



**Supreme Court of New Zealand
Te Kōti Mana Nui**

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MEDIA RELEASE – FOR IMMEDIATE PUBLICATION

**HAWKE'S BAY REGIONAL INVESTMENT CO LTD v ROYAL FOREST
AND BIRD PROTECTION SOCIETY OF NEW ZEALAND INC AND
MINISTER OF CONSERVATION**

(SC 106/2016) [2017] NZSC 106

**MINISTER OF CONSERVATION v ROYAL FOREST AND BIRD
PROTECTION SOCIETY OF NEW ZEALAND INC AND HAWKE'S BAY
REGIONAL INVESTMENT CO LTD**

(SC 107/2016)

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest www.courtsofnz.govt.nz.

The appeals concern the basis on which s 18(7) of the Conservation Act 1987 permits the Minister of Conservation to revoke the special protection of conservation park status, freeing the land in question from restraint against exchange or other disposition. The revocation in issue in the case was made to remove conservation park status for 22 hectares of the Ruahine Forest Park. The decision to revoke was made by the Director-General of Conservation, as the Minister's delegate, in order to facilitate the proposed Ruataniwha Water Storage Scheme through a land exchange by which other land will be obtained for the Park in exchange for the 22 hectares which will be flooded by the Water Storage Scheme.

The principal question on the appeals was whether revocation of conservation park status could lawfully be undertaken only where the intrinsic conservation values of the subject land do not warrant the continuation of special protection. The argument advanced by the Royal Forest and Bird Protection Society of New Zealand was that it was insufficient justification under the Act for the revocation decision that the subsequent proposed exchange would enhance the conservation park or wider conservation ends. Subsidiary questions on the appeals were whether the Director-General was obliged to observe provisions in the Conservation General Policy and Hawke's Bay Conservation Management Strategy, planning instruments adopted under the Act. In issue too was whether the proposed exchange entailed a disposition of land which required reservation of marginal strips under Part 4A of the Act.

The Supreme Court has by majority comprising Elias CJ, Glazebrook and Arnold JJ affirmed the judgment of the Court of Appeal setting aside the decision of the Director-General revoking the conservation park status of the 22 hectares. The majority Judges agreed with the Court of Appeal that the Director-General acted unlawfully in revoking conservation park status for the land on the basis of the test for exchange under s 16A, which authorises exchange of stewardship land. They have affirmed the decision of the Court of Appeal that revocation under s 18(7) is permitted only where the conservation values in the subject land no longer warrant continued special protection. That was not the approach taken by the Director-General and so the revocation decision was rightly set aside by the Court of Appeal. The Judges in the majority have held also that the revocation decision of the Director-General was in error because it did not observe policies contained in the statutory planning instruments. They considered that these instruments applied to the revocation decision under s 18(7) and assisted in determination of its scope.

William Young and O'Regan JJ dissented and would have allowed the appeals. They considered that there is nothing in the language of s 18(7) to limit the revocation determination to the intrinsic values of the subject land if the revocation was for the purposes of the Act. They also took the view that the policies in the statutory planning instruments were not relevant because they were concerned with general reviews of protected status initiated by the Department and did not constrain consideration of specific one-off proposals such as the one in issue in the present case.

With respect to the reservation of marginal strips, the majority Judges have affirmed the view taken in the High Court that an exchange of conservation land for other land entails a "disposition" of the conservation land and triggers the reservation of marginal strips. They have however declined to consider further the effect of the application of Part 4A of the Act on the basis that the question is not currently before the Court.

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