

SECTION 42A REPORT

Rebuttal Evidence

Hearing 20: Maaori Sites of Significance and Maaori Areas of Significance

Report prepared by: Sheryl Paekau

Date: 27 July 2020



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1 Introduction

1.1 Background

1. My name is Sheryl Paekau
2. I am employed by Waikato District Council as a Policy Planner and Kaiwhakamaahere (Policy Advisor).
3. I am the writer of the original S42A report for Hearing 20: Maaori Sites of Significance (MSOS) and Maaori Areas of Significance (MAOS).
4. In the interests of succinctness I do not repeat the information contained in section 1.1 to 1.4 of that S42A Hearing Report for MSOS and MAOS and request that the Hearings Panel take this as read.

2 Purpose of the report

5. In the directions of the Hearings Panel dated 26 June 2019, paragraph 18 states:
If the Council wishes to present rebuttal evidence it is to provide it to the Hearings Administrator, in writing, at least 5 working days prior to the commencement of the hearing of that topic.
6. The purpose of this report is to consider the primary evidence and rebuttal evidence filed by submitters.
7. Evidence was filed by the following submitters within the timeframes outlined in the directions from the Hearings Panel¹:
 - a. Mark Crisp on behalf of Riverdale Group Limited [719.1 and 719.2]
 - b. Carolyn Anne McAlley on behalf of Heritage New Zealand Pouhere Taonga [several submissions and further submission points].
8. Tim Lester on behalf of Blue Wallace Surveyors Ltd [FS987.1] sought an extension of time from the Hearings Panel to submit evidence. The Hearings Panel agreed to this extension and evidence was lodged by Mr Lester by 5pm on Wednesday 15 July 2020.

3 Consideration of evidence received

3.1 Matters addressed by this report

9. The main topics raised in evidence and rebuttal evidence from submitters included:
 - a. Submissions on general content and structure
 - b. Determination of “significance” of identified MSOS and MAOS sites.
 - c. Consideration of minor earthworks and earthworks as permitted activity.
 - d. Earthworks and the inclusion of Waahi Tapu.

¹ Hearings Panel Directions 21 May 2019

10. I have therefore structured my response to this content and addressed the submitters' evidence provided.

4 Determination of “significance” of MSOS and MAOS sites

4.1 Analysis

11. Mr Lester on behalf of Blue Wallace Surveyors Ltd [FS987.1] lodged evidence expressing concern that the Proposed District Plan and my recommendations in the s42A report did not involve a balanced evaluation of MSOS and MAOS sites before including them in the Proposed District Plan. In particular, Mr Lester is concerned that an MSOS or MAOS may not be appropriately identified and delineated, and may not be representative of the significance of the site.
12. He also expresses concern that the analysis (and decision to include such sites in the district plan) does not adequately recognise the constraints imposed by such an annotation, nor the potential significant economic and financial burden to landowners. He seeks that the level of significance of the site be clearly articulated so as to not unreasonably restrict a landowner's development rights.
13. I note that the further submission from Blue Wallace Surveyors Ltd was in relation to a submission from Brian Nabbs and Margaret Forsyth [978.1], whose submission was specific to the property at 212D Newell Road, Tamahere. I note that the evidence from Mr Lester is distinctly broader in scope than the original submission, however in good faith I have addressed all the points raised in Mr Lester's submission.
14. In my s42A report, I recommended that there be no change to the MSOS location on the property at 212D Newell Road, Tamahere². The NZAA information for site S14/117 provided a good level of information. The site relates to the Paa that is surrounded by a large area of garden soils and borrow pits that have been affected by rural residential subdivision over the years, for European settlement (as shown in the following images).

² Paragraph 118 of the s42A report

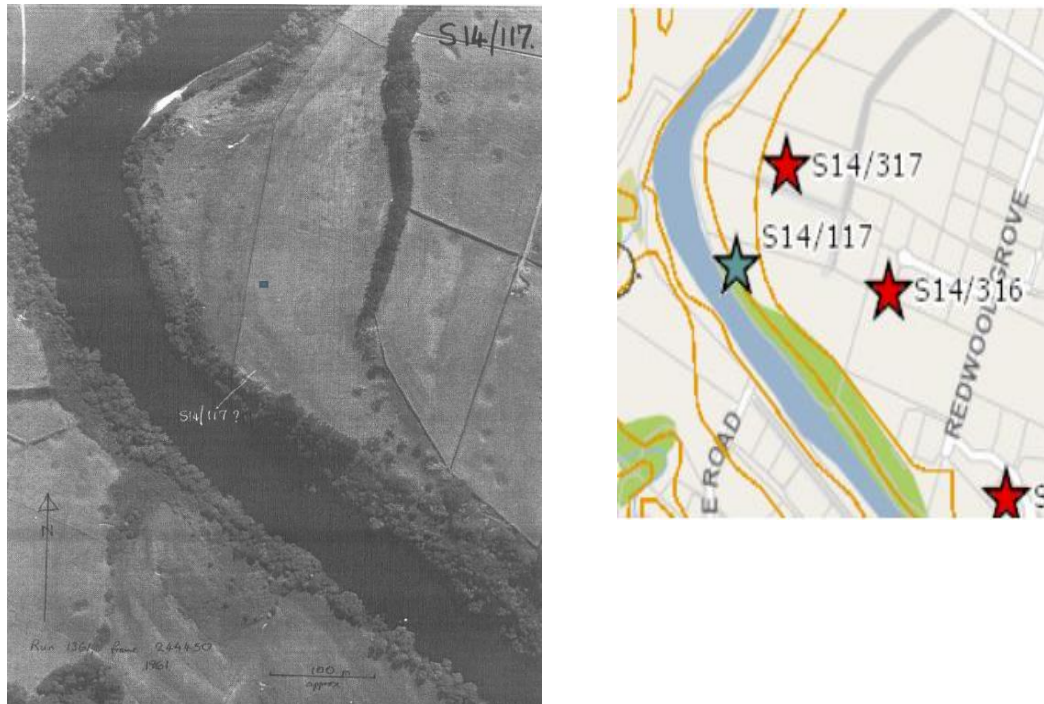


Figure 1 1961 Aerial Photo - Large area of garden soils and borrow pits that surrounded S14/117 and the subsequent registered NZAA sites within the subdivided land.

15. Dr Kahotea noted in his assessment that a field check in 1986 considered that the feature was not visible, suggesting that the paa has been affected by farming activities such as the plough. While the above images and recorded features support values and beliefs of what little remains of a Maaori cultural landscape, an MSOS identified as 'Patuwai Paa' now gives identity and protection of a relationship that Maaori can acknowledge, in accordance with the RMA s6(e). This cultural relationship is explained in paragraph 47 of my S42A report. I add that this identification has little to do with archaeological values or a physical structure, and is more about the cultural association and values of the site (which are often intangible). Dr Kahotea's explanation of cultural values shows the importance of cultural relationship that is associated with manawhenua/hapuu.
16. Sites with Maaori cultural values are extremely difficult to spatially identify with any certainty, but there is a need to identify these within the construct of the district plan to provide certainty for plan users and landowners. While I accept that not all of the sites will still have physical features due to historic practices and land uses, the Maaori cultural values of this site make it worthy of protection. As stated in paragraph 117 of the s42A report, several attempts were made through various email addresses to request an onsite visit. No response was received, which was unfortunate.
17. I acknowledge that physical verification has not taken place on this particular site. However, Dr Des Kohotea has indicated that there is enough evidence to afford some protection of this site as is apparent from the 1961 aerial photos, and as such, I consider it appropriate that the identification of this site be included in the Proposed District Plan. The MSOS on the Newell Road property is a paa site, which makes it highly significant to Iwi who associate themselves with this Paa. I note that Objective 3.9 and Policy 10.2 of the Waikato Regional Policy Statement seek to recognise and provide for the relationship of tangata whenua and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga. Identification and protection of sites such as the MSOS on the Newell Road property in the District Plan is an appropriate way to give effect to the Regional Policy Statement, even given the difficulties in spatially identifying the extent of these sites.

4.2 Recommendation

18. Having considered the points raised in evidence, I have not changed my recommendations on this matter. I understand the submitter's viewpoint and the constraints that the district plan may have placed on the future development of properties with an MSOS on them. However, development of the site is still possible, but resource consent will be required so as to acknowledge the cultural heritage, any adverse effects on the values of the site, and afford the relevant Mana Whenua the opportunity to be involved in the consenting process.
19. I note that the relationship of Maaori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga is a Section 6 matter in the RMA; that is, a matter of national importance. The absence of remaining physical features does not negate the Maaori cultural values of the site, and I support the identification of the site and rule framework protecting the site in the District Plan. The delineation of MSOS represents only a small area of what was potentially there, as a Paa site in reality would have encompassed a much larger area than what is being shown on the Proposed District Plan maps. I consider that the approach of the Proposed District Plan is reasonable, it appropriately gives effect to the Regional Policy Statement, and is an effective way of preventing further disconnect between Maaori and their culture and history.

5 Earthworks as a permitted activity

5.1 Analysis

20. Mr Mark Chrisp prepared evidence on behalf of Riverdale Group Limited [719.1 and 719.2], whose submission related to Maaori Site of Significance S15/25 and Maaori Area of Significance SS65.
21. In my s42A report I recommended that the PDP planning map be amended as per covenant area. I also I recommend that S15/25 in the MSOS Schedule be amended to show that it is located at 102 Hooker Road, Tamahere, and Mr Chrisp supports this recommendation.³
22. I note that Mr Chrisp and Riverdale have reflected on MAOS SS65, and no longer seek to have this removed from the Proposed District Plan, due to the historical and cultural significance to iwi and hapu.⁴ However, Mr Chrisp wishes to pursue the alternative relief and amend Rule 22.2.3.2 to allow earthworks associated with the construction of permitted activities within the Rural Zone (e.g. dwellings, sheds, etc), or at the very least, some practical thresholds, to allow earthworks as a permitted activity.
23. Rule 22.2.3.2 RD2 classes all earthworks within a Maaori area of significance, as identified in Schedule 30.4 (Maaori areas of Significance) and shown on the planning maps, as a restricted discretionary activity. There is no threshold whereby earthworks (for any reason or at any scale) would be permitted. While the intent of the MSOS and MAOS rule framework is to protect and preserve sites that are important to Maaori and which are rapidly disappearing because of residential and economic development, this does seem like an unreasonably restrictive approach. This is a point made by Mr Chrisp - that even earthworks for the purpose of planting a tree would require a resource consent for a restricted discretionary activity.⁵

³ Statement of Evidence of Mark Chrisp, 13 July 2020, paragraph 2.7

⁴ Statement of Evidence of Mark Chrisp, 13 July 2020, paragraph 3.4

⁵ Statement of Evidence of Mark Chrisp, 13 July 2020, paragraph 3.6

24. Mr Chrisp points out that a subdivision consent has already been granted by Council for the property, and therefore seeks that earthworks associated with the implementation of a subdivision consent be provided for as a permitted activity. I consider this to be a step too far, and that the location of a building site (and any adverse effects of that on the cultural significance and values of the MAOS) could have been addressed in the same consent application.
25. I am aware that the definition of earthworks in the Proposed District Plan means “modification of land surfaces by ... removing, placing or replacing soil or earth”, which means that any scale of earthworks will be captured by this term. However, the National Planning Standards definition of earthworks is:
- means the alteration or disturbance of land, including by moving, removing, placing, blading, cutting, contouring, filling or excavation of earth (or any matter constituting the land including soil, clay, sand and rock); *but excludes gardening, cultivation, and disturbance of land for the installation of fence posts.*
- [emphasis added]
26. The Hearings Panel have directed that the National Planning Standards be implemented, therefore the extent of the earthworks rule for MSOS and MAOS will be relaxed a little as a result of introducing the National Planning Standards definition for earthworks. The Proposed District Plan as notified does not contain an over-arching default activity status for activities not listed. In order to avoid the situation of earthworks in an MSOS or MAOS for the purpose of gardening, cultivation or fencing being captured by the RMA default activity status of discretionary for an activity not listed in the district plan, I recommend that an explicit activity for earthworks associated with these activities be added.

Earthworks – Maaori Sites and Maaori Areas of Significance

PI	<u>(a) Earthworks within a Maaori site or area of significance identified in Schedule 30.3 or 30.4 for the purposes of gardening, cultivation, or disturbance of land for the installation of fence posts</u>
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27. I consider this to be an appropriate level of permitted earthworks for a site whose significance has been well established. These sites on Hooker Road have been registered since the 1997 Plan, and are in the Operative District Plan in Appendix C1 Historic Heritage Items as Item 66, with a ‘Totality’ status. Although the terminology has changed, the scheduling and protection of the site has been carried over into the Proposed Waikato District Plan.
28. I am mindful that the relationship of Maaori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga is a Section 6 matter in the RMA - that is, a matter of national importance. I am also mindful that Objective 3.9 and Policy 10.2 of the Waikato Regional Policy Statement seek to recognise and provide for the relationship of tangata whenua and their culture and traditions with their ancestral lands, water, sites, waahi tapu and other taonga. I consider this approach to be an appropriate balance of protecting the sites, whilst ensuring that more significant earthworks are considered through a resource consent process.
29. I note that Council has granted a subdivision consent in relation to 124 Hooker Road⁶, however this property is subject to an Archaeological Authority from Heritage New Zealand Pouhere Taonga (HNZPT) because it is part of Item 66 in Appendix C1 Historic Heritage Items with a ‘Totality’ status in the Operative Waikato District Plan.

⁶ Statement of Evidence of Mark Chrisp, 13 July 2020, paragraph 3.9

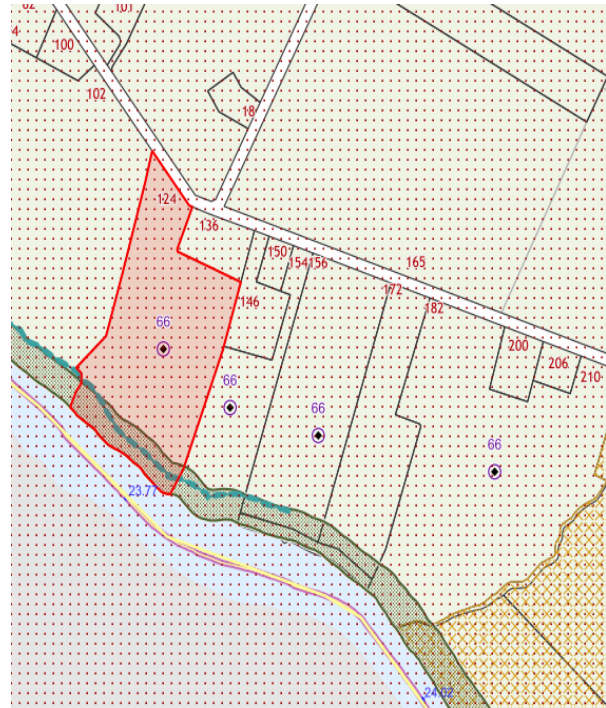
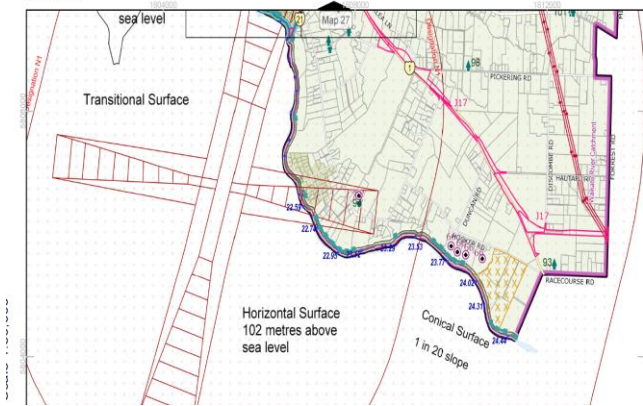


Figure 2 – The Operative District Plan status of the Tamahere Maaori Gardens

- 30. The OWDP Appendix C status is in accordance with S15/27 (Prehistoric gardens) An assessment of archaeological values by Dr W Gumbley January 2003.
- 31. Despite the identification status placed on the land, conditional applications for an authority to modify, damage or destroy an archaeological site have been issued for the purposes of constructing a dwelling and associated buildings, forming accessways and landscaping, subject to conditions set by HNZPT.

5.2 Recommendation

- 32. I have considered the points raised in evidence, and other than acknowledging the implications of the National Planning Standards definition for earthworks, I have not changed my recommendations on these matters. My recommendations are in support of RMA section 6(e) to provide identification and preservation of Maaori heritage. I consider it appropriate that the adverse effects of earthworks be assessed through a resource consent process and an Authority to modify, damage or destroy any archaeological site.

5.3 Section 32AA evaluation

- 33. I consider that enabling minor earthworks in an MAOS or MSOS as a permitted activity is the most efficient way to achieve the objectives in the Proposed District Plan.

6 Earthworks and Waahi Tapu

6.1 Analysis

- 34. Ms Carolyn McAlley prepared evidence on behalf of Heritage New Zealand Pouhere Taonga, and addressed matters where she disagreed with my recommendations.

35. I acknowledge Heritage New Zealand Pouhere Taonga's (HNZPT) position and roles and responsibilities in regard to Maaori areas and sites of significance, and as I stated in the Tangata Whenua s42A Hearing Report, I believe that we must work together for the benefit of Maaori. However, we approach this issue from two different perspectives. While HNZPT have overarching legislation to deal with archaeological sites (which are mostly Maaori sites), the RMA recognises the national importance of Maaori exercising their culture and relationship to their resources. I consider it important to recognise that cultural values are very different to archaeological values, and history has shown that archaeological decisions have carried more weight in decision-making in relation to mitigating and destroying archaeological sites. Dr Kahotea provided the importance of cultural values' connections through whakapapa and wairuatanga that are important to Maaori.
36. Our team have sought to enable Maaori to participate in the RMA process by identifying MSOS and MAOS that are important and significant to them, and to provide opportunity for them to engage when required with landowners and developers regarding their cultural values in relation to sites. The trigger for this is when activities occur within an MSOS or MAOS. With this in mind, I have responded below to the specific points raised by Ms McAlley.
37. Ms McAlley sought amendments to the earthworks rules for MAOS and MSOS – in particular the expanding of the activity to include ancillary earthworks and rural ancillary earthworks.⁷ I do not consider that ancillary earthworks and rural ancillary earthworks need to be specifically included, as they are essentially a subset of the much wider term "earthworks". However, I am aware that the National Planning Standards definition of "earthworks" excludes cultivation. In this regard, the term 'cultivation' is defined in the National Planning Standards to mean:
- Cultivation - means the alteration or disturbance of land (or any matter constituting the land including soil, clay, sand and rock), for the purposes of sowing, growing or harvesting of pasture or crops.*
- I consider that cultivation for the purposes of sowing crops would be an acceptable activity within these sites, as this practice is already occurring and it would be unreasonable for a farmer to undergo a consenting process for what would ordinarily be a permitted activity (farming). While it may not have been entirely clear in my s42A report, I recommended rejecting this submission and accepting in part further submissions from Riverdale Group Ltd and Federated Farmers supporting normal farming practices.
38. Ms McAlley sought inclusion of additional matters of discretion. I agree with some of the additional matters, and consider that they are not unreasonable and would provide guidance to applicants and processing planners alike. I therefore recommend that the matters of discretion for earthworks in MAOS and MSOS are amended as follows:
- Council's discretion is restricted to the following matters:
- (i) Nature, design, extent and location of activity in relation to the site;
- (ii) effects on heritage and cultural values.
- (iii) The necessity of the works and any alternatives considered
36. Ms McAlley's evidence sought inclusion of HNZPT Wahi Tapu / Wahi Tapu Areas in a separate schedule and in the district plan maps. As discussed in paragraphs 165 and 166 of my s42A report, the sites that Ms McAlley was asking for are already included in the

⁷ Statement of Evidence of Carolyn McAlley on behalf of Heritage New Zealand Pouhere Taonga, 13 July 2020, paragraphs 5.1-5.4

schedules. HNZPT submitted site reports and information to the MSOS project. An abbreviated description is shown in paragraph 37 below.

37. The scheduled sites in the Proposed District Plan are listed and are all viewed as Waahi Tapu by our Kaitiaki, who asked for identification of those sites in the PWDP review. The terms MSOS and MAOS have become popular today because Council asked for sites that Maaori viewed as significant. My recommendation was to reject this submission on the basis that they are already included. I stand by my decision to not have a separate schedule for HNZPT Waahi Tapu Sites and Areas.
38. Items taken from Maaori Areas of Significance – Chapter 30 Schedule 30.4

ITEM No	DESCRIPTION	SIGNIFICANCE
SS69	Te Aukati Ki Maungatawhiri Oram Road, Whangamarino	1863 river crossing of the Maungatawhiri stream which began the invasion of the Waikato.
SS77	Meremere Paa and Redoubt Te Puea Avenue, Meremere	Meremere Paa (S13/116) was a complex site constructed to resist the British advance in 1863. Col. Mould of the Royal Engineers was in charge of remodelling the central area of the Paa and the new earthworks were laid out by surveyor Charles Heaphy. It consisted of a small central summit fort, extensive rifle trenches, gun emplacements, and small satellite forts. (Redoubt S13/7)
SS51	Te Teo Teo, Whangamarino Redoubt/Pickards Redoubt and Huirama Paa Oram Road, Whangamarino	It is the place where the Ngaati Mahuta Rangitira, Te Huirama, Kaireperepe (affinal kin to) and Tianara (general) of Kingi Taawhiao, was charged with harrying and holding back the tide of Crown forces.
SS78 SS79 SS05	Rangiriri State Highway, Rangiriri	Includes Rangiriri and Te Wheoro Paa, Lake Karaka and riparian wetlands.

39. Ms McAlley sought a discretionary and non-complying activity status for earthworks in these wahi tapu areas⁸. As explained, *all* of the MSOS and MAOS items listed in the schedules are Waahi tapuu. I refer to my s42a report, where I accepted in Section 9 paragraph 190:

that there should be the same wording of the rule in each zone to ensure that the same level of protection of MSOS and MAOS is achieved in each zone and to achieve the relevant Objectives 2.14 and 2.15 which apply to the whole district.

40. A recommended amendment was provided in paragraph 197 of the s42A report as follows:

RDI Earthworks rule to replace the rule in each zone on earthworks for MSOS and MAOS.

41. I believe this is a better outcome and provides consistency throughout the Plan.

⁸ Statement of Evidence of Carolyn McAlley on behalf of Heritage New Zealand Pouhere Taonga, 13 July 2020, paragraphs 5.12-13

42. Ms McAlley also sought to extend the area of MAOS ss60 to align with the HNZPT Wahi Tapu listing that includes the Kingitanga reserve, surrounding parks and streets and Turangawaewae Housing and grounds.⁹ On assessment of the Proposed District Plan maps, I can see that it is not clear that the ss63 identifier includes the whole reserve known as “The Point” (Te Huinga o Te Wai) and that the proposed delineation should encompass the whole site. In this regard I agree with Ms McAlley¹⁰ and recommend that changes be made to the Proposed map as follows:



Figure 3 - The Point (Te Huinga o Nga Wai), with my recommendation shown in blue. The notified version is outlined in red for comparison.

43. This will require a consequential amendment to Māori Areas of Significance – Chapter 30 Schedule 30.4 to update the description as follows:

⁹ Statement of Evidence of Carolyn McAlley on behalf of Heritage New Zealand Pouhere Taonga, 13 July 2020, paragraphs 5.8

¹⁰ Statement of Evidence of Carolyn McAlley on behalf of Heritage New Zealand Pouhere Taonga, 13 July 2020, paragraphs 5.8

ITEM No	DESCRIPTION	SIGNIFICANCE
SS60 SS63	The Point, Te Huinga o Ngaa Wai includes the Kingitanga Reserve, Maori and European Sites, and Turangawaewae House Broadway, Ngaruawahia	Currently known as “The Point”. A site to the of pre 1900 history that connects to the Hakarimata Range, Puke-i-aahua Paa to the naming of Ngaruawahia and the Kingitanga movement, followed by European occupation.

44. Ms McAlley sought ground truthing of the sites and areas of significance to Maaori, due to the fact that this had been undertaken as a desktop exercise.¹¹ While part of the project was aided by desktop review, many field visits were undertaken with Dr Kahotea and kaitiaki, along with library visits to obtain information from books and Māori Land Court minutes. Maaori values are not only collected from archaeological digs but also from literature, historical maps and kaumatua korero.
45. A logical approach to supplementing this current information base would be to undertake ground truthing at the time that consent is sought in an MSOS or MAOS. This approach avoids unnecessary cost to council and allows a more detailed assessment at the time that an activity on an MSOS or MAOS is proposed. This may be somewhat of an incentive for the property owner to undertake the proposed activity outside the MSOS or MAOS.
46. Ms McAlley sought further amendments to the advice note that I recommended including to contain references to adjacent properties.¹² Considering that the advice note already refers to “development on or in proximity”, I do not see any need to include additional words regarding adjacent properties.

6.2 Recommendation

47. I have considered the points raised in evidence and I recommend the following amendments:
48. I recommend that the matters of discretion for earthworks in MAOS and MSOS in each zone be amended as follows:
- Council’s discretion is restricted to the following matters:
- (i) [Nature, design, extent and](#) location of activity in relation to the site;
 - (ii) effects on heritage and cultural values.
 - (iii) [The necessity of the works and any alternatives considered](#)
49. I also recommend that changes be made to correct the Proposed Map clarifying the MAOS of the “The Point” (Te Huinga o Ngaa Wai).
50. I recommend amending the description of SS60/SS63 The Point in Chapter 30 Schedule 30.4 as follows:

The Point, [Te Huinga o Ngaa Wai includes the Kingitanga Reserve, Maori and European Sites, and Turangawaewae House](#) Broadway, Ngaruawahia.

6.3 Amendments

Chapter 30: Schedule 30.4 Maaori Areas of Significance

¹¹ Statement of Evidence of Carolyn McAlley on behalf of Heritage New Zealand Pouhere Taonga, 13 July 2020, paragraphs 5.10

¹² Statement of Evidence of Carolyn McAlley on behalf of Heritage New Zealand Pouhere Taonga, 13 July 2020, paragraphs 5.14-15

ITEM No	DESCRIPTION	SIGNIFICANCE
SS60 SS63	The Point, Te Huinga o Ngaa Wai includes the Kingitanga Reserve, Maaori and European Sites, and Turangawaewae House , Broadway, Ngaruawahia	Currently known as “The Point”. A site of pre-1900 history that connects to the Hakarimata Range, Puke-i-aahua Paa to the naming of Ngaaruawahia and the Kingitanga movement, followed by European occupation.

Earthworks – Maaori Sites and Maaori Areas of Significance

RD I – Earthworks within a significant Maaori site or area of significance	<p>(a) Earthworks within a significant Maaori site or area of significance as identified in Schedule 30.3 and 30.4.</p> <p>(b) The Council's discretion is restricted to the following matter:</p> <p>(i) Nature, design, extent and location of earthworks in relation to the Maaori site or area of significance;</p> <p>(ii) Effects on heritage and cultural values.¹³</p> <p>(iii) The necessity of the works and any alternatives considered</p>
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6.4 Section 32AA evaluation

51. The amendment does not alter the overall intent of the matters of discretion for the earthworks rule and the corrections to the MAOS of “The Point” (Te Huinga o Ngaa Wai) Map and schedule details. These amendments are considered to be a more effective way to achieve Objectives 2.12, 2.13, and 7.1.1.

7 Conclusion

52. I thank the submitters for their effort in drafting evidence. I consider that the submissions on the MSOS and MAOS provisions should be accepted, accepted in part or rejected, for the reasons set out in this report. I consider that the amended provisions will be efficient and effective in achieving the purpose of the RMA (especially for changes to the objectives), the relevant objectives of the Proposed Plan and other relevant statutory documents.
53. My recommendations are based on RMA section 6(e), requiring the district plan to provide identification and preservation of Maaori heritage and provide a platform for Maaori to address their relationship to their sites, waahi tapu and taonga.

Teena Taatou Katoa

Sheryl Paekau

¹³ [697.107, 697.108, 697.182, 697.264, 697.771 and 697.1028]