SECTION 42A REPORT

Officer's written right of reply 26 June 2025

Hearing 12 – Historic Heritage and Kororāreka Russell Township Zone

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1 Introduction

1. This right of reply addresses the Historic Heritage and Kororāreka Russell Township zone (KRTZ) topics that were considered in Hearing 12 on the Proposed Far North District Plan (**PDP**) held on 27-28 May 2025. It has been prepared by myself (Melissa Pearson), as the author of the section 42A reports for the Heritage Area Overlay, Historic Heritage and KRTZ chapters.

2. In the interests of succinctness, I do not repeat the information contained in Section 2.1 of the section 42A reports and request that the Hearings Panel (**the Panel**) take this as read.

2 Purpose of Report

3. The purpose of this report is primarily to respond to the evidence of submitters that was pre-circulated and presented at Hearing 12 on the PDP in relation to the Historic Heritage and KRTZ topics and to reply to questions raised by the Panel during the hearing. This report does not respond to evidence presented on either of the Sites and Areas of Significance to Māori or Notable trees topics as these will be addressed separately by the section 42A reporting officers for these topics.

3 Consideration of evidence recieved

4. The following submitters provided evidence, hearing statements and/or attended Hearing 12, raising issues relevant to the Historic Heritage and KRTZ topics:

    a. Alec Jack (S277).

    b. Allen Hookway (S311).

    c. Bayswater Inn (S29).

    d. Chorus New Zealand Limited, Spark New Zealand Trading Limited, One New Zealand Group Limited, Connexa Limited, Fortysouth Group LP (The Telco Companies) (S282).

    e. David Truscott (S476).

    f. Don Mandeno (S532).

    g. Federated Farmers (S421).

    h. Foodstuffs North Island Limited (Foodstuffs) (S363).

    i. Heritage New Zealand Pouhere Taonga (HNZPT) (S409).

    j. Ian Diarmid Palmer and Zejia Hu (S249).

    k. John Andrew Riddell (S431).

l. Kerry Ludbrook (S220).

m. The Paihia Property Owners Group (S330, S565).

n. Top Energy (S483).

o. Waitangi Limited (S503).

5. Several submitters generally support the recommendations in the section 42A reports for Historic Heritage and KRTZ topics, and many submitters raise common issues. As such, I have only addressed evidence where I consider additional comment is required and have grouped the issues raised in submitter evidence where appropriate. I have grouped these matters into the following headings:

a. Issue 1 – Dry-stone walls

b. Issue 2 – Non-statutory layers (Heritage Alert layer and ArchGIS layer)

c. Issue 3 – Pouerua Heritage Area overlay

d. Issue 4 – Paihia Heritage Area overlay

e. Issue 5 – Mangonui and Rangitoto Heritage Area overlay

f. Issue 6 – Kororāreka Russell Heritage Area overlay and Kororāreka Russell Township zone

g. Issue 7 – Spatial extent of other Heritage Area overlays

h. Issue 8 – Infrastructure

i. Issue 9 – Earthworks

j. Issue 10 – Other matters

6. I note that the evidence of both HNZPT and Waitangi Limited acknowledges that there is currently engagement occurring between both parties and the Council with respect to developing a special purpose zone for Waitangi. I acknowledge the material submitted by HNZPT and Waitangi Limited for Hearing 12, however I do not provide any additional comments on that material at this stage as it will be addressed as part of Hearing 15B.

7. I have addressed various questions raised by the Hearing Panel at the end of this reply – refer to the section "Additional Questions from the Hearing Panel".

8. I have used the following mark-ups in the provisions to distinguish between the recommendations made in the section 42A report and my revised recommendations in this reply evidence:

   a. Section 42A Report recommendations are shown in black text (with underline for new text and ~~strikethrough~~ for deleted text); and

   b. Revised recommendations from this Report are shown in red text (with red underline for new text and ~~strikethrough~~ for deleted text)

9. For all other submissions not addressed in this report, I maintain my position as set out in my original section 42A reports.

3.1 Issue 1: Dry-stone walls

Overview

Relevant Document	Relevant Section
Section 42A Report	Heritage Area overlay and Historic heritage section 42A report – Key Issue 21
Evidence and hearing statements provided by submitters	HNZPT, Alec Jack

Matters raised in evidence

10. Mr Stuart Bracey (planner) and Mr Bill Edwards (archaeologist) on behalf of HNZPT seek a blanket rule across all zones in the Far North district to protect dry-stone walls. Mr Bracey and Mr Edwards argue that dry-stone walls are a distinctive and culturally significant feature of the Far North's heritage landscape. Mr Bracey disagrees that the Heritage New Zealand Pouhere Taonga Act (HNZPTA) provides sufficient protection, noting that many dry-stone walls are not pre-1900 and therefore fall outside the Act's archaeological protections. He further notes that similar protections have been successfully implemented in the Whangārei District Plan and considers that a comparable framework could be adopted in the Far North with minimal modification. In Mr Bracey's view, the proposed provisions would affect less than 10% of the district and would provide necessary protection for a unique heritage feature.

11. Conversely, Mr Alec Jack was clear at the hearing that he opposed blanket protection of dry-stone walls and that a broad assumption that all dry-stone walls in the area have historic heritage value is incorrect. As an example, Mr Jack referred to his own farm where dry-stone walls were constructed by his grandfather and others around 70ha of native bush, as well as along property boundaries and that these walls do not have any heritage significance. Mr Jack is of the opinion that any additional protection of individual sections of dry-stone walls require consultation, engagement with

stakeholders that have dry-stone walls on their properties and ground truthing.

Analysis

12. I addressed the issue of blanket provisions to protect dry-stone walls in Issue 21 of my section 42A report and hearing the evidence on the issue from HNZPT has not changed my position. The discussions between the Hearing Panel, HNZPT and Mr John Brown at the hearing further confirmed my initial position that it would be problematic to introduce objectives, policies and rules to protect dry-stone walls for the following reasons not already covered in my section 42A report:

    a. It is difficult in practice to determine if a dry-stone wall has been constructed recently or if it is older and has heritage significance, particularly as historic walls are often rebuilt and repaired over time, as discussed in more detail in Mr Brown's memo in **Appendix 4**.

    b. I consider that the definition of dry-stone walls in the Whangarei District Plan (being the example used by HNZPT) is not sufficiently certain to use as a basis for a policy and rule framework as it is not time bound, meaning it captures all walls, including modern walls built using traditional non-mortar methods.

    c. Using a definition based on the age of a dry-stone wall is problematic for the reasons set out in (a) above.

13. I reiterate that, if there is a desire to protect dry-stone walls that fall outside of a HA Overlay, the proposed provisions should go through a full Schedule 1 process, including initial engagement with directly affected landowners, communities and iwi/hapu to determine levels of support.

Recommendation

14. I do not recommend that any blanket protection provisions for dry-stone walls are included in either the HA or HH chapters of the PDP.

Section 32AA Evaluation

15. As no changes are recommended, no further analysis under section 32AA of the RMA is required.

3.2 Issue 2: Non-statutory layers (Heritage Alert layer and ArchGIS layer)

Overview

Relevant Document	Relevant Section
Section 42A Report	Heritage Area overlay and Historic Heritage section 42A report – Key Issue 21

Relevant Document	Relevant Section
Evidence and hearing statements provided by submitters	HNZPT

Matters raised in evidence

Non-statutory Heritage Alert layers

16. Mr Bracey and Mr Edwards on behalf of HNZPT propose the use of non-statutory heritage alert layers to raise awareness of heritage values without imposing a consenting burden on landowners. Mr Bracey identifies three areas — the Oruru Valley, Kawakawa Township, and Kaeo Township — as potential locations for where a non-statutory alert layer may be valuable. Mr Edwards notes that the Oruru Valley contains the highest concentration of pā sites in a single valley system in Aotearoa, while Kawakawa and Kaeo have rich histories of Māori and early European settlement. Mr Bracey suggests that non-statutory alert layers, similar to those used in the Gisborne District, could be incorporated into FNDC's GIS mapping system to inform landowners and developers that there may be heritage values to consider and encourage early engagement with HNZPT.

Use of ArchSite as a non-statutory GIS layer

17. Mr Bracey on behalf of HNZPT also seeks the inclusion of the ArchSite archaeological database as a layer within FNDC's GIS system. Mr Bracey argues that even an indicative mapping tool can provide valuable early warning of potential archaeological features. He suggests that the layer could be updated annually and would serve as a non-statutory but informative resource for landowners and developers.

Analysis

18. I reserved my position on the use of non-statutory heritage alert layers in my section 42A report until after I had the chance to review and consider the evidence provided by HNZPT. Based on that information, and the discussions had throughout the hearing, I consider that there are benefits and disadvantages to the use of such a tool as follows (building on some of the pros and cons outlined by Mr Brown in **Appendix 4**):

    Benefits

    a. No consenting burden on landowners from a non-statutory alert layer.

    b. May raise visibility and awareness of existing legal obligations under the HNZPTA with respect to archaeological sites.

    c. Potential reduced risks to undiscovered archaeological sites (although no clear evidence provided by HNZPT that this is occurring

in Gisborne or anywhere else where this tool is used, based on Mr Bracey's response to the Hearing Panel question on this matter).

d. Allows for a recognition of areas that do have agreed historic heritage values (agreed by HNZPT and acknowledged by Mr Brown) but were not sufficiently consulted on or spatially identified prior to PDP notification or through submissions to be heritage areas.

Disadvantages

e. Will result in a spatially mapped area being shown as having heritage value as part of the PDP GIS (and showing on Land Information Reports). While this may be seen as a positive by HNZPT, it is likely to be opposed by affected landowners, based on the evidence and statements presented at Hearing 12, as one of the key areas of contention was being shown 'inside' an area identified for heritage value on a map.

f. The nuance that the map is non-statutory and has no associated rules is unlikely to be understood or supported by landowners or communities, based on the evidence and statements heard during Hearing 12.

g. May be perceived as 'the thin end of the wedge' by affected parties and seen as a step towards full heritage area mapping.

h. Has not been consulted on as a tool, either with potentially affected landowners, the wider community or mana whenua.

i. The original relief requested by HNZPT did not include maps of the Oruru Valley, Kawakawa or Kaeo (or any other potential location for either a heritage area or a heritage alert area), so potentially impacted parties may not have understood the spatial extent of what was being proposed or how it might affect their land, let alone the implications of changing the requested relief to a non-statutory alert layer.

j. May cause potential confusion for consent staff as to what extent they should give weight to an area having heritage value when this is signalled via a non-statutory layer.

k. May undermine other processes and engagement underway to protect historic heritage values, e.g. current work being undertaken in the Oruru Valley.

19. Taking the above into account, I consider that the two key issues to balance are:

a. The potential benefits to identifying and recognising heritage values (particularly raised awareness over unidentified archaeological sites); and

b. The detrimental impact that the introduction of alert layers may have on affected landowners, communities and mana whenua when there has been insufficient engagement and consultation on the issue.

20. There is no disagreement between the two expert archaeologists involved in this hearing (Mr Edwards for HNZPT and Mr Brown for FNDC) that the Oruru Valley, Kawakawa and Kaeo have historic heritage values that are valuable and worth protecting. However, in my view, identifying those values alone is not sufficient to justify taking a step to spatially identify these areas on a PDP map (even in a non-statutory capacity). Support from landowners, affected communities and mana whenua is a critical part, in my view, of the likely success of any approach to heritage protection. Without this support, those same parties become disengaged, alienated and less likely to protect the heritage values of the areas that they are kaitiaki of.

21. I am not satisfied that there have been sufficient opportunities to consult on the idea of a non-statutory heritage alert layer for Oruru Valley, Kawakawa and Kaeo, or any other part of the Far North district where the Hearing Panel may be considering using this as an alternative tool e.g. for the hospital site in Rāwene. A step to include these types of layers via a submission runs the risk of further alienating communities and mana whenua as there is no ability to consult on the concept of alert layers as a tool, although I agree that it would be within scope as 'lesser relief' than a heritage area.

22. I am not opposed to the idea of non-statutory alert layers in principle as, in my experience, there are situations where these types of layers can be utilised successfully in district plans to raise awareness for landowners of potential issues. However, the concerns I have with suggesting a new tool part way through the Schedule 1 process, combined with the lack of clear maps in the original HNZPT submission to ensure all potentially impacted parties were aware of what might be proposed, mean that I do not consider non-statutory alert layers to be the correct tool in the toolbox for this specific scenario. As such, I do not recommend introducing non-statutory heritage alert layers for Oruru Valley, Kawakawa and Kaeo, or any other part of the Far North district.

Archsite

23. I do not consider any new information has been provided by HNZPT in their evidence relating to the inclusion of an Archsite layer in the PDP as a non-statutory layer. As such, my analysis in paragraph 376 of the section 42A report remains unchanged.

Recommendation

24. I do not recommend including any non-statutory layers relating to historic heritage or Archsite in the PDP.

Section 32AA evaluation

25. As no changes are recommended, no further analysis under section 32AA of the RMA is required.

3.3 Issue 3: Pouerua Heritage Area overlay

Overview

Relevant Document	Relevant Section
Section 42A Report	Heritage Area overlay and Historic heritage section 42A report – Key Issue 7
Evidence and hearing statements provided by submitters	Alec Jack, Kerry Ludbrook (witnesses Sam and Fiona Chapman-Smith and Pita Tipene)

Matters raised in evidence

26. Mr Alec Jack and Mr Kerry Ludbrook appeared at Hearing 12 strongly in support of the boundary of the Pouerua HA Overlay reverting to the ODP boundary of the Pouerua Heritage Precinct. Mr Jack provided an archaeological report from 1993 prepared by HNZPT in support of his oral statement, referred to in the hearing as 'The Chalice report'. Mr Jack also called the owners Greenfields Farm Ltd (Mr Sam Chapman-Smith and Ms Fiona Chapman-Smith) as witnesses to speak to the negative impacts of the HA Overlay on their ability to continue farming their property, as well as Mr Pita Tipene in his capacity as a cultural expert witness.

27. Collectively, these submitters raised several issues with the proposed extension of the Pouerua HA Overlay to the northwest (noting that there was unanimous support for the removal of the southeastern portion of the Pouerua HA Overlay that I had already recommended in the section 42A report). The key issues raised were:

    a. The core purpose of the Pouerua Heritage Precinct in the Operative District Plan was to recognise and protect the unique pre-European Māori heritage, not colonial buildings such as homes and churches. Expanding out the scope of the Pouerua HA Overlay to include both pre-European and colonial heritage undermines the mana of the site for tangata whenua.

    b. Any colonial heritage buildings and structures above ground with historic heritage value are already individually scheduled and do not need to be included in the HA overlay.

c. Pastoral farming is under pressure and primary industries need to evolve and adapt to remain profitable and sustainable. Uncertainty, expense and delays associated with the resource consent process resulting from the HA Overlay are a threat to being able to convert land to horticultural use in the future and make use of nearby water storage projects and good soils.

d. The Chalice Report sets out a boundary for the Pouerua Heritage Precinct that has been relatively accepted by landowners and the local community, albeit there are still some areas that Mr Jack and Mr Ludbrook consider could be removed from the Chalice Report boundary.

e. There was insufficient engagement with impacted landowners, the community and tangata whenua in the lead up to notifying the PDP to fully understand the impact of what was being proposed.

f. There are real financial implications for landowners within the HA overlay resulting from the perceived limitations of the associated rules on the ability to farm the land. Simply having land shown as being located within the Pouerua HA overlay can impact whether people are able to sell their farm as often potential buyers are scared off by the HA overlay and instead look for less encumbered land.

28. These submitters raise other concerns with specific provisions in the HA and HH chapters (particularly regarding earthworks), however I address these separately in Issues 9 and 10 below.

Analysis

29. The boundary of the Pouerua HA overlay is clearly an issue that is critical to the Pouerua community, particularly those landowners that are most spatially affected. I acknowledge the feelings of submitters that consultation, engagement, investigation and ground truthing prior to the notification of the PDP was insufficient (noting the limitations around the ability to engage in person during Covid) and that, as a result, there is no community buy in for the extension of the Pouerua HA Overlay beyond the spatial extent of the Operative District Plan 'precinct', which is the same boundary supported by the Chalice report.

30. Mr Brown's memo summarises that, although he still considers that there are likely undiscovered archaeological sites outside of the lava flow (being the spatial basis for the ODP Pouerua Heritage Precinct), he acknowledges that there are strong cultural and community reasons for aligning the spatial extent of the Pouerua HA overlay with the ODP precinct boundary. On that basis, Mr Brown can support a reduction in spatial extent.

31. Based on Mr Brown's revised position, I consider that the most appropriate planning response is to revert back to the boundary of the Pouerua Heritage Precinct in the ODP. I heard general acknowledgement at the hearing that,

while not perfect, the ODP precinct boundary for Pouerua is a boundary that is accepted by landowners, the community and mana whenua as spatially containing the most historically and culturally significant sites and features of pre-European Māori occupation. My understanding of the submitter feedback was that, provided some of the other concerns regarding specific rules could be resolved, the operative Pouerua Heritage Precinct boundary would be accepted as satisfactory relief.

32. I note that Mr Jack and Mr Ludbrook requested several further refinements to the boundary that would reduce the spatial extent even further than the ODP precinct boundary. However, after reviewing the scope of their original submissions, I note that:

    a. Mr Jack's requested relief was to *"Amend the Pouerua Heritage Area, by deleting the proposed map and replacing it with the map of the Pouerua Heritage Precinct from the Operative District Plan."* Alternatively, Mr Jack requested that a smaller area be removed from his land to the north of Lake Owhareiti, but this is lesser relief than the relief in italics and was not his preferred option.

    b. Mr Ludbrook's requested relief was slightly unclear spatially, as parts of the submission requested removal of the HA overlay from all of Lot 1 DP 194271 (Ludbrook Road, Pakaraka), while other parts only requested partial removal. The map attached to the original submission shows partial removal of the HA overlay along a boundary that aligns with the ODP precinct boundary for Pouerua.

33. As such, I do not consider that additional refinements to the operative boundary of the Pouerua Heritage Precinct are within scope for this PDP process.

Recommendation

34. I recommend that the spatial extent of the Pouerua HA Overlay is reduced to align with the operative boundary of the Pouerua Heritage Precinct (refer to map in **Appendix 5** for spatial extent).

Section 32AA Evaluation

35. Consistent with my section 32AA evaluation for removing the southeastern portion of the Pouerua HA overlay in paragraph 127 of the section 42A report, I consider that removing the northwestern portion is a more efficient and effective way of achieving the relevant objectives by focusing the spatial extent of the Pouerua HA Overlay on the areas with the highest heritage value. While some potential undiscovered archaeological sites may be more at risk of being damaged or destroyed than if they were included in the HA Overlay, I consider that the benefits of landowners being engaged and supportive of protecting the most vulnerable and valuable areas of heritage outweigh the lost opportunity for further protection of undiscovered heritage.

3.4 Issue 4: Paihia Heritage Area overlay

Overview

Relevant Document	Relevant Section
Section 42A Report	Heritage Area overlay and Historic heritage section 42A report – Key Issue 4
Evidence and hearing statements by submitters	The Paihia Property Owners Group, Bayswater Inn Ltd, Don Mandeno

Matters raised in evidence

36. Ms Inge Amsler on behalf of the Paihia Property Owners Group is opposed to the introduction of the Paihia HA Overlay Part B for the following reasons:

    a. The 2014 NZ Environment Court consent order determined the correct spatial extent of the Paihia Mission Heritage Area, which is spatially identified in the PDP as 'Part A' of the Paihia HA overlay. The inclusion of the new 'Part B' area is seen by Ms Amsler as overruling the Environment Court consent order.

    b. There are concerns that the reports prepared by Mr Brown to justify the spatial extent of the Part B area are inadequate and have not been peer reviewed or subject to community scrutiny.

    c. Urban, built-up areas of Paihia e.g. Marsden Road, Kings Road, McMurray Road, Bedggood Close, Seaview Road and part of Totara Heights have no known or proven historical or archaeological significance and should not be included in Part B.

37. Mr Don Mandeno agrees with Ms Amsler and remains of the opinion that no HA overlay should apply to his property at 22 Marsden Road, Paihia. Mr Mandeno provided a rich description of the heritage values of adjacent sites and the associations that his family have with the area at the hearing. In his view, all heritage values associated with Paihia are already well protected by the spatial extent of the Paihia Mission Heritage Area in the ODP, or through individual scheduling of sites. More specifically, Mr Mandeno is opposed to Part B of the Paihia HA overlay for the following reasons:

    a. Both he and his neighbours already look after the heritage, paint their houses appropriate colours etc without any rules requiring them to do so.

    b. 22 Marsden Road contains a 100 year old cottage but the grounds were extensively explored for potential archaeological remains in the 1970s, so there is nothing of value left.

c. The 2014 NZ Environment Court consent order determined that 22 Marsden Road should not be within the Paihia Mission Heritage Area, therefore it should not be included again.

38. Mr Mandeno also made points relating to the need to achieve a consistent approach across heritage areas (e.g. why was Waitangi not protected in the PDP) and concerns with inadequate consultation prior to the PDP notification. Mr Mandeno made separate points on the provisions of the HA overlay chapter relating to engaging experts, tangata whenua engagement and earthworks, which I address separately in Issues 9 and 10 below.

39. Mr Chester Rendell on behalf of Bayswater Inn Ltd made similar arguments to Ms Amsler and Mr Mandeno with respect to opposing the introduction of Part B to the Paihia HA overlay on his property at 40 Marsden Road. In particular, he supports the findings of the 2014 Environment Court consent order that his property should not be subject to a heritage overlay and that the ODP Paihia Mission Heritage Area boundary should be reinstated.

Analysis

40. Mr Brown's memo sets out his rationale for retaining the spatial extent of Paihia HA overlay Part B as notified, which is primarily based on his analysis of historical mapping and recorded archaeological sites, which indicate high potential for more sites to be uncovered. Mr Brown notes that, in his experience, it is very common, even on developed urban sites, for undisturbed archaeological features to be revealed when these sites are redeveloped. On this basis, Mr Brown does not support a reduction in the spatial extent of Paihia HA overlay Part B and I rely on his advice for my recommendation.

41. I understand that Ms Amsler, Mr Mandeno and Mr Rendell consider that the introduction of 'Part B' of the HA overlay 'overrides' or relitigates the 2014 Environment Court consent order, which established the boundaries of the Paihia Mission Heritage Area. In my view, the spatial extent of the Paihia Mission Heritage Area is reflected in the spatial extent of 'Part A' of the Paihia HA overlay, which is the same spatial area identified in the 2014 Environment Court consent order.

42. As established at the hearing, unless a property is within 20m of a scheduled Heritage Resource or on a site containing a scheduled Heritage Resource, the only two restrictions that apply in 'Part B' of the Paihia HA overlay are limited to controls on colour and the depth of excavation. These controls, in my view, are much less stringent than those that apply in the 'Part A' area and, as such, should not be viewed as an 'expansion' of the spatial extent of Part A that was established by the 2014 Environment Court consent order. Rather, 'Part B' is a new, less stringent overlay that is primarily focused on protecting undiscovered archaeological sites and managing colour to avoid detracting from the heritage values of the Paihia township.

43. I note that none of the submitters appearing in relation to the Paihia HA overlay were concerned with the colour standard HA-S2. Rather, their primary concerns related to the HA overlay being applied to their property in principle and the 500mm depth trigger in the earthworks rule HA-R5. I have made some recommendations for HA-R5 in Issue 9 below, which may partially resolve concerns with the stringency of this rule.

Recommendation

44. I do not recommend any amendments to the spatial extent of the Paihia HA Overlay Part B.

Section 32AA Evaluation

45. As no changes are recommended, no further analysis under section 32AA of the RMA is required.

3.5 Issue 5: Mangōnui and Rangitoto Heritage Area overlay

Overview

Relevant Document	Relevant Section
Section 42A Report	Heritage Area overlay and Historic heritage section 42A report – Key Issue 5
Evidence and hearing statements provided by submitters	Ian Diarmid Palmer and Zejia Hu

Matters raised in evidence

46. Mr Ian Palmer opposes the notified extent of the Rangitoto Peninsula Heritage Area Overlay Part B (referred to in his hearing statement as (RPHAB)) on the basis that it is unjustified, overly expansive, and based on flawed technical evidence. Key points made in his hearing statement include:

    a. That the section 42A report misrepresents his submission by implying that he is requesting deletion of the entire Part B overlay as it applies to the Rangitoto Peninsula. He clarifies that his submission sought to limit the overlay to land directly associated with known heritage features, not to remove it entirely.

    b. The community do not support the expansion of Part B of the HA overlay. Mr Palmer makes this assertion based on a submission from the local Te Hiku Community Board and a public meeting where attendees unanimously opposed the expansion of Part B onto the Rangitoto Peninsula.

    c. The Plan.Heritage reports are not reliable and include misinterpretations of historical land use and incorrect assumptions

about archaeological features. Mr Palmer also references more recent archaeological work by Maxwell and Huebert, which identifies only two significant sites on the peninsula—both already known and scheduled.

d. Key recommendations from the Plan.Heritage reports—such as the need for sub-area-specific design guidance and management plans—were not implemented, which has resulted in a lack of clarity about what constitutes "appropriate" or "inappropriate" development within the Part B area, particularly given the mix of Māori and European heritage values.

e. That the section 32 analysis is inadequate and fails to demonstrate a clear problem or risk that justifies the overlay's extent. He notes that the analysis does not assess whether existing protections (such as the Accidental Discovery Protocol or conservation covenants) are sufficient, nor does it provide evidence of inappropriate development occurring or likely to occur.

f. As the Part B area improperly incorporates landscape and Māori cultural values that are already addressed through other overlays (e.g. Outstanding Natural Landscapes, Sites of Significance to Māori), this results in "double-counting" and is inconsistent with national planning guidance, which requires such values to be addressed in their respective chapters.

47. Mr Palmer has raised other matters with respect to the provisions of the HA overlay chapter, namely tangata whenua consultation and earthworks, which I address separately in Issues 9 and 10 below.

Analysis

48. Firstly, I agree with Mr Palmer that I was incorrect when noting in my section 42A report that his requested relief was to remove the Rangitoto Peninsula Heritage Area Overlay Part B entirely. His submission acknowledged that the is HA overlay is appropriate for the Rangitoto Peninsula where land directly associated with and/or proximal to listed heritage resources. At the hearing it was clear that Mr Palmer is seeking a reduction in the spatial extent of the HA overlay on the Rangitoto Peninsula and that the retained area of overlay should only focus on the headlands/coastline and the land around the scheduled Heritage Resources on Butlers Point.

49. Mr Brown has considered the hearing statement provided by Mr Palmer and has confirmed in his memo that he can support a reduced spatial extent of the HA overlay over the Rangitoto Peninsula, provided that the HA overlay continues to apply to the two pa sites, the headland of Butlers Point, and the trading settlement up to the western extent of the paper road that bisects the peninsula. Based on Mr Brown's assessment, I can support a reduction in the spatial extent of the HA overlay on Rangitoto Peninsula,

which I consider to be largely consistent with the outcome sought by Mr Palmer.

50. With respect to Mr Palmer's other points, Mr Brown has responded to the criticisms of the Plan.Heritage reports with respect to accuracy and reliability and I do not have any further comments on that issue. Regarding the adequacy of the section 32 analysis, I am comfortable that the level of analysis in the original section 32 report was sufficient and proportionate to the issue. The reduction in spatial extent to focus on the areas of the Rangitoto Peninsula with the most significant historic heritage values strengthens the section 32 case, in my view, for the presence of the HA overlay and the use of colour and earthworks controls to manage impacts on the associated historic heritage values.

51. Finally, with respect to the 'double counting' concern raised by Mr Palmer, I do not consider that any doubling up of landscape controls is occurring. The purpose of the HA overlay provisions is to manage the potential impacts of subdivision, use and development on historic heritage values, both above and below ground. Landscapes can be managed under section 6(f) the RMA from a historic heritage perspective and the HA overlay manages different values from those protected under section 6(a) regarding the natural character of the coastal environment and section 6(b) regarding outstanding natural features and landscapes. The fact that these values are managed for different reasons using different tools within the same spatial 'landscape' does not mean that there is double counting occurring. I consider that the same argument is equally as valid for Sites of Significance to Māori (SASM) – the HA overlay is not doubling up on this protection, it is managing different aspects of historic heritage in a different way to the SASM chapter. The fact that the HA overlay manages risks to both pre and post European archaeological sites adds further weight to the HA overlay being a useful tool to manage historic heritage values that go beyond the protection of a 'landscape' or 'cultural values'.

Recommendation

52. I recommend that that the spatial extent of the Mangōnui and Rangitoto HA Overlay Part B as it applies to the Rangitoto Peninsula is reduced as shown in the map in **Appendix 5**.

Section 32AA Evaluation

53. I consider that removing part of the Mangōnui and Rangitoto HA Overlay Part B from the Rangitoto Peninsula is a more efficient and effective way of achieving the relevant objectives by focusing the spatial extent of the HA Overlay on the areas of the Rangitoto Peninsula with the highest heritage value. While some potential undiscovered archaeological sites may be more at risk of being damaged or destroyed than if they were included in the HA Overlay, I consider that the benefits of landowners being engaged and supportive of protecting the most vulnerable and valuable areas of heritage

outweigh the lost opportunity for further protection of undiscovered heritage.

3.6 Issue 6: Kororāreka Russell Heritage Area overlay and Kororāreka Russell Township zone

Overview

Relevant Document	Relevant Section
Section 42A Report	Heritage Area overlay and Historic heritage section 42A report – Key Issues 15, 18 Kororāreka Russell Township Special Purpose Zone section 42A report – Key Issues 1, 2, 3
Evidence and hearing statements provided by submitters	John Andrew Riddell

Matters raised in evidence

54. I have addressed Mr John Riddell's evidence on both the Kororāreka Russell HA overlay and KRTZ together, as the way the underlying zone and the HA overlay provisions work together is a central component of his evidence.

55. Mr Riddell's key concern is that the combination of the Kororāreka Russell HA overlay and KRTZ provisions do not adequately carry forward the intent and effect of ODP framework, particularly in relation to building scale, design guidance, the treatment of Part D of the HA overlay and infrastructure constraints.

Building scale

56. Mr Riddell provides a detailed analysis of the building scale rule as it applies under the ODP and the PDP. He notes that the ODP rule 10.9.5.1.5 distinguishes between areas within and outside the heritage precincts in the ODP. Specifically, within the heritage precincts and the Russell Township Basin and Gateway Area, a 20% floor area ratio applies to total net floor area, while outside these areas the 20% ratio applies only to net ground floor area. He argues that the PDP, as notified, applies a more restrictive standard across the entire KRTZ by using total net floor area rather than net ground floor area, and that the reasons for this change were not clearly signalled or justified. Mr Riddell notes that the solution I propose in my section 42A report for the KRTZ remedies the issue for the balance of KRTZ land outside the HA overlay, but results in a building scale standard that is more permissive than the ODP for land within the HA overlay.

57. Mr Riddell proposes two options to address this issue. The first is to amend standard KRT-S5 to apply to net ground floor area and to introduce a new standard in the HA chapter to replicate the ODP building scale rule. The second, which he prefers, is to replace KRT-S5 entirely with a revised version

of the ODP rule, structured for clarity and consistency with the National Planning Standards. He considers that either option would better reflect the intent of the operative provisions and provide appropriate protection for the heritage and character values of Kororāreka Russell.

Design guidelines

58. Mr Riddell supports the inclusion of references to the Kororāreka/Russell Design Guidelines (being the 2007 document prepared by Salmond Reed Architects) within the PDP. He notes that, while the Design Guidelines are not currently included or referenced in the ODP, they provide valuable direction for applicants and decision-makers, particularly in the absence of detailed design criteria in the PDP. He requests amendments to policies KRT-P1 and KRT-P3 to reference the Design Guidelines and recommends that the full scope of KRT-P6 be available as a matter of discretion for relevant rules, rather than limiting consideration to clause (b) of the policy only.

59. Mr Riddell also critiques the wording of KRT-P6, arguing that it does not provide sufficient guidance for designing development in the KRTZ. He suggests that key principles from the 2007 Design Guidelines, the design criteria from Policy 10.9.4.8 of the ODP and the assessment criteria from section 11.21 of the ODP — particularly those relating to scale, form, and materials — should be explicitly incorporated into KRT-P6. Mr Riddell also requests that KRT-P6 (in full, not just clause (b)) be referenced in the matters of discretion for rules KRT-R1, KRT-R8, and HA-R4 to ensure it is effectively implemented.

Part D of the Kororāreka Russell HA overlay

60. Mr Riddell raises concerns about the treatment of Part D of the Kororāreka Russell HA overlay. He notes that under the ODP, the Russell Township Basin and Gateway Area (now Part D in the PDP) functions as a buffer area, with less restrictive rules than the core heritage precincts. He argues that the PDP inappropriately elevates Part D and subjects it to the same level of control as the core areas, contrary to the intent of the Environment Court decisions that established the buffer (as appended to Mr Riddell's evidence).

61. Mr Riddell requests that Part D be included in the permitted activity part of rule HA-R4 (new buildings and structures). He considers that this approach better aligns with the policy direction in both the ODP and PDP, which both recognise the importance of maintaining the village character and landscape setting of Kororāreka Russell, while allowing for appropriate development in the buffer area. He considers that the key control for managing the scale of development in Part D is the building scale rule and that, if his requested amendments to KRT-S5 are accepted, then it is not necessary for all new buildings and structures in Part D to go through a restricted discretionary resource consent process.

Infrastructure constraints

62. Mr Riddell continues to request that the Overview section of the KRTZ chapter include a statement acknowledging the capacity limits of the wastewater system to provide context for the zoning and subdivision provisions. He notes that, given the wastewater scheme is already at or near capacity, any extension or intensification of development in the KRTZ would require a significant upgrade to the scheme or a return to unsewered lot provisions.

Analysis

Building scale

63. I appreciate Mr Riddell setting out the background and context for the operative net floor area rules and outlining the issues with how the rules have been translated into the PDP. Having reviewed his evidence, I agree that KRT-S5 does not accurately reflect the split in the ODP rule 10.9.5.1.5 between land in the KRTZ within and outside of the HA overlay. I acknowledge that my recommended insertion of the word 'ground' into KRT-S5 has addressed Mr Riddell's concerns about the standard being overly restrictive for the balance of the KRTZ outside of the HA overlay but has inadvertently made the rule more permissive than the ODP within the HA overlay. This has created an inverse of the problem in the notified PDP that was identified in Mr Riddell's original submission.

64. As I agree that the issue needs resolving, the question then turns to Mr Riddell's proposed options for remedying this issue. I remain of the opinion that a building scale rule is best located in a zone chapter as opposed to the HA chapter. While I acknowledge that there is a crossover between character/amenity values and historic heritage values in the context of Kororāreka Russell (and the findings of the Environment Court decision appended to Mr Riddell's evidence confirmed that it is difficult to separate these two types of values), I consider that the purpose of such a rule is primarily to manage the character and amenity of Kororāreka Russell, which I see as a matter to be managed by the KRTZ provisions. My preference is for all parts of the building scale standard to be in one chapter, as opposed to split between the KRTZ and HA chapters, so that landowners in the KRTZ only need to look in one chapter for bulk and location controls. This would align with the second (and preferred) option put forward by Mr Riddell, for a completely redrafted KRT-S5.

65. My suggested wording for KRT-S5 to address this issue is as follows (noting that this wording largely follows that suggested by Mr Riddell, albeit with a different structure):

> "The maximum combined net floor area of the ground floor of all buildings or structures on the site ~~is no more than~~ shall not exceed 20% of the net site area, except that:~~.~~

1. For sites with a net site area less than 400m², the maximum net floor area may be up to 80m².

2. For sites within the Kororāreka Russell Heritage Area Overlay, the maximum combined net floor area of all buildings on the site shall not exceed 20% of the net site area."

Design Guidelines

66. I consider that there are three issues to address regarding design guidelines from Mr Riddell's evidence:

    a. Whether or not the 2007 Design Guidelines prepared by Salmond Reed Architects should be incorporated and/or referenced in the PDP;

    b. Whether KRT-P6(b) needs further drafting amendments to better reflect Policy 10.9.4.8 of the ODP and the assessment criteria from section 11.21 of the ODP; and

    c. Whether more rules in the KRTZ and/or the HA chapters need to reference KRT-P6 (in full) in the matters of discretion.

67. With respect to the 2007 Design Guidelines, I do not support them being either incorporated or referenced in the KRTZ or the HA chapter. As Mr Riddell has pointed out in his evidence, the 2007 Design Guidelines are not currently included or referenced in the ODP and I do not consider it appropriate to elevate this document so that it is required to be considered as part of making decisions on resource consents. Mr Brown noted at the hearing that design guidelines need to be updated regularly to ensure they remain relevant (his suggestion was that they should be reviewed every 5 years) and noted that the 2007 Design Guidelines are now 18 years old. In my view, the 2007 Design Guidelines were drafted for non-statutory information purposes and the age, content and style of the document means that it is not suitable for consideration as part of a policy or rule.

68. With respect to the drafting of KRT-P6(b), I appreciate that Mr Riddell and I may differ as to what is an appropriate level of detail and choice of words for this clause of the policy. From reading Mr Riddell's evidence (particularly paragraphs 73 and 74), it appears that the components Mr Riddell considers are missing from my drafting of KRT-P6 are:

    a. A clear focus on preserving the scale of existing development when considering designs for new development;

    b. More emphasis on the form of development, emphasising clear and simple forms, with similar roof pitches to surrounding buildings and moderate use of features such as verandahs; and

c. Including direction that buildings on the skyline should not exceed the maximum [height] limit.

69. In my view, matter (a) relating to scale of buildings is sufficiently addressed by KRT-P6(b)(v), which refers to maintaining the pedestrian scale and layout of Kororāreka Russell. Similarly, I consider the matter of form is addressed by KRT-P6(b)(i), which refers to the pitch of roofs and having low levels of ornamentation, which I take to mean a preference for clear and simple forms.

70. I did not translate over the statement from the ODP about buildings on the skyline not exceeding the maximum height limit as firstly, there is no corresponding rule to implement a policy statement like this, and secondly, it is difficult to draft a permitted activity rule that requires buildings and structures to be below the skyline[1]. I consider that a more appropriate place to address this issue is in the matters of discretion for KRT-S1 (maximum height), as this is more targeted to activities that infringe this standard. I recommend a new matter of discretion that focuses on the visual effect of development in relation to ridgelines, headlands or peninsula, which is consistent with similar wording included in the Natural features and landscapes chapter.

71. Finally, with respect to the extent to which KRTZ and HA chapter rules should reference KRT-P6, I accept Mr Riddell's point in paragraph 75 of his evidence that *"having a policy like KRT-P6 is of very limited value unless it is considered with a resource consent application. For controlled and restricted discretionary applications this requires a matter of control or discretion allowing that consideration."* After reviewing the content of KRT-P6, I consider that most of the policy could be applicable to consent applications for buildings and structures under KRT-R1, with some potential exceptions (e.g. the hours of operation for non-residential activities or opportunities for public access corridors and esplanade reserves, which are a matter for subdivision). However, I acknowledge the chapeau of KRT-P6 does state 'where relevant', meaning that a decision maker only needs to consider the parts of KRT-P6 that are relevant to the application in front of them e.g. do not need to consider the direction for managing zone interfaces if the application is not at the edge of a zone. On this basis, I can support broadening out the reference to KRT-P6 by removing the reference to sub-clause (b) from the matters of discretion in KRT-R1.

72. Mr Riddell also requests that KRT-P6 is referenced in KRT-R8 (minor residential units) and HA-R4 (heritage rule for new buildings or structures). I can see a benefit in referring to KRT-P6 in HA-R4 for new buildings in the Kororāreka Russell HA overlay to provide a stronger link between the two chapters and ensure that the relevant parts of KRT-P6 are able to be considered through the resource consent process.

[1] See commentary on a similar issue in paragraphs 334 and 335 of the Coastal Environment section 42A report.

73. However, I do not consider it necessary to refer to KRT-P6 in KRT-R8 as the matters of discretion for minor residential units are already sufficiently broad, in my view, to allow for all relevant parts of KRT-P6 to be considered.

Part D of the Kororāreka Russell HA overlay

74. As a starting point, I have recommended that KRT-S5 be amended as per Mr Riddell's request. If the Panel accept this recommendation, there will be a more restrictive building scale standard applying to Part D of the Kororāreka Russell HA overlay compared to what I recommended in my section 42A report.

75. The key question becomes whether this more restrictive building scale rule is sufficient (combined with the colour standard HA-S2 and other bulk and location controls in the KRTZ e.g. maximum height) to manage the potential impact of new buildings and structures on the historic heritage values for which the Kororāreka Russell HA overlay was identified, or whether a restricted discretionary consent process is appropriate. I find that this question turns on whether Part D should be treated as a 'buffer area', which insinuates that its historic heritage value is 'less than' Parts A, B and C of the HA overlay, or whether the historic heritage values found in Part D justify it being treated in a similar manner to the other parts.

76. My justification for requiring a resource consent for new buildings and structures in Part D under HA-R4 in the section 42A report relied on the advice of Mr Brown, who considers that Part D has more historic heritage value than simply a 'buffer' or a 'backdrop' to Parts A, B and C. Mr Brown's memo in **Appendix 4** notes that the evidence presented by HNZPT at the hearing, which included several historical images of Kororāreka Russell, demonstrates that Part D is more significant historically than simply a 'buffer' area and is not historically distinct from the rest of the Kororāreka Russell township. From Mr Brown's perspective, a more permissive approach with respect to the construction of new buildings and structures does not effectively manage potential adverse effects on the identified historic heritage values of the Kororāreka Russell HA overlay as a whole.

77. I have considered Mr Brown's historic heritage views on the issue along with the findings of the Environment Court decision (which confirmed that Part D should be treated differently to Parts A, B and C with respect to historic heritage matters). I have also considered the other 'tools' to manage built development in Part D that are found in the KRTZ chapter. Unlike most other HA overlays where there is a relatively permissive underlying zone for built development, the KRTZ provisions are relatively restrictive with respect to the scale of development that is permitted, particularly the combination of the building scale rule and the maximum height limit of 7.2m. These provisions, combined with the application of HA-S2 managing the colour of buildings and structures, do provide some certainty that built development that is not sensitively designed to integrate into the Kororāreka Russell township with respect to scale or colour will be required to go through a

resource consent process. As such, I have revised my recommendation and am now recommending that new buildings and structures in Kororāreka Russell HA Overlay Part D be provided with a permitted pathway under HA-R4. I note that this issue is finely balanced and, on the advice of Mr Brown, the Hearing Panel could find it equally appropriate to retain the restricted discretionary activity status for new buildings and structures in Part D under HA-R4, as per my original section 42A report recommendation.

Infrastructure constraints

78. I responded to Mr Riddell's request for a reference to wastewater scheme capacity constraints in paragraph 76 of the KRTZ section 42A report, noting that my preference was for a reference to the capacity of the wastewater network in KRT-P6 as opposed to a statement in the Overview.

79. I note that the non-statutory commentary on the Russell Township Zone objectives and policies in the ODP includes the following paragraph:

> *"Two significant environmental issues in Russell that are dealt with in the objectives and policies are stormwater runoff from impermeable surfaces, and effluent from sewerage systems. Both of these matters have potential to adversely affect the environment if they are not controlled in an appropriate way."*

80. The relevant operative policy relating to wastewater is 10.9.4.2 as follows:

> *"That residential activities have sufficient land associated with each household unit to provide for outdoor space, and where a reticulated sewerage system is not provided, sufficient land for onsite effluent disposal."*

81. I note that the ODP does not make any specific statements in either statutory or non-statutory parts of Section 10.9 relating to the capacity constraints of the wastewater system, rather the extent of the policy direction relates to having enough land available for disposal if there is no connection to the reticulated sewer network.

82. I am still of the opinion that an additional statement relating to wastewater in the Overview is unnecessary given it is clearly covered by KRT-P6(f) – *"the adequacy and capacity of available or programmed development infrastructure to accommodate the proposed activity, including…capacity of the wastewater network"*. This is a stronger response to the issue given that it is referenced in a policy, rather than the non-statutory Overview statement.

Recommendation

83. I recommend that:

a. KRT-S5 is amended as set out in paragraph 65 above.

b. A new matter of discretion is inserted into KRT-S1 relating to the visual effect of development in relation to ridgelines, headlands or peninsula.

c. The reference to sub-clause (b) of KRT-P6 is removed from the matters of discretion in KRT-R1, effectively allowing consideration of all listed matters in KRT-P6 (where relevant).

d. A reference to KRT-P6 is inserted into the matters of discretion under HA-R4 (only relevant for new buildings and structures in the Kororāreka Russell HA Overlay).

e. New buildings and structures are provided with a permitted pathway in Kororāreka Russell HA Overlay Part D in HA-R4.

Section 32AA Evaluation

84. I consider that the recommended changes to the HA and KRTZ chapters strike an appropriate balance between managing historic heritage, character and amenity values within the parts of the KRTZ that overlap with the Kororāreka Russell HA overlay, while still enabling appropriate levels of development in the balance of the KRTZ. I consider it appropriate to bring the building scale standard KRT-S5 into alignment with equivalent ODP provision as it will result in a more efficient and effective application of this standard to the areas where tighter management over the scale of built development is required. I also consider that limited cross referencing between the HA and KRTZ chapters allows the two chapters to work together more efficiently without repetition and will support more effective and consistent decision making. Overall, I consider that the package of amendments are an appropriate way to give effect to the objectives of both the HA and KRTZ chapters with respect to section 32AA of the RMA.

3.7 Issue 7: Spatial extent of other Heritage Area overlays

Overview

Relevant Document	Relevant Section
Section 42A Report	Heritage Area overlay and Historic heritage section 42A report – Key Issue 8
Evidence and hearing statements provided by submitters	HNZPT, Allen Hookway

Matters raised in evidence

<u>Rāwene</u>

85. Mr Bracey on behalf of HNZPT considers that the Rāwene Hospital and Cemetery area warrant inclusion in the Rāwene HA overlay as a new Part C

area. Mr Bracey argues that the heritage value lies not in the buildings themselves, but in the site's long-standing use as a base for free public health services. He clarified at the hearing that HNZPT is not seeking to restrict the operation or future development of the hospital or cemetery but rather to recognise the historic significance of the site in the context of healthcare. His solution is a HA overlay that includes objectives and policies that recognise the heritage values of the site but no associated rules or standards that could restrict hospital or cemetery operations. When questioned as to whether this site could potentially be a candidate for a non-statutory alert layer, Mr Bracey confirmed that his preference is for a HA overlay.

86. Mr Bracey confirmed via email after the hearing that HNZPT are no longer pursuing a HA overlay for the islands of Motuarohia, Moturua and Motukiekie through the PDP process.

Te Waimate

87. Mr Allen Hookway did not appear at the hearing but sent an email to be tabled at the hearing relating to his property at 211 Waikuku Road. Mr Hookway is concerned that the Te Waimate HA overlay map included as supplementary information to my section 42A report still shows very small areas of overlap with 211 Waikuku Road. He wishes to confirm that all errors have been identified and that, once a decision is made by the Hearing Panel, the Property Information panel on the PDP maps will not show the Te Waimate HA overlay applying to his property.

Analysis

Rāwene

88. I addressed the request for a HA overlay over the Rāwene Hospital and Cemetery sites (referred to as the Hokianga Health Enterprise Trust facility) in paragraph 131(a) of my section 42A report. My analysis in that paragraph has not changed as a result of evidence presented at the hearing. In response to the HNZPT suggestion that a HA overlay could be imposed that only contained objectives and policies but no rules, I have some practical concerns with that approach.

89. Practically, I consider that a consenting planner may find it difficult to understand how the heritage objectives and policies for Rāwene Hospital and Cemetery sites should be considered when read alongside the permissive objectives and policies of the Hospital Special Purpose Zone if there are no corresponding rules. In my view, rules and standards are essential to show how the PDP envisaged 'giving effect to' the heritage objectives and policies, otherwise there is no ability to take action to achieve those objectives and policies. I am also unclear as to what outcome any objective would state should be achieved, or what action a policy might direct a decision maker to take if there are no rules to enable that outcome or action to occur.

90. As such, I do not support the introduction of a HA overlay for the Rāwene Hospital and Cemetery sites that contains objectives and policies but no implementing rules. If the Panel were minded to consider a non-statutory alert layer as an alternative, I do not support that approach either, for the reasons set out in Issue 2 above.

Te Waimate

91. In paragraph 146 of my section 42A report I recommended amendments to the PDP maps to ensure that no part of the Te Waimate HA overlay covered the property at 211 Waikuku Road. After passing Mr Hookway's email to the Council GIS team, several additional small errors were identified. A revised map has been prepared to reflect these changes (**Appendix 5**) however the small scale of the changes makes it difficult to discern without using a GIS viewer and zooming in to the fullest extent. The inclusion of this paragraph is to reiterate my intent from the section 42A report, for the benefit of Mr Hookway and the Hearing Panel, that no part of 211 Waikuku Road should be included in the Te Waimate HA overlay.

Recommendation

92. I do not recommend the introduction of a HA overlay for the Rāwene Hospital and Cemetery sites.

93. I do recommend amending the Te Waimate HA overlay boundary to ensure that no part of the overlay covers the property at 211 Waikuku Road, consistent with my original recommendation in the section 42A report.

Section 32AA Evaluation

94. As all recommended changes to the Te Waimate HA overlay boundary are to correct minor errors, no further analysis under section 32AA of the RMA is required.

3.8 Issue 8: Infrastructure

Overview

Relevant Document	Relevant Section
Section 42A Report	Heritage Area overlay and Historic heritage section 42A report – Key Issues 13, 17, 21
Evidence and hearing statements provided by submitters	Top Energy

Matters raised in evidence

Top Energy

95. The evidence for Top Energy was jointly prepared by Mr David Badham and Ms Melissa McGrath, with Ms McGrath presenting at the hearing. For simplicity this section summarises the Top Energy evidence as presented by Ms McGrath.

HA-R5 – Earthworks

96. Ms McGrath disagrees with the recommendation to require resource consent for earthworks exceeding 500mm in depth within HA overlays. She considers this threshold unnecessarily restrictive for undergrounding cables and notes that such undergrounding should be encouraged to reduce visual impacts on heritage values. In her view, compliance with the Accidental Discovery Protocol and the Heritage New Zealand Pouhere Taonga Act 2014 provides sufficient protection for archaeological features. Ms McGrath requests amendments to HA-R5 to permit earthworks associated with underground network utilities, subject to setbacks and discovery protocols, without a depth limit.

97. At the hearing, Ms Taryn Collins from Top Energy set out the internal process followed by Top Energy for managing potentially undiscovered archaeological sites, which included having archaeologists already engaged for any investigations needed, undertaking an initial site visit and getting archaeological advice before works start. Ms Collins confirmed after questions from the Panel that this process is followed for both existing and new sites, although it is a more rigorous process when a new site is proposed.

98. Ms Collins confirmed that the Top Energy contractors are well trained in what to do if archaeological remains are discovered and they are required to complete a biannual refresher course on the appropriate protocol. Top Energy have also engaged HNZPT to give a presentation to contractors on the risks of finding archaeological sites to ensure they know what to look out for.

HA-R6 and HA-R10 - Infrastructure

99. Ms McGrath requests further amendments to Rules HA-R6 and HA-R10. While she supports the general restructuring of these rules to distinguish between infrastructure within and outside sites containing scheduled Heritage Resources, she considers that the 1m alignment limit for maintenance and upgrades is too restrictive and should be increased to 3m. This was confirmed by Mr Nishan Sooknandan from Top Energy, who clarified that a 3m limit is necessary from an operational perspective as:

a. During upgrades, replacement sites need to be established before decommissioning old sites to minimise network disruptions, which often need to be more than 1m away from the original site.

b. Replacement units often have bigger footprints than the units they are replacing.

c. The installation of assets requires a minimum separation from other assets for operational and safety requirements and this will result in the new unit being further away from its original location.

100. Ms McGrath also recommends removing the reference to "all zones" in the rule headers, which she argues creates unintended consequences by potentially applying heritage rules district-wide. Additionally, Ms McGrath seeks to align the exemptions for underground and road reserve infrastructure across both HA-R6 and HA-R10 and to amend the activity status for non-compliance with HA-R10 for from discretionary to restricted discretionary, with clearly defined matters of discretion.

HH-R6 – Infrastructure

101. Ms McGrath supports the partial acceptance of Top Energy's submission to exclude certain infrastructure activities from the discretionary activity status under Rule HH-R6. However, she seeks further amendments to align this rule with the revised HA-R6 and HA-R10 provisions. Specifically, she requests that underground infrastructure, infrastructure within 3m of its original alignment, and new infrastructure within road reserves be excluded from the rule. Ms McGrath also seeks to amend the activity status from discretionary to restricted discretionary, with matters of discretion focused on heritage effects and the operational needs of infrastructure.

Analysis

HA-R5 – Earthworks

102. I consider that there is a trade-off between installing infrastructure above or below ground in HA overlays. While I agree with Ms McGrath that below ground infrastructure does reduce visual impacts on built heritage values above ground, it does put archaeological values at risk. Conversely, installing infrastructure above ground infrastructure means that the heritage values of archaeological sites are better protected, but there may be adverse impacts on the built heritage environment above ground. As such, I do not consider that the approach to managing infrastructure in HA overlays should be prioritise below ground options in all situations and therefore permit all associated earthworks, particularly as most of the HA overlays have been identified specifically because of their potential for undiscovered archaeological sites.

103. From listening to the discussions at the hearing, my understanding is that Top Energy's core argument for infrastructure being exempt from the

500mm depth excavation threshold is that their internal protocol for managing risks to archaeological sites is sufficiently robust. It is the view of Ms McGrath and Ms Collins that this internal process, plus the other requirements of HA-R5 (being the accidental discovery protocol and the 20m setback from a scheduled Heritage Resource) are sufficient to manage risks to archaeological sites.

104. I note that HA-R5 applies to all excavation within a HA overlay, regardless of who is undertaking that excavation. I have considered some exemptions for particular activities from the 500mm depth control in Issue 9 below, however these exemptions are primarily targeted at everyday land use activities that need to be undertaken by landowners (particularly farmers) in a time or location sensitive manner. I maintain my position on the 500mm depth control for activities associated with development or planned projects where there is time available for initial investigations and/or choices with respect to the location of the excavation.

105. I commend Top Energy for their proactive approach to managing risks to archaeological sites and agree that the internal process put in place to manage archaeological risk may achieve effectively the same outcome as what would be required under the resource consent process e.g. initial site visit and archaeological advice and/or investigation as required before works begin. However, Top Energy are only one infrastructure provider and HA-R5 applies to all infrastructure providers (as well as all landowners or other parties that might propose earthworks). I consider the core purpose of HA-R5 is to ensure that the best practice process that Top Energy undertakes is followed by all parties proposing to do earthworks deeper than 500mm, effectively codifying this best practice into the PDP. I also note that there is no guarantee that Top Energy will continue to follow this best practice approach in the future – I see the role HA-R5 as setting up best practice as an expectation and a mandatory requirement, rather than an optional choice to do the right thing.

106. As such, I do not recommend any amendments to HA-R5 to specifically exempt infrastructure activities from the 500mm depth control.

HA-R6 and HA-R10 – Infrastructure

107. I note the comment made by Chairman Scott at the hearing that a 3m allowance to change the location of above ground infrastructure essentially creates a 6m wide corridor where a replacement unit could be moved to. Although I understand the operational constraints of Top Energy with respect to upgrading activities, the purpose of the HA chapter is to protect the historic heritage values for which the HA overlay was identified from inappropriate subdivision, use and development. For me to recommend a permitted activity rule based on a 3m flexible location, I would need to be satisfied that there would only be minimal adverse effects on the historic heritage values of a HA overlay resulting from moving above ground infrastructure 3m in any direction. I am not satisfied from the evidence

presented by Top Energy that this level of flexibility is appropriate in all HA overlays and all locations within those overlays. As such, I do not recommend any additional locational flexibility for HA-R6 or HA-R10 as, in my view, the protection of historic heritage values of the HA overlays should be prioritised over Top Energy's operational requirements.

108. With respect to the use of the term 'all zones' in the left-hand column of the HA chapter rule table, I note that Top Energy's original submission did not request removal of this term and neither did any other submitter on the HA chapter. However, I agree with Ms McGrath that the use of the term 'all zones' in conjunction with specific references to HA overlays is unusual in that it does not follow the same format as other overlays in the PDP e.g. Natural features and landscapes and Sites of Significance to Māori. I note that the district wide chapters where the term 'all zones' has been used (e.g. Notable trees and Natural hazards), it is only used on its own, not in conjunction with a specific reference to an overlay so there is no opportunity for confusion.

109. While there is no scope in submissions to remove the references to 'all zones' I consider that the Panel could make an argument that the term could be removed under clause 10(2)(b) of Schedule 1 as a consequential amendment to achieve consistency with the format of other chapters. I do not have a strong view either way on this issue as I think the risk that the rules of the HA chapter could be misinterpreted and applied district wide outside of HA overlays is negligible. I have shown the deletion of the term 'all zones' in **Appendix 1** if the Panel are minded to make this amendment.

110. With respect to alignment of the exemptions between HA-R6 and HA-R10, the two exemptions that I did not carry over into HA-R10 were the infrastructure being located underground and the infrastructure being located in the road reserve. My reasons were:

    a. As the site contains a scheduled Heritage Resource, there is no guarantee that undergrounding infrastructure would ensure adverse effects on historic heritage would be minimised, particularly as the risk of encountering archaeological sites around scheduled Heritage Resources is generally higher. However, I appreciate that the primary tool for managing risks to archaeological sites is controlling excavation under HA-R5. As a compromise, I can support allowing an exemption for underground infrastructure in HA-R10, provided the infrastructure is set back 20m from the scheduled Heritage Resource.

    b. I did not include the exemption for infrastructure located in the road reserve as I had assumed that there were no instances in the PDP where a scheduled Heritage Resource was already located in a road reserve, so the exemption would be redundant. I have checked this assumption with the GIS since the close of the hearing and there are two instances where a scheduled Heritage Resource is located in a

road reserve – Site #228 (Waoku Coach Road in Wekaweka) and Site #237 (the Hokianga Arch in Kohukohu). However, the point of providing the exemption in HA-R6 is to encourage infrastructure to locate in the road reserve, being a less visually sensitive part of a HA overlay, in scenarios where there are no scheduled Heritage Resources. HA-R10 is intended to protect scheduled Heritage Resources, regardless of whether they are located on private land or in the road reserve. Sites #228 and #237 are worthy of the same protection as any other scheduled Heritage Resource, despite being located in a road reserve. As such, I do not support including an exemption in HA-R10 for this scenario.

111. With respect to the activity status of HA-R10, I agree with Ms McGrath that a restricted discretionary activity status is appropriate and that the matters of discretion from HA-R6 could equally be applied to HA-R10.

HH-R6 – Infrastructure

112. For the same reasons I've set out above with respect to HA-R10, I consider that exemptions can be added to HH-R6 for underground infrastructure setback 20m from a scheduled Heritage Resource and that the activity status can be amended from discretionary to restricted discretionary. I do not agree with increasing the 1m location flexibility to 3m.

Recommendation

113. I recommend that:

a. The term 'all zones' is removed from the left-hand column of the HA chapter rule table.

b. Include an exemption in HA-R10 and HH-R6 for underground infrastructure, provided the infrastructure is set back 20m from the scheduled Heritage Resource.

c. Amend the activity status of HA-R10 and HH-R6 from discretionary to restricted discretionary and apply the matters of discretion from HA-R6.

Section 32AA Evaluation

114. I consider that the proposed amendments are minor changes to remove potential confusion, ensure that a consistent approach is taken to managing the location of infrastructure between the HA and HH chapters and use targeted matters of discretion to assess infrastructure activities where appropriate. I consider that these changes provide some more flexibility for infrastructure providers to install, operate, repair, maintain and upgrade infrastructure in areas with historic heritage values without undermining the core purpose of the provisions and the objectives of these chapters, which aim to protect those values. As such, I consider that the changes are an

appropriate way to achieve the relevant objectives with respect to section 32AA of the RMA.

3.9 Issue 9: Earthworks

Overview

Relevant Document	Relevant Section
Section 42A Report	Heritage Area overlay and Historic heritage section 42A report – Key Issues 16, 24
Evidence and hearing statements provided by submitters	Alec Jack, Don Mandeno, Paihia Property Owners Group, Bayswater Inn, Ian Palmer, Federated Farmers

Matters raised in evidence

115. Mr Jack, and his witnesses Mr and Mrs Chapman-Smith, are primarily concerned with the impact that the earthworks rules will have on everyday farming activities. Examples provided at the hearing from these submitters/witnesses of when a 500mm excavation depth would be insufficient in the context of farming in Pouerua include burying dead stock, installing fences for stock, maintenance and repair of irrigation drains, cutting out new farm tracks and maintenance of existing tracks.

116. Ms Amsler, on behalf of the Paihia Property Owners Group, and Mr Mandeno consider that the earthworks rules are too onerous and do not provide enough exemptions for simple, everyday activities. Examples of when a 500mm excavation depth would be insufficient in the context of Paihia by Ms Amsler and Mr Mandeno include digging out tree roots, planting trees, erecting boundary fences, excavating swimming pools and constructing the foundations for a building or a deck.

117. Mr Palmer is also concerned about the stringency of the earthworks rules applying to the Rangitoto Peninsula and the likely requirement for consultation and cultural impact assessments. He notes that even with proposed amendments to allow a permitted pathway for new buildings, associated earthworks would likely trigger restricted discretionary status, leading to further regulatory burden.

118. In the evidence for Federated Farmers prepared by Ms Jo-Anne Cook-Munro, there was no outstanding opposition to HA-R5 or the approach of using a 500mm depth control. However, Mr Colin Hannah (who appeared in person on behalf of Federated Farmers) commented to the Hearing Panel that he would have raised concerns about the 500mm depth if he was aware of it prior to the evidence being prepared. His alternative option is to base the earthworks rule around different soil types, as different soils necessitate different excavation depths for the same activity e.g. installing fence posts. He also noted that the good quality soils were likely to be where you would

find potential archaeological sites as that is where people lived and farmed, as opposed to clay soils which are harder to farm.

Analysis

119. As a starting point, I take the direction from Chairman Scott that, in principle, the Hearing Panel support the concept of using a depth control as a trigger for needing earthworks consent in the HA chapter under HA-R5. The question to be resolved, based on the evidence I heard, is whether there should be exemptions for certain types of activities from this depth requirement. I would reiterate that I am only considering exemptions for certain activities from the depth component e.g. HA-R5, PER-1(3). I consider that all types of earthworks should still be required to comply with subparts (1) and (2) of PER-1, being the 20m setback requirement from a scheduled Heritage Resource and the requirement to comply with the accidental discovery protocol.

120. One of my key considerations when considering exemptions is whether the activity is associated with a type of development that a landowner has a choice as to whether they proceed with or not (either with respect to the timing or location of the earthworks) or whether is it a day-to-day activity that is a normal part of living and/or working on a property.

Rural earthworks

121. I agree with Mr Jack and Mr and Mrs Chapman-Smith that the 500mm depth component of HA-R5 will make it difficult to undertake some day-to-day farming activities that are a necessary part of operating a farm without needing a resource consent. I agree with these submitters/witnesses that farmers often do not have a choice when it comes to certain types of earthworks e.g. burying dead stock or installing fences – they simply must occur in a timely manner and there isn't any choice with respect to the location of the associated earthworks.

122. I note that the request for a range of activities under a new definition of 'rural ancillary earthworks' to be exempt from volume controls in the Earthworks chapter was considered in Hearing 6[2]. Although the reporting officer for the Earthworks topic did not recommend including a definition of 'rural ancillary earthworks', there was acknowledgement that certain types of rural earthworks warranted exemptions from the area and volume controls.

123. I consider the issue that was considered in the Earthworks chapter is different to the issue I am considering as the exemptions were for a different purpose i.e. whether the scale of earthworks associated with small, ancillary rural activities would cumulatively add up over a year and unfairly 'use up' the allocated area and volume thresholds allocated to each lot. However, I find the list of potential activities requested by submitters on the earthworks

[2] Paragraphs 237-241, Earthworks section 42A report, 20 September 2024

topic e.g. Horticulture NZ and Federated Farmers to be a useful starting point for a possible list of exemptions. The ones that I think are most relevant are:

a. Planting trees, removing trees and horticultural root ripping

b. Maintenance of drains

c. Drilling bores

d. Offal pits

e. Burying of dead stock

f. The burying of material infected by unwanted organisms as declared by the Ministry of Primary Industries Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993

g. Maintenance of existing walking tracks, vehicle tracks, driveways, roads and accessways within the same formation width.

124. Some of these examples are the same as those raised by submitters at the hearing and I agree that some of these activities should be exempt from HA-R5, particularly where farmers do not have a choice about where to undertake the earthworks and/or where they are required by other legislation. Although not on this list, I also consider that the installation of boundary fences or fences for livestock, as well as the maintenance of irrigation infrastructure would also be valid exemptions from HA-R5.

125. I disagree with Mr Hannah that an earthworks rule based on the type of soil being excavated could be a workable or practical option. As the reporting officer for Hearing 9 - Rural, I heard from submitters at that hearing that there is considerable uncertainty as to what type of soil is located where and there are known deficiencies in the Land Use Capability (LUC) classification system for land in terms of accuracy. Mr Hannah acknowledged that he had around seven different soil types on his farm alone and that soil can change from one type to another over a relatively short distance.

Urban earthworks

126. Unlike the impacts on rural property owners who appeared at the hearing in relation to the Pouerua HA overlay, I do not consider that earthworks rule has the same day to day impact on the property owners of urban properties such as Paihia. Firstly, with respect to Paihia (and most other urban parts of the HA overlays) I agree with the submitters that most of the land is largely built up and developed already. As such, the need to excavate deeper than 500mm is not a daily (or even weekly/monthly) occurrence for most urban property owners. I did not hear any evidence from urban submitters that convinced me that HA-R5 would have a significant impact on most regular, day-to-day activities, particularly when activities such as gardening are

excluded from the definition of earthworks as they are 'cultivation'. The exceptions were boundary fences, planting/removing trees and maintaining driveways and accessways, which I have considered as possible exemptions below.

127. Secondly, I consider that most activities in an urban setting that would result in excavation deeper than 500mm would be associated with development on a site e.g. extension of a dwelling, construction of a new deck or swimming pool or redevelopment of a commercial property. These are the types of redevelopment activities that I envisaged would be captured by the earthworks rule when I made my recommendation in my section 42A report. I consider it entirely appropriate for a site development proposal to either comply with HA-R5 or obtain a resource consent to assess and manage the potential for damage to unknown archaeological sites prior to work commencing.

Exemptions from HA-R5

128. Table 1 below contains a list of the activities that could be exempt from HA-R5, PER-1(3), being the 500mm depth control for earthworks, and my rationale. Some of these recommendations are finely balanced and the Hearing Panel may adopt a different selection of exempt activities from those I have recommended below. The analysis in this table is intended to be a helpful starting point for the Hearing Panel in redrafting HA-R5, PER-1(3) to be less restrictive on landowners for day-to-day activities. My redrafting of HA-R5 in **Appendix 1** reflects my analysis below.

129. I have considered whether to have separate lists of exemptions for urban and rural HA overlays as, in practice, there will be no need to bury dead livestock or infected material in central Paihia for example. I also note that several of the activities on this list are equally applicable in both urban and rural settings e.g. boundary fences, planting/removing trees or excavating roots and driveway and accessway maintenance. I have decided to recommend identifying the activities that would only be considered appropriate in a rural setting and provide an exemption in the HA overlays of Pouerua, Te Waimate and Rangihoua, rather than exemptions for all HA overlays. In my view this is important to avoid a situation where an applicant may attempt to use a permitted baseline argument for earthworks in an urban setting by referring to the depth of earthworks permitted for a rural activity e.g. using the example of burying livestock to justify the depth of excavation for an urban construction project.

Table 1: Consideration of exemptions to HA-R5, PER-1(3)

Suggested exemption	Analysis	Recommendation

Planting trees, removing trees and horticultural root ripping	Do not consider that any of these activities fall within the definition of 'cultivation' (which would mean they were automatically excluded from the earthworks rule) as they are not always going to be related to sowing, growing or harvesting of pasture or crops. Given the similarities to some cultivation activities that are exempt (e.g. the planting or removing of trees relating to an orchard, which would be cultivation), I consider that an exemption could be supported. This would benefit landowners in both urban and rural HA overlays.	Include as exemption in all HA overlays
Maintenance of drains	As the drains already exist and any potential archaeological sites would have been uncovered at the time of installation, I can support an exemption.	Include as exemption in all HA overlays
Maintenance of irrigation infrastructure	As the irrigation infrastructure already exists and any potential archaeological sites would have been uncovered at the time of installation, I can support an exemption for rural HA overlays only.	Include as exemption in rural HA overlays
Drilling bores	Having access to water for stock drinking water and domestic supply is not optional for farmers or landowners that are not connected to reticulated services. There also limited flexibility with respect to accessing groundwater as bores need to be drilled in locations where there is groundwater available. However, any potential archaeological site will be destroyed when a bore is being drilled, so I do not support a permitted pathway for all bores for any purpose. I consider that bores for commercial use should follow the resource consent process and undertake archaeological investigation prior to exploratory testing as commercial use of a property (e.g. for water bottling or supporting a commercial enterprise) is a more optional use of land, whereas providing water for people and stock is a necessity. As such, I can support an exemption for the drilling of bores where the purpose of that bore is for stock drinking water or domestic supply, but not commercial use. I also consider it appropriate to only apply this exemption in rural HA overlays where connections to reticulated water services are not typically available.	Include as exemption for bores for stock drinking water and domestic supply in rural HA overlays
Offal pits	My understanding of offal pits is that there is more flexibility to choose where a pit is located on a farm and, if a new pit is required, there is time to properly investigate the location of the new pit i.e. it does not have to be dug immediately (unlike the need to bury dead stock). For farms that are only partially inside a HA overlay, there are options to locate pits outside of the overlay.	No exemption

Burying of dead stock	As heard from submitters at the hearing, farmers do not have a choice when it comes to burying dead stock, either with respect to the location of the burial (which needs to be where the animal died), the timing (as soon as possible) or the depth (needs to be deeper than 500mm to ensure the animal is adequately covered). I consider that requiring a resource consent process would be unreasonable in these circumstances.	Include as exemption in rural HA overlays
The burying of material infected by unwanted organisms as declared by the Ministry of Primary Industries Chief Technical Officer or an emergency declared by the Minister under the Biosecurity Act 1993	As this is a requirement under another piece of legislation, I consider it appropriate to provide an exemption to ensure that the resource consent process does not become a barrier to a farmer being compliant with the Biosecurity Act 1993.	Include as exemption in rural HA overlays
Maintenance of existing walking tracks, vehicle tracks, driveways, roads and accessways within the same formation width.	As these types of accessways already exist, I consider it appropriate to allow an exemption for their maintenance.	Include as exemption in all HA overlays
Boundary fences and fences for livestock or waterways	At the hearing it was clear that fencing was one of the key concerns for submitters in both urban and rural HA overlays. I agree with submitters that there is no choice in location when it comes to fencing along property boundaries, fencing for livestock or along waterways, rather it is an everyday activity that has to happen.	Include as exemption for all HA overlays

Recommendation

130. I recommend that HA-R5, PER-1(3) be amended to reflect the list of exemptions in Table 1, as set out in **Appendix 1.**

Section 32AA Evaluation

131. I consider that including exemptions in HA-R5 strikes a balance between the need to provide stronger protection for undiscovered archaeological sites in locations where it is likely they exist and the need to allow landowners flexibility to undertake everyday excavation activities where they have no choice with respect to either location and/or timing of the excavation. Allowing exemptions to HA-R5 will reduce the effectiveness of the provision and increase the risk of damage to undiscovered archaeological sites, however HA-R5 will still capture most earthworks activities that pose the greatest risk to archaeology. I consider that there may be compliance benefits associated with a slightly less stringent earthworks rule – if more everyday activities are exempt then there is a greater likelihood of landowners following the correct process for when larger scale, higher risk earthworks are proposed, which will also improve the effectiveness of the rule. There will also be efficiency benefits as fewer resource consents will be required for small scale, everyday activities. Overall, I consider that the revised HA-R5 (as set out in **Appendix 1**) is an appropriate way to achieve the objective of the HA chapter with respect to section 32AA of the RMA.

3.10 Issue 10: Other matters

Overview

Relevant Document	Relevant Section
Section 42A Report	Heritage Area overlay and Historic heritage section 42A report – Key Issues 8, 10, 14, 17, 23
Evidence and hearing statements provided by submitters	Federated Farmers, David Truscott, Foodstuffs, Ian Palmer, Don Mandeno

Matters raised in evidence

Acknowledgement of farming in HA chapter overview

132. Federated Farmers reiterated their request to include a statement in the HA chapter overview to acknowledge and provide for existing and legally established rural activities as part of the rural environment. Federated Famers remain concerned that everyday farming activities could be unintentionally impacted by the provisions in the HA chapter and that the overview text should be clear on Council's intention with respect to farming in the HA overlays.

Colour controls

133. Mr David Truscott did not appear at the hearing but sent an email confirming that he still has concerns regarding the proposed colour controls in standard HA-S2. He considers that the ability to personalise buildings through colour is important for fostering a sense of place and ownership, and that overly

prescriptive controls may undermine this. While he supports colour controls for scheduled heritage buildings, he considers the proposed palette to be insufficiently tailored to building age and style, allowing inappropriate combinations such as art deco colours on 19th-century buildings. He recommends that colour controls be applied specifically to scheduled buildings and that colour choices be guided by the building's historical period, ideally with professional advice.

134. Mr Truscott also highlights the broader role of colour in supporting economic development and community revitalisation. He notes that the use of colour has contributed to positive outcomes in Rāwene, including increased community confidence and investment, and considers that flexibility in colour choice can support similar outcomes in other small towns.

135. Mr Truscott does support the use of colour controls where they are appropriately targeted and historically informed. However, he cautions against generic or overly prescriptive controls that may undermine local character or economic regeneration efforts.

Foodstuffs

136. Mr Badham, on behalf of Foodstuffs, did not appear at the hearing but did table a statement. Mr Badham supports a range of amendments recommended in the section 42A report but remains concerned about the activity status of some activities under HA-R4[3], being the consolidated rule for new buildings and structures in HA overlays. Mr Badham disagrees with my recommendation that a full discretionary activity status should apply under HA-R4 in two specific circumstances in 'Part A' type HA overlays:

    a. Where a site is located in the Kororāreka Russell – Part A Heritage Area Overlay and has frontage to the coastal marine area (RDIS-1)

    b. Where a proposed building or structure does not comply with standards HA-S1 or HA-S2 (RDIS-2).

137. Mr Badham considers that these two situations do not warrant full discretion, as the effects are limited and can be appropriately assessed through the existing matters of discretion under HA-R4. In his view, a restricted discretionary activity status would provide a more proportionate and efficient consenting pathway in these cases.

The cost of engagement – tangata whenua and other experts/parties

138. Mr Palmer and Mr Mandeno are concerned about the expectation of tangata whenua consultation for resource consent applications within Part B:

[3] The statement from Foodstuffs refers to HA-R8, which was the notified rule for new buildings and structures in the 'Part A' type HA overlays. I have presumed that Mr Badham meant to refer to the restricted discretionary part of HA-R4, which is my recommended consolidated rule for new buildings and structures in all HA overlays.

a. Mr Palmer notes that while not mandatory, such consultation is likely to be requested by Council officers, potentially leading to delays, additional costs, and uncertainty for applicants. He also highlights the complexity of overlapping mana whenua claims in the area.

b. Mr Mandeno considers that any requirement to consider the historical, spiritual or cultural values of tangata whenua are inappropriate as culture and spirituality should be voluntary matters and not legislated in the PDP. Mr Mandeno also considers that the additional costs associated with employing heritage or cultural experts and/or engaging with HNZPT, the Department of Conservation and tangata whenua are unfair on landowners and the costs should be met by the experts themselves.

Impact of scheduled Heritage Resource rules for larger sites

139. I am aware that several submitters are concerned about the impact of rules applying to *'a site containing a scheduled heritage resource'* in circumstances where 'a site' is a very large parcel of land. While this issue was not specifically raised in evidence, I became aware of the concern as part of broader discussions with submitters and witnesses at the hearing with respect to the impact of HA and HH chapter provisions on farmers and farming activities, particularly discussions with Mr and Mrs Chapman-Smith. I understand similar concerns are also held by Mr Jack and Mr Ludbrook. Finally, although the submission points raised by the Waitangi Trust Ltd on the HH chapter have been deferred to Hearing 15B, the evidence provided by Waitangi Trust Ltd for this upcoming hearing has alerted me to the fact that this issue remains a concern in the context of the Waitangi Estate.

140. The key concern is the impact of the HA and HH chapter provisions on very large parcels of land that contain a scheduled Heritage Resource, as several rules apply to '*a site containing a scheduled Heritage Resource*', regardless of how big that site is and how far away the activity might be from the scheduled Heritage Resource. While most land within a HA overlay is only subject to the colour controls and the 500mm earthworks control, if a site contains a scheduled Heritage Resource it is subject to several other restrictions, including requiring a resource consent for additions or alterations to an existing building or structure, or constructing a new building or structure. This can result in a scenario where a resource consent is required for a new farm shed, for example, when the location of that shed is kilometres away from the scheduled Heritage Resource.

Analysis

Acknowledgement of farming in the HA chapter overview

141. I addressed this submission point from Federated Farmers in paragraphs 161 and 162 of my section 42A report. I initially recommended rejecting the submission point for two reasons – firstly I wanted to keep the focus of the HA overlay chapter on historic heritage, rather than mentioning other

activities that should be enabled and secondly, I disagreed with mentioning farming in the overview section for each individual overlay as that seemed disproportionate compared to the main focus of the chapter, being historic heritage.

142. However, in light of the concerns raised by farmers at the hearing, I consider that a brief statement in the general overview of the HA chapter (not in each specific HA overlay overview) could be a way to acknowledge the intent of the chapter drafting, which is not to restrict day to day necessary farming operations. I also consider that the statement should not just focus on existing and lawfully established farming activities as the HA chapter should not pose a significant barrier to changing from one type of farming to another or introducing innovative farming practices.

143. As such, I recommend that the following sentence is inserted at the end of the second paragraph in the HA chapter overview:

> *"The intent is that most landowners will be able to undertake day to day activities on their properties with minimal restrictions, except for when activities are proposed close to scheduled Heritage Resources. Some of the Heritage Area Overlays cover land used predominantly for farming and it is expected that most normal farming practices will be able to occur within the Heritage Area Overlay rule framework."*

Colour controls

144. I appreciate Mr Truscott's insights into colour and the positive role it can play in revitalising communities, particularly those with heritage values. I agree that overly prescriptive rules with respect to colour have the potential to be a barrier to projects and revitalisation of buildings. However, I consider there is an inherent conflict in Mr Truscott's observations – he considers the range of colours in the HA-S2 palette to be too broad, not specifically linked to the historical period of a building and suggests that professional advice is required to ensure a colour is appropriate for a building's age and style. This request appears to be somewhat at odds with his criticism that HA-S2 is too prescriptive and onerous and that it needs to be more flexible.

145. I agree that the range of colours able to be used under HA-S2 is broad – it is deliberately so to enable landowners a range of choices when choosing a paint colour for a building or structure within a HA overlay. The key outcome that HA-S2 is intended to achieve is that no inappropriate colours are chosen for HA overlays. While there is a risk that a colour is chosen for a building that is better suited for a different time period, any of the colours allowed under HA-S2 will not detract from the heritage values for which the HA overlay was identified. I do not see the purpose of HA-S2 as being to ensure that the most appropriate colour palette for a building is chosen, rather it is to ensure that inappropriate colours are avoided.

146. I note that, when asked by the Hearing Panel, no submitters who appeared at the hearing raised any issues with HA-S2 in principle and I received no

other evidence in opposition to it being applied in the HA overlays. As such I do not recommend any changes to HA-S2 in response to Mr Truscott's statement.

Foodstuffs

147. I generally agree with Mr Badham that, in the context of chapters to manage historic heritage values, a restricted discretionary status is often helpful as the matters of discretion assist a decision maker focus their attention on the key matters. I also agree that, in most cases, the list of matters in the restricted discretionary part of HA-R4 are sufficiently broad enough to address effects associated with an infringement of either RDIS-1 or RDIS-2. However, I also note that HA-R4 relates to new buildings or structures in the most sensitive heritage areas in the Far North district, being the 'Part A' type HA overlays. These are the areas where a new building or structure has the greatest potential to adversely affect heritage values for which the overlay was identified if it is not sensitively designed to integrate into the heritage area.

148. I maintain that a discretionary activity status is appropriate for situations where a new building or structure is proposed along the Kororāreka Russell waterfront (a significant area not valued by the local community, but also the tourism industry, mana whenua and the broader public), as it signals that built form changes to that stretch of the waterfront are generally not supported or anticipated by the HA chapter. I note that the discretionary activity status for development along the Kororāreka Russell waterfront is unchanged from the ODP (new buildings between the Strand and the seaward boundary are a discretionary activity for failing to comply with Rule 12.5A.6.3.2).

149. I also maintain that a discretionary activity status is appropriate for infringements of either HA-S1 or HA-S2 in the 'Part A' type overlays, given that these are the HA overlays with the most significant heritage values. As above, a discretionary activity status appropriately signals that built form changes that are too close to a scheduled Heritage Resource or an inappropriate colour are generally not supported or anticipated by the HA chapter.

The cost of engagement – tangata whenua and other experts/parties

150. I understand the concerns of Mr Palmer and Mr Mandeno with respect to engagement with tangata whenua and the likelihood of additional costs, delays and complexity associated with facilitating that engagement. However, as acknowledged by Mr Palmer, engagement with tangata whenua is not mandatory, rather the HA and HH chapters acknowledge that it may be required and that, if engagement is undertaken, the outcome of that engagement must be considered as part of any resource consent process.

151. The recommended inclusion of the words in HA-P1 and HH-P15 *"any historical, spiritual, or cultural association held by tangata whenua, with*

regard to the matters set out in Policy TW-P6" is based on standard text that is included in consideration policies in almost every zone and district wide chapter in the PDP. In this context, its inclusion is simply bringing the HA and HH chapters into alignment with the rest of the PDP. In my view, the presence of this wording in the HA and HH chapters does not necessarily increase the likelihood that tangata whenua engagement will be required as any historical, spiritual, or cultural association held by tangata whenua is relevant to all activities that require consent across the PDP, not just in the context of historic heritage.

152. The PDP is required by section 6(e) of the RMA to recognise and provide for *"the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga".* This relationship includes historical, spiritual, or cultural associations held by tangata whenua. As such, requiring resource consent applicants to consider these historical, spiritual, or cultural associations (where appropriate) is not optional for the PDP – it is mandatory under the RMA and the wording of HA-P1 and HH-P15 reflects this. I acknowledge Mr Palmer's concerns about overlapping mana whenua claims adding complexity to the process but also note this is a common issue facing resource consent applicants nationally and is not unique to the Far North district. The complexity of needing to engage with more than one iwi or hapu group does not negate the need for that engagement to occur.

153. My recommendations on the HA and HH chapters cannot address Mr Mandeno's concerns about costs and who pays for engaging heritage experts and/or engaging with other parties as those are not matters that can be addressed through PDP provisions.

Impact of scheduled Heritage Resource rules for larger sites

154. I maintain my position that, in most cases (particularly in urban settings) the rules as worded are appropriate as built development on the same site as a scheduled Heritage Resource generally has the potential to adversely affect the values for which the item or feature was scheduled. However, I agree with Waitangi Trust Ltd, and other submitters I engaged with at the hearing, that rules that focus on *'a site containing a scheduled Heritage Resource'* disproportionately impact large landholdings and may result in more onerous restrictions than intended.

155. I have discussed options for addressing this issue with Mr Brown to try and determine an appropriate alternative setback distance that could be used for larger sites to 'ringfence' an area around a scheduled Heritage Resource where controls on built development are appropriate, without impacting the rest of the landholding. I am aware that Waitangi Trust Ltd have suggested that, in the context of the Waitangi Estate, a 20m setback would be sufficient

to protect the heritage values the scheduled Heritage Resources on their site[4].

156. One issue I have noted is the discrepancy between the 'whole site' approach vs the requirement for a 20m setback from scheduled Heritage Resources for new buildings or structures or additions/alterations to buildings and structures in HA-S1. On reflection, there may be an unfair outcome where there is a permitted pathway for buildings/structures on sites that adjoin those containing scheduled Heritage Resources that are just outside the 20m setback in HA-S1 (say 25m away), but there is no permitted pathway for building/structures on a site that does contain a scheduled Heritage Resource, even if the proposed location is 100m away.

157. In the interests of fairness and consistency, I recommend applying the 20m setback in HA-S1 consistently, regardless of whether the proposed building/structure is on the same site that contains a scheduled Heritage Resource or on an adjoining site.

158. As such, the following provisions across the HA and HH chapters will require amendment accordingly (changes are shown in **Appendix 1** and **Appendix 2**):

    a. HA-R2 – Additions or alterations to existing buildings or structures

    b. HA-R4 – New buildings or structures

    c. HH-R4 – New buildings or structures, extensions or alterations to existing buildings or structures

Minor error

159. In reviewing the HA and HH chapters, I have noticed a minor error in the wording of HH-R1. The explanatory note states *"this rule applies to maintenance or repair works, if the works do not meet the definitions of maintenance or repair then HH-R2 applies"*. As I have recommended deleting HH-R2 and replacing it with HH-RX, the cross reference should be to HH-RX, not HH-R2 (noting that the final referencing in this chapter is likely to change at the decision stage due to the deletion of some rules).

Recommendation

160. I recommend the following changes:

    a. A new paragraph is added into the HA chapter overview as set out in paragraph 143 above and in **Appendix 1**.

    b. Rules HA-R2, HA-R4 and HH-R4 are amended to allow a permitted pathway for additions/alterations and new buildings/structures to

[4] Based on evidence submitted by Waitangi Trust Ltd for Hearing 15B.

occur on larger sites containing a scheduled Heritage Resource, provided a 20m setback is met.

c. The referencing error in the note for HH-R1 is amended to refer to HH-RX, not HH-R2.

Section 32AA Evaluation

161. I note that my recommended amendments to the HA chapter overview and the HH-R1 explanatory note are changes to non-statutory parts of these chapters and do not require consideration under section 32AA.

162. I consider that providing a permitted pathway for additions/alterations and new buildings/structures to occur on larger sites when they are set back 20m from a scheduled Heritage Resource removes an unfair inconsistency within the HA chapter that disproportionately impacted larger sites and imposed more stringent requirements than otherwise imposed under HA-S1. I consider that the recommended provisions still provide effective protection for scheduled Heritage Resources while allowing for the balance of larger sites to be used efficiently where the potential impact on scheduled Heritage Resources are less. I consider this approach to be an appropriate way of achieving the HA chapter objectives with respect to section 32AA.

3.11 Questions from the Hearing Panel

163. This section responds to questions raised by the Hearing Panel at the end of Hearing 12.

Missing Rāwene policy

164. Commissioner Kensington correctly noted that there was no specific policy in the HA chapter relating to Rāwene, despite there being a clear justification for the HA overlay set out in the overview section of the chapter and all other HA overlays having at least two policies specific to their location.

165. There were relatively few submissions on the Rāwene HA overlay – two submission points from HNZPT (S409.041 and S409.042), both summarised as *"Amend the provisions and spatial extent of the Rawene Heritage Area and insert additional new sub-areas (including associated overview, objectives, policies and rules) as indicated in submission"*, plus a submission in opposition to Part B of the HA overlay from David Truscott and a submission from Federated Farmers requesting recognition of existing, legally established rural activities as part of the existing environment in the overview.

166. In my view, the only submission points that could potentially provide scope to include a new policy for Rāwene are those from HNZPT. Although HNZPT were requesting amendments to the objectives and policies to accommodate new sub-areas (which I am not recommending), the submission does

indicate that new policies relating to the Rāwene HA overlay were being asked for.

167. If the Hearing Panel agree that there is scope for a new Rāwene policy within the HNZPT submission points, I have drawn on the content of the Rāwene section of the overview for policy wording (as noted in my verbal right of reply at the hearing, there is no Rāwene specific policy in the ODP to roll over). I have also followed the general format of some of the other HA overlay policies[5], which is to include a pair of policies – the first being a 'protection' policy and the second being an 'enable' policy that signals the type of development that is acceptable in the HA overlay. My suggested wording for the two new policies is as follows:

> "HA-P17 - To maintain the integrity of the Rāwene Heritage Area Overlay and protect the heritage values by:
>
> a. retaining the compact and intact range of scheduled buildings, archaeological sites, and surviving early boundary treatments in Part A, reflective of its past as a colonial coastal township centred on shipping and export of kauri timber;
>
> b. ensuring subdivision and development complements the form of the early township and the surviving historical boundaries and street layout; and
>
> c. protecting scheduled archaeological sites from damage or destruction and retrieving archaeological information whenever unscheduled archaeological sites are discovered.
>
> HA-P18 - To enable subdivision and land use which recognises and protects the cultural and heritage values of Rāwene, and the relationship of the historical township with the headland, foreshore and limestone cliffs on the western side of the peninsula."

168. I have discussed the wording of these policies with Mr Brown, who is supportive of their content. I do not consider that any party would be prejudiced by the introduction of these policies as they cover the same content as set out in the overview for Rāwene and follow the same structure as most of the other HA policies. From a section 32AA perspective, the omission of specific Rāwene policies was clearly an error and including specific policy direction to assist with decision making within the HA overlay is an efficient and effective way of achieving HA-O1 (as well as planning best practice to ensure there are clear and specific policies to achieve the objective).

[5] Note that not all HA overlay policies follow this format e.g. Kerikeri, Paihia and Rangihoua have two 'protection' type policies and Te Waimate only has one policy.

Obligation to consider both pre-European Māori heritage and European/colonial heritage

169. Chairman Scott asked the question *"Is Council under obligation to consider European and colonial heritage even if tangata whenua would prefer it not to"*. Chairman Scott further refined the scope of what he was seeking at the close of the hearing, making it clear that he is interested in understanding whether choosing to exclude certain types of heritage features from being protected (in the case of the Pouerua HA overlay) would cause any issues with respect to obligations under the HNZPTA.

170. HNZPT clarified at the hearing that they would also accept the ODP Pouerua Heritage Precinct boundary as an alternative spatial extent for the Pouerua HA overlay, so there is no specific challenge from HNZPT as a submitter to reducing the spatial extent of the Pouerua HA overlay back to the ODP boundary. However, I have some more general comments on the relationship between the PDP and obligations under the HNZPTA that may assist the Hearing Panel.

171. Firstly, the three key 'tools in the toolbox' of the HNZPTA (as I understand them) are:

    a. **New Zealand Heritage List:** HNZPT can add historic places, areas, wāhi tapu, and wāhi tapu areas to the New Zealand Heritage List – this is the list that typically informs schedules of Heritage Resources that are included in district plans and has informed the content of SCHED2 – Schedule of historic sites, buildings and objects in the PDP.

    b. **The Archaeological Authority process:** This process is mandatory under the HNZPTA for any work that may modify or destroy a pre-1900 archaeological site, regardless of whether it is listed or known about. The definition of 'archaeological site' in the HNZPTA does not differentiate between pre-European Māori and European colonial archaeological sites. The Authority process under the HNZPTA is separate to any consenting obligations under the PDP, although in practice the two processes often occur in tandem.

    c. **Heritage covenants:** These are voluntary legal agreements entered into between HNZPT and landowners that are registered on certificates of title and typically involve specific conditions to protect heritage values.

172. My understanding is that there are no direct obligations on district councils under the HNZPTA, rather the HNZPTA operates as part of a broader legislative framework to protect historic heritage that also includes the RMA. In my view, the two pieces of legislation are meant to be complimentary and work in parallel rather than be hierarchical. Councils are expected to support heritage protection through their planning roles under the RMA

and through cooperation with HNZPT, but this is not a mandatory requirement under the HNZPTA, it is simply best practice. The key legal obligation on councils regarding historic heritage comes from section 6(f) of the RMA.

173. On that basis, I see no legal issues under the HNZPTA with any of the HA overlays being focused primarily on pre-European Māori heritage rather than European colonial heritage. However, I note that all archaeological sites (regardless of origin) are automatically protected under the HNZPTA, even if the PDP does not protect them using a HA overlay. This means that any accidental discovery of archaeological sites around the Pouerua area would be protected by the HNZPTA, regardless of whether it was of Māori or European origin or whether it was found inside or outside the Pouerua HA Overlay.

Appendices

Appendix 1 – Officers recommended amendments to the HA chapter

Appendix 2 – Officers recommended amendments to the HH chapter

Appendix 3 – Officers recommended amendments to the KRTZ chapter

Appendix 4 – Memorandum from Plan.Heritage

Appendix 5 – Updated recommendation maps for Kororāreka Russell, Mangōnui Rangitoto, Pouerua and Te Waimate

Appendix 6 – Example schedule of heritage colours for HA-S2

Appendix 7 – Updated Appendix 2 from Historic Heritage and KRTZ section 42A reports