

**IN THE MATTER** of the Local Government (Auckland Transitional Provisions) Act 2010 (**LGATPA**) and the Resource Management Act 1991 (**RMA**)

**AND**

**IN THE MATTER** of an appeal under section 156(3) of the LGATPA against a decision of the Auckland Council on a recommendation of the Auckland Unitary Plan Independent Hearings Panel (**Hearings Panel**) on the proposed Auckland Unitary Plan (**Proposed Plan**)  
*\* Select one.*

**AND**

**IN THE MATTER** of Proposed Plan Hearing Topic(s) 031 Historic Heritage  
032 Historic Heritage

**BETWEEN** **MARIAN ISABEL KOHLER**  
*\* State appellant's name here*

Appellant

**AND** **AUCKLAND COUNCIL**

Respondent

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**NOTICE OF APPEAL**

**Dated 15<sup>th</sup> September 2016**

*\* Insert date here*

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**General notes:**

1. *This template is for appeals lodged under section 156(1) of the LGATPA (appeals by submitters against Auckland Council decisions rejecting Hearings Panel recommendations), or section 156(3) of the LGATPA (appeals by unduly prejudiced persons against Auckland Council decisions accepting Hearings Panel recommendations identified by Panel as 'out of scope').*
2. *This template is based on Form 6 in the Resource Management (Forms, Fees, and Procedure for Auckland Combined Plan) Regulations 2013, but has been amended in a number of respects – e.g. to reflect certain waivers / directions made by the Environment Court.*
3. *For designation appeals to the Environment Court under section 157 of the LGATPA, please use Form 7 of the Resource Management (Forms, Fees, and Procedure for Auckland Combined Plan) Regulations 2013.*

To: The Registrar  
Environment Court  
**Auckland**

1. I, **MARIAN ISABEL KOHLER**, appeal against decisions (or parts of decisions) of the Auckland Council (the **Council**) on the proposed Auckland Unitary Plan (**Proposed Plan**).
2. I have the right to appeal the Council's decision –
  - (a) under section 156(3) of the LGATPA because the Council accepted a recommendation of the Hearings Panel that the Hearings Panel/the Council had identified as being beyond the scope of the submissions made on the Proposed Plan. The Council's decision resulted in a provisions being included in the proposed plan and in a matter being excluded from the Proposed Plan. I was, am/or will be unduly prejudiced by the inclusion of the provisions / exclusion of the matter.
3. I provide further details of the reasons for my appeal below.
4. I am not a trade competitor for the purposes of section 308D of the RMA.
5. I received notice of the decision on 19 August 2016.
6. The decision that I am appealing is as set out in the annexure hereto.
7. The reasons for the appeal are as set out in the annexure hereto.
8. I seek the following relief as set out in the annexure hereto.
9. An electronic copy of this notice is being served today by email on the Auckland Council at [unitaryplan@aucklandcouncil.govt.nz](mailto:unitaryplan@aucklandcouncil.govt.nz). Waivers and directions have been made by the Environment Court in relation to the usual requirements of the RMA as to service of this notice on other persons.
10. I attach the following documents to this notice:
  - (a) a copy of the relevant decisions/parts of the decision:
    - Please refer Auckland Council Decisions Report PAUP Historic Heritage 031 and 032
    - Decisions Version Auckland Unitary Plan
      - o Chapter L Schedule 14.2.5.1 Map 11
      - o Schedule 14.2.5 Statement of Significance HHA
      - o Chapter D 17.3.15 (b), 17.3.20, 17.5.1 (f), 17.7, 17.8
    - Notified Version of PAUP
      - o Appendix 9.3 Map 11
      - o Appendix 9.2.8
      - o Chapter J Overlay Rules Historic Heritage
  - (b) any other documents necessary for an adequate understanding of the appeal:
    - statement of primary evidence of Cara Elizabeth Francesco – topic 032 dated 14 August

2005 plus Attachments A & B;

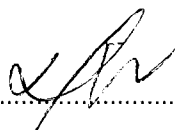
- IHP procedural minute no. 6 dated 5 August 2014

- email from Auckland Council dated 5 September 2016

*\* Delete if no other documents are attached.*

- (c) a list of names and addresses of persons served / to be served with a copy of this notice:  
Auckland Council at [unitaryplan@aucklandcouncil.govt.nz](mailto:unitaryplan@aucklandcouncil.govt.nz)

*† These documents constitute part of this form and, as such, must be attached to the notice lodged with the Environment Court. The appellant does not need to attach a copy of the Unitary Plan. In addition, the appellant does not need to attach copies of the submission and decision to the copies of the notice served on the Council and (if relevant) the Minister if the copy served lists these documents and states that copies may be obtained, on request, from the appellant.*



M I Kohler

Signature of appellant (or person authorised to sign  
on behalf of appellant)

*15 September 2016*

Date

Address for service of appellant: 4 Herne Bay, Rd Herne Bay

Telephone: 361 3802

Fax/email: [mariankohler03@gmail.com](mailto:mariankohler03@gmail.com)

Contact person: Marian Kohler

### **Note to appellant**

You may appeal only if—

(a) the Council rejected a recommendation of the Hearings Panel in relation to a provision or a matter you addressed in your submission on the proposed plan and the Council decided on an alternative solution that resulted in a provision being included in the proposed plan or a matter being excluded from the proposed plan; or

(b) you are, were, or will be unduly prejudiced by the inclusion of a provision in or the exclusion of a matter from the proposed plan in relation to which the Council accepted a recommendation of the Hearings Panel that the Hearings Panel had identified as being beyond the scope of the submissions made on the proposed plan.

Your right to appeal may be limited by the trade competition provisions in Part 11A of the RMA.

You must lodge the original notice with the Environment Court, and serve a copy on the Council (by email to [unitaryplan@aucklandcouncil.govt.nz](mailto:unitaryplan@aucklandcouncil.govt.nz)), within 20 working days after the Council notifies its decisions in relation to the recommendations of the Hearings Panel under section 148(4)(a) of the LGATPA (i.e. by no later than **16 September 2016**).

You must pay the filing fee required by regulation 15 of the Resource Management (Forms, Fees, and Procedure for Auckland Combined Plan) Regulations 2013 at the time you lodge this notice with the Environment Court.

If your appeal concerns a regional coastal plan provision / the coastal marine area, you must serve a copy of this notice on the Minister of Conservation within 5 working days after this notice is lodged with the Environment Court.

However, you may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003).

### **Advice to recipients of copy of notice of appeal**

#### *How to become party to proceedings*

You may become a party to the appeal if you are one of the persons described in section 274(1) of the RMA.

To become a party to the appeal, you must, within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003) with the Environment Court by email (to [unitaryplan.ecappeals@justice.govt.nz](mailto:unitaryplan.ecappeals@justice.govt.nz)) and serve copies of your notice by email on the Auckland Council (to [unitaryplan@aucklandcouncil.govt.nz](mailto:unitaryplan@aucklandcouncil.govt.nz)) and the appellant.

Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the RMA.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003).

#### *Advice*

If you have any questions about this notice, contact the Environment Court in Auckland.

### **Note to appellant**

You may appeal only if—

(a) the Council rejected a recommendation of the Hearings Panel in relation to a provision or a matter you addressed in your submission on the proposed plan and the Council decided on an alternative solution that resulted in a provision being included in the proposed plan or a matter being excluded from the proposed plan; or

(b) you are, were, or will be unduly prejudiced by the inclusion of a provision in or the exclusion of a matter from the proposed plan in relation to which the Council accepted a recommendation of the Hearings Panel that the Hearings Panel had identified as being beyond the scope of the submissions made on the proposed plan.

Your right to appeal may be limited by the trade competition provisions in Part 11A of the RMA.

You must lodge the original notice with the Environment Court, and serve a copy on the Council (by email to [unitaryplan@aucklandcouncil.govt.nz](mailto:unitaryplan@aucklandcouncil.govt.nz)), within 20 working days after the Council notifies its decisions in relation to the recommendations of the Hearings Panel under section 148(4)(a) of the LGATPA (i.e. by no later than **16 September 2016**).

You must pay the filing fee required by regulation 15 of the Resource Management (Forms, Fees, and Procedure for Auckland Combined Plan) Regulations 2013 at the time you lodge this notice with the Environment Court.

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Your right to be a party to the proceedings in the Court may be limited by the trade competition provisions in section 274(1) and Part 11A of the RMA.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (see form 38 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003).

#### *Advice*

If you have any questions about this notice, contact the Environment Court in Auckland.

6. The decisions (or part of the decisions) that I am appealing are:

6.1 The Council accepted recommendations of the Hearings Panel under Hearings Topics 031 and 032- Historic Heritage Areas , that in the Proposed Plan:

(a) Chapter L Schedule 14.2.5.1 Map 11 of Herne Bay Road Historic Heritage Area (HHA) be amended to include, identify and show “non-contributing sites” at numbers 6 and 31 Herne Bay Road, and

(b) Chapter L Schedule 14.2.5 Statement of Significance Herne Bay Road HHA (Schedule 14.1 I D 02515) :

(i) be amended to add new provisions, including new provisions on roof form which initiate new emphasis on roof form, and

(c) Chapter L Schedule 14.1 Schedule of Historic Heritage not be amended to include the avenue of London Plane trees within the road reserve of Herne Bay Road as a “contributing feature”,and

(d) Chapter D17 Historic Heritage Overlay rules be amended to include new provisions creating different rules for “non-contributing sites”.Specific examples are 17.3.15 (b), 17.3.20, 17.5.1 (d) and (f).

7. The reasons for the appeal are as follows:

(a) I was,am and will be unduly prejudiced by the inclusion and exclusion of the above stated provisions and matters.

(b) I live at number 4 Herne Bay Road, having purchased this property in 2001 for the particular reason that this road was a scheduled Conservation Area of historic housing in the Auckland Council District Plan (ACDP)- Isthmus Section operative 1999. All the houses within this defined Conservation Area were included for protection on the same terms. There were no “non-contributing sites”(NCSs)

(c) The potential consequences to me of the Councils identification of numbers 6 and 31 Herne Bay Road as NCSs in combination with the special rules in Chapter D17 enabling demolition/partial demolition/ destruction/relocation of the existing house and construction of new buildings on different, and lower threshold, assessment criteria on these sites are:

(i) in respect of number 6 the actual demolition/destruction/relocation of the existing historic house, and construction of a new house immediately next door to me without any requirement to notify me. This would affect me adversely both as neighbour and as owner in an HHA.It would also be contrary to the objectives of HHAs. The historic fabric of the whole street would be disrupted and in particular the portal to Jervis Road, as described in the Statement of Significance, would be permanently damaged by the continuity being destroyed. The damaging effect caused to the whole integrity of the HHA by a new house would greatly outweigh the comparatively unnoticeable effect of a less than perfect alteration to a house of the relevant historic period. This house has been a “contributing site” since the inception of the HHA(formerly known as Conservation Area) and should not be subject to retrospective and arbitrary change of status.

The value of my property would be likely to decrease as a result of number 6 being a NCS.

(ii) In respect of number 31 the theoretical opportunity for redevelopment of this sole recent house which Council allowed to be built in spite of strong opposition from the majority of local residents who believed it would compromise the historic character of the road. Council decided that the design of this house was in keeping with the row of historic villas on the east side of the road and it would not appear incongruous. Ironically Council has now termed it “non-contributing” with the consequence that it could be demolished or relocated and replaced by an even newer house.

(d) None of the above specified provisions were notified to the public. As the Proposed Plan is a major planning instrument under the RMA all Aucklanders have overarching rights of notification, submission and appeal and similar rights available pursuant to the principles of Administrative Law.

(e) I was not given any opportunity to make submissions on these provisions which directly affect me as a property owner and especially as next door neighbour to number 6. They also affect all other property owners in this HHA.

(f) There were no submissions as defined in S116 of the LGATPA on the above specified provisions/matters. The Council advised me that there were no submissions on the identification of the above NCSs other than its own evidence. The provisions/matters are “out of scope”. The Council refers to the “out of scope” nature of the provisions/matters in its evidence to the Hearings Panel.

(g) In Procedural Minute No. 6 the Hearings Panel has in paragraph 1. identified site specific requests to add, modify or delete scheduled items including heritage items and trees as being covered by this minute. Paragraph 7 sets out the 2 fundamental principles to be applied in processing such requests:

(i) the Court cannot permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, and

(ii) care must be exercised on appeal to ensure that the objectives of the legislature in limiting rights of appeal to those fairly raised by the appeal are not subverted by an unduly narrow approach.

Paragraphs 8, 10, 11 and 16 collectively provide (in summary) that a key issue is whether someone might be taken by surprise by changes sought through submissions especially where the submitter is not the property owner, and where a submission seeks to add an item not identified in the Proposed Plan as notified, or to modify an item substantially, then a fundamental issue of procedural fairness is the extent to which a submission may directly affect a third party. Where the submission lacks any sufficient information to demonstrate that it meets the relevant criteria then the submission should not proceed to be considered on its merits but should be considered by the Council subsequently for plan change or otherwise.

(g) The Council stated in evidence to the Hearings Panel that its intention was to “roll over the legacy conservation areas” from the ACDP to the Proposed Plan and these were included in the notified version of 30 September 2013. No NCSs were shown in Appendix 9.3 Map 11 Herne Bay Road HHA nor for any of the other legacy conservation areas.

(h) In 2015, long after the period for making submissions had expired, a member of the Council's heritage staff visited Herne Bay Road for the purpose of identifying from the streetview any properties which may be introduced as NCSs. Following this numbers 6 and 31 Herne Bay Road were

marked NCSs on Map 11 in Appendix 9.3 and presented to the Hearings Panel with other evidence on defining “contributing” and “non-contributing”.

Although this evidence described the general terms of the methodology used to identify NCSs no evidence relating specifically to numbers 6 and 31 Herne Bay Road was provided. This appears to have been left entirely to the discretion of Council staff.

(i) I dispute that number 6 in particular should have been identified as a NCS as indicated in paragraph (c) above. Number 6 was built in 1923/1924 according to Council records and is one of the “4 later houses at the top of the west side approaching Jervois Rd” specifically referred to in the Statement of Significance as “this sense of stylistic evolution lends and character to this part of the road, and its inclusion in the historic heritage is important in maintaining the quality of the roads portal at Jervois Rd”. Number 6 is specifically scheduled as contributing.

The identification of number 31 also illustrates the inherent inconsistencies in the application of Council policies and rules, and the opportunity for further serious instances to occur, resulting from an absence of notification requirements in favour of an imbalance of discretion granted to Council, under the Proposed Plan.

(j) Owing to the very brief time period allowed for appeals under the LGATPA I am unable to file more detailed evidence disputing the identification of number 6 Herne Bay Road as a NCS at this time. It is my intention to file this later together with further material on identification of the subject provisions/matters being out of scope.

(k) The new provisions in Chapter D 17 Historic Heritage Overlay rules creating different rules for NCSs are unduly prejudicial to me as owner of the property next door to number 6 Herne Bay Road as well as prejudicial in the context of being an owner of a property in this HHA.

(l) NCSs are subject to different, more permissive and more enabling policies, rules, thresholds and assessment criteria as per the following examples from Chapter D 17:

(i) D 17.3.15(b) Enabling total or substantial demolition or destruction of features including buildings

(iii) D 17.3.20-Enabling permanent relocation of buildings beyond the scheduled extent of place.

(iv) D 17.5.1 (d)(f) No notification required for (subdivision or) demolition of buildings on “non-contributing sites”.

(v) D 17.7 and D 17.8 contain lowered assessment criteria for NCSs.

(m) I believe that the various different rules now applied to NCSs are inconsistent with the objectives for HHAs and application of them is inappropriate in scheduled areas where promoting any enabling culture of new development negates the purpose of such scheduling. The more permissive nature of these provisions is more suited to areas where intensification is a planned objective.

(n) The notified version of the Proposed Plan did not include the above different rules for NCSs in Chapter J Overlay Rules.



(o) The inclusion and exclusion respectively of the above stated provisions in the Statement of Significance; and the Historic Heritage Schedule, for Herne Bay Road HHA are relevant to the extent that:

(i) the new provisions including new provisions on roof form which initiate new emphasis on roof form should not be able to be used to change "contributing" status retrospectively for houses built in the relevant historic period whether or not they show a feature(s) permitted more than 20 years ago.

(p) In Chapter L Schedule 14.1 Historic Heritage the exclusion of a provision to include the avenue of London Plane trees within the road reserve as a "contributing feature" raises questions as to why this was excluded while the identification of NCSs and the additions to the Statement of Significance were included. The inclusion of these trees as a "contributing feature" has more merit than identifying NCSs in my opinion.

8. I seek the following relief:

(a) That number 6 Herne Bay Road be reinstated as a "contributing site" and Schedule L 14.2.5.1 Map 11 be amended to reflect this by way of plan change or alternative means to achieve this. Alternatively that the matter be notified and public submissions allowed to an appropriate forum.

(b) That Chapter L Schedule 14.1 Schedule of Historic Heritage Herne Bay Road HHA be amended to include the avenue of London Plane trees within the road reserve as a "contributing feature" by way of plan change or alternative means to achieve this.

(c) That Chapter D 17 Historic Heritage Overlay Rules be amended to delete the different rules applying to NCSs to the effect that the rules are largely the same as for contributing sites, and to provide for notification of activities within the HHAs to all affected parties by way of plan change or alternative means to achieve this. Alternatively that the matter be notified and public submissions allowed to an appropriate forum.

(d) Such other relief as the Court deems necessary to achieve the above results.

(e) Costs.

**BEFORE THE AUCKLAND UNITARY PLAN INDEPENDENT HEARINGS PANEL**

**IN THE MATTER** of the Resource Management Act 1991 and the Local Government (Auckland Transitional Provisions) Act 2010

**AND**

**IN THE MATTER** of Topic 032 Historic Heritage Schedules

**AND**

**IN THE MATTER** of the submissions and further submissions set out in the Parties and Issues Report

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**STATEMENT OF PRIMARY EVIDENCE OF CARA ELIZABETH FRANCESCO  
ON BEHALF OF AUCKLAND COUNCIL (HERITAGE – TOPIC 032)**

**14 August 2015**

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## 1. SUMMARY

1.1. My name is Cara Elizabeth Francesco. Details of my role, qualifications and experience are set out in the Council's Joint Statement of Evidence (**Joint Statement**). I am providing heritage evidence on behalf of Auckland Council (**Council**) for Topic 032 – Historic Heritage Schedule (**Topic 032**) with respect to the following Historic Heritage Areas (**HHA**):

(a) Ardmore Road, Wanganui Avenue, Albany Road, and part of Trinity Street, (Appendix 9.3 map 4) (ID 02516);

(b) Burnley Terrace and King Edward Street, (Appendix 9.3 map 5), (ID 02513);

(c) Cooper Street, (Appendix 9.3 map 6), (ID 02518);

(d) Elgin Street, (Appendix 9.3 map 9), (ID 02517);

(e) Herne Bay Road, (Appendix 9.3 map 11), (ID 02515);

(f) Princes Street, (Appendix 9.3 map 17), (ID 02511); and

(g) Renall Street, (Appendix 9.3 map 19), (ID 02512).

1.2. I note that the HHAs listed above are collectively referred to in my evidence as 'the legacy HHAs' as they were 'rolled over' into the Proposed Auckland Unitary Plan (**PAUP**) from legacy district plans. Where my evidence is in relation to a specific HHA, it is referred to by name. I do not address the Monte Cecilia HHA in my evidence. Ms Rowe addresses the Monte Cecilia HHA (Appendix 9.3 map 14) (ID 02514) in her planning evidence.

1.3. My evidence addresses the submission made by the Council that seeks to amend maps 4, 5, 6, 9, 11, 14, 17, and 19 in Appendix 9.3 of the Schedule in order to define the "contributing" and "non-contributing" sites within the HHAs listed above.<sup>1</sup> My evidence also addresses the submission made by the Council that seeks to amend the entry for the Princes Street HHA (ID 02511) within Appendix 9.1 of the Schedule of Significant Historic Heritage Places (**Schedule**) to indicate that archaeological controls apply within this HHA, and that it is a place of Māori interest or significance.<sup>2</sup> My evidence also addresses a number of submissions that relate to individual sites within the legacy HHAs listed above. My evidence outlines the methodology and findings that have been used to identify the contributing and non-contributing sites within the HHAs identified above. The results of this work are set

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<sup>1</sup> Auckland Council (5716-473)

<sup>2</sup> Auckland Council (5716-536)

out in the proposed amendments to the various maps in Appendix 9.3 that relate to these HHAs (refer to **Attachment A**), and in the proposed amendments to the Statements of Significance for these HHAs set out in **Attachment B** to my evidence.

**1.4.** As a result of my analysis I propose that:

- (a) maps 4, 5, 6, 9, 11, 17, 19 in Appendix 9.3 of the Schedule are amended to identify the contributing and non-contributing sites within the legacy HHAs as set out in Attachment A to my evidence. This includes amendments to the map legend on these maps to amend 'sites with contributing buildings' and 'sites with non-contributing buildings' to read as 'contributing site' and 'non-contributing site', as an out of scope amendment;
- (b) the Statements of Significance in Appendix 9.2 of the Schedule for the legacy HHAs are amended to reflect the findings of the field survey undertaken to respond to Council's submission point 5716-473 as set out in Attachment B to my evidence;
- (c) the boundaries of the Princes Street HHA (ID 02511) shown on Map 17 in Appendix 9.3 and on the GIS planning maps are amended (as an out of scope amendment) as set out in Attachment A to my evidence, in particular to:
  - i. Remove 33 Victoria Street West and 22-24 Kitchener Road, Auckland Central from the HHA;
  - ii. Align the boundary of the HHA with the parcel boundaries of 16-24 Princes Street and 3A Waterloo Quadrant, Auckland Central;
- (d) specific named buildings within the sites at 9 and 16-24 Princes Street, within the Princes Street HHA (ID 02511) are identified as non-contributing features in Appendix 9.1 of the Schedule;
- (e) that criterion 'D' (knowledge) is inserted in the 'Known Heritage Values' column of Appendix 9.1 of the Schedule for the Princes Street HHA (ID 02511) (as an out of scope amendment);
- (f) that the entry for the Princes Street HHA (ID 02511) in Appendix 9.1 is amended to indicate that archaeological controls apply within this HHA, and that it is a place of Māori interest or significance;
- (g) that the boundary of the Renall Street HHA (ID2512) shown on Map 9.2.17 in Appendix 9.3 and on the GIS planning maps is amended to remove 6 Wood Street from the HHA;

- (h) that the boundary of the Burnley Terrace and King Edward Street HHA (ID 02513) shown on Map 5 in Appendix 9.3 and on the GIS planning maps is modified to remove 160-168 Sandringham Road and 170 Sandringham Road from the HHA (as an out of scope amendment); and
- (i) That the partial avenue of London Plane trees within the road reserve of Herne Bay Road is set out in Appendix 9.1 of the Schedule as a contributing feature within the Herne Bay HHA (ID 02515). This is an out of scope amendment.

**2. INTRODUCTION AND SCOPE**

- 2.1. My full name is Cara Elizabeth Francesco. Details of my role, qualifications and experience are set out in the Council’s Joint Statement of Evidence. As set out in the Joint Statement, I confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note and that I agree to comply with it.
- 2.2. I have been asked to provide heritage evidence in relation to several legacy HHAs identified in the PAUP as notified. My evidence addresses a range of submissions, including submissions made by the Council, in relation to these HHAs. These HHAs are shown in the figures below.

**Figure 1: (below) Ardmore Road, Wanganui Avenue, Albany Road and part of Trinity Street HHA, Ponsonby**



Figure 2: (below) Burnley Terrace and King Edward Street HHA, Sandringham

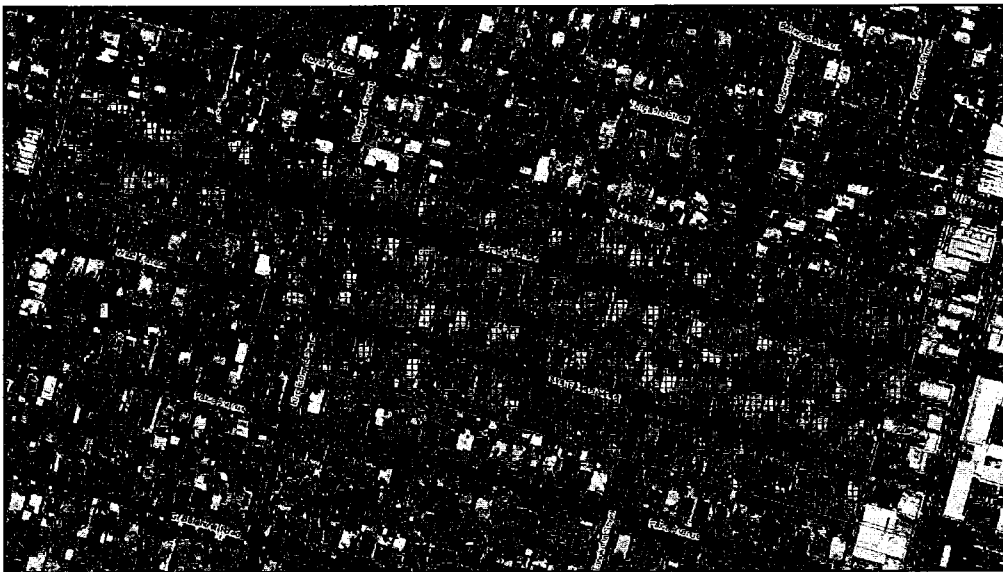


Figure 3: (below) Cooper Street HHA, Grey Lynn



Figure 4: (below) Elgin Street HHA, Grey Lynn



Figure 5: (below) Herne Bay Road HHA, Herne Bay



Figure 6: (below) Princes Street HHA, Auckland Central



Figure 7: (below) Renall Street HHA, Ponsonby



2.3. In preparing this statement of evidence I have had regard to the following documents:

- (a) The PAUP;
- (b) The Panel's Submission Point Pathway Report (**SPPR**) and Parties and Issues Report (**PIR**) for Topic 032;
- (c) The Council's submission, in particular submission points 5716-473 and 5716-536;



- (d) Submissions by North 8 Limited (5081-1), Samson Corporation and Sterling Nominees Limited (**Samson Corporation**) (6247-5), and the Housing New Zealand Corporation (**Housing NZ**) (839-9613 and 839-9628);
- (e) Field survey work undertaken by Ms Laura Kellaway on behalf of the Council;
- (f) The Statements of Significance set out in Appendix 9.2 of the PAUP;
- (g) Council property files; and
- (h) Council archival files relating to legacy HHAs.

2.4. Mediation for this Topic was held on 13, 14 and 15 July 2015. As set out in Ms Rowe's evidence on HHAs, none of the submitters who made submissions in respect of the HHAs that are the subject of my evidence attended mediation.

2.5. My evidence covers the following matters in respect of the Council's submission points that relate to the legacy HHAs:

- (a) The methodology for determining contributing and non- contributing sites within the legacy HHAs;
- (b) The findings of the assessment of these areas;
- (c) Proposed amendments to the maps and Statements that describe these HHAs; and
- (d) Amendments to the way in which the Princes Street HHA is described in Appendix 9.1 of the Schedule.

2.6. My evidence also addresses the submissions made by North 8 Ltd., Samson Corporation, and Housing NZ in respect of the legacy HHAs.

### 3. EXPERT ASSESSMENT

#### Background to the legacy HHAs

3.1. All of the legacy HHAs that are the subject of my evidence are included as Conservation Areas within the Auckland Council District Plan. Six of the legacy HHAs (known as Conservation Areas A, B, C, D, E, and F) are included in the Auckland Council District Plan Isthmus Section, Operative 1999 (**Isthmus Plan**) and one (the Princes Street HHA) is included in the Auckland Council District Plan Central Area Section Operative 2005 (**Central Area Plan**). Provisions that relate to the management of these legacy HHAs are set out within the heritage sections of the Isthmus Plan and the Central Area Plan.

- 3.2. The geographic boundaries for these seven legacy HHAs in the PAUP were intended to be a direct translation of the Conservation Area boundaries from the Isthmus Plan and the Central Area Plan.
- 3.3. Conservation Areas are subject to an area-based heritage management regime for their collective heritage values in the Isthmus and Central Area Plans. Consideration of the specific merits and level of contribution of a particular site within the area is undertaken at the time of resource consent under the Operative Plan framework. The Conservation Areas are applied to a small number of areas, in recognition of the high degree of unity of scale and form they demonstrated, as well as being representative of significant historical themes.<sup>3</sup> These Conservation Areas were incorporated in the PAUP as HHAs. The Council's Joint Statement sets out further details on the rollover of legacy historic heritage places into the PAUP.

### **Overview of matters raised in submissions**

#### *Auckland Council's submission*

- 3.4. The Council seeks to identify 'contributing' and 'non-contributing' sites within the legacy HHAs.<sup>4</sup> In addition, the Council seeks to amend the entry for the Princes Street HHA (ID 02511) in Appendix 9.1 to indicate that archaeological controls apply within this HHA, and that it is a place of Māori interest or significance.<sup>5</sup>
- 3.5. There are a number of further submissions to the Council's submission points that are the subject of my evidence. These submissions all appear to be generic further submissions to the Council's primary submission that variously oppose in part,<sup>6</sup> support,<sup>7</sup> or support in part<sup>8</sup> the Council's primary submission. None of these further submissions specifically address the legacy HHAs.

#### *Site-specific primary submissions*

- 3.6. There are four site-specific primary submissions that oppose the inclusion of specific sites within the some of the legacy HHAs. Direct discussions have been held with two of these submitters (North 8 Limited and Samson Corporation), and agreement between the Council and these submitters has been reached. There are no further submissions on either of these primary submissions. Copies of Direct Discussion

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<sup>3</sup> Derived from text set out in Auckland Council District Plan: Isthmus Section, Section 5C.5 Implementation, p.8

<sup>4</sup> Auckland Council (5716-473)

<sup>5</sup> Auckland Council (5716-536)

<sup>6</sup> Lyn Hume (FS 3038) and K Vernon (FS 347)

<sup>7</sup> David Lourie (FS 3748), Waiheke Island Community Planning Group Incorporated (FS 2412) and John Sanderson (FS 3079)

<sup>8</sup> Jenny and Eamon Holdings Limited (FS 2279)

forms recording the agreement reached with these submitters are included as an attachment to Ms Rowe's evidence.

- 3.7. North 8 Limited seeks to remove 6 Wood Street from the Renall St HHA (5081-1). The Council and North 8 Limited have agreed to exclude 6 Wood Street from the Renall Street HHA as reflected on the revised Map 19 set out in Attachment A to my evidence.
- 3.8. The Council has reached agreement with Samson Corporation that the 1960s-70s era commercial building at 182 Jervois Road, Ponsonby should be identified as a non-contributing site within the Ardmore Road, Wanganui Avenue, Albany Road and Trinity Street HHA. This is reflected in Map 4 set out in Attachment A to my evidence.
- 3.9. Housing NZ made two submissions (839-9613) relating to specific sites within the legacy HHAs. Housing NZ seeks that 18 Trinity Street, Herne Bay be removed from the Wanganui, Ardmore, Trinity Street HHA.<sup>9</sup> I understand that Housing NZ has indicated that it will not pursue this submission. Housing NZ also seeks that 69 Burnley Terrace, Mt Eden is removed from the Burnley Terrace and King Edward Street HHA.<sup>10</sup> Housing NZ has confirmed that it will not be pursuing this submission point as it is no longer owned by Housing NZ.<sup>11</sup> I consider that both 18 Trinity Street and 69 Burnley Terrace should be identified on the relevant maps in Appendix 9.3 as contributing sites (as set out in Attachment A to my evidence).

#### *General primary submissions*

- 3.10. Two general submissions have been received in respect of the legacy HHAs. Andrew J M Park and Victoria J Park support the retention of the Burnley Terrace and King Edward Street HHA.<sup>12</sup> I support the relief of these two submissions, in accordance with the survey findings.

#### **Assessment of matters raised in the Council's submission – identifying contributing and non-contributing sites in the legacy HHAs**

- 3.11. This section of my evidence addresses the Council's submission that seeks to identify contributing and non-contributing sites within the seven legacy HHAs. It outlines the methodology used to identify the contributing and non-contributing sites

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<sup>9</sup> Housing NZ (839-9613)

<sup>10</sup> Housing NZ (839-9628)

<sup>11</sup> Housing New Zealand Executive Summary of Evidence – Topic 032 – Historic Heritage Schedules. p.2.

<sup>12</sup> Andrew JM Park (6645-10) and Victoria J Park (5884-13)

and the proposed amendments to the maps of these HHAs in Appendix 9.3 and the associated Statements of Significance in Appendix 9.2.

- 3.12.** The boundaries of the legacy HHAs are set out in Appendix 9.3 of the Schedule and the associated planning maps of the PAUP. However, in the case of the legacy HHAs, the maps in Appendix 9.3 do not identify whether sites within the HHAs are contributing or non-contributing. This affects the way in which the proposed provisions of the Historic Heritage overlay would apply to these HHAs. The Council's submission seeks to address this matter.

#### *Methodology*

- 3.13.** My evidence is also informed by the findings in the work undertaken by Ms Laura Kellaway. Ms Kellaway undertook field survey work on behalf of Council in order to prepare the initial maps setting out contributing and non-contributing sites within the legacy HHAs. Ms Kellaway undertook her initial survey work between November 2014 and March 2015. I prepared the brief for Ms Kellaway's work, and reviewed her findings.
- 3.14.** I undertook field visits for all seven HHAs on foot, viewing from the public realm during May 2015. Private property was not accessed, other than within the University of Auckland. Permission to access the University grounds was sought and obtained prior to undertaking the site visits.
- 3.15.** Ms Kellaway prepared a photographic inventory and analysis of sites within each of the legacy HHAs. The front elevation (and in some cases additional side elevations) of the buildings on all front sites were photographed.
- 3.16.** I have inspected Council's property records in some circumstances in order to ascertain the dates and details of modifications to buildings within the legacy HHAs.
- 3.17.** A survey of the buildings on the sites within the legacy HHAs was undertaken by Ms Kellaway. This survey recorded the building type, form, and whether additions or alterations had been made to buildings. Using this information, each building was prescribed an integrity rating. The rating system consisted of a sliding scale between 0 and 3 assigned for each site, with 3 being 'very high', 2, 'high', 1, 'moderate to low' and 0 'none'. In addition, where a site is not able to be observed it has been set out as 'n/v' ('integrity not visible').
- 3.18.** An overview of the approach taken to assign the integrity ratings to sites within these HHAs is set out below:

- (a) Identify whether a site represents the significant values for which the area is scheduled. This includes its age, property type, and architectural style.
- (b) Determine the extent to which a site retains integrity and assign the appropriate number from very high to none.
  - i. "Very High" integrity generally means the site has no apparent alterations that detract from its original appearance.
  - ii. "High" integrity generally means the site has one or two alterations that detract from its original appearance, but otherwise it appears intact.
  - iii. "Low to Moderate" integrity generally means the site has sustained some alterations that detract from its original appearance, but the site still has enough of its form and features that its historical appearance is apparent.
  - iv. None or no integrity means the site has been altered to the point that it is barely recognisable as something from the period of significance.
- (c) Photograph the site and determine based on (a) and (b) above whether it should be a contributor or non-contributor in the HHA, based on its representativeness and integrity and relative to the area as a whole.

**3.19.** A site that represents its respective HHA and is of at least moderate integrity is generally considered a contributing site within that HHA. Sites that have very low or no integrity, and/or are not representative of the HHA's significance are usually identified as non-contributing sites.

**3.20.** The approach that I have taken to determine whether sites in the legacy HHAs are contributing or non-contributing has been informed by text in E2 (as proposed to be amended by the Council in Topic 031) that describes HHAs. It states that:

*"...Non-contributing sites are either not relevant to, or may detract from, the heritage values of the historic heritage area. Specific buildings, structures or features which may detract from the heritage values of the historic heritage area may be identified in the exclusions column in Appendix 9.1".*

#### *Survey Findings - Integrity*

**3.21.** Integrity, in the context of heritage conservation, is the ability of a place to convey its significance. This relates to more than physical attributes alone, and includes

location, setting, material workmanship, feeling and association. In my opinion, all seven HHAs demonstrate a very high concentration of building stock from the defined era(s) of value within them. This ranges from the late 1860s workers' cottages in closely confined allotments, situated close to the street frontage on Renall Street, Ponsonby, through to several representations from the inner suburbs of the Isthmus demonstrating cascading rows of Victorian and Edwardian bay villas relating to specific defined subdivisions in Mt Eden, Herne Bay and Arch Hill.

**3.22.** Some unsympathetic modifications have been made to buildings on some of the sites within the legacy HHAs. It appears some of these modifications have occurred prior to the establishment of formal heritage management of the collective areas, others appear to be more recent modifications. Examples of these modifications include the construction of garages in the front yard, additions to the upper roof geometry, and the lifting of residences to establish basement garaging underneath. If such modifications have been undertaken but the building remains legible overall, it has been set out as contributing. Even when undertaken as sympathetically as possible this generally results in some reduction to the integrity of a place.

**3.23.** The following table sets out the percentage of contributing sites within each area. Over 90% of sites are contributing across all seven HHAs.

Historic Heritage Area	Number of Sites	Number and (Percentage (%)) of Contributing Sites
Ardmore Road, Wanganui Avenue, Albany Road, and part of Trinity Street	255	7 (97%)
Burnley Terrace and King Edward Street	183 <sup>13</sup>	176 (96%)
Cooper Street	45	42 (93%)
Elgin Street	40	40 (100%)
Herne Bay Road (part of)	35	33 (94%)

<sup>13</sup> Not including two sites included in the HHA in error at 160-168 and 170 Sandringham Road  
26565967.doc

Historic Heritage Area	Number of Sites	Number and (Percentage (%)) of Contributing Sites
Princes Street	Not applicable <sup>14</sup>	(Only 2 non-contributing sites and two non-contributing buildings within contributing sites)  Above 90%
Renall Street	26 <sup>15</sup>	(92%)

- 3.24.** As a result of surveying and mapping the Princes Street HHA, I propose that the entry for this HHA in Appendix 9.1 of the Schedule be amended to identify the modern tower block at 9 Princes Street, Auckland Central as a non-contributing site. In addition, I propose a similar amendment to Appendix 9.1 in order to identify Equity House, situated to the rear of the Clock Tower at 16-24 Princes Street as a non-contributing feature.
- 3.25.** The Herne Bay Road HHA comprises a partial avenue of London Plane trees (*Platanus acerifolia*). This avenue of London Plane trees is directly associated with the era of development of housing in this HHA. I propose that this avenue of trees be identified as a contributing feature in Appendix 9.1 of the Schedule for the Herne Bay Road HHA (ID 02515).

<sup>14</sup> There are multiple buildings are large sites in the Princes Street HHA which do not lend themselves towards accurately providing a definitive number of sites

<sup>15</sup> Not including 6 Wood Street agreed for removal from Renall Street HHA via direct discussion form

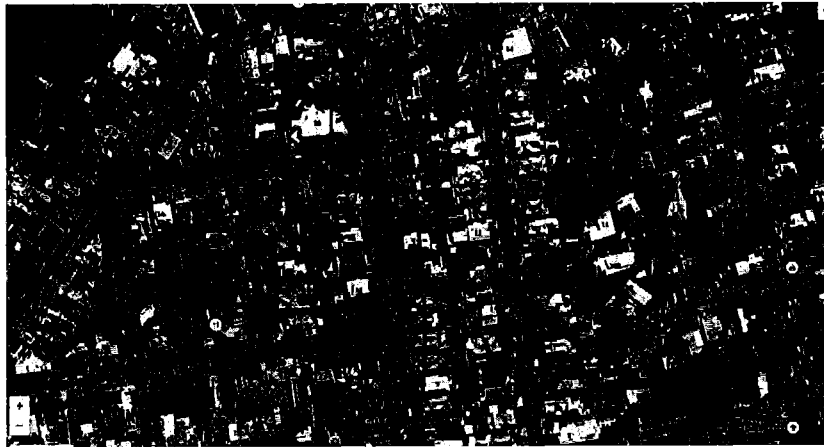


Figure 8: Aerial photograph showing partial avenue of London Plane Trees - Herne Bay Road HHA

**3.26.** As an out of scope amendment, I propose that the boundary of the Burnley Terrace and King Edward Street HHA (ID 02513) is amended to exclude two sites that were included within the boundaries of the HHA erroneously in the PAUP as notified (refer figure below). I consider that it is appropriate to delete 160-168 Sandringham Road and 170 Sandringham Road from the HHA in Appendix 9.3 and associated planning maps, as set out in Attachment A to my evidence, on the basis that they did not form part of the legacy HHAs, were included in the HHA in error, and therefore not in accordance with the intended methodology.



Figure 9: Location of 160-168 Sandringham Road and 170 Sandringham Road

**3.27.** In addition, I propose that a similar amendment to the boundary of the Princes St HHA be made to exclude the properties at 33 Victoria Street West and 22-24 Kitchener Street, Auckland Central from this HHA (refer figure below). They were included within the extent of this HHA in error.



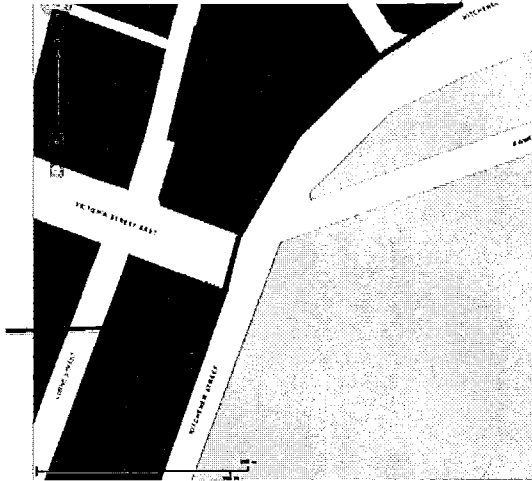


Figure 10: Location of 33 Victoria Street West and 22-24 Kitchener Street, Auckland Central

3.28. As a result of my analysis as outlined above, I propose that Maps 4, 5, 6, 9, 11, 17, and 19 in Appendix 9.3 are amended to show the contributing and non-contributing features within the legacy HHAs, as set out in Attachment A to my evidence.

#### *Statements of Significance*

3.29. Appendix 7 of the Isthmus Plan contains 'Character Statements' for the identified Conservation Areas. The Central Area Plan does not include a character statement for the Princes Street Conservation Area. A new Statement of Significance was included in the PAUP for the Princes Street HHA. The 'Character Statements' in the Isthmus Plan formed the basis of the Statements of Significance set out in Appendix 9.2 of the PAUP (as notified).

3.30. As reflected in the Council's amendments to the assessment criteria in J2 via Topic 031, these Statements of Significance describe the values and attributes of the HHA. As a result of my analysis outlined above, I propose a series of amendments to the Statements of Significance in Appendix 9.2 of the Schedule as set out in Attachment B to my evidence. These amendments seek to:

- (a) correct some minor errors, such as references to 'conservation areas'; and
- (b) more clearly describe the heritage values within these HHAs.

#### **Addressing matters raised in the Council's submission – Princes St HHA**

3.31. This section of my evidence addresses the Council's submission point that seeks to amend the entry for the Princes Street HHA in the Appendix 9.1 of the Schedule to

identify that archaeological controls apply to this HHA, and that it is identified as a 'Place of Māori Interest or Significance'.<sup>16</sup>

- 3.32. The Statement for the Princes Street HHA (Appendix 9.2.16 in the PAUP as notified) describes (at a high level) the historical associations this area has as a place of Māori occupation. This is reflected in the Statement, which states out that:

*"A Māori kainga (village) called Rangipuke was originally situated on Albert Park hill and a pa named Te Horotiu is said to have been located in what is now the northwestern corner of Albert Park".*

- 3.33. Within the boundary of the HHA there are several scheduled Sites of Significance to Mana Whenua (**SSMW**). These SSMW are Te Reuroa Pā (ID 21), Wai Ariki (ID 60), Te Tōangaroa (ID 18) and Waahi whakahirahira (ID 49). It is therefore appropriate to identify the Princes Street HHA (ID 02511) as being of interest and/or significance to Māori in the Schedule of Significant Historic Heritage Places.

- 3.34. The Princes Street HHA exhibits a range of archaeological values. The HHA contains some of the oldest extant commercial, residential and civic building stock simultaneously and collectively found in the Auckland region. A considerable portion of the building stock in the area pre-dates 1900, in particular, but by no means limited to, the Merchant Houses on Symonds Street, St Andrews Church, High Court, Old City Library/Art Gallery, Northern Club, and Old Government House.

- 3.35. Many of these buildings remain intact, and I consider that it is appropriate to recognise the building and sub-surface archaeology potential that these places are likely to have, through inclusion of the 'knowledge' criterion as one of the historic heritage values in Appendix 9.1 of the Schedule for this HHA. I therefore propose that criterion 'D' (knowledge) is included within the 'Known Heritage Values' column of Appendix 9.1 of the Schedule for this HHA. This is an out of scope amendment.

- 3.36. The Statement of Significance for the Princes St HHA in the PAUP (as notified) states that:

*"The area has multiple and layered significance for its historical, social, mana whenua, aesthetic, knowledge and technological values and physical attributes".*

- 3.37. Alongside this, the area that today comprises Albert Park, but also areas buffering around it for some distance, formed the Albert Barracks, constructed in the late 1840s and early 1850s. There are small elements of above ground archaeological

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<sup>16</sup> Auckland Council (5716-536)

ruins, namely a small portion (approximately 85 metres) of the Barracks stonewall (originally approximately 1300 metres), partly located within the HHA. While not generally visible and subsurface, the area has the potential for archaeological material of significance from several previous layers of occupation. This is evident from the inclusion of the 'archaeological controls' and 'Māori interest or value' recognised for the individual schedule entry for Albert Park (ID 01999).

- 3.38. In light of the above analysis, I propose that the entry for Princes St HHA (ID 02511) in Appendix 9.1 of the Schedule is amended to indicate that archaeological controls apply within this HHA, and that the HHA is identified as a 'Place of Māori Interest or Significance'.

#### **4. CONCLUSION**

- 4.1. Overall it is my opinion that it is necessary to amend Maps 4, 5, 6, 9, 11, 17 and 19 in Appendix 9.3 of the Schedule to clearly identify the contributing and non-contributing sites within the legacy HHAs, as set out in Attachment A to my evidence. This includes amendments to some of the boundaries of these HHAs either in response to submissions, or to correct errors that were introduced in the roll over of these HHAs into the PAUP.
- 4.2. I consider it is appropriate to amend the entry for the Princes Street HHA in Appendix 9.1 of the Schedule to identify that the HHA should be subject to additional archaeological controls, and that it is a 'Place of Māori Interest or Significance'. I also propose that the knowledge criterion be identified in Appendix 9.1 of the Schedule for this HHA.

***Cara Elizabeth Francesco***

***14 August 2015***

**ATTACHMENT A: Historic Heritage Area Maps**



ARGYLE STREET

UPTON STREET

GALATEA TERRACE




BELLA VISTA ROAD

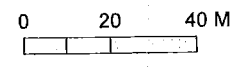
MASONS AVENUE

HERNE BAY ROAD

\*Avenue of London Plane trees  
-contributing feature

**Legend**

-  Historic heritage area
-  Contributing sites
-  Non-contributing sites



### Historic Heritage Area: Herne Bay Road



**Auckland Council**  
He Kaitiaki Take Kōwhiri

**ATTACHMENT B: Amendments to Historic Heritage Area Statements of Significance**

## Attachment B – Proposed Amendments to Appendix 9.2

Council's proposed changes are shown in <del>strikethrough</del> and <u>underlined</u> text
Black text changes record amendments proposed in Primary Evidence
Green text changes record amendments proposed and agreed to in mediation
Red text changes record amendments proposed in rebuttal evidence
Blue text changes record amendments proposed post hearing (e.g. right of reply)
Yellow highlighted text changes record amendments that are considered to be beyond the scope of submissions
Grey highlighted text changes record consequential amendments

### Appendix 9.2 Historic Heritage area statements of significance

#### Appendix 9.2.1 Ardmore Road, Wanganui Avenue, Albany Road and Trinity Street historic heritage area

##### Statement of significance

This is an area of Edwardian villas ~~of exemplary~~ displaying a good representation of architectural and landscape character, with very clear geographic and topographic identity. The area displays stylistic and spatial consistency, which derives from both the nature of the subdivision, and a remarkable "group building" venture (described below).

A number of Edwardian commercial buildings at the Jervois Road entries are important historic portals to the ~~conservation~~ historic heritage area and are included as an integral part of it. The corners of Ardmore Road and Wanganui Avenue are graced by solid two-storey decorative period masonry buildings. The west side of the Albany Road entry is marked by what is probably the best corner building of the six, while the building on the opposite corner is of no heritage value but warrants inclusion in the interests of completeness, symmetry, and long-term improvement.

The three principal roads (Ardmore Road, Wanganui Avenue & Albany Road) run in parallel at right angles to the contour, as it were on a perfect plane warped in one direction only. This relation to the contour imparts elements of both movement and formality. Commencing at Jervois Road, each road enters into a long pronounced descent, then bottoms out and finishes with a short ascent to a common terminus at Trinity Street where the facing villas act powerfully to close the vista and provide a sense of completeness. The shops form an important historic streetscape and consistently have verandahs and Edwardian details. Some shops include old shop frontages, while other ground level frontages have seen more change. At the Jervois end of the road are a few outbuildings - some relate to the shops while on Albany Street there is an old stables.

The commercial premises within the historic heritage area on Jervois Road illustrate the historical development pattern of providing local convenience stores which provided important services for the nearby residents at a time prior to modern conveniences such as refrigeration, the motor vehicle and supermarkets.

## Appendix 9.2.8 Herne Bay Road historic heritage area

### Statement of significance

Herne Bay Road is a road street of mostly late Victorian and early Edwardian villas of very high quality and which are largely unmodified, particularly on the east side. The portion of the road selected historic heritage area is a representative sample of this period, and of Herne Bay housing for the upper class of the time. It is almost completely free of recent infill. It is one of Auckland's earlier roads having been set out as a thoroughfare in the late 1860s, prior to its subdivision for housing. In the 1870s and early 1880s, eleven lots were released on the west side and most of the Victorian villas and cottages that were built on them have survived, largely intact.

In 1901, the east side was subdivided into fifteen lots in the middle of a building boom. Accordingly the lots were all built on in a relatively short period. This timely release produced today's legacy of an unusually continuous row of well preserved Edwardian bay villas. They show strong repetition of overall forms, notably the gabled bay; and strong consistency of roof form and roof slope and building set-back. These elements combine to create a sequence of buildings in parallax. At the same time, the villas express individuality in timber detailing and ornamentation, ranging from fairly standard catalogue mouldings to complex turnery and spindle work. The form, scale, height and materials of the villas are important attributes.

The road includes four later houses at the top of the west side approaching Jervois Road, where subdivision did not occur until 1923, including a set of mid-century apartments. These dwellings were designed in the style of their period in an historical progression up the road, moving through the Californian bungalow style to the Moderne style of the apartments. This sense of stylistic evolution lends character to this part of the road, and its inclusion in the conservation historic heritage area is important in maintaining the quality of the road's "portal" at Jervois Road. The portal is completed by a finely proportioned Victorian shop and residence on the east corner, now used as a restaurant and historically integral to the road.

The road has a particularly spacious ambience with blue stone kerbs and established trees that lead down towards Herne Bay beach. The lots range from 22 to 32 perches (550-800m<sup>2</sup>) and have a width of 15-20 metres which was generous for the time. Accordingly the villas are generally well separated from each other.

There tend to be reasonably consistent building lines in any one part of the road. The villas on the east side stand reasonably well up to the road with a consistent set-back of 3.5-4.5m. Front gardens and landscaping was traditionally soft and involved timber or metal fencing. Much of this historic characteristic is retained. This gives the frontage a conspicuously architectural character. On the west side most of the set backs range between 3m and 6m. Virtually all the lots are wide enough to allow vehicular access beside the house. In consequence, most cars are not parked forward of the building facade, and the front yards have largely retained their original character. Garages were generally not part of the historic fabric of the street, and front yards traditionally remained intact and void of structures.

The road is straight and tilts at the harbour which crosses in front of it. There is little



evidence of original footpaths or road surface however blue stone kerbs remain a feature. A strong axial character was established through planting the berms in an avenue of London planes, a road tree characteristic of the period. Unfortunately only the top half of the avenue still survives. Planting within the front yard was historically of low scale using soft materials. Historic harbour views are a significant element of the street and have been taken into account in terms of planning and securing tends to be low scale, possibly to secure the harbour view, obtainable obliquely from each bay window.

Although the side yards are wider than in earlier periods, many of the homes are aligned essentially to the front and rear, irrespective of the orientation to sun or view. However quite a number of the villas, particularly those occupying a double lot, make some architectural concession to one side yard in the form of a return verandah or shallow bay.

The houses are largely straightforward in form and are aligned square to the side boundaries. A main roof form encloses the building with gables coming off the main form. Traditionally there were no additions on top of the main roof. The predominantly timber villas were set lightly on the ground. Some of the villas have had redevelopment of roof forms with additional attic windows and gables. These are not original, and significant care needs to be taken when modifying the roof form and geometry that it remains true to its original style. Some of the buildings have enclosed verandahs, converted into habitable areas, where there would have once been an open verandah. These modifications do not form part of the traditional characteristics of the villa. Specific elements of the verandah that are of importance often include the detailing of the posts, fretwork and balustrades.

They houses are clad in weather board, with pitched roofs of corrugated iron. Brick chimneys are prominent, some of them ornamented. There are sash windows, and all the late villas have bays, some with tiled sunhoods. In character with the later period, the bay is contained under the main roof of the house. The road includes examples of the double bay and the angled corner bay villa. The level of timber ornamentation ranges from simple forms on the earlier Victorian cottages, through the more eye-catching pattern book ornament of some of the bay villas, to elegantly turned verandah work. The villas on the east side of the road display a repeated sequence of protruding bay and recessed verandah from south to north. A mixture of low picket fences and low tecomā hedges predominate at the front boundary, tecomā being characteristic of early 20th century Auckland.

Because the area lies to the sun and is somewhat protected from the cool southerlies by the Herne Bay ridge at its back, there is a comfortable microclimate. This is capitalised upon and enhanced where the villas on the east side of the road display a repeated sequence of protruding bay and recessed verandah from south to north. Hence the verandah traps the sun and is shielded from wind on its south edge.

In the design of the house facade and treatment of the front yard, there is a sense of propriety and formality facing the road. There is typically a front verandah over which the roof pitch flattens to impart a sense of welcome. In both two-storied villas in the road, there are double verandahs. The verandah acts as intermediate or transitional space between the public footpath and the privacy of the home, reflecting a time when the road was social space. The social interaction which is possible between the verandah and the footpath can still survive to some extent today, particularly where high front fences, front yard carports

and garages have not been added.

In terms of architectural character and social significance, a clear historical distinction exists between the front (publicly visible) elevation of the houses and the rear elevation (the utility areas, private and unseen), except where the villa is on a corner site. Expense was concentrated upon the front elevation which was of formal design, well articulated with bays and ornamented. Within the finances of the family, it was their grand statement. The rear ~~evaluation~~ elevation was simple and plain, with an absence of curved walls, articulation of surfaces or ornamentation. These architectural distinctions should be respected when designing alterations or extensions at the rear.

~~Because of the more complex roof forms of the late villas, they lend themselves more readily to sensitive roof additions. Good examples of such additions are found in two adjoining villas on the east side.~~

AUCKLAND UNITARY PLAN  
INDEPENDENT HEARINGS PANEL

*Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau*

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**Procedural Minute No. 6 by Chairperson of  
Independent Hearings Panel**

**Directions in relation to submissions that seek  
specific changes to modify, add or delete site specific provisions  
in the Plan**

5 August 2014

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**AUCKLAND UNITARY PLAN  
INDEPENDENT HEARINGS PANEL**

*Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau*

**Proposed Auckland Unitary Plan**

**Directions in relation to submissions that seek  
specific changes to modify, add or delete site specific provisions in the  
Plan**

**Procedural Minute No. 6 by Chairperson of Independent Hearings Panel**

**Introduction**

1. A significant number of the submissions on the Proposed Auckland Unitary Plan (PAUP) include site-specific requests to modify or add items to or delete items from the schedules of the PAUP. This includes:
  - Heritage items
  - Significant ecological areas
  - Outstanding natural landscapes and features
  - Trees
  - Volcanic cone /viewshafts
2. There are also a large number of submissions seeking re-zoning or modification to the zones of specific sites. Many of these also relate to the precinct applicable to the site and to the overlays that may apply. There are also a large number of submissions seeking changes to the Rural-Urban Boundary (RUB) in the proposed Regional Policy Statement.
3. To hear all of these, especially if they are contested by other parties (the Council and/or further submitters), would require a very large number of hearing days. In light of the statutory deadline for reporting our recommendations on submissions to the Auckland Council, we must consider an effective and efficient method for considering such submissions, bearing in mind the rights of the submitters and ensuring that there is procedural fairness throughout the process.

**Purpose of this Minute**

4. The purpose of this minute is to identify the issues that arise in dealing with these submissions and to give directions to the Auckland Council about further information we seek to assist us in addressing them ahead of any pre-hearing meetings we may convene with submitters.

**Relevant considerations**

5. A central question is whether the relief sought in a submission on a proposed plan is within the jurisdiction of the person who has the authority to make decisions on that submission. In the present process for the PAUP under the Resource Management Act 1991 (RMA) as amended by the Local Government (Auckland Transitional Provisions) Amendment Act 2010 (LGATPA), the Panel's

# AUCKLAND UNITARY PLAN INDEPENDENT HEARINGS PANEL

*Te Paepae Kaiwawao Motuhake o te Mahere Kotahitanga o Tāmaki Makaurau*

role as the body making recommendations to the Auckland Council is subject to essentially the same jurisdictional constraints.

6. The jurisdictional issue is a fundamental one in the process for preparing or changing a Plan. Submissions must be on the proposed plan and cannot raise matters unrelated to what is proposed. If a submitter seeks changes to the proposed plan, then the submission should set out the specific amendments sought and the basis on which they ought to be included in the Plan.
7. A review of the relevant case law shows that the circumstances of particular cases have led to the identification of two fundamental principles:
  - i. the Court cannot permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected;<sup>1</sup> and
  - ii. care must be exercised on appeal to ensure that the objectives of the legislature in limiting appeal rights to those fairly raised by the appeal are not subverted by an unduly narrow approach.<sup>2</sup>
8. A key issue is whether someone might be taken by surprise by changes sought through the submission process, especially by submitters who are not the owner of the affected property.
9. At this stage and subject to fuller consideration in any particular case, it appears to us that where a submission relates directly to a matter which is included in the PAUP as notified and seeks to amend or delete that item, then there may not be any basis on which that submission could be considered to be outside jurisdiction. The matter having been raised in the PAUP as notified, then any submission directly on that matter will likely have to be addressed on its merits.
10. Again subject to fuller consideration in any particular case, where the submission seeks to add an item not identified in the proposed Plan as notified or to modify an item in a substantial way, then a fundamental issue of procedural fairness is the extent to which the submission may directly affect a third party. Where a submission seeks to schedule land or buildings which are privately owned by someone other than the submitter, then the effects on that owner are likely to be such that we will need to be sure that the affected owner has an effective opportunity to participate before proceeding to a merits assessment. The submission and further submission process in Schedule 1 is not likely to be sufficient on its own to ensure adequate notice.
11. It is also important to bear in mind that there are other methods by which new items can be added to the schedules in the PAUP, including by way of a variation

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<sup>1</sup> *Clearwater Resort Ltd v Christchurch City Council* (unreported: High Court, Christchurch, AP34/02, 14 March 2003, William Young J) at para [66].

<sup>2</sup> *Power v Whakatane District Council & Ors* (unreported: High Court, Tauranga, CIV-2008-470-456, 30 October 2009, Allan J) at para [30].

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to the PAUP (if that can be done within the statutory deadline) or by way of a subsequent plan change after the Unitary Plan is made operative. The most important aspect of such other methods is that they afford the opportunity for directly affected persons such as the owners to be directly involved in the process from the outset, rather than having the chance of participation only through further submissions.

## **Scope of submissions concerning scheduled items**

12. From our preliminary review of a number of submissions which address the schedules to the PAUP, we are concerned that a number of them may not include certain information that we would regard as essential to any assessment of the scheduling of such items in terms of the relevant objectives and policies and the requirements of section 32 of the RMA.
13. On a preliminary basis, we would group these submissions into four categories, noting that in many cases a submission may fit into the first category as well as one of the other three:
  - i. those that do not have approval or support from the owner(s) of the item;
  - ii. those where the submission contains adequate information which shows that the item meets the relevant plan criteria as proposed in the PAUP;
  - iii. those where the item nearly meets the relevant criteria as proposed in the PAUP, such that it may be appropriate to seek more information in respect of specific aspects of the submission to see if the item does indeed meet the criteria; and
  - iv. those which are unsupported by detailed information in relation to the relevant criteria as proposed in the PAUP.
14. We are concerned at the amount of time that may be needed to traverse all of these considerations in respect of every item that is proposed to be added to the schedules of the PAUP.
15. Where the addition of items is approved or supported by its owner (point i) and the submission contains adequate or nearly enough information to demonstrate that the item meets the relevant criteria for scheduling (point ii or iii), then it appears to us that consideration of that submission should proceed on its merits.
16. Where the addition of the item is opposed by the owner (point i) and/or the submission lacks any sufficient information to demonstrate that it meets or is likely to meet the relevant criteria (point iv), then we do not consider that the submission should proceed to be considered on its merits as it does not meet the second *Clearwater* test. In these cases a better approach may be for the Council to consider these subsequent to our processes.

## **Re-zonings, precinct changes and changes to the RUB**

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17. The single largest group of submissions identified through the Summary of Decisions Requested is that containing all those submitters who seek a change to the zoning or precinct applicable to their property or seek to bring their property inside the RUB. We see these matters as a significant issue (both in terms of the time required to address them and in terms of their significance to submitters). We need to get a better idea of how many issues are raised to help determine the scale of this hearing topic, what issues may be able to be mediated and how many hearing days are likely to be required.
18. We understand that the Council is developing a spatial mapping tool to identify those properties where site specific changes are requested to the zoning or precinct which is proposed to be applied under the PAUP. We further understand that the Council is uncertain how complete this mapping tool may be for detailed analytical use in the near future and therefore has concerns about publicly releasing it. We have not had any access to the tool ourselves.
19. If such a mapping tool is sufficient for the Council at least to be able to do the work we envisage, then we think the following information is needed:
  - i. a summary of all re-zoning requests and their identification spatially, whether by list, table or map;
  - ii. a scheme for potential grouping of issues (whether spatially or by PAUP provision);
  - iii. a preliminary assessment of the significance of the issue according to nominated criteria, which we envisage would include: areas of widespread concern; site-specific v street, neighbourhood or community changes; and addition of new zones or new zoning provisions;
  - iv. the extent to which mediation is likely to be useful to progress the submission;
  - v. an estimate of the total likely mediation and hearing time required; and
  - vi. indicative responses by the Council as to its view of the merits of the requests.

## **Our present directions**

20. We will hear all of the PAUP policy matters first before dealing with the 'site-specific' or 'schedule-specific' submissions. This will enable the Panel to work from the general to the specific, which we consider the best way to develop and apply policy.
21. We intend to dis-aggregate the RPS policy matters from the RPS schedules so as to allow more time to address the schedule issues.
22. We propose to develop a work programme now to enable the work on these schedule and re-zoning issues to be undertaken in parallel to other Panel work,

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accepting that the hearings on these matters will be late in the overall programme and that time is needed to do this work.

23. We will address any 'out of scope' submissions early in the process, so we and submitters are clear on the number of submissions and range of issues we are to deal with.
24. We direct the Council to report to us by **1st September 2014** on its approach and assessment of the categorisation of the submissions on scheduled items as set out above.
25. We direct the Council to report to us by **10th September 2014** on changes to the RUB and by **1st October 2014** on its approach to and assessment of the categorisation of the submissions on rezoning and changes to precincts as set out above.
26. Any information provided to the panel by the council will be made publicly available.



5/8/14



## Graham Kohler

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**From:** Marian Kohler <mariankohler03@gmail.com>  
**Sent:** Saturday, 10 September 2016 1:33 p.m.  
**To:** Graham Kohler  
**Subject:** Fwd: query on Herne Bay Historic Heritage Area

----- Forwarded message -----

**From:** **Marian Kohler** <mariankohler03@gmail.com>  
**Date:** Mon, Sep 5, 2016 at 11:30 AM  
**Subject:** Re: query on Herne Bay Historic Heritage Area  
**To:** Katrina David <Katrina.David@aucklandcouncil.govt.nz>

Thank you Katrina.  
Regards,  
Marian Kohler

On Mon, Sep 5, 2016 at 9:02 AM, Katrina David <Katrina.David@aucklandcouncil.govt.nz> wrote:

Dear Ms Kohler

Yes as noted 6 Herne Bay Rd is included in the Special Character Areas overlay (Residential Isthmus A).

The sites on the corner of Herne Bay Rd and Jervois Rd that are not included in the Special Character Areas overlay are 227 and 225 Jervois Rd. 227 Jervois Rd is the villa on the corner and it is within the Historic Heritage Area (see map below).


With regards to the email you sent on Friday (as attached) asking if there were submissions on 6 Herne Bay Rd, yes there was a submission by Auckland Council (5716-618 and 5716-618) seeking to identify contributing and non-contributing sites for the various Historic Heritage Areas that did not already do so. These are listed below. As notified the Herne Bay Historic Heritage Area was shown in Map 11.

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#### Submission Point Pathway Report

Sub#/Point	Name	Submitter Group	Theme	Topic	Subtopic	Summary
5716-473	Auckland Council	Local Government and FS Local Gov	Historic Heritage (Overlay)	Overlay E2/J2 Historic Heritage	Appendices 9.1 9.2 and 9.3 Significant Historic Heritage Places	Amend maps 4, 5, 6, 9, Appendix 9.3 to define "non-contributing" plac

5716-618	Auckland Council	Local Government and FS Local Gov	Historic Heritage (Overlay)	Overlay E2/J2 Historic Heritage	Appendices 9.1 9.2 and 9.3 Significant Historic Heritage Places	Amend Appendix 9.3 sp 5 and 6, 9, 11, 14, 17, 19 maps and/or associated sites with Contributing with Non-Contributing I
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# GEOMAPS

Proposed Auckland Unitary Plan -  
Decisions version (19 Aug 2016)

Address

Search the map

Info      Legend      Results

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### Property Summary

This summary lists searched address, legal description, Zone and other limitations that apply to the site.

**Address**  
227 Jervois Road Hēme Bay Auckland 1011

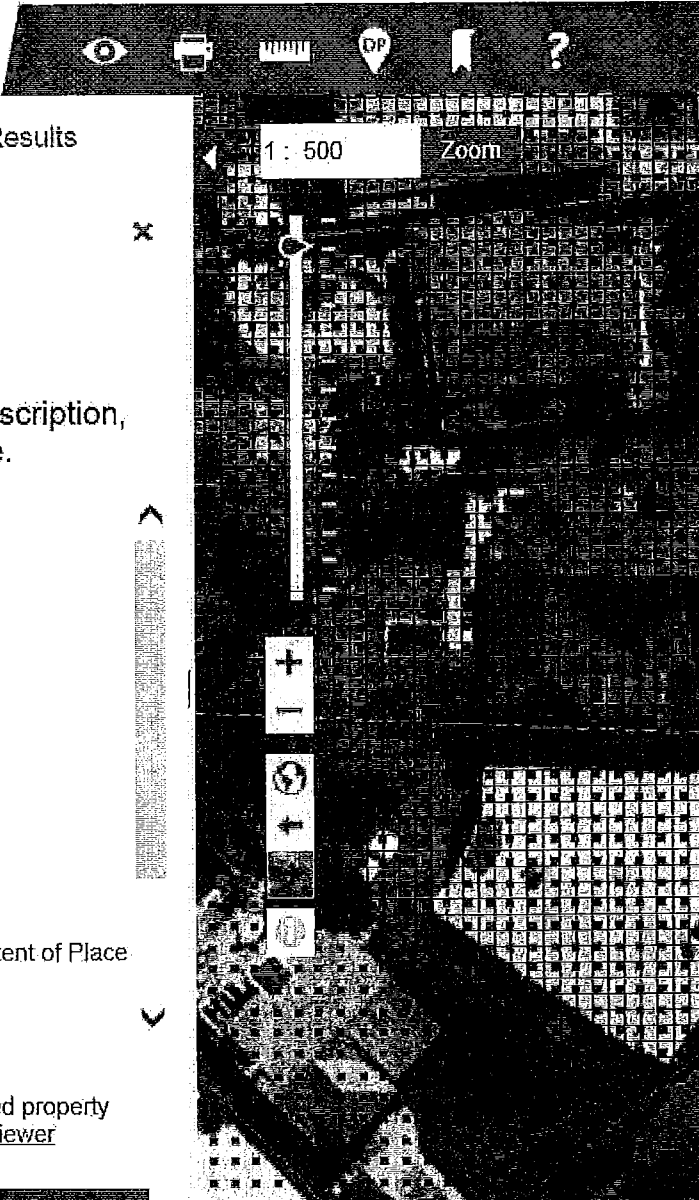
**Legal Description**  
LOT 8 DP 2477

**Zone**  
Business - Neighbourhood Centre Zone

**Precinct**

**Overlays**  
Built Heritage and Character: Historic Heritage Overlay Extent of Place  
[rcp/dp] - 2515, Hēme Bay Road Historic Heritage Area

For other mapped information that may apply to the searched property please use the [Data Discovery tool](#) or check the main [GIS viewer \(GeoMaps\)](#).



Kind regards