

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 4-Tangata Whenua.**

**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 HNZPT made 18 submission points (559.2, 559.7, 559.8, 559.9, 559.10, 559.11, 559.12, 559.13, 559.14, 559.15, 559.16, 559.17, 559.18, 559.35, 559.36, 559.37, 559.38, and 559.41) related to Waikato District Council Proposed District Plan (the Plan), and 12 further submission points (FS1323.7, FS1323.8, FS1323.9, FS1323.10, FS1323.11, FS1323.168, FS1323.169, FS1323.171, FS1323.172, FS1323.173, FS1323.174, and FS1323.175).
- 2.3 With regard submission point 559.2 I have made a response as part of a statement tabled for Hearing 2. I accepted the reporting planner's response in that S42A report for a system of cross referencing as a method to improving navigation through the District Plan. I will seek clarification at the hearing regarding the responses to the same submission point as my interest in cross referencing within the Plan remains therefore I cannot accept the stance of the reporting planner within the Hearing 4 report.
- 2.4 With regard to submission points; 559.7, 559.8, 559.9, 559.10, 559.11, 559.12, 559.13, 559.14, 559.16, 559.17, 559.18, 559.35, 559.36, 559.37, 559.38, and 559.41, I accept the reporting planner's recommendations and will not discuss these submission points further. I will discuss the reporting planner's response to submission point 559.15 in section 5 of this evidence.

- 2.5 With regard to further submission points FS1323.7, FS1323.8, FS1323.9, FS1323.10 and FS1323.11, I concur with the recommendations of the reporting planner and will make no further comment.
- 2.6 With regard the further submission points FS1323.168, FS1 323.169, FS1323.171 and FS1323.172, the reporting planner has rejected these as no actual amendments were proposed as part of the related primary submissions. With regard the further submission points FS1323.168, FS1323.171 and FS1323.172 further comment would be made by the reporting planner if amendments were suggested at the hearing. HNZPT reserve the right to make further comment should any material be provided at the hearing.
- 2.7 With regard to the further submission points FS1323.13, FS1323.74 and FS1323. 175 the primary submissions related to the inclusion of a Maori land chapter and revisions to allow for the greater integration of Maatauranga Maaori in the proposed Plan were rejected. HNZPT reserve the right to make further comment should any material be provided at the hearing.
- 2.8 In preparing this evidence I have read the section 42A report for the Council and the associated s32 report.
- 2.9 With regard to the s32 report, at section 1.6 Consultation, Table 2 Specific consultation processes¹ I would like to include a greater context to the statement recorded, in that Maori sites and areas were part of larger group of archaeological sites included into a draft version of the Plan. These sites were the current version of the New Zealand Archaeological Association (NZAA) recorded sites for the District at that time, and as HNZPT understood, had not been subject to any form of review or ground truthing. The concerns related to duplication were in the context of the very large number of archaeological sites in the Plan, where typically HNZPT advocates for only significant archaeological sites (always assuming a limited number and that they are ground truthed) to be scheduled and have a rule framework within a District Plan. The Maaori sites and areas of Significance in the Proposed Plan are based on the NZAA Paa subset of archaeological sites. Any of the works undertaken under the Proposed Plan rule set will require consultation with HNZPT staff in relation to the need for an archaeological assessment and an archaeological authority.

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.*

¹ Proposed Waikato District Plan (Stage1) Section 32 (Tangata Whenua) 18 July 2018, pg.9

- 3.2 Section 6(f) of the RMA requires that any proposal “*recognise and provide for... the protection of historic heritage from inappropriate subdivision use and development*”.
- 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 SUBMISSION POINTS

- 4.1 In submission point 559.15 HNZPT sought the inclusion of additional wording to Policy 2.15.1 Ngaa taonga tuku iho (Maaori sites and areas of significance), as part of a suite of amendments sought to both policy and rules of the Plan in relation to the Maaori sites and areas of Significance. The reporting planner has rejected the amendments sought to Policy 2.15.1.

5. HNZPT RESPONSE TO RECOMMENDATIONS OF THE PLANNERS REPORT

5.1 Policy 2.15.1

- (a) The HNZPT submission sought an amendment of the wording to Policy 2.15.1;

That 2.15.1-Policy Ngaa taonga tuku iho (Maaori sites and areas of Significance and wahi tapu) is retained and amended as follows:

- (a) *“Ensure subdivision, use and development does not compromise the cultural and spiritual significance of areas, including wahi tapu, urupaa, maunga and other landforms, mahinga kai and indigenous flora and fauna.*
- (b) *Area and sites of significance to maori including waahi tapu sites and waahi tapu areas are protected from adverse effects of development or activities on those sites, including inappropriate modification”*

- (e) *Avoid the destruction of Area and sites of significance to Maori, including and waahi tapu sites and waahi tapu areas. are protected from adverse effects of development or activities on those sites²*

In response the reporting planner has recommended that the proposed additions are rejected²

“on the basis that the policy is sufficient for its purpose in the chapter and provides the mechanism to protect sites under the RMA.” “The proposed plan has used an earthworks activity rule, whereby Councils discretion is restricted to the following matters: location of the activity in relation to the site and effects on heritage and cultural values”

- (b) I consider, after reading the s42A report that I cannot agree with the reporting planner’s comments, especially in the context of the larger suite of amendments sought through the HNZPT submission related to Maaori sites and areas of significance. In summary, HNZPT has sought the suite of amendments to ensure that the destruction of such sites can be avoided through amended policy provisions and the introduction of a related non-complying rule, which will be covered at a later hearing. This type of extended policy and rule framework is used in district plans that I am familiar with in relation to Maaori sites and areas of significance, and I consider it is an improved method of meeting the requirements of Part 2 of the RMA with regard s6 matters.
- (c) I also consider by not amending the Policy to include consideration of the need to avoid the destruction of sites and areas of significance to Maori, the Policy would not give effect to the Waikato Regional Policy Statement (WRPS) Objective 3.18 where *“Sites, structures, landscapes, areas or places of historic and cultural heritage are protected, maintained or enhanced in order to maintain the identify and integrity of the Waikato regions and New Zealand history and culture.”* The explanation to the related WRPS Policy 10.3-Effects of development on historic and cultural heritage, clearly advises that while *“Policy 10.3 is not intended to prevent change to historic and culture heritage but rather ensure that change is carefully managed”*, it also advises that *“destruction of or damage to heritage resources needs to be avoided”*
- (d) I think that it is important, given that the Maaori sites and areas of significance are included under s6 of the RMA that a distinction is made within the rule framework between modification, inappropriate modification and destruction. This would provide greater clarity for those administering the Plan. The inclusion of the amendment *“Avoid the destruction”* clearly meets the requirements of the WRPS, while the remainder of the Policy, together with other amendments sought by HNZPT does provide for modification should the need be required.
- (e) I consider that the wording sought in the HNZPT submission should be retained as a more clear and appropriate set of thresholds for these important and finite s6 RMA matters.

² Proposed Waikato District Plan, Tangata Whenua report, section 42A report, paras 136-Analysis and para 140 – recommendations, pg.43

6. CONCLUSIONS

- 6.1 The RMA requires that the protection of historic heritage should be *recognised and provided for* as a Matter of National Importance (Section 6(f)). As subdivision, use and development have the potential to significantly detract from built and other historic heritage, it is important that the Plan limit the potential for adverse effects to occur.
- 6.2 I seek that the wording as sought by NZPT in their submission point on Policy 2.15.1 Ngaa taonga tuku iho (Maaori sites and areas of significance), be retained at the time of the decision.
- 6.3 I am able to answer any questions that you have relating to this statement.

Carolyn McAlley

For Heritage New Zealand Pouhere Taonga