

ICOMOS NEW ZEALAND
TE MANA O NGA POUWHENUA O TE AO
INTERNATIONAL COUNCIL ON MONUMENTS AND SITES
CONSEIL INTERNATIONAL DES MONUMENTS ET DES SITES
CONSEJO INTERNACIONAL DE MONUMENTOS Y SITIOS

**ICOMOS New Zealand: submission to the Ministry for the Environment
on:**

***Transforming the resource management system: opportunities for
change - Issues and options paper***

3 February 2020

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.

In 1993, ICOMOS New Zealand published the ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value. A revised ICOMOS New Zealand Charter was published in September 2010 and is available on the ICOMOS New Zealand website. The heritage conservation principles outlined in the ICOMOS New Zealand Charter are based on a fundamental respect for significant heritage fabric and the intangible values of heritage places.

ICOMOS New Zealand has 107 members made up of professionals with a particular interest and expertise in heritage issues, including architects, engineers, heritage advisers, archaeologists, lawyers, and planners. ICOMOS New Zealand members are experienced and qualified heritage professionals, many of whom have worked thousands of hours in New Zealand's planning system. Many have also worked in heritage overseas.

Our submissions

Introduction

We read the issues and options paper with interest and agree with the panel that much has changed in New Zealand in the 30 years since the Resource Management Act (RMA) was introduced in 1991. Unfortunately, the system for managing historic heritage in New Zealand has been languishing (and in some cases even going backwards) over these years.

New Zealand's current regulatory approach to historic heritage has weaknesses that not only result in unnecessary permanent and irreversible losses of heritage value, but also create an uncertain environment for owners, developers and investors. The current system for historic heritage prevents us from responding quickly and appropriately to urban development pressures and the need for housing.

Many of the issues identified in our submissions were subject to recommendations in the 1996 Parliamentary Commissioner for the Environment's report *Historic and Cultural*

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CONSEJO INTERNACIONAL DE MONUMENTOS Y SITIOS

Heritage Management in New Zealand and the subsequent 1998 Historic Heritage Management Review - report of the Ministerial Advisory Committee. Many recommendations from these reports remain relevant and they are attached as Appendix 1 and 2.

Key messages

Historic heritage is an issue that needs to be addressed in the resource management system reform

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 it is a fundamental part of our local and national identity.

Historic heritage in both the built and natural environment is a finite resource that brings wellbeing benefits to present and future generations. Heritage places contribute to the resilience of our communities in the face of significant change by providing a focus for community sentiment and sense of place; they also provide opportunities for emissions reduction through adaptive reuse and sustainable development.

Currently our heritage is under pressure from various sources such as climate change, seismic forces and development pressures. Efforts to ensure it is appropriately protected and managed has also been hampered by emergency and special issue legislation like 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.

The Resource Management Act 1991 is based on sound principles; however, plan-making and resource consent practices are leading to poor outcomes for historic heritage

There is patchy, inconsistent and infrequent identification of places with heritage value across New Zealand, with inadequate protection in policy statements and plans creating the likelihood of preventable loss.

Equally, there appears to be a general reluctance to notify resource consent applications. According to Ministry for the Environment data, in 2015/16 only 1.4% of applications were publicly notified in New Zealand. In contrast, the notification rate in many comparative jurisdictions is exponentially higher, for example the Australian state of Victoria publicly notifies around 30% of applications annually. It is our view that notification should be the norm, rather than the exception, as diminished opportunities for community participation in planning and development can lead to irreversible adverse effects on heritage and costly disruptions to development plans.

To improve outcomes for historic heritage, we need national direction under the RMA and improvements to notification decision-making and fee charging

ICOMOS New Zealand is seeking a better planning system that leads to:

- Increased retention of heritage value and associated economic, environmental and social benefits.

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CONSEJO INTERNACIONAL DE MONUMENTOS Y SITIOS

- More certainty for local authorities, owners and developers and potential decrease in administrative and compliance costs.
- More efficient and consistent sector performance.

In early 2018 we met with Minister Parker and advocated for a National Policy Statement for historic heritage. We understand that historic heritage related national direction is currently being developed by officials at the Ministry for Culture and Heritage and the Ministry for the Environment and we have been involved in their engagement with stakeholders. However, we consider that other changes to the broader resource management system are required in order to achieve appropriate conservation of historic heritage so that New Zealanders can derive wellbeing benefits.

Issue: 1 Legislative architecture

1. Should there be separate legislation dealing with environmental management and land use planning, or is the current integrated approach preferable?

ICOMOS New Zealand supports the integration of environmental management with land use planning as these two issues are inextricably connected. The natural and built environment, including historic heritage, is the resource that is used and may be impacted upon by land use planning. We note that when it comes to management of historic heritage, there already is a separate system as the archaeological provisions are in the Heritage New Zealand Pouhere Taonga Act 2014.

Issue: 2 Purpose and principles of the Resource Management Act 1991

2. What changes should be made to Part 2 of the RMA?

3. Does s5 require any modification?

ICOMOS New Zealand considers that s5 may not require modification as it already clearly spells out the balancing act of resource management i.e. managing resources sustainably while allowing communities to provide for their needs. We would support the inclusion of a positive obligation to maintain and enhance the environment.

4. Should ss. 6 and 7 be amended?

The following clauses of section 6 have particular relevance for heritage conservation and should be retained:

6(e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga:

6(f) the protection of historic heritage from inappropriate subdivision, use, and development.

The RMA currently refers to 'historic heritage'; however, internationally the term 'cultural heritage' is used. This is an issue which causes confusion and deserves serious consideration. A review of the definition of heritage in the RMA should be considered in

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TE MANA O NGA POUWHENUA O TE AO

INTERNATIONAL COUNCIL ON MONUMENTS AND SITES
CONSEIL INTERNATIONAL DES MONUMENTS ET DES SITES
CONSEJO INTERNACIONAL DE MONUMENTOS Y SITIOS

order to fully provide for the broad aspects of heritage of New Zealand, including the multiple cultures and communities who have contributed to our heritage over time. It needs to recognise that cultural heritage includes the built and natural environment, urban and rural landscapes, tangible and intangible heritage, stories, memories and traditions, and movable heritage'.

5. Should the relationship or 'hierarchy' of the matters in section 6 and 7 be changed?

The hierarchy of the matters in section 6 and 7 should be reviewed.

Most of the matters listed at section 7 have profound importance for the management of historic heritage i.e.

(a) kaitiakitanga:

(aa) the ethic of stewardship:

(b) the efficient use and development of natural and physical resources:

(ba) the efficiency of the end use of energy:

(c) the maintenance and enhancement of amenity values:

(f) maintenance and enhancement of the quality of the environment:

(g) any finite characteristics of natural and physical resources:

(i) the effects of climate change:

In practice, our members find that section 7 matters are often seen as being of such lower importance than those matters in section 6 that they are given very little weight. In our members' experience, these matters are not sufficiently taken account of in plan making and resource consent decisions. This is leading to poor outcomes for historic heritage for example:

- The importance of character areas (which very often have historic heritage value) is downgraded because of an arbitrary distinction that is made between historic heritage and character.
- Cumulative effects are given insufficient weight.

6. Should there be separate statements of principles for environmental values and development issues (and in particular housing and urban development) and, if so, how are these to be reconciled?

7. Are changes required to better reflect te ao Māori

8. What other changes are needed to the purpose and principles in Part 2 of the RMA?

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TE MANA O NGA POUWHENUA O TE AO
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CONSEIL INTERNATIONAL DES MONUMENTS ET DES SITES
CONSEJO INTERNACIONAL DE MONUMENTOS Y SITIOS

Issue: 3 Recognising Te Tiriti o Waitangi / the Treaty of Waitangi and te ao Māori

9. Are changes required to s8, including the hierarchy with regard to ss. 6 and 7?

10. Are other changes needed to address Māori interests and engagement when decisions are made under the RMA?

Sites of significance to Māori have been particularly poorly served by the current heritage protection system. Well-drafted national direction for historic heritage would assist with this issue, provided it is inclusive of Maori interests and sensitive to the needs and concerns of Maori in terms of site identification and protection.

Issue: 4 Strategic integration across the resource management system

11. How could land use planning processes under the RMA be better aligned with processes under the LGA and LTMA?

12. What role should spatial planning have in achieving better integrated planning at a national and regional level?

13. What role could spatial planning have in achieving improved environmental outcomes?

14. What strategic function should spatial plans have and should they be legally binding?

15. How should spatial plans be integrated with land use plans under the RMA?

There is a lack of integration with the Heritage New Zealand Pouhere Taonga Act 2014 relating to the New Zealand Heritage List and archaeological authorities. There is also poor integration with ArchSite, a non-statutory list managed by the New Zealand Archaeological Association. This sometimes leads to poor outcomes for places that are listed but have not been scheduled in the relevant district plan. It also means that there is a lack of clarity concerning the roles and responsibilities of councils and Heritage New Zealand Pouhere Taonga relating to the recognition and protection of archaeological sites.

Issue: 5 Addressing climate change and natural hazards

16. Should the RMA be used as a tool to address climate change mitigation, and if so, how?

Many heritage places are under threat from climate change but protection of historic heritage can also mitigate the effects. As conservation of older building stock essentially constitutes recycling it can contribute to emissions reduction. ICOMOS New Zealand would support the RMA being used as a tool to address climate change, particularly in areas where historic heritage, especially archaeological sites and sites of significance to Māori, are vulnerable to the effects of projected sea level rise.

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TE MANA O NGA POUWHENUA O TE AO
INTERNATIONAL COUNCIL ON MONUMENTS AND SITES
CONSEIL INTERNATIONAL DES MONUMENTS ET DES SITES
CONSEJO INTERNACIONAL DE MONUMENTOS Y SITIOS

17. What changes to the RMA are required to address climate change adaptation and natural hazards?

Climate change would need to be added as a consideration in plan making and consenting. We propose that it should be a section 6 matter.

18. How should the RMA be amended to align with the Climate Change Response Act 2002?

Issue: 6 National direction

19. What role should more mandatory national direction have in setting environmental standards, protection of the environment generally, and in managing urban development?

There is considerable variation of approaches to historic heritage across New Zealand which contributes to inefficiencies, inconsistency and uncertainty for actors in the system.

A national policy statement for historic heritage would mandate a consistent approach to a nationally important resource. National Planning Standards could also be of use to standardise the structure of plans and definitions, criteria, objectives, policies and rules for heritage. This is likely to lead to more efficient planning processes. It would also assist those operating at a national level, such as the Courts, legal profession and consultants.

A national direction for historic heritage is likely to have similarities with a number of the National Policy Statements currently being consulted on which also relate to finite resources that need careful management e.g. highly productive land, biodiversity and significant natural landscapes.

To achieve an effective resource management system all forms of national direction need to be integrated and able to function as a 'coherent whole' - something that appears to be absent in the suite of national direction currently gazetted. ICOMOS New Zealand would support the approach suggested by the EDS that a harmonised set of national policy statements should be delivered through a single Government Policy Statement. This would reflect the UK National Planning Policy Framework approach.

Issue: 7 Policy and planning framework

20. How could the content of plans be improved?

Plans are variable in nature and can be very difficult to navigate, even for experienced planning professionals. As noted above, plans should be consistent in their language or structure. ICOMOS New Zealand supports the work that the Government is doing in this area introducing national planning standards. This leads to efficiencies for people who are acting across a number of council jurisdictions, such as many of our members who work as advisors or consultants.

ICOMOS New Zealand would support the adoption of a model like the Victorian Planning Scheme where most plan content i.e. the equivalent of policies and rules, is set out at the State level. We note that under this regime individual councils still have the power to choose what places they protect and make consenting decisions.

ICOMOS NEW ZEALAND
TE MANA O NGA POUWHENUA O TE AO
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CONSEJO INTERNACIONAL DE MONUMENTOS Y SITIOS

21. How can certainty be improved, while ensuring responsiveness?

Explicit identification and protection of heritage provides certainty, whereas insufficient identification and protection of heritage results in regrettable losses and costly development delays. Unfortunately, many district plan heritage schedules do not currently protect places that are significant to their local communities, often relying solely on HNZPT listings. Most plans are also only updated on an infrequent basis.

Certain types of heritage are particularly poorly represented on heritage schedules, including cultural landscapes, sites of significance to Māori, post-1945 and archaeological sites. National direction and planning standards could help to improve this situation.

There is also a lack of policy direction regarding places that have identified values but are not protected. Heritage Protection Authorities have the option of requiring a heritage order; however, these are generally viewed as a course of last resort and are seldom used. While putting places at risk, these situations also create development uncertainty that impacts on investment.

Instead, heritage needs to be viewed as offering a range of development opportunities rather than being a constraint. In jurisdictions like Australia, for example, a change in attitude has led to developers actively pursuing heritage listing of their property prior to development. Actively pursuing listing and engaging in conservation planning has enabled Australian developers to have surety about their developments and has avoided costly delays due to heritage issues being raised at the eleventh hour. In Victoria, understanding and acknowledging the heritage values of a place is commonly seen as essential when planning for development, while in the UK immunity from heritage listing for several years is provided if a place is assessed as not meeting the threshold for listing.

The resource management review presents an opportunity to change attitudes away from viewing heritage regulation as a barrier to development to be avoided at all costs, i.e. via emergency legislation to minimise consideration of planning laws. To avoid expensive and disruptive delays like the stop work put in place at Ihumātao, cultural values need to be addressed upfront. This is the practice that is advocated by the ICOMOS New Zealand Charter for the Conservation of Places of Cultural Heritage Value.

There is also a lack of direction around the issue of ‘demolition by neglect’ (the absence of protective care of a heritage place which results in its ultimate loss). If not an area covered by the RMA then any national direction on heritage should clearly indicate that heritage owners have a duty of care of these places to ensure intergenerational equity. There should, as a minimum, be an expectation that any empty or unused heritage place is stabilised and secured.

22. How could planning processes at the regional and district level be improved to deliver more efficient and effective outcomes while preserving adequate opportunity for public participation?

23. What level of oversight should there be over plans and how should it be provided?

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TE MANA O NGA POUWHENUA O TE AO
INTERNATIONAL COUNCIL ON MONUMENTS AND SITES
CONSEIL INTERNATIONAL DES MONUMENTS ET DES SITES
CONSEJO INTERNACIONAL DE MONUMENTOS Y SITIOS

Issue: 8 Consents/approvals

24. How could consent processes at the national, regional and district levels be improved to deliver more efficient and effective outcomes while preserving appropriate opportunities for public participation?

Often our members find that there is little middle ground in resource consents for proposals which impact heritage values. Very few consents are refused, most are non-notified and if there is notification, it usually results in a full hearing. To achieve good outcomes the resource management system needs to be more nuanced, enabling various levels of community participation through the notification process. The lack of opportunities for public participation in planning processes leads to people feeling frustrated, powerless and ultimately apathetic about the environment.

In New Zealand, applying for consent or notifying a consent can be seen as an insurmountable hurdle by many applicants due to cost. The RMA test for notification is currently a low bar i.e. adverse effects on the environment that are more than minor. Despite this, only a small number of applications are notified. To avoid notification developers and property owners will seek avenues outside the RMA to develop their property, like the HASHAA, where the notification requirements are even less.

This leads to notification decisions and assessments of effects as less than minor being driven by concerns about money rather than actual effects. To address these issues, the way that notification decisions are made, fees are charged and hearing costs are passed on to the applicant needs to be reviewed.

In comparable functioning planning systems many permits are notified. For example, in Victoria approximately 1/3 of planning permits are notified and application fees are upfront and pegged to the value of the development, not per officer hour processing the application. Sometimes when submissions are received they are considered by the planning officer. It is not always necessary to go to a full hearing.

ICOMOS New Zealand would support notifying more or all applications and removing a blanket requirement to have a hearing if it is requested. Some submissions can be considered by delegated council officers.

There are some issues with how effects on heritage are being assessed. Permitted baseline assessments can allow significant adverse effects on heritage that is not scheduled, for example the collection of buildings at Shelly Bay in Wellington. Management of cumulative environmental effects is also particularly challenging for heritage.

ICOMOS New Zealand would support simplifying categories of activity status.

As reflected in the issues paper (paragraph 106), an important issue to consider is how a shift to an 'outcomes' rather than an 'effects-based' planning system might be reflected in plans - noting further that this has the potential to provide more certainty about development that is and is not permitted, reducing the current strong focus on decision-making through resource consent processes. However, introduction of a more prescriptive and less flexible approach might be required to achieve this - something that may be inappropriate when applied to heritage, particularly if it results in an inherent bias towards development.

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TE MANA O NGA POUWHENUA O TE AO
INTERNATIONAL COUNCIL ON MONUMENTS AND SITES
CONSEIL INTERNATIONAL DES MONUMENTS ET DES SITES
CONSEJO INTERNACIONAL DE MONUMENTOS Y SITIOS

25. How might consent processes be better tailored to the scale of environmental risk and impact?

It can be frustrating for owners of heritage places to have to apply for resource consents for minor works, but it is important to ensure these works are regulated as they can have adverse effects on heritage values, especially where cumulative. Under the current system there are no alternatives to consents for minor works but ICOMOS New Zealand would support the exploration of alternatives, such as an exchange of letters between parties confirming the agreed scope of any such works.

26. Are changes required for other matters such as the process for designations?

The heritage order provisions are not functioning. It is hugely important that the ability to apply interim protection is available to heritage protection authorities given how long a plan change can take. Perceived financial risks have made these provisions unworkable and they need to be reviewed.

27. Are changes required for other matters such as the review and variation of consents and conditions?

28. Are changes required for other matters such as the role of certificates of compliance?

Issue: 9 Economic instruments

29. What role should economic instruments and other incentives have in achieving the identified outcomes of the resource management system?

30. Is the RMA the appropriate legislative vehicle for economic instruments?

Economic and other incentives are essential to our system of heritage protection and conservation. There may be opportunities for economic instruments to be included in the RMA, including for example:

- Tailored site/area specific zoning controls
- Transfer of development rights
- Parking, building site ratio and land use concessions
- Flexibility in planning requirements
- Waiver of fees for development applications.

Issue: 10 Allocation

31. Should the RMA provide principles to guide local decision making about allocation of resources?

32. Should there be a distinction in the approach taken to allocation of the right to take resources, the right to discharge to resources, and the right to occupy public space?

ICOMOS NEW ZEALAND

TE MANA O NGA POUWHENUA O TE AO

INTERNATIONAL COUNCIL ON MONUMENTS AND SITES
CONSEIL INTERNATIONAL DES MONUMENTS ET DES SITES
CONSEJO INTERNACIONAL DE MONUMENTOS Y SITIOS

33. Should allocation of resources use such as water and coastal marine space be dealt with under the RMA or elsewhere as is the case with minerals and fisheries, leaving the RMA for regulatory issues?

Issue: 11 System monitoring and oversight

34. What changes are needed to improve monitoring of the resource management system, including data collection, management and use?

It is concerning to see that monitoring historic heritage is no longer included in the environmental monitoring statements issued by the Ministry for the Environment. It is clear from the RMA that the built environment and the natural environment, and the historic heritage therein, are all part of the environment that is covered by the Act. Separating the two is anathema to environmental management and to heritage best practice which advocates for a joint nature/culture lens and acknowledges the intrinsic connections between the natural and cultural spheres. Natural and built elements of the environment can have multiple and competing values for different cultures and communities. This should be identified and recognised in the management of resources, and should be more clearly expressed as one of the principles of the RMA.

At present councils are inadequately monitoring the effectiveness of heritage provisions in policy statements and plans. To counter this we suggest that this function could be more effectively and efficiently delivered via a central government agency, provided that a consistent approach was mandated through national direction.

35. Who should have institutional oversight of these functions?

In the past the Ministry for the Environment monitored the state of built heritage in its environmental reporting. In the more recent reports the state of heritage, and of the built environment, no longer appear to be monitored. This is a serious oversight and ICOMOS New Zealand submits that the Ministry for the Environment should urgently re-commence monitoring historic heritage and the built environment.

Issue: 12 Compliance, monitoring and enforcement

36. What changes are needed to compliance, monitoring and enforcement functions under the RMA to improve efficiency and effectiveness?

37. Who should have institutional responsibility for delivery and oversight of these functions?

38. Who should bear the cost of carrying out compliance services?

The data in the issues and options paper illustrating the lack of compliance monitoring by many councils is alarming, particularly as it has the potential to undermine public confidence in the planning system. To address this we consider it is essential that monitoring of council performance in this area is initiated to ensure that New Zealanders, who are supposed to be the ultimate benefactors of the system, can have faith in the consenting system.

Councils should be able to recoup the costs of compliance through resource consent application fees. This would be easier if fees were aligned to project cost and paid up front.

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CONSEJO INTERNACIONAL DE MONUMENTOS Y SITIOS

Councils are dissuaded from undertaking compliance when they have to bill consent-holders for fees, which may sometimes never be recouped.

Issue: 13 Institutional roles and responsibilities

39. Although significant change to institutions is outside the terms of reference for this review, are changes needed to the functions and roles or responsibilities of institutions and bodies exercising authority under the system and, if so, what changes?

40. How could existing institutions and bodies be rationalised or improved?

41. Are any new institutions or bodies required and what functions should they have?

The 1998 Ministerial Advisory Committee report on heritage recommended that the archaeological provisions of the HNZPTA should be moved into the RMA. This could address the poor protection that archaeological sites currently receive. While they are able to be protected in District Plans, many councils assume that archaeological values are protected under the HNZPTA. However, the HNZPTA is often permits destruction and modification of archaeological sites. It can require mitigation but rarely achieves conservation.

Heritage New Zealand should have a more significant role in resource consenting. A system where Councils sought approval from Heritage New Zealand where a resource consent application involves a place on the New Zealand Heritage List / Rārangi Kōrero would mirror the approach in the UK. We would suggest this is something that could benefit from being explored further.

One way of pooling resources is to take a flying squad approach i.e. having a team of planning experts available to support a Council that is making a new plan.

Issue: 14 Reducing complexity

42. What other changes should be made to the RMA to reduce undue complexity, improve accessibility and increase efficiency and effectiveness?

43. How can we remove unnecessary detail from the RMA?

44. Are any changes required to address issues in the interface of the RMA and other legislation beyond the LGA, LTMA?

Conclusion

ICOMOS New Zealand considers it essential that a revised RMA is fit for purpose and can endure. Recent emergency and special issue legislation designed to circumvent the RMA (e.g. the CERA, HASHAA and Kaikoura Earthquake legislation) has had disastrous effects on historic heritage.

We also note that the panel has indicated it will work with reference groups on certain important topics of interest: the natural and rural environment, urban and built environment and te ao Māori. As it is our understanding that a number of reference and associated

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TE MANA O NGA POUWHENUA O TE AO

INTERNATIONAL COUNCIL ON MONUMENTS AND SITES
CONSEIL INTERNATIONAL DES MONUMENTS ET DES SITES
CONSEJO INTERNACIONAL DE MONUMENTOS Y SITIOS

working groups have already been established around these topic areas ICOMOS New Zealand would welcome the opportunity to be included on one or more of these groups given that heritage is of particular relevance to all of these topics.

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**HISTORIC AND CULTURAL HERITAGE
MANAGEMENT IN NEW ZEALAND**

Office of the
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June 1996

6. CONCLUSIONS AND RECOMMENDATIONS

Historic and cultural heritage is an important part of New Zealand's environment and the identity of the national and local communities. There is a large and growing public appreciation of this heritage and commitment to its protection; however this has yet to be fully reflected in New Zealand's environmental management system.

Some positive achievements are occurring at the local level, principally through planning procedures under the Resource Management Act 1991 (RMA). However the system for the management of historic and cultural heritage as a whole lacks integrated strategic planning, is poorly resourced and appears to fall short of the principles of the Treaty of Waitangi. Consequently, permanent losses of all types of historic and cultural heritage are continuing.

The following section sets out the specific conclusions of this investigation, together with recommendations for improvement.

Performance of the government system

1. Historic and cultural heritage is part of a continuum of types of heritage, including natural, historic and cultural heritage of all types whether in situ or conserved in collections. An integrated strategy for all types of heritage conservation is yet to be developed in New Zealand. Much work remains to be done to develop and implement this strategy, at all levels.

(see Chapter 1.2;5.1.2)

2. The system for protection of historic and cultural heritage as a whole is performing poorly, is very reactive, and at present is characterised by poor resourcing and a lack of vision and integrated strategic planning. However some positive achievements are occurring at the local level, principally through planning procedures under the RMA.

(see Chapter 3.1.2, 3.1.4)

3. There is a significant policy gap at national and regional levels and an apparent lack of political will to adequately provide for historic and cultural heritage protection. A lack of Government commitment to the protection of historic and cultural heritage is indicated by –

- the lack of a clear national strategy for protection of New Zealand's historic and cultural heritage;
- inadequate ministerial accountability for heritage protection outside the conservation estate;
- the limited focus and funding of historic and cultural heritage through the Crown purchase agreements with the New Zealand Historic Places Trust (the Trust) and the Department of Conservation (DOC);
- the lower level of importance given to heritage values other than for Maori in Part II of the RMA;

(see Chapter 3.1.2, 3.1.3, 3.1.4)

4. The omission of heritage values from matters of national importance under s 6 of the RMA allows local authorities the discretion to do little in relation to historic and cultural heritage.

(see Chapter 3.1.3)

5. The intention of legislative review leading to the Resource Management Act 1991 and the Historic Places Act 1993 was that the identification and assessment of historic places should be covered by the HPA and protection should be addressed primarily through the RMA. However, the Acts do not explicitly allocate functions between central and local government and the Trust.

(see Chapter 3.1.3, 3.1.4)

6. There are a number of agencies involved in historic and cultural heritage protection and management at all levels. The relevant duties, responsibilities and accountabilities of these agencies are not always transparent or well defined. This inhibits management and protection of historic and cultural heritage.

(see Chapter 3.1.2)

7. The Trust is not a Crown entity yet it has a statutory regulatory function. As now constituted in law and policy, the Trust is a hybrid public authority and non-governmental organisation and this causes confusion as to its role and the role of its members. It is not adequately funded or serviced by the Crown. These problems, as well as some management deficiencies, have prevented the Trust from fully realising the role identified by Government as the leading agency to promote and assist historic and cultural heritage protection and management.

(see Chapter 3.1.2)

8. The Minister of Conservation is responsible for the HPA and the Trust but DOC provides the primary policy advice to the Minister in that role. Given that DOC's role in historic and cultural heritage management is now primarily restricted to the conservation estate, this arrangement is inappropriate.

(see Chapter 5.1.1)

9. DOC's Historic Heritage Strategy, although clear and internally consistent, is inconsistent with DOC's role on and off-estate in natural heritage protection, and creates serious inequalities in the deployment of archaeological expertise around the country. The decision to concentrate DOC's efforts on the conservation estate has significant implications for both the Trust and local authorities as they exercise their respective responsibilities for historic and cultural heritage. No overall assessment of the effects of this decision on the machinery of government has been made.

(see Chapter 3.1.2)

10. There are a number of agencies involved in the management of Crown-owned heritage places, without consistent Government policy for the management of those places. This has led to a duplication of responsibilities, poor management at times, and the loss of important heritage places.

(see Chapter 5.3.3)

11. There is very important work to be done at the regional level, including giving effect to heritage sections of regional policy statements and plans, giving support to territorial authorities in undertaking historic and cultural heritage protection and management, and coordinating surveys where appropriate. In order to effect integrated heritage management, there should be close cooperation at this level between regional councils, the Trust (especially Regional Offices), DOC conservancies, and tangata whenua.

(see Chapter 3.1.2, 5.1.2)

12. Territorial authorities are the primary protection agencies for historic and cultural heritage at the local level. Their current performance in the discharge of this function is very variable.

(see Chapter 3.1.2)

RECOMMENDATION 1

To the Prime Minister:

Establish a portfolio for historic and cultural heritage and arrange for a new unit of government to advise the Minister responsible for historic and cultural heritage and with specific responsibility for the administration of a revised Historic Places Act.

RECOMMENDATION 2

To the Minister responsible for historic and cultural heritage:

Develop, as a priority, a detailed national strategy for historic and cultural heritage management in New Zealand.

RECOMMENDATION 3

To the Minister for the Environment:

Amend Part II of the Resource Management Act 1991 so that "recognition and protection of the heritage values of sites, buildings, places, or areas" becomes a matter of national importance.

RECOMMENDATION 4

To all Regional Councils:

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

RECOMMENDATION 5

To all Territorial Authorities:

Recognise their primary protection role for historic and cultural heritage under the Resource Management Act 1991 and to use available protection measures accordingly.

RECOMMENDATION 6

To the Prime Minister:

Arrange for oversight of management of all HPA-registered Crown-owned heritage places to be established in a single agency such as the Heritage Properties Unit of the Department of Internal Affairs.

Maori heritage

13. The historic and cultural heritage of tangata whenua is an essential component of New Zealand's national identity. Findings of the Waitangi Tribunal suggest that for the government system for historic and cultural heritage to reflect the principles of the Treaty of Waitangi, support and advice should be provided by government to Maori to protect their heritage. Support should be based on the development of cooperative relationships between tangata whenua and public authorities at all levels in both the development and implementation of policies and measures to protect taonga. At the same time, such efforts require coordination through the development of a national strategy which links all aspects of the management of Maori heritage, and its implementation needs to be supported by adequate funding at all levels of government. This has yet to be achieved.

(see Chapter 3.1.2, 3.1.3, 4.4, 4.6)

14. While there is a range of mechanisms that can potentially be used to protect Maori historic and cultural heritage, these have yet to be fully utilised and developed. There is an insufficient system of funding and incentives at national, regional and local levels to support the implementation of protection measures for sites of significance to the tangata whenua.

(see Chapter 3.1.4, 4.5)

15. The HPA is deficient in its treatment of Maori values. It contains no reference to the Treaty of Waitangi, and while the Act requires persons exercising functions and powers under it to recognise the relationship of Maori and their culture and traditions with their ancestral lands, waters, sites, waahi tapu and other taonga, as does the RMA, the structure and procedures of the Act do not fully support this requirement. Other than in the registration of wahi tapu and wahi tapu areas, the Maori Heritage Council has insufficient authority in decision-making affecting Maori.

(see Chapter 3.1.3, 4.4).

16. There is a potential gap between the archaeological site provisions of the HPA and the RMA when local authorities fail to provide for the protection of sites in their policies and plans; and also between the provisions of the HPA and the Antiquities Act 1975 in respect of the management and disposal of artefacts found in archaeological sites.

(see Chapter 4.2, 4.4.1, 4.6, 5.5.2)

17. The law does not provide guaranteed protection for confidential information on sites of significance to the tangata whenua. While information of a general nature may have to be made available to affected parties, there is considerably

more work to be done in developing processes for protecting the particular location of sites, information systems for tangata whenua, and protocols for their use by public authorities.

(see Chapter 4.4)

18. Ranking of sites significant to Maori is generally not appropriate, and other ways of assessing and providing a robust basis for protection of Maori heritage need to be found.

(see Chapter 4.4)

19. The development of a revised Historic Places Act and a detailed national strategy for historic and cultural heritage management requires consultation with representatives of the tangata whenua.

RECOMMENDATION 7

To the Maori Heritage Council:

In association with the Minister responsible for historic and cultural heritage and the Board of the New Zealand Historic Places Trust, urgently convene a hui (or a series of hui) of interested parties to:

- develop options for addressing systemic problems in managing Maori historic and cultural heritage;
- review current initiatives being taken by tangata whenua; and
- develop strategies for protecting and managing historic and cultural heritage of significance to Maori.

Assessment and information

20. The processes and criteria for registration and scheduling under the RMA and HPA respectively are inherently different. The RMA process is a public process ultimately guided by community views and values; the HPA process is based on consistent criteria applied by the Trust.

(see Chapter 3.1.3)

21. Effective historic and cultural heritage protection depends heavily on the provision of high-quality information and ongoing monitoring. There is insufficient historical research on many historic places and areas, which at times has been a factor in failing to secure protection.

(see Chapter 3.3)

22. Agencies use many different heritage assessment approaches and criteria, and have widely variable quantities and quality of information on which to base assessment. This results in inconsistent levels of protection. It is desirable for all assessments to be systematic, objective, and based on essentially similar criteria, even if the weighting of those criteria changes to reflect local values.

(see Chapter 3.3)

23. The HPA Register, a pivotal link between the HPA and the RMA, is intended to be a key source of information about historic and wahi tapu

places and areas, and to be a means of helping to protect them. However, its use for these purposes is devalued by problems with the quality and unevenness of some of its information, the lack of direct protection mechanisms for registered places and areas, and a lack of resources for upgrading. Registration does not in itself confer protection on registered items.

(see Chapter 3.3)

24. There would be a number of significant advantages in restricting the HPA Register to historic places of national and international significance. Primary responsibility for registration, listing or other types of assessment of all other places would then lie with territorial authorities and Maori agencies.

(see Chapter 5.2)

25. The New Zealand Archaeological Association File is a major basic source of information for archaeological sites throughout the country and is a database of national significance. However there are significant problems in the use of the File for statutory and scheduling purposes, without a major upgrading of existing records and additional surveys in priority areas that are poorly surveyed. Under the Historic Heritage Strategy, the justification for DOC retaining custody of the File is weak.

(see Chapter 3.3, 5.5.4)

26. Research (including systematic survey) into various aspects of historic and cultural heritage identification and management is currently very fragmented, resulting in ad hoc funding decisions by the Public Good Science Fund and the Lottery Grants Board.

(see Chapter 3.3.1)

RECOMMENDATION 8

To the Minister responsible for historic and cultural heritage:

In association with the Board of the New Zealand Historic Places Trust, the Maori Heritage Council, the Local Government Association, and ICOMOS New Zealand, urgently convene a Working Group on assessment and registration procedures, with the objectives of strengthening and integrating those procedures, upgrading the existing HPA Register, and exploring the feasibility of a HPA Register of national important sites.

RECOMMENDATION 9

To The Minister of Research, Science and Technology:

Re-examine the criteria for databases to be funded by the Foundation for Research, Science and Technology as databases of national significance, with a view to establishing the eligibility of the New Zealand Archaeological Association File to be funded by the Public Good Science Fund.

Protection and resourcing

27. There is a wide range of mechanisms that are potentially available for historic and cultural heritage protection. Different levels of protection require different levels of national, regional and local commitment, but at all levels a balanced and integrated approach to protection is required, with the use of both regulatory and voluntary measures that are supported by financial incentives. The potential effectiveness of many protection mechanisms (especially for buildings) hinges on being able to find new financially viable uses for the resource.

(see Chapter 3.2.2)

28. For historic and cultural heritage of national significance, a national agency must be able to effectively identify and protect such places. Sufficient funding is required for this purpose.

(see Chapter 5.5)

29. The use of heritage orders is very limited, particularly so by bodies corporate because of the time and resources required to become recognised as a heritage protection authority. The effectiveness of heritage orders has been limited because of their financial implications, although there has been little use made of potentially less expensive mechanisms such as purchase and resale under covenant.

(see Chapter 3.2.2)

30. There is a lack of funding for historic and cultural heritage protection at national, regional and local levels. The lack of a dedicated national heritage acquisition and management fund is particularly serious, and such a fund should be complemented by incentives for owners to protect their historic and cultural heritage. Many local authorities are poorly equipped with resources and expertise to meet increased responsibilities for historic and cultural heritage management. Further consideration will also be required for both self-generated and external financial resources for historic and cultural heritage protection and management at regional and local levels.

(see Chapter 5.5.3)

31. Lotteries Environment and Heritage funding is an important resource for historic and cultural heritage protection and management projects at all levels. However, in the absence of national policy to guide resourcing priorities and adequate core funding for agencies, Lotteries funding can have a distortionary effect. Lotteries funding should generally be used for specific one-off projects.

(see Chapter 3.1.4, 4.1.4)

32. The New Zealand Mainstreet Programme has the potential to promote heritage conservation and economic development but it is restricted by the lack of a national organisation and servicing.

(see Chapter 3.2)

33. The rigid enforcement of new earthquake protection and safety measures without financial incentives or investigation of alternative options, and the inability of owners to provide for insurance for heritage buildings without government assistance, are currently significant factors in the loss of heritage buildings.

(see Chapter 3.2.2)

34. The provision of expert heritage conservation advice can significantly assist the recognition and protection of heritage and increase public awareness of heritage issues, but there is generally a lack of training opportunities for historic and cultural heritage management by professionals and amateurs.

(see Chapter 5.3.6)

RECOMMENDATION 10

To the Minister responsible for historic and cultural heritage:

Review the Crown Purchase Agreements covering historic and cultural heritage to ensure that all core and statutory functions are funded appropriately and adequately.

RECOMMENDATION 11

To the Minister responsible for historic and cultural heritage:

Establish a fund for the acquisition of nationally significant historic and cultural heritage places.

RECOMMENDATION 12

To the Minister responsible for historic and cultural heritage:

Establish a national incentive fund for the funding of various heritage protection and management measures.

RECOMMENDATION 13

To all Territorial authorities:

Establish local incentive funds for the funding of various heritage protection and management measures.

RECOMMENDATION 14

To the Lottery Grants Board Environment and Heritage Distribution Committee:

Ensure that Lotteries funding decisions are consistent with a national strategy for historic and cultural heritage management.

RECOMMENDATION 15

To the Minister of Finance:

Consider the reinstatement of government earthquake insurance cover for buildings of regional and national heritage significance.

Archaeological sites

35. HPA authority provisions are akin to resource consent processes under the RMA. However as currently defined they are inadequate in comparison to RMA consent processes in respect of local decision-making, consultation, independent assessment and systematic enforcement.

(see Chapter 5.5.2)

RECOMMENDATION 16

To the Minister for the Environment:

Consult with the Minister responsible for historic and cultural heritage on the desirability of placing the archaeological site authority provisions of the HPA within the RMA, and on the insertion of a clause in the provisions setting an expiry date for all authorities granted under previous Acts.

HISTORIC HERITAGE MANAGEMENT REVIEW

Report of the Ministerial Advisory Committee

Not Approved Government Policy

OCTOBER 1998



Department of Conservation
Te Papa Atawhai

- ii. In recent years the Environment and Heritage Committee has established the policy that Lottery funds are not intended to support the core services of government agencies. It has thus continued to fund approved historic heritage conservation projects by the NZHPT, but has withdrawn from funding NZHPT statutory functions and operating costs which it considers should be funded by the Crown or from self-generated funds. The validity of this policy is recognised. However, it is suggested that the funding withdrawn from NZHPT should not be lost from historic heritage but should be reallocated to historic heritage conservation projects, subject to sufficient applications fully meriting funding being received.

17. Historic heritage in the Ross Sea region of Antarctica

Recommendation XVII. That the strategic importance for New Zealand of the conservation of historic heritage in the Ross Sea region of Antarctica be properly recognised.

The reasons for this recommendation are:

- i. Historic sites in the Ross Sea region are of outstanding significance for New Zealanders. New Zealand has a strong national interest in their conservation.
- ii. Considerable progress has been made in reviewing and redesignating historic heritage sites as Antarctic Specially Protected Areas, and in developing plans for their conservation and management. These plans require resources for their implementation.
- iii. The New Zealand Antarctic Institute is responsible for New Zealand's activities generally in Antarctica, but does not have a focus on historic heritage. The Antarctic Heritage Trust is an independent New Zealand based organisation formed to preserve and protect the historic heritage of Antarctica. The Antarctic Heritage Trust co-ordinates and implements all conservation activity at the historic sites in the Ross Sea region from a limited resource base.

18. Summary of recommendations

- I. That the RMA be the principal regulatory tool for the protection of historic heritage.
- II. That the RMA be amended to enhance its provisions applicable to historic heritage, and that regulatory provisions under the HPA subsequently be repealed.
- III. That central Government prepare a National Policy Statement for historic heritage within two years of the enactment of legislative amendments to the RMA, and ensure that adequate information is provided to local authorities to assist the transition to their enhanced role in historic heritage protection.

- IV. That heritage planning documents recognised by tangata whenua, referred to in the RMA, be given greater weight in law, and their production be assisted by the availability of funding and technical support.
- V. That the statutory protection of archaeological heritage under the HPA be integrated into the RMA and that, when such protection is in place, the current HPA system of regulation of archaeological sites be repealed.
- VI. That a "sunset clause" be established for archaeological authorities granted under the HPA 1975 and 1980 which have not been exercised.
- VII. That the importance of improved archaeological survey and databases, including those led by iwi, hapu and whanau, be recognised, and that the current restrictions on eligibility for the Public Good Science Fund be reviewed.
- VIII. That there be local historic heritage schedules included in district plans, and a National Historic Heritage Schedule included in the National Policy Statement, with all historic heritage so identified being protected through district plans and eligible for incentives.
- IX. That a combined portfolio of the built heritage assets of the NZHPT and DOC be managed by a stand-alone company or business unit charged with retaining heritage values while maximising revenue generation, and that an establishment unit be initiated within six months.
- X. That the NZHPT remain an independent statutory body, as an advocacy and public membership organisation but without regulatory powers, and that because of the major change in its functions it be subject to a zero-based review.
- XI. That a distinct Maori heritage agency be established by Government to provide for Maori heritage policy and leadership while empowering iwi, hapu and whanau, and that the detail of its structure be subject to ongoing consultation with Maori.
- XII. That a Ministry of Culture and Heritage be established as the primary source of policy and purchase advice to Government on historic heritage.
- XIII. That there be a dedicated contestable national historic heritage fund, similar to the Forest Heritage Fund and the parallel Nga Whenua Rahui fund, to protect and conserve nationally scheduled historic heritage and Maori heritage.
- XIV. That, as an economic incentive for voluntary conservation, there be a 20% rates discount for nationally scheduled historic heritage and a 10% rates discount for locally scheduled historic heritage.
- XV. That the Building Industry Authority, while recognising that public safety is paramount, ensure that Building Act amendments and implementation recognise the public interest in the retention of historic buildings and structures.
- XVI. That the Lottery Grants Board Environment and Heritage Committee continue to recognise its important role as an independent funder of historic heritage conservation projects.
- XVII. That the strategic importance for New Zealand of the conservation of historic heritage in the Ross Sea region of Antarctica be properly recognised.