
BEFORE THE HEARINGS COMMITTEE

IN THE MATTER

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

**SECTION 42A REPORT BY JOHN MAASSEN
FOR HORIZONS REGIONAL COUNCIL CONCERNING HISTORIC HERITAGE**

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Introduction

1. My name is John Maassen. I am a resource management lawyer. I have 20 years legal experience. I am a partner of the Manawatu and Central Region law firm Cooper Rapley. In the last decade I have undertaken work for at least six local authorities in the lower North Island and top of the South Island. I also regularly act as a commissioner having completed the Making Good Decisions Program which I co-presented on behalf of the Ministry for the Environment in the lower North Island.
2. I have been requested by Horizons Regional Council (HRC) to provide legal commentary on issues relating to the provisions of Part I and Part II of the Proposed One Plan (POP) concerning historic heritage. My report is confined to legal matters.

General

3. POP (Part I) is the RPS and it deals with historic heritage under the heading "Living Heritage". The living heritage section relies upon various provisions in Part II RMA including s.6(b), s.6(c) and s.6(f). That is because it deals with:
 - (a) significant indigenous habitats and vegetation;
 - (b) outstanding natural features and landscapes; and
 - (c) protection of historic heritage.
4. This paper is confined to a consideration of historic heritage. Section 6(f) states that it is a matter of national importance to provide for:

"The protection of historic heritage from inappropriate subdivision, use and development."
5. Historic heritage has a wide meaning and is defined in s.2 as follows:

"[historic heritage—

 - (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 Maori, including wahi tapu; and
 - (iv) surroundings associated with the natural and physical resources]"
6. The protection of historic heritage must be provided for in relevant plans. The inclusion of s.6(f) was brought about by the 2003 Resource Management Amendment Act. Previously heritage had been a matter under s.7 to which decision makers were required "to have particular regard".

7. The inclusion of s.6(f) does not mean that the protection of historic heritage is an end in itself or to be achieved at all costs. A relevant question is whether or not the development or use is inappropriate. The requirements of s.6 inform s.5 but are not in substitution for the overall judgment required by s.5. This is made plain in *New Zealand Historic Places Trust v. Manawatu District Council*¹ [2005] NZ RMA 431.

Regional Council's functions in relation to historic heritage

8. The Regional Council has the function of preparing an RPS to achieve the RMA's purpose by providing an over view of the resource management issues of the region and the policies and methods to achieve integrated management (see s.59 RMA).
9. When preparing and changing a regional policy statement a regional council is required to have regard to any relevant entry in the Historic Places Register (see s.61(2)(a)(ia)).
10. An RPS must state at least:

"the significant resource management issues for the region"

What is significant is a matter of practical judgment based on the evidence and is often described as a matter of fact and degree.

11. The provisions of an RPS must be given effect to in district plans (s. 75(3)).
12. Most historic heritage is on land as defined in s.9 and the control of land is primarily a territorial authority function. The regional council does not have the power to control land use to manage the effects on historic heritage unless it is in the Coastal Marine Area. The question then, is the extent to which direction should be given (in an RPS) to territorial authorities in relation to their functions as it affects historic heritage. That question should be considered in the context of:
- (a) the significance of the issue of inappropriate use of historic heritage in the region;
 - (b) deficiencies in the level of protection afforded to historic heritage;
 - (c) the degree of specific direction that can be given that is materially helpful beyond the requirements of the RMA.
13. It does not follow that just because a matter is identified as a matter of national importance it is worthy of detailed consideration in the RPS. Territorial authorities must prepare and change their plans to achieve the Acts purpose which includes the protection of historic heritage from inappropriate use and development. This is a sufficiently particular direction that there is no utility in repeating it in an RPS in a different form. If there is specific evidence of inappropriate use and development which can be properly characterised as a significant issue then there is a case for specific consideration of that matter in the RPS. As the territorial authority's change their plans then the elevation of historic heritage to s.6 is likely to result in even greater protection afforded to historic heritage.

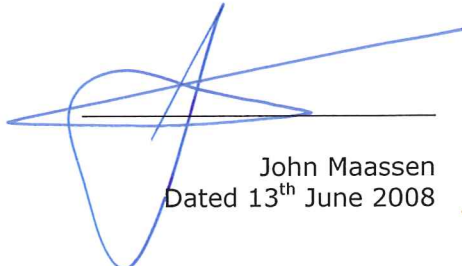
¹ See also for the place of matters in s.6 generally, *NZ Rail Ltd v. Marlborough District Council* [1994] NZ RMA 70 and *Auckland Volcanic Cones Society Inc v. Transit New Zealand* [2003] NZ RMA 316 and *Trio Holdings v. Marlborough District Council* (1996) 2 ELRNZ 353

14. On a cautionary note, it is risky to provide specific direction on matters relating to historic heritage within the control of territorial authorities in the absence of detailed information as to the historic values of that heritage and what would constitute inappropriate use and development having regard to the over arching purpose of the Act. There is a risk of information 'deficit' which makes informed judgement difficult. A regional policy statement should not attempt to resolve land use conflicts in the absence of detailed information of the resources and the social, economic and cultural aspirations of the community in relation to those resources. Applying the principle of subsidiarity, these matters are best left to the territorial authority.
15. In respect of the Coastal Marine Area, the regional council shares responsibility with the Minister of Conservation. Section 30(d) states:

"30 Functions of regional councils under this Act

- (d) In respect of any coastal marine area in the region, the control (in conjunction with the Minister of Conservation) of—
- (i) Land and associated natural and physical resources:
 - [(ii) The occupation of space on land of the Crown or land vested in the regional council, that is foreshore or seabed, and the extraction of sand, shingle, shell, or other natural material from that land:]
 - (iii) The taking, use, damming, and diversion of water:
 - (iv) Discharges of contaminants into or onto land, air, or water and discharges of water into water:
 - [(iva) The dumping and incineration of waste or other matter and the dumping of ships, aircraft, and offshore installations:]
 - (v) Any actual or potential effects of the use, development, or protection of land, including the avoidance or mitigation of natural hazards and the prevention or mitigation of any adverse effects of the storage, use, disposal, or transportation of hazardous substances:
 - (vi) The emission of noise and the mitigation of the effects of noise:
 - (vii) Activities in relation to the surface of water:" [emphasis added]

16. Regional plans can include rules and must discharge a regional council's functions (see s.63(1)). Regional coastal plans govern the coastal marine area. Thus, in relation to the coastal marine area there is provision for a regional council to make rules controlling use of land or surface water to protect historic heritage.



John Maassen
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