

IN THE MATTER

of the Resource
Management Act 1991

AND

IN THE MATTER

of Hearing of Submissions
and Further Submissions
on the Proposed Porirua
District Plan

Minute 18 – Landscape Assessment of Whitireia Park

1. One of the issues arising in Stream 2 is the potential for land forming part of Whitireia Park located between the currently mapped ONFL overlay (ONFL003) and the urban area of Titahi Bay to be the subject of overlay either as ONFL (Outstanding Natural Feature/Landscape) or SAL (Special Amenity Landscape).
2. A number of submitters sought relief in this regard and we heard from Ms Robyn Smith in the Stream 2 hearing on these issues.
3. While Ms Smith's written presentation included alternative and/or broader relief, the argument she pressed verbally was that there were good grounds to extend the existing ONFL onto the Radio New Zealand land north and north-east of the existing Radio New Zealand facilities.
4. It occurred to us that while an extension of the existing ONFL was potentially open to the objection that the additional land is of different character to the existing identified ONFL, there might be a case for identification of the land either as an ONFL or an SAL in its own right. In Minute 9, we requested that the Council include in its Reply a landscape assessment of the Radio New Zealand land addressing that question.
5. Ms Smith filed a Memorandum dated 16 December, noting our request and suggesting that she and other submitters raising the same point have leave to file further representations with respect to her submission point 168.7 (seeking that the ONFL be amended to include all of Whitireia Park except small footprints of modified landforms within the golf course and Radio New Zealand mast and building area) on the basis that the Hearing Panel had identified an inadequacy in the original landscape assessment, that any comment Ms Armstrong (Council's expert landscape adviser) provided would

be new evidence, and that she (and the other submitters seeking like relief) should be provided with the opportunity to respond to that new material.

6. The Chair asked the Hearing Administrator to advise Ms Smith that the Hearing Panel would consider her request once the Council's reply was in hand and the Hearing Panel had been able to consider the issues raised in the light of what the Council's reply actually included.
7. We have now received and reviewed the expert evidence of Ms Armstrong on these issues (along with the planning overlay provided by Ms Rachlin). Ms Armstrong has provided a detailed assessment both of the question we posed as above, and the broader relief canvassed in Ms Smith's written presentation (also as above). She concludes that neither the broader area the subject of Ms Smith's written presentation, or the subset including only the Radio New Zealand land, qualifies as an ONFL, but expresses the view that the area mapped by Ms Smith would qualify for inclusion as an SAL based on its natural science, sensory and shared and recognised values. However, Ms Armstrong noted that she had been unable to obtain confirmation from Te Rūnanga o Ngāti Toa o Rangatira as to tangata whenua landscape values applying to the area identified and she regarded her evaluation as being incomplete. She stated that she would be able to provide an addendum once further input and advice from Ngāti Toa Rangatira had been received.
8. Ms Armstrong's evidence includes a detailed evaluation supporting her conclusions, as above.
9. In her reply statement, Ms Rachlin noted Ms Armstrong's qualified support for an SAL overlay in this area, but identified a number of planning issues that, in her view, indicated that it would not be appropriate to recommend an SAL overlay through this process.
10. We therefore have to address two procedural issues:
 - (i) Whether we should provide the time and opportunity for Ms Armstrong to provide additional commentary on values that would support an SAL overlay in this location, having received input from Ngāti Toa Rangatira;
 - (ii) Whether Ms Smith, and other submitters on these issues, should have the opportunity to provide further evidence and/or commentary from

their perspective on how the PDP should recognise the landscape values of Whitireia Park.

11. As regards the first point, having received an indication from Ms Armstrong that there is a case, on landscape grounds, to identify an SAL in this location subject to receiving confirmation of relevant tangata whenua values, we consider that we ought to round out the position, so that we can have Ms Armstrong's completed evaluation and recommendation before us. We emphasise that this does not mean that we discount the planning issues Ms Rachlin has raised. We have reached no conclusion on those matters as yet. Rather, we think that we need to understand the complete picture.
12. Neither Ms Armstrong nor Ms Rachlin indicate how long it might be required to obtain the feedback of Ngāti Toa Rangatira. On the basis, however, that what is required is the latter's feedback on draft values that reflect initial input from Ngāti Toa Rangatira, this will hopefully not be an onerous task. We direct that Ms Armstrong has leave to file an addendum confirming her recommendations in relation to potential identification of an SAL on Whitireia Peninsula by 31 January.
13. Turning to the potential to provide Ms Smith and other submitters with an interest in the matter with the opportunity to contribute further on these issues, Ms Smith's Memorandum makes much of the supposed inadequacy of Council's Section 42A Report, addressing the relevant submissions. We think that the criticism is overstated. While Ms Armstrong may have misunderstood the area the subject of relief in her evidence in chief, Council could have taken the position that unless and until the submitters produced detailed evidence supporting the relief sought (expansion of the existing ONFL or identification of a new SAL) there was no basis to amend the notified PDP.
14. It is a matter of degree as to whether a full reply in such circumstances gives rise to an unfair hearing process. In this case, we agree that with the detail of Ms Armstrong's analysis coming in through the Council's reply, Ms Smith and other submitters on the point have effectively been deprived of the opportunity to provide meaningful feedback on key aspects of the reasoning underlying the Council's recommendation not to recommend expansion of the existing ONFL. Similarly, while we assume that Ms Smith and other submitters would agree with Ms Armstrong's foreshadowed recommendation for identification of an SAL, they might well have a view on the suggested

characteristics and values for that SAL. They might also wish to present a contrary view to the reply evidence of Ms Rachlin summarised above.

15. In summary, we consider that natural justice requires that Ms Smith, and the other submitters with an interest in the identification of landscape values on the Whitireia Peninsula, have an opportunity to respond to the additional evidence provided by Council in reply.
16. Ms Smith sought that the opportunity to provide further feedback be extended as far into the future as 29 April. We think that a period of that length is excessive. If Ms Armstrong's detailed evaluation had been provided with the Section 42A Report, submitters would have had three weeks to respond to it with expert evidence and a little under two weeks thereafter to compile and file non-expert commentary/representations. Against that background, we consider that a deadline of end February should be sufficient.
17. We therefore direct that submitters (including further submitters) who have lodged submissions on the identification of either an ONFL or an SAL over Whitireia Park/Peninsula may file written evidence/representations with the Hearing Administrator not later than 1pm on 28 February.
18. We emphasise that the leave provided is an opportunity to respond to the reply evidence of Ms Rose Armstrong, and the covering planning commentary of Ms Caroline Rachlin (in paragraphs 48-64 of her reply) as they relate to recognition of the landscape values of Whitireia Park/Peninsula. The Hearing Panel will disregard evidence and submissions extending beyond that.
19. The Hearing Panel has made no decision as to what procedure might follow receipt of submitter evidence/representations as above. We will decide that once we have had the opportunity to review whatever material submitters provide to us.

Dated 12 January 2022

A handwritten signature in blue ink, consisting of a large, stylized 'T' followed by a horizontal line and a small flourish.

**Trevor Robinson
Chair
For the Proposed Porirua District Plan Hearings Panel**