

BEFORE COMMISSIONER DAYSH APPOINTED BY NEW PLYMOUTH DISTRICT COUNCIL

UNDER

the Resource Management Act 1991 ("RMA")

IN THE MATTER

of an application under section 88 of the Act by **KD HOLDINGS LTD** to the **NEW PLYMOUTH DISTRICT COUNCIL** for land use consent application to construct a six-storey mixed use building and remove a notable tree at 45, 49 and 51 Brougham Street and 33 Devon Street West, New Plymouth.

STATEMENT OF EVIDENCE IVAN BRUCE ON BEHALF OF KD HOLDINGS LTD

1. INTRODUCTION

- 1.1 My full name is Ivan David Bruce.
- 1.2 My qualifications include B.A. Honours from the University of Otago, and M.A. Honours from the University of Auckland, majoring in Anthropology.
- 1.3 Since 2006 I have been engaged as a consultant archaeologist, based in New Plymouth and specializing in the archaeological record of the Taranaki Region.
- 1.4 This evidence is given in support of the land use consent application ("the application") lodged by KD Holdings Ltd ("the applicant"), to construct a six-storey mixed use building and remove a notable tree at 45, 49 and 51 Brougham Street and 33 Devon Street West, New Plymouth.
- 1.5 I am authorised to give this evidence on behalf of the applicant.

2. INVOLVEMENT IN THE PROJECT

- 2.1 My involvement in the application has included:
 - (a) I prepared an archaeological assessment of the project, included in the application. This assessment included a review of the

archaeological record; historic literature; land plans and early maps; and a pedestrian survey of the application area;

- (b) As a result of this assessment a section of pre 1900 historic railway embankment was identified and recorded as an archaeological site. The stone railway embankment is part of a wider, largely unrecorded archaeological assemblage relating to the 1875 New Plymouth to Waitara Railway line. Better presented sections of the same embankment survive elsewhere on publically accessible areas, notably on the right bank of the Huatoki Stream at the Huatoki Plaza and on the western side of Sir Victor Davies Memorial Park. The latter is listed as a heritage feature (ID 70) in the proposed NPDC District Plan. The railway embankment has been recorded as an archaeological site P19/416 on the NZAA site recording scheme. However, the section of embankment in question is not listed or protected in either the Operative or Proposed District plans.
- (c) As there is potential for this project to damage, modify or destroy a section of this embankment, an application was made to Heritage New Zealand Pouhere Taonga (HNZPT) for an archaeological authority to modify this site;
- (d) HNZPT have granted an authority (2021/174) which contains conditions for monitoring and archaeological recording. A copy of this authority is attached to my evidence as **Annexure A**;
- (e) I have also reviewed the material produced with the application, including the application and assessment of environmental effects dated 04 September 2020 and the Cultural Impact Assessment prepared by the Ngāti Te Whiti Hapu for the New Plymouth District Council (NPDC) dated 2 September 2020.

3. CODE OF CONDUCT

- 3.1 I confirm that I have read the Code of Conduct for expert witnesses contained in the 2014 Environment Court Practice Note and that I agree to comply with it. I confirm I have considered all the material facts that I am aware of that might alter or detract from the opinions I express. In particular, unless I state otherwise, this evidence is within my sphere of expertise and I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.

4. PURPOSE AND SCOPE OF EVIDENCE

- 4.1 In this matter, I have been asked by the applicant to record archaeological evidence and to advise the applicant as to its requirements under the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA).
- 4.2 I confirm that I have read the submissions on the application. The assumptions, assessment and conclusions set out in my archaeological assessment (Bruce and Crimp 2019) in the application, in my opinion, remain valid.
- 4.3 Except where my evidence relates to contentious matters I propose to only summarise the conclusions set out in my expert technical report.
- 4.4 My evidence is structured as follows:
- (a) Summary (Section 5);
 - (b) Matters raised in submissions and the Section 42A report (Section 7);
 - (c) Concluding comments (Section 9).

5. SUMMARY

- 5.1 The key issues related to archaeology are in my opinion:
- (a) The possible modification or damage to the existing archaeological feature (the stone railway embankment) as a result of tree removal and or site construction.
 - (b) The potential to encounter unrecorded archaeological evidence relating to Maori land use and occupation at this location.
- 5.2 By way of a summary, my detailed analyses and assessments enable me to confidently conclude that:
- (A) The heritage values of the potentially affected remnant section of railway embankment are low - medium and representative samples of the same assemblage are listed elsewhere in the district plan. This assessment is supported by the granting of the HNZPT authority. The conditions of that authority adequately provide for the appropriate recording and reporting in the event that the project requires the modification of this embankment;

- (B) The archaeological assessment notes that there is historic record of "Maori pits" on the property during the early years of European tenure. I note also that that the CIA considers these pits could potentially relate to the hinterland of the nearby papakainga of Mawhera. Notwithstanding these reports I consider further discovery of archaeological evidence relating to pre-European Maori occupation on this site to be very low, given the history of 19th and 20th Century land use at this site; and that the ground surface has been significantly cut down from the original state that would have existed at the time the pits were recorded;
- (C) In the event that archaeological evidence of Maori occupation is encountered during project works Condition 6 of the authority requires that all works should cease within 20m of the find and HNZPT must be notified. No works can take place until HNZPT has responded. It is my opinion that this condition adequately provides for the expert consideration of unexpected finds.

6. THE APPLICATION SITE AND RECEIVING ENVIRONMENT

- 6.1 I have read the application and adopt the description of the site and receiving environment outlined in that document.

7. SUBMISSIONS

- 7.1 I have reviewed the submissions received by the NPDC, which raise the following particular matters within my field of expertise:
 - (A) I note that Ngāti Te Whiti and Te Kotahitanga supports the application in part, subject to the provision of those conditions recommended in the CIA and agreed by the applicant, being secured in the event New Plymouth District Council recommends to grant the resource consent;
 - (B) Of these recommendations, Condition 3, relating to the provision of monitoring opportunities to Ngāti Te Whiti representatives during earthworks associated with this project, is relevant to my area of expertise.
 - (C) In response to which, I can confirm that the conditions of the archaeological authority in no way prevent such involvement by representatives from Ngāti Te Whiti and that I would consider their involvement to be useful addition to the project and complementary

to the intended outcome of the archaeological authority. It is my experience that having cultural monitors working alongside project archaeologists is now the norm for any project where a HNZPT authority has been granted and/or where there may be potential for archaeological finds to include, or archaeological evidence relating to Maori occupation.

S42A Report

- 7.2 I have read the Council's section 42A report LUC20/47704 which raises the following matters relevant to archaeology and my archaeological assessment that I wish to address.
- 7.3 I note that both the Section 42A report and the findings of the peer review of my assessment (McCurdy 2021) accept that the project site is highly modified and that there is a low likelihood that unrecorded archaeological finds will be encountered as a result of the development. To my reading, both reports support the conclusions of my assessment.
- 7.4 All parties accept that the removal of the protected tree will cause damage to a short section of stone railway embankment.
- 7.5 The Section 42A report notes that this section of wall is of low - medium archaeological value and that the effects of the proposal to remove the tree will have an overall minor effect on the site.
- 7.6 Dan McCurdy and I may debate the low to medium archaeological value that I place on this section of embankment, but despite reading Dan's argument for a higher value I am not inclined to change my opinion at this time. However, I consider the debate to be irrelevant in this case for the reasons below.
- 7.7 In this matter I agree with McCurdy's report where he states *"that, regardless of the heritage significance of the section of wall in question however, the Agonis Flexuosa will inevitably impact the structure of the wall at some point in the future, either as part of development, or when it reaches the end of its natural life. As such, it is preferable that the tree be removed in a controlled manner as part of this development"* (Ibid, p9).
- 7.8 I note that McCurdy also states *"The recommendations made by Bruce that the proposed works proceed under an HNZPT authority are appropriate for the entire site, and particularly for the removal of the Agonis Flexuosa tree."* (Ibid, p9).

8. PROPOSED CONDITIONS OF CONSENT

8.1 I have reviewed the proposed conditions of consent that relate to Archaeology. I consider these conditions to be appropriate and can be compatible with the conditions of the HNZPT authority (2021/174).

9. CONCLUSION

9.1 My evidence has assessed the matters relating to archaeological sites that I am aware of in relation to the application and I conclude that:

- (a) The project is compliant with the provisions of Heritage New Zealand Pouhere Taonga Act 2014 with regard to modification of the recorded archaeological site P19/416.
- (b) There is adequate protection provided by the conditions of the archaeological authority, to allow for consideration of unexpected archaeological finds of Maori origin.
- (c) As such, I consider applicant has fully recognised and provided for the protection of historic heritage from inappropriate subdivision, use and development as outlined in section 6(f) of the RMA.

Name: Ivan Bruce
Date: February 10, 2021



HERITAGE NEW ZEALAND
POUHERE TAONGA

S:\Archaeology\Archaeological Authorities

22 October 2020

File ref: 2021/174
11013-042

KD Holdings Ltd
28 Currie Street
New Plymouth 4310

Attn. Kevin Doody

Tēnā koe Kevin

**APPLICATION FOR ARCHAEOLOGICAL AUTHORITY UNDER HERITAGE NEW ZEALAND
POUHERE TAONGA ACT 2014: Authority no. 2021/174: P19/416, 51 Brougham St, New
Plymouth**

Thank you for your application for an archaeological authority which has been granted and is attached.

In considering this application, Heritage New Zealand Pouhere Taonga notes that you propose to undertake earthworks for property development as well as remove a large *Agonis Flexuosa* from a stone railway embankment at 51 Brougham St, New Plymouth. The stone railway embankment relates to the 1875 New Plymouth to Waitara Railway line and is recorded as P19/416 in the New Zealand Archaeological Association Site Recording Scheme. The railway embankment runs through the edge of the subject property and will be impacted on by the removal of the *Agonis Flexuosa* as this will destabilise and necessitate the removal of a small portion of the wall. Although the site has been damaged in the past, it still possesses archaeological values and is part of a wider, largely unrecorded archaeological assemblage relating to the New Plymouth to Waitara Railway line. In addition, while there is a low likelihood, archaeological material relating to the occupation and settlement of the subject property dating back to the 1850s cannot be entirely discounted.


Please inform the s45 approved person and Heritage New Zealand Pouhere Taonga of start and finish dates for the work.

An appeal period from receipt of decision by all parties applies. Therefore this authority may not be exercised during the appeal period of 15 working days or until any appeal that has been lodged is resolved.


If you have any queries please direct your response in the first instance to:

Kathryn Hurren
Archaeologist
Heritage New Zealand Pouhere Taonga, Wellington Office
PO Box 2629, Wellington 6140

Phone (04) 494 8324 Email ArchaeologistCR2@heritage.org.nz

 (64 4) 472 4341

 National Office, Antrim House, 63 Boulcott Street

 PO Box 2629, Wellington 6140

 heritage.org.nz

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Vanessa Tanner', is centered on the page. The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Vanessa Tanner
Manager Archaeology

cc: Kevin Doody
via email at kdoody@xtra.co.nz

cc: Darelle Martin, BTW Company Ltd
via email darelle.martin@btw.nz

cc: Kathryn Kruik and Ian Baker
New Plymouth District Council
via email at kathryn.kruik@npdc.govt.nz and ian.baker@npdc.govt.nz

cc: Ivan Bruce
via email at itmustbesointeresting@xtra.co.nz

cc: Planning Manager
New Plymouth District Council
via email at enquiries@npdc.govt.nz

Pursuant to Section 51 Heritage New Zealand Pouhere Taonga Act 2014 Heritage New Zealand Pouhere Taonga must notify TLAs of any decision made on an application to modify or destroy an archaeological site. We recommend that this advice is placed on the appropriate property file for future reference.

cc: Ministry for Culture and Heritage
via email at protected-objects@mch.govt.nz

Pursuant to Section 51 Heritage New Zealand Pouhere Taonga Act 2014

cc: NZAA Central Filekeeper
Attn: Mary O'Keeffe
via email at centralfilekeeper@archsite.org.nz

cc: Heritage New Zealand Pouhere Taonga Archaeologist, Kathryn Hurren

cc: Heritage New Zealand Pouhere Taonga Director Central Region, Jamie Jacobs

cc: Heritage New Zealand Pouhere Taonga Kaiwhakahaere Tautiaki Wahi Taonga, Mita Harris



HERITAGE NEW ZEALAND
POUHERE TAONGA

AUTHORITY

Heritage New Zealand Pouhere Taonga Act 2014

AUTHORITY NO: 2021/174

FILE REF: 11013-042

DETERMINATION DATE: 22 October 2020

EXPIRY DATE: 22 October 2025

AUTHORITY HOLDER: KD Holdings Ltd

POSTAL ADDRESS: 28 Currie Street, New Plymouth 4310. Attn. Kevin Doody

ARCHAEOLOGICAL SITES: P19/416 and potential sites, as yet unrecorded

LOCATION: 51 Brougham St, New Plymouth

SECTION 45 APPROVED PERSON: Ivan Bruce

LAND OWNER CONSENT: Completed

This authority may not be exercised during the appeal period of 15 working days or until any appeal that has been lodged is resolved.

DETERMINATION

Heritage New Zealand Pouhere Taonga grants an authority pursuant to section 48 of the Heritage New Zealand Pouhere Taonga Act 2014 in respect of the archaeological site described above, within the area specified as Part Section 683 Town of New Plymouth, Part Lot 6 DP 3466, Lot 2 DP 15492 and Lot 3 DP 15492 to KD Holdings Ltd for the proposal to undertake earthworks for property development and to remove a large *Agonis Flexuosa* from a stone railway embankment at 51 Brougham St, New Plymouth, subject to the following conditions:

CONDITIONS OF AUTHORITY

1. The authority holder must ensure that all contractors working on the project are briefed on site by the s45 approved person, who may appoint a person to carry out the briefing on their behalf, prior to any works commencing on the possibility of encountering archaeological evidence, how to identify possible archaeological sites during works, the archaeological work required by the conditions of this authority, and contractors' responsibilities with regard to notification of the discovery of archaeological evidence to ensure that the authority conditions are complied with.

2. Prior to the start of any on-site archaeological work, the Authority Holder must ensure that Heritage New Zealand Pouhere Taonga is advised of the date when work will begin. This advice must be provided at least 2 working days before work starts. The Authority Holder must also ensure that Heritage New Zealand Pouhere Taonga is advised of the completion of the on-site archaeological work, within 5 working days of completion.
3. At the discretion of the s45 approved person, earthworks may be undertaken on an on-call basis provided conditions 1 and 2 are met.
4. Works that may affect the stone railway embankment must be monitored by the s45 approved person. The S45 person may appoint a person to carry out the monitoring on their behalf.
5. Any archaeological evidence encountered during the exercise of this authority must be investigated, recorded and analysed in accordance with current archaeological practice.
6. The authority holder must ensure that if any possible taonga or Māori artefacts, or sites of Māori origin are encountered, all work should cease within 20 metres of the discovery. The Heritage New Zealand Pouhere Taonga Archaeologist must be advised immediately and no further work in the area may take place until they have responded.
7. 20 working days of the completion of the on-site archaeological work associated with this authority, NZAA Site Record Form P19/416 must be updated based on current archaeological practice (condition 5) and submitted to the Heritage New Zealand Pouhere Taonga Archaeologist and the NZAA Site Recording Scheme.
8. If any archaeological remains other than P19/416 require any archaeological investigation, recording and analysis, then the authority holder must ensure that within 12 months of the completion of the on-site archaeological work a final report, completed to the satisfaction of the Heritage New Zealand Pouhere Taonga is submitted to the Heritage New Zealand Pouhere Taonga Archaeologist.

Signed for and on behalf of Heritage New Zealand.



Claire Craig
Deputy Chief Executive Policy, Strategy and Corporate Services
Heritage New Zealand Pouhere Taonga
PO Box 2629
WELLINGTON 6140

Date 22 October 2020

ADVICE NOTES

Contact details for Heritage New Zealand Archaeologist

Kathryn Hurren
Archaeologist
Heritage New Zealand Pouhere Taonga, Wellington Office
PO Box 2629, Wellington 6140

Phone (04) 494 8324 Email ArchaeologistCR2@heritage.org.nz

Current Archaeological Practice

Current archaeological practice may include, but is not limited to, the production of maps/ plans/ measured drawings of site location and extent; excavation, section and artefact drawings; sampling, identification and analysis of faunal and floral remains and modified soils; radiocarbon dating of samples; the management of taonga tuturu and archaeological material; the completion of a final report and the updating of existing (or creation of new) site record forms to submit to the NZAA Site Recording Scheme. The final report shall include, but need not be limited to, site plans, section drawings, photographs, inventory of material recovered, including a catalogue of artefacts, location of where the material is currently held, and analysis of recovered material.

Please note that where one is required, an interim report should contain a written summary outlining the archaeological work undertaken, the preliminary results, and the approximate percentage of archaeological material remaining *in-situ* and a plan showing areas subject to earthworks, areas monitored and the location and extent of any archaeological sites affected or avoided.

Rights of Appeal

An appeal to the Environment Court may be made by any directly affected person against any decision or condition. The notice of appeal should state the reasons for the appeal and the relief sought and any matters referred to in section 58 of the Heritage New Zealand Pouhere Taonga Act 2014. The notice of appeal must be lodged with the Environment Court and served on Heritage New Zealand Pouhere Taonga within 15 working days of receiving the determination, and served on the applicant or owner within five working days of lodging the appeal.

Review of Conditions

The holder of an authority may apply to Heritage New Zealand Pouhere Taonga for the change or cancellation of any condition of the authority. Heritage New Zealand Pouhere Taonga may also initiate a review of all or any conditions of an authority.

Non-compliance with conditions

Note that failure to comply with any of the conditions of this authority is a criminal offence and is liable to a penalty of up to \$120,000 (Heritage New Zealand Pouhere Taonga Act 2014, section 88).

Costs

The authority holder shall meet all costs incurred during the exercise of this authority. This includes all on-site work, post fieldwork analysis, radiocarbon dates, specialist analysis and preparation of interim and final reports.

Assessment and Interim Report Templates

Assessment and interim report templates are available on the Heritage New Zealand Pouhere Taonga website: archaeology.nz

Guideline Series

Guidelines referred to in this document are available on the Heritage New Zealand Pouhere Taonga website: archaeology.nz

The Protected Objects Act 1975

The Ministry for Culture and Heritage ("the Ministry") administers the Protected Objects Act 1975 which regulates the sale, trade and ownership of taonga tūturu.

If a taonga tūturu is found during the course of an archaeological authority, the Ministry or the nearest public museum must be notified of the find within 28 days of the completion of the field work.

Breaches of this requirement are an offence and may result in a fine of up to \$10,000 for each taonga tūturu for an individual, and of up to \$20,000 for a body corporate.

For further information please visit the Ministry's website at <http://www.mch.govt.nz/nz-identity-heritage/protected-objects>.

Land Owner Requirements

If you are the owner of the land to which this authority relates, you are required to advise any successor in title that this authority applies in relation to the land. This will ensure that any new owner is made aware of their responsibility in regard to the Heritage New Zealand Pouhere Taonga Act 2014.



HERITAGE NEW ZEALAND
POUHERE TAONGA

SECTION 45 APPROVED PERSON

Heritage New Zealand Pouhere Taonga Act 2014

AUTHORITY NO: 2021/174

FILE REF: 11013-042

APPROVAL DATE: 22 October 2020

This approval may not be exercised during the appeal period of 15 working days or until any appeal that has been lodged is resolved.

APPROVAL

Pursuant to section 45 of the Act, **Ivan Bruce**, is approved by Heritage New Zealand Pouhere Taonga to carry out any archaeological work required as a condition of authority 2021/174, and to compile and submit a report on the work done. Ivan Bruce will hold responsibility for the current archaeological practice in respect of the archaeological authority for which this approval is given.

Signed for and on behalf of Heritage New Zealand,

A handwritten signature in blue ink, appearing to read 'Claire Craig'.

Claire Craig
Deputy Chief Executive Policy, Strategy and Corporate Services
Heritage New Zealand Pouhere Taonga
PO Box 2629
WELLINGTON 6140

Date 22 October 2020