

## MEMORANDUM

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<b>To</b>	New Plymouth District Council ( <b>Council</b> )
<b>From</b>	Will Downey – Goodwill Law on behalf of Mr. S Kidd, Mrs. M Kidd & S Eichstaedt ( <b>Owners</b> ) as owners of the property situated at 115 Vivian Street, New Plymouth ( <b>Property</b> )
<b>Matter</b>	Submission in opposition to Mr. Bruce's submission Sub No. 297 Point No. 215
<b>Date</b>	18 August 2020

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**Subject:** **Submission in Opposition to Mr. I Bruce's submission Sub No. 297 Point No. 215**

*Summary*

1. By letter dated 7 August 2020, the Council notified the Owners of the Property of its receipt of a submission requesting that the Property be listed as an archaeological site within Schedule 3 of the proposed district plan (**Submission**).
2. The Submission was submitted to the Council by Mr. I Bruce, on behalf of Heritage Taranaki Incorporated (**Submitter**).
3. The owners of the Property wish to oppose Sub No. 297 Point No. 215 of the Submission, in its entirety for the reasons set out in this memorandum.

*Context*

4. The obligation of the council to provide for the protection of historic heritage from inappropriate sub-division, use, and development arises in relation to its duty under s 6(f) of the Resource Management Act 1991 (**RMA**) to give effect to matters of national importance.
5. The primary means the council proposes giving effect to this recognition is through including items of historic heritage in its proposed district plan (**Proposed District Plan**).
6. The term “**historic heritage**” is defined within the RMA to include those physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from, inter alia, archaeological qualities.
7. The Submission proposes the Property be listed as an archaeological site.

*Reasons for Opposition*

8. There are two primary limbs to our reasoning for opposing the Submission, being:
  - a. the Property does not meet the criteria prescribed by both the Proposed District Plan and the **Heritage New Zealand Pouhere Taonga Act 2014** for being an archaeological site; and
  - b. the Property is not presently at danger of *inappropriate* subdivision, use and development.

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9. According to the Submitter, the sole basis for classifying the Property as an archaeological site is that it was “built before 1900”.
  10. As noted within the Historic Heritage chapter of the Proposed District Plan, an archaeological site is “*any place in New Zealand (including buildings, structures or shipwrecks) that was associated with pre-1900 human activity, where there is evidence relating to the history of New Zealand that can be investigated using archaeological methods*” (**Archaeological Site**).<sup>1</sup>
  11. The Submitter notes in his Submission that there are “*general issues in accessing information pertaining to... archaeological sites*”, and further notes that the “*basis behind archaeological site identifications and extents can’t be gained from the e-plan, which makes it almost impossible to make meaningful evaluation of the quality of this process (particularly with regard to [archaeological] sites.*”
  12. By the Submitter’s own admission, the Submitter appears to acknowledge there is insufficient evidence available to demonstrate the Property has any value of national importance. And further appears to imply that this evidentiary obligation can be overcome by the Council making certain information publicly accessible.
  13. The definition of Archaeological Site requires evidence relating to the history of New Zealand to exist *and* be capable of investigation using archaeological methods. Neither of the above requirements are met.
  14. In addition, we note the Courts have stated that sub-section 6(f) RMA does not mean that every building that might be said to be of significance as historic heritage is a building of national importance.<sup>2</sup> The same can be said to apply to Archaeological Sites. Evidence must exist that the Property has, or may have, evidence relating to the history of New Zealand which is of national importance.
  15. The requirement that Council recognise and provide for matters of national importance implies that the values unique to the property have a significant priority and cannot be merely an equal part of a general balancing exercise.<sup>3</sup>
  16. Furthermore, the only reasoning offered by the Submitter that the Property has any heritage value appears to apply to the building itself, and not the underlying land. In this regard we note the Submitter offers a link to the community developed and administered website <http://ketenewplymouth.peoplesnetworknz.info/en/site> (**Kete**). In this respect, we note Kete records that:
    - a. Mr. W. F. Brooking was listed as the occupier of the Property in 1907.

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<sup>1</sup> As also defined within [section 6 Heritage New Zealand Pouhere Taonga Act 2014](#).

<sup>2</sup> *NZ Historic Places Trust v Manawatu DC* [2005] NZRMA 431 (EnvC).

<sup>3</sup> *Bleakley v Environmental Risk Management Authority* [2001] 3 NZLR 213 (HC)

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- b. prior to 1907, Mr. Brooking resided in a home on Dawson Street before he “reappears” as living in “a” property on Vivian Street.
  - c. “it is likely” Mr. Brooking designed, built and lived in the Property prior to 1900, being sometime between 1881 and 1887.
17. There is no actual evidence that the property Mr. Brooking resided at prior to 1900 was the Property. Despite the potential invalidity of Kete’s historical claim that Mr. Brooking once resided at the Property, whether before 1900 or after, the Submission fails to evidence that:
- a. the Property is of national importance; nor
  - b. that through investigation by archaeological methods, the Property provides evidence relating to the history of New Zealand.
18. Accordingly, the Submitter has not provided any evidence that the underlying land of the Property, to which investigation by archaeological methods would appear to apply, has any heritage value of either local or national importance.
19. For the aforesaid reasons, the Submission that all buildings built before 1900 should be classed as Archaeological Sites should be opposed in the fullest.

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- Appropriateness* 20. As stated above, the Council’s duty to protect **historic heritage** is limited to protection from “inappropriate” subdivision, use and development (**Activities**). The scope of Activities is heavily influenced by context and must be construed on a case by case basis.
21. What is deemed “inappropriate”, must also be judged from the point of view of preserving the matters identified as being of national importance. In this case the Submitter has failed to identify any matters of national importance. In the absence of such, it should be noted that the Activities themselves are not “inappropriate.”
22. The Activities all contemplate direct physical interference with the natural character of the environment. As the Property is currently located within a residential suburban environment, subdividing, using, and developing the land in a manner consistent with its existing use cannot be said to be inappropriate. Especially where the activity is permitted by the current District Plan.
23. The author notes that even if the Property is not scheduled as an Archaeological Site, the requirements of the RMA “will still bite”.<sup>4</sup> And the Submitter will not be precluded from exercising any existing rights and privileges which apply in relation to protection of historic heritage.

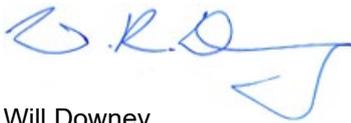
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<sup>4</sup> See *New Zealand Transport Agency v Architectural Centre Inc* [2015] NZHC 1991.

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24. Lastly, the Owner's understand that any implied heritage value appears to be linked to the claim Mr. Brooking once resided in the home situated on the Property, and not the Property itself. Accordingly, the Owners confirm that, in the event the property is developed, with the effect that the home is no longer required and is transportable, they are open to discussing the possibility of selling the home to the Submitter on an arms' length basis.
25. For the above reasons, we confirm our opposition to the Submission and would like the Council to reject the Submitter's Submission so far as it relates to the Property and similarly any property that is subject to a request that it be recognised as an Archaeological Site by virtue only of being "built before 1900".
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Kind regards

**Goodwill.law**



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