

**IN THE ENVIRONMENT COURT
I MUA I TE KOOTI TAIAO O AOTEAROA**

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 **QUEENSTOWN LAKES DISTRICT COUNCIL**

Respondent

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

18 June 2018

TO: The Registrar
Environment Court
Christchurch

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

Proposed Queenstown Lakes District Plan Stage 1 (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 7 May 2018.
5. The decision was made by Queenstown Lakes District Council.
6. The parts of the decision that Heritage New Zealand is appealing are:
 - a) Section 26.2, in particular that the wording does not make it sufficiently clear that conservation plans to support nominations for Category 1 heritage features will only be *'encouraged'*.
 - b) Policy 26.3.3.1 where it states *'and in conjunction with Heritage New Zealand archaeological sites'*.
 - c) The deletion of a number of significant heritage features from the Plan as a result of the deletion of notified Schedule 26.10 'Archaeological Sites' of the Inventory of Protected Features.
 - d) Errors pertaining to specific details (for example legal descriptions and mapping) of several heritage features listed in Schedule 26.8 Inventory of listed Heritage Features as set out in [7.22 & 7.23] below.
 - e) An apparent error in Section 27.5.13 of the Plan which refers to *'Heritage Areas'* rather than *'Heritage Overlay Areas'*.
 - f) Inconsistent reference to Schedule 26.8 throughout Chapter 26, and a lack of clarity regarding the intent of the term *'Inventory of Protected Heritage Features'*.

7. Reasons for the Appeal

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

- a) Does not promote the sustainable management of natural and physical resources;
- a) Does not recognise and provide for the protection of historic heritage from inappropriate subdivision, use, and development¹;
- b) Does not give effect to the Otago Regional Policy Statement²;
- c) Does not result in the most appropriate plan provisions in terms of section 75 of the Act; and
- d) Is contrary to good resource management practice.

Section 26.2.1 and the provision of Conservation Plans to support nominations for the scheduling of Category 1 Heritage Features

7.2 Section 26.2.1 sets out information that is expected to be provided with any nomination for new District Plan heritage listings (as well as removals and amendments to categories).

7.3 Heritage New Zealand submitted opposing the requirement in 26.2 & 26.2.3 of the notified Plan for nominations of Category 1 features to be accompanied by a conservation plan on the basis that the requirement is overly onerous, costly, and requires owner co-operation.

7.4 This submission was accepted³ and it was recommended that the text be amended to provide for 'encouraging' the preparation of a Conservation Plan. The decision version of Chapter 26 however does not appear to reflect this intent.

7.5 Although the phrase '*is required*' has been removed from the text in the decision version of the Plan, it is still not clear that a Conservation Plan is encouraged rather than being a strict requirement.

¹ Section 6(f) of the Act

² Section 75(3) of the Act

³ 'Report and Recommendations of Independent Commissioners Regarding Chapter 26 – Historic Heritage' at [36].

Relief sought

7.6 That section 26.2.1 is amended as follows:

26.2.1 . . .

c. for individual buildings and structures, a report from a suitably qualified conservation architect, using the Council's criteria, and for Category 1 features, a Conservation Plan is encouraged. Any Conservation Plan shall be prepared in accordance with Heritage New Zealand's Best Practice Guidelines;

Policy 26.3.3.1 (Notified Policy 26.5.3.1)

7.7 Heritage New Zealand submitted in support of this Policy as notified, however the decision version includes additional phrasing that is incorrect and misleading to Plan users.

7.8 Policy 26.3.3.1 provides for the identification of heritage values of heritage precincts, heritage features, sites of significance to Māori, areas of heritage significance and also states '*and in conjunction with Heritage New Zealand archaeological sites*'.

7.9 The policy incorrectly implies that the identification of archaeological sites is a responsibility of Heritage New Zealand and as such this phrase must be removed from Policy 26.3.3.1.

Relief Sought

7.10 That Policy 26.3.3.1 be amended as follows:

Identify the heritage values of heritage precincts, heritage features, sites of significance to Maori, ~~and~~ areas of heritage significance, and ~~in conjunction with Heritage New Zealand~~ archaeological sites.

Deletion of heritage features listed in Schedule 26.10 – Archaeological Sites

7.11 Heritage New Zealand supported, with amendments, the proposed framework relating to the management of scheduled archaeological sites as set out in Table 5 and Schedule 26.10 of the notified Plan, which recognised that certain activities relating to the use of land have the potential to adversely affect archaeological historic heritage values, and that appropriate management of these values is necessary. These submissions were rejected and Schedule 26.10 and the associated rules contained in Table 5 (26.6.17 – 26.6.20) have been deleted.

7.12 Schedule 26.10 was derived from the Archaeological Sites listed in the Operative Plan Inventory of Protected Features (at Section 5). Schedule 26.10 contained 11 archaeological sites that are also listed as Category 2 Historic Places in the New Zealand Heritage List/Rārangi Kōrero ('the List').⁴

7.13 The List identifies New Zealand's significant and valued historical and cultural heritage places⁵ and when preparing its District Plan, the Council is required to have regard to the relevant entries on the List.⁶ Heritage New Zealand considers that these are relevant List entries for the Council to consider and include in the Plan as scheduled heritage features.

7.14 Inclusion in the Plan as scheduled heritage features means that there are activity standards that will apply and therefore manage adverse effects on the heritage values of these features.

7.15 The removal of the archaeological sites included in notified Schedule 26.10 severely compromises the Plan's ability to adequately recognise and provide for the protection of historic heritage, specifically archaeological values, from inappropriate subdivision, use, and development as required pursuant to section 6(f) of the Act.

Relief sought

7.16 That the following heritage features be reinstated into the Plan in Schedule 26.8 or similar schedule:

- | | |
|-----|--|
| 700 | <i>Māori Ti Pits and paved area. Between Dart Bridge and Kowhai Creek true right bank of Dart River below road</i> |
| 705 | <i>Sawmill Settlements Turners Creek - Kinloch Road Mill Creek</i> |
| 706 | <i>Suspended Pipe Syphon in Stoney Creek</i> |
| 707 | <i>Mining Tunnel Oxenbridge Tunnel</i> |
| 708 | <i>Lime Kilns and Manager's residence Bobs Cove</i> |
| 709 | <i>Gold Mining - All relics in Twelve Mile Creek</i> |

⁴ There are four additional Category 2 archaeological sites that were included in notified Schedule 26.10, however these are included in Schedule 26.8 of the decision version and as such are already subject to the provisions of Chapter 26. These sites are 701 Dynamo; 702 All settlement and gold mining relics; 703 Battery, Rees River Vicinity and 704 Buddle, Rees River Vicinity.

⁵ Assessed in accordance with the criteria set out in section 66 of the HNZPTA

⁶ Section 74(2) of the Act

7.17 Additionally, should the relief under [7.16] be accepted, that the details concerning Heritage Feature 705 (Sawmill Settlements Turners Creek - Kinloch Road Mill Creek) be amended as follows:

Amend legal description:

~~Crown Land Block VI Upper Wakatipu - Pt Recreation Reserve C, Blk II Upper Wakatipu SD (NZ Gazette 1891 p.790), Otago Land District~~

Amend map symbol 705 on Map 09 to show the correct location for this site.

7.18 The intent of this relief sought is that the abovementioned archaeological sites are included as protected heritage features in a schedule, and would be subject to the rules set out in Table 2 'Listed Heritage Features' or similar rules.

Rejection of additional heritage listings

7.19 Associated with the deletion of Schedule 26.10 and the provisions associated specifically with archaeological sites, Heritage New Zealand's submissions seeking the scheduling of the following heritage features were rejected:

- a) Wong Gong's Terrace Historic Area
- b) Sew Hoy's Big Beach Claim Historic Area

7.20 Heritage New Zealand considers that by not recognising and providing for the appropriate management of these sites, the Plan fails to appropriately 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, and fails to have regard to the List as required pursuant to section 74(2) of the Act.

Relief sought

7.21 In addition to the sites listed at [7.16], that the following heritage features are included in Schedule 26.8 (or similar):

- *Description: Wong Gong's Terrace Historic Area*
Legal Description: Pt Run 27 (CT OTA2/1228)
HNZ Cat/No: Historic Area/7549
- *Description: Sew Hoy's Big Beach Claim Historic Area*
Legal Description: Legal River
HNZ Cat/No: Historic Area/7545

Additional relief sought

7.22 Amend Schedule 26.8 as follows:

- a) Heritage Feature 34 *Invincible Mine, including the battery, and buddle sites, Vicinity Rees River* Heritage New Zealand Cat/No. column to include the relevant List details as follows: 2 / 5603 & 5604.
- b) Heritage Feature 67 *Pleasant Terrace Workings, Sainsbury's House and outbuilding, Skippers Mt Aurum Recreational Reserve* Heritage New Zealand Cat/No. column to refer to the correct List number as follows: ~~5176~~ 5175.
- c) Heritage Feature 87 *Gratuity Cottage* Heritage New Zealand Cat/No. column to include the relevant List details as follows: 2/2339
- d) Heritage Feature 140 *Bullendale hydroelectric dynamo and mining site - including Eden Hut and Musters Hut* Heritage New Zealand Cat/No. column to include the relevant List details as follows: 1 / 5601

7.23 Amend Map 36 to show Heritage Feature 38 as listed in Schedule 26.8, being 'Bridge over Horne Creek – 11 Camp St.'

7.24 Amend Rule 27.5.13 as follows:

The subdivision of land identified on the planning maps as a Heritage Overlay Area.

7.25 Amend reference to the Schedule at 26.8 to be consistent and correct throughout the entire Plan. For example Schedule 26.8 is currently referred to as:

- a) *Inventory of protected Heritage Features* in the Purpose (26.1);
- b) *Inventory of Protected Heritage Features* in Identification and Protection (26.2);
- c) *Inventory of Protected Features* in Policy 26.3.1.1; and
- d) *Inventory of listed Heritage Features* in the heading for Schedule 26.8.
- e) *Inventory of protected features* (26.9) under the definition of 'Protected Feature' at Chapter 2 (noting that the reference to 26.9 appears to be an error in that section 26.9 relates to Sites of Significance to Maori).

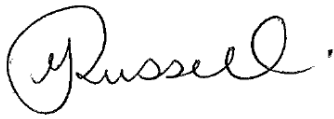
7.26 Any alternative or additional changes which are required to the text of the Plan to give effect to the relief sought in this reference.

8. Attachments

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

- a) a copy of submission and further submission (excluding the lengthy Appendices C, D and E to the submission, which are not considered to be relevant to this appeal);
- 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 relevant provisions of the Otago Regional Policy Statement.
- e) copies of New Zealand Heritage List Rārangi Kōrero reports for Wong Gong's Terrace Historic Area and Sew Hoy's Big Beach Claim Historic Area.

Dated 18 June 2018



Melanie Russell

For and on behalf of Heritage New Zealand Pouhere Taonga

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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.