

BEFORE THE HEARINGS COMMITTEE

**IN THE MATTER of hearings on submissions
concerning the proposed
One Plan notified by the
Manawatu-Wanganui
Regional Council**

**End of Hearing Statement of Fiona Gordon
for Historic Heritage**

TABLE OF QUESTIONS AND RECOMMENDATIONS

Matter	Raised by	Topic	Comment from Reporting Officer	Recommendation
<p>Section 7.1.4</p> <p>Suggest that the word “includes” be replaced with “means”, to reflect the definition in the RMA.</p> <p>Reference “<u>or water</u>” to a specific recommendation</p>	<p>Chairperson</p>	<p>Section 7.1.4 Paragraph 1 Recommended change H3)</p>	<p>I agree that the wording used in paragraph 7.1.4 should reflect the definition for Historic heritage given in the Resource Management Act (RMA), as was the intent.</p> <p>In error, the words “<u>or water</u>” were not referenced to Recommendation HH 3 in the Track Changes document.</p>	<p>Recommendation S HH 8</p> <p>(a) Amend Paragraph 7.1.4 to replace the word “includes” with “means” to better reflect the definition in the RMA</p> <p>(b) Amend Paragraph 7.4.1 to show that the addition of the words “<u>or water</u>” are as a result of Recommendation HH 3</p> <p>(Please See Track Changes)</p>
<p>Section 7.1.4</p> <p>Federated Farmers disputes the issue of “unknown” and “undiscovered” sites being threatened by “demolition by neglect”. They question “does this capture any old building on a farm that is not used but must be maintained at owners cost</p>	<p>Evidence of Federated Farmers of New Zealand (01/12/08) Nicola Ekdahl (see page paragraphs 70 – 72)</p>	<p>Section 7.1.4</p>	<p>The New Zealand Historic Places Trust (NZHPT) provided detailed information on the issue of “demolition by neglect” in Robert McClean’s Statement of Evidence 25 July 2008 (paragraph 23 – 28). I consider that there is sufficient evidence that demolition by neglect is a valid issue for historic heritage in the region and worthy of note in the Proposed One Plan (POP) Section 7.1.4.</p> <p>There is no provision in the POP for capturing the scenario Federated Farmers mentions regarding old</p>	<p>No Change Recommended</p>

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for no benefit to them?"			unused farm buildings.	
<p>Section 7.1.4</p> <p>Is it more correct to replace the word minimised with “avoid, remedy or mitigate”?</p> <p>Is it more correct to say that Territorial Authorities (TA) “control” landuse, rather than “can control” landuse?</p>	Chairperson	<p>Section 7.1.4 Paragraph 3</p>	<p>I agree that it is correct to state that TAs control landuse, and that it is preferable to use the words “avoid, remedy, or mitigate”, to more accurately reflect the RMA.</p>	<p>Recommendation S HH 9</p> <p>Amend Section 7.1.4 Paragraph 3, last sentence, such that the word “minimised” is replaced with the words “avoid, remedy or mitigate”, and delete the word “can”.</p> <p>(Please See Track Changes)</p>
<p>Footnote 1 Section 7.1.4</p> <p>As written, the New Zealand Historic Places Trust (3 August 2007) Sustainable Management of Historic Heritage Guide No. 1 Regional Policy Statements(p12 – 13)document (NZHPT Guide) is referenced as “best practice” which suggests that it is best</p>	Chairperson	<p>Section 7.1.4 paragraph 4, page 7-4, Footnote 1</p> <p>(See S HH 3b in Supplementary Report of Fiona Gordon for the Historic Heritage Hearing) in Statement of Evidence Report 1</p>	<p>I do not consider the NZHPT document referred to in the footnote is best practice. The words “best practice” are used in the footnote because the NZHPT Guide document refers to it’s contents as “best practice examples”. It was not intended that the POP state that the NZHPT Guide document <i>is</i> best practice, therefore, I consider that the wording be changed to remove any reference to best practice.</p> <p>I further consider that, for format reasons, this footnote is more appropriately added into Section</p>	<p>Recommendation S HH 10</p> <p>Make the following amendments to Footnote 1 page 7-4, Section 7.1.4:</p> <p>(a) move Footnote 1 such that it becomes paragraph three in Section 7.1.4</p> <p>(b) delete the words “best practice”</p> <p>(c) replace the word “appropriate “ with “inappropriate”.</p> <p>(Please See Track Changes)</p>

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<p>practice in the Officer's opinion and in the opinion of the Regional Council. Is this what was intended?</p> <p>Why is "appropriate" in speech marks? If it is a reference to the RMA, the term used should be "inappropriate".</p> <p>Rakesh Mistry (NZHPT) requests, in his supplementary evidence, that Footnote 1 be attached to Policy 7-10, rather than to Section 7.1.4. On questioning at the Hearing, Rakesh Mistry stated that the intent of the footnote (ie. not part of the policy) could be provided in the Principal Reasons and Explanations Section.</p>	<p>Rakesh Mistry, Statement of Evidence of Rakesh Mistry for and on behalf of the New Zealand Historic Places Trust Pouhere Taonga (NZHPT) 1 December 2008. (see paragraph</p>	<p>December 2008)</p>	<p>7.1.4, as the third paragraph.</p> <p>"Appropriate" should not be in speech marks, and it should be replaced with the word "inappropriate", to reflect the wording of the RMA.</p> <p>The footnote makes reference to the NZHPT Guide which provides an example of the matters to be considered by local authorities when determining what may be inappropriate subdivision, use and development. As discussed at the Hearing, I consider that while the NZHPT Guide p12 - 13 provides good guidance to decision makers, it does not warrant inclusion as a policy in the POP. As stated by Elizabeth Pishief at the Hearing there is no nationally agreed list of matters to be considered when determining what may be inappropriate subdivision, use and development with regard to historic heritage.</p> <p>Further to this, I consider that the combination of</p>	

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	15)		<p>Objective 7-3 and Policy 7-10 and addition of Policy 7-11 will assist the decision maker to an appropriate degree in terms of determining what may be inappropriate subdivision, use and development.</p> <p>I do think there is merit in providing reference to the NZHPT Guide p12 – 13 as it is a useful reference for decision makers. I recommended in my Supplementary Report S HH 3b that this reference is most appropriately made as a footnote to Section 7.1.4. I now recommend that the footnote be inserted into Section 7.1.4 as paragraph 3, for formatting reasons.</p>	
<p>Issue 7-3 Historic Heritage Is it more correct to replace “and development” with “including development”?</p>	Chairperson	Issue 7-3	I agree that “development” is a subset of landuse and therefore the wording should be changed to reflect this.	<p>Recommendation S HH 11 Amend issue 7-3 by replacing the words “and development” with “including development”.</p> <p>(Please See Track Changes)</p>
<p>Issue 7-3 Federated Farmers request that rather than the plan stating that historic heritage is “at risk” from the effects of land use, it</p>	<p>Nicola Ekdahl Federated Farmers of New Zealand (01/12/08)</p>	Issue 7-3	The use of the term “at risk” is discussed in the Historic Heritage Planning and Recommendations Report (See Section 4.4, Recommendation HH 4) and while I have considered the Federated Farmers Supplementary Evidence, I do not wish to change my original evaluation and recommendation.	No Change Recommended

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should say, "the effects of land use can impact on heritage".	Evidence (paragraph 70 – 72)			
<p>Objective 7-3</p> <p>Was it intended that the objective require protection from activities that would have an adverse effect on heritage values, as this is a high level of protection? Does the proposed wording in the POP better reflect the intended approach?</p>	Chairperson	Objective 7-3	The intent was not to afford absolute protection to all historic heritage and I consider that the words "significantly reduce", as proposed in the POP, is most appropriate.	<p>Recommendation S HH 12</p> <p>Amend Objective 7-3 by replacing the term "have an adverse effect on" with "significantly reduce".</p> <p>(Please See Track Changes)</p>
<p>Policy 7-10</p> <p>Should this policy also refer to TA responsibilities?</p> <p>Should the words "as far as practicable" be inserted at the end of the paragraph, as per the proposed POP wording and as recommended in Recommendation HH 6 in</p>	Chairperson	Policy 7-10	<p>I consider that, in light of the addition of new Policy 7-11, that Policy 7-10 should be amended to apply equally to the Regional Council and TAs.</p> <p>The words "as far as practicable" are omitted from the Track Changes document accompanying the Supplementary Report in error. . This needs to be corrected to reflect Recommendation HH 6.</p>	<p>Recommendation S HH 13</p> <p>Amend Policy 7-10 to</p> <p>(a) include "Territorial Authorities" and</p> <p>(b) include the words "as far as practicable".</p> <p>(Please See Track Changes)</p>

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<p>historic places as places or areas of national significance. In response to questioning, Rob McClean suggested the addition of an advice note. He also clarified that it was not intended that District Plans must schedule all Cat I sites in their plans.</p>	<p>New Zealand Historic Places trust Pouhere Taonga (NZHPT) 25 July 2008 (see Policy 4, page 20)</p>		<p>Maassen in his report (paragraph 24 – 25), and further consider that s66 and s74 RMA clearly requires the Regional Council and TAs to consider any relevant entry in the Historic Places Register when preparing or changing any regional or district plan. The on-line Historic Places Register http://www.historic.org.nz/Register/register.html currently contains 58 entries as Category I sites for the Manawatu-Wanganui Region. I consider that the activities most likely to affect these sites are controlled by TAs and, for this reason, that generally it is most appropriate that these sites are considered for scheduling in District Plans as opposed to a Regional Plan. In addition, while the Historic Places Register provides enlightening and useful information on each entry, it is not clear as to whether any of the Category I sites (or Category II sites) are regionally or nationally significant. I consider that an amendment to the policy or an advice note is not required or appropriate.</p>	
<p>Recommendation SHH 7 – Method</p> <p>Should the new method include Iwi Authority to the</p>	<p>Chairperson</p>	<p>Method</p>	<p>I agree that the list of who should be involved in the method should include Iwi Authorities</p>	<p>Recommendation S HH 15</p> <p>Amend Method “Proactive Identification of Historic Heritage” to include Iwi Authorities in the list of</p>

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list of who should be involved?				<p>who should be involved.</p> <p>(Please See Track Changes)</p>
<p>Anticipated Environmental Result Section 7.6</p> <p>Should the Anticipated Environmental Result Column include reference to the Regional Council database for the Coastal Marine Area (CMA)?</p> <p>Should the Indicator column include requirement for the Regional Council schedule to be in the Regional Coastal Plan?</p>	Chairperson	Anticipated Environmental Result	<p>I consider that reference to the Regional Council Database would be appropriate in the Anticipated Environmental Results column.</p> <p>I consider that reference to the Regional Council Plan and Database would be appropriate in the Indicator Column and Data Column.</p>	<p>Recommendation S HH 16</p> <p>Amend Anticipated Environment to refer to the Regional Council Plan and Regional Council Database</p> <p>(Please See Track Changes)</p>
<p>Terminology – values, qualities, Historic Heritage values.</p> <p>Is there a need to define</p>	Chairperson	Various	I agree that the term historic heritage “values” used throughout the chapter could be changed to “qualities” to better reflect the definition of historic heritage in the RMA. I consider that this eliminates the need to define “historic heritage values” in the	<p>Recommendation S HH 17</p> <p>Replace the word “values” with “qualities” in Chapter 7, historic heritage provisions.</p>

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<p>“historic Heritage Values” in the glossary? The Chapter 7 provisions use the term “historic heritage”, “historic heritage values”. Would it perhaps be more appropriate to use the term historic heritage “qualities” as used the RMA definition of historic heritage?</p>			POP.	(Please See Track Changes)
<p>Terminology – Site, place, area</p> <p>Request that the words “site”, “place” or “area” is used consistently across the POP.</p> <p>Note that reference to place and site is mentioned in Chapter 4 also.</p>	Chairperson	Various	<p>John Maassen makes comment on these terms in his report (paragraph 20-22). Rob McClean, when questioned with regard to what term he preferred, stated that his preference was place or area.</p> <p>The term site is used in many different ways in the heritage provisions as follows:</p> <ul style="list-style-type: none"> (a) historic heritage sites, structures, places and areas (b) archaeological site (c) sites of significance to Maori (d) historic sites (e) historic heritage sites (f) site (g) Site Recording Scheme 	<p>Recommendation S HH 18</p> <ul style="list-style-type: none"> (a) Amend the following provisions, such that the words “historic sites”, “site”, “historic heritage sites” are replaced with “historic heritage” – Section 7 .1.4 Paragraph 3, Section 7.6 Anticipated Environmental Result (Indicator column) (b) Amend the following provisions such that the terms “historic sites” , “site”, “historic heritage sites” are replaced with the term

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			<p>I consider that the words historic heritage sites, structures, places and areas; archaeological site; and sites of significance to Maori, are the most appropriate words to use as they accurately reflect the wording of the definition for historic heritage given in the RMA, and are used in the appropriate context within the POP.</p> <p>I consider that the use of Site Recording Scheme is also appropriate as it is the name of the Site Recording Scheme maintained by the New Zealand Archaeological Association.</p> <p>I consider that the words historic sites; historic heritage sites; and site, are used inconsistently in the historic heritage provisions, and in different contexts, unintentionally limiting the application of the words. I recommend that these words are replaced by historic heritage; historic sites, structures, places or areas, depending on the context.</p> <p>I have reviewed the Track Changes Document 14 August 2008 for Chapter 4 and note that the word</p>	<p>“historic sites, structures, places or areas” – Section 7.1.4 paragraph 1 and 2, Section 7.5 Method 7.9, Section 7.7 Explanations and Principal Reasons (paragraph on Historic Heritage)</p> <p>(Please See Track Changes)</p> <p>(c) Amend Policy 4-2(b)(ii) by replacing the words “historic sites” with “sites”</p> <p>(Please see Te Ao Maori track changes v5 Dec 08 incorp HH)</p>

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			<p>“site” it is used in the context of “sites of significance to Maori”, which I think is appropriate, with the exception of Policy 4-2(b)(ii) where the term “historic sites of special significance” is used. I consider that this be amended to use the words “sites”.</p>	
<p>Definition of Archaeological site</p> <p>The definition proposed in the Supplementary Report is not exactly as in the HP Act. It should be identical to the HP Act (ie. include “means”)</p> <p>Mr Moodie stated that he does not think that the archaeological site definition recommended to be included in the POP glossary is appropriate.</p>	<p>Chairperson</p> <p>Mr Moodie Submissions on behalf of Mighty River Power Limited (08/11/08)</p>	<p>Glossary</p>	<p>The term archaeological site is used in Section 7.1.4 and in Part II of the POP in various rule clauses. Mr Moodie considers that the definition should only apply within the HP Act and is too broad when applied through the POP (See paragraph 3.81 p21 Mighty River Power Report). I agree with Michael Moodie that the definition of the HP Act as applied in the POP is too board, and that the definition provided in any dictionary will suffice.</p>	<p>Recommendation S HH 19</p> <p>Delete the definition proposed for archaeological site in the POP Glossary</p>
<p>Part II POP Clauses</p> <p>Request that John Maassen checks the</p>	<p>Chairperson</p>	<p>Part II POP various clauses (See Recommendation</p>	<p>See John Maassen’s Report and Discussion in Recommendation S HH 20 (below)</p>	<p>See Recommendation S HH 20 (below)</p>

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<p>legality of the recommendations regarding clauses in Part II.</p> <p>Recommendations in Land Supplementary Recommendations differ from the recommendations Supplementary Recommendations for clauses in Chapter 12. This issue needs to be resolved.</p> <p>Need to consider further the approach to be taken in clauses in Part II with regard to the accidental discovery of koiwi, waahi tapu and archaeological sites. Is it more appropriate to specify that the resource user contacts the Regional Council only</p>		<p>HH 1, recommended Changes to Provisions (g), (h), (l), (j), (k) (page 33, 34), and Supplementary Report of Fiona Gordon for Historic Heritage Hearing paragraph 35 - 37.)</p>	<p>See John Maassen's Report and Discussion in Recommendation S HH 20 (below)</p>	

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<p>and that the Regional Council contacts the relevant authorities, or to specify an inclusive list of the authorities to be contacted (for example Police, iwi, NZHPT)?</p> <p>Is NZHPT approval required in each circumstance?</p> <p>Request to provide track changes version to clauses in Part II.</p>			<p>Track changes have been made to the most up to date track changes documents (16 December 2008) for each relevant chapter in Part II and are available electronically.</p>	
<p>NZHPT pointed out at the Hearing, and the Hearing panel agreed, that there is scope within the NZHPT original submission to deal with improved recognition of the historic heritage values of regionally significant landscapes</p>	<p>Rakesh Mistry, Statement of Evidence of Rakesh Mistry for and on behalf of the New Zealand Historic Places trust Pouhere</p>	<p>Unresolved issue 5 (See Supplementary Report of Fiona Gordon for Historic Heritage Hearing, paragraph 31 and 32)</p>	<p>At the Pre-Hearing Meeting with NZHPT on 30 October 2008, two options were discussed to address this issue. The first option was the addition of wording to the characteristics and values of items listed in Schedule F. The second option was that over time through assessments involving a public process the characteristics and values of landscapes could be amended to include historic heritage values. It was acknowledged that no</p>	<p>No Change recommended</p>

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listed in Schedule F of the POP.	Taonga (NZHPT) 1 December 2008. (see paragraph 20-26)		current process exists, but the matter is currently being discussed with relevant submitters. Prior to considering that there was insufficient scope for this issue, the agreed outcome reached through the pre-hearing meeting was the second option. Having established that there is scope to deal with this matter, I note that at the Hearing that NZHPT stated their interest in working on this issue into the future (also see paragraph 25 of Rakesh Mistry's evidence 1 December 2008).	

PART II POP CLAUSES - DISCUSSION AND RECOMMENDATIONS HH 20

1. The Chair has questioned the appropriateness and legality of proposed Permitted/Controlled/Restricted Discretionary activity standards relating to historic heritage. Two types of standards are proposed in Part II POP for managing the effects of various activities on historic heritage, these are:
 - (a) standards requiring separation distances or no disturbance to archaeological sites, koiwi remains and waahi tapu; and
 - (b) standards requiring cessation of the activity in the event of the discovery or disturbance of an archaeological site, koiwi remains and waahi tapu.
2. The following provides relevant information about the Historic Places Act 1993 (HP Act), a discussion of the above standards and the appropriateness and legality of their use.

Standards requiring separation distances or no disturbance to archaeological sites, koiwi remains and waahi tapu

3. A number of clauses in permitted, controlled and restricted discretionary activity standards in Part II of the POP require the following:
 - “the activity shall not disturb any archaeological site, waahi tapu site or koiwi remains in any District Plan schedule, in the NZAA Site Recording Scheme, or by the NZHPT Trust except where the approval of the NZHPT has been obtained”.
(Clauses 12-1 (b), 12-2(c), 12-3 (c), Table 16-1 condition (l)) (Vegetation clearance, forestry, land disturbance, beds of lakes and rivers).
 - A separation distance of “50m from any archaeological site, waahi tapu site or koiwi remains as identified in any District Plan, in the NZAA Site Recording Scheme, or by the NZHPT except where the approval of the NZHPT has been obtained”.
(Clauses 13-3(c)(iii), 13-4(d)(v), 13-5(e)(vi), 13-6(c)(v), 13-13(d)(iv), 13-19(c)(iii), 13-20(b)(iv), 13-25(c)(iv), (Discharges to land and water).
 - “the activity shall not be to any archaeological site, waahi tapu site or koiwi remains as identified in any District Plan schedule, in the NZAA Site Recording Scheme, or by the NZHPT Trust except where the approval of the NZHPT has been obtained”.

(Clauses clauses 13-11(j), 13-12(e), 13-15(i), 15-10(j)) (Discharges to land and water, and new drainage).

- “the activity shall not disturb any archaeological site, waahi tapu site or koiwi remains as identified in any District Plan schedule, in the NZAA Site Recording Scheme, or by the NZHPT Trust except where NZHPT approval has been obtained”.

(Clause table 17-1 condition (i)). (CMA activities).

- “the activity shall not be to any archaeological site, waahi tapu site or koiwi remains as identified in any District Plan schedule, in the NZAA Site Recording Scheme, or by the NZHPT Trust except where NZHPT approval has been obtained”.

(Clause 17-30(f)) (discharges of stormwater in the CMA).

4. In determining the appropriateness of these clauses, I consider it relevant to include a discussion of the HP Act and the purpose of the Historic Places Register, the scope of permitted standards in Regional Plans and the responsibilities of the Regional Council for historic heritage and sites of significance to Maori, including waahi tapu.

Historic Places Act 1993

5. As stated in Elizabeth Pishief’s Section 42A report (paragraphs 22 – 35), the NZHPT is governed by its Board of Trustees and the Maori Heritage Council. The NZHPT’s responsibilities relate to historic buildings, historic places, areas, archaeological sites and Maori heritage including wahi tapu and wahi tapu areas. The Maori Heritage Council’s functions include the development of the bicultural dimension of the NZHPT, the empowerment of Maori to manage their heritage and raising public awareness of Maori heritage. The NZHPT has two main functions: to establish and maintain a Register of historic places, historic areas, wahi tapu and whai tapu areas; and the statutory responsibility for managing the modification of archaeological sites. The HP Act provides protection for archaeological sites and requires that any person wishing to undertake work that may damage, destroy or modify an archaeological site, or to investigate a site by excavation, must first obtain an authority form NZHPT for that work (ss10-20 HPA). The HP Act contains penalties for unauthorised damage or destruction to any archaeological site.

6. The purpose of the Historic Places Register is to:
 - Inform members of the public about historic places, historic areas, wahi tapu and wahi tapu areas.
 - Notify owners of historic places, historic areas, wahi tapu and wahi tapu areas where necessary for the purposes of the HP Act.
 - Assist historic places, historic areas, wahi tapu and wahi tapu areas to be protected under the RMA (s22(2) HP Act).

7. The Register includes a number of parts, including under s 22 (30 (a) HP Act a part relating to historic places, comprising the following categories, Category 1: places of special or outstanding historical or cultural heritage significance or value, and Category 2: places of historical or cultural heritage significance or value (see Appendix 1).

8. In terms of affording protection to historic places, the HP Act provides for Heritage Orders and Heritage Covenants (see Appendix 2). Heritage Orders provide that the Trust or the Minister may give notice to the relevant territorial authority of a requirement for a heritage order in accordance with that Act to protect (a) the whole or part of any historic place, historic area, wahi tapu, or wahi tapu area; and(b) such area of land (if any) surrounding that historic place, historic area, wahi tapu, or wahi tapu area as is reasonably necessary for the purpose of ensuring the protection and reasonable enjoyment of it. Heritage Covenants provide for the Trust to negotiate and agree with the owner or lessee or licensee of any historic place, historic area, wahi tapu, or wahi tapu area for the execution of a heritage covenant to provide for the protection, conservation, and maintenance of that place, area, or wahi tapu.

9. Another way protection can be afforded to items listed in the Historic Places Trust Register is their listing in a District Plan Schedule. Listing the item in the District Plan enables protection to be afforded through the RMA provisions. Elizabeth Pishief states in her report (paragraph 42) that she considers it mandatory for TAs to develop and maintain and update inventories of historic heritage in their districts. She also considers that the Regional Council has a statutory responsibility to develop and maintain an inventory of historic heritage in the Coastal Marine Area (paragraph 45). It is also important to note that all seven Territorial Authorities in the Manawatu-Wanganui Region currently include Schedules of Historic Heritage and provide related provisions

for managing the effects of activities. It is important to note that in Recommendation HH1, Recommended Changes to Provisions (c) of the Historic Heritage Planning and Recommendations Report, a recommendation is made to include a method in the CMA chapter (Chapter 9) of the POP to require the Regional Council to develop a Schedule of Historic Heritage for the CMA.

Resource Management Act 1991

10. Under s6 (e) and (f) RMA the Regional Council is required to, as a matter of national importance, recognise and provide for the protection of historic heritage from inappropriate subdivision, use and development, and the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga. Chapter 4 of the POP addresses resource management issues of significance to hapu and Iwi. Policy 4-2 in particular addresses waahi tapu, waahi tapuna and other sites of significance. Methods in Chapter 4 include the Memoranda of Partnership, Code of Practice for Waahi Tapu Protection and Discovery and Regional Iwi Environmental Projects, all of which address (in different ways) the identification of sites of significance, or the development of processes to protect identified sites, or the development of a code of practice to deal with the accidental discovery of sites during the course of a consented activity.

Permitted Activity Standards

11. I agree with John Maassen in his report (paragraph 18) that the performance standards recommended in my supplementary Report for Historic Heritage, do not meet the tests according to the recent decision *Carter Holt Harvey Ltd v. Waikato Regional Council*, for those reasons specified by John Maassen. As proposed the standards require the approval of the NZHPT (via an archaeological authority) and reference to lists of sites in the NZAA site recording scheme and Historic Places Register. An archaeological authority is only required for archaeological sites, therefore the standard as written is incorrect.

Conclusions and Recommendations

12. I consider that the HP Act provides for the identification and registration of historic heritage on the Register, and provides for historic heritage protection through Heritage Orders and Heritage Covenants, and requires any person wishing to modify, damage or destroy any archaeological site apply for an authority to do so. I do not consider it appropriate that the POP provisions should add another layer to this control, or should do the work of the HP Act with specific regard to archaeological sites. I do however consider that the Regional Council has a responsibility to manage the effects of activities, for which they have control, on historic heritage that is included in any District Plan or Regional Plan Schedule and that it is appropriate for standards in the POP to reflect this. I also consider that the Regional Council has a responsibility to manage effects of activities, for which they have control over. I further consider that the methods in chapter 4 provide mechanisms for sites of significance to Maori, including waahi tapu, to be identified and scheduled in the Regional plan (in an appropriate manner as determined through the implementation of those methods in Chapter 4). In conclusion, I recommend that the hearing Panel consider amending the relevant standards in clauses in Part II of the POP that require either setback distances or require no disturbance to apply only to historic heritage listed in any District or Regional Plan. It should be noted that using the term historic heritage, as per the RMA definition provides for sites of significance to Maori, including waahi tapu.
13. John Maassen explains in his report (paragraph 8), that in his opinion there is no jurisdiction for the Regional Council to impose rule standards/terms/conditions for the purpose of protecting historic heritage in Chapter 12 Land. For this reason, I recommend that the relevant clauses (12-1 (b), 12-1 (c),12-2(c),12-2(d), 12-3(c)) in Part II of the POP be deleted, in agreement with Phil Percy in his Supplementary Report for Land, as shown in Track Changes Chapter 12 Document 1 December 2008. In addition, I consider that a consequential amendment should be made in Section 7.1.4, paragraph 1, such that the examples of activities given better reflect the jurisdiction of the Regional Council.
14. I agree with John Maassen (paragraph 15) that there is merit in providing an advice note to resource users that the HP Act provides protection for

archaeological sites and that any person wishing to undertake work that may damage, destroy or modify an archaeological site, or to investigate a site by excavation, must first obtain an authority form NZHPT for that work, and that the HP Act contains penalties for unauthorised damage or destruction to any archaeological site. However, I also consider that this information is already adequately presented in Section 7.1.4 and that repeating this information throughout chapters in Part II is not essential (and would be unduly cumbersome) to the interpretation of the Rules in Part II.

Recommendation

15. (a) Amend clauses in Table 16-1 condition (l) and Table 17-1 condition (i) to read as follows:
“the activity shall not disturb any historic heritage as identified in any District or Regional Council plan Schedule or database, or proposed plan”.
- (b) Amend clauses 13-3(c)(iii), 13-4(d)(v), 13-5(e)(vi), 13-6(c)(v), 13-13(d)(iv), 13-19(c)(iii), 13-20(b)(iv), 13-25(c)(iv), that require a separation distance to read as follows:
“50m from any historic heritage as identified in any District or Regional Council plan Schedule or database, or proposed plan”.
- (c) Amend clauses 13-11(j), 13-12(e), 13-15(i), 15-10(j)), 17-30(f) to read as follows:
“the activity shall not be to any historic heritage as identified in any District or Regional Council plan Schedule or database, or proposed plan”.
[Track changes have been made to the most up to date track changes documents (16 December 2008) for each relevant chapter in Part II and are available electronically.]
- (d) Delete clauses 12-1 (b), 12-1 (c), 12-2(c), 12-2(d), 12-3(c).
[Please see the Track changes document Chapter 12 December 2008].
- (e) Consequential amendment, reword Section 7.1.4, paragraph 1 to include examples of activities for which the Regional Council has jurisdiction.

STANDARDS REQUIRING CESSATION OF THE ACTIVITY IN THE EVENT OF THE DISCOVERY OR DISTURBANCE OF AN ARCHAEOLOGICAL SITES, KOIWI REMAINS AND WAAHI TAPU

16. A number of clauses in permitted, controlled and restricted discretionary activity standards in Part II of the POP require the following:

“In the event of the discovery of an archaeological site, waahi tapu site or koiwi remains being discovered or disturbed while undertaking the activity, the activity shall cease and the Regional Council shall be notified as soon as practicable. The activity shall not be recommenced without the approval of the Regional Council”.

17. This standard applies to clauses 13-11(k) (permitted), 13-12(f) (restricted discretionary), Table 16.1 condition (m) (Standard conditions for permitted activities involving the beds of Rivers and Lakes), and Table 17-1, condition (j) (Standard Conditions for Permitted and Controlled Activities in the CMA).

18. John Maassen states in his report (paragraph 17) that permitted standards should meet the tests according to the recent decision *Carter Holt Harvey Ltd v. Waikato Regional Council*. I consider that, firstly, as proposed the clause does not meet these tests, in particular because it reserves control to a council the discretion to decide by subjective formulation whether a proposed activity is permitted or not. Secondly it requires the cessation of an activity for an unspecified period, providing the resource user with no certainty. Third, it is not the Regional Council who is required to give approval for the activity to recommence. By way of explanation I give the following examples:

(a) In the case of an archaeological site being disturbed (such as a midden or old building foundations) the NZHPT would need to be contacted and an archaeological authority obtained.

(b) In the case of human remains being disturbed, it would be most appropriate to contact the New Zealand Police in the first instance. If the remains are archaeological, it would also be appropriate to contact the NZHPT and an archaeological authority obtained. If the remains are

koiwi remains, not only should the NZHPT be contacted, but also the relevant iwi, so that culturally sensitive procedures may be carried out.

19. The HP Act, as stated previously, provides for archaeological sites and I consider that it is not appropriate to add additional layers of control or to do the work of the HP Act through the POP provisions. I consider that the discovery of human remains would prompt the average reasonable person to contact the New Zealand Police in the first instance. I consider that the average reasonable person would not be able to ascertain if the human remains were archaeological or koiwi remains without assistance from an archaeological expert or professional in a related field. I also consider that it is unlikely that in the course of an activity a waahi tapu site, in the broad sense of the term, is disturbed or uncovered, unless a person was to inform the resource user that the area of concern was in fact waahi tapu. I consider that in most instances any site that may be uncovered or disturbed will be uncovered or disturbed because they were buried, and therefore are likely to be, by their very nature, archaeological sites, human remains of koiwi remains.
20. I consider that attempting to identify all the relevant authorities that should be contacted in the event of such a discovery in a permitted, controlled or restricted discretionary standard, would be far too difficult because it is so dependent on what is disturbed or discovered. In my opinion, this is a matter that requires clear procedures to be drafted, before any certainty could be provided via a standard in the POP. It is important to note the relevance of the methods in Chapter 4 with regard to the development of a protocol to deal with the accidental disturbance of koiwi remains or waahi tapu. In the method, resource consent holders, resource consent applicants and contractors are to be made aware of the appropriate procedures to follow in the accidental discovery of waahi tapu or koiwi remains.
21. In my view, there are two options to be considered further:
 - i. The clause could be amended to require only that the Regional Council is contacted as soon as practicable, such that the Regional Council may provide advice to the resource user of the appropriate authority to be contacted (eg. New Zealand Police, NZHPT, Iwi)
 - ii. The clause is deleted.

22. If option (1) is undertaken, I consider that this would provide an appropriate mechanism for the protocol, proposed to be developed through Chapter 4, to be used effectively in the future, and could be used as a permitted, controlled, restricted discretionary standard.
23. If option (2) is taken, the clause is deleted and the only means to informing resource users of the protocol, proposed to be developed through Chapter 4, is via non-regulatory means and through the consent process.

Conclusions and Recommendations

24. With regard to permitted and controlled activities in the CMA (Table 17-1, condition (j) (Standard Conditions for Permitted and Controlled Activities in the CMA), I have discussed the options above with Elizabeth Pishief who advises that there is high probability that koiwi remains could be uncovered within the CMA, being the area from mean high water springs to the 12 nautical mile limit. Elizabeth Pishief considers that it is a matter that requires specific mention and warrants consideration in decision making, as is reflected in the proposed clause of Chapter 17 POP.
25. With regard to the clause used in Table 16.1 Standard conditions and terms for permitted activities involving beds of rivers and lakes, and the clause used in Rule 13-11 (new and upgraded discharges of domestic wastewater into or onto land (permitted)), and the clause used in Rule 13-12 (Discharges of domestic sewage not complying with Rules 13-10 and 13-11 (Restricted Discretionary), I consider that there is a high enough probability that the accidental discovery or disturbance of koiwi remains may occur during these activities.
26. Therefore, I consider that it is appropriate to include a standard requiring that the Regional Council be contacted should remains be uncovered or disturbed. This would also assist in the implementation of the method in Chapter 4 to develop protocols for the accidental discovery of koiwi remains or waahi tapu.

Recommendation

27. (a) Amend clauses 13-11(k) (permitted), 13-12(f) (restricted discretionary), Table 16.1 condition (m) (Standard conditions for permitted activities involving the beds of Rivers and Lakes), Table 17-1 condition (j) (Standard Conditions for Permitted and Controlled Activities in the CMA) to read as follows:

“In the event of koiwi remains being discovered or disturbed while undertaking the activity, the Regional Council shall be notified as soon as practicable such that the Regional Council will provide advice regarding the appropriate authorities to be contacted”.

[Track changes have been made to the most up to date track changes documents (16 December 2008) for each relevant chapter in Part II and are available electronically.]

APPENDIX 1 - SECTIONS 22 AND 23 HISTORIC PLACES ACT 1993 (REPRINT AS AT 1 AUGUST 2006)

Part 2: Registration of historic places, historic areas, wahi tapu, and wahi tapu areas

28. **22. Register of historic places, historic areas, wahi tapu, and wahi tapu areas**

- (1) The Trust shall establish and maintain a register of historic places, historic areas, wahi tapu, and wahi tapu areas.
- (2) The purposes of the register shall be as follows:
 - (a) to inform members of the public about historic places, historic areas, wahi tapu, and wahi tapu areas;
 - (b) to notify owners of historic places, historic areas, wahi tapu, and wahi tapu areas where necessary for the purposes of this Act;

- (c) to assist historic places, historic areas, wahi tapu, and wahi tapu areas to be protected under the Resource Management Act 1991.
- (3) The register shall consist of the following:
- (a) a part relating to historic places, comprising the following categories:
 - (i) Category 1: places of special or outstanding historical or cultural heritage significance or value;
 - (ii) Category 2: places of historical or cultural heritage significance or value.
 - (b) a part relating to historic areas;
 - (c) a part relating to wahi tapu;
 - (d) a part relating to wahi tapu areas.
- (4) The entry in and removal from the register of details of historic places, historic areas, wahi tapu, and wahi tapu areas shall be in accordance with this Part.
- (5) An entry in the register in respect of any historic place may include any chattel or object or class of chattels or objects-
- (a) situated in or on that place; and
 - (b) considered by the Trust to contribute to the significance of that place; and
 - (c) nominated by the Trust.

Registration of historic places, historic areas, wahi tapu, and wahi tapu areas

29. 23. Criteria for registration of historic places and historic areas

- (1) The Trust may enter any historic place or historic area in the register if the place or area possesses aesthetic, archaeological, architectural, cultural, historical, scientific, social, spiritual, technological, or traditional significance or value.
- (2) The Trust may assign Category 1 status or Category 2 status to any historic place, having regard to any of the following criteria:
 - (a) the extent to which the place reflects important or representative aspects of New Zealand history;
 - (b) the association of the place with events, persons, or ideas of importance in New Zealand history;
 - (c) the potential of the place to provide knowledge of New Zealand history;
 - (d) the importance of the place to the tangata whenua;
 - (e) the community association with, or public esteem for, the place;
 - (f) the potential of the place for public education;
 - (g) the technical accomplishment or value, or design of the place;
 - (h) the symbolic or commemorative value of the place;
 - (i) the importance of identifying historic places known to date from early periods of New Zealand settlement;
 - (j) the importance of identifying rare types of historic places;

- (k) the extent to which the place forms part of a wider historical and cultural complex or historical and cultural landscape;
- (l) such additional criteria for registration of wahi tapu, wahi tapu areas, historic places, and historic areas of Maori interest as may be prescribed in regulations made under this Act;
- (m) such additional criteria not inconsistent with those in paragraphs (a) to (k) for the purpose of assigning Category 1 or Category 2 status to any historic place, and for the purpose of registration of any historic area, as may be prescribed in regulations made under this Act.

APPENDIX 2 - SECTION 5 AND S 6 HISTORIC PLACES ACT 1993 (REPRINT AS AT 1 AUGUST 2006)

s 5 Heritage Orders

30. “Without limiting any of the provisions of the Resource Management Act 1991, the Trust or the Minister may give notice to the relevant territorial authority of a requirement for a heritage order in accordance with that Act to protect-
- (a) the whole or part of any historic place, historic area, wahi tapu, or wahi tapu area; and
 - (b) such area of land (if any) surrounding that historic place, historic area, wahi tapu, or wahi tapu area as is reasonably necessary for the purpose of ensuring the protection and reasonable enjoyment of it.”

S 6 Heritage Covenants

31. “(1) Subject to subsection (5), the Trust may negotiate and agree with the owner or lessee or licensee of any historic place, historic area, wahi tapu, or wahi tapu area for the execution of a heritage covenant to provide for the protection, conservation, and maintenance of that place, area, or wahi tapu.

- (2) Subject to subsection (5), a heritage covenant may include such terms and conditions as the parties think fit, including provision for public access.
- (3) Without limiting subsection (2), a heritage covenant may be expressed to have effect in perpetuity or for any specified term, or may be expressed to terminate upon the happening of a specific event or events.
- (4) Subject to subsection (5), any heritage covenant may be varied or cancelled by agreement between the owner, lessee, or licensee (as the case may be) of the land for the time being and the Trust.
- (5) The consent of the owner of the land shall be required where-
 - (a) any lessee or licensee of any land proposes to enter into a heritage covenant with the Trust; or
 - (b) any lessee or licensee of any land and the Trust propose to vary or cancel a heritage covenant under subsection (4).
- (6) In the case of the proposed execution of a heritage covenant or a variation of such a covenant, any consent given under subsection (5) may be given subject to the inclusion in the heritage covenant or variation of the heritage covenant of any additional provisions or modified provisions, or to the deletion of such provisions, as the owner giving the consent considers necessary.
- (7) For the purposes of this section and section 8,-
 - (a) the term owner includes the owner of the fee simple and any lessee or licensee from whom a lessee or licensee derives title; and
 - (b) the term land means the land to which the heritage covenant relates; and includes, in the case of a building or structure that is

the subject or intended subject of a heritage covenant, the land on which that building or structure is located.

- (8) Nothing in this Act shall require the Trust to negotiate or agree with any person to enter into or execute any heritage covenant.
- (9) Nothing in section 126G of the Property Law Act 1952 applies to any heritage covenant entered into in accordance with this Act.”