

# **SECTION 42A REPORT**

Report on submissions and further submissions

## **Topic: Sites and Areas of Significance to Māori**

**Report prepared by: Alex Bell**

**Dated: 21 October 2024**

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## List of submitters and further submitters addressed in this report

<b>Submitter No</b>	<b>Submitter name</b>	<b>Abbreviation</b>
3	Heritage New Zealand Pouhere Taonga	HNZPT
46	Federated Farmers	FF
10	Waikato Regional Council	WRC
8	Manulife Forest Management New Zealand Ltd	MFMNZL
17	Waka Kotahi NZ Transport Agency	Waka Kotahi
19	PF Olsen	PFO
30	NZ Forest Managers	NZFM
38	Te Tokanganui-a-noho Whare	TTRMC
50	Te Nehenehenui Trust	TNN
35	Te Ruunanga o Ngaati Mahuta ki te Hauaauru	TRNMH
48	Sudesh Machra	S Machra
49	Taharoa Ironsands Limited	TIL
45	Marama Henare Waho	Marama
FS19	PF Olsen	PF Olsen
FS20	Sheryl Paekau	Sheryl Paekau
FS23	Te Nehenehenui Trust	TNN
FS05	Federated Farmers	FF
FS16	Heritage New Zealand Pouhere Taonga	HNZPT
FS12	Manulife Forest Management New Zealand Ltd	MFMNZL

# **1. Introduction**

## **1.1 Qualifications and Experience**

1. My name is Alex Bell. I am employed by the Waitomo District Council as the General Manager – Strategy and Environment.
2. I hold the qualifications of Bachelor of Laws, Graduate Diploma in Environmental Planning and am completing my Post Graduate Diploma in Environmental Planning from the University of Waikato.
3. I have been employed in legal and planning roles in private practice, central government and local government for approximately 10 years. I have been employed by Council as the General Manager – Strategy and Environment since June 2021. In this role I am responsible for the Proposed Waitomo District Plan proceeding through the process under Schedule 1 of the RMA and the administration of the Operative Waitomo District Plan.

## **1.2 Code of Conduct**

4. I confirm that I have read the Code of Conduct for Expert Witness in the Environment Court Practice Note 2023 and that I have complied with it when preparing this report. Other than when I state that I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
5. I am authorised to give this evidence on the Council's behalf to the Proposed District Plan hearings commissioners.

## **1.3 Conflict of Interest**

6. I confirm that I have no real or perceived conflicts of interest.

## **1.4 Preparation of this report**

7. I am the author of this report. The scope of evidence in this report relates to the evaluation of submissions and further submissions received in relation to the provisions related to Chapter 25 Sites and Areas of Significance to Māori, SCHED2 – Significant Archaeological Sites, SCHED3 – Sites and areas of significance to Māori, SCHED 4 - Sites and areas of significance to Māori – wāhi tapu sites and SCHED 5 - Sites and areas of significance to Māori – Cultural Alert Layer.
8. The data, information, facts, and assumptions I have considered in forming my opinions are set out in my evidence. Where I have set out opinions in my evidence, I have given reasons for those opinions. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

## **2. Scope of Report**

### **2.1 Matters addressed by this report**

9. The provisions of the Chapter 25 Sites and Areas of Significance to Māori, SCHED2 – Significant Archaeological Sites, SCHED3 – Sites and areas of significance to Māori, SCHED 4 - Wāhi tapu sites and SCHED 5 - Cultural Alert Layer and the associated definitions are covered by this report. The scope of my evidence relates to the evaluation of submissions and further submissions received in relation to these provisions.
10. This report is prepared in accordance with Section 42A of the Resource Management Act 1991. Sites and areas of significance to Māori are places and features that are of historical, cultural and/or spiritual significance to Māori. These scheduled sites and areas carry deep levels of meaning and association for mana whenua. In developing this plan, Waitomo District Council has engaged with mana whenua who have identified significant sites and their boundaries.

### **2.2 Overview of the topic**

11. Overall, the Chapter and associated schedules seek to recognise and provide for the relationship Māori and their culture and traditions have with their ancestral lands, water, sites, wāhi tapu, and other taonga, which is a matter of national importance under section 6(e) of the RMA. A key method for achieving this outcome is through the identification of sites that are of significance to mana whenua. These scheduled sites provide a tangible connection to ancestors, whenua (land) and significant historical events. This plan uses a tiered system to protect the cultural heritage values of identified sites. The Chapter seeks to manage effects and the requires resource consent where the scale and potential effect requires a more specific assessment.
12. The Chapter applies across all zones, unless stipulated otherwise.

### **2.3 Statutory Requirements**

13. The PDP has been prepared in accordance with the Council's functions under the RMA, specifically section 31, Part 2 and the requirements of sections 74 and 75, and its obligation to prepare, and have particular regard to, an evaluation report under section 32. The section 32 report which addresses this Chapter sets out how the relevant national policy statements, national environmental standards, provisions of the Waikato Regional Policy Statement, the Manawatū-Whanganui One Plan, the Maniapoto Environmental Management Plan, the Waikato Tainui Environment Management Plan 2018 and Te Ture Whaimana o Te Awa o Waikato - The Vision and Strategy for the Waikato River have been assessed and considered.

## **2.4 Procedural matters**

14. At the time of writing this Section 42A report there have not been any pre-hearing conferences, clause 8AA meetings or expert witness conferencing in relation to submissions on this topic.

## **3. Consideration of submissions received**

### **3.1 Overview of submissions**

15. The table of submissions is contained in Appendix 1 of this report. This appendix contains all of the submission points and further submission points that were received on the sites and areas of significance to Māori chapter, associated schedules and definitions.

### **3.2 Structure of this report**

16. The Section 42A report is structured by topic as follows:

Topic 1 – Sites and Areas of Significance to Māori - Provisions

Topic 2 – Sites and Areas of Significance to Māori – Schedules 3 to 5

17. The table of submissions is contained in Appendix 1 of this report. 124 submission points and 101 further submission points were on the sites and areas of significance to Māori chapter, associated schedules and definitions.

## **4. Analysis and recommendations**

### **Topic 1: Sites and Areas of Significance to Māori - Provisions**

18. Federated Farmers requests the addition of a new objective that provides for private property rights where a property contains sites and areas of significance to Māori (SASMs). It is proposed that the objective implements this through access agreements, iwi liaison support and providing funding or support for track access and maintenance to SASMs. The relief sought is as follows:

**SASM-OX** Ensure private landowners who host sites and areas of significance to Māori are identified stakeholders and supported through any proposals to access sites and values on their properties. This may include negotiating formal access agreements, iwi liaison support or providing contestable funding for maintenance and enhancement works including forming track access if necessary.

19. This submission accepted in part. It is considered that the relief Federated Farmers seek is provided for in SASM-P9 which sets out how the Council will work with landowners to manage scheduled sites and SASM-P10 which encourages formal and informal arrangements to promote access to sites. However, there is not an objective which directly provides for the

relationship of landowners with the SASM. The objective proposed by the submitter is rather too detailed but could be shortened to support SASM-P9 and P10. The recommended approach is as follows:

**SASM-OX Work with landowners to support the management, maintenance, preservation and access to scheduled sites.**

20. SASM-P5 seeks to provide flexibility for Māori landowners when considering the development of land returned under Te Tiriti o Waitangi settlements and multiple owned Māori land located within a scheduled site. WRC requests the following amendment to this policy:

~~Provide flexibility when considering the development of~~ Enable increased scope to sustainably develop land returned under Te Tiriti o Waitangi settlements and multiple owned Māori land located within a scheduled site by..."

21. This submission is accepted in part. It is considered that the wording provided by WRC is not materially different to that which is currently provided, as it is offering the same outcome. We accept that the submitter is not trying to undermine the policy. However, we do not think the wording adds any clarity, and on that basis, we consider that the wording as notified should be retained. No change is recommended.
22. SASM-P7 seeks to ensure that earthworks are managed to avoid adverse effects on the values of scheduled sites. Federated Farmers have requested the following amendment:

Earthworks must be managed to avoid significant adverse effects on the values of scheduled sites.

23. It is recommended that this submission is rejected. It is considered that the current wording is consistent with section 6(e) as it seeks to ensure that earthworks avoid adverse effects on scheduled sites (which is consistent with the requirements to manage the use, development, and protection of natural and physical resources by providing for the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga) and the purpose of the RMA (sustainable management of natural and physical resources by avoiding, remedying, or mitigating any adverse effects of activities on the environment). No change is recommended.
24. SASM-P9 provides that Waitomo District Council will work with landowners to manage, maintain and preserve scheduled sites through the matters listed 1-4. Federated Farmers have request that the policy is amended by adding a clause that requires Council's involvement with landowners who are seeking to engage and establish relationships with mana whenua.
25. It is recommended that this submission is accepted in part. The recommended amendment would read:

**SASM-P9** Waitomo District Council will work with landowners to manage, maintain and preserve scheduled sites by:

1. Increasing community awareness, understanding and appreciation of the presence of, and importance of, scheduled sites; and

2. Encouraging engagement between landowners, engage with mana whenua and/or marae to and develop positive working relationships in respect of the ongoing management and protection of scheduled sites; and
  3. In consultation and collaboration with mana whenua, promoting the use of mātauranga Māori, tikanga Māori and kaitiakitanga to manage, maintain and preserve scheduled sites; and
  4. Where possible, providing assistance to landowners to preserve, maintain and enhance scheduled sites.
26. HNZPT and TTRMC have both sought that this provision is retained as notified, as the submission from Federated Farmers has been accepted in part, these submissions are both accepted in part also.
27. Section 32AA: It is considered that this amendment is not a material change to the policy, as it is essentially adding additional wording to clarify its application and is not changing the effect. Therefore, it is considered that a section 32AA evaluation is not required.
28. SASM-P11 enables the investigation of opportunities for Māori and by Māori, which facilitate improved management of scheduled sites, including the transfer of powers to mana whenua to manage cultural heritage resources.
29. Federated Farmers requests that SASM-P11 is amended as follows:
- Investigate opportunities for Māori and by Māori, which facilitate improved management of scheduled sites on Māori land , reserves or public land, including the transfer of powers to mana whenua to manage cultural heritage resources.
30. It is considered that this policy is consistent with the Maniapoto Joint Management Agreement and the schedules that are currently being prepared by Te Nehenehenui, Waitomo, Waipa, Waikato, Otorohanga District Councils and Waikato Regional Council to enable a transfer of powers to Māori in certain circumstances when agreed by all parties under section 33 of the RMA. Also, it is considered that this would not unduly infringe on private property rights, which are protected and enshrined in New Zealand law through various statutes (i.e. Property Law Act 2007 etc). It is noted that the transfer of powers has been used successfully in relation to monitoring at Lake Taupo. No change is recommended.
31. SASM-P12 provides for the event where a resource consent is triggered within the cultural alert layer, ensuring that any proposed activity is appropriately assessed, and any resulting development is managed in a way that retains and protects the cultural heritage values of the site.
32. HNZPT requests the following amendment to SASM-P12:
- SASM-P12** In the event a resource consent is triggered within the cultural alert layer, ensure that any proposed activity is appropriately assessed, and any resulting development is managed in a way that retains and protects the cultural heritage values of the site, including monitoring cumulative effects to ensure the appropriate regulatory approach is being utilised.
33. It is considered that this amendment is appropriate, as this is a new approach to management of SASMs in the district, and it would be



beneficial to consider the cumulative effects on sites identified within the cultural alert area over time. The recommended amendment is above:

34. TTRMC request this provision is retained as notified. As the submission from HNZPT was accepted, this submission is accepted in part.
35. SASM-R2 relates to the maintenance (as defined in Chapter 9 – Definitions) of Sites and Areas of Significance to Māori in Schedule 3 and wāhi tapu sites in Schedule 4.
36. HNZPT requests that the nature and scale of the proposed permitted activities are reviewed to ensure that such activities cannot cause any adverse effects on these important sites.
37. It appears that the HNZPT are concerned with the matters listed in the 'other features' in the definition of maintenance in Chapter 9 - Definitions, which includes:

Other features - works that will restore or keep the feature in a sound condition including stabilisation of the asset by conservation treatments and land stabilising supervised by a suitably qualified and experienced archaeologist and in collaboration with mana whenua as required.
38. It is considered that the activities currently identified as permitted are appropriate and these have been assessed and considered appropriate by mana whenua. It is not clear what the concerns HNZPT has with respect to the matters listed under 'other features', as Council has narrowed it to conservation treatments and land stabilising supervised by a suitably qualified and experienced archaeologist (and collaboration with mana whenua as required). No change is recommended.
39. TTRMC requests that this provision is retained as notified. As it is considered that the amendment proposed by HNZPT is rejected, the submission from TTRMC is accepted.
40. SASM-R4 relates to external additions to existing buildings within sites and areas of significance to Māori in Schedule 3 and wāhi tapu sites in Schedule 4 as a Permitted Activity. HNZPT have sought that SASM-R4 is amended to a restricted discretionary activity.
41. It is considered that this amendment is not appropriate as the approach as notified is consistent with section 6(e) of the RMA. The size of any extension is restricted over the lifetime of the plan and any deviation from this requires a resource consent. There are only two sites that have both SASMs and heritage buildings and structures on them, and one of those sites is on Māori land. HNZPT may not have noted that the rule does not apply to building extensions on listed items. SASM-R4 contains an advice note referring plan users to the historic heritage chapter where the building is listed in SCHED1 - Heritage Buildings and Structures. So a small extension or deck can only be undertaken to unlisted buildings.
42. TTRMC requests that this provision be retained as notified. As it is considered that the amendment proposed by HNZPT should be rejected, the submission from TTRMC is accepted. Therefore, no change is recommended.

43. SASM-R5 permits accessory buildings including shipping containers where foundations are required within sites and areas of significance to Māori in Schedule 3 and wāhi tapu sites in Schedule 4. Similar to SASM-R4, the size of any accessory building or shipping container is restricted over the lifetime of the plan and any deviation from this requires a resource consent. HNZPT request the activity status is amended from permitted to a restricted discretionary activity.
44. It is considered that this amendment is not appropriate as the approach as notified is consistent with section 6(e) of the RMA. The rule enables small buildings but anything above a very limited threshold requires a consent. As noted this threshold applies over the lifetime of the plan. Essentially all new buildings above 20m2 will require a consent and this is considered to be acceptably stringent.
45. TTRMC requests that this provision be retained as notified. As it is considered that the amendment proposed by HNZPT should be rejected, the submission from TTRMC is accepted. No change is recommended.
46. SASM-R6 provides for demolition and/or removal of structures as a permitted activity. HNZPT have sought that the provision as notified is retained subject to the following amendment to the note that is displayed in the rule as follows:

Demolition or removal of structures that do not require earthworks

47. It is considered that this amendment can be accepted in part. SASM-R7.2 currently makes provision for earthworks during demolition or removal of a building where no more than 5 m3 of soil is disturbed, but it is agreed that this link is not clear. The recommended amendment would read:

SASM-R6

Activity status: PER

*Note: Where the building is listed in SCHED1 - Heritage Buildings and Structures, also see the historic heritage chapter.*

*Note: Where the demolition or removal of structures requires earthworks, please see SASM-R7 and R8.*

48. Section 32AA: It is considered that as this amendment is the addition of an advice note that does not have a material impact on the rule. A section 32AA evaluation is not required.
49. SASM-R7 provides for minor earthworks activities within sites and areas of significance to Māori in Schedule 3 and wāhi tapu sites in Schedule 4 as a permitted activity. TTRMC have sought that this provision is retained as notified. Te Ruunanga o Ngaati Mahuta ki te Hauaauru have requested that cultivation be removed from the list of permitted activities and instead be considered as a restricted discretionary activity. HNZPT have sought that SASM-R7 is amalgamated with SASM-R8 (earthworks for any other purpose) which has the effect of making all earthworks restricted discretionary. Federated Farmers have requested that activities are provided for as 'minor earthworks', but are excluded from the definition of 'earthworks' and made a separate permitted activity. Federated Farmers

also request SASM-7.3 and 7.4 are amended as set out below, and that SASM-R7.5 to 7.10 are retained as notified.

3. The earthworks are for maintaining or upgrading existing fences on the same or similar alignment; and
  4. The earthworks are for maintenance of existing driveways and existing farm tracks on the same or similar alignment;
50. It is considered that it is necessary to provide for cultivation as a permitted activity, as these sites are generally within farming environments and cultivation, as defined in the national planning standards set out below, is not deep disturbance that would be considered to have a less than minor effect on the site.

*Cultivation means the alteration or disturbance of land (or any matter constituting the land including soil, clay, sand and rock) for the purpose of sowing, growing or harvesting of pasture or crops.*

51. This approach is also favoured by a number of Councils.
52. HNZPT's request that SASM-R7 and SASM-R8 be amalgamated is also not considered appropriate as the activities provided for in SASM-R7 are basically maintenance activities. Sufficient protection is in place through the requirement to obtain an archaeological authority if required. Only very minor earthworks are enabled this rule. No change is recommended.
53. The request by Federated Farmers cannot be supported. The National Planning Standards define 'earthworks'. In any event the approach of this rule is to separate out activities that are considered to be minor earthworks activities that would have a less than minor effect on the cultural and heritage values of these sites. The requested amendments to SASM-R7.3 and 7.4 are considered to be too ambiguous, as the term 'similar' does not provide sufficient certainty to a plan user, and rules need to use precise and certain language in order to be enforceable.
54. SASM-R8 provides for earthworks for any purpose other than those activities listed in SASM-R7, as a restricted discretionary activity. New Zealand Forest Managers have sought that SASM-R8 be deleted. New Zealand Forest Managers consider that this provision is duplication of the existing HNZPT archaeological authority process, which it considers should remain the default protection mechanism for managing sites of significance within plantation forests.
55. It is considered that it would not be appropriate to delete this provision as not all of the SASMs identified are archaeological sites. Earthworks can have a significant adverse effect on SASMs, and there is a need to manage earthworks through a consenting process. The sites in Schedule 3 and Schedule 4 have been identified by mana whenua to give effect to section 6(e), 7(a) and 8 of the RMA.
56. Federated Farmers have requested that SASM-R8(e) is deleted. This is a matter of discretion which applies to any practical mechanisms to maintain or enhance the ability of mana whenua to access and use the site for Karakia, monitoring, customary uses and ahi kā roa. On balance, it is considered that this request is appropriate as the matter of discretion does

not directly relate to the effects of earthworks. The change does not remove any requirement to consult with mana whenua which is provided for through SASM-R8(b). If the Commissioners agree to this amendment a subsequential change is recommended to SASM-R4 and R5 which contain the same provision. The amendment would read:

<b>SASM-R8.</b>	<b><u>Earthworks</u> for any other purpose</b>
<b>SASM-R9.</b>	<b>Repositioning a <u>building</u> within a scheduled <u>site</u></b>

**Activity Status: RDIS**

**Matters over which discretion is restricted:**

- (a) Effects on the values of the scheduled site; and
- (b) Outcomes from consultation with mana whenua regarding protection of the scheduled site's values including provision for tikanga Māori, kaitiakitanga, and mātauranga Māori; and
- (c) The location of earthworks and whether there are any alternative locations that would reduce the level of effect; and
- (d) The area, depth and volume of earthworks; and
- ~~(e) Any practical mechanisms to maintain or enhance the ability of mana whenua to access and use the site for karakia, monitoring, customary uses and ahi kā-roa; and~~
- (f) Whether there is the potential to enhance the values of the scheduled site and the relationship mana whenua have with the site, commensurate with the scale and nature of the proposal.

**Activity status where compliance is not achieved: N/A**

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- 57. SASM-R11 relates to destruction or demolition of a feature or item on a scheduled site as a non-complying activity. HNZPT have requested that SASM-R11, and the non-complying activity status is retained subject to clarification relating to the items or features within the entire scheduled site and the extent to which it is all protected. This matter is clarified at the top of SASM – Table 1 which reads: The rules in this table apply to the mapped extent of land identified as Sites and Areas of Significance to Māori in SCHED3 and Sites and Areas of Significance to Māori - wāhi tapu sites in SCHED4 in all zones. As the amendment proposed by HNZPT is already provided for it is recommended that the submission point is accepted in part.
  - 58. SASM-R13 provides for plantation forestry as a non-complying activity on sites and areas of significance to Māori in Schedule 3 and Schedule 4. Manulife requests the deletion of SASM-R13 or that further clarification is provided on what aspects of plantation forestry are to be regulated by this rule. They also ask that the activity status is amended to restricted discretionary.
  - 59. PF Olsen similarly requests that SASM-R13 be deleted, or an authority from Heritage NZ is relied upon rather than a resource consent. They further request the rule applies to all primary production.
  - 60. New Zealand Forest Managers also consider it unclear what aspects of 'plantation forestry' the rule applies to. They have requested that SASM-

R13 be deleted, as they consider that the Heritage NZ process to obtain an archaeological authority to disturb the site is the process that should be followed.

61. It is agreed with submitters that the aspects of plantation forestry affected by the rule should be clarified. The proposed amendment is shown below. Otherwise, no change is recommended. This rule applies to significant sites and mana whenua have clearly indicated that forestry is an inappropriate activity on these sites. The activity status is therefore considered to be appropriate. As noted above, not all of the SASMs identified are archaeological sites so the duplication between the two regulatory instruments should be limited. The recommended change reads:

<b>SASM-R13.</b>	<b>Plantation Forestry <u>afforestation and harvesting</u></b>
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62. Section 32AA: This amendment clarifies the aspects of plantation forestry subject to the rule. It is a minor change to better identify the parameters of the rule. A section 32AA evaluation is not required.
63. SASM-R14, R15 and R16 relate to official signs, interpretive signs and temporary signs on sites and areas of significance to Māori in Schedule 3 and wāhi tapu sites in Schedule 4 as a permitted activity.
64. HNZPT requests that SASM-R14 and SASM-R15 is amended so that the permitted activity status and performance standards provide for the retention of cultural values. If this request is not accepted, HNZPT seek that any interpretative signage should be assessed as a restricted discretionary activity.
65. It is considered that the relief sought in these submissions is quite unreasonable given that the rule as notified provides for official signs and interpretive signs. Official signs are often required or provided for public safety, and interpretive signs contain information and/or images that explain the values associated with scheduled sites and features. It is difficult to understand how the rules as notified would be seen as not striking the appropriate balance by providing for necessary matters while balancing the potential adverse effects on Schedule 3 and Schedule 4 sites.
66. HNZPT requests that the activity status for SASM-R16 for temporary signs is amended to a restricted discretionary activity, or changed so that a permitted activity sign can only be temporary if there is no ground disturbance.
67. It is considered that given the limited circumstances that are provided in SASM-R16 for temporary signs (being commercial filming, construction sites, property sales and electioneering) all with specific short duration timeframes, it would not be appropriate to change the activity status to restricted discretionary. Also, it is considered unreasonable to require no ground disturbance for a permitted activity, as there will always be minimal ground disturbance when a temporary sign is erected. As with all the provisions in this chapter, this rule was drafted with mana whenua and this was the agreed position.

68. TTRMC requests that SASM-R14, R15 and R16 are retained as notified. As the submissions from HNZPT are recommended as rejected, the submissions by TTRMC as accepted.
69. SASM-R20 to SASM-R23 relate to the performance standards for various signs. HNZPT have requested that SASM-R20-R23 be 'reworked' to directly address matters to ensure that there are no adverse effects on these important sites. It is not clear what specific relief the submitter is seeking in relation to these provisions, and we would welcome some further clarification at the hearing. Notwithstanding this, it is considered that the rules as notified provide sufficient controls to ensure that signs do not cause an adverse effect on these sites that is more than minor. Also, if a consent is triggered, the matters of discretion have specifically been drafted to ensure the management of adverse effects on these sites. It would be useful if the submitter could provide some clarity at the hearing on what specific amendments they consider need to be made to these rules, and their reasoning why the current wording is not appropriate. In the interim no change is recommended.

## **Topic 2: Schedules 3 to 5**

70. SSM099-A known as Kakamoria is identified in Schedule 3 is a Takotoranga (burial site). The extent of this site from the notified planning maps is outlined below.



**Figure 1: Map showing the extent of SSM099-A**

71. The extent of the site has been opposed by Ms Sudesh Machra, who owns the property (outlined in black below) that has a large proportion of this site on it.



**Figure 2: Map showing the extent of SSM099-A and property owned by S Machra**

72. After notification of the plan, HNZPT initiated their own process to have Kākāmorīa entered onto the Heritage New Zealand inventory as a wāhi tapu. Council submitted on the proposed listing stating the following "we formally request that the Māori Heritage Council hold over the list entry application until the PDP is operative, to enable the two processes to be aligned". However, the site was ultimately listed as a wāhi tapu site on 24 July 2023 (List no. 9859), and the extent that was granted through this process is outlined below.



**Figure 3: HNZPT Listing 9859**

73. Ms Machra in her submission has proposed that the boundaries of the site should be the area outlined in green on the map below.





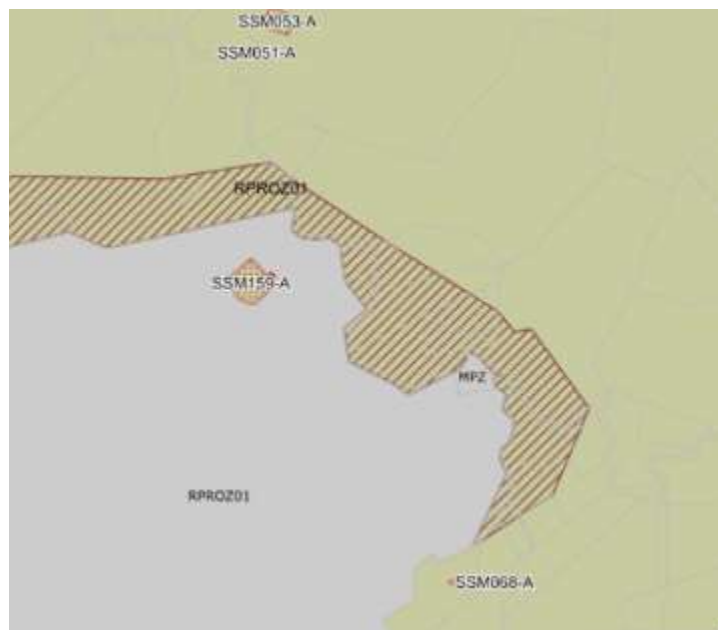
**Figure 4: Boundaries sought by S Machra in her submission**

74. In principle, there is no objection to amending the site boundaries to reflect the extent of the HNZPT listing (9859) providing that is acceptable to mana whenua. However, Ms Machra in her submission is seeking a different extent to that which is provided for in either the plan as notified or the HNZPT listing. It is unclear whether an archaeologist has been involved in the delineation of the new boundaries or the extent to which mana whenua were involved in any amendments. Regardless, to ensure consistency between the two processes, the views of all parties need to be clearly understood. It is noted that Te Nehenehenui have opposed the extent of the boundaries proposed by Ms Machra in their further submission. As such it would be helpful for all parties to provide their views to the hearing to assist the Commissioners with their decision on this matter. In the interim, the boundary proposed by mana whenua is recommended to stand until the other extents are better understood.
75. Taharoa Ironsands Limited have requested the following amendments to sites listed in Schedule 3:
- (i) Deletion of SASM ref SSM074-A from the PWDP.
  - (ii) Rezoning of SSM159A from General Rural Zone to Rural Production Zone.
  - (iii) SSM113A – neutral position.
76. These 3 sites are identified on the map below.



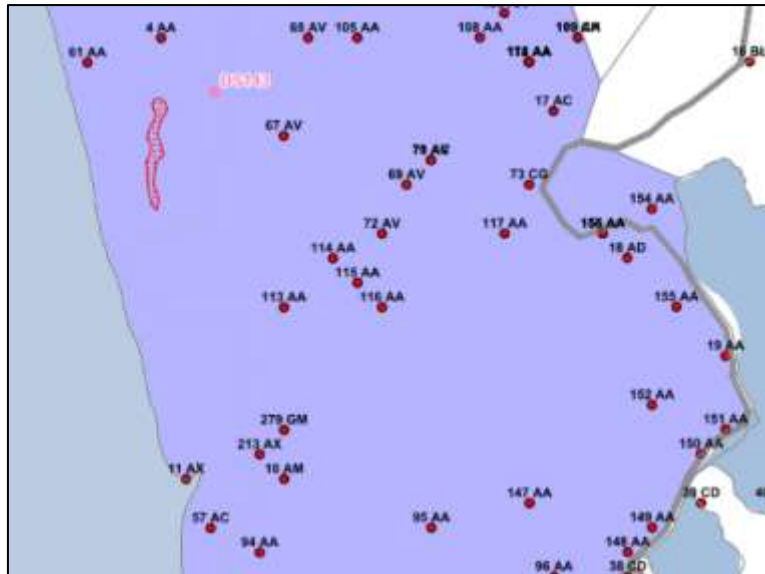


**Figure 5: Map showing SSM074-A and SSM113-A**



**Figure 6: Map showing SSM159-A**

77. SSM074-A is identified in the operative district plan as a cultural site (outlined on the map below). However, there is no further description as to what the significance of this site is.



**Figure 7: Operative District Planning Map showing cultural site**

78. Therefore, as the site is listed in the operative district plan, and during consultation with mana whenua (Ngati Mahuta) it was not proposed to be removed from the plan it is considered that this site should remain. The submitter has not provided any evidence from mana whenua to support the deletion in their submission, and if they wish to seek its deletion, they will need to provide evidence at the hearing supported by Ngati Mahuta who are the relevant mana whenua. No change is recommended.
79. Rezoning of SSM159A from general rural zone to rural production zone. Currently, the notified underlying zoning of SSM159A is general rural. It is considered that this amendment can be accepted, as changing the underlying zoning will not impact on the requirements to give effect to the provisions in Chapter 25, as wherever there is a conflict or inconsistency between rules, the most restrictive rule status applies to the activity in the first instance.
80. Section 32AA: The change to the underlying zoning of SSM159A from general rural zone to rural production zone is not considered to have an affect on the policy framework or the application of the rules, as regardless of the underlying zoning, the site will still be subject to the more stringent SASM provisions. A section 32AA evaluation is not required.
81. As Taharoa have neither supported nor opposed the listing of SSM113-A this submission is accepted and considered that it should be retained.
82. Marama Henare-Waho has sought to correct the name of SSM018-A (map below) entered into Schedule 3 from Te Paerata Papakāinga to Kautu.



**Figure 8: Map of SSM018-A**

83. This submission is accepted, as Ms Henare-Waho is a mana whenua representative, and it is considered that this amendment to the schedule should be made on her recommendation.
84. Section 32AA: It is considered that given the scale and significance of the change recommended as a result of the above submission, a section 32AA evaluation is not required.
85. Marama Henare-Waho has requested the addition of the following sites to Schedule 3:
- Te Naunau Urupaa
  - Te Nehenehenui
  - Te Mania Urupa and Papakaainga, Waikawau
  - Te Rainga Urupaa
  - Waiopapa Stream
  - Tainui trees stand north of Mookau
  - Te Puia Paa
  - Mookau Public Cemetery
86. This submission is accepted in part, as we are supportive of engaging with mana whenua on the addition of SASMs in future. However, these would need to proceed through a future plan change process, as the submission does not provide sufficient detail to meet the requirements, as set out in *Clearwater Resort Ltd v Christchurch City Council*<sup>1</sup> as follows:
- (i) A submission can only fairly be regarded as “on” a plan change if it is addressed to the extent to which the plan change changes the preexisting status quo.
  - (ii) But if the effect of regarding a submission as “on” a plan change would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, this is a powerful consideration against any argument that the submission is truly “on” the plan change

<sup>1</sup> *Clearwater Resort Ltd v Christchurch City Council* HC Christchurch AP34/02, 14 March 2003.

87. The Court in *Palmerston North City Council v Motor Machinists Limited*<sup>2</sup> affirmed the Clearwater test as follows:

*First, the submission could only fairly be regarded as "on" a variation "if it is addressed to the extent to which the variation changes the pre-existing status quo". That seemed to the Judge to be consistent with the scheme of the Act, "which obviously contemplates a progressive and orderly resolution of issues associated with the development of proposed plans".*

*Secondly, "if the effect of regarding a submission as 'on' a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected", that will be a "powerful consideration" against finding that the submission was truly "on" the variation. It was important that "all those likely to be affected by or interested in the alternative methods suggested in the submission have an opportunity to participate". If the effect of the submission "came out of left field" there might be little or no real scope for public participation. In another part of paragraph [69] of his judgment William Young J described that as "a submission proposing something completely novel". Such a consequence was a strong factor against finding the submission to be on the variation.*

88. The decision in *Motor Machinists* at [80] - [82] also further clarified the application of the Clearwater test:

*For a submission to be on a plan change, therefore, it must address the proposed plan change itself. That is, to the alteration of the status quo brought about by that change. The first limb in Clearwater serves as a filter, based on direct connection between the submission and the degree of notified change proposed to the extant plan. It is the dominant consideration. It involves itself two aspects: the breadth of alteration to the status quo entailed in the proposed plan change, and whether the submission then addresses that alteration.*

*In other words, the submission must reasonably be said to fall within the ambit of the plan change. One way of analysing that is to ask whether the submission raises matters that should have been addressed in the s 32 evaluation and report. If so, the submission is unlikely to fall within the ambit of the plan change. Another is to ask whether the management regime in a district plan for a particular resource (such as a particular lot) is altered by the plan change. If it is not then a submission seeking a new management regime for that resource is unlikely to be "on" the plan change. ... But that is subject then to the second limb of the Clearwater test: whether there is a real risk that persons directly or potentially directly affected by the additional changes proposed in the submission have been denied an effective response to those additional changes in the plan change process.... While further submissions by such persons are permitted, no equivalent of clause 5(1A) requires their notification. To override the reasonable interests of people and communities by a submissional side-wind would not be robust, sustainable management of natural resources...*

89. Therefore, it is necessary that first, the submission must reasonably fall within the ambit of the notified plan by addressing a change to the 'status quo' advanced in the plan. Secondly, the decision-maker should consider whether there is a real risk that persons potentially affected by the changes sought in a submission have been denied an effective opportunity to participate in the decision-making process.
90. It could be argued that the submission partially meets the first limb of the test as it is addressing the ambit of the plan by proposing to add additional sites to Schedule 3, and had the sites been known then they could have been included. However, it is considered that as the submission does not

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<sup>2</sup> *Palmerston North City Council v Motor Machinists Limited* [2013] NZHC 1290.

provide the necessary matters for sites listed in Schedule 3 (i.e. location, legal description, category and values summary), so there is a real risk that persons potentially affected by the changes sought in a submission have been denied an effective opportunity to participate in the decision making process by lodging a further submission opposing or accepting the sites being added to their properties. Therefore, the additional sites cannot be added.

91. Marama Henare-Waho has requested that Schedule 3 is amended to require anyone wishing to undertake development and activities engage with mana whenua of the sites. This submission is accepted in part, as the relief sought in this submission is already provided for in the matters of discretion in Chapter 25 (i.e. SASM-R4(d)), which provides for outcomes from consultation with mana whenua regarding protection of the scheduled site's values including provision for tikanga Māori, kaitiakitanga and mātauranga Māori.

92. TTRMC requests an amendment to Schedule 3 to include an additional advice note that as additional information about these scheduled sites is held by mana whenua and can be made available through consultation. Due to nature of some sites mana whenua may evoke an option to keep information tapū (restricted from general use/view). This submission is accepted in part, and an additional advice note will be added as follows:

Note: For some sites and areas of significance to Māori, the scheduled area does not match the legal parcel boundaries. Please see the planning maps to determine the area of a site that the listing applies to. [Additional information about these sites is held by mana whenua and can be made available through consultation. Due to nature of some of the sites, mana whenua may request that information on these sites is restricted from general use/view.](#)

93. Section 32AA: The advice note signposts plan users that additional information on these sites, which may be able to be obtained from mana whenua. As this amendment does not have an effect on the policy framework or rules, a section 32AA evaluation is not required.

94. HNZPT have requested the current recognition in SCHED 4 of the HNZPT wāhi tapu sites is amended to fully recognise the extent, as listed with HNZPT, to enable these sites to be correctly mapped and subject to the protective rule framework:

- Pehitawa-HNZPT Listing # 7332,
- Uekaha-HNZPT Listing #6713,
- Pa-HNZPT Listing # 6113,
- Ruakuri-HNZPT Listing # 6721
- Te Anaureure-HNZPT Listing 6722
- Ngakuraho-HNZPT listing # 9788
- Te Pua o Te Ata-HNZPT Listing # 7606
- Pukeroa-HNZPT Listing # 9822, and
- Kākāmorua, Hangatiki # 9859

95. It is considered that Council has undertaken an extensive engagement process with mana whenua on all of the sites listed in Schedule 4 and have mapped them based on the guidance provided by mana whenua, and as such the boundaries are considered correct. If HNZPT wished for a survey to be completed, they should have completed this prior to notification of

plan, as we had given considerable notice to all stakeholders and residents of the district that we would be notifying in late 2022. The significant level of engagement is set out in the iwi consultation and advice section of the introduction section 32 report:

<https://www.waitomo.govt.nz/media/r5fnkoro/s32-introduction-for-notification.pdf>

96. It is clear that this matter needs to be resolved. Council repeatedly contacted HNZPT during the drafting of the plan requesting that a number of these sites were confirmed where there was an incorrect legal description, where the extent was unclear or did not represent the information provided by mana whenua. Eventually it was explained to HNZPT that the plan would be notified without their amendments if input was not received. It was not received. Accordingly, the plan was notified. It is requested that before the hearing, each of the sites listed above are checked for completeness and correctness by HNZPT. We ask that any differences or disputes in extent between the notified plan and the HNZPT listing are shown on a map so the Commissioners have a clear idea of the issues.
97. WRC have sought that a cross reference is provided for to the New Zealand Heritage List /Rārangi Kōre Ro (formerly the register). Link: Search the List Heritage New Zealand. Unfortunately, WRC's submission point becomes collateral damage as a result of the differences of site extent between the notified plan and the HNZPT list. It is recommended that any reference to the list is not included in the schedule until the discrepancies between the extents can be resolved.
98. TTRMC and Te Nehenehenui have requested that the current extent of SSM005-B Pehitawa as identified in SCHED4 is retained as notified. This site is listed by HNZPT. Mana whenua (including the whare that originally proposed the listing) have disputed the extent of the listing with HNZPT. It is recommended that mana whenua's prerogative to identify the extent of their own wāhi tapu sites prevails.
99. Te Nehenehenui request that SCHED4 is amended to also include recognition that Maniapoto promote the enhancement and protection of cultural values including wāhi tapu. Mana whenua are the knowledge keepers and holders of these sites. The relief sought is recommended to be accepted, as it is a useful addition to the schedule. It is considered that the advice note can be added to as follows:

Note: For some sites and areas of significance to Māori - wāhi tapu sites, the scheduled area does not match the legal parcel boundaries. Please see the planning maps to determine the area of a site that the listing applies to.

[Note: Maniapoto promote the enhancement and protection of cultural values including wāhi tapu. Mana whenua are the knowledge keepers and holders of these sites.](#)

100. Section 32AA: The advice note signposts plan users that additional information on these sites, which may be able to be obtained from mana whenua. As this amendment does not influence the policy framework or rules. A section 32AA evaluation is not required.

101. Marama Henare-Waho requests that Schedule 4 is amended to require anyone wishing to undertake development and activities engage with mana whenua of the sites. This is accepted in part, as this submission is already provided for in the matters of discretion in Chapter 25 (i.e. SASM-R4(d)), which provides for outcomes from consultation with mana whenua regarding protection of the scheduled site's values including provision for tikanga Māori, kaitiakitanga and mātauranga Māori.
102. TTRMC requests that an amendment to Schedule 5 to add in and include the following to Schedule 5: In partnership with Whare. This relief sought is recommended to be accepted. However, it is considered that a more appropriate place to acknowledge that Schedule 5 was developed in partnership with the relevant whare is in the note at the start of the Schedule as follows:
- Note: [Schedule 5 – Sites and areas of significance to Māori – cultural alert layer was developed in partnership with the relevant Whare in the Maniapoto Rohe](#).
- For some sites and areas of significance to Māori – cultural alert layer, the scheduled area does not match the legal parcel boundaries. Please see the planning maps to determine the area of a site that the listing applies to.
103. Section 32AA: The advice note signposts plan users that additional information on these sites, which may be able to be obtained from Mana Whenua. As this amendment does not have an effect on the policy framework or rules, a section 32AA evaluation is not required.
104. Te Nehenehenui requests that Schedule 5 is retained and have requested that a 50m buffer is added around sites identified in Schedule 5. This submission is rejected, as it is considered that when the sites were identified the extent of the boundaries was sufficient to ensure that an additional buffer area was not required, as it took into consideration the area that was to be protected to ensure that the site was not undermined or damaged by activities on its periphery.
105. Marama Henare-Waho requests that Schedule 5 is amended to require that anyone wishing to undertake development and activities engage with mana whenua of the sites. This submission is accepted in part, as the relief sought is already provided for in the matters of discretion, see SASM-R24(b).

## 5. Conclusion

106. Submissions have been received in support of, and in opposition to the notified provisions of the Proposed Waitomo District Plan. Having considered all the submissions and reviewed all relevant statutory and non-statutory documents, it is recommended that the proposed district plan should be amended as set out in Appendix 2 of this report.
107. For the reasons set out in the section 32AA evaluations included throughout this report, it is considered that the proposed objectives and provisions, with the recommended amendments, will be the most appropriate means to:

- Achieve the purpose of the Resource Management Act 1991 where it is necessary to revert to Part 2 and otherwise give effect to higher order planning documents, in respect to the proposed objectives; and
- Achieve the relevant objectives of the proposed district plan, in respect to the proposed provisions



## **APPENDIX 1 SUBMISSIONS IN ORDER OF PLAN PROVISIONS**

## **APPENDIX 2 CHAPTER AMENDMENTS**