

**BEFORE THE ENVIRONMENT COURT**

**ENV-2018-**

**IN THE MATTER OF**

The Resource Management Act 1991

**AND**

**IN THE MATTER OF**

of an appeal pursuant to clause 14(1), First  
Schedule of the Act

**BETWEEN**

**HERITAGE NEW ZEALAND POUHERE  
TAONGA  
APPELLANT**

**AND**

Kapiti Coast District Council  
**RESPONDENT**

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**NOTICE OF APPEAL TO ENVIRONMENT COURT AGAINST DECISION ON PROPOSED  
PLAN**

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G A Baumann  
Heritage New Zealand Pouhere Taonga  
PO Box 2629  
Wellington  
gbaumann@heritage.org.nz

**TO: The Registrar  
Environment Court  
Wellington**

1. Heritage New Zealand Pouhere Taonga appeals against a part of a decision of Kapiti Coast District Council on the following plan:

*Kapiti Coast District Plan*

2. Heritage New Zealand Pouhere Taonga made a submission on that plan.
3. Heritage New Zealand Pouhere Taonga is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
4. Heritage New Zealand Pouhere Taonga received notice of the decision on 22 November 2017.
5. The decision was made by Kapiti Coast District Council.
6. The decision (or part of the decision) that Heritage New Zealand is appealing is:
  - The Decision on Chapter 10 Historic Heritage (Report 12)
  - The decision establishes rules for land disturbance of up to ten cubic metres per year on Wāhanga Rua, and Wāhanga Toru, sites and areas
    - Permitted activity rules Rules 10A.1 6 and 7 - land disturbance on wāhi tapu sites and areas up to ten cubic metres per calendar year total volume in an area scheduled as waahi tapu and Other Places and Areas of Significance to Māori: Wāhanga and Wāhanga Toru
    - Controlled activity rule 10A.2 Rule 2 – new buildings including land disturbance of up to ten cubic metres per calendar year in an area scheduled as waahi tapu and Other Places and Areas of Significance to Māori: Wāhanga Toru
7. The reasons for the appeal are as follows:
  - 7.1 The permitted activity and controlled activity rules listed above for Wāhanga Rua and Wāhanga Tora do not provide adequate protection for waahi tapu sites and areas, particularly from land disturbance, and do not support the following objectives and policies of the plan for waahi tapu:
    - **Policy 10.4 – Protection of Historic Heritage:** *Subdivision, development and land use affecting the District's historic heritage will be managed in a way that protects historic heritage values from adverse effects.*
    - **Policy 10.8 – Waahi Tapu:** *Waahi tapu and other places and areas of significance to Māori and their surroundings will be protected from inappropriate subdivision, development, land disturbance or change in land use, which may affect the physical features and non-physical values of the place or area.  
The Council will work in partnership with the relevant iwi authority for the Proposed*

*Kapiti Coast District Plan Historic Heritage Decisions Version November 2017 - [10-6] - ongoing and long term management and protection of waahi tapu. Relevant iwi authorities will be consulted on all resource consent applications affecting waahi tapu and other places and areas of significance to Maori identified in the Schedule of Historic Heritage.*

#### **Commentary**

- 7.2 Heritage New Zealand Pouhere Taonga submitted that it is inappropriate to provide for land disturbance within wāhi tapu sites, i.e. Wāhanga Rua and Wāhanga Toru as a permitted or controlled activity; land disturbance within these areas should be restricted discretionary. The standard of 10m<sup>3</sup> is a significant volume of work to undertake as a permitted activity
- 7.3 Land disturbance has the potential to cause significant adverse effects on historic heritage values through the disturbance of koiwi, damage to culturally and historically significant natural and manmade landforms, and the disturbance of artefacts. The disturbance of koiwi is a particular risk, as some WāhangaRua and Wāhanga toru sites include urupa.
- 7.4 The Proposed Plan acknowledges that land disturbance should not be permitted in the urupā included in Wāhanga Tahī (Urupā). Heritage New Zealand considers that the same restriction is appropriate for those Wāhanga Rua and Wāhanga Toru sites that contain urupa.
- 7.5 The volume limit of 10m<sup>3</sup> for land disturbance, equivalent to a truck load of material, would allow disturbance of cultural sites, including urupā, of significance to Maori. In particular this permitted activity could affect scheduled wāhi tapu sites.
- 7.6 Permitted activities are unlikely to be monitored, and council may not have any way of identifying these activities or checking whether the limits are being breached. The effect on wāhi tapu could be significant even if the limits are complied with, and certainly if there is no monitoring undertaken. All of the activities within 10A.1 rules 6 and 7 and 10A.3 rule 2 require land disturbance, so in order to prevent adverse effects on wāhi tapu, it is appropriate for all the activities resulting in land disturbance to be restricted discretionary.
- 7.7 A controlled activity status for new buildings means council cannot decline a consent, nor establish conditions that derogate the intention of the rule. While council could limit the extent of earthworks under controlled, severe restrictions to protect a site may be ultra vires as the applicant would not be able to carry out the proposed activity.
8. Heritage New Zealand seeks the following relief:
- 8.1 That land disturbance within Wāhanga Rua, and Wāhanga Toru sites and areas be a restricted discretionary activity i.e.:
- Delete the permitted activities 10A.1 rules 6 and 7
  - In both 10A.3 rules 6 and 7, delete point b) and replacing with “ b) Land disturbance”.

- 8.2 That new buildings in an area scheduled as waahi tapu and Other Places and Areas of Significance to Māori: Wāhanga Toru be restricted discretionary. The standards and matters over which control is reserved in the proposed rule should be retained as standards and matters over which discretion is restricted.
9. Heritage New Zealand Pouhere attaches the following documents to this notice:
- (a) a copy of my 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.



G A Baumann  
Legal Advisor, Central Region  
Heritage New Zealand Pouhere Taonga

DATED the 24 day of January 2018.

**ADDRESS FOR SERVICE:**

Heritage New Zealand Pouhere Taonga  
Antrim House, 63 Boulcott Street,  
PO Box 2629, Wellington 6140  
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Contact person: Geraldine Baumann  
Legal Advisor

**Annexures:**

- (a) Copy of submission
- (b) Copy of further submission
- (c) Copy of decision in respect of Heritage New Zealand's submission
- (d) Names and addresses of persons to be served with a copy of this notice

### **Note to appellant**

You may appeal only if—

- you referred in your submission or further submission to the provision or matter that is the subject of your appeal; and
- in the case of a decision relating to a proposed policy statement or plan (as opposed to a variation or change), your appeal does not seek withdrawal of the proposed policy statement or plan as a whole.

Your right to appeal may be limited by the trade competition provisions in Part 11A of the Resource Management Act 1991.

The Environment Court, when hearing an appeal relating to a matter included in a document under section 55(2B), may consider only the question of law raised.

You must lodge the original and 1 copy of this notice with the Environment Court within 30 working days of being served with notice of the decision to be appealed. The notice must be signed by you or on your behalf. You must pay the filing fee required by regulation 35 of the Resource Management (Forms, Fees, and Procedure) Regulations 2003.

You must serve a copy of this notice on the local authority that made the decision and on the Minister of Conservation (if the appeal is on a regional coastal plan), within 30 working days of being served with a notice of the decision.

You must also serve a copy of this notice on every person who made a submission to which the appeal relates within 5 working days after the notice is lodged with the Environment Court.

Within 10 working days after lodging this notice, you must give written notice to the Registrar of the Environment Court of the name, address, and date of service for each person served with this notice.

However, 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).

### **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).