

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

**AND**

**IN THE MATTER OF** Proposed Plan Change 52 and 55

**BEFORE THE** Manawatu District Council Hearings  
Panel

---

**HERITAGE NEW ZEALAND POUHERE TAONGA HEARING STATEMENT**

---

**6 December 2016**

## **Introduction**

1. Heritage New Zealand Pouhere Taonga (Heritage New Zealand) is an autonomous Crown Entity with statutory responsibility under the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA) for the identification, protection, preservation and conservation of New Zealand's historical and cultural heritage. Heritage New Zealand is New Zealand's lead heritage agency.
2. Heritage New Zealand submitted on various sections of Proposed Plan Change 52 and 55 relating to historic heritage (submission S3).
3. In preparing this evidence, Heritage New Zealand has read the summary of submissions and the s.42A Reports for Plan Change 52 and 55. Unless otherwise stated in this evidence, Heritage New Zealand supports the recommendations in the Reports regarding its submission points.
4. The submission and further submissions from Heritage New Zealand covered many provisions. To avoid repetition, this evidence will only address key submission points and is confined to Plan Change 55.
5. All references to specific provisions are made to PC(R1).

## **Definition of Earthworks – Changing of Ground Level**

6. The plan change proposes to amend the definition of earthworks to become "the removal, deposit or relocation of soil that results in an alteration between the existing and finished ground level..." It then goes on to state a number of activities excluded from being earthworks; for example, cultivation and upgrading or maintenance of farm tracks.
7. Heritage New Zealand opposed this new definition (submission no. S3/006) because the exclusion of activities that do not change the finished ground level would result in a regulatory gap, with activities that have the potential for significant adverse effects, especially on historic heritage, not being controlled. For example, under the proposed definition, the digging of a trench through an urupa or wāhi tapu site would not be considered earthworks as long as the ground level was the same at the end, no matter the size of the trench. Such an activity has the potential to cause significant adverse effects on historic heritage and cultural values (e.g. through the

breaking of tapu or uncovering koiwi), and accordingly they should go through the proper resource consenting process. Permitted activity standard 3D.4.2.e provides for this, by making earthworks within the area of scheduled historic heritage sites a restricted discretionary activity. The exclusion proposed would undermine the effectiveness of this standard.

8. The s.42A Report recommends the rejection of the above submission point because it “would capture many activities that are not intended to be covered by the definition such as gardening and farming.” For the reason set out above, Heritage New Zealand still considers that such a broad and non-specific exclusion is inappropriate for the Manawatu District Plan (the Plan). Additionally, the definition of earthworks already includes a list of exemptions (which includes cultivation, capturing much of gardening and farming). If there are other activities that Council intends to exclude from the definition of earthworks, then the Plan should include these in the existing list of exemptions. This provides certainty to users of the Plan and avoids the considerable regulatory gap created by the current drafting.
9. As an additional rationale for rejection, the s.42A report also states, “the provisions relating to archaeological discovery still apply”. Heritage New Zealand assumes that this refers to the archaeological authority process under the HNZPTA. While this does offer some protection to archaeological sites, there are issues with relying solely on it.
10. First, the HNZPTA is limited in how it can require the avoidance of sites, with conditions imposed on archaeological authorities limited to investigation, remediation, consent from parties with a registered interest, reporting, and archaeological best practice. However, avoidance forms a key part of decision making under the RMA, and it offers an important strategy for managing significant historical sites.
11. Second, the archaeological authority process only applies where there is physical archaeological evidence present. Physical evidence is not a requirement for a site to be historic heritage in terms of the RMA and the District Plan, because heritage status can come from the associations with a site itself, regardless of archaeological remains. For example, regarding sites of significance to Māori, where an important

ancestor is buried, the wider area can take on significance and be tapu, despite the physical remains being confined to a small area. Digging a trench through such a site, even if returned to the original ground level, can be culturally inappropriate and have significant adverse effects on historic heritage. In these situations, the archaeological authority process does not apply and councils must protect these sites under their plans if they are to meet their s.6(e) and (f) responsibilities. The current definition of earthworks would not provide an adequate level of protection.

12. Finally, the proposed drafting introduces unnecessary ambiguity into the Plan. There is no time limit set for when the ground level has to be returned to its original level; only that it must be returned when the activity is finished. This creates issues for ongoing activities. For example, where a hole is dug for the disposal of material over a prolonged period, is the activity only finished when the hole has been filled up and returned to the original ground level? If so, this would make for considerable enforcement issues as the person undertaking the activity could simply state that the activity is not yet finished and does not need to be returned to the original ground level. This potential gap could lead to ongoing adverse effects on historic heritage values; for example, from mounds of dirt disrupting aesthetic appreciation of a site.

#### *Recommendation*

13. That the definition of earthworks be amended as follows:

*means the removal, deposit or relocation of soil ~~that results in alteration between to the existing and finished ground level...~~*

#### **Definition of Earthworks – Formation of Farm Tracks**

14. Regarding the list of exemptions in the definition of earthworks, Heritage New Zealand opposed the submission from Federated Farmers (submission no. S1/001) that sought to add a number of exemptions to the definition of earthworks (further submission no. FS5/006). Heritage New Zealand opposed these because of their potential to cause adverse effects on historic heritage.
15. Heritage New Zealand supports the recommendations in the s.42A Report, except where it recommends the exclusion of the forming of farm tracks from the

definition. The creation of new farm tracks has the potential for significant adverse effects, especially because the drafting sets no limits on the scale of farm tracks exempted. As an example of how a new farm track could adversely affect historic heritage, where the track cuts through a wāhi tapu site, adverse effects could arise from the disturbance of material, the breaking of tapu, or damage to the site as a landscape feature with historic heritage value (e.g. where a pā site forms a prominent landmark). It is appropriate that such activities are subject to the resource consent process.

16. However, Heritage New Zealand acknowledges that not all farm tracks should require resource consent. Rather, the Plan should provide for the formation of farm tracks as a permitted activity. The permitted activity standard 3D.4.2.e relating to historic heritage would then apply, making the formation of farm tracks within the area of scheduled historic heritage a restricted discretionary activity. This approach would achieve an appropriate balance between enabling the formation of farm tracks while also protecting historic heritage.

#### *Recommendation*

17. That the definition of earthworks be amended as follows:

...

*For the purposes of this Plan, earthworks excludes the following:*

- *work associated with the ~~forming~~, upgrading or maintenance of farm tracks*

...

#### **Network Utilities – Policies 3.1 and 3.2**

18. Under submission number S3/010, Heritage New Zealand sought that Policy 3.1 be amended to not refer to protection, as this would already be provided for under the amended Objective 3, and instead to specify the requirement for avoidance, remediation or mitigation of adverse effects. The s.42A report recommended against this change because it restates what is required under the RMA (s.5(2)(c)). Heritage

New Zealand questions this reasoning given that both Policy 3.1 and 3.2 as drafted in PC(R1) also duplicate what is required under the RMA.

19. Policy 3.1 refers to the protection of values that cause historic heritage or outstanding natural landscapes and features to be scheduled, a duplication of Objective 3, s.6(b), and s.6(f) of the RMA. S.6(b) and s.6(f) respectively address the protection of outstanding natural landscapes and features and historic heritage from inappropriate subdivision, use, and development. This intrinsically requires protecting the values that make them important. Policy 3.1 therefore duplicates these sections.
20. Policy 3.2 is “[t]o restrict development of network utilities” within scheduled areas of historic heritage. The word ‘restrict’ is vague as the RMA as a whole is a restriction on the development of network utilities (and all other activities). The RMA is a piece of legislation that restricts property rights through the imposition of regulation and rules. Therefore, this part of Policy 3.2 can then be interpreted as saying “the RMA will apply.”
21. Looking at both Policy 3.1 and Policy 3.2 I PC(R1), the only part that does not duplicate what the RMA provides is the “unless there is no practicable alternative location” part of Policy 3.2. This clause indicates that there are a range of functional constraints facing network utilities that must be considered in decision making. However, Heritage New Zealand maintains that the wording of the policy as a whole is vague because of the word ‘restrict’ and because it does not specify what aspect of network utilities will be restricted, be it the adverse effects of the activity or the location of the activity itself.
22. If referring to the adverse effects, the policy can be interpreted as saying that where network utility infrastructure is within scheduled areas, its adverse effects will be restricted (i.e. through their avoidance, remediation, or mitigation), unless there is no practicable alternative location and then a degree of unrestricted adverse effect will be permitted. On the other hand, if referring to the location of the utility infrastructure, it can be interpreted as saying that network utility infrastructure will be restricted to avoid scheduled areas unless there is no practicable alternative location.

23. In practice (and considering the range of things that must be balanced against the requirement to avoid, remedy and mitigate set out in Policy 3, 4, and 5 of the National Policy Statement on Electricity Transmission), both of the above interpretations should be provided for. Considering this, Heritage New Zealand proposes that Policy 3.1 be amended to address the avoidance, remediation or mitigation of adverse effects where practicable, and Policy 3.2 be amended to address the avoidance of scheduled areas where practicable.
24. These policies are more specific than those included in PC(R1). They provide more detail for how adverse effects will be managed and balanced against the functional constraints facing network utilities.

#### *Recommendation*

25. That Policy 3.1 and 3.2 be amended as follows:

*3.1 To the extent practicable, avoid, remedy or mitigate the adverse effects of the subdivision, use and development of network utilities on the values that cause an Outstanding Natural Feature and Landscape to be scheduled in Appendix 1C (Outstanding Natural Features) or a site of historic heritage scheduled in Appendix 1E (Buildings and Objects with Heritage Value) and 1F (Sites with Heritage Value) from inappropriate subdivision, use and development.*

*3.2 To ~~restrict~~ avoid the development of network utilities, except within an existing road carriageway, within areas scheduled in Appendix 1A (Wetlands, Lakes, Rivers and their Margins), 1B (Significant Areas of Indigenous Forest/Vegetation (excluding Reserves), 1C (Outstanding Natural Features), 1D (Trees with Heritage Value), 1E (Buildings and Objects with Heritage Value) and 1F (Sites with Heritage Value) unless there is no practicable alternative location.*

#### **Signs – Effects on Historic Heritage**

26. Heritage New Zealand submitted (submission no. S3/024) seeking a new rule to manage the adverse effects of signage on historic heritage. It was submitted that any

signage attached to, or within the site of, scheduled historic heritage that causes adverse effects on historic heritage values be a restricted discretionary activity.

27. The s.42A report recommends against this submission point on the grounds that the signage rules already have a permitted activity standard limiting them to  $0.6\text{m}^2$ , and that the Business Zone has provisions limiting signs to identifying the business on site. Regarding the limit to  $0.6\text{m}^2$ , this only applies to signs outside the Inner Business Zone, Outer Business Zone, and Industrial Zone; within these zones, the limit is  $3\text{m}^2$  (see rule 3E.4.2.b.ix). Temporary signs are also permitted larger face areas of  $1.5\text{m}^2$  normally and  $3\text{m}^2$  for electioneering signs (see rule 3E.4.2.c.i). Additionally, while the business zone provisions do include the provisions referenced in the s.42A Report (Chapter 10, Policy 3.4 and permitted activity standard 10.4.2.f in the operative Plan), breaching the permitted activity standard causes the activity to become restricted discretionary. Effects on historic heritage values are not provided for under the matters which discretion is restricted to, therefore limiting the degree that historic heritage can be considered. These provisions also do not apply to the Outer Business Zone.
28. Heritage New Zealand maintains that signage on all historic heritage requires consistent management. Unlike amenity value, the zone a heritage item is located in does not change the types of adverse effects on historic heritage values that are occurring. For example, effects from obscuring a key architectural feature, inappropriate signage on a wāhi tapu site, or damage to heritage fabric from improper attachment or construction apply to the specific site. This makes wider zone considerations irrelevant. However, Heritage New Zealand does acknowledge that the original drafting in the submission was ambiguous and would be difficult to implement. To address this, Heritage New Zealand proposes that an additional permitted activity standard be added to address signage that is within the area of scheduled historic heritage. The standard should address sign size, illumination, and the purposes for which the sign is used.
29. If an activity breaches these standards, it could either become a discretionary activity (like all other breaches of signage permitted activity standards), or if this is too onerous, restricted discretionary with discretion limited accordingly.



30. Heritage New Zealand considers that the above provisions would allow for appropriate signage within the area of scheduled historic heritage, while ensuring activities with the potential for adverse effects are appropriately managed.

*Recommendation*

31. That the following permitted activity standard be added to 3E.4.2.b (regular signs) and c (temporary signs):

[x for 3E.4.2.b and xii for 3E.4.2.c]. Signs within the areas scheduled in 1E (Buildings and Objects with Heritage Value) and 1F (Sites with Heritage Value) must not have a sign face area exceeding 0.5m<sup>2</sup>, nor be illuminated or have moving parts, and be for the purposes of:

- a) setting out information relating directly to the onsite activities or uses;
- (b) aiding traffic or providing information for public health and safety requirements; or
- (c) interpretive material on the historic heritage values of the place.

32. That if discretionary activity status is considered too onerous, that the following restricted discretionary activity be added:

The following activities are Restricted Discretionary Activities:

- a) Any sign that does not comply with permitted activity standards 3E.4.2.b.x or 3E.4.2.c.xii.

For this activity, the Council has restricted its discretion to considering the following matters:

- Effects on historic heritage values
- Sign design, construction, location and method of fixing
- Number of signs
- Illumination

33. If using restricted discretionary status, consequential amendments to 3E.4.3 would be required to exclude 3E.4.2.b.x and 3E.4.2.c.xii.

## Conclusion

34. Heritage New Zealand requests that the Panel adopt the recommendations set out in this evidence. Where this evidence has not commented on the recommendations in the s.42A Report relating to Heritage New Zealand's submission and further submission, Heritage New Zealand requests that the Panel adopt the that report's recommendations.



Claire Craig  
General Manager  
Central Region  
Heritage New Zealand Pouhere Taonga