

SECTION 42A ADDENDUM REPORT

Rebuttal evidence in response to expert evidence filed

Topics:

Historic Heritage

Sites and Areas of Significance to Māori

Miscellaneous

Residential Zone

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Dated: 18 November 2024

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1. Introduction

1. My name is Alex Bell. I am the writer of the original section 42A reports for Hearing Tranche 2 for the following matters:
 - a. Historic Heritage
 - b. Sites and Areas of Significance to Māori
 - c. Miscellaneous
 - d. Designations
2. My qualifications and experience are set out in the section 42A reports in section 1, along with my agreement to comply with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023 as set out in section 1.1.
3. The recommended text changes as a result of this rebuttal evidence are set out in Appendix 1 to this report. Changes that are a result of the original section 42A report are shown in **purple**, with changes arising from this rebuttal evidence shown in **red**.

2. Purpose of the Report

4. The purpose of this report is to consider primary expert evidence filed by submitters. The evidence that was filed by the following submitters I will respond to below:

Submission number	Submitter	Chapters
17.161, 17.163, 17.164, 17.165, 17.166, 17.167, 17.168, 17.169	NZ Transport Agency / Waka Kotahi	55. Designations
03.71, 03.63, 03.64, 03.79, 03.86, 03.164, 03.169, FS16.42	Heritage New Zealand Pouhere Taonga	24. Historic Heritage 25. Sites and Areas of Significance to Māori
43.09, FS08.02, 43.02, 43.03, 43.04, 43.05, 43.06, 43.08	Graymont (NZ) Limited	Miscellaneous
24.38, 23.39	Ministry of Education	Residential Zone

5. It should be noted that I have not provided rebuttal commentary on all evidence, particularly where either the submitter agrees with my recommendation in the section 42A report, or where we simply have a difference in view and there is little more to add.

6. I have therefore focused primarily on evidence that has caused me to change my recommendation, or where there is value in further discussion on the matters raised in evidence.

3. Designations – New Zealand Transport Agency

Analysis and recommendations

7. The New Zealand Transport Agency accepted all recommendations in the section 42A Report related to their designations. Therefore, it is considered that no further discussion or amendment on their various designations is required.

4. Chapter 24. Historic Heritage and 25. Sites and Areas of Significance to Māori

Matters raised in evidence

8. The main topics raised in evidence from Heritage New Zealand Pouhere Taonga that are in disagreement with the recommendations of the original s42A report for the chapter include:
 - (a) Buildings and Structures
 - (b) Differences between the New Zealand Heritage List/Rārangi Kōrero list and Scheduled buildings in SCHED1 and Sites and Areas of Significance to Māori in SCHED4
9. Mr Ben Pick has provided a submitter statement for Heritage New Zealand Pouhere Taonga (HNZPT), which sets out the relief that HNZPT are still seeking.

4.1 Buildings and Structures

Analysis and recommendations

10. In the original submission point (03.71), HNZPT sought an amendment to HH-P12.5 and HH-P12.6, to require the relocation of a listed building or structure to be within the same community and directs that development post relocation is completed within a reasonable timeframe. From his statement, it appears that Mr Pick is no longer pursuing the relief that directs that development post relocation to be completed within a reasonable timeframe. The relief that Mr Pick is still seeking in his statement is as follows:

HH-P12. Buildings or structures should not be relocated unless:

1. Alternatives to relocation have been investigated, and
2. There is significant community benefit, and the building is restored; and/or

3. The building or structure has fallen into significant disrepair and will be restored on its new site because restoration is not economic on its existing site; and/or
 4. Relocation of the building or structure allows for improved longevity or structural safety; and
 5. Relocation of buildings and structures within the same community, ~~and occurs where possible.~~
11. The original submission requesting an amendment to HH-P12.5 was rejected on the basis that relocation is effectively the last resort for a heritage building or structure and generally all other options for restoration have been exhausted. In the section 42A Report it was considered that it would not be appropriate to restrict relocation to within the same community particularly given the other likely option is demolition. As it is beneficial that the heritage item is restored whether that be within the same community or not, removing barriers (within reason) increases the likelihood of a heritage item being restored and its values retained.
 12. It is considered that as Mr Pick has not provided any additional justification or evidence as to why the recommendation in the section 42A report should be changed, and has simply just repeated the submission point, no change is recommended, as there is no reason or justification for a change to the original recommendation.
 13. In their original submission points (03.63 and 03.64) HNZPT requested that HH-P4 and HH-P5 be amended to remove the word 'unduly'. As notified the policies read:

HH-P4. Recognise benefits from earthquake strengthening, fire protection and accessibility upgrades whilst ensuring the appearance including views of and through windows, and external heritage features and values of the buildings and structures are not unduly compromised. Designs which consider complementary materials and detailing and do not screen architectural features are preferred.

HH-P5. Provide for additions and external alterations to buildings and structures where they are:

1. Consistent with the scale, detailing, style, materials and character of the heritage item; and
2. Retain cultural and heritage values; and
3. Do not unduly compromise the site or surroundings of the building or structure including the contribution the building or structure makes to the streetscape.

Whilst recognising the benefits gained from the addition or alteration to the improved functionality and/or liveability of the building or structure.

14. Mr Pick in his statement has continued to pursue this relief. In his statement Mr Pick outlines that he considers the use of 'unduly' serves to

dilute the meaning of the Policy and undermines decision making through unnecessary language. He also considers that the activity status provides for consideration regardless. As such, the s42A Planner's Report recommendation is not supported in that it could be improved.

15. It is considered that there is no compelling reason to change the recommendation in the section 42A Report in relation to HH-P4 and HH-P5 as it is considered that the removal of the word "unduly" would make the policies too absolute. There will be circumstances where a compromise will need to be made to provide for peoples' health and safety. In some circumstances, changes to make buildings safer are unavoidable. The main goal of the policy is to allow heritage features to be modified in a minor way, so they remain viable structures and are able to be used and enjoyed by current and future generations. No change is recommended.
16. For the same reasons as above, the change to HH-P5 was not recommended, as it is not the intention of the provisions to restrict external alterations that are sympathetic or protective of a feature's heritage values. No change is recommended.
17. In the original submission point (03.79), HNZPT sought an amendment to HH-R3 to change the activity status from controlled to restricted discretionary. HH-R3 provides for external alterations for earthquake strengthening, fire protection and accessibility upgrades or internal alterations for earthquake strengthening, fire protection and accessibility upgrades that obstruct views of and through windows. It applies to both category 1 and 2 items as a controlled activity.
18. Mr Pick in his statement has advised that strengthening provisions can have a significant impact on the visual appearance of heritage building and structures. Also, he considers that the Controlled Activity status is not appropriate as consent must be granted and considers that a Restricted Discretionary Activity status would be more appropriate given the requirements of section 6(f) of the RMA whereby historic heritage is a matter of national importance.
19. The matters of control in HH-R3 as notified are as follows:

Matters over which control is reserved:
 - (a) For earthquake strengthening, fire protection and accessibility upgrades, whether there are alternative methods of providing the required level of protection or upgrade; and
 - (b) For restoration projects, whether a conservation plan of the works has been prepared by a conservation architect or heritage architect in general accordance with the ICOMOS charter (Appendix 3); and
 - (c) Benefits obtained from undertaking the work; and
 - (d) The outcome of any assessments or advice from a conservation architect or heritage architect; and
 - (e) The outcomes of consultation with HNZPT
20. It is considered that the provision as notified is consistent with section 6(f) of the RMA given the matters of control seek to ensure that any adverse

effects on heritage values are avoided, remedied or mitigated. Also, given that the works provided for in HH-R3 are required for safety and accessibility a Controlled Activity status is the most appropriate. No change is recommended.

21. In the original submission point (03.86), HNZPT sought an amendment to amend the activity status from Permitted to Restricted Discretionary with an additional matter of discretion regarding the relationship of the historic heritage item with its extent of setting. Mr Pick in his statement is still pursuing the relief that the activity status be amended from a Permitted Activity to a Restricted Discretionary Activity, as the cultural and historic curtilage can be very important in the round and surroundings may also be an archaeological site. He considers that a Restricted Discretionary Activity status is appropriate given section 6(f) of the RMA whereby historic heritage is a matter of national importance.
22. It is considered that given the stringency of the performance standards this provision as notified gives effect to section 6(f) of the RMA. Also, the current controls are considered sufficient to ensure that any adverse effects on heritage values are avoided, remedied or mitigated. The amendment is rejected. No change is recommended.

5. Differences between the New Zealand Heritage List/Rārangi Kōrero list and Scheduled buildings in SCHED1 and Sites and Areas of Significance to Māori in SCHED4

5.1 Schedule 1 – Heritage Buildings and Structures

Analysis and recommendations

23. In the original submission point (03.164), HNZPT opposed the extent of scheduled item HH19 – Waitomo Caves Hotel and requested that the scheduled item is enlarged to better reflect the HNZPT Listing # 4176 of the place known as “Waitomo Hotel”. In his statement, Mr Pick has requested that given its position and siting, HNZPT continue to seek an amended extent that better reflects the place’s town mark / landscape values, setting, and outlook.
24. The original submission was rejected, as the listing by HNZPT included Hauturu East 21. This allotment contains outbuildings associated with the Waitomo Caves Hotel (see area in red in the image below). It was noted that the outbuildings do not have heritage values, as they do not form part of the Waitomo Caves Hotel, and it was for this reason Hauturu East 21 was not included within HH19 in SCHED 1.



25. It is considered that there is good reason not to include these outbuildings in the Scheduled Item HH-19, as pursuant to section 74(2)(b)(iia) of the RMA, when preparing or changing a district plan, a territorial authority shall have regard to relevant entries on the New Zealand Heritage List/Rārangī Kōrero required by the Heritage New Zealand Pouhere Taonga Act 2014. It is considered that Council is only required to have regard to the extent of the listing, and it is not compelled by the RMA to be consistent with the extent of the listing in the New Zealand Heritage List/Rārangī Kōrero.
26. Also, as stated in the section 42A report, the judgement in *Redmond Retail Ltd v Ashburton District Council*¹ (Redmond Retail) provides useful clarity on the application of heritage values to sites. The Court in Redmond Retail held it is reasonable to expect the heritage listing to apply to the building / area or part thereof that has the heritage values. In this case, the Council had applied the listing to the whole building when the heritage values were only present in the original part of the building. Therefore, it is considered the approach taken by Council with regards to the Waitomo Caves Hotel is consistent with this approach.
27. Also, it is noted that the town mark and landscape value that is noted in the listing states the following:

The hotel is positioned upon the crest of a hill and is the central and pivotal building in the Waitomo Village complex. It commands good views and is also visible from quite long distances.

¹ [2020] NZEnvC 078

28. It is considered that given the above description of the town mark and landscape value associated with the Waitomo Caves Hotel, the outbuildings on Hauturu East 21 would not contribute to the town mark and landscape value.

5.2 Schedule 4 – Sites and Areas of Significance to Māori – Wahi Tapu

Analysis and recommendations

29. In the original submission point (03.169), HNZPT sought that the extent of the Wahi Tapu sites listed in Schedule 4 be amended to be consistent with the extent of the HNZPT sites listed below.
- 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
 - Proposed Listing; Kākāmorā, Hangatiki (proposed List no. - 9859)
30. Mr Pick in his statement has continued to seek that all HNZPT listed items are included in the heritage schedules of plans to afford them protection. HNZPT supports in part the way in which the HNZPT Wahi Tapu have been included in SCHED4 of the PDP. HNZPT are concerned that not all of the HNZPT Wahi Tapu sites are included in SCHED4 and therefore will not be mapped and subject to the associated rule framework.
31. HNZPT consider that all of these sites / places that have been listed by HNZPT are worthy of protection having been nominated by mana whenua and approved by the Māori Heritage Council. It is noted that all of the sites listed above have been included in SCHED4 (with the exception of Kākāmorā, but this was listed after the PDP was notified), so it is not clear what additional sites Mr Pick considers need to be included, or if this statement only relates to Kākāmorā.
32. Before assessing each site and why the extent is not the same in the PDP as it is in the New Zealand Heritage List/Rārangi Kōrero, it is considered useful to set out the reasons why we have not adopted the same extents.
1. The Wahi Tapu sites mapped in SCHED4 have been mapped in consultation with mana whenua, and have involved a considerable

amount of engagement and analysis, which is set out in the Introduction to evaluation reports – section 32 Report. The engagement was often undertaken with the original listers of the sites, or their descendants and the sites were mapped and the extents agreed with the mana whenua. Therefore, the extents in the notified PDP are considered to be correct.

2. 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.
3. The legal descriptions and location descriptions that are provided in the Heritage List are in many cases not current (i.e. the legal description no longer exists and there are no specifics as to the location of the site in a particular area), which means without further information from HNZPT we cannot know what they consider to be the site's extent. Also, the sites boundaries do not follow legal descriptions and parcel boundaries, so there is a true lack of detail in the Heritage List information.
4. We requested that before the hearing, HNZPT provide a mapped extent of each of the sites listed above and 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. The statement provided by Mr Pick has not provided the information that was requested in the section 42A Report. Also, it is unhelpful that HNZPT are not attending the hearing to provide guidance and clarity to the Commissioners on what they consider needs to be amended in SCHED4, or why they consider the extents in the PDP as notified are not correct.

Pehitawa 7332 – SSM005-B

33. Pehitawa was identified in the Operative Waitomo District Plan (ODP). The original listing was lodged by Josephine and Wally Anderson and approved for addition to the register on 27 March 1996.
34. Council met with HNZPT, Josephine Anderson and additional mana whenua representatives to discuss the extent of the site on 27 July 2022. Ms Anderson advised that she had undertaken a number of site visits with mana whenua representatives, and that the extent provided in the listing was not correct and needed to be amended.
35. No advice or guidance has been provided by HNZPT, as to why they consider the extent in the PDP incorrect. It is considered that as the person who listed the site has now clarified the extent of the boundaries and has done so in consultation with mana whenua representative, no change is recommended.

Uekaha 6713 – SSM002-B

36. Uekaha was listed in the ODP. While there is minimal information in the heritage listing for Uekaha, it relates to Pohatuiri Marae. The extent that is provided in SSM002-B is considered to be the correct extent as it has been agreed with the relevant mana whenua, and the HNZPT extent appears to simply follow the parcel boundaries as opposed to being aligned with the extent of the site. No change is recommended.

Pa 6113 – SSM001-B

37. The Pa site was listed in the ODP. There is minimal information in the heritage listing on this site. The legal description of "*Tawarau State Forest 167*" is not current, and there are no other details provided in the listing regarding the location or extent of the site.
38. We have no information about what area of land the legal description listed by HNZPT is pertaining too. However, it is considered that it will likely be the parcel boundaries.
39. HNZPT have not provided any guidance or advice on extent of the site. As there is no advice to dispute the extent we have outlined in the notified PDP, it is considered the extent as agreed with mana whenua is correct. It is noted that there is an error in the legal description in SCHED4, which should be amended as follows:

Unique ID	Map Ref	Site Name	Location	Legal description	HNZ List Entry Legal Description	HNZ Category	HNZ Description of Values
SSM001-B		Pa	Tawarau State Forest 167	Part Section 6 Block XI Kawhia South SD (NZ Gazette 1947 p1373) <u>Lot 1 DPS 57166</u>		Wāhi Tapu	HNZ6113

Ruakuri 6721 – SSM003-B

40. Ruakuri was listed in the ODP. It appears from the legal description in the HNZPT list that SSM003-B is consistent with the extent outlined in the listing and in fact incorporates an additional area Part Section 7 Block X Orahiri SD (NZ Gazette 1905 p2948).

41. We have not received any advice or guidance from HNZPT on how the extent of this site is not consistent with their listing. No change is recommended.

Te Anaureure 6772 – SSM004-B

42. Te Anaureure was listed in the ODP. It appears from the legal description in the HNZPT list that SSM004-B is consistent with the extent outlined in the listing. We have not received any advice from HNZPT on how the extent of this site is not consistent with their listing. No change is recommended.

Ngakuraho 9788 – SSM007-B

43. The legal descriptions are not current and do not produce a result when searched for and the location description does not provide a level of detail, which would allow us to discern the extent of the site. We used the extent of the site listing and advice from mana whenua to map the site.
44. We have not received any advice from HNZPT on how the extent of this site is not consistent with their listing. No Change is recommended.

Pukeroa 9822 – SSM008-B

45. This site was listed on 6 June 2020. It appears from the legal description in the HNZPT listing that SSM008-B is consistent with the extent outlined in the listing. We have not received any advice from HNZPT on how the extent of this site is not consistent with their listing. No change is recommended.

Kākāmorua 9859

46. After notification of the plan, HNZPT initiated their own process to have Kākāmorua 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

47. We received a submission from Ms Machra (48.02) requesting 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 original submission

48. Mr Pick in his statement has sought that SSM099-A, which is currently contained in SCHED3 be added to SCHED4 and the extent be aligned with the HNZPT listing 9859.
49. Ms Machra has also advised us that she agrees to the boundaries as outlined in the HNZPT listing. Given that Ms Machra and HNZPT agree on

the boundaries, we recommend that the extent of the site be amended in the PDP to match the HNZPT listing. Therefore, it is recommended that the planning maps be amended to align with 9859, and SCHED4 be amended as set out below.

Unique ID	Map Ref	Site Name	Location	Legal description	HNZ List Entry Legal Description	HNZ Category	HNZ Description of Values
SSM009-B		Kākāmorīa	1054 Mangarino Road, Hangatiki	Section 9, Survey Office Plan 518392, Pt Pukeroa Hangatiki A62; and Section 16 Survey Office Plan 418392	Section 9, Survey Office Plan 518392, Pt Pukeroa Hangatiki A62; and Section 16 Survey Office Plan 418392	Wāhi Tapu	HNZ9859

6. Miscellaneous

Analysis and recommendations

50. In their original submission Graymont (NZ) Limited sought that the definition of significant mineral resources be amended to include the assessment criteria for defining significant mineral resources, (as per Method UFD-M29 of the WRPS) for ease of access for the plan user. Ms Terry Calmeyer in her evidence has requested that the definition of significant mineral resource be amended to include the newly numbered WRPS as follows:

significant mineral resources means sites identified in accordance with the criteria contained in [UFD-M29 Method 6.8.1](#) of the Waikato Regional Policy Statement.

51. This amendment was accepted in the section 42A Report (see paragraph 57). Therefore, no change from the recommendation in the section 42A Report is proposed.
52. Ms Calmeyer at paragraph 24 of her evidence has stated that she supports the retention of the definition of significant hazardous facility as notified. However, an amendment to this definition was made as a result of the submission from the Fuel Companies (see paragraph 55 of the section 42A Report). It is assumed that Graymont is not opposed to this amendment, but they may wish to clarify their position at the hearing should they disagree.

7. Residential Zone

Analysis and recommendations

53. In their original submission the Ministry of Education (MoE) (24.38 and 24.39) sought that educational facilities are removed from RESZ-R12 and a new rule is added providing for educational facilities as a restricted discretionary activity, with the following matters of discretion.

RESZ-RXX

Educational facilities Activity status: RDIS

Matters over which discretion is restricted:

- a . The size, design, location, construction, and materials used; and
 - b. Effects on the streetscape and amenity of the area; and
 - c. The level of on-site amenity and landscaping; and
 - d. Adverse effects on the safe, efficient, and effective operation of the road transport network, giving particular consideration to pedestrian and cyclist safety; and
 - e. Parking, manoeuvring and access; safety and efficiency, including the provision of sufficient off-street parking and the effects of traffic generation; and
 - f. Consideration of reverse sensitivity effects; and
 - g. The extent to which the key moves in the relevant Town Concept Plan has been considered and provided for.
54. The MoE considers that educational facilities should be enabled where there is potential for a population to support them, and that a discretionary activity status is too restrictive. It is considered that given the broad range of activities provided for within the definition of 'educational facilities' and the need to control the wide range of adverse effects that would be potentially generated by an educational facility in the residential zone, it would not be appropriate to provide for them as a restricted discretionary activity. It is also noted that the Ministry is a requiring authority and has the ability to designate land should it wish to. No change is recommended.

8. Conclusion

55. I would like to thank the submitters and experts for taking the time to provide their evidence and I look forward to further discussion through the course of the hearing. Where amendments have been agreed, as a result of submitter evidence, these have been set out in the analysis and recommendations sections above.