

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

IN THE MATTER of the Resource Management Act 1991
AND of an appeal under Clause 14 of the First
 Schedule of the Act
BETWEEN HERITAGE NEW ZEALAND POUHERE
 TAONGA
 (ENV-2018-CHC-70)
 Appellant
AND QUEENSTOWN LAKES DISTRICT
 COUNCIL
 Respondent

Environment Judge J J M Hassan – sitting alone pursuant to s279 of the Act

In Chambers at Christchurch

Date of Consent Order: 23 October 2019

CONSENT ORDER

A: Under s279(1)(b) of the Resource Management Act 1991, the Environment Court, by consent, orders that:

- (1) the appeal is allowed to the extent that the Queenstown Lakes District Council is directed to amend Chapters 2, 26 and 27, the planning maps, and legends of the Proposed Queenstown Lakes District Plan, as set out in Appendix A, attached to and forming part of this order;
- (2) the appeal is otherwise dismissed.

B: Under s285 of the Resource Management Act 1991, there is no order as to costs.



REASONS

Introduction

[1] This proceeding concerns an appeal by Heritage New Zealand Pouhere Taonga ('HNZPT') against parts of a decision of the Queenstown Lakes District Council on Chapters 2, 26 and 27 of the proposed Queenstown Lakes District Plan – Stage 1. In particular, it relates to Topic 5 (Historic Heritage).

[2] The court has now read and considered the consent memorandum of the parties dated 15 March 2019, which proposes to resolve this appeal.

Other relevant matters

[3] No person has given notice of an intention to become a party under s274 of the Resource Management Act 1991 ('the RMA').

[4] The consent memorandum proposes additional Policy 26.3.1.7. This is not discussed in the memorandum. It does not appear to have been explicitly the subject of HNZPT's submission and appeal. However, I am satisfied that, in substance, it is sufficiently within scope. That is in the sense that it relates to the framework and provisions that HNZPT sought for archaeological sites (ie as relating to recognition and provision for "protection of ... archaeological values from inappropriate subdivision, use and development").

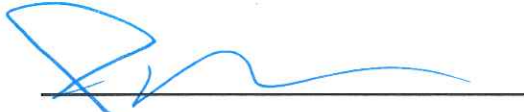
Orders

[5] The court makes this order under s279(1) RMA, such order being by consent, rather than representing a decision or determination on the merits pursuant to s297. The court understands for present purposes that:

- (a) all parties to the proceedings have executed the memorandum requesting this order; and



- (b) all parties are satisfied that all matters proposed for the court's endorsement fall within the court's jurisdiction and conform to the relevant requirements and objectives of the RMA including, in particular, pt 2.



J J M Hassan
Environment Judge



APPENDIX A

(amendments shown in underline and ~~strikethrough text~~)

CHAPTER 2 – DEFINITIONS

~~Protected-Listed Heritage~~ Feature (For the purpose of Chapter 26 only)

Means the collective terms used to explain all buildings, features, and structures listed in the Inventory of ~~protected~~ Listed Heritage Features (26.89).

Contributory Buildings (For the purpose of Chapter 26 only)

Means buildings within a heritage precinct that contribute to the significance of a heritage precinct some of which may be listed for individual protection in the Inventory of Listed Heritage Features under Rule 26.8. They may contain elements of heritage fabric, architecture or positioning that adds value to the heritage precinct. They have been identified within a heritage precinct because any future development of the site containing a contributory building may impact on the heritage values of heritage features, or the heritage precinct itself. Contributory buildings are identified on the plans under Section 26.7 'Heritage Precincts'. (Refer also to the definition of Non-Contributory Buildings).

Extent of Place (For the purpose of Chapter 26 only)

Means the area around and/or adjacent to a heritage feature listed in the Inventory of Listed Heritage Features under Section 26.8 and which is contained in the same legal title as a heritage feature listed in the Inventory, the extent of which is identified in Section 26.8.1. (Refer also to the definition of Setting).

Heritage Feature or Features (For the purpose of Chapter 26 only)

Means the collective terms used to describe all heritage features listed in the Inventory of ~~Heritage Features~~ Listed Heritage Features under Section 26.8.

Non-Contributory Buildings (For the purpose of Chapter 26 only)

Means buildings within a heritage precinct that have no identified heritage significance or fabric and have not been listed for individual protection in the Inventory of Listed Heritage Features under Rule 26.8. They have been identified within a heritage precinct because any future development of a site containing a non-contributory building may impact on the heritage values of heritage features or contributory buildings within the heritage precinct. Non-Contributory Buildings are identified on the plans under Section 26.7 'Heritage Precincts'.

Setting (For the purpose of Chapter 26 only)

Means the area around and/or adjacent to a heritage feature listed under the Inventory of Listed Heritage Features in Section 26.8 and defined under 26.8.1, which is integral to its function, meaning, and relationships, and which is contained in the same legal title as the heritage feature listed on the Inventory of Listed Heritage Features. (Refer also to the definition of 'Extent of Place').



CHAPTER 26 - HERITAGE

26.1 Purpose

...

This chapter contains objectives, policies and rules relating to:

- a. the Inventory of ~~protected~~ Listed Heritage Features (26.8), which includes all listed buildings, structures, and other features;
- b. heritage Precincts;
- c. sites of significance to Maori;
- d. heritage Overlay Areas.

26.2 Identification and Protection

26.2.1 Categorisation and future listing

The District's most significant known listed heritage features are represented in the Inventory of ~~Protected~~ Listed Heritage Features (26.8). Although they all have heritage value, they are categorised according to their relative level of importance which allows different levels of regulatory protection to be applied. For listed heritage features there are three categories: 1 to 3, with Category 1 being the most significant.

Queenstown Lakes District Council acknowledges that the Inventory represents an identification and categorisation of listed heritage features at the time this plan was reviewed and may subsequently change. Nominations for inclusions, removals or amendments to categories for individual features will be considered, but should contain sufficiently detailed and robust reports in line with assessments that the Council uses. Evidence that affected owners have been informed and consulted should be provided and:

...

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;

26.3 Objectives and Policies

26.3.1.1 Ensure historic heritage features within the District that warrant protection are recognised in the Inventory of ~~Protected~~ Listed Heritage Features in Section (26.8).

26.3.1.4 Where activities are proposed within the setting or extent of place of a listed heritage feature, to protect the heritage significance of that feature by ensuring that:

- a. the form, scale and proportion of the development, and the proposed materials, do not detract from the ~~protected~~ listed heritage feature located within the setting or extent of place;
- b. the location of development does not detract from the relationship that exists between the ~~protected~~ listed heritage feature and the setting or extent of place, in terms of the values identified for that feature;
- c. existing views of the ~~protected~~ listed heritage feature from adjoining public places, or publicly accessible places within the setting or extent of place, are maintained as far as is practicable;
- d. hazard mitigation activities and network utilities are located, designed, or screened to be as unobtrusive as possible.

26.3.1.7 Protect archaeological and historic heritage values of listed archaeological sites while managing the adverse effects of land use and development, including cumulative effects.



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

26.4 Other Provisions and Rules

26.4.2.2 Reference should be made to Chapter 27 with respect to rules regulating the subdivision of sites containing listed heritage features.

26.5 Rules - Activities

26.5.2 Repairs and maintenance

Minor repairs and maintenance on all ~~protected~~ listed heritage features and contributory and non-contributory buildings in heritage precincts.

Note: Works that do not fall within the definition of minor repairs and maintenance are classed as alterations.

26.5.3 Total demolition or relocation to another site

*For Category 3 heritage features discretion is restricted to:

- a. the extent of the demolition proposed and the cumulative effects on the listed heritage feature;
- b. the effects on the heritage values and heritage significance, as evaluated in accordance with the criteria in section 26.6;
- c. where the ~~protected~~ listed heritage feature is located within a heritage precinct, the effects of the proposed activity on the key features of the heritage precinct as identified in section 26.7.

26.5.5 Relocation within the site

The relocation of an existing listed heritage feature within the same site.

[Insert new Table 6 into section 26.5 – Rules – Activities]

Table 6 Archaeological sites



<u>Rule</u>	<u>Activity</u>	<u>All archaeological sites</u>
<u>26.5.xx</u>	<p><u>Any activity within an archaeological site listed in 26.X for which an authority has been obtained under the Heritage New Zealand Pouhere Taonga Act 2014.</u></p> <p><u>Advice note: This rule relates only to that aspect of the proposal covered by the authority. Rules 26.5.xy – 26.5.xz apply to any aspect of the proposed work not expressly approved by the authority.</u></p>	<u>P</u>
<u>26.5.xy</u>	<p><u>Relocation of any archaeological building or structure located within an archaeological site listed in 26.X.</u></p> <p><u>Any activity that results in an archaeological building or structure or part thereof, located within an archaeological site listed in Section 26.X being relocated within the same site or to another site.</u></p>	<u>D</u>
<u>26.5.xz</u>	<p><u>Modification of an archaeological site listed in Section 26.X.</u></p> <p><u>For the purpose of this rule, modification means any new buildings and structures and any alterations to existing buildings and structures but excludes minor repairs and maintenance.</u></p> <p><u>*Discretion is limited to:</u> <u>The effect of the alteration or modification on the heritage and archaeological values of the site.</u></p>	<u>RD*</u>
<p><u>Note: An authority from Heritage New Zealand Pouhere Taonga will also be required to destroy or modify or cause to be destroyed or modified the whole or any part of an archaeological site, pursuant to the Heritage New Zealand Pouhere Taonga Act 2014¹</u></p>		

26.6 Evaluation Criteria

26.6.1 Evaluation criteria for categorizing and including features in the Inventory of protected Listed Heritage Features (26.8).

The following criteria are used to determine the listing and category of listed heritage features, whether a feature should be included in the Inventory, and the category of such listed features; and

Heritage Assessments exist for many of the Protected Listed Heritage Features and these provide a detailed assessment of the values of the feature and a conclusion of its overall significance. These assessments are available from the Council and should be used as the starting point for any evaluation. Where such an assessment does not exist, then your evaluation will need to be based on existing historical information, which can be obtained from various sources, including the Council's archaeological alert layer, heritage New Zealand, the Council's resource consent files, and the Lakes District Museum.

26.7 Inventory of Protected Features— Precincts [change in title only]



¹ Heritage New Zealand Pouhere Taonga Act 2014

26.8 Inventory of Listed Heritage Features

Ref No	Map Ref	Description	Legal Description (Valuation Reference)	HNZ Cat / No.	QLDC Cat
34	9	Invincible Mine, including the battery, and buddle sites, Vicinity Rees River	Legal description: Sections 1 and 2 Blk XII Earnslaw SD, SO 18563 (Invincible Mine historic Reserve NZ gazette 1979,p 570) Otago Land District. heritage New Zealand Cat/No:2/5603 and 5604	<u>2/5603 & 5604</u>	3
67	10	Pleasant Terrace Workings, Sainsbury's House and outbuilding, Skippers Mt Aurum Recreational Reserve	Section 148 Block XI Skippers Creek SD, (2907300400)	<u>1/5176 5175</u>	1
87	35	Gratuity Cottage, 9 Gorge Road Queenstown	Lot 1 DP 12476 (2910623700)	<u>2/2339</u>	3
140	10	Bullendale hydroelectric dynamo and mining site - including Eden hut and Musters hut	Section 148 Block XI Skippers Creek (2907300400)	<u>1/5601</u>	1

26.X Inventory of Archaeological Sites

Ref. No.	Map Ref	Description	Legal Description	HNZ Cat/ No
<u>700</u>	<u>9</u>	<u>Maori Ti Pits and paved area. Between Dart Bridge and Kowhai Creek true right bank of Dart River below road</u>	<u>Sec 3 SO 24940; Pt Sec 20 Block I Dart SD.</u>	<u>2/5600</u>
<u>705</u>	<u>9</u>	<u>Sawmill Settlements Turners Creek - Kinloch Road Mill Creek</u>	<u>Pt Recreation Reserve C, Block II Upper Wakatipu SD (NZG 1891 p.790)</u>	<u>2/5605</u>
<u>706</u>	<u>10</u>	<u>Suspended Pipe Siphon in Stony Creek</u>	<u>Part Mt Aurum Historic Reserve Run 753 Block XI Skippers SD, Sec 1 SO 430611</u>	<u>2/5606</u>
<u>707</u>	<u>13</u>	<u>Mining Tunnel Oxenbridge Tunnel</u>	<u>Crown Land Block XIX Shotover SD, Marginal Strip; Pt Section 148 Blk XIX Shotover SD.</u>	<u>2/5607</u>



<u>708</u>	<u>38</u>	<u>Lime Kilns and Manager's residence Bobs Cove</u>	<u>Pt Reserve A Block V Mid Wakatipu SD (Recreation Reserve, NZ Gazette 1891 p.1049)</u>	<u>2/5608</u>
<u>709</u>	<u>38</u>	<u>Gold Mining - All relics in Twelve Mile Creek</u>	<u>Part Run 707 Block IV Mid Wakatipu SD</u>	<u>2/5609</u>
<u>710</u>	<u>28</u>	<u>Arrowtown Chinese Settlement</u>	<u>Lot 3, 4 and 5 DP 18410, Arrowtown Historic Reserve, Sections 1 and 2 SO 21055, Section 17 TN of Block XIX Arrowtown</u>	<u>2/5613</u>
<u>711</u>	<u>10</u>	<u>Wong Gong's Terrace Historic Area</u>	<u>Part Run 27</u>	<u>7549</u>
<u>712</u>	<u>39</u>	<u>Sew Hoy's Big Beach Claim Historic Area</u>	<u>Legal River</u>	<u>7545</u>

26.11 Heritage Orders

Ref No	Map Ref	Related Listed Heritage Protected Features	Purpose	Heritage Protection Authority	Site and Legal Description
1	28	See 362 and 373	To protect and preserve the buildings known as the Postmaster's house and the Arrowtown Post Office and their associated buildings and their surrounding land (refer to site files for complete description of heritage order).	Queenstown Lakes District Council	52 and 54 Buckingham Street Lots 1 and 2, DP 21884, Block VI, Town of Arrowtown (Valuation reference 2918228800 and 2918228801)
2	36		To protect the building known as Archer cottage and the historic relationship created by buildings on Marine Parade, the space between these buildings and the relationship between these buildings and the public space onto which they front (refer to site files for complete description of heritage order).	Queenstown Lakes District Council	Lot 15 DP 302022



CHAPTER 27 - SUBDIVISION

Rule 27.5.13 The subdivision of land identified on the planning maps as a Heritage Overlay Area.

MAP 36

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

AMENDMENTS TO RELEVANT PLANNING MAPS

Amend the relevant planning maps to identify the archaeological sites (700-712). The maps are to show the areas identified in the document titled "Archaeological Sites: Significance Summaries and Mapping Boundaries" provided to the Environment Court as Attachment B to the Joint Memorandum of Counsel dated 15 March 2019.

