

**BEFORE INDEPENDENT HEARING COMMISSIONERS APPOINTED BY THE CANTERBURY REGIONAL
COUNCIL**

UNDER the Resource Management Act 1991

IN THE MATTER of Proposed Plan Change 7 to the Canterbury Land and Water Regional Plan

AND in respect of a submission and further submission by Heritage New Zealand Pouhere
Taonga

LEGAL SUBMISSIONS OF COUNSEL FOR HERITAGE NEW ZEALAND POUHERE TAONGA

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MAY IT PLEASE THE HEARING COMMISSIONERS:

1. Heritage New Zealand Pouhere Taonga (Heritage New Zealand) made a submission dated 12 September 2019 and a Further Submission dated 6 November 2020 in respect of Plan Change 7 to the Canterbury Land and Water Regional Plan (CLWP).
2. The Submission of HNZPT sets out the status of Heritage New Zealand and its statutory responsibilities under the Heritage New Zealand Pouhere Taonga Act 2014, and these will not be repeated here.

Issue of interest to Heritage New Zealand

3. The particular interest of Heritage New Zealand in PC7 is the provision of appropriate controls on the taking or use of water for particular land uses (primarily irrigation) that may affect rock art sites within Canterbury Regional Council's region. Although there are known to be some 761 rock art sites within the Ngāi Tahu rohe¹ the majority are located in the Orari-Temuka-Opihi-Pareora sub-region (OTOP), which is addressed in Part B of PC7.
4. Rock art sites are culturally significant to New Zealand as a whole, and are regarded by the Rūnanga as wāhi taonga.² Unfortunately they are also "inherently and intrinsically fragile"³ as well as hydrologically sensitive, and the greatest threat to their continued existence comes from changes, even potentially very small changes, in the hydrological regime. The number and quality of rock art areas is in decline.⁴ There is a high risk of inter-generational cultural loss in respect of these flow sensitive sites unless the adverse effects of land use practices involving water are effectively managed.
5. Heritage New Zealand supports the use of mapped Rock Art Management Areas and accompanying policies and rules within the CWLP but has concerns regarding the likely effectiveness of some of the proposed provisions and has sought internal consistency within the CWLP to assist in the application of its provisions.
6. In particular, Heritage New Zealand seeks that consents **avoid** adverse effects on rock art. Currently PC7 has a slightly confusing approach to whether adverse effects on rock art should be avoided or could be mitigated or minimised, as follows:
 - Policy 14.4.5 requires consents *avoid or minimise* adverse effects on rock art;
 - Policy 14.4.7 requires farming activities with irrigation to show, through the use of a Farm Management Plan (FEP), how adverse effects will be *minimised*;
 - The matters of control under Rule 14.5.18 list methods to *avoid or mitigate* adverse effects on rock art sites;

¹ Evidence of Amanda Symons, paragraph 8, on behalf of Ngai Tuahuriri Runanga.

² Evidence of Kylie Hall, paragraph 64, on behalf of Te Runanga o Arowhenua and Te Runanga o Ngai Tahu.

³ Evidence of Kylie Hall, paragraph 66, on behalf of Te Runanga o Arowhenua and Te Runanga o Ngai Tahu.

⁴ Evidence of Kylie Hall, paragraph 82, on behalf of Te Runanga o Arowhenua and Te Runanga o Ngai Tahu.

- The requirements for an FEP set out in Schedule 7 includes a target to *avoid* adverse effects on rock art from irrigation, stock and farming practices.
7. In its Further Submission Heritage New Zealand supported the submission of the Royal Forest and Bird Protection Society Incorporated, which sought the amendment of Policy 14.4.2 by removing the reference to mitigation, thus requiring that applicants demonstrate how potential adverse effects of the specified activities on culturally significant sites will be avoided. Mitigation is regarded as uncertain in its ability to ensure protection, and that section 6(e) RMA can only be given effect to by way of a requirement to avoid adverse effects on rock art sites.⁵ Heritage New Zealand concurs.
 8. The Section 42A report recommends that policy 14.4.2 be deleted, but also considers that the use of ‘avoid’ in the context of rock art sites is too stringent and inflexible a policy provision.⁶ Whilst Heritage New Zealand has no objection to Policy 14.4.2 being deleted, as the remaining policies could provide sufficient protection (particularly Policy 14.4.5), with respect, the position reached in the Section 42A Report is not agreed with.
 9. This is because the cultural values of the rock art sites and their sensitivity to damage and loss are such that only avoidance of adverse effects can ensure their ongoing protection. Even then, it is understood that there will be attrition due to the natural effects of limestone weathering. The most humans can do is ensure we do not accelerate the natural attrition rate due to the addition of water flows to the sensitive environment in which rock art is found. Whilst the commissioners will have heard of the concept of a ‘cultural flow’, in the case of rock art sites it is in fact a ‘cultural non-flow’ that is more likely to be required.

Farm Environment Plans

10. In its original submission⁷ Heritage New Zealand stated that:

“A Farm Environment Plan (FEP) is a suitable mechanism to identify and manage the potential adverse effects of farming activities on rock art provided there is a clear understanding of what is or is not a negative effect and how they will be managed.”

11. In its Further Submission Heritage New Zealand supported the submission of Te Rūnanga o Arowhenua and Te Rūnanga o Ngāi Tahu, giving as a reason for the support that the retention of provisions in Section 14 within the OTOP zone relating to rock art was consistent with the submission made by Heritage New Zealand.
12. Heritage New Zealand fully supports the submissions of the Rūnanga. In saying this, I acknowledge the evidence of Kylie Hall on behalf of the Rūnanga, where she states that:

⁵ Section 42A Report paragraph 4.16.

⁶ Section 42A Report, paragraph 4.25.

⁷ At paragraph 11.

“For Arowhenua, limiting the management of rock art [sites] to the FEP process is a significant concern. FEPs are not statutory documents and no enforcement action can be applied to non-complying landowners. I am also aware that the content, quality and auditing of a FEP varies substantially depending on the author, the willingness of the landowner to incorporate good management practice, and the qualifications and expertise of the auditor. It is important to note that in determining the likely effects and protection of rock art requires specialist knowledge and training, which is not typically held by farmers and farm auditors.”⁸

13. Further:

In terms of concern to Arowhenua, the creation and auditing of FEPs is external to the Regional Council. Rūnanga are excluded from the process entirely; therefore, there is no input from rūnanga into the management of a culturally sensitive taonga. Additionally, the auditing process does not enable a rock art expert to be brought into the process to assist in the formulation and auditing of a FEP.”⁹

14. To the extent that there is a seeming contradiction in Heritage New Zealand’s position, I wish to seek the leave of the Panel to withdraw the statement reproduced in paragraph 10 above, and the support of Schedule 7 Farm Environment Plans in Section 11 OTOP – Additional Requirements.

15. Such a withdrawal does not alter the position of Heritage New Zealand, which clearly supports both the Rūnanga and the protection of rock art sites through appropriate provisions in the CWLP and which equally clearly expressed its view that the outcome sought was *“to ensure that adverse effects on rock art are avoided.”¹⁰* Nor does it prejudice¹¹ any other party, as the question of Farm Environment Plans has been raised by other parties, both in support of and opposition to their use in protecting rock art sites, and thus the issue is live.

Evidence

16. Heritage New Zealand has not called any evidence in respect of its submissions. However it wishes to adopt in full the evidence of, respectively:

- Amanda Symon; and
- Kylie Susan Hall.

Both witnesses have filed evidence on behalf of Te Rūnanga o Arowhenua and Te Rūnanga o Ngāi Tahu.

⁸ Paragraph 81.

⁹ Paragraph 85.

¹⁰ HNZPT Submission, Attachment A: Summary of HNZPT’s submission and relief sought, Ref no. 8.

¹¹ Refer to the Memorandum of Legal Advice to the Commissioners’ Panel received in respect of the desire of Horticulture New Zealand to withdraw submission points. The potential for prejudice to arise should a submission point be withdrawn was raised as a concern in the Memorandum.

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