

## **Review of the Canterbury Regional Policy Statement: Heritage**

### ***Purpose***

The purpose of this paper is to discuss options on the approach to be used to review the provisions within the Canterbury Regional Policy Statement (CRPS) for heritage (found principally in Chapter 8). The paper brings together the current thinking on the review of these CRPS provisions. It outlines the options and preliminary approaches to be used in the review. Views are being sought on possible policy approaches prior to undertaking detailed analysis or drafting specific wording.

### ***Background***

Environment Canterbury (ECan) has begun its review of the CRPS. The review must consider all the provisions in the CRPS, decide whether to retain, amend, or delete existing provisions, or add new provisions. The statutory context for the review of the heritage provisions is summarised in Appendix 1.

The current CRPS recognises that Canterbury's various cultures each have sites and areas that carry particular heritage value. Canterbury traditionally held the majority of Ngāi Tahu settlements, and as such contains many wāhi tapu sites and sites of cultural significance such as the rock drawings near Waikari and in the Waitaki Valley, Kaiapoi Pā and other historic Pā and Marae. European settlement of the Canterbury region has also left some significant heritage sites and areas, including buildings such as Fyffe house in Kaikōura, and areas such as the Bridle Path on Banks Peninsula. Additionally, areas settled by distinct cultures, such as the French settlement at Akaroa, provide insight into the heritage of such cultures. The diversity of heritage sites, and the cultures and eras they represent, contribute to the regional sense of identity.

In terms of responsibilities for protecting heritage features in New Zealand and specifically in Canterbury, there are several agencies that have key roles. Among these agencies, the New Zealand Historic Places Trust (NZHPT) is a Crown Entity<sup>1</sup> that was originally established by the Historic Places Act 1980 and continues in this capacity under the Historic Places Act 1993 (HPA). The general functions of the NZHPT are to identify and conserve heritage features, to advocate the conservation of heritage features, to foster public interest in heritage, to provide information and assistance regarding heritage features and to administer heritage features owned by the HPT.

Protection of historic Heritage, other than archaeological sites, primarily occurs through rules in District Plans. As such, Territorial Authorities (TAs) have a role in the direct management of heritage areas. Most TAs have policies, objectives and rules relating to heritage features within their District or City Plans.

Regional Councils have a direct role in the protection of heritage features within the Coastal Marine Area (CMA) and in the beds and margins of lakes and rivers. The NZHPT state that the primary tools for the strategic management of heritage features available to Regional Councils are the Regional Policy Statement and Regional Plans<sup>2</sup>.

Some members of Papatipu Rūnanga have responsibility as kaitiaki, to protect some heritage features that are of significance to Ngāi Tahu and / or the local Rūnanga within their takiwā.

There are other community based groups who voluntarily take responsibility for certain heritage features such as the Canterbury Railway Society, the Society of Rural History, the Ashburton Vintage Home Restorers' Group, and various Historic Societies. These groups generally work in conjunction with the NZHPT as advocates to Councils.

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<sup>1</sup> Section 7 Crown Entities Act 2004

<sup>2</sup> *Sustainable Management of Historic Heritage – Guide No. 1 Regional Policy Statements*. (2007) New Zealand Historic Places Trust - NOTE: The NZHPT have released a series of guides for local government to assist in the management of heritage features through District and Regional Plans. Included in these guidelines is “*Sustainable Management of Historic Heritage – Guide No. 1 – Regional Policy Statements*”.

Since the CRPS was made operative in 1998, there have been a number of contextual changes that affect the management of heritage features:

1. In 2003 heritage was included in Section 6(f) of the RMA as a matter of national importance. Prior to 2003, Section 7 (other matters) of the RMA, included provision for the recognition and protection of heritage values. This has elevated the significance of heritage in terms of resource management issues.
2. The HPA was amended in 2006. Of note, the amendment includes a new provision that requires District and Regional Councils to have particular regard to recommendations made by the Māori Heritage Council.
3. District Plans all contain provisions controlling the use and development of heritage features. Many TAs have updated their District Plan provisions since 1998.
4. The Regional Coastal Environmental Plan was made operative in 2005. This plan includes provisions protecting heritage features within the Coastal Marine Area.
5. The Ngāi Tahu Claims Settlement Act was enacted in 1998 and contains a list of statutory acknowledgement areas that contain heritage features of significance to Ngāi Tahu. Additionally, Iwi Management Plans have been written that identify heritage features (or areas containing heritage features) and provide policies for activities taking place in these areas.

### **Current CRPS provisions and effectiveness of these**

Chapter 8 of the CRPS contains provisions for landscape, ecology and heritage. Specific to heritage, issue 1 states:

*Adverse effects of the use, development, and protection of natural and physical resources on the integrity, distinctive characteristics and contribution to a regional sense of identity of:*

[...]

*(e) the historical and cultural heritage of Canterbury including its amenity and recreational values.*

Objective 4 states:

*Protection or enhancement of the historical and cultural heritage sites, buildings, places and areas, including their cultural, recreational and amenity values, that contribute to Canterbury's distinctive character and sense of identity.*

Policy 5 seeks the protection and conservation of historic sites and buildings (that meet the relevant criteria in Section 20.4 of the CRPS) and to provide for access to wāhi tapu and wāhi taonga sites for Tangata Whenua. Policy 5 also recognises that it may not always be appropriate to make information regarding wāhi tapu and wāhi taonga sites publicly available.

Section 20.4 of the CRPS defines “Regional Significance” by listing criteria that are to be considered when determining if a heritage site, place or area is regionally significant to Canterbury. In summary, matters of regional significance are heritage sites, places or areas that contribute to or reflect the cultural or spiritual identity, or evolution of the Canterbury region, including different stages of human occupation<sup>3</sup>.

Chapter 12, which deals with settlement and the built environment, includes provision for the protection of, among other features, heritage features from adverse effects that could be caused by the use of land for urban development and the physical expansion of settlements.

Chapter 6 of the CRPS provides for the relationship of Tangata Whenua with resources and includes specific provision for the protection of heritage features such as wāhi tapu and archeological items such as kōiwi tangata (human remains) and artifacts.

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<sup>3</sup> *Canterbury Regional Policy Statement 1998 – Section 20.4 (g)*

In terms of effectiveness, heritage has coverage in all District Plans and it is considered that heritage is generally well provided for within the Canterbury Region. This has raised questions as to whether the CRPS needs to cover heritage at all. It is however noted that the RMA requires the CRPS to cover all resource management issues for the region<sup>4</sup>. Heritage features and values often transcend district and regional boundaries (i.e. bridges, landscapes, historic trails, marine features anchored to the land such as jetties), and as such, it is considered that regional direction is appropriate to promote integrated management of heritage<sup>5</sup>.

Chapter 12, Policy 2 states that the use of land for urban development and settlement expansion that will adversely affect regionally significant heritage and sites of significance to Tangata Whenua should be discouraged. It is not clear if this policy has been effective or not, however it is considered that the policy is not strong enough to reflect the status that the RMA gives to heritage. It is also considered that the term “*should be discouraged*” is quite vague and provides no certainty.

The CRPS relies mainly upon District Plans to implement heritage provisions and it is considered that this has generally been carried out appropriately, however there is no evidence to indicate that this has occurred as a result of the CRPS. It is noted that the RMA has elevated the status of historic heritage from a Section 7 “other matter”, to a Section 6 “matter of national importance”. It has been suggested (through submissions on the CRPS review scoping report<sup>6</sup>) that the heritage provisions need to be strengthened in order to reflect this elevated status.

The Chapter 8 provisions are not considered to be effective due to the reference to section 20.4 of the CRPS. There is currently a provision of 20.4 that states that although a site or feature may meet the criteria of “regional significance”, that site or feature may not necessarily be regionally significant. This provision creates a lack of certainty and guidance to District Councils and the general public as to what heritage features are considered to be regionally significant. Further, due to legislative changes to the RMA<sup>7</sup>, it is no longer considered necessary for the CRPS to define what is regionally significant in terms of heritage features, but rather should provide for the heritage resource as a whole.

The CRPS review scoping report<sup>8</sup> found that Section 20.4 creates uncertainty generally and as such, recommended that the section should be reviewed in the context of specific resources with a view to removing the section if possible. To this end, it is considered that the criteria relating to heritage found in Section 20.4 are neither effective nor efficient.

### **Policy options and discussion**

It is not clear if the heritage provisions of the CRPS have been effective or not. However, elevated status in the RMA of historic heritage as a matter of national importance, has meant that the current provisions no longer reflect the significance of heritage nationally or regionally.

The Chapter 8 reference to Section 20.4 has created uncertainty and confusion. Changes to the RMA in 2005 mean that criteria for regional significance are less relevant to the CRPS provisions and are no longer needed.

The Chapter 12 provisions are considered to be vague and do not provide certainty or reflect the status of heritage within the RMA. It is considered that the provisions could be strengthened with the use of more mandatory language that would provide more certainty.

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<sup>4</sup> Section 62(1)(a)– Resource Management Act 1991

<sup>5</sup> *Sustainable Management of Historic Heritage – Guide No. 1 Regional Policy Statements*. (2007) New Zealand Historic Places Trust

<sup>6</sup> Christchurch City Council comments on scoping report 2006

<sup>7</sup> Section 62(1)(a) RMA – See 2003 amendment – Schedule 2 repealed 2003

<sup>8</sup> *CRPS Scoping Report – A Report on the Issues and Approach to the Review of the Canterbury Regional Policy Statement*. (2006) Environment Canterbury

Given the above discussion, it is considered the options for review of the heritage provisions are as follows:

1. Retain the existing provisions (status quo) – Despite the lack of currency and certainty, the current provisions are reflected throughout the region in District and Regional Plans and heritage in general is well provided for. However, given the contextual changes, this option is not supported.
2. Reduce the CRPS provisions to include a general objective and policy to protect heritage through District Plans and Regional Plans where appropriate – this is a step back from the current provisions in that it does not provide criteria for identifying regionally significant heritage features, but reflects current practice and leaves it up to local communities to decide what is worth protecting.
3. Remove CRPS heritage provisions and rely upon District Plans, and where appropriate, Regional Plan provisions to protect heritage – This option has been contemplated, however it is considered that heritage is an issue of resource management significance within the Canterbury Region. If this option were to be pursued, it would need to be on the basis that a contextual change has occurred that has reduced the significance of this resource management issue in Canterbury, and as such is not supported.
4. Retain the existing provisions but strengthen them to provide certainty and reflect RMA amendments, and achieve consistency in the management of heritage across the region – This option would provide a similar level of protection to historic heritage as currently provided (or at least intended), but would also provide greater certainty. This option will require several changes including:
  - a. Remove Section 20.4
  - b. Ensure Chapter 8 provisions are written in mandatory language and give consideration to including a list of criteria to assist TAs in identifying historic heritage.
  - c. Ensure Chapter 12 provisions are written in mandatory language
  - d. Could include a method whereby the HPT classifications and/or heritage listings are reflected in District Plans
5. Identify and map all heritage features and include specific guidance on how these features should be treated – This option would be problematic for several reasons, as outlined below, and as such is not supported:
  - a. There is a risk that newly discovered heritage items would not be provided for within the CRPS or that some items are mistakenly overlooked.
  - b. The study that would be required to identify and map heritage items would not be expensive but would be inefficient as, for the most part, it would rely on existing District Plans inventories of heritage features and would be a duplication of work that has already been done in the preparation of District Plans.
  - c. Mapping of some heritage features such as wāhi tapu, within a public document, may be inappropriate.
  - d. The level of detail would be too great for the CRPS.

## **Recommendation**

It is considered that due to changes in the RMA and a need for more certainty, some revision and strengthening of the provisions is necessary. To this end, option 4 is recommended.

## **Appendix 1: Statutory context**

### Resource Management Act 1991 (RMA).

Section 6 sets out matters of national importance which must be recognised and provided for by those exercising powers and functions under the RMA. Included in the matters of national importance are:

*6(e) the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, wāhi tapu, and other taonga.*

*6(f) The protection of historic heritage from inappropriate subdivision, use, and development*

Section 30(1)(a) gives regional councils the function of establishing, implementing and reviewing the objectives, policies and methods to achieve integrated management of the natural and physical resources of the region.

Section 30(1)(b) gives regional councils the function of preparing objectives and policies in relation to any actual or potential effects of the use, development or protection of land which are of regional significance.

Section 31(1)(a) gives Territorial Authorities (TAs) the function of establishing, implementing and reviewing objectives, policies and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district.

Section 62 (1)(a) requires that a Regional Policy Statement must state the significant Resource Management issues for the region

**Appendix 2: Review of resource management issues**

<b>Issue</b>	<b>Relevance</b>	<b>Significance</b>	<b>Recommendation</b>
<p><u>Chapter 8 Issue 1</u> Adverse effects of the use, development, and protection of natural and physical resources on the integrity, distinctive characteristics, and contribution to a regional sense of identity of: [(a) – (d)] (e) the historical and cultural heritage of Canterbury including its amenity and recreational values [(f) ...]</p>	<p>Remains relevant</p>	<p>The national significance of this issue is reflected in legislation. The issue is also considered to remain regionally significant</p>	<p>The issue is retained No further issues have been identified.</p>

**Appendix 3: Analysis of policy approaches: Heritage**

Option 1: Retain existing provisions (status quo)

	<b>For</b>	<b>Against</b>
<b>Purpose of the RMA</b>	<ul style="list-style-type: none"> <li>Assists in achieving the purpose of the RMA</li> </ul>	<ul style="list-style-type: none"> <li>Does not reflect the status the RMA gives the issue as a matter of national importance</li> </ul>
<b>Issue resolution</b>	<ul style="list-style-type: none"> <li>Assists in resolving the issue</li> </ul>	
<b>Integrated management</b>	<ul style="list-style-type: none"> <li>Will achieve regionally integrated management</li> </ul>	<ul style="list-style-type: none"> <li>Will not achieve nationally integrated management as current provisions do not fully reflect the legislation</li> </ul>
<b>Carrying out functions</b>	<ul style="list-style-type: none"> <li>Achieves Environment Canterbury's functions</li> </ul>	
<b>Consultation views</b>		
<b>OVERVIEW</b>	This approach would not resolve the lack of certainty that the current provisions present, nor does it reflect the legislative RMA change that requires the CRPS to address significant resource management issues in the region, rather than regionally significant matters. The current provisions do not reflect the status that the RMA gives the issue as a matter of national importance	

Option 2: Reduce the CRPS provisions to include a general objective and policy to protect heritage through District Plans and Regional Plans where appropriate

	<b>For</b>	<b>Against</b>
<b>Purpose of the RMA</b>	<ul style="list-style-type: none"> <li>Assists in achieving the purpose of the Act</li> </ul>	
<b>Issue resolution</b>		<ul style="list-style-type: none"> <li>Relies on legislation and District level planning to resolve the issue. There would be inconsistency in issue resolution across the region</li> </ul>
<b>Integrated management</b>		
<b>Carrying out functions</b>	<ul style="list-style-type: none"> <li>ECan's Section 62 functions would be satisfied</li> </ul>	
<b>Consultation views</b>		
<b>OVERVIEW</b>	This approach reflects current practice	

Option 3: Remove the CRPS heritage provisions and rely upon District Plan and where appropriate, Regional Plan provisions to protect heritage

	<b>For</b>	<b>Against</b>
<b>Purpose of the RMA</b>		<ul style="list-style-type: none"> <li>Would not achieve the purpose of the Act as this option does not recognise or provide for matters of national importance</li> </ul>
<b>Issue resolution</b>	<ul style="list-style-type: none"> <li>Districts currently cover heritage generally well in District Plans, so it is likely the issue will be resolved</li> </ul>	<ul style="list-style-type: none"> <li>Relies on legislation and primarily on District level planning to resolve the issue (would only be addressed at regional plan level in the CMA and beds and margins of lakes and rivers) and without CRPS provisions there is no guarantee this would continue in the long term</li> </ul>
<b>Integrated management</b>		<ul style="list-style-type: none"> <li>Would be not achieve integrated management</li> </ul>
<b>Carrying out functions</b>		<ul style="list-style-type: none"> <li>This approach is contrary to Section 62 of the RMA</li> </ul>
<b>Consultation views</b>		
<b>OVERVIEW</b>	This approach would not achieve the purpose of the Act or constitute a proper course to carry out legislative requirements under that Act and as such this approach is not recommended	

Option 4: Retain the provisions but strengthen to reflect RMA changes and achieve consistency in the management of heritage across the region

	<b>For</b>	<b>Against</b>
<b>Purpose of the RMA</b>	<ul style="list-style-type: none"> <li>Assists in achieving the purpose of the RMA</li> </ul>	
<b>Issue resolution</b>	<ul style="list-style-type: none"> <li>Assists in resolving the issue and removes uncertainty</li> </ul>	<ul style="list-style-type: none"> <li>May result in less flexibility at District Planning level</li> </ul>
<b>Integrated management</b>	<ul style="list-style-type: none"> <li>Will ensure policy framework is current with legislation</li> </ul>	
<b>Carrying out functions</b>	<ul style="list-style-type: none"> <li>Assists in achieving ECans functions</li> </ul>	
<b>Consultation views</b>		
<b>OVERVIEW</b>	This approach would ensure the “matter of national importance” status provided by the RMA is reflected and will remove uncertainty. In addition, this approach will remove reference to the CRPS Section 20.4 identification of heritage features of regional significance in accordance with RMA legislative changes, specifically changes to Sections 6(f) 62(1)(a) RMA.	

Option 5: Identify and map all heritage features of regional significance and include specific guidance on how these features should be treated

	<b>For</b>	<b>Against</b>
<b>Purpose of the RMA</b>	<ul style="list-style-type: none"> <li>Assists in achieving the purpose of the RMA</li> </ul>	
<b>Issue resolution</b>	<ul style="list-style-type: none"> <li>Assists in resolving the issue</li> </ul>	<ul style="list-style-type: none"> <li>There is a risk that some regionally significant heritage features would not be provided for</li> </ul>
<b>Integrated management</b>	<ul style="list-style-type: none"> <li>Will assist in integration of the management of this resource</li> </ul>	<ul style="list-style-type: none"> <li>Is not an efficient method of achieving integrated management</li> </ul>
<b>Carrying out functions</b>	<ul style="list-style-type: none"> <li>Assists in achieving ECan's functions</li> </ul>	<ul style="list-style-type: none"> <li>Is an inefficient method of carrying out Environment Canterbury's functions. Would not provide flexibility to District level planning</li> </ul>
<b>Consultation views</b>		
<b>OVERVIEW</b>	This approach would achieve the purpose of the Act and integrated management of the issue, but is inefficient and risks missing coverage of regionally significant features.	