1 August 2016

The Chief Executive
Environment Southland
Private Bag 90116
Invercargill 9840

Dear Sir/Madam

SUBMISSION OF HERITAGE NEW ZEALAND POUHERE TAONGA ON THE PROPOSED SOUTHLAND WATER & LAND PLAN 2016

1. This is a submission on the Proposed Southland Water and Land Plan 2016.

2. Heritage New Zealand could not gain an advantage in trade competition through this submission.

3. The specific provisions of the Land and Water Plan that Heritage New Zealand’s submission relates to are the historic heritage-related aspects of the Plan.

4. The historic and cultural heritage of Southland/Murihiku is unique, complex and fascinating. The management of the region’s finite heritage resources is especially important for enabling existing and future generations’ full understanding and appreciation of the region and to enhance the value that the region’s residents gain from living and working in and around historic places. Considered management of heritage resources can also render these a drawcard for potential visitors to the region, with all of the attendant economic benefits that tourism can offer.

5. Heritage New Zealand generally supports the Plan as it concerns historic heritage, but does seek amendments and additions to certain provisions. The specific relief sought by Heritage New Zealand is set out in Attachment A to this submission. The relief sought is intended to improve by reducing potential duplication, clarify, qualify and strengthen the provisions as they relate to the management and protection of historic heritage.

6. Heritage New Zealand wishes to be heard in support of this submission.

Yours sincerely

Sheila Watson
General Manager – Southern Region

Address for service: Heritage New Zealand, c/- Jane O’Dea, Heritage Advisor – Planning, jodea@heritage.org.nz, PO Box 5467, Dunedin 9058.
Attachments:

Attachment A: Submission of Heritage New Zealand Pouhere Taonga
Attachment B: Heritage New Zealand Pouhere Taonga Act 2014 information
Attachment C: Accidental Discovery Protocol
## Attachment A - Submission of Heritage New Zealand Pouhere Taonga

**Key:**  
Strike eg. abc = delete text  
Underline eg. abc = additional text

- **HNPZTA 2014** = Heritage New Zealand Pouhere Taonga Act 2014  
- **NZAA** = New Zealand Archaeological Association

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<td>1.</td>
<td>Objective 9 Objective 13 Policy 20 Policy 24 Policy 28</td>
<td>Support</td>
<td>The Proposed Southland Water and Land Plan is required to recognise and provide for matters of national importance, in particular 6(e) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga; and 6(f) “the protection of historic heritage from inappropriate subdivision, use and development” The proposed objectives and policies recognise that certain activities governed by the Proposed Southland Water and Land Plan have the potential to adversely affect historical and cultural heritage values, and that appropriate management of these values is a priority.</td>
<td>Adopt Objectives 9 &amp; 13 Adopt Policies 20, 24 &amp; 28</td>
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| 2.       | Policy 29 | Amendments sought | Heritage New Zealand considers that in not including reference to historic heritage, this policy is inconsistent with Rule 73, which provides for the management of historic heritage values by making the extraction of gravel a restricted discretionary activity if there is a recorded historic heritage site at the site of the activity. | Amend Policy 29 as follows:  
Policy 29 – Provide for the extraction of gravel  
Provide for the extraction of gravel to meet the needs of the community, in a way that |
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<td>avoids, remedies or mitigates adverse effects on rivers and their margins; and: 1. maintains or enhances aquatic and riparian habitat; or 2. ensures no long-term net loss of habitat in the river channel and floodplain; or 3. maintains or enhances flood protection, erosion control or the integrity of physical resources; and 4. does not adversely affect the cultural values associated with the river, including mahinga kai and taonga species habitat, mātaitai and taīpūre; and 5. does not adversely affect recreational values. 6. avoids, remedies or mitigates adverse effects on historic heritage values.</td>
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<td>3.</td>
<td>Rules:</td>
<td>Support in part – amendments requested</td>
<td>Heritage New Zealand considers that the Water and Land Plan accurately identifies activities that have the potential to adversely affect historic heritage values. Activities managed under the Proposed Water and Land Plan such as gravel extraction, earthworks and discharges have the potential to impact on historic heritage in ways that would not necessarily be controlled through a district plan. Accordingly it is appropriate to retain the rule framework in order to ensure that such matters are able to be considered through a resource consent process. As set out in the rules, appropriate management of heritage values is provided for either by requiring resource consent for an activity, or through matters of discretion. This approach is supported.</td>
<td>Adopt rules: 9(f), 32(a) &amp; associated matter of discretion 3. 32(a) &amp; associated matter of discretion 3. 40(a)(iv) &amp; (b) &amp; 5 associated matter of discretion 3. 42(a)(iii) &amp; (b)3. 43(a)(iv) 44(a)(iv) &amp; (c)(v) 51(a)(i)(7) 53(a) Matter of discretion (1) 55(a)(vii) 57(a)(xi) &amp; associated matter of discretion 2. 58(a)(xv) &amp; associated matter of discretion 2. 59(a)(xvi) &amp; associated matter of discretion 2.</td>
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| 4.      | Glossary  
'Recorded historic heritage sites' | Amendments sought | Notwithstanding Heritage New Zealand’s support for the above mentioned provisions, Heritage New Zealand has one area of concern in relation to the breadth of the definition of 'recorded historic heritage sites.' Heritage New Zealand considers that this concern could be addressed by amending the definition of 'recorded historic heritage sites' as set out opposite.  

Heritage New Zealand is concerned that the Proposed Water and Land Plan unnecessarily duplicates archaeological site protection under the Heritage New Zealand Pouhere Taonga Act 2014 (HNZPTA 2014).  

The Heritage New Zealand Pouhere Taonga Act 2014 makes it unlawful for any person to modify or destroy the whole, or any part of, an archaeological site without the prior authority of Heritage New Zealand Pouhere Taonga. This applies whether or not the land on which the site is located is designated, or a resource or building consent has been issued. It also provides for substantial penalties for unauthorised modification or destruction.  

There are more than 1500 recorded archaeological sites in Southland, and there is already a legislative framework in place under the HNZPTA 2014 to manage direct modification and destruction of these sites. Heritage New Zealand therefore considers it overly onerous to also require resource consent where an activity would take place in the vicinity of a recorded archaeological site, unless that site has been assessed of having significant value - in which case it should be included in a regional or district plan heritage schedule.  

Heritage New Zealand considers that the Council does have a responsibility to manage effects on archaeological heritage values pursuant to sections 6.|

Amend definition of 'Recorded historic heritage site' as follows:  

Sites recorded on the New Zealand Heritage List/Rārangi Kōrero or on the New Zealand Archaeological Association (NZAA) Site-Recording Scheme, or a historic heritage site, tree or building listed in an operative or proposed district or regional plan.  

Include information in the Water and Land Plan about how owners and/or applicants are to access information about the location and nature of NZAA recorded sites.
& (f) of the RMA, however it is not necessarily appropriate to require resource consent for an activity when the only trigger is that there is a recorded archaeological site in the vicinity. This is usually more appropriately dealt with under the HNZPTA 2014.

It is recognised that the current definition of ‘Recorded historic heritage sites’ has been used in the existing Regional Water Plan. However since that Plan was developed Heritage New Zealand’s awareness of the issue of duplication between the RMA 1991 and HNZPTA 2014 has increased. Heritage New Zealand has also noted through involvement in the development of other RMA plans that concern about this issue has become more prevalent.

Linked to this is the observation that sites recorded in the New Zealand Archaeological Association (NZAA) database (and which accordingly fall under the proposed definition of ‘Recorded historic heritage sites’) are not identified on the Proposed Water and Land Plan maps. The Plan should include information on how to access NZAA site records.

On a separate matter, pursuant to section 86(B)(3)(d) of the RMA 1991, a rule in a proposed plan has immediate legal effect if the rule protects historic heritage. Accordingly Heritage New Zealand considers it appropriate to include reference to historic heritage places that are scheduled in proposed plans in the definition of recorded historic heritage sites.'

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<td>5.</td>
<td>40(a)(iv)</td>
<td>If Heritage New Zealand’s requested relief in regards to recorded archaeological sites is accepted, rules 40(a)(iv), 42(a)(iii), 43(a)(iv), 44(a)(iv) &amp; (c)(v) (which are worded slightly differently from most of the proposed Plan’s rules concerning historic heritage) would in effect only duplicate district and regional plans which generally control activities directly impacting on scheduled heritage sites such as alterations and demolition/destruction of scheduled heritage sites.</td>
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<td>42(a)(iii)</td>
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If Heritage New Zealand relief under point 3. above is accepted –

Amend Rules 40(a)(iv), 42(a)(iii), 43(a)(iv), 44(a)(iv) & (c)(v) as follows:

the activity does not modify, damage or destroy any recorded historic heritage site;
| 44(a)(iv) & (c)(v) | These provisions should be amended so as to be consistent with the wording used throughout most of the Plan, as set out in the next column. Heritage New Zealand considers that the Water and Land Plan has a role to play in managing effects on significant historic heritage items. Activities managed under the Proposed Water and Land Plan such as gravel extraction, earthworks and discharges have the potential to impact on historic heritage in ways that would not necessarily be controlled through a district plan. Accordingly it is appropriate to retain the rule framework in order to ensure that such matters are able to be considered through a resource consent process, but to avoid likely duplication with district plan rules. |
Amendments sought
The Plan is somewhat inconsistent in referring to the protocol surrounding the accidental discovery of previously unknown archaeological and/or cultural sites. For example an accidental discovery protocol is outlined in section Rule 78 – Weed and sediment removal for drainage maintenance (a)(x), and rule 51 – in relation to minor diversions of water on the Tiwai Peninsula (rule 51); but not for other activities which also have the potential to uncover archaeological and/or cultural material, for example the erection of structures in river and lake beds. Heritage New Zealand considers that it would be more appropriate to include a comprehensive accidental discovery protocol centrally within the Plan so as not to infer that this requirement only relates to a small number of activities. The provision of this information will lead to better management of archaeological and cultural heritage values, and reduce the possibility of accidental site damage. This information also assists owners/developers to understand their legal obligations under the HNZPA 2014, avoiding unanticipated project costs and delays. The proposed provisions are also potentially misleading in that they suggest |

| 6. | That the Accidental Discovery Protocol included in Attachment C to this submission be included centrally within the Plan. Amend Rule 51(c)(iii)(6) as follows:

(6) in the event of a discovery, or suspected discovery, of a site of cultural, heritage or archaeological value, the operation shall cease immediately in that location and the Director of Policy, Planning and Regulatory Services, Environment Southland shall be informed. Operations may recommence with the permission of the Director of Policy, Planning and Regulatory Services who will consult with Heritage New Zealand Pouhere Taonga. |
that Environment Southland alone has the mandate to make a decision about whether or not work may recommence following the accidental discovery of archaeological and/or cultural material.

Whilst it is appropriate in terms of historical and cultural heritage management that the Council is made aware of any archaeological or cultural site discovered, Heritage New Zealand would like to stress that regardless of any consent granted, or decision made by a Council, an archaeological site may only be modified or destroyed if an archaeological authority has been granted by Heritage New Zealand. Therefore any decision to recommence works following the accidental discovery of an archaeological site should only be made following consultation with Heritage New Zealand Pouhere Taonga to ensure that all legal obligations under the HNZPTA 2014 have been met.

Rule 51(c)(iii)(6) is site specific. Given the number of known and recorded archaeological sites on the Tiwi Peninsula, there is strong possibility that the works permitted under this rule could not legally proceed without an archaeological authority being granted by Heritage New Zealand. Heritage New Zealand therefore questions the appropriateness of this provision which implies that works can take place provided any discovery is reported to the Council, but does not mention that there is a possibility that an archaeological authority under the HNZPTA 2014 will also be required. This should be remedied as set out in the column opposite.

Advice note: Due to the high concentration of recorded archaeological sites in the vicinity of the above sites, it is possible that works will require an archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014. No work (even if permitted under the rule or authorised by resource consent) should commence without first contacting Heritage New Zealand.

Amend Rule 78(a)(x) as follows:

x) there are no known archaeological sites or recorded historic heritage sites or wāhi tapu in the bed, at the site of the activity. In the event of the discovery of a site of potential historical or cultural importance (for example, archaeological site or wāhi tapu), the activity shall cease and Environment Southland’s Director of Policy, Planning and Regulatory Services shall be informed immediately. The activity may not recommence without the permission of the Director of Policy, Planning and Regulatory Services who will consult with Heritage New Zealand Pouhere Taonga, and where the site is of Māori origin the relevant rūnanga, before providing permission:

7. New schedule/appendix Amendment sought The management of archaeological heritage values is achieved under both the RMA 1991 and the HNZPTA 2014. In order to ensure that management of archaeological resources is achieved in an integrated manner, whilst Include the information contained in Attachment B of this submission as a schedule/appendix to the Proposed
avoiding duplication as far as possible, Heritage New Zealand considers that it would be appropriate for the Proposed Plan to include an appendix outlining HNZPTA 2014 legal requirements concerning archaeological sites.

As well as enhancing the management of archaeological heritage resources by raising awareness of the legal protection to archaeological sites, the provision of this information is of benefit to land owners and developers in that early awareness of their obligations lessens the possibility of unforeseen time delays and costs to projects.

| 8. | Appendix N - Farm Management Plan Requirements | Support | The inclusion of information in Farm Management Plans about the location of known and recorded historic heritage will provide for better management of heritage values by raising awareness of their presence and location, reducing the possibility of accidental site damage, and ensuring that information about historic heritage values is available to inform resource consent and general farm management processes. | Adopt Appendix N - Farm Management Plan Requirements Part B – Management Plan Content |

| 9. | Whole Plan Amendments sought | The use of the words ‘despite’ and ‘notwithstanding’ at the beginning of certain rules is confusing. Dictionary definitions indicate that these words have the same meaning. The rules would be easier to interpret if one of these terms was chosen and used consistently throughout the Plan. | Review use of ‘despite’ and ‘notwithstanding’ in the rules and amend as necessary to achieve consistency and clarity. |
Schedule X Archaeological Requirements

This Schedule sets out information to alert the public to their responsibilities regarding archaeological sites. This is relevant with regard to:

1) Demolition / destruction of any structure associated with human activity prior to 1900, whether or not it is scheduled in a district or regional plan.
2) Earthworks or other works that may disturb pre-1900 surface or sub-surface archaeological sites or material.

An archaeological site is as defined by the Heritage New Zealand Pouhere Taonga Act 2014 as being:

a) any place in New Zealand, including any building or structure (or part of a building or structure), that:
   i. was associated with human activity that occurred before 1900 or is the site of the wreck of any vessel where the wreck occurred before 1900; and
   ii. provides or may provide, through investigation by archaeological methods, evidence relating to the history of New Zealand.

It is also possible for Heritage New Zealand Pouhere Taonga (Heritage New Zealand) to declare a post-1900 site as an archaeological site.

Consent required from Heritage New Zealand

An authority (consent) from Heritage New Zealand must be obtained prior to the commencement of works noted in (1) or (2) above, and preferably before submitting any resource consent application. It is an offence to modify or destroy an archaeological site, or demolish / destroy a whole building, without an authority if the person knew or ought to reasonably suspect it to be an archaeological site. For further information, contact Heritage New Zealand. The relevant legislation is the Heritage New Zealand Pouhere Taonga Act 2014, in particular sections 42 and 44 of that Act.

Known or suspected archaeological sites

The following resources may assist in determining if an archaeological site is or may be present:

- Historic and cultural heritage scheduled in a district or regional plan.
- Sites listed by the New Zealand Archaeological Association's Archaeological Site Recording Scheme (Latest information is on the NZAA website).
- Council GIS information that highlights known sites and areas where there is a higher risk of unidentified historic heritage being encountered.
- Written and oral histories of the area, including those of Tangata Whenua.

Archaeological discovery without an authority (Protocol)

If an authority has not first been obtained, and an archaeological site is subsequently discovered, the following protocol must be followed:

i. immediately cease operations;
ii. inform the relevant iwi authority;
iii. inform Heritage New Zealand and apply for the appropriate authority, if required;
iv. inform the Council and apply for the appropriate resource consent, if required;
v. take appropriate action, after discussion with the Heritage New Zealand, Council and relevant iwi authority to remedy damage and/or restore the site.
Attachment C: Accidental Discovery Protocol
Heritage New Zealand Pouhere Taonga Archaeological Discovery Protocol

Under the Heritage New Zealand Pouhere Taonga Act (2014) an archaeological site is defined as any place in New Zealand that was associated with human activity that occurred before 1900 and provides or may provide, through investigation by archaeological methods, evidence relating to the history of New Zealand. For pre-contact Maori sites this evidence may be in the form of bones, shells, charcoal, stones etc. In later sites of European/Chinese origin, artefacts such as bottle glass, crockery etc. may be found, or evidence of old foundations, wells, drains or similar structures. Burials/koiwirangiata may be found from any historic period.

In the event that an unidentified archaeological site is located during works, the following applies;

1. Work shall cease immediately at that place and within 20m around the site.

2. The contractor must shut down all machinery, secure the area, and advise the Site Manager.

3. The Site Manager shall secure the site and notify the Heritage New Zealand Regional Archaeologist. Further assessment by an archaeologist may be required.

4. If the site is of Maori origin, the Site Manager shall notify the Heritage New Zealand Regional Archaeologist and the appropriate iwi groups or kaitiaki representative of the discovery and ensure site access to enable appropriate cultural procedures and tikanga to be undertaken, as long as all statutory requirements under legislation are met (Heritage New Zealand Pouhere Taonga Act, Protected Objects Act).

5. If human remains (koiwirangiata) are uncovered the Site Manager shall advise the Heritage New Zealand Regional Archaeologist, NZ Police and the appropriate iwi groups or kaitiaki representative and the above process under 4 shall apply. Remains are not to be moved until such time as iwi and Heritage New Zealand have responded.

6. Works affecting the archaeological site and any human remains (koiwirangiata) shall not resume until Heritage New Zealand gives written approval for work to continue. Further assessment by an archaeologist may be required.

7. Where iwi so request, any information recorded as the result of the find such as a description of location and content, is to be provided for their records.

8. Heritage New Zealand will determine if an archaeological authority under the Heritage New Zealand Pouhere Taonga Act 2014 is required for works to continue.

It is an offence under S87 of the Heritage New Zealand Pouhere Taonga Act 2014 to modify or destroy an archaeological site without an authority from Heritage New Zealand irrespective of