In the matter of the Resource Management Act 1991

and

In the matter of a submission under Clause 14 of the First Schedule to the Resource Management Act 1991

between

The House Movers Section of the New Zealand Heavy Haulage Association Inc, Britton Housemovers Ltd, and Central Housemovers Ltd

and

Manawatu District Council

Submissions of Counsel for the House Movers Section of the New Zealand Heavy Haulage Association Inc

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May It Please the Committee

1.1 My name is Rowan Ashton, and I appear on behalf of the House Movers Section of the New Zealand Heavy Haulage Association Inc. Britton Housemovers Ltd, and Central Housemovers Ltd (together referred to as "House Movers").

1.2 With me and presenting evidence today is Paul Britton, general manager for Brittons, a local member of the Association.

1.3 These submissions address:

a. The *Central Otago* decision
b. Permitted activity performance standards for relocation

c. The proposed pre-inspection report
d. Performance bonds
e. Why relocation should be a permitted activity in all zones
f. Relief sought

1.4 By way of overview, the s42A report recommends accepting the House Movers' submission that relocated buildings be a permitted activity in the Rural Zone. Relocated buildings less than $40m^2$ are also recommended to be permitted in the Residential, Outer Business, Industrial and Village Zones. However, the report recommends retaining controlled activity in the Residential, Outer Business, Industrial and Village Zones. In the House Movers' submission relocation should be provided for as a permitted activity in these zones as well.

1.5 The overarching resource management issue is ensuring proper reinstatement of relocated buildings. This can be achieved by permitted activity standards, but at a lower regulatory cost compared to requiring controlled activity resource consents. This enabling approach accords with the Environment Court's decision in *Central Otago* and is submitted to better achieve the purpose of the RMA.

2. The *Central Otago* decision

2.1 The *Central Otago* decision is the leading RMA case concerning relocation of dwellings.

2.2 In its proposed plan (as notified) Central Otago District called relocated dwellings a restricted discretionary activity. It retained discretion to notify applications for resource consent and required bonds.

2.3 Following a full hearing the Council's position was not upheld by the Court. The Court agreed with the Association's position and held that relocated dwellings should be a permitted activity subject to a number

of performance standards specified in the plan. The Court's decision is contained in three judgements, namely:

a. The Court's interim decision dated 15 April 2004;
b. The Court's final decision regarding the performance standards dated 17 May 2004; and
c. A costs decision dated 2 September 2004.

2.4 The Court found that after an initial establishment period there was no meaningful difference in effects on amenity values between a relocated dwelling, and construction in situ of a new dwelling (refer paras 14 and 18 of interim decision).

2.5 The performance standards applied by the Court in the *Central Otago* case ensure coordination, and avoid duplication, between RMA and Building Act controls.

3. Permitted activity standards

3.1 The final decision of the Court in *Central Otago* sets out appropriate permitted activity performance standards. Permitted activity standards to the same effect are sought by the Association, with some minor amendments (in **bold**) as set out below:

a. *Any relocated building intended for use as a dwelling (excluding previously used garages and accessory buildings) must have previously been designed, built and used as a dwelling.*

b. *A building* ***pre-****inspection report* ***prepared by a licenced building practitioner*** *shall accompany the application for a building consent* ***for the destination site****. That report is to identify all reinstatement works that are to be completed to the exterior of the building.*

c. ***The building shall be located on permanent foundations approved by building consent, no later than 1 month after the building being moved to the site.***

d. *All **other** reinstatement work required by the building inspection report and the building consent to reinstate the exterior of any relocated dwelling shall be completed within **12** months of the building being delivered to the site. Without limiting (b) (above) reinstatement work is to include connections to all infrastructure services and closing in and ventilation of the foundations.*

e. *The proposed owner of the relocated building must certify **to the Council** that the reinstatement work will be completed within the **12** month period.*

3.2 The House Movers accept the performance standards recommended for the Rural Zone in the 42A report as appropriate with one exception. The 42A report recommends a performance standard requiring that:

> *The relocated building must be installed on permanent foundations immediately upon delivery to the destination site.*

3.3 People will, of course, seek to install foundations for their relocated building as soon as possible. Generally the house mover will be contracted to undertake this work. However it will not always be possible to install foundations *"immediately upon delivery to the destination site"* due to factors, such as weather conditions. Allowing a period of one month to complete the installation of foundations provides reasonable flexibility, without compromising amenity considerations.

3.4 Because a performance standard is a rule, breach of a rule amounts to a breach of section 9(3) RMA. This brings into play all of the enforcement penalties and remedies in the RMA. Breach of a rule is

an offence under section 338(1). Council has wide enforcement powers including infringement notice, abatement notice, enforcement order, and prosecution.

3.5 A performance standard specified in a rule is every bit as legally enforceable as a condition imposed on resource consent, but has the advantages that:

a. People know *in advance* what the required standards are because the standards are published in a public document, the district plan (not always apparent where there is reliance upon consent conditions);

b. There are lower transaction costs involved in complying with a standard, i.e. transaction costs are all costs including the cost of making application for resource consent to Council, any consultant's fees, Council processing fees, the cost of complying with any special conditions e.g. performance bonds which have a direct financial cost.

4. Pre-inspection report

4.1 The pre-inspection report has been developed to record the condition of the dwelling prior to relocation and address the following key points:

a. General information relating to the applicant, building details, reporting conditions, definitions, and access.

b. A Condition Table, which includes each site-specific construction element support by;

i. A detailed description,
ii. The condition of the building element
iii. Required upgrades and comments; and
iv. Photographs of existing condition

c. An estimated cost of reinstatement works.

4.2 The report requires the owner to certify that they will comply with the reinstatement requirements and acknowledge the potential penalties for non-compliance.

4.3 A summary of the objectives of the pre-inspection report are:

a. To provide an accurate record of the condition of the building for relocation, which is support by photographs;

b. To ensure that there are a clear set of reinstatement conditions; and

c. To provide owner certification that the specified reinstatement works will be completed within the timeframe required by the district plan.

4.4 The s 42A report of proposes a number of changes to the House Mover's proposed pre-inspection report. These changes are shown in track changes at the end of Appendix 1 to the 42A report. The majority of these changes are agreed by the House Movers. However the following changes are not agreed:

a. The 42A report proposes to include a description of various details of the destination site, including the presence or otherwise of indigenous vegetation and areas of cultural or heritage value. It is unclear how these matters relate to reinstatement of relocated buildings. The pre-inspection report makes provision for photographs of the destination site illustrating context – nothing further is needed. In addition the proposed site description requirement creates a significant practical issue for the process. The pre-inspection will occur at the site of origin, which may be in another district. It is not practical for this inspector to visit the destination site to ascertain this information.

b. The 42A report also proposes an acknowledgement of Council's ability to change monitoring costs. Given that the report is for a permitted activity it is not appropriate to include this statement as it is inaccurate. Any relocated buildings for which consent granted as an RDA due to non-compliance with performance standards can contain the usual acknowledgement of council's ability to recover monitoring costs.

5. Performance Bonds

5.1 In *Central Otago* the Court squarely rejected the need for a bond when it was not imposed as a requirement of newly constructed in situ building (para 22 of interim decision). Further, bonds effectively require people to have twice the cost of reinstatement works available, once to be held as the bond and once to do the work.

5.2 The 42A report recommends the deletion of performance bonds for relocated buildings. The House Movers support this recommendation.

6. Why relocation should be a permitted activity in all zones

6.1 The permitted activity approach approved by the Environment Court in *Central Otago* provides the same level of benefit in terms of amenity value outcomes as the use of resource consents, but at a lower cost to both Council and house relocators.

6.2 Section 32 RMA as amended in 2013 greatly increases the direction as to the requirements of cost benefit assessment. It now specifically requires an assessment, and quantification where practicable, of the benefits and costs of the environmental, economic, social and cultural effects of the proposal, including on economic growth and employment.

6.3 The costs of controlled activities are submitted to exceed those of permitted. In summary, the additional costs of resource consents are:

a. The costs in money for an applicant and Council (staff administrative costs) of a resource consent application. Consultants may also be required to prepare resource consent applications.

b. The costs in time for the intending house relocator of acquiring resource consent.

6.4 These additional costs do not create any material benefit in terms of amenity values outcomes. The conditions of consent for a controlled activity will not result in a higher standard of reinstatement works. The pre-inspection report specifically itemises reinstatement works that are required. This permitted activity approach (with standards) results in the same (or better) reinstatement requirements as controlled activity resource consent.

6.5 The s 42A report does not address the Environment Court's decision in *Central Otago*. Fundamentally, the *Central Otago* decision concerned equity of regulatory treatment between methods of construction. No evidence has been produced to illustrate the construction effects of relocated buildings are any different to those of new builds and renovations.

6.6 Activity status should take in account the positive effects of activities. Relocation is an efficient re-use of existing physical resources. Relocated buildings also often represent an affordable housing choice and enable people to provide for their social wellbeing. The 42A report notes that relocated buildings are a growing industry in the District. It is submitted that an enabling approach should be adopted to relocation in the district plan to recognise these positive effects.

6.7 With a couple of exceptions (subject to appeal) all territorial authorities reviewing second generation plans after the *Central Otago* decision have ultimately either provided for relocation as a permitted activity subject to performance standards, or no longer distinguish between relocation and new dwellings.

7. Conclusion

7.1 In summary, the House Movers seek:

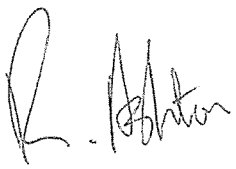
a. That Relocated Buildings be classed as a permitted activity in the Rural, Residential, Outer business, Industrial and Village Zones;

b. Performance standards as per the schedule to these submissions to provide a reasonable time period for installation of foundations;

c. The inclusion of the Pre-inspection report in the Plan as per the track changes drafting provided; and

d. A restricted discretionary activity for relocated buildings that are not permitted, as per the drafting in the 42A report.

Dated 6 December 2016



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Rowan Ashton / Stuart Ryan,

Counsel for the House Movers

Schedule – Suggested Rules

The permitted activities specified in Rule 3G.4.1 above must comply with the following conditions:

a. Any relocated building intended for use as a dwelling must have previously been designed, built and used as a dwelling.

b. The relocated building must be installed on permanent foundations ~~immediately upon~~ approved by building consent with 1 month of delivery to the destination site.

c. The relocated building is not located within the Flood Channel Zone.

d. Compliance with all standards specified for permitted activities in the relevant zone and other parts of this Plan.

e. A building pre-inspection report shall be submitted by the owner of the relocated building to the Council at the same time as an application is made for a building consent for the relocated building. That report shall be on the form contained in Appendix 3G.1 and is to identify all reinstatement works that are to be completed to the exterior of the building.

f. The building pre-inspection report shall be prepared by:

   i. A licenced building practitioner (carpenter or design category); or

   ii. A building inspector from the local authority where the building is being relocated from.

g. All reinstatement work required by the Condition Table in Section 2.0 of the building pre-inspection report (in Appendix 3G.1) to reinstate the exterior of any relocated building shall be completed within 12 months of the building being delivered to the destination site.

h. The owner must complete the Owner Certificate and Declaration in Section 7.0 of the building pre-inspection report (in Appendix 3G.1) to certify to the Council that all the reinstatement work will be completed within 12 months of the building being delivered to the destination site.