

**IN THE ENVIRONMENT COURT
CHRISTCHURCH REGISTRY**

ENV-2018-CHC-

IN THE MATTER the Resource Management Act 1991 ("the Act")

AND

IN THE MATTER of an appeal under Clause 14(1) of Schedule 1 of the Act

BETWEEN **HERITAGE NEW ZEALAND POUHERE TAONGA**

Appellant

AND **SOUTHLAND REGIONAL COUNCIL**

Respondent

**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION ON PROPOSED PLAN ON BEHALF
OF HERITAGE NEW ZEALAND POUHERE TAONGA**

17 May 2018

Heritage New Zealand Pouhere Taonga
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TO: The Registrar
Environment Court
Christchurch

1. Heritage New Zealand Pouhere Taonga (Heritage New Zealand) appeals against part of a decision of Southland Regional Council on the following plan:

Proposed Southland Water and Land Plan (Plan)

2. Heritage New Zealand made a submission on that plan.
3. Heritage New Zealand is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. Heritage New Zealand received notice of the decision on 4 April 2018.
5. The decision was made by Southland Regional Council.
6. The parts of the decision that Heritage New Zealand is appealing are:
 - a) The removal of all provisions relating to historic heritage (Chapter 16 of the Report and Recommendations of the Hearing Commissioners).
 - b) Location within the Plan rules of advice notes regarding the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA 2014).
 - c) The absence of advice notes regarding the HNZPTA 2014 in the following rules:

Rules 32B (Construction, maintenance and use of new agricultural effluent storage facilities); 43 (farm landfills); 53 (bores and wells); 55 (monitoring and sampling structures); 59A (on-farm sediment traps); and 63A (Navigational aids and health and safety signs).
 - d) The rejection of Heritage New Zealand's submission seeking the retention of the requirement for Farm Management Plans maps or aerial photographs to show the location of 'any known and recorded heritage site' (Appendix N Part B – Management Plan Content, section 3 in notified Plan).
 - e) An apparent error in Appendix S concerning *Archaeological discovery without an authority (Protocol)*.

7. Reasons for the Appeal

7.1 Heritage New Zealand considers that the decision appealed does not accord with the relevant requirements of the RMA and is contrary to Part 2 of the RMA. In particular, the decision appealed:

- a) Does not promote the sustainable management of natural and physical resources;
- b) Does not recognise and provide for the protection of historic heritage from inappropriate subdivision, use, and development¹;
- c) Does not give effect to the Southland Regional Policy Statement²;
- d) Does not result in the most appropriate plan provisions in terms of section 67 of the RMA; and
- e) Is contrary to good resource management practice.

Deletion of Historic Heritage provisions – objectives and policies

7.2 Heritage New Zealand submitted in support of notified Objectives 9 & 13 and Policies 20, 24 & 28 which recognised that certain activities relating to the use of water and land have the potential to adversely affect historical and cultural heritage values, and that appropriate management of these values is necessary. These submissions were rejected and references to historic heritage values have been removed from these objectives and policies.

7.3 The removal of the references to historic heritage values in the objectives and policies represents a significant change in direction from the notified version of the Plan and severely compromises the Plan's ability to adequately manage the effects of activities on historic heritage values, particularly in relation to discretionary and non-complying activities.

7.4 The decision to remove the references to historic heritage from the objectives and policies means that the Plan now fails to give effect to the Southland Regional Policy Statement, particularly Objective HH.1 (Protection of historic heritage), Policy HH.2 (Protection of Historic Heritage) and Method HH.1 (District and regional plans).

¹ Section 6(f) RMA

² Section 67(3) RMA

7.5 Further, the absence of any provisions pertaining to historic heritage means that the Plan fails to recognise and provide for the protection of historic heritage from inappropriate subdivision, use, and development as required pursuant to section 6(f) of the Act.

Advice Notes

Use of advice notes regarding the HNZPTA 2014

7.6 Heritage New Zealand supports the inclusion of an advice note to inform any Plan users of the requirement to comply with HNZPTA 2014.

7.7 However, the use of the advice note is not consistent in the Plan, in particular it has not been applied to the following rules, which as notified, contained clauses relating to historic heritage: Rules 32B (new rule regarding Construction, maintenance and use of new agricultural effluent storage facilities); 43 (Farm landfills); 53 (Bores and wells); 55 (Monitoring and sampling structures); 59A (On-farm sediment traps); and 63A (Navigational aids and health and safety signs).

Location of HNZPTA 2014 advice notes in the Plan Rules

7.8 A second issue with the decision to insert HNZPTA 2014 advice notes in the rules relates to their location within the following rules: Rules 57, 58, 59, 60, 61, 62, 64, 66, 67, 68, 72, 73, 75, 77, and 78. Whereas in these rules the advice note has been inserted after the permitted or controlled activity conditions, with the rules then going on to outline restricted discretionary, discretionary or non-complying activities, in other rules the note has been placed at the end of a rule (for example Rule 40).

7.9 The archaeological site protection provisions of the HNZPTA 2014 are applicable regardless of activity status under the Plan, however Heritage New Zealand considers that inconsistencies in the location of the HNZPTA 2014 note within the rules could lead to confusion in regards to which activities controlled by the Plan the provisions of the HNZPTA 2014 apply to.

Appendix N – deletion of requirement for Farm Management Plans to identify the location of any known and recorded heritage site

7.10 Heritage New Zealand submitted in support of notified Appendix N, which included the requirement to show the location of 'any known and recorded heritage site' in Farm Management Plans.

- 7.11 This submission was rejected and the requirement was removed.
- 7.12 The rejection of this submission point is inconsistent with the approach taken elsewhere in the decision version of the Plan of providing information about the appropriate management of archaeological sites pursuant to the HNZPTA 2014 through the use of advice notes.
- 7.13 The inclusion of this information in Farm Management Plans is a straightforward and efficient means of ensuring the Plan aligns with section 6(f) of the Act and gives effect to the historic heritage provisions SRPS, particularly Objective HH.1 and Policies HH.1, HH.2 and Method HH.1. In this context the deletion of this requirement is not considered to be appropriate or justified.
- 7.14 Some re-wording of the clause is necessary as a result of the deletion from the Plan of the definition of 'recorded historic heritage site.'

Appendix S

- 7.15 Appendix S sets out information for the public regarding responsibilities relating to archaeological sites. The section of this appendix that is headed *Archaeological discovery without an authority (Protocol)* contains an error.
- 7.16 The section currently refers to situations when an archaeological authority has been obtained, rather than where an authority has not been obtained. Heritage New Zealand therefore seeks that this be corrected as set out in section 8 below.

8. Relief sought

- 8.1 That Objectives 9 and 13 and Policies 20, 24 and 28 are reinstated as notified;
- 8.2 That Policy 29 is amended as follows by inserting the clause requested in Heritage New Zealand's submission dated 1 August 2016:

Policy 29 – Provide for the extraction of gravel

Recognise the value of gravel and provide for its extraction to meet the social, economic and cultural needs of the community in a way that avoids, remedies or mitigates adverse effects on land, groundwater quality, rivers and their margins; and:

- 1. for river based extractions, requires the restoration of aquatic and riparian habitat once the gravel extraction activity has ceased; and*
- 2. results in no long-term net loss of habitat in the river channel, bed or floodplain; and*
- 2a. ensures that the rate and volume of gravel extraction is sustainable; and*

3. *ensures no degradation of flood protection and erosion control infrastructure and the integrity of physical resources; and*
4. *does not adversely affect the Ngāi Tahu cultural values and interests associated the land or river, including taonga species habitat, mahinga kai, mātaítai and taiāpure; and*
5. *results in no long-term adverse effects on recreational values; and*
6. *maintains public access (except in circumstances where public health and safety are at risk).*
7. *Avoids, remedies or mitigates adverse effects on historic heritage values*

8.3 With the exception of the note within Rule 51, that advice notes concerning the HNZPTA 2014 within the rules be relocated to sit more centrally in the Plan underneath the rule topic headings as follows:

Region-wide Rules

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

...

Discharge Rules

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

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Land Use Rules

Note: *In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S.*

And so on, under the remaining rule topic headings of

- Wastewater, Effluent and Sludge
- Landfills
- Land Contamination
- Taking and Using Water
- Structures in river and lake beds and wetlands
- Bed disturbance activities in river and lake beds

8.4 Alternatively, if the above relief is not accepted, that the following advice note concerning the HNZPTA 2014 is inserted into rules 32B (Construction, maintenance and use of new agricultural effluent storage facilities); 43 (Farm landfills); 53 (Bores and wells); 55 (Monitoring and sampling structures); 59A (On-farm sediment traps); and 63A (Navigational aids and health and safety signs):

In addition to the provisions of this Plan and any relevant district plan, any activity which may modify, damage or destroy pre-1900 archaeological sites is subject to the archaeological authority process under the Heritage New Zealand Pouhere Taonga Act 2014. The responsibilities regarding archaeological sites are set out in Appendix S

8.5 That section 3 of *Part B – Management Plan Content* of Appendix N be amended as follows:

3. *The FEMP contains a map(s) or aerial photograph(s) of the landholding at a scale that clearly shows the locations of:*
 - (a) *the boundaries; and*
 - ...
 - (j) the location of any historic heritage site recorded in the New Zealand Archaeological Association Site Recording Scheme, entered on the New Zealand Heritage List, or scheduled in an operative or proposed District or Regional Plan.*

8.6 That the final section of Appendix S entitled *Archaeological discovery without an authority (Protocol)* be amended as follows:

Archaeological discovery without an authority (Protocol)

If an authority ~~is obtained~~ is not in place, and an archaeological site is subsequently discovered, the following protocol must be followed:

- (a) *immediately cease operations; . . .*

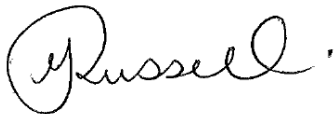
8.7 Any additional changes which are required to the text of the Plan to give effect to the relief sought in this reference.

9. Attachments

9.1 Heritage New Zealand attaches the following documents to this notice:

- a) a copy of submission and further submission;
- b) a copy of the relevant part of the decision;
- c) a list of names and addresses of persons to be served with a copy of this notice.
- d) a copy of Chapter 14 Historic Heritage of Southland Regional Policy Statement

Dated 17 May 2017



Melanie Russell

For and on behalf of Heritage New Zealand Pouhere Taonga

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Contact person:

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Advice to recipients of copy of notice of appeal

How to become party to proceedings

You may be a party to the appeal if you made a submission or a further submission on the matter of this appeal.

To become a party to the appeal, you must,—

- within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
- within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.

Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing or service requirements (*see* form 38).

How to obtain copies of documents relating to appeal

The copy of this notice served on you does not attach a copy of the appellant's submission or part of the decision appealed. These documents may be obtained, on request, from the appellant.