

BEFORE THE MANAWATU DISTRICT COUNCIL

IN THE MATTER OF

a review of the Manawatu District Plan

And

IN THE MATTER OF

Plan Change 46 concerning the Feilding Town
Centre

DECISION OF COMMISSIONERS

Date: 8 July 2014

DECISION OF COMMISSIONERS

Introduction

[1] This is the first Plan Change in the sectional review of the Operative Manawatu District Plan. For logistical reasons, the hearing of Plan Change 46 followed Plan Change 50, but it is Plan Change 46 that launches the sectional review process and therefore introduces a new introductory section to the Manawatu District Plan (Chapter 1) that sets the scene for the planning agenda of the District Plan. There are also changes to the definitions section of the Plan which have broader application than simply to the Feilding town centre. The ‘business end’ of Plan Change 46 is to address the sustainable management of the natural and physical resources within Feilding town centre. The spatial area to which the Plan Change applies is shown in Figure 1 to the RMA, s 42A report prepared by Ms Kissick, the Senior Policy Planner at the Manawatu District Council.¹ In short, Feilding town centre is that area of land bounded by, in clockwise direction commencing at the South end of town:

- (a) South Street
- (b) Kimbolton Road;
- (c) Warwick Street;
- (d) Manchester Street;
- (e) Aorangi Street;
- (f) Monckton Street;
- (g) Denbigh Street;
- (h) East Street.

[2] Feilding is, of course, the commercial hub of the Manawatu district and the only location where a business zone applies. Because Feilding is a rural service centre, it has a diversity of activities including the Feilding Sale Yards, which is an important part of the rural economy of the wider Manawatu Plain. Feilding town centre contains a high concentration of buildings with significant historic heritage value, attributable to the historical, and continuing, economic productivity of the wider rural landscape. Feilding is noted for its significant collection of

¹ See order paper 14 February 2014, Page 2.

Edwardian style buildings. These physical resources make up part of the unique character and identity of Feilding.

- [3] Plan Change 46 was notified on 22 August 2013. The closing date for lodging submissions was 18 October 2013. The submissions and summary of decisions requested were publicly notified for further submission on 7 November 2013. The closing date for lodging further submissions was 21 November 2013.
- [4] Ms Kissick's report addressed by topic and provision the submissions received on Plan Change 46. The contents of that report need not be repeated in this decision. This decision will focus on the principal matters in contention that we must determine as a result of the hearing. We have however independently reviewed the detailed analysis provided by Ms Kissick, together with the RMA, s 32 report on Plan Change 46. In respect of matters not fully addressed in this decision because they could not be classed as in contention, we consider the approach of the plan change justified and sound and adopt the analysis of Ms Kissick.

The structure of this decision

- [5] The structure of this decision is to address individually each of the chapters that are amended by Plan Change 46 and state our conclusion. The chapters that are addressed are:
- (a) Chapter 1 - which sets out the purpose of the District Plan;
 - (b) Chapter 2 – that contains definitions and the glossary of key terms;
 - (c) Chapter 4 – that deals with historic heritage and in the context of Plan Change 46, specifically history heritage within the Feilding town centre; and
 - (d) Chapter 10 – relating to business zones.

Statutory evaluation and provisions in higher order instruments that have special relevance

- [6] The RMA has been amended a number of times between 2000 and 2010. In 2009, further amendments were made to RMA, s 32 and other provisions relating to the assessment of plan changes. Case law has helpfully summarised the statutory requirements. The most recent statement of the mandatory decision making requirements that apply to plan changes notified after the Resource Management Amendment Act 2009 came into force is the decision of the

Environment Court in *Colonial Vineyard Ltd v Marlborough District Council*.² The requirements identified in the RMA and summarised in that decision are set out below:

A. General requirements

1. A district plan (change) should be designed to **accord with**³ — and assist the territorial authority **to carry out** — its functions⁴ so as to achieve the purpose of the Act.⁵
2. The district plan (change) must also be prepared **in accordance with** any regulation⁶ (there are none at present) and any direction given by the Minister for the Environment.⁷
3. When preparing its district plan (change) the territorial authority **must give effect to**⁸ any national policy statement or New Zealand Coastal Policy Statement.⁹
4. When preparing its district plan (change) the territorial authority shall:
 - (a) **have regard to** any proposed regional policy statement;¹⁰
 - (b) **give effect to** any operative regional policy statement.¹¹
5. In relation to regional plans :
 - (a) the district plan (change) must **not be inconsistent** with an operative regional plan for any matter specified in section (1) or a water conservation order;¹² and
 - (b) **must have regard to** any proposed regional plan on any matter of regional significance etc.¹³
6. When preparing its district plan (change) the territorial authority must also:
 - **have regard to** any relevant management plans and strategies under other Acts, and to any relevant entry in the Historic Places Register and to various fisheries regulations¹⁴ to the extent that their content has a bearing on resource

² [2014] NZEnvC 55.

³ Section 74(1) of the Act.

⁴ As described in section 31 of the Act.

⁵ Sections 72 and 74(1) of the Act.

⁶ Section 74(1) of the Act.

⁷ Section 74(1) of the Act added by section 45(1) Resource Management Amendment Act 2005.

⁸ Section 75(3) RMA.

⁹ The reference to “any regional policy statement” in the *Rosehip* list here has been deleted since it is included in (3) below which is a more logical place for it.

¹⁰ Section 74(2)(a)(i) of the RMA.

¹¹ Section 75(3)(c) of the Act [as substituted by section 46 Resource Management Amendment Act 2005].

¹² Section 75(4) of the Act [as substituted by section 46 Resource Management Amendment Act 2005].

¹³ Section 74(2)(a)(ii) of the Act.

¹⁴ Section 74(2)(b) of the Act.

management issues of the district; and to consistency with plans and proposed plans of adjacent territorial authorities;¹⁵

- **take into account** any relevant planning document recognised by an iwi authority;¹⁶ and
- not have regard to trade competition¹⁷ or the effects of trade competition:

7. The formal requirement that a district plan (change) must¹⁸ also state its objectives, policies and the rules (if any) and may¹⁹ state other matters.

B. Objectives [the section 32 test for objectives]

8. Each proposed objective in a district plan (change) **is to be evaluated** by the extent to which it is the most appropriate way to achieve the purpose of the Act.²⁰

C. Policies and methods (including rules) [the section 32 test for policies and rules]

9. The policies are to **implement** the objectives, and the rules (if any) are to **implement** the policies;²¹

10. Each proposed policy or method (including each rule) is to be examined, **having regard to its efficiency and effectiveness**, as to whether it is the most appropriate method for achieving the objectives²² of the district plan **taking into account:**

- (i) the benefits and costs of the proposed policies and methods (including rules); and
- (ii) the risk of acting or not acting if there is uncertain or insufficient information about the subject matter of the policies, rules, or other methods;²³ and
- (iii) if a national environmental standard applies and the proposed rule imposes a greater prohibition or restriction than that, then whether that greater prohibition or restriction is justified in the circumstances.²⁴

¹⁵ Section 74(2)(c) of the Act.

¹⁶ Section 74(2A) of the Act.

¹⁷ Section 74(3) of the Act as amended by section 58 Resource Management (Simplifying and Streamlining) Act 2009.

¹⁸ Section 75(1) of the Act.

¹⁹ Section 75(2) of the Act.

²⁰ Section 74(1) and section 32(3)(a) of the Act.

²¹ Section 75(1)(b) and (c) of the Act (also section 76(1)).

²² Section 32(3)(b) of the Act.

²³ Section 32(4) of the RMA.

²⁴ Section 32(3A) of the Act added by section 13(3) Resource Management Amendment Act 2005.

D. Rules

11. In making a rule the territorial authority must **have regard** to the actual or potential effect of activities on the environment.²⁵
12. Rules have the force of regulations.²⁶
13. Rules may be made for the protection of property from the effects of surface water, and these may be more restrictive²⁷ than those under the Building Act 2004.
14. There are special provisions for rules about contaminated land.²⁸
15. There must be no blanket rules about felling of trees²⁹ in any urban environment.³⁰

E. Other statutes:

16. Finally territorial authorities may be required to comply with other statutes.

F. (On Appeal)

17. On appeal³¹ the Environment Court must **have regard** to one additional matter — the decision of the territorial authority.³²

[7] The One Plan is virtually operative and for practical purposes Part 1 is the Regional Policy Statement that the Manawatu District Plan must give effect to. Two policies in the Regional Policy Statement are of relevance to PC 46. These are policies 7-10 and 7-11, the contents of which are set out below:

Policy 7-10: *Historic heritage*[^]

The *Regional Coastal Plan*[^] and *district plans*[^] must without limiting the responsibilities of local authorities to address *historic heritage*[^] under the RMA include provisions to protect from inappropriate subdivision, use and development *historic heritage*[^] of national significance, which may include places of special or outstanding heritage value registered as Category 1 historic places, wāhi tapu, and wāhi tapu areas under the Historic Places Act 1993

²⁵ Section 76(3) of the Act.

²⁶ Section 76(2) RMA.

²⁷ Section 76(2A) RMA.

²⁸ Section 76(5) RMA as added by section 47 Resource Management Amendment Act 2005 and amended in 2009.

²⁹ Section 76(4A) RMA as added by the Resource Management (Simplifying and Streamlining) Amendment Act 2009.

³⁰ Section 76(4B) RMA – this “Remuera rule” was added by the Resource Management (Simplifying and Streamlining) Amendment Act 2009.

³¹ Under section 290 and Clause 14 of the First Schedule to the Act.

³² Section 290A RMA as added by the Resource Management Amendment Act 2005.

and give due consideration to the implementation of a management framework for other places of historic heritage.

Policy 7-11: *Historic heritage* identification

- (a) *Territorial Authorities* must develop and maintain a schedule of known *historic heritage* for their district to be included in their *district plan*.
- (b) The Regional Council must develop and maintain a schedule of known *historic heritage* for the *coastal marine area*[^] to be included in the *Regional Coastal Plan*[^].
- (c) *Historic heritage* schedules must include a statement of the qualities that contribute to each *site*^{*}.

Plan Change 46 as it affects Chapter 1 – the Introduction chapter

[8] Chapter 1 sets out the purpose of the District Plan and what it seeks to achieve and the statutory basis for what the document includes.³³ The new introduction is more concise and removes unnecessary text.

[9] There were no elements of Chapter 1 in contention. There were two submissions. One from Heritage New Zealand and the other from the Manawatu District Council. The recommendations of Ms Kissick, in respect of these submissions, was not contested at the hearing.

[10] Our decision is that the recommendation of Ms Kissick in her RMA, s 42A report, be adopted. This does not result in any changes to Plan Change 46 as notified.

Plan Change 46 as it affects Chapter 2– the Definitions chapter

[11] Accurate and well drafted definitions are a fundamental part of an effective District Plan. As part of this sectional review, changes to definitions will be made where required to accommodate the topic that is being addressed by the Plan Change. It is recognised however, that further adjustment to definitions may be required as a result of a better understanding of the implications of a definition as it affects other parts of the Plan yet to be reviewed. In addition, it is anticipated that an omnibus plan change sweep up any other definitional changes that are considered required.

³³ See Manawatu Sectional District Plan Review – *Proposed Plan Change 46 – Feilding Town Centre*,

- [12] Because the review is a sectional review, it is understandable that some submitters identify that the plan change is amending definitions, and use the plan change as a vehicle to insert definitions which are in reality more relevant to a different topic yet to be addressed. By way of example, the network utilities chapter of the Manawatu District Plan is not reviewed by Plan Change 46. That review will occur as part of another plan change. Submissions that seek to address definitions for the purpose of managing natural and physical resources relating to network utilities should not be dealt as part of Plan Change 46. Submitters should understand that every part of the Plan Change will be subject to a notified review, whether or not any material amendment is proposed. Where the definitions in question relate to the topic under review, then associated amendments to definitions will be considered as part of the plan change.
- [13] Ms Kissick in her RMA, s 42A report addressed a number of submissions on the definitions proposed to be amended in Chapter 2. Those amendments that she recommended be accepted were incorporated into a further tracked version of the amended plan change that is contained in Appendix 3 to her RMA, s 42A report.
- [14] None of the recommendations (whether to accept or refuse submissions) was contested in the hearing before us.
- [15] We adopt the recommendations by Ms Kissick in respect of the submissions on Chapter 2 of the Manawatu District Plan and accordingly approve her recommended changes to that chapter as set out in Appendix 3 to her RMA, s 42A report.

Plan Change 46 as it affects Chapter 4– the Historic Heritage chapter

Broad outline of Plan Change 46 as it relates to heritage

- [16] The Operative District Plan was promulgated prior to the enactment of RMA, s 6(f). Section 6(f) makes it a matter of national importance to recognise and provide for “the protection of historic heritage from inappropriate subdivision, use and development”.
- [17] The Operative Plan contains five objectives and associated policies of these two are applicable to buildings in the Feilding town centre are Objective HV1 and HV3. These respectively:
- (a) Seek to protect significant heritage places, values, items to maintain the cultural, historic, architectural, educational natural values associated with the place concerned; and
 - (b) Seek to promote greater public awareness of heritage places.

- [18] The Operative plan has appendices including Schedule 1E that identifies the buildings and objects with heritage value. Appendix 1H provides guidelines for redevelopment in central Feilding. Appendix 4H identifies the heritage precinct within Feilding and design guidelines. Appendix 4B has identified shop frontages and Appendix 4C specifies parking and veranda cover for central Feilding.
- [19] The Operative Plan provides a range of controls on the use and development of heritage resources.
- [20] The main changes proposed by Plan Change 46 are the following:
- (a) A simplified introduction statement recognising the values of historic heritage in the Manawatu district, the policy direction of the Regional Plan and the present statutory provisions including the obligation to recognise and provide for RMA, s 6(f); and
 - (b) A statement of heritage issues that is new in section 4.2 and prepared following public consultation; and
 - (c) Amended, and in some cases new, objectives and policies. Objective 1 is amended to read:

To protect significant historic built heritage that represents the history of the Manawatu district from inappropriate subdivision use and development.
 - (d) Plan Change 46 introduces eight new policies to achieve Objective 1. The first identifies relevant values associated with identification of historic built heritage. Policy 1.2 implements Objective 1 by proposing the scheduling of historic built heritage into two categories. The two categories are:
 - (i) Category A – Significant history built heritage with values of national significance; and
 - (ii) Category B – Significant history built heritage with values of regional or local significance.
 - (e) Plan Change 46 introduces a range of rules in an activity and performance standard cascade ranging from permitted to non-complying. Permitted activities are associated with making buildings safe or to improve seismic strength. Discretionary activities are external alterations, additions, removal or demolition of Category B heritage and other

similar activities. Non-complying activities include the alteration or partial or complete demolition of Category A historic built heritage.

- [21] The change in categorisation system implemented in Plan Change 46 is evaluated as Option 2 in the RMA, s 32 analysis.³⁴ In the efficiency and effectiveness assessment a paragraph states:

The categories are currently divided into buildings of national (A), regional (B) and local (C) significance. As discussed above, the existing schedule is split into three categories for protection, however the category C does not have the same level of protection afforded to it. It is recommended the existing schedule be reduced to two categories, both of which offer a higher level of protection to historic heritage. The criteria for assessing the heritage values of a building will also be revised to reflect the two proposed levels of protection. In order to reduce the three categories to two, it is proposed that buildings of national significance be considered as category A and buildings of regional and local significance be grouped together as category B.

- [22] Looked at as a whole, the Plan Change 46 moves further in the direction of protecting historic heritage from any use and development that has the potential to reduce or remove the values of identified historic built heritage while being permissive of appropriate remedial work. In the RMA, s 32 analysis, this approach is also justified because it accords with the preference of the community expressed in pre-notification and consultation. At Section 4.5.1 of the RMA, s 32 report, the following is stated:

Responses to the discussion document highlighted the Feilding town centre has a key role in the district as the rural centre. Heritage buildings in the town centre are widely seen as an asset and contribution to a neat character and identity that “makes Feilding, Feilding”. Encouragement of the use of the first floor of buildings in the town centre was also identified as being important for both increasing viability of two story buildings and in maintaining the scale and character of buildings in the town centre.

From responses of the public meetings held late 2002, it was clear that the retention and enhancement of the existing town centre was important. Focussing business development toward Manfield Park rather than over the railway line was also seen as important and would result in a compact town centre. The need to provide for a range of activities, including some limited and planned residential, was also identified.

Analytical approach

- [23] The fundamental four step approach to analysing resource management problems is set out by the Environment Court *Long Bay – Okura Great Park Society Inc v North Shore City Council*,³⁵ where at [20] the Environment Court said:

³⁴ Manawatu Sectional District Plan Review Proposed Plan Change 46 – Feilding Town Centre, page 140.

The traditional fact/law/judgment division of civil cases inadequately describes the role of a local authority (or the Environment Court on Appeal) in relation to a district or regional plan, policy statement or resource consent. We consider that there are not three, but four general steps in most proceedings under the RMA:

- (1) Fact finding;
- (2) Statements of the applicable law;
- (3) Risk predictions assessing the probabilities of adverse effects and their consequences;
and
- (4) The overall assessment as to what better achieves the purpose of the RMA.

[24] We will follow that broad analytical approach in the assessment of the issues in contention in relation to historic heritage. Before we do so, we outline the main matters in contention and outline the evidence that we heard.

Evidence from submitters and matters in contention

[25] The subject of Plan Change 46 that attracted the most contention was the part dealing with Chapter 4, and in particular, the management of historic heritage within Feilding town centre. This related not so much to the existence of historic heritage as itemised in Plan Change 46 or the values associated with the historic heritage. What was more in contention was the appropriateness of the level of protection afforded to this historic heritage by Plan Change 46, in light of:

- (a) The cost of maintaining and repairing and upgrading existing heritage buildings;
- (b) The risk that catastrophic failure of the buildings presents to public safety; and
- (c) The “economic drag” associated with the inability to obtain satisfactory tenancies from the existing heritage buildings even if upgraded and the risks of unacceptable economic return that would be associated with such upgrading and renovation thereby depriving Feilding of much urban needed renewal and its associated vitality.

[26] These issues go to the heart of how best to achieve the purpose of the Act as expressed in RMA, s 5.

[27] Mr Ford gave evidence for Feilding Promotion. Feilding Promotion is an economic development and community development agency aimed at making Feilding and the Manawatu

³⁵ Decision No. A078/2008.

district a great place to visit, shop, work and live. Mr Ford has extensive experience in the real estate industry spanning 36 years. Feilding Promotion has been involved in practical steps to improve the appearance of the built heritage of Feilding including streetscape redevelopment, town centre murals, clock tower construction and participation in earthquake prone policy development. Mr Ford said that Feilding Promotion generally supported the provisions of Plan Change 46 and appreciated the consultation undertaken in the development of Plan Change 46.

- [28] Mr Ford supported the approach of façade protection rather than entire building protection as proposed in Plan Change 46. Mr Ford said that Feilding Promotion considers that the community and visitors value the proposed collection of buildings for their facades only and in his experience there have been some very positive façade protection treatments around New Zealand.
- [29] Mr Ford acknowledged the problems associated with maintaining and rejuvenating heritage buildings and the costs associated with that for landowners. In that regard he noted the importance of tangible economic support to assist in the protection of heritage, alongside the provisions for the District Plan. At present the funding priorities of the Council is such that the Council has not allocated funds to support or assist seismic strengthening of heritage buildings.
- [30] Mr Ford said that the principal concern was that without a heritage focus on the core parts of Feilding that had special value, then there would be irreparable loss to the identity of Feilding. Mr Ford said that those core components were not necessarily reflected in the categorisation used by the Council. While Feilding Promotion did not disagree with the Category A classification for the four buildings proposed, it considered a high level of protection was also justified for a core collection of buildings around Manchester Square. These include the landmark Feilding Hotel and the important collection of commercial buildings from Brian Gifford Optometrist building at 4 Manchester Square, around the Smith Pharmacy building on the corner of Manchester Square and Street and down to the ex Helen Spillard building at 52 Manchester Street. Feilding Promotion proposed these facades be elevated to the Category A class by reason of their special heritage values and their central location and function in reflecting the identity of Feilding.
- [31] Heritage New Zealand was represented by Jillian Kennemore, a heritage advisor for Heritage New Zealand. Heritage New Zealand supported the approach of identifying significant built heritage by means of a schedule of historic building heritage in the District Plan, combined with rules applying to items in the schedule. The position of Heritage New Zealand was:

- (a) It supported the identification approach in PC 46;

- (b) It supported the reduction of the number of categories used from three to two, ie 'A' for national significance and 'B' for regional or local significance;
- (c) It supported the identification in the schedule of the heritage values of each building; and
- (d) It considered the schedule of items in Schedule 4a was a good fit with the New Zealand Heritage list; and
- (e) It considered that the proposed rules provide very good protection for both A & B categories.

[32] A number of minor issues that Heritage New Zealand had were resolved by the report by Ms Kissick pursuant to RMA, s 42A. The one issue unresolved for Heritage New Zealand was the lack of provision for alterations and additions of Category A buildings, even if compatible with the heritage values of the building. These alterations or additions would be classified as non-complying under Plan Change 46 as notified. Heritage New Zealand proposed a discretionary classification for these activities.

[33] Mr Bell gave evidence on behalf of himself and his company Focal Point Feilding FPF Limited. Focal Point operates the local cinema in a heritage building on Manchester Street. The request of Mr Bell was:

- (a) All old buildings may be demolished as of right;
- (b) The only controls in the District Plan are those that govern replacement buildings which should be subject to assessment against the Feilding Town Centre Design Guide which Mr Bell supported; and
- (c) Removal of Schedule 4a from the District Plan. Schedule 4a lists the significant historic built heritage.

[34] Mr Bell's interest was personal and because he considers his position is in the interests of Feilding generally. Mr Bell explained that he and his wife wished to demolish all of 75-77 Manchester Street and some of 81 Manchester Street and replace them with modern buildings in a style and appearance which is in keeping with the proposed Feilding Town Centre Guide. The submission he made would enable that vision to be achieved. In terms of the interests of Feilding generally, Mr Bell stated at [53] that:

- (a) The heritage buildings are of a construction type that provides them typically with less than 10% compliance with the current Building Code for seismic strength; and
- (b) Many are no longer fit for purpose with high levels of redundancy such as vacant first floors; and

- (c) Most are not being maintained to a sufficient level and in many cases buildings are deteriorating at alarming rates; and
- (d) Updating and/or seismic strengthening is economically unrealistic; and
- (e) Insurances are either exorbitant or unobtainable.

[35] In support Mr Bell's called two witnesses. The first was real estate agent, Mr Ian Steele, from Property Brokers specialising in commercial leasing. The second witness was Mr Shane O'Brien who is a builder and developer. Mr Steele explained how hard it is to let heritage buildings in Feilding and how difficult it is for landowners to insure them or sell them. He considered that the existence of these buildings, rather than replacement superior space, was a factor in the inability to secure high quality tenants who wish to have a retail presence in Feilding.

[36] Mr O'Brien has carried out a major redevelopment on the eastern corner of Manchester Square. He describes the difficulties associated with the demolition of a heritage building that formed part of that development known as the "Sandilands" Building on Kimbolton Road. He indicated that the experience of obtaining consent for demolition of a heritage building would put him off ever owning a heritage building in the future. He considered that the replacement building he built was better suited to the needs of tenants and was of sympathetic design.

[37] Ms Tucker, a Policy Planner for Horizons Regional Council, provided a letter dated 29 May 2014 in support of the Council's submission. The Council's submission is dated 17 October 2013 at [52] *et ff* states that the Regional Council considers that Plan Change 46 gives effect to Policy 7-10 of the proposed plan *in that it identifies significant built historic heritage and methods to secure their protection*. In the letter dated 29 May 2014, the Horizons Regional Council reiterated its opposition to the relief sought by Mr Bell and Focal Point, Feilding.

The built heritage resources of Feilding town centre

[38] The built heritage resources identified in Plan Change 46 are set out in Schedule 4a and each item is listed with a map reference, a description of the building, its address, its categorisation and finally a statement of significant historic heritage values. Schedule 4a is based on a study that identified built heritage in Feilding town centre. The study is called *Heritage Inventory for the Manawatu District Council 2013*. This inventory was prepared with input from the conservation architect, Ian Bowman. For each building the inventory records the physical and social history, the architectural description and summary of heritage values. While some of the ownership details are no longer correct, the inventory is otherwise a comprehensive record of significant historic built heritage in Feilding town centre.

- [39] The Operative District Plan lists 42 items. Two are in Class A, 34 are in Class B and 6 are in Class C. Plan Change 46 has 42 listed items, 8 of which are new. 4 are Category A, 38 are Category B.

Environmental risks associated with historic built heritage

- [40] The most obvious risk is that the heritage and its values are lost by demolition or inappropriate alteration. This risk is very high in light of the current prevailing conditions including:

- (a) Difficulty insuring heritage buildings of the construction type that is common in Feilding town centre;
- (b) The difficulty of obtaining an adequate economic return from heritage buildings and the significant cost of repairing them; and
- (c) The inevitable preference of landowners to construct new building rather than restore existing heritage buildings. Mr Bell's aspirations are a very good example of that.

- [41] There are also risks that landowners will be dis-incentivised from improving and strengthening their buildings if there are unreasonable regulatory barriers to implementing that work. There are other risks that are less easy to quantify. There is a risk to the public safety associated with seismic events that lead to catastrophic collapse of un-strengthened built heritage. One cannot ignore the trajectory of legislation towards requiring the strengthening of buildings to withstand seismic events. At some point, perhaps in the life of this plan, a crunch point will be reached where buildings must be either strengthened or demolished.

- [42] Another environmental risk is a loss of economic and social vitality in Feilding because landowners are kept 'between a rock and a hard place'. The rock is the inability to significantly alter or demolish historic heritage. The hard place is facing either an uninsurable building and low occupancy, or spending large sums with substantial risk that there will be no economic return. This conundrum cannot be placed entirely at the feet of the aging condition of the buildings. Feilding is subject to wider secular trends in retailing and economic activity. There is credible information from economic reports of the Council that historic heritage is part of the 'magnet' that attracts people to shopping in Feilding. Long term economic vibrancy may well be best achieved by leveraging off the unique heritage resources of Feilding.

Our Analysis

- [43] RMA, s 6(f) represents an axial shift towards protection of historic heritage rather than "use and management" in achieving the overarching purpose of the Resource Management Act. There is general acceptance that Schedule 4a in Plan Change 46 is an appropriate inventory.

Faced with that reality, we must incline towards protection from “inappropriate use and development” of that built heritage.

[44] We are also obliged to give effect to Policy 7-10 in the One Plan. To “give effect to” requires positive implementation. The recent Supreme Court decision *Environmental Defence Society Inc v New Zealand King Salmon Company Limited*³⁶ has confirmed that “give effect to” means “implement” and “it is a strong directive creating a firm obligation on the part of those subject to it”.³⁷

[45] We do not agree with the submission by Heritage New Zealand that the non-complying status is too onerous for additions or alterations to Category A buildings in Schedule 4a. We have reached that conclusion on the following grounds:

- (a) The Category A buildings are a small group of core heritage that is of national significance;
- (b) The Category A buildings are especially rare and precious;
- (c) None of the landowners have opposed that activity classification and they will carry the burden of the rule regime;
- (d) The gateways in RMA, s 104D that must be passed with a non-complying status provide a clear signal that alterations and additions must be exceptional if they are to be approved;
- (e) A non-complying status allows for caution and ensuring the decision maker is satisfied the proposal is not contrary to the objectives and policies of the plan;
- (f) The non-complying status would not militate against sensible additions or alterations that sustain and enhance the heritage values of the Category A building; and
- (g) The non-complying status need not frustrate the process of collaborative engagement with landowners to achieve an optimal solution.

[46] In arriving at our conclusion that the non-complying status is appropriate for alterations and additions to Category A buildings, we draw parallels with the reasoning of the Environment Court on the biodiversity provisions of the One Plan. In the decision on Chapter 3 at [3-115], the Environment Court preferred a non-complying activity status for activities affecting rare and threatened habitats. It is a slightly different context, but much of the analysis resonates with us. The relevant paragraph reads:

We agree with the Minister and NZ Fish & Game that *non-complying* activity status is the better approach. Our reasons are:

³⁶ [2014] NZSC 48.

³⁷ [2014] NZSC 38 at [77].

- The evidence of Ms Maseyk, Mr Horcroft and Dr Gerbeaux informed us that there are a few activities affecting *rare and threatened habitats* which would have minor adverse effects;
- *Non-complying* status sends a strong symbol;
- If there is a section 104D gateway, the consent authority need only have regard to the biodiversity policy framework, among other matters, including part 2. Under section 104(1), the decision maker must have genuine attention and thought to any relevant provisions or plan, but has discretion to decide there are countervailing considerations outweighing the strict application of even a strongly expressed policy. The greater discretion afforded to a decision maker under *discretionary* activity rule is inadequate to ensure biodiversity is maintained in the region. *Non-complying* activity status results in a more focused examination of the biodiversity objectives and policies: these are not just one of a number of plan provisions to have regard to;
- Section 6(c) is not a veto, but it has more weight if it is a Section 6(c) type gateway and not only one of the matters to have regard to;
- The need for some caution comes with a need to be satisfied the proposal is not contrary to the objectives and policies;
- Other similar uses in the plan involving resources at their limit (example water) have *non-complying* activity status. Water is similar in that it involves a consent applicant obtaining information from the Council in the resource example volumes already allocated;
- It would be clear to a decision maker whether or not the proposal the contrary to the directions set by the provisions. A proposal would only meet the objectives and policies if it can demonstrate that it is designed to take reasonable measures to, first, avoid more than minor adverse effects, and second, take reasonable measures to remedy or mitigate these effects and finally offset residual effects;
- *Non-complying* status need not militate against the process of working with landowners.

[47] We do not agree with the submission by Mr Ford and Feilding Promotion that the cluster of built heritage on Manchester Square should be reclassified as Category A. We disagree for the following reasons:

- (a) The buildings proposed to be reclassified would not qualify as Category A under Policy 1.2 which describes Category A buildings as “significant historic built heritage with values of national significance”; and
- (b) The argument is based on the incorrect premise that the policy and rule framework will make it easy for Category B buildings to be altered or demolished;
- (c) In the professional assessment of whether the buildings are Category A or B, the group value was taken into consideration by Mr Bowman;

- (d) In the assessment of an application in respect of a Category B building, the prominence and significance of the building will be a factor in deciding whether or not consent should be granted. Categorisation is not the final word and the individual circumstances of each building and each proposal, must be evaluated pursuant to RMA, s 104;
- (e) If the buildings were reclassified as Category A buildings, as Feilding Promotion proposes, then they would attract the non-complying activity status for modification, alternation or additions. We consider this too onerous for landowners in the circumstances; and
- (f) Directing focus on the group value of the centre of town and not the significant heritage that might exist elsewhere, as on the corner of Fergusson Street and Goodbehere Street (i.e. Dominion Building), would send a signal that the value of those heritage items not in the centre of town are less valuable;
- (g) The proposal of Feilding Promotion was not supported by any expert heritage evidence;

[48] Mr Ford is right that the group value exists for the buildings identified and this should be acknowledged in the Schedule 4a. This is achieved by the amendment in Schedule 1 attached to this decision.

[49] We do not agree with the submission by Mr Bell and Focal Point Feilding Limited that Schedule 4a be deleted, and the only control on the streetscape and design in Feilding township is the requirement for new buildings replacing heritage buildings to be assessed against the Feilding Town Centre Guidelines. Quite simply that submission does not:

- (a) Do what RMA, s 6(f) directs; and
- (b) Give effect to the One Plan; and
- (c) Fulfill the functions of the Manawatu District Council in managing the effects of subdivision use and development in order to achieve the overarching purpose of the RMA which is sustainable management.

[50] Mr Bell did however make a number of valid points. He reminded us of the 'real world' challenges facing communities in protecting historic heritage where the building fabric no longer meets regulatory requirements, together with the challenges confronting landowners in achieving economic return. Mr Bell invited us to do a site visit and we visited his properties and others. It is plain from that site inspection that the internal configuration of a number of buildings is less than ideal and would be unlikely to generate sufficient economic return to warrant regeneration or rejuvenation. There were also examples of deferred maintenance on

the external façade which speaks to the challenges confronting landowners owning heritage buildings. The picture is an evolving one with regulatory requirements also on the horizon that are likely to have an impact on landowners and in all likelihood will increase the economic burden on them. We are also conscious that proposals may impact on heritage, but nevertheless, provide considerable injection of economic vitality into Feilding township. It is important that these matters are weighed in the overall assessment, even if while retaining the preferential option for protection for historic heritage evident in the policy suite as proposed.

[51] We toyed with the idea of amending Policy 1.5 in Section 4.3, to replace the word “where possible”, with “where reasonably practicable”. The reason is that the antonym of ‘possible’ is ‘impossible’ which suggests an unrealistically high target. On the other hand, synonyms of “possible” include; “achievable”, “viable” and “feasible”. All of these words connote an element of practicality and reasonableness. So in the end we are comfortable with Policy 1.5 as drafted. We consider however, that Policy 1.7 should be re-drafted to read as follows:

To balance the protection of significant historic heritage values with other resource management issues and public safety concerns and in making an assessment under Policy 1.5 and achieving this policy to have regard to:

- (a) Market conditions affecting the feasibility of adaptive reuse; and
- (b) The economics of a range of reasonably practicable options; and
- (c) The contribution that any replacement building might make to the vitality and vibrancy of the Feilding town centre.

[52] The phrase “have regard to” has a well known legal meaning. It directs that the specified matter be considered. But whether it carries any weight will depend on the individual circumstances of any case. The matters added would be relevant in any event under a RMA, s 104A assessment. However, flagging these items ensures that attention is given to these matters in the overall exercise of discretion.

Overall outcome on heritage

[53] For the reasons that we have given, we generally agree with the comprehensive report prepared by Ms Kissick and her recommendation for changes to the Plan in response to submissions. In relation to the principal issues in contention, we generally agree with the conclusions of Ms Kissick, except for the modification to Policy 1.7. The outcome of our decision for individual submissions points is summarised in the RMA, s 42A report by Ms Kissick. In addition we approve the minor amendments in Schedule 1 attached.

Plan Change 46 as it effects Chapter 10 – The Business Zones Chapter

Broad outline of Plan Change 46 as it relates to the business zones

[54] Plan Change 46 is focussed on the natural and physical resources of Feilding town centre. This involved not only consideration of the built heritage, but also the efficient and effective operation of all other land and physical resources within the Feilding town centre. Bundling all relevant resource management issues relating to Feilding town centre, enables one to gain a perspective on the overall planning strategy for Feilding town centre and ensure good relationship between policies and rules across all.

[55] The Operative Plan currently contains one Business Zone for the district and this applies to the area surrounding Manchester Square. Plan Change 46 does not consider that the existing Business Zone is the most appropriate way to protect the existing character of the central core of the town centre. In addition, Plan Change 46 proposes change because the existing plan provisions do not recognise the need for larger scale business activities to be provided for in Feilding town centre.

[56] Plan Change 46 promotes the inclusion of the business zones called the Inner Business Zone and Outer Business Zone respectively. Together they are to achieve a comprehensive and consistent planning framework for all retail, commercial and other complementary activities in the Feilding town centre. The introduction to Section 10.1 explains the purpose of each zone as follows:

The Inner Business Zone relates to the central heart of the Feilding town centre. This zone seeks to retain the existing boutique-scale and character of the town centre and includes the area bounded by Warwick Street, Grey Street, part of Denbigh Square and Eyre Street. Compatible commercial and community activities are provided for throughout the zone. In addition to this, dwellings are provided for above the first floor level to promote a diverse range of use within the zone. The zone seeks to create an interesting and pleasant environment for pedestrians and to encourage pedestrian movement.

The Outer Business Zone relates to the area adjoining the Inner Business Zone. This zone provides for larger scale activities that require larger building footprints than the Inner Business Zone. The zone also provides for a specific area of large format retail activities.

[57] Appendix 10a introduces the Feilding Town Centre Design Guide. Rules are introduced governing development in the Inner Business Zone to ensure that the streetscape presentation of any new building is consistent with the Feilding town centre design guidelines.

[58] In addition to the large format retail overlay, there is an overlay relating to veranda provision.

Overall analysis of proposed changes to the Business Zone

[59] Ms Kissick in her RMA, s 42A report addresses all of the submissions in relation to the proposed changes to Chapter 10 of the Manawatu District Plan. Where she considered that relief should be accepted she proposed amendments that are recorded in Appendix 10 to her report.

[60] We did not receive any evidence that contradicted the opinions of Ms Kissick or challenged any provision of Plan Change 46 as it affects Chapter 10 of the District Plan.

[61] After reviewing the provisions of the plan we consider that the amendments to Chapter 10 in Plan Change 46 as amended in Ms Kissick's report are appropriate. We consider it especially valuable that there is now an overlay for large format retail immediately adjacent to Feilding town centre. This will contribute to the vitality and vibrancy of the Feilding retail core and provide a positive inter relationship between the Inner Business Zone, with its pedestrian focus, and the Outer Business Zone.

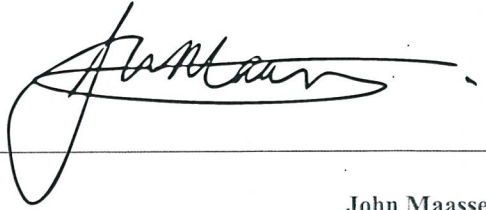
Overall conclusions on Plan Change 46

[62] Plan Change 46 addresses the sustainable management of the natural and physical resources of the heart of the Manawatu district, which is Feilding town centre. Plan Change 46 is a comprehensive piece of strategic planning work based on a reliable sub-terrain of technical evidence as to the nature and characteristics of the resources within Feilding town centre and the economic importance of Feilding town centre. Plan Change 46, rather than dealing with a topic and applying it district wide, addresses a place and considers the natural and physical resources within that place and how to manage them sustainably. Given the importance of the place, Feilding, to the functioning of the Manawatu district, this an entirely appropriate planning response as part of the sectional review of the District Plan.

[63] We agree with the conclusions and recommendations of Ms Kissick in her RMA, s 42A report and adopt them as our decision, except for the modification to Policy 1.7 in Section 4.3 of the Plan referred to in our decision and those further amendments in Schedule 1 recommended by Mr Bell and Ms Kissick in their right of reply . The effect of our decision on the submission

points by submitters is fully recorded in the RMA, s 42A report by Ms Kissick and need not be repeated here.

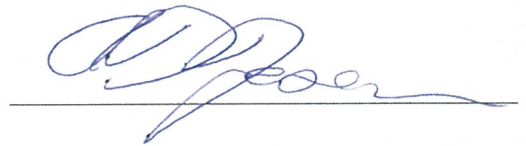
[64] We thank submitters for their time and their contribution to Plan Change 46.



John Maassen



Howard Voss



Tony Jensen

Schedule 1

1. Please add recognition of the “group” values alongside the following buildings under Schedule 4a – Significant Historic Built Heritage – Feilding Town Centre as follows (additions underlined, deletions strikethrough):

<i>Map ref.</i>	<i>Building</i>	<i>Address</i>	<i>Proposed Building rank</i>	<i>Significant historic heritage values</i>
B25	Carthew’s Building (Pharmacy)	1 Manchester Square, Feilding	B	Regionally significant for historical, and architectural <u>and group</u> heritage values.
B26	Cooper Rapley Building (Visique)	4 Manchester Square, Feilding	B	Regionally significant for historical, and architectural <u>and group</u> heritage values.
B33	Spillard’s	52 Manchester Street, Feilding	B	Regionally significant for historical, and architectural <u>and group</u> heritage values.
B34	Spillard’s	54-56 Manchester Street, Feilding	B	
B35	Spillard’s	58 Manchester Street, Feilding	B	
B36	Williamson Building	60-62 Manchester Street, Feilding	B	Regionally significant for historical, and architectural <u>and group</u> heritage values.
B37	JDs Linens (Williamson Building)	68 Manchester Street, Feilding	B	Regionally significant for historical, and architectural <u>and group</u> heritage values.

B38

The Shed

70 Manchester Street,
Feilding

B

Regionally
significant for
historical, ~~and~~
architectural and
group heritage
values.

2. Please amend clause 10.4.3 as follows (additions underlined, deletions strikethrough):

10.4.3 Restricted Discretionary Activities - Inner Business Zone

The following are restricted discretionary activities in the Inner Business Zone:

- a. Any activity, specified in Rule 10.4.1 above, that does not comply with one or more of the standards in Rules 10.4.2 a-o.

For this activity, the Council has restricted its discretion to considering the following matters:

- scale and location
- building form (design and materials)
- traffic and pedestrian safety
- noise
- continuation of streetscape character
- signage

In determining whether to grant a resource consent and what conditions to impose, the Council will, in addition to the objectives and policies of the Business Zone, assess any application in terms of the following assessment criteria:

- i. Whether the application will result in any adverse effects on amenity values of neighbouring properties or the character of the Inner Business Zone
- ii. Whether the application remains consistent with the intention of the standard(s) it infringes.
- iii. Whether the application will result in any adverse effects on streetscape character
- iv. The extent to which there will be adverse effects where an application does not meet two or more standards.

- b. The construction of any new building

For this activity, the Council has restricted its discretion to considering the following matters:

- Demonstrated compliance with the Feilding Town Centre Design Guidelines (Appendix 10A)
- scale and location
- building form (design and materials)
- relationship to adjacent buildings
- design and appearance of verandah
- contribution to streetscape character
- signage

c. External additions or alterations to an existing building

For this activity, the Council has restricted its discretion to the following matters:

- demonstrated compliance with the Feilding Town Centre Design Guidelines (Appendix 10A)
- scale and location
- building form (design and materials)
- relationship to adjacent buildings
- design and appearance of verandah
- contribution to streetscape character
- signage