

Reply Report

Proposed Otago Regional Policy Statement 2021

13: HCV - Historical and cultural values

Angela Fenemor

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1. Introduction

1. This report forms part of a suite of reply reports that have been prepared to sit alongside and explain the “marked up” version of the final recommendations on the proposed Otago Regional Policy Statement (pORPS). The approach to the whole suite is set out in the first report in this series, *Reply Report – Chapter 1: Introduction and General Themes*. Appended to the suite of reports is a consolidated version of the pORPS containing all final recommendations from the reporting officers.
2. This report is the final set of advice on this chapter and is in addition to:
 - a. Section 42A report on Chapter 13: HCV – Historical and Cultural Values (27 April 2022)
 - b. First Brief of Supplementary Evidence of Angela Marie Fenemor: HCV – Historical and Cultural Values (11 October 2022)
 - c. Second Brief of Supplementary Evidence of Angela Marie Fenemor: HCV – Historical and Cultural Values (24 February 2022)
 - d. Opening Statement of Angela Marie Fenemor: HCV – Historical and Cultural Values (13 February 2023)
3. The hearing session for the Historical and Cultural Values (HCV) chapter was held over two days on the 13th and 14th February 2023. For the Wāhi Tūpuna (HCV-WT) section of the chapter, the evidence was either in support of the section 42A report or provided further clarification on the points raised in the submissions.
4. The key matters of contention for the Historic Heritage (HCV-HH) section, in my view, are as follows:
 - a. The appropriateness and practical implementation of provisions related to the protection of historic heritage, including requirements to avoid adverse effects
 - b. Providing for new infrastructure (including that which is not nationally or regionally significant)
 - c. Providing for existing activities
5. This report takes a provision-by-provision approach to addressing these issues. It does not address the following provisions because I do not consider there are any additional matters to address as a result of the hearing:
 - Objectives HCV-WT-O1 and HCV-WT-O2
 - Policy HCV-WT-P1
 - Methods HCV-WT-M1 and HCV-WT-M2
 - HCV-WT-E1, HCV-WT-PR1 and HCV-WT-AER2
 - Policy HCV-HH-P4
 - Methods HCV-HH-M4 and HCV-HH-M6
 - HCV-HH-E2, HCV-HH-PR2, HCV-HH-AER3, HCV-HH-AER4 and HCV-HH-AER5

6. My previously recommended amendments to those provisions, in addition to my amended recommendations in this report, are incorporated in the Reply Report version of the pORPS attached to this suite of reports.

2. HCV-WT – Wāhi tupuna

2.1. HCV-WT-P2 – Management of *wāhi tūpuna*

2.1.1. Introduction

7. HCV-WT-P2 is discussed in section 13.5.6 of the s42A report, with my analysis in paragraphs [97] to [104].

8. The recommended version of this provision currently reads:¹

HCV-WT-P2 – Management of *wāhi tūpuna*

Wāhi tūpuna are protected by:

- (1) avoiding significant adverse *effects* on the cultural values ~~associated with~~² identified *wāhi tūpuna*,
- ~~(1A) avoiding, as the first priority, other adverse effects on the cultural values of~~
~~identified *wāhi tūpuna*,~~³
- (2) where ~~other~~⁴ adverse *effects* demonstrably cannot be completely avoided, ~~then either~~⁵ remedying or mitigating adverse *effects* in a manner that maintains the values of the *wāhi tūpuna*,
- (3) managing identified *wāhi tūpuna* in accordance with tikaka Māori, ~~and~~⁶
- ~~(4) avoiding any activities that may be considered inappropriate in *wāhi tūpuna*~~
~~as identified by Kāi Tahu, and~~⁷
- (5) encouraging the enhancement of access to *wāhi tūpuna* to the extent compatible with the particular *wāhi tūpuna*.

2.1.2. Submissions and evidence

9. In her evidence, Ms Ainsley McLeod for Transpower states there is conflict between HCV-WT-P2 and EIT-INF-P13 as the former requires avoidance of significance effects on cultural values of identified *wāhi tūpuna*.⁸

¹ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements

² 00226.278 Kāi Tahu ki Otago

³ 00137.142 DOC

⁴ 00226.278 Kāi Tahu ki Otago

⁵ 00226.278 Kāi Tahu ki Otago

⁶ Clause 10(2)(b)(i), Schedule 1, RMA – consequential amendment arising from 00315.069 Aurora Energy Limited

⁷ 00315.069 Aurora Energy Limited

⁸ Ainsley McLeod for Transpower, para [8.39(d)]
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2.1.3. Analysis

10. HCV-WT-P2 includes a requirement to avoid significant adverse effects on the cultural values of identified wāhi tūpuna. Therefore, this provision is not more stringent than EIT-INF-P13, which seeks to avoid, as the first priority, locating infrastructure in wāhi tūpuna and areas with protected customary rights.
11. These two provisions work together to ensure that, where the location of infrastructure cannot be avoided as a first priority, significant adverse effects on the cultural values of the wāhi tūpuna are avoided.
12. In EIT-INF-P13(1)(g), the direction is to avoid locating in those areas as a first priority. EIT-INF-P13(2)(a)(iia) then provides for infrastructure that cannot "practicably" avoid locating in those areas due to its functional or operational need. It then directs that adverse effects are managed in accordance with HCV-WT-P2. The effects management hierarchy set out in HCV-WT-P2 requires the avoidance of significant adverse effects on the identified cultural values. In my view this is entirely appropriate and in accordance with section 6(e) and s8 of the RMA.

2.1.4. Final recommendation

13. I do not recommend any further amendments.

2.2. HCV-WT-AER1

2.2.1. Introduction

14. HCV-WT-AER1 is discussed in section 13.5.13 of the s42A report, with my analysis in paragraphs [178] to [181].
15. The recommended version of this provision currently reads:⁹

HCV-WT-AER1 Wāhi tūpuna areas and sites ~~The areas and places of wāhi tūpuna~~¹⁰ are identified in the relevant *regional plans*¹¹ and *district plans* and sensitive sites are identified and protected using mechanisms deemed appropriate by Kāi Tahu.¹²

- 16.

2.2.2. Submissions and evidence

17. The EIC of Mr Bathgate on behalf of Kāi Tahu agrees in principle with the intent of the s42A recommended amendments to HCV-WT-AER1 but considers further amendments are necessary to:¹³

⁹ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements

¹⁰ 00239.156 Federated Farmers; 00226.284 Kāi Tahu ki Otago

¹¹ Clause 16(2), Schedule 1, RMA

¹² 00101.053 Toitū Te Whenua

¹³ Michael Bathgate for Kāi Tahu, para [125]

- a. ensure that AER1 remains focused on identification of wāhi tūpuna whereas AER2 is covers protection of wāhi tūpuna, and
- b. that identification of wāhi tūpuna in plans is at the discretion of Kāi Tahu and is not a mandatory requirement.

18. Amendments suggested in the EIC of Mr Bathhurst follows:¹⁴

HCV-WT-AER1 Wāhi tūpuna areas and sites ~~The areas and places of wāhi tūpuna~~ are identified in the relevant *regional plans* and *district plans* ~~and sensitive sites are identified and protected where appropriate, using mechanisms deemed appropriate by Kāi Tahu.~~

2.2.3. Analysis

- 19. Due to the recommended amendments in my s42A report¹⁵ to include the term ‘protected’ in AER2, I agree that it is unnecessary for AER1 to address protection as well. As Mr Bathgate has stated, this would ensure that identification is the focus of AER1 and protection is the focus of AER2.
- 20. Additionally, due to these recommended amendments in my s42A report, the reference to ‘sensitive sites’ does not require explicit mention additional to wāhi tūpuna. I consider that removing the term ‘sensitive sites’ improves clarity of the provision.
- 21. It is my view that including the additional words “where appropriate” would not be consistent with related provisions HCV-WT-O1, HCV-WT-P2 and HCV-WT-M1. In my view, enabling the identification of wāhi tūpuna areas and sites using mechanisms deemed appropriate by Kāi Tahu provides the necessary discretion as to how those sites are identified in the plan documents, noting that the recommended amendments to HCV-WT-M1 specifies that identification methods are not limited to mapping (HCV-WT-M1 (4)). It is my view that the statement of the anticipated environmental results as recommended below are a better reflection of these related provisions, and therefore do not support the addition of the words “where appropriate” to HCV-WT-AER1.

2.2.4. Final recommendation

22. My final recommended amendments to the notified version of the pORPS are:

HCV-WT-AER1 Wāhi tūpuna areas and sites ~~The areas and places of wāhi tūpuna~~¹⁶ are identified in the relevant *regional plans*¹⁷ and

¹⁴ Michael Bathgate for Kāi Tahu (Appendix 1), page [23]

¹⁵ Section 42A report on Chapter 13: HCV – Historical and Cultural Values (27 April 2022)

¹⁶ 00239.156 Federated Farmers; 00226.284 Kāi Tahu ki Otago

¹⁷ Clause 16(2), Schedule 1, RMA

*district plans using mechanisms deemed appropriate by Kāi Tahu.*¹⁸

23. No section 32AA evaluation is considered necessary given the minor nature of the recommended amendments, and that section 32 of the RMA does not require an evaluation of the anticipated environmental results.

3. HCV-HH – Historic heritage

3.1. HCV-HH-O3 – Historic heritage resources

3.1.1. Introduction

24. HCV-HH-O3 is discussed in section 13.6.3 of the s42A report, with my analysis in paragraph [215]. HCV-HH-O3 is also discussed in my brief of supplementary evidence (11 October 2022) at paragraphs [32] to [39].

25. The recommended version of this provision currently reads:¹⁹

HCV-HH-O3 – Historic heritage resources

Otago’s unique *historic heritage* contributes to the region’s character, sense of identity, and social, cultural and economic well-being, and is preserved protected²⁰ for future generations and people’s understanding and appreciation of it is enhanced.²¹

3.1.2. Submissions and evidence

26. The EIC of Mr Freeland on behalf of Dunedin City Council, seeks amendments to HCV-HH-O3 stating concerns that the provision does not differentiate between protecting places and areas with outstanding or special heritage values, and retaining other places or areas with “less heritage values “if this does not conflict with other pORPS objectives.²² Mr Freeland considers this suggests protection of every item of historic heritage, regardless of competing objectives in the pORPS.²³

3.1.3. Analysis

27. In giving effect to HCV-HH-O3, HCV-HH-P5 directs how protection of historic heritage is to occur, recognising that there is a different pathway for protecting places and areas with **outstanding or special** historic heritage values or qualities (as in clause (2)), compared to those with historic heritage values or qualities (as in clauses (3) to (6)).

¹⁸ 00101.053 Toitū Te Whenua

¹⁹ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements

²⁰ 00139.239, DCC

²¹ 00139.239, DCC

²² Paul Freeland for DCC, para [75]

²³ Paul Freeland for DCC, para [76]

28. I consider the objective is the relevant place for setting a clear outcome and expectation for the protection of historic heritage, while the policies provide the guidance on how that is to be done effectively while being cognisant of other pORPS objectives.

29. However, I agree there is a lack of clarity around the implementation of the effects management hierarchy for the two categories of historic heritage, as directed in HCV-HH-P5. I have addressed this in section 3.3 of this report.

3.1.4. Final recommendation

30. I do not recommend any further amendments.

3.2. HCV-HH-P3 – Recognising historic heritage

3.2.1. Introduction

31. HCV-HH-P3 is discussed in section 13.6.4 of the s42A report, with my analysis in paragraphs [225] to [229]. I have also addressed HCV-HH-P3 in my Opening Statement (13 February 2023) at paragraphs [17]-[21].

32. The recommended version of this provision currently reads:²⁴

HCV-HH-P3 – Recognising historic heritage

Recognise that Otago's *historic heritage* includes:

- (1) ~~Māori~~ Kāi Tahu cultural and *historic heritage* values and sites,²⁵
- (2) archaeological sites,
- (3) residential and commercial *buildings*,
- (4) pastoral sites,
- (5) surveying equipment, communications and transport, including *roads*, bridges, railway infrastructure²⁶ and routes,
- (6) industrial *historic heritage*, including mills, quarries, limekilns, grain stores, water supply infrastructure²⁷ and brickworks,
- (7) gold, limestone²⁸ and other mining systems and settlements,
- (8) dredge and ship wrecks, and coastal structures and buildings, including breakwaters, jetties, and lighthouses,²⁹
- (9) ruins,

²⁴ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements

²⁵ 00239.158 Federated Farmers; 00226.287 Kāi Tahu ki Otago, 00140.029 Waitaki DC

²⁶ 00140.029 Waitaki DC

²⁷ 00140.029 Waitaki DC

²⁸ 00140.029 Waitaki DC

²⁹ 00140.029 Waitaki DC

- (10) coastal *historic heritage*, particularly Kāi Tahu occupation sites and those associated with early European activities such as whaling,
- (11) memorials and cemeteries,³⁰ and
- (12) trees ~~and vegetation~~.³¹, and
- (12A) military structures or remains.³² , and
- (12B) includes any historic place within the meaning under section 6 of the Heritage New Zealand Pouhere Taonga Act 2014.³³

3.2.2. Submissions and evidence

33. Mr Bathgate for Kāi Tahu ki Otago suggests amendments to the supplementary evidence version of HCV-HH-P3 as follows:³⁴

Recognise that Otago’s historic heritage includes:

- (1) Māori ~~Kāi Tahu~~ cultural and historic heritage values, and sites places and areas,

...

34. Mr Bathgate notes that that there may be Māori historic heritage of non-Kāi Tahu origin and that reference to ‘places and areas’ as opposed to ‘sites’ is more consistent with HCV-HH-P4 and APP8.³⁵
35. Mr Brass for DOC supports the inclusion of the following new clause to the policy on the basis that The Heritage New Zealand Pouhere Taonga Act is a directly relevant matter to historic heritage as it is the primary legislation managing heritage values nationally, and includes provisions directly relating to the identification of historic heritage.³⁶

(14) and includes any historic place within the meaning under Section 6 of the Heritage New Zealand Pouhere Taonga Act 2014.

3.2.3. Analysis

36. As stated by Mr Bathgate, referring to Kāi Tahu cultural and historic heritage is unnecessarily narrow when it comes to recognition of Otago’s historic heritage, when there is potentially non-Kāi Tahu, Māori cultural and historic heritage present. Additionally, as the provision is centred around the recognition of Otago’s historic heritage, reference to ‘places and areas’ as opposed to ‘sites’ is a logical amendment. I agree with Mr Bathgate.
37. In the HCV-WT section, the term ‘sites’ is generally used in regard to identification of wāhi tūpuna. The exceptions are HCV-WT-M2 which does refer to ‘sites and areas’ when it

³⁰ 00140.029 Waitaki DC

³¹ 00239.158 Federated Farmers

³² 00140.029 Waitaki DC

³³ 00137.143 Director General of Conservation

³⁴ Michael Bathgate for Kāi Tahu (Appendix 1), page [23]

³⁵ Michael Bathgate for Kāi Tahu, paras [127] – [128]

³⁶ Murray Brass for Director General of Conservation, para [219] – [220]

comes to managing activities in or affecting these sites and areas, and HCV-WT-PR1 which refers to 'sites and resources' used by Kāi Tahu.

38. The inclusion of a clause explicitly referencing any historic place within the meaning under section 6 of the Heritage New Zealand Pouhere Taonga Act 2014 provides a clear connection to that Act. Therefore, I agree that an additional clause would be beneficial, and in my opening statement (13 February 2023) I recommended that HCV-HH-P3 be amended to include the new clause.
39. During the hearing, the panel noted there is a disjunct between section 6 of the Heritage New Zealand Pouhere Taonga Act and the policy itself. From my understanding this is because the policy already details the types of historic places under section 6 of the HNZPT, and therefore the inclusion of the clause is not in keeping with the remainder of the policy. I agree with the panel noting that the policy provides guidance for users of the pORPS to understand the types of places and areas that have historic heritage, whereas the definition in section 6 of the Heritage New Zealand Pouhere Taonga Act is more general in nature. With this in mind, I consider it would be in better keeping with the style and approach of the policy to include this additional text below the list of types of historic heritage, rather than including it in the listed sites/areas and places.

3.2.4. Final recommendation

40. My final recommended amendments to the notified version of the pORPS are:

HCV-HH-P3 – Recognising *historic heritage*

Recognise that Otago's *historic heritage* includes:

- (1) Māori cultural and historic heritage values and places and areas,³⁷
- (2) archaeological sites,
- (3) residential and commercial buildings,
- (4) pastoral sites,
- (5) surveying equipment, communications and transport, including roads, bridges, railway infrastructure³⁸ and routes,
- (6) industrial *historic heritage*, including mills, quarries, limekilns, grain stores, water supply infrastructure and brickworks,³⁹
- (7) gold, limestone⁴⁰ and other mining systems and settlements,
- (8) dredge and shipwrecks, and coastal structures and buildings, including breakwaters, jetties, and lighthouses,⁴¹
- (9) ruins,

³⁷ 00239.158 Federated Farmers; 00226.287 Kāi Tahu ki Otago, 00140.029 Waitaki DC

³⁸ 00140.029 Waitaki DC

³⁹ 00140.029 Waitaki DC

⁴⁰ 00140.029 Waitaki DC

⁴¹ 00140.029 Waitaki DC

- (10) coastal *historic heritage*, particularly Kāi Tahu occupation sites and those associated with early European activities such as whaling,
 - (11) memorials and cemeteries,⁴² and
 - (12) trees ~~and vegetation~~, and⁴³
 - (13) military structures or remains,⁴⁴
- and any historic place within the meaning under section 6 of the Heritage New Zealand Pouhere Taonga Act 2014.⁴⁵

41. In terms of s32AA, I consider that the changes provide additional certainty to readers by providing a clear understanding of what types of places and areas the HCV-HH provisions apply to. As such, I consider them to be more efficient and effective at achieving HCV-HH-O3.

3.3. HCV-HH-P5 – Managing historic heritage

3.3.1. Introduction

42. HCV-HH-P5 is discussed in section 13.6.6 of the s42A report, with my analysis in paragraphs [263] to [279]. HCV-HH-P5 is also discussed in my brief of supplementary evidence (11 October 2022) insofar as it relates to APP8 (identification criteria for places and areas of historic heritage), at paragraphs [40] to [50].

43. The recommended version of this provision currently reads:⁴⁶

HCV-HH-P5 – Managing *historic heritage*

Protect historic heritage by:

- (1) requiring the use of accidental discovery protocols in accordance with APP11,⁴⁷
- (2) avoiding adverse effects on areas or places with special or outstanding historic heritage values or qualities, except in the circumstances where HCV-HH-P7 applies,⁴⁸
- (3) avoiding significant adverse effects on areas or places with historic heritage values or qualities,
- (4) avoiding, as the first priority, other adverse effects on areas or places with historic heritage values or qualities,

⁴² 00140.029 Waitaki DC

⁴³ 00239.158 Federated Farmers

⁴⁴ 00140.029 Waitaki DC

⁴⁵ 00137.143 Director General of Conservation

⁴⁶ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements

⁴⁷ Consequential amendment to APP11: 00123.007, Heritage NZ

⁴⁸ 00137.145 DOC

- (5) ~~and where it is demonstrated that adverse effects demonstrably cannot be completely avoided, they are remedied or mitigated~~ remediating or mitigating them, and⁴⁹
- (6) recognising that for infrastructure, EIT-INF-P13 applies instead of HCV-HH-P5(1) to (5).

3.3.2. Submissions and evidence

44. Several submitters raise issues with the effects management hierarchy in this policy, particularly in relation to the avoidance of adverse effects and the uncertainty about which approach for managing effects is to be applied to activities in places and areas of historic heritage that have not been classified as outstanding or special. The EIC from Ms Hunter for Oceana Gold suggests deleting clauses (3) and (4) of HCV-HH-P5, as she notes that the s42A recommended amendments to the policy results in a contradiction between these clauses and the cross reference to HCV-HH-P7 in clause (2).⁵⁰ Mr Bathgate for Kāi Tahu ki Otago suggests amendments so that it is clear that clauses (4) and (5) are not tied back to clause (2), which is consistent with similar amendments requested in their primary submission.⁵¹
45. Ms Kirsty O’Sullivan for QAC considers that HCV-HH-P5 needs to be focused on protecting the ‘**values** of areas and places with historic heritage values or qualities’ [emphasis added] rather than just the ‘areas and places with historic heritage values or qualities’.⁵² Alternatively, she considers that HCV-HH-P7 needs to recognise that adverse effects may arise as a result of adaptive reuse or upgrade and that is an acceptable outcome provided the heritage values are maintained.⁵³
46. Submitters also seek amendments to provide for infrastructure and/or regionally or nationally significant infrastructure projects. Ms Ainsley McLeod for Transpower supports the submission seeking the addition of a new clause in HCV-HH-P5, to provide cross reference to the EIT-INF section, stating that this would provide clarity regarding the management of effects from the National Grid on historic heritage.⁵⁴
47. Mr Paul Freeland for DCC supports the amendments sought by the submitter to allow for some loss of historic heritage where there are projects of national or regional significance; and where the avoidance of effects is unavoidable; and the public benefit outweighs the loss of historic heritage values.⁵⁵
48. The EIC prepared by Chris Horne on behalf of the Telecommunications Companies supports amendments sought to insert a new clause to the provision recognising that infrastructure service connections to heritage buildings support their ongoing use and

⁴⁹ 00226.289 Kāi Tahu ki Otago; 00139.234 DCC

⁵⁰ Claire Hunter for Oceana Gold, para [13.7]

⁵¹ Michael Bathgate for Kāi Tahu, para [133]

⁵² Kirsty O’Sullivan for QAC, para [12.5]

⁵³ Kirsty O’Sullivan for QAC, para [12.6]

⁵⁴ Ainsley McLeod for Transpower, para [8.43]

⁵⁵ Paul Freeland for DCC, paras [85] – [88]

therefore protection and upkeep.⁵⁶ The submitters' principal concern is that by relying on Policy EIT-INF-P13 in the EIT chapter for infrastructure connections to scheduled heritage buildings, the provisions of the pORPS as notified would require adverse effects on the heritage item to be avoided.⁵⁷ Mr Horne notes that this concern is resolved by the amendments to the definition of *Regionally Significant Infrastructure* set out at paragraph [45] of Mr Langman's supplementary evidence on the EIT section (dated 11 October 2022).⁵⁸

49. The EIC for Wayfare Group Ltd and Trojan Holdings, authored by Ben Farrell notes that the HCV provisions set reasonably loose thresholds for identifying historic heritage. Therefore, the direction in HCV-HH-P5 to avoid adverse effects is inappropriate and presents a potentially high risk of people being unable to subdivide, use and develop resources that may affect historic heritage. Additionally, Mr Farrell states that s6(f) of the RMA does not require avoidance of historic heritage values.⁵⁹

3.3.3. Analysis

50. The evidence on HCV-HH-P5 is indicative that there is some uncertainty in how the policy is to be implemented, particularly how the effects management hierarchy applies to the different categories of historic heritage. I agree with submitters that the policy would benefit from amendments to provide greater certainty to readers. I note that the amendments set out in the evidence from Mr Bathgate (for Kāi Tahu ki Otago) provide the required clarity without changing the intent of the provisions. I recommend these changes are accepted.
51. I consider that the amendments sought by Wayfare Group Ltd and Trojan Holdings, and Queenstown Airport Corporation Ltd weaken the direction provided in the provisions. I disagree that the policy needs to be focussed on protecting the values associated with historic heritage rather than just the areas and places of historic heritage. The oral submission from Graye Shattky and Kristy Rusher on behalf of Central Otago Heritage Trust (13 February 2023) traversed tangible and intangible values of historic heritage. I understand that 'historic heritage' is directly referencing tangible items, such as structures and facades (as examples). Without the tangible item, the historic heritage value is removed - historic heritage is an explicitly visual value. It is the interplay between historic heritage and modern development that contributes to the region's character and sense of identity. In my view, by focussing only on protecting the intangible elements of historic heritage and neglecting the tangible, HCV-HH-O3 will not be attained.
52. Evidence addressing the threshold for identifying historic heritage is considered against APP8 in this report at paragraphs [86-87]. However, I note that the two-tiered approach for identifying and classifying historic heritage means that appropriate management tools can be applied to protect **significant or outstanding** historic heritage areas and places from adverse effects, and to manage the effects for all other sites and places with historic

⁵⁶ Chris Horne for the Telecommunications Companies (HCV), para [4.18]

⁵⁷ Chris Horne for the Telecommunications Companies, para [3.4]

⁵⁸ Chris Horne for the Telecommunications Companies, para [4.15]

⁵⁹ Ben Farrell for Otago Fish and Game Council, Wayfare Group Ltd, Trojan Holdings, paras [114] - [115]

heritage. Lower order plans may define the types of activities (subdivision, use and development) that is appropriate in the context of proposed HCV-HH-P5. The direction in the policy does not preclude development simply where an activity may affect historic heritage; rather the policy is more nuanced in setting the effects management hierarchy.

53. This nuance is discussed in my second supplementary evidence at paragraph [8] (dated 24 February 2023). While there is a close link between locating within and adversely affecting an area (with special or outstanding historic heritage values or qualities), I do not consider that locating on its own will always result in adverse effects. In my second supplementary evidence (paragraph [8]) I refer to examples of minor activities that are permitted or controlled that affect scheduled heritage buildings, to demonstrate that there are activities that will not be constrained by the policy direction to avoid adverse effects.
54. Ms Hunter (for Oceana Gold) responded to my second supplementary evidence in her supplementary evidence (dated 31 March 2023). At paragraph [7.7] she notes the locational constraints of, and significant economic benefits that can be derived from, mineral extraction activities and considers it appropriate for this policy to defer to a separate mining related provision, like it does for nationally or regionally significant infrastructure.
55. While Ms Hunter notes that this request is consistent with the current approach adopted in Policy 5.4.8 of the Partially Operative RPS it is my view that the requested amendments will not assist with achieving HCV-HH-O3, as such I do not recommend making any further amendments.
56. When considering this policy, I have double-checked the reference in clause (6) to EIT-INF-P13. As notified, HCV-HH-P5(6) applies the management framework in EIT-INF-P13 instead of HCV-HH-P5 in areas of places with historic heritage values or qualities (i.e. those that are not special or outstanding) when managing the adverse effects of infrastructure. However, EIT-INF-P13(1)(f) has incorrectly only referred to areas or places with special or outstanding historic heritage. The consequence of this is that EIT-INF-P13 does not apply to other historic heritage as required by HCV-HH-P5. In practical terms, this error means that there is a more stringent pathway for infrastructure in areas or places of other historic heritage than in areas or places of special or outstanding historic heritage.
57. I recommend amending EIT-INF-P13(1)(f) as follows:
- (f) areas or places of ~~significant or outstanding~~ *historic heritage*,
58. I consider that this amendment corrects an error and is therefore in accordance with clause 16(2) of Schedule 1 of the RMA.

3.3.4. Final recommendation

59. My final recommended amendments to the notified version of the pORPS are:

HCV-HH-P5 – Managing *historic heritage*

Protect *historic heritage* by:

- (1) requiring the use of accidental discovery protocols in accordance with APP11,⁶⁰
- (2) avoiding adverse effects on areas or places with special or outstanding *historic heritage* values or qualities, except in the circumstances where HCV-HH-P7 applies,⁶¹
- ~~(3)~~ and for other areas or places with *historic heritage* values or qualities.⁶²
 - (a) avoiding significant adverse *effects* on areas or places with *historic heritage* values or qualities,
 - ~~(4)~~(b) avoiding, as the first priority, other adverse *effects* on areas or places with *historic heritage* values or qualities,⁶³
- ~~(5)~~ and where it is demonstrated that adverse *effects* demonstrably cannot be completely avoided, they are remedied or mitigated, remedying or mitigating them and⁶⁴
- (6) recognising that for *infrastructure*, EIT-INF-P13 applies instead of HCV-HH-P5(1) to (53).⁶⁵

60. In terms of s32AA, I consider that the changes provide greater clarity on the action required to be taken. As such, I consider them to be more efficient and effective at achieving HCV-HH-O3.

3.4. HCV-HH-P6 – Enhancing historic heritage

3.4.1. Introduction

61. HCV-HH-P6 is discussed in section 13.6.7 of the s42A report, with my analysis in paragraphs [288] to [290].

62. The recommended version of this provision currently reads:⁶⁶

HCV-HH-P6 – Enhancing *historic heritage*

Enhance places and areas of *historic heritage* wherever possible through the implementation of plan provisions, decisions on applications for *resource consent* and notices of requirement and non-regulatory methods.

3.4.2. Submissions and evidence

63. The EIC of Ms Styles, on behalf of Manawa Energy, recommends the inclusion of the term “practicable” in place of the term “possible” in HCV-HH-P6.⁶⁷ These recommendations

⁶⁰ Consequential amendment to APP11: 00123.007, Heritage NZ

⁶¹ 00137.145 DOC

⁶² 00226.289 Kāi Tahu ki Otago

⁶³ 00226.289 Kāi Tahu ki Otago

⁶⁴ 00226.289 Kāi Tahu ki Otago; 00139.234 DCC

⁶⁵ Consequential amendment to 00226.289 Kāi Tahu ki Otago

⁶⁶ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements

⁶⁷ Stephanie Styles for Manawa Energy (formerly Trustpower Ltd), page [51]

come from a concern that the provisions need to be practicable regarding the enhancement of heritage assets that are part of a functioning renewable electricity generation scheme. Otherwise, Ms Styles states, the provisions may set unrealistic expectations for what is possible. At paragraph [6.11] of her EIC, Ms Styles notes that a key concern with using “possible” is that it is a subjective test, open to interpretation and disagreement, with essentially all things being possible. She notes that this is an extremely high bar to set in policy.

3.4.3. Analysis

64. At paragraph 288 of my s42A report, I recommended that submissions seeking the insertion of “where practicable” in place of “wherever possible” were rejected on the basis that they result in weakening of the policy position for historic heritage. I agree with the evidence of Ms Styles that “where possible” sets a high bar for policy, and that any technically feasible action to enhance historic heritage will not necessarily be practicable in terms of an operational or functional need. I do have residual concerns that replacing these words with “where practicable” allows for consideration of other factors, including cost implications of complying with the required provisions which could result in an environmental outcome (in this case, for historic heritage) that is at odds with the objectives (HCV-HH-O3). In this case, I suggest that more appropriate wording would be “to the greatest extent practicable”, which places an onus on the resource user to demonstrate or show that the policy has been appropriately provided for.

3.4.4. Final recommendation

65. My final recommended amendments to the notified version of the pORPS are:

HCV-HH-P6 – Enhancing historic heritage

Enhance places and areas of *historic heritage* ~~wherever possible~~ to the greatest extent practicable⁶⁸ through the implementation of plan provisions, decisions on applications for *resource consent* and notices of requirement and non-regulatory methods.

3.5. HCV-HH-P7 – Integration of historic heritage

3.5.1. Introduction

66. HCV-HH-P7 is discussed in section 13.6.8 of the s42A report, with my analysis in paragraphs [298] to [300].

67. The recommended version of this provision currently reads:⁶⁹

HCV-HH-P7 – Integration of historic heritage

⁶⁸ 00311.056 Manawa Energy (formerly Trustpower Ltd)

⁶⁹ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements

Maintain *historic heritage* values through the integration of *historic heritage* values into new activities and the adaptive reuse or upgrade of *historic heritage* places and areas.

3.5.2. Submissions and evidence

68. Several submitters presented evidence on HCV-HH-P7, addressing uncertainty of the meaning of integration⁷⁰ and the need for the policy to provide for continued use and operation of historic heritage items⁷¹. The EIC of Kirsty O’Sullivan (Queenstown Airport Corporation Ltd) notes that the policy needs to recognise that adverse effects may arise as a result of adaptive reuse or upgrade, and that is an acceptable outcome provided the heritage values are maintained.⁷²

3.5.3. Analysis

69. The recommended amendments in the s42A report to include a cross reference to HCV-HH-P7 in clause (2) of HCV-HH-P5 effectively provides an exemption to meeting the requirement to avoid adverse effects on sites and places with outstanding or special historic heritage values or qualities. This exemption is only in relation to avoiding effects, and still requires the actions to be put in place to achieve HCV-HH-O3 (for example, through mitigation or remediation). Any further clarification can be provided in lower order documents through the development of a policy and rule framework that provides for these outcomes, considering additional requirements and details such as providing for continued operation of existing activities.

70. I note that the common meaning of integration applies when implementing this provision, i.e. the act or process of combining two or more things so that they work together. I do not consider any amendments are necessary to provide further clarification.

3.5.4. Final recommendation

71. I do not recommend any further amendments.

3.6. HCV-HH-M5 – District plans

3.6.1. Introduction

72. HCV-HH-M5 is discussed in section 13.6.10 of the s42A report, with my analysis in paragraphs [316]-[320]. HCV-HH-M5 is also discussed at paragraphs [26]-[33] of my brief of supplementary evidence (11 October 2022), insofar as it relates to a recommendation to include a new APP11 (Accidental Discovery Protocol).

⁷⁰ Paul Freeland for DCC, para [95]

⁷¹ Stephanie Styles for Manawa Energy (formerly Trustpower Ltd), page [52]

⁷² Kirsty O’Sullivan for QAC, para [12.6]

73. The recommended version of this provision currently reads:⁷³

HCV-HH-M5 – District Plans

Territorial authorities must prepare or amend and maintain their *district plans* to the extent necessary to:

- (1) identify places and areas with *historic heritage* in accordance with HCV-HH-P4 that are located outside the *beds of lakes and rivers, wetlands* and the *coastal marine area*,
- (2) control the following where they may adversely affect *historic heritage*:
 - (a) the location, intensity and form of *subdivision*,
 - (b) the character, location, scale and form of activities (including *structures*) outside the *beds of lakes and rivers* and the *coastal marine area*,
 - (c) the location and scale of *earthworks* and indigenous vegetation removal outside the *beds of lakes and rivers* and the *coastal marine area*,
 - (d) the disturbance, demolition or alteration of physical elements or *structures* with special or outstanding *historic heritage* value or qualities outside the *coastal marine area, beds of lakes and rivers*,
- (2A) enable Kāi Tahu to identify places and areas with historic heritage values for mana whenua in accordance with HCV-HH-P4 that are located outside the beds of lakes and rivers, wetlands and the coastal marine area.⁷⁴
- (3) include implementation methods to protect *historic heritage* places and areas required by HCV-HH-P5, and may also include:
 - (a) assessment criteria, development standards or thresholds to control the scale, intensity, form and location of activities (including for the purposes of controlling cumulative adverse *effects*),
 - (b) conditions on *resource consents* and designations to provide buffers or setbacks between *historic heritage* places or areas and other incompatible activity,
 - (c) accidental discovery protocols as conditions on *resource consents* for *earthworks* or other activities that may unearth archaeological features,
 - (d) providing for activities seeking to retain *historic heritage* places, areas or landscapes, including adaptive reuse, maintenance and seismic strengthening,
 - (e) including heritage alert layers in plans to inform the public about areas where there is a high probability of the presence of heritage values, particularly archaeological values, and

⁷³ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements

⁷⁴ 00226.293 Kāi Tahu ki Otago

- (4) require the use of accidental discovery protocols as conditions on *resource consents* and designations for *earthworks* or other activities that may unearth archaeological features.

3.6.2. Submissions and evidence

74. The EIC of Mr Freeland (on behalf of DCC), supports amendments sought in the submission to acknowledge that the location or presence of historic heritage is not always known and that there must be recognition of an approach for situations where the location is suspected but not confirmed.⁷⁵
75. Mr Bathgate for Kāi Tahu ki Otago notes that a Supplementary Evidence recommendation to amend HCV-HH-M5 to reference APP11 is not reflected in the Supplementary Evidence version of the PORPS.⁷⁶

3.6.3. Analysis

76. As clause (3)(c) of this provision references accidental discovery protocols, I do not think it is necessary to insert a new clause explicitly referring to locations where historic heritage is suspected but not confirmed. I accept the evidence from Mr Bathgate to correct the error noted in his evidence to include reference to APP11.

3.6.4. Final recommendation

77. My final recommended amendments to the notified version of the pORPS are:

HCV-HH-M5 – District Plans

Territorial authorities must prepare or amend and maintain their *district plans* to the extent necessary to:

- (1) identify places and areas with *historic heritage* in accordance with HCV-HH-P4 that are located outside the *beds of lakes and rivers, wetlands* and the *coastal marine area*,
- (2) control the following where they may adversely affect *historic heritage*:
 - (a) the location, intensity and form of *subdivision*,
 - (b) the character, location, scale and form of activities (including *structures*) outside the *beds of lakes and rivers* and the *coastal marine area*,
 - (c) the location and scale of *earthworks* and *indigenous vegetation* removal outside the *beds of lakes and rivers* and the *coastal marine area*,
 - (d) the disturbance, demolition or alteration of physical elements or *structures* with special or outstanding *historic heritage* value or qualities outside the *coastal marine area, beds of lakes and rivers*,

⁷⁵ Paul Freeland for DCC, para [97] – [99]

⁷⁶ Michael Bathgate for Kāi Tahu, para [132]

- (2A) enable Kāi Tahu to identify places and areas with *historic heritage* values for *mana whenua* in accordance with HCV-HH-P4 that are located outside the *beds of lakes and rivers, wetlands and the coastal marine area*.⁷⁷
- (3) include implementation methods to protect *historic heritage* places and areas required by HCV-HH-P5, and may also include:
- (a) assessment criteria, development standards or thresholds to control the scale, intensity, form and location of activities (including for the purposes of controlling cumulative adverse effects),
 - (b) conditions on *resource consents* and designations to provide buffers or setbacks between *historic heritage* places or areas and other incompatible activity,
 - (c) accidental discovery protocols as conditions on *resource consents* for *earthworks* or other activities that may unearth archaeological features,
 - (d) providing for activities seeking to retain *historic heritage* places, areas or landscapes, including adaptive reuse, maintenance and seismic strengthening,
 - (e) including heritage alert layers in plans to inform the public about areas where there is a high probability of the presence of heritage values, particularly archaeological values, and
- (4) require the use of accidental discovery protocols as conditions on *resource consents* and designations for *earthworks* or other activities that may unearth archaeological features, in accordance with APP11.⁷⁸

78. The changes above correct an error in the Supplementary Evidence version of the pORPS. The s32AA evaluation of the recommended amendments to HCV-HH-M5 is set out at paragraph [30] of my supplementary evidence (dated 11 October 2022).

3.7. APP8 – Identification criteria for places and areas of *historic heritage*

3.7.1. Introduction

79. APP8 is discussed in section 13.6.17 of the s42A report, with my analysis in paragraphs [366] to [371]. APP8 is also discussed in my brief of supplementary evidence (11 October 2022) at paragraphs [40] to [52].

80. The recommended version of this provision currently reads:⁷⁹

APP8 – Identification criteria for places and areas of *historic heritage*

Step 1⁸⁰

⁷⁷ 00226.293 Kāi Tahu ki Otago

⁷⁸ Consequential amendment to APP11: 00123.007, Heritage NZ

⁷⁹ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements

⁸⁰ 00137.144 Director General of Conservation

A place or area is considered to have *historic heritage* if it meets any one or more of the⁸¹ criteria below:⁸²

Aesthetic value The place has, or includes, aesthetic qualities that are considered to be especially pleasing, particularly beautiful, or overwhelming to the senses, eliciting an emotional response. These qualities are demonstrably valued, either by an existing community or the general public, to the extent that they could be expected to experience a sense of loss if the qualities which evoke the aesthetic value were no longer there.

Archaeological value The place provides, or is demonstrably likely to provide, physical evidence of human activity that could be investigated using archaeological methods. Evidence obtained from an archaeological investigation could be expected to be of significance in answering research questions, or as a new or important source of information about an aspect of New Zealand history.

Architectural value The place reflects identifiable methods of construction or architectural styles or movements. When compared with other similar examples, or in the view of experts or relevant practitioners, it has characteristics reflecting a significant development in this country's architecture. Alternatively, or in conjunction with this, the place is an important or representative example of architecture associated with a particular region or the wider New Zealand landscape.

Cultural value The place reflects significant aspects of an identifiable culture and it can be demonstrated that the place is valued by the associated cultural group as an important or representative expression of that culture.

Historic value The place contributes to the understanding of a significant aspect of New Zealand history and has characteristics making it particularly useful for enhancing understanding of this aspect of history, especially when compared to other similar places.

Scientific value The place includes, or is demonstrably likely to include, fabric expected to be of significance in answering research questions or a new or important source of information about an aspect of

⁸¹ Clause 16(2), Schedule 1 RMA 1991

⁸² The identification criteria in APP8 follows O'Brian, R and Barnes-Wylie J, *Guidelines for Assessing Historic Places and Historic Areas for the New Zealand Heritage List/Rārangi Kōrero* (2019) which has been adopted by Heritage New Zealand Pouhere Taonga as its *Significance Assessment Guidelines* (New footnote attributed to 00123.003 Heritage New Zealand Pouhere Taonga, 00139.239 DCC)

New Zealand's cultural or historical past through the use of specified scientific methods of enquiry.

Social value The place has a clearly associated community that developed because of the place, and its special characteristics. The community has demonstrated that it values the place to a significant degree because it brings its members together, and they might be expected to feel a collective sense of loss if they were no longer able to use, see, experience or interact with the place.

Spiritual value The place is associated with a community or group who value the place for its religious, mystical or sacred meaning, association or symbolism. The community or group regard the place with reverence, veneration and respect, and they might be expected to feel a collective sense of loss if they were no longer able to use, see, experience or interact with the place.

Technological value The place includes physical evidence of a technological advance or method that was widely adopted, particularly innovative, or which made a significant contribution to New Zealand history
OR
The place reflects significant technical accomplishment in comparison with other similar examples or, in the view of experts or practitioners in the field, has characteristics making the place particularly able to contribute towards our understanding of this technology.

Traditional value⁸³ The place reflects a tradition that has been passed down by a community or culture for a long period, usually generations and especially since before living memory, and has characteristics reflecting important or representative aspects of this tradition to a significant extent.

~~The significance of areas and places with *historic heritage* will be assessed having regard to the following criteria:~~

Step 2: Categorising a place of historic heritage

All places and areas which have been identified as *historic heritage* in Step 1 must be assessed to determine whether they have special or outstanding heritage values or qualities by considering the criteria below and by applying the method set out in "Part Two: Applying the section 66(3) criteria" of *Assessing Historic Places and Historic Areas for the New Zealand Heritage List/Rāranqī Kōrero (2019)*:⁸⁴

⁸³ 00123.003 Heritage NZ

⁸⁴ 00137.144 Director General of Conservation
Proposed Otago Regional Policy Statement 2021

- (1) the extent to which the place reflects important or representative aspects of Otago or New Zealand history,
- (2) the association of the place with events, persons, or ideas of importance in Otago or New Zealand history,
- (3) the potential of the place to provide knowledge of Otago or New Zealand history,
- (4) the importance of the place to *takata whenua*,
- (5) the community association with, or public esteem for, the place,
- (6) the potential of the place for public education,
- (7) the technical accomplishment, value, or design of the place,
- (8) the symbolic or commemorative value of the place,
- (9) the importance of identifying historic places known to date from an early period of Otago's or New Zealand's settlement,
- (10) the importance of identifying rare types of historic places, and
- (11) the extent to which the place forms part of a wider historical and cultural area.

3.7.2. Submissions and evidence

81. Mr Freeland for DCC, supports amendments sought by DCC to include a mechanism for district plans to bridge the gap between their current identification approaches and the identification and categorisation approach set out in APP8.⁸⁵ The concern centres around the costs associated with categorising historic heritage into 2 categories (those with special or outstanding historic heritage values, and those with all other historic heritage values), when the 2GP approaches the management of historic heritage in all the same way.⁸⁶ At the hearing, Mr Freeland described how a significance classification occurs in practice, however this typically occurs through the consenting process and is not included in the plan. He reiterated that for categorisation of significance to be included as part of the plan would be a significant resourcing issue.
82. In response to questions from the Panel at the hearing, Mr Freeland noted that the criteria listed in APP8 are linked to the definition of historic heritage in the RMA. He also advised that similar criteria are used in the 2GP, and while the criteria may be phrased differently, the concepts remain the same.

3.7.3. Analysis

83. The rationale for APP8 is described in the efficiency and effectiveness evaluation for the HCV-HH provisions (section 5.11.3.5 of the section 32 report). I consider that implementing a regionally consistent approach to identifying and classifying historic heritage will assist in ensuring the provisions are applied consistently. The approach set

⁸⁵ Paul Freeland for DCC, para [84]

⁸⁶ Paul Freeland for DCC, para [81] – [83]

out in APP8 is nationally recognised and is consistently adopted nationwide for the purposes of implementing the Heritage New Zealand Pouhere Taonga Act 2014.

84. The approach for classifying historic heritage by other councils was reviewed as part of ORC's investigation into appropriate mechanisms to classify historic heritage as part of the RPS review process. The results of this review, along with an evaluation of methods to classify heritage, are included in Appendix 20 of the section 32 report.⁸⁷ In relation to adopting the Heritage New Zealand Pouhere Taonga Act 2014, the report in Appendix 20 notes:

“This option consists largely of an adaption of the wording in Sections 65-66 of the HNZPT Act 2014. The criteria in these sections of the Act are used by HNZPT to assess heritage items for inclusion on the HNZPT List/Rārangi Kōrero.

The appropriateness of the assessment criteria used by HNZPT are debatable. For example, the meanings of several criteria potentially overlap – scientific and technological, aesthetic and architectural, cultural and traditional – and this can make the assessment of heritage significance challenging. In lieu of a guidance document explaining these criteria (until last year), most councils have chosen to construct their own heritage assessment criteria as they see fit. The result is an inconsistent heritage identification policy across districts.

However, the advantages of the HNZPT criteria today is that they are:

- *Legally recognised.*
- *Utilised nationally by HNZPT assessments.*
- *Well defined by the HNZPT Significance Assessment document.*

This latter point is the most important, as the Significance Assessment Document helps remove the criteria's ambiguity and makes them usable for identifying heritage significance.

The adoption of the HNZPT criteria provides two opportunities:

1. *The proactive identification and protection of heritage places within the Otago region, similar to that outlined in points 3 and 4 in Option B above. This would have the associated costs and benefits of this approach.*
2. *A nationally consistent foundation that will allow ORC to advocate for a harmonised system of heritage identification across councils within the Otago region. Presently each council has a unique approach to heritage. The regional coordination of these disparate systems could potentially be a valuable service provided by the ORC...”*

85. I agree with the conclusions reached by Mr Freeland regarding the criteria included in APP8 and that there is alignment with the RMA definition of historic heritage. The presentation of evidence and the technical advice relied upon by ORC in developing the

⁸⁷ 2020, Jeremy Moyle, Archaeologist - Origin Consultants Ltd

provisions indicates that adopting the nationally consistent criteria aligns with current practice.

86. I note that HCV-HH-M5 only requires territorial authorities to amend their district plans to identify sites and places with historic heritage in accordance with HCV-HH-P4, and that there is discretion available to those implementing the provisions regarding when the subsequent classification of significance occurs. While I consider it is appropriate to include the significance of a place/area in a district plan, as this provides greatest certainty to plan users, the discretion available to the territorial authorities afforded by the wording of HCV-HH-M5 (i.e. they are not bound by a date by which this must be completed) may resolve the issues raised by Dunedin City Council.

87. I consider that the benefits of including APP8 in the pORPS, alongside the provisions to protect historic heritage, outweigh the costs of implementing an inconsistent and ad hoc approach across Otago.

3.7.4. Final recommendation

88. I do not recommend any further amendments.

3.8. APP11 – Accidental Discovery Protocol

3.8.1. Introduction

89. The submissions and analysis of an accidental discovery protocol is discussed in my s42A report at paragraphs [127] and [134]. An accidental discovery protocol is subsequently recommended to be included in the pORPS (as APP11) in my brief of supplementary evidence (11 October 2022) at paragraphs [26] to [31].

90. The recommended version of this provision currently reads:⁸⁸

APP11 – Accidental Discovery Protocol⁸⁹

If an unidentified archaeological site is located during works, the following applies:

1. Work must cease immediately at that place and within 20m around the site.
2. The contractor must shut down all machinery, secure the area, and advise the Site Manager.
3. The Site Manager must secure the site and notify the Heritage New Zealand Regional Archaeologist. Further assessment by an archaeologist may be required.
4. If the site is of Māori origin, the Site Manager must notify the Heritage New Zealand Regional Archaeologist and the appropriate iwi groups or kaitiaki representative of the discovery and ensure site access to enable appropriate cultural procedures and tikanga to be undertaken, as long as all statutory

⁸⁸ This version includes the recommendations from the hearing reports prepared under s42A of the RMA, all supplementary evidence, and the opening statements

⁸⁹ 00123.007, Heritage NZ

requirements under legislation are met (*Heritage New Zealand Pouhere Taonga Act, Protected Objects Act*).

5. If human remains (kōiwi) are uncovered the Site Manager must advise the Heritage New Zealand Regional Archaeologist, NZ Police and the appropriate iwi groups or kaitiaki representative and the above process under 4 must apply. Remains are not to be moved until such time as iwi and Heritage New Zealand have responded.
6. Works affecting the archaeological site and any human remains (kōiwi) must not resume until Heritage New Zealand Pouhere Taonga gives written approval for work to continue. Further assessment by an archaeologist may be required.
7. Where iwi so request, any information recorded as the result of the find such as a description of location and content, is to be provided for their records.
8. Heritage New Zealand Pouhere Taonga will advise if an archaeological authority under the *Heritage New Zealand Pouhere Taonga Act 2014* is required for works to continue.

It is an offence under Section 87 of the *Heritage New Zealand Pouhere Taonga Act 2014* to modify or destroy an archaeological site without an authority from Heritage New Zealand irrespective of whether the works are permitted or consent has been issued under the Resource Management Act.

3.8.2. Submissions and evidence

91. The EIC from Kāi Tahu, authored by Mr Bathgate seeks amendments to the Supplementary Evidence version of APP11, to recognise rūnaka kaitiakitaka in respect of Kāi Tahu archaeological heritage.⁹⁰ Recommended drafting was circulated at the hearing on 13th February 2023.

3.8.3. Analysis

92. As the amendments are to provide further clarity around the processes for managing any kōiwi tangata (human remains of a Māori person), I agree that the changes sought by Mr Bathgate are appropriate and improve the clarity of the provision.

3.8.4. Final recommendation

93. My final recommendation is to insert a new APP11 into the pORPS, as shown in full at paragraph [92].
94. This recommendation includes amendments to the Supplementary Evidence version of APP11, as shown as tracked changes below:
 - a. Amendments to clause 4:

⁹⁰ Michael Bathgate for Kāi Tahu, para [131]
Proposed Otago Regional Policy Statement 2021

“... and the appropriate ~~iwi groups or kaitiaki representative~~ papatipu rūnaka of the discovery and ensure site access to enable appropriate cultural procedures and ~~tikanga tikaka~~ to be undertaken...”

b. Amendments to clause 5:

“If human remains (kōiwi) are uncovered the Site Manager must advise the Heritage New Zealand Regional Archaeologist, NZ Police and the appropriate ~~iwi groups or kaitiaki representative~~ papatipu rūnaka and the above process under 4 must apply. Papatipu rūnaka will lead the management of any kōiwi tangata (human remains of a Māori person) that have been uncovered, in line with the Te Rūnanga o Ngāi Tahu Kōiwi Tangata policy 2019. Remains are not to be moved until such time as papatipu rūnaka ~~iwi~~ and Heritage New Zealand have responded.”

c. Amendments to clause 6:

“Works affecting the *archaeological* site and any human remains (kōiwi) must not resume until Heritage New Zealand Pouhere Taonga gives written approval for work to continue. Works affecting a site of Māori origin or containing kōiwi tangata must not resume until papatipu rūnaka give written approval for work to continue. Further assessment by an archaeologist may be required.”

95.

APP11 – Accidental Discovery Protocol ⁹¹

If an unidentified *archaeological site* is located during works, the following applies:

1. Work must cease immediately at that place and within 20m around the site.
2. The contractor must shut down all machinery, secure the area, and advise the Site Manager.
3. The Site Manager must secure the site and notify the Heritage New Zealand Regional Archaeologist. Further assessment by an archaeologist may be required.
4. If the site is of Māori origin, the Site Manager must notify the Heritage New Zealand Regional Archaeologist and the appropriate papatipu rūnaka of the discovery and ensure site access to enable appropriate cultural procedures and tikaka to be undertaken, as long as all statutory requirements under legislation are met (Heritage New Zealand Pouhere Taonga Act, Protected Objects Act).
5. If human remains (kōiwi) are uncovered the Site Manager must advise the Heritage New Zealand Regional Archaeologist, NZ Police and the appropriate papatipu rūnaka and the above process under 4 must apply. Papatipu rūnaka will lead the management of any kōiwi tangata (human remains of a Māori person) that have been uncovered, in line with the Te Rūnanga o Ngāi Tahu Kōiwi Tangata policy 2019. Remains are not to be moved until such time as papatipu rūnaka and Heritage New Zealand have responded.

⁹¹ 00123.007, Heritage NZ

6. Works affecting the *archaeological site* and any human remains (kōiwi) must not resume until Heritage New Zealand Pouhere Taonga gives written approval for work to continue. Works affecting a site of Māori origin or containing kōiwi tangata must not resume until papatipu rūnaka give written approval for work to continue. Further assessment by an archaeologist may be required.

7. Where iwi so request, any information recorded as the result of the find such as a description of location and content, is to be provided for their records.

8. Heritage New Zealand Pouhere Taonga will advise if an archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014 is required for works to continue.

It is an offence under Section 87 of the Heritage New Zealand Pouhere Taonga Act 2014 to modify or destroy an *archaeological site* without an authority from Heritage New Zealand irrespective of whether the works are permitted or consent has been issued under the Resource Management Act.

96. In terms of a s32AA evaluation, the recommended addition of a new appendix to outline the requirements of an accidental discovery protocol was evaluated in the supplementary evidence dated 11 October 2022. The minor improvements recommended in this reply report result in greater clarity for the provisions, there will be no overall change to the intent or efficiency of the provisions as assessed in the Section 32 Evaluation Report.

3.9. Other changes

97. The following minor corrections must be made to the provisions, in accordance with clause 16(2), Schedule 1, RMA.

3.9.1. HCV-HH-M6

98. I recommend deleting the word “policies” before the reference to HCV-HH-P3.

3.9.2. HCV-WT-M2

99. In the supplementary evidence version of the pORPS dated 24 February 2023, HCV-WT-M2 incorrectly includes reference to APP11 in clause (3). This reference should be included at clause (4), and not clause (3).

100. My final recommendation for HCV-WT-M2 follows:

HCV-WT-M2 – Regional plans⁴³ and district plans

Local authorities must prepare or amend and maintain their *regional plans⁹²* and *district plans* to include methods that are in accordance with tikaka to:

⁹² Clause 16(2), Schedule 1, RMA

- (1) ~~control manage~~⁹³ activities in, or ~~adjacent to~~⁹⁴ affecting,⁹⁵ *wāhi tūpuna* sites and areas,
- (2) require cultural impact assessments where activities have the potential to adversely affect values of⁹⁶ *wāhi tūpuna* and Kāi Tahu have identified the need for an assessment,⁹⁷
- (3) require ~~including~~⁹⁸ conditions on *resource consents* or designations to ~~provide buffers or setbacks between~~ protect⁹⁹ *wāhi tūpuna* and ~~from~~¹⁰⁰ incompatible activities,
- (4) require ~~including~~¹⁰¹ accidental discovery protocols as ~~conditions an advice note~~¹⁰² on *resource consents* or designations for activities that may unearth archaeological sites, in accordance with APP11¹⁰³, and
- (5) maintain existing access to identified *wāhi tūpuna* sites and areas and promote improved access where practicable.

⁹³ 00239.152 Federated Farmers

⁹⁴ 00239.152 Federated Farmers

⁹⁵ 00223.122 Ngāi Tahu ki Murihiku

⁹⁶ 00226.280 Kāi Tahu ki Otago

⁹⁷ 00223.122 Ngāi Tahu ki Murihiku

⁹⁸ 00226.280 Kāi Tahu ki Otago

⁹⁹ 00239.152 Federated Farmers

¹⁰⁰ 00239.152 Federated Farmers

¹⁰¹ 00239.152 Federated Farmers

¹⁰² 00123.007 Heritage NZ

¹⁰³ Consequential amendment to APP11: 00123.007, Heritage NZ