

**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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1 December 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. In my position at the NZHPT I deal with heritage planning issues, promoting the sustainable management of historic heritage resources in the Central Region of New Zealand (extending from Taranaki to Hawkes Bay and south to Nelson and Marlborough). This involves providing heritage planning advice to local and regional councils, preparing submissions on policy/plan changes and resource consent applications, on behalf of the NZHPT.
3. I have read the Code of Conduct for Expert Witnesses as contained in the Environment Court Consolidated Practice Note (2006) and my evidence has been prepared in accordance with this. I have not omitted to consider material facts known to me that might alter my views expressed in this evidence.

## **The purpose of this evidence**

4. The following evidence is supplementary planning evidence to the Biodiversity and Heritage Hearings Panel for the proposed One Plan (OP). The evidence is in relation to the pre-hearing meeting (held on 30th October 2008) and the subsequent supplementary Historic Heritage Hearings prepared by Council's Planner, Fiona Gordon.
5. The pre-hearing meeting was based on issues primarily raised in the submission by the NZHPT on historic heritage matters. The issues that were discussed at this meeting are set out in the pre-hearing report for the proposed OP 'Historic Heritage'.<sup>1</sup>
6. As a result of these discussions I support the following recommendations set out in the supplementary Council Planner's report:

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<sup>1</sup> Refer to page 1 – Richard Thompson Pre-Hearing Report 27 – 'Historic Heritage'.

Issue	Supplementary recommendations
(1) Clarification and discussion of the historic issues in the region	S HH 3a
(3) Identification and protection of sites of significance to Maori	S HH 6

7. However I disagree with recommendations contained within the report to resolve the following issues:
- a) Policy to assist in determining what may be “inappropriate” subdivision use and development (S HH 3b).
  - b) Improvements to the consent assessment process with regard to the proactive management of unidentified heritage resources (S HH 3b)
  - c) Review of Schedule F: Regional Landscapes
8. I would also like to note here that there is no specific recommendation made in relation to the identification and recognition of nationally important heritage resources, which is listed as an unresolved item on page 5-11 and in Table 2 on page 7-11 of the supplementary Council Planner’s report.
9. I will therefore only address the above outstanding issues in this evidence.

**Policy to assist in determining what may be “inappropriate” subdivision use and development.**

- 10. The basis of the NZHPT submission and the discussion at the pre-hearing was based on the New Zealand Historic Places Trust Sustainable Management of Historic Heritage (SMHH) Guidance Series (August 2007)<sup>2</sup>.
- 11. These are non-statutory guidelines that represent and provide best practice heritage management models for territorial and local authorities. It is envisaged these frameworks will enable an integrated and consistent values based assessment process to be developed amongst all local authorities under the RMA.
- 12. The benefits of the guidelines in my view, in relation determining what may be inappropriate subdivision use and development include less variation in the assessment of heritage, enhanced compatibility when undertaking state of the environment reporting and plan effectiveness monitoring across the region.

<sup>2</sup> Available online at: [http://www.historic.org.nz/publications/SustMgt\\_guidance\\_series.html](http://www.historic.org.nz/publications/SustMgt_guidance_series.html)

13. With regard to improving the consent assessment process, it has been recommended that the Hearings Panel consider the inclusion of a footnote at the end of paragraph 7.14. This footnote refers to the NZHPT Guide No 1. Regional Policy Statements to assist decision makers to determine the 'appropriateness' of an activity affecting a historic heritage resource.
14. I consider the proposed footnote is awkwardly placed at the end of paragraph four on page 7-4 of the proposed OP. In view this will create confusion for plan users as to how the guidance is to be used. It would not assist with delivering the outcomes anticipated by the policies to address the historic heritage issues outlined in the proposed OP. I agree that that SMHH is non-statutory guidance and not intended to be binding however the underlying principles are based on best practice heritage management principles and serve to assist the Regional Council and local authorities to develop their own assessment frameworks. For example this could take the form of a policy or assessment criteria to assess the effects of subdivision, use and development on historic heritage resources, in either a Regional Plan or District Plan.
15. Therefore, to ensure the role of the guidelines is clear in the proposed OP, I would recommend that the following amendments are made to Chapter 7 *Living Heritage*:
  - The footnote referring to the NZHPT SMHH - *Guide no 1. Regional Policy Statements* is placed under policy 7-10 and;
  - Further explanation is provided as to the purpose of the guidance as part of the explanatory and principal reasons under section 7.7 of the Living Heritage Chapter of the propose OP.

**Improvements to the consent assessment process with regard to the proactive management of unidentified heritage resources**

16. As highlighted in the evidence of Robert McClean the proactive management of unidentified historic, in particular resources of significance to Maori historic heritage, is a valid issue in the Manawatu-Wanganui region<sup>3</sup>. The proactive management of unidentified heritage resources has been acknowledged as a gap in the proposed OP.<sup>4</sup>
17. Given there will be more than one party interested in this issue, it was agreed at the pre-hearing meeting that there would be a number of ways to address this

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<sup>3</sup> Paragraph 49 Statement of evidence of Robert McClean

<sup>4</sup> Paragraph 28, Supplementary report of Fiona Gordon – Historic Heritage – Proposed One Plan.

particular issue and that further discussion would be required. While it is not noted in the supplementary recommendation S HH 7, one of the ways that the NZHPT identified at the pre-hearing meeting, to address this gap was to establish a link between Policy 4.2 of the Te Aro Maori chapter.<sup>5</sup> The NZHPT was of the view that Policy 4.2 under the Te Aro Maori chapter offered really good guidance to plan users with regard to managing the effects of subdivision use and development on unidentified Maori historic heritage resources. This would be particularly helpful in reducing the risk to unknown sites until such a time that a comprehensive investigation of sites within the region has been completed and sites are either scheduled in plans or included in a regional database.

18. To establish this link between the two chapters, I would recommend the following additional amendments to the proposed OP:
  - a) A footnote or a side note added to Policy 7-10, guiding plan users to also refer to Policy 4.2 for additional guidance when considering the effects on Maori historic heritage resources.
  - b) Policy 4-2 is linked to the Anticipated Environmental Result – *By 2017 the Regions known historic heritage will be recorded in a District Plan schedule or databases* (section 7.6 Living Heritage Chapter).
  - c) A brief discussion of the relationship between the relevant parts of Chapters 4 to Chapter 7 is inserted under the explanation and principal reasons for Historic Heritage (section 7.7 Living Heritage Chapter).
19. As stated above, there is more than one way of addressing this issue. I am aware that the Hearings Panel may want to discuss these suggestions with other parties who have submitted on this particular issue.

### **Review of Schedule F: *Regional Landscapes***

20. The issue of reviewing Schedule F: *Regional Landscapes* to recognise regionally important heritage resources was discussed at the pre-hearing meeting and a couple of options identified to address this issue. Subsequent to this meeting the validity of NZHPT submitting on this particular matter has been raised.<sup>6</sup>
21. The tests commonly applied to the validity of a submission are referred to in the Environment Court decision *Campbell, Valerie Marion v Christchurch City*

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<sup>5</sup> Refer to page 2 – Richard Thompson Pre-Hearing Report 27 – ‘Historic Heritage’.

<sup>6</sup> Paragraph 31, Supplementary report of Fiona Gordon – Historic Heritage – Proposed One Plan.

Council, ENV Co40/02, 7 NZED 408 (paragraph 18). A summary of this decision is appended as Attachment 1 to this evidence on page 9.

22. I consider that in determining the validity of the NZHPT submission on this matter the Hearings Panel should consider the following reasons:
  - a) The overall submission by the NZHPT seeks substantial review of the proposed OP to ensure historic heritage is provided for as a matter of national importance. This in itself is a broad and all encompassing submission. (page 11, NZHPT submission).
  - b) The NZHPT eighth submission (page 15, NZHPT submission) does mention Schedule F: Regional Landscapes. The submission seeks that the Council refers to Guide No.1 – Regional Policy Statements, in particular Policy 1 – Identification of Historic Heritage (from the guidelines) which refers to the Context or Group criterion which includes the identification of landscapes with historic heritage values.
23. In terms of the supplementary recommendation, I agree that no amendments are required to be made to the Living Heritage Chapter. However, it is considered that in terms of giving greater recognition to Historic Heritage as a matter of national importance in the proposed OP, the identification of the 'historic heritage values' of regional outstanding landscapes still requires further attention.
24. At the pre-hearing the NZHPT attention was drawn to the paper prepared by Clive Anstey, providing a background to the statutory context and case law development around Landscape Assessment criteria<sup>7</sup>. The report confirms that the Tangata Whenua and Historic values are relevant to identification of outstanding natural features and landscapes.
25. The approach that was agreed to at the pre-hearing was that over time through a public process, a set of criteria would be developed to identify the historic heritage values of significant landscapes. The NZHPT considers that this is an important issue for the region and would strongly support such a process. As part of this process, the NZHPT would be willing to participate in an advisory role to assist with developing a framework to recognise and protect the heritage values of regionally significant landscapes, in the proposed OP.
26. I am of the view for the aforementioned reasons that the identification of heritage values as part of Schedule F: *Regional Landscapes*, is a valid matter raised in the NZHPT submission and the second option noted in the supplementary Council

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<sup>7</sup> Clive Anstey *Background to Landscape Assessment Criteria Development* 5/6/08.

Planner's report, in relation to this specific issue should be accepted by the Hearings Panel.

### **Identification and recognition of nationally important heritage resources**

27. There is no discussion of this specific issue in the Council Planner's supplementary report however there is a contrasting reference to it in the Planner's report. It is noted as a separate unresolved issue on page 5-11. However on page 7-11 in Table 2 it forms part of Issue 5, which is the review of Schedule F: *Regional Landscapes*. From my recollection there was limited discussion on this specific issue, however this remains an unresolved issue for the NZHPT.
28. While there is no discussion of this specific recommendation contained in the Council Planner's supplementary report, the NZHPT considers that in accordance with the NZHPT SMHH – Guide No 1. *Regional Policy Statements*, the proposed OP should provide for the identification and protection of places and areas of national importance. I support this view, in particular in situations where historic heritage resources recognised by a statute such as Tongariro National Park and Category I Historic Places, registered by the New Zealand Historic Places Trust in accordance with the Historic Places Act 1993. As noted in my initial evidence the failure to recognise the heritage values of the Tongariro National Park which is a World Heritage Area is a significant omission from the proposed OP<sup>8</sup>.

### **Conclusion**

29. My supplementary evidence addresses the additional recommendations contained in the supplementary Council Planner's report. I consider that for the reasons outlined above that:
  - a) Recommendations S HH 3a and S HH 6 should be accepted by the Hearings Panel.
  - b) The following amendments should be made to Recommendations S HH 3:
    - i. The footnote referring to the *NZHPT SMHH - Guide no 1. Regional Policy Statements* is placed under policy 7-10 and;
    - ii. Further explanation is provided as to the purpose of the guidance as part of the explanatory and principal reasons under section 7.7 of the Living Heritage Chapter of the propose OP.

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<sup>8</sup> Paragraph 24 Evidence of Rakesh Mistry

- c) The following amendments should be made to Recommendations S HH 7:
  - i. A footnote or a side note added to Policy 7-10, guiding plan users to also refer to Policy 4.2 for additional guidance when considering the effects on Maori historic heritage resources and;
  - ii. Policy 4-2 is linked to the Anticipated Environmental Result – *By 2017 the Regions known historic heritage will be recorded in District Plan schedule or databases* (section 7.6 Living Heritage Chapter) and;
  - iii. A brief discussion of the relationship between the relevant parts of Chapters 4 to Chapter 7 is inserted under the explanation and principals reasons for Historic Heritage (section 7.7 Living Heritage Chapter).
- d) The Hearings Panel consider whether the review of Schedule F: *Regional Landscapes* to include the identification of historic heritage values, is a valid submission made by the NZHPT for the reasons outline in this evidence. If the Hearings Panel is of the view that it is a valid submission then the second option as recommended in the Council Planner's supplementary Historic Heritage report is accepted.
- e) The Hearings Panel consider further amendments to the proposed OP to provide for the identification and protection of historic heritage of national importance.

Dated this 24th day of November 2008

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

**Attachment 1: Summary from Brookers Online of:**

***Campbell, Valerie Marion v Christchurch City Council,***  
**ENV Co40/02, 7 NZED 408**

Databases > Environmental > Environmental Cases > CASE LAW > Campbell, Valerie Marion v Christchurch City Council

### Campbell, Valerie Marion v Christchurch City Council

Appellant Campbell, Valerie Marion

Respondent Christchurch City Council

Decision Number Co40/02

 NZRMA  
Reference

[2002] 7 NZRMA 332

Digest Reference 7 NZED 408

Court Judge JR Jackson

Judgment Date 28/3/2002

Year 2002

Counsel/Appearances Cuthbert, HL; Hardie, JG; Dewar, A; Limmer, AC

Cases Cited Atkinson v Wellington Regional Council, W013/99, 4 NZED 272; Auckland Regional Council v North Shore City Council, 4/7/95, CA29/95, [1995] NZRMA 424, 1B ELRNZ 426, 4 NZPTD 113a; Banks Peninsula District Council (re an application), Co27/02, 7 NZED 295; Beach Road Preservation Society Inc v Whangarei District Court, 1/11/00, Chambers J, HC Whangarei, CP27/00, [2001] NZRMA 176, 7 ELRNZ 1, 6 NZED 109; Biocycle (New Zealand) Ltd v Manawatu-Wanganui Regional Council, W148/96, 1 NZED 696; Campbell v Christchurch City Council, Co23/02, 7 NZED 384; Christchurch City Council (re an application, Montgomery Spur), Co71/99, (1999) 5 ELRNZ 227, 4 NZED 471; Christchurch International Airport Ltd & Anor (re an application), Co77/99, 4 NZED 579; Countdown Properties (Northlands) Ltd v Dunedin City Council, 7/3/94, Barker J, HC Wellington, AP214/93 (No2), AP215/93 (No2), AP216/93 (No2), [1994] NZRMA 145, 1B ELRNZ 150, 3 NZPTD 157; Duchess of Rothesay v Transit New Zealand, W033/98, 3 NZED 414; Feltex Carpets Ltd v Canterbury Regional Council, C103/00, (2000) 6 ELRNZ 275, 5 NZED 544; Flanagan v Christchurch City Council, C222/01, 7 NZED 108; Hardie v Waitakere City Council, A069/00, 5 NZED 550; Healthlink South Ltd v Christchurch City Council, 14/12/99, John Hansen J, HC Christchurch, AP14/99, [2000] NZRMA 375, 5 NZED 114; J Rattray & Son Ltd v Christchurch City Council, 10 NZTPA 59; Lovegrove v Waikato District Council, A017/97, 2 NZED 207; Marlborough Ridge Ltd v Marlborough District Council, C111/97, [1998] NZRMA 73, 3 ELRNZ 483, 2 NZED 751; Romily Properties Ltd v Auckland City Council, A095/96, 2 NZED 34; Royal Forest & Bird Protection Society Inc v Southland District Council, 15/7/97, Pankhurst J, HC Christchurch (Invercargill), AP198/96, [1997] NZRMA 408, 2 NZED 575; Upper Clutha Environmental Society Inc v Queenstown Lakes District Council, Co34/02; Vivid Holdings (re an application), Co86/99, [1999] NZRMA 467, (1999) 5 ELRNZ 264, 4 NZED 661; Winter & Clark v Taranaki Regional Council, A105/98, (1998) 4 ELRNZ 506, 3 NZED 866

Statutes Resource Management Act 1991, Part III, Part V, s 5, s 9, s 35, s 61, s 66, s 73(1), s 74, s 75, s 75(1)(d), s 76(1)(b), s 76(2), s 120, s 271A, [s 279], s 293, s 293(2), First cl 2, cl 4, cl 6, cl 7, cl 8, cl 8B, cl 10, cl 14, cl 16A, cl 16A(2), cl 20, cl 20(5); Resource Management (Forms) Regulations 1991, reg 5; Town and Country Planning Act 1977

Number full text 30  
pages

#### KEYWORDS

appeal procedure; submission; appeal validity; natural justice; zoning; rule

#### DECISION AS TO JURISDICTION

The decision related to the scope of Mrs Campbell's reference to the Proposed District Plan. Various s271A parties own land on Monck's Spur and Mount Pleasant. Their land was zoned Living Hills A ["LHA"] or Living Hills B ["LHB"] in the Proposed Plan (as revised) and they understood Mrs Campbell's reference as seeking a change of zoning to a Rural Hills Zone. In Mrs Campbell's circulated evidence she accepted that the zoning should remain Living Hills A or B but be subject to extra design or landscaping controls. The landowners submitted that it was beyond the Court's jurisdiction to consider imposition of such controls.

The Court found that the relief claimed in the submission raised four issues, the first being the "protection" of the Port Hills. Mrs Campbell was concerned about the effects of new housing development on the Port Hills in three places: Mount Pleasant, Worsely's Spur, and near Halswell Quarry. She wished "new developments" in those areas to be rezoned as Rural Hills. All buildings above 160m were to be "notifiable" regardless of zone. The summary of submissions was more explicit about the relief sought than the submission itself. It stated that she was seeking to change the LHA Zone in the Mount Pleasant area (and, by implication, shown on Planning Map 55A) to Rural Hills.

The Council had declined to grant any of the relief sought. In Mrs Campbell's reference the relief claimed was: That the area zoned LHA and B, [in the area known generally as Mt Pleasant] on Planning Map 55 be returned to the RuH Zone and any consequential changes necessary to give effect to the relief sought or such other relief as may be considered appropriate.

Adopting the approach set out in *FELTEX CARPETS LTD v CANTERBURY REGIONAL COUNCIL*, the Court considered whether the submission and reference gave it jurisdiction to entertain the relief now sought. It held that the test is, "does the submission as a whole fairly and reasonably raise some relief, expressly or by reasonable implication, about an identified issue". [para 18, p12]

It concluded that the following factors needed to be considered in assessing whether a submission REASONABLY raises any particular relief:

- (i) the submission must identify what issue is involved (*RE VIVID HOLDINGS LTD*) and some change sought in the proposed plan;
- (ii) the local authority needs to be able to rely on the submission as sufficiently informative for it to summarise it accurately and fairly in a non-misleading way (*RE CHRISTCHURCH CITY COUNCIL [MONTGOMERY SPUR]*);
- (iii) the submission should inform other persons what the submitter is seeking, but if it does not do so clearly, it is not automatically invalid. [para 42, p22]

As to the FAIRNESS of the relief sought, there are four safeguards for the rights of landowners and the interests of other parties by giving them notice of what is proposed:

- (i) other parties' knowledge of what a submitter seeks comes first (usually) from the local authority's summary of submissions; and,
- (ii) if it becomes clear to a local authority - at any time before it reaches a decision on submissions - that the summary of submissions is not accurate about a submission, then it can apply to the Environment Court for an enforcement order directing re-notification.
- (iii) if the local authority considers that a summary of a submission was accurate, and the submission should be accepted, but that consequential changes to rules or other methods are necessary, then it may promote (and notify) a variation under cl 16A of the First Schedule to the Act;

(iv) if there is a reference that is based on a reasonable submission but it appears fairer to give further notification then the Environment Court has its s293 powers to ensure by notification that persons not yet before the Court have an opportunity to be heard. [para 43, p23]

The Court found that the appellant's submission does REASONABLY raise an issue about a request for rezoning of Living Hills and LHA zoned land in the general Mount Pleasant area (and elsewhere). [para 51, p26]

It was submitted that because the submission was so unclear, a number of landowners on Mount Pleasant and Monck's Spur whose land is zoned LHA or LHB may not be parties to this reference. The Court found that: the Council's summary showed that (in the Council's view) Mrs Campbell sought that all land in the area zoned LHA in the notified plan be rezoned as Rural Hills; and, if the Court hears the merits AND decides Mrs Campbell has made a reasonable case for change, it can direct notification under s293 RMA. [para 54, p27]

#### OVERALL ASSESSMENT OF THE SUBMISSION

In assessing whether the submission fairly and reasonably sought to rezone land on Mt Pleasant Spur as Rural Hills the Court took into account the following considerations:

(i) that the submission should be read as a whole in the light of the submission's place in the plan preparation process;

(ii) the RMA's encouragement of laypersons being involved in the process;

(iii) that the approach taken should be non-legalistic and realistically workable;

(iv) that on the issue of fairness there are two safeguards: affected landowners and other interested persons could rely on the Council's summary of submissions; and, if Mrs Campbell makes a reasonable case for change of the Proposed Plan then there is the s293 procedure for directing further notification;

(v) that the purpose of the Act may be met by enabling the consequential reference to be heard because there are, potentially, matters of national importance involved. [para 55, p28]

The Court held that the submission did fairly and reasonably raise rezoning of the land identified on Map 55A as LHA to RuH. (In reaching that conclusion the Council's summary and the possibility of s293 notification were of decisive importance).

#### THE REFERENCE

The validity of the reference was challenged on the basis that, on its face, it appeared to have dropped relief sought in the original submission.

The Court held that it is always open to a party to argue on the merits, that different land should be zoned differently. The fact that such relief might create a "spot zone", or a plethora of small subzones is an issue to be considered at a substantive hearing.

In general lesser (implicit) relief always comes within greater express changes sought by an appeal. Bearing in mind the flexible, non-legalistic approach encouraged by the High Court, the Court concluded that Mrs Campbell was able to seek design and landscaping controls.

#### SUMMARY

The Court held that both Mrs Campbell's submission and reference were valid.