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**Further Submission in Opposition to Sub No. 297 Point No 2 | 32 Carrington Street, New Plymouth (Property ID 14099) Ref: ECM8339808 (HB+existAS)**

1. We act for McLay Family Trust Limited (**Owner**) being the owner of the property situated at 32 Carrington Street, New Plymouth and described as the "Issey Manor"(**Property**).

### Summary

2. By letter dated 7 August 2020, New Plymouth District Council (**Council**) notified the Owner of the Property of its receipt of a submission requesting that the Property be listed under Schedule 1 of the proposed New Plymouth Council District Plan (**Proposed District Plan**), to the effect that the Property will become a heritage building (**Submission**).
3. The Submission was submitted to Council by Mr. I Bruce, on behalf of Heritage Taranaki Incorporated (**Submitter**).
4. In accordance with the right to make a further submission pursuant to Schedule 1 clause 8(1)(b) of the **Resource Management Act 1991 (RMA)** the Owner wishes to oppose the inclusion of the Point No. 297.2 of the Submission in its entirety, for the reasons set out in this letter.

### Context

5. Council's obligation 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 **RMA** to give effect to matters of national importance.
6. One of the ways that Council seeks to protect historic heritage from activities that will compromise historic heritage values is through listing heritage buildings and items within its proposed district plan (**Proposed District Plan**).
7. For the purposes of the Proposed District Plan, the term "historic heritage" has the meaning given in s 2 of the RMA. Section 2 defines "historic heritage" to include those physical resources that contribute to an understanding and appreciation of New Zealand's history and cultures, deriving from, inter alia, historical sites, structures, places and areas.
8. The Submitter requests that in enacting changes to the Historic Heritage chapter of the Proposed District Plan, the draft heritage assessment for the Property (**Draft Assessment**) be adopted to the effect that the Property will be a heritage building (and accordingly listed under SCHED 1 – Schedule of Heritage Buildings and Items) (**SCHED 1**) of the Proposed District Plan.

## Reasons for Opposition

9. The Owner opposes the Submission on the basis that:
  - a. The information relied on by the Submitter under the Draft Assessment in support of the view that the Property should be listed as a heritage building under SCHED 1 is not entirely correct, and furthermore, due to significant works, modifications and / or alterations that have been carried out to the building located on the Property, the building cannot reasonably be considered of national importance;
  - b. Notwithstanding the above, risk of inappropriate subdivision, use and development of the Property is already materially protected against due to the Property being listed as an archaeological site in SCHED 3 (Schedule of Archaeological Sites or Sites or Sites and Areas of Significance to Maori) (**SCHED 3**) of the current New Plymouth District Council District Plan (**District Plan**) and therefore Council's mandate under section 6(f) RMA is not triggered; and
  - c. In light of the above considerations, any public interest in preserving Property as a heritage building under SCHED 1 is outweighed by the disproportionate impact and financial burden this Submission may have on our client.

## Heritage Building

10. Provision HH-P1 of the Historic Heritage chapter of the Proposed District Plan sets out criteria that Council will use to identify, map and schedule significant heritage buildings and items. The Submitter has reflected these criteria in the Draft Assessment, with descriptions as to how, in the Submitter's view, the SCHED 1 listing criteria threshold is met.
11. We submit that the information relied on by the Submitter under the Draft Assessment in support of their view is not accurate and remains in draft. Accordingly, this information cannot be properly relied upon. Furthermore, the building located on the Property possesses insufficient original features to be considered "nationally significant", and by consequence, fails to meet the SCHED 1 listing criteria threshold.
12. Not reflected in the Submission is the fact that significant works, modifications and / or alterations to the exterior of the building located on the Property have been carried out both prior to and during the time that our client has owned of the Property.
13. We submit that for the reasons set out below, the headings of 'architecture and construction', 'representative, rarity and integrity' and 'setting and context' contained within the Draft Assessment are not made out (or at least, are not made out in to the extent suggested by the Submitter). In support, we note:
  - a. *Board and Batten Cladding:* The Submitter relies on the board and batten style of the original portion of the building being regionally significant, a rare example of this construction style in a 1 1/2 storey cottage, and specifically, that the exterior has changed little since 1897 and retains a "high degree of external integrity". We submit that these points are incorrect. We understand that only relatively recently the majority of the board and batten cladding on the front and the side of the house has been replaced due to rotting. We submit that from a historical heritage perspective the building does not possess a high degree of external integrity, as put forward by the Submitter.
  - b. *Weatherboard Cladding:* The Submitter states that the weatherboard section of the building is a good example of a late nineteenth century two-storey villa. Furthermore, and as noted above, that the exterior has changed little since 1897 and retains a "high degree of external integrity". Again, we submit that these points relied on by the Submitter are incorrect as, likewise, the weatherboards on the front, back and side of the building have been relatively recently replaced.
  - c. *Windows:* In addition to the re-cladding of the exterior of the building already noted above, the majority of the windows on the front of the house have been replaced and further windows require replacing in the near future.
  - d. *Streetscape:* The Submitter submits that because the building is close to the street frontage, it contributes positively to the surrounding streetscape. We understand that,

due to flooding in the area, retaining walls have been constructed on Carrington Street which have entirely changed the landscape of the road. We further understand that due to this embankment, it is now only the top of the second storey of the building that is visible from the street. We submit that while the Submitter's view that the building's frontage contributes positively to the surrounding streetscape may have once been correct, the statement is now materially inaccurate.

- e. *Frontage / Architecture:* Further to the above points, the front and side verandas originally comprised in its architectural design no longer exist, to the extent that the frontage of the building now presents differently to how it did post-1897 addition. We further note that an additional bedroom and a balcony has been added to the rear of the building since it has been in our client's ownership, which has deteriorated the integrity of the original architecture of the building.
14. 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>1</sup> We submit that many of the values the Submitter considers to be unique to the property, and therefore should be given significant priority in determining whether the building is of national importance, are not made out.
  15. Finally, with regard to the other factors put forward in the Draft Assessment that are not directly addressed above, we note that the Courts have stated that section 6(f) of the 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> Therefore even if the building located on the Property does possess certain features of significance of historic heritage, the threshold for regarding a building of national importance is a higher standard, which we submit is not made out in this case.
  16. Based on the above information we submit that:
    - a. The building located on the Property does not possess all of the historic heritage factors relied on by the Submitter in the Draft Assessment;
    - b. Furthermore, it is likely that due to the works, modifications and alterations already carried out to the building by our client and otherwise, the building does not possess sufficient original features of a type or standard in-keeping with a building of national importance and therefore should not be listed as a heritage building under SCHED 1; and
    - c. For the above reasons, Council could not reasonably adopt the Draft Assessment under the Proposed District Plan to the effect that the Property be listed as a heritage building under SCHED 1 upon the Proposed District Plan being enacted.

### ***Archaeological Site***

17. The Property is already listed as an archaeological site under SCHED 3 (Schedule of Archaeological Sites or Sites or Sites and Areas of Significance to Maori), with site 4019 already identified on the District Plan.
18. As per the Historic Heritage chapter of the Proposed District Plan, the identification of archaeological sites enables landowners to plan and undertake development activities in a way that minimises or avoids disturbance. Accordingly, the Proposed District Plan already imposes restrictions upon our client's use of the Property, due to its existing listing as an archaeological site under SCHED 3.
19. For this reason, notwithstanding our conclusion under paragraph 16 above, we submit that the purpose for listing the building as a heritage building under SCHED 1, being to minimise the risk of inappropriate subdivision, use and development of the Property (per section 6(f) RMA), is already materially satisfied by the Property's existing listing as an archaeological site under SCHED 3. On this basis we submit that listing the Property under SCHED 1 would not offer the protection it would but for its existing listing under SCHED 3.

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<sup>1</sup> *Bleakley v Environmental Risk Management Authority* [2001] 3 NZLR 213 (HC)

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

### **Appropriateness**

20. The Council's duty to protect historic heritage is limited to protection from "inappropriate" subdivision, use and development (**Activities**), per section 6(f) of the RMA. 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. As concluded under paragraph 16 above, it is our view that the building located on the Property should not be regarded of national importance, and therefore submit that the question of whether or not Activities are "inappropriate" or not is not relevant in this case.
22. Notwithstanding our conclusion under paragraph 16 above, we further submit that protection from "inappropriate" Activities is already offered by the Property's existing listing under SCHED 3 of the District Plan. Therefore even if the Property was considered to be of national significance, Council's mandate under section 6(f) of the RMA would not be triggered because due to the existing SCHED 3 listing, there is likely to be little to no risk of "inappropriate" Activities. For this reason, we further submit there are insufficient grounds for listing the Property under SCHED 1 of the Proposed District Plan.

### **Conclusion**

23. For reasons set out above we submit that there are insufficient grounds to support listing the Property under SCHED 1 of the Proposed District Plan.
24. We further submit that the inconvenience and financial burden imposed upon our client in making this submission, and also the further implications of listing the Property as a heritage building under SCHED 1, especially under the current economic climate taking into account the negative effects of COVID-19, outweighs any public interest in listing the Property as a heritage building under SCHED 1.
25. We confirm our client's opposition to Point No. 297.2 of the Submission and request that Council reject the Submission so far as it relates to the Property.

Kind regards



Bea Chamberlain

**Solicitor**