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# SUSTAINABLE MANAGEMENT OF OUR HERITAGE

THE RMA-HPA STATUTORY REQUIREMENTS FOR HERITAGE; CRITICAL ISSUES FOR MAORI SITES, WAHI TAPU, OTHER ARCHAEOLOGICAL SITES, LOCAL AUTHORITY PLANNING FOR HERITAGE; AND POSSIBLE FUTURE NATIONAL HERITAGE STRUCTURES.

## INTRODUCTION

This paper has been prepared in four parts. Part 1 focuses on the *Resource Management Act 1991* (RMA) and the *Historic Places Act 1993* (HPA) statutory requirements for cultural heritage. Part 2 considers the present status and possible future options for Maori sites, wahi tapu and other archaeological sites. Part 3 considers local authority planning for heritage including district plan reviews, implementation of heritage rules, non-regulatory options including incentives, regional councils and the future role of the NZ Historic Places Trust (the Trust). Part 4 begins to evaluate possible future national heritage structures.

In June 1996, The Parliamentary Commissioner for the Environment (PCE) prepared a report entitled *Historic And Cultural Heritage Management In New Zealand* (1996). That report called for substantial changes to the management of the nation's land-based heritage.

Subsequently, an inter-departmental National Heritage Strategy was initiated, although its future seems doubtful. More recently, the Minister of Conservation has outlined his intentions to review the system of historic heritage management. The nature and timing of changes has yet to be decided. In the meantime, it is important for resource management practitioners to continue to develop heritage sustainability programmes; to understand the problems that exist; and to understand the significance of possible changes and adopt appropriate transitional operational procedures.

## STATUTORY REQUIREMENTS FOR HERITAGE

The basis for heritage planning is found within the legislation of the RMA and the HPA. The main statutory components for heritage under the RMA are:

- That heritage is embodied in the RMA under section 7(e) and other sections of the RMA, including the definitions of "resource", "environment", "structure" and "amenity";

- The requirement to recognise and provide for, among other things, the relationship of Maori with their ancestral lands, sites and wahi tapu under section 6; to have regard to Kaitiakitanga under section 7(e); and to take into account the principles of the Treaty of Waitangi under section 8;

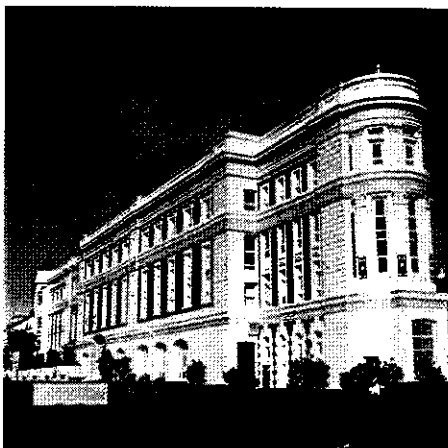
- That the Historic Places Register must be considered when preparing a regional or district plan under sections 66(2)(c)(iia) or 74 (2)(b)(iia);
- That under section 93(1)(c) a resource consent application must be served on the Trust for any land subject to a heritage order or requirement, or is otherwise identified in the plan as having heritage value; or that is registered under the HPA;

- That sections 187-198 deal with heritage orders and that the Trust and local authorities are heritage protection authorities (hpa's).

The purpose and principles of the HPA are both reasonably general and wide ranging. The functions of the Trust are outlined in section 39 of the HPA. The methods of undertaking the Trust statutory planning components of the HPA are:

- Section 5, requirements for heritage orders;
- Sections 6-8, negotiating heritage covenants with owners;
- Sections 9-19, applications to destroy, damage or modify archaeological sites;
- Sections 22-37, registration of historic places/areas, wahi tapu/areas; and
- Section 58, conservation plans for Trust properties.

There is no definitive case law on the present process of heritage protection using rules within district plan reviews. Section 85 of the RMA makes it difficult to implement rules that may adversely affect private property rights and as no references to the Environment Court have yet been heard on heritage rules in district plans developed under the RMA, the extent to which a rules-based approach is allowable is still in part to be determined. The Planning Tribunal, in *GM Goldfinch & Others v Ohakune Borough Council* E15/86, stated that protection notices (vis-à-vis heritage orders) are the preferred method for protecting heritage. However, the heritage order



*The Wellington Harbour Board Wharf Office; a trend-setting and politically successful adaptive reuse to inner city apartments, but the extent of physical alteration had an adverse effect on the high cultural values of the building.*

process often precludes development and may have substantial associated compensation costs attached; where as rules in a plan can leave room for a discretionary approach to change or development.

There are problems with the relationship between the RMA and the HPA, including the appropriateness of existing responsibilities for sustainably managing Maori sites, wahi tapu and other archaeological sites, and differing consent procedures and time frames for applications under the two Acts. Further in-depth analysis of the legislative requirements is required.

## CRITICAL ISSUES

Significant problems exist in the statutory management of Maori sites, wahi tapu and other archaeological sites under the RMA and HPA. Those problems, and their possible solutions, have been outlined in at least 25 reports, (see Bibliography). However, with the exception of the PCE Report, the existing literature may not be widely read by resource management practitioners. The recent increase in papers dealing with sites under the RMA and HPA is indicative of the increasing awareness of the problems and the desire by many to see those problems solved.

The RMA *requires* local authorities to recognise and *provide* for the relationship of

*Kaiapoi Woollen Mills, Office and Factory, Manchester St, Christchurch; demolition in progress after both the City Council and the Trust had lodged, then withdrawn requirements for heritage orders.*



Maori with their ancestral lands, sites and wahi tapu. Most district plan reviews have included a consultation process with iwi and outlines of the aspirations of iwi have been included in many proposed district plan documents. Although consultation is both valuable and necessary, it is not the only method used for sustainable management of other resources and so why should it be the only method of recognising and providing for Maori with their ancestral lands, sites and wahi tapu? Consultation, on its own, is unlikely to achieve sustainable management of such sites.

While some district plans include rules to protect registered historic places, including archaeological sites, in general, the consideration of sites by councils occurs where such sites are incidental to a consent that is required for non-archaeological reasons. In some district councils the RMA consents for subdivisions, coastal areas or other special developments specify the need to look at archaeological sites.

There is no direct link between the RMA and the HPA archaeology authority process, although some councils have a close working relationship with the Trust. The Trust is required to be contacted when any development may affect an archaeological site. Unfortunately, many councils use the HPA process to justify their not becoming involved with sites under the RMA. However, no such opt-out clause exists under either the RMA or HPA legislation. Further complicating factors are the lack of sufficient information on sites for planning purposes and the reluctance of iwi to disclose the location of wahi tapu, particularly burial sites. These problems are not unresolvable and there are various case studies which demonstrate different methods of providing solutions.

The South Wairarapa District Plan protects the registered Matakaitaki a Kupe Historic Area. This area was nominated by the iwi and registered by the Trust after substantial discussion with and opposition from local interests. A further development of that process for other areas of sites in the district is being discussed. The Tasman District Council included areas of sites

within the proposed plan that would require specific culturally-based resource consents for development work. The process has been frustrated by inadequate data and substantial community opposition which has led to the areas being withdrawn under a Variation. The concept is to be revisited and a substantial upgrade of site data is one of the prerequisites to including areas in the proposed plan. Tauranga District Council is initiating an iwi-run data gathering of site information and Gisborne District Council is also initiating an iwi-based site programme.

The Auckland Regional Council runs a computer-based information system of recorded sites and has advocated that district councils use that data to protect sites within district plans. The process has had some success but requires more accurate and comprehensive data and would require councils in the region to take a more active approach to site protection. Studies overseas have used the predictive model approach to outline areas of high, medium and low probability of the existence of sites; these studies have then been integrated with protection mechanisms and this method could be of value in New Zealand.

Future site protection could be undertaken by regional councils or by a separate organisation formed out of the Trust's Maori Heritage Council. Some commentators believe that iwi should have control over the site data and consent process. There is support for Maori being given resources to complete Iwi Management Plans incorporating statements protecting Maori sites.

The Ministry for the Environment (MfE) declined the Trust's 1996 application to the MfE Sustainable Management Fund for a national policy initiative in this area (G Whitehead and D Derby), although two iwi-based projects were approved. However, it is unlikely that those two iwi-run studies will solve the national policy problems that exist. More recently, MfE has stated it sees Maori interests as a priority area and as such intends to hold discussions with Local Government New Zealand (*Environment Update* MfE March 1997) on this topic.

Substantial work is still to be undertaken to identify, consider and propose solutions to the conflicts between the RMA, the HPA and sustainable management of Maori sites, wahi tapu and other archaeological sites. Further policy work is also required to consider the differences in time frames between the seeking of authorities

under the HPA and seeking designations or resource consents under the RMA.

## LOCAL AUTHORITY PLANNING FOR HERITAGE

### Critical Issues For District Plan Reviews

The critical issues for district plan reviews regarding heritage are:

- What level of consideration should councils give to the Trust's register?
- What level of information is required about an historic place to justify its being scheduled on a plan?
- What will the use of rules in a plan achieve, what should those rules say and what effect will section 85 of the RMA have on heritage items subject to rules in a plan?
- How should Maori sites, wahi tapu and other archaeological sites be integrated into the district planning process?
- Should the regulatory approach be limited to the use of heritage orders?

Johanna Woodward prepared a report for the Trust entitled *A Review Of Local Authority Heritage Protection Measures (1996)*. Her report found that while councils are generally handling their district plan approaches to heritage buildings well, the following issues (among others) have arisen:

*"...most, but not all, councils require resource consents for alterations to heritage buildings, some are not requiring applications for interiors of buildings. The use of controlled activity classes by some councils means these applications cannot be declined. [Of the councils surveyed] Dunedin is the only city to prohibit demolition of all scheduled heritage buildings, Auckland City prohibits demolition of Category A buildings. ...the approaches to archaeological sites and wahi tapu vary and where sites are not afforded protection, all archaeological data should be included in their land information systems. ...the value of specialist heritage reports is not always recognised..."*

### Resource Consent Applications

Once district plans are proposed under the RMA, councils are obliged to begin to implement the policies and rules contained in those plans. Experience shows that many councils have difficulty understanding and successfully implementing the heritage rules in their plans. As such, the Trust is promoting a seminar in the Wellington region to see if planning practitioners could benefit from

specialist knowledge about preparing resource consents for heritage items.

### Critical Issues For Non-regulatory Approaches

Compensation in the form of rates relief, tax refunds for conservation works, assistance for earthquake strengthening and lower costs for resource consent applications (including any conservation plan or heritage inventory) may all be necessary for the following reasons:

- To raise the threshold at which the land is rendered incapable of reasonable use if subject to a heritage rule in a plan; and
- If the nation is to compensate private property owners for any costs incurred in holding our cultural heritage for future generations.

As no Crown capital fund or tax relief exists for compensation to owners of heritage items, "other methods" of funding need to be included in council long-term strategic plans and annual plans. The Trust has been assisting the Wellington City Council with its draft Heritage Policy as a case study in integrated heritage management of non-regulatory methods. It is probable that the use of alternatives to regulation should have been given more consideration by councils prior to the use of rules in district plans.

### Critical Issues For Regional Councils

Regional councils are a critical component of any national heritage package. The use of heritage-based regional policy statements can influence integrated management of physical resources via district plans, resource consents and heritage orders. Regional councils are also required to have regard to registered historic places when preparing regional plans and are ideally placed to undertake iwi consultation on heritage matters. The Trust's experience is that with the exception of Auckland and Wellington, regional councils have avoided becoming involved in heritage matters for a variety of reasons, the most commonly advanced argument being that it is too great a departure from their traditional catchment board/unity council concerns of "water, soil and transport".



*Kupe's Sail, Cape Palliser; part of the registered historic area and protected under the South Wairarapa District Plan.*

### Trust Planning Functions

Several studies were undertaken in the early 1990s to identify the responsibilities, opportunities and problems involved with statutory planning under the RMA and HPA. These included a report entitled *Historic Heritage Protection and District Planning* by Sylvia Allan, for *Environmental Planning and Assessment 1992*. That report, which was prepared after the RMA, but before the introduction of the 1993 HPA, contains an interesting prediction of the future role of the Trust in relation to the change from listed A, B, C, and D items to registered category 1 and 2 items:

*"Over time these changes will probably result in:*

- *Fewer buildings in total being identified for registration by the Trust;*
- *An improved level of information about buildings being available from the Trust at the time a building is registered;*
- *Greater emphasis on places, areas and wahi tapu, rather than just buildings."*

While those predictions have only eventuated in part, they still set out the agenda for the Trust input to the RMA. Her report continues:

*"As a corollary, the Trust will emphasise information provision and protection for particularly important buildings and places at national level, but will have a larger role in encouraging conservation and protection, and providing information generally. It will seek to work closely with and assist local authorities in their wider heritage protection roles under the Resource Management Act."*

If the above predictions were implemented, the Trust might have to concern itself with category 1 items, which would need substantial updating of information to support their registration, and to work on heritage thematic studies. Other Trust resources could then be used to consult with district councils and to advocate the use of both statutory and non-regulatory measures. This proactive approach would also need to be limited to items of national interest and assumes no major increase in funding.

The critical issue for the Trust's input to resource consent applications is: should the Trust participate in this process in a comprehensive manner, and as the national advocate with expert witnesses; or should the Trust limit its participation to an occasional basis with district councils being solely responsible for the sustainable management of heritage?

The Trust could prioritise involvement with applications involving: category 1 historic places; applications with important case law implications; types of heritage places under represented on inventories; some of the applications involving category II historic places that have high heritage profiles; and some other applications that will assist councils to administer the new heritage rules of their plans.

A letter from the PCE staff to the Trust, dated 15 October 1996 stated:

*"I hope that in preparing a paper on heritage policy development that you recognise that the Trust can still provide a great deal of assistance to local authorities in preparing provisions for sites of significance to tangata whenua and for archaeological sites. As you know, the level of heritage expertise among local authorities is very variable, but it is particularly limited in these areas. The Trust may be able to position itself to provide some much needed policy and technical assistance to support and assist small and poorly resourced local authorities to meet their RMA requirements in these areas. This could be the catalyst to enable some local authorities to provide for the management of all forms of heritage and not just heritage buildings."*

Promotion of heritage covenants by the Trust, including processing costs and monitoring of existing covenants, is an important non-regulatory part of the HPA, but it is presently under funded. The cost of preparing covenants and of enforcing them in the High Court is a critical issue for their use by the Trust.

### The HPA Register and the RMA

The register is the subject of an ICOMOS Workshop to be held on 23-24 May 1997. Some of the key determinants appear to be:

- What level of consideration should local authorities give to registered historic places?
- What should the relationship be between the HPA registration criteria and the criteria for listing on district plans?
- How should extra information be gained and updated for items on the register and/or on district plans and which agency(ies) should field public enquiries about information on historic places?
- Should there be an institutional divide between the recognition (registration) and protection of cultural heritage?
- What would the effects be of having the Trust as a policy organisation, with or without a register?

## NATIONWIDE DEVELOPMENT OPTIONS

The main national development options for heritage in the future being can be divided into four, long-term options, with each option having a range of management possibilities as follows:

1. Modified status quo option with the Trust staying as a non-Crown-owned entity, with a mix of membership, ownership of buildings and statutory responsibilities.
2. Implement the PCE recommendations for a Ministry of Heritage with coordinating roles to other agencies, and including a local government decentralised approach for regulatory control.
3. A government department option with the policy, register and some practice components of the Trust being transferred to a suitable department, and the Trust properties and membership becoming part of an independent heritage advocacy (NGO) organisation.
4. Any of the above options may include doing "something else" with Maori sites, wahi tapu and other archaeological sites including either: putting some of the other statutory functions out to regional councils, and/or creating a stand-alone Maori heritage agency along the lines suggested at the recent Trust hui.

The interdepartmental group that was looking at these wider options, as part of a national heritage strategy, seems to have lost impetus; possibly as a result of the Minister of Conservation instructing his department to prepare a scoping paper for review of the system of land-based historic heritage management. That

exercise, which will deal mostly with the department and the Trust, is expected to be completed by the end of 1997.

The following is a more detailed operational breakdown of the long-term options. All of these national options have sub-options and some options can co-exist. For example, options two (heritage ministry) and three (department) could operate either together, or separately.

### Option One: A Modified Status Quo

A modified status quo option with the Trust staying as a non-Crown-owned entity with a mix of private members, private ownership of buildings and statutory responsibilities. The modified status quo assumes that the Trust could fulfil its existing responsibilities if it was funded satisfactorily.

The consequences of this option are that the problems already identified will be difficult to solve, as some of those problems relate to the structure of the statutory background for heritage. The desire to see this option continue into the long-term could mean too little change to rectify the identified problems, and in any case it may be too late to make the required changes. The Modified Status Quo option allows the Trust the greatest flexibility in terms of operational and management responses in the short-term, as there is no need to make a transition to any new system. Local authorities would not need to develop new operational procedures other than enhancing their existing regulatory and non-regulatory roles.

### Option Two: Implement the PCE Recommendations

A Ministry of Heritage, as was proposed in the PCE report, with coordinating roles to other agencies. This option, which could include enhanced local government regulatory control, was ruled out by ministers from the last government. In this option, the policy and coordinating work would be run at a central government level and the statutory requirements for heritage would probably be run by regional and district councils. The Trust branch membership would be a separate independent non-Crown entity. This option would be in keeping with much of the existing statutory components of the RMA. This option assumes that heritage is presently under funded and that the funding would increase, but mostly through local authority input. The Crown would only fund policy work and upgrading of data bases.

In the long term, a decentralised local

government option is probably preferable for the statutory administration, with the policy work occurring at both central and local government levels. The recognition of heritage, and the seeking of authorities for archaeological sites, could be managed by regional councils. The protection of built heritage would be at district plan level.

The non-regulatory advocacy would be via an independent membership group not funded by the Crown; this group could also be associated with Trust properties. The moving out of the advocacy topic from central government will make it difficult for them to prioritise funding this topic during the transitional phase, other than promoting that district councils undertake that responsibility. If this option is adopted, then the transitional approach needs to identify what needs to be done to ensure the local authorities can meet their statutory responsibilities in the future.

#### Option Three: Central Government Approach

A central government approach with the policy, register and some of the statutory requirements of the HPA practice components being run by a government department or Crown agency, as part of a "national identity".

In this option, the Trust properties and membership would become part of an independent heritage advocacy organisation.

If this option is adopted, then any national heritage strategy must ensure that cognisance is taken of the statutory protection functions that may not be a focus of the national identity question. Under this option, the Trust will find it more difficult to work towards ensuring that local government meets its heritage responsibilities, and in particular, it will be difficult to upgrade the involvement of regional councils during the transition phase. This option will allow continuation of the public education programmes, but not as part of advocating for protection of heritage.

#### Option Four: Maori Alternative

This option involves doing "something else" with Maori sites, wahi tapu and/or other archaeological sites, such as devolving to Iwi, creating a separate Maori agency, creating a stand-alone Maori heritage agency along the lines suggested at the recent Trust hui, or by putting some of the other statutory functions out to regional councils. This option assumes a substantial increase in funding for Maori sites. Very little is known about this option, as it is only just starting to be discussed. This option will have impact on the Trust's Maori Unit,



*Katherine Mansfield birthplace, 25 Tinakori Rd, Wellington; a special case for restoration costing approximately \$500,000.*

archaeological site protection and the protecting of sites under district plans.

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