

BEFORE THE ENVIRONMENT COURT

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

AND of appeals under Clause 14 of the
First Schedule to the Act

BETWEEN TASMAN BUILDINGS LIMITED
(ENV-2016-AKL-000094)

HERITAGE NEW ZEALAND
POUHERE TAONGA
(ENV-2016-AKL-000113)

Appellants

AND THAMES-COROMANDEL DISTRICT
COUNCIL

Respondent

Environment Judge D A Kirkpatrick sitting alone under section 279 of the Act
In Chambers at Auckland

CONSENT ORDER

[A] Under s 279(1)(b) of the Resource Management Act 1991, the Environment
Court, by consent, orders that:

- (1) the appeals are allowed subject to the agreed amendments to the
proposed Thames-Coromandel District Plan set out in Annexure A
to this order;
- (2) the appeals are otherwise dismissed.

[B] Under s 285 of the Resource Management Act 1991, there is no order as
to costs.



REASONS

Introduction

- [1] These appeals relate to the Heritage topic of the proposed Thames-Coromandel District Plan (**Proposed Plan**).
- [2] Heritage New Zealand Pouhere Taonga (**HNZPT**) appealed a number of the provisions in Sections 4, 8, 16 and 31 of the Proposed Plan. While HNZPT's appeal points to Section 16 are being addressed in the Subdivision topic, it is considered that the bulk of its relief sought falls within the Heritage topic. Specifically, HNZPT sought amendments to the background text and certain objectives and policies of Section 8, the Accidental Discovery Protocol in Sections 8 and 31, and rule 1 in Section 31.
- [3] Tasman Buildings Limited (**Tasman**) sought amendments to rules 1 and 3 of Section 31. Tasman's other appeal interests in Heritage topic matters have been addressed through separate consent documentation.
- [4] The parties to the Heritage topic aspects of both appeals have now all reached an agreement that will resolve the relief sought by the appellants on heritage matters in Sections 4, 8 and 31 of the proposed Plan in their entirety.
- [5] In making this order, the Court has read and considered the appeal and the memorandum of the parties dated 23 May 2017.
- [6] Pieter Dirk Sieling, Federated Farmers of New Zealand, Waihi Gold Company Limited, Tasman, Coromandel Property Owners Alliance, Blackjack Farms Limited, Claire Elliot, Dean Glen, Sol Glen and Sue Edens all gave a notice of intention to become a party to the heritage aspects of these two appeals, and have signed the memorandum of the parties seeking this order.
- [7] The Court is making this order under s 279(1)(b) of the Act, such order being by consent, rather than representing a decision or determination on



the merits pursuant to s 297. The Court understands for present purposes that:

- (a) All parties to the proceedings have executed the memorandum requesting this order.
- (b) All parties are satisfied that all matters proposed for the Court's endorsement fall within the Court's jurisdiction, and conform to the relevant requirements and objectives of the Act, including in particular Part 2.

Order

[8] Therefore the Court orders, by consent, that the appeals are allowed to the extent that the Thames-Coromandel District Council is directed to amend the proposed Thames-Coromandel District Plan as shown in tracked text in Annexure "A" (additions are underlined / deletions are in ~~strike through~~).

[9] This Order resolves the appeal by HNZPT in the Heritage topic in its entirety, and the remainder of Tasman's appeal on heritage matters. This order also completely resolves the s 274 interests of Pieter Dirk Sieling, Federated Farmers of New Zealand, Waihi Gold Company Limited, Tasman, Coromandel Property Owners Alliance, Blackjack Farms Limited, Claire Elliot, Dean Glen, Sol Glen and Sue Edens in the Heritage aspects of both appeals.

[10] There is no order as to costs in relation to this order.

DATED at Auckland this 9th day of June 2017



D A Kirkpatrick
Environment Judge



"A"

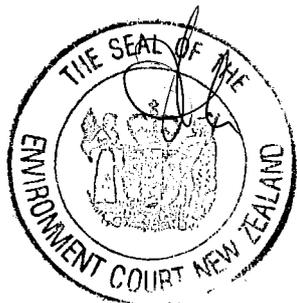
Amendments to the Proposed Thames-Coromandel District Plan (Decisions Version)

Deletions are ~~struck through~~, and additions are underlined

1) References to "HNZPT" throughout the Proposed Plan

Every reference to "HNZ" in the Proposed Plan (where the intention is to refer to Heritage New Zealand Pouhere Taonga) is deleted and replaced with "HNZPT". This occurs, for example, in the following sections of the Proposed Plan:

- 5.1 (last paragraph);
- 5.2 (item 4);
- 5.3 (item 13);
- 31.1;
- 31.4 (31.4.1 and 31.4.2);
- 31.8 (Table 2); and
- Appendix 1.



2) Agreed Amendments to Sections 8 and 31 of the Proposed Plan

Section 8 Historic Heritage

8.1 BACKGROUND

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8.1.1 Archaeological Sites

Historic heritage includes archaeological sites. The District has in excess of 11,000 archaeological sites identified in the New Zealand Archaeological Association database (Archsites). In the Plan twenty-five archaeological sites and areas are included for protection. These sites have been assessed as meeting the "Criteria for Determining Significance of Natural and Cultural Heritage Resources" in the Waikato Regional Policy Statement (RPS).

The Heritage New Zealand Pouhere Taonga Act 2014 provides 'blanket' protection to a management regime for all pre-1900 archaeological sites simply by virtue of their age, not their archaeological significance, whether listed, scheduled, recorded or unrecorded.

The District Plan provides an additional layer of recognition and protection for 'significant' archaeological sites identified on the Planning Maps.

The locations listed in the Archaeological Sites Schedule represent some of the most significant heritage resources in the District. The heritage values associated with these sites are explained on Archaeological Sites record forms, and information in the Heritage New Zealand List of wāhi tapu sites and areas, and publically available Council files associated with the sites.

In many instances the full archaeological extent of known sites has not been ascertained where unidentified features may extend sub-surface. Further assessment may be necessary to ensure sites are not disturbed or damaged through earthworks, construction or even less intrusive activities such as landscaping and fencing. Where sites have not been identified on the Planning Maps or have not yet been discovered, the Accidental Discovery Protocol applies. Where an archaeological site is either known or discovered during the site excavation, and an archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014 has not been obtained from HNZPT, the Accidental Discovery Protocol shall apply.

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8.3 OBJECTIVES AND POLICIES

Archaeological Sites; Sites of Significance to Māori

Objective 1

~~Historic and cultural values of archaeological sites and sites of significance to Māori are maintained to retain the identity and integrity of the District's history and to recognise and provide for the relationship of Māori, their culture and traditions~~

Policy 1a

~~Land disturbance activities shall be managed to avoid modification, destruction or damage to the historic and cultural heritage values of known archaeological sites, and sites of significance to Māori.~~

Policy 1b

~~Land disturbance on an unidentified or unknown archaeological site or site of significance to Māori, shall be managed in a way that avoids damage or destruction until the site or area's historic or cultural heritage value is assessed.~~

Policy 1c

~~Land disturbance activities for enhancement of cultural values on known archaeological sites and sites of significance to Māori shall ensure the historic and cultural heritage values are maintained.~~



Objective 2

~~Subdivision, use and development maintain the relationship of Māori with archaeological sites, and sites of significance to Māori.~~

Policy 2a

~~Subdivision, use and development shall provide for the protection of historic and cultural heritage values of archaeological sites and sites of significance to Māori and the relationship of iwi and hapū with those sites.~~

Policy 2b

~~Subdivision, use and development on archaeological sites and sites of significance to Māori shall be undertaken in a way that enhances where degraded, the relationship of iwi and hapū and their culture and traditions with those sites.~~

Archaeological Sites

Objective 1

Archaeological sites scheduled in the Plan shall be protected to retain the identity of the District's history and culture.

Policy 1a

Subdivision, use and development shall be managed to provide for the protection of archaeological sites scheduled in the Plan.

Policy 1b

Land disturbance activities, including planting, removal of vegetation and excavation, shall minimise adverse effects on significant archaeological sites scheduled in the Plan.

Sites of Significance to Māori

Objective 2

Sites of Significance to Māori should be protected to maintain the relationship of Māori with their cultural and heritage values.

Policy 2a

Subdivision, use and development of Sites of Significance to Māori shall maintain the relationship of iwi and hapu and their culture and traditions with those sites.

Policy 2b

Land disturbance activities shall be managed to provide for the protection of historic and cultural values of Sites of Significance to Māori and the relationship of iwi and hapu with those sites.

Historic Heritage Items and Historic Heritage Areas

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Policy 3h

Historic heritage items and areas evaluated in accordance with historic and cultural heritage assessment criteria in the Waikato Regional Policy Statement may be included in the Historic Heritage Schedule through the RMA Schedule 1 process.

NOTE

1. Refer to ICOMOS New Zealand Charter 2010 for a set of guidelines and standards for cultural heritage conservation.

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Section 31 Historic Heritage

31.1 BACKGROUND

The Historic Heritage Overlay identifies archaeological sites, sites of significance to Māori, historic heritage items and historic heritage areas that have cultural and/or heritage values that are worthy of protection in the Plan.

Archaeological sites, sites of significance to Māori, historic heritage items and historic heritage areas are listed in schedules in Appendix 1 Historic Heritage Schedules. The rules for historic heritage items are generally more restrictive than for activities within historic heritage areas.

For the purpose of the rules in this section, the term 'historic heritage item' includes both the historic heritage item and its curtilage, including landscaping and planting.

Some of the historic heritage items scheduled in the Plan are also entered on the New Zealand Heritage List listed by Heritage New Zealand Pouhere Taonga (HNZ) (HNZPT). Where a historic heritage item is listed with HNZ HNZPT, ~~an authorisation is required from HNZ to undertake consultation with HNZPT is recommended prior to applying for consent for works affecting the heritage values of that item.~~ HNZPT also seeks to be considered as an affected party in respect of any resource consent application affecting any Historic Place, Historic Area, Wahi Tupuna, Wahi Tapu or Wahi Tapu Area that is an entry on the New Zealand Heritage List.

The Historic Heritage items, sites and areas have a Historic Heritage Item Record summarising the heritage values that apply to them. Information on those items that are entries on the New Zealand Heritage List can also be sourced from HNZPT. ~~These~~ This information may be used when assessing resource consent applications under rules in this section. Information on Sites of Significance to Māori is held by HNZ HNZPT as part of the New Zealand Heritage List.

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31.4 LANDOWNER INFORMATION

31.4.1 Heritage New Zealand Pouhere Taonga

The Heritage New Zealand Pouhere Taonga Act 2014 is the primary legislation for the management of archaeological sites, particularly those that are pre-1900 archaeological sites.

Where there is an HNZ HNZPT recorded archaeological site in the vicinity of any proposed activity, landowners should contact them for further information. If an activity modifies, damages or destroys any archaeological site (whether or not it is recorded on the New Zealand Heritage List), through any activity including earthworks, fencing or landscaping, an authority to modify the site is required from HNZ HNZPT. This authority must be obtained prior to the commencement of the work.

31.4.2 Accidental site discovery protocol

The District holds an estimated 11,000 archaeological sites, most of which are not recorded. Where any archaeological artefact or human remains are accidentally discovered or are suspected to have been discovered while carrying out an activity on a site, particularly earthworks, the following procedure shall be followed. These provisions are administered by HNZ HNZPT:

- a) Cease all work immediately and shut down all equipment where the accidental discovery occurs. ~~Shut down all equipment and activity.~~
- b) The site manager shall take immediate steps to secure the possible archaeological site. The possible archaeological site shall include the location of the accidental discovery and a '20m buffer' around that location. This shall ensure ~~Ensure~~ that the archaeological artefact or human remains are undisturbed and the possible archaeological site is safe in terms of health and safety requirements.
- c) Work may continue outside of the possible archaeological site.
- e) ~~d)~~ The site manager shall notify ~~Notify~~ the HNZ HNZPT Area Archaeologist, the iwi representative for the area and the Police if human remains are discovered.
- e) ~~e)~~ The HNZ HNZPT archaeologist will confirm the nature of the accidentally discovered material.
- e) ~~f)~~ If the material is confirmed as being archaeological, under the terms of the Heritage New Zealand Pouhere Taonga Act 2014, an archaeological assessment must be carried out



by a qualified archaeologist, and if necessary, an archaeological authority must be obtained from HNZ HNZPT before work resumes.

- f) g) If burials, human remains/kōiwi tāngata are uncovered the possible archaeological site must be treated with discretion and respect and the kōiwi tāngata/human remains dealt with according to law, cultural procedures and tikanga.
- g) h) Works at the possible archaeological site must not recommence until an archaeological assessment has been made, all archaeological material has been dealt with appropriately and HNZ HNZPT and the Council advise that work can recommence.

31.4.3 Information requirements for resource consents

Where an application for land use or subdivision consent is subject to the rules in this section, the following information is required in addition to the information requirements in Section 4 of the Plan:

- a) A detailed description of: the site, the surrounding environment, and the archaeological features which are evident and/or the site of significance to tāngata whenua and/or the heritage item; and
- b) A detailed description of the proposal outlining all proposed works affecting the scheduled site, area or item; and
- c) An accurately scaled site plan showing the existing and proposed location and extent of the site, area or item in relation to property boundaries, all buildings and/or structures on the site (and neighbouring sites where relevant), trees and other vegetation, and contours; and.
- d) Where relevant, existing and proposed elevation plans showing the degree of impact the activity will have on the site, area or item.

31.4.4 Assessment of environmental effects to include:

- a) An outline of the values for which the site, area or item is scheduled; and
- b) Discussion on how the proposed changes will impact on the values of the site, area or item; and
- c) A discussion of alternatives and why the proposal is the best option; and
- d) If applicable, a copy of a specialist report carried out by a suitably qualified person; and
- e) Details of any consultation or engagement undertaken with HNZ HNZPT or tāngata whenua including any cultural impact assessment, measures to provide for the relationship of tāngata whenua to the area, or integration of tāngata whenua culture and traditions into the development.

31.5 ARCHAEOLOGICAL SITES AND SITES OF SIGNIFICANCE TO MAORI

RULE 1 Maintenance

1. Maintenance is a **permitted activity** provided:
 - a) The work is part of an existing land use and does not involve any land disturbance; or
 - b) The work involves keeping the site in good condition by doing any of the following:
 - i) Controlling noxious weeds;
 - ii) Cutting grass;
 - iii) Grazing of stock;
 - iv) Fencing repairs;
 - v) Maintaining and upgrading paved roads, modified berms and paths; or
 - c) The work is permitted in a conservation management plan approved by the Council.
2. Maintenance that is not permitted under Rule 1.1 is a **discretionary activity**.

NOTE:

1. Heavy cattle should preferably not be grazed on archaeological sites in winter months.

