

**BEFORE THE HORIZONS REGIONAL COUNCIL**

**IN THE MATTER** The Resource Management Act 1991  
**OF**

**AND**

**IN THE MATTER** Combined Regional Policy Statement,  
**OF** Regional Plan and Coastal Plan –  
Proposed One Plan – Historic  
Heritage

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**STATEMENT OF EVIDENCE OF RAKESH MISTRY FOR AND ON  
BEHALF OF THE NEW ZEALAND HISTORIC PLACES TRUST  
POUHERE TAONGA (NZHPT)**

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11 July 2008

## **Introduction**

1. My name is Rakesh Mistry. I am employed as a Heritage Advisor - Planning for the New Zealand Historic Places Trust/Pouhere Taonga (NZHPT). I hold a Bachelor of Planning (Honours) from the University of Auckland. I am also a graduate member of the New Zealand Planning Institute.
2. Today I am presenting planning evidence in support of the New Zealand Historic Places Trust's submission on the Horizons Regional Council's proposed One Plan (OP).
3. I have read and considered all the relevant reports and expert evidence that have been commissioned by the Horizon's Regional Council (the Council).
4. I have read and considered the Council's planner's report for this hearing by Fiona Gordon, dated June 2008 (the planner's report).
5. I have read the Environment Court's practice note Expert Witnesses – Code of Conduct and I agree to comply with it.

## **The purpose of this evidence**

6. The purpose of my evidence is to provide expert planning evidence in support of NZHPT submission on the proposed OP. The general thrust of my evidence is to examine where historic heritage sits in the context of the RMA. My presentation will cover:
  - Historic heritage as a matter of national importance under the RMA.
  - Overview of the role and distinction between the Regional Policy Statement (RPS) and Regional Plans in relation to the sustainable management of historic heritage under the RMA
  - Regional Coastal Plan and its role in relation to the sustainable management of historic heritage in the Coastal Marine Area under the RMA.

### **Role of the New Zealand Historic Places Trust**

7. The NZHPT is the lead historic heritage agency in New Zealand and is responsible for the administration of the Historic Places Act 1993 (HPA). The purpose of the HPA is to promote the identification, protection, preservation and conservation of the historic and cultural heritage of New Zealand.
8. Local authorities are responsible for historic heritage under the Resource Management Act 1991 (RMA). This responsibility is exercised in conjunction with other statutory agencies such as the Department of Conservation and the NZHPT.

### **Regional Planning and Sustainable Management of Historic Resources**

9. All local authorities have a responsibility to promote the purpose and principles of the RMA. This includes providing for the protection of historic heritage from inappropriate subdivision, use and development as matter of national importance (section 6f, RMA). There is a considerable degree of interrelationships between all the matters listed in section 6 of the RMA. For example the protection of outstanding landscapes and the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga all relate to historic heritage values.
10. Historic heritage resources at a regional level can include natural formations and landscapes of heritage significance and heritage places in the Coastal Marine Area (CMA). Groups of archaeological sites when considered together as areas, at a regional scale can be valuable indicators of past resource use, settlement patterns and historical events. Often iwi boundaries extend beyond local authority boundaries, so approaching Maori heritage issues from a regional perspective can be a far more effective approach with regard to providing for the integrated management historic heritage resources across a region.
11. The finite nature of historic heritage resources means that once it is altered or lost it cannot be returned to its original state or be replaced. The need to manage our historic heritage in a sustainable manner, in particular the positive effects this has on our communities, is best summarised in the New Zealand Historic Places Trust Strategic Plan 2005-2010 –

‘Our historic sites and buildings make a powerful contribution to local identity, reminding us of ancestral achievements and engendering a sense of pride in our communities and regions. Historic Places also have educational value, passing on knowledge of the past to our children. They enrich the texture of our communities,

making them more enjoyable and interesting places to live in and contributing to urban renewable' (emphasis added).<sup>1</sup>

12. The RMA enables Regional Council to allow for historic heritage in their plans in a number of ways:
  - The establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the natural and physical resources of the region. As defined under section 2 of the RMA, historic heritage is both a natural and physical resource.
  - The preparation of objectives and policies in relation to any actual or potential effects of the use, development, or protection of land which are of regional significance. This could include the protection of regional landscapes that have historic heritage value.
  - Regulating activities in the CMA, which includes managing the destruction, damage, or disturbance of any foreshore or seabed (other than for the purpose of lawfully harvesting any plant or animal) in a manner that has or is likely to have an adverse effect on historic heritage.
  - When preparing or changing their plans to have regard to any relevant entry in the Historic Places Register as a matter to be considered when preparing a regional policy statement, regional plan and coastal plan under section 61(2)(a)(iia) and 66(2)(c)(iia).
  - Provide consideration to iwi management plans when preparing a regional policy statement and a regional plan which would include issues related to the management of Maori historic heritage under section 61(2A)(a) and 66(2A)(a).
13. The above establishes that the RMA encourages and enables Regional Council's to provide for the sustainable management of historic heritage through a range of provisions available to them in the Act.

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<sup>1</sup> NZHPT Strategic Plan 2005-2010 Message from the Chairperson of the Board (Dame Anne Salmond) pg. 4.

## Regional Policy Statement (RPS)

14. Section 59 of the Act sets out the purpose of regional policy statements –

### **Purpose of regional plans**

The purpose of a regional policy statement **is to achieve the purpose of the Act** by providing an overview of the resource management issues of the region and policies and methods to achieve integrated management of the natural and physical resources of the whole region (emphasis added).

15. The hierarchy of planning documents means an RPS establishes a policy framework for heritage provisions in regional coastal plans, regional and district plans. In the absence of national policy statements, the RPS is the leading planning document with regard to a number of different resource management issues. The RMA recognises the status of RPS within this planning framework by requiring regional plans, regional coastal plans and district plans to give effect to this document. Given that the RPS is the foremost strategic planning instrument in determining how the integrated management of natural and physical resources is to be achieved, this confirms in my opinion that this is a document for the region not just a document for the Regional Council.
16. As has been raised in earlier discussion on the Overall proposed OP, I concur that it is important to retain in the proposed OP a clear distinction between the role of the RPS and the Regional Plan (RP) because of their different functions under the RMA<sup>2</sup>.
17. The Environment Court, on making a decision on an appeal on a RPS plan change, has confirmed the status of historic heritage. In the case of *Thomas M J v Bay of Plenty Regional Council*, the new heritage provisions of the Environment Bay of Plenty RPS were challenged. The Court stated:

*The suggestion that the Regional Council has exceeded its powers in seeking to address these issues cannot be correct. In fact, given that the protection of historic heritage from inappropriate subdivision, use and development is provided for as a matter of national importance under section 6, it is clear that the Regional Council should recognise and provide for those matters in the Regional Policy Statement.*<sup>3</sup>

18. The NZHPT holds the same view as stated in its submission. The protection of historic heritage is assisted by appropriate RPS provisions. The NZHPT, for example, was involved in saving the Cobbler building in Marton some four years

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<sup>2</sup> Section 42A report by Andrea Bell for the Overall Horizons One Plan (paragraph 9)

<sup>3</sup> *Thomas, MJ v Bay of Plenty Regional Council*, ENV A011/08, p 19, proceedings related to Environment BOP, Proposed Plan Change No.1 (Heritage Criteria)

ago. This is a registered Category II historic place and part of the historic centre of Marton. The building was subject to a consent application to demolish. The Rangitikei District Council made a decision to decline the consent application noting the evidence that the Cobbler building was of regional significance as guided by the provisions in the Horizon's RPS.

19. The Environment Court has also, on a number of occasions, drawn its attention to RPS provisions to determine or identify the significance of historic heritage at a regional level. For example, in the case of *Wellington Boys' and Girls' Institute Incorporated v Wellington City Council*, the Environment Court referred to the heritage provisions of the Wellington RPS in determining the appropriateness of alterations and addition to a registered Category I Historic Place and listed in the Wellington City Council District Plan (Spinks Cottage)<sup>4</sup> This case highlights the important role of the RPS in consent decision-making at the territorial level when dealing with historic heritage of local, regional and national importance.
20. Furthermore the Environment Court has endorsed that a landscape, when considered under the RMA and the New Zealand Coastal Policy Statement (NZCPS), is not limited to natural landscapes, nor restricted to visual aspects. It may include both the physical and the perceptual, such as historic heritage values<sup>5</sup>.
21. Given the lead role of the RPS, it has been demonstrated by the Environment Court that provisions relating to the identification and assessment of historic heritage values are important in a RPS. Clearly, historic heritage provisions in the RPS assist in applying the 'appropriateness' test in terms of the application of section 6(f) of the RMA.
22. It is noted in the Planner's report that greater guidance on the identification and assessment of historic heritage resources and their values is required in the proposed OP. It has been recommended that a new policy be included (policy 7-11) to provide guidance on criteria to identify and also to assess the effects on historic heritage resources. I support this change recommended in the Planner's report to the proposed OP.
23. However, in relation to policy 7-10 I consider that this policy as proposed would be better placed in the Regional Plan as refers it only refers to activities controlled by the Regional Council. As discussed above (paragraph 13) this policy should be amended so it applies to both the Regional Council and the Territorial authorities, not just the Regional Council.

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<sup>4</sup> Wellington Boys' and Girls' Institute Incorporated v Wellington City Council ENV W010/08

<sup>5</sup> New Zealand Marine Hatcheries (Marlborough) Ltd v Marlborough District Council ENV W129/97

24. Another area that I consider that further work should be undertaken is the identification and recognition of the historic heritage values of the 'regionally important' resources that have been scheduled in the proposed OP. A good example is that the Tongariro National Park which is listed in the schedule of regionally important landscapes but has not been noted as a World Heritage Area. There are also a number of regional important water catchments that have been listed in schedule D that have high historic heritage, which have not been recognised.

### **Regional Plans (RP)**

25. Section 63 of the Act sets out the purpose of Regional Plans –

#### **Purpose of Regional Plans**

- (1) The purpose of the preparation, implementation, and administration of regional plans is to assist a regional council to carry out any of its functions in order to **achieve the purpose of this Act**.
- (2) Without limiting subsection (1), the purpose of the preparation, implementation, and administration of regional coastal plans is to assist a regional council, in conjunction with the Minister of Conservation, to achieve the purpose of this Act in relation to the coastal marine area of that region.

(Emphasis added).

26. The threat of damage and destruction of historic heritage at a regional level involve both natural processes and human activities. Examples of these processes and activities include coastal erosion, land subsidence, earthworks and flooding. In addition, archaeological sites can be damaged by heavy stocking, fencing and ground disturbance from forestry and cultivation. Regulating the effects of many of these activities and processes are controlled by the Regional Council. The following table, from the NZHPT's *Sustainable Management of Historic Heritage Guidance Series* Guide No. 3 – Regional Plans, provides a good overview of the examples of activities and the actual and potential effects that they could have on historic heritage.

<b>Activity</b>		<b>Issues: Examples of Historic heritage effects</b>
Earthworks	and	Damage to sites of significance to Maori and archaeological sites
Clearance	of	Loss of trees of historic heritage value (e.g. karaka and cabbage tree plantations, commemorative trees)
vegetation		Damage to sites of significance to Maori and

	archaeological sites
Silviculture	Damage to historic heritage caused by logging, tree fall, tracking, planting of new trees on archaeological sites. May damage the surroundings associated with historic heritage
Draw down of ground water (e.g. geothermal, mineral, water bores)	Damage to sites of significance to Maori and archaeological sites. Subsidence effects on built heritage.
New buildings and structures	Damage to sites of significance to Maori and archaeological sites. Visual impacts of settings of heritage places.
Activities relating to the beds of rivers, streams and lakes	Damage to sites of significance to Maori and archaeological sites. For example, wetland, submerged island lake pa
Reclamation	Damage to sites of significance to Maori and archaeological sites
Wetland-related works	May damage artefacts and taonga buried by Maori within wetlands
Coastal protection works	Removal or damage to coastal heritage structures Damage to sites of significance to Maori and archaeological sites. Visual/landscape impacts.
Contaminated sites remediation	May need to manage archaeological sites associated with a contaminated site (example of Mapua remediation works, Tasman District).
Gravel extraction	May affect water or sites of significance to Maori and archaeological sites.

27. Given the regulatory functions in relation to the controls on the use of air, land and water as set out in the Act, in administering these responsibilities through the RPS, the consideration of effects of activities on the environment regulated by the RPS is no different to that required or found in a District Plan. Therefore there is a need to establish a planning framework of objectives, policies, rules and methods to manage the effects on historic heritage resources.
28. The management of the actual and potential effects of activities on historic heritage resources is provided for in three ways in part II of the proposed OP. The first method in relation to known recorded archaeological sites, waahi tapu or koiwi remains requires the approval of the NZHPT prior to commencing an activity. The second method requires compliance with stipulated set back distance from a known recorded archaeological sites, waahi tapu or koiwi remains (or less where NZHPT approval has been obtained) and thirdly advising the Regional Council



upon the discovery of an unknown (unrecorded) archaeological site, waahi tapu or koiwi remains.

29. The NZHPT acknowledges the recommendations in the Planner's report in relation to the role of the NZHPT and the archaeological authority process in the proposed OP. NZHPT notes the inclusion of the definition of an archaeological site from the Historic Places Act 1993 (HPA). The NZHPT supports this change to the proposed OP given that it is not defined by the RMA and is a statutory definition under the HPA.
30. While the NZHPT supports the inclusion of the archaeological authority process into Part II of the proposed OP it is important to remember that historic heritage is a wider issue than just archaeological sites and that the authority process falls under the HPA. Council is still required to assess the effects on historic heritage as part of the consent process under the RMA. As an example, the Council may proposed to construct new stop banks along the Manawatu River. The heritage assessment should ensure any historic heritage relating to the area is identified; this may include archaeological sites, Maori heritage, historic structures, even historic stopbanks. Therefore, in my opinion there is still a need to improve the assessment framework in Part II of the proposed OP around managing the effects on historic heritage.

### **Regional Coastal Plans (RCP)**

31. Sections 64 of the RMA states:

#### **Preparation and change of regional coastal plans**

- (1) There shall at all times be, for all the coastal marine area of a region, one or more regional coastal plans prepared in the manner set out in Schedule 1 [[and Schedule 1A]].
  - (2) A regional coastal plan may form part of a regional plan where it is considered appropriate in order to promote the integrated management of a coastal marine area and any related part of the coastal environment.
  - (3) Where a regional coastal plan forms part of a regional plan, the Minister of Conservation shall approve only that part which relates to the coastal marine area.
  - (4) A regional coastal plan may be changed in the manner set out in Schedule 1 [and Schedule 1A].
32. Regional Councils are responsible for the protection of historic heritage from inappropriate use or development in the CMA. Many of New Zealand's settlements

are, or were, located at the interface of the land and sea or water bodies and this has resulted in concentrations of heritage places on the coast. Coastal historic heritage may include historic buildings, historic sites (including archaeological sites), historic areas and heritage seascapes, places/areas of and significance to Maori. Places of cultural significance to Maori in the coastal environment can include registered wahi tapu and wahi tapu areas, natural landforms such as reefs, rocks, and other parts of the shoreline that are of traditional importance (e.g. tauranga waka), as well as places with evidence of past habitation such as archaeological sites.

33. The Regional Coastal Plan is unique in that there is an additional level of guidance in the hierarchical policy and planning framework which begins with the New Zealand Coastal Policy Statement (NZCPS). The NZCPS contains a number of provisions relating to historic heritage (see attachment 1).
34. In addition to providing for sections 6(e) and (f) of the RMA in the CMA, section 12 of the RMA restricts certain activities in coastal marine areas unless specifically permitted by a rule in the Regional Coastal Plan, or unless a resource consent has been obtained. This includes:
  - (g) Destroy, damage, or disturb any foreshore or seabed (other than for the purpose of lawfully harvesting any plant or animal) in a manner that has or is likely to have an adverse effect on historic heritage.
35. Activities in the CMA that have potential for adverse effects on historic heritage include dredging, or disturbance of the seabed, reclamation or damage or the foreshore or seabed. Therefore, given section 12(g) of the RMA, Regional Coastal Plans must control the effects of activities on historic heritage resources located within the CMA.
36. The New Zealand Coastal Policy Statement, Part II of the RMA, the provisions of section 12 of the RMA, and other provisions relating to the coast within the RMA, highlight the importance of conserving the historic heritage located within the coastal marine area.
37. Given that Regional Council's and the Minister of Conservation (DOC) are responsible for the CMA, all regional coastal plans must contain a policy framework for identifying, protecting and managing coastal historic heritage. The NZHPT's *Sustainable Management of Historic Heritage Guidance Series* Guide No. 3 – Regional Plans, sets out basic standards to achieve recognition of historic heritage in regional coastal plans. As a minimum a plan should:

- Contain a schedule of coastal historic resources that identifies, recognises and protects characteristics of special spiritual, historical or cultural significance to Maori and significant places or areas of historic and cultural significance in the coastal marine area.
  - Contain objectives, policies and rules to regulate activities that may have adverse effects on historic heritage, including destruction, damage and disturbance of the foreshore or seabed.
38. The NZHPT notes and acknowledges the recommendations contained in the Planner's report in relation to the Regional Council's responsibilities with regard to the management of historic heritage in the CMA. A new policy (7-11) and method in Chapter 9 has been recommended to address this deficiency in the proposed OP. It is also noted in the report that at the pre-hearing that NZHPT would provide guidance on good practice management in the CMA. In terms of this agreement the NZHPT is willing to provide assistance to Council (in addition to the *Sustainable Management of Historic Heritage Guidance Series*) on developing a framework in the proposed OP for good practice management in the CMA, as part of a future plan change to the plan.

#### **Section 42A reports historic heritage Provisions of the proposed One Plan.**

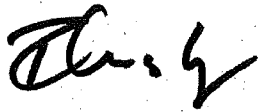
39. I have commented on the Planner's Section 42A report throughout my evidence. The NZHPT acknowledges Council's recruitment of a heritage consultant (Elizabeth Pishief) to provide expert advice on the matters raised by submissions on the heritage provisions of the proposed OP. The recommendation based on this report outline a number of changes that would contribute to positively enhancing the heritage provisions of the proposed OP.

#### **Conclusion**

40. In conclusion I support the intent of Council to provide for an integrated approach resource management at a regional level by combining the Regional Policy Statement, Regional Plan and Regional Coastal Plan, to focus on delivering on the four key regional issues.
41. While the proposed OP is an innovative approach, the proposed OP should still contain an appropriate level of recognition and provision for the protection of historic heritage within the Manawatu - Wanganui region as a matter of national

importance given the contribution of historic heritage to the well-being of communities, which is consistent with the purpose and principles of the RMA.

Dated this 11th day of July 2008

A handwritten signature in black ink, appearing to read 'Rakesh Mistry', with a stylized flourish at the end.

Rakesh Mistry  
Heritage Advisor – Planning  
New Zealand Historic Places Trust / Pouhere Taonga  
Central Regional Office

## **Attachment 1: New Zealand Coastal Policy Statement Heritage Provisions**

- As a general principle (No.8, p 3), cultural, historical, spiritual, amenity and intrinsic values are the heritage of future generations and damage to these values is often irreversible. Also (No. 9), the tangata whenua are the kaitiaki of the coastal environment.
- Policy 1.1.3. It is a national priority to protect characteristics of special spiritual, historical or cultural significance to Maori identified in accordance with tikanga Maori and significant places or areas of historic and cultural significance.
- Policy 2.1.1. Provision should be made for the identification of the characteristics of the coastal environment of special value to the tangata whenua in accordance with tikanga Maori.
- Policy 3.1.2. Policy statements and plans should identify (in the coastal environment) those scenic, recreational and historic area, areas of spiritual or cultural significance, and those scientific and landscape features, which are important to the region or district and which should therefore be given special protection; and that policy statements and plans should give them appropriate protection.
- Policy 4.2.1. Recognition and facilitate the special relationship between the Crown and the tangata whenua as established by the Treaty of Waitangi.