



ICOMOS NEW ZEALAND

TE MANA O NGA POUWHENUA O TE AO

INTERNATIONAL COUNCIL ON MONUMENTS AND SITES

Submission to the Environment Committee

Inquiry on the Natural and Built Environments Bill: Parliamentary Paper

2 August 2021

Introduction

ICOMOS is an international non-governmental organisation of heritage professionals dedicated to the conservation of the world's historic monuments and sites. The organisation was founded in 1965 as a result of the international adoption of the Charter for the Conservation and Restoration of Monuments and Sites in Venice in the previous year. ICOMOS is UNESCO's principal advisor in matters concerning the conservation and protection of historic monuments and sites. The New Zealand National Committee was established in 1989 and incorporated in 1990.

ICOMOS New Zealand (ICOMOS NZ) has 150 members made up of professionals with a particular interest and expertise in heritage issues, including architects, engineers, heritage advisers, archaeologists, lawyers, and planners.

In 1993 ICOMOS NZ published the ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value. A revised ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value was approved in September 2010 and is available on the ICOMOS New Zealand website.

The heritage conservation principles outlined in the Charter are based on a fundamental respect for significant heritage fabric and the intangible values of heritage places.

Context of this submission

Like New Zealand's natural environment our built environment is unique and special. It provides us with places to live, learn, work and socialise and is a fundamental part of our local and national identity.

Within this environment cultural/historic heritage plays a valuable role in contributing to the sense of uniqueness and quality of urban environment we experience. It is a finite resource that helps ground our 'sense of place' and brings wellbeing benefits to present and future generations. Heritage places, for example:

- Enable us to appreciate our collective history of occupation and settlement, including a greater awareness of our people, places and stories
- Act as agents to bring diverse communities together, promoting social inclusion, cohesion and empathy
- Contribute to our tourism economy through enhancing the reputation and attraction of an area, along with their viability as visitor destinations in their own right

- Create, through their conservation, high quality employment and educational opportunities
- Contribute to our resilience in the face of significant change by providing a focus for community sentiment and sense of place
- Provide opportunities for emissions and building waste reduction through retention and adaptive reuse

Currently our heritage is under pressure from various sources such as climate change, natural hazards such as earthquakes and development pressures. Patchy, inconsistent and infrequent identification of heritage places across the country, coupled with inadequate protection in policy statements and plans, has also increased the likelihood of preventable loss.

Efforts to ensure heritage is appropriately protected and managed has been further hampered by emergency and special issue legislation such as the Canterbury Earthquake Recovery Act 2011, Hurunui/Kaikōura Earthquakes Recovery Act 2016, Housing Accords and Special Housing Areas Act 2013 and earthquake prone buildings provisions in the Building Act 2004.

Scope of this submission

In light of this context ICOMOS NZ welcomes the opportunity to respond to the proposals included in the exposure draft of the Natural and Built Environments Bill. We note that the draft contains initial content relating to key aspects of the Bill, with the full Bill to be introduced in the House early-mid 2022. The key aspects include preliminary:

- Definitions
- Purpose and related provisions
- Environmental limits and outcomes
- Clauses relating to the National Planning Framework
- Clauses relating to Natural and Built Environments Plans

Given our specific heritage related remit and interests, the clauses that we have chosen to focus our submissions on are ones that have particular implications for the effective ongoing management and protection of cultural heritage in New Zealand. These are as follows:

Clause 3 – Interpretation

Cultural heritage

ICOMOS NZ supports in principle the change in terminology from ‘historic heritage’ to ‘cultural heritage’ as the current term inadequately reflects the breadth of our current and evolving heritage – this includes pre-historic places and more recent places such as post war/early modernist buildings. However, as the term ‘historic heritage’ has been interpreted and applied in a regulatory context for the last 18 years we would caution that introducing a new term will require careful consideration to ensure that the change does not result in unintended consequences (e.g. unnecessary litigation, formative caselaw).

We note that the proposed definition of ‘cultural heritage’ is largely a roll-over of the current definition of ‘historic heritage’ in the RMA with the following exceptions:

- Reference to ‘aspects of the environment’ instead of ‘natural and physical resources’
- Reference to ‘surroundings associated with those sites’ instead of ‘surroundings associated with natural and physical resources’

Regarding the change in focus to ‘aspects of the environment’ we are unclear what is intended here, particularly as this is neither further defined nor clarified in the exposure draft.

This contrasts with the current position where the term 'natural and physical resources' is explicitly defined in the RMA. If the intention of this change is to extend consideration to include, for example, social and economic factors then specific reference to this in the Bill would be advisable. Otherwise, the meaning of this term is highly likely to be the subject of extensive litigation and debate through the Courts.

Although reference to 'those sites' versus 'natural and physical resources' in the proposed definition represents a subtle change in emphasis we are concerned how this might be interpreted and applied in the absence of an associated definition of 'site'. This is particularly relevant in the context of exclusion of any reference in the proposed definition to the surroundings of structures, places and areas. We also note that the term 'surroundings' is not currently defined, the result of which could have interpretive and administrative implications in terms of certainty and efficiency.

Of further interest is the absence of any reference to 'cultural landscapes' within the definition. Although reference to cultural heritage being inclusive of cultural landscapes is made in clause 8(h) this is currently not reflected in the definition of cultural heritage – this being the most obvious location for any such reference. Equally, we note the absence of any associated definition of 'cultural landscapes'. Like the term 'surroundings', we are strongly of the view that this void could also have implications in terms of interpretive and administrative certainty and efficiency.

Recommended amendments:

- a. Amend clause 8(b)(i)-(iii) as follows:
 - i. historic sites, structures, places, and areas and their associated surroundings; and
 - ii. archaeological sites and their associated surroundings; and
 - iii. sites of significance to Māori, including wāhi tapu, and their associated surroundings
- b. Replace clause 8(b)(iv) with the following:
 - iv. cultural landscapes
- c. Include a definition of 'surroundings' as follows (based on the definition of 'setting' in the [ICOMOS New Zealand Charter](#)):
 - a) 'means the area around and/or adjacent to a place of cultural heritage value that is integral to its function, meaning, and relationships; and
 - b) includes -
 - i. the structures, outbuildings, features, gardens, curtilage, airspace, and accessways forming the spatial context of the place or used in association with the place; and
 - ii. cultural landscapes, townscapes, and streetscapes; perspectives, views, and viewshafts to and from a place; and relationships with other places which contribute to the cultural heritage value of the place
 - c) may extend beyond the area defined by legal title, and may include a buffer zone necessary for the long term protection of the cultural heritage value of the place'
- d. Include a definition of 'cultural landscapes' as follows (based on the definition of 'cultural landscapes' in the [ICOMOS New Zealand Charter](#)):
 - a) 'means an area possessing cultural heritage value arising from the relationships between people and the environment; and

- b) includes –
 - i. cultural landscapes that may have been designed, such as gardens, or have evolved from human settlement and land use over time, resulting in a diversity of distinctive landscapes in different areas; and
 - ii. associative cultural landscapes, such as sacred mountains, that may lack tangible cultural elements but have strong intangible cultural or spiritual associations

e. Include the following qualities in the proposed definition of ‘cultural heritage’:

- a) means those aspects of the environment that contribute to an understanding and appreciation of New Zealand’s history and cultures, deriving from any of the following qualities:

- vii. social
- viii. spiritual

Clause 5 – Purpose

ICOMOS NZ supports the intention to uphold Te Oranga o te Taiao, including by protecting and enhancing the natural environment. However, we consider that the emphasis on environmental protection that predominates clause 5 undervalues the role and importance of the built environment, particularly as this is where over 85% of us reside.

This is highlighted by the absence of any specific reference to the built environment in this clause, with indirect reference to it subsumed in the proposed definition of ‘environment’. We would suggest that this, coupled with the lack of an associated definition of ‘built environment’, is a major oversight in a legislative proposal intended to deal with both the natural and built environments.

Recommended amendments:

- a. Add a specific definition of ‘built environment’ under clause 3 – Interpretation
- b. Include within this definition a clear reference to ‘cultural heritage’.

Clause 8 – Environmental Outcomes

ICOMOS NZ notes the shift in the exposure draft to an outcome-based approach that focuses on both protecting resources and enabling activities, the intent of which is to reframe the current emphasis in the RMA on managing adverse effects.

We support this move in principle, particularly the inclusion of cultural heritage and the relationship of iwi and hapū, and their tikanga and traditions, with their ancestral lands, water, sites, wāhi tapu and other taonga in the list of outcomes identified. However, we note with concern the lack of a clear hierarchy between the 16 outcomes identified, with these currently presented as an undifferentiated list in no clear order of importance. The outcomes range from those that have a clear development orientation (e.g. clauses 8(k)-(m)) through to those that are more protective in nature (e.g. clauses 8(a)-(h)).

The risk with this approach is that the outcomes could end up becoming the object of parochial or politicised trade-offs. This is further exacerbated by the fact that any conflicts between outcomes are intended to be left to the discretion of the Minister in determining the content of the proposed National Planning Framework (NPF), and to planning committees when determining the content of plans or case-by-case decisions on resource consents or designations (refer clause 24(d)).

Regardless of any supplementary guidance that might be provided through the NPF (refer clause 13(3)) the prospect of costly and time consuming litigation to resolve such conflicts appears inevitable in the absence of clear priorities being signalled in the Bill. To deliver greater certainty we consider that clause 8 needs to more clearly state whether any hierarchy of outcomes is intended, particularly as the current wording tends to imply that this

is the case given the contrasting nature of the wording applied (e.g. directive terms such as 'preserve', 'protect', 'restore', 'improve' vs weaker terms such as 'enable', 'contribute', 'support').

ICOMOS NZ also notes with interest that aside from the introduction in clause 8(h) of the terms 'cultural heritage' and 'cultural landscapes' the concepts of 'active management' and 'proportionate to cultural values' have also been added as follows:

'cultural heritage, including cultural landscapes, is identified, protected, and sustained through active management that is proportionate to its cultural values'

However, the inclusion of these terms results in the outcome becoming a confusing conflation of outcome (the what) and policy response (the how), with this being the only occurrence amongst the list of outcomes proposed. To redress this situation we are strongly of the view that clause 8(h) needs to be recast to solely focus on what is to be achieved (i.e. to identify, protect and restore cultural heritage), with the how addressed through the proposed NPF.

Aside from the confusion created by the current framing of this clause the absence of clarity as to what the terms 'active management' or 'proportionate to cultural values' entail (e.g. is proportionality a proxy for significance?) is also highly likely to result in interpretive and administrative uncertainty and unintended and unnecessary litigation.

Recommended amendment:

a. Amend clause 8(h) as follows:

h) ~~cultural heritage, including cultural landscapes, is identified, protected, and conserved~~ sustained through active management that is proportionate to its cultural values

(also refer [ICOMOS New Zealand Charter](#) for a definition of the term 'conservation')

Clauses 10 and 13 – National Planning Framework

At base ICOMOS NZ seeks system reform that results in:

- Increased retention of cultural heritage value and associated economic, environmental and social benefits
- More certainty for local authorities, owners and developers and potential decrease in administrative and compliance costs
- More efficient and consistent sector performance

Considering this we are highly supportive of central government assuming a more pronounced role in providing strategic and regulatory direction on the use, protection and enhancement of the natural and built environment, including cultural heritage. This is intended to be implemented through the NPF.

ICOMOS NZ notes that clause 10 of the exposure draft identifies the purpose of the NPF as being to 'further the purpose of this Act by providing integrated direction on—

(a) matters of national significance; or

(b) matters for which national consistency is desirable; or

(c) matters for which consistency is desirable in some, but not all, parts of New Zealand'.

Clause 13(1) of the draft then goes on to list topics that the NPF must include, with the notable exclusion of two significant topics – cultural heritage and the relationship of iwi and hapū, and their tikanga and traditions, with their ancestral lands, water, sites, wāhi tapu and other taonga.

Issues centred around the identification, protection and management of cultural heritage, including Māori heritage, are long standing and were identified and extensively canvassed in the Parliamentary Commission for the Environment investigation into Historic and Cultural Heritage in New Zealand in 1996, the government initiated Historic Heritage Review in 1998-1999 and recent stakeholder outreach undertaken in 2018 by the Ministry of Culture and Heritage as part of the Strengthening Heritage Protection project.

A key theme that has emerged from each of these exercises is the absence of clear direction to achieve more effective and consistent identification and protection of historic/cultural heritage. In response the Parliamentary Commissioner recommended that central government 'develop, as a priority, a detailed strategy for historic and cultural heritage management', while the Ministerial Advisory Committee established to support the Historic Heritage Review recommended that central government 'prepare a NPS for historic heritage within 2 years of the enactment of legislative amendments to the RMA' (these being provisions to strengthen the recognition and protection of historic heritage under the RMA, and introduced via the RM Amendment Act 2003). The Ministry of Culture and Heritage is also currently scoping the need for national direction on heritage protection as part of the Strengthening Heritage Protection project.

Against this background ICOMOS NZ is both alarmed and highly concerned that cultural heritage and the relationship of iwi and hapū, and their tikanga and traditions, with their ancestral lands, water, sites, wāhi tapu and other taonga have been omitted from the list of mandatory NPF topics. This is particularly disturbing as both matters clearly satisfy the proposed criteria outlined in clauses 10(a)-(b) of the exposure draft as well as the rationale for issuing national direction outlined on the Ministry for the Environment's website (<https://environment.govt.nz/what-government-is-doing/areas-of-work/rma/about-national-direction-under-the-resource-management-act/>):

- The issue is of national importance and greater direction should be provided to local authorities at a national level to give certainty
- The issue involves significant national benefits or costs
- The costs of local variation outweigh the benefits
- It is necessary to give effect to other Government policy or regulation (such as the New Zealand Energy Strategy) – of particular relevance here is the Policy for Government Departments' Management of Historic Heritage 2004
- The issue relates to Government obligations including the Treaty of Waitangi and international obligations – of particular relevance here are the government's obligations under the Treaty of Waitangi, being a signatory to the Convention Concerning the Protection of the World Cultural and Natural Heritage (1972) and its membership of the International Centre for the Study of the Preservation and Restoration of Cultural Property

Based on this we are strongly of the view that both of these topics should be included in the mandatory list set out in clause 13(1). Additionally, their inclusion in the list would ensure that they are given full effect in the development of proposed Natural and Built Environment Plans (refer clause 22(1)(b)).

Recommended amendment:

- a. Amend clause 13(1) to include the following:
 - j) section 8(f) (relationship of iwi and hapū, and their tikanga and traditions, with their ancestral lands, water, sites, wāhi tapu, and other taonga)
 - k) **section 8(h)** (cultural heritage)

ICOMOS NZ wishes to thank the Select Committee for the opportunity to raise the matters outlined within this submission. We would also like to take up the invitation to make a further oral presentation.

ICOMOS New Zealand
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