



HERITAGE NEW ZEALAND
POUHERE TAONGA

PROPOSED THAMES COROMANDEL DISTRICT PLAN

SUBMISSION BY HERITAGE NEW ZEALAND POUHERE TAONGA

STATEMENT OF DUNCAN MCKENZIE

Introduction

1. My name is Duncan McKenzie. I am the Heritage Advisor Planning for the Northern Regional Office of Heritage New Zealand. I am a qualified planner with a total of almost 40 years of planning experience, in local and central government and as a planning consultant. I have been in my present position for almost three years, and was responsible for preparing the submission on behalf of Heritage New Zealand to the proposed Thames Coromandel District Plan

Heritage New Zealand and its Responsibilities

2. The submission was made in the name of the New Zealand Historic Places Trust Pouhere Taonga ("NZHPT"). Throughout the submission reference is made to the Historic Places Act 1993 ("HPA"), which was the legislation the NZHPT worked under at the time. In May of this year, the Heritage New Zealand Pouhere Taonga Act 2014 ("HNZPTA") came into effect, and my organisation is now known as Heritage New Zealand Pouhere Taonga, or Heritage New Zealand ("Heritage NZ"). The new Act gives Heritage NZ a similar range of responsibilities to that given to the NZHPT under the previous legislation and our submission does not change in a material sense because of the new legislation. There are some changes in terminology and in references to the legislation which I will cover at the appropriate time in my evidence.
3. The purpose of the HNZPTA is expressed as (Section 3):

to promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand.
4. This is done in a number of ways:
 - Heritage NZ encourages local authorities to meet their heritage obligations under the Resource Management Act 1991 ("the RMA") in preparing and administering District Plans.

- Heritage NZ maintains the New Zealand Heritage List /Rarangi Korero (“the List” - previously known as the Historic Places Register) of significant historic heritage, historic places, historic areas, wahi tapu, wahi tapu areas, wahi tupuna and wahi tupuna areas as a means for recognising heritage values. Entry on the List is an acknowledgement that the place or area meets the significance criteria of the HNZPTA. The legislation also provides for the establishment and maintenance of a list to be known as the National Historic Landmarks/Nga Manawheuna o Aotearoa me ona Korero Tuturu.
- Heritage NZ regulates any activities that may or will adversely affect an archaeological site. The HNZPTA applies whether or not an archaeological site is a recorded archaeological site or is entered on the New Zealand Heritage List or the landmarks list or scheduled by Council. The HNZPTA provides overarching protection for all pre- 1900 archaeological sites. That is, unless an authority is granted under one of the applicable sections of the HNZPTA in respect of an archaeological site, no person may modify or destroy, or to cause to be modified or destroyed the whole or any part of that site if that person knows or ought reasonably to have suspected, that that site is an archaeological site, as defined in the HNZPTA ¹

Council’s responsibilities in respect of Historic Heritage

5. In preparing its district plan, any council is obliged to recognise and provide for a number of matters of national importance, which include (Section 6 (f)):

the protection of historic heritage from inappropriate subdivision, use, and development:

6. Historic heritage is defined in that Act as

(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) historic:
- (v) scientific:
- (vi) technological; and

(b) includes—

¹ The HNZPTA includes the following definition:

archaeological site means, subject to section 42(3),—

- (a) any place in New Zealand, including any building or structure (or part of a building or structure), that—
 - (i) was associated with human activity that occurred before 1900 or is the site of the wreck of any vessel where the wreck occurred before 1900; and
 - (ii) provides or may provide, through investigation by archaeological methods, evidence relating to the history of New Zealand; and

(b) includes a site for which a declaration is made under section 43(1).

Section 43(1) provides for Heritage NZ to declare post-1900 sites as archaeological sites.

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

7. Further, Section 74(2) (e) of the RMA requires that, " when preparing or changing a district plan, a territorial authority shall have regard to ... any ... relevant entry on the Historic Places Register" [now called the New Zealand Heritage List].

Conclusions regarding respective responsibilities

8. Both the RMA and the HNZPTA deal with the protection of historic heritage in its various forms. In respect of non-archaeological historic heritage the main responsibility for protection lies with the Council, with Heritage NZ having an important supporting or advocacy role:

- Heritage NZ identifies, and enters on the New Zealand Heritage List, heritage meets the significance criteria of its legislation. Heritage NZ then has a particular interest in proposals that may affect such heritage.
- Heritage NZ helps local authorities in the development of measures to provide protection for heritage which is significant to the local area, which will generally include (but not be restricted to) entries on the List.

9. Heritage NZ has a direct regulatory role in respect of the management and protection of archaeological sites. Heritage NZ will generally advocate the scheduling and associated protection and management of significant archaeological sites identified through the District Plan (and can provide advice on how this protection management is best delivered in terms of objectives, policies and rules. Heritage NZ is also concerned to ensure that Plan provisions including general objectives, policies and rules, and the statutory requirements of the HNZPTA are synchronised, avoid duplication and do not conflict, and that information provided to landowners is clear in this respect so they are made aware of the respective role of Council and Heritage NZ.

Heritage NZ's Submission

10. I support in general the submission of Heritage NZ. I agree with the introductory submission that supports the general approach of the Plan of identifying and scheduling historic heritage of various types that merits protection, and imposing that protection through overlay objectives, policies and rules.

11. The following develops the planning arguments in respect of the Heritage NZ submission.

Definitions and terms

12. The accepted term for what we are endeavouring to protect is “historic heritage” – it is a term that is defined in the RMA, it includes cultural heritage and it is conveniently distinct from “natural heritage”. The term “historical heritage” which is used in a number of places in the Plan appears to intend to refer to ‘historic heritage’ and should be amended accordingly.
13. At a more detailed level, I support the inclusion within the definitions of a section on “Historic Heritage Terms”. In my opinion the definition of “demolition” has some shortcomings, in that it would potentially allow for the removal of significant heritage elements without that activity qualifying as a demolition with the associated level of assessment that would require. I am of the opinion that the amended definition of “demolition” and a new definition of “partial demolition” as proposed in our submission would address these concerns (and would also be consistent with changes to rules that are proposed elsewhere in the submission).
14. I note that a definition of “archaeological site” as specified in the Historic Places Act 1993 is proposed. I have already noted that the HPA has been replaced by the Heritage New Zealand Pouhere Taonga Act 2014 and that has a slightly different definition of “archaeological site” (refer to footnote 1 above), so the reference should be updated appropriately. It should also be noted that the protection afforded an archaeological site under the HNZPTA is generally limited to those sites that date prior to 1900.

Incentives

15. In common with most planning restrictions, there is no right of compensation for land use controls such as those imposed by the scheduling of historic heritage. A control may only be challenged on the basis that it would prevent the “reasonable use” of the land.
16. Nevertheless, given that the wider community benefits from protection of historic heritage, in my view it is not inappropriate to provide incentives to owners of such places.
17. Incentives can take the form of District Plan provisions and provisions outside the District Plan. Incentives outside the District Plan could include
 - rates relief (postponements and/or remissions), differential rating and targeted rates;
 - heritage awards
 - direct financial assistance
 - reduction or elimination of resource consent application fees as they apply to heritage aspects of an application.

The role of the District Plan in respect of such incentives would be limited to describing these as potentially available “non-Plan methods”, which would be implemented through the annual planning process.

18. Of more direct relevance to the District Plan are incentives provided through planning controls. Examples of these could be policies that indicate, in circumstances where the protection of heritage values of a scheduled item or area would be encouraged, particularly through the facilitation of adaptive re-use, the following may be appropriate:

- A more liberal range of allowable activities;
- A waiver of full car parking requirements.

Such policies could be reasonably readily incorporated into Section 8 of the Plan.

19. A more complex set of provisions could be developed that provides for the transfer of development rights and the provision of development bonuses for specifically approved positive heritage outcomes. Acceptable positive outcomes could include one or more of the following in respect of the heritage item in question: an acceptable management plan, specific protective or restoration measures, and a covenant. Where heritage is involved that Heritage NZ has a direct interest in (archaeological sites and entries on the List), Heritage NZ would expect to be directly involved, although we can also provide advice where other heritage items are involved.

20. This could be taken a step further through the provision of a regime of transfer of development rights and the provision of development bonuses where that would provide for the protection of historic heritage. Such a regime has to take account of effects in the locality of recipient sites and ensure any restrictions imposed on the heritage site are against the title. Such measures tend to work best in where it is apparent that heritage restrictions have significant economic implications.

Inclusion of information of the role of Heritage NZ in respect of archaeological sites

21. As indicated previously, Heritage NZ is the regulator in respect of activities under s 42 (1) of the HNZPTA that may modify or destroy archaeological site(s) or cause to be modified or destroyed, the whole or any part of that site that the person knows, or ought reasonably to have suspected, that the site is an archaeological site. This role applies whether or not a site is a recorded archaeological site or entered on the List, scheduled or otherwise identified. These provisions contrast with the District Plan's main role in providing enhanced protection for a select group of scheduled archaeological sites and their surrounds that are assessed in the District Plan as significant. The District Plan also has another potential role in providing for/encouraging the avoidance of adverse effects on archaeological sites through the consenting process for activities such as subdivision and earthworks.

22. Section 5 of the Plan is called "Cross-Boundary Issues". In my opinion this should be amended to read "Cross-Boundary and Cross-Jurisdictional issues". A number of specific amendments to this section have been sought in the submission, including amendments to Section 5.1, 5.2, 5.3

and 5.4. The amendments sought generally seek to ensure the functions of Heritage NZ are properly recognised, that in particular its functions in respect of archaeological sites are recognised, that duplication of functions is avoided, that opportunities for coordination and early consultation with Heritage NZ are taken advantage of, and Heritage NZ's interest and expertise in all aspects of historic heritage are recognised.

23. I support these amendments, noting that references to the Historic Places Act 1993, the New Zealand Historic Places Trust, and the Register need to be changed in the manner detailed in paragraphs 2 and 4 of this evidence.

Section 4 - Information requirements and assessments

24. I generally support the requirement of Section 4.3 to the effect that an Assessment of Environmental Effects should consider any effect of natural and physical resources having historic heritage, spiritual, or cultural value. However in my opinion this section should provide more information on what needs to be included in such an assessment, along the lines suggested in the submission.
25. It is my opinion that Clauses 3 and 4 of Section 4.5 should be moved to Section 4.3 (not Section 4.4 as suggested in the original submission), with some wording changes to aid in clarification as proposed in the original submission. Section 4.5 is headed "Administration Requirements" and appears to be the wrong location for Clauses 3 and 4, which more appropriately seen as "Assessment of Environmental Effects Requirements".
26. In respect of Section 4.4's additional requirements in respect of subdivision applications, I support, for the purposes of clarity and accuracy, the submission requests that
- Clause 1 (m) be amended to require plans to show the indicative location and extent of any archaeological site, and
 - That Clause 4(g) be re-organised so the reference to historic heritage includes specific reference to archaeological sites and Maori cultural sites (which are included in the definition of historic heritage).

I support those requests.

Section 8.1.1 and 8.3.1 - Conflation of archaeological values and Maori cultural values

27. It is my opinion that there should be separate background explanations (Section 8.1) and sets of objectives and policies (Section 8.3) for archaeological sites and Maori cultural sites respectively. Archaeological values can differ from Maori cultural values. Archaeological sites must exhibit evidence of physical cultural material associated with human activity, the context, integrity and quality of which is able to be quantified and assessed in archaeological /scientific terms to

provide evidence of past human activity. Accordingly, while archaeological sites may also have cultural significance to Maori, this is not always the case. Not all archaeological sites are of Maori origin, and even those that are of Maori origin are not necessarily of cultural significance. Likewise, not all Maori cultural sites exhibit tangible archaeological evidence, for example, natural landforms/ features or meeting places, canoe landing sites that may not exhibit evidence of past human activity.

28. I therefore support the remedies sought in respect of these sections in the Heritage NZ submission. The proposed re-wording of the submission in respect of archaeological sites also clarifies differences in the status and numbers of recorded sites (in the New Zealand Archaeological Association database) as opposed to scheduled archaeological sites proposed in the District Plan, and the role of Heritage NZ in the regulation of all pre 1900 archaeological sites.

Objectives and Policies –Heritage Items and Heritage Areas

29. The submission of Heritage New Zealand sought a much more extensive set of policies in respect of heritage items and heritage areas than proposed in the Plan. In my opinion it is important to have these objectives and policies, as they do provide the framework for what is acceptable and what is not acceptable, in considering proposals that may affect historic heritage.
30. Having reviewed the submission, I can see there is some scope for re-ordering the objectives and policies, so that they address, in respect of both historic heritage items and heritage areas, matters relating to identification and assessment, modifications, subdivision and development, demolition, removal and repositioning on site, re-use, and context and surroundings.
31. Accordingly I have provided as an attachment to this evidence, a further re-worked version of the objectives and policies. Where these incorporate substantive changes from the objectives and policies as sought by Heritage New Zealand's original submission these have been identified through underlining insertions and ~~striking through deletions~~.
32. The following develops in more detail the reasoning for the changes sought.

Historic Heritage Items: Objective and Policies

33. The suggested change to the objective would bring it more in accordance with Section 6(f) of the RMA, which makes the protection of historic heritage a matter of national importance.
34. The first two policies (3a and 3b in the attachment) relate to the identification and assessment of historic heritage items. It is noted that Section 8.1 asserts that historic heritage items have been assessed as meeting the criteria of the Regional Policy Statement. It is unclear whether

this reference is to Parts 10 and 10A of the Proposed Waikato Regional Policy statement or the slightly less set contained in the Operative RPS. Nevertheless, it is worth noting that the RPS sets out the minimum requirements and the district council may include its own criteria provided these are consistent with the RPS.

35. Policy 3b (as proposed in this evidence) introduces the idea of a two-tier scheduling system. Category A is reserved for the most significant heritage, with Category B being for heritage of a more local significance. The effect of having two categories will become apparent in the discussion of rules that is to follow, but generally activities that affect the values of Category A items would be more stringently regulated than those affecting Category B.
36. Evidence that is intended to be presented in February next year in respect of the scheduling of historic heritage items and areas will address this in more detail.
37. The second group of policies (Numbered 3c, 3d, 3e and 3f in the attachment) address modifications, subdivision and development affecting heritage items. Policy 3c in particular is a more full expression of the originally proposed Policy 3a. Policy 3e generally discourages subdivision and development that affects heritage values, with policy 3f going on to restate (with some modifications) the original policy 3b to explain in more detail what is considered to be acceptable subdivision. A new policy, (numbered 3l in the submission but now proposed as 3g), introduces the ICOMOS Charter.
38. It is appreciated that the outcomes of the ongoing review of legislation affecting earthquake-prone buildings may in fact result in a regulatory framework that overrides District Plan heritage provisions. That is not yet the case, so the Council needs to consider what provisions are appropriate in the District Plan. The submission included some ideas for this, noting that specific recognition needs to be given safety issues that may be associated with to heritage buildings.
39. The submission seeks some quite specific changes. I have given this some more thought and I am of the opinion that a more general policy (proposed as Policy 3d) and some changes to the status of these works (discussed later in this evidence) would adequately cover this issue.
40. Policies 3h, 3i and 3j are those dealing with demolition or removal of a heritage item on or from a site, or repositioning of a heritage item on the site. These involve some minor modifications of the policies 3d, 3e and 3f of the originally notified proposed district plan.
41. Policy 3k is a restatement of the originally proposed 3c and concerns allowable activities to encourage re-use.

42. The next two policies (3l and 3m) are new policies sought by the submission to address the importance of the context and surrounds of historic heritage items. This raises the issues of curtilages.

Historic heritage areas; objective and policies

43. I generally agree with the objective for these areas (and note the observation in the last paragraph of Section 8.1 that heritage areas and heritage items should be managed differently.
44. Nevertheless, I have a major concern in terms of plan provisions (reflected in the policies and rules), in that I consider the regime proposed in respect of historic heritage areas – especially in regard to demolitions – is unlikely to encourage positive heritage outcomes. In my opinion, that management regime would not appear to promote Objective 4 or the originally numbered Policy 4a of the proposed policies (both the objective and the policy being in my opinion worthy of support).
45. My concerns would be largely overcome if “contributing buildings” within a historic heritage area were to be specifically identified and a more stringent set of provisions imposed in respect of such buildings (a set of provisions that would at least require a resource consent for removal of such buildings).
46. The changes requested in the Heritage NZ submission reflect that concern. Again, I have recast the policies.
47. The original submission included a request for a new policy for historic heritage areas along the following lines:
- That within historic heritage areas, contributory buildings shall be identified and total or partial demolition, removal or repositioning of such buildings shall be discouraged.*
48. While I support this policy, I consider it should be split into two – the first part seeking identification of contributory buildings (Policy 4a in the attachment to this evidence), and the second part, discouraging demolition, removal or repositioning, being located in a subsection headed “Policies on development ” (and numbered Policy 4c).
49. Further policies relating to development were included in the Proposed District Plan and in my opinion, merit supporting with modifications. The emphasis continues to have more restrictive controls over contributing buildings as well as to respect or complement the identified character of the historic heritage areas. These further policies are included as 4b, 4d, and 4e.
50. Policy 4f addresses the range of uses that may be appropriate in a heritage area and as proposed incorporates minor changes (as sought by Heritage NZ) to what was originally numbered 4b. Policy 4g addresses subdivision in a heritage area. This is based on the originally

proposed Policy 4c although the submission of Heritage NZ did seek some enhancements. I support these policies in their amended form.

Section 16 – Subdivision – Objectives and Policies

51. In general, issues, objectives and policies should explicitly provide for recognition of, and protection of, historic heritage and cultural values (in a similar manner as biodiversity and natural character). These are all matters of national importance in terms of Section 6 of the RMA. Further, Objective 1 for subdivision should include specific reference to historic heritage, and a new Policy added seeking protection of significant archaeological sites from fragmentation through subdivision.
52. The submission seeks the addition of material to Issue No 5 of Section 16.2 – which describes the disadvantages of ad-hoc subdivision that does not make use of and connect with existing and planned infrastructure. Upon reflection, I can see the relief sought does not really fit in with this particular issue, but in fact would fit in better with issue No 4. Accordingly, in my opinion, issue No 4 should be rephrased to read
- Poorly planned subdivision can compromise local amenity values and historic heritage values, and lose opportunities for the provision of public recreational space.*
53. The addition sought to Policy 3a, describing situations where the acquisition of public reserves is appropriate, in my opinion should provide for vesting of public reserves where that would help maintain and manage significant historic heritage.
54. In my opinion, Objective 8 (which concerns subdivision as a whole and its role in maintaining and enhancing a range of values), and Policies 8a and 8c (which deal respectively with the need for and extent of esplanade reserves) should be modified to specifically provide for the maintenance and protection of historic heritage

Section 17 – Tangata Whenua Objectives and Policies

55. Generally the use of a Maori Cultural Sites schedule (Appendix 1.2) is supported. A later part of the submission seeks the addition of one more site to the schedule.
56. The provisions (specifically 17.2 Issue 1 and in 17.3, Objective 1, Objective 3 and Policy 1d that seek greater involvement of tangata whenua in resource management matters, and to allow the exercise of kaitiakitanga and for a range of activities are generally supported. However, the proviso is sought that other legislative requirements (including the District and Regional Plan requirements; Heritage New Zealand Pouhere Taonga Act 2014 and Te Ture Whenua Maori Act 1993) should be met.

57. In my opinion, the policy in respect of development on a Maori cultural site (Policy 1c) should place greater emphasis on protection of, and avoidance of adverse effects on, Maori cultural sites. This is a requirement of Section 6e of the RMA. Further, viewshafts both to and from these sites should be considered.

Section 31: - Historic heritage overlay – General issues

58. Two parts of Section 31 (31.1 background, 31.4.1 landowner information – NZHPT) purport to describe the role of the NZHPT in respect of historic heritage. This needs to be clarified, changing the reference to the organisation to read “Heritage New Zealand ” (or Heritage NZ) and to accurately reflect what its roles are which I described in the earlier part of this evidence as:

- The regulator in respect of the modification or destruction of all pre-1900 archaeological sites;
- Responsible for the compilation and maintenance of the New Zealand Heritage List of historic places, wahi tapu and wahi tapu areas (and now, wahi tupuna and wahi tupuna areas), which will influence Council scheduling processes;
- The lead national agency providing advice and information on the management and protection of historic heritage, including through the resource management process.

59. In my opinion, the fourth paragraph of 31.1 should be re-worded, and a further paragraph added, as follows (taken from the original submission with references to the Heritage NZ and its legislation updated):

Some of the historic heritage items scheduled in the Plan are also entries on the New Zealand Heritage List which is maintained by Heritage NZ. Where a scheduled item is also an entry on the New Zealand Heritage List, consultation is recommended with Heritage NZ prior to undertaking works affecting the heritage values of that item. Heritage NZ would also be considered to be an affected party in respect of any resource consent application affecting an entry on the New Zealand Heritage List.

In respect of any archaeological site that pre-dates 1900, (whether that site is a recorded archaeological site, is entered on the New Zealand Heritage List or the national Historic Landmarks List, approval of the Heritage NZ is required under S 44, 56 or 62 of the Heritage New Zealand Pouhere Taonga Act 2014, to undertake any activity that will or may modify or destroy 1 or more archaeological sites.

Separate sets of controls for archaeological sites and Maori cultural sites

60. In my evidence in respect of section 8, I advanced the argument that issues, objectives and policies in respect of archaeological sites are sufficiently different to those applying to Maori cultural sites that they should be separately considered. The same argument applies in respect of the rules.
61. In practice, this would lead to a splitting of the Activity table of Section 31.3 into four parts, and a separate set of overlay rules for activities affecting Maori Cultural sites. Attachment 2 to this evidence provides an outline of how the amended activity table would look. This amended outline table also includes a footnote in respect of activities that will or may modify or destroy an archaeological site as defined by the HNZPTA. Paragraph 65 of my evidence explains this in more detail.
62. I consider that this table would be significantly more “user-friendly” if it not only identified the rule number that applied in respect of each activity, but also provided an indication of the activity status that applies to each (permitted, controlled, restricted discretionary, discretionary or non-complying).

Controls and activities associated with archaeological sites and Maori cultural sites

63. In general I support the status of the various activities associated with archaeological sites and Maori cultural sites as spelled out in Section 31.3's activity table, as well as the rules of Section 31.5 in respect of these sites. However, as previously stated, I consider the provisions relating to each of these two categories of site would be better dealt with separately.
64. I am of the opinion that a greater restriction on the types of activity described as maintenance on both categories of site is warranted. In particular grazing by heavy cattle does have the potential to significantly damage sites especially at certain times of the year.
65. Changes to rules are also sought to ensure that all subdivision potentially affecting these sites is either a restricted discretionary or discretionary activity (and not a controlled activity). This should allow a more explicit consideration of heritage values.
66. Our submission also raised concerns that apply to scheduled archaeological sites in particular, including the extent of controls, the explanation of the role of Heritage NZ, the use of accidental discovery protocols, and the use of conservation management plans. These are explained in more detail in the following paragraphs.
67. In my opinion, there should be greater clarity provided around the extent of protection offered to archaeological sites. Ideally, the planning maps should define the extent of area protected which would vary according to the scale and nature of the site at issue. This is particularly

important for the site described as Tahanga Environs – this is a culturally significant heritage landscape containing a complex of archaeological sites which also appears on the New Zealand Heritage List as a historic place and a wahi tapu area – and in respect of which Heritage NZ holds considerable information.

68. The proposal in section 31.2 that controls apply to the whole of the lot that contains the scheduled site is not satisfactory. If the appropriate areal extent of protection applying to the site is not defined, a default of controls within 100 metres of the site's location as identified on the Planning Map should be imposed. Adoption of this measure would involve modification of the second paragraph of Section 31.2 in the manner described in the submission. I am also of the opinion that this provision should be repeated as a rule in Section 31.5, perhaps as an additional Rule 4 along the following lines: the effect that:

Overlay rules apply within the scheduled extent of each site as shown on the Planning Maps, and where the scheduled extent is not shown on the Planning Maps, within 100 metres of the site's location as identified on the Planning maps"

69. I have some concerns with that Section 31.4. Landowner information: 13.4.1 - New Zealand Historic Places Trust, which endeavours to explain the role of Heritage NZ in respect of archaeology. I support the concept of explaining this role, but it does need to be accurate. The proposed amended activity table in paragraph 61 above includes a footnote that clearly and accurately advises on landowner obligations in respect of all (pre-1900) archaeological sites. Inclusion of this note in the table would eliminate the need for Section 31.4.1 altogether.
70. Another concern is the following 13.4.2 Accidental site discovery protocol. The status of the "accidental discovery protocol" is not made clear. Protocols of this nature are generally used by Heritage NZ in carrying out its statutory functions under the HNZPTA, and even then are only used in quite specific circumstances. The ADP is not seen as an alternative to an appropriate level of assessment, and in my opinion is not appropriate as a Plan rule. I agree that it would be useful to include such a protocol as advice which sets out actions and contacts to ensure appropriate process is followed, rather than looking like a plan rule. It is important however that such a protocol is factually and legally accurate. Attachment 3 to this evidence offers an alternative wording for this section.
71. I support the ability to be able to prepare, get consent for and operate a conservation management plan in respect of a site – and note that Heritage NZ is able to provide expert advice in respect of such plans as they would need to comply with heritage best practice and statutory requirements under the HNZPTA.

Schedules – Archaeological sites and Maori cultural sites

72. In general, the principle of extending schedule protection to those sites that have been assessed as significant archaeological sites is supported. This approach recognises that unscheduled sites still receive protection under the Heritage New Zealand Pouhere Taonga Act 2014. It is understood that a number of submitters have sought the scheduling of other archaeological sites – these will need to be assessed against the plan criteria prior to their inclusion in the schedule.
73. Within the Thames Coromandel District, there are several wahi tapu and wahi tapu areas that are entries on the New Zealand Heritage List. All of these but one (Te Kouma) are also scheduled as Maori cultural sites. I agree with the submission of both Heritage NZ and the Council that this place should be included on the schedule.
74. Further research should be undertaken with iwi to identify and schedule additional sites that are assessed as of cultural significance to Maori.

Historic Heritage Items Overlay Rules

75. As indicated in my evidence on Section 8 (objectives and policies) a fundamental concern is the failure to divide historic heritage places into two categories. Category A and B items, with the former receiving a higher degree of protection (through more restrictive rules) than the latter. The submission includes suggested rules for each category of item, along with assessment criteria where needed.
76. What the submission has not attempted at this point is the assignment of a category to each proposed scheduled item. A good starting point would be to assign Category A status to those places that are identified in the district as Category 1 on the New Zealand Heritage List. Places that have been entered on the List as Category 2 places would in most cases be assigned Category B, although some may merit Category A in the context of the district. Again these will be argued at the February hearing.
77. The main differences in respect of the two categories would be in respect of the (newly-defined) activity of partial demolition, removal, repositioning, where for Category A these would retain non-complying activity status whereas for Category B items these would be discretionary activities.
78. A new or relocated building would retain its discretionary activity status for a Category A item, but would be a restricted discretionary activity for a Category B item. A new set of restricted discretionary activity matters would then be required for this activity.
79. New activities are suggested. Land disturbance would be a restricted discretionary activity, with a set of restricted discretionary activity matters proposed that are specific to this activity.

Seismic strengthening and public safety and access issues

80. I have previously discussed, in the context of policy, the desirability of providing for works associated with public safety and access (including seismic strengthening). It is acknowledged that there is still uncertainty about how seismic strengthening requirements will be accommodated through new legislation, with the main issue being whether building safety requirements totally override heritage protection requirements, or whether they need to work in with those requirements. At present, the latter is the case, and that suggests that heritage protection rules could be altered to better accommodate works that are required for building safety. At the least, works required for earthquake strengthening and other measures to enhance building safety (which may involve partial demolition prior to reconstruction) should have restricted discretionary status, in a similar manner as additions and alterations.

81. The submission did suggest the replacement of high-risk elements with high-quality light weight material as controlled activities, but in my opinion that may not be always appropriate in a relatively low earthquake risk area.

82. My suggested changes include in respect of historic heritage items and areas:

- Changes to the activity table, in the manner shown in Attachment 2, to
 - Specifically provide for works for public safety and access (including earthquake strengthening) as a restricted discretionary activity.
 - Make that activity subject to Rule 6 and 16 (where the works are external), and to Rule 9 (where works are internal and the interior of the item is scheduled). (Works affecting a non-scheduled interior would not be subject to the rules applying to scheduled items).
- Changes to Rules 6 and 16 as follows:
 - Re-titling each of the rules to read: **Exterior additions and alterations (including exterior works for enhancing public safety and access)**
 - Rephrasing clause 2 of each of the rules to read “The Council restricts its discretion to matters {[for R 6] 4(a)– f)}/ {[for R 16] 6 (a)-(f)} in Table 2...”
- Adding new assessment criteria to Table 2.4 as follows:

4 Historic Heritage Item exterior additions or alterations and external works for enhancing public safety and access			
(f)	Works for public safety and access (including earthquake strengthening)	i)	The extent to which the work is necessary to enable the item to be upgraded to an acceptable standard
5 Historic Heritage Item interior alteration			
(c)	Works for public safety and access (including earthquake strengthening)	i)	The extent to which the work is necessary to enable the item to be upgraded to an acceptable standard
6 Historic Heritage Area exterior additions or alterations and external works for enhancing public safety and access			

(f)	Works for public safety and access (including earthquake strengthening)	i)	The extent to which the work is necessary to enable the item to be upgraded to an acceptable standard
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Historic Heritage Area Overlay Rules

83. Historic heritage areas range from the homogenous (such as the tram bach areas), where all buildings contribute to the area, to the diverse. In the latter case it is submitted there is quite a wide variation in the contribution that particular buildings make to the wider area – especially where the extent of the areas is based on historic subdivision patterns rather than on the current existence of historic heritage. While consideration could be given to reducing the extent of the overlay in some areas, the submission suggests an alternative – that of identifying non-contributory buildings. Rules in respect of these buildings can then be more liberal than for contributory buildings.
84. Regulation in respect of non-contributory buildings would then be to ensure that replacement buildings are sympathetic to the wider heritage area context.
85. In this regard, the proposal to allow any demolition, removal or repositioning of a contributory building in a historic heritage area as a permitted activity is opposed, and non-complying activity status is preferred.
86. A similar regime is proposed for safety and strengthening works on contributory buildings as for historic heritage items (that is, controlled activity status).
87. Likewise, land disturbance would be a restricted discretionary activity.

Conclusions

88. The Proposed Thames Coromandel District plan does acknowledge in its provisions, the rich heritage resource of the district. That resource includes evidence of pre-European settlement and associated cultural values, as well as the district's mining heritage and associated early European settlement.
89. My evidence has provided an update on Heritage NZ and its legislation. What has not changed to any great extent are the roles of Heritage NZ – including the direct regulatory role in respect of archaeological sites, its role in maintaining the New Zealand Heritage List (formerly known as the Register) and the Landmarks list, and its role as advisor to district councils, including helping them to meet heritage objectives.
90. In respect of archaeological sites, I agree with the Council approach of providing schedule protection for the most significant of these. The Council also has a role in ensuring that where any development such as a subdivision or earthworks is contemplated, effects on all

archaeological sites are able to be taken into account and avoided where possible, while acknowledging that the responsibility for authorising destruction or modification of most such sites lies with the Council.

91. The Council's approach to scheduling significant Maori cultural sites is also supported.
92. In respect of both archaeological and Maori cultural sites, I have advanced some suggestions for the improvement of plan provisions. Perhaps the most significant improvement would be implemented through the better definition of the areas to be protected.
93. In respect of built heritage, the main responsibility for providing protection lies with the Council. I do support the comprehensive approach taken to identifying items and areas for protection although (at a later hearing) Heritage NZ will be advancing the argument that more places, particularly those appearing on the NZ Heritage List, should be scheduled.
94. I have advanced the argument in respect of historic heritage items that these should be categorised as either A or B, with different levels of regulation in respect of each category.
95. I have a significant concern with an apparent liberal regime in respect of demolition and removal of buildings within the Historic Heritage Areas. It is accepted that the purpose of these areas is generally different from the purposes advanced for scheduling individual items. Nevertheless historic heritage areas do include some significant buildings, which could be identified as contributory buildings and subject to a more protective set of provisions than non-contributory buildings.
96. My evidence has also suggested some rule changes in respect of historic heritage items and areas, including more explicit provision for upgrading works required for building safety (including seismic upgrades).

Duncan McKenzie

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Heritage New Zealand Pouhere Taonga

ATTACHMENTS TO EVIDENCE

ATTACHMENT 1

Suggested re-casting of Objectives and Policies 8.3.3 and 8.3.4:

Historic Heritage Items and Historic Heritage Areas

Objective 3 – Historic Heritage Items

Heritage items shall be maintained and protected to retain the integrity and identity of the District's historic heritage.

Policies regarding identification and assessment

Policy 3a

Historic heritage items shall be identified, evaluated and included on the historic heritage overlay.

Policy 3b

When included on the overlay, historic heritage items shall be assigned a category as follows:

- a) Category A: items that are of special or outstanding significance to the locality, region or greater geographic area
- b) Category B: items that are of significance or value to a locality or greater geographic area.

Policies regarding modifications, subdivision and development

Policy 3c

Modifications or development on the site of a historic heritage item shall respect and maintain historical associations and values that contributed to the scheduling of the site by having regard to the following characteristics of the historic heritage item:

- a) Built form; and
- b) Style, form, scale and proportion; and
- c) Setting on the site; and
- d) Visual relationship with the relevant context including streetscape and neighbouring properties; and
- e) building fabric, features, appropriate colour and materials; and
- f) site coverage; and
- g) landscaping; open space;

Policy 3d

That works for earthquake strengthening and to enhance public safety and access be encouraged and provided for in a manner that does not compromise heritage values.

Policy 3e

Discourage subdivision and development that may compromise historic heritage values.

Policy 3f

Historic heritage items shall be safeguarded from the adverse effects of subdivision by ensuring that:

- a) The size and shape of the new lots provides sufficient land around the historic heritage item to maintain its heritage values, including (but not limited to) any gardens, open space, accessory buildings; driveways, vegetation that form part of the curtilage, and views to and from the item.
- b) Newly developed lots do not adversely affect the heritage values of a historic heritage item, and its site

Policy 3g

Development on the site of, or modifications to, a historic heritage item shall be guided by the ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value, revised 2010.

Policies regarding demolition, removal or repositioning

Policy 3h

A historic heritage item should not be demolished in whole or in part until all options for the adaptive re-use of the heritage item have been fully considered including, but not limited to, an investigation to determine conservation methods from restoration, through to adaption, and potentially relocation.

Policy 3i

A historic heritage item shall only be removed from its existing site if:

- a) It is necessary to save the building from damage or destruction associated with natural events; and
- b) It is relocated to a suitable site within the District that allows for maintenance, retention and continuation of its heritage values.

Policy 3j

A historic heritage item should only be repositioned within its existing site if the heritage values can be retained and/or enhanced.

Policies regarding re-use

Policy 3k

An activity or mix of compatible activities may be considered within a historic heritage item to encourage its retention or re-use whilst recognising its historic heritage values

Policies regarding context and surroundings

Policy 3l

The historical context and surroundings of a historic heritage item are important in maintaining the values of the item and shall be protected.

Policy 3m

Appropriately manage activities adjacent to or on sites associated with historic heritage to retain and protect significant heritage values.

Objective 4 – Historic Areas

Subdivision, use and development maintain important historic heritage characteristics and values that exist within Heritage Areas.

Policies on assessment and evaluation

Policy 4a

That within historic heritage areas, contributory buildings shall be identified. ~~and total or partial demolition, removal or repositioning of such buildings shall be discouraged.~~

Policies on development

Policy 4b

Building, structures, open spaces and other elements that contribute to the Heritage Area shall be maintained or protected.

Policy 4c

That within historic heritage areas, ~~contributory buildings shall be identified and total or partial demolition, removal or repositioning of such~~ contributory buildings shall be discouraged.

Policy 4d

A new or relocated building within a heritage area shall be of a similar scale so as to not dominate the streetscape or any historic heritage item

Policy 4e

New or relocated buildings in a Heritage Area shall complement the identified values character and appearance of the Heritage Area.

Policies on activities and uses

Policy 4f

A mix of compatible activities and uses in heritage Areas shall be provided for, in order to encourage the retention, adaptive re-use, and heritage sensitive maintenance of heritage buildings, structures, spaces, layout and features.

Policies on subdivision

Policy 4g

Subdivision in a Heritage Area shall ensure that:

- a) Significant historic heritage values of the area are recognised and retained.
- b) The spaciousness, prevailing density, setbacks and the original subdivision concept for the heritage area are maintained.
- c) The size and shape of the new lots containing a heritage item provides sufficient land around the item to maintain its heritage values, including (but not limited to) gardens, open space, accessory buildings, driveways, landscaping that forms part of its curtilage, and to maintain views to and from the Heritage Area.

[Note: The above represents a re-ordering – with additional headings – of the relief sought by Heritage NZ in its prime submission. With the exception of Policy 3d, no new policy has been added. However a new policy that was sought in respect of heritage areas has now been divided into two policies – numbered 4a and 4c].

ATTACHMENT 2
Amended activity table

ACTIVITY TABLE		
ARCHAEOLOGICAL SITES OVERLAY RULES	S 31.5	
Land disturbance etc	R 3 DA	
MAORI CULTURAL SITES OVERLAY RULES	S 31.5A	
Land disturbance etc	R 3 DA	
HISTORIC HERITAGE ITEM OVERLAY RULES	S 31.6	
	Category A	Category B
Demolition	NCA R 11	NCA R 11
Partial demolition	NCA R 11	DA R 10
Exterior addition or alteration	RDA R 6	RDA R 6
Fence	RDA R 7	RDA R 7
Garage	RDA or DA R 8	RDA or DA R 8
Interior alteration (where interiors are scheduled)	RDA R 9	RDA R 9
Maintenance and/or repair	PA R 4	PA R 4
New or relocated building (excluding garage)	DA R 10	RDA New rule 11A
Removal	NCA R 11	DA R 10
Repositioning	NCA R 11 (amended)	DA R 10
Sign	DA R 5	DA R 5
Subdivision	DA R 10	DA R 10
Land disturbance	RDA New rule 11B	RDA New rule 11B
Alterations for the purpose of improving building safety – earthquake strengthening, fire safety, access or other building code work	RDA R 6 (where works are external) R 9 (where works affect scheduled interior)	RDA R 6 (where works are external) R 9 (where works affect scheduled interior)

HISTORIC HERITAGE AREA OVERLAY RULES		S 31.7
	Contributory building	Non-contributory building
Demolition	NCA New rule 12A	PA R 12
Partial demolition	NCA New rule 12A	PA R 12
Removal	NCA New rule 12A	PA R12
Repositioning	NCA New rule 12A	PA R12
Alterations for the purpose of improving building safety – earthquake strengthening, fire safety, access or other building code work	RDA R 16	PA R 12
Exterior addition or alteration	RDA R 16	
Fence	RDA R 13	
Garage	RDA R 14	
Maintenance and/or repair	PA R 12	
New or relocated building	RDA R 17	
Sign	CA R 15	
Subdivision	DA R 18	
Land disturbance	RDA	
<p>Note <i>The Heritage New Zealand Pouhere Taonga Act 2014 is the primary legislation for the management of all pre 1900 archaeological sites whether they are recorded or not. An authority under that Act is required from Heritage NZ for any activity that may modify or destroy an archaeological site whether or not the land is designated, a resource or building consent has been granted, or the activity is permitted under the Regional or District Plan.</i></p>		

ATTACHMENT 3

Suggested Section 31.4.1

31.4.1 Accidental discovery protocol in respect of archaeological sites:

The following information is not a plan rule but is provided as advice. These provisions are administered by Heritage New Zealand. They are generally imposed on a landowner once it has been assessed that a development involves some risk of encountering archaeological evidence but that an archaeological authority is not necessary up front:

In the event that an unidentified archaeological site is located during works the following applies;

- 1 Work shall cease immediately at that place.*
- 2 The contractor must shut down all machinery, secure the area and advise the Site Manager.*
- 3 The Site Manager shall notify Heritage New Zealand (Heritage NZ) Auckland Regional Archaeologist. Further assessment by a qualified archaeologist may be required.*
- 4 If the site is of Maori origin the Site Manager shall also notify the appropriate iwi group(s)/ Kaitiaki representative of the discovery and ensure site access, to enable appropriate cultural procedures and tikanga to be undertaken, in so long as all statutory requirements under legislation are met (Heritage New Zealand Pouhere Taonga Act 2014, Protected Objects Act 1975).*
- 5 If skeletal remains are uncovered the Site Manager shall advise the NZ Police and Heritage NZ Regional Archaeologist and the appropriate iwi group(s) and the above process under 4 shall apply. Remains are not to be moved/removed until such time as iwi and Heritage NZ have responded.*
- 6. Where iwi so request, any information recorded as the result of the find(s) such as a description of location and content, is to be provided for their records.*
- 7 Heritage NZ will determine if a consent under the Heritage New Zealand Pouhere Taonga Act 2014 is required for works to continue.*
- 8. No works that may affect the archaeological site are to resume until Heritage NZ has given approval.*