

**BEFORE THE INDEPENDENT HEARINGS PANEL
OF THE HAMILTON CITY COUNCIL**

IN THE MATTER

of the Resource Management
Act 1991 (RMA)

BY

**Waikato Regional Theatre
Governance Panel**

IN THE MATTER OF

An application for resource
consent for the redevelopment
of the former Hamilton Hotel
building at 170 Victoria Street,
Hamilton CBD

**STATEMENT OF EVIDENCE OF DR RACHEL SARAH DARMODY
FOR HERITAGE NEW ZEALAND POUHERE TAONGA**

INTRODUCTION

1. My full name is Rachel Sarah Darmody.
2. I have a Bachelor of Arts with Honours (First Class) (1995) in Anthropology, a Master of Arts (with Distinction) (1997), and a PhD (2000) from the University of Otago.
3. I have been actively involved in New Zealand archaeology for 25 years and have been a member of the New Zealand Archaeological Association (the **NZAA**) since 1994.
4. I am the Senior Archaeologist for Heritage New Zealand Pouhere Taonga's Lower Northern Region (Waikato, Bay of Plenty and Gisborne), based in the Tauranga Office. I have worked as an archaeologist for Heritage New Zealand Pouhere Taonga since February 2001.
5. I am responsible for advocating for the protection and management of New Zealand's archaeological sites and ensuring that any person wanting to damage or modify a site complies with the provisions of the Heritage New Zealand Pouhere Taonga Act 2014. I have worked on over 2,000 archaeological authority applications.
6. I have read, understood and will comply with the Environment Court's Code of Conduct for Expert Witnesses contained in the Environment Court's Consolidated Practice Note 2011 and have complied with it in preparing this evidence. I also agree to comply with the Code when presenting evidence. The evidence I give is within my area of expertise and represents my best knowledge about this matter. I have not omitted to consider material facts known to me which might alter or detract from the opinions I express.

SCOPE OF EVIDENCE

7. My evidence is given in support of Heritage New Zealand's position in respect of the application for the establishment of the Waikato Regional Theatre facility.
8. In my evidence I will:
 - a. Briefly outline the role of Heritage New Zealand Pouhere Taonga;
 - b. Explain the requirements under the Heritage New Zealand Pouhere Taonga Act 2014 for archaeological authorities; *and*
 - c. Outline my concerns that there is insufficient archaeological information to make a decision on the effects of the proposal on the scheduled urupa (Hau O Te Atua, A123, Hamilton City Council Schedule 8C: group 2).
 - d. Recommend, based on the available information, that the Hau O Te Atua Urupa is avoided by the proposed development.
 - e. Comment on the draft conditions for the application.

THE ROLE OF Heritage New Zealand Pouhere Taonga

9. Heritage New Zealand is an autonomous Crown Entity constituted under the Heritage New Zealand Pouhere Taonga Act 2014, and within the Ministry for Culture and Heritage portfolio. It is governed by a Board and a Maori Heritage Council. Its purpose is to provide for the identification, protection, preservation and conservation of the historical and cultural heritage of New Zealand.

10. Heritage New Zealand is the national statutory authority responsible for archaeological site protection. Section 44 of the Heritage New Zealand Pouhere Taonga Act 2014 directs that an authority is required from Heritage New Zealand in order to modify or destroy any archaeological site or sites (recorded or unrecorded).
11. An authority is required whether or not the land on which an archaeological site may be present is designated, a resource or building consent has been granted, or the proposed activity is permitted under the relevant Regional or District Plan.
12. One of Heritage New Zealand's roles is therefore to manage the process of permitting modification or destruction of archaeological sites through the issuing of archaeological authorities.

WAIKATO REGIONAL THEATRE

13. I have undertaken three site visits to the subject property. Two of the visits were in the company of the archaeologists from Clough and Associates Ltd.
14. It is accepted that there is potential for archaeological remains to be encountered within the property.
15. Heritage New Zealand received an Authority Application from the Waikato Regional Theatre Governance Panel on 16 September 2019. The application was not accepted because it was determined as incomplete. It was returned because:
 - a There was not enough information for Heritage New Zealand to make a decision on the extent and condition of the archaeology relating to the Hau O Te Atua Urupa. I will address this in my evidence.
 - b There was deemed to be incomplete consultation with Tangata Whenua, which my colleague Makere Rika-heke will address in her evidence.

16. The application was resubmitted on 1 October 2019 and, at the time of writing this evidence, is being assessed by staff so I am unable to confirm if it has been accepted as an application or if it has been returned. I can say that it appears no additional archaeological information has been provided and it was returned the first time on this basis.

HAU O TE ATUA, A123

17. There is not enough information in the application to understand the location, extent, condition and archaeological values of Hau O Te Atua Urupa.
18. The archaeological assessment prepared by Sarah Phear, Zarah Burnett and Kim Tatton (August 2019, "Waikato Regional Theatre, Hamilton: Archaeological Assessment", Clough and Associates Ltd.) identifies the potential for archaeology to be present across the subject land, including the area identified in the Hamilton City Council Schedule as Hau O Te Atua. They identify the need for an Authority, under the Heritage New Zealand Pouhere Taonga Act 2014, to be obtained prior to the development occurring.
19. Their assessment (2019:79) notes that the subject land

"...is part of a wider archaeological landscape associated with Maori occupation and gardening along the Waikato River terraces. Principally associated with the occupation of Kirikiriroa Pa, which was situated between what is now London and Bryce Streets"
20. The assessment (2019:79) explains that people were buried in urupa close to Kirikiriroa Pa and in urupa along the Waikato River. It identifies the significance of urupa.
21. Hau O Te Atua Urupa was scheduled based on the research undertaken by archaeologist Russell Foster in 2000 in conjunction with oral history and confidential records from representatives of Ngati Waiere (according to the Archaeological Assessment, 2019:69).

22. At a site meeting on 20 August 2019, Heritage New Zealand requested more information about the scheduled urupa to: define the extent of the site in relation to the proposed development; and determine any modifications that had occurred to the site. In response Dr Rod Clough and Kim Tatton prepared an Addendum to the archaeological assessment ("Waikato Regional Theatre, Hamilton: Addendum to Archaeological Assessment", September 2019).
23. The Archaeological Assessment (p69) notes that it is unclear how the boundaries of the scheduled area were determined but that it is approximately 372m² (without survey information). In the Addendum it is noted that the boundaries of the urupa are not to scale and only indicative and it (p3) gives the size of the urupa as 700m² (without survey information). It is not clear how the specialists working on this project (archaeologists, planners, architects, engineers and others) came to an agreement about the size and boundary of Hau O Te Atua Urupa.
24. Human remains have been uncovered elsewhere on the property (198 Victoria Street).
25. The Addendum outlines modifications to the western part of Hau O Te Atua Urupa. The extent of modifications to the riverside (eastern) part remains unclear. The ground level around the scheduled heritage trees would suggest there are areas that have not been heavily modified.
26. According to the Archaeological Assessment (2019:81, 93) and Dr Clough's evidence (point 7.3), Hua O Te Urupa will be affected by:
 - a Vegetation clearance;
 - b Piling works on the northern and southern edge of the urupa to support part of the open courtyard deck and an access ramp;
 - c The excavation and removal of 9m by 9m of the urupa for the sub-stage area;

- d Some sub-soil drains required at the perimeter of the building; and
 - e A storm water manhole at the southern boundary.
27. There needs to be an archaeological field survey of the urupa, for the purpose of mapping, to define the extent and to understand the current features and landforms within the area. In two draft versions of the Archaeological Assessment (dated July 2018 and October 2018) it recommended:

“If feasible, the overgrown vegetation in the south-eastern corner should be cleared and an additional site survey undertaken ...[to] gain further understanding of the level of modification”.

This recommendation did not appear in the final version of the assessment. It is, however, the logical next step to be taken in understanding more about the urupa.

28. Clough and Associates Ltd have said that the effects should be minor. I disagree because the archaeological reports do not provide enough information to adequately assess the impacts of the proposed development on the archaeology within the urupa. If koiwi tangata are present within the urupa (and we have no evidence to say they are not) then the effects of the proposed works would be more than minor.

THE PLANNER’S REPORT AND THE TECHNICAL SPECIALIST REPORT- ARCHAEOLOGY

29. The Planner’s Report (p40) states that the design of the proposal has considered the location of the urupa and the majority of the area will be avoided. I disagree. The Planner does not have enough archaeological information to draw this conclusion.
30. I advocate for avoiding any ground disturbance within the scheduled urupa. The Planner’s Report (no. 180, p14) cites a statement in the Addendum that “any effects to the scheduled area of Hua O Te Atua Urupa should be minor overall”. I disagree. If koiwi tangata are present in this area, and no one can conclusively say they are not,

then a large post through a burial would have a significant adverse effect and should be avoided.

31. Dr Alexy Simmons's technical specialist report (7 August 2019: point 3.3.6.3 p17) states that:

“Inserting screw piles into Hua O Te Atua Urupa, earthworks and vegetation clearing, etc. is likely to effect the integrity of the urupa”.

32. The Planner's Report (no. 176 and 177, p41) cites the Archaeological Assessment's conclusion that there should be no major constraints on the proposal due to archaeology and that any affects can be mitigated through the provisions of the *Heritage New Zealand Pouhere Taonga Act 2014*.
33. The archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014 does not remove the necessity for Council to satisfy its own requirements under the Resource Management Act 1991 to consider archaeological sites.

PLANNER'S RECOMMENDED SUBDIVISION CONSENT CONDITIONS

34. I do not recommend the granting of this consent because there is not enough archaeological information to adequately assess the impacts on Hua O Te Atua Urupa. If the Hearing Commissioner is mindful to grant the consent then I have the following comments to make on the conditions.
35. In setting the consent conditions, Heritage New Zealand would encourage the Hearing Commissioner not to approve conditions that have the potential to contradict the regulatory process set out in the Authority process.
36. The proposal requires an Authority under the Heritage New Zealand Pouhere Taonga Act 2014. It is unlawful for any person to modify or destroy, or cause to be modified or destroyed, the whole or any part of an archaeological site without the prior authority of Heritage New Zealand. Without predetermining any decision Heritage New Zealand may make, it should not be taken for granted that the Maori

Heritage Council would approve the destruction of Hua O Te Atua Urupa. The Resource Consent decision should therefore not contain any conditions relating to the monitoring, recording, or recovery of archaeological information as outlined in Condition 29 (monitoring of removal of initial subsurface earthworks). Condition 29 should be deleted but the advice note can remain. The advice note should point out that the Authority is required before any work commences and that Heritage New Zealand has the ability to decline an Authority.

37. Condition 124 does not make any sense in the context of this application. It sets out an accidental discovery protocol and requires Heritage New Zealand to be contacted. It has already been established in the archaeological reports, planner's report and the earlier advice note (under condition 29) that an Authority is required from Heritage New Zealand. This supersedes an accidental discovery protocol. Condition 124 should be deleted. Dr Simmons's technical report points this out (point 2.4 page 11) calling the accidental discovery protocol "...superfluous if the recommended archaeological authority is obtained...".

DR ROD CLOUGH'S EVIDENCE

38. I do not agree with Dr Clough's statement of archaeological values because it underestimates the potential for important information to be recovered relating to pre-European Maori occupation and gardening (Clough Evidence point 6.7), although in point 6.13 he acknowledges that an investigation "could contribute further to our understanding of the 19th century European history of the site...". It also contradicts other parts of his evidence where he describes a rich archaeological record (Clough evidence 4.3, 6.1, 6.2, 6.4, 6.5, 6.6, 6.7, 6.8 and 6.9) with important archaeological values.
39. Other nearby properties along the river have been identified as being able to provide significant information that would contribute to our knowledge of the archaeological record. Dr Caroline Phillips uncovered over 2000 archaeological features at nearby 21 Grantham Street, when the Hamilton Club was moved,

representing a gardening and storage site (see Phillips, C. and B. Thorne, 2014, "Archaeological Excavations (Historic Places Authority 2012/243) of Historic Buildings (S14/259) and Maori Gardening (S14/258) at 21 Grantham Street, Hamilton", Datum Archaeology). Sian Keith and Laura Davies (2018, "Final Report, Victoria on the River, Authority 2017/119, S14/119, S14/472, Hamilton", Sian Keith Archaeology Ltd, Hamilton) describe the importance of the Waikato River as a focus of settlement, including Kirikiriroa pa site and the fertile soils for cultivation. They note in their report from the Victoria on the River site that, while the evidence was sparse and disturbed, it advanced the archaeological record for the northern end of Victoria Street.

40. Dr Clough states throughout his evidence that the potential effects on archaeological values within the scheduled area of Te Hua O Te Atua Urupa will be minor (see points 4.6, 6.10, 7.5 and 10.4). This appears to be based on the degree of modification the area has been subject to. I disagree. It is not clear from the archaeological information provided just how much the area has been modified and to what extent any burials present would be affected. There is potential for subsurface archaeological deposits to be well-preserved as has been demonstrated in other developments along this stretch of river bank (see Phillips and Thorne 2014). From the information we currently have, the proposed destruction of parts of the Hua O Te Atua Urupa could not be considered minor.

CONCLUSION

41. No evidence has been produced in the archaeological reports to say that there are no burials within the scheduled urupa (Hau O Te Atua, A123, Hamilton City Council Schedule 8C: group 2).
42. There is not enough archaeological information to assess the effects of the proposal on Hau O Te Atua Urupa. There needs to be an archaeological field survey of the urupa, for the purpose of mapping,

to define the extent and to understand the current features and landforms within the area.

43. On the basis of the current information, I recommend that the development avoids any ground disturbance to Hau O Te Atua Urupa.
44. If the Hearing Commissioner is mindful to grant the consent then Conditions 29 and 124 should be deleted. It is not appropriate that there are recommended conditions that contradict the regulatory process already set out in the Authority process under the Heritage New Zealand Pouhere Taonga Act 2014.

Dated 3 October 2019

Dr. Rachel Darmody