

SECTION 42A REPORT

Opening Statement

Hearing 14: Historic Heritage and Notable Trees

Prepared by: Alice Morris

Date: 28 July 2020



INTRODUCTION

1. My full name is Alice Jane Morris, and I am the writer of the s42A report for Hearing 14: Historic Heritage and Notable Trees; and the author of the rebuttal evidence in relation to this topic.
2. I am a Principal Planner in the City Planning Unit at Hamilton City Council ('HCC'). HCC is giving Waikato District Council ('WDC') assistance in providing a staff resource.

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 (because of Covid-19, graduation was postponed and rescheduled to 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 and rebuttal; and continue to comply at this hearing.
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. Noting that I have not assessed or made recommendations on HCC's specific submission point [535.85] seeks the scheduling of the relocated St Paul's Presbyterian Church (formerly from London Street, Hamilton). This submission point has been addressed by Betty Connolly, Senior Planner, Waikato District Council (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.

Preparation of the s.42A report

10. The scope of the s.42A report was to evaluate submissions and further submissions received in relation to the provisions related to historic heritage and notable trees.
11. In preparing the s.42A report, and for technical matters at this hearing, I rely on expert advice from:
 - Dr Ann McEwan, Heritage Consultancy Services on historic heritage matters; and
 - Messrs Grant Sirl and Kevin Gordon, Waikato District Council on arboricultural matters.

Purpose of this Opening Statement

12. I do not intent to cover my recommendations in detail, set out in either my s.42A report or rebuttal evidence. My opening statement will provide a broad overview of:
 - The planning framework of the protection of historic heritage and notable trees
 - Overview of the submissions and main themes
 - Summary of recommended amendments
 - Matters of contention raised in submitter evidence

THE PLANNING FRAMEWORK OF THE PROTECTION OF HISTORIC HERITAGE AND NOTABLE TREES

Statutory

13. Historic Heritage is a matter of national importance. The legislative protection for the retention and management of identified historic heritage is addressed via two statutes, the Heritage New Zealand Pouhere Taonga Act 2014 and the Resource Management Act 1991.
14. The purpose of Heritage New Zealand Pouhere Taonga Act ('HNZPTA') is to promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand (Section 3, HNZPTA). HNZPTA provides the statutory direction for Heritage New Zealand Pouhere Taonga ('HNZPT') who administers the New Zealand Heritage List/Rarangi Korero ('the List'), regulates the protection of archaeological sites and heritage covenants. HNZPT, with the exception of regulating the protection of archaeological and pre-1900 sites, has an advocacy role in the protection of historic heritage.
15. The Resource Management Act 1991 ('RMA') identifies historic heritage as a matter of national importance (Section 6(f), RMA). Regional and territorial council are required to ensure the historic heritage of their respective jurisdiction is protected. Heritage protection is achieved by promoting the sustainable management of this physical resource, and an absence of protection leaves the heritage items vulnerable to demolition or deterioration and therefore not sustained for future generations. The protection of built heritage and post-1900 sites is totally reliant on how territorial authorities schedule the protection of identified buildings, items and sites in their district plan.
16. The National Planning Standards seek to provide a standard format for district plans across the country. The management of historical and cultural values under the direction of the National Planning Standards, is for all relevant provisions to be contained in identified chapters within the section of the district plan headed 'Part 2 – District Wide Matters': Historical and Cultural Values.

Historic heritage in the Waikato District

17. The Waikato is a source of rich history in terms of the growth of New Zealand as a nation.
18. The management of historic heritage in the Waikato region cascades from the Waikato Regional Policy Statement ('WRPS'). Policy 10.1 Historic Heritage, of the WRPS provides direction on the management of Waikato's historic heritage; specifically the collaborative, consistent and integrated management of historic and cultural heritage resources. The aim is to improve understanding, information sharing and cooperative planning to manage or protect heritage resources across the region.
19. In the context of the Waikato District there is a legacy of Historic heritage items that reflect the lives and work of former residents, events and industries. These items and sites provide a valuable link to the past for both present and future generations. It is important that these heritage items are protected so the community can understand its past while looking to the future.
20. Waikato District Council provides the protection and management of the district's historic heritage through the relevant provisions of Operative District Plan ('ODP') and since notification also the historic heritage provisions under the Proposed District Plan ('PDP') in accordance with section 86F of the RMA as having immediate effect¹

¹ Waikato District Council also administers non statutory tools for the protection of the district's historic heritage, the Waikato Heritage Policy and the Waikato District Heritage Strategy and offers a heritage fund.

21. One component of the district plan review was a review of the ODP's historic heritage and notable trees provisions, as well as consideration of a full refresh of the items protected. Council employed external expertise to undertake those reviews.
22. The key difference between the ODP and the PDP are the changes to the scheduling of items to be protected.
23. The PDP does not articulate how historic heritage and notable trees have been determined to be of value for scheduling, and lacks direction for plan users to determine whether such values remain/should be retained as part of a resource consent process. However, the structure of the rule framework proposed in the PDP aligns with that in the ODP:
 - The use of 'A' and 'B' ranking for historic heritage;²
 - The use of the STEM scoring method for notable trees;³
 - how ranking is applied, and the suite of provisions anchored in the individual zone chapters.
24. Under the PDP, the district's significant historic heritage and notable trees are protected through the policy framework in Chapter 7 – Historic Heritage, Appendix 3: Design Guidelines, Schedule 30.1 Historic Heritage Items and Schedule 30.2 - Notable Trees, and specific provisions to protect identified heritage items, sites and notable trees in each of the following zone chapters:
 - Chapter 16: Residential Zone
 - Chapter 17: Business Zone
 - Chapter 18: Business Town Centre Zone
 - Chapter 20: Industrial Zone
 - Chapter 21: Industrial Zone Heavy
 - Chapter 22: Rural Zone
 - Chapter 23: Country Living Zone
 - Chapter 24: Village Zone
 - Chapter 25: Reserve Zone
25. In each of these zones the provisions relating to demolition, relocation and removal, maintenance and repair, alterations and additions, site development and subdivision (with the exception of the Reserve zone where there is no subdivision provisions) for historic heritage; and removal or destruction, trimming, and activities within the dripline for notable trees are identical.
26. In the Residential zone there are additional provisions relating to heritage precincts and battlefield view shafts.

OVERVIEW OF THE SUBMISSIONS AND MAIN THEMES

27. 326 submission points, and 97 further submission points were received on the topic of Historic Heritage and Notable Trees. There were three key themes from the submissions:

² S.42A report, section 9.1, paragraph 495, page 149 -

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

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

³ STEM - NZ Standard Tree Evaluation Method

- a. Objectives policies and rules for built heritage and notable trees
 - b. The reinstatement and introduction of heritage precincts
 - c. Amendments to Schedule 30.1 (Heritage Items) and Schedule 30.2 (Notable Trees)
28. Heritage New Zealand Pouhere Taonga [559] and Waikato District Council [697] made substantial number of submissions on this topic. Both submitters sought amendments to the objectives, policies, rules, method of scheduling, definitions and the inclusion of additional items (built heritage and notable trees).
 29. WDC submissions have been broad to enable the correction of inaccuracies in both the structure and content of the schedules and to ensure alignment of the text for both historic heritage and notable tree rules in each zone that were identified post notification.
 30. HNZPT have sought a suite of amendments to ensure a stronger heritage focus.
 31. A number of submission points sought the protection of notable trees through a 'blanket approach' rather than via individual trees.
 32. The recommendations relating to ranking and map notations will, if accepted by the Hearings Panel require further work to finalise the ranking of heritage items or the correction to mapping notations.

SUMMARY OF RECOMMENDED AMENDMENTS

Historic Heritage:

33. There are no substantial amendments proposed to the historic heritage objective and policies as notified. The amendments I have recommended do not alter the fundamental direction of the protection of heritage in the district.⁴
34. The amendments I recommend to the zone provisions ensure best practice is applied in the ability to both protect and use heritage items/sites; they correlate with the amendments sought by WDC to ensure the rules for historic heritage under each zone have the same text; and the amendments sought by HNZPT.
35. My recommended changes also ensure alignment between the definition of activities managed through the historic heritage provisions under each zone to avoid confusion as to when an activity should cascade upon non-compliance with the standard. For instance, under the ODP and the notified version of the PDP maintenance and repair is permitted unless it affects features and then cascades to restricted discretionary, and the same occurs for additions and alterations. However, in my opinion, there should be clear distinctions between what should be deemed maintenance and repair verses additions and alterations verses demolition/relocation and the cascade should be from one activity to another. Through the submissions from both WDC and HNZPT I have recommended amendments to enable that clear separation and cascade of the activities that occur to a heritage item and how that should be sustainably managed:
 - Permitted Activity - Maintenance or repair - if replacement materials are the same as, or similar to, the original in terms of colour, texture, form and design to the original that it replaces. This correlates with the definition for maintenance and repair.
 - Restricted Discretionary Activity - Alterations or addition to a heritage item in Schedule 30.1 (Heritage Items). The determination of what constitutes an alteration or addition verses maintenance and repair lying with the definitions of these different activities.

⁴ s.42A report, section 6, paragraphs 84 - 211, page 28 -52.

- Discretionary Activity - Demolition, removal or relocation of any B Ranked heritage item listed in Schedule 30.I (Heritage Items)
- Non Complying Activity - Demolition, removal or relocation of any A Ranked heritage item listed in Schedule 30.I (Heritage Items)

36. In addition to these rules, the purpose of the 'site development' rule in each zone chapter is to manage the effects of works proposed to be undertaken within the setting of a scheduled item. It is important to ensure development within the setting of a scheduled item does not impact on the item's heritage values. This rule is applied in the Waikato section of the ODP and was replicated in the notified PDP. As written, this rule is reliant on understanding what is meant by 'development'. The notified structure of this rule relies on arbitrary controls (e.g. retaining a separation district of 10m from the scheduled item). As I stated in my s.42A, because 'development' is not defined in the plan and the existing conditions cannot be justified, the extent of what is considered development as a permitted activity needs to be expressed in the rule; that then can cascade if those conditions are exceeded.⁵
37. I consider the recommended amendments as briefly address above will provide greater guidance for plan users on the management of scheduled items, and enabling the continued use or adaptive re-use of the resource.
38. Under the PDP, Schedule 30.I is a table listing the individual heritage items and implies only certain features are protected. There is no guidance on what the historic heritage ranking means, how to apply an assessment of the heritage values afforded to those items, and to understand why items have been scheduled. To improve this, I have recommended applying an explanation of the differences are between the A and B ranking for historic heritage and the criteria set out in the RPS and utilised by Dr McEwan as part of her assessments that have formed the heritage reports for each scheduled item. ⁶
39. To ensure best practice is applied in the protection of historic heritage, I have recommended removing any reference to 'specific features'; with reliance being placed on the information within each individual heritage record instead. The heritage records, prepared by Dr McEwan in determining whether an item should be scheduled and the ranking to be applied, set out the heritage value, reasons for an item's protection and the extent of its setting. This information is of great assistance to holistically consider the proposed actions to a heritage item.
40. The present format of the PDP removes that holistic approach and renders the heritage item's importance to the protection of only certain features. Meaning there is a higher potential for the overall heritage value of an item to be lost. This is not best practice.
41. The determination of scheduling individual items has been reliant on the expert advice from Dr McEwan. Dr McEwan will expand on the approach she took in reviewing the ODP schedule, the historic heritage resources the district has and her opinion on the recommendations.
42. A number of submitters sought either the reinstatement or addition of certain buildings and structures onto Schedule 30.I. All of these requests were assessment by Dr McEwan and thirteen additional items were recommended to be added to Schedule 30.I.
43. I wish to highlight at this point that five of those thirteen items recommended be scheduled were not considered by Dr McEwan to warranted protection. As I state in my s.42A report, while it is not normal to go against the advice of the expert, in this case, the opportunity to provide heritage protection is not readily available so I have taken a more conservative approach to recommend protection, as once removed from the schedule there is no statutory protection afforded these items; and they could be lost. The five items are:

⁵ s.42A report, section 7.6, paragraphs 354 - 366, pages 97-98

⁶ s.42A report, section 9.1, paragraph 494, pages 147 - 150.

- 14 Galileo Street, Ngruawahia⁷
 - 11 and 19 Bow Street, Raglan⁸
 - Whatawhata Cemetery NZ War Memorial and Ngaruawahia NZ War Memorial⁹
44. No changes have been made to the planning provisions relating to heritage precincts as a result of the submissions which sought the reinstatement of the heritage precinct over Rangiriri under the ODP and a new precinct at Raglan.¹⁰

Notable Trees:

45. There are no amendments proposed to the notable tree objective and policies as notified.¹¹
46. The amendments I have recommended to the zone provisions for the removal/destruction, trimming and works within the dripline of a notable tree are to ensure best practice is applied, and to ensure there is consistency in the text of these rules, under each zone.¹²
47. Under the PDP, there is presently no explanation of guidance on how the trees have been assessed for protection, or what should be used to assess proposals that could affect the notable tree. To improve this, I have recommended (in addressing the submission by Federated Farmers of New Zealand [680.115]) the introduction of a section at the start of the schedule to explain the type of assessment used (e.g. STEM method for the assessment of trees).¹³
48. The WDC submissions [697] seeking amendments to Schedule 30.2 were sought to correct duplications, editorial errors and improve the accuracy of the information provided by the schedule. Since the release of the s.42A report in June, Council's arborists have further reviewed the information contained in Schedule 30.2. As a result of this work, I have been advised that it would be their preference to undertake a wholesale technical review of Schedule 30.2 as recommended in the s.42A report to comply remove any other potential inaccuracies that may still exist, so there can be confidence with the information. The detail of this further work will be addressed by Messrs Sirl and Gordon.

MATTERS OF CONTENTION RAISED IN SUBMITTER EVIDENCE

49. I have considered the evidence provided by the following submitters on the following matters and advise that nothing has not caused me to change my recommendations set out in the s.42A report :
- Scheduling of the following heritage items:
50. The Ministry of Education [781] seek the removal of Harrisville School Teacher's house, Tamahere School Building and Te Mata School Building from Schedule 30.1. I continue to support my original approach that these items should be scheduled.
51. HNZPT [559] have sought the Otaua Memorial Bowling Club, gates and associated boundary wall, 36 Maioro Road, Otaua be added onto Schedule 30.1. Dr McEwan advised the gates and associated boundary wall warranted scheduling but not the actual greens. This remains the recommendation.

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

¹¹ s.42A report, section 6, paragraphs 225 - 258, page 53 -59.

¹² s.42A report, section 7 paragraphs 406 - 449, page 115 - 135

¹³ s.42A report, section 6.8, paragraphs 227 - 233, pages 53-54.

Earthquake and Fire Safety provisions:

52. Ms Carolyn McAlley, on behalf of HNZPT filed evidence seeking the inclusion of specific Earthquake and Fire Safety provisions. I continue to support my original approach that fire safety and earthquake strengthening works can be adequately addressed under the umbrella of the policy and rule frameworks for additions and alterations.
53. Ms Christine Madsen and Ms Carolyn McAlley, on behalf of HNZPT filed evidence seeking a heritage precinct at Rangiriri. As outlined in my rebuttal:
 - Council's heritage expert, Dr Ann McEwan has advised that the existence of these two heritage items does not constitute the basis to apply a heritage precinct over the area.
 - I am not persuaded by points raised by Ms Madsen that it is necessary to have a "special zone to protect the area" and that the establishment of a heritage precinct will stimulate interest in the settlement and its history.¹⁴
 - I consider the suggestion by Ms McAlley that Council consider alternative management mechanisms may support the outcomes being sought by Ms Madsen.¹⁵
 - Such mechanisms are outside the scope of the district plan process.

Conclusion

54. In conclusion, the forefront of my consideration of the submissions relating to historic heritage and notable trees was the balance of the protection and the sustainability of the resource, either the actual building, tree or the site the protected item (structure or tree) is located on.
55. The recommended amendments to the PDP apply best practice for protection of historic heritage and notable trees; achieves the directions for the protection of historic heritage under the WRPS and provides the framework to enable adaptive re-use and encourage the continued use of scheduled items.
56. I consider the recommendations I have made to address the relief sought through submissions on the Historic Heritage and Notable Trees efficiently and effectively achieve the purpose of the RMA.

¹⁴ Ms Madsen's evidence, 6 July 2020

¹⁵ Ms McAlley's evidence, 7 July 2020, paragraph 5.13, pages 7-8