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KEI MUA I TE AROARO O TE RŌPŪ WHAKAMANA  
I TE TIRITI O WAITANGI

BEFORE THE WAITANGI TRIBUNAL

WAI 2200

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IN THE MATTER OF

the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

The Porirua ki Manawatū District Inquiry  
(Wai 2200)

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BRIEF OF EVIDENCE OF KATHRYN AMY HURREN  
FOR AND ON BEHALF OF HERITAGE NEW ZEALAND

Dated: 5 July 2019

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RECEIVED

Waitangi Tribunal

**8 July 2019**

Ministry of Justice  
WELLINGTON

CROWN LAW

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I, Kathryn Amy Hurren, of Wellington, state:

### **Introduction**

1. My full name is Kathryn Amy Hurren.
2. I am the Archaeologist Poutairangahia, Central Region, Heritage New Zealand Pouhere Taonga. I have worked for Heritage New Zealand Pouhere Taonga for 11 years.
3. I hold a Bachelor of Arts Honours and a Masters of Arts in Anthropology from the University of Otago. I have been a member of the New Zealand Archaeological Association for 15 years.
4. I have given evidence related to archaeology for Heritage New Zealand Pouhere Taonga previously although not in the Waitangi Tribunal. While I am an employee of Heritage New Zealand Pouhere Taonga, I give this evidence in my capacity as a professional archaeologist. As such, I affirm the matters set out in this brief of evidence are within my area of expertise, except where I state I am relying on what I have been told by another person. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.

### **Scope of evidence**

5. My brief of evidence provides information on the Archaeological Authority 2017/316 granted on 18 October 2016 (**Authority**) and the protections the Authority affords the Karewarewa Urupā.

### **Archaeological Authority**

#### Application

6. An exploratory archaeological authority application was received by Heritage New Zealand Pouhere Taonga on 23 September 2016 (**application**). It was lodged by S Johnston, lawyer on behalf of Waikanae Land Company Limited.

7. A copy of the application is at **Appendix A**. (I note a copy of the application also appears at page 708 of the appendices to the brief of evidence of Mahina-a-rangi Baker dated 22 January 2019.)
8. The application sought approval to undertake an excavation at Tamati Place, Waikanae, with the land description being Part lot 1 DP 71625. The excavation proposed was a hand-dig test pit measuring 1m long and 0.5m wide.
9. The purpose of the proposed test pit was to help interpret a geophysical survey undertaken by Dr Hans-Dieter Bader of Archaeology Solutions Limited on 13-14 July 2016.
10. The application was accompanied by an archaeological assessment undertaken by Mary O'Keeffe together with evidence of tāngata whenua, or 'iwi', consultation.
11. I was the Heritage New Zealand Pouhere Taonga Archaeologist who determined the application complete in relation to the archaeological component of the application.
12. In order to assess an archaeological authority application, the Heritage New Zealand Pouhere Taonga Archaeologist looks at a number of items. An authority application has to be accepted for processing or returned within five working days. The Heritage New Zealand Pouhere Taonga Archaeologist checks the basic information of applicant's name, contact details and signature, area of land involved in the application, consents of property owners, description of activity, as well as assessment of archaeological values and impact on these values. I also look at the proposed works and how the archaeologist (intending to undertake the work) will manage/undertake these works. If the above information is present in the application and I feel I can process an application based on the information provided, I will determine that on archaeological grounds it can be accepted for processing.

#### Iwi consultation

13. Iwi consultation is a required part of any application for all archaeological authorities regardless of the site. This includes pā, urupā and European sites. Iwi consultation is the responsibility of the applicant; the role of Heritage New

Zealand is limited to assessing whether the consultation has been complete. Whether the iwi consultation component of an application is 'complete' is determined by the Māori Heritage Adviser who is responsible for assessing this part of an authority application.

14. Details of the nature of iwi consultation undertaken in this instance is, I understand, to be provided by Mary O'Keeffe in her brief of evidence. I note a description of the consultation with Te Ātiawa ki Whakarongotai Charitable Trust is set out at page 5 of the application. (See page 5 of Appendix A.)
15. The evidence of iwi consultation provided with the application was determined complete and accepted for processing on 6 October 2016. This was done by Heritage New Zealand's Maori Heritage Advisor, who was Dean Whiting, acting Maori Heritage Advisor and Maori Heritage Manager Central and Southern Region at the time. I understand Dean Whiting is providing a separate brief of evidence to explain the process he went through to determine the iwi consultation component of the application was complete. As an archaeologist, I have nothing to do with the assessment of the iwi consultation; that is the role of the Māori Heritage Adviser.

Application granted and authority issued

16. I completed the archaeological internal assessment and Dean Whiting completed the Pou Arahi cultural internal assessment, and together we recommended approval of the application. A copy of the internal assessment and recommendations – a copy of which is at **Appendix B** - was then sent to the National Office of Heritage New Zealand for consideration and sign off. In this instance, Pam Bain, Senior Archaeologist, and Te Kenihi Teira, Deputy Chief Executive Kaihautu, considered the application and the internal assessment, and ultimately signed off the application as approved.
17. The application was processed, granted, and the Authority issued on 18 October 2016.
18. A copy of the Authority is at **Appendix C**.
19. As can be seen in the Authority, both a tikanga protocol as well as reporting condition were included in the Authority.

19.1 The tikanga protocol included in the Authority is at page 24 of Appendix C.

19.2 The reporting condition included in the Authority is at page 24 of Appendix C.

Tikanga protocol

20. The tikanga protocol included in the Authority is the standard form tikanga protocol included in excavation authorities in circumstances where there is no existing tikanga protocol (or other form of agreement as to how tikanga is to be adhered to) between the applicant and the affected tāngata whenua. In this instance, there was (and is) no tikanga protocol between the applicant (Waikanae Land Company Limited) and Te Ātiawa ki Whakarongotai. I note that Te Ātiawa ki Whakarongotai has tikanga protocols with other developers; there just is not one with Waikanae Land Company. I understand that Les Mullens, who was the Te Ātiawa ki Whakarongotai representative Mary O'Keeffe refers to in her brief of evidence, has negotiated these tikanga protocols on behalf of Te Ātiawa ki Whakarongotai previously. I am aware that Les Mullens has been the iwi monitor on site at other developments in the region, including for the Mackays to Peka Peka expressway.

21. I should make it clear that a tikanga protocol or notification is included in every archaeological authority decision letter even if tāngata whenua have not engaged in the application process and even if the site is considered a European site. The reason for this is to ensure that basic protocols are adhered to and tāngata whenua are notified if any archaeological material, tāonga or koiwi are encountered during works.

22. Heritage New Zealand has three different types of tikanga protocol:

22.1 One used for when there is an existing protocol between the applicant and the tāngata whenua;

22.2 One used for when there is no existing protocol between the applicant and the tāngata whenua;

- 22.3 One used for when tāngata whenua say the site is not of importance to them, culturally.
23. The protocol used for when tāngata whenua say the site is not of importance to them culturally is to ensure that if material that relates to a Māori archaeological site is encountered, tāngata whenua will be notified of the finds. This ensures that any decisions going forward will include tāngata whenua.
24. Heritage New Zealand does not have any role in managing the relationship between an applicant and tāngata whenua. Heritage New Zealand's role is to manage the archaeology, not the relationships of the affected parties.
25. Heritage New Zealand does, however, monitor compliance by the applicant of the tikanga protocol. We do this through following up with tāngata whenua, speaking with people involved in the work (eg archaeologists), and sometimes by physically observing or inspecting the work.

#### Reporting Condition

26. A reporting condition is a normal condition that is included in all archaeological authorities.
27. The reporting condition included in this Authority is not exceptional.
28. The accepting, processing and granting of the test pit was undertaken at face value and in good faith. The application was deemed complete and the archaeological implications were considered low. Given this, the application was granted and the Authority issued.

#### Protections afforded by the Authority

29. I have been asked what protections an archaeological authority affords to a site. The archaeological authority process does not afford site protection. Archaeological sites are protected by law under the Heritage New Zealand Pouhere Taonga Act 2014. An archaeological authority is applied for in order to undertake work which may damage or destroy a site. Once granted, an authority enables the destruction of a site. Once an archaeological authority is granted it cannot be revoked unless withdrawn by the applicant. For all of these

reasons, Heritage New Zealand takes its responsibilities to grant archaeological authorities extremely seriously and cautiously.

Test pit undertaken

30. The test pit was undertaken on 10 April 2017. Details of this will be described by Mary O’Keeffe in her brief of evidence.
31. I am aware that the intention to undertake the test pit was emailed to all respective parties on 5 April 2017 with the main iwi recipient being Andre Baker, Chairman of Te Ātiawa ki Whakarongotai Charitable Trust. The other recipients of the email were Kristie Parata (Secretary of Whakarongotai Charitable Trust), Shannon Johnston (lawyer for Waikanae Land Company) and myself. A copy of that email is at **Appendix D**. The email included the line “As per our previous communications we once again invite representatives of the Trust to observe the work and to undertake any tikanga protocols that may be required.” I am not aware that any representatives of Te Ātiawa ki Whakarongotai Charitable Trust observed the work or undertook any tikanga protocols. The final report lodged with Heritage New Zealand after completion of the test pit makes no reference to iwi representatives being present.
32. The final report on the test pit was received by Heritage New Zealand on 13 June 2017. A copy of the final report is at **Appendix E**. The report advises the test pit did not encounter archaeological material but had deep topsoil overlaying clean sand. There was no indication of dredging in this area of the property and the results of the test pit were able to be used to interpret more conclusively the results of the geophysical survey.
33. A copy of the Archaeological Geomagnetic Report prepared by Archaeology Solutions Ltd (Dr Hans-dieter Bader) dated April 2018 is at **Appendix F**.
34. For completeness, ~~a copy of~~ ~~appending~~ a copy of Mary O’Keeffe’s ‘Tamati Place – archaeological issues’ report from March 2012 is at **Appendix G**.
35. Heritage New Zealand is not aware of any further proposed archaeological work at the Tamati Place site. If there was to be any further archaeological work at the site, a further authority application would need to be lodged and the same

assessment process would be undertaken. There is no way to predict the outcomes of any such application process.



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Kathryn Amy Hurren  
Archaeologist  
Heritage New Zealand

5 July 2019