Heritage CONSERVATION • CELEBRATING 40 YEARS OF 1955-1995
NEW ZEALAND HISTORIC PLACES TRUST/POUHERE TAONGA

Resource Management Law Association: Fifth Annual Conference

Session 5: Conservation, Heritage Values and the Environment - Commentary

Mihi

E te whare, e tu nei, e te papa, e takoto nei, teenaa koorua

Ki nga takata whenua o tenei rohe, teena koutou,
aa, ki o raatou tipuna kua haere ki te po, haere, haere, haere

Ki nga manuhiri tuuaarangi me nga takata Pakeha o tenei whenua,
kua huihui mai nei i tenei ra, teenaa koutou katoa

Ko Helen Lowe tookuu ikoa
No Otakou au.
He kaimahi au, mo te Pouhere Taonga.

1. Issues

I intend to address to major themes that have emerged from the papers on Conservation, Heritage Values and the Environment:

- Achieving Improved Environmental Outcomes *vs* [statutory] Environmental Process

- The balance of private, as opposed to public rights and responsibilities

Mr Barnett's presentation focused on the need to respect and protect the rights of private resource owners in relation to the powers of the state, in particular in the identification of World Heritage Areas.

The Parliamentary Commissioner for the Environment, Dr Williams, also questioned what we have actually achieved in NZ, post the Resource Management Act 1991, in terms of better environmental outcomes. He has laid down the challenge that we tend to focus too much on environmental process.

In his speech, Dr Williams quoted Dr Joe Baker, the Australian Capital Territories Environmental Commissioner as observing that:

" NZ's leadership is in the development of environmental management processes but not in the management of the environment. "

Dr Williams described this as a harsh message and I must concur with his assessment For at the end of the day, it is the improvements that we achieve out there, in the health and sustainability of our natural and physical resources on the ground, that is the only measure of our effectiveness and integrity as resource managers that actually, really matters.

For this reason , I believe it is right for Dr Williams to raise it as an issue before an association whose very name indicates a primary focus on the law, and its associated processes, rather than on the outcomes that the law is intended to achieve.

Sadly, my own professional experience post RMA 1991, tends to support the observation of Drs Baker and Morgon that organisational and professional energy is centred more on process than on outcomes. Many would probably argue that good process engenders good outcomes and that the desire for good environmental outcomes is implicit in our pursuit of good process.

There is a certain appeal in these arguments. I would respond however, that the pursuit of any goal that is not explicit is likely to be unfocused, haphazard and its energies easily diverted, for example, into the pursuit of process for its own sake, particularly in the preparation of policy statements and plans, where the final product is too often achieved by exhaustion - of time, resources and the parties involved.

It is my personal observation that the pursuit of "good process" is absorbing a huge quantity of both public and private resources and that I am unaware of any research being undertaken to identify whether there is any correlation between this level of resource and the quality of environmental outcomes being achieved. I would venture to suggest that the resources would be better off being applied more directly to the environmental problems at hand.

A cynical observer could also suggest that a focus on process is also a "soft option" for those involved at all levels of resource management: it absorbs our time and energy, and gives an impression of activity and action - while the hard environmental issues and decisions remain unaddressed.

To be fair, the Act has tried to build in mechanisms to ensure that this does not occur. For example, councils are required to undertake performance monitoring of their policy statements and plans. Unfortunately, it will be difficult to measure the objectives and anticipated environmental results as these tend to be written broadly in response to generally stated issues . Section 35 monitoring, which the Parliamentary Commissioner touched on briefly in his paper, should assist in the identification of environmental trends but this will depend on the adequacy of environmental data that is available - and it is noted that councils tend to be wary of the costs associated with the collection and analysis of monitoring data. Without the robust environmental

trend information cited by Dr Williams therefore, it will be impossible to tell whether our resource management processes are in fact delivering improved environmental outcomes - and justify the resources that they are absorbing.

3. The Balance of Public vs Private Rights and Responsibilities

Mr Barnett's paper addressed the balance of rights and responsibilities, between the Commonwealth and state governments in Australia, and between the exercise of government responsibility and the rights of individuals, particularly land and resource holders. He is particularly concerned that individuals should be properly compensated when their properties are deemed to have natural or cultural heritage values that should be protected for public benefit.

3.1 Commonwealth [Central] and State [Decentralised] Responsibility

Mr Barnett clearly notes a trend towards increasing centralization in the Australian environmental regime. This is very different to the RMA regime where the focus of decision making is decentralised to regional councils and territorial local authorities. Although provision is made for national policy statements, only a NZ Coastal Policy Statement has been prepared - and its preparation was required by the Act. The position of the Minister for the Environment currently, is that no further national policy statements will be prepared, although there are many who believe that such statements would be beneficial to ensure consistent and sustainable management of resources such as energy.

3.2 Compensation and the Use of Financial Mechanisms When Restrictions to Protect Heritage Resources Apply

Heritage Values and Cultural Wellbeing

The suggestion that compensation measures should/ must be considered usually becomes stronger when dealing with those aspects of natural or physical heritage that most directly impact on land ownership, as opposed to the use of water or air resources. The values associated with these resopurces are also perceived as being more "subjective", eg landscape values, habitats of flora and fauna and heritage buildings and sites, falling into the category that Mr Barnett has described as "emotional" [as opposed to "scientific" and "objective"] and Dr Williams as "societal values and ethics".

In New Zealand there is relatively little compensation given for the loss of such rights. It is not provided for by the government, either under the RMA or through other mechanisms, and in my experience councils tend to resist the loss of rating revenue through compensation, rates relief or financial incentives, although this has changed slightly over recent years. One argument used to justify this resistance is that the actions of private individuals or entities cannot be allowed to compromise the health and safety of the environment, in the same way that they are not permitted to compromise the health or safety of other individuals or society. For example, we don't suggest that criminals should be compensated for not undertaking criminal activity.

The Resource Management Act itself refers to "social, economic and cultural wellbeing" as an integral part of sustainable management. The values of natural and physical heritage are very closely aligned to cultural wellbeing - they are values which relate to our sense of identity in the world and to those things that provide it: knowledge of and connection to our past history, a sense of place relating to valued features and landscapes, recognition of the physical landmarks and connections that give us a sense of belonging in place and time. In this country they are those tangible elements that give us a sense of our history and identity as New Zealanders. The importance of landscape and physical resources, and the interaction between them, in defining culture, is well illustrated in the arts. A significant proportion of NZ art reflects this interaction and makes, in my view, a statement about our developing cultural relationship with the environment of this country.

These connections with our environment and our past are important in terms of developing sustainable and secure communities, and a sense of cultural wellbeing, but are hard to measure in relation to the more obvious demands of economics and ecological bottom lines. Nonetheless, the Act identifies cultural wellbeing as a goal that people and communities should be enabled to achieve and identifies the following natural and physical heritage concernsthrough the provisions of Sections 6, 7 and 8 of the Resource Management Act 1991. These are clearly identified as significant considerations when pursuing the Act's purpose of sustainable management.

Reasons For and Against Financial Incentives

Mr Barnett has proposed that recognition of the property rights of individuals and appropriate compensation for a reduced ability to untrammeled use and enjoyment of their property because of environmental or heritage considerations, is essential if more harm than good is not to be done in the long run.

I would certainly agree that, in order to be successful, any form of environmental or heritage protection needs to have the support and fundamental "agreement in principle" of the majority of the populace that the overall goal, eg sustainable management of resources, justifies the loss or curtailment of previously enjoyed individual rights.

I believe that there is a basic acceptance in New Zealand of this premise with respect to sustainable resource management because it is seen to achieve or promote social, economic and cultural wellbeing at the macro level.

The debate of course arises, as Mr Barnett pointed to in his paper, as to where the line should be drawn between the private and public ends of the spectrum. This debate is particularly strong in relation to the management of physical heritage in this country and I propose to use it as an example of when and how compensation for loss of private rights should occur.

To clarify briefly, I am using the term physical heritage to cover buildings, sites, places or areas that are regarded as significant, either at the national, regional or local level, because of their historic, architectural, archaeological, cultural, educational or technical values.

Built heritage in particular, is probably the most personal of all the heritage categories - it can effect the very dwellings in which we live, as well as the resources from which we derive economic benefit. Even the protection of built heritage that is not lived in can place a greater burden on the private landowner than the protection of landscapes or archaeological sites, chiefly because it requires active management, ie repairs and maintenance, rather than the management focus being on non interference. Although it is fair to argue that all property owners have the responsibility and cost of maintaining their buildings, there can be a greater cost where maintenance must be done in a heritage sensitive way, eg the difference between reroofing in long run colour steel or using heritage slate tiles.

Overall, I am of the view that physical heritage resources should be retained for future generations and that the cultural and community benefit of requiring such retention justifies the need to curtail normal private property rights. To this extent, there is little difference from the other aspects of natural and physical resource management.

However, in view of the very personal way in which retention of built heritage can affect people in their home environment and the additional cost that can often be incurred in retaining the heritage fabric of buildings, I believe that that there may be grounds to consider compensation under some circumstances.

In my experience, the ability to obtain financial assistance for the retention and enhancement of heritage values on private properties usiually makes a significant difference to the attitude of property owners. Even though the sums available may only be quite modest, incentives represent a recognition that the owners of heritage properties may face expenses that are greater than those of property owners generally in privately maintaining a property that is seen to have significant community value.

On the positive side, heritage properties are also marketable commodities. Dunedin real estate agents advise my office that they have had very positive results from advertising "historic" properties, so a heritage designation can also add value to certain sectors of the community.

For this reason, I believe that compensation in the form of rating or other relief should only apply to the owner that is first affected by the heritage designation. These owners have purchased the property under one set of expectations which later change and it therefore seems fair to recognise that changed circumstance. Subsequent owners however, purchase the property in full knowledge that it is a scheduled heritage item and therefore accept the restrictions that this attaches to their use of the property.

Provision of Financial Incentives

The RMA already provides for acquisition where a heritage protection order is found to prevent reasonable use of the affected property. Even under a Heritage Protection Order however, the test of "reasonable use" does not presume that public acquisition will be necessary. I would suggest that, in most normal registration and scheduling circumstances, it is not necessary because scheduling in District Plans does not

prevent reasonable use. Rather, it provides for a more rigorous test, through the resource consent process, when alteration and/ or demolition is proposed.

The resource consent process itself is designed to facilitate finding the balance between the public and the private interest in these cases. In terms of cost, Councils have discretion as to how much they charge for resource consents and there is no reason why they could not waive or reduce resource consent fees to provide relief to owners who are required to go through the resource consent process because their property is a scheduled heritage building.

I believe that there is also room for a wider range of incentives, including rating relief and the ability to apply for either low interest loans or grants to help finance the difference between normal maintenance and work that is necessary to retain or enhance a building's heritage values. A number of Councils in the Otago/ Southland are have established or contributed towards such funds over recent years.

In my view, the most logical and practical way to fund such incentives would be for central government to fund those buildings that are identified as being nationally significant, regional councils to take responsibility for those that are identified as being regionally significant and territorial local authorities to fund incentives for buildings that are significant in the local context. The RMA currently provides for a three tiered structure for resource management that would be compatible with this approach.

Difficulties include:

- Central government does not currently fund incentive programmes, except through the Lotteries Commission which does provide funding for heritage projects - but not to private owners. However, the Minister of Conservation is on record in the Christchurch Press of 19 July as stating that the use of rates relief, grants and loans as incentives will be examined by the current heritage management review.

- Regional councils are generally reluctant to address sustainable management of heritage resources. The conclusions of the previous Parliamentary Commissioner for the Environment's investigation [June 1996] into historic and cultural heritage management in NZ identified that:

  > "...There is a significant policy gap at national and regional levels and an apparent lack of political will to adequately provide for historical and cultural heritage protection."

  and recommended that regional councils:

  > "Recognise and give effect to their role in integrated heritage management within their regions"

  Southland Regional Council has recently been instrumental in establishing, jointly with territorial local authorities, the Southland Regional Heritage Fund to provide low interest loans to owners of heritage buildings. This is a very positive initiative and one that has shown regional leadership in the heritage management field.

Many territorial local authorities have also been active in setting up heritage [incentive] funds over recent years, usually in conjunction with the local branches of the NZ Historic Places Trust. In addiiton to Southland, these include Waitaki and Dunedin City Councils, the Christchurch City Council, and the Ashburton and Timaru District Councils. The establishment of such funds reflects a positive response to Recommednation 13 of the Office of the Parliamentary Commissioner for the Environment's report.

4. Conclusion

Overall, I believe that we should take the following away from this session:

1. An acceptance that the retention and protection of both natural and physical heritage is an essential part of a sustainable future, both for the resources and for our communities.

2. A recognition that financial incentives should be considered in some cases, where private owners of heritage resources bear greater than normal costs in terms of a resource that is protected because of its value to the community. Compensation or public acquisition however, should only be considered where reasonable use of a property or buildling is prevented.

3. A commitment that our over riding focus as resource management professionals should be to achieve sustainable environmental outcomes rather than allowing ourselves to become side tracked into a process focus that is self perpetuating and consumes a high level of time and resources.