan administration.
91. The further refinement set out in this closing statement of the planning provisions for Historic Heritage and Notable Trees strengthen the direction originally proposed through the recommendations in the s.42A report.

¹² Tainui o Tainui submission [942], page 12

APPENDICES

Appendix 1 – Chapter 7 - Historic Heritage - Revised Recommended Amendments

Appendix 2 – Chapter 12 - How To Use And Interpret The Rules - Revised Recommended Amendments

Appendix 3 – Chapter 13 - Definitions - Revised Recommended Amendments

Appendix 4 – Zone Rules - Revised Recommended Amendments

Appendix 5a – Schedule 30.1 - Historic Heritage Items - Revised Recommended Amendments

Appendix 5b – Schedule 30.1A - Extent of Setting for a Historic Heritage Item

Appendix 6 – Schedule 30.2 - Revised Recommended Amendments

Appendix 7 – WSP Assessment report

Appendix 8 – WDC Arborist Tree Schedule