

BEFORE THE HEARING PANEL

IN THE MATTER of the Resource Management Act 1991

AND

IN THE MATTER of Proposed Plan Change 9 to the Operative Hamilton
City District Plan

**STATEMENT OF SUPPLEMENTARY AND REBUTTAL EVIDENCE OF PAUL
STANLEY RYAN**

(PLANNING – ARCHAEOLOGICAL SITES)

Dated 6 October 2023

LACHLAN MULDOWNY
BARRISTER

P +64 7 834 4336 **M** +64 21 471 490

Office Panama Square, 14 Garden Place, Hamilton

Postal PO Box 9169, Waikato Mail Centre, Hamilton 3240

www.lachlanmuldowney.co.nz

INTRODUCTION

1. My full name is Paul Stanley Ryan.
2. My qualifications, professional memberships, and experience are set out in my statement of evidence dated 1 September 2023¹.
3. I confirm that this Supplementary and Rebuttal Evidence, provided on behalf of Hamilton City Council (**Council**) as proponent of Plan Change 9 (**PC9**) has been prepared in accordance with the Code of Conduct for expert witnesses contained in the Environment Court's Practice Note 2023.
4. The Supplementary Evidence responds to issues raised in 22 submission points that I did not address in my Primary Evidence².
5. I have read the evidence prepared on behalf of submitters relevant to archaeological and cultural sites.
6. The Rebuttal Evidence responds to planning issues raised in that evidence.

PRE-HEARING MEETINGS

7. Before finalising this evidence, I invited Carolyn McAlley and Eleanor Sturrock for Heritage New Zealand Pouhere Taonga (**HNZPT**) to comment on my draft amendments to the following:
 - a) Notes below Rule 19.4.2
 - b) Proposed Rule 19.3.3 f and a new Advice Note 3 be added below Rule 19.3.3
 - c) Rule 19.3.3 g
 - d) Policy 19.2.6a

¹ Paragraphs 2 to 6.

² The submission points are listed in Paragraph 31.

8. Carolyn McAlley confirmed³ HNZPT's acceptance of the amendments to these provisions recommended in this evidence.
9. On 28 September 2023, I discussed with Eleanor Sturrock paragraphs 5.2 through 5.10 of her evidence to better understand them.

ABBREVIATIONS AND ACRONYMS

10. Abbreviations and acronyms used in the evidence are listed in **Appendix A**.

SCOPE OF EVIDENCE

11. My evidence responds to planning matters raised in submissions and submitters' evidence relating to the archaeological and cultural site topic within PC9.
12. It includes Supplementary Evidence relating to:
 - a) The Frankton Railway Station site (S14/498), which Mr Cable recommended be included in PC9, but which was omitted from my Primary Evidence.
 - b) The date to be recorded in the explanation I recommended be included below Objective 19.2.6.
 - c) The 22 submission points for which I had not completed a comprehensive review and response at the time of filing my Primary Evidence.
13. It also includes rebuttal evidence responding to the following submitters' evidence:

Submitter Witness	On behalf of	Paragraphs responding to the witness
Carolyn McAlley	HNZPT	110 to 115
Eleanor Sturrock	HNZPT	107 to 109
Rachel Dimery	Cordyline Holdings Ltd	96 to 106 and 118 to 129

³ Personal Communications – e-mails dated 28 and 29 September 2023.

Sara Brown	WEL Networks Ltd	130 to 138
------------	------------------	------------

14. My evidence is structured as follows:

- a) Summary of Evidence.
- b) Supplementary Evidence.
- c) Rebuttal Evidence.
- d) Conclusions.

SUMMARY OF EVIDENCE

Supplementary Evidence

- 15. Mr Cable recommended in his Primary Evidence that the Frankton Railway Station (S14/498) be included in PC9.⁴
- 16. However, the site was omitted from Annexures 2 and 9 to Mr Cable's Primary Evidence and from Appendix D to my Primary Evidence.
- 17. Based on Mr Cable's recommendation, I recommend that the extent of this archaeological site be included on the District Plan Planning Map and the site be included in Schedule 8C in Appendix 8.
- 18. Also, with the inclusion of the Frankton Railway Station in PC9, I recommend that the date in the second paragraph of the explanation below Objective 19.2.6, which I recommended in my Primary Evidence⁵, be amended as follows in blue:

Archaeological sites recorded on the New Zealand Archaeological Association's (NZAA's) Digital Archaeological Site File database (ArchSite) as of ~~24 September 2021~~ 1 September 2023 are included in either Schedule 8B, 8C, or 8CA of Appendix 8, and the location and extent of each site is shown on the District Plan Planning Map⁵⁸. Details of any archaeological or cultural sites added to ArchSite after 24 September 2021, including their location and extent, would need to be obtained from ArchSite. Refer to <https://nzaa-archsite.hub.arcgis.com/>

⁴ Paragraphs 25 to 29.

⁵ Paragraph 121 a of my Primary Evidence dated 1 September 2023.

19. My Supplementary Evidence addresses the 22 submission points that I had not fully addressed in my Primary Evidence, but I recommend no amendments to PC9 in response to them, other than to update the definition of “archaeological site” to match the definition in the Heritage New Zealand Pouhere Taonga Act 2014 (**HNZPT Act**), as follows⁶.

Archaeological Site (as stated in the Heritage New Zealand Pouhere Taonga Act 2014 (the HNZPT Act): Means, subject to section 42(3) of the HNZPT Act, -

- a. Any place in New Zealand, including any building or structure (or part of a building or structure), that:-
- a. Either —
- i. Was associated with human activity that occurred before 1900 or ~~ii. is~~ the site of the wreck of any vessel where that wreck occurred before 1900; and
 - ii. ~~b. Is or may be able~~ Provides or may provide, through investigation by archaeological methods, ~~to provide~~ evidence relating to the history of New Zealand; and
- b. Includes a site for which a declaration is made under section 43(1) of the HNZPT Act.

20. However, I recommend that the issues listed in **Table 1** that were raised in submissions by mana whenua and iwi be considered as part of the future work which will determine how best to recognise and provide for mana whenua’s relationship with their ancestral landscape in Hamilton.

⁶ Paragraphs 85 to 89.

Table 1 Issues raised in submissions that are recommended to be considered as part of the future work on sites and areas of significance to Maaori

Submitter	Submission Point	Issue	Paragraphs in this evidence that discuss the issue
Wiremu Puke	169.9	Limiting building height near Paa sites to retain view shafts to the river.	43 to 46
	169.13	Enabling Ngaati Wairere to examine and record subsoils of pre-1950 houses and structures that are to be removed off-site.	47 to 49
	169.14	Limiting building height on or near Miropiko Paa and Opoia Paa sites.	0 and 52 to 53
Waikato-Tainui	349.23	Identifying and recognising sites and areas of significance to Maaori.	58 to 59
Te Haa o Te Whenua o Kirikiriroa	426.1	Council to work with THaWK to develop maps showing the location and extent of sites of significance to mana whenua based on Maaori values and not European archaeological values and for this map to be included in the next District Plan revision.	80 to 81
	426.2	<ul style="list-style-type: none"> Extending the area of protection for all cultural sites out to 100m beyond the boundary of all sites currently identified in the District Plan; and Requiring anyone proposing to develop or undertake earthworks within that new perimeter to consult mana whenua prior to undertaking these works. 	82 to 84

Rebuttal Evidence

Rachel Dimery's Evidence on behalf of Cordyline Holdings Limited

21. In response to Rachel Dimery's evidence (22 September 2022) I:

- a) Consider⁷ that Archaeological Site A127 is outside the scope of PC9.
- b) Recommend⁸ that Policy 19.2.6a is amended as follows:

~~Inappropriate~~ subdivision, use and development shall be managed so that where to avoid adverse effects on archaeological and cultural sites ~~where they are known to exist, or are likely to exist cannot be avoided, they shall be remedied or minimised as far as practicable.~~

- c) Set out why PC9 requirements relating to archaeological and cultural sites do not duplicate HNZPT Act requirements⁹.

Carolyn McAlley's Evidence on behalf of HNZPT

22. In response to Carolyn McAlley's evidence (22 September 2022) I recommend¹⁰ that the following provisions, which I had recommended in my Primary Evidence¹¹, be amended as follows in blue:

- a) Rule 19.3.3 g¹²:

Activity	Class
g. <u>Demolition, alterations, and additions to an existing building or structure constructed after 1900 on a Schedule 8C site that does not involve earthworks or Schedule 8A buildings or structures.</u>	<u>P</u>

- b) Advice Notes below Rule 19.4.2¹³:

Note

1. If archaeological material, koiwi or taonga, which pre-dates 1900, is present or uncovered on a site, then the site is may be an archaeological site in terms of the Heritage New Zealand Pouhere Taonga Act 2014.
2. Any disturbance of an archaeological sites, regardless of their listing or otherwise in this District Plan, is not permitted under the Heritage New

⁷ Paragraph 95.

⁸ Paragraph 98.

⁹ Paragraphs 119 to 129.

¹⁰ Paragraph 112.

¹¹ Paragraph 169 of my Primary Evidence dated 1 September 2023.

¹² Paragraph 112.

¹³ Paragraph 115.

Zealand Pouhere Taonga Act 2014, regardless of whether the site is listed in this District Plan or on land that is designated, or the activity causing the disturbance is permitted under the District or Regional Plan or by a building consent or resource consent.

3. The Heritage New Zealand Pouhere Taonga Act 2014 requires an authority to be obtained from Heritage New Zealand Pouhere Taonga before an archaeological site is modified or destroyed.

4. An authority is required for all such activity regardless of whether the land on which an archaeological site may be present is designated, a resource or building consent has been granted, or the activity is permitted under the Regional or District Plan.

54. If you wish to do any work that may affect an archaeological site or obtain ~~for~~ further information about Heritage New Zealand Pouhere Taonga Act 2014 requirements, or ~~to~~ make an application for an authority, then contact the nearest office of Heritage New Zealand Pouhere Taonga.

Eleanor Sturrock's Evidence on behalf of HNZPT

23. In response to Eleanor Sturrock's evidence (22 September 2022) I recommend that:

- a) Rule 19.3.3f, which I had recommended in my Primary Evidence (1 September 2023), be amended and a new Advice Note be added as follows in blue font¹⁴:

Activity	Class
<u>f. Any earthworks on a site in Schedule 8CA (see note 3)</u>	<u>P</u>

Note

...

3. Heritage New Zealand Pouhere Taonga should be consulted about any proposed earthworks on a site in Schedule 8CA to determine whether any further assessment of this proposal is required to satisfy the requirements of the Heritage New Zealand Pouhere Taonga Act 2014.

Sara Brown's Evidence on behalf of WEL Networks Limited

24. I recommend¹⁵ that the new Permitted Activity Rule for repair or replacement of existing network utilities that Ms Brown sought in her Primary Evidence (22 September 2023) be rejected.

SUPPLEMENTARY EVIDENCE

25. Mr Cable, as part of his post-notification review (dated 1 September 2023), confirmed that only one additional archaeological site in Hamilton

¹⁴ Paragraph 109.

¹⁵ Paragraphs 130 to 138.

(excluding the land subject to PC5) had been added to ArchSite since he undertook his pre-notification review on 24 September 2021.

26. Mr Cable recommended that this additional site, the Frankton Railway Station (S14/498), be included in the Plan¹⁶.
27. However, this new site was omitted from the following in Mr Cable's Primary Evidence:
 - a) Annexure 2; and
 - b) Annexure 9 – a map of the extent of the site.
28. Consequently, it was also omitted from any of the amended Schedules 8B or 8C, or the new Schedule 8CA included in Appendix D to my Primary Evidence.
29. Based on Mr Cable's recommendation¹⁷ that the Frankton Railway Station be included in PC9 as a Group 2 Archaeological and Cultural Site, I recommend that the extent of this archaeological site, A182 (S14/498), be included on the District Plan Planning Map and be included in Schedule 8C in Appendix 8 as follows in blue font.

¹⁶ See responses to Submission Points 330.24, 330.25, and 427.83 in Annexure 1 to Mr Cable's Primary Evidence dated 1 September 2023 and Paragraph 13 of his Rebuttal Evidence dated 6 October 2023.

¹⁷ Paragraph 13 of Mr Cable's Rebuttal Evidence dated 6 October 2023.

Schedule 8C: Group 2 Archaeological and Cultural Sites

Site Number (NZAA Number*)	Name	Legal Description	Map Number	Approximate Location
A182 (S14/498)	Frankton Railway Station	Lot 1 DP 493328; Lot 2 DP 493328; LINZ Parcel IDs 4568333 and 4568168.	-	Frankton Railway Station

30. Also, with the inclusion of the Frankton Railway Station in PC9, I recommend that the date in the second paragraph of the explanation below Objective 19.2.6, which I recommended in my Primary Evidence¹⁸, be amended as follows in blue font:

Archaeological sites recorded on the New Zealand Archaeological Association's (NZAA's) Digital Archaeological Site File database (ArchSite) as of ~~24 September 2021~~ [1 September 2023](#) are included in either Schedule 8B, 8C, or 8CA of Appendix 8, and the location and extent of each site is shown on the District Plan Planning Map. Details of any archaeological or cultural sites added to ArchSite after 24 September 2021, including their location and extent, would need to be obtained from ArchSite. Refer to <https://nzaa-archsite.hub.arcgis.com/>

31. The remainder of this Supplementary Evidence responds to the following 22 submission points that were not fully addressed in my Primary Evidence.

Submitter	On behalf of	Sub Pt No.
Raymond Noel Mudford		98.1
Raymond Noel Mudford		98.4
Raymond Noel Mudford		98.5
Ngati Wairere – Wiremu Puke		169.8
Ngati Wairere – Wiremu Puke		169.9
Ngati Wairere – Wiremu Puke		169.13
Ngati Wairere – Wiremu Puke		169.14
Ngati Wairere – Wiremu Puke		169.15
Gordon and Rita Chesterman		182.6

¹⁸ Paragraph 121 a of my Primary Evidence dated 1 September 2023.

Submitter	On behalf of	Sub Pt No.
Waikato-Tainui (Te Whakakitenga o Waikato Incorporated) – Alana Mako		349.23
Property Council New Zealand – Logan Rainey	Brian Squiar	388.1
Steven Perdia		392.1
Steven Perdia		392.2
Manga Waitawhiriwhiri Kaitiaki – Te Kopa King		399.1
4Sight Consulting Limited – Mark Laurenson	Z Energy	422.17
4Sight Consulting Limited – Mark Laurenson	Z Energy	422.18
4Sight Consulting Limited – Mark Laurenson	Z Energy	422.19
4Sight Consulting Limited – Mark Laurenson	Z Energy	422.20
Te Haa o te Whenua O Kirikiriroa – Sonny Karena and Rawiri Bidois		426.1
Te Haa o te Whenua O Kirikiriroa – Sonny Karena and Rawiri Bidois		426.2
Waikato Heritage Group – Laura Kellaway	Waikato Heritage Group	427.88
Campbell Brown Planning Ltd – Michael Campbell	Kainga Ora	428.6

Raymond Mudford's Submission

32. Mr Mudford's submission¹⁹ asserts that it is not clear what criteria and weighting were applied to determine what archaeological set should be included in the Plan.
33. Paragraph 34 (a) of my Primary Evidence (1 September 2023) sets out the criteria used to determine which archaeological sites PC9 included in the Plan.
34. Mr Cable's Primary Evidence (1 September 2023) sets out the following:
 - a) At Paragraph 21: the criteria he used to inform a significance ranking of each site prior to notification of PC9.
 - b) At Paragraph 25 (b): the matters he considered when reviewing the significance rankings of sites deemed within the scope of his

¹⁹ Submission Point 98.1.

evidence.

- c) At Paragraph 34: the changes he recommends to the scheduling of archaeological and cultural sites in the Plan in response to submissions.
 - d) At Paragraph 35: A description of the ranking of archaeological and cultural sites (Group 1, Group 2, and Group 3 sites) that he recommends be inserted in the Plan at Appendix 8-4.
35. Mr Mudford seeks²⁰ clarification regarding whether landowners whose property is affected by PC9 will receive monetary compensation for any such adverse effects.
 36. I confirm that Council will not compensate landowners in this way.
 37. Mr Mudford asserts²¹ that PC9 was notified without consultation.
 38. Appendix 4 to the Section 32 Report lists the consultation undertaken in relation to PC9. In May 2022, all affected landowners were sent a letter that set out all the matters under PC9 that impacted them, provided links to further information, and invited them to attend a pre-notification webinar held on the parts of PC9 relating to archaeological and cultural sites. The webinar was held on 29 June 2022. That same day, Council resolved to notify PC9. Following this, a series of community events and/or drop-in sessions provided an opportunity for landowners to engage with Council staff about the proposals. PC9 was notified on 22 July 2023.
 39. Mr Mudford's submission asks²² why Council does not have a heritage park where high value heritage items are restored and maintained for future generations.

²⁰ Submission Point 98.4.

²¹ Ibid.

²² Submission Point 98.5.

40. Archaeological and cultural sites must be protected in-situ. They cannot be relocated into a heritage park.

Wiremu Puke's Submission

41. Mr Puke encourages²³ use of the term "sites of hapu and archaeological significance" instead of "cultural sites".
42. I disagree because the term "cultural site" includes sites of significance to mana whenua or tangata tiriti.
43. Mr Puke's submission²⁴ opposes "any high-rise buildings near any Pa site to be built as part of this plan change as we want to have those sites left as open as possible for cultural reasons as view shafts to the river".
44. There are 34 recorded paa sites in Hamilton and the effects of restricting building height near them need careful and comprehensive assessment, which has yet to be undertaken.
45. Also 8 of the paa sites are not immediately beside the Waikato River.²⁵ So maintaining view shafts to the river from these paa sites would not be practicable.
46. I recommend that the proposal to limit building height near paa sites be considered as part of the future project to address sites and areas of significance to Maaori.
47. Wiremu Puke seeks²⁶, as part of the conditions of consent, a process that would enable Ngaati Wairere to examine and record subsoils of pre-1950 houses and structures that are to be removed off-site.
48. I have insufficient information about the proposed process or its merits to

²³ Submission Point 169.8.

²⁴ Submission Point 169.9.

²⁵ The following sites are located away from the river: A13, A23, A107, A115, A152, A153, and A155.

²⁶ Submission Point 169.13.

recommend any changes to PC9.

49. I recommend that this proposed process is considered as part of the future project to address sites and areas of significance to Maaori.
50. Mr Puke also seeks for:
 - a) No large multi-story buildings to be constructed on or near Miropiko Paa and Opoia Paa.²⁷
 - b) Exotic trees on Miropiko Paa to be replaced with Miro and other suitable indigenous trees.²⁸
 - c) Opoia Paa to be commemorated with a carved pou and interpretive panel as outlined in *Nga Tapuwae o Hotumauea – Maori Landmarks on Riverside Reserves Management Plan*.²⁹
51. Implementation of *Nga Tapuwae o Hotumauea – Maori Landmarks on Riverside Reserves Management Plan* is outside the scope of PC9.
52. The proposal to limit building height on or near Miropiko Paa and Opoia Paa sites requires comprehensive assessment, which has yet to be undertaken.
53. I recommend that this proposal be considered as part of the future project to address sites and areas of significance to Maaori.

Gordon and Rita Chesterman's Submission

54. Under the heading, "Heritage Amenity Value", the Chestermans' submission³⁰ urges Commissioners to reinforce the value of heritage as recognised in the Hamilton Heritage Plan, March 2016.
55. The Hamilton Heritage Plan uses the word "value" 5 times and does not use the word "amenity" at all.

²⁷ Submission Point 169.14.

²⁸ Submission Point 169.14.

²⁹ Submission Point 169.15.

³⁰ Submission Point 182.6.

56. It is unclear whether the Chestermans seek any amendments to PC9.

57. It would be helpful if they were to clarify the relief they seek.

Waikato-Tainui's Submission

58. Waikato-Tainui seek³¹ for the work related to identifying and recognising sites and areas of significance to Maaori, which was decoupled from PC9, to be progressed imminently through another plan change.

59. How best to recognise and provide for the relationship of Maaori with their ancestral landscape within Hamilton remains a further workstream to be completed later.

Property Council New Zealand's Submission

60. The Property Council considers³² that PC9 imposes significant restrictions on intensification and development in Hamilton and seeks a more targeted and tailored approach to historic heritage to reduce unintended impacts on development capacity.

61. The hearing process and any subsequent appeal process will determine any changes to the management of historic heritage in Hamilton.

Steven Perdia's Submission

62. As the submission³³ does not relate to archaeological and cultural sites, this evidence considers it no further.

Te Kopa King's Submission

63. Mr King raises concerns about the following matters, which are separate from and outside the scope of PC9:

³¹ Submission Point 349.23.

³² Submission Point 388.1.

³³ Submission 392.

- a) Council's consultation and engagement process.
- b) The past destruction of archaeological sites and related processes under the HNZPT Act.³⁴
- c) Restoration projects.

64. Mr King seeks for Council to change its consultation and engagement process. As this relief and the other matters raised in the submission are outside the scope of PC9, I recommend the submission be rejected.

Z Energy's Submission

65. Z Energy's submission seeks³⁵ retention of Objective 19.2.1 and Policy 19.2.1a as notified.

66. I recommend that these submission points be accepted because they support notified provisions.

67. Z Energy's submission also seeks³⁶ retention of Policy 19.2.1b as notified.

68. As I have recommended³⁷ that Policy 12.2.1b be amended in response to Kaainga Ora's Submission³⁸, I recommend Z Energy's Submission Point be accepted in part.

69. Z Energy seeks³⁹ to amend Policy 19.2.1e as follows:

Signs on buildings, structures and/or sites listed in Schedule 8A or 8B must:

- i. Be associated with lawful activities on the site;
- ii. ~~Be consistent with and m~~Maintain or enhance the historic heritage values;
- iii. Avoid, remedy or mitigate adverse effects on the heritage resource.

70. Z Energy considers that requiring signage to be consistent with historic

³⁴ These are matters the submitter could take up with HNZPT.

³⁵ Submission Points 422.17 and 422.18

³⁶ Submission Point 422.19.

³⁷ See paragraphs 72 to 74 of my Primary Evidence, 1 September 2023.

³⁸ Submission Point 428.41.

³⁹ Submission Point 422.20.

heritage values “will not provide appropriately for maintenance and upgrading of existing lawfully established signage which can be managed to maintain or enhance historic heritage values and in doing so give effect to Objective 19.2.1 but which in isolation may not be considered consistent with historic heritage values”.

71. Low-intensity signs on historic heritage buildings and sites listed in Schedule 8A and archaeological and cultural sites listed in Schedule 8B are Restricted Discretionary activities.^{40,41}
72. High-intensity signs are either Discretionary Activities⁴² or Restricted Discretionary Activities⁴³.
73. The matters of discretion and assessment criteria for signs on heritage buildings and structures and archaeological and cultural sites are those listed in Appendix 1.3.3 of the Plan under E – Heritage Values and Special Character.⁴⁴
74. These include E1(a) and the new matters and criteria listed in E8 in PC9, which are as follows [emphasis added]:

E1	The extent to which the proposal, development, excavation, modification and disturbance, earthworks, and/or subdivision of a historic heritage site, historic heritage area, or places identified in Schedules 8A or 8B or 8C or 8D of Appendix 8:	
	a.	Is consistent and compatible with the identified heritage values, including scale, design, form, character, style, bulk, height, materials and colour, and retains, protects or enhances the heritage resources and values and historic setting.
E8	The extent to which proposed signage on an identified building, site or surroundings identified in Schedule 8A or 8B of Appendix 8:	
	a.	Is associated with permitted or consented activities on the site.
	b.	Is consistent with and maintains or enhances the historic heritage values of the building, site, setting and surroundings.
	c.	Acknowledges and respects the character of the façade of the building.

⁴⁰ Rules 19.3.1 q, 19.3.3 c, and 25.10.3 f.

⁴¹ Except within the Major Facilities Zone – Waikato Hospital Campus where Rule 25.10.5.11 applies.

⁴² Rule 25.10.3 g.

⁴³ Rule 25.10.3 h.

⁴⁴ Rule 25.10.6 a i.

	d.	Is consistent with the historically documented traditional location, style, colours and size of signs.
	e.	Is not visually prominent and is appropriate in size and location to the heritage features, including not requiring the removal of decorative features or detailing.
	f.	Avoids irreversible damage to the original fabric of the building or structure, including by ensuring appropriate methods of attachment.
	g.	Avoids visual cluttering effects.
	h.	Ensures that any illumination of signs avoids or minimises adverse effects on the historic heritage values, including by ensuring that signs are illuminated by external lighting or any illumination is static and high-intensity signs are avoided.

75. If “consistent” were to be deleted from Policy 19.2.1e, then it would follow that criterion E8 d, which also includes the word “consistent”, would also need to be deleted.
76. However, Council’s Heritage Specialist, Elise Caddigan, has advised me⁴⁵ that, in her opinion, criterion E8 d should be retained as it would allow more best practice heritage outcomes in consenting as it directs style (e.g., font and shape) and colour which are not included in any other criteria that relate directly to signage.
77. Also, the wording of E8 b, “consistent with and maintains or enhances the historic heritage values of the building, site, setting and surroundings” reflects the wording of Policy 19.2.1e.
78. In my opinion, based on Ms Caddigan’s advice, it would be inappropriate to amend Policy 19.2.1e in the manner sought by Z Energy⁴⁶.
79. Therefore, I recommend that Z Energy’s submission point⁴⁷ be rejected.

Te Haa o Te Whenua o Kirikiriroa’s Submission

80. Te Haa o Te Whenua o Kirikiriroa (**THaWK**) seeks⁴⁸ for Council to work with THaWK to develop maps showing the location and extent of sites of

⁴⁵ Personal communications, e-mails dated 19 and 28 September 2023.

⁴⁶ As set out in Paragraph 69.

⁴⁷ Submission Point 422.20.

⁴⁸ Submission Point 426.1.

significance to mana whenua based on Maaori values and not European archaeological values and for this map to be included in the next District Plan revision.

81. This submission point requires no amendment to PC9; it relates to the future programme of work to investigate how best to recognise and provide for the relationship of Maaori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga in Hamilton.
82. THaWK also seeks⁴⁹ for PC9 to be amended to:
 - a) Extend the area of protection for all cultural sites out to 100m beyond the boundary of all sites currently identified in the District Plan; and
 - b) Require anyone proposing to develop or undertake earthworks within that new perimeter to consult mana whenua prior to undertaking these works.
83. Waikato-Tainui supports this submission point.
84. This relief falls within the scope of the proposed future programme of work, so it is recommended that no decisions on this matter are made as part of the PC9 hearing.

Waikato Heritage Group

85. The Waikato Heritage Group seeks⁵⁰ to have 20th century sites, such as industrial sites, scheduled in the Plan as archaeological sites and policy included in the Plan for the management of these sites.

⁴⁹ Submission Point 426.2.

⁵⁰ Submission Point 427.88.

86. Six further submissions oppose this submission⁵¹.

87. The definition of an archaeological site in the Plan is:

Archaeological Site (as stated in the Heritage New Zealand Pouhere Taonga Act 2014): Means any place in New Zealand that:

- a. Either —
 - i. Was associated with human activity that occurred before 1900 or,
 - ii. Is the site of the wreck of any vessel where that wreck occurred before 1900.
- b. Is or may be able, through investigation by archaeological methods, to provide evidence relating to the history of New Zealand

88. However, the definition in the HNZPT Act has been changed to:

Archaeological site means, subject to [section 42\(3\)](#),—

- (a) any place in New Zealand, including any building or structure (or part of a building or structure), that—
 - (i) was associated with human activity that occurred before 1900 or is the site of the wreck of any vessel where the wreck occurred before 1900; and
 - (ii) provides or may provide, through investigation by archaeological methods, evidence relating to the history of New Zealand; and
- (b) includes a site for which a declaration is made under [section 43\(1\)](#)

89. To be consistent with the HNZPT Act, I recommend that the definition of “archaeological site” in the Plan be amended as follows:

Archaeological Site (as stated in the Heritage New Zealand Pouhere Taonga Act 2014 (the HNZPT Act): Means, subject to section 42(3) of the HNZPT Act, -

- a. Any place in New Zealand, including any building or structure (or part of a building or structure), that:—
- b. Either —
 - i. Was associated with human activity that occurred before 1900 or ~~ii. Is~~ is the site of the wreck of any vessel where that wreck occurred before 1900; ~~and~~
 - ii. ~~b. Is or may be able~~ Provides or may provide, through investigation by archaeological methods, ~~to provide~~ evidence relating to the history of New Zealand; ~~and~~
- b. Includes a site for which a declaration is made under section 43(1) of the HNZPT Act.

⁵¹ The National Trust Limited and the Trust Company Limited as Custodian for the National Storage New Zealand Property Trust (FS897 and FS1993), Tainui Group Holdings Residential Development Limited (FS1952), Te Ihonui Limited (FS1956), Xianglin Li (FS1971), and Geoff Purkis (FS1978).

90. Twentieth century sites are not archaeological sites, unless declared under s43 of the HNZPT Act to be an archaeological site.
91. Therefore, I recommend that Waikato Heritage Group's Submission Point 427.88 be rejected.

Kaainga Ora's Submission

92. Kaainga Ora supports in part:
 - a) The proposed amendments to objectives, policies and methods concerning land use activities within or near mapped archaeological sites⁵².
 - b) The identification of new archaeological sites⁵³.
93. Kaainga Ora seeks⁵⁴ for the mapped archaeological sites and the relevant provisions to be included in the Plan as notified.
94. It is recommended that Submission Point 428.6 be accepted in part because:
 - a) Mr Cable has recommended⁵⁵ the mapped extents of some archaeological sites be amended.
 - b) I have recommended⁵⁶ that some plan provisions relating to archaeological and cultural sites be amended.

⁵² Paragraphs 29 and 30 of Kaainga Ora's submission.

⁵³ Paragraph 29 of Kaainga Ora's submission.

⁵⁴ Paragraph 31 (d) of Kaainga Ora's submission. Submission Point 428.6.

⁵⁵ Paragraph 31 of, and Annexures 2 and 9 to, Mr Cable's Primary Evidence.

⁵⁶ Paragraph 246 in my Primary Evidence and Paragraph 139 in this Rebuttal Evidence.

REBUTTAL EVIDENCE

Archaeological Site A127

95. Contrary to Rachel Dimery's statement,⁵⁷ I consider that re-evaluation of the mapped extent of Archaeological Site A127, which was addressed in Plan Change 5, is outside the scope of PC9.

Policy 19.2.6a

96. Ms Dimery has confirmed⁵⁸ she supports Policy 19.2.6a as notified.
97. In my Primary Evidence, I recommend⁵⁹ that Policy 19.2.6a be amended as follows:

Inappropriate subdivision, use and development shall be managed to avoid adverse effects on archaeological and cultural sites where they ~~are known to~~ exist, or are likely to exist.

98. In response to Ms Dimery's evidence, I have reconsidered Policy 19.2.6a and recommend that it be amended as follows for reasons I set out below:

~~Inappropriate s~~Subdivision, use and development shall be managed so that where to avoid adverse effects on archaeological and cultural sites ~~where they are known to exist, or are likely to exist~~ cannot be avoided, they shall be remedied or minimised as far as practicable.

Clean version:

Subdivision, use and development shall be managed so that where adverse effects on archaeological and cultural sites cannot be avoided, they shall be remedied or minimised as far as practicable.

99. The first issue I have with Policy 19.2.6a as notified is its reference to managing "inappropriate subdivision". This implies that inappropriate subdivision is acceptable, provided it is managed.
100. While s6(f) of the Resource Management Act 1991 (**RMA**) identifies "the protection of historic heritage from inappropriate subdivision, use, and development" as a matter of national importance, in my opinion, the

⁵⁷ Paragraph 24 of Rachel Dimery's Primary Evidence (22 September 2023).

⁵⁸ Paragraph 39 of Rachel Dimery's Primary Evidence (22 September 2023).

⁵⁹ Paragraphs 89 to 91 of my Primary Evidence (1 September 2023).

District Plan should not be enabling, encouraging, or managing inappropriate subdivision, use, or development; it should be avoiding them.

101. Therefore, I recommend that the word “inappropriate” be deleted.
102. The second issue I have with Policy 19.2.6a as notified is that it directs that subdivision, use and development are to be managed “to avoid adverse effects on archaeological and cultural sites”.
103. In many cases, it may be impracticable to avoid adverse effects on archaeological and cultural sites when undertaking subdivision, use, or development.
104. Therefore, to recognise this, I propose alternative wording that requires, when adverse effects on archaeological and cultural sites cannot be avoided, they shall be remedied or minimised as far as practicable.
105. This amendment is like that which I have recommended for Policy 19.2.2b in my Primary Evidence⁶⁰:

19.2.2b

Where the loss of heritage values associated with scheduled items ~~shall not~~ be avoided, **minimise the loss as far as practicable.**

106. Application of this alternative wording for Policy 19.2.6a requires an applicant for a subdivision or land use consent to demonstrate, first that the effects on the archaeological and cultural site cannot be avoided, and second that the adverse effects have been remedied or minimised as far as practicable.

Rule 19.3.3 f

107. In my Primary Evidence I recommended a new rule 19.3.3 f as follows:

19.3.3 Archaeological and Cultural Sites

⁶⁰ Paragraph 88 in my Primary Evidence dated 1 September 2023.

Activity	Class
<u>f.</u> Any earthworks on a site in Schedule 8CA	<u>P</u>

108. In her Primary Evidence⁶¹, Eleanor Sturrock states:

As the Council have chosen to include all the recorded archaeological sites in the NZAA ArchSite database within PC9, I agree with Mr. Cable's recommendation to create a new group for scheduled sites that is for information purposes only (8CA - Group 3). In my view however, it still needs to be made very clear that regardless of the significance level assessment and grouping, that **consultation should be undertaken with HNZPT⁶² to determine whether further assessment needs to be undertaken.** [Emphasis added].

109. Therefore, I recommend that proposed Rule 19.3.3 f be amended and a new Advice Note 3 be added below Rules 19.3.3 as follows in blue font:

19.3.3 Archaeological and Cultural Sites

Activity	Class
<u>f.</u> Any earthworks on a site in Schedule 8CA (see note 3)	<u>P</u>

Note

...

3. Heritage New Zealand Pouhere Taonga should be consulted about any proposed earthworks on a site in Schedule 8CA to determine whether any further assessment of this proposal is required to satisfy the requirements of the Heritage New Zealand Pouhere Taonga Act 2014.

Rule 19.3.3 g

110. Carolyn McAlley, on behalf of HNZPT, seeks⁶³ to amend as follows in blue font Rule 19.3.3 g that I recommended in my Primary Evidence:

Activity	Class
<u>g.</u> Demolition, alterations, and additions to an existing building or structure constructed after 1900 on a Schedule 8C site that does not involve earthworks, except when the rules related to Buildings on Schedule 8A Built Heritage (building or structures apply).	<u>P</u>

111. I agree that the proposed Rule 19.3.3 g needs to be amended to ensure that the demolition, alternations, and additions to a scheduled heritage building is not identified as a permitted activity.

112. However, I recommended that this is achieved using the following simpler

⁶¹ Paragraph 5.1 of Eleanor Sturrock's Primary Evidence dated 22 September 2022.

⁶² Heritage New Zealand Pouhere Taonga.

⁶³ Paragraph 25 of Carolyn McAlley's Primary Evidence.

wording:

Activity	Class
<u>g. Demolition, alterations, and additions to an existing building or structure constructed after 1900 on a Schedule 8C site that does not involve earthworks or Schedule 8A buildings or structures.</u>	<u>P</u>

Advice Notes below Rule 19.4.2

113. Ms McAlley seeks the following amendments (in blue font) to the advisory Notes that I recommended⁶⁴ be inserted below Rule 19.4.2:

19.4.2 Archaeological and Cultural Sites

a.

Note

1. If archaeological material, koiwi or taonga, which pre-dates 1900, is uncovered on a site, then the site is an archaeological site in terms of the Heritage New Zealand Pouhere Taonga Act 2014.
2. Any disturbance of archaeological sites, regardless of their listing or otherwise in this District Plan, is not permitted under the Heritage New Zealand Pouhere Taonga Act 2014.
3. The Heritage New Zealand Pouhere Taonga Act 2014 requires an authority to be obtained from Heritage New Zealand Pouhere Taonga before an archaeological site is modified or destroyed.
4. An authority is required for all such activity regardless of whether the land on which an archaeological site may be present is designated, a resource or building consent has been granted, or the activity is permitted under the Regional or District Plan.
4. If you wish to do any work that may affect an archaeological site you must obtain an authority from Heritage New Zealand before works begin. This is the case regardless of whether the land on which the site is located is designated, or the activity is permitted under the District or Regional Plan or a resource or building consent has been granted.
5. For further information, or to make an application, contact the nearest office of Heritage New Zealand Pouhere Taonga.

114. In my opinion, the proposed alternative wording of 4 merely restates Notes 3 and 4 in a different way.

115. I propose that the Advice Notes to Rule 19.4.2 be amended as shown in blue font as follows in blue:

Note

1. If archaeological material, koiwi or taonga, which pre-dates 1900, is present or uncovered on a site, then the site is-may be an archaeological site in terms of the Heritage New Zealand Pouhere Taonga Act 2014.
2. Any disturbance of an archaeological sites, regardless of their listing or otherwise in this District Plan, is not permitted under the Heritage New

⁶⁴ Paragraph 186 of my Primary Evidence.

Zealand Pouhere Taonga Act 2014, regardless of whether the site is listed in this District Plan or on land that is designated, or the activity causing the disturbance is permitted under the District or Regional Plan or by a building consent or resource consent.

3. The Heritage New Zealand Pouhere Taonga Act 2014 requires an authority to be obtained from Heritage New Zealand Pouhere Taonga before an archaeological site is modified or destroyed.

4. An authority is required for all such activity regardless of whether the land on which an archaeological site may be present is designated, a resource or building consent has been granted, or the activity is permitted under the Regional or District Plan.

54. If you wish to do any work that may affect an archaeological site or obtain ~~For~~ further information about Heritage New Zealand Pouhere Taonga Act 2014 requirements, or ~~to~~ make an application for an authority, then contact the nearest office of Heritage New Zealand Pouhere Taonga.

Clean version:

Note

1. *If archaeological material, koiwi or taonga, which pre-dates 1900, is present or uncovered on a site, then the site may be an archaeological site in terms of the Heritage New Zealand Pouhere Taonga Act 2014.*
2. *Any disturbance of an archaeological site is not permitted under the Heritage New Zealand Pouhere Taonga Act 2014, regardless of whether the site is listed in this District Plan or on land that is designated, or the activity causing the disturbance is permitted under the District or Regional Plan or by a building consent or resource consent.*
3. *The Heritage New Zealand Pouhere Taonga Act 2014 requires an authority to be obtained from Heritage New Zealand Pouhere Taonga before an archaeological site is modified or destroyed.*
4. *If you wish to do any work that may affect an archaeological site or obtain further information about the Heritage New Zealand Pouhere Taonga Act 2014 requirements, or make an application for an authority, then contact the nearest office of Heritage New Zealand Pouhere Taonga.*

116. I recommend that “present” is included in Advice Note 1 to make it clear that, even if the listed materials are present but not uncovered or exposed, then the site may be an archaeological site. In other words, it is the presence of the material, not just its uncovering, that determines that it may be an archaeological site.

117. I have recommended that “is an archaeological site” be changed to “may be an archaeological site” to recognise that taonga held in a museum or private heirloom collection does not necessarily make the museum or collection site an archaeological site.

Duplication of HNZPT Act requirements

118. Ms Dimery considers that PC9 includes rules relating to earthworks and

subdivision of archaeological sites that duplicate the requirements of the HNZPT Act. She considers that this approach is inefficient and that there are other reasonably practicable options to achieve the objectives. She considers that the most efficient and effective option to be the mapping of known archaeological sites as an alert layer to advise plan users of the requirements of the HNZPT Act and explanatory material in relation to accidental discovery protocols.⁶⁵

119. The purpose of district plans⁶⁶ is to assist territorial authorities to carry out their functions to achieve the purpose of the RMA, which is to promote sustainable management of natural and physical resources⁶⁷, including archaeological and cultural sites.

120. Relevant functions of Council are:

- a) The establishment, implementation, and review of objectives, policies, and methods to *achieve integrated management* of the effects of the use, development, or protection of land and associated natural and physical resources of the district⁶⁸, and
- b) The control of any actual or potential effects of the use, development, or protection of land⁶⁹

121. Furthermore, the methods Council uses to carry out its functions may include the control of subdivision.⁷⁰

122. On the other hand, the purpose of the HNZPT Act is:

to promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand.

123. Also, the HNZPT Act prohibits the modification or destruction of an

⁶⁵ Paragraph 42 of Ms Dimery's Primary Evidence.

⁶⁶ Section 72 of the RMA.

⁶⁷ Section 5 of the RMA.

⁶⁸ Section 31 (1)(a) of the RMA.

⁶⁹ Section 31 (1)(b) of the RMA.

⁷⁰ Section 31 (2) of the RMA.

archaeological site unless an authority for the modification or destruction is obtained from HNZPT under that Act.⁷¹

124. The HNZPT Act includes no mention of “earthworks” or “subdivision” or the need to achieve integrated management of the effects of the use, development, or protection of land and its associated natural and physical resources.
125. The requirements of the HNZPT Act and the District Plan overlap to the extent that they both relate to archaeological and cultural sites.
126. However, the purpose for including objectives, policies, and rules in the District Plan relating to archaeological and cultural sites is different from the purpose of the HNZPT Act.
127. Therefore, the district plan requirements relating to these sites do not duplicate HNZPT Act requirements.
128. Documentation, such as an archaeological assessment prepared for a proposed activity or use that affects an archaeological site, can be used as part of an assessment of environmental effects for the proposal, as well as to support an application to HNZPT for an authority to destroy or modify the site.
129. This provides an element of efficiency in the process of obtaining the necessary statutory approvals for the proposed activity or use.

Maintenance, repair, or replacement of existing network utilities

130. WEL Networks Limited seeks the following new Permitted Activity rule to be included in the Plan⁷²:

Rule 19.3.3 (f)

For maintenance, repair, or replacement (including associated earthworks) of existing established network utilities within a site identified in Volume 2 Appendix

⁷¹ Section 5 (2)(e) of the HNZPT Act.

⁷² Page 7 of WEL Networks Limited’s submission.

8, Schedule 8B and 8C, all work shall be undertaken within the existing in-ground or on-ground dimensions of the infrastructure and any existing areas of cut and fill.

131. Ms Brown states⁷³ that this rule is derived from Rule 7E.3.1 Existing Minor Structures and Activities of the Operative Tauranga City Plan.

132. I have reproduced relevant parts of Rule 7E.3.1 in **Appendix B**.

133. It applies to “Existing Minor structures and Activities”, which, in relation to the significant archaeological areas, means:

- a. Gardening activities
- b. Garden structures (including fences, steps, pergolas, paved areas, clothes lines or letter boxes);
- c. Support poles for decks;
- d. Tree planting;
- e. Interpretive and directional signage;
- f. Pedestrian and cycle tracks including pathways, boardwalks and steps;
- g. Park furniture including bollards, lighting poles, rubbish bins, playgrounds and play equipment, gates, stiles, seating, memorials, picnic tables, barbeques, sculptures, artworks or shade-sails.

134. While Rule 19.3.3 f sought by WEL Networks is clearly derived from Rule 7E.3.1 in the Tauranga City Plan, there is a significant difference between the size, extent, and complexity of “Existing Minor Structures and Activities” that it provides for and “existing established network utilities” for which proposed Rule 19.3.3 (f) would provide.

135. In the Hamilton City Operative District Plan, “network utility” is defined as follows:

Network utility: Means any activity or structure relating to:

- a. Distribution or transmission by pipeline of natural or manufactured gas petroleum or geothermal energy.
- b. Telecommunication or radiocommunication.
- c. Transformation, transmission, or distribution of electricity.
- d. The holding, transmission and distribution of water for supply.
- e. Stormwater drainage or sewerage reticulation systems.

⁷³ Section 5.2 (b) of Sara Brown’s Primary Evidence (22 September 2023).

- f. Beacons and [natural hazard](#) emergency warning devices.
- g. Meteorological services.
- h. Construction, operation and maintenance of power-generation schemes.
- i. A project or work described as a “[network utility](#) operation” by regulations made under the Resource Management Act 1991.

136. In no way does Rule 7E.3.1 in the Tauranga City Plan set a precedent for proposed Rule 19.3.3 f.

137. Mr Cable has advised⁷⁴ that it cannot be guaranteed that excavations for maintenance, repair, or replacement of existing network utilities will be confined within the extent of the previous areas of cut associated with installing the existing network utilities.

138. Therefore, based on Mr Cable’s evidence, I conclude that the Permitted Activity Standard proposed in Sara Brown’s evidence is impracticable and unenforceable.

CONCLUSION

139. I recommend that the provisions of PC9 be amended as set out in my Primary Evidence⁷⁵, Supplementary Evidence, and Rebuttal Evidence, except that the recommendations in my Rebuttal Evidence shall prevail over those in my Primary Evidence where the recommendations differ.

140. The provisions the Supplementary Evidence recommends be amended are listed in the following table.

Provision of PC9 this evidence recommends be amended	The paragraph of this evidence that sets out the amendments
Frankton Railway Station site to be added to Schedule 8C in Appendix 8 and to the District Plan Planning Map	29

⁷⁴ Paragraph 16 of Mr Cable’s Rebuttal Evidence (6 October 2023).

⁷⁵ Paragraph 246 in my Primary Evidence (1 September 2023).

Provision of PC9 this evidence recommends be amended	The paragraph of this evidence that sets out the amendments
The explanation below objective 19.2.6	30
The definition of “archaeological site” in Appendix 1.1.2	89

141. The provisions the Rebuttal Evidence recommends be amended are listed in the following table.

Provision of PC9 this evidence recommends be amended	The paragraph of this evidence that sets out the amendments
Policy 19.2.6a	98
Rule 19.3.3 f	109
Rule 19.3.3 g	112
Advice Notes 3 and 4 below Rule 19.4.2	115

142. I recommend that some issues iwi and mana whenua raised in submissions be considered as part of the future work to address sites and areas of significance to Maaori⁷⁶.

Paul Stanley Ryan

6 October 2023

⁷⁶ Table 1 in Paragraph 20.

APPENDIX A

ABBREVIATIONS AND ACRONYMS

HNZPT	Heritage New Zealand Pouhere Taonga
HNZPT Act	Heritage New Zealand Pouhere Taonga Act 2014
PC9	Proposed Plan Change 9 to the Operative Hamilton City District Plan
RMA	Resource Management Act 1991
THaWK	Te Haa o Te Whenua o Kirikiriroa
The Plan	The Operative Hamilton City District Plan

APPENDIX B

Operative Tauranga City Plan Provisions

[Tauranga City Plan](#) [Chapter 7 - Heritage](#)

Section 7E Significant Archaeological Areas Provisions

7E.3

Permitted Activity Rules

Note: Where an activity does not comply with a Permitted Activity Rule it shall be considered a Restricted Discretionary Activity unless stated otherwise.

Note: Destruction, damage or modification of any archaeological site, regardless of whether it is listed in the Plan or not, requires an authority from the New Zealand Historic Places Trust under the Historic Places Act 1993.

7E.3.1

Existing Minor Structures and Activities

For maintenance, repair or replacement (including associated [earthworks](#)) of existing [minor structures and activities](#) within a [significant archaeological area](#) identified in [Appendix 7D: Register of Significant Archaeological Areas](#), all work shall be undertaken within the existing in-ground or on-ground dimensions of the [structure](#) and any existing areas of cut and fill.

EARTHWORKS

DEFINITION

Means the removal, relocation or deposit of soil or cleanfill within, onto or from land and includes archaeological investigations authorised by Heritage New Zealand, grave digging or domestic gardening.

MINOR STRUCTURES AND ACTIVITIES

DEFINITION

....

In relation to the significant archaeological areas means:

- h. Gardening activities
- i. Garden structures (including fences, steps, pergolas, paved areas, clothes lines or letter boxes);
- j. Support poles for decks;
- k. Tree planting;
- l. Interpretive and directional signage;
- m. Pedestrian and cycle tracks including pathways, boardwalks and steps;
- n. Park furniture including bollards, lighting poles, rubbish bins, playgrounds and play equipment, gates, stiles, seating, memorials, picnic tables, barbeques, sculptures, artworks or shade-sails.

In relation to Significant Maori Areas means:

- a. Gardening activities
- b. Garden structures (including fences, steps, (cumulatively involving cuts less than 1.5 metres in height), pergolas, paved areas, clothes lines or letter boxes);
- c. Tree planting;
- d. Interpretive and directional signage.