

# APPENDIX 2

## RIDDELL HEARING 12 EVIDENCE

Decision No. A064/2006

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

**AND**

**IN THE MATTER** of appeals under clause 14 of the First Schedule concerning provisions of the proposed district plan

**BETWEEN**

**H D PICK**

ENV-2006-AKL-000152  
(formerly RMA 619/03)

**AND**

**J A RIDDELL**

ENV-2006-AKL-000162  
(formerly RMA 590/03)

Appellants

**AND**

**FAR NORTH DISTRICT COUNCIL**

Respondent

**BEFORE THE ENVIRONMENT COURT**

Environment Judge L J Newhook (presiding)  
Environment Commissioner R M Dunlop  
Deputy Environment Commissioner B Gollop

**HEARING** at Paihia on 21 and 22 November 2005

**APPEARANCES**

D A Kirkpatrick for the appellants and for Russell Protection Society Inc under s274  
J S Baguley for respondent



## INTERIM DECISION

### Introduction, background and issues

[1] These two appeals concern the level of heritage protection afforded Russell Township in the Bay of Islands, in the respondent's proposed district plan ("PDP"), and were heard together. The appeal by Ms Pick sought a number of changes, principally insertion of additional policies and some specific assessment criteria aimed at protecting the general heritage value and special character of Russell. The appeal by Mr Riddell sought two changes relating to controls on the scale of new buildings in Russell.

[2] The appellants acknowledged that the PDP provides a degree of protection for the historic heritage character of Russell, but submitted that it was insufficient, (as their counsel Mr Kirkpatrick put it, "*matters of degree*"). As presently structured, there is a Russell Township Zone covering quite a wide area, and in addition the overlay of 3 Heritage Precincts in the oldest part of the town, a considerably smaller area on flat land near the beach. The appeals concern the former, not the latter.

[3] Ms Pick's appeal asserted that while the objectives appear strong, the requisite degree of protection does not carry through policies and methods (particularly rules setting assessment criteria). For its part, the council asserted that the level of protection afforded is adequate, that the appellants were confusing heritage and amenity, that the appellants were seeking to make the plan overly prescriptive, that the zoning pattern in the plan generally provides for urban development, that there are many styles within Russell and that the plan should not prefer one over others, and that the controls sought by the appellants would lead to "mock" design provisions that would be unnecessary and inappropriate. The term '*faux colonial*' gained some currency during the hearing in the latter regard.

[4] The parties helpfully produced a schedule of agreed facts under schedule of issues unresolved. They were as follows:

#### SCHEDULE A - LIST OF AGREED FACTS

1. In relation to RMA 0619103: Pick v FNDC, the parties agree on the following points:

- 1.1 That parts of Russell have historic heritage value;



- 1.2 It is required by statute that the historic heritage value of Russell is protected from inappropriate subdivision, use and development as one of several matters of national importance;
  - 1.3 The remaining heritage buildings from the important "contact" period are contained on the flat area of the town;
  - 1.4 Russell will grow and develop, which needs to be managed;
  - 1.5 There should be a policy relating to views;
  - 1.6 The village atmosphere of Russell should be preserved by way of objective in the Proposed District Plan;
  - 1.7 The pedestrian scale of Russell should be protected;
  - 1.8 The character of Russell is low density;
  - 1.9 There are three Heritage Precincts in Russell with special planning requirements, the boundaries of which have been extended by consent order issued by the Court.
2. In relation to RMA 0590/03, there are no facts or issues which are agreed.

#### SCHEDULE B - LIST OF ISSUES UNRESOLVED

1. In relation to RMA 0619/03: Pick v FNDC, the following issues remain unresolved:
  - 1.1 Whether the provisions contained in the Far North Proposed District Plan (PDP) adequately protect the character of Russell;
  - 1.2 What the "character" of Russell is?
  - 1.3 Whether different parts of Russell have different "character"?
  - 1.4 Whether the rules contained in the PDP adequately protect the historic heritage of Russell?
  - 1.5 Whether there should be a policy in relation to the public works and utility services, and if so, what is its wording?
  - 1.6 Whether controlled and restricted discretionary activities should be assessed in terms of the draft amended Assessment Criteria provisions proposed by the Russell Protection Society.
  - 1.7 Whether there should be any amendment to the Assessment Criteria as suggested by the Appellant (in her appeal).



**The higher level plan provisions as they stand**

[5] As was agreed between the parties, there are numbers of high level provisions in the PDP (objectives, statements of issues, and the like) for the protection of heritage. They were not under challenge, the thrust of the question in the appeal being whether certain policies and rules gave adequate effect to them. Prime amongst the senior provisions are the following:

- In Chapter 1, Introduction, one of seven stated Significant Resource Management Issues is Heritage:

Given the rich cultural heritage of the district, an important outcome of the Plan will be the recognition and retention of identified historic sites, buildings and objects, features and notable trees. Archaeological sites will be protected and any necessary modification avoided (refer sections 11.5 and 17.3).

- In the same chapter there is a section describing "*The Environment*" which includes a provision on heritage, 1.4.3.1.4, which notes amongst other things that the district is, historically and archaeologically, one of the most significant in New Zealand, in terms of Maori occupation, and early European settlement.
- Descriptions of urban environments in the district in paragraph 1.4.3.2 include a passage about Russell including that:

Russell has great significance in the history of New Zealand, and had pre-eminence during the initial phase of European colonisation. As well as its historical aspects, its setting and landscape character give it a particular distinction which is recognised both within New Zealand and internationally....

- Also in Chapter 1, section 1.5.1 on Plan Structure provides a summary of provisions concerning the Russell Township Zone, acknowledging the unique character and amenity values it possesses.
- Chapter 10 deals with the Coastal Environment, and within it section 10.9 Russell Township Zone, addresses this topic. Statements about uniqueness and special significance are repeated, including as to the heritage and amenity values of the township.
- Issue 10.9.1.1 in section 10.9 records:



The historic and amenity values of Russell could be adversely affected by development that is not sensitive to the physical and cultural environment of the town and its surrounds, and particularly the ability of the receiving environment to accommodate the effects of development.

- Paragraph 10.9.2 in section 10.9 lists 2 environmental outcomes as follows:

1. A Russell Township Zone in which activities and development occur in a way that is compatible to the historic heritage and amenity values of Russell, and where there are no significant adverse effects on the environment.
2. The intrinsic character of Russell and its significance as New Zealand's oldest European settlement as recognised and preserved by controlling development within defined boundaries.

Section 11.5 concerns "Heritage" **generally throughout the district.** Interestingly, it commences with a Maori epigram for which a translation is also provided:

#### Taonga Tuku Iho

He wahi hirahira, he hangaanga, me nga rakau o te ngahere kei tenei rohe. He nui te mana o nga taonga nei; ahakoa he mana tikanga, mana wairua, mana korero tuturu, mana mahi huakanga ranei. Whakanuia tiakina hoki te whanuitanga me te mana motuhake o nga taonga tuku iho, hei painga mo nga tamariki, moripuna, o nga ra kei te haere mai.

#### Heritage

There are special sites, places, structures and trees which are treasured by us as a heritage passed into our care. Let us be good caretakers of our diverse and unique heritage that we in turn may pass it on to the care of future generations.

- This section of the plan sets out a number of issues, and which, importantly (and stressed by the appellants) are:

- 11.5.1.1 Land use activities can destroy or reduce the heritage values of heritage resources. This can occur through altering the heritage site, removing or altering the structure or object, altering the visual setting or appearance, and sometimes by altering the function of heritage site, structure or object.
- 11.5.1.2 Heritage values can be affected by historic buildings being removed, added to, remodelled or redecorated. Their value can be diminished by alteration of their setting such as the encroachment of new buildings.



We note also 11.5.1.3:

Several settlements in the district retain a strong colonial character in their architecture and the relationship of buildings with the environment, which adds significantly to their charm and amenity values. These values can be affected adversely by inappropriate development in the vicinity.

- The same section of the plan lists expected outcomes in paragraph 11.5.2. The first four of them relate to specific kinds of objects, but the fifth is particularly instructive in the current appeal:

11.5.2.5 Recognition and Retention of the Heritage Values of Specified Areas of Russell,... (which are coastal settlements with related values).

- In paragraph 11.5.3 are found the objectives, and we set out those that appear relevant in this appeal:

11.5.3.1 To protect and retain the heritage values of resources, which are a composite of values including architectural, historical, scientific, ecological, intrinsic or amenity values, visual appeal or other special character, and spiritual, cultural or historical significance to tangata whenua.

11.5.3.4 To conserve the historic and amenity values of settlements with significant historic character.

- The policies flow from the objectives, and we note in particular:

11.5.4.1 That a heritage resource be recognised as a complete entity whose surrounds or setting may have an important relationship with the values of the resource. For instance the coastal setting of places like...The Strand in Russell is an important part of the heritage value of these precincts.

11.5.4.11 That settlements that contain a high degree of heritage value be protected from subdivision, use and development that would adversely affect these values and their landscape setting.

[6] The next section of the PDP sets out methods, including schedules of heritage buildings and objects, and the creation of precincts.

[7] It was the case for the appellants that while the stated methods were worthy of support, they were not as clear, specific or firm as they should be to carry through the identified issues and achieve the stated objectives.



[8] We have already recorded the respondent's concerns about the appellants' case. At the heart of the criticism appeared to be a complaint about prescriptivity and undue control deriving from the wish of the appellants to transpose a number of provisions from the transitional plan and a study carried out in 1988 called the Russell Planning Review.

[9] The respondent, through submissions and the evidence of its planning consultant Mr J C Stewart, favoured an approach of minimal (or at least, avoidance of unnecessary) intervention. The appellants' case on the other hand was that while such an approach might be appropriate concerning general urban areas in the plan, it would not be adequate to protect historic heritage in the manner that complies with section 6(f), and to carry through the objectives of the plan. Mr Kirkpatrick said, about this:

As heritage cannot be replaced, I submit that this is clearly a case where a fence should be erected at the top of the cliff rather than an ambulance parked at the bottom.

[10] Concerning the differences in approach between the Town and Country Planning Act 1977 and the RMA, Mr Kirkpatrick submitted that the former enabled ordinances to be made without any particular analytical assessment being required, while the current legislation required such an analysis at the initial stage of preparing a plan provision, one focussed on effects of activities, and in particular of dealing with adverse effects. He submitted that the problem with the proposed plan's effects-based approach, (the inadequacy of it), is that in an important heritage township like Russell, heritage and character are inseparable. He submitted that the evidence would show that Russell has this character, and is quite unlike the newer townships of Paihia, Kaitia, or Kerikeri. It certainly seems that Issue 11.5.1.1, Objective 11.5.3.1, Objective 11.5.3.4, Policy 11.5.4.1, Policy 11.5.4.8, and Policy 11.5.4.11, contain recognition at a high level that heritage values can be linked with, affected by, and even inextricably bound up with, amenity values.

[11] Mr Kirkpatrick's criticism went further. Drawing from the discussion by Mr Stewart of policies relating to Russell Township in section 10.9 of the PDP (as distinct from the Heritage section), Mr Kirkpatrick was concerned that while potential adverse effects are discussed in the policies, there is no mention of heritage.

[12] There was initially a dispute between the parties about the jurisdiction for some of the relief sought by Ms Pick. However the point raised by the council was abandoned



before us, and we think rightly. The case then focussed on the substance of the relief sought (additional policies, specific criteria, and changes relating to controls on the scale of new buildings) so that the plan would meet the requirements of section 6(f) and enable the respondent and/or other persons described in section 6, to **recognise and provide for** *“the protection of historic heritage from inappropriate subdivision, use, and development”* as a matter of national importance; as well as match up to the plan’s own statement of issues and objectives.

[13] The case for the council rested quite heavily on a suggestion that the appellants were focussing excessively on section 6(f), and that the PDP as currently framed meets the balance between protection of historic heritage, and the raft of matters described in Part 2 of the Act, in particular the single purpose stated in section 5. Ms Baguley submitted that the appeals confused heritage and amenity, sought prescriptive controls, and sought the imposition of “blunt instruments which do not recognise individual parts within the Russell area, each of which has different elements and characteristics worthy of recognition and protection”. Counsel described Map 87 in the PDP to us, showing the constituent parts, and noting in particular the provision of three heritage precincts, recently expanded by a Consent Order on an appeal by New Zealand Historic Places Trust. Reference was made to something described as the “wider Russell area” shown on the map, extending to Tapeka Point, Okiato, Matauwhi Bay, and Maiki Hill.

### Applicable Legislation

[14] The parties agreed that because the appeals were lodged after 1 August 2003, they must be dealt with pursuant to the Act as amended in that year<sup>1</sup>. It was noted on behalf of all parties that subsection (f) of section 6 was inserted by that Amendment, its requirement being that in achieving the purpose of the Act, all persons exercising functions and powers under it, in relation to the use, development, and protection, of natural and physical resources, shall recognise and provide for, as one of several listed matters of national importance:

- (f) the protection of historic heritage from inappropriate subdivision, use and development.

The Amendment also inserted a new definition *“historic heritage”*, which is as follows:



<sup>1</sup> See s112(1) RM Amendment Act 2003.



- (a) Means those natural and physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from any of the following qualities:

- (i) archaeological
- (ii) architectural
- (iii) cultural
- (iv) historical
- (v) scientific
- (vi) technological: and

- (b) includes-
- (i) historic sites, structures, places and areas; and
  - (ii) archaeological sites; and
  - (iii) sites of significance to Maori, including waahi tapu; and
  - (iv) surroundings associated with the natural and physical resources.

[15] Ms Baguley pointed to a lack of case law as yet, concerning these provisions and as to how district plans should be structured. Mr Kirkpatrick did not differ from that view but for his part was inclined to stress (b)(iv) "*surroundings associated with the natural and physical resources*".

### **Relief Specifically Requested**

#### **J A Riddell**

[16] Mr Riddell sought deletion of the word "*ground*" from Rule 10.9.5.1.5 which is part of the permitted activity rule, and presently reads as follows:

The maximum net ground floor area of all the buildings on a site shall not exceed 20% of the net site area provided this may be exceeded on sites with a net site area less than 400m<sup>2</sup> where the maximum floor area may be up to 80m<sup>2</sup>.

The change would reduce total maximum floor area.

[17] Mr Riddell also sought a similar and consequential amendment to Rule 10.9.5.3.4 which provides a control of 25% for restricted discretionary activities.

#### **H Pick Appeal**

[18] Ms Pick sought:



- The inclusion of further policies relating to Russell, Tapeka and Okiato; and that the urban areas be generally confined within the existing urban limits of Tapeka, Russell and Okiato and to a level which relates to the requirements of the local community and services provided rather than to tourist demand.
- Inserting a further policy in the plan that the significance of Russell is recognised and its intrinsic historic value is preserved by protecting the special character of Russell.
- That a further policy be inserted in the plan that the special character of Russell be protected by:
  - (a) Providing additional controls in areas of Russell where groups of buildings, places or objects have significant historical associations or characteristics and protecting those buildings which are most important as examples of period styles.
  - (b) Containing development in the main township area between Matauwhi Bay and Maiki Hill promontories and the Oneroa Bay dividing ridge behind, and restricting development on ridges, skylines and undeveloped slopes so as to retain the visual dominance of natural landforms.
  - (c) Ensuring development in Matauwhi Bay reflects its role as an entrance to Russell and that activities are of a scale and size that is consistent with that of Russell itself and appropriate to the character of the Bay.
  - (d) Encouraging development at Oneroa Bay (Long Beach) to be of a scale and form that is compatible with a beach settlement with no commercial activity.
  - (e) Preserving views from significant vantage points around Russell while limiting the heights of buildings and trees which may impinge on such views.
  - (f) Maintaining, as far as practicable, the informal blending of land uses that has evolved to contribute to the village atmosphere of Russell.
  - (g) Protecting and fostering the small size and pedestrian scale of Russell.
  - (h) Ensuring public works and the provision of utility services are carried out in a manner consistent with the policies relating to Russell.



- The introduction of new assessment criteria in section 10A ("Russell") referring to building and development guidelines, which we summarise here as relating to roof pitches, style of alterations and additions, window size and shape, use of traditional construction methods and materials (and avoidance of certain modern types), limitations on dormer windows, minimising ornamentation, retention of public view shafts, use of soft landscaping on side boundaries, and avoidance of visually intrusive qualities and skyline controls.

### Discussion of Evidence

[19] During the hearing the issues appeared to range widely, but ultimately came to be narrowed somewhat. We consider that our task in considering challenges to proposed plan provisions since the 2003 Amendment to the Act, to be as was carefully set out by the Court in *Eldamos Investments Limited and another v Gisborne District Council*<sup>2</sup>, from which we quote as follows:

We accept that the amendments to section 32 call for revision of the *Nugent* test, by omitting the references to a rule being necessary, and having to be the most appropriate means. We have revised the test having regard to the current legislation, and propose the following measures for evaluating objectives, and for evaluating policies, rules and other methods:

- A. An objective in a district plan is to be evaluated by the extent to which:
  1. it is the most appropriate way to achieve the purpose of the Act (s32(3)(a)); and
  2. it assists the territorial authority to carry out its functions in order to achieve the purpose of the Act (s72); and
  3. it is in accordance with the provisions of Part 2 (s74(1)).
- B. A policy, rule, or other method in a district plan is to be evaluated by whether:
  1. it is the most appropriate way to achieve the objectives of the plan (s32(3)(b)); and
  2. it assists the territorial authority to carry out its functions in order to achieve the purpose of the Act (s72);
  3. it is in accordance with the provisions of Part 2 (s74(1)); and



4. (if a rule) it achieves the objectives and policies of the plan (s 76(1)(b)).

[20] The planning consultant called by the appellants, Mr T D Nugent, and specialist heritage architect Mr L J E Salmond, provided us with evidence about the history of the establishment of Russell during what is known as the "contact" period. Whaling operations were based in what was known as Kororareka in the early 1800s, subsequent to which the town of Russell became a mission settlement (earlier than Kerikeri); and during the mid-1800s significant conflict occurred between Maori and the Pakeha settlers.

[21] While there are few of the very early settlement buildings remaining, notable examples include Christ Church (1836) and Pompallier House (1841), together with a few cottages from the 1860s. Subsequent to those times, numbers of cottages and small houses have survived from the late 19th Century and early to mid-20<sup>th</sup> Century, established on traditional early settlement cadastral patterns running in parallel and perpendicular roading patterns back from the sea frontage. The earliest settlement was on the flat area of the town, and spread up the slopes of the enclosing basin landform over time, creating an attractive contained urban landscape based on the cadastral patterns, relatively small dwellings, and low density.

[22] These witnesses stressed the amenity of the town based on and around the heritage buildings and the patterns as described, setting the town significantly apart from the town of Paihia which has relatively little of such qualities, and the modern town of Kerikeri (as distinct from the confined heritage area on the river). Mr Kirkpatrick submitted (in our view correctly) that not only was the new s6(f) RMA relevant in the appeals, but so too was s7(c) (which remains unaltered), by which the Court amongst other bodies is to have particular regard to...*the maintenance and enhancement of amenity values*, such being defined in s2 as "...*those natural or physical qualities and characteristics of an area that contribute to people's appreciation of its pleasantness, aesthetic coherence and recreational attributes*".

[23] Mr Nugent gave evidence about planning studies undertaken in the 1970s and 1980s on behalf of various government departments and agencies such as the Department of Lands and Survey, Ministry of Works and Development, Department of Conservation, and NZ Historic Places Trust. Some aspects of the studies found their way into what is



presently the transitional district plan, establishing heritage precincts and heritage/amenity controls on building work through requirements for various kinds of planning consents.

[24] Mr Nugent discussed the various objectives, policies and issues in the PDP that we have already set out and provided us with what we thought was an honest and objective assessment of the relief being sought by his clients the appellants. Key amongst his opinions included that amenity was closely bound up with heritage, being in substantial measure derived from it, that the current low density and "pedestrian" scale of Russell could be harmed by plan provisions that allowed of significant tourist-orientated facilities; that he did not necessarily agree with his clients that certain peripheral areas like Matauwhi Bay, and Oneroa Bay, exhibited the same character and required the same level of control; but that the visual landscape unit of the basin is deserving of protection generally along the lines sought in the appeals.

[25] Mr Salmond is an architect very experienced and qualified by training in heritage conservation work. Building on his description of the way in which the town has come together, he opined that the relatively small number of heritage structures in the mapped heritage precincts required to have their surrounding amenity protected by a "fitting in" so as to maintain established patterns of **scale** and **setting**, meaning the relationship to other buildings, the streets, and the broader urban landscape. He was of the opinion that the provisions of the transitional plan had achieved this to the present point in time, and expressed support for the bulk of the relief sought by Ms Pick, and was critical of the apparently simple, but far-reaching change introduced by the council that Mr Riddell had appealed against (that is to remove the word "ground" from the floor area controls).

[26] Mr Salmond expressed his opinion that Russell is a modern and developing community but which has evolved around a site of very great national heritage significance. He considered that the present character of central Russell located in the previously described basin area) evokes that heritage, which is a significant factor in the wealth of the town as well as its urban character as a place.

[27] Cross-examination of Mr Nugent revealed that the earlier planning studies, while simplistic (at least in the case of one of them)<sup>3</sup>, had nevertheless assisted in achieving a

<sup>3</sup> A Plan for Russell (Russell Planning Team, on behalf of Department of Lands and Survey, September 1977); The Russell Handbook (Ministry of Works and Development, 2<sup>nd</sup> Edition February 1981);



protection of the amenity and character of the township. At the same time, proper concessions were made in relation to relief sought in the appeals, particularly that by Ms Pick, that the necessary protection of character probably should not extend beyond the Russell Township basin, to the areas of Okiato, Matauwhi Bay, Maiki Hill, and Oneroa Bay.

[28] For his part, Mr Salmond initially seemed to us rather unprepared and slightly vague on these issues. However it transpired in the course of careful questioning of him, that he had a good working knowledge of the important character areas of the Russell Township Basin up to the eastern high ground on the Gould Street ridge, and of the approach to the township along Matauwhi Road, Florence Avenue, and Hope Avenue. He made ready concessions that a valley flanking Wellington Street on the northern edge of the town was not of the same quality, and ultimately he differed little from the assessment by Mr Nugent, except perhaps that he placed more significance on the character of the gateway at the southern end of the town through Matauwhi Road and associated streets.

[29] Evidence was given on behalf of the council by landscape architect Mr M I Farrow, and a planning consultant who had been closely involved in the preparation of the PDP, Mr J C Stewart.

[30] As earlier noted in this decision, the difference between the experts called by the parties amounted in the end to matters of degree. The council's witnesses made quite a bit of the considerable geographical extent the subject of the relief sought by the appellants, but as we have noted the experts called by the appellants made ready and proper concessions about that. The witnesses for the council were inclined to place considerable weight on the provisions relating to the mapped heritage precincts in Russell, where the principal few remaining heritage structures are found. Those precincts (as recently expanded to a small degree in a consent order made by the Court) are relatively confined to a portion of the flat area of the town, and extend very little up the confining slopes that comprise the basin in which the town is located. They pointed to the existence of slightly larger and more recent houses on the slopes compared to the generally older urban development on the flat area. For their part they were prepared to make some concessions in relation to policy matters, particularly in relation to the

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Russell Planning Review (Professional study team engaged by Department of Conservation and NZ Historic Places Trust, May 1988).



planning decision (sp)

naturalness found on the slopes, and retention of the village atmosphere of Russell. Mr Farrow was inclined to recommend non-regulatory guidance, with limited bulk and location controls, and Mr Stewart stressed the wider variety of factors than just heritage, arising from the purpose and principles of the Act.

[31] While opining that many of the elements that make up the overarching identity of Russell are subtle and not necessary in themselves remarkable, Mr Farrow was not entirely dismissive of provisions that would support the distinctive character of Russell. Both witnesses were however highly critical of the approach fostered by the **Russell Handbook 1980**, which they considered had led to a "faux colonial" approach to development in recent times. They considered that the bulk and location rules in the PDP's section 10.9 (Russell Township Zone) provided an adequate "backstop", and that the 7.2 metre height limit, and site footprint controls, were appropriate in the context of Russell.

[32] The case was interesting for the careful concessions made by all witnesses, while they nevertheless remained somewhat polarised about matters where frankly we thought agreement could have been forthcoming. This particularly applied to the debate about the geographical areas in respect of which "buffer" provisions might be appropriate, and in the end we thought that the discussion of the areas outside the township basin amounted to a red hearing. This was particularly borne out by our inspection of those areas, where we found for instance that Okiato, Tapeka Point, and Oneroa Bay, exhibited their own different seaside settlement characteristics, distinct from the traditional township of Russell. The one area beyond the basin that we considered however remained of some importance in the context of the appeals, was the gateway area through Matauwhi Road and surrounding streets.

[33] At the same time we felt that the council witnesses identified an unnecessary distinction between heritage qualities on the one hand, and general amenity values on the other. Under questioning by the Court all the witnesses and counsel acknowledged that at the very least, the plan could offer more cross-referencing between various parts of it that touch on these and the more general residential issues.

[34] That said, we are persuaded by the evidence overall that it is not sufficient for the heritage precincts as mapped to be the sole protection for amenity born significantly of historic heritage. We find that lack of broader support by way of provisions in the buffer



area of the basin and gateway, is inapt. To leave matters in that state would be to fail to offer policies and rules that we consider the most appropriate way to achieve the objectives of the plan. Further, their absence would mean that the territorial authority would lack provisions necessary to assist it to carry out its functions in order to achieve the purpose of the Act, and (as regards rules) achieve the objectives and policies of the plan.

[35] That is, we are persuaded that a number of the very clear objectives, policies and issues quoted earlier in this decision (which properly address the relevant aspects of the purpose and principles of Part 2 of the Act), should have further reinforcement at policy and implementation levels. Without derogating from the importance of the many objectives, policies and issues we referred to earlier in this decision, we particularly have in mind those that include mention of "surrounds", "vicinity", "amenity values" and "landscape setting" such as Issue 10.9.1.1, Issue 11.5.1.3, Objective 11.5.3.1, Policy 11.5.4.1, and Policy 11.5.4.11. The evidence clearly established that there is an attractive village atmosphere in the relevant parts of the town, with a distinctive low density character, that the setting and landscape character give Russell a particular distinction from other urban localities in the district and beyond, that historic heritage and amenity values are interwoven, and that these qualities can be diminished by encroachment by out of scale new buildings, alterations and additions, on the flat area and basin slopes.

[36] It is now necessary to consider the differing views in relation to the various items of relief sought by the appellants.

[37] First, it is appropriate to note the council's concern that the mapped precinct areas contain their own controls, and that it might be cumbersome and potentially confusing to have any of the controls sought by Ms Pick operating within those precincts in addition to the precinct controls. In the exercise that we are going to require of the parties, attention should be paid to ensuring that no inconsistencies arise. As to the controls sought by Mr Riddell, we presently see no conflict.

[38] Beyond that, (referring now to paragraph [18] above), we are persuaded that the second and third of the additional policies sought by Ms Pick, with some modifications, are appropriate throughout that part of the Russell Township zone that we have indicated is of importance for the purposes of this appeal. The first is too nebulous, particularly in reference to "requirements of the local community".





[39] As ultimately seemed agreed by all witnesses, references to areas beyond the confines of those parts of Russell Township should be deleted, and application of the policies limited to the "basin area", and the "gateway". We include the "gateway" because Mr Salmond ultimately persuaded us that their application might extend southwards along Matauwhi Road, and along those portions of Florence Avenue and Hope Avenue that are near the Matauwhi Bay foreshore. Appropriate mapping would be necessary to show the areas concerned.

[40] So, referring back to the bullet pointed policy requests we noted in paragraph [18] of this decision, the first of them should not be added into the PDP; the second of them should be added; and in relation to the third, the following undertaken:

- (a) Add this into the PDP.
- (b) Add a policy supporting the retention of the visual dominance of natural landforms in the areas we have confined matters to for the purposes of this appeal.
- (c) Add to the PDP but with the geographic modification discussed above.
- (d) Do not add this policy to the PDP as it relates to Oneroa Bay.
- (e) Do not add this policy about views into the PDP.
- (f) Add this policy into the PDP.
- (g) Add this policy into the PDP.
- (h) Add this policy into the PDP, in recognition of our having been satisfied by answers given by the witnesses, that infrastructure like cellphone towers and other utilities, if not designed and placed sensitively, could have adverse visual effects, particularly within the heritage precincts.

[41] The request by Ms Pick to insert assessment criteria into section 10A in the PDP, as summarised by us in the last bullet point in paragraph [18] of this decision, caused the strongest response from the council. Initially, we were inclined to regard the requested criteria as perhaps unduly prescriptive. However, questioning of Mr Nugent and Mr Salmond provided some useful answers about the desirability of them, and as to how they



would work in practice. Hence, while we might as an entirely separate and additional matter encourage the council to assist in the creation of non-regulatory guidance in the future, the quality of historic heritage and the amenity derived from it in Russell Township is still sufficiently strong, and of sufficient importance to the national interest, to insert some controls into the PDP to ensure that these qualities are not lost and that Russell does not simply become another coastal resort town like Paihia.

[42] As mentioned earlier in this decision, the council was initially minded to raise a jurisdictional objection to an aspect of Ms Pick's appeal, that is as to whether the criteria she sought to have added into the PDP, would be in relation to resource consents for all land use activity types. While there was some ambiguity in the trail of submission and appeal documentation, we are satisfied that counsel were right to agree that the relief sought applies across the board, and not just to general discretionary activities.

[43] We were ultimately persuaded by answers given by Mr Nugent, and also by Mr Salmond, that the proposed assessment criteria or guidelines are for a good purpose, and will not be difficult to administer or adhere to as was asserted by the council. In particular, it seems to us to make good sense that additions to an existing building will see the original roof pitch carried through, whether that be a pitch reflecting Victorian design, or the very much lower pitch found on 1970s houses. Neither do we think the use of uniform construction methods and materials would present undue problems, particularly if the guideline was prefaced by a phrase indicating "general" application, so as not to raise an expectation (for instance) that native timbers and 19th Century fastening methods, and the like, were the expectation.

[44] We are inclined to think on the evidence that the guideline concerning dormer windows might be too detailed, and that more of a general guide might be given by reference to some notable style of same in the locality. The guideline suggesting a low level of ornamentation appears appropriate and helpful in avoiding "faux colonial" architecture as feared by the council (and which we, for ourselves, do not favour).

[45] The guideline proposed relating to existing views within Russell, was demonstrated by answers given by Mr Nugent and others to be a concept that is rather too nebulous and difficult to define, and we do not favour it.



[46] During the course of the hearing we asked counsel and witnesses whether they were aware of any plan provisions around the country similar to those sought by the appellants. They were not. From our own limited knowledge of such matters, we understand that there are some heritage towns and areas that have attracted protection for immediate curtilages of heritage items (for instance Arrowtown), but that buffer protection of heritage and associated amenity may be something new. Be that as it may, Parliament has recently enacted section 6(f) earlier referred to, and provisions of the sort that have found favour with us, seem appropriate in meeting its purposes.

### Result

[47] This is of necessity an interim decision. We allow both appeals to the extent described in various places in the decision, and direct that the parties confer in the light of our findings to endeavour to agree a draft of new provisions for insertion in the PDP. We seek their joint response, together with submissions on any point on which agreement cannot be reached, within 30 working days of this decision.

[48] We very much doubt that costs should be an issue in this case, but reserve them for any application within the same timeframe.

DATED at Auckland this 26<sup>th</sup> day of May 2006.

For the Court:



L J Newhook  
Environment Judge

pick decision (sp)



