

**BEFORE THE ENVIRONMENT COURT
AT PAIHIA**

IN THE MATTER

of the Resource Management
Act 1991 ("the Act")

AND

IN THE MATTER

of appeals pursuant to Clause 14
of the First Schedule to the
Act arising from proposed
Plan Change 12 to the Far North
District Plan 2009

BETWEEN

**Guyco Holdings & Ors
ENV-2013-AKL-000039**

Appellants

AND

**Paihia Heritage Precinct Support Society
ENV-2013-AKL-000044**

Appellant

AND

Far North District Council

Respondent

**STATEMENT OF EVIDENCE OF BRIAN WILLIAM PUTT
TOWN PLANNER**

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EVIDENCE OF BRIAN WILLIAM PUTT

TOWN PLANNER

1.0 INTRODUCTION

- 1.1 My name is Brian William Putt. I am a principal of Metro Planning Ltd. I am a qualified Town Planner with 39 years experience in New Zealand and the United Kingdom. I hold the qualifications of Bachelor of Arts in History and Psychology and a Diploma in Town Planning, both from Auckland University. I also hold a Diploma in Accounting and Finance from Central London Polytechnic. I have been a full member of the New Zealand Planning Institute since 1977.
- 1.2 I confirm that I have read the Code of Conduct for expert witnesses contained in the Environment Court Practice Note and I have complied with it when preparing my statement of evidence. I agree to comply with it when I present this evidence before the Environment Court at Paihia.
- 1.3 I am experienced in all aspects of New Zealand statutory and land use planning and have specialised in recent years in development co-ordination, social and environmental reporting on major projects, due diligence analysis for development project investment purposes and the analysis and presentation of applications for resource consents. I regularly appear as an expert witness before district councils, the Environment Court and less frequently, the High Court, in matters of town planning and resource management litigation.

- 1.4 I have a detailed knowledge of the Far North District Plan. I was intimately involved in all aspects of the notified plan, commencing in 2000 and through the various stages of submissions and appeals. I took a detailed role in the Environment Court assisted mediation process that resolved the great majority of appeals on the district plan and which lead to the adoption and promulgation through consent orders of the operative district plan confirmed in 2009.
- 1.5 My involvement in planning instruments in the Bay of Islands dates back to 1980 when I was a senior planner in the district planning team at the Ministry of Works and Development in Auckland. The MWD played a vital role in the planning and assistance of local authorities in the Northland and gave financial and technical support to the former Northland Regional Planning Authority and its successor, the Northland Regional Council. The particular work of note in relation to this plan change was the heritage, landscape and land use analysis which eventually formed the Russell Plan and later the Paihia Development Plan. While my colleague, landscape architect Mr Dennis Scott, had a more detailed design role in these two reports, I was involved in an advisory capacity for town planning purposes. This work took place through the mid 1980's. The work which MWD performed for the former Bay of Islands County Council underpinned some important structural elements of the former Bay of Islands District Scheme. These structural land use elements are still apparent today and have continued to guide development in the Bay of Islands. They included land use strategies, settlement pattern analyses and rural planning provisions.
- 1.6 Their purpose was to achieve an important balance between development to support tourism and economic activity while recognising and preserving the important coastal environment and the built heritage of this, the oldest European settled part of New Zealand. It is these values which form the important backdrop to the decision to be made about the veracity and purpose of Plan Change 12.
- 1.7 I became involved in this particular matter relating to the imposition of a Paihia Mission Heritage Area in 2009 when I was asked to examine on behalf of the TW Reed Estate (owner of 30 Marsden Road) matters that had arisen from a consent order issued

by the Environment Court in 2006 relating to controls in the district plan covering a nominated part of the Paihia waterfront towards the eastern end of Marsden Road; the area now subject to Plan Change 12.

1.8 From my extensive detailed knowledge of this area and the history of statutory planning in the Bay of Islands, I became aware immediately of the following contradictions of Part 12.5B, Paihia Mission Heritage Area and Plan Change 12 of the district plan. In my opinion, the contradictions in summary are these:

- There is no historic heritage to be protected in the area covered by Plan Change 12 other than those items already scheduled within the district plan but with the potential addition of the substantial pohutukawa tree straddling the boundary of 18 and 22 Marsden Road.
- The heritage overlay on this part of the Commercial Zone fronting Marsden Road disrupts the longstanding and important planning development partnership between Russell and Paihia. The former Russell Plan and the earlier Paihia Development Plan provided a balance whereby Russell was to retain its role as the historic heritage focus through the care and protection of important buildings and precincts within the village, while Paihia was to provide the tourism development platform giving ample scope for travellers' accommodation, shops, restaurants, cafes, tourist support services, transportation links and a full range of facilities to support a tourist industry. This was to be achieved within the flavour of an expanded coastal town, respecting the coastal environment and the important interplay of marine transport, passenger and tourist movements and the necessary entertainment facilities and open spaces to support the tourist industry. This support did not neglect the spatial characteristics of Paihia but in fact enhanced the waterfront esplanade environment with a high activity pedestrian focus within the framework of the three beach frontages stretching from the east through to Te Tii beach and the bridge to Waitangi. The Paihia Commercial Sub-Zones A1-A5 are evidence of the refined development controls imposed on Paihia to

implement the identified spatial differences along the Paihia waterfront and maintain and enhance the coastal urban amenity.

- The district plan provision of the Commercial Zone at Paihia sought to encourage this land use partnership arrangement which was beneficial to the entire Bay of Islands tourist industry, including the importance of Waitangi as a visitor focus, while protecting the important heritage resources. Plan Change 12 unravels this balanced and longstanding approach to land use management in the district plan.

1.9 In summary, the insertion into the district plan of the Paihia Mission Heritage Area controls has disrupted this important land use relationship. The disruption has no technical, theoretical or intellectual foundation. It does not represent a sustainable management outcome for the physical resources involved in this part of the Commercial Zone of Paihia at a detailed level. At a broader spatial level for Paihia, the proposal removes from the moderated development future of Paihia, an important strip of commercial zoned beachfront land. This plan change potentially adversely affects the intended development of Paihia as a tourist centre which supports visitor enjoyment of the broader conservation and historic heritage context of the Bay of Islands. My analysis of the district plan provisions which follows explains and supports this opinion.

1.10 It is my conclusion that Plan Change 12 and Part 12.5B of the Plan should be withdrawn and abandoned. The underlying Commercial Zone requires minor amendments to ensure that the subject area covered by Plan Change 12 is provided with appropriate controls to match and integrate with the setback control system covering the balance of the Paihia Commercial Zone. I have set out my suggestions for these insertions in my conclusion.

2.0 DISTRICT PLAN PROVISIONS

Commercial Zone

- 2.1 The Commercial Zone covers all of the commercial and business areas of the Far North. Distinctions are drawn between two groups of commercial centres, basically in relation to the permitted height for buildings. The Commercial Zone is found at Part 7.7.5 of the district plan. Within this section I note that Russell and Paihia are in the group of commercial centres where the permitted height is 8.5 metres (**Rule 7.7.5.1.1**) which can be raised following specific assessment criteria to a height of 10 metres as a restricted discretionary activity (**Rule 7.7.5.3.1**).
- 2.2 A further constraint of importance to the Commercial Zone at Paihia is the specific requirement for Setbacks found at **Rule 7.7.5.1.4**. Under this rule reference is made specifically to Map 91A where five commercial sub-zones are noted. The purpose of the sub-zones is to provide a range of front boundary setbacks from zero to six to ten metres. The sub-zones immediately adjoining or adjacent to the area subject to Plan Change 12 have a setback control of 6 metres. The exception is the provision covering 40 Marsden Road which is placed in Sub-Zone A5 with a setback of 10 metres. I note the assessment criteria for a breach of setbacks found at Rule 7.7.5.3.4. The criteria indicate the reasonable circumstances in which an infringement can be contemplated. I suggest an addition to these criteria to provide for an opportunity to address the street frontage to achieve the engagement and activation contemplated by good urban design principles in a commercial setting. I have included my suggested insertion in my evidence conclusion.
- 2.3 There is no height in relation to boundary control in the Commercial Zone except where properties adjoin residential or coastal residential zones. That does not apply to the subject area. Furthermore, other than the front yard setback control, site coverage is 100% for the balance of the site.

- 2.4 There is nothing unusual in my opinion about these controls. The point of difference is the height constraint. The clear indication is that the expected built development will be two or three storeys in height and no more. Recent redevelopment within Paihia demonstrates how effectively that rule has been implemented. This is the form of development which the appellants opposing Plan Change 12 seek to have reinstated over their land by allowing the underlying Commercial Zone to be reinstated as the operative planning control for the subject area.
- 2.5 In the immediate vicinity of the area subject to Plan Change 12, to the east of the Kings Road/Marsden Road intersection, there is a new development of tourist apartments called Edgewater Palms Apartments which has been completed over the last three years. This development is implemented under the Commercial Zone rules and in particular the setback provision provided for the Commercial Sub-Zone A2 of 6 metres. The three storied complex sits within the existing development pattern of the Paihia Commercial Zone and implements the purpose of the zone as tourist accommodation. A photograph of this development is shown at Annexure 5 of Mr Brown's evidence. In my opinion, this development is a reasonable and pleasant outcome in this location which uses the beachfront commercial land in an efficient and economic manner in keeping with the purpose of the district plan. This is the form of development that would be available over that part of the Paihia waterfront covered by the Plan Change 12 area if the heritage overlay was removed.

Heritage Controls – Plan Change 12

- 2.6 These are found at Part 12.5 of the district plan. This is where Plan Change 12 is to be inserted as a heritage control over a limited part of the Paihia waterfront. The *Context* section sets out the well known and important aspects of the historic heritage in the Bay of Islands. At the bottom of page 1 of Chapter 12.5 the context states -

Public awareness and appreciation for the value of historic heritage is the primary means of safeguarding these resources in the circumstances. Hence, there is a need for education which in turn

requires good information. However, information on heritage resources is of variable quality and completeness and therefore there is a need to compile and maintain a comprehensive database in order to manage this resource.

2.7 Fortunately the report (referenced in the Bundle) provided by the NZ Historic Places Trust dated February 2009 answers this contextual question. In terms of the credibility required under s.32 of the Act, for an action to be taken under the district plan, this report is of fundamental importance. It confirms that the built heritage within the heritage area is minimal (see para.7). It also confirms that the remaining key items of historic heritage include:

- St Pauls Church (built 1920's)
- Ruins of the Williams house
- St Pauls Church cemetery (dating back to 1840's)
- the protected Norfolk Pine at 28 Marsden Road
- the plaque commemorating the construction and launching of the mission ship "Herald"
- the plaque commemorating the service of Rev. Williams to local Maori.

These are the heritage features already protected in the district plan in the subject area. There is nothing in the provisions for development under the Commercial Zone which interrupts or degrades from the presence and protection of these historic heritage items.

2.8 Thus, in terms of the intentions set out in the *Context*, the NZHPT report confirms that the good information provided does not add any new feature to the comprehensive database the Council seeks to establish. In fact, it confirms that other than the identified items, there are no other elements of historic heritage requiring protection within the subject area of this part of Marsden Road identified in Plan Change 12.

2.9 In turning to the *Issues* at Part 12.5.1, the emphasis is on built heritage resources or the cohesive pattern of heritage settlements that have maintained a strong colonial character in their architecture and the relationship of buildings within certain groups. In this regard, Russell is the example in terms of individual heritage resources while settlements like Mangonui, Kohukohu and Rawene are examples where the colonial architectural character has remained intact. These settlements are covered by precinct controls. My earlier point about the balance of historic heritage protection and tourism is drawn out in Issue 12.5.1.8. I find it telling and noteworthy that in the *Outcomes Expected* at Part 12.5.2, Paihia is not mentioned in Part 12.5.2.5.

2.10 In turning to the *Objectives* at Part 12.5.3 and *Policies* at Part 12.5.4, I note that the emphasis remains on the heritage values of the built physical environment and the values of settlements with significant historic character. In all respects, the places identified in the specific precincts at Part 12.5A are identifiable as places containing clear and obvious buildings and settlement patterns of historic heritage value that work and contribute as both individual buildings or as groups of buildings. None of those characteristics is apparent on the Paihia waterfront in the subject area of Plan Change 12.

2.11 In my opinion the relevant objectives under Part 12.5.3 are:

- 12.5.3.1. – *to protect and retain the heritage values of resources....*
- 12.5.3.3. – *to protect the notable trees*
- 12.5.3.4 – *to preserve the historic and amenity values of settlements with significant historic character*
- 12.5.3.7. – *to ensure that subdivision and land use management practices avoid adverse effects on heritage values and resources.*

2.12 The related policies at Part 12.5.4 are:

- 12.5.4.1 – *that a heritage resource be recognised as a complete entity whose surrounds or setting may have an important relationship with the values of the resource*
- 12.5.4.2 – *that the heritage values of any building or heritage site shall not be adversely affected by subdivision or land use activities*
- 12.5.4.8. – *that where areas have significant historic character, their heritage values are not compromised by inappropriate activities*
- 12.5.4.11 – *that settlements that contain a high degree of heritage value be protected from subdivision use and development that would adversely affect these values and their landscape setting.*

2.13 The broad objectives and policies of Part 12.5 of the Plan do not provide an underpinning for the intended constraints proposed by Plan Change 12. The form and scale of development promoted by the Commercial Zone at Paihia already offers the level of constraint in development form necessary to achieve these objectives and policies. Beyond those heritage resources already identified, the use of land in the vicinity for a Commercial Zone purpose in support of the tourist economic wellbeing of Paihia as the key commercial settlement within the Bay of Islands, is modest enough to ensure that the protected heritage resources are not adversely affected. The provisions ensure that if the heritage area overlay was removed, the protected heritage resources would remain within a commercial development environment but one which is of limited impact with respect to the appreciation and value of those protected heritage resources. In my opinion any effect arising in respect of the heritage resources would be minor.

Part 12.5B – Paihia Mission Heritage Area

2.14 In my opinion, this section of the Plan, amended as it is by Plan Change 12, has no intellectual or technical foundation to support its purpose. It is my interpretation that the intention is to replicate a development and spatial form that may or may not have existed in the past, through the imposition of development controls which are onerous to the extent that they are about as restrictive than controls that would normally operate

in a benign residential environment. The combination of an 8.5 metre height limit, a front yard setback of 15 metres and sunlight angle control of 2 metres plus 45° from all boundaries, have the effect of preventing reasonable development on most of the land covered by Plan Change 12. I make this point in terms of understanding the concept of reasonable development found in s.85 of the Act. At 30 Marsden Road for example, more than half of the site becomes unusable through the combination of constraints. These rules have removed any prospect of tourist investment development as envisaged and promoted by the operative rules of the Commercial Zone for that property.

2.15 The missing element in proposed Plan Change 12 is an acceptance and understanding of the existing spatial arrangement of this part of the Paihia waterfront where the beachfront, existing vegetation on private land (the protected Norfolk Pine and the two large pohutukawa trees), the solid vegetated backdrop provided by the Williams Scenic Reserve and the spaciousness of the St Pauls church property, together provide the physical and natural elements that give this part of Marsden Road a character. Mr Scott has explained this point in detail. That character cannot be generated by controls on other land that do not hold these heritage and natural characteristics. Those characteristics cannot be created out of a set of rules. The development rules of the Commercial Zone complement those features while promoting the use of the land (the physical resource) in a manner which supports the economic, social and cultural wellbeing of the community by providing support for the tourism base of the town through which economic activity and employment are sustained.

2.16 Overall, I identify a conflict between the purpose of the Commercial Zone and the purpose of Plan Change 12. More importantly, it is my opinion that Plan Change 12 and Part 12.5B of the plan are not consistent with the intention of Part 12.5 Heritage of the district plan. My analysis under the s.32 evaluation criteria makes this clear.

3.0 CONSULTATION

- 3.1 When the Council realised it had an unfulfilled obligation under the Environment Court consent order dating from 2006, it made contact with the affected Plan Change 12 landowners and other parties with a view to commencing the consultation required by the consent order.
- 3.2 In my opinion, the Council commenced this exercise with a view to strengthening the uncontested constraints that had entered the district plan as Part 12.5B Paihia Mission Heritage Area, through the appeal of the Paihia Heritage Support Society. I do not consider the exercise was approached with an open mind.
- 3.3 With Mr Scott, I attended the first consultation meeting held on 21 April 2011 at Paihia. Virtually all of the affected Marsden Road landowners were present. The record shows there was no representative from the Paihia Heritage Support Society.
- 3.4 This consultation meeting received a copy of the first version of the evaluation report prepared by Brown NZ Ltd. Landscape architect, Mr Jeremy Froger, was there to present the report, answer questions and receive ideas. The same graphic material presented by Mr Froger is now annexed to the evidence of Mr Brown.
- 3.5 The report (contained within the Bundle) contained helpful scenario montage presentations of different development combinations. In my opinion, what is extremely telling is the comparison between Scenario 3 (at Brown Annexure 16), which effectively represents the intention of the Plan Change 12 controls (residential style sunlight constraints, a 10 metre height limit on buildings to the west of the Norfolk Pine and 8.5 metre height limit on buildings to the east of the Norfolk Pine), with Scenario 6 (at Brown Annexure 22) which almost represents the form of development that would be available under the Commercial Zone without the heritage overlay. The difference being that the likely front yard control in keeping with the Commercial Zone Paihia constraints, would be 6 metres rather than the imposed 10 metre setback shown on the Scenario 6 montage. In reality, an assessment of the two

speculative built forms concludes very little difference in impact on the appreciation of the Norfolk Pine as the key heritage element at this location. I say speculative because the montage assumes the demolition of the existing Busby Manor timeshare apartment development which is most unlikely and in my opinion a fanciful prospect. Also, a missing element is the important grove of trees including a mature Pohutukawa at 18-22 Marsden Road which I envisage remaining in any reasonable development scenario. Those trees need to be interpreted in both photomontages to present scale and context.

- 3.6 In turning to Appendix 14 (Brown Annexure 23), the effect of this form of development on the St Pauls Church environs, is depicted. Again, there is little difference between the existing situation and the proposed development scenario. Furthermore, when the effect of the two scenarios is assessed against the strong scenic backdrop of the Williams reserve, there is little to determine any form of different impact.
- 3.7 Paradoxically, these presentations have become a valuable tool in demonstrating that the effect of development under the operative Commercial Zone rules, should they apply, has limited visual and physical effect on this part of Marsden Road when compared to the constrained development proposed by Plan Change 12. However, there is a significant and serious difference in terms of development opportunity and economic return between the floor areas that could be developed under the two competing development scenarios. The Commercial Zone produces nearly three times the floor area compared to the floor area available under the rules of Plan Change 12. In my experience it will be this floor area difference that will determine economic viability for an investor.
- 3.8 Much discussion at this consultation meeting focused on the lack of any decisive purpose arising from these constraints. The general conclusion of the meeting was to abandon the constraints and concentrate on finetuning the Commercial Zone to fit in with the pattern of controls already provided in the Paihia Commercial Zone. This conclusion was ignored in the instruction given to Campbell Brown Planning Ltd to prepare the s.32 analysis.

- 3.9 The second consultation meeting took place in Paihia on 2 December 2011. At this meeting a modified version of the Brown NZ report was tabled along with a s.32 evaluation prepared by Campbell Brown Planning Ltd. Both of these reports are contained in the Bundle.
- 3.10 Again, the attendance at the meeting was dominated by the affected Marsden Road landowners but this time the Paihia Heritage Precinct Support Society was represented. I attended this meeting on behalf of the T W Reed Estate. The point I made at this consultation meeting still holds true. I criticised the draft s.32 material because it had two primary failings. It did not include as an alternative to be tested, a modified version of the Commercial Zone with rules to integrate this part of the Paihia Commercial Zone with the balance of the zone through the imposition of an appropriate front yard setback of 6 metres (to match Area A1 of the Commercial Sub-Zones) for the subject part of Marsden Road. The second missing element was an economic evaluation of the lost development rights which in this commercial tourist environment also requires assessment as to the loss of economic development, jobs and wealth in the local community. Neither of these important considerations were included in the s.32 analysis and have not been considered since.
- 3.11 The outcome of this consultation process was frustrating for the affected landowners. Given that the backdrop to the consultation was the NZHPT report declaring there was no additional heritage to be protected in this part of Paihia, the feeling of the affected landowners was that the process was of no value and did not reflect the spirit and purpose of consultation provided through the guidelines of s 82 Local Government Act 2002. Proposed Plan Change 12 was notified based entirely on the two Council reports covering landscape architecture and planning which were, in my opinion, discredited through the consultation process.

4.0 SECTION 32 MATTERS

- 4.1 In this section of the evidence I undertake a review of Plan Change 12 using the approach adopted by the Environment Court in *Nugent Consultants v Auckland City Council*, NZRMA 481, 1996, and later updated and endorsed in *Eldamos Investments v Gisborne District Council*, Decision No. WO47/05. The *Nugent* test contains four elements and remains relevant because it is a simple mechanism which relates the intentions of the plan change to the purpose of the Act and the Plan. Recently this approach has been modified by the Environment Court in *Long Bay Okura Great Park Society Incorporated & Others v North Shore City Council*, AO78/2008. Accordingly, in this setting I am using the revised test but reflecting on the approach taken in the original *Nugent* decision. Under each test I provide a separate comment on Plan Change 12.

Test 1

Does Plan Change 12 have regard to any proposed regional policy statement and give effect to any operative regional policy statement?

- 4.2 While the Northland Regional Policy Statement gives general encouragement and direction to achieve the protection of the historic heritage of Northland, it also expects physical resources like the commercially zoned land at Paihia to provide the appropriate economic underpinning of the regional economy through the encouragement of tourism. Given that the evidence is clear there are no heritage resources to protect in Paihia beyond the items already scheduled, it is logical that the regional policy support should be for the appropriate commercial development of the subject land under the operative provisions of the Commercial Zone of the district plan. In my opinion this is a far more important regional objective because commercial land in a popular tourist development area like Paihia is a scarce resource. The subject area with its outstanding location and outlook on the coastal esplanade, has the ability to create positive economic development and employment in support of the tourist industry. The Regional Policy Statement recognises the need for tourist

infrastructure to support the attractive heritage and historic tourist features of the district and the region. This is the balance of resource allocation which I mentioned earlier in my evidence.

- 4.3 In my opinion, the underlying Commercial Zone has more in keeping with implementing the Northland Regional Policy Statement than does Part 12.5B Paihia Mission Heritage Area and the modifications proposed by Plan Change 12. Plan Change 12 does not implement the Northland Regional Policy Statement because there are no additional heritage resources to protect and it constrains the use of the Commercial Zone land in an artificial and unnecessary manner.

Test 2

Does Plan Change 12 have regard to any relevant management plans or strategies under other Acts, and consistency with plans and proposed plans of adjacent territorial authorities?

- 4.4 I am not aware of any relevant management plans or strategies under other Acts that relate to this matter. I consider that the assessment by NZHPT has covered off relevant considerations under the Historic Places Act and confirms that no new heritage resources arise. There are, in my opinion, under that report no matters that require intervention at a district plan level beyond those matters already scheduled for protection. The earlier documents which I mentioned – the Russell Plan and the Paihia Development Strategy – while they remain valid from a theoretical and philosophical point of view, they are not statutory documents. They have provided an historical backdrop to the land use management strategy of successive planning instruments covering the Bay of Islands.
- 4.5 The impact of those earlier plans and strategies has made its way into the district plan (and the former district scheme) in the form of the heritage precinct controls in place at Russell and the expansion and finetuning of the Commercial Zone at Paihia to promote tourist accommodation and services within the retail beachfront environment. In the

district plan there is a helpful statement at Part 1.4.3.2 Description of the Urban Environment, which under the sub-heading **Paihia**, states that –

Paihia is one of the most tourism-oriented settlements in the District. The wharf area is intensively developed over a small area, and is the focal point for water-related activities. Paihia also has strong links to the historic heritage of the Far North District, including the establishment of the Church Mission Station in the 1820's. Geographically, Paihia has a flattish central area surrounded by steep to rolling hills. Almost all of the land identified as suitable for urban use is already developed. Urban growth is constrained by the status of surrounding land as well as the physical constraints.....

- 4.6 In a succinct paragraph this statement from the introduction chapter of the district plan, which falls under the section identified as Part 1.4 Profile of the Far North District, sets out the basic thesis on which I consider the Bay of Islands part of the district plan is based. This short statement reinforces the historical land use planning arrangements which I have described earlier in my evidence. In my opinion, this is the fulsome support in the district plan that the developable and useable land at Paihia is set aside for tourist related activities in order to give structural, economic and social support to the enjoyment of the historic and heritage resources of the district by visitors.

Test 3

Is Plan Change 12 the most appropriate way to achieve the purpose of the Act, being the sustainable management of the natural and physical resources, that is, in accordance with the provisions of Part 2 of the Act?

- 4.7 In my opinion, Plan Change 12 is not the most appropriate method of achieving the purpose of the Act with respect to the commercial land physical resource and the heritage resources in contention. In my opinion it is clear that the moderated form of development proposed by the Paihia Commercial Zone produces economic wellbeing

and employment of importance to the Paihia and Far North community. Furthermore, the commercial tourist infrastructure encouraged under that zone is fundamental to the future success of tourism within the Bay of Islands generally. Without these resources of accommodation, food and beverage outlets, recreational facilities and general services for tourists (retail, medical/health, financial, motor vehicles/transport) the tourism wealth of the Bay of Islands will be constrained. It would be contrary to the purpose of the Act having set aside this limited area of land for commercial development at Paihia and then to limit its use with an artificial restriction. The available commercial zoned land is a physical resource which should be promoted to its fullest extent to achieve a sustainable management outcome. The extent of development is properly balanced in the operative rules of the Commercial Zone to achieve a modest commercial development envelope while ensuring that the identified heritage resources of the Paihia waterfront are fully protected.

- 4.8 In considering the most appropriate way to achieve the purpose of the Act under Test 3 in accordance with the provisions of Part 2 of the Act, in the circumstances of Plan Change 12, the underlying challenge is, in my opinion, the need to balance the wellbeing of the community in an economic and social sense (the s.5 primary purpose matter) against the protection of heritage resources as a matter of national importance under s.6(f). To complete this analysis I consider that it is clear that the identifiable heritage resources of Paihia have been appropriately protected through scheduling in the district plan, whereas the economic and social wellbeing of the community, relying as it does in Paihia on the limited resources of available land zoned for the purpose of commercial development, is the aspect of sustainability which requires nurturing in this case. I have made the point above that if the economic underpinning of tourist activity through the provision of appropriate commercial resources, is limited or stymied without good reason, then in turn the wellbeing of the community is put at risk to some extent at least. Under the present district plan regime for Paihia, the protection of the heritage resources and the modest development encouraged through the Commercial Zone Sub-Areas is the fair balance contemplated by the Part 2 purpose of the Act.

- 4.9 In relation to Test 3 under s.32, it is my conclusion that Plan Change 12 does not provide the most appropriate way of achieving the purpose of the Act to answer the heritage resources/Commercial Zone conundrum at Paihia. The most appropriate way to achieve the purpose of the Act in this setting is to allow the Commercial Zone to operate as intended while ensuring that the identifiable heritage resources are fully protected.
- 4.10 Paihia should be seen in the broad context of land use management applied by the district plan to the Bay of Islands. Viewing Paihia in isolation to the heritage strategy applied to Russell and Waitangi misses a critical element in the structure of the district plan. When these matters are drawn together as they are Part 1.3 Strategic Direction and Part 1.4 Profile of the Far North, I consider the appropriate sustainable management balance is reached. In my opinion Plan Change 12 does not achieve the purpose of the Act as envisaged under Test 3 of s.32 RMA.

Test 4

Is Plan Change 12, having regard to its efficiency and effectiveness, the most appropriate method for achieving the objectives of the district plan, taking into account:

(a) the benefits and costs of the proposed policies and methods (including rules);
and,

(b) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules or other methods?

- 4.11 The efficiency and effectiveness test has been omitted from the s.32 material supporting Plan Change 12. It should be remembered that Part 12.5B Paihia Mission Heritage Area, entered the district plan without any s.32 analysis. It came in through the submission and appeal process. I note that evidence given in support of the appeal back in 2006, inappropriately compared Paihia to other Northland heritage villages and towns, such as Mangonui, Waimate North, Kohukohu and Rawene. Furthermore, it

attempted to make comparisons between the tourist attractiveness of the art deco city of Napier with the constraints being suggested through the insertion of Part 12.5B into the district plan. This was an unfortunate and inaccurate analogy given that Napier was developed following the 1931 earthquake as an architectural and experimental model of an art deco city that needed to respond to a rebuilding emergency. There is no comparison between that redevelopment project, successful as it has been, and Paihia.

- 4.12** There has been no assessment of the benefits and costs of the proposed policies and methods compared to the same benefits and costs that arise for the community at large from the underlying Commercial Zone development model. In my opinion, it is relatively easy to make the judgement that the Commercial Zone implementation would achieve a far higher efficiency and effectiveness outcome in economic terms.
- 4.13** With respect to the objectives of the district plan, the relevant objectives are those found in Part 12.5. Those objectives are focused on the existing historic heritage built environment either in the form of individual buildings or groups of buildings that still reflect the original strong colonial character in architectural form. None of that is apparent in Paihia. Accordingly, Plan Change 12 is not an appropriate method of achieving those objectives.
- 4.14** I have identified the urban purpose statements set out at Part 1.4.3.2 of the Plan for Paihia. The general objectives for the urban environment are found at Part 7.3 of the Plan where I consider Objective 7.3.1 and 7.3.3 together set the intention that urban activities should not cause adverse environmental effects on (in this case) the physical resources of the district which here are heritage resources. It is acknowledged that these resources are part of the amenity value of the existing Paihia urban environment. They are set amidst the commercial beachfront activities of Paihia within the Commercial Zone.
- 4.15** Policy 7.4.7 requires urban areas with distinctive characteristics to be managed to maintain and enhance the level of amenity derived from those characteristics. In my opinion, this is achieved in the Paihia beachfront setting by the development control

constraints imposed by the Commercial Zone Sub-Areas. The building envelope arising from the Commercial Zone development controls is modest and local in scale. It is limited to no more than three storeys of development in a setting where building economics will usually demand at grade parking and considerable open space for amenity purposes, including the front boundary setback. The existing developments in the vicinity, such as Busby Manor and the Edgewater Palms Apartments, both reflect the anticipated development form likely to arise from the district plan Commercial Zone provisions. The corresponding Policy 7.4.6 requiring the protection of historic heritage of urban settlements has been implemented through the scheduling of heritage resources of Paihia in the Plan. In my opinion, Plan Change 12 does not achieve the general purpose of the urban environment context in the district plan which is to use the resources allocated for urban purposes in a sustainable management manner.

- 4.16 The objectives and policies at Part 7.7 Commercial Zone recognise that commercial activities are essential to the quality of life and wellbeing of people in communities in the Far North (see Part 7.7.1.1). The primary objective at Part 7.7.3.1 seeks to achieve the development of commercial areas accommodating a wide range of activities while avoiding, remedying or mitigating the adverse effects of activities on the physical resources of the district which include the heritage resources.
- 4.17 The policies at Part 7.7.4 describe the placement of the Commercial Zone in traditional commercial areas such as Paihia, to serve the needs and wellbeing of the community and that the range of activities in the Commercial Zone be limited only by the need for generated effects to be consistent with other activities in the zone. Policy 7.7.4.3 requires that standards are applied to protect environmental amenity (which must include heritage resources) within the Commercial Zone. Overall, these objectives and policies are focused on achieving efficiency and effectiveness in the Commercial Zone which, by its very nature has limited application through the small settlements of the Far North. As I have already described, the district plan recognises the limited area available for commercial development in Paihia – limited both by topography and the competing demands for useable land arising from residential, recreational and commercial interests.

4.18 In carefully reviewing Plan Change 12 against these specific Commercial Zone objectives and related policies, it is not possible in my opinion to conclude that the proposed development control regime for the heritage area has focused on managing the effects generated by future commercial activities, nor are the standards to be applied aimed at protecting a visual and environmental amenity. The constraints of the rule package for Plan Change 12 are such that they result in the imposition of a residential development framework over this part of the Paihia Commercial Zone. I see this as being contrary to the objective and policies set out at Part 7.7.3 and 7.7.4 of the Plan.

4.19 Under this test my final area of examination is Chapter 12.5 Heritage in the district plan. The *Context* section describes –

For the purposes of this Plan heritage resources include:

- *notable trees*
- *historic sites, buildings and objects*
- *sites of cultural significance to Maori*
- *registered archaeological sites*
- *heritage precincts*

As already acknowledged, the historic sites, buildings and objects of Paihia are already scheduled and protected. Part 12.5A Heritage Precincts, introduces a technique into the Plan where nine precincts have been identified as having clusters of historic buildings that in association with their immediate environment have special amenity and character in addition to the heritage values. These are the precincts spread across the early settled part of the Bay of Islands but do not include Paihia. Paihia enters the Plan at Part 12.5B as now revised through Plan Change 12 as a heritage area being identified in the district as having several resources of historic importance.

- 4.20 It is noteworthy that at Part 12.5.2 Outcomes Expected, sub-section 12.5.2.5 does not include Paihia as a place recognised and to be retained for its heritage values. In reviewing the objectives at Part 12.5.3 and the policies at Part 12.5.4, I note in particular Objective 12.5.3.7 –

To ensure that subdivision and land use management practices avoid adverse effects on heritage values and resources.

In the Paihia setting the waterfront Commercial Zone restricts commercial development for tourist accommodation and services to a relatively moderate commercial built form. The intended development envelope of the Commercial Zone is in itself the manner in which Objective 12.5.3.7 is implemented. Development to the scale permitted under the Commercial Zone automatically avoids any adverse effects arising on the heritage resources identified at Paihia. In this setting the scale of permitted development must be the yardstick against which this judgement can be made.

- 4.21 This objective is supported by Policies 12.5.4.1, 12.5.4.2, 12.5.4.8 and 12.5.4.11. In each of these policies the attempt is to ensure that development in the vicinity of heritage resources is managed so as to avoid adverse effects. In my opinion, the existing Commercial Zone constraints already provide for this outcome and do not require the limited intensity and residential scale of building form that arises from the implementation of the Plan Change 12 development controls. Given that there is no cluster of historic buildings or individual historic buildings within the Paihia Mission Heritage Area, it is my opinion that it is not possible to confirm Plan Change 12 as the appropriate method of achieving the relevant objectives of the district plan that I have identified.
- 4.22 Finally under this test, the risk of not acting in accordance with Plan Change 12 is extremely limited as demonstrated by the scenario montages prepared by Brown NZ Ltd. This work removes any uncertainty and provides sufficient information to draw the logical conclusion that the balanced development available through the underlying

Commercial Zone has little or no adverse effect on the existing protected heritage items in this part of the Paihia waterfront.

- 4.23 Accordingly, Plan Change 12 fails to pass this test, in my opinion.

Test 5

Do the rules of Plan Change 12 that will come into effect have regard to the actual and potential effects of activities on the environment?

- 4.24 The rules of Plan Change 12 are effectively self-serving to the extent that their aim is to constrain development to a limited residential format that does not achieve the efficiency and effectiveness required from the physical resource represented by the subject land. In my opinion, the actual and potential adverse effect to arise is the loss of economic wellbeing from the constrained development and the loss of essential tourist infrastructure that would otherwise emerge to support the tourism industry of the Bay of Islands.
- 4.25 The effect of the rule package is to enforce a corridor of open space parallel to the Marsden Road reserve that serves a public purpose of creating further spaciousness within the beachfront environment. This has the effect of removing the front yard setback land from its intended use as commercial land for development purposes in support of the tourist industry at Paihia. While I note that this is an adverse effect in terms of the purpose of the Commercial Zone, it can be seen as having a positive effect in terms of an ulterior purpose which is effectively to create more public open space within the Marsden Road corridor at the expense of the private landowners. This arrangement has not been examined from an economic efficiency point of view in the s.32 reporting. Furthermore, it has not been examined from the point of view of reasonableness in terms of the use of the private land under the Commercial Zone development expectations supported by the protection interest in s.85 RMA.

- 4.26 In the Paihia setting where the useable flat land around the coastal terrace is limited and in high demand, Plan Change 12 does not create an outcome through the rule package that supports the sustainable management purpose of the Commercial Zone. The outcome in a three dimensional and built sense will be a low impact residential scaled environment. This is contrary to the purpose of the Commercial Zone.
- 4.27 In my opinion, Plan Change 12 fails this test.

Summary

- 4.28 Overall, it is my conclusion in relation to the s.32 analysis, that Plan Change 12 fails all five primary tests expected to be achieved under the provisions of s.32. The analysis demonstrates that Plan Change 12 is not required, it is inappropriate and it is disruptive to the land use management strategy of the operative district plan. This point is underpinned by the confirmation that there is no intellectual, philosophical or objective support for the contention that further historic heritage protection is required in Paihia beyond that which is already provided for in the district plan. The Plan Change 12 purpose seeks to achieve an open spatial outcome which is intended to serve a metaphysical appreciation for an historic environment made up of few remaining relics and heritage resources. This public benefit is being imposed on landowners without compensation and is contrary to their realistic expectations of Commercial Zone development. It does not serve the purpose of the Act at this location.

5.0 CONCLUSION


5.1 Based on my review of the issues surrounding Plan Change 12 and Part 12.5B of the plan, it is my opinion that the plan change does not stand the test of s32 RMA and is not a sustainable management outcome for the affected part of the Commercial Zone of Paihia. It is evidential that there are no additional heritage resources to protect. It is also clear that the provisions and rules of Plan Change 12 adversely constrain and limit the reasonable development model offered by the operative Commercial Zone. The zone proposal fails to meet the purpose of the Act.

5.2 In my opinion, to promote a sustainable management outcome over the subject area at Paihia requires:

- The withdrawal of Plan Change 12
- The removal of Part 12.5B from the operative Far North District Plan
- The imposition of Commercial Sub-area A1 over the subject area to be depicted on Planning Map 91A
- The protection of the Pohutukawa tree on the boundary of 18 & 22 Marsden Road.
- The insertion of an extra criterion to Rule 7.7.5.3.4 to encourage landscape enhancement and a better urban design outcome for future development. My suggested wording is:

(Addition to Rule 7.7.5.3.4)

- (c) *the extent to which buildings recognize and enhance the existing landscape and built elements, and the extent to which buildings address and activate the street frontage in a positive manner.*



Brian William Putt
Town Planner

15 August 2013