

BEFORE THE HEARING COMMISSIONER

**IN THE
MATTER OF**

**The Resource Management Act
1991 (the Act)**

AND

**IN THE
MATTER OF**

**Waikato District Council Proposed
District Plan:
Hearing 18-Rural Zone.**

**STATEMENT OF EVIDENCE OF CAROLYN ANNE MCALLEY FOR AND ON BEHALF OF
HERITAGE NEW ZEALAND POUHERE TAONGA**

1. INTRODUCTION

- 1.1 My name is Carolyn Anne McAlley. I hold the qualification of a Bachelor of Planning degree (1993) from Auckland University. I have over 20 years planning experience in local and regional government, in consenting, implementation and policy based roles.
- 1.2 I have been employed by Heritage New Zealand Pouhere Taonga (HNZPT) since August 2012, where part of my role includes providing statutory planning advice in relation to proposals under the Resource Management Act, including District Plans, Plan Changes and Resource Consent proposals.
- 1.3 Although this evidence is not prepared for an Environment Court hearing I have read the Environment Court Code of Conduct for Expert Witnesses Practice Note 2014 and have complied with it when preparing this evidence. I confirm that the topics and opinions addressed in this statement are within my area of expertise. I have not omitted to consider materials or facts known to me that might alter or detract from the opinions that I have expressed.

2. SCOPE OF EVIDENCE

- 2.1 HNZPT is New Zealand's lead heritage agency and operates under the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA). Included as the purpose of the HNZPTA is: *"To promote the identification, protection, preservation and conservation of the historical and cultural heritage of New Zealand."* HNZPT meets this purpose in a number of ways, including advocacy and active involvement in Resource Management Act 1991 (RMA) processes for heritage.
- 2.2 With regard the s42A-Subdivision for the Rural Zone, the HNZPT submission points 559.252, 559.259 and 559.264 are discussed in section 4.
- 2.3 With regard to the S42A-Land Use report for the Rural Zone, HNZPT concurs with the planner's recommendation for submission points 559.56, 559.287 and 559.54. I will discuss the outstanding points 559.286 and 559.85 further in section 4.
- 2.4 In preparing this evidence I have read the section 42A reports for the Council.

3. LEGISLATIVE FRAMEWORK

3.1 The purpose of the RMA is to “*promote the sustainable management of natural and physical resources*”. Section 5 of the Act states:

“In this Act, sustainable management means managing the use, development and protection of natural and physical resources in a way, or at a rate which enables people and communities to provide for their social, economic, and cultural well being and for their health and safety.

3.2 Section 6 of the RMA requires “*all persons exercising functions and powers under it, in relation to managing the use, development and protection of natural and physical resources to recognise and provide for:*

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

... 6(f) the protection of historic heritage from inappropriate subdivision use and development” (historic heritage includes sites of significance to Māori).

3.3 In terms of Part 2 RMA matters, historic heritage is part of the environment. Therefore adverse effects on historic heritage must be avoided, remedied or mitigated (as required by section 5).

3.4 The RMA defines historic heritage as:

(a) means those natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from any of the following qualities:

(i) archaeological:

(ii) architectural:

(iii) cultural:

(iv) historic:

(v) scientific:

(vi) technological; and

(b) includes—

(i) historic sites, structures, places, and areas; and

- (ii) archaeological sites; and*
- (iii) sites of significance to Māori, including wāhi tapu; and*
- (iv) surroundings associated with the natural and physical resources.*

4. HNZPT RESPONSE TO RECOMMENDATIONS OF THE PLANNERS REPORT

4.1 (a) Subdivision **Report**-Rule 22.4.3-Submission point 559.264.

- (i) HNZPT submitted in support (559.264) of Rule 22.4.3 relating to Title boundaries that provided for subdivision while not dividing Heritage Items and Sites and Areas of Significance to Māori (SASM) with proposed lot boundaries.
- (ii) The reporting planner has recommended the rewording of the Restricted Discretionary activity rule with the trigger being the “boundaries of every proposed lot containing any of the following” rather than using the words “must not divide” and has also recommended a change in activity status for those activities that do not comply with the restrictive activity status.
- (iii) While it is appreciated that the amendment of the restrictive discretionary activity is to provide clarity HNZPT would seek that the wording is further amended as follows:

*“RD1 (a) The boundaries of every proposed allotment containing any of the following
in their entirety:*

- (i) Significant Natural areas,*
- (ii) Heritage items etc.*

HNZPT considers that this amendment is required as this wording provides a clearer trigger point for when a proposed activity would trip to the next activity status, which would be when these items were not contained in their entirety within one allotment. As currently worded the movement between the two activities is potentially subjective.

- (iv) With regard to the proposed change of subdivision status from non-complying to discretionary when the activity does not comply with the restricted discretionary rule (the boundaries would retain the feature in one lot) HNZPT continues to seek that the non-complying activity status is retained. The retention of these types of features in one lot through the initial subdivision process is the key method to ensure the preservation and integrity of the historic heritage item into the future. Given that the items and their settings have been reviewed and considered significant the non-complying status is commensurate to the status of the items in the schedules and

aligns with the activity status sought in relation to other parts of the plan in relation to the destruction of items.

4.1 (b) **Subdivision Report** Rule-22.4.8 -Submission points 559.252 and 559.259.

- (i) HNZPT sought the retention of this rule that related to subdivision of lots containing heritage items or SASM, which the reporting planner has recommended to delete, advising it repeats Rule 22.4.3. I consider that the rules were not exactly the same, with rule 22.4.3 focusing on the retention of the heritage item in one lot and Rule 22.4.8 focusing on the nature of the subdivision giving regard to setting and context.
- (ii) The Panel may well decide that there is scope to accommodate the planner recommendations. However if there was only one rule to cover both matters I would seek that the more nuanced matters of discretion contained in Rule 22.4.8 are included into Rule 22.4.3.

4.2 (a) **Land Use Report- Rule** 22.2.6.1 Signs-Signs General-P2, RD1, request for an advice note, and any consequential changes as requested-Submission point 559.85.

- (i) The HNZPT submission point sought no signage on heritage sites and Māori sites of significance as a permitted activity, any signage to be restricted discretionary activity, a request for an advice note to link to other heritage controls and any consequential changes as required.
- (ii) Submission point 559.85 was part of the HNZPT generic submission point to the permitted signage rules in the Plan, to rules which vary between the zones with greater allowances in some zones for the size of signage than others. This methodology does not relate to the individual nature of heritage buildings hence the submission point seeking a restricted discretionary activity status to assess the effects of signage on buildings and SASM as the permitted activity standards are not sufficiently robust to ensure that the effects are managed on these important items.
- (iii) Of particular concern in this zone was the permitted activity size of 3m² for an identification sign, that HNZPT consider has the potential to adversely affect the heritage values of a building. I consider that this size of signage is too large to consider as a permitted activity and be attached to a building even if it is for the purposes of identification and interpretation. Matters such as the colour of the sign in relation to the building, the location of the sign in relation to the significant detailing of the building and the manner in which the sign is attached to the building would all need to be considered

through a consenting process to ensure any possible effects are minimized for a sign of this size.

- (iv) With regard to the matter in the submission for an advice note referencing other heritage rules, HNZPT would still seek this, if in the final version of the Plan, the signage rules for heritage buildings and SASM were located separately from the heritage rules.

4.2 (b) **Land Use Report** - Definition-Ancillary Rural Earthworks and works in a Site or Area of Significance to Māori-Submission points 559.286

- (i) HNZPT supported the definition of Ancillary Rural Earthworks subject to clarity being provided regarding the definition and its content and its activity status in relation to SASM. HNZPT was concerned about the types of earthworks that could occur in these sites without assessment. The reporting planner has advised that such works are to be assessed as a permitted activity.¹
- (ii) HNZPT understands that the majority of the SASM are within rural locations, with many of these sites appearing to be located in the Rural zone of the Planning maps. While “*earthworks*”² are to be assessed in the SASM sites as a restricted discretionary activity, with this writer assuming that a house, garage and driveway would require a resource consent, if the proposed activity was for example a new fertiliser storage pad or a silage pit and all the other activities listed as part of the Ancillary Rural Earthworks would be a permitted activity.
- (iii) I consider that many of the activities listed as part of the Ancillary Rural Earthworks, when undertaken for the first time have the potential to cause adverse effects to SASM. Given the effort that has been made to schedule these significant sites it appears remiss that the Plan would allow the potential for works of this scale to be undertaken in culturally significant sites. The Plan therefore requires further amendment to ensure that activities that have the potential to cause adverse effects are assessed in an appropriate manner as outlined in the HNZPT response in the SASM hearing report and in the earlier HNZPT submission and further submission points. The amendments sought to the definition recognise the existing use rights of many farm activities (s 10 of the RMA) and address the impact of new farming activities on the scheduled SASM. Amending this definition will enable some “new” activities that have the potential to cause adverse effects to SASM to be assessed under the earthworks rules for works in the SASM sites.

¹ Section 42A Land Use Hearing Report, Rural Zone, Para 223

² Defined term in the Proposed Waikato District Plan

(iv) I seek that the following **amendments** are made to the recommended definition of

Ancillary Rural Earthworks:

- (a) Means any earthworks or disturbance of soil associated with: cultivation, land preparation including establishment of sediment and erosion measures), for **existing** planting and growing operations **in existing locations**;
- (b) Harvesting of agricultural and horticultural crops **in existing locations** and forests (~~forestry~~); and
- (c) Maintenance ~~and construction~~ of **existing** facilities typically associated with farming ~~and forestry~~ activities, including but not limited to, farm/~~forestry~~ tracks, roads and landings, stock races, silage pits, offal pits, farm drains, farm effluent ponds, feeding pits, fertiliser storage pads, airstrips, helipads, ~~post holes~~, fencing, drilling bores, stock water pipes, water tanks and troughs, ~~the maintenance of on~~ farm drainage networks and erosion and sediment control measures.
- (d) **New activities-post holes for fencing**

and any further amendments to the Plan as required.

5. CONCLUSIONS

- 5.1 The RMA requires that the protection of the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wahi tapu and other taonga as a Matter of National Importance should be *recognised and provided for* as a Matter of National Importance (Section 6 (e) together with Historic Heritage (Section 6 (f)). As subdivision, use and development have the potential to significantly detract from Māori heritage and historic heritage, it is important that the Plan limit the potential for adverse effects to occur.
- 5.2 I seek that the amendments as sought by NZPT in this statement be retained at the time of the decision making.
- 5.3 I am able to answer any questions that you have relating to this statement.

Carolyn McAlley

For Heritage New Zealand Pouhere Taonga

