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HISTORIC AND CULTURAL HERITAGE MANAGEMENT IN NEW ZEALAND

BACKGROUND REPORT: CASE STUDIES

Office of the

PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT

Te Kaitiaki Taiao a Te Whare Pāremata

PO Box 10-241, Wellington

June 1996

This report provides information on four case studies undertaken as part of an investigation into historic and cultural heritage management in New Zealand. The main report "Historic and Cultural Heritage Management in New Zealand" (ISBN 0-908804-64-4) is available through Bennetts Government Bookshops. A brief summary of findings is available from this Office on request.

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1. THE NGUNGURU SANDSPIT AND THE PROTECTION OF WAHI TAPU

The Ngunguru Sandspit¹ is located south-east of Ngunguru and Tutukaka townships on the east coast of Northland, approximately 25 km north-east of Whangarei. The sandspit is 2.5 km long and between 300 m and 600 m wide. The area commonly identified as the Ngunguru sandspit property is in four certificates of title covering 119 ha, which includes the entire sandspit and approximately 20 ha of forest and wetland that merge into the hills to the south (see Figure 1.1).

1.1 Background

The boundaries of the present titles are based on the original partition orders of the Maori Land Court. The shape and size of the four titles restrict practical land development and do not recognise cultural values and landform as one boundary passes through a pa site and another title is a long and narrow rectangular shape. The area is zoned in the Whangarei Transitional District Plan as Rural AC with a wide range of permitted activities which include forestry, agriculture, and buildings which are accessory to these activities such as dwelling houses and residential buildings.

The Ngunguru Sandspit property was formerly Maori land that was sold in two parts. The outermost title was sold by its owners in 1964 to developers. It was then held under caveat with an option to purchase in 1968, and finally transferred to the present owner, Mr R A Green, in 1986. The other three southern titles were acquired by the same owner in 1981.

There is no legal or formed road access to the sandspit but access is possible along the coast from the west and by sea from Ngunguru township across the Ngunguru River (some 300 m). A Maori roadway connecting the Ngunguru Ford Road (extension) and the Ngunguru Sandspit was laid off by the Maori Land Court but the road was never formed. Part of the Ngunguru Ford Road (extension) remains vested with the original Maori owners and not with the council and as such it is not a legal road (Department of Survey and Land Information letter to Whangarei District Council July 1995). A comparison of the existing Ngunguru Ford Road formation and the roading plan also shows that the formed road along the causeway deviates from its intended alignment. In 1995, while considering a partition order on Maori land adjoining the Ngunguru Sandspit property, a Maori Land Court judge recommended that the Whangarei District Council (WDC) legalise and form the Ngunguru Ford Road (extension). The council declined the recommendation, as it was generally not council policy to provide access to private land or development (WDC letter to PCE March 1996).

1.2 Values of the Ngunguru Sandspit

The Ngunguru Sandspit has multiple values as it is a unique combination of historic, cultural and natural heritage. It is a significant ecological site and geomorphological feature given the continuity and diversity of habitat. Its natural features are largely unmodified and there are few comparable sandspits remaining in New Zealand. The area is of particular value to tangata whenua for its cultural and spiritual values.

¹ The Ngunguru Sandspit is a barrier sandspit that was created by the accumulation of sand swept up the coast by tidal movement. These formations usually develop across the mouth of a river or inlet, creating a barrier and enclosing the inlet further.

Figure 1.1 Map of Ngunguru Sandspit showing proposed boundary adjustments for Lots 1-4 (C.T. = current Certificate of Title boundary)

The map illustrates the Ngunguru Sandspit area, bounded by the Ngunguru River to the west and Ngunguru Bay to the east. It shows four main lots with proposed boundary adjustments:

- Lot 1:** 26.0 ha, located at the bottom right, with a proposed boundary indicated by a dashed line.
- Lot 2:** 15.5 ha, located in the lower middle section.
- Lot 3:** 16.0 ha, located in the middle section.
- Lot 4:** 61.3 ha, located at the top left.

Other features and labels on the map include:

- Lot 1C:** BURIAL RESERVE, located between Lot 4 and Lot 3.
- Lot 1A4E:** Located near Lot 1.
- Lot 1A4D:** ML 15036, located at the bottom right.
- Lot 1A4C:** ML 11441, located near Lot 2.
- Lot 1A4B:** ML 11442, located near Lot 2.
- Lot 1A4A:** ML 11443, located near Lot 2.
- Lot 1A4F:** ML 610/139, located near Lot 2.
- Lot 1A4G:** ML 610/138, located near Lot 2.
- Lot 1A4H:** ML 610/137, located near Lot 2.
- Lot 1A4I:** ML 610/136, located near Lot 2.
- Lot 1A4J:** ML 610/135, located near Lot 2.
- Lot 1A4K:** ML 610/134, located near Lot 2.
- Lot 1A4L:** ML 610/133, located near Lot 2.
- Lot 1A4M:** ML 610/132, located near Lot 2.
- Lot 1A4N:** ML 610/131, located near Lot 2.
- Lot 1A4O:** ML 610/130, located near Lot 2.
- Lot 1A4P:** ML 610/129, located near Lot 2.
- Lot 1A4Q:** ML 610/128, located near Lot 2.
- Lot 1A4R:** ML 610/127, located near Lot 2.
- Lot 1A4S:** ML 610/126, located near Lot 2.
- Lot 1A4T:** ML 610/125, located near Lot 2.
- Lot 1A4U:** ML 610/124, located near Lot 2.
- Lot 1A4V:** ML 610/123, located near Lot 2.
- Lot 1A4W:** ML 610/122, located near Lot 2.
- Lot 1A4X:** ML 610/121, located near Lot 2.
- Lot 1A4Y:** ML 610/120, located near Lot 2.
- Lot 1A4Z:** ML 610/119, located near Lot 2.
- Lot 1A4AA:** ML 610/118, located near Lot 2.
- Lot 1A4AB:** ML 610/117, located near Lot 2.
- Lot 1A4AC:** ML 610/116, located near Lot 2.
- Lot 1A4AD:** ML 610/115, located near Lot 2.
- Lot 1A4AE:** ML 610/114, located near Lot 2.
- Lot 1A4AF:** ML 610/113, located near Lot 2.
- Lot 1A4AG:** ML 610/112, located near Lot 2.
- Lot 1A4AH:** ML 610/111, located near Lot 2.
- Lot 1A4AI:** ML 610/110, located near Lot 2.
- Lot 1A4AJ:** ML 610/109, located near Lot 2.
- Lot 1A4AK:** ML 610/108, located near Lot 2.
- Lot 1A4AL:** ML 610/107, located near Lot 2.
- Lot 1A4AM:** ML 610/106, located near Lot 2.
- Lot 1A4AN:** ML 610/105, located near Lot 2.
- Lot 1A4AO:** ML 610/104, located near Lot 2.
- Lot 1A4AP:** ML 610/103, located near Lot 2.
- Lot 1A4AQ:** ML 610/102, located near Lot 2.
- Lot 1A4AR:** ML 610/101, located near Lot 2.
- Lot 1A4AS:** ML 610/100, located near Lot 2.
- Lot 1A4AT:** ML 610/99, located near Lot 2.
- Lot 1A4AU:** ML 610/98, located near Lot 2.
- Lot 1A4AV:** ML 610/97, located near Lot 2.
- Lot 1A4AW:** ML 610/96, located near Lot 2.
- Lot 1A4AX:** ML 610/95, located near Lot 2.
- Lot 1A4AY:** ML 610/94, located near Lot 2.
- Lot 1A4AZ:** ML 610/93, located near Lot 2.
- Lot 1A4BA:** ML 610/92, located near Lot 2.
- Lot 1A4BB:** ML 610/91, located near Lot 2.
- Lot 1A4BC:** ML 610/90, located near Lot 2.
- Lot 1A4BD:** ML 610/89, located near Lot 2.
- Lot 1A4BE:** ML 610/88, located near Lot 2.
- Lot 1A4BF:** ML 610/87, located near Lot 2.
- Lot 1A4BG:** ML 610/86, located near Lot 2.
- Lot 1A4BH:** ML 610/85, located near Lot 2.
- Lot 1A4BI:** ML 610/84, located near Lot 2.
- Lot 1A4BJ:** ML 610/83, located near Lot 2.
- Lot 1A4BK:** ML 610/82, located near Lot 2.
- Lot 1A4BL:** ML 610/81, located near Lot 2.
- Lot 1A4BM:** ML 610/80, located near Lot 2.
- Lot 1A4BN:** ML 610/79, located near Lot 2.
- Lot 1A4BO:** ML 610/78, located near Lot 2.
- Lot 1A4BP:** ML 610/77, located near Lot 2.
- Lot 1A4BQ:** ML 610/76, located near Lot 2.
- Lot 1A4BR:** ML 610/75, located near Lot 2.
- Lot 1A4BS:** ML 610/74, located near Lot 2.
- Lot 1A4BT:** ML 610/73, located near Lot 2.
- Lot 1A4BU:** ML 610/72, located near Lot 2.
- Lot 1A4BV:** ML 610/71, located near Lot 2.
- Lot 1A4BW:** ML 610/70, located near Lot 2.
- Lot 1A4BX:** ML 610/69, located near Lot 2.
- Lot 1A4BY:** ML 610/68, located near Lot 2.
- Lot 1A4BZ:** ML 610/67, located near Lot 2.
- Lot 1A4CA:** ML 610/66, located near Lot 2.
- Lot 1A4CB:** ML 610/65, located near Lot 2.
- Lot 1A4CC:** ML 610/64, located near Lot 2.
- Lot 1A4CD:** ML 610/63, located near Lot 2.
- Lot 1A4CE:** ML 610/62, located near Lot 2.
- Lot 1A4CF:** ML 610/61, located near Lot 2.
- Lot 1A4CG:** ML 610/60, located near Lot 2.
- Lot 1A4CH:** ML 610/59, located near Lot 2.
- Lot 1A4CI:** ML 610/58, located near Lot 2.
- Lot 1A4CJ:** ML 610/57, located near Lot 2.
- Lot 1A4CK:** ML 610/56, located near Lot 2.
- Lot 1A4CL:** ML 610/55, located near Lot 2.
- Lot 1A4CM:** ML 610/54, located near Lot 2.
- Lot 1A4CN:** ML 610/53, located near Lot 2.
- Lot 1A4CO:** ML 610/52, located near Lot 2.
- Lot 1A4CP:** ML 610/51, located near Lot 2.
- Lot 1A4CQ:** ML 610/50, located near Lot 2.
- Lot 1A4CR:** ML 610/49, located near Lot 2.
- Lot 1A4CS:** ML 610/48, located near Lot 2.
- Lot 1A4CT:** ML 610/47, located near Lot 2.
- Lot 1A4CU:** ML 610/46, located near Lot 2.
- Lot 1A4CV:** ML 610/45, located near Lot 2.
- Lot 1A4CW:** ML 610/44, located near Lot 2.
- Lot 1A4CX:** ML 610/43, located near Lot 2.
- Lot 1A4CY:** ML 610/42, located near Lot 2.
- Lot 1A4CZ:** ML 610/41, located near Lot 2.
- Lot 1A4DA:** ML 610/40, located near Lot 2.
- Lot 1A4DB:** ML 610/39, located near Lot 2.
- Lot 1A4DC:** ML 610/38, located near Lot 2.
- Lot 1A4DD:** ML 610/37, located near Lot 2.
- Lot 1A4DE:** ML 610/36, located near Lot 2.
- Lot 1A4DF:** ML 610/35, located near Lot 2.
- Lot 1A4DG:** ML 610/34, located near Lot 2.
- Lot 1A4DH:** ML 610/33, located near Lot 2.
- Lot 1A4DI:** ML 610/32, located near Lot 2.
- Lot 1A4DJ:** ML 610/31, located near Lot 2.
- Lot 1A4DK:** ML 610/30, located near Lot 2.
- Lot 1A4DL:** ML 610/29, located near Lot 2.
- Lot 1A4DM:** ML 610/28, located near Lot 2.
- Lot 1A4DN:** ML 610/27, located near Lot 2.
- <

Local people have a history of recreational use of the Ngunguru Sandspit and River and this has contributed to a "sense of ownership" even though the land is privately owned and there is no legal access to the sandspit. The landowner has riparian rights on the sandspit and no general right of way exists along the foreshore.

Tangata whenua

Ngunguru Sandspit is of considerable significance to tangata whenua as it had a long history of occupation and it has significant cultural, spiritual, historical, and environmental values. Three tangata whenua groups have associations with the sandspit - Ngatiwai, Ngati Taka, and Te Waiariki. Each has expressed different views about its relative interests in respect to the sandspit, and about the levels of protection and/or development that should occur there.

The Ngatiwai Trust Board (NWTB) is the mandated authority of the Te Iwi O Ngatiwai. The Resource Management Unit of the Board has authority from the NWTB to process resource consent applications and prepare policy on environmental issues. Ngunguru Sandspit is within the manawhenua and manamoana rohe of Te Iwi O Ngatiwai (NWTB 1995).

The Ngunguru Sandspit is of particular significance to the hapu of Te Waiariki because it was the scene of a battle which ended a sustained campaign by southern tribes against Te Waiariki in the early nineteenth century. The campaign had begun on the northern shores of Whangarei Harbour and moved up the coast to Ngunguru Sandspit. Numerous pa and kainga were destroyed along the coastline and the campaign almost annihilated Te Waiariki. The sandspit is tapu because the remains of the warriors who fell in the battle are buried there (NWTB 1995). There is no known documented evidence of this battle and there is some debate over the importance and scale of the conflict.

The rangatira ringa kaha, Paratene Te Manu, is also buried on the sandspit. Paratene Te Manu was among a party of 18 chiefs who travelled to England in the 1860s to discuss Treaty of Waitangi breaches by the government with the Queen (NWTB 1995).

In a cultural impact assessment of the sandspit prepared for the New Zealand Historic Places Trust (the Trust) (NWTB 1995), NWTB stated that as the entire area was wahi tapu and as it had significant archaeological remains (pa, terraces, midden, and burial sites), the individual sites should be considered as one interrelated area. Members of Te Waiariki have stated that they have no concerns about the middens but they want the pa and urupa protected (pers. comm. 1995).

The NWTB have filed a claim with the Waitangi Tribunal for the return of the sandspit as part of the Wai 244 claim over the entire Ngatiwai area. The NWTB policy for land where a claim has been filed is that the authorities responsible for the land should make resource management decisions that are consistent with returning the land in a no less favourable condition than it was at the time of the claim. The NWTB disagrees with the Treaty of Waitangi Act 1975 which establishes that the Waitangi Tribunal shall not recommend the return to Maori ownership of any private land that is under a Treaty claim (s 6(4A) Treaty of Waitangi Act 1975).

Archaeological

Ngunguru Sandspit is a significant archaeological area with a headland pa, terraces, urupa, and numerous middens. It has been claimed that it is an almost continuous archaeological site (DOC 1994). The area has been partially surveyed several times (1963, 1981, and 1993) and its general archaeological values recognised, but no detailed survey of the entire area has ever been undertaken. The information that could be obtained from the sites could be used to interpret pre-European Maori occupation and history for the sandspit and for Northland (DOC 1994).

By 1993 nine archaeological sites (including the pa, terraces and associated middens) had been recorded on the New Zealand Archaeological Association Site Record File but the presence of many other sites on the sandspit had been noted. No archaeological sites or wahi tapu at Ngunguru Sandspit have been assessed for registration under the Historic Places Act 1993 (HPA). A Maori burial reserve was first identified in the original 1877 survey of the block, but a larger reserve was then shown after the 1913 survey, possibly to extend the reserve to take in bone material that was appearing from nearby shell middens (Best 1994). Human remains have been found outside the burial reserve and they are periodically uncovered after dune movement and flooding. For example between 1962 and 1968 the remains of about six persons were removed from the southern end of the sandspit (S Bartlett, pers. comm. 1995).

Ecological significance

A 1995 report for the WDC by Boffa Miskell Ltd identified sites of ecological significance in the Whangarei district and, in particular, outstanding natural ecological features, important habitats for indigenous species, and species at risk. Five levels of ranking of sites based on the Department of Conservation (DOC) Sites of Special Biological Interest (SSBI) inventory were recognised with values assigned from outstanding to potential. Ngunguru Sandspit in the coastal/estuarine category was given a secondary ranking of high ecological significance (national value) as it was notable as part of a sequence (dune-shrublands-podocarp-broadleaf-forest-wetland) and had significant indigenous species including the New Zealand dotterel and variable oystercatcher, which use the sandspit as a breeding ground (Boffa Miskell Ltd 1995).

Natural landscape

As part of the preparation of the new district plan, the WDC commissioned LA4 Landscape Architects to describe and define: the coastal environment of the district; those landscapes and landforms, which in themselves or in combination, are essential or important elements of the natural character of the coastal environment; and the outstanding natural geological and landform features of the district. A landscape assessment was undertaken to identify and classify landscape units and assess landscape values and evaluate their sensitivity to change in the Whangarei district. Ngunguru Sandspit (Unit C10) was given the highest possible rating for overall sensitivity and it was classified as an outstanding natural landscape. The reasons for this classification were that the Ngunguru Sandspit had retained its predominantly natural form, its dune formations were largely intact and the majority of its vegetation was indigenous. "The intactness of the spit makes it a unique and powerful landscape feature within the district" (LA4 1995). The study did not assess cultural landscapes in the district which can be considered to be an important part of historic and cultural heritage.

Risks

Risks to the natural, historic and cultural values of the sandspit include uncontrolled public access, fossicking of the archaeological sites, wandering livestock (the sandspit is not fenced off from adjoining areas), and pest and weed infestation. Recreational activities such as motorbike riding have damaged the dune environment and uncontrolled fires have burnt some of the forest-scrub associations in recent years. Coastal development including subdivision is likely to strongly influence many of the natural and historic values, and would in turn be influenced by dune movement, coastal erosion and flooding.

A Northland Regional Council (NRC) coastal hazard report (NRC 1988) stated the narrowest part of the sandspit had been flooded by the river or breached by the sea on four occasions since 1974 (ie in 1974, 1975, 1978, and 1982). Previously in 1956 the Ngunguru River flowed directly through the sandspit to the sea after heavy rainfall (S Bartlett, pers. comm. 1995). The narrowest area of the sandspit is signalled as flood prone and the seaward side of the sandspit has a coastal hazard setback zone of approximately 30 m like many coastal areas of Northland (NRC 1988).

The Ngunguru Sandspit (135 ha) was designated in 1967 by the Whangarei County Council (WCC) as a proposed public open space reserve and on appeal the designation was confirmed by a decision of the Town and Country Planning Appeal Board in 1970. At that time the outermost title on the sandspit was in private ownership. The inherent assumption of imposing the designation was that the designating authority was committed to acquiring the land by purchasing it from the owners. Any development of the land was prevented without the approval of the designating authority.

1.3 Designation history and attempts at public acquisition

In 1974 the Department of Lands and Survey (DLS) undertook a nationwide coastal survey to establish an inventory of existing coastal reserves and to identify future demand. As a result of this survey it was proposed that the entire Ngunguru-Horahora block should become a regional park for wilderness type recreational use.

In 1978 as part of the review of the Whangarei County district scheme, the land between the Ngunguru and Horahora estuaries was designated by the Ministry of Works and Development at the request of the DLS. At this time, the DLS took over financial responsibility for the entire designation but it was assumed that WCC would contribute to any purchase. The extension of the original designation was appealed and the Town and Country Planning Appeal Board then reduced the area of the designation. The Appeal Board believed that the intentions of the Maori owners in the south were not incompatible with the designation of the Northern area as a public reserve. The designation (with a total area of approximately 600 ha including the Ngunguru Sandspit property) remained in place during the 1983 scheme review and the designation was transferred from the DLS to DOC in 1987.

Between 1975 and 1989 many discussions and attempts to purchase or exchange the land at Ngunguru Sandspit were initiated by either the landowner or at various times the New Zealand Wildlife Service (NZWS), the Commissioner of Crown Lands (CCL), and Department of Conservation. However no satisfactory agreement over the sale of the property was ever reached between the various agencies and the landowner with, at various times, a lack of finance and changes of attitude to the sale and purchase of the land by both parties hindering agreement. For example, in 1980 the

owner offered to exchange Ngunguru Sandspit for Crown land at Te Anau or Manapouri but the CCL was unable to consider this offer as there was no suitable land. In 1986 the NZWS and the CCL approached the landowner regarding the purchase of the land but an agreement could not be reached (DOC Schedule of Negotiations 1994).

In late 1989 renewed efforts were made by DOC to purchase the sandspit and Valuation New Zealand was asked by DOC to provide a valuation for the four titles on the sandspit as if the designation did not exist. The valuation was assessed at \$605,000 and the WCC were also asked to contribute to the purchase. The council agreed to the request providing it could retain the option of naming rights for the reserve.

In 1990 an application was made by the DOC Northland Conservancy to the internal DOC land acquisition fund² for \$450,000 as part of the intended joint purchase of the area by DOC and the WCC and the application was approved. DOC were willing to negotiate with the landowner for approximately \$600,000 but the landowner's own valuation was \$5,871,200. Various discussions took place between DOC and the landowner over the differences in the valuation and it was agreed that the owner would obtain an independent valuation to support their own higher valuation of the property, but no such evidence was provided to DOC. No further discussions or action by DOC or the landowner are documented.

In 1992 DOC commenced a review of all existing designations for which DOC was the requiring authority to identify the future of designations on private and Maori land. The review was to be completed by 30 June 1994. In contrast with previous legislation, under the Resource Management Act 1991 (RMA), requiring authorities were expected to take reasonable steps to acquire any designated property or the designation would lapse after five years. Designations also had to be reviewed as part of any district plan review.

All designations held by DOC were to be assessed and their conservation values evaluated according to national priorities, to determine if the designation should be retained. Head Office approval would be required for those designations that were to be retained. For designations that were not required, the conservancy was to consider the implications of initiating uplifting of the designation prior to the expiry of the designation. The uplifting of the designation prior to the notification of a new district plan would generally only occur when the landowner requested DOC to do this or when the landowner requested the Planning Tribunal to order DOC to uplift the designation or acquire the land. However the continued existence of a designation represented a potential commitment to land acquisition. Under common law, DOC was also potentially liable for compensation of the affected owners of the designated land if they could successfully demonstrate that they had suffered a loss due to the presence of the designation (DOC 1992).

² The DOC land acquisition fund provides funding for the statutory protection of areas of private and Maori land. The fund receives a proportion of the revenue from the disposal of revoked reserves (land held under the Reserves Act 1977) and other uncommitted funds in the Reserves Act Trust Account. A Head Office committee with representatives from all policy divisions (including heritage) considers applications three times a year. National priorities include historic places of national importance or other special significance, and places of special significance to Maori, including wahi tapu.

In 1993 DOC received requests from several landowners in the Ngunguru-Horahora block to uplift the designation on their land. DOC thought it was advisable to review the entire designation rather than separate parts and there was also the need to consider the conservation values of the entire area. After a review it was proposed that the designation should be lifted on the interior blocks, as the land was unlikely to be sold given that it was in multiple Maori ownership and the owners had strong ancestral ties to the land. However the designation would be retained on the Ngunguru Sandspit and the blocks with frontage to the coast.

In late 1993 the Ngunguru property was put up for tender and was advertised internationally for its development potential. DOC was offered the property for \$3 million. In response DOC contacted both WDC and NRC to seek their support for part funding of the purchase of the sandspit and WDC were specifically asked to renew the commitment of the former WCC to contribute \$150,000 to the purchase of the area. However the WDC could not honour the commitment made by the WCC as the funding had not been specifically provided for by the former council and there was no other funding available from WDC. NRC was not able to provide any funding as this was outside its functions. A public subscription was suggested by local groups but it was acknowledged that it would have been difficult to obtain significant amounts of funding to contribute to the purchase. Although there was strong local support for DOC to purchase the property (eg 1,500 signatures on a local petition), DOC could not get a significant local financial contribution.

In response to the advertised tender a detailed funding proposal was prepared by the Northland Conservancy for DOC Head Office, proposing the acquisition of Ngunguru Sandspit by tender with funding from two sources: the DOC land acquisition fund (\$370,000) and the Forest Heritage Fund (\$325,000). Following funding approval, a tender would be lodged for approximately \$695,000 based on an assumed market value for the area.

The application was considered by DOC Head Office but it was recommended that although protection of the area was desirable, the application should be declined. This was because land acquisition funds were already committed for the year. There had already been substantial land purchases by DOC and significant land purchases were being negotiated for higher priority areas such as Waitutu Forest. The Forest Heritage Fund also declined to provide any funding for the tender. In late April 1994, DOC explained in a press release that it could not finance the substantial tender that would be required to purchase the property and so it would not tender for the sandspit. DOC could not afford to pay a premium (ie the government valuation was approximately \$580,000 whereas the owner wanted \$3 million) for the area and it had a responsibility to get the most conservation value from land purchases.

DOC suggested that the RMA provisions would be able to provide for the protection of the sandspit through the preservation of the natural character of the coast and the relationship of Maori to wahi tapu (s 6(a) and (e) RMA, matters of national importance). The significance of the site would mean that it should be able to be adequately protected from inappropriate development through the RMA (DOC memo to the Minister of Conservation April 1994).

As DOC could not tender for the land it also believed that the designation had to be uplifted in good faith. In assessing various options for either keeping or removing the designation, DOC believed that while the designation was in place:

- if DOC did not lodge a tender, the land could be sold to the highest tender and the present owner could argue that the designation reduced the value of the land and possibly seek compensation;
- if DOC did not lodge a tender and no satisfactory tender was received by the present owner, the owner could seek to have DOC acquire the land or apply to have the designation uplifted on the review of the district plan;
- if the property was sold to another party at a higher price than that tendered by DOC, the party would have difficulty forcing DOC to acquire the land. However the new owner would be able to apply to have the designation uplifted (DOC memo to Minister of Conservation April 1994).

DOC considered that whether it submitted a tender or not, there was the distinct possibility that the current or the new owner could successfully apply to the Planning Tribunal to have the designation uplifted or DOC could be requested by the Tribunal to acquire the land. Since DOC did not want to be placed in this position it considered that it needed to uplift the designation.

Community concern over the decision by DOC to not tender for the property and to lift the designation resulted in a public meeting at Ngunguru in May 1994 which was attended by 200 people and representatives from the various public authorities. A resolution was passed at the meeting requesting that the Minister of Conservation hold off lifting the designation until the local authorities in consultation with the community could review the planning provisions for the area. The Conservation Board supported the proposal that DOC delay lifting the designation until there had been an opportunity to initiate alternative means of protection.

The Ngunguru Sandspit Committee (NSC) was elected at the meeting with members drawn from the Tutukaka Residents and Ratepayers, the local branch of the Royal Forest and Bird Protection Society, Ngati Taka hapu, and the local community. The formation of the NSC was reactivating an older independent Ngunguru public support group that had been formed in 1989 to support DOC and the purchase of the sandspit.

In July 1994 DOC requested WDC to lift the part designation on the Ngunguru Sandspit property after the landowner requested DOC to do this in May. The WDC advised DOC that it would not uplift the part designation as it would have more than a minor effect on the remaining designation and it would be contrary to the purpose and principles of the RMA. DOC then requested the WDC to remove the entire designation in late 1994, which duly took place.

The NWTB disagreed with the removal of the designation by DOC as it contradicted the relationship that Ngatiwai had with DOC and its policies on the protection of wahi tapu. The NWTB believed that the decision was untimely and that it would need to be revisited by future governments. The Conservation Act 1987 included the responsibility to give effect to the principles of the Treaty of Waitangi and this duty was ignored in the decision (NWTB 1995).

The Northland Conservation Board (NCB) was also very disappointed with the DOC decision and stated that it would have implications for DOC in that it undermined public confidence in DOC's ability to perform stated objectives and that there would be greater difficulty in negotiating protection mechanisms with private landowners in the future (NCB letter to the Minister of Conservation May 1994).

Since the removal of the designation, the landowner has applied to the WDC for a resource consent for a boundary adjustment and to the Trust for an authority to destroy, damage, or modify archaeological sites in order to build on the sandspit (see Chapter 1.4.2).

In the Whangarei District Plan the Ngunguru Sandspit area is zoned Rural AC which is a coastal adaptation of the general rural zone. The purpose of the Rural AC zone was to preserve the natural character of the coastal environment and to protect it from unnecessary development. For subdivision proposals, Ordinance V Clause 5 of the district plan requires the WDC to be satisfied that any land is suitable for any particular use and to consider road access and drainage, liability to flooding, erosion or landslip, and the stability of foundations. Clause 6.9A.2. of the district plan advises that under the HPA an authority from the Trust is required for any work which may affect archaeological sites.

1.4 Involvement by relevant public authorities

1.4.1 Whangarei District Council

In 1992 after considering an appeal against a proposed plan change for the coastal zones, the Planning Tribunal directed WDC to introduce a new plan change for the Rural AC and Rural Scenic Protection Zones. The plan change was prepared and publicly notified in early 1994. The major provisions of the plan change were new subdivision rules based on the covenanting of land and amendments to the northern boundaries of the Rural A and Rural AC zones.

Midway through the development of the plan change Ngati Taka hapu requested the WDC to initiate a further plan change to rezone the Ngunguru Sandspit from Rural AC to the Ngunguru Sandspit protection zone. The purpose of the requested rezoning was to provide policies, objectives, and rules that would protect the sandspit from inappropriate and environmentally unsound development. Provisions for the zone would be formulated in consultation with interested parties. However the WDC believed that the request could be accommodated by their plan change.

In July 1995 after the hearing of submissions, an independent commissioner recommended that the proposed plan change be withdrawn as the blanket approach to subdivision provided by the covenanting provisions was not appropriate to the diverse nature of the Whangarei coastline. For example, submissions highlighted that the proposed plan change would have allowed 29 sections as of right at Ngunguru Sandspit, and that it would not have provided for the preservation of the natural character of the coastal environment. The commissioner stated that a more detailed assessment of the Whangarei District coastal area was required, and that this should recognise its significant features and diversity and give greater consideration to suitable areas of the coast for subdivision, lot sizes and effects (WDC 1995). These recommendations were to be considered in the general review of the district plan.

Resource consent application

In July 1994 an application was made to the WDC by the owner of the Ngunguru Sandspit property for a boundary adjustment that was intended to improve the shape and location of the titles on the Ngunguru Sandspit property. The proposed rearrangement would allow for a more rational layout of the lots with coastal and river frontage and a proposed 20 m Right of Way (ROW) connecting the house sites to the Maori roadway on the adjoining block. The proposed ROW stopped at the

boundary of Lot 4 but there would be no general public access to the area. The proposed boundary adjustment was a controlled activity in the district plan.

WDC responded to the application by requesting (under s 92 RMA) a comprehensive engineering report (including identification of suitable building sites, effluent and stormwater disposal, and confirmation of road access) and confirmation that the proposed development would not affect any archaeological sites. The WDC informed the Northern Regional Office of the Trust, DOC, and the NRC of the application and requested their comments.

The Trust's Northern Regional Office advised the WDC that they wished to make a submission on the consent application if it was to be notified and informed the council that all archaeological sites were protected under the Historic Places Act 1993 and that the applicant would need to seek authority to destroy, damage or modify archaeological sites from the Trust. DOC advised the WDC of the natural and historic values of the area and the likely effects if the consent was granted, and submitted that further information on archaeological values and land stability was required before a decision could be made. The NRC's comments emphasised that the application did not address the potential risks from coastal flooding or erosion, that more information was required on hazard avoidance and mitigation measures, and that the consent should not be granted until these issues had been comprehensively addressed.

A report to the WDC Environmental Services Committee (WDC 1994) explained that the proposal was a controlled activity but a subdivision application could be declined if the land was subject to erosion (s 106(1) RMA), if the land was not suitable for subdivision or if the subdivision was not in the public interest (s 406 RMA). The issue of notification of the application was discussed as usually applications for controlled activities were not notified. However WDC staff considered that special circumstances existed that would warrant the application to be notified (s 94(5) RMA) because the land had significant environmental, landscape and cultural values and it warranted wide public scrutiny. This recommendation was adopted by the WDC Environmental Services Committee.

Additional information on site suitability, stability, effluent and stormwater disposal, access and archaeological details was then provided to the WDC by the applicant. On the question of access, the landowner disagreed with the WDC opinion that legal access was not available to the property. The applicant included a report on a preliminary archaeological assessment of the proposed access route and house sites (Best 1994). The archaeological assessment did not locate and investigate all archaeological sites in the vicinity of the proposed works as it was only to locate and record sites. However human bone fragments were found in one midden and stone artefacts were found in two others. The report recommended that future development would require a more comprehensive assessment and archaeological sites would need to be marked before development. If the house sites could not avoid archaeological sites then an authority from the Trust would need to be obtained (Best 1994).

The WDC then requested further information from the applicant to ensure that the proposed development would not affect any archaeological sites as insufficient information had been provided to the council. The archaeological report had stated that it was a preliminary assessment and as such, it did not provide sufficient information on the actual or potential effects of the development. The applicant was

requested to prepare a full archaeological assessment of the building sites and access ways and provide an assessment of actual or potential effects of the proposal on archaeological sites.

The applicant was also requested to provide:

- a record of consultation with tangata whenua and identification of any concerns and the response to these concerns (the applicant was recommended to consult the NWTB and the Ngati Taka hapu);
- a record of consultation with the Trust and authorities for any archaeological sites that were to be destroyed, damaged or modified;
- information on the location of building sites and potential hazards;
- evidence that legal road access was available to the property;
- additional information on how the proposed development would mitigate the coastal hazards identified in the Whangarei Coastal Hazard Survey.

In December 1994 the NWTB was approached by a consultant, at that time acting for the developer, regarding the possibility of a 29-house subdivision on the sandspit. The NWTB explained that this was not possible because of the number of middens on the sandspit and even individual house sites would not be considered. The consultant was provided with a copy of the Ngatiwai policy on wahi tapu. Ngatiwai kaupapa (policy) for the protection of wahi tapu stated that:

All Maori archaeological sites are waahi tapu and are sacrosanct. It is inappropriate to apply any value system, practice or physical modification that may diminish this status. Accordingly the following (tikanga) principles of management apply:

Waahi tapu shall not be entered upon physically unless agreed by tangata whenua/kaitiaki and then only to carry out maintenance or study that will enhance the conservation of the physical, spiritual, and cultural integrity of the site.

Tangata whenua/kaitiaki are responsible for the historical interpretation of Maori historical sites and may only exercise their prerogative of divulging this Matauranga within the principles espoused in the kaupapa.

The legal status for the protection of such sites shall be s 439/53 Maori Reservation and where deemed appropriate by tangata whenua subsection 2 shall apply.

Article 2 of the Treaty of Waitangi, s 6, 7 and 8 of the Resource Management Act and s 4 of the Conservation Act confirm these principles (NWTB 1995).

The NWTB and Te Waiariki were unable to condone any development of the sandspit because of its immense cultural, spiritual and historical significance (NWTB 1995). There was no comment provided on the views of Ngati Taka and members of Te Waiariki have expressed an alternative view that they had no concerns about the middens but they wanted the pa and urupa protected (pers. comm. 1995).

In response to the delay in processing the resource consent application the landowner then applied to the WDC for four certificates of compliance (s 139 RMA) for a

dwelling in association with agricultural use. However the WDC deferred issuing the certificates of compliance pending further information as the WDC believed that the Rural AC zone provided for a dwelling as a permitted activity only when the dwelling was accessory to the agricultural use of the land. The WDC considered the sandspit was not being utilised for agricultural purposes and there was therefore no use to which the dwellings could be accessory.

The WDC were also not satisfied that road access was available as there was no practical or legal road access to the area. The Ngunguru Ford Road (part of Horahora Pt 1B) was still vested in the original Maori owners and as such was not a legal road. There were also concerns about the suitability of two house sites (the low lying site on the southern block and coastal erosion and flood hazards and the height profile of another building), and that authorisation was required from the Trust for construction of the house sites and the access roads.

The resource consent application has not yet been accepted by the WDC and it has not been notified.

1.4.2 New Zealand Historic Places Trust

HPA authority application, assessment and decision

In February 1995, the Trust received an application for an authority to destroy, damage, or modify eight archaeological sites as part of the development of four titles which included a right of way, house sites and access roads.³ Two of the sites were part of the same midden and were treated as one site. The application was accompanied by an archaeological assessment (Fredericksen 1995) containing an assessment of the house sites, ROW and 10 m buffer zones either side of the ROW and a record of consultation with tangata whenua (representatives of the Ngati Taka hapu and the NWTB). In March 1995 an assessment of Maori cultural values of the area by the NWTB was provided by the applicant and the application was formally accepted by the Trust.

The archaeological assessment was commissioned by the owner to assess the impact on recorded archaeological sites from four development lots. In total eleven unrecorded middens were found and eight were to be modified or destroyed by the proposed developments. The specific development covered a very small percentage of the sandspit. Six of the archaeological sites subject to the application were disturbed by natural erosion but two were partially intact. The middens contained mainly shell fragments and stone although there were bird bones in one midden. The archaeological values of the deflated sites were not considered to be very high although it was acknowledged that they could contain material that would provide information on the early occupation on the sandspit. The consultant archaeologist believed many additional sites (between 50 and 100) remained to be identified. The report recommended that sites should be marked on the ground and that a qualified archaeologist should be present to oversee construction and earthworks (Fredericksen 1995).

The Trust believed that sufficient archaeological information was supplied with the application but further information on Maori cultural values and consultation was

³ A section 12 HPA application for a general authority relating to areas of land or a specific type of site was originally submitted to the Trust by the landowner. However as the application was for eight specific sites that were able to be identified, the Trust changed the application with the consent of the applicant to a section 11 HPA application.

requested from the applicant. The Trust checked the applicant's consultation with Ngatiwai and Ngati Taka, and Ngatiwai confirmed to the Trust that the entire sandspit was wahi tapu and that they opposed the development. Officers of the Trust did not visit the sandspit.

The Maori Heritage Council (MHC) were informed of the application at their April 1995 meeting in order for Trust staff to receive MHC advice. The MHC did not comment on whether or not it supported the granting of the authority. The Chair of the MHC was independently consulted about the application and commented that the development would not have a significant effect on the cultural values of the sandspit provided that the conditions of the authority were complied with, that the ROW was stopped short of the boundary of Lot 3 and that an offer to set aside Lot 4 as a reserve was incorporated into the development. A report was then prepared for the Director of the Trust who had delegated authority from the Board of Trustees to make a decision.

In assessing the application the Trust reported that:

- the cultural heritage value of the individual sites under consideration was not sufficient to require their preservation (they did not contain skeletal remains) although they could prove to have more intact remains that are not visible;
- no archaeological sites or wahi tapu sites on the sandspit had been ever registered with the Trust;
- remains could be found over the entire sandspit and the sandspit had significant Maori values (NZHPT 1995).

In recognising that the Ngunguru Sandspit as a whole had significant Maori and other values, the Trust believed that these values needed to be taken into account by the landowner and the WDC when making any decisions or plans on developments that may affect these values. The Trust decided that it would specifically inform the WDC of the historic values of the whole area and the limited nature of the conditional approvals, and advocated that the council consider various aspects of Lot 3 that were beyond the scope of the HPA and retention of Lot 4 as a reserve.

In June 1995 the Trust granted an authority under s 14 of the HPA for seven archaeological sites (midden) at Ngunguru Sandspit for the construction of a right of way, house sites and access roads. The authority was granted only for the specified sites and stated that new sites or further development would require a new assessment and further applications to the Trust. The authority was granted subject to the following conditions:

- that all the archaeological sites in the work area be identified and flagged before work commenced;
- that a qualified archaeologist be engaged to be present during construction of the earthworks;
- that an archaeological investigation of the sites be performed to provide information on the site including the environmental context of the site, the age of the site, internal layout, and the relationship with other sites in the wider Ngunguru coastal area (approval would be required from the Trust under s 17 HPA);
- that curation and storage of any material removed from each site be arranged;
- that a report be supplied to the Trust and tangata whenua;

- that if skeletal material were encountered during the earthworks then all work must cease and tangata whenua and the Trust must be contacted to make a decision on the matter;
- that members of the tangata whenua be allowed to participate in the archaeological investigations;
- that all working areas be indicated on the site and no machinery be permitted to travel outside the area.

The archaeological investigation had to be performed before any development at the site. Any variation to, or development outside, the application area including building, landscaping and tree planting would require a new assessment to be performed and would be subject to new authority applications.

The Trust strongly advocated to the applicant and the WDC that the ROW should be stopped short of the boundary of Lot 3, the boundary of Lot 3 should be altered to avoid a midden, and Lot 4 should become a historic reserve. The Trust asked the WDC to notify the resource consent application and that the amendments be made conditions of any resource consent. The Trust hoped that the issue of an authority to restrict use of 118 ha to 5% of the total holding would enable the protection of customary values while allowing the owner the right to reasonable use of the property (The Heritage Advocate 1995).

The DOC Northland Conservancy informed the Trust of their concerns with the Trust decision and submitted that the Trust was setting a dangerous precedent by allowing the destruction of a significant archaeological site before the entire property had been adequately assessed. DOC suggested that Trust had not addressed issues including:

- the need for a comprehensive survey of the area which had been advocated by DOC since 1989 and since the designation was lifted this had become a priority;
- the effects of future development (a consultant archaeologist stated that "the subsequent impact of any purchasers will be as great or greater than the initial work" (Best 1994));
- the effects on subsurface sites; and
- human remains were not confined to the burial reserve and the Trust was not protecting and conserving wahi tapu and traditional sites (DOC letter to the Trust, June 1995).

DOC noted the Trust request to the WDC and the landowner to acknowledge that "Ngunguru Sandspit has significant Maori and other values" but questioned why the Trust should grant the authority if the area had significant values. DOC then requested the Trust to review the decision although there was no legal process for DOC to request this review. A review of an HPA authority could only be requested by the applicant or initiated by the Trust (s 16 HPA).

The Royal Forest and Bird Protection Society also requested the Trust to withdraw the authority because of the high ecological and historic values of the sandspit. The Society commented that given the role and aim of the Trust it was difficult to understand how the decision could be made when the Trust was willing to assist Ngatiwai to protect and conserve wahi tapu and other places of traditional significance.

The landowner accepted the decision of the Trust. However the NWTB disagreed with the Trust decision and filed an appeal (July 1995) to the Planning Tribunal over the granting of the authority, on the grounds that:

- the decision did not promote the identification, protection, preservation and conservation of historical and cultural heritage of New Zealand and that it conflicted with the purpose and principles of the HPA;
- Maori values of the sandspit had not been taken into full consideration by the Trust;
- the Trust had inadequate information to reach a decision; and
- the spiritual and archaeological integrity of Ngunguru Sandspit would be heavily compromised by the decision.

The appeal to the Planning Tribunal was heard in February 1996 and a decision was made by the Tribunal on 11 March 1996 (*Ngatiwai Trust Board v New Zealand Historic Places Trust* A13/96). The Tribunal considered that the NWTB was not a person directly affected for the purposes of bringing the appeal under s 20(1) HPA. As a body corporate the NWTB was not the same person as its members and it was not itself tangata whenua. The NWTB had not established that it was directly affected by the decision and it was not eligible to bring an appeal. The hearing could have ended with the above decision but the Tribunal was then asked by the various parties to consider the matters under dispute.

The appellant's case was directed to the heritage value of the sandspit as a whole and not the individual middens that were the subject of the application. However the application was not for a general authority but an authority for seven specific sites. The Tribunal could only have regard to the particular archaeological sites and on the evidence submitted the values of those sites were not as many as other middens on the sandspit that were bigger or more intact.

The Tribunal found that although s 4 HPA was entitled "purpose and principles" s 4(2)(c) "the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga" was not a principle of the HPA. Subsections 4(2)(a) and (b) HPA were the only principles. So where the Act requires the principles of the Act to be considered as in s 20(6)(b) HPA in a Planning Tribunal decision, it did not include s 4(2)(c) HPA. However the relationships described in s 4(2)(c) HPA were to be taken into account in the process of deciding the appeal.

The Tribunal commented that the Trust had given the application careful and systematic consideration, and the report of the Trust showed that full recognition of, and attention to, the principles of the Act. The principles of the Act did not necessarily require the retention in situ of all archaeological remains and depending on the intrinsic value of the site, the principles may be recognised by providing careful investigation, recording and storage of material. If protection of the middens prevented the formation of road access and house sites, probably the only use of the land that would be practicable would be forestry which would have much more adverse effects on the archaeological sites than the present proposal.

The persons directly affected by the decision of the Trust were the owner, and possibly tangata whenua with an interest in any remains of their ancestors. The owner's interests were met by the limited granting of the application. The interests of tangata whenua had been recognised and provided for in the Trust's decision by

the limitation of work to the proposed lots, by provision for tangata whenua participation in the archaeological investigations, requirements for advice to tangata whenua of curation and storage of material, and the provision of information from investigations.

In conclusion, the Planning Tribunal ruled the appellant lacked the required status to bring an appeal and the appeal was dismissed. If it had not been dismissed on that ground it would have been disallowed on the merits of the case. The NWTB have subsequently appealed the decision to the High Court.

1.5 Issues arising from the case study

The various issues arising from this case study can be grouped into four broad categories:

- the recognition of the actual and relative values of the Ngunguru Sandspit;
- the suitability of the planning provisions;
- the history of the designation and attempts by various public authorities to acquire the area; and
- the involvement of the Trust in assessing and granting the HPA authority.

The underlying issue is whether the property rights of the private owner and the values held by tangata whenua and the public can be reconciled and the values recognised and provided for in the future with appropriate use, development and protection.

Concerns of the landowner include:

- the land was designated for over 20 years and in that period the owner was unable to develop the land;
- the lack of compensation available to the landowner;
- the history of unlawful access to the property, particularly by local residents;
- no steps were taken by relevant authorities to exercise statutory powers of purchase and acquire the land through the Public Works Act 1981.

The values of the Ngunguru Sandspit

The multiple values of the Ngunguru Sandspit (eg historic, cultural, natural, recreational and landscape) make it a special place in New Zealand. It is a rare example of a largely unmodified landscape as it is one of the few remaining natural sandspits in New Zealand. Many other large sandspits (eg Pauanui, Coromandel Peninsula, and Omaha Sandspit near Warkworth) have been modified by subdivision. To Ngatiwai the area is wahi tapu and it is an important area in the history of Te Waiariki. However no public authority has ever been able to purchase the area or provide it with specific planning protection in order to manage the multiple values of the sandspit and allow tangata whenua to have legal access to the area.

Any public authority obtaining ownership of the land would have to address how to protect the cultural, spiritual and natural values of the area while providing for appropriate public access and recreation. For some areas with significant historic and cultural values and where no development is appropriate, any level of public activity may be unsuitable and these areas would require full protection.

The debate about the historical significance of the area and the status of the sandspit as a wahi tapu can be partially attributed to the lack of historical records and the limited research of the area. There is a need for research of Maori traditions and oral history as well as a comprehensive archaeological survey that documents and explains the archaeological, cultural and traditional values of sites such as Ngunguru Sandspit. However tangata whenua approval for any archaeological survey would need to be obtained. The New Zealand Archaeological Association code of ethics recognises the rights of tangata whenua and requires members to obtain their informed consent to any archaeological investigation or management work and this includes surveys.

The lack of archaeological information for the sandspit is the result of an incomplete archaeological survey of the area, although this is not uncommon for many parts of New Zealand. It has been stated that the area is of "high archaeological value" and "a detailed survey of the area would be fully justified" (DOC 1994) but the sandspit had never been fully surveyed, nor were any sites within the sandspit identified by the Trust on the HPA Register. Official recognition of the area arising from detailed survey and subsequent prioritisation may have assisted applications for funding for purchase.

Planning provisions

While the designation was in place on Ngunguru Sandspit, any proposed activity was subject to the designation and had to be approved by the requiring authority. The designation effectively prevented the development of the area and it was widely assumed by local people that the land would be bought for public ownership. However with the removal of the designation, the provisions of the transitional district plan were not able to provide a desired level of heritage protection and will need to be reviewed. The underlying Rural AC zone provides for agriculture and forestry as permitted activities, but these would significantly compromise the integrity of the area and lead to the destruction of the archaeological sites.

The new WDC proposed district plan will be released in late 1996 and the council has signalled that it will have stronger provisions to protect areas like Ngunguru Sandspit. As part of the review the WDC has commissioned studies into the ecological and landscape values of the district and these studies will assist in improving the provisions for the coastal areas. The WDC is also performing extensive consultation with tangata whenua as part of the district plan process. However a complementary study of all of the district's historic and cultural values is also warranted in order to gather sufficient information to provide for the recognition of the values of important historic places. For Ngunguru Sandspit and similar areas of historic and cultural importance that are privately owned, the district plan is the primary mechanism for recognising and providing for the protection of the special values of these areas and to manage the effects of any use of development.

The decision by DOC to lift the designation from the sandspit was in part influenced by the significance of the site and that it could be adequately protected from inappropriate development through provisions of the RMA, namely s 6(a) and 6(e). However this decision placed the responsibility for sustainable management and protection of the sandspit on local authorities and in particular the WDC. Protection would not be guaranteed without appropriate planning provisions in both regional and district plans that recognised the significant values of the sandspit.

As part of the preparation of the draft Northland Conservation Management Strategy (CMS), different habitat types in Northland were assessed and ranked for their representativeness and level of protection, inside and outside the DOC estate. The Northland CMS does not specifically identify areas targeted for acquisition or for protection through statutory planning mechanisms. Instead the CMS identifies habitat types that were poorly represented or under protected and these habitats were given a high priority for protection. The Northland CMS identifies a range of possible protection mechanisms and protection will not necessarily imply purchase by DOC (DOC 1995).

Riverine and alluvial flood forest, freshwater wetlands, saltmarshes, and some off-shore islands were given a first-order priority by DOC for the protection of habitats on land. This was because the habitats were poorly represented as protected areas, were confined to small isolated areas, were nationally threatened, and were essential to New Zealand's biodiversity. Soft coastal zones like Ngunguru Sandspit were provided with a secondary priority status for protection as generally the habitat was under-represented as a protected area, it was poorly represented in Northland, and there was a large diversity of threatened species (DOC 1995). Ngunguru Sandspit received a secondary priority because of the higher priority habitats listed above.

The draft CMS identified "special places" because of the combination of significant natural, historic and recreation values. These places are centred on areas of land administered by DOC but also include adjacent areas of land in other tenure (DOC 1995). The CMS did not specifically identify Ngunguru Sandspit as one of Northland's "special places" where DOC conservation effort would be focused because, as DOC did not own the sandspit, it could not be expected to identify it as an area where it would be putting management effort (DOC letter to PCE March 1996). The rationale for the concept of "special places" has been expanded on in the revised draft CMS and it includes the consideration of public submissions. Public submissions on the draft CMS requested DOC to include Ngunguru Sandspit in the CMS as a "special place" and to recognise its importance.

The area was initially designated for its natural and recreational values. After the formation of DOC, the wider conservation values and heritage values were recognised by the agency and two attempts were made to purchase the area in 1990 and 1994. In the CMS, DOC did not explicitly recognise the importance of the area. This can be seen as inconsistent recognition of the values of the area in contrast with earlier attempts by DOC to acquire the land and it has contributed towards creating some confusion as to how important the area's historic and cultural heritage and conservation values are in relation to other parts of the Northland coastline.

The Northland Regional Policy Statement (RPS) recognises that there are numerous traditional sites in Northland and heritage protection is an objective in the RPS. Policies include the identification of heritage features but there are no criteria in the RPS for regionally significant heritage. The RPS promotes the identification of heritage features and the recording of sites by district councils and regional councils, and the protection of heritage features and rules that would complement the requirements of the HPA. Any assessment of effects on natural character should include cultural heritage values which would encompass historic places and sites of significance to Maori (NRC 1995).

Designation and acquisition

The initial designation of Ngunguru Sandspit in 1967 was an attempt by the WCC to protect the area's important natural and recreational values. However, with time, the area's landscape, historic, cultural, spiritual, and archaeological values have also been recognised to some extent.

For many years community groups and individuals requested central and local government to purchase the Ngunguru Sandspit. As early as 1965 the Ngunguru Scenic Preservation and Improvement Society requested the Whangarei County Council to designate and purchase the sandspit and surrounding area as a public reserve. The formation of the Ngunguru Sandspit Committee in 1989 to support DOC acquisition of the area again demonstrated the community interest in protecting the sandspit. In 1994 the committee was reactivated and a local public subscription was even proposed to assist the government purchase of the area. The local community were very interested in seeing that the area received some form of protection and DOC was presented a petition signed by 1,500 residents.

The designation was in place for more than 20 years and it appears in hindsight that the period was ample to resolve public purchase of the property. But in that time, no agreement between the various public agencies and the landowner on the valuation of the property, an agreed sale price and on agencies sharing the costs and responsibilities of acquisition could be negotiated. The designation prevented the development of the area at some cost to the landowner.

The lack of agreement was because the Crown valued the property on its government valuation whereas the landowner valued the property on its potential development value. No professional valuation was ever provided to the Crown to substantiate this higher value, although normally this would only be supplied during actual negotiations. It is arguable that if the area was not suitable for development because of its significant conservation, archaeological, and cultural values, and if these values were recognised in a public planning process, then a valuation based on the full development potential is not valid particularly if the designation was in place at the time of purchase as it was for all but the outermost title.

The provisions of the Public Works Act 1981 allow compensation for designated areas to be independently assessed by the Land Valuation Tribunal. However this process was not used by DOC or former agencies. The use of an arbitrator and independent land valuations may also have assisted in finding a solution and at a value that was acceptable to all parties.

Ultimately, the failure to secure protection through public ownership appears to be because of the lack of a dedicated national land acquisition fund for historic and cultural heritage to assist the purchase of the area. DOC was severely criticised by many parties for lifting the designation but because it could not fund the purchase of the area from either the departmental land acquisition fund or the Forest Heritage Fund, under the RMA it had no choice but to withdraw the designation. This could have occurred at the time of the district plan review but the landowner requested DOC to lift the designation shortly after the decision not to tender for the property. Ultimately, as the requiring authority, DOC could have been liable to pay compensation to the affected landowner if the designation had remained and no significant action was taken to purchase the land.

A crucial point from this case study is that in similar situations, the primary authority taking the lead and the responsibility for the acquisition of land with significant heritage values requires support from other public authorities. A cooperative approach between all the authorities (ie DOC, the Trust, regional council, and the territorial authority) was required to provide sufficient funding to complete negotiations and purchase. The involvement of different agencies would also have allowed for national, regional, and local interests to be represented through the joint funding of the purchase of the area. In recognition of their association with the area, tangata whenua could also have become involved in the purchase and management of the area.

Attempts were made by DOC to get support from the other agencies but this was not forthcoming because WDC had other priorities and was short of funding, and NRC believed it did not have the mandate to provide funding for the purchase of local reserves. In view of the strong local interest in the area and the local importance, it is appropriate that a local contribution to any public purchase of the area be made, primarily through the WDC. For example, a rating levy on local Ngunguru residents could have assisted in funding the WDC contribution.

An option that could have been considered as an alternative to the public acquisition and protection of the area was a rearrangement of the titles to allow for a limited coastal subdivision on some portions of the inland titles. This could enable a sensitive use to be made of the area while protecting significant conservation and heritage values through the reservation of the sandspit and the covenanting of significant archaeological and cultural sites (eg the pa). The transfer of development rights is another option that could have been considered. These options may still have been unacceptable to tangata whenua.

The HPA authority and the Trust decision

The Trust reviewed the development proposal, the archaeological assessment, and the applicant's consultation with tangata whenua. The Trust then undertook further consultation with tangata whenua before being satisfied that it had sufficient information to be able to make a decision on the application. However no site inspection was undertaken and no independent assessment of the archaeological values of the sites was performed. The archaeological assessment submitted by the applicant's consultant was relied on as the main source of archaeological information, as routinely occurs.

The MHC was informed of the application and provided with the draft Trust report. In general the MHC face a number of difficulties in attempting to provide informed comments on HPA applications, for example it meets only six times a year, it cannot report on every application because of time constraints, and it cannot consult individual iwi groups because of resourcing constraints.

Local people were critical of the actions of the Trust and were frustrated that their views on the sandspit were not considered as the HPA does not provide for this process. The consideration of the application for an authority to destroy archaeological sites by the Trust Head Office did not allow for concerned parties to provide information to Trust staff and view any information that was being considered as part of the application. The Trust Head Office did not contact local people (apart from tangata whenua), the Trust Regional Office in Auckland, or the Trust branch committee in Northland.

The Trust believed that the proposed development would not adversely affect the values of the wahi tapu even though Ngatiwai have a holistic view of the entire site as wahi tapu and therefore considered it was inappropriate for development. The Trust had to assess the values of the different sites and the relative values of the sites for different groups of tangata whenua in considering the application. However there was no process under the HPA to bring all of the various parties (eg the Trust, applicant, tangata whenua, council) together to consider the different values of the area and attempt to come to an appropriate solution.

The Trust was criticised for considering only the effects on individual sites, rather than on the sandspit as a whole, and for not requesting or undertaking a full archaeological assessment of the entire sandspit. However the Trust could not justify this to the applicant or fund this assessment itself. The landowner could not be expected to pay for a complete archaeological survey of the total sandspit when the proposed development was only going to physically affect a small proportion of the sandspit. A dedicated research fund is required to provide for these type of archaeological surveys on significant sites in order for sufficient information to be available to assess the proposal and the effects on the archaeological values. In 1994 DOC offered to survey the entire area to identify its archaeological and cultural values but after initial discussions with the landowner no agreement was ever reached. The landowner then employed two consultant archaeologists to firstly perform a preliminary assessment of the heritage values for the development area and then a second more detailed survey.

The applicant was requested by the WDC to prepare a full archaeological assessment of the building sites and access ways and provide an assessment of actual or potential effects of the proposal on any archaeological sites. In terms of assessing the potential effects of the proposal, it can be argued that a comprehensive evaluation of the entire area was required. This would extend beyond the individual sites that were affected by the proposal to also include the wider area.

It has been shown above that the whole sandspit has multiple values including cultural heritage value to tangata whenua. However the HPA authority provisions only deal with the area in terms of a number of discrete archaeological sites covering only a small proportion of the total area and defined in terms of archaeological and historical value. This has been viewed by Maori as devaluing Maori cultural heritage values. The HPA also does not distinguish or give priority to older or more important archaeological sites and no criteria are provided by the Act or by Trust policy to assist the Trust in assessing and making a decision on an authority application. In contrast, in determining an appeal the Planning Tribunal is provided with a list of criteria in s 20(6) of the HPA and:

...the Tribunal shall have regard to any matter it considers appropriate, including (but not limited to)—

- a) the historical and cultural heritage value of the site and any other factors justifying the protection of the site;
- b) the purpose and principles of the HPA;
- c) the extent to which protection of the site prevents or restricts the existing or reasonable future use of the site for any lawful purpose;
- d) the interests of any person directly affected by the decision of the Trust (s 20(6) HPA).

The Trust was not able to consider all of the details of the proposal under the HPA and informed the WDC of the importance of the entire area and strongly urged that the council consider various amendments to the subdivision application including the stopping of the ROW in Lot 3 and the creation of a historic reserve in Lot 4. It is debatable whether the WDC will be able to consider these requests in assessing the resource consent application for a boundary change. In granting the HPA authority, the Trust has shifted the onus for protection on to the WDC under the RMA.

A condition of the authority was that the archaeological investigation of the sites should provide information on relationships with other sites in the wider Ngunguru coastal area. However the limited research of the surrounding area would limit the interpretation of the information. There was no information given to the applicant on the degree of this assessment, which could potentially include the entire area.

The authorities were granted for discrete areas and the Trust signalled to the landowner that any further development (eg building, landscaping, and tree planting) would require new applications to the Trust for authorities to destroy, damage or modify archaeological sites. New applications would require further archaeological assessments. However this gradual application and consent process is bureaucratic and inefficient. There is also a problem that each discrete application may not be able to be declined but if the combined values of an area were considered, they may have been of sufficient importance to justify declining the application. A solution to this problem may be to consider all of the archaeological values of the total area at the initial development stage, when all development options are available to a landowner.

The difference in timing of approvals under the HPA and the RMA is not clear as an archaeological authority can be granted before or after a resource consent. For example, the Trust granted the HPA authority to the landowner although resource consents that could be required under the RMA have not yet been heard by the WDC. The various authorities and resource consents for a development need to be considered at the same time in an integrated manner.

Unresolved issues

Key unresolved issues from this investigation include:

- whether the outermost title can be reserved as has been proposed at different times;
- different views among tangata whenua as to what would constitute appropriate development;
- monitoring future development on the sandspit when any activity (eg landscaping) would require new applications for authorities to be made to the Trust;
- future management of the area, regardless of proposed developments and present legal processes; and
- whether there is sufficient information for assessing the heritage values of the area or whether more research is required.

Values

1. The multiple values of the Ngunguru Sandspit (eg historic, cultural, natural, recreational and landscape) make it a unique place in New Zealand which warrants a significant degree of protection.
2. There is a lack of research of Maori traditional and oral history as well as a lack of a comprehensive archaeological survey of Ngunguru Sandspit to establish the significance of the site.
3. The lack of recognition of the importance of Ngunguru Sandspit in the Northland Conservation Management Strategy as an important conservation area contrasts with earlier attempts by the Department of Conservation to acquire the land, and has created confusion as to how important the historic and conservation values of the sandspit are in relation to other parts of Northland.

1.6 Findings

Planning

1. No public authority has ever been able to provide the area with specific planning protection in order to manage the multiple values of the sandspit.
2. The provisions of the transitional district plan are not able to provide an appropriate level of heritage protection for the Ngunguru Sandspit.
3. The Whangarei District Council has not completed an assessment of all of the historic and cultural values of the district to enable the values of important historic and cultural heritage places to be provided for in the new district plan.
4. There is no guidance provided by either the RMA or the HPA as to the relative sequence for obtaining RMA resource consents and HPA authorities.

Acquisition

1. The failure to secure protection for the sandspit can be more fundamentally attributed to the inability to implement the designation of the area in the period 1970 to 1994 or otherwise provide for protection through appropriate planning measures, than to the lifting of the designation or the granting of the HPA authorities.
2. The lack of decisive action to implement protection has adversely affected the landowner, tangata whenua and other interested parties.
3. Official recognition of the values of Ngunguru Sandspit (by different agencies), arising from detailed research and subsequent categorisation and prioritisation of areas, may have assisted applications for funding to purchase the area.
4. A cooperative approach between all the authorities (ie DOC, the Trust, NRC and WDC) was required to provide sufficient funding to complete negotiations and purchase. In particular, given the strong local interest in the area and its local importance, a contribution was required from the WDC to assist the public purchase of the area.

5. The lack of a dedicated national land acquisition fund for historic and cultural heritage is a significant factor in the lack of any contribution from a national agency.

Historic Places Act 1993

1. The inability of the Trust to undertake a site visit, commission an independent assessment of historic and cultural heritage values, consult tangata whenua or involve the MHC fully in decision making, all compromise the Trust's ability to make sound resource management decisions with respect to applications for HPA authorities.
2. Local residents and interested parties were not able to comment on the HPA authority application as the HPA does not provide for interested parties to provide information to the Trust. In addition, no person is able to comment on any information that was being considered as part of a HPA authority application.
3. There is no process under the HPA to bring all the various parties (ie the Trust, applicant, tangata whenua, council) together to consider the different values of the area and attempt to come to an appropriate solution.
4. The HPA does not give priority to Maori cultural values over archaeological values or distinguish or give priority to older or more important archaeological sites.
5. The combined historic and cultural heritage values of the affected area, as opposed to individual sites, were not able to be considered under the HPA. The potential piecemeal application and consideration of HPA authorities for future development at Ngunguru Sandspit is bureaucratic and inefficient, nor does it adequately recognise cumulative effects of successive development proposals.
6. No specific criteria are provided by the HPA or by Trust policy to assist the Trust in assessing and making a decision on an HPA authority application.

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Consultation list

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R A Green, landowner

J Klaricich, Chairman, Maori Heritage Council

New Zealand Historic Places Trust:

Head Office

Northern Regional Office

Northland Branch Committee

Ngatiwai Trust Board

Ngati Taka

Northland Conservation Board

Northland Regional Council

Ngunguru Sandspit Committee

Royal Forest and Bird Protection Society

Te Waiariki

Whangarei District Council

2. PROTECTION OF REMNANT AREAS OF THE AUCKLAND STONEFIELDS

2.1 The Auckland stonefields

The basaltic lava stonefields of the Auckland region, which cover more than 8,000 ha, have been occupied and used from the time of earliest human settlement. The Auckland region had one of the densest concentrations of early Maori settlement and many villages and fortifications were established on the volcanic cones and stonefields. The cones were often the most predominant feature of the stonefields being an integral part of the settlement and agricultural system. The stonefields contain high fertility soils, numerous peripheral springs and unique micro-environments. The stonefields were modified by Maori to provide earth and rock mounds and boundary walls that were part of a carefully constructed gardening system along with terraces, storage pits and midden. To this day, the volcanic cones and stonefields provide strong traditional and cultural linkages between tangata whenua and their ancestors (Bulmer 1995).

In the mid-1800s the stonefields were extensively used by Maori to provide food for the growing settlement of Auckland. The highly fertile soils, the pre-existing agricultural systems, and the introduction of new crops and markets enabled the Maori community to essentially control early agricultural production in the district.

European settlement in the nineteenth century brought new agricultural and horticultural uses to parts of the stonefields and these areas were progressively used for urban development and settlement. Drystone walls provide modern evidence of the early European agricultural use of the stonefields.

The stonefields are important for their cultural, traditional, archaeological, historical, social, scientific and landscape values. The stonefields are unique in New Zealand. The volcanic cones of the inland Bay of Islands and stone constructions in the Wairarapa have different kinds of stone features and are in a different geographical context as they represent an alternative land management system and cultural development (NZHPT 1983).

Throughout Auckland the stonefields have been extensively used for industrial subdivision and industrial park development (eg East Tamaki and Wiri) and this development has had the greatest impact on the stonefields as a whole. Parts of the stonefields have been quarried as they are an important source of aggregate for the construction industry. Some areas of the stonefields in South Auckland are used for pastoral grazing, which does not significantly affect the historic values of the stonefields except where large animals (eg cattle and horses) have displaced stone structures while moving and grazing. This mainly benign agricultural use has contributed to a belief that these few remaining areas of stonefields have had some type of protection. However as other aggregate supplies are exhausted, the underlying aggregate resource of these pastoral areas has become more valuable and protection issues have become more critical.

In the Auckland region, it is now estimated that less than 200 ha of stonefields remain from the original 8,000 ha (Department of Conservation 1994). The cumulative effects of industrial park development and the quarrying of the aggregate resource over the last 25

2.2 The South Auckland stonefields

years have destroyed many sites. This has increased the heritage value of the few remaining stonefields in South Auckland. The controversial destruction of part of a stonefield at the Wiri Quarry in early 1995 renewed interest in the historic and cultural values of the stonefields and brought new attempts to obtain protection for remaining areas of the South Auckland stonefields to preserve links with the past.

The Otuataua and Matukuturua¹ Stonefields in Manukau City are the last remaining major examples of the stonefield landscape of Auckland (see Figure 2.1). According to Ngaati Te Ata tikanga and whakapapa, the tuturu (principal) tangata whenua of the South Auckland stonefields are Wai O Hua. Ngaati Te Ata are direct descendants of Wai O Hua and Waikato and their whakapapa can not only be traced directly to the Tainui Waka but also to the original inhabitants through whose ancestry Ngaati Te Ata claim occupation since time immemorial (N Minhinick, Ngaati Te Ata, pers. comm. 1996).

The Otuataua and Matukuturua Stonefields are of regional, national and international significance (Bulmer 1995). The stonefields are currently being considered by the New Zealand National Committee of the International Council for Monuments and Sites (ICOMOS) for recommendation to the Department of Conservation (DOC) to nominate the area for the status of a world heritage site to the World Heritage Committee.²

In the Auckland region, 54 out of 58 archaeological sites on the Historic Places Act (HPA) Register are located in the South Auckland stonefields and the various archaeological sites have been broadly grouped into two areas: the Otuataua Stonefield and the Matukuturua Stonefield. The stonefields were registered as archaeological sites under the HPA 1980 and under the transitional provisions of the HPA 1993 were deemed to have final registration as a Category II historic place. The Category II status has not been reviewed by the New Zealand Historic Places Trust (the Trust) and no archaeological sites are registered as Category I historic places.

Both the Otuataua and Matukuturua Stonefields are in private ownership with Matukuturua owned by a quarry operator,³ and Otuataua by four farmers. The only stonefield sites in public ownership in the Auckland region are two small areas at Ambury Farm Park (Mangere) and Motukorea (Browns Island). Both are very limited in terms of the number of features that are present and the area at Ambury Farm Park is in poor condition.

Matukuturua is a 60 ha segment of a formerly much larger field (approximately 500 ha) and the archaeological remains are almost entirely pre-European. The Matukuturua Stonefield is important because it includes unique structures such as an extensive

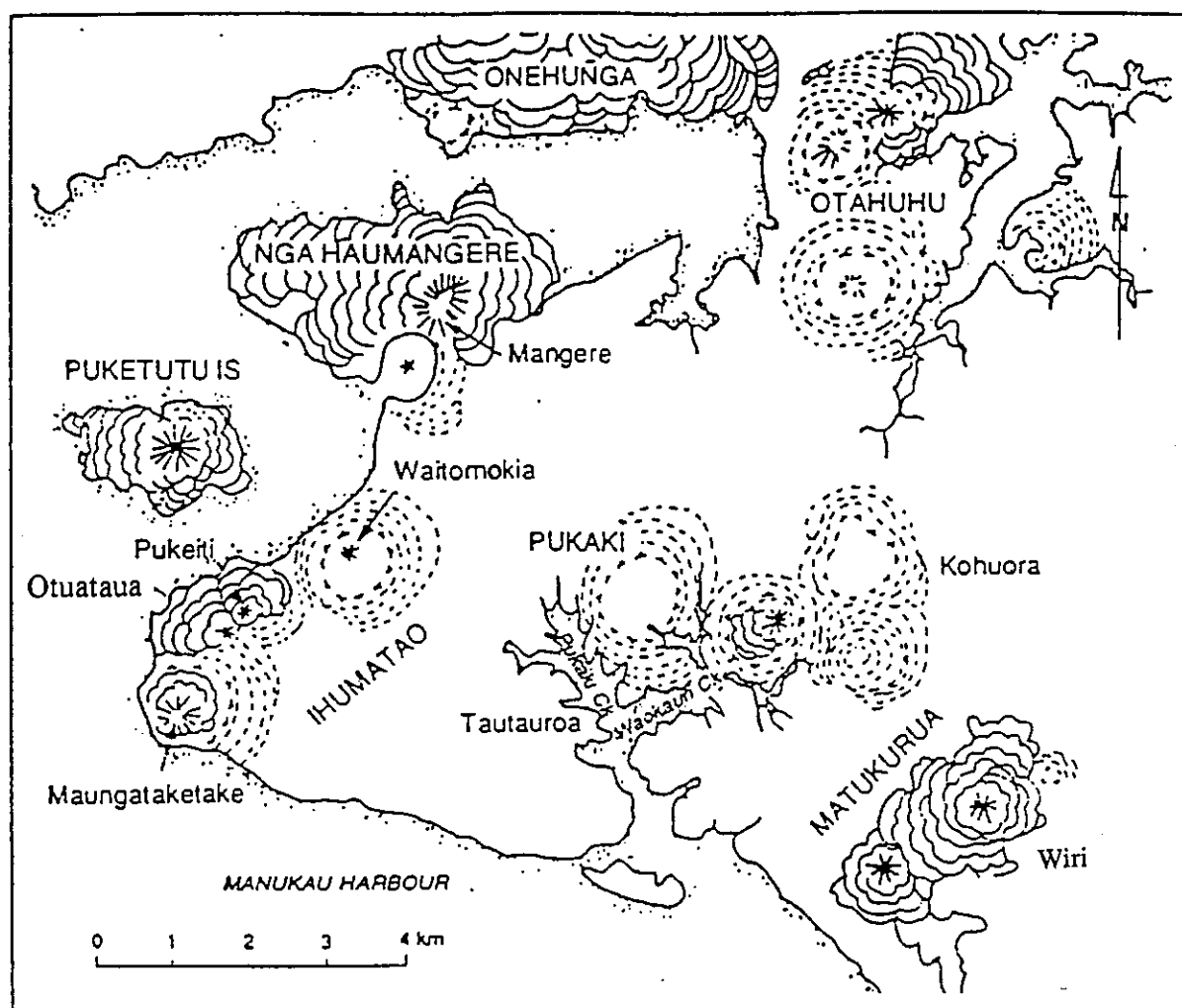
¹ Matukuturua is the collective name for the two pa on the volcanic cones at Matukuturua (McLaughlin's Mountain) and Te Manurewa O Tamapahore (Wiri Mountain). Puhinui is also used to refer to the general area, being the name used by the McLaughlin family for their homestead.

² In New Zealand, authority for conducting affairs under the World Heritage Convention rests with the Minister of Conservation and DOC exercises administrative authority.

³ The quarry operator is Craig Downer Limited which consists of joint partners Winstone Aggregates Ltd and DML Resources Ltd.

Figure 2.1 Map of Otuataua and Matukuturua Stonefields

Source: Department of Conservation 1994



KEY



Lava Flow



Tuff and Lapilli



Scoria Cone



Tuff Ring Rim

MATUKURUA

District name

Pukeiti

Local place name

fishtrap complex which has been identified as a cultural heritage item for scheduling in the proposed Auckland Regional Coastal Plan. Matukuturua is important because it is one of only two field systems to have been systematically assessed and excavated by archaeologists. Following excavation industrial subdivision at East Tamaki has now destroyed all but small isolated fragments of the stonefield. The Trust gave authority for the modification and destruction of the East Tamaki stonefields on the assumption that the other remnant areas, like Matukuturua and Otuataua, would be protected.

In contrast, Otuataua is a largely intact entire small field of approximately 100 ha that was part of a larger volcanic area known as Ihumatao. Otuataua was an early Maori settlement and occupation site and the site of a large nineteenth-century Maori community that provided agricultural produce to the developing city of Auckland. The Otuataua Stonefields have not been fully mapped except for a small part containing a disused quarry although many individual features were recorded by student community service workers who were employed by the Trust in the late 1970s. The Otuataua Stonefields also include important remnant areas of broadleaf podocarp vegetation and significant wildlife habitat.

In 1994 a report was prepared by DOC on the Otuataua Stonefields and a statement of significance recorded that:

- the Otuataua Stonefield is highly significant and worthy of permanent preservation;
- Otuataua is the last remaining area in Tamaki in which the record of continuity of settlement is clearly visible on the surface of the land;
- there is evidence of human occupation for the last 600 to 1,000 years;
- there are outstanding remains of early Maori agricultural systems and settlement and unique remnants of nineteenth-century Maori gardening techniques;
- there are outstanding examples of nineteenth-century European drystone walls (DOC 1994).

The inherent conflict between the protection of the historic and cultural values of the stonefields and realisation of the commercial value of the aggregate resource has restricted initiatives to recognise and provide for both use and protection of areas of the stonefields. The debate between private and public property rights is well illustrated in attempts to protect the values of the stonefields.

2.3 Policy and planning background to Otuataua and Matukuturua Stonefields protection

Auckland Regional Council (ARC)

The ARC is committed to recognising and providing for historic and cultural heritage management in the Auckland region. The responsibility for this role is derived from provisions of Part II of the RMA (s 6(e), 7(e), and 8) and s 30 RMA which provides a regional council with the role of integrating the management of the region's natural and physical resources and managing the effects of the use, development, or protection of land of regional significance. The ARC has:

- attempted to provide a general leadership role for the management of heritage in the Auckland region and establish some integration between territorial authorities and other organisations;

- developed an inventory of recorded archaeological and cultural heritage sites for the region and provided this to territorial authorities to use as a basis for schedules in their district plans and for use when considering applications for resource consents;
- proposed establishing a schedule of regionally significant heritage sites with processes for their protection.

The Auckland Regional Policy Statement (RPS) provides for integrated management of historic areas and states that the ARC and territorial authorities will investigate the need for appropriate management structures for heritage sites and areas of high significance to tangata whenua. Options for local authorities to actively manage such taonga include heritage orders, conservation management plans, acquisition and vesting ownership with tangata whenua or joint ownership. The ARC will, with tangata whenua involvement, encourage initiatives which seek to incorporate tikanga Maori into resource management processes, techniques, and measures of resource quality. The development of a Regional Heritage Plan has been signalled by the ARC in the RPS.

Department of Conservation

The Auckland Conservancy Conservation Management Strategy (CMS) recognises "key areas" for protection for land managed by DOC. DOC will advocate for the protection of historic resources but extensive acquisition of land is beyond the resources of the Department and thus for most areas requiring protection they promote covenants and other mechanisms such as management agreements (DOC 1995).

The Auckland stonefields and intact cones are included on maps in the Auckland CMS that identify areas having significant historic value on and off the conservation estate. The protection of these areas would be advocated through participation in RMA procedures and by raising public awareness. The CMS also contains a proposal for the reclassification of the Auckland Volcanic Field Reserves (principally administered by local authorities) to either a National Reserve under the Reserves Act and/or a World Heritage Site. The Auckland Volcanic Field Reserves are not defined in the CMS (DOC 1995). The Auckland Conservancy is preparing a Historic Resources Strategy but this strategy will deal primarily with work on the conservation estate.

The Auckland Conservation Board (ACB) has adopted the protection of Auckland's volcanic heritage and associated archaeological heritage as a particular focus for its programme for the 1995/96 year.

Manukau City Council (MCC)

The transitional Manukau City district plan recognises 23 archaeological sites in a schedule to the plan although there are approximately 1,000 known archaeological sites in the MCC area (MCC 1995). However only 10% of Manukau City has been surveyed for archaeological sites.

In the proposed Manukau City district plan (notified August 1995), there is no archaeological schedule. This is because MCC believed that this would duplicate the provisions of the HPA that protect archaeological sites and the responsibility of the Trust to administer the HPA. However the MCC propose to require an applicant for any resource consent for a site which contains a heritage resource to include an Assessment of

Environmental Effects (AEE). As part of an AEE, evidence of discussions with the Trust (where appropriate) and an authority to destroy, damage or modify archaeological sites is required. If this information is not supplied the application will not be accepted by MCC. This procedure will depend on an applicant being aware of, or informed of, the presence of a site although the location of the majority of sites is not documented.

A broader wahi tapu schedule of areas of significance to tangata whenua has been prepared in consultation with iwi and some of the previously identified archaeological sites will move to this new schedule. Any activity which is to occur on a site identified as wahi tapu requires a resource consent application to be made to the council. The scheduling of the Otuaataua and Matukuturua Stonefields as wahi tapu, and in some cases, geological features in the proposed district plan imposes restrictions on the types of activities that landowners can undertake on the sites.

MCC recognises that private property rights are affected by any planning controls which provide for protection of a site, and in the case of the stonefields these controls severely restrict the use of land. These provisions could be objected to on the basis that they interfere with private property rights and the reasonable use of the land, and so for this reason MCC has preferred acquisition as a method for protection. Because of the high costs involved with purchase, MCC has advocated a joint agency approach to acquisition of the stonefields. Public acquisition was required because other forms of protection that relied on the cooperation of landowners did not provide for absolute protection, public access, or enable tangata whenua to have an input into the management of the area.

The MCC took a comprehensive approach to identifying and prioritising potential areas for public open space. The outcome of this process was a list of proposed public open space designations which were likely to be acquired within a five-year period. The Otuaataua and Matukuturua Stonefields received the highest priority in the Manukau area and were jointly designated by MCC, ARC and DOC (see Chapter 2.5).

The two categories of criteria for prioritising public open space areas were land desirability and land attainability. Criteria under land desirability included site suitability or resource quality (which can include culture, ecology, scenic landscape, and geology aspects of sites), accessibility, demand for recreation use, additions to parks, and that it fulfilled a current deficiency in existing provision of open space. Criteria under land attainability included the degree of threat, willing seller, cost, public support, and required management.

A draft Cultural Heritage Strategy provides an overview of cultural heritage and sets out a comprehensive and integrated policy approach for Manukau. The final status of the strategy has yet to be determined and it will then need to be implemented. The essential elements of the strategy include the identification and regulatory protection of important buildings, areas and sites; the recognition of the contribution of heritage; giving appropriate priority to the recognition and protection of tangata whenua taonga; and the encouragement of voluntary protection of heritage by increasing awareness. The strategy states that a priority of the MCC should be to preserve areas of stonefields and the few remaining volcanic cones. Tangata whenua should be consulted about the future of these areas and future management options (MCC 1995). A Cultural Heritage Inventory which documents existing archaeological information was prepared in association with ARC and further checking of the data is continuing.

New Zealand Historic Places Trust (the Trust)

In the late 1960s the historic and cultural values of the Auckland stonefields began to be more widely recognised and since that time attempts have been made by the Trust to gain protection for the most important areas. In the early 1970s attempts to protect the Matukuturua Stonefield were made by the Auckland Regional Authority, the Department of Lands and Survey, the Trust, and Manukau City but no formal protection was able to be provided for the stonefield.

In 1983 a Trust review documented the importance of the stonefields and their rapid decline as industrial development increased and recommended that two areas, Otuataua and Matukuturua (in total about 160 ha), should be permanently protected (NZHPT 1983). The selection of these two areas was based on the state of preservation of the archaeological features, their historical and scientific importance, and their suitability for protection and presentation. The Trust Board resolved not to issue authorities to destroy, damage or modify archaeological sites at Otuataua and Matukuturua. By 1984 about 400 ha of the Auckland stonefields were still intact (including 160 ha at Otuataua and Matukuturua). Since then the Trust has issued authorities for the remaining 240 ha and most of these areas have since been destroyed. In the early 1980s several archaeological recovery excavations preceded major public works, quarrying and other developments (eg the South-Western Interceptor - see Chapter 2.6). The Trust granted authorities to developers to destroy, damage or modify a number of individual archaeological sites but on the condition that sites were investigated prior to their destruction (eg the Wiri Quarry - see Chapter 2.4).

Section 47(1) HPA 1980 enabled the Trust to request a council to record a site in a plan. In 1990 the Trust and DOC requested MCC to include Otuataua and Matukuturua in a schedule in the district scheme as a way of recognising their importance, although it was acknowledged that this would not provide the areas with any legal or tangible protection. MCC declined the request as the areas were identified as having national and international importance and it was considered a national responsibility to protect the sites (MCC 1990). The Minister of Conservation appealed the decision as it was believed that MCC was endangering the sites by removing them from planning procedures. The Minister of Conservation later withdrew the appeal on the agreement that the stonefields would be registered in a schedule, "Register of Items to be Protected", although it would not form part of the district plan and was only for information purposes.

In 1983 New Zealand Railways (NZR) applied to the Trust for an authority under the Historic Places Act 1980 to enable the quarrying of basalt from the NZR-owned Wiri Quarry. The basalt had unique qualities that could not be obtained from other areas and was required as ballast for the maintenance of the North Island main trunk railway. The quarry was part of the wider Matukuturua (McLaughlins Mountain and Wiri Mountain) Maori occupation and gardening site and the property contained most of the remaining stone structures of the Wiri Stonefield (18 ha out of an approximately 400 ha stonefield). The Wiri Stonefield was not included on the HPA Register but it possessed:

2.4 The Wiri Quarry bulldozing

- a great density and variety of stone structures (eg mounds, heaps, walled enclosures, and enclosed sink depressions);
- an area interpreted as a specialised mound gardening system;

- well-defined walled enclosures and continuous walls that separated distinct gardens;
- the only large and relatively intact mound garden in South Auckland (ARC 1995).

The Trust granted an HPA authority to NZR to modify the site subject to the completion of archaeological mapping and providing that archaeological investigations were phased with quarrying. The cost of investigations was to be recovered from the NZR. The HPA authority had no expiry date. The conditions were appealed by the NZR and were altered after an agreement that NZR would fund a two-to-three year programme of investigation but that the results would be reviewed at the end of the first year. A comprehensive archaeological investigation and mapping of the site was undertaken between 1984 and 1986 and the majority of the site was then quarried and destroyed. The remaining portion (250 m by 80 m) closest to the Roscommon Road contained an unusually high density of stone structures and a large and relatively intact mound garden.

In 1985 the Tainui Maori Trust Board formally supported any proposals that the Trust Archaeology Committee might make to the NZR to preserve the area in which the prehistoric mound gardens were located. The Kaitiaki of the Wiri Stonefield have always been shared by the Akitai-Wai O Hua, Te Ahiwaru-Wai O Hua and Ngaati Te Ata-Wai O Hua (N Minhinnick, Ngaati Te Ata, pers. comm. 1995).

In 1989 NZR entered into a joint venture agreement with Downer Mining Limited (now DML Resources Limited) for the supply of basalt from the Wiri Quarry with rights to quarry the basalt until the year 2003. Under the agreement, Downer Mining undertook to extract basalt from the quarry for and on behalf of NZR. Downer Mining as the quarry operator was responsible for obtaining all necessary consents or permits for the operation. However NZR remained actively involved in the operation of the quarry and in 1993 sought and obtained the mining permit required for the operation of the quarry under the Crown Minerals Act 1991. The Wiri Quarry was zoned a quarry zone in the Manukau City transitional district plan and quarrying was a permitted activity subject to the operator providing the council with a quarry management plan before any quarrying.

Following the restructuring and sale of NZR, in 1994 the management of the Crown interest in the land was transferred from the New Zealand Railways Corporation to the Department of Survey and Land Information (DOSLI)⁴ under a direction made by the Minister of Railways. DOSLI was bound by the existing legal contract with DML Resources Limited and took over NZR's responsibilities under the joint venture. Ownership of the quarry remained with the Minister of Railways.

In March 1994 DML Resources applied to the ARC for a resource consent to discharge sediment from the Wiri Quarry into the Puhinui Stream. The resource consent application was publicly notified on 17 October 1994 and two submissions were received from the Royal Forest and Bird Protection Society and the Manukau Harbour Protection Society Inc relating to discharge issues and draft conditions for the consent. Huakina Development Trust (HDT) (a management committee of Tainui Marae and Papakainga, and the Environmental Authority of the Tainui Maori Trust Board) had previously advised DML Resources that it was supportive of DML's proposed stormwater

⁴ DOSLI manage the disposal of surplus Crown lands (eg railways) and property in a manner consistent with statutory procedures including the public interest, existing Crown contractual obligations, and the Crown's collective interest as determined by Cabinet (eg responses to the principles of the Treaty of Waitangi) (DOSLI 1995).

discharge programme and had no objection to the discharge consent. However in February 1995 HDT contacted the ARC to seek clarification of the various issues affecting heritage values at Wiri.

In July 1994 DOSLI submitted to MCC a draft quarry management plan which had been prepared by DML Resources at DOSLI's request. MCC commented on the draft plan and informed DML of the existence of a recorded archaeological site at the quarry. As a result of this, DML Resources contacted the ARC and DOC to request information about historic places and any potential constraints in the vicinity of their operations. A detailed response was forwarded by ARC, and DOC provided further information on the site. DOC also expressed an interest in obtaining the area as DOSLI was proposing to dispose of surplus railway land. DOC was also investigating the protection of the Wiri Lava Cave (south across the Wiri Station Road from the Wiri Quarry) as a scientific reserve. The cave is a wahi tapu to tangata whenua and was used as a refuge and escape route in times of war.⁵

In January 1995 a site inspection took place with representatives of DOSLI, DML Resources, MCC and ARC, and the remnant historic features of the site were outlined and interpreted. Various discussions also took place over whether the 1983 HPA authority still provided DML Resources with the right to quarry at the site. A verbal agreement between the various parties was made that DOSLI would obtain a legal opinion on the transfer of the HPA authority and ARC would also seek further information on this issue. Subsequently the boundary of the part of the site that had not been modified by quarrying in the 1980s was then pegged by the ARC to identify the remnant area and separate it from the area to be quarried.

DOSLI obtained an independent legal opinion that confirmed advice of internal solicitors and they believed that they did not need a new HPA authority as DOSLI had a ministerial directive to carry out the functions and exercise the powers of NZR. Under the joint venture, DML Resources operated the quarry for and on behalf of NZR, and DOSLI considered the authority extended to DML Resources.

ARC continued to maintain that the HPA authority was specific to the activity proposed for each site and could not be transferred to other applicants. ARC contacted the Trust a number of times to address the conflict of opinion with DOSLI over the status of the 1983 authority. Initially the Trust believed that the 1983 authority was not transferable (from NZR through DOSLI to DML Resources Ltd) and that a new HPA authority was required for the new end use. However after obtaining verbal legal advice, the Trust subsequently accepted that the 1983 authority was still valid and that it applied to the entire area since the required archaeological investigations had been completed.

Following legal clarification that the 1983 HPA authority was still valid, DOSLI advised DML Resources that it could proceed with quarrying operations on the site. On Saturday 25 February 1995, most of the remaining part of the site (approximately 1.9 ha of the ancient Maori village and gardens) was systematically bulldozed by DML Resources, apart from a strip up to 40 m along Wiri Station Road. There are differing

⁵ The protection of the Wiri Lava Cave was the subject of an investigation by the Parliamentary Commissioner for the Environment in 1990. It was recognised that the permanent protection of the cave was of great importance and it was recommended that an acceptable mechanism for protection should be negotiated by all parties (Parliamentary Commissioner for the Environment 1990).

accounts from the parties involved as to whether bulldozing continued on subsequent days.

ARC claims that it requested DML Resources several times to stop bulldozing and that it was only on 1 March 1995 when a group of tangata whenua and others occupied the site and blocked access to the area that bulldozing was finally stopped. DML Resources, however, claims that bulldozing operations ceased on 27 February 1995, before any request had been received from the ARC, and that the bulldozer had left the site by the time of the occupation on 1 March 1995.

On 1 March 1995, the Minister of Lands directed DOSLI to request DML Resources to stop all work at the site until further notice and DML Resources complied with that request which remains in effect. By the time of the Minister's directive, bulldozing of the site had reformed the surface into parallel rows 4 m apart and overburden removal operations were essentially completed.

On 3 March 1995 ARC issued an abatement notice to DML Resources requiring the cessation of all earthwork activity in the Wiri Quarry that was progressing without a soil conservation (land use) consent as required under the ARC's proposed erosion and sediment control regional plan. DML Resources lodged an appeal against the notice with the Planning Tribunal on the grounds that quarrying without a discharge permit was a permitted activity in the proposed regional plan and the DML actions were an essential and integral part of quarrying. The ARC and DML eventually agreed to the cancellation of the abatement notice and the withdrawal of the appeal.

Both ARC and MCC considered prosecuting DML Resources but decided not to proceed. The Crown (DOSLI) was not liable for prosecution (s 4(5) RMA). The MCC Resource Management Committee decided not to prosecute DML in May 1995 but the committee wanted the quarry management plan to be finalised. The MCC requested DML Resources to complete a quarry management plan for the area and to exclude from the revised plan the remnant areas of the Wiri Stonefield as well as the already protected Wiri Lava Cave from quarrying. Discussions between the two parties are continuing and MCC has sought further explanation on the third draft management plan. Ngaati Te Ata have stated they have not sighted nor been able to provide comment on the DML Resources quarry management plan for the area.

DOC and Trust were then asked by the Minister of Conservation for reports relating to the physical damage to the archaeological values. DOC commented that the archaeological integrity of the damaged area was severely compromised and that it did not warrant reinstatement. After the bulldozing only very small parts of the gardens could be recognised. Reinstatement was not a feasible option as the archaeological integrity has been severely compromised and any reconstruction would only be a vague replica. In DOC's view the remaining intact area did not have significant public interest. The scope of the DOC report did not include consultation with tangata whenua regarding what involvement they wanted to have with the site nor an assessment of the cultural and spiritual values of the site and this was noted in the report (DOC 1995).

Ngaati Te Ata have indicated that they want the site reinstated and that the Wiri site remains significant to tangata whenua. Ngaati Te Ata have a strong historical and highly significant cultural and spiritual relationship with the Wiri Stonefield and had never given consent for the destruction of the area because of its significance and wanted their taonga protected. Ngaati Te Ata thus opposed the continuation of the

quarrying in the area and sought the prosecution of the contractors over the Wiri bulldozing. They submitted that there was a lack of appropriate planning and policy for the area, that an integrated management committee was required for the area, and that an assessment of the significance of the damage should be made by tangata whenua. They supported attempts by local authorities to preserve and protect remaining stonefields in the area but were frustrated by the ongoing destruction of sites, lack of clarity as to which agencies were responsible for the management of the sites, and limited account of Maori values being recognised in the management of the stonefields. They also suggested that the return of the land as part of a possible treaty settlement should be investigated (N Minhinnick, Ngaati Te Ata, pers. comm. 1995).

The Trust reported to the Minister that the HPA authority was issued for all of the quarry although the Trust understood in 1988 that NZR had no further use for the area that was bulldozed or other remaining intact areas. The Trust did not understand in 1983 that the authority was for general quarrying purposes and that the basalt could be used for purposes other than the main trunk line. The Trust:

- accepted the conclusion of the DOC report that the archaeological integrity of the damaged portions of the site has been severely compromised;
- suggested to the Minister of Conservation that he consider the views of tangata whenua that the remaining areas should be returned to tangata whenua, that an assessment of the significance of the damage should be made by tangata whenua and that an integrated approach should be taken with the management and preservation of remaining areas of the South Auckland stonefields;
- supported efforts to achieve long term protection of the Otutau and Matukuturua sites (NZHPT letter to Minister of Conservation March 1995)

The ARC wrote to the Ministers of Conservation and Environment to obtain guidance on the allocation of responsibilities for managing the stonefields. The Minister for the Environment replied to the ARC that:

I have limited my comments to matters within the ambit of the Resource Management Act 1991. The Act establishes a functional overlap in respect of the protection of heritage resources between the Regional Councils and Territorial Authorities. This is deliberate. As you have indicated there has been some confusion in the respective roles of Local Authorities.

I would expect the Regional Policy Statement to be the appropriate vehicle to establish the criteria to determine and identify those resources of regional significance and to indicate how it is intended that heritage protection functions be exercised (Minister for the Environment letter to ARC 19 May 1995).

The Minister of Conservation replied that:

In organisational terms, the Government see the Historic Places Trust as the lead agency for heritage protection on lands of all tenures. The Trust sees its key roles as registration and advocacy. While the Trust generally aims to achieve protection through resource management processes, it also can exercise direct protection powers through the archaeological provisions of the Historic Places Act. All of these avenues for protection are relevant in the case of the stonefields. I hope to see the regional and territorial

authorities, in co-operation with the Trust, play the key role in managing and protecting the stonefields sites (Minister of Conservation letter to ARC 14 June 1995).

To date, there has been no final resolution of the future of the site. DML Resources have sought clarification from the Minister of Lands and DOSLI over their intentions regarding the site. DML has a legal entitlement to the mineral resource in the site and questions of compensation will arise if they are permanently denied access to the resource. Discussions between DML and DOSLI are continuing.

Future options for the management and ownership of the Wiri Stonefield have also been explored by DOSLI, DOC and tangata whenua including retaining the area in Crown ownership or transferring it to Maori. The Crown could reserve the archaeological site as a historic reserve and the lava cave as a scientific reserve. The Crown could then retain control of the reserve (by DOC), vest it with MCC, or either agency could enter into a joint management agreement with tangata whenua. Alternatively the Crown could vest the land as a Maori reserve or vest the land with Maori as freehold land.

In the proposed MCC district plan, quarrying at the Wiri site is a controlled activity whereby a resource consent will be required. The consent must be granted but the local authority will be able to attach conditions that address the effects of the activity. The site has also been included in a schedule of wahi tapu which was prepared in consultation with tangata whenua.

2.5 Otuataua and Matukuturua Stonefields - designation and purchase

In the mid 1970s a quarry company (Wilkins and Davies Ltd) obtained the rights from landowners to quarry aggregate from two of the properties at Otuataua totalling 39 ha. Planning permission from MCC was obtained and in the early 1980s the company wanted to start quarrying. In 1983 the landowners were informed by the Trust of the archaeological values of Otuataua and that an HPA authority to destroy, damage or modify archaeological sites would be required before any work could commence as required under the HPA 1980. The proposed quarry area was surveyed for its archaeological values and an HPA authority was issued for several hectares which were then quarried. The Trust informed the company that a decision on the remaining area would be made after further consultation and the consideration of the areas values.

A second application for an HPA authority to modify selected sites in the remaining quarry area was made in 1984 and the Trust approved a further area for quarrying provided that there was a preliminary archaeological investigation of the area. Another area was declined with the recommendation that it should become a historic reserve. Planning consent for the quarry lapsed in 1985 but in 1986 a third HPA authority was sought from the Trust to modify all archaeological sites in the quarry area. The application was considered and declined because of the archaeological significance of the sites in the area. In 1987 the company appealed the decision by the Trust to the Minister of Conservation but the appeal lapsed.

In 1988 a proposal for the protection of the Otuataua Stonefields was prepared as a background paper for the Minister of Conservation (DOC 1988). From 1988 DOC took an active role in discussions with landowners, promoting the idea that the protection of the stonefields would require the purchase of the area from the landowners. However by 1994 DOC recognised that it would not be able to acquire the land without funding assistance from other agencies. A valuation of part of the Otuataua Stonefield area had been undertaken in 1992 and the value of the land was

assessed at several million dollars depending on the value of the aggregate resource. DOC then sought the support of the MCC and ARC to develop some form of strategy to provide for the joint acquisition of the land. A staged acquisition or the transfer of development rights were also examined as alternative approaches to acquiring the stonefields.

In early February 1995, a proposal was put forward that ARC as the major financial partner and MCC and DOC (the minor partners) would attempt to acquire part of the land for a public reserve. This was rejected at a March ARC council meeting because the status of ARC as the major player meant the need for a large financial input, ARC believed a tangata whenua contribution was also needed, and ARC believed that DOC had no funding available at that time for land purchase. Another meeting of the various agencies was called by the Mayor of Manukau City in May 1995 to discuss the need for a coordinated approach to the protection of stonefields and the need to arrange joint funding. The Mayor offered the assistance of MCC staff to progress the protection of Otutataua and the various parties at the meeting agreed to the proposal.

In mid 1995 MCC requested an archaeological assessment of parts of the Otutataua and Matukuturua Stonefields to establish their present state, any recent modification, activities that would be compatible with the protection of the sites, and any threats to the stonefields. The report concluded that both sites were in generally good condition, although there were some signs of superficial damage to structures by stock, particularly at Matukuturua. The report also noted that:

- the stonefields were not suitable for horse pasturing or riding;
- the least destructive management regime was light grazing by small animals (eg goats and sheep) for short periods;
- unsupervised recreation was not compatible with the protection of the sites as people would dislodge the structures, there was a danger of public fossicking, and there were some areas that the public should be excluded from for cultural reasons;
- the stonefields were ideal for supervised tours and for development as cultural and historic centres that presented an insight on early New Zealand (Bulmer 1995).

At a June meeting of the various agencies, draft notices of requirement for the designation were circulated with the requiring authorities shown as MCC, ARC and DOC. DOC indicated that approval would be required from the Minister. DOC funding as well as alternative funding sources from Nga Whenua Rahui and the Queen Elizabeth II National Trust were considered unlikely to be available. Following the meeting, the Auckland Conservancy of DOC informed MCC that there had been insufficient consultation over the designation of the sites and DOC would not be a party to the designation. The Trust was the "Crown's leading historic protection agency off the conservation estate" and "the responsibility for protecting sites off the conservation estate clearly lies with the Trust and local authorities". The Trust should have a greater role to protect the stonefields than it had been given to date (DOC Auckland Conservancy letter to MCC 21 June 1995).

MCC were very concerned that DOC was placing the burden of purchase of Otutataua on the ratepayers of Manukau City and the Auckland region and that the Trust was not capable of funding protection, let alone purchase. MCC unsuccessfully approached the Auckland Airport Company, the Ministry for the

Environment Sustainable Management Fund, the ASB Community Trust and Nga Whenua Rahui for funding for purchase.

Under the proposed MCC district plan the properties were designated for acquisition for public open space purposes. A reserve management plan under the Reserves Act 1977 would also be prepared which would allow tangata whenua to have input into the management of the stonefields. The management of the stonefields as public open space would provide for public access while protecting and maintaining the stonefields. The development of the site would follow agreed conservation plans and would be part of the second phase of the project. Future work could include an interpretation centre, signs, and boardwalks.

MCC formally requested DOC and ARC to become joint requiring authorities for the proposed open space designations at Otuataua and Matukuturua Stonefields. The Trust supported the MCC decision to designate the Otuataua and Matukuturua Stonefields and advised that they would request the Minister of Conservation to support public purchase. The Trust did not mention the option of becoming a party to the designation.

The ARC agreed but the Minister of Conservation declined the request. The Minister stated "that protection of these sites, and indeed any historic site, can be progressed at a local and regional level" and confirmed DOC advice to MCC that "the Trust is the Crown's leading historic protection agency on lands not administered by the Department of Conservation". The use of a designation was a last resort option and it was believed that other steps could be pursued. The Minister was prepared to consider a more developed protection proposal when issues including the method of protection, financing, and the timetabling for protection were addressed and a "stepped approach" to the purchase of Otuataua could be more appropriate (Minister of Conservation letter to MCC 28 July 1995).

MCC were surprised that a designation was not considered an appropriate mechanism for protection given DOC's inability to advance the "stepped approach" over the previous five years. Concern was also expressed that the Trust was not resourced to provide any meaningful input into the long term protection of important sites of national significance and so DOC needed to take an active role in the protection and purchase of sites (MCC letter to Minister of Conservation 15 August 1995).

In late 1995 DOC and ARC were included in the proposed district plan as joint requiring authorities with MCC. The Minister of Conservation informed MCC that the inclusion of DOC was in spite of its expressed wishes to not be a party to the designation and requested MCC to remove DOC from the notice of requirement in the proposed district plan (Minister of Conservation letter to MCC November 1995). MCC confirmed that this would occur as part of the hearings process for the proposed district plan, scheduled to commence in June 1996.

The ACB were concerned that the Minister of Conservation was not prepared to support the initiatives of MCC and the ARC and that the Otuataua and Matukuturua Stonefields were viewed as only having regional heritage values. This was in contrast to the identification of the areas as sites of significant historic value in the Auckland Conservation Management Strategy and a DOC statement of significance on Otuataua prepared in 1994. However given the financial implications of a designation the ACB could understand the Minister's reluctance to

become a party to the designation. The ACB was concerned that designation and purchase might not be achieved without participation by the Government. The situation reinforced the need for a heritage fund to assist with the preservation of New Zealand's cultural heritage (ACB letter to Minister of Conservation 30 November 1995).

MCC set aside \$1 million in its 1995-96 Annual Plan towards the acquisition of the Otuataua Stonefields⁶ and in October 1995 lodged an application for \$1 million with the New Zealand Lottery Grants Board (NZLGB) for financial assistance to purchase the four blocks of land which contained the Otuataua Stonefields. The Lottery Environment and Heritage Distribution Committee (LE&HDC) had funded large sums of money for the protection of physical and cultural heritage.

The LE&HDC provide discretionary funding for community-based natural, physical and cultural heritage projects. In 1994/95 approximately \$4 million was available for physical heritage grants although the Trust received \$1.7 million for specified projects including operating costs. Any application is assessed in terms of its significance, alternative funding sources, local funding support, confirmation of existing funding, Treaty of Waitangi claims, and iwi support for the application. The LE&HDC will not fund the purchase of land or buildings except where the project is of exceptional historic merit and will not fund individual applicants or projects already completed (NZLGB 1995).

The LE&HDC considered the MCC application in December 1995 but it was declined because:

- the project did not demonstrate exceptional historic merit;
- the position of the Department of Conservation and the Auckland Regional Council in terms of their support for and financial contribution towards the land purchase had yet to be determined;
- the fact that the land is currently subject to Treaty of Waitangi claims that have yet to be reported on;
- the lack of clarity on the future ownership of the land;
- the lack of secured funding for the total purchase price.
- The Committee noted that there had been no independent comparative archaeological study undertaken to determine the significance of the Otuataua site in relation to other stonefield sites in the North Island (LE&HDC letter to MCC 11 December 1995).

MCC were very concerned with the reasons given for the refusal of the application, in particular that the project did not demonstrate exceptional historic merit. They informed LE&HDC that the site had been researched from the 1960s, the significance of the area had been well documented, and that DOC had lobbied for the protection of Otuataua for many years along with notable archaeologists. The site was of significance to tangata whenua. The stonefields were currently being considered by the New Zealand National Committee of ICOMOS with a view to recommending to DOC that they nominate the area to UNESCO for the status of a world heritage site. The issue of the stonefield being under a Treaty of Waitangi claim

⁶ MCC also agreed to contribute that land known as the MCC water reserve to the project. It is currently designated as a water reserve and the intention is to change the reserve classification to either historic or scenic reserve depending on the reserve management plan.

was irrelevant as the area was currently in private ownership, no central government agency was prepared to acquire the site, and tangata whenua had supported the acquisition of the stonefields. However DOC had advised the LE&HDC that if the Crown were to contribute towards the land purchase there could be issues of ownership of land that would need to be resolved including the potential of land to be used for Treaty of Waitangi settlements.

The LE&HDC were then asked by MCC to reconsider the application and this was agreed to providing MCC supplied additional information to address the reasons given for the refusal of the application. MCC requested an independent archaeologist to prepare a literature review and a photographic study of other stonefield areas in order to resubmit the application.

ARC would not commit themselves to any financial contribution but stated it was likely that any contribution would be a symbolic one as the reserve did not fall within the definition of a regional park. ARC also wanted a commitment from Tainui and DOC and more information on the historic merit of the site, Treaty of Waitangi claims, an accurate assessment of the purchase price and ongoing responsibilities after purchase (ARC letter to MCC January 1996).

Discussions are continuing between the MCC, ARC and the Minister of Conservation about the protection of Otutataua. The Minister has stated that he is prepared to consider a contribution from the Crown and to discuss the whole protection issue with MCC and ARC (Minister of Conservation letter to MCC January 1996).

The Otutataua landowners who have farms that include parts of the Otutataua Stonefields are eager to see the matter resolved and made the following comments about the approach of different agencies and the many attempts to protect the stonefields (T R Ellett, G S Rennie, E Mendelsohn, G H Wallace, pers. comm. 1996):

- while the protection of the stonefields remained unresolved, the landowners were unable to obtain authorities to destroy, damage or modify sites and the owners could not invest in or develop their land. Although the land was in private ownership, the situation was more analogous to a short term lease which did not encourage good environmental management of the land.
- the land currently had no value as no buyer except a public authority would want to purchase the property for a fair price with the unresolved issue of protection of the land.
- the valuation of the land should be assessed on the basis that there were no restrictions from either RMA or HPA and should be at a fair value that includes the value of the aggregate resource. Compensation should also be paid on this basis for any remaining area of the property that was not designated if it was not an economic unit.
- over the last five years DOC had raised expectations of public purchase of the area but then they could not afford to purchase the land and they were not even supporting the MCC designation. However it was noted that DOC was buying offshore islands near Auckland and intended to buy areas of forest in the South Island.

The landowners acknowledged that it was in the public interest to prevent activities that would have an adverse effect on the stonefields, but only if compensation was paid to the

owners. The example of Transit New Zealand was given, where if farmland was designated for a motorway, fair compensation was paid by Transit New Zealand and the landowners were aware of few complaints from other landowners. It was wrong for Government to give power to the Trust to apply restrictions (in the form of the archaeological provisions of the HPA) without the Trust being resourced to purchase areas when landowners' rights were unduly restricted. The landowners believed that if compensation could not be paid then the Trust should withdraw the restriction.

Craig Downer Limited as the owner of land at Matukuturua that is the subject of the public open space designation is also concerned about the lack of public funding for the purchase and the lack of commitment by public authorities to complete the purchase of the area. It appears to the landowner that they are denied the use of a significant aggregate resource and yet are expected to act as a custodian in the national interest. Heritage values should not be imposed upon private landowners and public values should be supported by public funds (Craig Downer Limited letter to PCE March 1996).

A major threat to the integrity of the remaining portions of the Matukuturua Stonefield is the proposed Watercare Services Limited South-Western Interceptor (a major sewer trunk line) which will cross the southern part of the stonefield. The work is part of a \$35 million project between Auckland Airport and Manurewa to service the southern districts of Auckland. Two main trunk sewers have been planned to service the southern districts but with the Southern Interceptor already overloaded, the South-Western Interceptor needs to be completed.

A conditional HPA authority was granted by the Trust in 1978 to the Auckland Regional Authority (ARA) who was responsible for the Interceptor designation at the time. The HPA had no expiry date. The HPA authority required that any work be supervised by an archaeologist, that the width of the construction area be 30 m or less, that detailed mapping be performed before construction, and that costs be paid by the ARA. Detailed mapping and excavation of the area was completed in 1981 and the HPA authority was confirmed in 1986 and re-confirmed in 1993 in relation to the HPA 1980. Subsequently Watercare took over the water services undertaking from the ARA and became holder of the HPA authority.

The construction of the Interceptor was stopped by a national freeze on loan expenditure in the 1970s while in the 1980s resource management issues concerning a proposed new access road to the airport prevented construction. In 1991 objections to the proposed road were satisfied by an agreement to build a single bridge for the road and the Interceptor over the Pukaki Inlet. This agreement was the trigger that allowed the Interceptor project to proceed. An assessment of environmental effects (including alternatives) was prepared in 1993 and appropriate resource consents were obtained. In early 1996 Watercare were in the process of letting a tender for the construction of the Interceptor.

Ongoing discussions about the project have been held between Watercare and tangata whenua, MCC, DOC, and the Trust, but it is not possible for the Interceptor to avoid the stonefield unless there was a major re-routing. Watercare is not obliged to consider re-routing the Interceptor as they have an approved designation and an HPA authority. The Interceptor is either above ground or partially below the ground where it crosses the stonefields. In this area the 30 m corridor will be reduced to 20 m or less depending on the final form of the pipeline. Watercare has commissioned landscape architects to prepare alternative designs to minimise the

2.6 Watercare Services Limited South-Western Interceptor

visual impact of the Interceptor on the stonefield, and have entered into commitments with MCC to:

- provide for a pedestrian link across the Interceptor to link both the Puhinui Reserve and the stonefield site;
- construct a visitor's centre and information display to promote the interpretation of the historical and archaeological sites (on the Puhinui Reserve);
- arrange for appropriate planting to improve the landscape (on the Puhinui Reserve).

Watercare is also preparing an archaeological management plan for the stonefield as a result of its historical significance. The objectives of the plan are to minimise disturbance to archaeological and culturally significant sites, to maintain a working environment where iwi protocols are respected, and to establish a balance between the conflicting goals of protecting the significant sites and the provision of access to them for cultural, scientific and educational purposes. The plan includes sections on site protection measures, corridor fencing, the treatment of human remains, and the protection of wahi tapu (Watercare Services Limited 1995).

Ngaati Te Ata-Wai O Hua strongly opposed the proposal to take the Interceptor through the stonefields and questioned whether the HPA authority could be transferred from ARA to Watercare Services Limited. However the Trust obtained a legal opinion in March 1996 and believed that Watercare had the right to exercise the authority.

2.7 Issues arising from the case study

The Otuataua and Matukuturua Stonefields of South Auckland have been recognised as having regional, national, and international significance and numerous reports have been prepared on the significant values of the areas. The continuing incremental loss of areas of the stonefields has increased the historical and cultural value of the remaining areas but no significant areas have been protected to date. The preservation of different types of stonefields is also important as there are a variety of structures and zones in different fields that contribute to the individual landscape of each field.

In general, the attempts to recognise and gain protection for representative areas of the stonefields and to protect wahi tapu and taonga are a good example of the problems that various public authorities with different responsibilities are having with both managing and obtaining protection for historic sites in New Zealand. A key issue is the sustainability of the historic and cultural values of the stonefields, as once an area is cleared for development or quarried, the historic and cultural values are lost forever. However the compensation issues raised by the Wiri and Otuataua stonefields illustrate the difficulties of reconciling the protection of these historic and cultural heritage values in the public and tangata whenua interest, with private property rights arising from land ownership.

Planning and policy responsibilities

Valuable historic and cultural heritage areas like the stonefields require an integrated approach to be taken towards their management and protection by all relevant agencies. This is because the cost of acquisition is beyond any one agency and responsibilities often cover more than one agency.

In the Auckland region, ARC have taken a lead role in attempting to increase general public awareness and promote the recognition of heritage, primarily through the Auckland RPS and the preparation of Cultural Heritage Inventories in association with territorial authorities. The proposed regional heritage plan will assist the coordination of responsibility between regional and local authorities. However ARC's policy on regional parks prevents it from making more than a symbolic contribution to the purchase of the Otuaataua Stonefield.

The role of lead agency to ensure the protection of Otuaataua and Matukuturua Stonefields has been taken by MCC to coordinate protection measures and provide for integrated heritage management by different authorities. The proposed district plan and the public open space land acquisition strategy assisted in the integrated heritage management of the city. The MCC draft Cultural Heritage Strategy will complement the proposed district plan and provide for the integration and management of heritage in the city although its status and implementation have yet to be finalised.

The MCC decision not to recognise archaeological sites in their district plan will limit the application of the RMA and the council influence on the promotion of the sustainable management of archaeological sites. The effect of the MCC decision will be to place the responsibility for managing and protecting archaeological sites solely with the Trust. The formal linkages between the MCC district plan and the HPA are encouraging with the provisions of the HPA required to be considered by resource consent applicants where historic resources are affected by any proposal. However this assumes that an applicant is aware of any archaeological site, or is informed of any such site by a heritage agency.

This case study indicates much public and agency confusion about the relative roles of DOC and the Trust for historic and cultural heritage management in New Zealand. The Trust is promoted as the lead agency for historic resource management on private land but there has been some debate about the DOC decision to relinquish the lead role of advocating for, and providing formal protection of, significant historic and cultural heritage resources on private land. This raises the question of what the future role of DOC will be with this significant case.

It is Government policy that the Trust is the "Crown's leading historic protection agency off the conservation estate". The Trust has expressed an alternative view that it is the lead agency which advocates/promotes protection of sites on private land; this view is based on s 4 HPA where the key word is "promote".

The interests of tangata whenua in the stonefields need to be recognised and given appropriate weight given the long history of settlement and occupation. Although an area may be physically altered and its features destroyed, it will still retain its status as wahi tapu and even though it may not be able to be restored, it will still be of importance to tangata whenua. An iwi heritage management plan could provide for archaeological and historic inventories to be integrated with traditional knowledge. A further issue that needs to be addressed is how to manage confidential information on significant cultural sites and provide for their protection.

Protection

There has been a long history of the Trust and DOC involvement in attempting to obtain protection for the stonefields, particularly at Otuaataua. The Trust spent about ten years endeavouring to establish a heritage covenant under the HPA with one owner of part

of the Otuataua Stonefield. This was never finalised but it indicated a commitment from the Trust during the 1980s to attempt some form of heritage protection within the parameters of the HPA 1980. However the Trust is not a party to the joint MCC, DOC and ARC designations of Otuataua and Matukuturua and the Minister of Conservation has requested MCC to withdraw DOC from being a party to the designation. However the Minister is still involved in discussions with MCC. Joint meetings have been held between all relevant agencies and tangata whenua but the drive to purchase significant areas has been a local and regional initiative. A consistent approach to the recognition of the national and international values of these areas is required along with a national and regional financial contribution to ensure the formal protection of these areas. The ability of an agency to provide funding for protection should not affect its level of recognition of historic and cultural heritage values.

At times there has been a lack of interdepartmental cooperation to protect significant historic and cultural heritage values. When the joint venture agreement for the Wiri Quarry was being negotiated between NZR and a private company in 1989, there was a lack of interdepartmental cooperation between NZR and DOC to recognise and protect the significant values at the Wiri site. The management of the Crown interest in the area has now passed to DOSLI and where there are significant heritage values at stake from land disposal and interim management, these values need to be recognised by DOSLI and DOC should be informed. Although the remnant garden area at Wiri was recognised as an important area, it was not protected by any agency and ultimately the values were destroyed. However it has now been identified as a wahi tapu area in the proposed MCC district plan.

A major issue with the protection of the stonefields is the need to provide compensation for the loss of property rights. Where a land use like quarrying is prevented, compensation will need to be paid which will increase the cost of protection. Additional costs can also be incurred by other parties with rights such as requiring authorities like Watercare, when they hold legitimate HPA authorities but are required to plan new routes to avoid sensitive areas. A key question is whether compensation should be set to reflect the full development potential of an area when the activity may be affected by planning restrictions.

The Lottery Environment and Heritage Distribution Committee (LE&HDC) declined the MCC application for lotteries funding for the Otuataua Stonefields for a variety of reasons. The LE&HDC believed that they did not have sufficient information to assess the relative and national significance of the Otuataua Stonefield. The application was not seen as having "exceptional merit" but the LE&HDC retains discretion as to what is considered exceptional. The lack of recognition of Otuataua by the LE&HDC appeared to ignore the many reports that had been produced on the values of the area and MCC were asked to provide a comparative evaluation of all North Island stonefields. To fully assess the application this was required but this type of research was beyond the responsibility of MCC and should be performed by a national agency although MCC have requested a literature review and a photographic study of other areas.

The LE&HDC were also not convinced of the financial commitment of the various agencies to purchasing the stonefields but without Lottery funding, only a small proportion of the area would be able to be purchased. If the remainder of the site was not purchased this would severely compromise the historic and archaeological value of the site. MCC is committed to purchasing as much of Otuataua as it can fund but it requires the support of other agencies. It is not appropriate that a

Lottery fund is the sole source of national funding for the purchase of significant areas of historic and cultural heritage.

Archaeological and cultural values

Information is available on the archaeological values of some of the stonefield areas, in contrast to many other areas, but comprehensive assessments and archaeological mapping are still required. The lack of a national standard to ensure a consistent approach to the identification, survey and documentation of archaeological sites is a problem. For many sites, the archaeological and Maori values should also be considered in an integrated approach.

If the quality of archaeological information was improved, it could be included in regional and district plans, considered in resource consent applications, and relevant details would be able to be listed on Land Information Memorandums (LIM). For LIMs, an archaeological site or area could be identified along with information on the need to consult the Trust about the requirement to obtain an HPA authority to destroy, damage or modify archaeological sites.

The recovery of archaeological information can be specified as a condition of an HPA authority to destroy, damage or modify archaeological sites to ensure the partial protection of archaeological information. However this process does not provide for the site to be protected and the context of a site can be lost. Archaeological research and recovery excavations also have the potential to threaten the Maori cultural values of sites, and protocols for research need to be developed between archaeologists and Maori.

The proposed pipeline by Watercare Services Limited will further affect the historic and cultural values of the Matukuturua Stonefield. However Watercare have recognised the value of the stonefield and have agreed to provide for the interpretation of its archaeological and scientific values and will build interpretation facilities on council owned land at the adjacent Puhinui Reserve. The building of interpretation facilities for the stonefields had not been developed by any agency in the past.

HPA authorities

As the provisions of the HPA require authorities to be obtained before any archaeological site is destroyed, damaged or modified requires, landowners and developers need to be informed about the existence of sites and the HPA provisions. However there is insufficient awareness of the HPA provisions and there is a lack of information for landowners and developers on the existence of archaeological sites.

Any authority that is granted by the Trust under the HPA 1993 has to be used within two years. However there is no similar sunset clause for existing authorities that were granted between 1975 and 1993 under previous historic places legislation. The Wiri Quarry (approved 1983) and the Watercare Services Limited South-Western Interceptor route (conditional 1978 and approved 1986) are examples of authorities that were issued many years ago and part or all of the authority was never exercised close to the time of issue. However the Trust has no power to withdraw an authority once it has been granted. Given the much reduced area of stonefields in the Auckland region, and the stronger momentum towards public protection of parts or all of the remaining stonefields, the continuing existence of authorities to modify or destroy parts of the remaining stonefields is no longer appropriate.

For both the Wiri Quarry and the South-Western Interceptor development, the transfer of an authority to destroy, damage or modify archaeological sites was a contentious issue that needed to be resolved. A legal opinion was sought by Watercare to clarify the transfer of an authority from ARA to Watercare and the Trust sought an opinion to clarify the status of the authority in relation to the HPA 1993. Watercare were able to rely upon the 1978 authority that was transferred from the ARA.

After the Wiri Stonefield destruction the ARC requested the Trust to provide them with a list of all current authorities for the stonefields in the Auckland region. The MCC also made similar requests. However these requests were not able to be processed because of incomplete Trust records that were located in several Trust offices. A computer database for listing authorities issued since 1976 has recently been completed and will assist the monitoring of authorities and knowledge of the state of historic and cultural heritage.

HPA Register

The Matukuturua and Otuataua Stonefields were given a Category II registration in accordance with the transitional provisions of the HPA 1993 and they have not been reassessed in terms of the criteria in the HPA 1993. The inconsistent recognition of the sites does not assist attempts to gain protection for them.

Under the RMA local authorities must have regard to any entry in the HPA Register when preparing or changing a RPS or a plan, and the Trust must be notified of any resource consent application that affects any place on the Register. The quality of information on the Register is therefore of critical importance.

Unresolved issues

Key unresolved issues from this investigation include:

- how to integrate the management of the historic and cultural heritage of the stonefields as part of the wider process for environmental management;
- how to provide for the sustainable management of historic and cultural heritage resources like the stonefields;
- what is the most appropriate or effective allocation of roles for the protection of heritage on private land;
- who is the appropriate lead agency for the advocacy and protection of heritage on private land and how to increase coordination between various heritage agencies.

2.8 Findings

Values

1. The Auckland volcanic cones and stonefields are important taonga to tangata whenua and provide strong traditional and cultural linkages between tangata whenua and their ancestors. The interests of tangata whenua in the stonefields have not been given appropriate recognition by all agencies.
2. The Otuataua and Matukuturua Stonefields are the last remaining major areas of stonefield representing early settlement and agricultural sites in the Auckland region and they are of regional, national and international significance. The

stonefields are important for their cultural, traditional, archaeological, historical, social, scientific and landscape values.

3. The continuing incremental loss of areas of the stonefields has increased the historical and cultural heritage value of the remaining areas but no significant areas have been purchased and provided with full protection to date.

Planning

1. The ARC recognises the importance of historic and cultural heritage management in the Auckland region and has attempted to provide a general leadership role and establish some integration between territorial authorities and other organisations.
2. The MCC has taken the lead role to coordinate protection measures and provide for integrated heritage management by different authorities for the Otuataua and Matukuturua Stonefields.
3. The MCC has taken a comprehensive approach to identifying and prioritising potential areas for public open space which ultimately resulted in the proposed joint public open space designations of the Otuataua and Matukuturua Stonefields.
4. The MCC has recognised the interests of tangata whenua in the proposed district plan and attempts to purchase the Otuataua Stonefield. The inclusion in the proposed Manukau City district plan of a wahi tapu schedule of areas of significance to tangata whenua prepared in consultation with tangata whenua is a positive resource management initiative.
5. The draft MCC Cultural Heritage Strategy provides an overview of cultural heritage and sets out a comprehensive and integrated policy approach for Manukau City although the final status of the strategy is yet to be determined and the strategy remains to be implemented.
6. The decision not to include an archaeological schedule in the proposed Manukau City district plan will limit the sustainable management of archaeological sites under the RMA in the district as the provisions of the HPA are not able to protect archaeological sites or provide for the integrated resource management of archaeological sites and areas.
7. The formal linkages between the MCC district plan resource consent requirements and the HPA authority provisions are encouraging, although this assumes that an applicant is aware of any archaeological site, or is informed of any such site by a heritage agency.

National agencies

1. The Trust's Head Office and regional offices are not resourced for promoting and advocating protection of archaeological and cultural heritage management on private land and cannot fund the acquisition of significant areas like the stonefields.
2. The Trust's Auckland Regional Office is not able to meet the demands placed on it for information on archaeological sites, joint management approaches, and the monitoring of activities that may affect archaeological sites.

3. Since the early 1990s DOC's role has changed from an initiator and leader in attempts to protect the stonefields to a much more subsidiary and reactive role. While this change is consistent with recent DOC policy, there is public and agency confusion about the relative roles of DOC and the Trust for historic and cultural heritage management.
4. The decision of the Lottery Environment and Heritage Distribution Committee to decline the application for funding for the purchase of part of the Otuataua Stonefield was made in the absence of full knowledge of the proposal and in the absence of a national funding strategy.

Historic Places Act 1993 provisions

1. There is insufficient public awareness of the HPA archaeological authority provisions.
2. The non-finite term of authorities issued under former HPA legislation to modify or destroy parts of the stonefields is not appropriate for protecting the remaining historic and cultural heritage values of the stonefields.
3. The monitoring of HPA authorities and knowledge of the state of historic and cultural heritage will be assisted by the development of the Trust computer database for listing authorities.
4. The transitional classification of the Otuataua and Matukuturua Stonefields as Category II historic places appears inappropriate but there has been no review in terms of the criteria in the HPA 1993.

Acquisition and protection

1. The regional, national and international significance of the remaining stonefields is such that urgent protection is required. This will require a proactive approach including financial contributions from local, regional and national government.
2. The lack of a dedicated national historic and cultural heritage protection fund for the purchase of land has hindered attempts to protect the stonefields.
3. Protection of the stonefields will result in the loss of property rights thus raising questions about the need for compensation.

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Consultation list

Auckland Conservation Board
Auckland Regional Council
S Bulmer, consultant archaeologist
R Clough, Clough & Associates Limited
Craig Downer Limited
Department of Conservation:
 Head Office
 Auckland Conservancy
Department of Survey and Land Information:
 Head Office
 Auckland Office
DML Resources Limited
Huakina Development Trust
New Zealand Lottery Grants Board:
 Lottery Environment and Heritage Distribution Committee
Manukau City Council
New Zealand Historic Places Trust:
 Head Office
 Northern Regional Office
Ngaati Te Ata
The landowners of the Otuaataua Stonefield:
 T R Ellett, G S Rennie, E Mendelssohn, G H Wallace
Watercare Services Limited
Winstone Aggregates Limited

3. BUILT HERITAGE MANAGEMENT IN A LARGE METROPOLITAN CENTRE: AUCKLAND CITY¹

Auckland City has many significant built heritage features arising from its early residential settlement and commercial growth. However, inadequately controlled property development, and periods of rapid economic growth like that in the mid-1980s, have had significant effects on Auckland's built heritage. A considerable amount has been lost. For instance significant heritage buildings like His Majesty's Theatre have been demolished and places important in the city's social heritage, like the Gluepot Tavern have been converted to other uses. Between 1984 and 1994, 42 Auckland buildings registered by the New Zealand Historic Places Trust (the Trust) for their significant heritage values were destroyed (Auckland Regional Council 1994).

The Auckland region continues to experience rapid urban growth and this is placing increasing pressure on the built heritage of Auckland City. High density suburban housing development (urban infill) that affect streetscapes and the historic character of residential suburbs like Ponsonby, Parnell and Epsom; high rise commercial building developments in the inner city; and public infrastructure projects like the proposed Britomart Transport Centre development continue to place pressure on the built heritage of Auckland.

The following historic places and accompanying issues were considered as potential built heritage case studies to illustrate issues affecting the protection of Auckland's built heritage:

- Westfield Chimney: the recognition of industrial heritage, interim and final registration under the Historic Places Act 1993 (HPA), the cost of protection and ongoing management;
- Auckland Town Hall: council ownership, the use of value management workshops, compromise solutions;
- Civic Theatre precinct: existing Trust heritage order, council ownership, the use of design guidelines, the protection of individual buildings verses precincts, commercial development to offset conservation costs;
- De Bretts Hotel: the alteration of a relatively unmodified interior, interim and final registration, linkages between HPA and Building Act 1991;
- Ellisons Chambers, Queen Street: the alteration of an exterior facade; HPA registered building, Trust heritage order under the RMA;
- Ponsonby Road: streetscapes, use of conservation overlay zones, design guidelines;
- Gluepot Tavern, Ponsonby: social significance, interim and final registration, change of use;

3.1 Introduction

3.1.1 Recent Auckland built heritage issues

¹ The first two examples for this case study were largely based on research undertaken for this investigation by Carley Smith, Department of Planning, University of Auckland.

- Auckland Grammar School, Epsom: alterations, structural upgrading, resource consents;
- St Mary's College, Ponsonby: several heritage buildings, ACC assessment process, district plan provisions, alteration proposals.

The proposed Britomart Transport Centre development and its effects on a heritage precinct that is an important part of the transport and maritime history of Auckland were also considered for inclusion as a case study in this report. However although the proposed development affects significant heritage values, it was rejected as a case study for two reasons: it was a major development project that would require a major investigation in its own right; and the resource management issues were much wider than heritage values as they included transport planning, infrastructure development, local authority decision-making and public consultation.

The Civic Theatre precinct, the Westfield Chimney, and St Mary's College were chosen to illustrate representative built heritage issues in Auckland.

3.2 Auckland City Council heritage planning

The sustainable management and protection of the remaining built heritage of Auckland City is a major environmental issue for the Auckland City Council (ACC) under the Resource Management Act 1991 (RMA). This section considers the ACC heritage planning structure and assessment processes for heritage planning, as a background for the case study examples that follow.

The ACC has recognised the significance of the city's built heritage and the ACC strategic plan states:

a commitment to fostering the heritage and cultural values of the city and its residents underlies all the activities of the council. The commitment will be most strongly reflected in the refurbishment of the Auckland Museum, the Town Hall and the Civic Theatre Council will purchase downtown properties as appropriate to ensure buildings are used and developed in a manner consistent with the revitalised inner city and harbour edge developments. Properties will be sold as part of redevelopment or reinvestment programmes (ACC 1993).

A significant amount of money will be spent by the council on the restoration of the Town Hall (\$51 million capital and design cost between 1993 and 1997) and the Civic Theatre (\$12 million 1998-2001). The council is also exploring the use of financial incentives such as loans, grants and rate rebates for heritage protection.

3.2.1 Conservation and Urban Design Division

The Conservation and Urban Design Division (C&UDD), which is part of the Planning and Regulatory Directorate, has eight full-time staff and is responsible for all heritage policy, administration and monitoring work. The C&UDD provide expert advice on heritage provisions, heritage conservation, and architectural and urban design to the public. The preparation of voluntary design guidelines assist landowners and developers to recognise and provide for the protection of heritage. The C&UDD encourages early contact with owners and potential applicants, well before applications are considered which reduces the need for expensive, and in some cases unnecessary, design work being commissioned.

The C&UDD prepared the proposed Auckland City District Plan Isthmus Section (Isthmus Plan) heritage provisions and are preparing provisions for the Central Area Section of the District Plan that principally covers the central business district. Resource consent applications that affect scheduled heritage items are referred to the C&UDD for comment and a report containing recommendations on the application is prepared for a council planning officer. The C&UDD has a "call-in power" for resource consent applications which affect heritage places and objects.²

The C&UDD are currently assessing the administration and implementation of a random sample of resource consents concerning special character areas and heritage items processed in the last two years. This assessment will include the level of assessment, time factors, enforcement of conditions, and the outcome in terms of the protection of heritage. C&UDD have, in conjunction with other parts of ACC, taken a stand on the enforcement of district plan heritage provisions and have successfully undertaken recent major enforcement actions related to heritage places.

The Property Department of the ACC has a significant role as the owner of strategic sites and heritage buildings, although there are no criteria for council purchase of buildings as they are generally part of strategic initiatives. For instance, the ACC purchased the former Chief Post Office and other properties in the Britomart block as part of the proposed Britomart Transport Centre development. Some important heritage buildings like the Town Hall have always been owned by the council and managed by the Property Department. Under the terms of 60-year ground leases, like that for the Civic Theatre, ownership of these buildings was always to revert to the council upon the expiry of the leases. The department has taken a lead role in organising value management workshops to resolve conflicts in opinion over the use of heritage buildings (eg the Town Hall and the Civic Theatre) (see Chapter 3.3).

The proposed Isthmus Plan was notified in June 1993; in June 1995 council decisions were made and it is now subject to appeals.

3.2.2 Isthmus Plan

An objective of the proposed district plan was to identify heritage resources that were worthy of preservation and provide suitable measures to secure the preservation of those identified heritage resources (eg through the use of schedules, Conservation Areas, special character residential zones, conservation plans, financial assistance and the provision of information). The district plan scheduled 244 buildings and sites, 30 archaeological locations, 37 sites of scientific value, 681 individual tree sites encompassing over 2,000 trees, a city wide network of protected public views and 8 wahi tapu sites nominated by iwi. The district plan uses zoning as the basic technique to control the effects of land use, and large areas of residential Auckland are zoned as special character residential activity zones:

- residential 1 (Built) is intended to retain the historic form and pattern of subdivision, buildings and streetscapes in Auckland's early-established residential neighbourhoods;
- residential 2 (Built/Flora) is intended to conserve the landscape qualities of those residential areas which display a blend of buildings and vegetation, sometimes period housing;

² Non-heritage planning matters in resource consent applications are reported on by staff in the Central Area Planning Division, the District and Neighbourhood Planning Division, Council area offices and City Environments.

- residential 3 (Built/Landform) is intended to maintain the visual harmony and coherence between the residential areas which occupy parts of the volcanic cones, and the cones themselves.

A pilot study is currently underway for the Ponsonby Road ridge to investigate the feasibility of a special character business zone that would be similar to the provisions of the residential I zone.

Conservation Area overlay provisions have been applied to areas which display a considerable degree of unity in scale, form and historical origin. There are six Conservation Areas comprising one or two residential streets in each of Ponsonby, Grey Lynn and Mt Eden. Any demolition, alteration, or addition within a Conservation Area is a restricted discretionary activity. A rigorous assessment of the effects on heritage values should accompany an application for a resource consent for any work that would affect the character of the area.

Non-statutory *Architectural Design Guidelines* are annexed to the proposed Isthmus Plan. The *Guidelines* provide advice to owners of buildings in Conservation Areas or residential zones about the effects of the various district plan policies, rules and design guidelines.

3.2.3 Assessment and protection process

After local government reorganisation in 1989 the ACC inherited eleven sets of schedules and planning mechanisms for protecting heritage places in the Isthmus area. As part of the preparation of the proposed Isthmus Plan, ACC took a zero-based approach to assessment and the preparation of new heritage provisions. This was to enable a thorough RMA section 32 analysis to be undertaken and provide for transparency and accountability.

A new quantitative assessment system was developed by C&UDD based on the Parks Canada system but adapted for New Zealand conditions. A critical goal of the new assessment system was to reduce the amount of variation that can occur with uncoordinated heritage assessments. Heritage places and objects were scored against five main assessment criteria out of a total of 100 points and then ranked. The criteria along with sub-categories were:

- architectural association (out of 35): style, construction, age, architect, design and interior;
- history (out of 45): association with a person, event and context;
- environment (out of 5): continuity, setting and landmark quality;
- usability (out of 5): compatibility, adaptability, capacity for public use, adequacy of services and potential cost of upgrading;
- integrity (out of 10): original site, scale of alterations and general condition.

Using the new assessment system a detailed heritage survey was undertaken by C&UDD staff using transitional district plan schedules, council records, the HPA Register, community board lists, and community interest group lists as sources of information to identify potential heritage places and objects. Many hundreds of places and objects were assessed against the criteria and a standard evaluation sheet was prepared; for each place or object marks were awarded out of 100.

Places and objects scoring over 75 points were listed as Category A and those between 50-75 points as Category B in the "Schedule of Buildings, Objects, Heritage Properties, or Places of Special Value" in the proposed district plan. The district plan defines Category A buildings, objects, or places as "having outstanding historical significance beyond their immediate environs and it is of prime importance that these items are protected". Plan protection is provided to the exterior of buildings, and the interior and surrounding site as particularly specified in the schedule. If the surrounding site is not defined dimensionally in the schedule, it is taken as the legal title. Category B items are less significant than Category A but should not be wilfully removed, damaged or altered in a significant way unless there is a compelling reason.

The proposed plan lists 244 buildings and objects in a schedule and approximately 25% of the items on the schedule are Category A. Where significant work is proposed to be undertaken on a Category A or B place, a resource consent application must be made to the council before work is started. Significant work is work that will have an effect on the qualities for which the place has been listed. In general, applications for Category A places will require a notified application. Demolition or removal of all or part of a Category A building or object is a prohibited activity. Council rejected requests in district plan submissions to schedule only those parts of a place or building which have the highest heritage value, preferring to include the whole of the item. The council may require a conservation plan to be prepared where significant changes are proposed for a building as a conservation plan provides a suitable technique for assessing relative values, and as a consequence, the individual sensitivity of any value to any changes that are proposed.

An illustrated computer database was created for all of the items that were considered and it contains some 62 fields of text information, coloured photographs and a small extract from the district plan special limitation maps for each item. There is potential for the database to be linked into the ACC's geographic information system. The database enables rapid searches to be made for information including filtered searches for specific information. The database is an important asset to the C&UDD and will assist the protection of heritage items.

Landowners were not formally notified of the inclusion of a historic place in the proposed district plan, but informal discussions took place between landowners and C&UDD staff when staff were identified performing heritage assessments or if access was required into the interior of a building. When the proposed plan was notified there were requests for copies of the assessment and there were some challenges to individual scoring. However there were no challenges to the basic approach taken by the ACC. Following submissions, some places were added and some were downgraded from Category A to B but very few were deleted from the schedule.

The C&UDD offer free advice on proposed developments that affect scheduled buildings and Conservation Areas. Early consultation with the C&UDD is strongly recommended to developers to save time and money, and to avoid the preparation of inappropriate design work. The council will generally waive normal planning charges and costs when dealing with listed heritage places. This is based on ACC interpretation of s36(4)(b)(i) RMA where the scheduling of a place denotes a sense of value to the community as a whole, which therefore mandates a "no-charge" approach.

3.3 Civic Theatre precinct

3.3.1 Background

The Civic Theatre precinct is located in central Auckland, bordered by Queen St, Wellesley St and two one-way lanes. The precinct comprises the Auckland Civic Theatre and two buildings that are attached to it, the Ferguson Building and Civic House. The Civic precinct is adjacent to the Town Hall, the Aotea Centre and the St James Theatre.

The Civic Theatre was built in 1929. Since its construction the theatre has attracted theatre enthusiasts mostly because of its spectacular interior architecture. The interior is described as “atmospheric” as it symbolises a style of theatre architecture that attempted to persuade audiences that they were not merely sitting in a theatre auditorium but rather in a particular environment (eg the Egyptian outdoors or an Italian garden).

In 1932 the theatre was purchased by Amalgamated Theatres and, under the terms of the 60-year ground lease, ownership of the building was to revert to the council upon the expiry of the lease. The theatre quickly became a premier attraction as films became more popular. The famous Wintergarden Cabaret was home to many an American serviceman during the Second World War and quickly rose to become the premier “dine and dance” spot. There were several development proposals for the site after the war (ie government office buildings and municipal chambers) but by 1951 ACC had decided that the Civic Theatre would remain.

The 1960s saw the last performance on the original gondola mechanism inside the theatre and in 1969 the Wurlitzer organ was sold to Southward’s Motor Museum in Paraparaumu. In 1970 the earlier schemes for the site were reviewed and the Civic Theatre site was targeted for future development. In 1975 the Wintergarden Cinema was constructed in the lowest levels of the theatre, signalling the loss of the Cabaret.

In 1988 the Trust issued a protection notice for the theatre under the HPA 1980. This became a heritage order under the RMA and is still in force. The theatre was registered as a Category B building under the HPA 1980 and registered as a Category I building under the HPA 1993. This classification applies to “places of special or outstanding historical or cultural heritage significance or value” (HPA s 22(3)(a)(i)). Civic House and the Ferguson Building are registered as Category II buildings under the HPA 1993 as “places of historical or cultural heritage or value” (HPA s 22(3)(a)(ii)).

3.3.2 Assessment of heritage values

The ACC assessed the heritage value of the Civic Theatre using its assessment criteria (see Chapter 3.2.3) as:

- a nationally significant theatre;
- containing regionally significant architecture;
- the best “atmospheric” theatre in the Southern Hemisphere;
- a critical part of the theatrical and performance mix that the City is aiming to achieve in the entertainment precinct.

The historic and cultural value of the Civic Theatre was also assessed in a conservation plan prepared in 1994 (Salmond 1994).³ In the plan the Civic Theatre was assessed as a building of exceptional significance in Australasia because of its:

³ The method of assessment was based on an examination of the building and its architectural character, its urban context and its interior features, the associations of the building and site

- remarkable design as the largest surviving “atmospheric” picture theatre in Australasia;
- intact and original “atmospheric” interior;
- social importance as a place of public recreation especially during the Second World War;
- associations with the development of the motion picture industry in New Zealand and with the international tradition of “atmospheric” theatre design;
- interior as an exemplar of the art and craft of fibrous plaster modelling and of techniques of painting and finishing “atmospheric” cinema interiors
- exterior as an example of the “decorated box” approach to architectural design;
- importance in the inner city streetscape of Auckland and the many views of the building from points close to and remote from the building.

The interest group Friends of the Civic believe that the theatre has important historical value mainly because it is the most complete example of an “atmospheric” theatre in the world. The group believe that the theatre is a building that has significant regional and national values and that if restored, will enhance both the commercial and art sectors by becoming the centre of artistic life in Auckland (P O’Connor, Friends of the Civic, pers. comm. 1996).

The Auckland Civic Trust also believe that the Civic Theatre is significant because it is one of the few remaining examples of an intact, “atmospheric” theatre. The Civic Theatre is significant because it is a focus for civic pride, a repository for memories and a place that many Auckland residents relate to and identify with (G Burgess, Auckland Civic Trust, pers. comm. 1996).

By 1990 ACC had scheduled the Civic Theatre and there were discussions about retaining the theatre although there was no formal commitment from the council about any future council project or other proposals for the theatre after the lease expired. There were also proposals from an operator for a cinema multiplex inside the theatre.

3.3.3 Development proposals

In October 1990 a C&UDD report entitled *Focus: the Past, Present & Possible Future of Auckland’s Civic Centre* summarised the various issues and recommended that the Civic Theatre should be a essential component of the Civic Centre’s future and that the theatre must remain (ACC 1990). The Chairman of the Property Enterprise Board then recommended that council formally confirm its commitment to the preservation of the theatre. Shortly after this the council confirmed the recommendation in open session. This was the first time the council had made public the fact that the theatre was critical to its plans for creating an entertainment precinct.

In 1992 expressions of interest in the preparation of a conservation plan for the theatre were sought and eventually in November 1994 a conservation plan was published. This was an important step towards retaining the theatre because the plan recognised and promoted its historic merits and significance.

over time (James Kerr’s conservation plan method) and the criteria of the ICOMOS Charter (Salmond 1994 p 34).

In 1993 Everard Films Limited proposed the first plan for a multiplex development on the Civic House/Ferguson Building sites, along with a restored Civic Theatre to be managed as part of the complex. A structural report on the theatre was commissioned by the ACC. By October 1993 ACC suggested spending \$29 million for the conservation of the Town Hall, and \$19 million on the restoration of the Civic Theatre although these figures were not part of a formal budget. On 19 November 1993, ACC announced the signing of a five-year renewable lease between ACC and Hoyts Cinemas. This ensured that the theatre would remain open and that the much needed maintenance would be carried out. On 31 December 1993 the Civic Theatre reverted to direct council ownership upon expiry of the 60-year ground lease.

ACC's policy is to ensure that the Civic Theatre moves into the new millennium with new capabilities and uses. In the ACC strategic plan the council stated that its aim is to develop the Civic Theatre and the adjacent properties in conjunction with the private sector to retain entertainment and commercial vitality in the area, whilst maintaining a significant heritage building (ACC 1993 p 44). To achieve the commercial vitality, ACC aim to develop the Civic precinct through a joint public/private partnership. The private development will be undertaken by the Oxford Group, whose proposal has been the crux of the value management workshop discussions (see Chapter 3.3.5).

Oxford Group (a development group) initially promoted the notion that successful retail development in the precinct required the demolition of the Civic and Ferguson buildings. However the Trust actively lobbied against this proposal to seek the retention of the greater part of these buildings. By May 1995 Walker Partnership (architects for Oxford) remodelled their proposals so that the facades of the two adjacent buildings would remain although Tanfield Potter (a specialist retailer on site since 1930) would not be able to remain on its existing premises. This was contrary to the *Focus* report that suggested in 1990 that Tanfield Potter should be given every opportunity to remain on the site, even if reconstruction occurred to the building (ACC 1990). This particular proposal was not popular with the tenants and by the end of May 1995 the development proposals were modified so that most of the Category II buildings would be retained, and Tanfield Potter would be able to remain on its existing premises, which would be slightly reconfigured.

The current proposal is that the ACC will sell the land on which the Civic House and the Ferguson Building stand and other adjoining land to the Oxford Group, and the proceeds of this sale will be used to underwrite the cost of the theatre's restoration. Oxford will then use the existing building envelopes and floor plates to create a cinema and retail development alongside the Civic Theatre. The retail frontages of the Civic (and adjacent sites) were an intrinsic original component of the theatre and the precinct, and thus constitute an important and very restorable heritage element.

To enable the re-development of the Civic block, the adjacent land has been rezoned 8C, which is the standard commercial inner city zoning, and lane closures to facilitate the development have been notified. In early 1996 ACC was going through the statutory process to close the roads and the closing will not physically take effect until the proposed development proceeds.

Design guidelines for the precinct have been created and although they are not part of the district plan, any council development that takes place in the area must

consider the guidelines. These guidelines have been created partly from the *Focus* report prepared for the Civic (ACC 1990), and partly out of discussion with the Oxford Group and their architects. The guidelines aim to oversee development by creating controls to recognise and provide for pedestrians, heritage values, streetscape and the relationship of the Civic block with the Aotea Centre.

In July 1995 the first of three value management workshops was held. These workshops were led by the Property Department of ACC and run by a partner of Maltby and Partners, a group of quantity surveyors who are the first in New Zealand to promote this type of decision-making process. The workshops were arranged to provide a forum for discussion and direction for the precinct. The objectives were to identify principal uses for the theatre and to reinstate it as the focal point in a 24-hour cultural and entertainment precinct. The invited participants were the Auckland City Council C&UDD, Auckland City Council Property Division, the Oxford Group (developers), Jasmax (design team), Jeremy Salmond (architect), Greg Innes (Aotea Centre), the Trust, the Auckland Civic Trust, Friends of the Civic and Eric Kearney (Manager Hoyts Civic), and private promoters and producers.

The first value management workshop was held over two days in July 1995, with a review held in September. A second review took place in January 1996 to work through the problems that had arisen to date and to see if the various parties would accept alternative solutions. The workshop will reconvene in mid 1996 but the developers have been provided with a concise brief, information on conservation concerns, and can work towards furthering the proposal in a manner which best balances the needs of all interested parties.

Several advantages of the workshops have been commented on including:

- from the start of discussions all parties are able to discuss all possibilities. The workshop has been instrumental to making all heritage groups comfortable with the notions of adaptation (T Mansfield, ACC Property, pers. comm. 1996).
- they clarify and communicate heritage bottom lines and unacceptable interventions (G Farrant, ACC C&UDD, pers. comm. 1996).
- the workshop has allowed historical issues to be put into context and made a priority (V Rickard, the Trust, pers. comm. 1996).
- they have been important because they allow for discussion before any final decision or development proposals are prepared and people can change their views. Value management workshops save money because litigation is expensive (P O'Connor, Friends of the Civic, pers. comm. 1996).

Auckland City Council

The Conservation and Urban Design Team and the Property Department are working collectively on the project and want to see the restoration of the Civic Theatre and the maintenance of its historical values while providing a useful and multipurpose building. The ACC do not want to see the Civic become a museum.

The theatre is included in the transitional district plan as a Category C1 building; however the two adjacent buildings (Civic House and the Ferguson Building) are not

3.3.4 Value management workshops

3.3.5 Involvement of agencies and groups

listed. Category C1 is the top protection category and includes buildings having "outstanding natural beauty or architectural, scientific or historical significance well beyond their immediate environs". Items listed as Category C1 are protected from demolition under the mechanisms of the district plan. The new Central Area District Plan has not yet been notified but it is likely that the Civic Theatre will be listed under the new plan as a Category A building (ie highly significant) which will prohibit its demolition.

ACC recognises the high heritage values at stake and therefore the thrust of its Civic Theatre policy is to ensure protection but at the same time find new uses for the theatre. The Civic Theatre will only survive if given extra capability.⁴ This "extra capability" means providing for new uses apart from simply showing films; for example, as a lyric theatre,⁵ or a venue for recitals, award ceremonies and product launches.

The New Zealand Historic Places Trust

The Trust is a heritage protection authority for the theatre and no work can be undertaken on the fabric of the building without its written consent. The Trust want to ensure that the building is protected in perpetuity and believe that it is important that the two adjacent buildings (Civic and Ferguson), or as much of them as possible are conserved. One result of the value management workshop has been that these two buildings will not be totally demolished, since their building envelopes and floor plates will be incorporated into the new multiplex development. The Trust are supportive of these proposals since although the buildings as stand alone structures will not remain, there will be more than facades.

Friends of the Civic

The interest group Friends of the Civic was established in 1990 with a specific intent that the Civic Theatre would not be demolished and become a carpark like His Majesty's Theatre. The group now has over 250 members and has contact with other conservation organisations, including the English National Trust. Their main aim is to raise public awareness about the Civic Theatre and its heritage value. Friends of the Civic believe that the precinct is a unique part of Auckland's historic and social fabric.

As a group Friends of the Civic seek restoration of the theatre to its original condition and support the Oxford proposal but see it as essential that any development for the precinct blends in with the Civic Theatre. Friends of the Civic are driven by conservation values but also acknowledge that commercial imperatives must be considered. They want to see the theatre as a living, working building, one that is as commercially viable as possible without threatening its historical significance, and would also like to see the Civic Theatre generate its own revenue (P O'Connor, Friends of the Civic, pers. comm. 1996).

The Auckland Civic Trust

⁴ Information supplied to the C&UDD from the North American "League of Historic Theatres", an information sharing collective of owners and operators of restored theatres, affirm that increased capability is a key success factor in successful historic theatre rehabilitation, conservation and restoration.

⁵ The term *lyric theatre* means a theatre for performance art including drama, musicals, opera and recitals.

The Auckland Civic Trust, as well as other groups, have long been interested in the protection of the Civic Theatre and they would like to see it restored. The Civic Trust believe that the theatre needs to be modified to meet present and future needs but at the same time, preserved so as to capture the special features that make it unique. The Civic Trust recognises that the theatre needs an economic use (eg as a lyric theatre) and that it cannot be a museum.

The Managers of Hoyts Civic and Aotea Centre

Management of both the Hoyts Civic and the Aotea Centre have attempted to educate the public that the theatre has potential outside of simply showing films and that it could become an alternative entertainment venue. They consider that there is a need for a secondary theatre in Auckland and there is a sound economic basis for the theatre to be converted into an international standard lyric theatre to complement the Aotea Centre. Careful programming will be needed to ensure that the use of the two theatres is complementary. Increased numbers of people in the city will increase commercial opportunities as well as increasing the safety of night-time activities (G Innes, Manager Aotea Centre, pers. comm. 1996).

The tenants

The tenants in the Civic precinct range from specialist retail stores to fast-food eateries as well as nightclubs. The tenants' main concerns from the value management workshop were the loss of existing premises, the disruption to business and likely rent increases. One tenant in particular who faced considerable uncertainty regarding its future was Tanfield Potter, a specialty china and collectibles store that has been trading since the early part of this century. In one proposal, Tanfield Potter faced complete loss of business or the loss of their existing premises. This was of particular concern because of the distinctive light source the shop has enjoyed over the years. As the Oxford proposal stands to date, Tanfield Potter is guaranteed inclusion in the proposed development and its existing premises.

The Civic Theatre is approaching a period of thorough restoration although there are some reservations about the transformation of the theatre to a lyric theatre. There is a concern that it could become an exclusive home to large-scale musicals which may result in an increase in rental costs and the fostering of an elitist atmosphere which would mean the theatre would not be as accessible to the community as it is today (E Kearney, Manager Hoyts Civic, pers. comm. 1996). A possible solution to this issue would be for the council to reconsider the existing commitment of the Aotea Centre to community or short term shows, and transferring these to the Civic. The Aotea Centre could then host more demanding large scale shows.

The issues surrounding the Civic Theatre are on-going and are moving closer to being resolved. In early 1996 a further value management review was proposed for mid 1996 to critique another stage in the development proposal. Although a number of issues are yet to be resolved, it is obvious that the Civic Theatre is a building that is important to the people of Auckland and one whose future has stirred much constructive debate on heritage and conservation issues in the city.

3.3.6 The future for the precinct

3.4 The Westfield Chimney

3.4.1 Background

The Westfield Chimney was originally part of the Westfield Freezing Works, a 43 ha industrial site in the industrial heartland of the Mt Wellington/Otahuhu area, South Auckland. The industrial site is bordered to the east by the Mt Wellington Highway and to the west by Great South Road and is in close proximity to the Auckland-Wellington main trunk railway line. The industrial site had been vacant since the closure of the freezing works in 1989 but the owners, Weddel Westfield Limited, intended that the site be developed into an industrial and business park, with up to 40 lots for industrial and commercial use.

The octagonal Westfield Chimney (approximately 10 m tall) was constructed in May 1916 of unreinforced brickwork. This particular shape was used to allow the chimney the flexibility to withstand high winds. It was originally built as a general purpose boiler used for steam generation before wholesale electricity was introduced.

In May 1994 Beca Carter, on behalf of Weddel Westfield, contacted the Northern Regional Office of the Trust to request a general check of the group of buildings at Westfield. On 30 May the Trust replied that site records had been examined, the Department of Conservation (DOC) had been consulted, and the conclusion was that the proposed earthworks would not affect any known archaeological sites. The heritage values of the area were not specifically investigated or inspected by any agency at that time.

Weddel Westfield was taken into receivership by KPMG Peat Marwick in August 1994. At the time of the receivership, part of the area including the site containing the chimney had already been sold off to Broadway Developments Ltd, who had subsequently subdivided the area and sold some lots from the design plan.

3.4.2 Recognition of heritage values

The chimney had been obscured by the surrounding buildings and it was not until the freezing works were systematically demolished that it was first identified as a landmark. The chimney was to have been demolished at the same time as the buildings surrounding it, but the demolition group, Vuksich & Borish, asked Weddel Westfield if they could burn rubbish in it as they cleared the site. The chimney had not previously been considered significant in its own right since it had always just been one component of the Westfield Works. The ACC district plan review had not recognised or included the chimney as a scheduled item in the Isthmus Plan and it had never been included in a previous district scheme.

The heritage value and significance of the chimney was first recognised and promoted by a member of the public, who wanted to see the chimney retained and used as a symbol for the proposed industrial park. There was some concern that the chimney would be demolished before it could be protected and so, with the help of the Auckland Branch Committee of the Trust, an application was made to the Trust for interim registration on 3 August 1994.

To support the protection of the chimney the Auckland Steam Engine Society Inc. compiled a brochure entitled "Save this Classic Chimney at Westfield". The aim of the brochure was to inform the society's members and members of the general public of the historical value of the chimney and why it should be retained. The Auckland Steam Engine Society requested a chimney engineer to inspect the

chimney and his conclusion was that it was essentially sound and would be able to be restored.

The ACC then assessed the chimney's heritage value according to their assessment criteria. The chimney was assessed as a Category B item, primarily because of its architectural merit (ie its ornate brickwork), its potential landmark value, the chimney's associations with the Westfield Works, and its social and cultural values.

The application for interim registration⁶ under section 24 of the HPA stated the chimney was:

3.4.3 Interim registration

- *historically significant* because it was the last remnant of the Westfield Freezing Works which played a major part in the working lives of South Auckland residents;
- *culturally significant* because it was a reminder of a time when freezing works and the exporting of frozen meat played a major part in New Zealand's economy;
- *aesthetically significant* because the chimney was of great landmark significance and located in an area with little else of aesthetic or historical significance;
- *architecturally significant* because it was an extremely fine example of a classic industrial chimney; and
- *technologically significant* because of its fine workmanship and because the boilers associated with the chimney⁷ were believed to be made by Babcock and Wilcox, England.

On the 25 August the Trust wrote to Weddel's receivers, KPMG Peat Marwick, giving formal notice of interim registration and the Trust's intent to register the building. This letter explained the legal obligations of the developer and the Trust along with submission procedures. On 27 August interim registration of the chimney was publicly notified in the *New Zealand Herald*.

The Civic Trust supported interim registration, stating that the chimney had many qualities based on assessment criteria from the HPA including:

- *landmark*: a visual reminder of the freezing works;
- *architectural*: the finest remaining early twentieth century industrial chimney in Auckland;
- *technological*: a Babcock and Wilcox designed chimney and fine brickwork;
- *historical and social*: the largest of several freezing works in the area when the export of frozen meat was a major industry for New Zealand; the Freezing Worker's Union took a leading role in the Labour Movement;
- *tangata whenua*: this criterion should be further investigated.

The Mayor of Auckland City supported the retention of the chimney and said that it was "important as a reminder of the industrial and commercial role of Westfield and the evolution of the meat processing industry in New Zealand's early years" (L Mills letter to the Trust 1994). The MP for Panmure also supported the retention of the

⁶ To apply for interim registration, the significance or value of the place or building must be outlined in terms of defined categories such as historical, cultural, aesthetic or architectural significance.

⁷ The boilers associated with the chimney were not regarded as so significant because their functions had changed over time.

building. Two interest groups, the Auckland Steam Engine Society Inc. and the Otahuhu-Tamaki Historical Society, were also advocates for the retention of the chimney.

Weddel Westfield opposed interim registration as they had contracts and agreements that required the clearing of the site according to the terms of sale.⁸ Interim registration would have the same effect as a notice of requirement for a heritage order and would protect the site for up to six months while it was considered for full registration. This would prevent the removal of buildings from the site and Weddel Westfield would be in breach of its terms of sale. Broadway Developments also opposed the granting of interim registration for similar reasons (ie because interim registration would jeopardise their unconditional sale agreements, because of already completed subdivision plans, and because they had contacted the Trust in the initial stages and were told that there was no risk to any known archaeological sites).

Both Weddel Westfield and Broadway Developments were concerned about the structural repairs that would be necessary if the chimney were to be retained, along with responsibility of ownership and the insurance risk. There were concerns that the chimney was unstable, and that it was a danger to "life and limb" because if it fell debris could reach to Great South Road and the main rail line. Broadway Developments Ltd consulted Beca Carter and McGuigan Symes, Structural Engineers, and both of these companies were of the opinion that the chimney would have to be filled with concrete and bricks removed and re-mortared to make it stable.

KPMG Peat Marvick submitted that the Trust had the opportunity to lodge the appropriate classifications and had failed to do so, and that as a result, the subdivision had been planned in a particular way and lots had been conditionally sold on that plan. KPMG also asked the Civic Trust what financial contribution they would be prepared to make to retain the chimney. The lot on which the chimney stood was 5,000 m² and had an estimated value of \$500,000. The aim of this letter was to inform the Civic Trust and other organisations that they must be willing to pay for the chimney's retention because it was not a cost that the developers were prepared to pay. If the matter had been recognised from the start of planning for the use of the site then the chimney could have been included in design plans and roads could have been planned to provide access to the site.

3.4.4 Final registration

On 27 October 1994 the Westfield Chimney was given final registration under the HPA 1993, as a Category I Historic Place because it fulfilled certain criteria outlined in section 23(2) HPA including:⁹

- a) The extent to which the place reflects important or representative aspects of New Zealand history: *Largest meat works at Westfield and in New Zealand, central to New Zealand's export trade.*
- c) The community association with, or public esteem for, the place: *The seasons of the meat killing industry played a significant role in the working lives of many New Zealanders and university students, and the demise of the industry had a significant impact on the community.*

⁸ Weddel Westfield Ltd held the demolition consent: Vuksich & Borish (demolition contractors).

⁹ The words in italics are the Trust's reasons for registration.

- e) The technical accomplishment or value, or design of the place: *The symbolic or commemorative value of the place: It is significant in that it symbolises the previous use of the area.*

The Trust commented that with the demolition of the surrounding buildings, the chimney had become a landmark, that it was a fine example of industrial architecture and it was the only remaining chimney of its kind. However the Trust was not in a position to acquire the chimney and the Category I registration did not afford it any protection as it only recognised the structure's significance.

Following final registration on 2 November 1994, a meeting of various parties involved with the chimney was held to look at possible solutions regarding retention of the chimney, ownership and long-term maintenance. During the meeting Broadway Development Ltd outlined how a concept plan had already been finalised and that it was envisaged that a warehouse would stand on the lot where the chimney was presently located. The proposed development would surround the chimney and it would not be visible over the proposed development's height lines for the surrounding sites (ie two-and-three-storey buildings).

Compromise solutions were proposed by Broadway Developments Ltd and by ACC including realigning the road, re-subdividing so that the chimney was in the corner of the lot, or giving up the chimney site as part of a reserve contribution. Broadway Developments admitted that the chimney had merit in terms of its construction and suggested that there was a possibility that lot sizes could be adjusted to create a separate lot for the chimney but they did not believe they should pay the full cost. The developers wanted ACC or the Trust to become the long-term owners since the developers did not want to be burdened with ongoing restoration and maintenance work, as well as the insurance risk. ACC did not wish to see the chimney demolished and offered to maintain the chimney in perpetuity if the Trust would purchase it, but this scenario was rejected by the Trust as they were not able to purchase the area because of a lack of funding.

The main issue confronting those who wanted to retain the chimney and those who wanted to see it demolished was the cost of protection. Most of the interest groups believed that the chimney was highly significant yet they could not afford to purchase it to ensure its protection. Community fund-raising was not able to be investigated due to a lack of time. After interim registration the developers were pressuring the Trust to provide the building with final registration so the protection afforded by interim registration would be removed, and demolition could proceed.

There was much debate over the stability of the chimney and the cost of stabilising it. An ACC engineer who was requested to give a visual opinion of stability reported that the chimney virtually complied with the earthquake code as it stood. This decision was made without a full assessment. An independent chimney engineer had earlier concluded that the chimney was structurally sound. However engineers from Beca Carter (representing Broadway Developments) stated that the chimney was unstable and the cost of stabilisation was estimated to be more than \$200,000.

A few days prior to the proposed demolition the Civic Trust urgently requested ACC to use its status as a heritage protection authority under the RMA to place a heritage order on the chimney. They also requested that ACC immediately list the building in

3.4.5 Negotiation of protection

3.5.3 Redevelopment proposals

In September 1993 the Sisters of Mercy Trust Board proposed that the classroom extension wing attached to the College Hall would be demolished to allow the building of a new college "entry", administration area and other specialist teaching facilities. The classrooms in the extension wing were part of the original school that had once surrounded a circular courtyard, although the courtyard had been demolished in the early 1980s. The proposal would recreate the old entry and central courtyard of the College.

It was proposed that the new building would be designed in harmony with the hall and it would be in glass and plaster with burnt clay tiles. The hall, tower and three associated classrooms would be preserved under the proposal although the hall would need to be structurally upgraded with significant alterations. A conservation plan would be prepared for the development. Comments on the initial proposal and future processes were sought from the ACC (Orgias Cornthwaite letter to ACC September 1993).

The ACC acknowledged the proposal and commented that:

- any new development would need to be designed in harmony with the remainder of the building;
- the council was always very concerned and cautious in respect of the demolition of heritage buildings;
- the part demolition of the block would increase the use of the remaining buildings and improve the prospects for their future.

It was recommended that a conservation plan should be prepared along with sketch plans for the proposed alterations and additions to the site. The application for a resource consent would be a notified discretionary activity and would need to be accompanied by a conservation plan for the scheduled item (ACC letter to Orgias Cornthwaite September 1993).

The Trust had earlier commented on the proposal that it was unfortunate that the historic classroom wing would be lost but the economic arguments for not retaining the wing had been noted. The Trust requested the opportunity to make comments on the conservation plan in the draft stage in order that comments could be considered for inclusion on the final document (Trust letter to Orgias Cornthwaite March 1994). The Trust were subsequently consulted about the proposal.

A resource consent application for a discretionary activity was made to the ACC on 3 August 1994. It was accompanied by an assessment of environmental effects and a conservation plan for the building. The Roman Catholic Bishop of Auckland and the Trust gave their written approval for the application.

After consideration of the proposal, the application was treated as a non-notified activity because of the relatively small effect on the items scheduled in the district plan for protection. However the ACC informed the development architect that the proposed alterations to the hall were not acceptable in their present form and that further discussions would be required. The application would remain on hold in that time. The applicant was informed that a conservation plan would not be required for the application because of the relatively small effect on the items scheduled in the district plan for protection. However the council wished to place on record that the conservation plan submitted with the application was deficient in a number of

aspects and could not be approved by the council in its present form (ACC letter to Orgias Cornthwaite August 1994).

Following further discussions between the applicant and the C&UDD, the proposal was then altered to achieve a visual separation of the roof of the original hall and the new block, and to enhance the visual characteristics of the courtyard by increasing the separation between the new elements and the old.

The final C&UDD report commented that:

The design is sensitive to the original architectural style without mimicking it. The forms, scale and detailing are also sympathetic and in keeping with the remaining original building. The junction of the new and old buildings has been designed to avoid any awkward joining of the new and old. The proposal allows the school to upgrade the accommodation for specialist classrooms and appropriate office accommodation (ACC 1994).

The resource consent application was then recommended to be granted for the reasons that:

- the significant part of St Mary's Convent College Hall will be restored and structurally strengthened to ensure its preservation;
- the proposed building has been designed to be visually separate from the original hall but in keeping in character with the hall;
- any adverse effects on the environment from granting consent to the application will be minor.

The proposed activity was to be carried out in substantial accord with the design plan and the development has since proceeded according to the design plan and conservation policy set out in the conservation plan. This ensured, as the building was not in excellent condition, that there was the least possible loss of significant building fabric during the processes of stabilisation, structural strengthening, restoration adaptation and addition, enabling continual use of the whole complex.

Auckland City Council

The C&UDD is the largest and oldest dedicated heritage section in local government in New Zealand. The council has provided significant resourcing to the C&UDD and the C&UDD acknowledges strong support from councillors and council staff, which is critical for its continued success. The resourcing of the division is commendable and it has enabled the development of a sophisticated assessment system and the provision of advice on heritage matters to the public and for all areas of council operations.

The continuity of approach offered by experienced staff and the development of relationships between C&UDD staff and heritage professionals and developers have assisted heritage management and protection in Auckland City. A key aspect of the work of the C&UDD is the integrated approach to the development of heritage policy and administration. Each part of the division depends on the other and an

3.6 Issues arising from the case study

integrated and consistent approach can be taken with all heritage work by the division.

The ACC has taken an integrated approach to providing protection for heritage buildings and areas in the proposed Isthmus Plan through the scheduling of buildings and surrounds, and the use of conservation overlays and various residential zones. It is notable that "attitudes towards heritage zones have changed from hostility to wide popularity as the zones are used in real estate marketing as a sign of desirability and protection from inappropriate infill development" (Environmental Planning and Assessment 1995).

Council advocacy, encouragement of early contact and discussions, the provision of expert heritage and architectural advice, and the preparation of voluntary design guidelines assist landowners and developers to recognise and provide for the protection of heritage. The C&UDD approach has successfully encouraged early contact with owners and potential applicants, well before applications are considered. This reduces the need for expensive, and in some cases unnecessary, design work being commissioned.

The C&UDD will face a significant challenge in the preparation of appropriate provisions for the Central Area Section of the District Plan to protect historic and cultural heritage in the central business district because of the high level of economic pressure on the area. The inner city area has lost much of its heritage resource and will require a strong commitment from the council to protect that which remains.

There is some conflict between the ACC strategic plan provisions stating a commitment to fostering the heritage and cultural values of the city and the redevelopment of the Britomart precinct. The costly protection of "flagship" heritage buildings like the Town Hall and Civic Theatre precinct by the ACC is commendable and this action is required. However the commitment of council to the protection of heritage precincts like Britomart is also required in order to protect areas with more group and contextual values.

The ACC recognises the contribution of the Trust to the protection of heritage in Auckland and the two organisations have a close working relationship. When considering a resource consent application for alterations and additions to any scheduled item or the destruction of a Category B scheduled item, the council may invite opinion from the Trust or other recognised heritage bodies as appropriate (eg the Auckland Branch of the New Zealand Institute of Architects) except where the body concerned has objected to the application. This invitation is usually extended and applicants are encouraged to undertake any necessary deliberations in joint ACC/Trust meetings. This is more efficient than separate meetings and allows for informed decisions to be made by all parties.

New Zealand Historic Places Trust and HPA interim and final registration

In terms of emergency protection, the benefit of interim registration of a historic place under the HPA 1993 is that it has the same effect as the notice of a requirement for a heritage order. Interim registration provides up to six months while full registration is considered. It also provides for various development options to be discussed, which ultimately may assist the recognition and protection of heritage values. For example, a project may be redesigned to protect heritage

values, a protective covenant may be negotiated or the historic place may be purchased by an interest group or public authority.

The value of interim registration is reduced where negotiations are proceeding and yet final registration is confirmed or declined before the six months have passed. Unlike interim registration, final registration provides no protection to a building and a development can proceed. The Westfield Chimney may have been able to be protected if more time had been taken with negotiations before final registration was confirmed although the Trust cannot delay the consideration of full registration.

The interim registration of a historic place can take significant time and resources and it inevitably stresses head office, regional office, and branch relationships. The interim registration of the Westfield Chimney required a lot of research, by individuals and the Trust regional office and branch, to prepare a report for the Trust Board. The Trust regional offices need to be resourced to be able to use this mechanism where necessary or promote its use to interest groups or local authorities to enable a proposal for interim registration to be prepared.

Quickly following interim registration or a heritage order, a value management workshop meeting should be held between the Trust, the landowner, the developers, and other interested parties, in order to provide for an opportunity for negotiation and discussion about future use and protection before a crisis situation develops.

Like other Trust branches, members of the Auckland Branch of the Trust have the responsibility of monitoring development proposals that may affect Category II buildings registered under the HPA. However the level of activity is restricted by the ability, and resources available to, local branch members.

The Auckland Civic Trust and the Auckland Branch of the New Zealand Institute of Architects play an important role in promoting the preservation of buildings and areas of cultural heritage significance in the Auckland area although the involvement of any group or institute is limited by resourcing constraints. For example, the Civic Trust could apply to become a Heritage Protection Authority under the RMA in order to place a heritage order on a building, but this would have major financial implications and the Civic Trust could be required to purchase the building.

Recognition and assessment of heritage values

The ACC heritage assessment process and the resulting ACC heritage database is of high quality and should assist the protection of heritage in Auckland City. The assessment system is quantitative, transparent, and relatively objective. There are differences in opinion about whether a quantitative or a qualitative assessment should be used but the key requirement is that it is rigorous and well documented (see Appendix Six, Main Report).

The ACC took account of items registered on the HPA Register in considering potential heritage buildings for their schedule, but some heritage buildings have different levels of recognition from the Trust and the ACC. An issue is whether a standard national assessment process should be used by all responsible authorities.

The ACC assessment system has been reviewed and amended after the preparation of the Isthmus Plan in order to assess and allocate a value to groups of heritage items in the same area. This was recognised as being important citywide but

particularly in the central city where a number of heritage items warrant extra recognition because of their membership of identifiable and important groups. Higher scores have also been provided to regionally rare or unique heritage items and nationally rare or unique heritage items.

The ACC did not specifically inform any owner that a building was scheduled when the proposed district plan was notified but C&UDD staff informed owners that their building was being considered for inclusion in the district plan if the owners approached them during the assessment of any property. Once the district plan is approved, the ACC proposes to inform all owners of scheduled heritage items that their property has been scheduled and that design assistance and information is available from the ACC if it is required. Early consultation by owners with the C&UDD is positively encouraged.

The initial lack of recognition of the historic value of the Westfield Freezing Works and, in particular, the Westfield Chimney, is partly a reflection of the lack of appreciation for these types of industrial heritage in New Zealand. The freezing works industry has played an important role in the development of New Zealand's agricultural export economy and it is of important social, cultural and historic value. In the case of ACC, the chimney was not recognised because of the scale of assessment that was required as part of the preparation of the proposed Isthmus Plan. However it is important that all types of heritage including commercial, residential and industrial are recognised and protected and any heritage assessment system needs to be able to recognise all forms of heritage. The historical values of representative sites should also be recorded before they are lost through demolition, to enable records to be placed in historical archives.

The archaeological value of the Westfield industrial site was considered by developers and information was sought from the Trust and DOC but the wider social and built heritage values were not initially considered by any agency including ACC. If the area had been assessed at the time information was requested, the heritage values might have been able to be incorporated in the development of the initial subdivision design plan and the chimney might have been able to be protected.

Protection of heritage values

The commitment of the ACC to purchase, and in some cases retain, key properties for their heritage values is essential. In some cases, short-term council ownership will assist the final sale of a heritage building to a sympathetic owner. The establishment of a fund for heritage protection and the provision of heritage grants and incentives would further assist the protection of heritage in Auckland. This would provide a balanced approach to protection with both regulatory provisions and incentives. Heritage agencies require funding to be able to consider the purchase of heritage resources. The pooling of financial resources by the different agencies was not considered for the purchase and maintenance of the Westfield Chimney yet this option might have provided sufficient finance to enable the chimney to be protected, especially if more time had been available.

The use of value management workshops by the ACC has been very successful. These have involved relevant parties and have enabled various options to be discussed before final decisions are made. The workshops have much potential to be used for conflict resolution for other heritage issues.

For the Civic Theatre to be preserved it was essential that any proposal allowed for an economic use to be made of the theatre. Commercial development could then be used to offset the conservation cost of restoring the theatre. It was also important that the theatre would not be seen in isolation, as the context of the Civic Theatre precinct needs to be considered in relationship to other buildings in the central city (eg Town Hall, St James Theatre).

The preparation of a conservation plan was an important step in identifying the heritage values of the Civic Theatre, and ultimately in contributing to proposals to protect and restore the theatre. The St Mary's development also benefited from the preparation of a conservation plan and contributed to the process of creating a new design to harmonise with the most significant aspects of the old. The ACC has the ability to require and approve a formal conservation plan in the proposed district plan.

An issue is whether some form of conservation plan or heritage management plan should be prepared for all places of historic and cultural heritage importance. Conservation is wider than just preservation, which is only one part of a conservation plan that considers future use as well as the past. For the successful management and sustainability of historic and cultural heritage, it is important that old and new components of any design co-exist in harmony and that the places thus created attract people to them. The resulting quality of environment is greater than either component in isolation. This can only be achieved by demanding a high standard of design with an external evaluation process by appropriate heritage agencies.

The maintenance and adaptation of historic public buildings for modern use often has additional costs such as the preparation of a conservation plan. The funding of these types of costs can be met in part through the use of Lottery Grants Board Environment and Heritage grants.

State of built heritage

1. Inadequately controlled property development and rapid economic growth have had significant adverse effects on Auckland's built heritage and a considerable amount has been lost. Suburban housing developments, urban infill, high rise commercial building developments in the inner city and public infrastructure projects continue to place pressure on the built heritage of Auckland.
2. A major factor in the loss of the 1916 Westfield Chimney were the initial comments from agencies, which were based on inadequate assessment and gave a false impression to the developers that no heritage values were at risk.

Local government

1. Local authorities did not anticipate the scale of economic development and the consequent pressure on heritage in the 1980s.
2. The sustainable management and protection of the remaining built heritage of Auckland City is a major environmental management and planning challenge for the ACC under the RMA.

3.7 Findings

3. The resourcing and support of the C&UDD has enabled the development of a sophisticated assessment system, council advocacy, the provision of expert heritage and architectural advice, and the preparation of voluntary design guidelines to assist landowners and developers to recognise and provide for the protection of heritage.
4. ACC has invested considerable resources in the protection of "flagship" heritage buildings like the Town Hall and Civic Theatre precinct but has not matched this with the establishment of a fund for heritage protection and the provision of grants and other financial incentives for heritage protection.
5. The ACC heritage assessment process and the resulting ACC heritage database is of high quality and should assist in the protection of heritage in Auckland City. The assessment system is quantitative, transparent, and relatively objective, and the rigorous approach taken by ACC has provided for a high level of accountability in terms of s 32 RMA requirements.

National agencies

1. The joint working relationship of the Trust and ACC assists heritage protection in Auckland.
2. The level of activity of the Trust's Northern Regional Office and branch members is restricted by the limited resources available.

Conservation planning

1. The preparation of conservation plans for the 1929 Civic Theatre and the 1929 St Mary's College Hall was an important step in identifying heritage values and ultimately contributing to proposals to protect and restore the buildings.
2. The use of value management workshops by the ACC has been very effective in involving relevant parties and enabling various options to be discussed before final decisions are made.

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Orgias Cornthwaite Architects Ltd 1994: *A Conservation Plan. St Mary's College Hall Building*. Orgias Cornthwaite Architects Ltd: Auckland.

Salmond J 1994: *Civic Theatre Auckland - A Conservation Plan*. Salmond Architects: Auckland.

Consultation list

Auckland City Council:
 Conservation and Urban Design Division
 Property Department
Auckland Civic Trust
Broadway Developments Limited
Friends of the Civic
New Zealand Historic Places Trust:
 Head Office
 Northern Regional Office
 Auckland Branch Committee
Orgias Cornthwaite Architects
Salmond Architects

4. HERITAGE MANAGEMENT IN A PROVINCIAL CENTRE - NELSON CITY

Nelson has been described as “one of the few cities in New Zealand where the built heritage of the inner city still encapsulates an almost complete picture of New Zealand’s European building history from the 1850s” (Christie 1991, p 33). Despite this, buildings in the inner city area have continued to be demolished.

This study focuses primarily on issues relating to built heritage in Nelson and outlines policies being developed by the Nelson City Council to protect buildings and places in the inner city. It also briefly explores the management of Maori heritage. The study aims to provide an understanding of the way public authorities and interested parties in Nelson see their roles and relationships, and to gain an understanding of the effectiveness and suitability of procedures used by public authorities for the protection of built heritage.

Public authorities with statutory responsibilities for heritage management in Nelson City are:

- The Nelson City Council - a unitary authority with responsibilities under the Resource Management Act 1991
- The New Zealand Historic Places Trust (the Trust) - a statutory organisation with a private membership and with some statutory functions allocated under the Historic Places Act 1993.

Aside from the public authorities, interested parties who provided perspectives on the role of both agencies were:

- Friends of Nelson City
- The Nelson Branch of the National Council of Women
- Nelson Historical Society
- Dr John Mitchell (Ngati Tama, Ngati Rarua, Te Atiawa)

The Department of Conservation has no involvement in the management of built heritage in Nelson City and was not interviewed for this study.

Since the early 1990s, the Nelson City Council (the Council) has developed a proactive and positive approach towards the protection of historic buildings. This approach began to be developed as a result of:

- the Council’s controversial decision in 1990 to demolish the “1903” Municipal Building located opposite the Church Steps in the Central Business District (CBD) and the resulting rise in public awareness of the value of historic buildings and a desire to protect them;
- threats to significant buildings in the main street, Trafalgar Street (eg Stroud House, the Baird Building);

4.1 Background

4.2 Nelson City Council approach to heritage management

4.2.1 Background

- the demolition of buildings due to earthquake risk;
- inadequate protection for historic buildings in the transitional district plan and recognition by the Council that policies for protection need to be developed in the new district plan if protection is to be achieved.

Some of these issues were dealt with in an earlier report by the Parliamentary Commissioner for the Environment (PCE) concerning environmental issues in the Church Steps area, which amongst other things, stressed the need for the Council to strengthen its public consultation procedures (PCE 1991).

In 1992, as a result of the expression of public concern about heritage protection, the Council and the Trust agreed to jointly fund the Nelson Heritage and Streetscape Study, the aim of which was to "define and analyse the heritage and streetscape values and to recommend means of managing these urban elements" (Bowman 1994). Recommendations from the study included:

- listing of proposed heritage buildings in the district plan;
- writing of conservation plans for listed heritage buildings;
- protection of environs of listed heritage buildings;
- protection from "facadism" of listed heritage buildings;
- means for funding conservation;
- solutions to problems of earthquake risk to heritage buildings;
- education on the benefits of conservation of heritage buildings;
- the establishment of a heritage committee on Council.

Comments were made that the streetscape study was "before its time" and that when it was tabled, the Council failed to act on the recommendations. Some suggested that councillors had had insufficient involvement in the establishment of the survey and so failed to "own it". Mixed views have been expressed as to its usefulness. However the Council has recently resolved to develop policies on heritage management for its new district plan and some of the information contained in the streetscape study has been used to identify those buildings worthy of further assessment.

4.2.2 Nelson City Council approach to heritage management in the new district plan

At the time this case study was prepared, the new district plan had yet to be notified. However a great deal of policy work and public consultation had already underpinned the development of the draft plan by council staff.

Heritage policies developed so far aim to protect the character and appearance of building frontages and the streetscape in general rather than the particular architectural attributes or historic associations of individual buildings (Nelson City Council 1995a).

Thus the controls and guidelines being developed by the Council give more weight to street frontages than building interiors or back yards. This approach contains the following components:

Assessment criteria

The Council developed criteria for the assessment of heritage buildings with the assistance of a consultant and two retired architects recommended by the local

branch of the Trust. The criteria contain seven factors which are scored and ranked as follows:

- historical and social (out of 20)
- cultural and spiritual (out of 20)
- architectural (out of 20)
- group and setting (out of 20)
- landmark significance (out of 10)
- archaeological value (out of 5)
- technological and scientific (out of 5)

The final score determines whether a building falls into one of three proposed classes which require some form of protection. These are:

1. buildings, places and objects of major significance to the district, the protection of which is considered essential (except in exceptional circumstances);
2. buildings, places and objects which are important to the district and the protection of which is considered important (where this can be reasonably achieved);
3. buildings, objects and places which make a contribution to the heritage of the district, the protection of which is desirable and to be encouraged (Nelson City Council 1995a).

Using the above criteria, assessments of approximately 400 buildings have been made with the help of a local architect and members of the local branch of the Trust. Those buildings assessed were identified from the transitional district plan, the Heritage and Streetscape Survey, HPA Register and recommendations by the Trust and members of the public.

Many of the buildings which fall into the Council's three classes are not on the HPA Register and some buildings on the Register do not fall into one of the Council's protection classes (or at least are not given special priority). This reflects some difference in emphasis between the Council's criteria and those of the HPA, which are somewhat more diverse.

The assessment method can be used to assess not only individual buildings, but groups of buildings, "recognising that collective value of a group of buildings can be greater than the sum of its individual parts" (Nelson City Council 1995a). As a result, a number of inner city heritage precincts have been proposed. Some are already registered as Historic Areas under the HPA 1993 and others have been recommended in the Heritage and Streetscape Survey. It is of note that it was not until after the demolition of the 1903 Municipal Building in 1992 that the Nelson City Council was advised by the Trust that the building came within an area classified for a historic precinct (PCE 1991). One residential precinct in South Street has protection under the transitional district plan. Other residential precincts are also being considered. The Council is understood to be willing to consider supporting residents who wish to protect the heritage and amenity values of their neighbourhoods by developing ways of protecting those values through the District Plan. The degree of protection would depend upon the assessment of values.

One particular area being considered for a residential precinct was pointed out as an unusual example. It involves an area of housing dating from the 1920s and is "not what might commonly be called historic". The area was considered to be of interest because the relatively large group of houses:

- is of mostly similar age, with little interruption by modern housing;
- is a good example of their era;
- generally retains the architectural style of the period;
- is generally well looked after.

It was considered that the heritage value of the houses would increase with time (Nelson City Council 1995a).

Development of design guidelines

Design guidelines are being developed for the inner city area and for some residential areas. The guidelines are intended to cover the general features of the Nelson streetscape and heritage precincts in order to provide a context for the development of new buildings. Specific requirements relating to materials, colour or decoration are not covered (Nelson City Council 1995b). In the long term, the use of design guidelines may not guarantee the protection of older buildings. However any new buildings would have to be designed in sympathy. This potential loss of older buildings was a matter of some concern to the local branch of the Trust.

Buildings on Trafalgar, Hardy and Bridge Streets (within the ring road) will be subject to the City Centre Design Guideline. This requires that new buildings on these streets relate approximately to the height of their neighbours. Most older buildings in the CBD consist of two storeys. Where old buildings are replaced, developers may be reluctant to rebuild two storeys because of higher cost - particularly when only one storey is intended to be used. The Council has begun to encourage developers to build facades which are intended to make the buildings blend in. Moreover where new buildings must rise above their neighbours, visual treatment of exposed side walls must be considered (Nelson City Council 1995b).¹

Other measures being considered are incentives for developers to provide for residential uses on second storeys. The issues of higher costs and stricter building requirements would have to be addressed.

Proposed methods of protection

Rules

Rules are being considered in the draft district plan to protect both individual buildings and buildings within precincts. An example of the approach considered involves the following rules for activities as they relate to the three groups of buildings:

¹ A number of other measures proposed in the draft plan will have the effect of limiting the height of buildings and retaining viewshafts and sunlight access (R Witte, Director Resource Management, Nelson City Council, letter to PCE, 18 March 1996).

Table 4.1 Rules for selected activities

Group	Type of activity		
	Minor repairs and maintenance	alterations removal of item	demolition
1	permitted	discretionary	non-complying (approval to demolish will be granted in exceptional circumstances) ²
2	permitted	controlled	discretionary
3	permitted	permitted	permitted (provided 2 months prior notice given)

(Source: Nelson City Council 1995a)

Rules for heritage precincts are also being developed to deal both with buildings which fall into one of the above categories, and with those which do not. Amongst other things, they are intended to address the potential effects of subdivision and the removal and replacement of buildings. In some instances there are opportunities to enhance the heritage character of an area with the replacement of non-listed buildings with more sympathetic ones. Any replacement buildings would have to be designed in accordance with the guidelines governing the precinct.

Establishment of a Heritage Protection Fund

Partly in response to controversy over the demolition of, and continued threat to, older buildings in the CBD (see Chapter 4.2.3), the Council has approved the establishment of a Heritage Protection Fund to be managed by four trustees with the advice of an Advisory Committee to the Trustees, which has wide representation.

The objectives of the Trust are to:

encourage, promote and assist in (financially or otherwise):

- (i) the protection and preservation of such buildings, places and things in the Region the Trustees consider worthy of protection and preservation by reason of their cultural, architectural, historical or heritage significance or for any other reason.
- (ii) the enhancement of the streetscape and character of the City of Nelson.

The Council has undertaken to match private funds collected by the end of June 1996 up to a level of \$65,000. There are four trustees: the Mayor (Philip Woollaston), Chief Executive Officer of the Nelson City Council (Joseph Rudhall) (both ex officio) and two elected members (At present representing Friends of Nelson City and Nelson Historical Society). The first meeting was held in February 1996. With the establishment of the fund, the Council recognises that the protection of heritage buildings can incur high costs, for example for maintenance and earthquake strengthening. Two important issues yet to be dealt with involve fundraising and the development of criteria for the allocation of funds.

² Criteria for determining what are exceptional circumstances are being developed.

Other measures

Other ideas that have been considered include the development of an awards system for good design and restoration, and workshops (for example on architectural and engineering issues). A visit to Nelson by Dunedin City's architect, who gave a series of lectures on heritage related issues, was positively endorsed by interested parties.

4.2.3 Transitional issues

As already noted, the Council is still working under a Transitional District Plan which contains inadequate controls for the purpose of protecting built heritage, and historic buildings in the CBD have continued to be demolished. About 50 buildings and other items are listed in the transitional plan. To demolish or significantly alter a listed building requires a resource consent application (discretionary activity). The plan does not list any items in the City Centre.

The Council gave two examples of issues it faced in this regard. The first involved the Baird Building which, although listed on the HPA Register (Category II), was demolished in 1995. The second involved Stroud House, for which the Council tried unsuccessfully to initiate negotiations with the owners to have the facade of the building retained. The Council then issued a heritage order over the building. Although the order was eventually withdrawn, the Council bought the building in order to protect it and intends to onsell it. The Council is confident that it can recoup the costs. It is of note that the Council received advice that it should consult the building owner prior to issuing the Order. However the councillors did not accept this advice and considered that such consultation could nullify the intent of the Order by precipitating demolition (R Witte letter to PCE 18 March 1996). The building is now subject to a covenant which provides for any activities in respect of the building to comply with the provisions of the draft plan.

In light of the issues raised by such examples, the Council has developed a detailed consultation process to obtain feedback from, and build support amongst, the owners of buildings which are being considered for listing in the draft district plan. The Council has written to the owners of such buildings. Of those who have responded, about 50 percent were willing to have their buildings listed. While some owners have not agreed with the assessments of their buildings and the rules that are being considered, the general level of owner and public support for the Council's approach has pleased the Council (R Witte *ibid.*).

The lack of controls in the transitional district plan has raised concerns amongst members of the public about the impact of development on older residential areas for which no policy has yet been developed. One example involves residential properties near Wakefield Quay. Residential development in this area has traditionally occurred on a small scale - small houses and small sections - and while individual houses in themselves may have no historical value, the overall character of the area is said to be unique. There is some pressure from developers to buy sections and amalgamate them to build apartment blocks. The Council held a public meeting in February 1996 to obtain the views of residents and other interested parties. Staff of the Council advise that the meeting endorsed the development of design guidelines and special controls for the area to ensure that any development is sympathetic to the character of the area. The Council intends to include special provisions in the plan to achieve this. Interested parties who attended the meeting

have emphasised the need for ongoing public education on the use of these kinds of options.

The development of policy in relation to sites of significance to the tangata whenua is at a very early stage. The Council does not have a well developed list of sites. In 1994, the Council contracted a member of a local marae to develop a list as a basis for further consultation with tangata whenua. The list contains those sites which are already known and which are either on the HPA Register or the New Zealand Archaeological Association file. There may be many other sites which are not widely known.

Tangata whenua are generally reluctant to reveal the location of significant sites. It is understood that the publication of a list of registered sites is also of concern to them. The Council intends to carry out consultation with the tangata whenua to determine how these matters might be resolved. Tangata whenua have some concerns about the ability of councils to withhold confidential information because of the requirements of the Local Government Official Information and Meetings Act 1987. Tangata whenua would rather manage their own information base and make known only their general areas of interest in the Regional Policy Statement and relevant plans.

A major issue concerns the staff resources available to the Council to carry out this work. The planners involved are also working on other policy areas. Interested parties commented that larger councils have specialist staff, including urban design units and archaeologists. While the Council initially estimated that 10% of one planner's time would be required for heritage planning, a far greater amount of time has been required.

The development of any policy with significance for the tangata whenua depends partly on the establishment of consultation processes which are agreed to by both tangata whenua and councils.³ The Council wishes to continue to work with tangata whenua to develop an appropriate consultation structure through which many issues, including heritage management, might be addressed. The Council had undertaken to hold a hui with the iwi of the top of the South Island and the three local authorities (Nelson, Tasman and Marlborough) to determine how best to facilitate the participation of tangata whenua in a relationship with all three councils, and how to resource it. The interests of six iwi fall within the Council district. While there are many issues to address, it is understood that tangata whenua have a positive relationship with the Council.

Since the early 1990s, groups such as the Nelson Branch of the National Council of Women, Friends of Nelson and the Nelson Historical Society have played an active role in raising heritage issues in public meetings and in the media. The Nelson Branch of the Historic Places Trust has tended to work behind the scenes in dealing with private building owners (see Chapter 4.3). All interested parties spoken to were generally supportive of the work being carried out by the Council and all considered that the Council's approach has improved vastly in recent years.

4.2.4 Council approach to the protection of Maori heritage

4.2.5 Issues for Council in developing its heritage policy

³ For more detailed discussion of some of the principles involved, see PCE 1992

4.3 The role of the New Zealand Historic Places Trust in the Nelson Region

The New Zealand Historic Places Trust (the Trust) is represented in the Nelson Region in two ways:

- through its Wellington staff, both those of the Head Office and the Regional Officer, whose area of responsibility includes Nelson;
- through its local branch (also known as the Nelson District Committee)⁴ which consists of members who represent the interests of the Trust on a voluntary basis.

A number of issues relating to the structure and operations of the Historic Places Trust are of concern to the local branch. These include the low level of contact between the branch and Head Office and what is seen to be the "fuzzy" role of the branch in relation to advocacy at the local level. For example, on occasions when Head Office has become involved in local issues, the branch has not been consulted and an important source of local knowledge overlooked. The case of the Redwood Stables was used to illustrate this point. When Transit New Zealand proposed to widen a nearby stretch of road, Head Office did not object to the removal of the building because of its proximity to the road and its poor condition. The Trust also consulted with the local branch over this issue. Following the removal of the stables, the Head Office gave permission for the removal of the archaeological remains without consultation with the branch. Head Office advises that in relation to authorities to destroy archaeological sites under sections 11 and 12 of the HPA, internal procedures have since changed so that the checklist for authorities to destroy archaeological sites now includes branch involvement (G Whitehead letter to PCE March 1996).

Members of the local community tend to regard the branch and Head Office as one and the same. Because the branch has some restrictions from becoming involved in formal statutory proceedings, its perceived lack of activity in such processes gives the Trust in general a reputation for being "toothless". On the other hand, staff of Head Office point out that any legal action becomes a liability on them and not the branch. Its priorities must be identified in a wider context. The branch chairperson and one member of the branch have a delegation to lodge submissions or give consent as an affected party on historic places (sites and buildings) other than Category 1 and subject to consultation with Trust staff.

On the issue of priorities, Head Office is making submissions on all district plans once they are notified. In the case of the Wellington Region, which covers Nelson, special effort has been made to provide input into the Wellington District Plan

⁴ Some persons spoken to expressed some confusion about the use of the terms "branch" and "district committee". According to the rules of the Trust, the Trust may establish local branches for the furtherance of its work. These branches have been known as district committees but are now officially called local branches. However the rules have as yet to be amended to reflect this change. According to the rules, the number of committees established, and the boundaries within which each committee may operate, shall be as defined by the Board based upon Regional Authority boundaries as constituted under the Local Government Act (No 3) 1988 (rule 21). Members of the committees are elected by the membership of the Trust based within each committee boundary at each alternate District Annual General Meeting. One member is also appointed by the Regional Conservator of the Department of Conservation. Other members may be appointed by the Board. Officers of the committees are elected by members of the committee at its first committee meeting after the District Annual General Meeting. "Branch" and "District Committee" are understood for the purpose of this chapter to be one and the same.

during its draft stages. Heritage buildings in the Wellington area are considered to be subject to a greater degree of pressure from development than other areas within the region. Nevertheless, Head Office intends to make a submission on the Nelson District Plan once it is notified.

Members of the branch pointed out that because of their relationship to Head Office and the restrictions that therefore apply to what action they can take, their role is rather different from that of other local interest groups. They often work with private owners behind the scenes, contributing to public impressions that the Trust is not doing anything. Concern was expressed about the minimal resources provided to the branch to carry out voluntary unpaid work.

Some concerns were expressed by members of the local branch about the overall structure and resourcing of the Trust as a whole. Some considered that it might carry out its functions better if a small staff was retained in Wellington with more staff appointed in the regions. Head Office advises that the bulk of its staff are in the regions; however they are mainly properties staff, not heritage conservation staff. Even so, the latter are currently fairly evenly split with 10 full time equivalents (FTE) in Head Office and 9 FTE in the regions as at December 1995 (G Whitehead letter to PCE 28 March 96).

It was also considered by the branch that the Trust should prioritise its Register, "go back to its knitting" and take some sites off its Register so that it can respond more quickly to major issues. Some also considered that a structure either within DOC, or similar to DOC, could be established to manage New Zealand's heritage.

While the bulk of the branch's activities involve the protection of buildings, it does seek to encourage Maori participation in the branch's activities. Comments were made to the team by a representative of the tangata whenua that the branch does good work on the issues that members are concerned about but that in respect of Maori issues, the Trust as an organisation appears to operate in Nelson by remote control. Moreover there is very little understanding locally of the work carried out by the Maori Heritage Council. Tangata whenua appear to prefer dealing with the relevant authorities in respect of Maori heritage as they are able to do so face to face.

Other interested parties described the Trust as "toothless" and wanted to see it given more powers and resources to act. Some concern was expressed that members of the Trust within the Nelson branch boundary are not kept informed by the local branch nor are their comments sought on local heritage issues. Moreover, some concern was also expressed that the local branch officers are not elected by members of the Trust within the branch boundary.

This case study raises questions about the roles and relationships between:

- the Nelson City Council and the Trust;
- the Head Office of the Trust and the local branch;
- the Resource Management Act (RMA) and the Historic Places Act (HPA).

4.4 Discussion

4.4.1 Powers and functions of public authorities

Of the two agencies which are the subject of this case study, the Nelson City Council appears to be taking the lead in developing policies to protect heritage buildings in the Nelson area, although there is still much work to be done to develop policies for the protection of Maori heritage. As far as the protection of built heritage is concerned, the Council's approach is largely community driven - with assessment criteria and policies largely determined by what the Council considers is important to the local community.

The Trust and local authorities operate under different legislation and while their aims may overlap they are not necessarily the same. In Nelson, the Council's approach focuses on streetscape and amenity values whereas the Historic Places Trust is more concerned with the historical and cultural values of buildings and places. Historical interest is only one of a number of elements which may render a place one of special interest worthy of protection by means of a heritage order under the RMA (s 189). Moreover, the RMA provides for public involvement in the process of listing and protecting heritage buildings; the HPA does not. Under the RMA, councils must be responsive to the wishes of their communities (see Chapter 2.8.6, Main Report).

There appears to be a clear distinction between the abilities of each agency to implement measures to protect heritage buildings. In the Nelson context, the Council is developing methods to protect buildings while the Historic Places Trust has contributed information and expertise.

While joint initiatives between both agencies are both possible and productive, as shown by the joint funding of the Heritage and Streetscape survey, the priorities of the Trust (Head Office) and its regional office in recent years have largely been driven by their understanding of where the greatest risks to heritage are. Even then, the activities of the Trust appear to involve advocacy and the provision of information rather than the implementation of measures to protect buildings. The Trust is able to exercise regulatory measures such as interim registration and heritage orders. However Head Office points out that its emphasis on making submissions to district plans is consistent with the government's preference for action through voluntary mechanisms rather than regulation, reflected in Board policies and Crown purchase priorities (G Whitehead letter to PCE March 1996).

The role and relative priorities of each of the two agencies raises questions about which should be responsible for heritage of "national significance" and heritage of "regional significance", and how such significance should be defined. The level of significance of Maori heritage is also a major issue. In view of the Treaty of Waitangi, and the relationship established between the Crown and Maori, the protection of Maori heritage is arguably of national significance. While the Nelson example indicates that there are potential advantages for the tangata whenua in being able to deal with local authorities face to face, it is not clear that the RMA is sufficient on its own to protect Maori heritage. The regulatory role of the Trust in relation to archaeological sites and wahi tapu overlaps with the role of councils. These issues are explored more fully in other case studies and in the main report.

Many of the problems faced by the Nelson City Council and the public in protecting heritage buildings are substantially transitional problems and demonstrate that the awareness and concern of the public about the protection of heritage will generally be ahead of progress in updating plans.

In the example contained in this study, the heritage order issued by the Nelson City Council proved to be an effective tool for protecting a building at short notice. That the Council ultimately purchased the building indicates that a financial commitment is an essential part of the heritage order mechanism, especially during the transitional period before plans prepared under the RMA are operative. The Council's confidence that the building can be on sold at no loss partly reflects the economic viability of the building. In other cities and provincial centres, the ability to achieve a no cost result may not be possible.

In spite of its willingness to issue a heritage order in the case of Stroud House, the Council recognises that it is far more desirable and cost effective in the long term to build public support for heritage protection through early public consultation and education. The district planning process provides an effective tool as long as measures such as heritage orders can be used in emergencies. Where any regulatory measures are proposed, early consultation with affected parties is essential. The involvement of the local community as the leader in promoting their area as heritage precincts appears to be a key.

Some concerns were expressed about the Council's assessment system for heritage buildings. These centred on the scoring system used and the relative priority given to the values scored. For example historical and social values attract 20 points and archaeological values only 5. Giving a building or place a total score may serve to overlook the high score that may be attracted by one value (for example cultural and spiritual) as opposed to a low score that may be attracted by others (for example group and setting). However, council staff advise that the heritage assessment system is for assessing heritage buildings, places and objects. It is not intended to be used to assess archaeological sites or wahi tapu. Moreover, they recognise the system is to be used as a tool but that in the end value judgements are required (R Witte letter to PCE March 1996).

The heritage fund is potentially an effective means of supplementing heritage protection initiatives in Nelson; however it is as yet too soon to comment on its effectiveness. Much will depend upon the level of support given to the fund by the community

As far as Maori heritage is concerned, there are a number of issues to be addressed. The first relates to confidentiality of information and how confidentiality might be maintained. Where it is agreed between the Council and the tangata whenua that methods should be devised to protect sites through the district plan, other issues which could be explored include the use of historical information to provide a means of identifying the approximate whereabouts of sites without the need for carrying out extensive archaeological surveys. Such an approach might be useful if general zones of Maori or archaeological interest were to be identified in the district plan.

4.4.2 The effectiveness and suitability of procedures for protection

4.5 Findings

1. The Nelson City Council is taking the lead in developing policies to protect heritage buildings in Nelson, with the New Zealand Historic Places Trust playing a supportive role through the provision of information and advice and local consultation through the branch and other groups.
2. In Nelson, the Council's approach focuses on streetscape and amenity values whereas the Trust is more concerned with the historic and cultural values of buildings and places.
3. In the Nelson context the use of a heritage order was proven to be an effective way of providing immediate protection to a site. However its effectiveness was dependent upon Council's willingness to purchase the building.
4. In the long term, the development of policies in consultation with the community is an effective way of protecting heritage which is valued by that community.
5. The establishment of incentives such as a heritage fund may prove to be an important component of policies for protection.
6. In relation to Maori sites it is not yet clear how the roles of the Council, the Trust and tangata whenua groups should be reconciled.
7. The respective roles of Trust staff and the branch are unclear. This hinders the effectiveness of the branch through a public perception that it is inactive.

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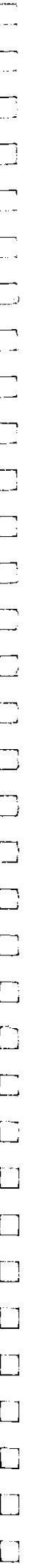
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Nelson City Council
New Zealand Historic Places Trust:
 Head Office
 Nelson Branch
Friends of Nelson City
National Council of Women, Nelson Branch
Nelson Historical Society
Dr John Mitchell (Ngati Tama, Ngati Rarua, Te Atiawa)

Consultation list



5. SELECTED OVERSEAS EXAMPLES OF HISTORIC AND CULTURAL HERITAGE MANAGEMENT¹

This chapter briefly explores a selection of overseas models for historic and cultural heritage management with particular emphasis on Australia and especially New South Wales. Legislation and structures in both the United Kingdom and the United States are briefly examined.

5.1 Introduction

Australian Heritage Commission (AHC)

The Australian Heritage Commission is a federally based authority responsible to the Federal Minister for Environment, Sport and Territories. The Commission consists of a Chairman and between four and six commissioners appointed by the Governor-General. Administrative support is provided by a secretariat located in Canberra of about 140 people (AHC 1994a).

5.2 Australian Federal Structures

The Australian Heritage Commission Act 1975 defines the national estate as: "those places, being components of the natural environment of Australia or the cultural environment of Australia, that have aesthetic, historic, scientific or social significance or other special value for future generations as well as for the present community". These are by implication items and places of national significance; many are private property and are also covered by various state Acts. However the powers of the Commission relate solely to properties controlled by the Commonwealth Government and do not extend to private property (AHC 1994b).

The responsibilities of the AHC include:

- advising the Commonwealth Government on national estate conservation issues;
- compiling a register of national estate places throughout Australia although registration does not ensure protection. The AHC does not own or manage any national estate places;
- coordinating the national estate grants programme in cooperation with state and territorial governments and administer the national component. Grants are available for identification, conservation, promotion and education purposes for places listed on the Register;
- encouraging community appreciation of the national estate through the provision of information, education and training.

The Commonwealth Government is the only body whose actions are restricted as a result of the listing of a place on the Register and Commonwealth agencies are required not to take any action which would adversely affects a place listed on the Register unless there was no "feasible or prudent alternative". The Commonwealth Government is a major owner of property and agencies are required to cooperate with the AHC to identify, conserve and enhance important places through heritage audits and the preparation of management plans and conservation plans.

¹ This chapter is largely based on a report prepared for the Parliamentary Commissioner for the Environment by Di Stewart and Associates April 1996.

At 30 June 1995 there were 11,031 places listed in the Register and 239 were on the interim list. The largest proportion of these are historic buildings and places, but places of natural significance may cover large areas and include other significant natural sites as well as historic and Aboriginal and Torres Strait Islander sites (AHC 1995).

AHC programmes

- the National Estate Grants Programme: this programme allocates around A\$4.67 million annually to projects involving the conservation of the national estate. These grants are administered through state heritage organisations. On average each \$1.00 of funding generates almost three times its value in heritage work (see Chapter 5.3.2).
- tax incentives: during the 1994 year the Federal Government introduced a tax incentive scheme for heritage conservation which built on the ideas used in the 1970s and 1980s United States schemes. It is based on a 20c in the \$1.00 tax rebate (as opposed to a tax deductibility) and is available for work on buildings listed on the National Estate Register or state registers. Applicants must spend at least A\$5,000 and the scheme is currently capped at A\$9.5 million worth of conservation per year at an approximate cost to the tax payer of A\$2 million (Department of Communications and the Arts 1995).
- educational and information programme: this programme provides conservation information and advice including information to the media and a publication programme. It also provides teaching resources for schools and a library and bibliographical service.

Intergovernmental and community linkages

Communication with intergovernmental agencies both horizontally with other federal departments, and vertically through state and local government, is considered important. Regular meetings are held with all state heritage bodies.

It is recognised that the Commonwealth Government is a major owner of property with heritage values throughout Australia and the Act requires other commonwealth agencies to co-operate with the commission in identifying, conserving and enhancing these places. Heritage audits of property owned and managed by all commonwealth departments and agencies are undertaken and management plans and guidelines developed to better conserve them.

Historic Shipwreck Act 1976

Under this Act, all shipwrecks or associated articles more than 75 years old which are in open waters below the low water mark and adjacent to the coast are protected. The Act is administered through state government agencies. A national Register of Historic Shipwrecks is maintained and people who find shipwrecks are required to notify the state authority nominated to administer the Act. Shipwrecks cannot be disturbed or altered. Penalties up to A\$1,000 or imprisonment for one year or both are available under the Act.

World Heritage Properties Conservation Act 1983

This Act protects property subject to World Heritage List nomination under the Convention for the Protection of the World Cultural and Natural Heritage, which has been adopted by the General Conference of the United Nations Education, Scientific and Cultural Organisation.

Heritage management at state level

A Council of Heritage Ministers was established in 1991 and this has encouraged discussion of cultural heritage protection at a state level. Most states have reviewed or are in the process of reviewing their initial heritage legislation, and have moved on from a reliance on restrictive orders and penalties, in favour of legislation which encourages conservation by means of incentives and agreement. Heritage is now viewed as a part of the overall conservation and environment system (James 1992).

The Heritage Act 1977 is the major piece of heritage protection legislation in New South Wales. The Heritage Act is concerned with all aspects of conservation ranging from protection against damage and demolition of heritage items to restoration, promotion and education. It is administered by the 12 member Heritage Council of New South Wales (see Chapter 5.3.2) set up under the Act. The Act states that the Director of the National Parks and Wildlife Service and the Government Architect are to be members of the council. The Chairman and nine others are appointed by the Minister for Urban Affairs and Planning. These represent:

- the Department of Urban Affairs and Planning
- the National Trust of Australia (New South Wales)
- property rights of citizens
- the Royal Australian Historical Society
- the New South Wales Chapter of the Royal Australian Institute of Architects and the New South Wales Division of The Royal Australian Planning Institute
- the Labour Council of New South Wales
- local government
- conservation interests generally
- building, development and property industries.

The Council gives advice and makes recommendations on matters affecting environmental heritage and on the implementation of the Heritage Act to the Minister for Urban Affairs and Planning.

Conservation orders

The primary instrument of protection for heritage items available under the Heritage Act are Conservation Orders. Conservation Orders may provide either interim or permanent protection.

- *Interim Conservation Orders* are made by the Minister without the necessity of the Minister notifying any person in order to prevent the demolition of an item. They take effect when they are published in the Government Gazette (in extreme circumstances this can necessitate the publication of a special issue of the

5.3 New South Wales

5.3.1 Legislation: the Heritage Act 1977

Government Gazette). They remain in force for up to one year or alternatively until they are revoked or allowed to lapse.

- *Permanent Conservation Orders:* The Minister may, after receiving a recommendation of the Heritage Council, propose to make a Permanent Conservation Order. Public notice of the proposal is required to be given to the owner or occupier as well as to the local government authority concerned to enable them to make submissions on the proposal.

Also, the owner of an item may request the Minister to make a Permanent Conservation Order over their item. Submissions for or against may be made within a period of 28 days. In the case of a submission against making a Permanent Conservation Order, the Minister appoints a Commissioner of Inquiry to hold an inquiry and to prepare a report for the Minister. The report gives a summary of the submissions and is made available to the public. If a Permanent Conservation Order is made by the Minister it is notified in the Government Gazette.

A Permanent Conservation Order can be revoked. In general this involves similar procedures as for the making of the order. It is an offence to allow any building or work which is subject to any of these orders to fall into disrepair for the purpose of effecting or enabling demolition or enabling the development of the land on which the item is situated as of adjoining land.

An Interim or Permanent Conservation Order controls:

- demolition of buildings or works
- damage to or despoliation of notice, places or land including the display of any relics or advertisement
- development of land on which buildings, works or relics are situated
- alteration of buildings, works or relics.

A person intending to carry out any kind of Activity on an item protected by a conservation instrument must first obtain the approval of the Heritage Council before submitting an application to a local council. Where the Heritage Council thinks that the proposal, if approved, would materially affect the heritage value of an item, it may advertise the application for public submission. The Heritage Council may grant approval for work to an item but in doing so may impose security in such as form and such an amount as they regard as appropriate as a condition of its approval.

An appeal can be made to the Minister against a decision by the Heritage Council about an application for up to 12 months after the determination of the Minister. The appeal is heard by a Commissioner of Inquiry, appointed by the Minister, who reports back to the Minister. After considering this report, the Minister may dismiss the appeal, allow the appeal either conditionally or unconditionally or return it to the Commissioner of Inquiry for further consideration.

Further orders are available under the Heritage Act:

- orders to control demolition: an order under section 130 or 136 of the Act may be made by the Minister² or the Chair of the Heritage Council to control and restrict

² Powers are also delegated to local government authorities to enable councils to achieve immediate demolition control over heritage items identified in draft local environmental plans but the plan must have been agreed to by the Heritage Council.

the causing of harm to a building, work, relic or place. It takes effect when published in the Government Gazette and remains in force for one year.

- The Heritage Council has 40 days following receipt of a notice of a proposal to harm a building, work, relic or place (under section 132 of the Act) in which to advise the Minister whether to proceed with a Conservation Order, to recommend revocation of the s 130 order or to take no further action. The section 130 order is principally a holding measure which allows time to investigate the significance of the item, the effect of the proposed harm and to decide whether any further protective Action needs to be taken under the Act. Where no subsequent Conservation Order is made, the section 136 order may be revoked or allowed to lapse at the end of the 40 days.
- in addition, the Minister (under section 129 of the Act) may curtail or modify laws or regulations which operate against the conservation of heritage items. This is done by orders published in the Government Gazette. Where another Minister is responsible for the administration of any such law or regulation, an order may only be made with the concurrence of that Minister.

Local government and heritage plans

These provide for conservation provisions to be incorporated into environmental planning instruments (the equivalent of New Zealand's district plans) made under the Environmental Planning and Assessment Act 1979. They include conservation provisions for individual buildings and sites as well as to the conservation of larger areas such as historic precincts or cultural landscapes.

Permits for archaeological excavation

Disturbance or excavation of land, including submerged lands, containing or likely to contain relics can only take place when an excavation permit has been granted by the Heritage Council. Any relics discovered during an excavation may be required to be given to a specified museum.

Shipwrecks adjacent to the NSW coast

The Heritage Act only provides conservation provisions for shipwrecks and submerged cultural heritage in the internal waters (rivers, harbours, lakes) of the state. As such it complements the Commonwealth Historic Shipwrecks Act 1976 which provides conservation provisions for shipwrecks or objects associated with shipwrecks adjacent to the NSW coast below the mean low water mark.

Heritage Conservation Fund

The Heritage Act also establishes a Heritage Conservation Fund which consists of money granted from Parliament, fees and charges under the Act, penalties recovered pursuant to the Act, money from the disposal of any property and that received by the fund by means of gifts and bequests. The fund is used for the running and administrative expenses of the Heritage Council itself and of the properties which it owns, the acquisition of property and its conservation, and the provision of grants and loans for the purpose of promoting and assisting the conservation of items of environmental heritage in New South Wales (see Chapter 5.3.2).

Rating and land tax relief

Land subject to a Permanent Conservation Order is valued under the Heritage Act for rating and land tax according to a special heritage valuation based upon its existing use, not its best potential use. This may result in a reduced rate and tax burden. Where land tax is payable on an item covered by a Permanent Conservation Order it is calculated separately as if the land were not owned in conjunction with other land.

Heritage and Conservation Registers

All government departments are required to keep a Heritage and Conservation Register which includes heritage items subject to a conservation instrument or which could, in the opinion of the Heritage Council, be subject to a conservation instrument and which is owned or occupied by them or vested in them. Such registers are required to be amended annually.

Penalties

Financial penalties and imprisonment up to six months or both are available for offences against the Heritage Act as are orders restricting development. In the latter case the Minister can direct that "no development or use of the land on which that item is or was situated and shall be carried out during such period, not exceeding 10 years and unless it is for the purpose of restoring item".

5.3.2 Heritage Council and Heritage Branch of the Department of Urban Affairs and Planning

Objectives and functions

The functions of the Heritage Council are to carry out the objectives and functions of the Heritage Act. In practice, however, emphasis on some objectives and functions of the Act over others has occurred and this has changed over time. In the years after the Heritage Act's enactment in 1977 and through the 1980s great emphasis was placed formal heritage protection through the use of Interim and Permanent Conservation Orders with a total of 750 orders being made between 1977 and 1994. But during recent years the Heritage Council has shifted its role from "regulator to facilitator" and as a consequence in the 1994 -1995 year only two Interim Conservation Orders and one Permanent Conservation Order were made. Local government is increasingly being seen as the appropriate agency to regulate and protect heritage items and areas, and much greater emphasis is now placed on the Heritage Council assisting them to do this especially through information and educational activities. These activities now have a principal focus on the needs of local government, state government agencies, key community groups, heritage consultants and other professionals involved in heritage management decisions.

Technical assistance

Development applications for work on heritage items covered by Conservation Orders or for work affecting heritage items listed in Local and Regional Environmental Plans are referred to the Heritage Council for comment and advice, and are processed by the staff of the heritage branch. This work makes up a large amount of the regular Activity of the branch.

Resources and staffing

The Heritage Council consists of a Chairman and 12 members (see Chapter 5.3.1). Expert advice on conservation issues is provided by nine sub-committees of the Council. Membership of these sub-committees is drawn from members on the Council itself and other conservation experts. The sub-committees are: Church Property Advisory Panel, Information and Education Committee, Archaeology Advisory Panel, Fire Advisory Panel, History Advisory Panel, Pipe Organ Advisory Panel, Heritage Assistance Advisory Panel, Heritage Council Advisory Panel, Technical Advisory Group on Materials Conservation (TAGMAC)

The Heritage Council is serviced and supported by the Heritage Branch of the Department of Urban Affairs and Planning. Its staff are officers of the Department and are a professional multidisciplinary team. Some (including the manager of the education and information programme) are full time in-house consultants. Numbers (excluding clerical staff) vary but are relatively modest (currently under 20). This team provides administrative and professional support and advice to the Heritage Council and its sub-committees. It has recently been announced by the NSW Premier that the Heritage Council will be relocated outside the Department of Urban Affairs and Planning to restore some degree of independence to the Heritage Council.

Current annual NSW Government financial allocation for the identification and conservation of heritage items and for community information and education is approximately A\$2 million (excluding the Federal Allocation for National Estate Grants).

Programmes

State government agencies are assisted in the identification, assessment and planning for the future of state owned heritage assets. Under the Heritage Act they must keep heritage conservation registers (see 5.3.1) and they must prepare conservation or management plans for heritage property that is no longer required by state government before its disposal. State owned heritage includes buildings, bridges, reservoirs, railways and rolling stock.

Local government's role in heritage identification and management is now regarded as the most effective method of heritage conservation in New South Wales. Since 1983 the Heritage Assistance Programme (see below) has been used to assist local governments to secure the service of heritage advisers who inform local governments about heritage matters and guide them in appropriate management. Most heritage advisory positions are part time and a number of heritage advisers service more than one local government. Such appointments are linked to minimum standards of heritage training and experience, and an accreditation programme is currently being developed for heritage advisers.

Financial support from the Heritage Assistance Programme is also provided for local government heritage studies to identify and confirm heritage resources and thematic studies (eg for art deco buildings in NSW, and for Sydney's twentieth-century buildings). The Council also advocates Main Street Programmes for the retention and revitalisation of historic town centres and provides funding for Main Street heritage study projects. Draft Local Plans with Heritage Provisions are submitted to the Heritage Council for comment. In 1994/95, 23 of these were considered covering 1,016 heritage items and two conservation areas.

Seminars and information packages are specifically targeted to local government councillors after each local government election.

Financial assistance - the NSW Heritage Assistance Programme

This incorporates the National Estate Grants Programme for NSW (see Chapter 5.2). Since 1988, 2,400 projects have been approved totalling A\$26.6 million. Most projects are funded on a dollar for dollar basis with funding provided by the applicants. This effectively doubles the actual sum spent through the project. Where grants are passed on to individuals through, for example, a local government heritage fund partly funded by the NSW Heritage Assistance Programme, the dollar for dollar multiplier again applies, thus tripling effect of the funding. Some calculations show the multiplier as being higher than this because a much higher sum is spent on the project by the owner than that applied for. As well as assisting owners of private and community buildings with site specific work, regional and local government are specifically targeted for assistance through the funding of studies and surveys, heritage advisers, the establishment of heritage funds and other promotion projects. For a full outline of the grants made by the fund in 1993/1994. In 1994/1995, 24 local heritage funds were established and 54 heritage advisers to local government were joint funded.

Heritage conservation information and education programme

The primary objective of the information and education programme is that of improving the standards of information and managerial competence at local government level. This includes:

- developing information to encourage community awareness and appreciation of heritage;
- working with governments, owners and the community to identify and conserve environmental heritage;
- promoting training and education in heritage management.

Specific strategies include: the provision of guidelines to assist decision-making at the local level; the development of criteria to give greater rigour and transparency to the identification and management of heritage resources; the provision of guidelines, standards and advice for property owners and explanatory information on conservation incentives; general guidance to government organisations in the development of heritage registers.

The Heritage Council promotes training and education in heritage management for local councils, community groups and property owners, including training and support programmes for heritage advisers. A wide range of publications are produced by the Heritage Council. Some are cheaply produced and easily updated like planning practice notes, technical notes and guidelines which are distributed free, others are well produced and changed for.

Liaison with other agencies

At national level, the chairs of the state heritage councils meet twice a year. At state level, joint projects are undertaken with other state government departments like that

of the Maintenance of Heritage Assets Seminars and Manual jointly with the Public Works Department.

The Heritage Council maintains formal and informal links with the Australian National Trust. Local government meetings with councillors and other local government representatives form an essential part of the Heritage Council's strategy.

The management of Aboriginal heritage in NSW is governed by a multitude of statutes operating at different levels of government. At Commonwealth level, legislation includes the Australian Heritage Commission Act 1975, the Aboriginal and Torres Strait Islander Heritage Protection Act 1984, the Protection of Moveable Cultural Heritage Act 1986, the Native Title Act 1993 and the World Heritage Properties Conservation Act 1983. At NSW state level, legislation includes the National Parks and Wildlife Act 1974, the Land Rights Act 1983 and the Environmental Planning and Assessment Act 1979. Local government also has broad planning and regulatory powers. Within this overall structure there are varying definitions of indigenous cultural heritage and different policies.

5.3.3 Cultural heritage management in New South Wales

The National Parks and Wildlife Service was established under the National Parks and Wildlife Act 1974 and it has the responsibility to protect all Aboriginal cultural sites and relics in NSW as well as the identification and conservation of historic places that are within national parks and nature reserves in New South Wales. Under the NSW National Parks and Wildlife Act 1974:

- indigenous cultural heritage is defined as consisting primarily of relics classified as "any deposit, object or material evidence (not being a handicraft made for sale) relating to indigenous and non-European habitation of the area that comprises New South Wales, being habitation both prior to and concurrent with the occupation of that area by persons of European extraction";
- all Aboriginal cultural remains are the property of the Crown;
- there are no legislative mechanisms for protecting confidential information such as the location of sacred sites.

The limited definition of Aboriginal cultural heritage in the Act fails to acknowledge indigenous connections with natural resources, sites of spiritual significance and traditional knowledge. For instance land is not recognised as part of the Aboriginal heritage. To some extent the definition is extended by provisions which allow the Minister to declare areas that are or were of special significance to Aboriginal culture and these places are then protected from unauthorised damage or destruction. However, despite this provision, only nine areas had been declared by 1995. The Commonwealth Native Title Act 1993 has recently linked sites and relics to the recognition of Aboriginal ownership or rights to land and natural resources (English 1996).

The NSW Heritage Act 1977 recognises the concept of heritage precincts but the Act is not applicable in most cases to the preservation and definition of sites important to Aboriginal people. In recent years there have been proposals to make significant changes to the structure of Aboriginal heritage management in NSW with the replacement of the National Parks and Wildlife Service as the chief regulating agency for Aboriginal heritage management with a new indigenous managed heritage agency (Ibid).

Local authorities under the Town and Country Planner Act 1971 can issue Building Preservation Notices for significant at risk buildings. The effect lasts for six months or until the building is added to the Department of Environment's list. Local authorities also have extremely wide discretion to refuse or accept applications for planning and development consents. Preceding such decisions, lengthy discussions can occur between the developer and the local authority. This consensual approach can result in section 52 Agreements contracted between the two parties and may involve conservation gains, for example by consent being given for higher density plus ratio on a longer commercial element in a development in return for conservation of a listed building.

There is little direct grant aid available for the preservation and maintenance of listed buildings. Local authorities can make grants and loans available. The Historic Buildings and Monuments Commission can make grants for the repair of buildings of outstanding architectural and historical merit. The National Heritage Fund can make grants and loans for the acquisition, maintenance or preservation of items of outstanding scenic, historic, aesthetic, architectural or scientific interest. The only tax relief available occurs where supplies and work made in connection with listed buildings or zero rated for VAT purposes.

The National Trust, a major heritage organisation in the UK, has similar objectives and operates similarly to the National Trust in Australia.

5.6 United States of America

The national body which lists places of historic and cultural heritage significance in the United States is the National Park Service which maintains the National Register of Historic Places. The Register is a list of districts, buildings, sites, structures and objects of local, regional or national significance but the list does not guarantee protection of items or areas. Some protection of heritage sites on federal land is afforded by the Historic Preservation Act 1980, which requires an environmental impact assessment federal projects and appropriate mitigation of effects. Protection is handled at state level and varies widely across the country. Most effective heritage protection control seems to occur at local government level with much use is made of zoning ordinances. Demolition controls by local government from six months to two years are used, for example where a preservation plan is being prepared for a city.

Fines are used as a disincentive to deter demolition in some areas. For example, the District of Colombia requires the full restoration of a building following illegal demotion or part demolition. "Demolition by neglect" is covered by many local governments. Often ordinances allow municipalities to do the necessary work if the owner refuses and after the work is completed a lien is created over the building as security for payment.

State and local governments can schedule buildings as landmarks. For example under the New York City Landmarks Law an owner may present evidence to the Landmarks Preservation Commission that a property cannot earn a reasonable return unless approval to demolish or alter the landmark is granted. Reasonable return is defined as a net annual return of 6% of the valuation of the property. The lack of reasonable return must be proven to the satisfaction of the Commission. If the owner establishes that a reasonable return cannot be made then the onus is on the Commission to devise a plan to make the property capable of earning a reasonable return. If an incentive package cannot be arranged then the City must either acquire

the property, place an easement on the property or allow any redevelopment proposals.

A major innovation in the United States was the Tax Reform Act 1976, which was introduced by Congress to off-set the excessive costs of preserving historic buildings and to diminish the bias in the Inland Revenue code between demolition and new construction. It offered owners of structures listed on the National Register of Historic Places favourable depreciation rates for rehabilitation expenditure and allowed tax deductions for charitable donations to societies and non-profit organisations. It also deterred demolition of registered landmarks by removing a tax deduction for demolition expenses.

The tax reform instigated by the 1976 Act tipped the scale in favour of historic preservation by giving potential investors and current owners strong incentives to consider rehabilitation as a serious alternative to demolition and redevelopment. The US Department of Interior has estimated that during the first seven years of operation, US\$4.8 billion was spent rehabilitating 7,510 historic properties. A 1984 accounting report to Congress in 1984 found that of a sample of 243 projects examined for the 1979 tax year US\$27.1 million of private expenditures has been achieved for a net tax cost of US\$1.3 million.

In 1981 the Reagan Administration significantly changed the income tax treatment of real estate including historic property. The five-year amortisation accelerated depreciation incentives of the 1976 legislation were replaced by direct tax credits for rehabilitation work. In 1986 the Tax Reform Act was introduced by the Federal Government to simplify the tax law and it immediately had a severe impact on historic preservation through the loss of taxation incentives. It altered the financial formulas available under the 1981 Act for rehabilitation by reducing the 25% tax credit to 20% for historic buildings on the national register and replaced the 15% and 20% credit with a single 10% credit for old "but not historic" buildings constructed before 1936. By 1989 there had been a two-thirds drop in the amount of assistance provided for historic rehabilitation by tax incentives.

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