

Possible Response of Heritage New Zealand to Procedural Minute 6.

Procedural Minute 6 of the Auckland Independent Hearings Panel sought the Council's comment on the assertion that certain matters introduced through submission (such as requests for adding to heritage schedules) may be "out of scope". Judge Kirkpatrick, Chair of the IHP, indicated at the first of the pre-hearing conferences, on 2 September 2014, that the Council should be seeking Heritage New Zealand's input into that advice.

In the case of Heritage New Zealand, at issue are a number of changes sought by the organisation to the schedule of historic heritage places or areas, including amendments, additions, promotions (from Category B to Category A), the inclusion of interiors and the extension of extents. A total of 225 changes were requested.¹²

The Clearwater test

The case-law of relevance is *Clearwater Resort Ltd v Christchurch City Council*, High Court, AP34/02. At issue was the extent of changes that could be brought about through submissions "on" a variation. Para 66 of that decision stated that the Courts preferred approach was that

- A submission can only be fairly regarded as "on" a variation if it is addressed to the extent to which a variation changes the pre-existing status quo;
- But if the effect of regarding a submission as "on" a variation would be to permit a planning instrument to be appreciably amended without real opportunity for participation by those potentially affected, this is a powerful consideration against any argument that the submission is truly "on" the variation.

The issue of whether a root-and-branch district-cum-regional plan review, for a newly constituted planning district, which has an objective of replacing the status quo, is comparable to a variation of limited scope, will need to be argued separately. However the second point of para 66, which expresses concern about the potential to amend a planning document through submission without real opportunity for participation by those potentially affected, was anticipated by Heritage New Zealand.

The Heritage New Zealand approach

Heritage New Zealand, after lodging its submissions but before the closing date for further submissions, wrote to (most) of the property owners whose properties were the subject of our submissions. The letter served to:

- Note that Heritage New Zealand considered their property had certain qualities that merited recognition/protection through the PAUP heritage schedule
- Inform that Heritage New Zealand had submitted accordingly
- Outline how the property owner could use the "further submission" process to comment on our submission
- Note that making a further submission in this manner would enable participation in subsequent procedures.

It is accepted that this process was not 100% in its accuracy or coverage. Heritage New Zealand was reliant on public-domain land records to identify the names of owners and these do not provide addresses. Addresses were sometimes gleaned from the White Pages, or from the Companies Office (which provides street addresses for registered companies). In many cases correspondence was sent

¹ Not included in this count are submissions seeking inclusion of reference to numbers from the New Zealand Heritage List (formerly the Register) and other minor modifications.

² Note that this does not mean 225 different places were involved – some places were the subject of two or three requests, such as "promote from B to A, include interior, extend extent".

direct to the site address. Where places are in multiple ownership, a Body Corporate may provide a central contact point but may have its own difficulties in contacting members.

However where a further submission was received from the owner of the property, whether supporting or opposing the Heritage New Zealand submission, that can be considered, in our view, providing that owner with a real opportunity for participation.

Resolvable submissions

It is assumed that submissions meeting the following criteria are capable of being resolved, through hearing or through agreement:

- All submissions seeking corrections (to address, name, etc);
- All submissions involving council owned property
- All submissions that have attracted further submissions from persons who represent all owners of the particular property, in the manner described above.

The following table summarises submissions that appear capable of being resolved (whether before or as a result of hearing) without any breach of natural justice. The attached tables analyse each of our submission points in more detail to show which places fall into which category.

Subject matter of submission	No of submissions	Resolvable?
Add place to schedule	92	29
Change Category B to A	61	20
Extend extent	13	5
Include interior	48	28
Seeking corrections	11	11
Total	225	93

Of the 93 resolvable submissions:

- 11 involve amendments that are unlikely to require hearing time
- Others may be dropped because insufficient information is available to support our position
- Others may be able to be resolved through mediation before hearing time.

Possible path forward

Heritage New Zealand has approximately 93 submission points in respect of the scheduling of historic heritage that, in our submission, could proceed to further consideration and if necessary, hearing. It is possible that points raised by other submitters (including Auckland Council), which seek similar outcomes and where owners have also clearly indicated their stance, could also proceed to further consideration.

It would be useful for these parties to be involved in an early pre-hearing meeting and, if necessary, a brief hearing, to determine which of their submissions are in scope. This would enable resources to be concentrated on those items which are considered resolvable, before the possible mediation and hearing scheduled for the first half of 2015 are undertaken.

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