

Before Hearings Commissioners
Appointed by Hamilton City Council

UNDER the Resource Management
Act 1991

AND

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

Statement of Evidence of

Rachel Claire Dimery

on behalf of Cordyline Holdings Limited

Dated: 22 September 2023

EXECUTIVE SUMMARY

1. My name is Rachel Dimery and I am a planning consultant and director of Dimery Consulting Limited. I am providing planning evidence on the matters raised in the submission and further submissions by Cordyline Holdings Limited.
2. I do not support the approach taken in Proposed Plan Change 9 to archaeological sites. Unlike other places of historic heritage, archaeological sites both known/recorded and unrecorded, have significant protection under the Heritage New Zealand Pouhere Taonga Act 2014. The Heritage New Zealand Pouhere Taonga Act 2014 requires an authority to be obtained to modify or destroy any archaeological site. This includes any activity that may disturb an archaeological site, including exploratory investigations and scientific investigations.
3. In my opinion, the proposed provisions in relation to archaeological sites will be inefficient and there are other reasonably practicable options to achieve the objectives. More particularly, the provisions are a significant overlap with the legal requirement under the Heritage New Zealand Pouhere Taonga Act 2014 to obtain an authority from Heritage New Zealand Pouhere Taonga to modify or destroy an archaeological site. I agree that the mapping of known and recorded archaeological sites within the Operative District Plan is appropriate and moreover, gives effect to the Waikato Regional Policy Statement. However, in my opinion, the proposed rules relating to archaeological sites will impose additional costs on resource consent applicants and are an unnecessary duplication of the authority process under the Heritage New Zealand Pouhere Taonga Act 2014.
4. I support the amendments to the following provisions in Chapter 19:
 - a. Objective 19.2.6
 - b. Policy 19.2.6a
 - c. Policy 19.2.6b
 - d. Policy 19.2.6e
5. For the reasons set out in my evidence below, I consider that amendments should be made to the provisions in respect of archaeological sites. These amendments are as follows:
 - a. Amend the mapping and entry in schedule 8C in respect of archaeological site A127 to show its extent as shown in the Archaeological Site Inventory

- b. Delete the following provisions:
 - i. Policy 19.2.6g
 - ii. Delete Table 19.3.3 Archaeological and Cultural Sites.
 - iii. Delete rule 19.4.2.b.
 - iv. Delete matters of discretion and assessment criteria pertaining to archaeological sites in rule 19.6 clauses xvi. and xvii.
 - v. Delete rules 23.3a.xi, 23.3b.xi and 23.3c xi.

INTRODUCTION

Qualifications and Experience

- 6. My full name is Rachel Claire Dimery.
- 7. I hold a Master of Planning Practice (Honours) and Bachelor of Arts (Geography), both from the University of Auckland. I am a full member of the New Zealand Planning Institute.
- 8. I am the director of Dimery Consulting Limited, a planning consultancy I established in 2015. I am a qualified planner with 23 years' experience. During this time I have held positions in both local government and as a consultant planner.
- 9. I have a wide range of experience in planning matters under the Resource Management Act (**RMA**), including plan preparation, resource consents and notices of requirement for designation. I have appeared as an expert witness at hearings before councils and the Environment Court. I am also an accredited hearings commissioner with chair endorsement.
- 10. My experience that is relevant to this plan change includes peer review and preparation of evidence in relation to historic heritage provisions in district plans and planning advice for land development and infrastructure projects. Most recently, in 2020 I was engaged by Queenstown Lakes District Council to undertake an independent peer review of the Wāhi Tūpuna chapter of the Queenstown Lakes Proposed District Plan. In 2019 I was engaged by Auckland Transport as a planning lead on the Downtown Infrastructure Development Programme. The project was located within areas of 19th and early 20th century reclamation and impacted on sites of archaeological and historic heritage value and required an authority under the Heritage New Zealand Pouhere Taonga Act 2014 (**HNZPTA**) to be obtained. Previous work of relevance includes my engagement by

Auckland Council to prepare expert evidence in relation to the Historic Heritage Schedules in the Auckland Unitary Plan.

11. Other relevant experience includes preparing resource consent applications for land development, preparing notices of requirement for infrastructure projects and my role as subdivision team leader in the resource consents department at Waitākere City Council.

Background and Involvement

12. I have provided planning advice to the submitter, Cordyline Holdings Limited (**Cordyline**) in respect of its property on Peacocke Road, (legally described as Lots 1, 6, 8-9 Deposited Plan 408579 and Lot 3 Deposited Plan South Auckland 45202) since October 2021. This has included providing planning advice to Cordyline in respect of the construction of Whatukooruru Drive, part of the Southern Links project; the construction of which is partly on land that was acquired from Cordyline.

13. I prepared a submission and further submission on Proposed Plan Change 9 on behalf of Cordyline. I was also involved in preparing the submission and appeal on Proposed Plan Change 5 on behalf of Cordyline.

Code of Conduct for Expert Witnesses

14. While this is not an Environment Court hearing, I have read and agree to comply with the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2023. This evidence is within my area of expertise, except where I state that I am relying on material produced by another person. I have not omitted to consider material facts known to me that might alter or detract from the opinion expressed in my evidence.

SCOPE OF EVIDENCE

15. My evidence is focused on the following three matters:
- a. Relevant statutory context, policy statements and plans
 - b. Errors in the mapping and Appendix 8C schedule entry for archaeological site A127
 - c. Duplication of the Heritage New Zealand Pouhere Taonga Act 2014

16. The key documents I have referred to in forming my views as expressed in this evidence are as follows:

- a. Section 32 evaluation report on Proposed Plan Change 9, including Appendix 10: Archaeological Sites
- b. Mr Cable, evidence in chief dated 1 September 2023
- c. Mr Ryan, evidence in chief dated 1 September 2023
- d. Dr Gumbley evidence in chief dated 2 September 2022 in respect of Proposed Plan Change 5
- e. Plan Change 5 Decisions version of Appendix 8: Heritage to the Operative District Plan
- f. Themes and Issues Report, Hearing Session 2: Archaeological Sites and Built Heritage, dated 25 August 2023
- g. Waikato Regional Policy Statement

17. I refer to this material and evidence where relevant in my evidence.

BACKGROUND

Cordyline submissions

18. The submission and further submission by Cordyline opposed the mapping of archaeological site A127 and the approach to archaeological areas in Chapter 19. The submission and further submission sought that the deletion of plan provisions relating to archaeological sites.

Cordyline Property

19. Hamilton City Council (**Council**) acquired land from Cordyline by agreement under the Public Works Act for Whatukooruru Drive and associated infrastructure.

20. Figure 1 below depicts the Cordyline land and area acquired by Council. As can be seen in Figure 1, Whatukooruru Drive bisects the original Cordyline land holding. The construction of Whatukooruru Drive commenced in late 2022 and is expected to be completed by 2025.

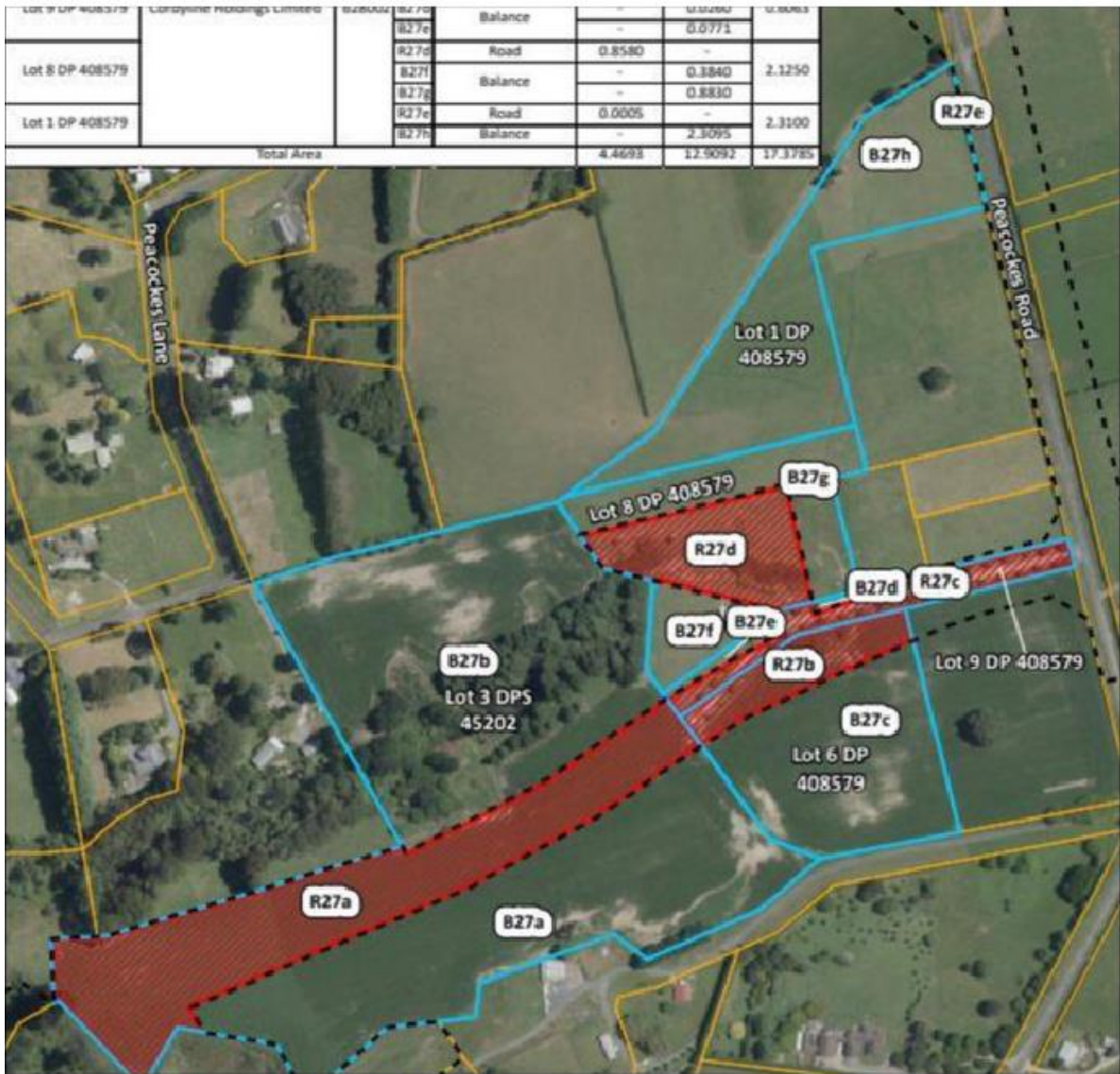


Figure 1: Cordyline land (shown with light blue border) and land acquired by Hamilton City Council (shown with red hatching)

21. Figure 2 below depicts the original Cordyline land holding and the mapped extent of archaeological site A127.



Figure 2: Archaeological site A127 (red shaded area) and original Cordyline land holding shown with black and white outline (land acquired by Hamilton City Council for Whatukooruru Drive shown with solid black outline)

RELEVANT STATUTORY CONTEXT, POLICY STATEMENTS AND PLANS

22. A comprehensive overview of the relevant statutory context, policy statements and plans has been provided in the Section 32 Evaluation Report and I do not repeat that here. In my opinion the Section 32 Evaluation Report evidence in chief of Mr Ryan have identified the relevant provisions of the Resource Management Act 1991. I also agree that Mr Ryan has identified the relevant statutes, including the HNZPTA, Waikato-Tainui

Raupatu Claims (Waikato River) Settlement Act 2010; the relevant statutory policy statements and the relevant iwi planning documents.

23. As I will set out below, I do not agree that sufficient consideration has been given to other practicable options¹ to achieve the objectives; namely the requirements of the HNZPTA.

ERRORS IN THE MAPPING AND APPENDIX 8C SCHEDULE ENTRY FOR ARCHAEOLOGICAL SITE A127

24. In response to Cordyline’s submission, Mr Ryan states that Mr Cable has confirmed the sites’ archaeological significance.² This is not correct. A127 is identified in Annexure 3 to Mr Cable’s evidence in chief as ‘Out of scope – PC5’. Therefore, there are no details of previous ground-truthing, and nor has there been any post-notification assessment review.

25. I disagree with the assertions that that changes to A127 are out of scope. The decisions version of Schedule 8C: Group 2 Archaeological and Cultural Sites is as follows:

<u>A127</u> <u>S14/322</u>	<u>Borrow Pits</u>	<u>Lot 2 DP 307340, Lot 3 DP 540770, Lot 100 DP 540770 and Lot 3 DPS 45202</u>	<u>64B</u>
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26. Plan Change 9 as notified made amendments to Schedule 8C as follows:

<u>A127</u> <u>(S14/322)</u>	<u>Maaori horticulture</u>	<u>Lot 2 DP 540770 (Riverlea Road)</u>	<u>64B</u>
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27. At the hearing on Plan Change 5, Dr Gumbley³ advised that:

Three Māori horticultural sites, A126, A127 and A140, have been identified from soil survey data and apparent borrow pits visible in the historical aerial photographs. As far as I am aware, these sites have not been field checked. [emphasis added]

¹ As required under section 32(1)(b)(i) of the RMA

² Ryan, evidence in chief at [148]

³ Gumbley, evidence in chief (Proposed Plan Change 5), dated 2 September 2022 at [14]

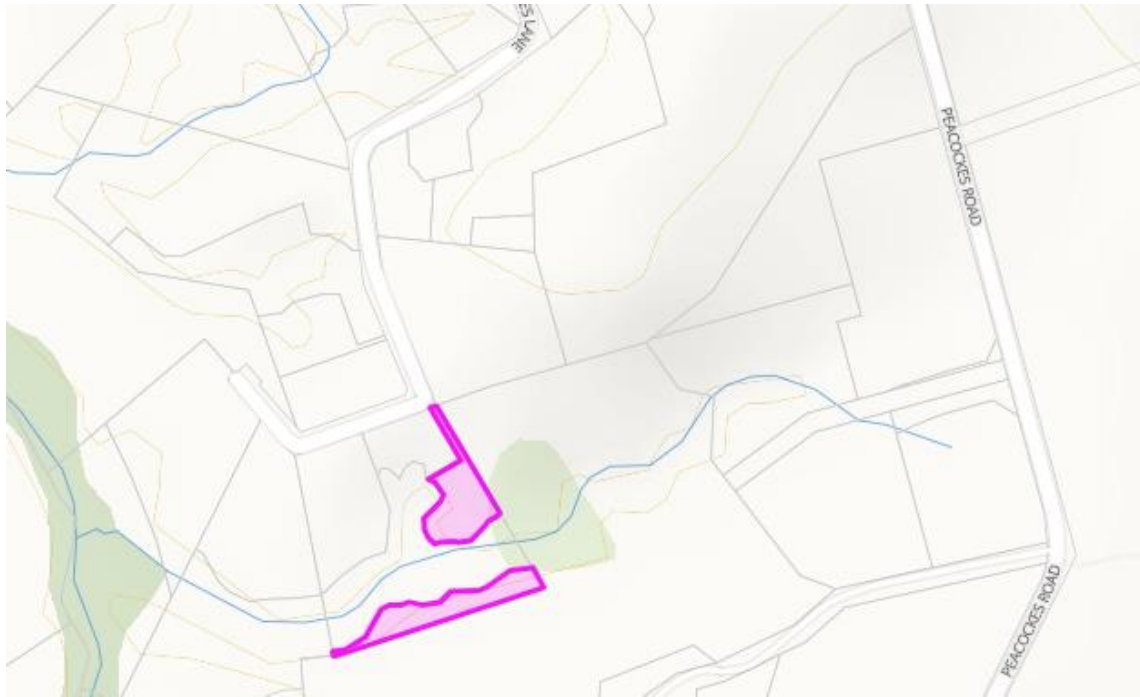
28. From my review of the evidence and Section 32 Evaluation Report for Proposed Plan Change 9, I cannot find any information to show that any further assessment or field check has occurred. The Archaeological Site Inventory in Appendix 10 to the Section 32 Report on Plan Change 9 shows the site extent for A127 (referred to by its NZAA ArchSite Number of S14/322), which I have reproduced in Figure 3 below.



Figure 1. Site extent for S14/322 outlined in red (arrowed) mapped on 2016 aerial photograph. Other recorded archaeological sites are shown in red, mapped garden soils are shown in green.

Figure 3. Excerpt from Archaeological Site Inventories in Appendix 10 to the Section 32 Report for Plan Change 9

29. The extent of A127 is far greater than that shown in the site inventory and I can find no material in the Section 32 Evaluation Report or evidence to support the extent of A127 as mapped. Secondly, the legal description of site in Schedule 8C appears to relate to a parcel of land that adjoins Cordyline's property (refer Figure 4 below).



**Figure 4: Location of Lot 2-3 DP 504770 (Title 907501) shown shaded in purple
(Source: LINZ)**

30. In my opinion, the mapping and entry in schedule 8C in respect of archaeological site A127 should be amended to show its extent as shown in the Archaeological Site Inventory.

DUPLICATION OF THE HERITAGE NEW ZEALAND POUHERE TAONGA ACT 2014

31. I do not agree with the description in the planning evidence prepared by Mr Ryan that Plan Change 9 is a refresh of the provisions in the Operative District Plan to better align with the statutory provisions.⁴ In my opinion, it is a fundamental change of approach and is an inefficient approach, which duplicates the requirements of the HNZPTA.

32. One of the issues raised in the evidence of Messrs. Ryan and Cable is that there are archaeological sites in Hamilton that have already been destroyed or modified without an authority from HNZPT.⁵ Mr Ryan expresses the view that:

...Council would be neglecting its heritage protection responsibilities under the RMA if it were to leave the management of archaeological and cultural sites to HNZPT.⁶

⁴ Ryan, evidence in chief at [34]

⁵ Ryan, evidence in chief at [149] and Cable, evidence in chief, at Annexure 1 in respect of submission 388.7

⁶ Ryan, evidence in chief at [150]

33. I do not agree with this view. In my opinion, the identification of an alert layer in the district plan, coupled with material in the plan to give detailed information on the requirements of the HNZPTA and accidental discovery protocols is an appropriate way for Council can meet its responsibilities under the RMA. The use of heritage alert layers and accidental discovery protocols are two mechanisms recognised in method HCV-M8 of the Waikato Regional Policy Statement. In this regard, I consider these methods are appropriate and would give effect to the Waikato Regional Policy Statement⁷.
34. Archaeological sites, unlike other types of historic heritage, have blanket protection under the HNZPTA, as any place associated with pre-1900 human activity is classified as an archaeological site. This is irrespective of whether the site is identified in ArchSite, the New Zealand Heritage List/Rārangi Kōrero, the Landmarks List or otherwise identified. This is a powerful protection, and an important one, as many archaeological sites are not identified and/or do have visible surface remains. The HNZPTA requires an authority to be obtained from Heritage New Zealand Pouhere Taonga (HNZPT) to modify or destroy any archaeological site. This includes any activity that may disturb an archaeological site, including exploratory investigations and scientific investigations.
35. Applications for authorities must include the information set out in section 46 of the HNZPTA. Importantly, this includes a requirement to provide information on whether consultation has taken place with tangata whenua, the details of the consultation and if no consultation has taken place, the reasons for this.⁸ Through the provisions of the HNZPTA, HNZPT has responsibility for the overarching protection of archaeological sites.
36. It is an offence to modify or destroy an archaeological site under section 87 of the HNZPTA. It is also an offence, under section 88, to breach the conditions of an authority. If an archaeological site is uncovered, works must stop and an authority must be obtained. The accidental discovery of an archaeological site has the potential to result in significant time and cost implications for any project. For this reason, it is my experience that authority is obtained from HNZPT well in advance of applying for a resource consent or finalising the development plans for a project.
37. To give a recent example, when I worked on the Auckland Downtown Infrastructure Development Programme, significant work was undertaken to investigate and assess

⁷ As required under s75(3) of the RMA

⁸ Section 46(2)(h) of the HNZPTA

archaeological and historic heritage sites prior to the lodgement of applications for resource consent. This work occurred in 2018 and culminated in an authority being granted in November 2018. Applications for resource consent were lodged the following year, in March 2019. This is the approach taken on all land development and infrastructure projects that I have been involved in. In my opinion, the presence of an archaeological site and potential impacts on archaeological values are one of the key considerations in the feasibility of developing options for any project. For this reason, I am of the view that the presence of archaeological sites and the potential impacts on archaeological values are best considered at a very early stage in any project, well in advance of preparing an application for resource consent.

38. I also note that advice notes on resource consents can also draw attention to the requirements of the HNZPTA and accidental discovery protocols set out in the district plan.

39. Lastly, I confirm that I support the amendments to the following provisions in as notified in Chapter 19:

- a. Objective 19.2.6
- b. Policy 19.2.6a
- c. Policy 19.2.6b
- d. Policy 19.2.6e

40. The reasons for my support are twofold: the amendments clarify that it is inappropriate subdivision, use and development that is to be managed and this accords with section 6(f) of the RMA; and secondly, the mapping of known archaeological sites is in my view an important tool to educate plan users about the statutory requirements under the NZHPTA.

CONCLUSIONS

41. Generally, the amendments to the objectives and policies relating to archaeological sites, coupled with other existing provisions in the Operative District Plan:

- a. Are appropriate to manage the effects on archaeological values arising from inappropriate subdivision, use and development;
- b. Will assist the Council in achieving the overall purpose of the RMA; and
- c. Will give effect to the Waikato Regional Policy Statement.

42. The approach of Plan Change 9 to include rules relating to earthworks and subdivision of archaeological sites duplicates the requirements of the HNZPTA. This approach is inefficient and there are other reasonably practicable options to achieve the objectives. I consider 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 HNZPTA, coupled with explanatory material in relation to accidental discovery protocols.

Rachel Claire Dimery

22 September 2023