

AUCKLAND UNITARY PLAN  
INDEPENDENT HEARINGS PANEL

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

---

**Report to Auckland Council  
Hearing topic 031**

**Historic heritage**

**July 2016**

---

# Report to Auckland Council - Hearing topic 031 Historic heritage

## Contents

1. Hearing topic overview .....	3
1.1. Topic description .....	3
1.2. Summary of the Panel’s recommended changes to the proposed Auckland Unitary Plan.....	3
1.3. Overview .....	5
1.4. Scope.....	5
1.5. Documents relied on .....	5
2. What is (not) historic heritage and how are responsibilities allocated? .....	6
2.1. Statement of issue.....	6
2.1.1. Unscheduled historic heritage.....	6
2.1.2. Role of Heritage New Zealand Pouhere Taonga.....	6
2.2. Panel recommendation and reasons .....	6
2.2.1. Identification/unscheduled historic heritage.....	6
3. Category B buildings and extent of place .....	8
3.1 Statement of issue.....	8
4. Definitions and role of ICOMOS charter .....	8
4.1. Statement of issue.....	8
4.2. Panel recommendation and reasons .....	9
5. Prohibited activity status for demolition and reallocation of scheduled historic heritage places.....	10
5.1. Statement of issue.....	10
5.1.1. Total demolition or relocation of primary features – activity status.....	10
5.1.2. Measurement of ‘total and substantial demolition’ .....	10
5.1.3. Policies concerning demolition and destruction.....	10
5.2. Panel recommendation and reasons .....	10
5.2.1. Total demolition or relocation of primary features – activity status.....	10
5.2.2. Measurement of ‘total and substantial demolition’ .....	11
5.2.3. Policies concerning demolition and destruction.....	12
6. Notification .....	12

6.1.	Statement of issue.....	12
6.1.1.	Exceptions to normal tests for notification .....	12
6.1.2.	Heritage New Zealand as an affected party .....	13
6.2.	Panel recommendation and reasons .....	13
6.2.1.	Exceptions to normal tests for notification .....	13
6.2.2.	Heritage New Zealand as an affected party .....	13
7.	Works in accordance with conservation plans and heritage implementation plans .....	14
7.1.	Statement of issue.....	14
7.2.	Panel recommendation and reasons .....	14
8.	Infrastructure .....	15
8.1.	Statement of issue.....	15
8.1.1.	Policies .....	15
8.1.2.	Activity status and standards .....	15
8.2.	Panel recommendation and reasons .....	15
8.2.1.	Policies .....	15
8.2.2.	Activity status and standards .....	16
9.	Consequential changes.....	17
9.1.	Changes to other parts of the plan .....	17
9.2.	Changes to provisions in this topic .....	17
10.	Reference documents .....	17
10.1.	General topic documents.....	17
10.2.	Specific evidence .....	18

# 1. Hearing topic overview

## 1.1. Topic description

Topic 031 Historic Heritage addresses the regional coastal plan and district plan provisions of the proposed Auckland Unitary Plan relating to:

Topic	Proposed Auckland Unitary Plan reference	Independent Hearings Panel reference
Topic 031 Historic Heritage	C.3 Auckland-wide objectives and policies  Historic heritage in the coastal environment  E.2 Overlay objectives and policies  J.2 Overlay rules  G.2.7.8 Information requirements historic heritage	D17 Historic Heritage Overlay  Chapter F Coastal

Under the Local Government (Auckland Transitional Provisions) Act 2010, section 144 (8) (c) requires the Panel to set out:

the reasons for accepting or rejecting submissions and, for this purpose, may address the submissions by grouping them according to—

- (i) the provisions of the proposed plan to which they relate; or
- (ii) the matters to which they relate.

This report covers all of the submissions in the Submission Points Pathways report (SPP) for this topic. The Panel has grouped all of the submissions in terms of (c) (i) and (ii) and, while individual submissions and points may not be expressly referred to, all points have nevertheless been taken into account when making the Panel's recommendations.

## 1.2. Summary of the Panel's recommended changes to the proposed Auckland Unitary Plan

- i. C.3 Auckland-wide objectives and policies addressing unscheduled historic heritage is deleted in its entirety and references to unscheduled significant historic heritage have been removed throughout the Plan.
- ii. Clarification of the role of Heritage New Zealand Pouhere Taonga particularly in relation to archaeological sites and including:
  - a. inserting a description of the role of Heritage New Zealand in D17.1;

- b. amending the definition of archaeological site to align with the Heritage New Zealand Pouhere Taonga Act (Topic 065 Definitions); and
  - c. providing for Heritage New Zealand to be considered as an affected party when decisions on notification are made concerning historic heritage (see rule C1.13(4))
- iii. D17 (formerly E2) is retained as proposed in the Council's closing version subject to a number of amendments, some to clarify its purpose and others for clarity of administration (e.g. structure and approach to rules). Amendments make it clear that the focus of this overlay is scheduled historic heritage i.e., historic heritage that merits protection under section 6(f) of the Resource Management Act 1991 and that has been scheduled following identification and evaluation as provided for in the regional policy statement (B5.2). Other amendments to the activity table, rules and standards give effect to this purpose.
  - iv. Definitions of terms such as 'conservation' have been deleted from Chapter D and from the definitions section of the Plan. The plain English meaning of these words together with professional judgement is preferred to prescriptive wording when interpreting the Plan.
  - v. The International Council of Monuments and Sites (ICOMOS) NZ Charter may be used as guidance when interpreting and applying the Plan. Reference to ICOMOS has been removed from the assessment criteria.
  - vi. The 'total and substantial demolition' of features is measured by volume or footprint (D17.4 Activity table).
  - vii. The list of exclusions in the notification rule is retained as proposed by the Council (rule D17.5) with the addition of 'restoration activities'.
  - viii. Insertion of controlled activity assessment criteria because these were missing from the Council's closing version of the provisions.
  - ix. The special information requirements have been abbreviated and now focus on key matters that are not otherwise addressed. If there is a recent conservation plan, a copy should accompany the application.
  - x. In D17.4 Activity table there is a new provision explaining the interpretation of footprint for Oakley Hospital ID 1339 – a cross reference to the diagram in Schedule 14.2 identifies the footprint for the area of the building that comprises the primary feature. This matter was addressed in Topic 032 Historic heritage schedules and Topic 081 Precincts (Wairaka).
  - xi. In relation to infrastructure, the objectives in D17.2 apply and policies 24, 25 and 26 apply as amended and all rules have been relocated to E26.8 Network utilities and electricity generation – Historic Heritage Overlay (the combined chapter).
  - xii. The regional coastal plan and district plan provisions are clearly identified and cross-referenced to the coastal Historic Heritage Overlay in Chapter F Coastal.

### 1.3. Overview

The parties and the Council were involved in mediation and direct discussions which resolved many issues resulting in agreed changes to the objectives, policies and rules as well as the descriptions of scheduled historic heritage places (refer Topic 032 Historic heritage schedules). Other matters were resolved during the exchange of evidence and at the hearing. In deliberating, the Panel relied on the Council's closing version of the provisions as its starting point because these represent the considerable degree of consensus reached. While the chapter looks different to the Council's closing version, many of the amendments are to the structure and the wording of objectives, policies and rules in order to clarify its purpose and improve administration.

The Panel, however, does not support the inclusion of objectives and policies addressing 'unscheduled historic heritage' (notified as C3) nor does it support the many references to 'unscheduled significant historic heritage' that occur throughout the Plan.

In the Panel's view, the method of protecting historic heritage by scheduling those places identified as having considerable and outstanding historic heritage value is well-established. The Panel supports this approach because it provides certainty to landowners and is likely to achieve the outcomes sought by the Plan. The Panel considers that significant historic heritage places should be identified, evaluated and included in the schedule following the process set out in the regional policy statement (B5.2).

Heritage New Zealand Pouhere Taonga's statutory role and responsibilities are recognised and the provisions clarified in this regard.

The links between this chapter and other parts of the Plan have been addressed; infrastructure, coastal heritage, land disturbance (accidental discovery rules) and definitions. Specific policies (D17.3(24) and D17.3(25)) enable the use and upgrading of existing network utilities and establishment of new network utilities within scheduled historic heritage places.

Site specific matters relating to identification and scheduling of historic heritage places are all addressed in Topic 032.

### 1.4. Scope

The Panel considers that the recommendations in 1.2 above and the changes made to the provisions relating to this topic (see 1.1 above) are within scope of submissions.

For an explanation of the Panel's approach to scope see the panel's Report to Auckland Council – overview of recommendations July 2016.

### 1.5. Documents relied on

Documents relied on by the Panel in making its recommendations are listed below in section 10 Reference documents.

## 2. What is (not) historic heritage and how are responsibilities allocated?

### 2.1. Statement of issue

#### 2.1.1. Unscheduled historic heritage

The protection of historic heritage from inappropriate subdivision, use and development is a matter of national importance (section 6 (f) of the Resource Management Act 1991). The notified proposed Auckland Unitary Plan took a broad view of historic heritage, including archaeological sites. The Plan identified and scheduled historic heritage places for protection in the conventional way. However it also included Auckland-wide objectives and policies dealing with historic heritage that has not been identified or evaluated and is yet to be included in the schedule (C3.1 and C3.2 proposed Auckland Unitary Plan). There were references to 'significant unscheduled historic heritage' as well. This all-inclusive approach to unscheduled historic heritage was an issue at the hearing (University of Auckland, 5662).

#### 2.1.2. Role of Heritage New Zealand Pouhere Taonga

A related issue is the need to clearly define the roles and responsibilities of Heritage New Zealand and the Council with respect to historic heritage protection. Heritage New Zealand supported the general scheme of the Plan as it deals with significant (scheduled) heritage but expressed major reservations about the way in which archaeology is dealt with (evidence in chief for Heritage New Zealand, Duncan McKenzie, paragraphs 6.1 and 6.4). Heritage New Zealand sought to clarify the roles and responsibilities of the two statutory authorities.

The Panel also noted a number of instances where efficiency and effectiveness would be improved by clarification of roles and responsibilities. The following are examples of the need for 'boundary management':

- i. the definition of archaeological sites in the notified proposed Auckland Unitary Plan differs from the definition in the Heritage New Zealand Pouhere Taonga Act 2014;
- ii. there is a need for compatibility between the schedule of historic heritage places and the Heritage New Zealand List/Rarangi Kōrero;
- iii. there is a need to minimise duplication of processes e.g. management of archaeological sites; and
- iv. there is a need to consider Heritage New Zealand may be an affected party in relevant circumstances (see 2.2.2 below).

### 2.2. Panel recommendation and reasons

#### 2.2.1. Identification/unscheduled historic heritage

The regional policy statement provides for the identification and evaluation of historic heritage places according to eight factors, the definition of the physical extent of the place, and its inclusion in Schedule 14.1 Schedule of Historic Heritage on the basis of its considerable or outstanding values (now B5.2.2(1) – (3)). A further policy sets out the categories of historic heritage places (now B5.2.2.4). In addition, identification of the primary features, exclusions and extent of place is a helpful management approach

because it assists understanding of what is protected in a particular circumstance. It also means that the activity status for works within the extent of place can be tailored according to whether it involves the primary features or non-primary features, thus avoiding unnecessary applications. The Panel endorses this approach to identification and protection of historic heritage. Historic heritage places that are significant should be scheduled because this promotes effective protection.

A resource management plan intervenes in property rights where this is necessary to achieve the purpose of sustainable management of natural and physical resources. It is fundamental to our planning system that intervention is justified by research and policy analysis and that landowners and the community are involved in the process. The principles of natural justice require both a substantive basis for intervention and due process to be observed.

It is unclear how the objectives and policies in C3 are to apply (University of Auckland, legal submissions, paragraphs 10-16) because there are no methods for giving effect to them. This creates uncertainty for applicants and, depending on how these objectives and policies are utilised, may increase compliance costs. Furthermore, there are accidental discovery rules where land disturbance or disturbance of the foreshore and seabed reveals archaeological evidence of prior occupation. The accidental discovery rules, together with the management regime administered by Heritage New Zealand, effectively manage the unforeseen.

For these reasons, the Panel does not support the inclusion of plan provisions relating to unscheduled historic heritage. If the Council wishes to protect historic heritage, it should follow the identification and scheduling process provided for in the regional policy statement, using the plan change procedure. Accordingly, C3.1 and C3.2 have been removed from the Plan as have various other references to unscheduled significant historic heritage e.g. from the information requirements.

## **2.2.2 Role of Heritage New Zealand Pouhere Taonga**

Heritage New Zealand has both an advocacy and a statutory role in relation to the conservation and protection of historic heritage. The Council has similar roles for a similar but not identical purpose (evidence in chief, Duncan McKenzie, paragraphs 7.1-7.4). Clear administrative boundaries assist applicants and the community in this situation.

A specific example of overlapping processes arose because the activity table (then J2.1 Activity Table 2, now Table D17.4.2) required resource consent (restricted discretionary) to be obtained for invasive archaeological investigations taking place within a scheduled historic heritage place. Heritage New Zealand maintained its opposition to this requirement because it duplicates the 'authority to modify' approvals that are also required under section 56 of the Heritage New Zealand Pouhere Taonga Act 2014 (evidence in chief, Duncan McKenzie and supplementary evidence of Beverley Parslow).

The Panel considers that this is a situation where duplication cannot be avoided. Restricted discretionary activity status applies only to those "archaeological sites or features identified as subject to additional archaeological rules in Schedule 11.1". There is the potential for invasive archaeological investigations to adversely affect the primary features of an historic heritage place that are not also archaeological sites or features. For this reason, it is fair to require resource consent to be obtained in addition to an authority to modify under section 56 of the Heritage New Zealand Pouhere Taonga Act 2014.



The Panel has considered the relationship between the two statutes in a number of instances with a view to clarifying the purpose of this chapter and simplifying administration. For example, the Panel has amended the definition of 'archaeological site' to align with the definition used in the Heritage New Zealand Pouhere Taonga Act 2014 as requested by Heritage New Zealand. As notified, the definition had no boundaries in time and therefore its reach was global. Using a standard definition creates certainty for all parties and is therefore more efficient. The Panel has also included an explanation of the role of Heritage New Zealand in D10.1 Background as sought by Heritage New Zealand (evidence in chief, Duncan McKenzie, paragraph 7.5). This explanation covers the management of archaeological sites in particular because of Heritage New Zealand's key role in scientific investigation of sites at risk.

### **3. Category B buildings and extent of place**

#### **3.1 Statement of issue**

Trust Management on behalf of Saint Johns College Trust Board et al (6785, FS3409) and the General Trust Board of the Anglican Diocese of Auckland (8932, FS3410) raised a number of issues in relation to the identification and management of Category B scheduled historic heritage places (see evidence in chief and supplementary statement of evidence of Ms Clare Covington). These issues were partly resolved by amendments to the Activity Table providing separately for 'primary feature Category B place' which Ms Covington supported. Nevertheless, a concern remains that all features within a Category B place are treated as primary features until such time as the schedule is updated to identify the primary features. Resource consent is therefore required for most works within the scheduled extent of place.

#### **3.2 Recommendation and Reasons**

Category B historic heritage places are by far the largest group in the schedule (approximately 80 per cent of all entries). In many cases, the extent of place is the same as the primary feature (assuming that was identified). Having said that, the Panel agrees with Ms Covington that accurate identification of Category B primary features, non-primary features and exclusions is desirable because this would improve protection and reduce compliance costs. In Topic 032 Historic heritage schedules the Panel has considered doing this where scope is available. The Panel supports the addition of a column providing separately for 'primary feature Category B place' as shown in the Council's closing version of the provisions.

### **4. Definitions and role of ICOMOS charter**

#### **4.1. Statement of issue**

The Character Coalition (6379, FS3173) and Remuera Heritage (5347, FS2235) consider that the definitions of the International Council of Monuments and Sites (ICOMOS) NZ Charter should be incorporated into the Plan provisions to avoid any ambiguities. The Council disagrees because there are important differences between the definitions used in the Plan and the ICOMOS definitions.

## 4.2. Panel recommendation and reasons

Ms Rowe for the Council proposed definitions in E2 (now D17) that were based on the ICOMOS definitions, and amended to fit the particular context of the proposed Auckland Unitary Plan (evidence in chief, paragraphs 9.88 and 9.99; closing version of provisions).

The Panel explored this matter during the hearing because of its concern that the definitions were overly prescriptive when protection of historic heritage relies on professional judgement applied in the context of unique places. Mr Loutit captured this concern in his discussion on balancing the protection of historic heritage values from inappropriate subdivision, use and development with enabling appropriate works (Auckland Council, closing remarks, paragraph 2.3):

It was generally agreed at the hearing of this topic that a degree of subjectivity is required in order to assess the effects development proposals may have on scheduled historic heritage places. This is because understanding and interpreting historic heritage values, and then assessing the effects of change upon those values, is inherently a subjective matter.

Conservation practice is well-established in New Zealand and is constantly evolving in light of experience and new advances. Terms such as conservation, modification and restoration are generally well-understood by practitioners but naturally they must be interpreted in any one case taking into account the proposal, the likely effects on the historic heritage place and the values that justify its inclusion in the schedule. Prescriptive definitions may avoid ambiguities on paper but they also imply a degree of certainty as to meaning that cannot exist out of context. The Panel considers that accurate identification of the historic heritage place, and appropriate categorisation and descriptions of primary and non-primary features and exclusions, assists with interpretation. Furthermore, activity status is commonly restricted discretionary, discretionary or non-complying where major works are proposed and it is therefore expected that professional judgement will be relied upon when interpreting and applying the Plan.

For these reasons, the Panel does not support retention of many of the definitions currently included in E2 and in the definitions section of the Plan (J Definitions). The few definitions that are retained are required to understand and apply the standards and are now located in the definitions section. These are: archaeological investigation; archaeological site; contributing buildings, structures or features; demolition; and non-contributing buildings, structures or features. Descriptions of the categories of historic heritage place and other terms explaining the approach to protection (e.g. primary and non-primary features, setting of a historic heritage place) are retained in D17.1. The definitions of 'total demolition' and 'substantial demolition' have been deleted and instead written into the activity table rules (see 4.2.1 below).

In the Panel's view, the meaning of the provisions in the Plan must be ascertained from all relevant text in the plan and in the light of the purpose of the Resource Management Act 1991 and any relevant objectives and policies in the Plan (see J1.1 Definitions).

The ICOMOS NZ Charter provides helpful guidance in the preparation of conservation plans and protection of historic heritage however it was not prepared for the purpose of administering the Resource Management Act. The Panel considers that the ICOMOS NZ Charter is best utilised to support professional judgement and conservation practice.

## **5. Prohibited activity status for demolition and reallocation of scheduled historic heritage places**

### **5.1. Statement of issue**

#### **5.1.1. Total demolition or relocation of primary features – activity status**

Prohibited activity status is proposed by the Council in relation to the total demolition or destruction of the primary features of a Category A place, and the permanent relocation of the primary feature of a Category A place beyond its scheduled extent of place. The Heritage Working Group did not challenge prohibited activity status. However the Character Coalition and Remuera Heritage consider that prohibited activity status is not appropriate, preferring non-complying activity status which would enable an assessment under the regional policy statement objectives and policies, and the objectives and policies of E2 (now D17). Housing New Zealand (839, FS3338) took a similar position.

#### **5.1.2. Measurement of ‘total and substantial demolition’**

Activity status is linked to concerns about the measurement of ‘total demolition’ and also the definition of demolition. Prohibited activity status necessitates accurate identification of the Category A primary features of a historic heritage place. These issues were raised by Housing New Zealand (evidence in chief, Amelia Linzey) and others. The Heritage Working Group seeks amendments to the definitions of total and substantial demolition to refer to gross floor area on the basis that this is measurable. Britomart Group Company (840, FS2908) also sought the use of gross floor area.

#### **5.1.3. Policies concerning demolition and destruction**

The Heritage Working Group and University of Auckland seek deletion of Policy 15 relating to avoiding demolition and destruction where the adverse effects would be such that the place would no longer meet the significance thresholds of the category within which the place is scheduled. They also seek amendment of Policy 16 to refer to ‘institutional, social and economic benefits’ rather than ‘public benefits’. The Council held to its position that Policies 15 and 16 should be retained as set out in the closing statement version of the provisions.

### **5.2. Panel recommendation and reasons**

#### **5.2.1. Total demolition or relocation of primary features – activity status**

During the hearing, the Panel explored this issue with a number of witnesses and legal counsel. The Panel also considered the measurement of ‘total and substantial demolition’ when coming to a conclusion on activity status (see 5.2.2 below).

As provided for in Chapter A, activities are classed as prohibited ‘where they are expected to cause significant adverse effects on the environment which cannot be avoided, remedied or mitigated by conditions of consent’ (see A1.7). The Panel agrees with the Council that demolition or destruction of the primary features of Category A historic heritage places is a valid reason for adopting prohibited activity status. This is because demolition or destruction results in the physical loss of the primary features and potentially the loss of all or some of the values on which scheduling is based. Provided there is excellent documentation of the Category A primary features and a clear understanding of what is ‘total demolition or

destruction', this is an appropriate method in the Plan (see policy (6) of B5.2.2 and policy (12) of D17.3).

With respect to relocation beyond the extent of place, the risk to be avoided is loss of the values on which scheduling is based due to severing the relationship between the primary features and the site or area in which they are located. Typically, the setting and location of a primary feature is an integral part of its historic heritage significance. This loss should be avoided (see Policy (6) of B5.2.2 and Policy (17) of D17.3) and therefore prohibited activity status is an appropriate method for this purpose.

The Panel addressed the scheduling of historic heritage places in Topic 032 and is satisfied that the identification of Category A primary features is generally sound. Many of these historic heritage places have been scheduled in district plans for decades and many are also listed in the Heritage New Zealand List/Rarangi Kōrero. Landowners acknowledge that protection of their property as a historic heritage place is warranted in the public interest and most take financial responsibility for ongoing maintenance and conservation.

For Heritage New Zealand, Mr Duncan McKenzie said that there is little demolition of Category A items (oral evidence). The Panel's analysis of resource consent data provided by Auckland Council tends to confirm this conclusion. This not only suggests there is general acceptance of historic heritage protection in resource management plans but also indicates that the risk of generating a high number of plan changes is low.

The Panel agrees with counsel for the Council (closing statement, paragraph 3.11) that applicants 'may seek a plan change on the basis that the place or feature no longer meets the criteria and thresholds for inclusion as Category A place or that scheduling may not be the most appropriate management response in respect of the place for any number of reasons'. Accordingly, prohibited activity status for 'total demolition of primary features of a Category A historic heritage place' and for 'relocation of primary features beyond the extent of place' is supported. This activity status provides a level of protection that is commensurate with the significance of the historic heritage values being protected.

### **5.2.2. Measurement of 'total and substantial demolition'**

The Panel asked questions about the effectiveness of various ways of measuring 'total and substantial demolition' and invited Mr Duncan McKenzie, Heritage New Zealand, to provide further comments in this regard.

Mr McKenzie subsequently provided a memorandum (supplementary evidence, 2 November 2015) in which he canvassed the measurement of 'total and substantial demolition'. Mr McKenzie consulted the Council's planners and they independently came to the same view on measurement. That is, volume or footprint is a suitable measure for setting thresholds (paragraph 12). Mr McKenzie considered that 'surface area' was not a particularly satisfactory measure if, for example, the cladding of a building needed to be removed and replaced (paragraphs 13 and 14). The Panel considers that desirable maintenance of historic heritage should be enabled and therefore does not support the use of 'surface area' as a measure.

Dr Pooley addressed the usefulness of 'gross floor area' and described a number of issues that arise due to this term being defined in the proposed Auckland Unitary Plan (evidence in rebuttal, paragraph 5.5). He concluded that, as defined, gross floor area "would be

unsuitable for buildings within historic heritage places, and could result in valuable elements or parts of buildings being precluded from the demolition control”.

The Panel considers that most measures used as thresholds for activity status will have limitations simply because of the myriad of different characteristics of historic heritage places. Certainty is unattainable in this context therefore a useful measure is one with a track record. Accordingly, the use of ‘volume’ is preferred because it has fewer limitations compared to ‘gross floor area’. Professional judgement and prior experience of its application in other district plans will assist interpretation in a particular case. The use of ‘footprint’ is appropriate where the historic heritage place is an archaeological site, garden or open space and therefore this measure is supported.

### **5.2.3. Policies concerning demolition and destruction**

The Panel agrees with the Council that Policy 15 is a necessary element in the policy framework against which applications for total or substantial demolition can be assessed. Retention of this policy is supported because it aims to protect the historic heritage significance of a place over time.

With respect to Policy 16, the Panel supports retention of ‘significant public benefit’ in the policy for the reasons set out in the evidence in rebuttal of Duncan McKenzie for Heritage New Zealand (paragraphs 2.2 and 2.3). In particular, the Panel’s view is that this wording provides a policy framework for considering the merits of proposals in terms of the public good they offer relative to the risk of losing another public good i.e., significant historic heritage. The nature of the public benefit is case-specific. The wording proposed by the University of Auckland – institutional, social and economic benefits – is unclear and appears to require consideration of private benefits relative to the loss of public enjoyment arising from the protection of historic heritage.

The Panel supports the retention of both policies as set out in the Council’s closing version of the provision subject to minor amendments.

## **6. Notification**

### **6.1. Statement of issue**

#### **6.1.1. Exceptions to normal tests for notification**

Whether or not the normal tests of notification should apply to all activities was an issue.

Parnell Heritage (3770, FS2910) sought public notification to enable greater public participation in decision-making and Remuera Heritage (5347, FS2235) considered that the normal tests of notification should apply. On the other hand, the Heritage Working Party (various submitters) and the Council agreed that selected controlled and restricted discretionary activities will be considered without public or limited notification, or the need to obtain written approval from affected parties. The Heritage Working Group also proposed additions to the ‘exceptions list’ which the Council did not accept e.g., the addition of ‘new buildings in a Historic Heritage Area’ was requested (legal submissions, paragraph 6.4).

### **6.1.2. Heritage New Zealand as an affected party**

An issue was whether and how Heritage New Zealand should be identified as an affected party in respect of activities affecting places in the Heritage New Zealand List/Rarangi Kōrero.

## **6.2. Panel recommendation and reasons**

### **6.2.1. Exceptions to normal tests for notification**

In principle, the Panel considers that the normal tests of notification should apply to all applications (see the Panel's Report to Auckland Council – Hearing topic 004 General rules July 2016). However, applications involving historic heritage involve a wide range of people, physical circumstances, scale of effects and values. Not all effects are adverse. Some activities such as restoration may have positive effects. Given this context, the Panel agrees with the Council that it is reasonable and appropriate to include a list of activities to be excluded from the normal notification tests. The activities considered suitable for such exclusion are those where the potential for adverse effects is limited or there are positive effects. Restoration is an example of positive effects and the Panel has added this to the list. Accordingly, the Panel supports the notification rule as amended by the Council (closing statement version) with the addition of restoration activities.

### **6.2.2. Heritage New Zealand as an affected party**

Mr Duncan McKenzie for Heritage New Zealand (evidence in chief, paragraph 13.6) proposed a targeted notification clause stating that Heritage New Zealand may be considered an affected party (limited notification) when a restricted discretionary directly affects a place that is on the Heritage New Zealand Heritage List/Rarangi Kōrero. Ms Rowe for the Council (evidence in rebuttal, paragraphs 10.6-10.8) acknowledged the role of Heritage New Zealand but considered that the notification clause proposed by Mr McKenzie may not be lawful. She proposed amendments listing the activities that may be considered without public or limited notification but did not include a specific provision stating that Heritage New Zealand may be considered as a potentially affected party. The Heritage Working Group agreed with Ms Rowe's approach (legal submissions, paragraph 6.9).

The Panel explored this matter during the hearing and Panel concluded there was general agreement among these parties that Heritage New Zealand should be considered as a potentially affected party at least in cases where the historic heritage place was also on its List. The Panel supports this agreement because Heritage New Zealand has statutory responsibilities, acknowledged expertise and long experience in this field. Involving Heritage New Zealand, in appropriate circumstances, is likely to promote better resource management outcomes.

For Heritage New Zealand, Mr Duncan McKenzie proposed this wording (evidence in chief, paragraph 13.6):

Restricted discretionary activities that directly affect scheduled historic heritage places that are also entries on the NZ Heritage List may be considered for limited notification, with the determination of affected persons under s 95E of the RMA to take into account the interests of HNZPT.

In the Council's closing remarks, Ms Rowe suggested an alternative approach for this purpose. She proposed an amendment to Policy 26 of E2 (Council's closing version) requiring proposals that affect one or more places to consider "the interests of Heritage New Zealand Pouhere Taonga, where the place affected is also identified on the Heritage New Zealand List/Rarangi Korero." The Panel agrees that it is desirable to provide a policy framework enabling the decision on notification to consider whether Heritage New Zealand is an affected party. The Panel considered this matter in a wider context.

In several topics, the Panel heard submissions from statutory bodies, network utility operators and iwi authorities seeking status as affected parties because they have responsibility for natural and physical resources. The Panel considers there is a risk that these responsibilities may not be fulfilled unless the relevant bodies are involved in the resource consent process. Accordingly, Rule C1.13(4) provides that:

in deciding whether any person is affected in relation to an activity for the purpose of section 95E of the Resource Management Act, the Council will give specific consideration to the statutory bodies, network utility operators and iwi authorities with responsibility for any natural or physical resources which may be affected by the activity, including.....(b) in relation to historic heritage, Heritage New Zealand Pouhere Taonga.

The Panel considers that this approach recognises and appropriately provides for consideration of Heritage New Zealand's statutory role in historic heritage in the context of applications for resource consent. A fuller explanation of the reasons for choosing this approach is set out in the Panel's report to Auckland Council - Overview of recommendations July 2016.

## **7. Works in accordance with conservation plans and heritage implementation plans**

### **7.1. Statement of issue**

Whether the activity table should provide for works undertaken in accordance with conservation plans and heritage implementation plans as permitted activities was an issue pursued by The University of Auckland (5662) and Britomart Group Company (840, FS2908). At the hearing, the Council maintained that there was no resource management process for approving a conservation plan (with its accompanying heritage implementation plan) and therefore permitted activity status was not possible. The submitters responded by proposing controlled activity status for maintenance and restricted discretionary activity status for modifications.

### **7.2. Panel recommendation and reasons**

The Panel does not support amendments to the activity table to provide for works in accordance with conservation plans and heritage implementation plans as permitted, controlled or restricted discretionary activities.

Conservation plans identify the historic heritage value and historic heritage significance of a place, the conservation policies, and the extent of the recommended works (adapted from ICOMOS NZ Charter, section 4). Thus the conservation plan focuses on conserving the authenticity and integrity of the place whereas the Resource Management Act 1991 deals IHP Report to AC Topic 031 Historic heritage 2016-07-22

with the protection of historic heritage for the purposes of sustainable management of natural and physical resources. It is appropriate that a conservation plan accompanies an application for resource consent or a plan change to inform decision-making. However the conservation planning process is not a substitute for resource management processes given the different purposes each serves. The Panel agrees with the Council that there is no reason why the objectives of the approach sought by the submitters cannot be achieved through resource consent applications supported by conservation plans as provided for in the Plan (legal submissions, paragraphs 5.1-5.7).

## **8. Infrastructure**

### **8.1. Statement of issue**

#### **8.1.1. Policies**

The wording of objectives and policies relating to infrastructure was an issue largely resolved in evidence and during the hearing.

#### **8.1.2. Activity status and standards**

The Auckland Utility Operators Group sought amendments to the activity table providing for a range of activities on a more permissive basis (i.e., permitted or controlled rather than discretionary or restricted discretionary activity status as proposed by the Council).

The Council disagreed and sought to retain the ability to consider activities on a restricted discretionary basis in order to assess effects on heritage value, and to decline consent where the activity has no functional necessity to locate within a scheduled extent of place.

### **8.2. Panel recommendation and reasons**

#### **8.2.1. Policies**

In its closing remarks, the Council agreed to include Transpower New Zealand Limited's (3766, FS2977) proposed new policy to guide decision-making on non-complying and discretionary resource consent applications (see policy X, Council's closing version of the provisions). The Panel supports the inclusion of this policy subject to minor amendments improving its clarity (Council closing statement, paragraph 9.8). The policy (now D17.2 Policy 26) provides for those exceptional circumstances where scheduled historic heritage may need to be relocated or demolished to provide for significant infrastructure (evidence summary, Ms Haylee Minoprio, paragraph 5). Adoption of this new policy satisfies a similar submission from New Zealand Transport Agency Limited (1725, FS1394).

Transpower New Zealand Limited also sought to replace the words 'that necessitates' with 'for' in policy 28 (see Council's closing statement version). This policy (now D17.2 Policy 25) enables the establishment of network utilities and small-scale electricity generation within historic heritage places in limited circumstances. The Panel agrees with the Council that making this replacement would lower the threshold test within this policy (Council closing statement, paragraph 9.9). Retention of the policy is supported subject to minor amendments improving its clarity.



The New Zealand Transport Agency Limited sought clear identification of regional coastal plan and district plan provisions. The Council proposed amendments (Council closing statement, paragraphs 9.13 and 9.14) and the Panel agrees that it is necessary to be clear in this regard. In the Panel's recommended version, this has been done by deleting some text from the Background section and 'tagging' the following provisions as both regional coastal plan and district plan provisions:

- i. D17.1-D17.3 Background, objectives and policies;
- ii. D17.4.1 Activity table - Activities affecting Category A, A\* and B scheduled places (rcp – where reference is made in Chapter F [Coastal] to these rules applying and dp);
- iii. D17.4.2 Activity table – Activities subject to additional archaeological rules.

In the preamble to D17.4 Activity tables, there is a statement directing the reader to the relevant activity table in Chapter F Coastal, as some rules for scheduled historic heritage places in the coastal marine area are contained in Chapter F Coastal. The rules in Chapter F apply except where reference is made to the rules in Chapter D17.

### **8.2.2. Activity status and standards**

The Panel determined that the activity table and standards for infrastructure should be relocated to E26 Infrastructure for efficiency and ease of administration. These matters are therefore addressed in Topic 042 Infrastructure.

## 9. Consequential changes

### 9.1. Changes to other parts of the plan

As a result of the Panel's recommendations on this topic, there are consequential changes to other parts of the Plan as listed below.

- i. E26 Infrastructure – all rules affecting historic heritage have been relocated to the dedicated infrastructure chapter.
- ii. J Definitions – deletion of various definitions relating to historic heritage; amendment to the definition of 'archaeological site' to align with the definition used in the Heritage New Zealand Pouhere Taonga Act 2014.
- iii. E11 and E12 – accidental discovery rules relocated to these chapters.
- iv. The rules in the activity table in Chapter F for scheduled historic heritage places apply, except where reference is made to the rules in this chapter (D10)
- v. C General rules now contains provision for Heritage New Zealand to be considered as an affected party when decisions on notification are made concerning historic heritage

### 9.2. Changes to provisions in this topic

There are no changes to provisions in this topic as a result of the Panel's recommendations on other hearing topics.

## 10. Reference documents

The documents listed below, as well as the submissions and evidence presented to the Panel on this topic, have been relied upon by the Panel in making its recommendations.

The documents can be located on the auihp website ([www.auihp.govt.nz](http://www.auihp.govt.nz)) on the hearings page under the relevant hearing topic number and name.

You can use the links provided below to locate the documents, or you can go to the website and search for the document by name or date loaded.

(The date in brackets after the document link refers to the date the document was loaded onto the auihp website. Note this may not be the same as the date of the document referred to in the report.)

### 10.1. General topic documents

#### Panel documents

[031-Submission Point Pathway Report](#) - 13 March 2015

[031-Parties and Issues Report](#) -23 February 2015

[031-Mediation Joint Statement - Session 1 \(11 February and 12 February 2015\)](#) (17 February 2015)

[031-Mediation Joint Statement - Session 2 \(12 February 2015\)](#) (17 February 2015)

[031-Mediation Joint Statement - Session 3a \(13 February 2015\)](#) (17 February 2015)

[031-Mediation Joint Statement - Session 3b \(13 February 2015\)](#) (17 February 2015)

[031-Mediation Joint Statement - Session 4 \(23 March 2015\)](#) (27 March 2015)

### **Auckland Council marked up version**

[031-Mediated marked-up version of section C3 Historic Heritage- Session 1](#) (17 February 2015)

[031-Mediated marked-up version of section E2 Historic Heritage- Session 1](#) (17 February 2015)

[031-Mediated marked-up version of section G2.7.8 Historic Heritage Information Requirements- Session 2](#) (17 February 2015)

[031-Mediated marked-up version of section J2 Historic Heritage- Session 2](#) (17 February 2015)

[031-Mediated marked-up version new provisions proposed by Auckland Council- inserted into E2- Session 3](#) (17 February 2015)

[031-Mediated marked-up version new provisions proposed by Auckland Utility Operators Group inserted into E2- Session 3](#) (17 February 2015)

[031-Mediated marked-up version of section C3 Historic Heritage- Session 4](#) (27 March 2015)

[031-Mediated marked-up version of section E2 Historic Heritage- Session 4](#) (27 March 2015)

[031-Mediated marked-up version of section H1 X Infrastructure- Session 4](#) (27 March 2015)

[031-Mediated marked-up version of section J2 Historic Heritage- Session 4](#) (27 March 2015)

### **Heritage working group**

[031-Mediated marked-up version of section Heritage Working Group- E2 Historic Heritage - Session 4](#) (27 March 2015)

[031-Mediated marked-up version of section Heritage Working Group- J2 Historic Heritage - Session 4](#) (27 March 2015)

### **Auckland Council closing statement**

[031 - Hrg – CLOSING STATEMENT](#) (2 June 2015)

[031 - Hrg – CLOSING STATEMENT - Annexure A – Proposed Amendments to C3, E2, G2.5.1, G2.7.8, H1.X, J2](#) (2 June 2015)

[031 - Hrg – CLOSING STATEMENT – Resource Consent Data Memorandum](#) (24 June 2015)

## **10.2. Specific evidence**

### **Auckland Council**

[031 - Hrg - legal submissions](#) (15 May 2014)

[031 - Hrg - \(Deborah Rowe\) – Planning – C3, E2, G2.7.8, H1.x, J2](#) (15 April 2015)

[031 - Hrg - \(Deborah Rowe\) – Planning – Attachment C – s32 and s32AA \(15 April 2015\)](#)

[031 - Hrg - \(Deborah Rowe\) – Planning – Attachment B \(15 April 2015\)](#)

[031 - Hrg - \(Deborah Rowe\) – Planning – REBUTTAL - LATE \(8 May 2015\)](#)

[031 - Hrg - \(Deborah Rowe\) – Planning – REBUTTAL – Attachment A – Revised Marked-up Version - LATE \(8 May 2015\)](#)

[031 - Hrg - \(Bryan Pooley\) – Heritage – REBUTTAL - LATE \(7 May 2015\)](#)

### **Heritage New Zealand Pouhere Taonga**

[031 - Hrg - \(Duncan McKenzie\) – Planning \(28 April 2015\)](#)

[031 - Hrg - \(Beverley Parslow\) – Archaeology - Supplementary Evidence \(7 May 2015\)](#)

[032 - Hrg - Supplementary Evidence - Definition of Demolition \(2 November 2015\)](#)

### **Housing New Zealand**

[031 - Hrg - \(Amelia Linzey\) - Planning \(28 April 2015\)](#)

### **‘The Heritage Working Group’**

[031 - Hrg - Heritage Working Group - JOINT STATEMENT - LEGAL SUBMISSIONS.pdf \(14 May 2015\)](#)

### **The General Trust Board of the Anglican Diocese of Auckland**

[031 - Hrg - \(Clare Covington\) – Planning – LATE \(28 April 2015\)](#)

[031 - Hrg - \(Clare Covington\) – Planning – Supplementary Evidence \(14 May 2015\)](#)

### **Transpower**

[031 - Hrg - \(Haylee Minoprio\) – Planning \(25 April 2015\)](#)

### **The University of Auckland**

[031 - Hrg - LEGAL SUBMISSIONS \(14 May 2015\)](#)

[031 - Hrg - LEGAL SUBMISSIONS – Attachment – Revised Marked-up Version \(15 May 2015\)](#)