

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

Office of the
PARLIAMENTARY COMMISSIONER FOR THE ENVIRONMENT
Te Kaitiaki Taiao a Te Whare Pāremata

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PREFACE

Although New Zealand is a young country in terms of human settlement, our historic and cultural heritage is unique in its distinct Maori and colonial aspects. This heritage is in danger of being lost.

The Resource Management Act 1991 and the Historic Places Act 1993 established a new framework for management of natural and physical resources, including our historic and cultural heritage. This report is the first evaluation of the current Government system to ascertain how heritage is being managed. Heritage protection for many places is not being achieved. The permanent loss of many historic and cultural sites and places is causing widespread anxiety and is most acute amongst tangata whenua.

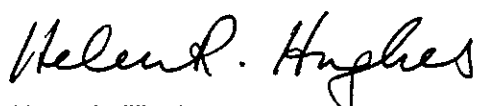
Integrated management of our historic and cultural heritage is required. This would entail managing a range of objects and places, from artefacts through to sites in their surrounding landscapes, together with their oral and written evidence. They are all inter-related but at present are the responsibility of several, largely uncoordinated agencies.

Recognition of the value of historical sites and places is evidenced by a large and growing membership of the New Zealand Historic Places Trust, (a ten percent increase per year over the last three years), the interest shown by large numbers of the public visiting historic places and the energy of many community groups in seeking to protect those places. There are now some real success stories, most of them at local level, which illustrate just how much people and communities cherish their heritage.

In seeking protection of heritage places there is an inherent conflict between private property rights and the public good, which is not easily resolved. Extra financial commitments will be needed but they need not be large. In some cases an ongoing, viable economic use can be identified to ensure survival of a building or place.

As New Zealanders we can be proud of our heritage. As we move into the twenty-first century it is vital that we identify just what is needed to be protected.

The record so far is not inspiring. We can do better. I trust this report will provide guidance for developing a strategic plan and vision for the protection of our historic and cultural heritage for future generations of New Zealanders.



Helen R Hughes
Parliamentary Commissioner for the Environment

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1. INTRODUCTION

In 1994 and early 1995 a number of individuals, iwi and community groups brought various concerns about historic¹ and cultural heritage to the attention of the Parliamentary Commissioner for the Environment (the Commissioner). Several of those concerns related to modification of wahi tapu and archaeological sites significant to Maori in Northland, Auckland, Tauranga, the Kapiti Coast and Waipa District. There were also concerns about the protection of heritage buildings in Auckland and Queenstown and of early mining sites in Otago.

Together these concerns indicated some problems with the heritage management system. In May 1995 the Commissioner made a decision in principle to review the environmental management system for managing and protecting historic sites in New Zealand and the ability of the New Zealand Historic Places Trust/Pouhere Taonga (generally referred to as the Trust in this report) to perform its functions. A number of affected agencies and parties, including the Trust, expressed support for an investigation of this scope.

The investigation was scheduled for 1995/96 financial year. During July to October 1995 limited investigation and discussion took place concerning critical issues and possible Terms of Reference. At the end of October 1995 a short summary of critical issues and draft Terms of Reference were prepared and widely circulated with an invitation to comment. Recipients of this material included Ministers and Members of Parliament, government departments, local government, iwi and Maori groups, business groups, professional associations, academics, consultants, and heritage and other non-governmental organisations. Fifty-four written responses were received by the end of January 1996. Terms of Reference were not finalised until this stage, although the final Terms of Reference did not differ significantly from the draft Terms of Reference, and information gathering proceeded in the last two months of 1995.

The investigation team carried out numerous interviews and meetings, including visits to Auckland (three), Whangarei - mid Northland, Christchurch and Nelson. These visits included brief field inspections of sites of most of the case study examples. Interviews in Auckland, Northland and Nelson were primarily concerned with case studies although much background information was obtained. Interviews in Wellington and Christchurch were more concerned with institutional and background issues. The team leader also attended a cultural heritage hui organised by the Auckland Regional Council in Auckland in April 1996. A full list of organisations and individuals providing information and comments to the investigation is given in Appendix 9.

1.1 Background to the investigation

1.2 Methodology

¹ In this report the term "historic" is used in preference to "historical" (see Appendix 1).

Drafts of each case study report were checked by all the people and organisations interviewed for that case study. Drafts of this report were commented on by affected statutory agencies and by peer reviewers.

Choice of case studies

A case study approach was decided on for the investigation, in which a limited number of discrete cases which would illustrate the different types of historic and cultural heritage, and the range of critical issues would be investigated in detail.

The choice of case studies was made primarily within the Commissioner's Office. In July 1995 the Commissioner was contacted over the granting of authorities for modification of archaeological sites at Ngunguru Sandspit, and decided that this issue should form part of a case study dealing with the sandspit. The Commissioner had been involved in an earlier small investigation of the destruction of cultural heritage sites in Wiri, South Auckland, and was subsequently contacted over wider issues concerning protection of the remaining South Auckland stonefields. This was chosen as the second case study. Concerns received by the Commissioner over the protection of heritage buildings in central Auckland, including those involved in the proposed Britomart Transport Centre, formed the basis of the third case study which focuses on a small number of specific buildings or structures. The three case studies were all located in areas with intense development pressures in the northern part of the country. For the final case study a contrasting situation was chosen, in which a more general approach was taken to studying heritage protection issues in a provincial centre, Nelson.

1.3 Definitions and types of historic and cultural heritage

The spectrum of heritage values with which this report is concerned is defined in many ways. The International Charter for the Conservation and Restoration of Monuments and Sites (the Venice Charter 1966) has given rise to many charters which set out the principles to guide historic and cultural heritage management in countries. A charter for New Zealand, adopted by the New Zealand National Committee of the International Council on Monuments and Sites (ICOMOS) in 1993, provides the following definition of cultural heritage value:

possessing historical, archaeological, architectural, technological, aesthetic, scientific, spiritual, social, traditional or other special cultural significance, associated with human activity (ICOMOS New Zealand 1993).

The New Zealand Charter goes on to describe places of cultural heritage value, which:

- (i) have lasting values and can be appreciated in their own right;
- (ii) teach us about the past and the culture of those who came before us;
- (iii) provide the context for community identity whereby people relate to the land and to those who have gone before;

- (iv) provide variety and contrast in the modern world and a measure against which we can compare the achievements of today; and
- (v) provide visible evidence of the continuity between past, present and future.

The word “heritage” occurs in several places in relevant New Zealand legislation (see Appendices 2 and 3), but its definition and usage varies considerably. This report largely uses the terminology of the Historic Places Act 1993 (HPA). The long title of the HPA states that it is an Act “to promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand...”, but the term “historical and cultural heritage” is not defined. The HPA then defines the terms “archaeological site”, “historic place”, “historic area”, “wahi tapu” and “wahi tapu area” (see Glossary).

The Resource Management Act 1991 (RMA) does not define “heritage” but in defining the purposes of heritage orders (s 189), states that they include protecting:

- (1)(a) Any place of special interest, character, intrinsic or amenity value or visual appeal, or of special significance to the tangata whenua for spiritual, cultural, or historical reasons; and...
- (2) ...a place may be of special interest by having special architectural, historical, scientific, ecological or other interest.

This implied definition is potentially very broad and inclusive, although it includes many types of heritage other than historic and cultural.

Taking the above into consideration, this investigation is concerned with the full range of heritage addressed by the Historic Places Act 1993, ie areas, places and tangible objects which are fixed and non-living, but excluding aspects of cultural heritage such as “portable” museum collections, the creative arts or language. Although the emphasis in this definition is on tangible, biophysical items, almost all such items also have intangible qualities which are valued. Such intangible qualities may have quite different management implications from the tangible places and objects. The tangible objects are generally in or fixed to land, with the exception of some Maori cultural heritage which may be associated with water as recognised in s 6(e) RMA and s 4(c) HPA. This investigation has not included historic trees; nor considered garden landscapes in detail (see Appendix 1).

At a broad level, four types of historic and cultural heritage places and objects can be recognised, as discussed separately in Appendix 1:

- Places of significance to Maori;
- Archaeological sites;
- Historic buildings and structures;
- Cultural landscapes.

These categories are very broad and overlapping but their protection and management are often significantly different, as discussed in other parts of this report.

1.4 Importance of historic and cultural heritage

Heritage is significant to people and communities in a number of ways. The types of significance specific to historic and cultural heritage are summarised in Table 1.1.

TABLE 1.1 Types of historic and cultural heritage values (adapted from Hall and McArthur 1993).

SOCIAL	ENVIRONMENTAL
Community values	Resource conservation
eg aesthetic	
historic	ECONOMIC
architectural	Tourism & recreation
Cultural significance	Visitor spending
Sense of place	Flow-on effects
Personal & community identity	eg service industries
	restoration businesses
SCIENTIFIC	Business image
Historic evidence	
Anthropological & cultural	POLITICAL
studies	National symbols & identity
	Heritage ownership
	Indigenous significance

The economic significance and benefits of historic and cultural heritage have received almost no systematic study in New Zealand. The ICOMOS New Zealand Charter has summarised non-economic types of significance (see Chapter 1.3). As in other countries, numerous speeches by politicians and other leaders remind us that elements of both historic and cultural heritage are important in New Zealand's national identity. What is unique to New Zealand, however, is Maori historic and cultural heritage, and the grouping and blending of Maori and European-based historic and cultural heritage.

A widespread popular appreciation of historic and cultural heritage in New Zealand is probably a fairly recent phenomenon but there are a number of indications that in the last couple of decades it has been growing rapidly along with appreciation of other heritage values. A nationwide survey of 1,000 adult members of the public in September 1987 examined attitudes to preservation and protection of historic places, and awareness of and attitudes to the Trust (Heylen Research Centre 1987). The survey indicated generally very supportive opinions about the protection of public historic buildings and sites. For example, nearly 60% of the respondents agreed with the statement that "too many important old buildings in our cities are pulled down". More than 80% agreed that "archaeological sites should be looked after and protected" and nearly 70% agreed that "Maori sites need to be given special protection". However, unlike natural heritage, historic and cultural heritage has aroused little public debate about its sustainability or about the notion that, like biodiversity loss, loss of historic and cultural heritage is permanent.

The Trust is one of the largest New Zealand organisations in the environmental sector. Founded by statute in 1954, its membership has steadily increased. In the last three financial years it has had annual membership growth rates of 4%, 10% and 17% respectively, to reach its present size of over 32,000 members. In mid 1995, its membership was profiled from a survey of 339 members (AGB McNair 1995). One-third of those members had belonged to the Trust for more than 10 years. The main reason given for joining the Trust was concern for New Zealand's historic places. The Trust's members are grouped into 22 branches, covering the whole of the country, and many branches are very active organisations in their city or district (Appendix 4). However the survey suggested that membership was not widely representative of the New Zealand population as a whole. Forty-six percent were aged over 60 and only 11% under 40. Trust members tended to be very well educated, had higher than average incomes, and were predominantly European in descent.

Territorial authorities interviewed during this investigation almost all referred to greatly increased interest in historic and cultural heritage amongst their residents in the last few years. Not only Trust branches but also a large number of other voluntary associations (Appendix 4) actively promote historic and cultural heritage values and put enormous voluntary effort into all aspects of heritage protection and management. Undoubtedly most councils have responded to this public interest with an increase in heritage-related activities in the last decade. Some larger urban authorities now have dedicated historic or cultural heritage sections, some have dedicated budget allocations (Appendix 3), and almost all have included heritage aspects in planning documents under the RMA (Appendix 8).

Visits to historic and cultural heritage sites provide another indication of interest. A 1991 Deloitte Ross Tohmatsu survey of visits to New Zealand heritage attractions cited 232,600 visits to historic buildings. This figure showed high variations between regions. Visits to historic buildings were much lower than visits to museums/art galleries, gardens and urban parks, and natural attractions, all of which also contain historic and cultural heritage interests (Hall and McArthur 1993). Estimates of recent total annual visitor numbers to individual Trust properties and historic places on the conservation estate include 119,000 to Waitangi National Reserve; 58,000 to the Stone Store, Kerikeri; 240,000-270,000 to North Head Historic Reserve, Auckland; 34,000 to Old St Paul's, Wellington; and 50,000 to Arrowtown Chinese Settlement, Otago (W Barclay, NZHPT, pers. comm., 1996; P Mahoney, Department of Conservation Head Office, pers. comm., 1996). Recently, 13,000 Wellingtonians visited the newly refurbished Parliament Buildings on just two open days. The Tourism and Publicity Department's 1989 domestic travel segmentation study categorised 21% of the New Zealand population as "heritage minded" (New Zealand Tourism and Publicity Department 1990).

A 1992/93 survey of international visitors to New Zealand (New Zealand Tourist Board 1993) showed that more than 420,000 out of a total of 1,117,000 international visitors (38%) visited a historic site. Visits to this type of attraction were exceeded only by visits to museums or art galleries (470,000 or 42%), Maori cultural performances or other Maori experiences (440,000 or 39%), and geothermal attractions (also 440,000). All these

attractions relate directly to New Zealand's historic and cultural heritage and all were more popular with international visitors than the most popular activities associated with New Zealand's well-known scenic attractions (short bush walks and scenic boat cruises with 310,000 and 300,000 participants respectively).

1.5 Summary of critical issues

The following summary is reproduced exactly as written and circulated in late October 1995 (see Chapter 1.2), as a basis for discussion and comment.

- **Weak mandate:** Is New Zealand's historic and cultural heritage given sufficient recognition as a component of national identity? There is limited policy at national level and no agency appears to be clearly taking the lead for historic and cultural heritage at either national or regional levels.
- **Weaknesses in the Historic Places Act 1993 (HPA) and unclear linkages to other legislation,** notably the Resource Management Act 1991 (RMA) and the Conservation Act 1987. The HPA is intended to be the main statute for historic and cultural heritage management; however the main mechanisms for heritage protection are regional policy statements, district plans and heritage orders under the RMA. The lack of reference in the HPA to the principles of the Treaty of Waitangi may devalue it in the view of Maori.
- **Allocation of functions and powers between agencies is unclear,** notably between the New Zealand Historic Places Trust (the Trust) and local authorities. The historic and cultural heritage functions and priorities of the Department of Conservation (DOC) outside the conservation estate are also unclear at both national and conservancy level. The relationship between the Trust and DOC has changed significantly since 1993 and the effects of these changes are still being felt by both agencies. Local authority policy and practice varies greatly. Some councils do not have a schedule of protected sites in their district plans, regarding the Trust as the primary agency for historic and cultural heritage, or leaving protection up to voluntary compliance.
- **The Trust has a very wide range of potentially conflicting functions and powers:** Do the decision-making, consultation and administrative structures of the Trust allow effective participation of regional expertise (both staff and membership) and of tangata whenua?
- **Resourcing issues:** Most historic and cultural heritage management functions appear to be significantly under-resourced, especially when public purchase is seen as the best option for protection.
- **Mechanisms for protection:** A wide range of protection mechanisms is theoretically available to agencies, but loss of significant heritage buildings and sites has continued. There seems to be a disproportionate focus of attention on the compulsory regulation mechanisms, which are used very infrequently because of heavy financial and political costs. The implementation of heritage orders has often been highly controversial. Recent government policy on taxation and earthquake insurance coverage has had significant effects on the implementation of protection.
- **Assessment processes:** There have been some criticisms of technical standards and consistency in assessing historic and cultural heritage, levelled at both the Trust and at local authorities.

- **Issuing of authorities by the Trust:** The Trust's criteria and processes for issuing authorities to destroy, damage, or modify archaeological sites are unclear, and some decisions very controversial.
- **The effectiveness of the Trust's Register:** The Register is widely acknowledged to be very incomplete and uneven. The Trust's resources to adequately maintain and develop the Register are very limited. Some sites are not registered because of perceived inadequacies of protection and cultural reasons for non-disclosure; but there is also a widespread misconception that the Trust's registration mechanisms in themselves offer secure protection.

A comment circulated with this summary stated that, in a preliminary assessment of the above issues in order to develop draft Terms of Reference, it seemed clear that the most fundamental issues related in the first instance to the overall system for historic and cultural heritage management, notably the functions and powers of statutory agencies. Performance aspects were certainly not unimportant, but may not be resolvable until any problems found in the system as a whole are rectified.

Reaction to this summary and to the draft Terms of Reference was mainly positive. Many submissions emphasised that some of the issues were closely linked. Major themes of comment were as follows:

- **Need to define the scope of "historic and cultural heritage" more closely.** A number of comments were made on terminology and definitions but there was no clear consensus in these comments.
- **Need to address Maori participation in historic and cultural heritage as well as the implications of the Treaty of Waitangi.** Frequently asked questions were: how can Maori best be able to participate as kaitiaki? Are Maori management structures recognised in the governmental system for historic and cultural heritage management?
- **Need to address tension between public and private rights.** Protection of heritage items for public benefit may frequently involve actual or potential costs to private interests. Thus consideration of compensation and incentive issues is often required.
- **Need more focus on implementation and effectiveness of protection processes.** It was emphasised that identification and listing procedures were not equivalent to protection.
- **Need to put more emphasis on resourcing for historic and cultural heritage.** Several submissions emphasised poor resourcing as the most important (in some cases felt to be the completely dominant) problem for historic and cultural heritage management. This concern was strongly linked to the theme above concerning public and private rights, because of compensation requirements for public purchase.
- **Need to focus more on management issues.** Some submitters felt that the adequacy of the system could not be tested if alleged management inadequacies in the principal agencies were not enabling the system to function as intended.

These issues, as well as all those listed in the original summary, are addressed in this report.

- 1.6 Terms of Reference**
- With the objective of maintaining and improving the quality of the environment (Environment Act 1986 s16), the Parliamentary Commissioner for the Environment decided to review the system of agencies and processes for the management of historic and cultural heritage in New Zealand, with the following Terms of Reference:
1. To review the allocation of powers and functions to public authorities involved in historic and cultural heritage protection.
 2. To review the effectiveness and suitability of procedures for the protection of historic and cultural heritage.
 3. To report the results to the House of Representatives and to provide advice as appropriate.
- 1.7 Criteria for investigation**
- To establish criteria for assessing the performance of agencies and processes in historic and cultural heritage protection and management, the critical issues summary and the responses to it were assessed to derive a list of characteristics of an effective system. This is shown in Table 1.2. An initial list of criteria was based on the preliminary assessment of critical issues, and on experience gained in earlier investigations. This list was progressively refined during the early part of the investigation, partly on the basis of informal consultation.
- 1.8 Structure of this report**
- Chapter 2 summarises the four case studies reported in more detail in the background report together with information on overseas (principally Australian) models for historic and cultural heritage management.
- Chapter 3 summarises an assessment and review of the current system for historic and cultural heritage management, with particular emphasis on the roles of the national agencies. It briefly reviews some legal and institutional issues, the resourcing of historic and cultural heritage management, assessment and information management, and issues affecting protection. This assessment and review is based largely on a detailed analysis of these aspects as set out in Appendices 2-8 and the case studies.
- Chapter 4 discusses aspects of the system particularly relevant to the protection of Maori cultural heritage, although relevant issues are also discussed in other chapters and the appendices.
- Chapter 5 discusses possible future approaches to historic and cultural heritage management, including institutional arrangements, policy setting, resourcing requirements and some protection and assessment issues.
- The whole report is summarised in a series of conclusions and recommendations in the final chapter.

TABLE 1.2 Characteristics of an effective system agencies and processes for the management of historic and cultural heritage

A. THE SYSTEM	
1.	The historic and cultural heritage of New Zealand is retained and conserved to a degree which meets individual and community aspirations as assessed under Characteristics 2 and 3.
2.	Treaty of Waitangi obligations are provided for in such a way that Maori interests in relation to their taonga are actively protected and Maori are able to exercise kaitiakitanga over their taonga according to their own cultural preferences.
3.	The system is responsive to: <ul style="list-style-type: none"> • the importance that is ascribed by New Zealanders to the protection of their historic and cultural heritage; • the wide range of historic and cultural values held by New Zealanders; • the wide range of interests which may be affected by the protection of historic and cultural heritage (in particular, the rights and responsibilities of landowners), so that outcomes are fair to all affected parties.
4.	The means used by each agency for setting priorities for historic and cultural heritage complement each other as part of a systematic national approach to historic and cultural heritage.
5.	Statutes which provide for the protection of historic and cultural heritage are structured and linked in such a way that the functional relationships between the agencies responsible for their implementation under those statutes are clear and unambiguous.
6.	Assessment criteria and technical standards used by agencies are comparable where necessary and result in consistent levels and high standards of identification and resultant protection.
B. THE PRINCIPAL AGENCIES	
1.	Each agency clearly sets out and implements its priorities for historic and cultural heritage protection and management.
2.	The statutory responsibilities of each agency are translated by that agency into clear operational objectives and policies (and plans where relevant).
3.	Agencies with responsibility for the protection of historic and cultural heritage actively liaise with each other to: <ul style="list-style-type: none"> • identify areas of common interest; • clarify how common concerns will be dealt with; • manage cross-boundary heritage issues in an integrated manner.
4.	Each agency's objectives and policies for the protection of historic and cultural heritage are clearly communicated to all levels of the agency and to the public.
5.	Within each agency, responsibilities are delegated to appropriate levels, such that decisions are made at the level which represents relevant accountabilities and communities of interest.
6.	Parties affected by historic and cultural heritage protection are meaningfully consulted by relevant agencies at appropriate times prior to final decisions being made.
7.	Each agency has a high-quality information base upon which to base its decisions and carry out its responsibilities. Information is freely available and shared between agencies unless prevented by cultural or commercial sensitivity.
8.	Clear and consistent assessment criteria and technical standards are used by each agency.
9.	Each agency carries out appropriate research to support its statutory responsibilities and validate the levels and standards of protection selected.
10.	Each agency monitors and reports on the results of its policies, plans and consents where relevant, and carries out monitoring of the state of historic and cultural heritage over which it has responsibility, in line with its functions.
11.	Each agency provides public information about its role in relation to the protection of historic and cultural heritage.
12.	Agencies have appropriately trained staff to carry out all tasks, and generally foster high professional standards of historic and cultural heritage management.

Description of Appendices

- Appendix 1 amplifies the material on the nature and types of heritage set out in Chapter 1.
- Appendix 2 summarises the legal framework for historic and cultural heritage management.
- Appendix 3 sets out and discusses the institutional framework for historic and cultural heritage management, for both central and local government, and also discusses the national policy framework.
- Appendix 4 describes the non-governmental organisations involved in historic and cultural heritage.
- Appendix 5 discusses the assessment methods used for historic and cultural heritage management.
- Appendix 6 discusses the provision of research and surveys for historic and cultural heritage management.
- Appendix 7 sets out and discusses regulatory and non-regulatory mechanisms for the protection of historic and cultural heritage.
- Appendix 8 provides an overview of protection methods used by a selection of statutory agencies.
- Appendix 9 lists all organisations and individuals consulted during this investigation.

2. HISTORIC AND CULTURAL HERITAGE CASE STUDY SUMMARIES¹

The Ngunguru Sandspit (119 ha) is located on the east coast of Northland, approximately 25 km north-east of Whangarei. The sandspit is a unique combination of historic and cultural heritage and natural heritage and it is one of only a few unmodified and unprotected sandspits remaining in New Zealand. Ngunguru Sandspit is of considerable significance to tangata whenua as it had a long history of occupation and has significant cultural, spiritual, historical, and environmental values. Three tangata whenua groups have associations with the sandspit - Ngatiwai, Ngati Taka, and Te Waiariki.

2.1 The Ngunguru Sandspit and the protection of wahi tapu

Ngunguru Sandspit has been assessed as a significant ecological site and an outstanding landscape. The sandspit is a significant archaeological area with a headland pa, terraces, urupa, and numerous middens but no comprehensive archaeological survey has been performed. No archaeological sites or wahi tapu at the sandspit have been assessed for registration under the Historic Places Act 1993 (HPA). The area is in private ownership and development including subdivision is likely to influence many of the historic and natural values, and would in turn be influenced by dune movement, coastal erosion and flooding.

Designation history and attempts to acquire the land for public ownership

The Ngunguru Sandspit was first designated in 1967 by the Whangarei County Council (WCC) as a proposed public open space reserve. The Department of Lands and Survey then took responsibility for the designation before it was transferred to the Department of Conservation (DOC) in 1987. Between 1975 and 1991 there were many discussions and attempts to purchase or exchange the land at the sandspit initiated by either the landowner or various government departments. However no satisfactory agreement over the sale of the property was ever reached between the various agencies and the landowner. At various times, a lack of finance, different valuations, and changes of attitude to the sale and purchase of the land by all parties hindered agreement.

In 1992 DOC commenced a national review of the conservation values of all existing designations where it was the requiring authority to assess if the designation should be retained (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). In 1994 a final attempt was made by DOC Northland to get funding support from DOC Head Office land acquisition fund, Whangarei District Council (WDC) and Northland Regional Council (NRC) but this was not forthcoming. As DOC could not fund the total purchase of the area it withdrew the designation in July 1994. There was widespread concern from

¹ Refer to *Historic and Cultural Heritage Management in New Zealand. Background Report: Case studies.* (Parliamentary Commissioner for the Environment 1996, for a full description of each case study.

tangata whenua and sections of the community over DOC's decision to lift the designation.

Resource consent application to the Whangarei District Council

In the transitional Whangarei District Plan the Ngunguru Sandspit area is zoned Rural AC, the purpose of which was to preserve the natural character of the coastal environment and to protect it from unnecessary development. For many years the designation had provided de facto protection to the area.

After the decision to lift the designation, a resource consent application was made to the WDC by the owner of the sandspit for a boundary adjustment (controlled activity) to allow for the building of a house on four reshaped titles. The WDC responded to the application by requesting a comprehensive engineering report 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 various agencies responded with comments on the significant values of the area and the potential risks from coastal flooding or erosion.

Additional information on site suitability, stability, effluent and stormwater disposal, access and archaeological details was provided to the WDC. The WDC then requested the applicant to provide a record of consultation with tangata whenua; a record of consultation with the Trust and authorities for any archaeological sites that were to be affected; and information on the location of building sites and potential hazards.

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

The landowner also applied to the WDC for four certificates of compliance to enable building development on the existing titles. However the WDC was not satisfied about its previous concerns and deferred issuing the certificates of compliance pending further information. The resource consent application has not yet been accepted by WDC.

HPA authority application, assessment and decision

In March 1995, the Trust accepted an application for a HPA authority to destroy, damage, or modify seven archaeological sites as part of the proposed development of the area which included a right of way, four house sites and access roads. The application was accompanied by an archaeological assessment, a record of consultation with tangata whenua (consultation with representatives of the Ngati Taka hapu and the NWTB), and a NWTB report on the cultural values of the area.

The Trust believed that sufficient archaeological information was supplied with the application but further information on Maori cultural values and consultation was 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) was informed of the application at its 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, but the Chair of the MHC was independently consulted about the application.

The Trust report assessing the application stated that the cultural heritage value of the individual sites under consideration was not sufficient to require their preservation although they could prove to have more intact remains that were not visible; no archaeological sites or wahi tapu sites on the sandspit had been ever registered with the Trust; and remains could be found over the entire sandspit. However the Trust report recognised that the sandspit as a whole had significant Maori and other values and that these 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.

In June 1995 the Trust granted the authority under s 14 of the HPA. The Trust hoped that the issue of an authority to restrict use to 5% of the total holding would enable the protection of customary values and allow the owner the right to reasonable use of the property. The authority was granted only for the specified sites and stated that new sites or further development (eg building, landscaping, and tree planting) would require a new assessment and further applications to the Trust. 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 to the WDC that the right of way should be stopped short of the boundary of the outermost of the four existing titles, which should then become a historic reserve, and that one boundary should be altered to avoid a midden. The Trust asked the WDC to notify the resource consent application.

DOC's Northland Conservancy informed the Trust of its 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 effects of future development and that the Trust was not protecting and conserving wahi tapu and traditional sites.

In July 1995 the NWTB filed an appeal to the Planning Tribunal over the granting of the authority on the grounds that the decision did not promote the protection of historical and cultural heritage; Maori values of the sandspit had not been taken into full consideration by the Trust; and the Trust had inadequate information to reach a decision. In the Tribunal's decision released in 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, it was not itself tangata whenua and it was not eligible to bring an appeal.

The Tribunal thus 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 be disallowed on the merits. The Tribunal ruled it could only have regard to the particular archaeological sites that were affected 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. 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, waahi tapu, and other taonga” was not a principle of the HPA. The Tribunal ruled that the Trust gave the application careful and systematic consideration, the Trust’s report had shown full recognition of, and attention to, the principles of the Act, and that the interests of tangata whenua had been recognised and provided for in the Trust’s decision.

Issues arising from the Ngunguru Sandspit case study

The lifting of the designation and the granting of authorities have been widely criticised for allowing inappropriate development. However, prior to these events the sandspit had been designated for over 20 years, and in that period the owner was unable to develop the land, there was no compensation available, and no steps were taken by relevant authorities to exercise statutory powers of purchase and acquire the land through the Public Works Act 1981. 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. In effect, the Trust’s decision to grant the HPA authority has shifted the onus for protection on to the WDC under the RMA.

Other relevant issues include:

- the debate about the historical significance of the area can be partly attributed to the lack of historical records and the limited research of the area.
- there was no dedicated national land acquisition fund for historic and cultural heritage to assist the purchase of the area.
- a cooperative approach between all the authorities (ie DOC, the Trust, regional council, and the territorial local authority) was required to provide sufficient funding and complete negotiations and purchase.
- a majority of archaeological sites are also of Maori interest but whereas the provisions in Part I of the HPA provide for the automatic protection of archaeological sites, they do not provide for the automatic protection of wahi tapu.
- the HPA does not distinguish or give priority to older or more important archaeological sites and no specific criteria are provided by the Act or by Trust policy to assist the Trust assessing and making a decision on an authority application.
- the authorities were granted for discrete areas and the Trust signalled to the landowner that any further development would require new applications to the Trust. However such a process does not recognise the cumulative effects of development, it is bureaucratic and inefficient and there is no guidance in either Act on the timing of approvals under the HPA and the RMA.

The basaltic lava stonefields of the Auckland region, which cover more than 8,000 ha, were occupied and used from the time of earliest human settlement. 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.

The stonefields are important for their cultural, traditional, archaeological, historical, social, scientific and landscape values. However the cumulative effects of industrial park development and quarrying of the aggregate resource, particularly over the last 25 years, have destroyed many sites. The Otuataua and Matukuturua Stonefields in Manukau City are the last remaining major examples of the stonefield landscape of Auckland and they are of regional, national and international significance. Otuataua has been described as archaeologically one of the most important Neolithic gardening sites in the world. Both the Otuataua and Matukuturua Stonefields are in private ownership. According to Ngaati Te Ata tikanga and whakapapa, the tuturu (principal) tangata whenua of the South Auckland stonefields are Wai O Hua.

From the 1980s the Trust, and since 1987 DOC, have recognised the significance of the remaining stonefields and the fact that they are worthy of permanent preservation. However the inherent conflict between the protection of the historic and cultural values of the stonefields and the realisation of the commercial value of the aggregate resource has restricted initiatives to recognise and provide for both the use and protection of areas of the stonefields.

The Wiri Quarry bulldozing

In 1983 New Zealand Railways (NZR) applied for and received an authority under the HPA 1980 to enable the quarrying of aggregate from the Wiri Quarry owned by NZR. The quarry was part of the wider Matukuturua occupation and gardening site and contained the only remaining stone structures of the Wiri Stonefield (8 ha out of an approximately 400 ha stonefield). A comprehensive archaeological investigation and mapping of the Wiri Stonefield was undertaken between 1984 and 1986 and the majority of the stonefield, except for a small gardening site, was then quarried and destroyed. In 1989 NZR entered into a joint venture agreement with Downer Mining Limited (now DML Resources Limited) for rights to quarry the aggregate until the year 2003. Following the sale of NZR, the Department of Survey and Land Information (DOSLI) administered the land.

In 1994 DOSLI submitted to Manukau City Council (MCC) a draft quarry management plan for the Wiri Quarry and DML approached Auckland Regional Council (ARC) for a discharge consent. In January 1995 a site inspection took place with representatives of DOSLI, DML Resources, MCC and ARC, and the remnant historic features of the garden were outlined and interpreted. Various discussions then took place between the agencies over whether the 1983 HPA authority was still valid. Following legal advice that the 1983 HPA authority was still current, DOSLI advised DML Resources that it could proceed with quarrying operations. In late February 1995 approximately 1.9 ha of the gardens was then systematically bulldozed and on 1 March the Minister of Lands directed DOSLI to

2.2 Protection of remnant areas of South Auckland stonefields

request DML to stop all work at the site until further notice and DML complied with that request.

DOC and the Trust were 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. 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. Ngaati Te Ata indicated that they wanted the site reinstated and that the Wiri site remained significant to tangata whenua.

To date, there has been no final resolution of the future of the site and discussions are continuing including finalising a quarry management plan. DML have sought clarification from the Minister of Lands about the rights of DML to the mineral resource in the site and possible compensation if they are permanently denied access to the resource. 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.

Attempts to protect the Otuaataua and Matukuturua Stonefields

From the early 1980s the Trust spent about ten years endeavouring to establish a heritage covenant with one owner of part of the Otuaataua Stonefield but this was never finalised. In 1988 a proposal for the protection of the Otuaataua Stonefield was prepared for the Minister of Conservation and from 1990 DOC took an active role in discussions with landowners promoting the purchase of the area. However by 1994 DOC recognised that it would not be able to acquire the land without funding assistance from other agencies as the land was assessed at several million dollars.

In early 1995, a proposal was put forward that ARC (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 by the ARC and MCC then took the role of lead protection agency. As part of its district plan preparation, MCC took a comprehensive approach to identifying and prioritising potential areas for public open space, which ultimately resulted in public open space designations of the Otuaataua and Matukuturua Stonefields being included in the proposed district plan. The areas were also listed in a wahi tapu schedule of areas of significance to tangata whenua that was prepared in consultation with tangata whenua. MCC formally requested DOC and ARC to become joint requiring authorities for the proposed open space designations at Otuaataua and Matukuturua Stonefields.

The ARC agreed but the Minister of Conservation declined the request, stating that "protection of these sites, and indeed any historic site, can be progressed at a local and regional level". The Minister also confirmed that "the Trust is the Crown's leading historic protection agency on lands not administered by the Department of Conservation". The Auckland Conservation Board was concerned that the Minister of Conservation was not prepared to support the initiatives of MCC and the ARC.

MCC set aside \$1 million in its 1995-96 Annual Plan towards the acquisition of the Otuataua Stonefield and in October 1995 lodged an application for \$1 million with the Lottery Environment and Heritage Distribution Committee (LE&HDC) for financial assistance to purchase the four blocks of land which contained the Otuataua Stonefield. The LE&HDC considered the MCC application in December 1995 but declined it. This was in part because the project did not demonstrate exceptional historic merit, there was a lack of financial support for the land purchase, the land is currently subject to Treaty claims, and there had been no independent comparative archaeological study of the relative significance of the Otuataua site. MCC was very concerned with the reasons given for the refusal of the application and, in particular, that the project did not demonstrate exceptional historic merit. The LE&HDC was then asked by MCC to reconsider the application and MCC has supplied additional information to address the reasons given for the refusal of the application.

Discussions are continuing between the MCC, ARC and the Minister of Conservation about the protection of Otuataua. 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.

The four Otuataua landowners who have farms that include parts of the Otuataua Stonefield are eager to see the matter resolved because as long as the protection of the stonefield is not resolved and the landowners are unable to obtain HPA authorities to destroy, damage or modify sites, the owners cannot further invest in or develop their land. The landowners acknowledge that it would be in the public interest to prevent activities that would have an adverse effect on the stonefield, but believed that this should happen only if compensation is paid to the owners.

Watercare Services Limited South-Western Interceptor

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) which is planned to cross the southern part of the stonefield. A conditional HPA authority to modify that part of the stonefield was granted by the Trust in 1978 to the Auckland Regional Authority (ARA) who was responsible for the Interceptor designation at the time. Detailed mapping and excavation of the area was completed in 1981. Subsequently Watercare took over the water services undertaking from the ARA and became holder of the HPA authority. An assessment of environmental effects including alternatives was prepared in 1993 and appropriate resource consents were obtained. By March 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 would not be possible for the Interceptor to avoid the stonefield without major re-routing. Watercare is not obliged to consider re-routing the Interceptor as it has an approved designation and an HPA authority. Watercare has commissioned landscape architects to prepare alternative designs to minimise the visual impact of the Interceptor on the stonefield, and has entered into commitments with MCC to link both the Puhinui Reserve and the stonefield site, and to construct a visitor

centre and information display to promote the interpretation of the historical and archaeological sites. Watercare is also preparing an archaeological management plan for the stonefield.

Issues arising from the stonefields case study

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.

The compensation issues raised by the Wiri and Otuaataua Stonefields illustrate the difficulties of reconciling the protection of historic and cultural heritage values in the interests of the public and tangata whenua, with private property rights arising from land ownership. Protection of the remaining stonefields is now an urgent priority and requires a joint approach to be taken towards their management and protection by all relevant agencies, because the cost of acquisition is beyond any one agency and responsibilities often cover more than one agency. The interests of tangata whenua in the stonefields need to be recognised and given appropriate weight because of 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 importance to tangata whenua.

Any authority that is granted by the Trust under the HPA 1993 lapses after two years. However there is no similar sunset clause for existing authorities that were granted between 1975 and 1993 under previous historic places legislation including the Wiri Quarry (approved 1983) and the Watercare South-Western Interceptor route (conditional 1978 and approved 1986). 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. The Matukuturua and Otuaataua 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.

Key issues identified from this case study include:

- how to integrate the management of the historic and cultural heritage of the stonefields as part of the wider process for environmental management;
- 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 can shared roles be coordinated.

2.3 Auckland City built heritage

Auckland City has many significant built heritage features although rapid economic growth and inadequately controlled property development have had significant effects at various times and a considerable amount of this heritage has been lost. 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 RMA. The ACC has recognised the significance of the city's built heritage in the ACC strategic plan and the council will spend more than \$60 million on the restoration of the Town Hall and the Civic Theatre.

The ACC Conservation and Urban Design Division (C&UDD) is responsible for all heritage policy and monitoring work. Council advocacy, the provision of expert heritage and architectural advice and encouragement of early contact and discussions assists landowners and developers to recognise and provide for the protection of heritage. The Property Department of the ACC is the owner of strategic sites and heritage buildings and the department has taken a lead role in organising value management workshops to resolve conflicts in opinion over the use of heritage buildings.

An objective of the proposed Isthmus District Plan was to identify heritage resources that were worthy of preservation and provide suitable measures to secure their preservation (eg through the use of schedules, Conservation Areas, special character residential zones, conservation plans). As part of the preparation of the proposed Isthmus Plan, a new quantitative assessment system was developed by C&UDD. A critical goal of the new assessment system was to reduce the amount of variation that can occur with uncoordinated heritage assessments and provide for a transparent and accountable approach to assessment. More than 240 buildings and objects were listed in a schedule in the proposed Isthmus Plan.

The resourcing of the C&UDD 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 council is also exploring the use of financial incentives such as loans, grants and rate rebates for heritage protection. The ACC recognises the contribution of the Trust to the management and protection of heritage in Auckland and the two organisations have a close working relationship.

To illustrate a selection of built heritage issues in Auckland, the Civic Theatre precinct, the Westfield Chimney and St Mary's College Hall were chosen as case studies.

Civic Theatre precinct

The Civic Theatre precinct is located in central Auckland and comprises the Auckland Civic Theatre, the Ferguson Building and Civic House. The Civic Theatre was built in 1929 and the building has spectacular interior architecture. 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. Since the theatre's construction there have been several development proposals for the site but the theatre has remained intact.

In 1988 the Trust issued a protection notice for the theatre under the HPA 1980, which is still in force as a heritage order under the RMA. The theatre is registered as a Category I building under the HPA and Civic House and the Ferguson Building are registered as Category II buildings.

By 1990 ACC had scheduled the Civic in the district scheme and there were ongoing discussions about retaining the theatre. In October 1990 a C&UDD report summarised the various heritage issues and recommended that the Civic should remain as an essential component of the Civic Centre's future. Following this, the council then confirmed that the theatre was critical to its plans for creating an entertainment precinct. On 31 December 1993 the Civic Theatre reverted into direct council ownership upon expiry of the 60-year ground lease. A conservation plan was then prepared.

The ACC intend to develop the Civic precinct through a joint public/private partnership to ensure that the Civic Theatre has new capabilities and uses. The private development will be undertaken by the Oxford Group who initially promoted the notion that successful retail development in the precinct required the demolition of Civic House and the Ferguson Building. The Trust and other NGOs actively lobbied against this proposal because it sought the retention of the greater part of these buildings.

The first of three value management workshops, which provided a forum for discussion for all interested groups and to identify principal uses for the theatre, took place in July 1995. The workshops provided the developers with a concise brief, information on conservation concerns, and a means of working towards furthering the proposal in a manner which best balances the needs of all interested parties. Proposals have been remodelled so that most of the buildings will now be retained. A further value management review was planned for to critique another stage in the development proposal in mid-1996. Although a number of issues have yet to be resolved, it is obvious that the Civic Theatre precinct is valued by the people of Auckland and one whose future has stirred much constructive debate on heritage and conservation issues in the city.

For the Civic Theatre to be preserved it was essential that any proposal allowed for its economic use. The use of value management workshops by the ACC has assisted discussions and involved relevant parties, and this has enabled various options to be discussed before final decisions are made. 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 Westfield Chimney

The Westfield Chimney was originally part of the Westfield Freezing Works, a 43 ha industrial site in the industrial heartland of South Auckland. The octagonal Westfield Chimney (approximately 10 m tall of unreinforced brickwork) was constructed in May 1916.

The industrial site had been vacant since the closure of the freezing works in 1989 but the owners, Weddel Westfield Limited, wanted the site to be developed into an industrial and business park. In May 1994 Beca Carter, on behalf of Weddel Westfield, contacted the Auckland Regional Office of the Trust regarding heritage values of the Westfield site and were informed that the development would not affect any known archaeological sites. The heritage values of the area were not specifically investigated or inspected on

site by any agency at that time. Weddel Westfield was taken into receivership by KPMG Peat Marwick in August 1994. At that time 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.

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. There was some concern that the chimney would be demolished before it could be protected and so a member of the public, with the help of the Auckland Branch Committee of the Trust, made an application to the Trust for interim registration in August 1994. The application for interim registration under s 24 HPA stated the chimney was historically, culturally, architecturally and technologically significant and was a major landmark. After consideration, the Trust gave formal notice of interim registration.

Weddel Westfield opposed interim registration, as they had contracts and agreements that required the clearing of the site according to the terms of sale and interim registration would have the effect of placing Weddel Westfield in breach of its terms of sale. Broadway Developments also opposed the granting of interim registration for similar reasons. Also they had already completed subdivision plans, and they had contacted the Trust in the initial stages and were told that there was no risk to any archaeological sites.

On 27 October 1994 the Westfield Chimney was given final registration under the HPA 1993 as a Category I historic place. Reasons for registration include that the fact that the place reflected important or representative aspects of New Zealand history, since the meat killing industry played a significant role in the working lives of many New Zealanders, as well as the symbolic value 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 that 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 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 its retention, ownership and long-term maintenance. Compromise solutions proposed by Broadway Developments Ltd and by ACC included 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 the chimney had merit but they did not believe that they should pay the full cost of protection. ACC did not wish to see the chimney demolished and offered to maintain it in perpetuity if the Trust would purchase it but the Trust were not able to commit funds for purchase. By mid November 1994 negotiations on the future of the chimney had stalled, and it was subsequently demolished.

In terms of emergency protection, interim registration of a historic place under the HPA 1993 has the same effect as the notice of a requirement for a heritage order by providing up to six months protection 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. The value of interim registration is reduced if a decision is made on final registration while negotiations are proceeding.

The initial lack of recognition of the historical value of the Westfield Freezing Works and, in particular, the Westfield Chimney, is partly a reflection of the lack of appreciation for this type of industrial heritage in New Zealand. If the area had been assessed at the time information was requested, the heritage values may have been able to be incorporated in the development of the initial subdivision design plan and the chimney protected.

St Mary's College

St Mary's College, Ponsonby, was founded by the Sisters of Mercy in 1864 and the first classrooms were built in 1866. An important heritage building on the site is the St Mary's College Hall. It was designed by the architectural partnership of Tole and Massey and it has considerable cultural significance as an example of their interpretation of the Spanish Mission Romanesque style for an educational building. The ACC assessed the College Hall heritage qualities as attractive Spanish architecture, as an important church building for the Catholic community, as a significant component of the site, and as being in excellent condition. St Mary's College Hall was listed by ACC as a Category B building in the proposed Isthmus Plan, and is registered as a Category II building under the HPA 1993.

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 hall itself would be structurally upgraded with significant alterations. A conservation plan would be prepared for the development. The ACC commented that any new development would need to be designed in harmony with the remainder of the building and the part demolition of the block would increase the use of the remaining buildings and improve the prospects for their future. Following discussions between the applicant and the C&UDD, the proposal was altered to achieve a visual 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 resource consent application was then granted, as the significant part of St Mary's Convent College Hall would be restored and structurally strengthened to ensure its preservation; any adverse effects on the environment from granting consent to the application would be minor. 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.

This case study assessed the roles of the Nelson City Council and the New Zealand Historic Places Trust in relation to built heritage in Nelson City, and their respective approaches to its protection. Approaches to Maori heritage were also briefly discussed.

Nelson City Council's approach to heritage management

Against a background of controversy over the demolition of buildings in the Central Business District (CBD), the Nelson City Council is developing policies on heritage management for its new district plan. The approach taken by the council aims 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. The approach includes:

- the development of assessment criteria, based on a scoring and ranking system which is used to assess either individual or groups of buildings;
- the development of design guides for the CBD and some residential areas;
- the development of rules to protect both individual buildings and groups of buildings within precincts;
- the establishment of a Heritage Protection Fund, to be administered by trustees, and to which the council has made a major contribution.

In the preparation of its draft plan, the council has consulted widely with building owners. While some have not agreed with the assessments of their buildings and the rules being considered, the general level of owner and public support for the proposals has pleased the council.

The draft district plan has yet to be notified. Meanwhile the council is still working under the transitional district plan which contains inadequate measures for protecting buildings in Nelson. This has raised difficulties for the council in protecting buildings in the CBD while the new district plan is being developed. One building in the CBD listed on the Trust's Register was demolished. Another building not listed but the council considered it worthy of protection and saved it from demolition by issuing a heritage order. After negotiations with the owner of the building, the council purchased the building and removed the heritage order. The council has placed a covenant over the building which provides for any activities in respect of the building to comply with the provisions of the draft plan. The council is confident that it will be able to onsell the building.

As far as Maori heritage is concerned, the council is at a very early stage of policy development. It is not yet clear how the roles of the council and the Trust in relation to archaeological sites should be reconciled in the Nelson context. 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. Nevertheless, the tangata whenua appear to be developing a good working relationship with the council.

2.4 Heritage management in a provincial centre - Nelson City

The New Zealand Historic Places Trust (the Trust)

In general, the work of the Trust in the Nelson District has been carried out largely through discretionary measures such as advice and information, rather than through the use of its regulatory functions. The Trust's Regional Officer for Nelson, based in Wellington, has a wide area to cover and that in that context, Nelson is not a high priority at the present time. The Trust advises that this is consistent with the government's preference for action through voluntary mechanisms rather than regulation, reflected in the Trust Board's policies and Crown purchase priorities. Head Office points out that a submission will be made on the Nelson District Plan once it is notified.

A number of issues were raised by the Nelson Branch of the Trust in regard to its role and relationship with Head Office. Some communication problems with Head Office were outlined and also issues relating to the branch's local reputation amongst other local interest groups as being "toothless". The branch has a general advocacy role and carried out liaison with the Nelson City Council. However, 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 (given the Trust's relationship with the Crown), their role is rather different from other interest groups.

Comments were made by the local branch that its resources for carrying out voluntary unpaid work were very limited. This raises questions about who should be funding some of the work being carried out by the branch, including working with the owners of buildings.

Issues arising from the case study

- Of the two agencies which are the subject of this study, 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 voluntary mechanisms such as the provision of information and advice.
- In Nelson, the council's approach to the protection of buildings focuses on streetscape and amenity values whereas the Trust is more concerned with the historic and cultural values of buildings and places.
- In the Nelson context the use of a heritage order has proven to be an effective way of providing short term protection to a site. However its effectiveness was dependent upon council willingness to purchase the building.
- In the long term, the development of policies in consultation with the community is an effective way of protecting heritage valued by that community. The establishment of incentives such as a heritage fund has the potential to be an important component of those policies.
- In relation to Maori sites it is not yet clear how the roles of the council and the Trust should be reconciled. It seems there has been little communication between tangata whenua and the Trust in regard to the protection of Maori historic and cultural heritage in the Nelson district.

This section briefly reviews various historic and cultural heritage protection approaches used overseas.

Australian Commonwealth

The Australian Heritage Commission (AHC) was established in 1975 to identify the national estate and promote its conservation. The national estate is defined 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”. The responsibilities of the AHC include:

- advising the Commonwealth Government on national estate conservation issues;
- compiling a Register of National Estate places throughout Australia. There are currently 11,000 places listed on the Register although registration does not ensure protection. The AHC does not own or manage any national estate places;
- coordinating the National Estate grants programme (A\$4.7 million p.a.) in cooperation with state and territorial governments and administering the national component. Grants are available for identification, conservation, promotion and education purposes for places listed on the Register. On average, each \$1 of grant generates \$3 of heritage work;
- 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 affect a place listed on the Register unless there is 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. Regular meetings are held by federal and state agencies, and meetings are held by a council of heritage Ministers.

In 1994 the Commonwealth Government introduced a taxation incentive scheme administered by the Department of Communications and the Arts with the AHC providing heritage advice. Private owners of heritage listed properties could apply through a competitive selection process to receive income tax rebates of 20% for approved conservation work. Preference is given to conservation work on heritage places that are visible or accessible to the community and for work which can be completed within two years. The scheme is currently capped with an approximate cost of A\$2 million in tax revenue that results in A\$9.5 million conservation work.

The management of Aboriginal heritage is governed by a multitude of statutes operating at different levels of government. The National Parks and Wildlife Service has the responsibility to protect all Aboriginal cultural sites and relics as well as to provide for the identification and conservation of historic places within national parks and reserves.

2.5 Selected overseas approaches to heritage protection

Australian states

Most states have now reviewed 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 generally viewed as a part of the overall conservation and environment system.

Each state and territory also has its own private National Trust and the Australian Council of National Trusts acts as a coordinating body. The various trusts compile and maintain registers, and own and manage some historic properties but have no statutory responsibilities. Australia has a national Main Street agency which promotes the economic revitalisation of cities and towns while providing for the preservation of heritage and character.

In New South Wales, the Heritage Council of New South Wales (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. A permit must be obtained from the Council before the disturbance of any non-Aboriginal archaeological site. A heritage assistance programme provides grants for local government projects, surveys and private work with most grants having significant multiplier effects. In 1995 approximately A\$2 million was provided by the NSW Government along with A\$0.8 million from the National Estate Grants Programme. Since 1988, 2,400 projects have been approved totalling A\$26.6 million.

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.

Conservation orders issued by the Minister may provide either interim or permanent protection for heritage items and interim orders may be issued without notification. Between 1977 and 1994, 750 orders were issued but in recent years the Council has shifted from being a regulator to a facilitator. Local government is increasingly seen as the appropriate agency to regulate and protect heritage items and the Council provides assistance with the provision of information, training and heritage advisers. This has been criticised by heritage professionals who believe that heritage responsibilities are being given to agencies with insufficient expertise.

Any person intending to perform any work on an item protected by a conservation order must obtain the approval of the Council before submitting an application to local government. The Minister can also issue orders to stop demolition for one year as a holding measure to enable the investigation of the significance of a heritage item and to determine future action. Where illegal demolition or damage to an item has occurred, the Minister may place a ban on development for up to 10 years.

In NSW all government departments are required to keep a Heritage and Conservation Register and they must prepare conservation or management

plans for heritage properties before disposal. Many government departments retain their own heritage managers or the services of consultants.

The Historic Houses Trust was established by legislation in 1980 to specifically manage and maintain a number of government-owned historic buildings as house museums and provide information on heritage conservation. The Trust receives significant levels of funding.

United States of America

The National Parks Service (NPS) manages many historic properties and has a network of national parks which include historic monuments. The NPS maintains the National Register of Historic Places to coordinate the identification, evaluation and protection of historic and archaeological resources. The Register does not guarantee protection of items, which occurs mainly at state or local government level. 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.

State and local governments can schedule buildings as landmarks and devise protection mechanisms for 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.

The Tax Reform Act 1976 was introduced to off-set the excessive costs of preserving historic buildings and provide an incentive for rehabilitation. It offered owners of structures listed on the National Register favourable accelerated depreciation rates and allowed for charitable donations. In a sample of 243 projects examined for the 1979 tax year US\$27.1 million of private expenditure was achieved for a net tax cost of US\$1.3 million. The United States Economic Recovery Tax (1981 and modified in 1986) replaced the depreciation incentives with a 25% tax credit (reduced to 20% in 1986) for the rehabilitation of certified heritage buildings according to national standards to encourage their preservation and the efficient use of resources. Some states and local government also provide for reductions or exemptions of property and other taxes to encourage the preservation of historic properties and non-producing archaeological sites.

The United States National Trust for Historic Preservation and State Trusts, together with the National Main Street Agency and various charitable organisations, provides major support to federal and state agencies.

United Kingdom

The Historic Buildings and Monuments Commission is empowered to secure the preservation of ancient monuments and historic buildings in England, provide for the preservation and enhancement of the character and appearance of, conservation areas, and promote the public's enjoyment of, and advance their knowledge of ancient monuments and historic buildings. The Commission administers a National Heritage Fund which is used for grants and loans for the acquisition, maintenance and preservation of items of outstanding scenic, historic, aesthetic, architectural or scientific interest. The Commission maintains a schedule of monuments that may include "any structure, work, site, garden or area which in the Commission's opinion is of historic, architectural, traditional, artistic or archaeological interest". In 1987 the schedule contained nearly 13,000 monuments and consent is required for any activity that may affect a scheduled monument.

The Department of the Environment administers English Heritage which maintains a list of over 400,000 buildings. It is an offence for a building owner to alter or demolish a listed building without the permission of the local planning authority. The listing of buildings occurs without the prior notification of an owner although an owner can then apply for exclusion of the building from a list. Buildings and sites of regional or local significance gain some protection under the Town and Country Planning Regulations (assessment of environmental effects) and from the general planning procedures of local authorities. Local authorities can also make grants and loans available for the preservation and maintenance of heritage.

The National Trust, a charitable organisation with more than 2 million members, has similar objectives to the Commission. The National Trust owns or manages a considerable number of reserves and buildings and assists in covenanting historic places.

3. REVIEW OF THE CURRENT SYSTEM

There is no doubt that significant losses of historic and cultural heritage in New Zealand are continuing. For example, in Auckland, 42 buildings on the Historic Places Act 1993 (HPA) Register were destroyed in the period 1984-94 (Auckland Regional Council 1994). In Wellington, 41 buildings on the HPA Register (12% of all registered buildings) were destroyed in the period 1980-95 (Flinkenberg 1996). It is probable that the rate of loss has slowed in the last 6-8 years compared to the period before this, but the slower trend is more likely to be due to economic factors than to more effective protection measures.

The losses may have been even greater for Maori heritage and archaeological sites. For example, in the Auckland metropolitan area, over 50% of pa have been extensively modified or destroyed since city development began. Less than 200 ha of the original 8,000 ha of stonefield areas (ie 2.5%) are still in existence. Six percent of known archaeological sites in the Auckland region were destroyed or modified in the period 1979-94 (Auckland Regional Council 1994). A 1993 archaeological site survey in the lower Hauraki Plains showed that 40-45% of all archaeological sites (70% of all midden sites) in the area affected had been destroyed in the 1970s and 1980s by the heavily government-subsidised Waihou Valley Scheme, many without legal authority and despite the existence of a detailed archaeological survey commissioned for the scheme (Allen *et al.* 1993). A recent review of archaeological site records in the Canterbury region concluded that over 40% of all sites in the hill country and 70% elsewhere had been destroyed or damaged (Challis 1994).

However as noted below, the new district plans of some territorial authorities, particularly in the major cities, have given a stronger commitment to protecting heritage buildings, and in a few cases, also to wahi tapu and archaeological sites. In some districts, plan provisions and assessment criteria for heritage protection have had widespread public support, and the adaptive reuse of sites and buildings has been promoted. There is a growing appreciation of the economic dimensions of heritage conservation, and a greater readiness to enter into constructive dialogue with property owners on the issue of "how can a new economic use be found for this building?" rather than focusing on "how can this owner be prevented from destroying this building?" In the larger urban councils, heritage planning and urban design units have been crucial to these successes.

A summary assessment of the system for historic and cultural heritage management is shown in Tables 3.1. and 3.2. Table 3.1 assesses the system as a whole and Table 3.2 assesses the ability of the two principal national agencies, the New Zealand Historic Places Trust (the Trust) and Department of Conservation (DOC), to discharge their responsibilities. In both tables

3.1 Assessment of the current system for historic and cultural heritage management

3.1.1 Heritage outcomes: the physical stock

3.1.2 Evaluation of system and agencies

assessment is made against the characteristics of an effective system suggested in Table 1.2.

Table 3.1 clearly indicates that the system as a whole is not effective. In spite of growing responsiveness by individual agencies, a systematic and coordinated approach is almost totally lacking, especially in strategic planning (see below). Deficiencies and ambiguities in legislation (principally the HPA and Resource Management Act 1991 (RMA)) have allowed variable interpretations of responsibilities and significant overlaps and gaps, especially between the Trust and territorial authorities (see Chapter 3.1.3)¹.

The case studies show several examples of confusion as to who is the lead agency for protection in different circumstances, or even whether it should be a national, regional or local organisation. Coordination and cooperation between agencies is at best ad hoc and largely dependent on personal initiatives. This is ironic when some of the most successful outcomes discussed in the case studies have occurred when agencies have taken a cooperative approach. Although there is extensive information in the combined resources of the HPA Register, the NZAA File and territorial authority schedules, overall it is of very variable quality, contains many gaps and is inconsistently assessed. As a result some information is not robust when subject to legal proceedings. This applies particularly to archaeological and Maori sites.

The fact that losses are continuing on the scale noted above is at least partly a reflection of the ineffectiveness of continued attempts at protection. A senior archaeologist has commented: "I have been involved in site protection for 30 years, and one of my saddest experiences in recent times is the realisation that we are still failing to achieve the protection of some of the key archaeological sites we first targeted early in that period" (J Davidson, pers. comm., May 1996).

National Agencies

Of the national agencies (see Table 3.2), the Trust is clearly under stress in many key areas of operation. It is clearly inadequately resourced for the variety of roles it is required by statute to perform, and the lack of resources means that its available protection mechanisms are largely ineffective. Expectations of what the Trust can achieve by the public and members may well be unrealistically high. The fact that in the last couple of years it has achieved financial and performance targets under these pressures is a tribute to its staff and members. However, some of the Trust's problems also stem from the apparent ineffectiveness of long-term strategic planning and priority setting. This has resulted in a perception that the Trust is reactive and internally confused about the roles of different parts of the organisation, particularly between the roles of Trust staff and local committees. The nature of the Trust's present regulatory roles means that some work (often relatively

¹ The Trust has proposed a series of amendments to the HPA in the 1996 legislative programme which, while not altering the basic system of historic and cultural heritage administration, would resolve some deficiencies in present procedures.

TABLE 3.1 Summary assessment of the system for the management of historic and cultural heritage

EFFECTIVE SYSTEM CHARACTERISTICS	Comments
<p>1. The historic and cultural heritage of New Zealand is retained and conserved to a degree which meets individual and community aspirations as assessed under Characteristics 2 and 3.</p>	<p>Losses continuing, although loss of buildings may have slowed in last 6-8 years. New district plans under RMA may have significant positive effects for some places (mainly buildings). Protection of archaeological sites under s 10 HPA ineffectual; protection of other sites significant to Maori even less so. Great difficulties in integrating historic and cultural heritage protection with other kinds of heritage.</p>
<p>2. Treaty of Waitangi obligations are provided for in such a way that Maori interests in relation to their taonga are actively protected and Maori are able to exercise kaitiakitanga over their taonga according to their own cultural preferences.</p>	<p>Overall not achieving protection, not allowing effective kaitiakitanga. Some useful initiatives by iwi, some territorial authorities, Maori Heritage Council. Evolving policy, especially under Treaty settlements processes, may have some positive impact on protection processes, but only indirectly on private land.</p>
<p>3. The system is responsive to:</p> <ol style="list-style-type: none"> The importance that is ascribed by New Zealanders to the protection of their historic and cultural heritage; The wide range of historic and cultural values held by New Zealanders; The wide range of interests which may be affected by the protection of historic and cultural heritage (in particular, the rights and responsibilities of landowners), so that outcomes are fair to all affected parties. 	<ol style="list-style-type: none"> Agencies recognising greater expectations and generally attempting to provide for it. Growing recognition of social and industrial values and of different societal/cultural values. System often not responsive to this range: minority cultures largely responding on their own. Outcomes often not seen as fair. National response significantly affected by lack of resources for public purchase/compensation so that private property rights can be upheld. Local government process more consultative and costs can be spread over community.
<p>4. The means used by each agency for setting priorities for historic and cultural heritage complement each other as part of a systematic national approach to historic and cultural heritage.</p>	<p>Agency priorities uncoordinated and individually unclear except DOC and some territorial authorities, leaving significant gaps off conservation estate. DOC primary focus on natural heritage. Important unrealised role to develop priorities at regional level, through RPS and other initiatives.</p>
<p>5. Statutes which provide for the protection of historic and cultural heritage are structured and linked in such a way that the functional relationships between the agencies responsible for their implementation are clear and unambiguous.</p>	<p>Structures and linkages envisaged by Coad Report reasonably clear: potential for effective implementation in HPA and RMA but interpretation leaves significant uncertainties and some overlapping statutory responsibilities and gaps especially between the Trust and territorial authorities. Role of regional councils unclear.</p>
<p>6. Assessment criteria and technical standards used by agencies are comparable where necessary and result in consistent levels and high standards of identification and resultant protection.</p>	<p>Variable standards and criteria at both national and local level. Leaves significant gap in information base for identification and protection.</p>

TABLE 3.2 Summary assessment of the performance of the principal national agencies in the management of historic and cultural heritage

EFFECTIVE AGENCY CHARACTERISTICS	NZHPT	DOC
1. Each agency clearly sets out and implements its priorities for historic and cultural heritage protection and management.	Very unclear priorities between protection, advocacy & management, partly caused by hybrid roles. Some success recently in meeting performance targets even with very poor resourcing. Priority of participation in territorial authority district plans under RMA effective.	Clear but major policy questions unresolved. Priorities at conservancy level need clarification not being implemented in some conservancies.
2. The statutory responsibilities of each agency are translated by that agency into clear operational objectives and policies (and plans where relevant).	Restructuring of work programme into outputs has helped, but hindered by ineffective strategic planning; forced into reactive role (sometimes inevitable). Role of regional offices very variable. Lack of clear policy and criteria for some functions.	<i>Historic Heritage Strategy (HHS)</i> major achievement. Very variable interpretation and implementation by conservancies.
3. Agencies with responsibility for the protection of historic and cultural heritage actively liaise with each other to: <ul style="list-style-type: none"> • identify areas of common interest; • clarify how common concerns will be dealt with; • manage cross-boundary heritage issues in an integrated manner. 	Good on specific projects, but could be improved on general and strategic issues. Very limited by resources.	Good on specific projects but very limited by policy and resources.
4. Each agency's objectives and policies for the protection of historic and cultural heritage are clearly communicated to all levels of the agency and to the public.	Problems in communicating to branches and to public, results in wide confusion over roles and limitations of the Trust as a whole and especially roles of branches/committees. Advocacy role very low profile, but good recent guides on building conservation and conservation planning	Widespread lack of understanding of DOC's new role and limitations.
5. Within each agency, responsibilities are delegated to appropriate levels, such that decisions are made at the level which represents the relevant community of interest.	Centralised decision-making for heritage conservation (sometimes necessary if financial implications); confusion on roles of regional officers.	HO role in designation decisions in case studies controversial but clear and appropriate.
6. Parties affected by historic and cultural heritage protection are meaningfully consulted by relevant agencies prior to final decisions being made.	Limited opportunities, little legislative requirement (major problem for authority provisions). Some effective "behind scenes" negotiations at times. Key role for regional offices but hampered by limited resources and delegation and poor information. Regional workload increasing.	HHS consultation limited. Informal consultation with Maori through Kaupapa Atawhai. Potential for NZCA/Conservation Boards to have greater role.

EFFECTIVE AGENCY CHARACTERISTICS	NZHPT	DOC
7. Each agency has a high-quality information base upon which to base its decisions and carry out its responsibilities. Information is freely available and shared between agencies unless prevented by cultural or commercial sensitivity.	Extensive for buildings (especially architectural aspects) but variable quality and far from complete, especially archaeological and Maori sites. Inadequate for statutory functions.	NZAA/DOC database extensive but far from complete, variable quality, improving but inadequate for statutory functions. Regional conservancy heritage inventories are being prepared.
8. Clear and consistent assessment criteria and technical standards are used by each agency.	Clear basis in HPA, and quality improving but older records not consistent. Further interpretation needed.	Clear and consistent criteria for on-estate historic heritage, guided by HPA and conservancy strategies. Often difficult to put into wider (off-estate) context. Technical standards good but needs attention to training of field staff.
9. Each agency carries out appropriate research to support its statutory responsibilities and validate the levels and standards of protection selected.	Important research by HO unit & branches but quantity limited in relation to needs.	Reasonable amount, good quality. Application to off-estate needs unclear under HHS
10. Each agency monitors and reports on the results of its policies, plans and consents where relevant, and carries out monitoring of the state of historic and cultural heritage over which it has responsibility, in line with its functions.	Effective monitoring of territorial authority plans, conservation plans etc. Monitoring of state of heritage ad hoc. Branches well placed to monitor but not coordinated.	Setting up good systems for monitoring heritage on-estate. Too early to assess results of HHS.
11. Each agency provides public information about its role in relation to the protection of historic and cultural heritage.	Good range of information available to public and members. High quality magazine to members. But apparently not translated to effective advocacy role.	Some good quality visitor and public information available. No separate budget for information provision.
12. Agencies have appropriately trained staff to carry out all tasks, and generally foster high professional standards of historic and cultural heritage management.	National standard setter in much conservation work. Number of qualified staff in some key professional areas very limited, continuity problem because of high turnover.	Mainly well qualified staff but distribution between conservancies very uneven.

high profile) is always likely to be reactive (G. Whitehead letter to PCE 29 April 1996). A major and insufficiently recognised recent achievement for the Trust is its significant input into RMA statutory planning procedures at a local level.

Government policy has restricted DOC, through its *Historic Heritage Strategy*, to a seemingly much more straightforward role in historic and cultural heritage management. On the conservation estate DOC is managing heritage resources which have already been protected in some way. Although DOC's historic heritage resources are also severely stretched (especially by the uneven distribution of skilled staff across conservancies) it has relatively more resources available than the Trust has, and also has a relatively good information base. However DOC's role off the conservation estate continues to be a contentious issue (see Chapter 3.2). Also, through the Conservation Act 1987 and explicit Treaty of Waitangi obligations, DOC has a special relationship with Maori and this will also result in tensions between expectations of Maori and the role that the Department feels able to play (see Chapter 4).

There has been much debate about Government's decision for DOC to relinquish the role of advocating for and providing formal protection of significant historic and cultural heritage resources on land outside the conservation estate. The Conservation Act makes no distinction between DOC's advocacy functions on-estate and off-estate. The *Historic Heritage Strategy* is not consistent with DOC's activities with respect to natural heritage (eg the PNA Programme, advocacy for natural heritage protection, the use of heritage orders and designations for the protection of forests and tussock grasslands).

Even on the conservation estate, intense internal competition for funding (with different divisions promoting the management and protection of natural and historic heritage respectively) is hampering DOC's progress with integrated heritage management. The lobbying of politicians by environmental NGOs for increased funding for DOC work is almost exclusively directed at increasing funding for natural heritage. There are serious inconsistencies in the level of attention to historic and cultural heritage between conservancies.

Local government agencies

Local government agencies are not included in Table 3.2 partly because the information base for local government in this investigation is far less complete than for the two national agencies, and partly because the information that is available suggests that local government performance is too variable to be adequately generalised.

Most regional policy statements prepared by regional councils have included sections on historic and cultural heritage, but these sections do not develop issues significantly beyond what is being currently undertaken by territorial authorities in the region. Regional councils do not appear to be putting significant resources into the monitoring of the outcomes of policies and objectives of historic and cultural heritage management sections in the regional policy statements, nor to be fulfilling any significant role in the identification and protection of regionally significant historic and cultural heritage.

A notable exception to this generalisation is the Auckland Regional Council (ARC) which has expressed a strong vision for historic and cultural heritage management in the region in the Auckland Regional Policy Statement (ARC 1994). Heritage is a significant regional issue in Auckland and ARC intends to provide for its integrated management through its role under Part II and s 30(a) of the RMA. The ARC is undertaking several key roles in historic and cultural heritage management in the Auckland region, involving diverse inventory, evaluation, resource consent procedure and policy development roles, although these roles do not include significant direct funding of heritage protection. In summary it appears that the ARC has significantly increased the momentum for historic and cultural heritage protection and management in the region as well as providing partnership and practical assistance to territorial authorities. This is a model which deserves wider application.

The performance of territorial authorities is extremely variable against almost all the criteria listed in Table 3.2. As a generalisation, the performance of most territorial authorities referred to in this investigation appears to be improving, in some cases significantly so, largely in response to growing public interest and expectations. Some larger urban territorial authorities are now making a significant commitment to historic and cultural heritage management, through dedicated heritage units, sophisticated assessment procedures linked to robust scheduling provisions in new district plans, design guidelines, and incentive funds (Appendices 7 and 8). Most recent heritage protection achievements appear to have been at the local level for historic places (usually buildings but in a few places including wahi tapu and/or archaeological sites) through district plans (eg Auckland Isthmus, Christchurch and Dunedin) or heritage orders (eg Christchurch, Gisborne and Nelson). These achievements have occurred where territorial authorities have taken a strong proactive role, often equally strongly supported by Trust submissions and advice, and backed up by Trust branches and other local heritage NGOs. These improvements are significant because of the recency of changes to the planning regime through the RMA and the HPA 1993, and very few new district plans are yet fully operative. Recently the Trust has also surveyed territorial authority progress in heritage protection under the RMA (Woodward 1996) and its analysis is broadly similar to the above summary.

There are still districts where territorial authorities do not appear to be providing adequately for historic and cultural heritage protection and management, in a few cases making scant recognition of any responsibility in this regard. There is a particularly poor commitment to Maori heritage (Chapter 4). Many submissions to the present investigation show acute frustration at the systematic failure to protect heritage places significant to iwi. There are more general problems for territorial authorities, even when political commitment is present; examples include lack of specialised heritage staff, reliance on poor quality information bases, and a lack of monitoring.

Because of the above factors, as well as the ebb and flow of priorities given by communities and decision-makers to historic and cultural heritage matters, it is too early to say that the improvements noted are either universal or lasting.

3.1.3 Legal and institutional issues

Status of Historic and Cultural Heritage in Part II RMA

When the RMA was enacted the Trust was concerned that heritage values (other than Maori values) had been omitted from the matters of national importance (s 6 RMA) and included among the other matters (s 7). The distinction is an important one as local authorities are required to recognise and provide for matters of national importance, whereas they are required only to have particular regard to the other matters. It is well established that a requirement to have “particular regard” imposes a lesser duty than does the requirement to “recognise and provide for” (*Minister of Works and Development v Waimea County Council* [1976] 1 NZLR 379; *R v CD* [1976] 1 NZLR 436). In other words local authorities are required to actually do something about the matters of national importance, whereas they merely have to think about whether they should do anything about other matters. This allows local authorities, after giving the other matters proper consideration, the discretion to do little or nothing in relation to heritage (other than Maori heritage) (*Marlborough District Council v Southern Ocean Seafoods Ltd* [1995] NZRMA 220).

Historic Places Act 1993 - reference to the Treaty of Waitangi and Maori heritage values

Among the failings in the HPA 1980 identified by the Coad Report (Working Group on Heritage Law Reform 1989) (see Appendix A3.3) was the serious deficiency in its approach to Maori heritage values. The Working Group identified the need to provide a better framework for dealing with Maori heritage, and recommended the inclusion of reference to the Treaty of Waitangi. However, the Bill was introduced and passed without a reference to the Treaty of Waitangi.

By contrast, there is such a reference in s 4 of the Conservation Act. As the HPA 1993 is included in the list of Acts administered by the Department of Conservation and contained in the First Schedule to the Conservation Act, it has been suggested that the reference to the Treaty in the Conservation Act is thereby imported into the HPA. This is not accurate. The Department will be bound by the Treaty in accordance with s 4 in its administration of the Conservation Act and the Acts scheduled. However, the Department has only a limited administrative role under the HPA and there is little scope for it to give effect to the Treaty in this context, whereas the Trust is not affected by the Department’s responsibility under s 4.²

Section 4 of the HPA contains the purpose and principles of the Act. Subsection (2) sets out three matters which are to be recognised by persons exercising powers and functions under the Act, in achieving the purpose of the Act. Paragraph (2)(c) requires the recognition of “the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi

² In *Ngai Tahu Maori Trust Board v Director-General of Conservation* [1995] 3 NZLR 553, it was held that the duty under s 4 of the Conservation Act affected the Department’s administration of the Marine Mammals Protection Act 1978 (an Act also listed in the First Schedule to the Conservation Act), but that case did not cover the position of an independent body acting under an Act administered by the Department.

tapu, and other taonga”. In *Ngatiwai Trust Board v New Zealand Historic Places Trust (Pouhere Taonga)* [1996] NZRMA 222, a recent decision of the Planning Tribunal, it was found that paragraphs (a) and (b) of s 4(2) are principles and paragraph (c) is not, because unlike the other two paragraphs, (c) does not commence with the words “the principle that”. This distinction meant that the matters specified in s 20(6)(b) HPA to which the Tribunal may have regard in considering an appeal³ did not therefore include Maori values.⁴ If the paragraph (c) matter is not to be classified as a principle and decision-makers do not take it into account in respect of applications for archaeological authorities, this may have the effect of further weakening provision for Maori heritage.

Irrespective of the issue of a reference to the Treaty in the HPA, there is a need to provide a proper framework for dealing with Maori heritage as shown by the continued inability of the system to provide adequately for the protection of Maori heritage (refer case studies and Chapter 4). A review of the HPA as it relates to Maori heritage is warranted as there is a need for policy in relation to Maori heritage to be properly thought through from a Maori perspective.

Differences between HPA and RMA

The Acts do not clearly allocate responsibility for the protection of historic and cultural heritage between central government, local government, and the Trust, other than in respect of authorities to destroy, damage or modify archaeological sites. The provisions as to archaeological sites do not actually protect them but rather regulate which ones should be destroyed, damaged or modified, and how and when.

Focus

“Heritage” is not defined in the RMA generally, although a heritage order is intended to protect any place of special interest, character, intrinsic or amenity value or visual appeal, or of special significance to the tangata whenua for spiritual, cultural or historical reasons (s 189(1)). In relation to the issue of heritage orders a place may be of special interest by having special cultural, architectural, historical, scientific, ecological or other interest (s 189(2)). By contrast the HPA has a narrower focus – on the historical and cultural heritage of New Zealand (s 4(1), Chapter 1.2). The HPA is concerned with historic places and areas, and wahi tapu and wahi tapu areas. The HPA (s 5) provides for the Trust to issue heritage orders to protect historic places, areas, wahi tapu and wahi tapu areas under the RMA.

³ Section 20(6)(b) provides “In determining an appeal under this section in respect of a decision made under paragraph (a) or paragraph (b) of section 14(1) of this Act, the Tribunal shall have regard to any matter it considers appropriate, including (but not limited to)...(b) The purpose and principles of this Act ...”

⁴ However, the Tribunal is in no way restricted in the matters it may take into account in coming to a decision on appeal and it must, in any event, recognise the para (c) matter in exercising its functions and powers under the Act, although it is arguable that matters which are specifically stated are more likely to be considered than those which are not stated.

Process

District councils may protect buildings or other heritage structures or places under the RMA by listing them in district plans, including rules, policies and objectives in the plans, and/or providing for a zoning tailored to their protection. This protection depends on the planning process, which is a public process. The district councils are elected representatives of the local community and are required to take the submissions of the public into account in preparing district plans. This means that a district council will have to give some weight to the community values and what it is that the community considers worthy of protection and Trust advice under s 74(2)(b) RMA, without compromising the environmental bottom line of the RMA. In some cases the community values will not coincide with those upon which the Trust focuses. For example in Nelson City, the local community is supportive of the council's approach to heritage which is based more on amenity and streetscape than on historical connections.

The Trust is not constrained by public opinion in the same way. The general public has no direct involvement in the membership of the Board of the Trust or the Maori Heritage Council and the criteria for assessment of historical and cultural heritage are set out in the HPA (s 23). The opportunity for public input at this national level was in the development of the legislation.

The HPA does not have the same focus on consultation as does the RMA, although the applicant is required to advise the Trust of the consultation with tangata whenua or other affected persons that has been undertaken. There is no provision for notification of the application or public submissions. Where the site is wahi tapu the Maori Heritage Council considers the application and makes a recommendation to the Trust. The Maori Heritage Council may undertake such consultation as it considers appropriate.

If the Trust's role is seen as that of managing and protecting historic and cultural heritage of national significance as advocated in the Coad Report, it is appropriate that statutory criteria should be used to determine what is of national significance. It is also appropriate that criteria developed to identify and protect regionally or locally significant heritage should be responsive to community values.

Summary

There are a number of significant differences between the HPA and the RMA.

- Maori values are given less weight in the HPA than in the RMA: there is no incorporation of the Treaty of Waitangi into the HPA; and the relationship of Maori with their ancestral sites is a matter to which regard is required to be had under the HPA, whereas under the RMA it is a matter of national importance which must be recognised and provided for. Non-Maori heritage is given less weight under the RMA than is Maori heritage.
- Bodies corporate, including iwi incorporations, are disadvantaged under the HPA process which provides standing for persons directly affected to contest decisions of the Trust by appeal to the Planning Tribunal, since a body corporate cannot be directly affected by the grant of an authority even though it represents individuals who are directly affected.

- Under the RMA any person (which includes bodies corporate) may make a submission on a notified resource consent application and thereby have standing to appeal the decision of the consent authority.
- The RMA focus is on sustainable management of natural and physical resources through a public planning process, whereas the HPA focus is on the identification, protection, conservation and preservation of historic and cultural heritage based on statutory criteria approved by the Trust Board.
- The RMA process is enabling of heritage protection through the public planning process; the HPA has no direct enabling mechanism. The Register is indirect and authorities are a regulatory consent process.
- The HPA authority procedure and the RMA resource consent process are both essentially consent processes, however, the RMA process makes greater use of consultation and provides for public submissions on applications; the HPA has no absolute requirement to consult affected persons nor does it allow for public submissions.

Central government funding

Of the total Trust funding of \$4.8 million in the 1995/96 financial year, the Crown directly provides \$1.98 million from Vote Conservation. This money is provided in two outputs, \$1.65 million for identification and protection and \$0.33 million for management services. The majority of Trust funding was part of the output: "identification and implementation of protection for natural and historic places including the identification, registration and the associated promotion of the conservation, protection and care of historic places in a culturally sensitive manner; and the implementation of legal protection of natural and historic resources on private or leasehold land". The Trust was to provide the following services:

- monitor and provide advice on the conservation of 120 buildings;
- register 30 places and areas under the HPA;
- prepare 20 submissions on RMA policies and plans;
- prepare 50 resource consent submissions;
- complete two covenants;
- the Maori Heritage Unit will visit marae in 1-4 areas, conduct 2-3 conservation workshops and hold 2-3 iwi site identification workshops;
- conservation advice will be provided for 44 Maori/archaeological places;
- statutory processes and time limits will be met in relation to the archaeological provisions of the HPA (s 9-20).

Crown funding of Historic Resources in DOC through Vote Conservation in the 1995/96 financial year amounted to \$3.0 million, more than 90% of which was in DOC's Output 4 (conservation estate management services), and the remainder in Output 2 (implementation of legal protection).

Excluded from the above Crown funding to the principal agencies is a far greater amount of related funding to other agencies. This includes:

- policy advice from Ministry of Cultural Affairs, Ministry for the Environment, Department of Internal Affairs and Te Puni Kokiri (not able to be specified):

3.1.4 Resources for historic and cultural heritage management

- funding for the Dictionary of New Zealand Biography Project and Historical Publications Branch (Department of Internal Affairs, \$1.74 million in 1995/96);
- museum services (Museum of New Zealand (MONZ), \$11.2 million in 1995/96);
- capital contributions to MONZ, Auckland Institute and Museum, Old Government Buildings, and Turnbull House building and restoration projects (\$75.8 million in 1995/96, \$290 million in total);
- operating expenses for Old Government Buildings, Turnbull House and heritage properties administered by Department of Internal Affairs (\$1.5 million in 1995/96);
- funding for various research projects provided by the Public Good Research Fund (see Appendix A6.4).

Local government funding

Local authorities with dedicated heritage staff and heritage units include Auckland, Wellington, Christchurch, and Dunedin City Councils, and Auckland Regional Council. Several other local authorities have policy analysts and planners with specified heritage duties but there is no general provision for these staff that can be identified from local authority annual plans. There is substantial financial commitment from local government to historic heritage projects (typically building restorations), and there is currently substantial involvement in developing heritage sections of district plans under the RMA. For many local authorities heritage is included in general resource management and environmental sections and discrete funding cannot be readily identified. For this reason no attempt has been made to estimate total funding.

Lottery Grants Board funding

In the 1995/96 financial year, the Lottery Environment and Heritage Distribution Committee (LE&HDC) provided \$3.4 million of funding to physical heritage projects, and a similar amount to cultural heritage projects. The provision of Lottery funding for the Trust is for specific projects and continued Lottery funding of the Trust for its core activities is under review. In April 1996 the LE&HDC advised the Trust that the committee was not prepared to fund any of the Trust Output 1 (exercise of statutory instruments) given DOC's new policy (Appendix A3.3), or any of Output 4 (marketing) given that it should be funded through self-generated income. The committee advised that it was only prepared to fund part of Output 3 (management of properties), specifically excluding any Crown-owned properties from funding. The committee advised it may consider funding aspects of Output 2 (advocacy) but requested more information (LE&HDC letter to the Trust April 1996).

Private funding

The Trust relies heavily on membership subscriptions and admissions to properties, self-generated funding (\$1.3 million) accounting for 27% of total Trust income. Many restoration projects are significantly funded from private and corporate funding generated from within local communities.

Inadequacy of present resources

The current level and allocation of resourcing at national and local levels is not sufficient to achieve the principles and objectives of the HPA or RMA as they pertain to historic and cultural heritage and to meet the requirements of both the national and local communities in providing for appropriate levels of protection of historic and cultural heritage. Note that Table 3.2 does not include reference to levels of resourcing as characteristics of effective management, as it emphasises outputs and processes. However this investigation clearly shows, as summarised below, that resource constraints are responsible for a number of the shortcomings identified in Tables 3.1 and 3.2. Difficulties in agency performance, and in particular in providing effective protection that can be directly attributed to the lack of resourcing include :

- the lack of dedicated funding available from DOC and the Trust for the acquisition of significant historic and cultural heritage places like Ngunguru Sandspit or the South Auckland volcanic stonefields, placing an inequitable burden on local residents if the local authority wishes to lead protection efforts;
- the inability of the Trust to research and assess archaeological sites and monitor and enforce the archaeological authority provisions of Parts I and V of the HPA, resulting in the loss and destruction of wahi tapu, taonga and archaeological sites;
- the withdrawal by the Trust of its heritage assistance fund because of a lack of resourcing, and the very low involvement of the Trust in voluntary heritage protection mechanisms such as covenants;
- the limited advocacy role of the Trust as it does not have a complete regional coverage of advisory staff to assist and advise local authorities and the community on heritage protection, to fully participate in planning processes and to provide adequate information from the HPA Register;
- the above lack of assistance by the Trust has been accentuated by DOC's decision to focus resources on the conservation estate, and the low level of resourcing for Historic Resources within DOC;
- the alteration and demolition of significant heritage buildings because of the construction of new buildings, modernisation of existing buildings and earthquake strengthening, where property owners are unable to meet the full cost of maintenance and restoration and assessing alternative options;
- the apparent inability of the Trust to take legal action to enforce its statutory powers, especially through heritage orders.

Some of these difficulties can in turn be attributed to gaps in the current Purchase Agreement between the Crown and the Trust, including:

- very small provision for registrations and no provision for upgrading of the Register;
- the low number of submissions to RMA statutory policies and plans, and no provision for comments on discussion documents and provision of advice to local authorities;
- the low number of resource consents to comment on given that the Trust is regarded as the lead agency for historic and cultural heritage management;

- the very low number of covenants, given that voluntary protection is one of the few mechanisms the Trust can use;
- no provision for strategic planning;
- no provision for monitoring or enforcement under Part V of the HPA.

The recently announced “Green package” as part of the 1996 Budget, in which historic and cultural heritage was not included, reinforces the government’s very low priority for funding historic and cultural heritage. However analysis of Crown and Lottery Grants Board spending (above) shows the difficulty of attempting to identify the total amount spent on different historic and cultural heritage conservation outputs, especially as so much of the total spending is channelled through agencies other than the Trust and DOC.

At the most general level, the basic criterion for adequacy of government funding would seem to be the obligation accepted in the RMA to promote sustainable management of a resource. Several lines of evidence in this investigation suggest that historic and cultural heritage places and items including taonga, as a resource are not being sustainably managed. The Coad Report (see Appendix A3.3) recognised that the proposed historic places legislative reform would require careful consideration of core funding requirements. This was also recognised by the Cabinet Expenditure Control Committee in late 1991 who, when discussing proposals for the new Historic Places Act. It recognised, but did not make a commitment to, the need for increased core funding for the Trust and that giving greater reliance to voluntary measures would result in a need for increased funding for incentives and compensation for the protection of historic places (Cabinet Expenditure Control Committee minute ECC (91) M59/9).

At the regional and local level the approach taken by local authorities is variable but many smaller territorial authorities are finding it difficult to provide for the protection of local heritage without support from national and regional agencies. Small territorial authorities rely on the HPA Register and NZAA File for information, and rely on national heritage agencies for advice on assessment and protection approaches. However when the data bases are incomplete and inaccurate, and national agencies are not able to provide advice, the ability of the small territorial authorities to protect historic and cultural heritage is restricted. There is a lack of financial incentives at the territorial authority level to supplement the scheduling of historic places in district plans and the use of heritage orders in emergency situations.

3.1.5 Are management issues obscuring performance of the system?

As mentioned in Chapter 1.5, some interested parties have expressed serious concerns about the quality of management by all major historic and cultural heritage agencies, especially the national agencies. The most extreme view was that this investigation should not concentrate on the system for historic and cultural heritage management because management was so poor that the system was completely unable to function as intended, regardless of resources available.

Although these concerns have not been investigated in detail, the analysis summarised in Table 3.1 shows that the system is inadequate, regardless of

the quality of management. However, some of the symptoms of inadequate management systems in the Trust include the pervasive uncertainty over the roles and responsibilities of local committees, the Trust's difficulty in retaining key staff in some professional areas, and its primitive data management systems. These problems are perhaps most acutely manifest in the Trust's Northern Regional Office which at present appears to be able to do little more than take a reactive position with overwhelming demands on its 1.6 full-time heritage conservation staff members⁵. This investigation has focused largely on the heritage conservation functions of the Trust, and very little on property management; however from this perspective the prolonged time and great uncertainty involved with the current properties review is having an unfortunate effect on strategic planning in other areas of Trust business.

These problems appear to contribute to unfavourable assessments of the Trust made by many people and organisations who deal regularly with the Trust. For instance ICOMOS alleges that "it is clear from the lack of public confidence and the number of functions that it is not carrying out, that the Trust decision-making, consultation and administration are not effective". Furthermore, "the policies and procedures adopted in recent years have added to the bureaucratic workload, but not added to the efficiency of the Trust's work" (ICOMOS submission to the PCE January 1996). Carter Holt Harvey, a regular applicant to the Trust for HPA authorities, alleges that the Trust does not have a standard procedure for dealing with requests of a similar nature, and that it is difficult for those requiring Trust approval to know "what will or may be required in any particular instance" (CHH letter to PCE 2 May 1996).

In the case of DOC, symptoms of an inadequate internal system for historic heritage protection include very slow development of wahi tapu policy, inconsistent Conservancy policy and practice and Historic Resources staffing imbalances, and an inability to retain or redeploy skilled archaeologists redundant to individual conservancies as a result of the 1995 internal review of Historic Resources staffing. Management problems and policy changes for both the Trust and DOC appear to be one of the contributing factors behind the development of the Kerikeri National Trust Bill (see Appendix A7.4), which is perceived by its promoters as necessary, even though DOC and the Trust own most of the key buildings and sites in the area.

All issues in both agencies are undoubtedly closely tied up with resourcing, but also appear to be indicative of increasing internal stresses and lack of guidance for prioritising. Ongoing attention to quality management systems is needed in both agencies so that the dedicated staff of these agencies can achieve their maximum potential effectiveness for heritage conservation.

⁵ It is intended to recruit a full-time archaeologist for the Northern Regional Office.

3.2 Historic and cultural heritage protection

3.2.1 Overview of protection mechanisms

Table 3.3 provides an overview of the suitability of various protection mechanisms for historic and cultural heritage. There are many protection mechanisms available for historic and cultural heritage protection but they vary greatly in their potential effectiveness according to different circumstances and most are ineffective in isolation from other measures. Information on the various mechanisms is provided in Appendix 7 and the current approach to historic and cultural heritage protection by selected agencies is outlined in Appendix 8.

3.2.2 Issues affecting protection

There is a need for effective protection mechanisms for historic and cultural heritage if it is to be retained for the benefit of present and future generations. The use of a range of protection mechanisms, to provide for a balanced approach between regulations and incentives, is more likely to lead to the protection of heritage. Ultimately the choice of protection mechanism will depend on the significance of the heritage resource and the degree of protection that is required to ensure its continued existence.

The effectiveness and suitability of particular mechanisms for implementing protection depend to a large degree upon the way historic and cultural heritage has been defined in particular contexts and by whom. The following issues are also relevant:

- the nature of the historic and cultural heritage resource being protected including the context and the extent of protection of a place;
- the nature of any Treaty of Waitangi obligations;
- the need for the location of some sites to remain confidential if they are to be protected;
- the degree of threat to the heritage resource;
- the community of interest which desires protection and which benefits from it and those parties who may be affected by the protection of historic and cultural heritage;
- the cost of protection and who pays, recognising that the cost of protection may include the cost of acquisition and compensation for landowners;
- the cost of maintenance and who pays.

For most of the agencies that were examined for this report, few of the mechanisms outlined in this chapter have been used to protect sites of significance to Maori. In partnership with tangata whenua, the various agencies could develop suitable approaches, which will vary according to the taonga to be protected and the desires of tangata whenua. The approach by a heritage agency will need to be negotiated in consultation with tangata whenua.

The recognition of different levels of national, regional, and local significance and responsibility should guide the allocation of funding and responsibility for the protection of historic and cultural heritage. There are many potential heritage protection agencies but there is a lack of direction of protection at a national level and there is no national agency who can provide funding for heritage protection by land acquisition and ongoing management.

TABLE 3.3 Overview of the suitability and effectiveness of heritage protection measures

Type and availability of protection mechanism	Effectiveness as a protection mechanism
Heritage strategies: all agencies, as part of strategic approach to heritage protection.	Limited direct protection. Proactive process that assists strategic approach to integrated heritage management and signals commitment to protection. Financial commitment can be signalled in annual plan. Other mechanisms required for implementation of protection.
Historic Places Act 1993 Register: administered by NZHPT: contents used by territorial authorities in preparation of district plans and heritage inventories.	No direct protection but items on Register may be included in district plans and given some level of protection. NZHPT must be informed of proposed activities that will affect items on Register. Primarily for information purposes and to signal importance. Variable quality of data, not fully representative, few recent additions. Requires review and upgrade.
HPA Part I archaeological site protection and authorities system: s 10 HPA universal protection but any person may apply to the Trust for authority to destroy, damage or modify any archaeological sites.	Limited protection as consent process and applications rarely declined. Main purpose is recovery of archaeological information. Little monitoring and enforcement of HPA provisions.
Regional heritage plans, rules and schedules: all regional councils under RMA.	Effective, provide for integrated management of heritage at regional level. Often not seen as significant regional issue. Proactive process. Cost of assessment and time to prepare plan. Plan may be challenged and amended.
Regional heritage inventories: all regional councils under RMA. Other agencies could prepare on a regional basis.	Very limited direct protection but increases the profile of heritage and provides the basis for other protection approaches. Cost of assessment and preparation of inventory. Primarily for information purposes and requires expertise to prepare. May overlap with HPA Register.
Territorial authority plans: schedules and rules for individual items and areas; zones and rules for areas: all territorial authorities under RMA.	Very effective. Proactive process. Management and protection of individual heritage items and some areas via scheduling and management and protection of areas via zoning. Cost of assessment and preparation of plan. Plan may be challenged and amended.
Territorial authority resource consent controls and financial contributions: all territorial authorities as part of resource consent process under RMA.	Moderately effective. Reactive process. Ad hoc, dependent on consent applications. Minimisation of adverse effects rather than proactive protection. Good if heritage reserves created or covenants recorded on Certificate of Title. Other uses of financial contributions have to be foregone. Alternative subdivision designs need early investigation at design plan stage.
Territorial authority registers: all territorial authorities under RMA. Other agencies could prepare on a territorial basis.	Very limited direct protection but increases the profile of heritage and provides the basis for other protection approaches. Cost of assessment and preparation of register. Primarily for information purposes and requires updating. Potential overlap with HPA Register.
Designations: all Ministers of the Crown, local authorities for public reserves.	Very effective if public prepared to fund. Proactive if signalled as part of district plan development. Reactive process at other times. Public ownership and compensation for landowners. Cost of process and hearings. Cost of acquisition.
Heritage orders by public authorities: all Ministers of the Crown, NZHPT, local authorities for any "place".	Very effective as emergency protection measure if HP Authority can afford process. Reactive process. No person, without consent of HP Authority, can do anything that would nullify the effect of the HO. Cost to prepare HO and hearing. Authority liable to pay compensation. HO can be appealed.
Heritage orders by bodies corporate: bodies corporate approved as HPA by Minister for the Environment	Limited due to time to become HP Authority and obtain HO. Potential costs. Reactive process and more effective long term approaches by community groups. No person, without consent of HP Authority, can do anything that would nullify the effect of the HO. Long process for approval as HP Authority and then HO application. Cost to prepare applications.

Type and availability of protection mechanism	Effectiveness as a protection mechanism
Te Ture Whenua Maori Land Act 1993 Reserves: Minister of Maori Affairs on application to Maori Land Court.	Effectiveness not widely tested. If land is not Crown land or Maori land, Maori Land Court may recommend that Crown purchase it for reserve. Cannot be used on land subject to mortgage or other charge.
Heritage subsidies: eg conservation funds, earthquake funds; all heritage agencies: to promote heritage conservation work.	Moderately effective. Best as part of a package of incentives and regulation. Dependent on voluntary use by landowners. Subject to funding limitations and targeting of subsidy to significant heritage resources. May not achieve desired level of protection. Legal agreement required with landowner.
Rates relief: territorial authorities: for voluntary protection of private land.	Moderately effective to encourage voluntary protection. Requires extension to offset regulatory protection by district plans to recognise community interest in protection of heritage. The provision of rates relief for covenanted areas can be an important incentive to a landowner to protect a historic place or site. Criteria for relief need to be prepared. Legal agreement required with landowner as to duration of relief and penalty provisions.
Tradeable development rights: territorial authorities: to provide for transfer of development space to more appropriate site.	Moderately effective: district plan needs to specify criteria and minimum standards for space. Can increase use by offering incentives. Need to negotiate covenants to protect sites before granting IDR. Require suitable recipient sites as development can crowd out other sites. Legal agreement required with landowner.
Lottery - Physical Heritage Fund: any organisation on application to Lottery Environment and Heritage Committee for conservation of heritage places.	Effective for projects. Competitive fund. Require conservation plans by recognised experts. Assessment of the need and merit of project, prioritised funding for recognised places. No national strategy for allocating grants. No funding for programmes that are core services of public authorities. Limited funding for purchase unless exceptional merit.
Lottery - Cultural Heritage Fund: any organisation on application to Lottery Environment and Heritage Committee for museum, whare taonga and art gallery projects.	Effective for projects. Assessment of the need and merit of project. No national strategy for allocating grants as ad hoc applications. No funding for programmes that are core services of public authorities.
Advocacy: all heritage agencies, NGOs, professionals and individuals.	Important component in suite of heritage protection measures and can be effective. Limited effectiveness as sole measure if not supported by back-up mandatory provisions eg rules in a district plan. Requires suitable resourcing and infrastructure. Availability of expertise. Does not achieve protection directly.
Mainstreet Programmes: territorial authorities and communities: integrated heritage conservation and business development programmes.	Effective in combination with other approaches but dependent on level of interest and resourcing and variable success rate. Can contribute to economic development and protect heritage. Requires councils and communities to become involved. Lack of information, national direction and leadership. May only focus on economic part of programme to detriment of heritage.
Design guidelines: territorial authorities: to provide advice and council direction on appropriate designs.	Effective as a complementary protection measure to rules for zones and schedules to influence urban design. May be either regulatory or voluntary. Limited availability of expertise to prepare guides. May lack flexibility and difficult to enforce.
Covenants: QE II Open Space; Reserves Act; Cons. Act; HPA: voluntary agreements between landowners and responsible agencies.	Effective. Voluntary process. Involvement of landowner in protection of private land. Funding required to support owners in protecting resource by maintenance. Requires willing landowners. Dependent on funding priorities. Trust's use limited because of a lack of funding for promotion, administration of covenants and management assistance.
Forest Heritage Fund/ Nga Whenua Rahui: administered by DOC. Limited application to heritage sites.	Limited because of mainly natural conservation criteria. Involvement of landowner in protection of private land. Requires landowners to want to voluntarily protect heritage resource. Dependent on funding priorities. Heritage only a contributing factor.

In different situations and depending on the significance of the heritage resource (ie national, regional or local significance), different agencies will be involved with protection, as shown in Appendix 8. However, a lead agency is required to coordinate protection measures and interagency protocols could establish when an integrated approach to protection by many agencies is required.

The RMA is the primary instrument for communities to provide for the sustainable management of heritage that will include use, development and protection, through policies and methods in regional policy statements, regional plans and district plans. However, annual plans need to identify the financial incentives and support available for the protection of heritage resources.

The involvement of communities and landowners in protecting heritage resources is essential as is the importance of political will for securing protection and developing initiatives to protect heritage. In many communities key individuals both inside and outside agencies have driven attempts to recognise and protect historic and cultural heritage.

The lack of funding for financial incentives from any national heritage agency is currently limiting the management and protection of historic and cultural heritage. A range of financial incentives is required to support current regulatory protection approaches and provide for a balanced approach to the protection of historic and cultural heritage.

The increasing recognition of heritage as an important resource that should be retained for the benefit of present and future generations will bring a corresponding need to increase the level of funding for the protection of heritage resources. The benefits of protecting and retaining heritage resources include the contribution that heritage makes to individuals and the national identity and the ability to use the resource for economic development (eg historic and cultural tourism).

In the final analysis the efforts of various heritage agencies are unlikely to save all of the nation's historic and cultural heritage. In some situations the planned demolition of a historic building or the destruction of a significant cultural site will proceed. However, in these circumstances, the recording of information before demolition or destruction is essential. It could become a requirement that the issue of a permit for the demolition of a building or the destruction of an archaeological site could require the recording of essential historic and cultural heritage information. The question of funding this research from public and private sources would need to be decided upon after taking into account the merits of the heritage item that was at risk.

Earthquake risk and protection

There is an obvious conflict between the need to protect historic resources in an active seismic zone like New Zealand while providing for the protection of individuals and the community. Many heritage buildings are vulnerable to damage from earthquakes as they were constructed before building design was adapted to provide earthquake resistance. This poses a problem for safe restoration and reuse. It appears easier often to demolish a heritage building

than examine other options. Territorial authorities can play a key role in assisting the examination of alternatives to demolition.

The design of buildings is controlled by the Building Act 1991 and the Building Code with structural design and performance criteria. Under s 66 of the Building Act, territorial authorities may require work to be undertaken on buildings that are earthquake prone⁶ to reduce or remove the danger although the Building Act requires territorial authorities to consider the historic importance of affected buildings.

The earthquake zones that reflect the degree of earthquake risk around New Zealand are very broad and the use of micro-zoning is encouraged to enable the specific risk to each building to be considered. Bowman (1985) suggested that the danger from major earthquakes should be mitigated with the least damage to the historical fabric and architectural integrity of a building. This should be achieved by assessing the seismic risk to each building and taking appropriate measures with regard to its heritage status.

In some cases there are disagreements about structural assessments and a process is required to resolve such disagreements with independent assessments and the examination of alternatives. Robinson (1994 p 68) has commented that "structural upgrading to abate risk to acceptable levels need not be extensive and can be achieved with minimum intervention into the existing fabric and form of buildings, and at acceptable cost".

In 1993 the Earthquake Commission began to phase out the provision of earthquake insurance for commercial property. Private insurers will be responsible for this in the future but they may not be willing to accept the insurance risk for these heritage buildings. The Wellington City Council is investigating the possibility of a municipalities heritage insurance trust to attempt to get some insurance protection for heritage buildings. This is a useful initiative especially for heritage buildings not regarded as of national significance or for especially earthquake prone seismic zones, but it does not replace the need for a national role in recognition of the public good conferred by retention of national and regionally significant heritage buildings.

The current government earthquake insurance provisions and the lack of recognition of heritage values in the building code have the potential to have the greatest effect on pre-1930 architectural heritage due to the costs to individual property owners associated with insurance provision and structural upgrading. The reinstatement of government insurance coverage for buildings of national and regional significance, would provide a major benefit for heritage conservation.

Compensation issues (see Appendix 7.10)

The provision of regulatory protection for historic and cultural heritage creates a direct conflict between private and public property rights, ie the rights of the individual and the rights of the community. For instance, the

⁶ An earthquake prone building is one that, in a moderate earthquake would be likely to suffer catastrophic collapse causing bodily injury or death to persons in the building or other buildings or damage to other properties.

scheduling of a building or a wahi tapu in a district plan under the RMA will restrict the use of a property while providing some protection for the heritage values. It can be argued that the recognition and protection of heritage through regulation is a legitimate government approach in the public interest although it restricts property rights of individuals. However, it can also be argued that if private property rights are removed or restricted then compensation should be paid.

If it is accepted that compensation is required in certain situations where private rights are removed, the key issue is how to assess the public and private costs and benefits and who will pay the compensation. There are many difficulties in attempting to value heritage resources with intrinsic and cultural values as the value cannot be determined solely by the market which reflects a more restricted set of "use" values (Piddington 1996).

The increasing recognition of heritage as an important resource that should be retained for the benefit of present and future generations will bring a corresponding need to increase the level of funding for the protection of heritage resources and the compensation of private property rights. Compensation should be available in situations where all beneficial use of a resource has been deprived from an owner, and this will normally require public acquisition. However, in other situations where use is only restricted, compensation can take many forms including tax and rate relief, transferable development rights, and professional advice on maintenance and sympathetic development opportunities.

It is proposed that matters that are able to be assessed as part of the consideration of an HPA authority should be the same matters that are allowed to be considered in terms of compensation. In terms of the HPA, if an assessment of the archaeological and cultural values is restricted to only those sites directly affected by a development proposal, then any compensation should only be assessed on the effects on those sites and not the wider area or the entire property.

Nahkies (1995a) has commented that the attitude of the Planning Tribunal is that an individual should not suffer personal financial loss in order to preserve a historic place without some form of compensation. Financial incentives could be used to provide compensation and balance the rights of the private owner with the good of the community. As proposed by Vossler (1993), the development of statutory criteria to assess "reasonable use" and "hardship" (respectively ss 85(6) and 198(3)(a)) would be a useful initiative to improve the decision-making process, assess required levels of compensation and promote the sustainable management of heritage resources. Information requirements for determining "reasonable use" or "hardship" could include estimates of additional costs to comply with desired levels of heritage protection, engineering reports assessing the potential for restoration, financial information on actual and potential returns from the property, and estimated market values.

3.3 Assessment and management of information

One factor common to all the case studies was that good quality and timely information was required for all stages of heritage protection and management. In particular it is apparent that the starting point for most systematic statutory historic and cultural heritage protection must be a register or inventory of heritage items, and that this must be based on a defensible assessment process. Section 32 of the RMA provides a strong legal basis for such a process, which could be qualitative or quantitative but must be rigorous. The reasons why a particular building or object is identified must be available through a transparent and accountable process. The research at the basis of that process must have been performed and its documentation available.

3.3.1 The HPA Register

The importance given to registration procedures in the HPA suggests that the HPA Register (Appendix A5.2) was intended to be the cornerstone of the process of identifying and protecting historic and cultural heritage nationally, but this is now far from the case. The Register does not in itself confer protection; under the present HPA-RMA regime it is primarily an information source linking to protection mechanisms under the RMA. Constraints to the effectiveness of the Register (discussed in Appendix A5.2 and the Ngunguru and Auckland built heritage case studies) can be summarised as follows:

- imbalances in the numbers of different types of registered heritage items;
- the variable quality of information on registered items, especially on pre-1993 registered items, leading to uncertainty over the quality of information on any one listed item;
- the blanket transfer of all archaeological sites to Category II registration;
- problems in the use of the Register for places of significance to Maori;
- low numbers of recent registrations due to resourcing constraints.

Considering these problems, it is not surprising that many territorial authorities now maintain their own lists of heritage items. These have been based on a variety of uncoordinated assessment methods (Appendix A5.3). Some larger urban councils now maintain comprehensive and authoritative lists that are independent of the Register, and in some cases surpass the Register in both quantity and quality. However smaller councils often rely on lists in transitional district plans or the Register, both of which are far from complete, for developing lists of scheduled items for their new district plans under the RMA. This is obviously a situation which poses significant risks for the protection of heritage items, especially the categories (archaeological sites and especially wahi tapu) which are most under-represented on the Register. Many councils feel that they are unable unwilling to comprehensively survey archaeological sites and Maori heritage items although there have been a few initiatives to record these. Joint approaches to such assessments, usually involving territorial authorities, iwi, the Trust and DOC, have been the most successful (Appendix A5.3). Alternatively, regional heritage inventories could be very useful where individual territorial authorities are unable to carry out assessments on their own, but at present only Auckland Regional Council is involved in regional inventory.

Recently the Trust has evaluated the places proposed for registration much more thoroughly than in the past. The Trust Board has been provided with full information on which to base a decision and this is often required if a

legal challenge is made, particularly for interim registration. However several Trust branch committees have commented that there are many HPA and internal Trust steps in the registration process which limits the number of items that can be registered and the incentive to place items on the Register. The Trust is considering a review of the registration process to deal efficiently with a backlog of registration proposals and to develop new standards for processing future proposals.

A variety of dispersed agencies and individuals undertake research on various aspects of historic and cultural heritage (Appendix 6). Funding for archaeological research is significant in total but distributed in an uncoordinated way by the Public Good Science Fund, DOC and the Lottery Grants Board. Funding of some kinds of heritage-related research, especially survey-related, is not readily covered by any funding source.

3.3.2 Research and survey

The New Zealand Archaeological Association File of site records, now maintained by DOC, is a very important database and the major source of basic information on archaeological sites through out the country. However there are a number of problems in the use of this File for site protection (Appendix A6.1), summarised as follows:

- It is far from complete and has very uneven regional coverage;
- records are of very variable quality and many early ones are minimal;
- its rate of update is very slow;
- its use by Maoris is uneven and there is some concern about the security of confidential records;
- its use by local authorities as a basis of listed sites or for checking resource consent applications is sporadic.

The File is not being used as a basis for adding to the HPA Register, and like the Register itself, requires a major injection of resources to bring it up to date and realise its full potential.

4. THE PROTECTION OF MAORI CULTURAL HERITAGE

*Whatungarongaro he tangata, toitu he whenua
People come and go, the land remains*

The place of Maori as the indigenous people of New Zealand is a significant issue to be addressed in the management of historic and cultural heritage. The Maori relationship with the land has existed for a longer period in New Zealand's human history than any other: the maintenance of that relationship is fundamental to the management of Maori historic and cultural heritage. At the same time, Maori historical and cultural heritage forms a vital component of New Zealand's national identity. Its protection is a matter of public interest.

Maori historic and cultural heritage is broadly encompassed by the concept of "taonga" which the Waitangi Tribunal describes as:

an umbrella term, inclusive of a wide range of things upon which Maori in general ... place great value and regard as treasures. Among them are intangibles like spiritual values as well as tangible objects. They include the land, sea fronts, forests, lakes and rivers; also places and things associated with life and death. Although the degree of tapu varies, all these taonga touch the "heart", the manawa pa (desires) and the ngakau pa (ends of the people) (Waitangi Tribunal 1992 p 210).

This report does not address the management of "taonga" in its widest sense: rather, its focus is on places regarded by Maori as taonga, or wahi taonga, plus all intangible and tangible properties that they contain. Wahi taonga include wahi tapu and wahi tupuna (see Appendix 1).

Any system for the management of heritage should take note of indigenous definitions of heritage. There are many international charters that cover indigenous people's heritage rights and which support that approach.¹

This chapter identifies issues of concern to Maori in the management of their wahi taonga, and makes an assessment of how far the present government system addresses those concerns.

The Waitangi Tribunal has expressed the view that "there can be no doubt that an important Treaty principle is the Crown's duty actively to protect Maori tino rangatiratanga over their taonga (Maori text), that is, the full exclusive control and undisturbed possession of their properties so long as they wished to retain them (English text)" (Waitangi Tribunal 1995a p 203).

In its Te Roroa Report, the Tribunal commented that the government system for historic and cultural heritage management needs to be responsive to Maori

4.1 Introduction

4.2 The principles of the Treaty of Waitangi (Te Tiriti O Waitangi)

¹ One example includes the International Code of Ethics on the responsibilities of archaeology to indigenous peoples, which was approved by the World Archaeological Congress in 1991.

needs in relation to the management of their heritage, and that the provision of support and advice, rather than control by government, is the approach which should be taken:

Wahi Tapu are taonga of Maori, acknowledged as such in article 2 of the Treaty. The role of the department [of Conservation] and Historic Places Trust in the “partnerships” is not a decision making role or being “included” in what is not theirs. Rather, it is to assist Te Roroa by the provision of services and advice when they are sought, to enable them to protect and care for the wahi tapu. (Waitangi Tribunal 1992 p 254).

This report has not addressed procedures for settling Treaty claims as they relate to Maori historic and cultural heritage. It is understood that the Crown is addressing a range of issues relating to the settlement of such claims as a result of its Treaty settlement proposals, including issues relating to surplus Crown lands. However, the Crown is also concerned with situations in which there are valid Maori interests in historic and cultural heritage outside the context of a claim relating to breaches of the Treaty. In findings made by the Planning Tribunal, the relationship of Maori and their ancestral lands has been recognised separately from questions of Treaty breach² (Parliamentary Commissioner for the Environment 1993 p 10).

In its review of the Antiquities Act 1975, the Department of Internal Affairs is addressing questions relating to the ownership and protection of moveable cultural property as it develops the Protection of Moveable Cultural Heritage Bill. The Antiquities Act establishes the presumption that any artefact found in New Zealand is the property of the Crown, however that provision is considered to be contrary to the Treaty of Waitangi (see Appendix A3.3). Meanwhile a member’s bill, the Taonga Maori Protection Bill, has been introduced to make provision for the preservation of Maori cultural heritage and to address the problem of taonga being removed from New Zealand. The issues raised by these initiatives are an important aspect of the management of Maori historic and cultural heritage and should be considered in the context of the wider system.

4.3 The Maori institutional framework

If the system of agencies and processes which governs the management of historic and cultural heritage is to be responsive to Maori values in relation to places which are taonga, an understanding of the Maori system for managing those places is necessary.

Everything in the natural world possesses mauri (the physical life force). The preservation of the mauri of any element of the natural world is essential for its survival. Responsibility for the preservation of mauri is delegated to

² Numerous cases include *Royal Forest and Bird Protection Society v W A Habgood Ltd* (1987) 12 NZTPA 76, in which the Tribunal found that such a relationship can be shown to continue regardless of whether the land concerned remains in Maori ownership, and *Haddon v Auckland Regional Council A 77/93*, in which the Tribunal commented upon mechanisms to restore customary authority where a traditional relationship exists between Maori and natural resources. The Tribunal noted that “authority is meaningless without some power (ihi) which can be provided for or recognised”.

kaitiaki (spiritual guardians) whose appointment is based on whakakpapa and responsibilities which are passed on from “father to son, mother to daughter, or by election, instruction and direction of tribal elders”(Minhinnick 1989 p 3).

Distinctions can be drawn between “everyday sites, including marae, pa sites, quarries and mahinga kai, and wahi tapu” (see Appendix 1). Human action in relation to nature is regulated through the concept of tapu, which implies a prohibition or restriction. The degree of tapu of particular sites may mean that their location must remain confidential. Such confidentiality is regarded as an important means of protecting not only the site from damage, but also of protecting people from the serious consequences of infringing tapu, albeit unwittingly. The location of some wahi tapu may only be known to a particular whanau, hapu, or iwi, and within each of these only a few people may know of their whereabouts (Manatu Maori 1991a p 3).

In contemporary times, Maori are faced with a number of challenges in maintaining their management system. These include:

- The development of their own policies and objectives for the management of their historic and cultural heritage. A problem for many whanau, hapu and iwi is a lack of resources to carry out the necessary research and participate in planning processes.
- The development of procedures within the framework of the iwi to ensure that the concerns of kaitiaki can be conveyed to relevant public authorities. The system of management based upon whanau, hapu and iwi, including the appointment of kaitiaki, continues to exist. However this structure has not always been recognised by the Crown and its agencies as a basis for dialogue with Maori. There exists today a range of institutions created by statute to represent particular Maori interests. These include Maori Trust Boards, Maori Land Trusts and Incorporated Societies. In addition, the Resource Management Act (RMA) provides for local authorities, in the development of policies and plans, to consult the tangata whenua through iwi authorities and tribal runanga. The issue for Maori is to ensure that the voice and authority of kaitiaki is conveyed through appropriate iwi authorities to the relevant public authority.³
- Knowledge of places has often been kept confidential by those kaitiaki responsible for their protection. However this approach is often not sufficient particularly where such places are located on private or Crown land. A major challenge is the establishment of meaningful kaitiaki structures under the RMA.
- The development of procedures for achieving dialogue with the various public authorities who have statutory responsibilities for the management of historic and cultural heritage. Issues include the ability of kaitiaki to work with councils to develop rules and codes of practice in district and regional plans under the RMA. More specific challenges include the development of mechanisms in policies and plans which trigger an automatic heritage response for any activity that could compromise the integrity of a site.

³ An iwi authority is defined as the “authority which represents an iwi and which is recognised by that iwi as having authority to do so” (s 2 RMA).

- The exercise by kaitiaki of their responsibilities for the maintenance and protection of sites on Crown-owned and private land. An additional challenge for kaitiaki and public authorities is to find ways of managing conflicts of interest where they arise.
- The maintenance of tribal knowledge is an important means of enhancing the relationship between whanau, hapu and iwi and their taonga, and their ability to maintain their management system. There is a concern amongst Maori that knowledge is being lost with the death of kaumatua and kuia.
- Language and the use of Maori names. Maori names for sites reflect their significance and history which can be affected if the name is replaced by an English one (Te Puni Kokiri letter to PCE April 1996).

4.4 Assessment and the management of information on places of significance to Maori

The government system for managing historic and cultural heritage of significance to Maori consists of two major components: management and assessment of information about wahi taonga, including wahi tapu, and provisions for their protection.

The effectiveness and suitability of particular mechanisms for implementing protection will to a large degree depend upon the way historic and cultural heritage is defined in particular contexts and by whom (see Chapter 3.2.2). Therefore where the system provides for the assessment of information about Maori sites it is important to be clear what the purpose of the exercise is and whether the Maori point of view takes priority.

Provisions for information and assessment in the major pieces of legislation covered in this report are summarised in Table 4.1. Given the statutory context and findings made by the Waitangi Tribunal, the information issues for Maori include:

- the purpose of any information collection or assessment carried out by relevant public authorities;
- the degree of confidentiality that can be maintained where necessary while still providing for effective protection of particular sites;
- whether legal provisions to protect confidential information are sufficiently clear and effective;
- the kind of evidence which might be required, for example by the Maori Heritage Council (MHC) or the Courts about the existence and nature of wahi tapu?
- whether it is appropriate for sites including wahi tapu to be given a ranking, and if so how and by whom?
- how far systems of assessment reflect Maori priorities and ways of doing things.

The following sections discuss the issues of information and assessment provided for under the Historic Places Act 1993 (HPA), the RMA and the Conservation Act.

TABLE 4.1 Information collection and assessment provisions in legislation

Act	Purpose of information	Information required	Procedures for obtaining information
Historic Places Act 1993	To register historic places and areas, and wahi tapu and wahi tapu areas (all of which may be of value to Maori) on the HPA Register. The purpose of the register is to inform members of the public about the value of places, notify owners where necessary for the purpose of the Act, and to assist areas to be protected under RMA.	For historic places and areas: information on historic, cultural, aesthetic, archaeological, architectural, scientific, social, spiritual, technological or traditional significance or value is required. For wahi tapu and wahi tapu areas: sufficient information to confirm existence of wahi tapu is required. Only the general nature of sites which are wahi tapu or wahi tapu areas are made public.	Nominations by interested parties, public notification of proposals. In the case of wahi tapu, MHC will notify in such a manner as it considers appropriate. Final decision on registration of historic places and areas made by the Trust. Final decision on registration of wahi tapu and wahi tapu areas made by the MHC.
Resource Management Act 1993	To determine the effects of policies and activities on the sustainable management of natural and physical resources. Requirement to take into account the principles of the Treaty of Waitangi (s 8).	the effects of policies and activities on: the sustainable management of natural and physical resources (s 5) and matters of national importance and other matters (ss 6-7).	Procedures for obtaining information set out in the Act include specific requirements to consult tangata whenua.
Conservation Act 1987	To promote conservation (includes intrinsic values and public appreciation and enjoyment). Requirement to give effect to the principles of the Treaty of Waitangi (s 4).	Information on all values associated with lands and species covered by legislation, including values held by Maori and the public.	Detailed consultation procedures in the development of Conservation Management Strategy which guide decision making where relevant.

The HPA Register

A distinction is made under the HPA between “wahi tapu” and “wahi tapu areas”, and “historic places” and “historic areas” all of which may be of significance to Maori. The HPA register provides for the registration of wahi tapu or wahi tapu areas and the process of registration is administered by the Maori Heritage Council (MHC). Under the HPA a wahi tapu is defined as a place sacred to Maori in the traditional, spiritual, religious, ritual or mythological sense. The application form for wahi tapu registration states that the MHC has devised a list of those places which would be considered as wahi tapu for the purposes of the Act and also places which may more appropriately be registered as historic places or areas.⁴

4.4.1 Information for planning under the Historic Places Act 1993

⁴ Amongst other things, wahi tapu may include burial places, places where baptismal rights were performed, burial places of placenta, battle grounds and sources of water for healing and death rites. Historic places may include pa and kainga that were occupied in former times, landscape features which determine the boundaries of iwi or hapu and sites recognised as memorials to events.

In its deliberations on how registration should be carried out, the MHC has decided to put in place a community-directed approach to registration. Proposals for wahi tapu come from tangata whenua and are not ranked as Category I or II (as is the case with historic places). The application form states that only information relating to the general nature of wahi tapu is required, although the Trust needs sufficient information to be able to make a decision on the application. The MHC does not judge whether a place is wahi tapu or not but rather whether the information provided is sufficient to allow registration (Allen 1996 p 26).

As has been suggested, confidentiality may be important for those whanau, hapu or iwi who wish to register a site. Additional information which nominees wish to restrict will not be used in any published record of the Register. The Trust is not a Crown agency, however it is covered by the Official Information Act 1982 so there is no guarantee that such information could be withheld if requested under the Act.

While the application for wahi tapu registration can be made by any person, the Trust's policy is that it should be endorsed by whanau, hapu or iwi, whichever is appropriate. At the time of writing there were 13 sites on the wahi tapu register, some of which were transferred from the register of traditional sites provided for under the previous Historic Places Act 1980, and six wahi tapu areas.

The degree of tapu associated with places may vary. However this degree of variation does not appear to be adequately reflected under the HPA. The process for registration administered by the MHC, which reflect to a large degree Maori views of what is of value, are closely bound to the concept of wahi tapu. While there are sites whose tapu can never be lifted, many places are able to be occupied by the ceremony of what Maori term "hiki te tapu", the "neutralising" or "making benevolent" land previously occupied. There are also sites Maori people wish retained as part of the landscaped for perpetuity (J Klaricich letter to PCE April 1996).

Under the HPA, sites not considered by Maori to be wahi tapu, but which are still of significance to Maori, may be registered as historic places or areas according to a range of criteria set out in the Act (see Table 4.1). A final decision is made by the Trust. An issue for Maori in these circumstances is whether it is appropriate to categorise such a historic place as Category I or II, and whether appropriate procedures have been followed in making those assessments.

It is of note that the only final decision-making authority held by the Maori Heritage Council under the HPA relates to the registration of wahi tapu and wahi tapu areas. It would seem more appropriate for the HPA to recognise a broader approach to the registration of wahi taonga - or places of value to Maori, and for that approach to be developed and administered by the MHC.

The degree to which Maori regard registration as a tool which can be used to meet their own objectives has not been established. It is of note that the current Crown purchase agreement with the Trust provides for 30 places to be registered across the full range of historic places and areas, and wahi tapu and

wahi tapu areas (see Chapter 3.1.4). The Trust is clearly limited in its ability to deal with high numbers of registrations in any single type of place.

The relationship between archaeological values and Maori values

There are 1,012 archaeological sites on the HPA Register, all as Category II sites (see Appendix 5). Many of these may also be sites of significance to Maori but have not been assessed from a Maori point of view or registered as such, raising questions as to whom the sites are of value and why, and also why all archaeological sites, including those that are wahi tapu, have been given a Category II ranking, instead of these sites registered as wahi tapu and not being given a ranking.

In the absence of a full assessment of Maori values, Maori priorities will not be able to be given priority in any planning which may affect archaeological sites. Maori would argue that under the Treaty of Waitangi, their values are the more fundamental.

Wahi tapu and taonga are not defined in the RMA. There is scope under the Act for tangata whenua to make their own definitions and assessments of what is significant. For example, the Auckland Regional Council's proposed Regional Policy Statement acknowledges that "only Tangata Whenua or their representatives have the right to determine matters of resource management significance to them. These have been identified through a series of hui, meetings, written statements and iwi planning documents" (Auckland Regional Council 1994 p 3-2).

4.4.2 Information for planning under the Resource Management Act 1991

In preparing their policies and plans, some local authorities have begun to develop a variety of ways of handling information relating to sites of significance to Maori. This includes the development of lists for inclusion in regional and district plans. For example the Wellington City Council has listed numerous sites and a number of precincts which are of interest to the tangata whenua in its new District Plan.

Auckland Regional Council has made reference to the use of "silent files" combined with rules that provide for applicants to consult with the tangata whenua as part of an assessment of environmental effects where information is confidential. Nevertheless, at a recent hui hosted by the Auckland Regional Council, strong views were expressed by Maori participants that the categorisation and ranking of sites is not appropriate for Maori heritage. Alternative approaches such as ranking according to risk were suggested. Moreover, the use of lists and schedules in district plans was not supported without strong protection mechanisms. Resolutions at the Auckland hui (April 1996) included calls to the regional council to identify the various mechanisms for protecting Maori heritage as a matter of urgency.

In the absence of complete information, and recognising the desire for confidentiality on the part of tangata whenua, the Tasman District Council has developed a policy which identifies zones of archaeological and Maori interest (see Appendix 5). Some concerns have been expressed that the RMA does not provide sufficient protection for confidential information held by

councils other than in council proceedings (s 32 RMA), and that there is no guarantee that, if requested under the Local Government Official Information and Meetings Act 1987, the information could be withheld.

In any case, where decisions are challenged, evidence of wahi tapu may have to be provided to the decision-maker. The decision of the Planning Tribunal in *Greensill v Waikato Regional Council* W17/95 provides an illustration of the difficulties which may arise. This case concerned an application to establish an oyster farm in Raglan Harbour. The Tribunal accepted that knowledge of wahi tapu may not be widely held within an iwi and that there may only be one or two people at any time who possess particular pieces of such knowledge. The tangata whenua were persuaded to share their knowledge of the whereabouts of wahi tapu with the council so that that information could be taken into account in coming to a decision. The regional council attempted to recognise the concept of "wahi tapu" by moving the site of the oyster farm 50 metres further out from the shore. The tangata whenua were not happy with this result and appealed but refused to provide the Tribunal with further evidence. The Tribunal commented –

If the tangata whenua do not choose to share their secrets with the Tribunal we can fully understand their reluctance. On the other hand, as we have expressed earlier, the tangata whenua are not the decision-making authority and cannot simply assert a proposition and leave the Tribunal bereft of evidence to enable an acceptable provision to be made for protection of wahi tapu.

4.4.3 Conservation Act and the Department of Conservation

The Department of Conservation is in the process of developing a policy on the protection of wahi tapu on the conservation estate. While the term "wahi tapu" is not included in the Conservation Act, the Department considers that the definition of a "historic resource" provided for under the Act would include wahi tapu, and that it therefore has some responsibility for wahi tapu management. The Department acknowledges that the tangata whenua are the repository of knowledge about wahi tapu location and tikanga and that its staff do not have an automatic right to that knowledge. It follows therefore that departmental staff cannot be accountable where they are denied the information necessary for proper management of wahi tapu sites (Department of Conservation 1995b p 12).

The essential question proposed by the Department is the relationship between the "need to know" principle and the requirements of confidentiality (ibid p 13). That is, whether it is necessary for the Department to hold such information or whether it should instead, through building relationships with tangata whenua, ensure that management plans and proposals (for example involving leases and licences) are referred to the appropriate iwi authority for comment in the first instance. These issues have yet to be resolved but should be considered in the process of developing Conservation Management Strategies (CMS) and Plans in consultation with tangata whenua, as provided for under the Conservation Act.

It is of note that three Treaty of Waitangi claims have been lodged with the Waitangi Tribunal on the grounds that CMS documents prepared by the

Department of Conservation fail to give effect to Treaty of Waitangi principles and that as a result, claimants are likely to be prejudicially affected (Waitangi Tribunal 1995a p 1). The Crown and one of the claimants, Ngati Tuwharetoa, have agreed to establish a working party to resolve the substantive issues behind the objections to the Tongariro/Taupo Conservation Management Strategy. It is understood that as part of the process, principles are being developed. If final agreement between the parties is reached, the relationship between the exercise by Maori of kaitiaki responsibilities, and the responsibilities of the Department as a Crown agency may be clarified more generally for management purposes. Such an outcome may assist to clarify questions about how the management of wahi tapu and other sites of significance to Maori may be approached by the Department.

The RMA requires local authorities, when preparing district or regional plans, to have regard to any planning document recognised by an iwi authority. This provision provides scope for whanau, hapu and iwi to develop their own information bases and policies through the procedures of the RMA. Many whanau, hapu and iwi are taking the initiative of developing their own policy statements on a wide range of resource management matters, including the management of wahi tapu, wahi taonga and wahi tupuna and associated information. A theme common to many is the right of tangata whenua to establish the significance of any historic place, area or wahi tapu associated with their iwi, hapu or whanau (eg. Kawerau a Maki Trust, 1995; Awaroa ki Manuka 1991; Kai Tahu ki Otago 1995; Tau *et al* 1990).

4.4.4 Initiatives taken by whanau, hapu and iwi

A management plan prepared by Kai Tahu ki Otago makes provision for Kai Tahu to implement their own system for recording information about sites. A "Site Location System" is being set in place to encourage iwi to record sites which:

- a) reflect resource values wider than those contemplated within the Historic Places Act;
- b) involve information which iwi wish to maintain control over; and
- c) are then treated in accordance with tikanga Kai Tahu. (Kai Tahu ki Otago, p 93)

The amount of information transferred to a central file depends on the nature of the site itself and what information is divulged about any particular site is the decision of the kaitiaki (ibid). Kai Tahu have initiated internal "awareness raising" programmes and also recognise that although the exact location and nature of a site will generally not be publicly available, the awareness of the general public needs to be raised. Arrangements are being made with local authorities to share information which is considered by the relevant kaitiaki to be suitable for public disclosure, through the development of a computerised database. This information will be available to local authorities when considering consent applications (E Ellison pers. comm).

As part of their plan, Kai Tahu ki Otago are negotiating a Memorandum of Understanding with the New Zealand Archaeological Association (NZAA) to establish the basis for a cooperative relationship in the recording, management, protection and interpretation of Maori cultural sites.

Te Whakatau Kaupapa, the Ngai Tahu Resource Management Plan for Canterbury, indicates that Ngai Tahu consider that of all wahi tapu, urupa are the most significant (Tau *et al* 1990 p 3-25). In regard to archaeological sites, Tau *et al* note the value of archaeological investigation as a means of obtaining information on the activities of their tupuna and set out policies for managing such sites. There is little objection to the excavation of archaeological sites provided that criteria are met. These include: that the right to modify sites remains with Ngai Tahu; the decision as to whether any sites are excavated rests with the affected Runanga and the Tribe, in consultation with family members where appropriate; that no burials be disturbed; that Ngai Tahu retain the right to approve those who undertake the excavations, and that in all excavating and subsequent processing, tikanga Maori is observed (ibid p 3-30). A more recent Ngai Tahu policy document sets out foundation principles relating to archaeological and rock art sites and confirms many of the policies stated above. A central principle is that:

Ngai Tahu Whanui assert the right to determine the management of archaeological and rock art sites identified within the tribal territory. Ngai Tahu hold tino rangatiratanga over the sites and their contents. This is assured to Ngai Tahu by the Treaty of Waitangi, Article 2 (Komiti Tuku Iho 1995 p 2).

Where Ngai Tahu views conflict with relevant legislation, Ngai Tahu seeks to negotiate policies that will engage government agencies in effective partnerships without compromising Ngai Tahu principles (ibid p 3).

The Ngatiwai Trust Board has stated that as far as Ngatiwai are concerned, all Maori archaeological sites are sacrosanct and that certain principles of management should apply. These include tangata whenua/kaitiaki control over physical access, which if granted will only be for the purpose of maintenance or study that will enhance the conservation of the physical, spiritual and cultural integrity of the site; tangata whenua/kaitiaki control over interpretation; and a policy that such sites be set aside as Maori Reservations (Ngatiwai Trust Board 1995).

The major issue highlighted by these examples is that Maori should be given the opportunity to establish their own policies for the way information and assessments are handled. The question then remains as to how these policies are pursued with public authorities through the relevant statutory procedures.

4.5 Effectiveness of mechanisms to protect sites of significance to Maori, including wahi tapu

A number of the mechanisms discussed in Appendix 7 and Chapter 3.2 may potentially be suitable for protecting Maori historic and cultural heritage. Their effectiveness will largely depend on the following:

- the degree to which whanau, hapu or iwi have developed their own policies, priorities and internal procedures for carrying out their responsibilities as kaitiaki;
- the degree to which whanau, hapu and iwi have developed agreed consultation procedures with relevant public authorities;
- the degree of control maintained by whanau, hapu and iwi over information relating to their historic and cultural heritage;

- the willingness of public authorities to give priority to the protection of Maori historic and cultural heritage;
- the responsiveness of particular measures to traditional Maori concepts;
- the resources available to protect particular sites, particularly where purchase or compensation is required.

As has already been pointed out, the authority provisions of the HPA for archaeological sites are in reality a consent system. The legal concept of the archaeological site is based on the information contained in that site and the focus of the authority process is on ensuring that archaeological information is obtained before a site is destroyed or altered, as well as on mitigating the effects of development activities on the site. The Trust is largely required to consider applications for authorities on a case by case basis but without the benefit of a comprehensive overview of their significance in the national context. There are 1,012 archaeological sites on the HPA Register out of 49,000 of the New Zealand Archaeological Association file (Appendix 6), and the selection of sites for registration has not been the result of any systematic assessment. In this regard it is important to note that archaeological sites are also potentially Maori sites, either of significance as historic places or wahi tapu. What is appropriate treatment for an archaeological site is not always appropriate when the site is of significance to Maori. The lack of context is therefore compounded in the case of Maori sites where the relevant whanau, hapu or iwi has not had the opportunity to make their own assessment of the significance of the site or to develop a policy for its protection.

The RMA provides a number of options for tangata whenua to pursue the protection of sites of significance to them through input into planning procedures and other mechanisms, such as heritage orders and water conservation orders (see Appendix 7). As yet, these are not well used or understood by tangata whenua or councils. However as experience is gained new approaches should be developed. Much will rest on the development of cooperative relationships between the tangata whenua and councils.

Comments on the appropriateness of heritage orders for use by iwi authorities and their incompatibility with traditional Maori concepts have been made (Appendix 7). It should be noted however that while some iwi authorities may be critical of the heritage order provisions, others have been prepared to consider using them, either by requesting Ministers to exercise their status as heritage protection authorities, or by seeking status as heritage protection authorities in their own right.

While heritage orders may be issued either by iwi authorities who are approved as heritage protection authorities or alternatively by a Minister, local authority or the Trust on behalf of relevant Maori interests, they may result in the relevant heritage protection authority having to acquire the affected land under the Public Works Act 1981. In this case, compensation is payable by the heritage protection authority. There is at present no nationally based heritage fund to draw from for such a purpose. Therefore unless particular departments (such as DOC or Te Puni Kokiri) have policies which set aside funding for the purpose of acquiring land in these circumstances, it is unlikely that their Ministers would be prepared to take such action, or to accept the ongoing responsibilities of a heritage protection authority. The

same may apply to the Trust and local authorities. The financial implications of issuing a heritage order are clearly also issues to be carefully considered by any iwi authorities approved as a heritage protection authority.

Some sites of significance to Maori may include sources of water for healing or for death rites and may be regarded as wahi tapu, as noted in the Trust's wahi tapu and wahi tapu areas proposal form. Depending upon the nature of the site and the qualities which are to be protected, water conservation orders could be considered as a method for protecting a water body. It should be noted that a water conservation order does not give direct protection to the land surrounding the water body and that it is limited to the water body itself. The Waitangi Tribunal's comments on the heritage order process and scrutiny of information relating to wahi tapu at a public hearing could apply to the process required for a water conservation order to be considered. Again, the use of this provision will depend to a large degree on the priorities of particular whanau, hapu and iwi, and their respective iwi authorities.

As has been shown by some of the examples discussed in this report it is possible, by working with local authorities through agreed consultation procedures, to develop policies, methods and rules for protecting wahi tapu and other sites in a way which integrates issues associated with the protection of land and water. As has also been shown, it may be of benefit for the Trust and DOC to contribute to the implementation of such policies through the provision of information and expertise.

One of the greatest challenges facing councils is the resolution of conflicts between activities on private land and the protection of the relationship of Maori and their culture and traditions with their ancestral lands, waters, sites, wahi tapu and other taonga. In the case of planning procedures, the RMA provides for affected parties (for example, landowners) to be heard and to make submissions on proposed plans. The local authority makes its decision subject to Part II of the Act, including sections 6(e), 7(a) and 8. Where rules are proposed which may affect landowners, councils have the ability to work through the implications of such proposals with those potentially affected prior to notification (First Schedule, Part 1). Where early consultation of this kind is carried out, there is potential for conflicts to be resolved and for all interests to be accommodated. However, agreement will not always be able to be reached. In these circumstances, purchase or compensation may be the only options for protecting particular sites or areas.

The Waitangi Tribunal has commented on the duties contained in s 8 of the RMA and has recommended that they be strengthened to ensure that Treaty rights are not outweighed by other considerations (Waitangi Tribunal 1993 p 153-55). Regardless of whether or not the government should decide to accept such a recommendation, an issue which appears to follow from the Tribunal's comments is that agencies delegated Treaty responsibilities need to be capable of fulfilling those responsibilities. This is certainly the case where the only option for protecting a significant taonga is through purchase or compensation to an affected party. In this respect, an important element of any system for the protection of Maori historic and cultural heritage is a source of funding for the purchase of sites or for compensation. The important question that then arises relates to the respective responsibilities of

the Crown, local authorities and iwi authorities in relation to the provision of funds.

The negotiation of private covenants is one possible option for the protection of sites on private or public land, regardless of whether or not purchase or compensation is required. The use of the provisions for setting aside Maori Reservations under Te Ture Whenua Maori (Maori Land Act) 1993 could well be suited to the protection of sites on Maori freehold land, general land or Crown land (see Appendix 7). Use of this method would require the agreement of the Minister of Maori Affairs and the cooperation of any affected landowners.

The public authorities involved in both the Auckland stonefields and Ngunguru Sandspit cases have maintained an interest in both areas for some years. However their reasons for doing so have been based upon a range of objectives including the protection of historic, ecological, archaeological and recreational values. In each case, the Maori heritage interests have only been identified and begun to be addressed relatively recently.

In *Ngatiwai Trust Board v New Zealand Historic Places Trust* [1996] NZRMA 222, the Planning Tribunal commented that none of the witnesses called by the appellant (the Ngatiwai Trust Board) gave any specific evidence about the historic or cultural heritage value of any of the seven particular middens which were the subject of the Trust's decision. A prior process of registration may have enabled a more detailed assessment of the Maori values and history associated with the site to be carried out. However, given the focus of the decision outlined above on the seven middens, rather than the whole spit, neither the complete historical context nor the potential cumulative effects of the development on the spit could be explored. Nor is there any guarantee that these issues will be considered by the Whangarei District Council under the RMA.

In the case of the stonefields, particular areas have been identified as archaeological sites and ranked as Category II historic places on the Trust's Register. However, archaeological sites on the Register have yet to be reassessed from a Maori point of view (see Chapter 4.3).

The above examples reinforce the conclusions of this chapter, that the responsibility for assessment and information management is clearly capable of, and indeed should in the first instance rest with the relevant iwi authorities. The following issues thus emerge:

- the benefits for Maori of registering sites with the Trust have not been established;
- the Maori values of sites registered with the Trust as historic places or areas are not always recognised and may not be reflected in the Trust's ranking;
- the respective roles of Maori and the Trust in managing information about sites of significance to Maori have not been clarified.

These issues apply equally to local authorities and their use of schedules:

4.6 Issues arising from the Ngunguru Sandspit and stonefields case studies

4.6.1 Issues relating to assessment and information

4.6.2 Protection and the responsibilities of public authorities

The Auckland stonefields and Ngunguru Sandspit case studies highlight the difficulties faced by public authorities in clarifying their responsibilities, particularly in cases where the purchase of particular areas presents itself as the only option for securing their protection. A major issue in both studies is the relative roles of the Trust and local authorities, who have responsibilities to recognise and provide for the relationship of Maori etc under s 6 (e) of the RMA. As the issues have unfolded in each case, disagreement and debate about the responsibilities of each agency have served to undermine efforts to protect the resources in question, each of which are highly significant to the tangata whenua.

Fundamental to the debate amongst public authorities were questions as to who should take financial responsibility for securing the protection of the areas concerned and what should be the relative financial contributions of each agency. With the decision to focus on DOCs historic heritage resources on the conservation estate, the debate is now principally left to the Trust and local authorities. While it is the Government's policy that the Trust is its leading historic protection agency off the conservation estate, the Trust's role in practice has been limited to that of an advocate. Its resources are too limited to include the purchase of areas for protection.

The Trust's role in the consideration of applications for authority to destroy archaeological sites serves to compound this problem, particularly where property rights and issues associated with compensation arise. In considering appeals concerning consents to destroy archaeological sites under the HPA, the Planning Tribunal is required to consider, amongst other things, the values of the site concerned and the interests of persons affected, including the extent to which protection of the site prevents or restricts the existing or reasonable future use of the site for any lawful purpose (s 20(6)). Much will depend upon what is considered to be significant, and what reasonable constraints can be expected to be placed on the use of land by a landowner. While the appeal provisions of the HPA do not limit the powers of the Trust to issue a requirement for a heritage order (s 20(7)), the Trust is not sufficiently resourced to issue heritage orders where there are potentially high financial consequences.

Major issues that need to be addressed include:

- the costs that can reasonably be expected to be born by private landowners in the protection of heritage;
- the circumstances in which the public should bear those costs;
- the appropriate balance between national (taxpayer) and regional/local (ratepayer) contributions;
- an appropriate Maori contribution.

The protection of historic and cultural heritage, including wahi taonga, should be a shared responsibility between the private landowner and the wider community. What is considered to be "reasonable" may shift as the attitudes of society in general change, and case law develops. However, that does not prevent public authorities from setting aside funds and developing criteria in consultation with tangata whenua, for allocating those funds to the protection of Maori and other historic and cultural heritage. The allocation of \$1 million

by the Manukau City Council for the protection of the Otuaataua Stonefield provides one example of a local authority initiative. However the initiative has proven to be insufficient without a national contribution.

At the present time the lack of nationally based funding for the protection of Maori heritage serves to constrain the ability of any national agency to act as more than an advocate. This is a serious deficiency in the system. While the Minister of Maori Affairs (and any other Minister) has the authority to issue a requirement for a heritage order (s 187 RMA), that Minister may still be liable for the costs of purchase of the area to which the order relates.

The HPA and the RMA take different approaches to the representation of parties at proceedings. Under the HPA, there is no formal submission process at the initial stage of determining applications for authorities, although consultation may be undertaken with representatives of the tangata whenua. Only persons directly affected by a decision have standing to appeal and such persons do not include bodies corporate such as Trust Boards (*Ngatiwai Trust Board v New Zealand Historic Places Trust* [1996] NZRMA 222).

Under the RMA, there is provision for a public submission stage prior to the hearing and determination of an application for resource consent. Any person (including a body corporate) may make a submission. Standing to appeal against a consent authority's decision then depends upon having made a submission on the application. In addition any person with an interest in the proceedings greater than the public generally may join in the appeal proceedings. To be granted standing a body corporate must itself be advantaged or disadvantaged by the outcome of the proceedings (*Purification Technologies Ltd v Taupo District Council* [1995] NZRMA 197). However, there is currently a proposed amendment to s 274 RMA before a select committee which would provide standing for "any person representing some aspect of the public interest". This phrase may be sufficient to provide standing in appeals to bodies corporate such as Maori Trust Boards and environmental organisations.

Where an application for resource consent is not notified there is no opportunity to make submissions and no-one with standing to appeal apart from the applicant. Where the applicant appeals, only persons with an interest in the proceedings greater than the public generally (or post amendment, any person representing some aspect of the public interest) may take part in the proceedings.

Both Chapters 3 and 4 identify deficiencies in the present system for managing historic and cultural heritage which are of significance for Maori. In brief, they can be summarised as:

- lack of coordination between statutory agencies involved in the management of historic and cultural heritage (the Trust, DOC and local authorities), and between them and Maori management organisations;
- lack of resources for the Trust to actively assist Maori to protect their wahi taonga, for example through the development of planning, assessment

4.6.3 Representation of tangata whenua interests

4.6.4 Summary of deficiencies in the system

and information systems, and support to implement measures to protect taonga;

- limited decision-making power of the Maori Heritage Council;
- inadequacy of the HPA in dealing with Maori values associated with archaeological sites;
- the potential gap between the archaeological site provisions of the HPA and the RMA where local authorities fail to provide for the protection of sites in their policies and plans.

There is scope within the RMA for the development of procedures for assessment and protection of wahi taonga. However their success will depend upon:

- good information and advice to tangata whenua about the use of planning procedures;
- the ability for tangata whenua to develop their own heritage policies and to address overlapping interests;
- the development of agreed procedures for consultation between local authorities and tangata whenua;
- the development of agreed procedures for the management of sensitive information;
- the availability of incentive funds to support protection measures where necessary.

While some local authorities are taking steps to address these issues, the performance of local authorities appears to vary widely, suggesting that good practice guidelines should be developed.

5. TOWARDS THE NEXT CENTURY FOR HERITAGE CONSERVATION

The poor performance of the system for historic and cultural heritage management discussed in the previous two chapters appears to be ultimately the result of a lack of national political leadership and commitment, expressed in poor resourcing and limited roles for the leading national agencies. This present low profile for historic and cultural heritage does not reflect the clear importance attached to historic and cultural heritage by individuals and communities, or the strong community support given to the Trust by its large membership. Nor does it reflect the substantial recent commitment of Government to important individual symbols of national historic and cultural heritage such as the restoration of Parliament and Old Government Buildings and the housing of artefacts in the new Museum of New Zealand. The Government has also accepted that other aspects of our history and culture, such as the creative arts, are important parts of our national identity.

The most fundamental change required to improve the system is for an explicit commitment to historic and cultural heritage protection and management, separate from the present Conservation portfolio. A portfolio for historic and cultural heritage could be filled by a Minister who is also responsible for related portfolios, eg Conservation, Cultural Affairs or Internal Affairs, but would provide clear Ministerial leadership and accountability.

At present, the Minister of Conservation is responsible for the HPA and the Trust but DOC provides the primary policy advice to the Minister in that role. Given DOC's role in historic and cultural heritage management is now primarily restricted to the Conservation estate, this arrangement is inappropriate. A Ministerial portfolio responsible for historic and cultural heritage would require independent policy advice, and this would have profound implications for the present Trust (see Chapter 5.3.1), and in particular suggests that one part of the Trust becomes a new Crown unit responsible to a Minister of Historic and Cultural Heritage.

It is important that future Government strategy should address historic and cultural heritage as part of New Zealand's national identity, if only to signal high-level political commitment and a raising of its present very low political profile. There is a gap in policy for historic and cultural heritage at the national level. *Environment 2010* (Ministry for the Environment 1994) does not provide a lead policy, and while the DOC *Historic Heritage Strategy* is a clearly articulated national strategy, its central theme is one of restriction and concentration of DOC's role to the conservation estate.

This gap leaves a clear opportunity for the new unit to assert itself at the outset as the leading Crown agency for historic and cultural heritage protection and management. The best way to do this, regardless of the

5.1 A vision for historic and cultural heritage

5.1.1 Political leadership

5.1.2 National and regional policy

future structure of the new unit, is for it to develop as a priority a detailed national strategy and “action plan” for historic and cultural heritage. Some aspects of the future structure of the various agencies will only emerge from this national strategy. This is also a good time to develop such a strategy because DOC’s role is now much clearer, and the direction of territorial authorities’ involvement, especially through new district plans, is beginning to emerge.

There will need to be close liaison between the new unit and a large number of government agencies and non-governmental organisations as national strategies for all types of historic and cultural heritage (eg wahi tapu policy, cultural framework policy) develop. The new unit cannot develop a national strategy on its own, but should be seen as the lead agency in a cooperative venture between Crown, local government and non-governmental organisations.

There have been some suggestions that a National Policy Statement should be developed under the RMA for historic and cultural heritage, in recognition of its national importance. An alternative option is for national policy and strategy to develop through the lead of the new unit rather than through a National Policy Statement. There is an important statutory role for the Minister for the Environment to be concerned with historical and cultural heritage issues: the Historic Places Act is scheduled in the Environment Act for the purposes of s 31(c)(i) and that section, as well as s 17(b) and (c), clearly refer to historic and cultural heritage matters (Chapter 1.2).

A possible reason for generally low political commitment at the local government level is the status of historic and cultural heritage in Part II of the RMA (Chapter 2.1.3) At present the heritage value of sites, buildings, places or areas is only one of the “Other Matters” under s 7 RMA, to be had regard to. Its present position provides a reason for agencies which are failing to adequately provide for heritage protection to justify their actions. It is also inconsistent with the principle of “the relationship of Maori ... with their ancestral lands” etc, a matter of national importance under s 6 RMA. Shifting all heritage values to s 6 RMA would have an important effect on all heritage aspects dealt with under the RMA, from policy and planning to the level of individual resource consent applications, without extending responsibilities of territorial authorities beyond present good practice.

5.1.3 Integration of historic and cultural and other types of heritage

The variety of types of heritage, and the continuum between different types of heritage, were discussed in Chapter 1.2 and Appendix 1. A local government heritage manager commented “There appears to be no safe refuge in isolated words like “historic”, “cultural” or “notable”. Each has limitations due to specific dictionary or local popular meanings which soon prove restrictive” (George Farrant, Auckland City Council, pers. comm., 9 May 1996). An ideal approach would be to approach all types of heritage in an integrated manner so as to recognise this continuum, and the contribution of the full range of New Zealand’s heritage to its national identity. This applies especially to the continuum between land-based natural heritage and historic and cultural heritage. The Ngunguru Sandspit and Westfield Chimney (Auckland City) case studies illustrate the widening range of heritage values

recognised by different sections of the community. This is recognised in several regional policy statements and district plans prepared under the RMA, and by some Conservation Management Strategies prepared under the Conservation Act. The promotion of the Kerikeri National Trust Bill (Appendix 7) is in part an expression of community recognition of the need for integrated heritage management by different agencies.

At the central government level, an integrated approach to heritage would benefit from a national heritage strategy and would achieve greater complementarity of the use of scarce resources than exist at present. A number of existing central government agencies have significant interest in the parts of the continuum of historic and cultural heritage values (Appendices 1,3), eg DOC, Ministry of Cultural Affairs, Department of Internal Affairs, Museum of New Zealand, Te Puni Kokiri, National Archives.

In conjunction with a more integrated approach at the national level, it may also be possible to manage heritage in a more integrated way at local and regional levels, with regional as well as district councils as key agencies. An important implication of integrated local management is that the functions of heritage policy and parks and reserves policy and management, at present almost always separate, should be closely examined. A much more integrated approach is achieved by the regional parks network maintained by the Auckland and Wellington Regional Councils.

The analysis of current resourcing of historic and cultural heritage management (Chapter 3.1.4) suggest that the main gaps in resourcing include:

- inadequate coverage of core and statutory functions of the Trust (s 39 HPA);
- the lack of a dedicated national heritage land and property acquisition fund administered by a leading heritage agency;
- the lack of rolling incentive funds at the national and local level;
- the lack of investment tax credits for heritage conservation work on nationally significant heritage places;
- the limited use of rate relief by territorial authorities for voluntary heritage conservation and uncertainties about the use of rate relief to complement regulatory heritage protection approaches;
- the lack of funding to develop and complete a national historic and cultural heritage register and assist research of traditional and oral history.

Of these resourcing deficiencies, the most urgent priorities suggested for action are: increased core funding for the leading national agency responsible for historic and cultural heritage management, a dedicated national acquisition fund, and local and national incentive funds. Justification for increased or new funding for these specific items can be summarised as follows:

- Some of the statutory requirements of the HPA are not being provided for under the current Crown Purchase Agreement with the Trust.
- Recognition that the protection of historic and cultural heritage should be a shared responsibility between the private landowner and the wider community (both local and national). There are both public and private

5.1.4 Resourcing requirements

benefits from heritage protection and so the public and private landowners should both contribute towards the cost of protection.

- A need for more equity between funding for natural and historic and cultural heritage protection. The Ngunguru Sandspit and Auckland stonefields case studies both showed that with the demands on DOC's land acquisition fund, neither proposal for acquisition could be accommodated. A dedicated historic and cultural heritage fund appears to be necessary, at least until there is much better integrated heritage management.
- The potential economic benefits flowing from domestic and international visits to historic and cultural heritage places (Chapter 1.3), although unresearched, appear to be substantial.

It is recognised that increasing responsibilities for local government will represent additional financial commitment which will be difficult for many, particularly smaller and rural, local authorities. Local authorities will require significant support, including financial support at times, to discharge these responsibilities. Useful precedents of local-national partnerships for local projects exist, including joint financing of Cultural Heritage Inventories by the ARC and Auckland territorial authorities, and the Tasman District heritage inventory involving DOC, the Trust and iwi as well as the Council.

The extra funding required to meet these most urgent shortfalls has not been estimated for this investigation but on an annual basis would not be large in comparison to government's overall commitment to heritage protection. In terms of direct government funding, the gap in the resourcing of historic and cultural heritage between New Zealand and other countries may not be as large as is commonly assumed. For example, the New South Wales government currently provides approximately A\$2.8 million for a state heritage acquisition fund (population seven million people). However, significant additional protection is provided through the extensive use of compulsory conservation orders on more than 750 places, and substantial property maintenance carried out by the Historic Houses Trust, as well as Federal investment tax credits and indirect support provided by the Australian Heritage Commission. Multiplier effects of up to five times the value of the funding generate significant heritage conservation work (see background report - overseas examples).

At present, Lottery Grants Board funding is a major component of present total funding for historic and cultural heritage management in New Zealand. The presence of this funding source is of course welcome but its relative size as a discretionary fund in the absence of a clear national strategy or priorities for resource allocation means that its application can be distortionary.

The Lottery Environment and Heritage Distribution Committee (LE&HDC) has carefully considered criteria for its funding decisions. These criteria appear to have caused difficulty for the Committee in considering the Trust's funding applications, in particular for items which the Committee considers part of the Trust's core or statutory functions. In April 1996 the LE&HDC advised the Trust that it was not prepared to fund any of the Trust Output 1 (exercise of statutory instruments) given DOC's current policy position, or any of Output 4 (marketing) given that it should be funded through self generated income. The Committee advised that it was only prepared to fund

part of Output 3 (management of properties) and any Crown owned properties were excluded from funding. The Committee advised it may consider funding aspects of Output 2 (advocacy) but requested more information (Letter from LE&HDC to the Trust April 1996). The Committee's policy behind this decision is that "lottery profits are distinct from government funds and are not intended to fund the core services for which government agencies are responsible. If government wishes to have a national distribution strategy to achieve government goals it has to resource it separately" (Letter from LE&HDC to PCE April 1996).

The Committee's policy appears to be consistent and rational. It reinforces the need for government's re-examination of its basis of funding the Trust's four agreed outputs, and in particular what can be defined as core services. It also suggests that national resource allocation policies for all funding sources including the Lottery Grants Board must be urgently addressed as part of a national strategy, and also possibly that the Trust as the leading historic and cultural heritage agency needs to have a greater role in deciding on discretionary funding allocations, as occurs in some other countries.

Internal allocation of resources

New Zealand Historic Places Trust: Since a period of acute financial stress in the early 1990s, and the application of Public Finance Act provisions, the Trust has put much effort into financial management. This has been acknowledged by favourable recent Audit New Zealand ratings of the Trust's financial management. Nevertheless the Trust estimates that it has a persistent shortfall between its total income and what it regards as its minimum core service provisions (G. Whitehead, NZHPT, pers. comm., May 1996). The main areas of stress appear to be in Output 2 (advocacy) which in turn has the potential to put stress on budgets for Output 1 (statutory functions) when advocacy fails and statutory measures must be initiated. Another area of shortfall is the management of Crown-owned properties in Output 3 which clearly should be the responsibility of the Crown.

On an activities basis, the four most urgent priorities for the Trust's Heritage Conservation work appear to be: increased funding for further national policy development and implementation, increased support of the general service provision work of regional offices, increased funding for the protection of Maori cultural values, and resources for the upgrading of the Register.

This analysis is made in terms of the existing Trust. All aspects are relevant to the operations of the proposed new Crown unit.

Department of Conservation: DOC's main priorities for its Historic Resources work will be to obtain more consistent funding between conservancies and to obtain a minimum level of historic resourcing in each conservancy that is significantly greater than the current minimum of less than 1% of conservancy spending. The 1995 internal Historic Resources review recommended an acceptable band of conservancy spending of 3.5 to 12%. This is endorsed and would result in an average of about 5% of total conservancy spending compared to the present average of about 3.5%. In

addition, Historic Resources staff contribute significantly to the provision of interpretative material for visitors and the public; this should be reflected in funding for Historic Resources directly from Output 8 without loss of funding for Output 4.

5.2 Improving the system for Maori heritage

5.2.1 Improvements to the system

In reviewing the system for the management of historic and cultural heritage, this investigation has also attempted to deal with heritage as it may be defined by Maori as well as other citizens of New Zealand. While the investigation has recognised the unique position of Maori in this country, and has set out to identify the major deficiencies in the system as far as the management and protection of wahi taonga are concerned, resources have not been available to carry out a detailed iwi-based study or to recommend in detail the changes that should be made to provide a more appropriate management system for wahi taonga. That would be a separate investigation in itself, and would require a far greater input from Maori than has been able to be achieved in this investigation.

It nevertheless appears from the limited information obtained that the system for the management of historic and cultural heritage could be greatly improved from a Maori point of view provided the following more general matters are addressed:

- a national strategy for the management of Maori historic and cultural heritage is developed, based on the principle that the Crown's role in respect to Maori heritage is supportive of Maori efforts to develop their own heritage management policies;
- that in the development of that strategy the roles and responsibilities of the relevant public authorities in respect of advocacy and funding are clarified;
- a nationally based source of funding is established to provide support to Maori to protect their historic and cultural heritage, with the criteria for allocation to be developed in consultation with tangata whenua;
- that the basis for the nationally-based registration of sites of significance to Maori is reviewed to determine:
 - what information is required to be held on a register;
 - how stronger links might be developed with tangata whenua so that information systems can be developed and managed within their own structures, and conveyed to the Trust and local authorities as necessary;
 - how information already existing on the HPA Register should be reassessed.
- priority is given to assisting tangata whenua to:
 - review information currently on the Register which is relevant to them;
 - carry out their own research and assessments, which can be linked into the register according to agreed criteria.
- provisions relating to the management of Maori historic and cultural heritage within the present Historic Places Act are strengthened to provide Maori concerns with a higher priority.

The development of a strategy for the management of Maori heritage could be carried out by the new unit which reports to a Minister of Historic and Cultural Heritage (see Chapter 5.3.1). As part of that strategy, high priority

should be given to the provision of support to Maori to develop their own management plans. One of the present functions of the Maori Heritage Council is to develop Maori programmes for the identification and conservation of wahi tapu, wahi tapu areas, and historic places and historic areas of Maori interests, and to inform the Board of all activities, needs and developments relating to Maori interests in such areas and places (s 85 HPA). This function would appear to be consistent with the supportive role that can be played by the Crown in the protection of Maori historic and cultural heritage. These functions could also be carried out by a new unit as suggested above. Initiatives could include:

- assistance to develop research programmes and databases;
- planning advice on the implementation of policies by Maori, for example through the procedures of the RMA;
- advice on the conservation of cultural heritage, for example whareniui (meeting houses).
- a process for the dissemination of information.

An analogous approach is that of the Minister for the Environment in funding a Landcare Trust at \$1.3 million to assist voluntary actions by landowners to manage resources sustainably on a sub-catchment basis. A similar trust could be established to assist whanau, hapu and iwi to develop their own management plans.

The value of iwi based information systems is that they could be linked, not only to a national information base, but also into those of local authorities and the Department of Conservation where considered necessary by the relevant iwi groups.

The development of a more comprehensive registration system for Maori heritage could assist a national agency such as the Trust/Maori Heritage Council or a new Crown unit to gain a national overview of the extent of wahi tapu and Maori historic sites as a means of formulating appropriate policies and programmes at the national level. Major questions would arise as to how such a register would be used. If information were to be managed within the iwi framework, that information might be accessed by the Trust/Maori Heritage Council or new unit, and protocols developed to obtain it. Such information could be of value in setting priorities for the allocation of funding, particularly where purchase is required. Rather than attempting to rank sites according to concepts of "national significance", (Chapter 5.5.1) other approaches could be developed, including ranking based on an assessment of risk to the sites concerned.

There is clearly a role for both local authorities and the Department of Conservation to assist Maori to develop their own heritage strategies. The Resource Management Act provisions for local authorities to have regard to planning documents which are recognised by an iwi authority provide a valuable opportunity for tangata whenua to promote their own policies and objectives in relation to their historic and cultural heritage.¹ Where consistent with their functions under the Resource Management Act and the Local

¹ See s 61(2)(a)(ii), s 66(2)(c)(ii) and s 73(2)(b)(ii) of the RMA

Government Act, councils are able to provide support to Maori to develop such plans. While some councils have begun to assist tangata whenua in this way, performance in general has been variable. The Trust could play a valuable role in providing advice on good practice to local authorities - for example by monitoring their performance and ensuring that successful initiatives are promoted.

The Department of Conservation has yet to finalise its wahi tapu policy which could include more positive measures to assist tangata whenua to develop and implement their own policies for sites on land managed by the Department. The Department would also need to develop decision-making procedures which have regard to Maori policies.

A new Crown unit could provide specialist advice to both local authorities and the Department of Conservation on the management of wahi taonga, including wahi tapu, and indeed could also act as an advocate on behalf of Maori.

Criteria for the management of a new fund would also have to be developed by the Trust/Maori Heritage Council or a new unit in consultation with Maori.

5.2.2 How options for improvement might be assessed and implemented

It has already been suggested that a new portfolio for Historic and Cultural Heritage be established. As part of that process, it is essential that a process is put in place to provide Maori with the opportunity to determine options for implementing a structure to address Maori concerns in relation to the management of their wahi taonga. There may be a number of options for making the changes suggested in this chapter, including the establishment of separate national Maori advisory body or agency to advise the Minister of Historic and Cultural Heritage, and amongst other things to administer a Maori Heritage Fund and provide policy direction.

An important first step in this process should be taken by the Maori Heritage Council and the Minister responsible for historic and cultural heritage calling a national hui of iwi representatives to discuss the management of Maori historic and cultural heritage. Matters to be discussed and clarified at the hui include:

- the identification of systemic problems in relation to the management of Maori historic and cultural heritage;
- the future of the present provisions for consents to destroy, damage or modify archaeological sites;
- current initiatives being taken by tangata whenua;
- potential options for the future, including strengthening the Historic Places Act; the development of special legislation to better provide for Maori concerns; the strengthening of the Maori component of the new heritage agency or the establishment of a national Maori heritage agency.

The results of such a hui would provide direction to the new Minister in the establishment of a new unit.

There are many organisations with responsibilities for historic and cultural heritage at different levels in New Zealand. It is recognised that relationships between different organisations have changed in recent years and they will continue to evolve. However, at the present time, the Trust and local authorities are the main agencies with responsibilities for protection of historic and cultural heritage on private land. If a ministerial portfolio is created as proposed in Chapter 5.1.1, consideration can then be given as to which functions should rest with government and which with a non-government albeit statutory body.

5.3 Future approaches for heritage agencies

The Trust is the leading national advocate for historic and cultural heritage management in New Zealand. Regardless of the outcome of this investigation, the future role of the Trust will be affected by several external factors including the level of national commitment to the protection of historic and cultural heritage, the level of resourcing for heritage agencies, and the Trust's current internal review. There has been much debate about the role and structure of the Trust with many submissions from individuals and organisations made to this investigation.

5.3.1 New Zealand Historic Places Trust

A new Minister of Historic and Cultural Heritage will require a Crown agency servicing unit. This new unit would:

- represent the Crown's interest as a Treaty of Waitangi partner for historic and cultural heritage;
- be the primary agency for providing heritage policy advice to the Minister responsible for historic and cultural heritage;
- be guided by an appropriate national advisory council (see below);
- continue to administer the HPA Register;
- continue to administer the provisions of Part I of the HPA until they are reviewed (see Chapter 5.5.2);
- continue as a heritage protection authority but only as a last resort option with primary protection responsibilities resting with local authorities. Any place or area that was required to be compulsorily acquired because of the placing of a heritage order would be vested with an appropriate heritage management agency or onsold with protective covenants;
- administer national heritage funds; its role for acquired properties would be similar to that above for HPA;
- provide specialist advice and information on the protection and management of Maori historic and cultural heritage to all other agencies;
- provide technical advice including information on heritage conservation standards, assessment methodologies and heritage conservation approaches to all other agencies and affected parties;
- act as a national advocate for historic and cultural heritage;
- liaise with other agencies as appropriate.

Adequate research and assessment would be key requirements for the new unit to underpin the above functions. Wide liaison and support at both a national and regional level would also be required. The servicing unit could largely consist of the present Trust Heritage Conservation Division, but its establishment would require significant changes to the present HPA. The future of the HPA archaeological authority provisions is discussed in Chapter

5.3.2. It is envisaged that the new unit would not be directly involved in day-to-day management and in particular would not own heritage places. Any property acquired would be promptly onsold or vested with appropriate protection mechanisms.

Under the proposed restructuring, the remaining portions of the Trust including the Property Division, marketing and communication, and membership sections would become an autonomous historic and cultural heritage non-governmental organisation. This organisation would have some similarities to the Queen Elizabeth the Second National Trust and would probably retain some statutory functions relating to the acquisition and management of properties. It would advocate for the protection and management of historic and cultural heritage at all levels.

The separation of responsibilities implied by the suggested restructuring requires a network of regional offices of the new statutory agency, that are resourced to handle historic and cultural heritage management on private land in New Zealand. The Trust's present regional offices do not cover all of New Zealand (eg there is no coverage in the central North Island, Taranaki, or East Coast) and the existing offices are not resourced for such a major responsibility (eg excluding property managers there is currently only one regional officer and an assistant for the Auckland and Northland regions). The regional offices are not able to meet the demands placed on them for information on archaeological sites, joint management approaches, and the monitoring of activities that may affect sites. This situation needs to be recognised in assessing resourcing for the new unit in the future and its various responsibilities under the HPA.

The role of the Trust branches and its members needs to be clarified for the future, as the branch members increasingly take on a role as environmental non-governmental organisations that actively advocate for the protection of heritage. This advocacy, which may include criticism of the approach of Government Ministers and agencies, can be seen to be incompatible with some of the present roles of the Trust while it receives funding from the Crown. A separation of advocacy and statutory roles would assist the clarification of the role of the Trust's branches.

The role of the present Trust Board and Maori Heritage Council would need to be substantially redefined. The present Board/Council structure, (although with members appointed only by the Minister), could have a policy oversight and advice for the new unit similar to that of the New Zealand Conservation Authority for natural heritage. Another possible model is the Arts Council of New Zealand Toi Aotearoa structure for arts funding in which overall governance is the responsibility of a seven-member Council, which allocates funds to two seven-member, autonomous boards responsible for general arts funding and funding specifically for Maori arts funding. It should also be noted that the proposed Protection of Moveable Cultural Heritage Bill proposes a Cultural Heritage Council. The relationship of the Board/Council to the governing body of the new non-governmental organisation would also need to be given close attention.

The role of the Department of Conservation for its historic and cultural heritage, in relation to other agencies, has been discussed in the national *Historic Heritage Strategy*. However, the role of DOC off-estate remains to be clarified and the circumstances in which the Department will take the lead and act in exceptional cases need to be defined including when it will intervene in the national interest. The Department has a statutory responsibility for managing areas where there are combined national and regional historic, cultural, and natural heritage values. The limited involvement of DOC off-estate will require other agencies to take a greater role. There will be an important continuing function for Conservation Management Strategies to guide historic and cultural heritage research and protection for DOC conservancies, within a regional context. This will be especially important for research and survey and analysing protection priorities of archaeological sites (including those that are significant to Maori) on a regional basis, as has already been attempted in a couple of regions (Challis 1991a, 1992).

5.3.2 Department of Conservation

Regardless of the future role of the present Trust and Maori Heritage Council, the New Zealand Conservation Authority and Conservation Boards will continue to have an important advisory role which is not restricted to the conservation estate and can bridge the gap between natural heritage and historic and cultural heritage. To be effective in this regard, membership of these bodies from more diverse backgrounds may be required.

The management of various Crown-owned historic buildings is the responsibility of several different Crown Departments and the Trust. For example, in Wellington the Wellington Conservancy of DOC manages Old Government Buildings and Turnbull House; the Department of Internal Affairs manages Premier House and Vogel House; and the Trust manages Old St Pauls. In addition, many buildings owned by the Crown and used for commercial purposes have important historic and cultural heritage values.

5.3.3 Management of Crown heritage properties

It is proposed that oversight of the management of all protected Crown owned historic properties should be the responsibility of a single agency, such as the Department of Internal Affairs Heritage Property Branch. This agency could provide consistent policy advice on the maintenance and restoration of these buildings and determine funding for restoration according to agreed priorities.

The Heritage Property Branch could also oversee the preparation of conservation plans and management plans for historic buildings and maintain a register of all Crown owned historic buildings. In Australia, Government departments at Australian Commonwealth and state level are required to identify and register items in their ownership that are of significant historic and cultural heritage and prepare conservation and management plans, particularly before disposal. In New Zealand, this type of requirement may have limited the loss of heritage resources when, for example, redundant railway stations or post offices were sold or before archaeological sites were destroyed. The preparation of conservation plans would also assist to prevent the decay of heritage buildings while long-term tenure was being resolved.

5.3.4 Local authorities

The RMA, as the overarching legislation to promote sustainable resource management, provides the main protection mechanisms for historic and cultural heritage through the use of rules and schedules in district plans supported by financial incentives. Local authorities have an important role in the identification, assessment, conservation, protection and promotion of historic and cultural heritage values. In particular regional councils have a role in recognising significant regional historic and cultural heritage, identifying and protecting sites in the coastal marine area and guiding historic and cultural heritage protection at a regional level. Territorial authorities will have the major role with dealing with the effects of the use, development and protection of heritage resources at a territorial level. For example, they have a key role in providing for historic and cultural heritage in district plans and for recognising and protecting the heritage values of sites, buildings, places and areas that are important to local communities and Maori. A discussion in Chapter 5.5.1 of registration procedures reinforces the primary role of territorial authorities in this aspect. At both levels this role requires significant resources: it is a reasonable principle that protection of local resources requires local funding, as long as the corollary of national funding for national protection is followed.

For both regional councils and territorial authorities a comprehensive and coordinated approach to protection would include the following elements:

- a robust approach to survey and assessment of historic and cultural heritage and a detailed information database to provide the basis for decision-making;
- an integrated long-term approach to historic and cultural heritage protection through a heritage strategic plan, either as an integral component of a strategic plan or as a separate heritage strategic plan;
- regulatory measures through the RMA to avoid, remedy or mitigate adverse effects of activities on historic and cultural heritage, possibly including a role in the present HPA authorities process (Chapter 5.5.2);
- financial incentives to assist protection including acquisition funding, conservation project funding, and rate relief;
- expert advice about protection approaches, alternative uses and appropriate designs and education of land owners and the wider community about the value of historic and cultural heritage.

This report has concentrated on local authority responsibilities under the RMA, but both regional and territorial authorities could carry out significant heritage-related work through other legislative responsibilities, eg promotion of economic well-being and promotion of regional tourism under the Local Government Act 1974.

5.3.5 Liaison between agencies

Regular liaison of the various heritage agencies is required at national and regional level. The new Crown unit should coordinate national level initiatives and monitor the response to historic and cultural heritage management by different agencies. Coordination is also required at the regional level to ensure the appropriate management and protection of the historic and cultural heritage resource. Roles of the lead agency, which may from time to time by mutual agreement be other than the new unit, include coordinating protection, evaluating and providing financial contributions from heritage agencies that

recognise national, regional and local significance, and conducting negotiations that lead to protection.

The new Crown unit needs to be able to provide high quality historic and cultural heritage information to local authorities who can provide for the management and protection of the resource through the RMA. Heritage advisers could assist smaller territorial authorities to appropriately provide for the management of historic and cultural heritage.

Achieving any kind of significant vision for historic and cultural heritage will require a substantial community involvement. This is especially true for the New Zealand system which relies on a high level of voluntary compliance. Community involvement is already present and expressed in many ways, as discussed in Chapter 1.3; however this involvement is not universal, either geographically or demographically. Many submissions to the investigation emphasised the great importance of community involvement and public education for further progress in historic and cultural heritage protection and management. Successful local models of participation can be adapted for other areas and can build up momentum for an improved national system. Also, much heritage conservation requires the active goodwill and support from the commercial sector.

5.4 Community involvement and education

Trust branches and local committees have a vital role to play in this process. It was often noted that the large Trust membership constitutes a remarkably muted political lobby for historic cultural heritage compared to that for nature conservation. The suggestions made in Chapter 5.3.1 would separate the present Trust branches from the proposed new statutory unit. Branches may well transfer to the new non-governmental trust organisation, or they may choose to remain autonomous, but either way would have much greater freedom from political constraints. They would have the freedom to choose priority issues and tactics, and this freedom would imply financial responsibilities too if they choose property management roles or applied to become Heritage Protection Authorities so as to apply heritage orders.

In the longer term, the development of combined local heritage advocacy groups, incorporating all the local heritage-related local organisations (Appendix 7) may be an effective means of wider community input into historic and cultural heritage. Given the huge resource that active branch members represent for advocacy and local action, the Trust and other agencies need to ensure that the training needs of these groups are not overlooked. Policy advisory boards to statutory agencies also have an important role in liaison between government agencies and the community.

A proposal has recently been made for a national Historic And Cultural Heritage Foundation to complement local groups and the new non-governmental trust organisation (Piddington 1996). The proposed foundation would attract various forms of funding, predominantly from private sources. These would include bequests, donation and the sale of "heritage bonds" to form an investment portfolio. Returns from the fund would finance designated historic and cultural heritage priorities.

5.5 Information and registration

5.5.1 The future of the HPA Register and the NZAA File

High quality information is an important basis for historic cultural heritage protection and management (Chapter 3.3 and Appendix 5). A major issue for the new unit, and for historic and cultural heritage practitioners, is future policy for the HPA Register (Chapter 3.3). In some larger urban authorities, the Register is now being overtaken in both quantity and quality by inventories drawn up by the local authority, in some cases with no reference to the HPA Register. However, the Register is still of central importance for the following reasons:

- it has a statutory status (unusual for databases in New Zealand);
- many smaller territorial authorities rely on it heavily for their scheduling provisions;
- even when not relied on for scheduling, the presence of an item on the Register sends a strong signal that “it is an important place” (in both the Ngunguru Sandspit and Westfield Chimney case studies it could be argued that the fact that the sites were not on the Register at the time they became controversial was a significant factor in failing to obtain protection for them);
- criteria establish a nationally consistent basis for assessment;
- criteria are varied, allowing nominated items to be assessed for their full range of historic and cultural heritage significance.

However it may be possible in the future. It may also be possible to manage heritage in a more integrated fashion at local and regional levels, with regional and district councils as key agencies.

One of the main difficulties with the Register is the Category I and Category II split for historic places, based only on the criterion of “special or outstanding historical or cultural heritage significance or value” (s 22(3) HPA). It would seem much more desirable to establish the primary categories in the Register, based on carefully developed criteria for either national/international or regional/local significance.

If this distinction were made, it would be a logical development for the HPA register to be restricted to historic places of national significance. Such a change would recognise both the status of the Trust as a national agency, and the increasing importance of territorial authority work on assessing and scheduling historic places, primarily for their local or regional significance.

Such a development would allow Trust branches and other local NGOs to take a more central role in the assessment and listing of local historic places, but in association with their local authority rather than with the central Trust organisation (as discussed in the Nelson case study). It would highlight the unevenness of the present register, especially its older records, and require removal of many older records of doubtful validity, as well as the transfer of a large number of locally significant places to territorial authority lists.

A restructuring of the registration process as suggested may lessen the present confusion between HPA and RMA provisions. Nationally significant places would be clearly registered and protected under the HPA, while locally significant places would be scheduled and protected under the RMA.

A common criticism of the present registration process is that in itself it confers no protection. If the HPA register were restricted to nationally significant items, society may accept the principle that owners of nationally significant historic places do not have unfettered property rights, a principle that is already accepted for some of New Zealand's natural heritage. For example, there may be a duty to "sustainably manage" historic places, as there is for some indigenous forests under the Forests Amendment Act 1993, with a more stringent test for a historic place's eligibility to be destroyed, and a greater penalty for illegal destruction if this test is not met. Public attitudes to historic and cultural heritage indicated by the 1987 Heylen poll and popular interest in heritage conservation (Chapter 1.3) suggest that common acceptance of this principle may already occur.

It is recognised that the above proposal has far-reaching implications and that there are a number of difficulties in its implementation. These include the following:

- *Establishing criteria of national importance* would be a major task, especially for historical, social and cultural criteria.
- *Implications for the new unit*: The proposal would diminish the role of the present Register as a national inventory. However, the new unit should continue to advise and support local authorities on local assessment and inventory.
- Careful consideration would have to be given to *transitional arrangements* if the register was split in the way proposed, to allow smooth transition of items from the HPA register to territorial authority schedules, and vice versa, and to prevent pre-emptive demolition or destruction of places if protection was to be strengthened.
- *Maori heritage*: A major issue is how to deal with archaeological sites and sites of significance to Maori. The former have a universal Category II classification because of the transitional provisions 1993 HPA. The latter are either historic places with a Category I or II classification, or are archaeological sites with a Category II classification, or are wahi tapu with no classification. The principles of ranking and significance behind the Register are not generally accepted by Maori (Chapter 3.2). Considerable work would be needed to develop criteria for national importance which were different from criteria of archaeological significance and significance to individual iwi or hapu. If the recognition of national significance resulted in a greater level of protection then this may be more acceptable to some iwi and hapu (Chapter 5.2).

Regardless of options favoured, it is clear that as a priority, the HPA register requires an injection of resources for its development. An issue which is raised for any proposal for a national database is knowing what is nationally significant before a complete inventory of all items is made. One option is to make a major commitment to developing a complete inventory on the existing Register as quickly as possible, before developing criteria and selecting what is deemed to be nationally significant. This is an ambitious but not impossible undertaking, as shown by the Auckland Cultural Heritage Inventory and it is the Trust's favoured option (G Whitehead, NZHPT, letter to PCE 29 April 1996). Completion of a comprehensive inventory would allow the option of choosing a nationally representative rather than a nationally important sample, a development that voids some of the difficulties

with the concept of significance. Such a process would be analogous to DOC's Protected Natural Areas Survey Programme, and to the Department of Internal Affairs' Dictionary of New Zealand Biography project. For archaeological sites, a basis for such an approach has begun with DOC's conservancy Historic Heritage Strategies and regional archaeological syntheses (Challis 1991b). The option of a comprehensive nationally representative Register has recently been advanced by the proposal for a thematic classification of the Register (McLean 1996), a proposal that would also facilitate information retrieval for general historical research.

A less ambitious option is to develop criteria for national significance and then to apply these to the existing register to produce an initial National Register which would then be added to by ongoing survey. This would be feasible for the present register of historic places and areas, some 4750 items, but the existing database for other categories of historic cultural heritage would be an insufficient base for this to be feasible. These two options are not mutually exclusive; a further pragmatic option is to concentrate on upgrading the quality of information on all existing Category 1 registrations to a uniform high standard, in the knowledge that these items would be likely to form the nucleus of any National Register (at least for buildings), in the future.

A further requirement regardless of options, for further development of the register, is to strengthen the research and assessment basis for listing and registration of historic places, particularly for historical research and validation of significance. Not all the necessary research can and should be done by the Trust; university departments, museums and the Historical Branch of the Department of Internal Affairs have an important role, as well as Trust branch members and private researchers. Funding arrangements for this research need to be rationalised; much of it is in the public interest and both the PGSF and Lottery Grants Board distribution committees need to be aware of policies and priorities for heritage management when making funding decisions.

The NZAA is a very important database but there are at present significant constraints to its effectiveness, as discussed in Chapter 3.3.1. Issues for making the File more effective are to some extent similar to those for the Register, and the possibility of the eventual merger of the two databases has been mentioned (see Chapter 5.5.4). DOC's new *Historic Heritage Strategy* has important implications for future use and development of the File. It can be strongly argued that the whole file should be kept together, and at present DOC is the only agency able to professionally service and maintain it. Yet if as a matter of policy DOC will not act on or provide interpretation of information on the File relating to all off-estate records, its justification for continuing to maintain the whole File must be less strong.

Regardless of custody of the File, its future funding must be secured. The File is undoubtedly a database of national significance yet falls outside present Foundation for Research, Science and Technology criteria for PGSF funding simply because of historical factors which are no longer relevant (Appendix A6.2). One of the criteria used by the Foundation to determine whether a database is eligible to be designated a database of national

significance was that it was currently and primarily funded from the PGSF. This had the effect of ruling any database outside the PGSF system at the time of its inception permanently ineligible for “national significance” status and funding, regardless of its significance in all other respects. Such a criterion (which affects many other databases/collections as well as the File) is arbitrary and inconsistent with other PGSF funding policy, and should be revisited.

There are many issues associated with the HPA authority provisions and the assessment and protection of archaeological sites, including:

- the current processes for obtaining HPA authorities and RMA resource consents are not coordinated and the different consents may be granted at different times;
- an applicant can be required to provide information to two different agencies under two different processes, sometimes with duplication of archaeological and cultural assessments;
- the HPA authority process does not provide for full consultation with those affected by an application or the consideration of other environmental values in an integrated manner;
- the HPA does not distinguish between different types of archaeological sites;
- the process has the effect of giving archaeological values priority over Maori historic and cultural heritage values;
- full archaeological excavation is destructive whereas in some cases in-situ preservation is required;
- the Trust is limited in its ability to monitor and enforce the HPA authority provisions at a local level;
- the emphasis of the HPA authority process on discrete archaeological sites ignores the wider context of sites and the cumulative effects of development projects.

In addition to the issues associated with HPA authorities the response of councils to provide for the sustainable management of archaeological sites under the RMA is very variable as noted in Appendix 5.3. Some councils choose not to schedule archaeological sites because they believe that the provisions of the HPA protect archaeological sites and that it is the responsibility of the Trust to administer the HPA. However the HPA cannot fully protect these sites (see Appendix 8) and decisions by councils to not include a schedule of significant archaeological sites will limit the sustainable management of these sites under the RMA. It will also not provide for the integrated resource management of significant archaeological sites and areas along with other environmental effects under the RMA.

It is proposed that a modern consent process for archaeological sites is required that includes appropriate consultation, involvement of tangata whenua, local decision making, site visits, independent assessments, monitoring, and enforcement. The consideration of archaeological and cultural values should occur with other resource management issues to enable integrated resource management. Criteria for determining the appropriate agency for the processing of historic and cultural heritage consents would include:

5.5.2 The future of the HPA authority provisions

- historic and cultural heritage is considered along with other environmental issues as part of an integrated resource management process;
- priority is given to Maori cultural heritage values before consideration of other archaeological and heritage values;
- the consent is considered at a local level to provide for appropriate consultation with all interested parties;
- site visits are conducted by the responsible authority and where appropriate independent assessments are made of information submitted with an application;
- professional historic and cultural heritage staff are available to assess and report on applications.

The modification of archaeological sites and cultural heritage values is directly affected by land use and the control of the effects of land use is a territorial authority function under the RMA. The transfer of the provisions to territorial authorities would have financial implications but there is more potential for cost recovery with consent charges for a heritage resource consent. The transfer of the provisions to territorial authorities would also avoid the current duplication of effort by some local authorities and the Trust and allow the consideration of heritage consents and other resource consents by the one authority. This would be consistent with the devolution of decision making to the local level and allow for participation by tangata whenua and interested parties.

Territorial authorities could administer the provisions under Part I of the HPA or alternatively the provisions could be transferred to the RMA which is the primary resource management statute in New Zealand. Transfer of the provisions to the RMA would allow for an effects based assessment to be made. If provisions controlling the effects of activities on significant archaeological sites were included in district plans then the management and protection of archaeological sites would occur in a more integrated manner. If the current s 10 HPA protection for archaeological sites were not to remain, then some thought would need to be given to providing temporary protection for unprotected or newly discovered sites until an assessment could be made.

This option would need to be very carefully considered for the future as at the present time a change is limited by:

- the lack of knowledge of historic and cultural heritage in most local authorities;
- the lack of experienced archaeologists working at council level;
- the lack of experience of local authorities in dealing with sites of significance to tangata whenua.

Territorial authorities would require expert advice on cultural and archaeological values that are affected by any heritage consent application from regional-based archaeologists and cultural heritage specialists.

5.5.3 Protection mechanisms

The lack of funding for financial incentives from any national heritage agency is currently limiting the management and protection of historic and cultural heritage. A range of financial incentives is required to support current regulatory protection approaches and provide for a balanced approach to the

protection of historic and cultural heritage. Incentives that need to be further explored are summarised in Table 4. They include:

- a dedicated national heritage fund for land acquisition and management that is administered by a national heritage agency;
- tax incentives for the conservation of significant heritage sites and buildings;
- tax incentives for the strengthening of earthquake prone heritage buildings or the reinstatement of Government insurance cover for buildings of regional and national significance;
- local authority revolving heritage funds at regional and local levels to provide for the purchase and resale of heritage sites with suitable protection covenants.

TABLE 5.1 Potential protection mechanisms

Potential protection mechanisms	Effectiveness as a protection mechanism
Crown resumption: by a Minister of the Crown.	Very effective emergency procedure. Public ownership. Immediate protection if interim process available before notification and final confirmation. Cost of acquisition. Dependent on funding and political will. Interim and final processes required.
National Heritage Fund: National Heritage Organisation eg the Trust: for acquisition of significant heritage resources.	Very effective. Public ownership. Can be part of a network of national, regional and local heritage funds. Requires agreement of landowner to sell or can be used to support heritage orders. Lack of funding.
Tax incentives: Administered by central government agency to promote the maintenance and protection of privately owned heritage resources.	Very effective if clear criteria and use of competitive selection process. Preference for incentives given to significant heritage sites, with public access. Can have significant multiplier effects. Reduced tax revenue. Requires monitoring and enforcement of incentives. Dependent on funding and political will.
Revolving Funds: National and local level funds: to provide for purchase, covenanting and resale of significant heritage resources.	Very effective. Can be used in association with heritage funds. Actively supports conservation of heritage places. Dependent on funding and political will. Requires criteria for use. Legal agreements required for the on-selling of heritage places.

The recognition of different levels of national, regional, and local significance should guide the allocation of funding and responsibility for the maintenance of any site. The use of national and local revolving funds to provide for the purchase and resale of heritage sites with suitable protection covenants should be explored by appropriate agencies.

Other overseas initiatives that could be researched for potential use in New Zealand include:

- the use of a national grants programme for the conservation of items on the national register;
- developing a register of national monuments and providing any item on the register with some level of protection;
- restricting development for up to ten years for the illegal destruction of a heritage item;
- enabling Mainstreet New Zealand to function as a national organisation to support local authorities and communities develop Mainstreet programmes.

5.5.4 Information for integrated heritage management

An integrated approach to the management of all types of heritage (Chapter 5.1.3) requires a more integrated approach to information requirements than is presently the case. This could be facilitated by modern information technology, such as used by Auckland City Council for their heritage buildings register, and by DOC for the NZAA archaeological file. ICOMOS New Zealand (submission to PCE investigation, January 1996) has suggested that the present File could be the basis of an integrated database of all historic and cultural heritage. This could be done on either a centralised or regional basis. The Trust is currently in discussion with the Department of Survey and Land Information on the possibility of that agency developing such a database.

An integrated database for all place-based heritage, both natural, historic and cultural is also a possibility. The PNAP survey database has provision for some historic and cultural heritage information to be included within it, although this is not done in a consistent manner.

5.5.5 Consistency of standards and criteria

Tables 3.1 and 3.2 suggest that there are inconsistent assessment standards and criteria which at times inhibits protection measures. A completely uniform assessment system throughout the country may not be feasible, nor desirable. If statutory protection becomes regionally or locally based in future, it is reasonable that people's and communities' perceptions of significance will not be the same everywhere. However, it is highly desirable for local assessments to be based on essentially the same criteria, even if the weighting for these criteria changes to reflect different values. A similar set of core criteria used throughout the country would increase the robustness of schedules. Assessment for a national register should use standard criteria that are consistently applied. A major effort needs to be made to upgrade standards of assessment, involving all the major agencies, as well as professional groups such as ICOMOS New Zealand.

5.5.6 Professional skills, training and advice

Professional standards in historic and cultural heritage management have undoubtedly increased since the founding of the Trust, but many submissions to this investigation have noted that professional standards need to be raised for effective heritage management. Many disciplines within historic and cultural heritage management are specialised, and would only be required in very small numbers in New Zealand, so it would be unrealistic to expect that all training can be provided in this country. There is concern that DOC and the Trust are also losing trained specialists, although their skills are not necessarily lost to heritage management or to New Zealand. Some areas of understanding within historic and cultural heritage management are still rapidly changing, eg archaeological assessment and some building conservation techniques, and in these areas training needs to be upgraded regularly.

There have also been concerns about the quality of some advice received from independent consultants (Appendix 6), especially for archaeological site assessments. The quality of advice can be monitored both by the consultants themselves, through their professional associations, and by the receivers of advice, especially the Trust. The trust needs to specify quality standards for

commonly undertaken assessments, including both for HPA authority applications and building conservation plans; the recent paper by (Gumbley 1995) has been helpful for the former. The Trust needs to have appropriate expertise to scrutinise consultants' reports and may on occasion need to arrange its own independent reports on HPA authority applications, as can occur for resource consent applications under s 92(c) RMA.

This situation requires an inter-agency strategy for raising professional standards across the board, so that any institutional resources put into training are used to best advantage. Non-governmental and professional organisations will also have an important role in this process. Many territorial authorities will not be able to employ specialist historic and cultural heritage staff, so will require short courses for more generalist staff to acquire some skills in relevant areas. It is also important for the Trust to continue to give both staff and members opportunities to develop their skills.

At present the Trust is very short of specialised skills in certain areas, and will have difficulty in recruiting and retaining enough of these skills with its present resources. This may at times also affect the availability of specialist advice to the Trust Board. One relatively low-cost solution to this problem may be to reinstate technical subcommittees to the Board (which until the late 1980s had Archaeological and Buildings Classification Committees), or to continue the practice of project-based Board/staff working groups, augmented by coopted members if necessary. Any such sub-committees or working groups would need to have tightly focused Terms of Reference and should not disguise the need for staff with adequate specialist skills.

6. CONCLUSIONS AND RECOMMENDATIONS

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

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

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

Performance of the government system

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

(see Chapter 1.2;5.1.2)

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

(see Chapter 3.1.2, 3.1.4)

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

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

(see Chapter 3.1.2, 3.1.3, 3.1.4)

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

(see Chapter 3.1.3)

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

(see Chapter 3.1.3, 3.1.4)

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

(see Chapter 3.1.2)

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

(see Chapter 3.1.2)

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

(see Chapter 5.1.1)

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

(see Chapter 3.1.2)

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

(see Chapter 5.3.3)

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

(see Chapter 3.1.2, 5.1.2)

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

(see Chapter 3.1.2)

RECOMMENDATION 1

To the Prime Minister:

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

RECOMMENDATION 2

To the Minister responsible for historic and cultural heritage:

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

RECOMMENDATION 3

To the Minister for the Environment:

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

RECOMMENDATION 4

To all Regional Councils:

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

RECOMMENDATION 5

To all Territorial Authorities:

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

RECOMMENDATION 6

To the Prime Minister:

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

Maori heritage

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

(see Chapter 3.1.2, 3.1.3, 4.4, 4.6)

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

(see Chapter 3.1.4, 4.5)

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

(see Chapter 3.1.3, 4.4).

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

(see Chapter 4.2, 4.4.1, 4.6, 5.5.2)

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

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

(see Chapter 4.4)

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

(see Chapter 4.4)

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

RECOMMENDATION 7

To the Maori Heritage Council:

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

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

Assessment and information

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

(see Chapter 3.1.3)

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

(see Chapter 3.3)

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

(see Chapter 3.3)

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

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

(see Chapter 3.3)

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

(see Chapter 5.2)

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

(see Chapter 3.3, 5.5.4)

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

(see Chapter 3.3.1)

RECOMMENDATION 8

To the Minister responsible for historic and cultural heritage:

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

RECOMMENDATION 9

To The Minister of Research, Science and Technology:

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

Protection and resourcing

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

(see Chapter 3.2.2)

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

(see Chapter 5.5)

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

(see Chapter 3.2.2)

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

(see Chapter 5.5.3)

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

(see Chapter 3.1.4, 4.1.4)

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

(see Chapter 3.2)

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

(see Chapter 3.2.2)

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

(see Chapter 5.3.6)

RECOMMENDATION 10

To the Minister responsible for historic and cultural heritage:

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

RECOMMENDATION 11

To the Minister responsible for historic and cultural heritage:

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

RECOMMENDATION 12

To the Minister responsible for historic and cultural heritage:

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

RECOMMENDATION 13

To all Territorial authorities:

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

RECOMMENDATION 14

To the Lottery Grants Board Environment and Heritage Distribution Committee:

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

RECOMMENDATION 15

To the Minister of Finance:

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

Archaeological sites

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

(see Chapter 5.5.2)

RECOMMENDATION 16

To the Minister for the Environment:

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

Appendix 1

Nature and types of historic and cultural heritage

The modern meanings of heritage, in terms of conservation, have diverged significantly from its traditional meaning as a near-synonym of “inheritance”. At its broadest, “heritage represents the things we want to keep” (Hall and McArthur 1993), or at least “those valuable features of our environment which we seek to conserve from the ravages of development and decay” (Davison 1991). The meaning of heritage implied by the definition of heritage order in the Resource Management Act 1991 (RMA) requires only that a heritage place shall have “special interest”. Within this concept there is a wide range of physical and non-physical items, words and ideas which people value and try to protect. These types of heritage, described for example as “natural”, “historical”, “cultural”, or “social”, are by no means mutually exclusive.

New Zealand has a short history of human occupation. Even this short history has inescapably shaped the cultures of all those who took part, while the record itself continues to the present. However the physical record of our history and culture does not remain intact without protection. This has been recognised by local individuals, communities and councils, who have attempted to preserve and sustain the physical elements of their heritage that they considered important, as well as more recently by successive governments who have passed legislation to try and protect the country’s heritage, in part because the elements of heritage are often seen as expressions of national or community identity.

A1.1 Statutory definitions of heritage

The word “heritage” occurs in several places in relevant New Zealand legislation (see also Appendix 2), but its definition and usage varies considerably. This report largely uses the terminology of the Historic Places Act 1993 (HPA). The long title of the HPA states that it is an Act “to promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand...”, but the term historical and cultural heritage is not defined. The HPA then defines the terms “archaeological site”, “historic place”, “historic area”, “wahi tapu” and “wahi tapu area” (see Glossary).

A matter to be recognised in achieving the purposes of the HPA is “the relationship of Maori and their culture and traditions with their ancestral lands, water, sites wahi tapu and other taonga” (s 4(c) HPA). The same principle is to be recognised and provided for as a matter of national importance in the RMA (s 6 (e) RMA). This could imply, among other things, that all ancestral lands water, sites, wahi tapu and other taonga could be defined as being part of historic and cultural heritage valued by Maori. On the question of the relationship of Maori with their ancestral land, the Planning Tribunal has found that such a relationship can be shown to continue regardless of whether the land concerned remains in Maori ownership (*Royal Forest and Bird Protection Society v. W A Habgood Ltd* (1987) 12 NZTPA 76).

The RMA uses similar but not identical words to those of the HPA. For example s 7 cites “recognition and protection of the heritage values of sites, buildings, places or areas”. None of these words are defined. The closest that the RMA comes to defining heritage is in defining the purposes of heritage orders (s 189 RMA), which include protecting:

- (1)(a) Any place of special interest, character, intrinsic or amenity value or visual appeal, or of special significance to the tangata whenua for spiritual, cultural, or historical reasons; and...

- (2) ...a place may be of special interest by having special architectural, historical, scientific, ecological or other interest.

This implied definition is potentially very broad and inclusive, although it includes many types of heritage other than historic and cultural.

The Conservation Act 1987 does not use the term "heritage" but refers to "conservation of natural and historic resources for the purpose of maintaining their intrinsic values, providing for their appreciation and recreational enjoyment by the public, and safeguarding the options of future generations" (s 2 Conservation Act). "Historic resource" is defined as "a historic place within the meaning of the Historic Places Act 1993".

Many regional policy statements and proposed or draft district plans under the RMA contain statements about the nature and types of heritage within their region or district. Some treat natural and historic or cultural heritage together. For example the Proposed Auckland Regional Policy Statement states "Auckland's heritage involves those aspects of both the natural and cultural environment which have been inherited from the past, define the present and will be handed on to future generations". It goes on to list the elements of Auckland's cultural heritage as including "sites, places, place names, areas, waahi tapu, waahi tapu areas, taonga, buildings, objects, artefacts, natural features of cultural and historical significance, historical associations, people and institutions". Landscapes are described as features of both the natural and cultural heritage. Auckland's heritage is described as a dynamic and changing resource and the heritage associated with the coastal environment in particular as having always been "of central importance in creating the sense of place that is Auckland" (Auckland Regional Council 1994).

There is some debate as to whether "historic" or "cultural" is the preferable term in the heritage context or whether "historical and cultural" should be used. The term "historic", defined in the Concise Oxford Dictionary as "famous in history" or "of past events", is favoured by Department of Conservation usage, on the grounds that the terms "historic resources" and "historic place" encompass cultural heritage concepts. Because of the overall context provided by the HPA, cultural values are closely linked with historic values (Department of Conservation 1995a). Conversely, the term "cultural heritage" is frequently used to include all types of heritage recognised in this investigation. Use of this term is consistent with the ICOMOS definition (Chapter 1.3) and may also reflect a perception that the term "historic" pertains only to traditions that are recorded in written form. Heritage is above all connected with people's values, and these are expressed in oral and artistic forms just as much as built and written forms. Especially for cultural heritage, heritage values are largely social values (Johnston 1994). However, in this report, the term "historic and cultural heritage" is chosen to accommodate both the above points of view and to be consistent with the terminology of the HPA.

A question arises as to the status of historic and cultural heritage within the concept of "environment". Under the Environment Act 1986, "Environment" includes "(b) all natural and physical resources"; which include "any building, structure, machine, device or other facility made by people". "Environment" also includes "(d) the social, economic, aesthetic, and cultural conditions which affect the environment or which are affected by changes to the environment". Matters to which regard shall be given by both the Parliamentary Commissioner for the Environment and the Ministry for the Environment include "areas, landscape, and structures of aesthetic, archaeological, cultural, historical, recreational, scenic, and scientific value"...(s 17 Environment Act). Clearly, all aspects of historic and cultural heritage as discussed above are included in these concepts of environment.

A1.2 Types of historic and cultural heritage

Nature of places of significance to Maori

In the Maori view, all living things are the descendants of Ranginui and Papatuanuku (the sky father and the earth mother) and are therefore related through whakapapa (genealogy). This interrelatedness creates a sense of belonging to nature, as humans are born from “mother earth” (Manatu Maori 1991b p 2). Hence a Maori sense of history and culture - that is, where people have come from and the customs by which they live - cannot be divorced from their experience of nature, and more particularly the land.

The Waitangi Tribunal introduces these themes to its discussion of the concept of taonga:

an umbrella term, inclusive of a wide range of things upon which Maori in general and the whatu-ora (claimants) of this claim place great value and regard as treasures. Among them are intangibles like spiritual values as well as tangible objects. They include the land, sea fronts, forests, lakes and rivers; also places and things associated with life and death. Although the degree of tapu varies, all these taonga touch the “heart”, the manawa pa (desires) and the ngakau pa (ends of the people) (Waitangi Tribunal 1992 p 210).

On the nature of taonga, Mead suggests that in order to reach some understanding it is necessary to introduce other Maori words such as “korero”:

Korero means talk but in the sense in which I am using the word it means the talk associated with creation and production of works of art and particularly with the stories and explanations given by artists and patrons to such works ... All objects that are called taonga have korero attached to them and if the korero is lost the task of the scholars is to find it. The korero is a valuable aspect of any taonga and it is the korero that gives meaning and cultural significance to it (Mead 1990 p 164).

Korero not only gives life and significance to works of art but also to the land and its history:

This is all ancient ancestral land, rich in our history, of the lives of our Tupuna. It is land which, like Pakeha history books, tells us where we came from and where we belong in the Ao-Marama. It defines us as a people. It is land which vividly brings history to life for us. The location and stories of the Wahitapu, kainga, mahinga and pa remain known to this day. These places form an essential part of tangata whenua, part of the landscape of our hearts and minds, and remain part of our very existence to this day (E Paniora *in* Waitangi Tribunal 1992 p 210).

Moreover

The physical presence recalls the name. The name recalls the event. The event recalls the whakapapa. The whakapapa recalls the connection between things past and things present. The connection between things past and present is the element which gives Te Roroa its pride and identity (counsel for the claimants, *ibid* p 211).

More specific terms for places that are taonga include: wahi tapu, wahi tupuna and wahi taonga. Wahi tapu and wahi tupuna have been described as “localities upon which certain activities took place” (Te Puni Kokiri 1993 p 18). A Manatu Maori discussion paper drew a distinction between “everyday sites including marae, pa sites, quarries and mahinga kai, and wahi tapu which translates as “sacred place” although the modern translation of tapu as sacred fails to capture its full essence, for “the deep

spiritual value of wahi tapu transcends mere sacredness". A wide range of sites may be tapu, including urupa (burial grounds), ana tupapaku (burial caves), pa where battles have occurred, other sites where blood has been spilt, tauranga waka [sites where ancestral canoes have been beached] and some mountains (Manatu Maori 1991b p 4). As an example of one iwi's approach to heritage description, in the resource management strategy for Ngai Tahu in Canterbury, Tau *et al.* (1990 p 4-29) describe wahi taonga as "tribally treasured areas":

Ngai Tahu have a personal relationship with the land which extends beyond mere occupation. The relationship begins at birth with the placenta, like the land, being called whenua. Traditionally, when the child is born the placenta is buried in the earth which expresses the belief that humankind originates from Papatuanuku and returns to her. This is an example of an individual's close relationship with the land and the loss of land is the loss of self.

Tribally, Ngai Tahu Whanui have a similar relationship with the land. For example when Ngai Tahu turn to Aoraki (Mt Cook), in one sense they see him as an old man - a relation. The same principle applies to the whole of the Southern Alps.

Ngai Tahu state that although treasured areas can also be correctly referred to as wahi tapu, for the purpose of their management plan they have chosen to make a distinction. They include archaeological and rock art sites, mountains and mountain ranges, fowling trees, historic pa and other sites, tauranga waka (canoe landing sites) and buried whakairo (important art and pounamu) as wahi taonga. Tau *et al.* (1990 p 4-36) maintain that Ngai Tahu alone own their histories as tribal taonga. In their Natural Resource Management Plan for Otago, Ngai Tahu make some similar distinctions (Kai Tahu ki Otago 1995).

Many places or sites of significance to Maori can also be classified from a scientific perspective as archaeological sites. However, these different perspectives mean that the relationship between Maori and archaeological values associated with these places is not always a comfortable one.

Archaeological sites

The range of archaeological sites is very wide, both in nature and chronological age. As described by Daniels (1979), Maori archaeological sites include pa, pits, terraces and ditches, platforms, house remains, ovens, stone structures, mounds and middens, source sites, working areas and made soils, caves and rock shelters, rock and tree carvings and drawings, tracks and trails, find spots and botanical evidence. Many archaeological sites predominantly reflect colonial history, eg evidence of early European buildings, industrial sites, goldfields, whaling sites, shipwrecks, etc. A further group have significance to both European and Maori, eg battle sites, early meeting places.

Many archaeological sites of early European occupation lie beneath standing buildings in urban areas. These sites normally have no visibility and can rarely be protected, as they are often only investigated in the context of the redevelopment of a building site. Thus the information content of this type of site is particularly important and the authority provisions of the HPA (see A7.2) have the potential to yield very valuable historical and scientific information (J Davidson pers. comm. May 1996).

The concept of "archaeological site" as defined in the HPA is unusual compared with other types of heritage in that it is defined in terms of ability to provide through investigation by archaeological methods evidence relating to the history of New Zealand (s 2 HPA) ie it is defined in terms of archaeological information content. This contrasts somewhat with other concepts; for example in the ICOMOS New Zealand charter, places of cultural heritage value have lasting values and can be appreciated in their own right as well as teaching us about the past. There can be conflict between protection for inherent values and emphasis on information content, the collecting of which may

adversely affect those inherent values. The degree of this potential conflict may depend on the degree of the threat to the site. If it is likely to be destroyed, a greater degree of intervention or modification in order to gather archaeological information can be justified than if a site is to remain protected on account of its inherent heritage values.

A further complication in the legal definition of archaeological sites is that they may contain portable Maori artefacts which are subject to the Antiquities Act 1975 rather than the HPA. This point is further discussed in Appendix 3.

Historic buildings and structures

This is the most straightforward category, and the one which, to many New Zealanders, is most immediately associated with "historic heritage". As well as buildings, the category includes fortifications, cemeteries, ruins, and industrial sites. Many of these include archaeological sites¹ and many (eg marae buildings) are also of significance to Maori. Those from the colonial era tend to be single "landmark" buildings and places especially in large city centres, but include significant precincts in smaller towns and on the margins of larger city centres, and also important items of military and early industrial heritage. More recent heritage is often valued from direct past experience in terms of social value eg It contains many largely intact commercial and residential precincts.

Cultural landscapes

Cultural landscapes deal with the context of heritage places (see also Appendix 5), whether they be historic places, buildings, archaeological sites or other taonga, in terms of their landscape heritage. Landscape heritage describes landscapes which demonstrate a range of natural and cultural features which are considered to be of sufficient significance for them to be retained for present and future generations (Schapper 1993). The landscape concept unifies all the above types of historic and cultural heritage places, and embodies their intangible as well as tangible aspects. The landscape also integrates natural, historic and cultural heritage: all landscapes are cultural except for increasingly elusive true wilderness areas. Criteria for World Heritage Area listing are largely based on the significance of natural and historical/cultural values of nominated heritage landscapes (World Heritage Committee 1984).

Many countries are trying to accommodate the concept of cultural landscapes in their heritage conservation systems, eg Australia (Russell in press), United Kingdom (Fairclough 1995). In New Zealand, cultural landscapes are accommodated in the HPA by the concepts of historic areas and wahi tapu areas, and also by one of the criteria for HPA registration ("the extent to which the place forms part of a wider historical and cultural complex or historical and cultural landscape").

Many definitions of historic and cultural heritage include not only cultural landscapes, as above, but also parks, gardens and cemeteries. These types of heritage clearly can come under a definition of "historic place" in the HPA. Individual historic or notable trees are more problematic. They do not clearly come under the HPA definition of historic place. Also trees, as living organisms, clearly are elements of natural heritage. But individual trees often have very obvious cultural or historic value and the distinction between individual trees and parks or gardens is very fine.

In terms of heritage management, the provisions for management of trees, parks and gardens, and cemeteries often differ from other types of historic heritage. In territorial authorities, they are often managed by parks and recreation departments. Many territorial authorities recognise and schedule notable and historic trees, often separately from other types of heritage. The Royal New Zealand

¹ Combinations of land and buildings are specifically included in the definition of "historic place" in s 2 HPA.

Institute of Horticultural operates a voluntary scheme for the registration of nationally notable and historic trees (Flook 1994).

Some information has come to the Commissioner relating to gardens, trees and landscapes, pointing out the loss of these types of heritage, and the special knowledge required to assess and manage them. The investigation has not considered these types of heritage in detail, but recognises that many of the issues and protection mechanisms discussed in this report for non-living historic and cultural heritage will equally apply to the management and protection of these types of heritage.

Appendix 2

Legislation affecting heritage protection

The key legislation by which the Government provides for the protection and management of the historic and cultural heritage of New Zealand includes the Resource Management Act 1991 (RMA), the Conservation Act 1987 and the Historic Places Act 1993 (HPA). These Acts were intended to provide for an integrated approach to the management and protection of historic and cultural heritage.

There are also a number of other statutes which provide in some way for, or impact upon, the protection of heritage.

1. The Resource Management Act 1991

Administered	<ul style="list-style-type: none"> • By the Ministry for the Environment.
Purpose	<ul style="list-style-type: none"> • To promote the sustainable management of natural and physical resources.
Section 6(e)	<ul style="list-style-type: none"> • In achieving the purpose of the RMA, all persons exercising functions and powers under it are to recognise and provide for the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga.
Section 7	<ul style="list-style-type: none"> • In achieving the purpose of the RMA, all persons exercising functions and powers under it are to have particular regard to: <ul style="list-style-type: none"> • kaitiakitanga (a). • the maintenance and enhancement of amenity values (c). • the recognition and protection of the heritage value of sites, buildings, places or areas (e).
Policy statements and plans	<ul style="list-style-type: none"> • May provide for the protection of heritage, for example through designations, zoning and schedules. • Shall take into account management plans prepared under the Reserves Act and the National Parks Act (and other Acts where relevant) (ss 66(2)(c) & 74(2)(b)).
Heritage orders	<ul style="list-style-type: none"> • A mechanism for protecting places of special interest, character, intrinsic or amenity value, or visual appeal, or of special significance to tangata whenua for spiritual, cultural or historical reasons.
Heritage protection authorities	<ul style="list-style-type: none"> • Include the Trust, all local authorities and all Ministers of the Crown, and any other person, which is a body corporate, may apply to the Minister for the Environment to become a heritage protection authority.

2. The Historic Places Act 1993

Administered	<ul style="list-style-type: none"> • By Department of Conservation.
Establishes	<ul style="list-style-type: none"> • The Historic Places Trust and the Maori Heritage Council.
Purpose	<ul style="list-style-type: none"> • To promote the identification, protection, preservation, and conservation of the historical and cultural heritage of New Zealand (s 4(1)).

Principles to be recognised by the Trust and all other persons exercising functions and powers under that Act (s 4(2)).	<ul style="list-style-type: none"> • that historic places have lasting value in their own right and provide evidence of the origins of New Zealand's distinct society; and • that the identification, protection, preservation, and conservation of New Zealand's historical and cultural heritage should: <ul style="list-style-type: none"> (i) Take account of all relevant cultural values, knowledge, and disciplines; and (ii) Take account of material of cultural heritage value and involve the least possible alteration or loss of it; and (iii) Safeguard the options of present and future generations; and (iv) Be fully researched, documented, and recorded, where culturally appropriate; and
Relationship to be recognised	<ul style="list-style-type: none"> • The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, wahi tapu, and other taonga (s 4(2)).
Part I	<ul style="list-style-type: none"> • provides for the protection of historic places (including archaeological sites) through heritage orders and heritage covenants; provides for authorities to destroy, damage or modify archaeological sites.
Part II	<ul style="list-style-type: none"> • The registration (and interim registration) of historic places, historic areas, wahi tapu and wahi tapu areas.
Offences and penalties Section 34	<ul style="list-style-type: none"> • Relating to archaeological sites. • Requires the Trust to supply territorial authorities with a record of registered historic places, wahi tapu etc in their districts and of heritage covenants relating to their districts.
Section 35	<ul style="list-style-type: none"> • The Trust may notify any territorial authority of the particulars of any registered place to enable the territorial authority to include those particulars in a PIM (refer Building Act) or LIM (refer Local Government Official Information and Meetings Act).

3. The Conservation Act 1987

Administered	<ul style="list-style-type: none"> • By Department of Conservation.
Purpose	<ul style="list-style-type: none"> • To promote the conservation of New Zealand's natural and historic resources.
"Historic resource"	<ul style="list-style-type: none"> • A historic place within the meaning of the Historic Places Act 1980, and does not include wahi tapu.
Department	<ul style="list-style-type: none"> • Administers Acts specified in the First Schedule to the Conservation Act, including the Historic Places Act, the Reserves Act 1977, the Queen Elizabeth II National Trust Act 1977 and the National Parks Act 1980.
Interpretation	<ul style="list-style-type: none"> • So interpreted and administered as to give effect to the principles of the Treaty of Waitangi (s 4).

4. Environment Act 1986

Administered	<ul style="list-style-type: none"> • By Ministry for the Environment.
Purpose:	<ul style="list-style-type: none"> • To establish the Ministry and the Parliamentary Commissioner for the Environment, and • to ensure that, in the management of natural and physical resources, full and balanced account is taken of a number of matters including “all values which are placed by individuals and groups on the quality of the environment.”
“Environment”	<ul style="list-style-type: none"> • Includes “those physical qualities and characteristics of an area that contribute to people’s appreciation of its pleasantness, aesthetic coherence, and cultural and recreational attributes”.
The Ministry	<ul style="list-style-type: none"> • Mandate to develop policy and give advice to the Minister for the Environment on all aspects of environmental administration; provide to public authorities advice on the application, operation and effectiveness of the Acts specified in the Schedule to the Environment Act, including the Conservation Act, the Historic Places Act, the National Parks Act, the Reserves Act and the Resource Management Act and generally to provide advice on matters relating to the environment.
Sections 17 & 32	<ul style="list-style-type: none"> • Ministry and the Parliamentary Commissioner for the Environment to have regard to, inter alia, “Areas, landscapes, and structures of aesthetic, archaeological, cultural, historic, recreational, scenic, and scientific value” and “any land, water ... physical or cultural resources, or interests associated with such areas, which are part of the heritage of the tangata whenua and which contribute to their wellbeing”.

5. The Reserves Act 1977

Administered	<ul style="list-style-type: none"> • By the Department of Conservation.
Purpose	<ul style="list-style-type: none"> • Providing for the acquisition, control, management, maintenance, preservation, development and use of areas, inter alia, of historic, archaeological or cultural value as reserves.
Surveys to decide whether any land should be reserved or protected	<ul style="list-style-type: none"> • No excavation or other activities may be carried out that would contravene the Historic Places Act (s 4).
Reserves	<ul style="list-style-type: none"> • May be administered by or vested in a local authority.

6. The National Parks Act 1980

Administered	<ul style="list-style-type: none"> • By Department of Conservation.
National parks	<ul style="list-style-type: none"> • To be administered and maintained so that sites and objects of archaeological and historical interest are, as far as possible, preserved (s 4(2)).

7. The Building Act 1991

Administered Purpose:	<ul style="list-style-type: none"> • By Department of Internal Affairs <ol style="list-style-type: none"> 1. To provide for controls to ensure that buildings are safely constructed, are safe and sanitary to use, and have means of escape in case of fire. 2. To co-ordinate these controls with other controls relating to building use and the management of natural and physical resources.
Building Code	<ul style="list-style-type: none"> • To prescribe “the functional requirements for buildings and the performance criteria with which buildings must comply in their intended use (s 48).
Territorial authorities	<ul style="list-style-type: none"> • Responsible for the issue of PIMs (project information memoranda) and building consents, and are required to advise the Historic Places Trust of any applications for PIMs and building consents which would affect a registered historic place etc. • May attach to a building consent a certificate to the effect that an authorisation under the RMA which will materially affect the building work has yet to be obtained and the building work may not proceed or may only proceed up to a certain point until the authorisation is obtained. • May fence off earthquake prone buildings and give notice requiring work to be done to reduce or remove the danger by a specified time.
Building consent	<ul style="list-style-type: none"> • Must be granted if the territorial authority is satisfied that the provisions of the building code would be met if the building work is completed in accordance with the plans and specification submitted with the application (s 34(3)). • May be granted subject to conditions and in framing conditions the territorial authority is required to have due regard to the provisions of the building code and the matters set out in s 47.
Section 47	<ul style="list-style-type: none"> • Matters include “[i]n the case of an existing building, any special historical or cultural value of that building” (s 47(j)).
“Earthquake prone”	<ul style="list-style-type: none"> • a non-residential building, or a residential building of two or more storeys and containing three or more household units is deemed earthquake prone if having regard to its condition and the ground on which it is built and because of its construction being either wholly or substantially unreinforced concrete or unreinforced masonry, the building will have its ultimate load capacity exceeded in a moderate earthquake and thereby would be likely to suffer catastrophic collapse causing bodily injury or death to persons in the building or to persons on any other property or damage to any other property (s 66)
Building owner	<ul style="list-style-type: none"> • May object to its classification as earthquake prone.
Buildings existing at commencement of the Act	<ul style="list-style-type: none"> • Are not required to be upgraded to comply with the building code. However, there is scope for councils to use the opportunity provided by an application for building consent to alter an existing building to require that building to be upgraded to comply with the building code as no building consent for the alteration of an existing building may be granted unless the territorial authority is satisfied that after the alteration the building will comply with the building code for means of escape from fire and access and facilities for people with disabilities as if it were a new building (s 38 BA). Similarly,

where the owner of a building intends to change the use of the building, the owner must advise the territorial authority and the use may not be changed unless the territorial authority is satisfied that in its new use the building will comply with the code on the same basis as for the alteration of a building (s 46 BA).

8. Earthquake Commission Act 1993

Administered	• By the Earthquake Commission
Purpose:	• To provide for the insurance of residential property against damage caused by certain natural disasters.
Automatic coverage	• Where a person enters into a contract of fire insurance with an insurance company for a residential building, that building is also deemed to be insured against natural disaster damage for replacement value.
EQC	• May replace or reinstate any property instead of paying for the amount of the damage, but is not bound to do so exactly or completely. • May exempt any property or class of property from the Act (s 36).
Transition	• Some non-residential property is still covered by the EQC for a transitional period, ending December 1996.

9. Queen Elizabeth the Second National Trust Act 1977

Administered	• By Department of Conservation
Purpose	• (Inter alia) to encourage and promote the provision, protection and enhancement of open space for the benefit and enjoyment of the people of New Zealand.
Queen Elizabeth II National Trust	• Has all the powers that are reasonably necessary or expedient to enable it to carry out its functions under the Act (s 21). • May acquire by purchase or other means any interest in land, dispose of property, engage persons or organisations to do repairs on Trust property, impose charges for admission to Trust property, pay the rates for any owner of land who has executed an open space covenant in favour of the Trust or has allowed the Trust to use the land, publish reports, recommendations and other information relating to any functions of the Trust (s 21(2)). • May negotiate and agree with land owners for owners to execute open space covenant (s 22).

10. New Zealand Walkways Act 1990

Administered	• By the Department of Conservation.
Purpose:	• To establish walking tracks over public and private land so that people shall have safe unimpeded foot access to the countryside for the benefit of physical recreation as well as for the enjoyment of the outdoor environment and the natural and pastoral beauty and historical and cultural qualities of the areas they pass through.
Rider on purpose:	• Walkways to be established and administered in a way which fully respects the rights of property owners and the rights of public

	access created by the Act shall be for walking purposes only, unless specifically provided otherwise.
Powers of Director-General	<ul style="list-style-type: none"> To establish camping grounds, huts etc, make arrangements for making the walkways accessible, approve charges for the use of facilities.
Conservation Boards	<ul style="list-style-type: none"> May recommend to the Minister that all or some of specified public land should be declared a walkway. May request the Director-General to negotiate the purchase or gift of an easement over the land
Minister of Conservation	<ul style="list-style-type: none"> May adopt statements of general policy for the implementation of the Act; and may with the consent of the administering body gazette the walkway.

11. Gaming and Lotteries Act 1977

Administered	<ul style="list-style-type: none"> Department of Internal Affairs
Purpose:	<ul style="list-style-type: none"> To provide for the conduct of games of chance etc and for the raising of funds for certain purposes while continuing to prohibit the conduct of such activities for commercial gain.
New Zealand Lotteries Grants Board	<ul style="list-style-type: none"> Responsible for the allocation of the profits for charitable purposes.

12. Museum of New Zealand Te Papa Tongarewa Act 1992

Administered	<ul style="list-style-type: none"> By Ministry of Cultural Affairs
Purpose:	<ul style="list-style-type: none"> To establish the museum as a forum in which the nation may present, explore and preserve both the heritage of its cultures and knowledge of the natural environment in order better to understand and treasure the past; to enrich the present and to meet the challenges of the future.
Functions of Board include	<ul style="list-style-type: none"> collecting works of art and items relating to history conduct research co-operate and assist other New Zealand museums, institutions and organisations having objectives similar to those of the Board
Board to have regard to:	<ul style="list-style-type: none"> the ethnic and cultural diversity of New Zealand people.

Many and various local Acts provide for local museums. They are largely empowering in nature, and set up trusts and provide for constitutions. These Acts do not provide for heritage as such.

13. Antiquities Act 1975 (RS 26)

Administered	<ul style="list-style-type: none"> By Department of Internal Affairs
Purpose	<ul style="list-style-type: none"> to provide for the better protection of antiquities, to establish and record the ownership of Maori artefacts, and to control the sale of Maori artefacts within New Zealand.
“Antiquities”	<ul style="list-style-type: none"> generally chattels (ie moveable objects, not land or fixtures). Includes artefacts, books, diaries, letters, photographs, film, pictures, works of art, animal plant or mineral specimens,

Artefacts	<p>meteorites, bones, feathers of extinct species, ships, aircraft etc which has been a wreck in New Zealand or New Zealand territorial waters for more than 60 years.</p> <ul style="list-style-type: none"> • Where any artefact is found during an archaeological investigation under the HPA, the person who found it is required to notify the Secretary of Internal Affairs within 28 days of the completion of the field work associated with the investigation (s 11(3)). • The Maori Land Court has jurisdiction, inter alia, to determine whether an article is an artefact, who of rival claimants is entitled to it, and to vest it in any person (s 12).
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14. Treaty of Waitangi Act 1975

Administered	<ul style="list-style-type: none"> • By Ministry of Justice
Purpose:	<ul style="list-style-type: none"> • To provide for the observance and confirmation of the principles of the Treaty of Waitangi by establishing a Tribunal to make recommendations on claims relating to the practical application of the Treaty and determine whether certain matters are inconsistent with the principles of the Treaty.
Waitangi Tribunal	<ul style="list-style-type: none"> • Specific power to recommend to the Government that land vested in a state-owned enterprise should be returned to Maori ownership.

15. Local Government Official Information and Meetings Act 1987

Administered	<ul style="list-style-type: none"> • Department of Internal Affairs
Purpose:	<ul style="list-style-type: none"> • To make official information held by local authorities more freely available ... to protect official information held by local authorities to the extent consistent with the public interest and the preservation of personal privacy.
Any person	<ul style="list-style-type: none"> • May apply to a territorial authority for a land information memorandum (LIM) in respect of any land.
LIM	<ul style="list-style-type: none"> • To include information relating to any consent, certificate, notice, order, or requisition affecting the land or any buildings on it previously issued by the territorial authority (s 44A(2)(d)) and information notified to the territorial authority by the Historic Places Trust (s 44A(2)(g)).

16. Burial and Cremation Act 1964

Administered	<ul style="list-style-type: none"> • By Department of Health.
Application:	<ul style="list-style-type: none"> • Excludes Maori burial grounds (s 3)
Manager of cemetery	<ul style="list-style-type: none"> • To give notice to the Historic Places Trust of any order closing the cemetery or burial ground (s 45).

17. Te Ture Whenua Maori 1993

Administered	<ul style="list-style-type: none"> • By Te Puni Kokiri
Purpose	<ul style="list-style-type: none"> • To promote the retention of land in the hands of the owners, their whanau and their hapu; and to facilitate the occupation, use and development of that land for the owners; and to maintain the Court and establish mechanisms to assist the Maori people to achieve the implementation of these principles. • Provides that Maori freehold or General land may be set aside as a Maori reserve for a number of purposes including as places of cultural or historic interest or for other specified purposes.

18. State-Owned Enterprises Act 1986

Administered	<ul style="list-style-type: none"> • By the Treasury
Purpose	<ul style="list-style-type: none"> • To promote improved performance in respect of Government trading activities. • Provides for resumption of state enterprise land by the Crown where the Governor-General is satisfied the land is wahi tapu, and for the land to be dealt with in accordance with an agreement between the Crown and the relevant tribes or failing agreement in accordance with any recommendation of the Waitangi Tribunal.

19. Valuation of Land Act 1951

Administered	<ul style="list-style-type: none"> • By Valuation New Zealand
Section 25F	<ul style="list-style-type: none"> • Provides for special rateable values of land subject to special preservation conditions, ie heritage covenants under the HPA, heritage orders under the RMA etc.

20. Waitangi National Trust Board Act 1932

Administered	<ul style="list-style-type: none"> • By Te Puni Kokiri
Purpose	<ul style="list-style-type: none"> • To incorporate the Waitangi National Trust Board, to vest certain lands in the Board and to confer certain powers upon the Board.
Preamble	<ul style="list-style-type: none"> • That Baron (the Governor-General) and Lady Bledisloe had acquired certain lands in order to preserve places of historical interest in New Zealand and with a view to presenting them to the people of New Zealand as a place of historic interest, recreation, enjoyment, and benefit in perpetuity.
First Schedule	<ul style="list-style-type: none"> • Contains deed of trust, the parties to which were declared to be the Board of the Trust. A representative of the family of the late James Busby was to be appointed to the Board. The Board was to have all the powers set out in the trust deed.
Other provisions	<ul style="list-style-type: none"> • Provides for offences in relation to lands of the Board and enables the Board to make bylaws. Certain Crown lands were also to be transferred to the Trust at cost price, being lands acquired under the Scenery Preservation Act 1908. The Trust's land is not rateable.

Appendix 3

The institutional framework for historic and cultural heritage

A schematic diagram of the major heritage agencies is shown in Figure 3.1.

A3.1 Functions, organisation and policy of statutory authorities

New Zealand Historic Places Trust/Pouhere Taonga

The New Zealand Historic Places Trust is a body corporate established under the HPA. It has a Board of Trustees and, among other things, it performs functions on behalf of the Crown with respect to the protection of the historic and cultural heritage of New Zealand. The organisational structure reflects the variety of functions and responsibilities it has assumed. A restructuring is taking place to align the Trust's organisation with its role as an agent of the Crown and also its broader strategic goals. The Trust reports annually on its proceedings and operations to the Minister of Conservation.

The Trust Board comprises eleven members, at least three of whom must be Maori. Board members are appointed by the Minister of Conservation (3), elected by members (3) or appointed by the Board (5). The Chairperson is one of the members appointed by the Minister. Ultimately, the Board is responsible for meeting the requirements of the Act. The Trust's Director is responsible to the Board.

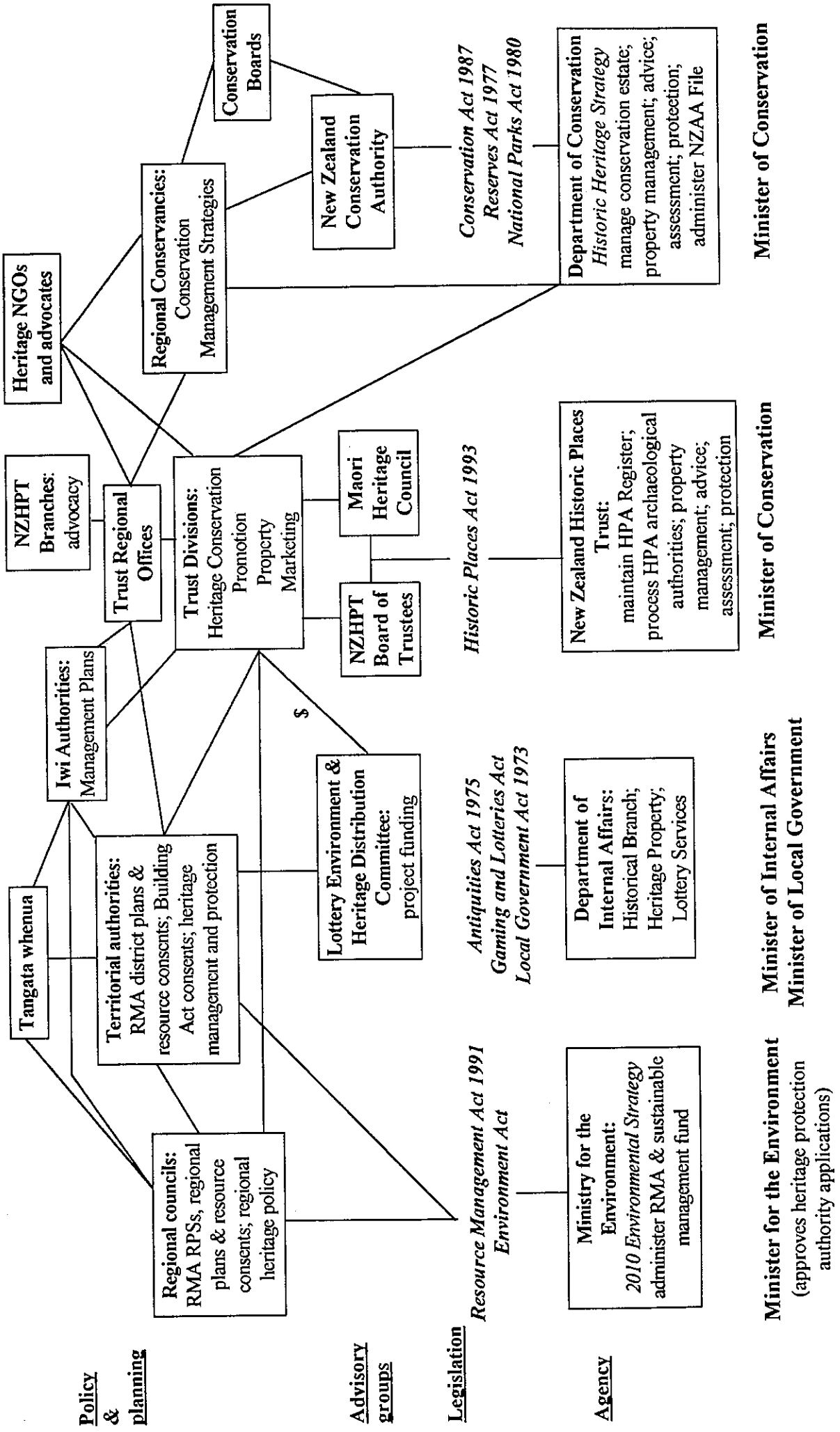
The Maori Heritage Council comprises eight members. Four of these must be members of the Board, including three Maori members and the Chair. The remaining four are appointed by the Minister of Conservation. The Council advises and makes recommendations to the Board and takes decisions on registration of wahi tapu and wahi tapu areas. The Maori Heritage Unit services the Council.

The Trust currently has over 32,000 members, including individuals, families and corporations. There are 22 branches throughout New Zealand, each with a local committee. The branches provide information to the corporate office, especially registration material, liaise with local councils, and provide various services to members, including publication of a magazine and arranging conferences and activities.

The staffing structure is presently being reorganised so that the management structure corresponds more closely to the four main outputs of the Trust as described in the Vision Statement and reported in the Crown Purchase Agreement. The outputs are –

- Output 1 – Exercise of Statutory Instruments, with the objective of identification, conservation and protection of historic places and areas.
- Output 2 – Promotional Services (Advocacy), with the objective of promoting the need for conservation of heritage places and areas.
- Output 3 – Management of Heritage Property, with the objective of maintaining and developing relevant historic places that are effectively managed, conserved and interpreted to exemplary conservation standards for the purposes of the Trust.
- Output 4 – Marketing and Communications, with the objective of building general public and specialist audience awareness of the Trust as an independent statutory organisation with charitable status.

TABLE A3.1 Schematic diagram of historic and cultural heritage legislation and agencies



Functions and activities

The Trust has four general functions (s 39):

- a) To identify, record, investigate, assess, register, protect and conserve historic places.
- b) To advocate the conservation and protection of historic places.
- c) To furnish information, advice and assistance in regard to the above.
- d) To manage, own and administer historic places vested in it for the above purposes.

To enable it to carry out these functions, the Trust has “all such powers as are reasonably necessary or expedient to carry out its functions” (s 54(1)). It has specific powers to participate in planning processes, acquire and dispose of property, create registers, enter into agreements with others, make grants, market heritage products and undertake promotional and advocacy tasks.

The specific functions of the Maori Heritage Council include the determination of proposals to register wahi tapu and wahi tapu areas, assisting the Trust to develop a bicultural view, making recommendations to the Trust on applications for general authorities to destroy, damage or modify an archaeological site of Maori interest and generally involving itself in all aspects of the Trust’s work in regard to Maori heritage such that this is done in a culturally sensitive manner (s 85).

Broadly, the Trust has two main businesses: heritage conservation and the management of property. The performance of these functions is guided by the strategic plan and the Crown Purchase Agreement setting out the services undertaken on behalf of the Minister of Conservation. It is also guided by the Maori Heritage Council as adviser and principal means of liaison with Maori. This investigation focuses largely on the heritage conservation business.

The Trust is a Heritage Protection Authority under s 187 of the RMA. It may serve a requirement for a Heritage Order on a territorial authority under s 189 to protect the whole or part of any historic place, historic area, wahi tapu or wahi tapu area and any surrounding area of land as is necessary to ensure the protection and reasonable enjoyment of such place or area (s 5 HPA). The Trust also supports local authorities and others who seek heritage orders. The Trust may negotiate with the interested parties to secure covenants protecting, conserving and maintaining historic places.

The Trust is responsible for regulating the destruction, or modification of archaeological sites. No sites may be destroyed, damaged or modified without the consent of the Trust, whether or not the sites are registered. The Trust also has enforcement responsibilities in relation to archaeological sites. A decision of the Trust may be appealed to the Planning Tribunal by any person directly affected by the decision.

The Trust is responsible for the contents and management of its register of historic places, historic areas, wahi tapu and wahi tapu areas.

The Trust has in its care a number of properties (currently 58), either in an ownership or management capacity, which it manages to ensure their protection, preservation, and conservation. The Trust is required to adopt general policies for the management, administration, control and use of all historic places owned, controlled or vested in it (s 57 HPA). Where appropriate, the Trust may prepare conservation plans for any historic place within its control (s 58 HPA).

The Trust has a role in promoting heritage conservation and protection through advocacy and informing decision-makers and the public. Where councils are aware that an application for a resource consent may affect a historic place, the Trust will generally be notified of the application and may put in a submission. The Trust may also make submissions on proposed plans under the RMA.

Department of Conservation, and Conservation Boards

The Minister of Conservation is the Minister responsible for the Department of Conservation. The Conservation Act establishes the New Zealand Conservation Authority (NZCA) and regional conservation boards. Conservation strategies and plans are subject to the approval of the NZCA. Conservation Boards recommend the approval of the conservation management plans and strategies, as well as carrying out other policy and advice duties under the Conservation Act 1987 and other Acts (including the HPA). The Department is responsible for the administration of the HPA and for advising the Minister on all aspects of the operation of that Act, including the appointment of Trust Board members and the detail of the Crown Purchase Agreement with the Trust. The Department has a similar role in relation to the Queen Elizabeth II National Trust.

The organisational structure of the Department was reviewed in anticipation of the implementation of the *Historic Heritage Strategy*, May 1995 (see Chapter 3.2). In Head Office there are three divisions with heritage roles:

- *Historic Resources* which provides policy advice to the Minister on all aspects of historic and cultural heritage, including the Purchase Agreement with the Trust; develops policies relevant to the management of historic places on the DOC estate and administers a national fund for building conservation that conservancies can bid for on a project basis (currently three staff).
- *Science & Research* which includes Human Ecology and undertakes research for the Department's historic resources responsibilities (currently four staff).
- *Kaupapa Atawhai* which gives advice on conservation issues and Maori, and is responsible for a draft policy on handling wahi tapu for the DOC estate (currently four staff).

There are 14 conservancies, each with specified Historic Resources responsibilities and duties. Staffing to undertake these duties varies considerably, from 0.5 to 3 officers. Historic Resources policy aims to have a dedicated Historic Resources Officer in each conservancy.

Functions

DOC is charged with a number of functions including:

- To manage for conservation purposes, all land and all other natural and historic resources, held under the Act, or whose owner agrees with the Minister that they should be managed by the Department;
- To advocate the conservation of natural and historic resources generally;
- To promote the benefits to present and future generations of the conservation of natural and historic resources (s 6 Conservation Act).

The *Historic Heritage Strategy* is being implemented now and the Department is seeking versatile people capable of delivering in all the output classes. There are also 70 field centres which do the field work, including restoration and maintenance of historic places. Historic Resources staff in conservancies have a range of tasks spanning the protection, advocacy and expert support roles outlined in the *Historic Heritage Strategy*. Responsibilities include developing a Historic Resources conservation strategy for the conservancy, input into RMA planning processes, investigating historic places on the conservation estate, provision of technical advice on and off the estate and preparation of interpretive material. In some conservancies, a DOC Historic Resources staff member is the Filekeeper for the NZAA File.

Ministry for the Environment

The Ministry for the Environment was established by the Environment Act 1986 and is responsible to the Minister for the Environment. It has no staff specifically dedicated to historic and cultural heritage.

The Ministry is responsible for the provision of policy advice to the Minister and administers the Resource Management Act 1991. It does not have a practical role in the protection of heritage, although it has responsibility for advising the Minister when he receives an application from a body corporate to become a heritage protection authority under s 189 of the RMA and it is involved in consultation and in making submissions on proposed district and regional plans. In making submissions on plans the Ministry addresses the matters set out in ss 6, 7 and 8, including cultural heritage issues, to ensure that councils are meeting their obligations under these sections. The Ministry is required to provide public authorities with advice on the application, operation and effectiveness of the Acts listed in the Schedule to the Environment Act. Among those Acts are the Conservation Act, the HPA, the National Parks Act, the Reserves Act and the RMA (s 31 Environment Act).

Department of Internal Affairs

The main historic and cultural heritage functions of the Department of Internal Affairs come under the Policy, Historical Branch, Heritage Property, and Lottery Grants and Services. The Department also maintains the National Archives:

- The Policy Unit provides general policy advice and is developing the Protection of Moveable Cultural Heritage Bill.
- The Historical Branch (Appendix 6) researches, writes and publishes works of New Zealand history, advises on historical matters, and administers three small history research and publishing grants schemes. The Dictionary of New Zealand Biography project is undertaken by a separate team with the Department.
- The Heritage Property Unit maintains the National War memorial and administers other war memorials and cemeteries. A number of Crown-owned residential properties are administered by the unit including the historic Premier House and Vogel House. The Antiquities Act 1975 is also administered by the Unit.
- The Lottery Grant and Services Division assists Lottery Distribution Committees in decision making by providing advisory and financial support services (Appendix 7). The New Zealand Lottery Grants Board has the role of determining the proportions in which the profits (approximately \$120 million) from the New Zealand Lotteries Commission are allocated for distribution by eight Lottery Distribution Committees to the community. The Lottery Environment and Heritage Distribution Committee is a source of discretionary funding for community based natural, physical and cultural heritage projects. In 1995/96, \$9.6 million was available for distribution.

Regional Councils

Regional councils are elected bodies with a legal requirement to consult with the community and they have a responsibility to listen to the views of their communities. As a result the importance which the community puts on heritage will be reflected in policy statements and plans.

Regional councils are responsible under the RMA for integrated management of the natural and physical resources of their regions (s 30(1)(a)). As persons exercising functions and powers under the RMA, they are required to take some responsibility for the protection of heritage (ss 6(e) & 7(e) RMA). Councils may be responsible for management of Reserves under the Reserves Act 1977. In Auckland Regional Parks, such management must have regard to cultural heritage values of those areas. Regional

councils have responsibilities to gather information and monitor the state of the environment, including heritage resources.

Regional councils are required to prepare regional policy statements and regional coastal plans and may prepare other regional plans (ss 60, 64 & 65 RMA). Among the matters which the regional policy statement and regional coastal plan should address is the impact of activities which are controlled by regional councils on natural, physical and cultural heritage sites and values including historic places and wahi tapu (Second Schedule, Part I, cl 4(c) RMA). The regional policy statement may also address the effects on heritage of activities controlled by district councils where the heritage values are a matter of regional significance (s 62 & Second Schedule, Part I, cl 2(c)). Plans and policy statements must be prepared in accordance with Part II RMA (including ss 6(e) & 7(e)) and the regional council must have regard to any relevant entry in the Historic Places Register (ss 66(2)(c) & 61(2)(a)). Although there is provision for the Trust to provide information to district councils there is no such specific provision in respect of regional councils.

Regional councils are consent authorities under the RMA and are required to notify the Trust of applications for consent which affect heritage values (s 93). In making decisions on applications for consent, regional councils are required to give weight to the various matters set out in Part II RMA. They are also heritage protection authorities (s 187) and may notify a district council of requirements for heritage orders.

District Councils

A number of district councils were surveyed for this part of the report, viz Far North, Whangarei, North Shore City, Rodney, Manukau City, Auckland City, Wellington City, Christchurch City, Nelson City, Tasman, Palmerston North City.

Variation in organisational structures may influence the way in which councils handle their heritage management functions but it is difficult to assess the effect of these different systems from the sample. Iwi representation varies among councils. Some prefer a Standing Committee comprised of council members and appointees representing local iwi through which issues of concern to iwi are channelled. Other councils have no formal relationships with iwi.

District councils are responsible for the preparation of district plans, in which they should address heritage issues affected by activities which they control. Plans address various means for achieving heritage goals, such as zoning areas as heritage precincts and listing significant buildings. District councils are consent authorities, processing applications for resource consent, and are required to notify the Trust of applications for consent which affect heritage values (s 93). In making decisions they must give weight to the matters in Part II RMA. They also have responsibility for brokering information provided by the Trust (and other sources). As well as being provided in plans, relevant information, including information about heritage values, is provided by district councils in the form of a land information memorandum (LIM) to any person who seeks it in respect of any land (s 44A of the Local Government Official Information and Meetings Act 1987). Information (a project information memorandum or PIM) is also provided subject to a charge to land owners proposing to undertake building work for which a building consent is required (s 30 of the Building Act 1991).

Pursuant to s 187(b) RMA, all local authorities are heritage protection authorities. This empowers district councils to issue heritage orders, which are provisions in a district plan giving effect to requirements. Section 189A RMA makes it explicit that a territorial authority may notify a requirement for a heritage order in its own district and this was recently confirmed by the Planning Tribunal in *Chappell v Christchurch City Council* (C11/96).

District councils have a role in educating and guiding applicants for consent and the public generally about the RMA and the values it seeks to protect. Councils establish funds, issue design guidelines and publications, and make their staff available for this purpose. They have access to information from a variety of sources including the Trust and are in a position to make such information more accessible to the public. It is also open to councils to make submissions on the plans of other local authorities, for example, where there are cross-boundary issues.

District councils also have power under the Local Government Act 1974 to undertake and promote the development of services and facilities in the interests of the public (s 598). Such services could include, for example, Mainstreet programmes and heritage trails.

A3.2 National policy framework

Environment 2010

Environment 2010 (Ministry for the Environment 1994) is the Government's pre-eminent policy on the environment. The strategy's vision for the New Zealand Environment 2010 is: "A clean, healthy and unique environment, sustaining nature and people's needs and aspirations". This statement can be interpreted to embrace historic and cultural heritage as defined in Chapter 1, and the conditions described as necessary for achieving the vision include meeting people's social and cultural needs. A section on environmental values for a cohesive society includes a discussion of heritage issues emphasising the importance of people's sense of history and culture of their community. This was felt to be particularly important for Maori. A section on principles for integrating environment, society and economy includes many principles and issues that are relevant to historic and cultural heritage management. For example, Principle 10: "defining the limits of resource use and substitution", recognises the importance of maintaining optimal levels of different "asset stocks", construed broadly, including environmental assets such as natural ecosystems, natural and physical resources including cultural heritage assets.

However these statements are not supported by the detail of the strategy. For example, the vision statement describes an environment with a number of positive characteristics; these include protection of the natural treasures or taonga of Maori and provision for the cultural practices of Maori associated with the environment, but there is no equivalent statement for any other aspect of historic and cultural heritage. The most detailed part of the strategy is an 11-part agenda for action, setting out preliminary steps towards achieving a number of environmental goals by the year 2010. Neither the goals nor the agenda for action mentions historic and cultural heritage or has any relevance to it. DOC is specifically mentioned as having a role in historic and cultural heritage management, but not the Trust is not.

A lack of attention to environmental issues in urban settings in the draft strategy was a major feature of submissions. Submitters included the Historic Places Trust and the Wellington Civic Trust, the Historic Places Trust submitting "that the strategy should be re-written to include cultural heritage and to recognise the sustainability of the urban as well as rural environment" (Ministry for the Environment 1994). The weight of these submissions was acknowledged in the summary of submissions and in the final strategy but it was concluded that urban issues did not transcend other cross-sectional issues. A specific exception to this was in the challenge of preserving our built heritage, which was recognised as a matter of particular emphasis in towns and cities. However the strategy concluded that there was more work to be done by urban authorities in addressing this issue, and the lack of attention to historic and cultural heritage in the strategy's agenda for action implies that historic and cultural heritage issues were not felt to be part of a national environmental strategy.

Historic Places Trust Strategic Planning

The Trust produces annual corporate plans and rolling three-year plans. In the most recent "Vision, Mission and Goals" statement for the Trust and the Maori Heritage Council, the Trust sees itself as "the lead agency for the identification, protection and enhancement of all New Zealand's historic places into the 21st Century" with a mission of "promoting the protection of New Zealand's historic places". The paper states six goals with attached Key Result Areas and brief commentary. The goals emphasise the Trust's role in developing awareness and political will about historic and cultural heritage and thereby encouraging individuals and agencies to "maintain, conserve and protect the historic heritage places and areas in their care". Neither the goals nor the Key Result Areas refer to achievement of specific protection objectives by the Trust.

The Trust's current internal review has generated considerable strategic planning activity, albeit in a highly uncertain environment. For example, a background document prepared for a July 1995 Trust Board meeting contains a relatively detailed analysis of the means for promoting historic and cultural heritage and of current strengths and weaknesses of the Trust, before discussing some options for future structures and roles. The current properties review will also of necessity involve considerable debate on both short-and long-term strategies for the Trust.

Department of Conservation Historic Heritage Strategy

Under the Conservation Act 1987, DOC has a broad mandate to advocate and raise public awareness of conservation issues, as well as to manage the conservation estate, which covers about one-third of New Zealand's area and contains many thousands of historic places. DOC's strategic planning exercise "*Atawhai Ruamano*" commenced in 1992. By early 1994 three key conservation results for the Department for the year 2000 were proposed. One of these results was "Key historic and cultural sites have been identified, and a significant percentage have formal protection. Places special to Maori are protected and managed according to Maori Tikanga in partnership with iwi" (DOC 1994). In mid 1995, the Department published its *Historic Heritage Strategy for Atawhai Ruamano* in which priorities for DOC in regard to both its obligations and opportunities with respect to historic heritage under the Act are developed and clarified. (DOC 1995).

Under the strategy the Department's priority is to manage historic resources which are located within the conservation estate. (Denis Marshall, Minister, Foreword). It states that the HPA 1993 places "more responsibility on the Trust to assume its role as the leading historic protection agency in New Zealand", in particular, taking responsibility for specific protection issues off-estate. The Strategy states that "it is no longer possible for Departmental staff to service the regulatory functions of the Trust relating to archaeological sites".

In future, DOC will focus on the active management of selected sites, using targeted funding, and will handle the protection of the remainder essentially through good stewardship. In doing this, it is a goal to "develop an effective relationship with iwi Maori in the conservation of their cultural heritage on lands administered by the Department". Another goal is to "provide opportunities for people to appreciate and enjoy heritage on lands administered by the Department". In fulfilling its advocacy and public awareness role under the Conservation Act 1987, the Department sees the Trust as the lead agency and its own off-estate role as supportive. Only in exceptional cases will the Department take the lead. Primarily, it will cultivate co-operative relationships with the Trust, local authorities and other groups or agencies to ensure effective protection of historic places not located within the conservation estate. In general, it will consult and offer advice and information to assist in conservation.

Although the Strategy attempts to clearly distinguish between work which is "on estate" and that which is "off estate" such a distinction is blurred, when it involves the same small group of specialist staff, participation in planning processes, and collaboration with other parties whose concerns cut across

estate boundaries. Sometimes the historic resource itself cuts across estate boundaries. The balance also varies considerably among conservancies, principally according to specialised staff availability and conservancy policies and priorities.

New Zealand Conservation Authority and Conservation Board

The New Zealand Conservation Authority and Conservation Boards are set up under ss 6A and 6L of the Conservation Act. The members of the Authority are appointed by the Minister of Conservation having regard to the interests of conservation, natural earth and marine sciences, and recreation. The focus of the sections of the Conservation Act which provide for the Authority is on nature conservation, although there is scope for the Authority to be involved in heritage issues. The boards are established by the Minister for specific areas and provide a link between the Department and the public, and contribute to the development and implementation of departmental policy.

Several suggestions were made to the investigation team that the Authority and boards gave only token interest to historic and cultural heritage issues, and that this was reinforced by legislative membership provisions, only a very small number of members of any boards having professional historical or archaeological qualifications. Only a few boards (and not the Authority) commented on the draft DOC Historic Heritage Strategy. It was alleged that relatively few Authority and board agenda items directly relate to historic and cultural heritage.

Interviews with the Northland and Auckland Conservation Boards did not bear out these allegations for these two boards. Both have taken an active interest in historic and cultural heritage matters, eg Ngunguru Sandspit and the remaining South Auckland stonefields.

The Authority and boards have important roles in the conservation management strategy process and have exercised it actively. Protection of Maori cultural heritage has been one of the most prominent themes of these roles. The Authority is commenting extensively on several DOC policy development processes, for example policy for wahi tapu.

It was suggested by several board and authority members that because of their small size and limited role, boards in particular can take a more integrated and holistic approach to heritage conservation than other agencies and non-governmental groups. The current chairman of the Maori Heritage Council is a member of the Conservation Authority.

A3.3 Discussion of legal and institutional issues

Historical background to the Historic Places Act 1993

The Historic Places Trust was established by the Historic Places Act 1954, and continued in existence by the Historic Places Act 1980. Following the formation of DOC in 1987, Cabinet decided that DOC would take over administration of the HPA from the Department of Internal Affairs, although the Trust remained an independent corporate body. Some Trust staff took on responsibility for the Department's heritage functions as well as the Trust's functions. Up until 1988 the Trust could not borrow money without the approval of the Minister of Finance, however, in 1988 a provision was inserted which provided that the Crown would not be responsible for the debts or other liabilities of the Trust except where it had given an indemnity or guarantee. If the Crown decided to wind up the Trust it would have to do so by Act of Parliament which should also deal with the fate of the Trust's assets and liabilities.

Also in 1987, the Government announced its intention to review the HPA 1980. The then Minister of Conservation released an issues paper for public comment and in 1988 a working group was appointed

to consider the submissions and recommend options in its report (Working Group on Heritage Law Reform 1989) (Coad Report). The Working Group commented on the difficulties it had faced as a result of the contemporaneous review of other legislation impacting on historic places, especially the Resource Management Law Reform process (RMLR). Since the Working Group was required to report before final decisions on some major aspects of RMLR policy had been taken, it provided the Government with alternative models for resource protection in the expectation that one of them would be compatible with the RMLR options being considered by Government (Coad Report 1989 p iii).

The Resource Management Law Reform exercise took place in the expectation that the Historic Places Act 1980 was being strengthened and that the Trust would have a continuing role in respect of the protection of historic and cultural heritage (S. Veart, Ministry for the Environment, pers. comm.). At the time that the Resource Management Bill was introduced (December 1989), the Working Group on the Historic Places Legislation Review had already reported back (Coad Report 1989).

It is clear from the Coad Report that it was intended that the protection of historic places should be effected through a combination of specialist historic places legislation and general land use legislation. Identification and assessment functions were to be undertaken by the Trust, with protection being effected under the land use legislation. Responsibility for protection was to lie with the appropriate level of government determined by ranking places as to significance, ie nationally significant places to be under the jurisdiction of a central body, and regionally and locally significant places being the responsibility of regional and local authorities (Coad Report 1989 p 24).

TABLE A3.2

KEY DATES IN HISTORIC AND CULTURAL HERITAGE MANAGEMENT IN NEW ZEALAND

1955	National Historic Places Act came into force
1955	New Zealand Historic Places Trust commenced operation
1958	New Zealand Archaeological Society Site Recording Scheme begun; first edition of Site Recording Handbook
1959	First property acquisitions by the New Zealand Historic Places Trust
1975	Historic Places Amendment Act: statutory protection for archaeological sites, Register established; Antiquities Act
1977	Queen Elizabeth II Trust established
1980	New Historic Places Act
1982	First dedicated local authority heritage unit (Auckland City Council Urban Design Section)
1982	Moratorium on property acquisition by New Zealand Historic Places Trust
1986	Environment Act: Ministry for the Environment and Parliamentary Commissioner for the Environment established
1987	Conservation Act: Department of Conservation established taking over administration of Historic Places Trust Act
1988	Resource Management Law Reform commenced
1989	New districts and regions in local government
1990	Coad Report on the Historic Places Bill
1990	New Zealand Conservation Authority and Conservation Boards established
1991	Resource Management Act enacted
1993	New Historic Places Act: New Zealand Historic Places Trust redefined; Maori Heritage Council formed
1995	DOC's <i>Historic Heritage Strategy</i>

The Working Group emphasised that the success of their recommendations would depend on three factors:

1. adequate funding;
2. effective transitional provisions; and
3. consistency with the outcome of RMLR.

The Coad Report identified a number of failings in the system under the HPA 1980. The major weaknesses identified were:

- except in the case of buildings, that the legislation did not lay down adequate criteria or processes for systematic ranking of historic places;
- the Act did not set out the responsibilities of the various levels of government, central, regional and local;
- there was little clear guidance about the payment of compensation if a property was subject to protection;
- the Act was seriously deficient in its approach to Maori heritage values.

The RMLR process continued on while the Government considered the Coad Report; the RMA being enacted in 1991. The Historic Places Bill was not introduced until 1992 and was passed in 1993.

Following the review of the HPA 1980 and the recognition that the Trust should be more independent the new Act was passed in 1993. It was made explicit that the Trust was not a Crown agency within the meaning of the Public Finance Act 1989. The Trust was given responsibility for all staffing, no longer having to obtain the agreement of the State Services Commission.

Status of the Historic Places Trust

The legal status of the Trust is complex. It is specifically not a Crown entity within the meaning of the Public Finance Act 1989, yet it manifests some of the features of a Crown entity. The Minister of Conservation has described the Trust as “the Crown’s leading historic protection agency on lands not administered by DOC” (letter to Mayor of Manukau City, 28 July 1995). The Trust is funded to a significant extent by the Crown directly through parliamentary appropriation and indirectly through Lottery Commission grants, and also by the subscriptions of its members and income generated from Trust properties. Clarification of the Trust’s non-Crown status was effected by the 1993 Act, partly because the Trust’s members would not subscribe funds to the Crown and a number of buildings had been bequeathed to the Trust because it was not the Crown.

Despite the Crown’s financial involvement, it is not liable for the debts or liabilities of the Trust other than under an indemnity or guarantee (s 77 HPA). In recognition of Crown funding, the Trust is required to keep proper financial accounts and is required to comply with Part V of the Public Finance Act 1989 as if it were a Crown entity. In 1995 the Trust entered into a Purchase Agreement with the Crown whereby the Crown purchases certain services from the Trust. The agreement was facilitated by the implementation of a new cost allocation process following a review of the Trust by KPMG Peat Marwick in 1994. In particular the Crown purchases the services of the Trust in administering the regulatory regime in respect of archaeological sites, the maintenance of the register and advocacy, and the Trust acts as an agent of the Crown in that respect. The payment for the services purchased by the Crown from the Trust is routed through DOC as a POBOC (payment on behalf of the Crown).

The Trust is essentially a hybrid organisation, having features of both a public authority and a non-governmental organisation. This hybrid status causes lack of clarity about the Trust’s purpose, and confusion as to the proper relationship of the Trust with the branches; and the role of the branches and the Trust in heritage protection. The branches have an expectation of involvement in the operations of the Trust and see themselves as a resource of well-informed people with local knowledge, whereas it

appears that the Trust sees its members as having a role in maintaining and administering local Trust properties and lobbying for the protection of Category II places.

Changed relationship between DOC and Trust

The Department of Conservation was established by the Conservation Act 1987. Prior to 1987, the HPA was administered by the Department of Internal Affairs. In 1987 the Internal Affairs staff involved with the HPA transferred to DOC, as there was a desire to integrate resources in respect of heritage. Those staff took on aspects of DOC's heritage responsibilities as well. In its Annual Report for the year ending 31 March 1987 the Trust welcomed its future association with DOC, "a department which shares a similar vision and common objectives". The Trust envisaged that it would benefit from DOC's national organisation and that in return Trust would make its knowledge, skills and community network available to the department.

In its 1995 Annual Report, the Trust commented that while the Trust has the statutory responsibility for archaeological sites, DOC has had the money and the people for the implementation of this responsibility since 1986. The HPA 1993 came into effect in July 1993 and in September that year DOC announced that it would no longer be providing archaeological services, leaving the Trust in a difficult position as to resources. Neither the Department nor Crown Law will initiate prosecutions under the HPA (NZHPT 1995 p 3) and the Trust has insufficient resources to do so itself.

DOC is responsible for the administration of the HPA, may be represented at meetings of the Trust and acts as a conduit for Crown funding of the Trust, although the Trust is no longer a Crown entity. However, the Trust is treated as if it were a Crown entity for a number of purposes, generally relating to financial accountability (eg s 79(2)HPA). In addition, the Trust continues to act as an agent for the Crown in administering the regulatory regime in respect of archaeological sites on behalf of the Crown.

The decision for DOC to withdraw from the provision of services to the Trust in respect of the archaeological sites was based on legal advice to the effect that it was no longer appropriate since the Trust was not a Crown entity. DOC has no authority to advise applicants for archaeological authorities or the Trust as its off-estate functions are limited to advocacy and promotion of the benefits of conservation. It is the Department's view that the provision of advice in respect of applications for authorities to destroy, damage or modify archaeological sites can not be encompassed in its advocacy or promotion roles as discussed in the *Historic Heritage Strategy*.

RMA, HPA, Building Act interface

The Trust is obliged to supply a territorial authority with a record of registered historic places in that district and of any relevant heritage covenants (s 34 HPA). The territorial authority will make those records available for public inspection. The Trust is able to make specific recommendations to territorial authorities as to appropriate measures that the territorial authority should take to assist in the conservation and protection of historic areas and wahi tapu areas (ss 31 & 32 HPA). The territorial authority must have particular regard to those recommendations but is not obliged to act on them.

The information on the Register also feeds into the project information memorandum (PIM) and land information memorandum (LIM) which a territorial authority is required to provide under the Building Act 1991 and the Local Government Official Information and Meetings Act 1987 respectively (ss 35 & 111 HPA). A project information memorandum is to include (inter alia) information likely to be relevant to the proposed building work, which in terms of any other Act, has been notified to the territorial authority by any statutory organisation having the power to classify or register land or buildings for any purpose (s 31(2)(b)). The Trust is specifically deemed to be such a statutory organisation by s 34(2) HPA.

The HPA provides for wahi tapu and wahi tapu areas to be included in the Trust Register and where this is so that information becomes publicly available as well as being made available to local authorities. There is no absolute protection for information about wahi tapu except in the context of a resource consent hearing.

Likewise the Trust must be informed of every application for a PIM or LIM or a building consent which affects any registered historic place, historic area, wahi tapu or wahi tapu area (ss 30(4) & 31 BA; s 44A LGOIMA). PIM and LIM issued by a territorial authority are to include particulars of any registered historic place etc, but this obligation depends on the Trust providing sufficient details of such historic places to the territorial authority. The Trust has a discretion whether or not to supply sufficient details to the territorial authority for this purpose (s 35 HPA).

The Building Act is designed to ensure that buildings are safe and sanitary. It is neither a planning nor an environmental statute and a building consent must be granted provided the proposal complies with the Building Code. It is the RMA which is the environmental statute, concerned as it is with the effects on the environment of activities. However, unless the building proposal is a permitted activity in the district plan, a resource consent under the RMA will also be required and no building work may commence until both consents have been obtained. Section 35(1A) of the Building Act enables a territorial authority to attach to a building consent, a certificate to the effect that an authorisation under the RMA has yet to be obtained and that no building work may proceed until it has been obtained or the work may proceed only up to a specified point.

It is appropriate, therefore, that the Trust has an input into the decision on the application for resource consent but does not make submissions on applications for building consents. It is left to the Trust to use the mechanisms available under the HPA and the RMA to protect historic places etc, and advice of PIMs and building consent applications is purely to ensure that the Trust is informed. There may be some difficulty for a territorial authority in imposing conditions on a building consent where it is sought for the demolition of a historic building, as the territorial authority is not able to refuse the consent if the work complies with the building code and may only attach conditions in recognition of the special historical or cultural value of that building. It is doubtful that a condition could be used, in effect, to nullify a building consent.

In addition to the heritage provisions of the RMA, the HPA provides specifically for the Trust to give notice to a territorial authority of its requirement for a heritage order to protect any historic place, historic area, wahi tapu or wahi tapu area and the surroundings (s 5 HPA). There is no limitation of this provision to places of "special interest" as under the RMA.

The HPA and the Antiquities Act 1975

In its application to archaeological sites the HPA impacts upon artefacts as they are discovered. The HPA requires the Trust to notify the Secretary of Internal Affairs or the nearest public museum within 20 working days of the granting of an authority to destroy, damage, modify or investigate an archaeological site (s 19 HPA). Any artefacts discovered are subject to the Antiquities Act which requires any person who has discovered an artefact in the course of an archaeological investigation to notify the Secretary of Internal Affairs within 28 days of the completion of the field work (s 11(3) Antiquities Act). It is an offence for any person to fail to notify the discovery of an artefact to the Secretary or nearest public museum as required by s 11(3).

The Antiquities Act establishes the presumption that any artefact found in New Zealand is the property of the Crown. That presumption can be displaced if some other person or persons is able to prove that they have the right to ownership. However, in developing the Protection of Moveable Cultural Heritage Bill, the Department of Internal Affairs is reviewing this aspect of the Act as it is considered to be contrary to the Treaty of Waitangi. The illegal export of artefacts has been a concern for some time and

the Antiquities Act has proved inadequate to prevent such export and to obtain repatriation of artefacts. The Department has also been considering changes to the Antiquities Act to enable New Zealand to become a party to the 1970 UNESCO Convention on the Means of Publishing and Preventing the Illicit Import, Export and Transfer of Cultural Property. However, it is not known when the proposed legislation will be ready for introduction.

In the meantime a member's bill, the Taonga Maori Protection Bill, has been introduced to make provision for the preservation of Maori cultural heritage and to address the problem of taonga being removed from New Zealand. The Bill recites, inter alia, the Government's acknowledgment that the Maori people are the rightful owners of their heritage. The Bill would establish a register of "prized taonga Maori" located outside New Zealand and a charitable trust with authority "to purchase taonga and expedite their return to New Zealand". Multinational corporations would be required to demonstrate their commitment to the need for protection of taonga to Te Puni Kokiri. The Taonga Maori Protection Bill would not enable New Zealand to become a party to the UNESCO Convention as it does not comply with the necessary requirements of that convention which envisages reciprocal arrangements between member states.

Appendix 4

Non-governmental organisations involved in historic and cultural heritage management

A4.1 Professional associations

New Zealand Archaeological Association (NZAA)

This is the principal association for professional archaeologists. As an open membership society, it also has many amateur members interested in archaeology. It has a membership of about 500; professional members are employed principally by DOC, universities, museums, some councils, and the Trust, and as private consultants. The NZAA was founded in 1955 and throughout its history it has promoted the practice and application of archaeology in New Zealand by means of its regular newsletter (*Archaeology in New Zealand*), more recently a scholarly journal (*NZ Journal of Archaeology*) and through an annual conference.

Members undertake considerable archaeological research, occasionally under NZAA sponsorship. The NZAA has been an important advocate for archaeology and archaeological site protection both to central and local government and its members' views are likely to have had a significant impact on archaeological aspects of the Historic Places Act 1993 and its predecessors. One of the Association's most significant activities has been the development of a Site Recording Scheme, started in 1958, and now containing more than 49,000 sites. This record provides much of the basic information for archaeological work in New Zealand (see Appendix 6). In 1993 members approved a code of ethics containing principles and rules for the conduct of archaeological work.

Institute of New Zealand Archaeologists

The Institute is a small group of professional archaeologists engaged in private sector consulting or working for public agencies. Members are actively involved in archaeological assessment. The Institute originated in the mid 1980s when members of the New Zealand Archaeological Association saw the need for oversight of professional work in this area. All Institute members are also members of the Association, but the Institute has its own code of ethics and professional membership requirements. However the Trust and territorial authorities have given no special standing to Institute members in their policies for archaeological consultancy. The Institute itself recognises that it is at present hampered in its effectiveness through lack of numbers, reflecting a lack of incentives for consultants or academics to belong to such an organisation (Institute submission to PCE, February 1996).

ICOMOS New Zealand

The New Zealand National Committee of the International Council on Monuments and Sites (ICOMOS) is an active branch of an international NGO associated with UNESCO. New Zealand members (about 50) are professionally employed in various aspects of historic and cultural heritage protection and management. Members include architects, archaeologists, planners, historians, historic property managers, academics, museum personnel, and landscape architects. Many members are self-employed consultants. The Trust and DOC are institutional members. Activities include working committees on particular topics, conferences and workshops, and publications. ICOMOS New Zealand also strongly advocates for the professional management of historic and cultural heritage, and, its concept of historic and cultural heritage (see Chapter 1) is wider than that of any of the other

professional organisations listed in this appendix. In 1993 ICOMOS New Zealand published a Charter For The Conservation Of Places Of Cultural Heritage Value (ICOMOS New Zealand 1995). The charter has been adopted by a number of national organisations and local authorities around New Zealand and is widely used by private consultants in conservation plans. The Council of ICOMOS New Zealand has developed a code of ethics and standards of practice.

New Zealand Institute of Architects

The Institute is the professional association of all registered architects. Architects have a significant involvement in built heritage management, increasingly through specialised discipline areas such as conservation architecture, architectural conservation and architectural history. A small number of New Zealand architects have formal qualifications in these disciplines, only the last of which is available in New Zealand. Architects have traditionally had significant involvement in the Trust (both on the Board and more recently on staff) but the Institute has no formal role in historic and cultural heritage management and has no formal conservation architecture subgrouping.

New Zealand Institute of Landscape Architects

The Institute is a group of about 250 professionally qualified landscape architects working mainly for consultancy firms and government agencies. Members of the Institute are often consultants to agencies for cultural heritage projects which involve landscape architecture issues. About 100 members are registered as associates of the Institute, for which minimum qualifications and experience apply. The Institute has codes of ethics and conduct, runs courses for its members and makes many submissions on matters of interest, eg landscape sections of district plans.

Professional Conservators Group of New Zealand (PCGNZ)

This is a group of about 40 professional conservators working mainly in museums or architectural consultancy firms. Requirements for entry include professional qualifications in conservation sciences, eg architecture or museum conservation. None of these qualifications are available in New Zealand). The group has codes of ethics and professional conduct. Members assist with professional training in universities and DOC. The group now has a significant role in historic and cultural heritage management because a recent Lotteries Board policy requires conservation projects for which Lotteries funding is sought to have a formal conservation plan prepared by a PCGNZ member.

Professional Historians Association of New Zealand/Aotearoa

The Association was formed in 1994 as the professional association of historians. It has approximately 70 members, many of whom work in historic and cultural heritage areas as heritage consultants, freelance researchers/writers or as museum employees. The Association has a Heritage Coordinator.

Planning Institute of New Zealand

The Institute represents professional planners and many policy analysts. Many members are involved in historical and cultural heritage management through preparation of district plans and other statutory planning processes.

A4.2 General non-governmental organisations

New Zealand Historic Places Trust branches

The Trust has 22 branches, which are best seen as non-governmental organisations in their own right, as they have no independent statutory powers. The branches have varying degrees of activity but many are actively involved in historic and cultural heritage protection issues in their area and are some of the most vocal advocates for the built heritage in particular. Many branches take part in their local authority's planning procedures and undertake supporting research and assessment for Trust registration or local authority listing. Informal Trust policy is that branches undertake non-statutory work associated with protection of Category II registered places.

Each branch has a branch committee which generally includes local council nominees, a local DOC representative and the local Trust Regional Officer where applicable. Committees undertake most of the protection work of the branches, but also some arrange activities such as tours, talks and research projects for members. Branches receive a small per capita annual grant from the Trust Head Office to support their various activities.

Civic and heritage trusts

A number of civic trusts in larger cities have been set up to promote conservation of urban environments. Most trusts are concerned with both the natural and the built environment and some with cultural heritage, and so attempt to link different types of heritage conservation. Civic trusts exist in Auckland, Wellington, Christchurch, and Timaru. A number of other heritage trusts promote distinctive themes or urban environments, for example the Art Deco Trust in Napier, the Cornwall Park Trust in Auckland, the Whitestone Trust in Oamaru, the Rail Heritage Trust, and the Heritage Trails Organisation. Some trusts receive limited funding from their local councils and some administer small heritage funds.

Historical societies

A considerable number of local historical societies exist in suburbs, towns and regions throughout the country with a likely combined membership of several thousands. Most members are lay people with an active interest in the history of their area. Members undertake local historical research, often being involved in oral history projects, and sometimes contributing to local historical journals and publications. Most historical societies are not involved as actively as Trust branches in formal historic and cultural heritage protection processes, but most members would probably consider themselves as advocates of historic heritage. Many societies own or care for historic places. In some areas there is active liaison with Trust branches.

Appendix 5

Evaluation and assessment of historic and cultural heritage

The starting point for most systematic statutory historic and cultural heritage protection must be a register or inventory of heritage items. Such a register or inventory must be based on a defensible assessment process that can withstand legal challenge. The assessment process can be qualitative or quantitative but it must be rigorous and the reasons why a particular heritage item is identified as important must be documented and made available through a transparent and accountable process.

Section 32 of the Resource Management Act 1991 (RMA) requires local authorities to fully consider alternatives, necessity, benefits and costs of any objective, policies and rules that they establish. This means that decisions on any statutory protection proposals (see Appendix 7) need to be based on consistent and authoritative information about historic and cultural heritage values. This in turn allows the authority to reach defensible decisions that the approach was the best and most cost-effective course of action. Furthermore, s 35 RMA requires local authorities to gather information, and to monitor and keep records as necessary to carry out their functions under the Act.

The Historic Places Act 1993 (HPA) also implies a requirement to have a high standard of information on historic and cultural heritage, for example by its definition of archaeological site and by establishing through statute the central importance of a Register of historic places, areas, wahi tapu and wahi tapu areas (see below). The basis of this Register is, of course, the information relating to those places.

A5.1 Methodological considerations in assessments

Adaptation of overseas approaches to New Zealand

A great range of methodological approaches and criteria for assessment are in use in overseas countries. Considerable information from overseas is available in New Zealand;¹ some of it has been summarised for the Trust Board (Richardson 1991, Quirk 1994), and has been extensively drawn on by practitioners. Some examples where overseas approaches have been drawn on directly by territorial authorities in their assessment are noted in A5.3. The Parks Canada approach to heritage buildings assessment (Kalman 1980) has been used by some territorial authorities and others have used Australian approaches.

The criteria for registration contained in s 23 HPA also assimilate much of the overseas work (in particular from South Australia) as well as developments in New Zealand up till 1993. The criteria were a new feature of the 1993 Act and were based on overseas models as well as on Trust buildings classification criteria as they had evolved since the late 1970s. Registration can be based on any of the following criteria:

- a) The extent to which the place reflects important or representative aspects of New Zealand history;
- b) The association of the place with events, persons, or ideas of importance in New Zealand history;

¹ For example, in the Trust and university libraries and in individual heritage manager's files.

- c) The potential of the place to provide knowledge of New Zealand history;
- d) The importance of the place to the tangata whenua;
- e) The community association with, or public esteem for, the place;
- f) The potential of the place for public education;
- g) The technical accomplishment or value, or design of the place;
- h) The symbolic or commemorative value of the place;
- i) The importance of identifying historic places known to date from early periods of New Zealand settlement;
- j) The importance of identifying rare types of historic places;
- k) The extent to which the place forms part of a wider historical and cultural complex or historical and cultural landscape; or
- l) Such additional criteria for registration of wahi tapu, wahi tapu areas, historic places, and historic areas of Maori interest as may be prescribed in regulations made under this Act;
- m) [Such additional criteria for the purpose of assigning Category I and II to any historic place as may be prescribed in regulations made under this Act] (s 22 HPA).

Because of the importance of the HPA Register, and the fact that the above criteria are the only ones that exist in law, these criteria and the assessment process used for HPA registration have been influential in local authorities' own assessment and listing procedures, where they have not developed their own approaches. Where they have developed their own criteria a great diversity of approaches is evident.

The evaluation of significance

Ultimately the range of criteria applied to heritage assessment attempts to evaluate significance. In turn, the assessment of significance is an interpretation of values held by the assessor and/or by the community of interest about the place being assessed. The general criteria for registration of historic places or areas refer to the "significance or value" of such places (HPA s 23(1)). These values are ultimately subjective, no matter how detailed the assessment and how expert the assessor (see below). When the assessment is a public process, such as a local authority listing procedure, the social value of the place is thus a legitimate and important consideration and may become the overriding factor. Recent attempts to assess social value more systematically (eg Johnston 1994) are a reflection of this. However, other types of assessments may be more restricted, and attempt to give more absolute values to specified criteria (eg assessments from a purely architectural or purely historical perspective). Thus the difficulties in evaluating significance differ according to the type of heritage and the type of value being evaluated.

The context for evaluation

Assessment processes and criteria have usually been developed for single buildings or places. Many commentators have noted the great importance of groups of buildings or places, and stressed the importance of the context of historic places. As with ecosystems and landscapes, the hypothesis that "the whole may be more than the sum of its parts" may be applicable to historic and cultural heritage. In archaeological terms the information from a number of individually quite insignificant but related sites may be far more valuable than the information from even the most important single site.

The importance of context is recognised in the HPA in the concept of historic areas and wahi tapu areas. Recently its importance has also been recognised in proposals for archaeological conservation zones, recognised cultural landscapes, and listed historic precincts. These concepts may well require different assessment procedures and criteria, and almost certainly different protection mechanisms, from single historic places.

Subjective and objective evaluations

The debate about assessment approaches is essentially a debate about the relative merits of a “best professional judgement” approach to heritage value, versus a closely categorised, often numerically scored, approach that should be capable of being consistently applied by more than one evaluator. The latter approach is justified by its advocates for its rigour, transparency and consistency, and thus its defendibility under challenge, particularly for some territorial authorities under s 32 RMA requirements for justifying the methods used to reach decisions on policies and plans. Proposals for listing new items can also be assessed against the same criteria as existing listed items. Critics of this approach claim that a numerically scored or closely categorised approach reduces the essential subjectivity of assessments of heritage value, and that it can at worst lead to unprofessional “cookbook” approaches. It is possible that a numerically-based approach is better suited to the territorial authority process under RMA, while for other special purpose assessments the judgement of a skilled professional in that speciality is preferable. However, neither a numerical/categorised approach nor a professional judgement is necessarily more objective than the other.

A major criticism of the numerical approach is that a place may receive only average marks for all categories and yet achieve a higher total mark than a place which receives the maximum possible mark for one category and low marks for all other categories. The same criticism could be made if specific categories were used for assessment purposes. However a place may be highly significant under only one criteria. Therefore consideration should be given not only to places with the highest total value but also to places with the highest value in single categories. Such an approach would enable individual ranking decisions to be made according to the relative priorities of a community and allow all types of heritage to be recognised and protected.

Recognition of change

As stated above, any assessment process ultimately reflects values held about heritage, and most such values are not static. Furthermore, limited information about heritage places is always capable of reinterpretation according to new understanding and paradigms in the field of study. This is especially true of the still rapidly changing fields of archaeology and cultural heritage studies. Registers and schedules must not, therefore remain static but need to evolve to remain relevant. This is implied in the Trust policy that any building at least 30 years old, may be proposed for registration, whereas the definition of archaeological site in the HPA gives a fixed cutoff date of 1900, which is likely to cause problems as that date moves further into the past.

Ranking

There is inevitably tension between the concept that “all heritage is equal” and therefore cannot be ranked, and the perceived necessity that effective conservation management requires decisions on conservation priorities, which inevitably involves ranking heritage. Ranking of historic places is inherent in the two categories established for the HPA Register (and was even more apparent in earlier historic places legislation, which allowed for four categories). There are no categories assigned to historic areas and wahi tapu in the Register, but any protection of these places inevitably involves their ranking, even if only on the basis of immediacy of threat to them. Ranking of places of significance to Maori is discussed further in Chapter 4.

A5.2 Assessment for HPA registration

Section 22 of the HPA requires the Trust to establish and maintain a Register of historic places, historic areas, wahi tapu, and wahi tapu areas (see Glossary). The purpose of the Register is:

- a) to inform members of the public about historic places, historic areas, wahi tapu, and wahi tapu areas;
- b) to notify owners of historic places, historic areas, wahi tapu, wahi tapu areas where necessary for the purposes of this Act;
- c) to assist historic places, historic areas, wahi tapu, and wahi tapu areas to be protected under the Resource Management Act 1991 (s 22(2) HPA).

The Register is primarily a source of information that can be used to identify heritage items and advocate for their protection. Under s 34 HPA, the Trust shall maintain and supply to every territorial authorities a record of any relevant items on the Register that are located in the territorial authorities district. A territorial authority is required to take registered items into account when reviewing a district plan or granting a resource consent.

The Trust may enter any historic place or area on the Register if it possesses “aesthetic, archaeological, architectural, cultural, historical, scientific, social, spiritual, technological, or traditional significance or value” (s 23(1) HPA). The Trust may assign Category I or II status to any historic place after considering criteria listed in s 23 (2) HPA (see A5.1). Category I places are of “special or outstanding historical or cultural significance or value” and Category II places are of “historical or cultural heritage significance or value” (s 22(3)(a) HPA). The phrase “special or outstanding” is not defined in the HPA.

Any person may propose the registration of a historic place (s 24 HPA) or area (s 31 HPA) to the Trust on a detailed registration proposal form. In terms of the registration of buildings, the Trust will consider any building built 30 years or more before the date of proposal for registration. The registration form requires information including legal title, location, ownership, historical interest, and boundary descriptions, and an assessment of the historical, cultural, aesthetic, archaeological, architectural, scientific, social, spiritual, or technological significance or values in terms of the HPA s 23 criteria and there is provision for extra information. Detailed guidance is provided on all parts of the form. If satisfied that the proposal is supported by sufficient evidence, the Trust is required to publicly notify the proposal for registration. If nominations are deemed to have insufficient information, gaps can either be filled by staff research, or the nomination referred back to the originator for further information.

Once a proposal is approved, the formal process of registration begins with either interim registration (s 26 HPA) or final registration (s 30 HPA). The Trust exercises a discretion as to whether it follows the interim or final registration process depending on the degree of threat to a historic place or area. Interim registration has the same effect as a notice of a requirement for a heritage order and no alteration or modification of a place can occur without the approval of the Trust. Interim registration lapses when final registration is confirmed or six months after the date of interim registration.

The HPA establishes that the owner, any occupier, any person with a registered interest, any incorporated society or body corporate engaged in the protection of historic resources, the territorial authority and the appropriate iwi may make written submissions to the Trust about the granting of interim registration for a historic place or area. When deciding whether or not to confirm the registration of a historic place the Trust may reconsider the category of registration of the place concerned. Final registration occurs when it is confirmed by the Trust or if an agreement is reached with the owner. Unlike interim registration, final registration provides no protection (see A7.2).

The Maori Heritage Council (MHC) is responsible for assessing and notifying applications to register wahi tapu or wahi tapu areas (see Chapter 4). There are no specific criteria in the HPA for registration of wahi tapu or wahi tapu areas apart from the definitions in s 2 HPA. Any person may apply on a registration form to the MHC to have any wahi tapu (s 25 HPA) or wahi tapu area (s 32 HPA) entered on the Register. The MHC may grant interim registration of wahi tapu if satisfied a proposal is supported by sufficient evidence. The MHC may make enquires before deciding to confirm the registration of a wahi tapu. Final registration occurs when it is confirmed by the MHC or if an agreement is reached with the owner. As explained above, final registration provides no protection.

The Register contains information on an item including: location; age; reasons for registration; details on style and architecture; and archaeological information. Some places and areas have extensive research reports and photographic information. The location of a wahi tapu site is not required to be included. The Register does not contain a certificate of title reference. By the end of 1995 the number of items on the Register included (Quirk 1995):

• historic places: (Category I and II status):		
buildings:	4676	
archaeological sites:	<u>1012</u>	
Total		5684
• historic areas	90	
• wahi tapu	12	
• wahi tapu areas	<u>4</u>	
Total		<u>5790</u>

Issues surrounding registration

There are major imbalances between the numbers of buildings and archaeological sites; and also between the number of historic places and wahi tapu on the Register. There is also an imbalance between different types of built heritage significance as the HPA 1980 gave architectural significance a high priority whereas the 1993 Act established criteria that are much broader and include historical, spiritual, cultural and social significance.

The value of the Register is reduced by some inaccurate information and a lack of certificate of title reference. Most items were registered under the 1975 and 1980 Acts and under the transitional provisions of the HPA 1993 were transferred to the new Register. Items nominated since 1993 have been thoroughly assessed before inclusion on the Register, but very little checking and updating of older records has been possible since 1993. The main information problems relate to pre-1993 Category II registrations (the old C and D categories). The unevenness of the quality of information on registered items has the effect of devaluing the whole Register because of uncertainty on the part of recipients of lists of registered items over the quality of information on any one listed item.

The process of registration has been primarily reactive in that the overall content of the Register has not been the result of any nationwide systematic assessment of historic and cultural heritage. In no types of heritage can the Register be said to be comprehensive. The majority of places listed on the Register under the 1975 and 1980 Acts were classified as a result of visits to areas by a voluntary Trust Buildings Classification Committee or by specific initiatives by archaeologists to register archaeological sites in particular areas.

Under the transitional provisions of the HPA, archaeological sites registered under the former HPA 1980 were included on the new Register as Category II historic places. The category of registration for

these sites has not been able to be reviewed and yet for registered areas like the Otuaatua stonefields, this category of registration is inappropriate given their significant historic and cultural value (see Background Report). The number of archaeological sites on the Register is very small in relation to the number of known sites (approximately 48,000 on the NZAA File) and the sites are unrepresentative of the sites that should be on a national register. For instance they include a number of small, and by most methods of assessment, insignificant sites on former New Zealand Forest Service land that were placed on the Register to record them as part of research projects. More visible and better preserved sites in the same regions are not on the Register.

There are several problems in the use of the Register for places of significance to Maori, especially concerning control; and confidentiality of information (see Chapter 4) (such issues also underlie DOC's development of policy for wahi tapu.) The number of wahi tapu on the Register is very small so use of the Register for territorial authority schedules beard no relation to the protection needs for wahi tapu. Maori need to have the opportunity to establish their own policies for the way heritage information and assessments are handled.

In recent years, the Trust has not been able to register as many items as are required because of resourcing constraints. The 1995/96 Crown purchase agreement provides for the Trust to register 30 places and areas but there is no provision for the Trust to review the existing Register. In the future the Trust intends to complete comprehensive surveys which will result in a more proactive approach to registration (NZHPT 1995 p 13), although there is no guarantee as to the Trust being able to fund these surveys.

A5.3 Territorial authority assessment of heritage

Assessment of buildings and objects

There are many different built heritage assessment methods used by territorial authorities when assessing and gathering information on historic and cultural heritage resources as part of the preparation of a district plan or a heritage inventory. Table A5.1 highlights different approaches taken by a selection of city councils.²

The selected councils used several different assessment methods and both qualitative and quantitative approaches. Some approaches were comprehensive zero-based assessments that started with new detailed research, whereas other councils used only existing information taken from sources such as the HPA Register and supporting information, council records, and local Trust branch or historical society records. District plan schedules do not always contain all of the relevant items on the HPA Register. In addition schedules in district plans do not always indicate that an item is registered under the HPA.

In most cases, standard inventory sheets were used to assist analysis but some of the selected councils had no standard reporting format and the reasons for listing were not always immediately apparent. All of the selected councils provided for information and inventory sheets to be available to the public on request. There was a variable approach taken by councils regarding the notification of a landowner that their heritage building or object was being considered for listing or was listed in a proposed plan. The availability of assessment sheets and heritage inventories enables landowners and other interested parties to comment on any assessment and the reasons for identifying any heritage item as significant.

² This part of the Appendix and Table 4.1 are substantially based on a report by Environmental Planning and Assessment (1995) as well as information collected during the investigation.

A38 TABLE A5.1 Examples of territorial authority built heritage assessment approaches

	Survey	Records	Criteria	Scheduling	Extent of schedule
North Shore City (proposed district plan)	Very detailed survey by consultants. @ 2,000 buildings and objects initially identified. Quantitative points system, score out of 100 (ACC approach).	Standard inventory sheet. Inventories publicly available. Owners not formally notified.	Five criteria: architecture, history, environment, usability, and integrity.	429 buildings and objects listed in schedule in proposed plan, two categories: Category A buildings with outstanding heritage significance, the protection of which is of prime importance (40%). Category B buildings with sufficient significance that they should not be removed or damaged without compelling reason (60%).	Cat. A listed for interior and exterior. Cat. B exterior only.
Auckland City Isthmus area (proposed district plan)	Very detailed survey by ACC using modified Parks Canada system developed by ACC. > 2,000 items considered. Quantitative points system, score out of 100.	Standard evaluation sheet. Inventories publicly available. Owners not formally notified.	Five criteria: architecture, history, environment, usability, and integrity.	254 buildings and objects listed in schedule in proposed plan, two categories: Category A: (over 75 points): buildings which have outstanding heritage significance, the protection of which is of prime importance (25%). Category B (50-75 points): buildings of sufficient significance that they should not be removed or damaged without compelling reason (75%).	Schedule specifies the extent of protection for interior and surrounds. If surrounds not specifically limited, whole site is deemed listed.
Manukau City (proposed district plan)	Detailed survey by consultants guided by trans. plan and HPA Register and some new assessment. Qualitative technique. Assessment criteria developed by D Holman.	Standard record sheet. Qualitative assessment. Inventories publicly available. Notification of all owners after inventory.	Twenty criteria based on ICOMOS charter. Re-evaluation after notification if challenged by owner.	146 buildings and objects listed in schedule in proposed plan, two categories: Group 1: the protection of these items is very important in that they represent a very valuable resource and their loss or degradation would be unacceptable to the community (47%). Group 2: the loss or degradation of these items should be avoided if possible but may be acceptable if no alternative (53%). Additional register of heritage resources of items not scheduled.	Schedule specifies the extent of protection and only ten interiors listed. Surrounds assessed according to criteria.
Palmerston North City (proposed district plan)	Based on 1993 audit of CBD by consultant and detailed visual survey of buildings suggested by council and NZHPT. Assessment model developed by I Bowman. Qualitative technique. Exterior and most interiors.	Background information sheets. Inventories publicly available. Owners informally notified during survey and formally notified at proposed plan stage.	Three criteria: cultural, use, and contextual.	67 buildings and objects listed in schedule in proposed plan, two categories. A team of six (councillors, staff, and NZHPT) revisited 67 buildings to assess under same methodology for placement in two categories. Category 1: buildings of outstanding cultural heritage value and warrant protection in their entirety (35%). Category 2: buildings of cultural heritage value to which external protection should be given (65%).	Schedule does not specify extent of protection which is noted in rules. Cat. 1 listed for interior and exterior. Cat. 2 for exterior only. No restriction on site.
Upper Hutt City (draft plan)	Initial list of heritage items prepared by consultants. Items of HPA Register added to schedule without further verification. UHCC compile inventory of heritage resources	Record sheets. Little information on some items. Inventories publicly available.	Five criteria: strong historic association; reflects skills, style or workmanship; unique or rare; physical evidence of early occupation; and continuity	Heritage items listed in schedule in draft district plan in four categories which have different degrees of protection. Additional inventory of heritage resources identifies heritage items important to the community but not protected by district plan rules.	Schedule does not specify extent of protection which is noted in rules.

	Survey	Records	Criteria	Scheduling	Extent of schedule
Hutt City (draft plan)	and verification and further identification completed by consultants. Quantitative technique. HCC research based on HPA Register, trans. plan, and proposals from hist. society. Qualitative technique.	Owners not formally notified.	No formal assessment criteria.	113 buildings and objects listed in schedule in draft plan, one category.	Schedule does not specify extent of protection for exterior, interior and surrounds.
Wellington City (proposed district plan)	Detailed survey by consultants of buildings proposed by WCC and NZHPT and street survey. Few interiors examined. Assessment model developed by I Bowman. Qualitative technique.	Background information sheets. Published inventories available. Owners not formally notified during survey but notified at proposed plan stage.	Three criteria: cultural, use and contextual.	513 buildings, objects and areas listed in schedule in proposed plan in one category. Background information sheets compiled into Cultural Heritage Inventory referred to in district plan.	All buildings listed for interior and exterior.
Nelson City (draft plan)	Development of assessment criteria by NCC and consultants. > 400 buildings initially identified from heritage and streetscape survey, HPA Register and public proposals. Quantitative technique.	All owners of potential heritage buildings notified at assessment stage of the implications of listing and asked for responses.	Seven criteria: historical and social, cultural and spiritual, architectural, group setting, landmark, archaeological, and technological. Weight given to streetscape and character.	Final score determines which class building assigned to in draft NCC district plan: Class 1: buildings, places or objects of major significance to the district, protection of which is considered essential; Class 2: buildings, places or objects where protection is important; Class 3: buildings, places or objects which make a contribution to the heritage of the district and protection is desirable.	Not available.
Christchurch City (proposed district plan)	Detailed survey by CCC using HPA criteria that were refined by a review of overseas models. Quantitative points system used for both the purposes of the district plan and for policies outside the plan including applications for incentives.	Inventories publicly available.	Seven criteria: historical/social significance, cultural and spiritual, architectural and artistic group setting, landmark, archaeological and technological. First three criteria given twice weighting of the other four.	570 buildings, objects and places listed in schedule in proposed district plan, four groups. Group 1: items of international or national significance, the protection essential (12%); Group 2: items of national or regional significance, protection important where this can be achieved (20%); Group 3: items of regional or metropolitan significance, protection desirable where this can reasonably be achieved (35%); Group 4: items of metropolitan significance, protection encouraged (33%).	Items are listed for interior and exterior. Some items specify surroundings but extent is not defined and considered on a case by case basis.
Dunedin City (proposed district plan)	Inclusion of items on HPA Register and other items that contribute to the streetscape by DCC. Qualitative technique.	No consistent record sheets. Information publicly available. Formal notification of owners during preparation.	No firm methodology or criteria. Items considered on contribution to streetscape, materials used, level of ornamentation, scale and architectural style.	735 buildings and structures listed in schedule in proposed plan in one category.	Listing only applies to exteriors and some items are only for parts of buildings.

The number of assessment criteria used by councils varied from none to twenty with most councils choosing between three and seven. Some councils chose to use assessment methods that had worked for other councils. Criteria that were used were based on the Parks Canada system (two councils), the HPA criteria (two councils), ICOMOS (one council), and New Zealand versions of overseas models (three councils). In some situations, a hybrid assessment approach was developed using an adaptation of HPA criteria and overseas models (eg Christchurch City Council). Architectural and historical values were often used as base assessment criteria although some councils gave a significant weighting to streetscape values.

Other smaller territorial authorities, such as Rodney and Whangarei District Councils, that are not shown in Table A5.1 have not commissioned independent heritage studies or assessments and rely on their current transitional district plan schedules and the HPA Register to identify historic places and areas that can then be included in the district plan. The importance of the HPA Register for identifying heritage items and the provision of technical advice and assistance by the Trust is vital in enabling these small territorial authorities to recognise the heritage of their district with appropriate district plan provisions and other policies and incentives.

Assessment of other heritage by local authorities - Archaeological sites

The Trust has commented (NZHPT 1996) that many councils are unwilling to comprehensively survey archaeological sites within a district because of:

- a lack of resources;
- the belief that it is the responsibility of the Trust under the HPA;
- a view that as other councils are not taking action, neither need they.

For instance, Manukau City Council has listed 24 wahi tapu in the proposed district plan but has decided not to schedule any archaeological sites as it believes the Trust is the lead agency for the protection of archaeological sites and the HPA gives the Trust the power to authorise destruction, damage or modification of these sites. Waitakere City has also taken a similar approach. The Manukau proposed district plan policy has attracted strong criticism in submissions from the Trust and the ARC.

As signalled in the Regional Policy Statement, the Auckland Regional Council (ARC) is committed to coordinating the management of regionally significant heritage sites and identifying and providing information on heritage resources. The ARC has been actively involved with the identification of archaeological sites, it is preparing a list of archaeological sites in the Auckland region and has assisted territorial authorities within its region to gather archaeological information. The ARC approach is a good example of what can be achieved by a regional council acting on its own and in partnership with territorial authorities.

Information contained in previous heritage inventories was not deemed of sufficient quality for resource management purposes or to protect heritage. To facilitate further cultural heritage work the ARC has developed a computer based Cultural Heritage Inventory (CHI) for recording known information on cultural heritage with the cooperation and support of territorial authorities. The overall aim of the CHI is to develop a region-wide inventory with maps of historic places and bibliographic references. The CHI does not aim to assess significance of identified places

The CHI will provide easily accessible information to encourage landowners and developers to address heritage issues at an early planning stage. It will also assist council with the administration of resource consents and in plan and policy development. The variable nature of existing information in terms of both quality and quantity can then be readily assessed, gaps in information can be targeted, and

appropriate survey and research can be undertaken. For instance, areas targeted for subdivision and development can be given a high priority for survey.

With financial assistance from the responsible territorial authority, the ARC has jointly prepared CHIs for Franklin District (1993), North Shore City (1994), and Manukau City (1995) and a CHI is currently being jointly prepared with the Waitakere City Council. For Franklin District and North Shore City global positioning systems were used to accurately locate sites. The CHI is a consolidation and improvement of existing heritage information with a focus on archaeological sites, but there are still many inaccuracies in the data and many areas have still not been surveyed (eg 90% of Franklin District has not been surveyed). There is also minimal recognition of cultural heritage in existing inventories. The ARC recognises a need to promote systematic coverage, monitor sites, and resurvey areas where coverage is out of date. Oral traditions and historic records also need to be examined and related to archaeological evidence such as physical structure and features. Further consultation will be required with *tangata whenua* to understand their relationships with historic and cultural heritage (ARC 1995).

In 1994 a regional Coastal Environment CHI was prepared by the ARC and this has assisted with providing a comprehensive thematic approach to heritage conservation for the coastal marine area. A broad objective of this work with the identification, inventory and evaluation of a single class of heritage (ie maritime) was to establish a model for other local authorities to follow.

Some territorial authorities like Manukau City have used the CHI as a tool to assist heritage management and augment the content of the district plan whereas other territorial authorities, like North Shore City, have relied on the CHI in preparing district plan schedules. It has been noted that the scale and quality of information in a CHI may not enable it to be used directly in a district plan. North Shore, Manukau and Rodney have adopted a strategy for the commissioning of preliminary archaeological surveys in areas allocated for future development.

Heritage inventories

The Queenstown Lakes District Council (QLDC) commissioned the preparation of an inventory of heritage structures of Arrowtown after support from local residents for the identification and appropriate protection of the town's heritage. The inventory provides historical and architectural information on individual buildings to establish their heritage values and enable recommendations to be made about the inclusion of buildings in the district plan. The heritage inventory includes information on: the building's name; address; construction date; architectural style; building type/use; compilation date and recorder; photograph number; legal description; and visible materials. A summary statement of the heritage values associated with each building is provided (Bowman & Reid 1995).

The Thames-Coromandel District Council (TCDC), under a requirement of the district plan, maintains heritage registers of objects and places of sufficient merit to justify protection. As such they will be eligible for assistance (eg incentives and funds) and subject to specific controls. The contents of the register were identified during a comprehensive heritage survey by a consultant. The register contains a map, a list of items on the register, identification sheets, and a list of sites of historical interest that are not protected by the district plan (TCDC 1995).

Tasman District Council joint planning

The Tasman District Council, in conjunction with the Trust and Department of Conservation have jointly funded a planning exercise which aims to jointly develop an information base on archaeological sites in the Tasman District, and develop policies for protecting those sites through the procedures of the RMA (Tasman District Council 1995). As part of the preparation of an information base and policy options, consultation was carried out with local iwi by a contract resource planner, employed by the council, and several hui were held which all agencies attended.

Some issues identified in the course of the exercise include:

- many of the archaeological sites are also likely to be of significance to Maori;
- 21 sites are listed in the HPA Register. However these are not necessarily the most significant. About 800 sites are listed on the NZAA File although the information needs checking and is incomplete. The council is concerned that without further work, the information cannot be displayed on planning maps;
- concerns were expressed by interested parties, including tangata whenua, about ranking and listing sites. For example, the sites on the HPA Register do not represent a true picture of significance and tangata whenua regard all sites as significant. Tangata whenua also have concerns about identifying sites of significance to them because of the danger of their being vandalised;
- tangata whenua did not provide information on wahi tapu as they were not satisfied that information about sites could be adequately managed;
- some parties considered that there are known and significant sites that should be listed so that they can be effectively protected.

Taking these issues into account, the council has proposed to establish zones of archaeological interest, where sites are actually or potentially present above an assumed threshold density and within which certain restrictions on development will apply. Consultation with the tangata whenua and an archaeological assessment would be required.

Following the successful completion of the Tasman District joint planning exercise, the Trust applied to the Ministry for the Environment's Sustainable Management Fund for funding for a project to sustainably manage archaeological sites. The application proposed to build on the Tasman District Council study and use the Masterton District as a primary case study along with approaches of several other district councils. Consultation with tangata whenua was to have been on-going throughout the project. It was proposed that the Masterton District Council, the Trust and DOC would jointly contribute about 40% of the \$110,000 required. The information gathered was to have been used to provide a model and mechanisms for including archaeological sites in district plans (NZHPT 1996). This application was not successful.

A5.4 Discussion of local authority approaches

The attitude of a community towards heritage protection, the size of a region, city or district, the magnitude of the historic and cultural heritage resource, and the level of development pressure, will largely dictate the assessment approach that needs to be taken and the burden of proof that is required. If a region, city, town or district is under pressure and losing historic and cultural heritage resources through extensive subdivision and development, then a very rigorous assessment process is required to identify and support the protection of heritage, and ultimately withstand legal challenge. Listed places in a district plan in any large urban CBD can represent hundreds of millions of dollars and these places may come under extensive development pressure.

The history of involvement of a local authority with heritage protection, the availability of resources and the priority given to historic and cultural heritage assessment in terms of competing demands for other resource management assessments and the development of other policies will be key factors that determine the assessment approach.

Key issues resulting from different local authority assessment approaches include:

- the lack of assessment of regionally significant historic and cultural heritage by most regional councils and the lack of criteria for assessing regionally significant heritage;

- the lack of identification and assessment of archaeological sites and sites of significance to tangata whenua;
- the wide range of assessment methodologies and whether the assessment approach taken will be able to withstand legal challenge;
- variable standards of data collection and storage;
- variable assessment criteria. For example, one assessment criteria that is often used by local authorities is “use” and yet this criteria is not listed in s 23 HPA as a matter for consideration for the registration of an item on the HPA and with time, any “use” values can change.

A member of ICOMOS has discussed the lack of a standardised evaluation methodology by local authorities (Vossler 1995) and has promoted the adoption of a credible survey and evaluation methodology for local authorities that could be developed by ICOMOS New Zealand (which as a member of an international non-governmental organisation will have access to internationally recognised developments). The methodology should include:

- the identification and systematic collection of data relating to places of historic and cultural heritage value; and
- a procedure whereby a rational evaluation of identified places can be made and the degree of evaluation will depend on the selection of sound and acceptable criteria.

With the recent momentum towards different assessment methods for the current round of district plans (Table A5.1) it may be too late to achieve a common methodology in the short term. However it will be important to look beyond this period as an opportunity to develop much more consistent assessment approaches. At the very least, core assessment criteria could be developed.

Appendix 6

Research and survey for historic and cultural heritage

A6.1 The New Zealand Archaeological Association Site Recording Scheme

The New Zealand Archaeological Association Site Recording Scheme was begun in 1958, with the objective of recording accurately by written description and appropriate illustrative material as many as possible of the individual archaeological sites throughout the country.¹ Prior to 1958 there were field surveys by archaeologists but records of these were not systematised in any way.

From the outset the scheme was organised by the New Zealand Archaeological Association (NZAA) on a regional basis, with each region having a voluntary regional filekeeper, maintaining its own records and exercising some regional quality control. In some cases the regional filekeeper was a professional archaeologist and the regional file was maintained in a university department or museum. A duplicate of each record was sent to a central file. Early on in the history of the scheme the Association and the Trust agreed that the central file would form the basis for the Trust's archaeological record systems, as provided for by s 39 of the HPA. This became known as "the NZAA File" (hereafter referred to as "the File"). In the mid 1970s to early 1980s the Trust was actively involved in archaeological survey and funded many site recording projects which built up the File (Challis 1995). Most records are added by members of the NZAA, whether in the employment of DOC, museums, universities, local authorities, self-employed consultants, or working privately without sponsorship. Local societies such as the Auckland Civic Trust, and Trust branches have also on occasion added records to the File. There is a detailed site recording handbook (Daniels 1979).

The most rapid growth of the File occurred in the period 1975-87, when it grew from less than 10,000 to nearly 40,000 records (Challis 1995). The rate of addition has slowed since 1987 but in early 1996 there were about 49,000 records.

Since 1988 the central file has been administered by the Science and Research Division of DOC, under a protocol with the NZAA. The File is the basis of the Department's archaeological database, the Computer Index of New Zealand Archaeological Sites (CINZAS), and a member of the Science and Research Division's Human Ecology Group is the designated filekeeper. Some regional filekeepers are now DOC Conservancy Historic Resources staff. Access to the File is free to NZAA members and members of the general public, but consultants pay a small fee to cover costs of access.

There is provision for records to be updated. In some conservancies DOC staff carry out independent updating work and quality control of independently submitted records. The central computerised file can provide maps of recorded sites. In recent years, the central filekeeper has handled about 200-250 requests for information per year. Requests from DOC conservancies form the largest proportion, up to half, with consultants making about one-quarter of requests. Local authorities, university groups, the Trust, iwi groups and the general public make smaller numbers of requests, all fewer than 20 per year. These statistics are only for requests to the central file, not the regional ones. A few local authorities have negotiated access to records in the File covering their district or region, which is subject to letters of agreement on annual updating database copies. Other local authorities routinely access regional files

¹ The following definition of "site" was adopted at the initiation of the scheme: "Any specific locality for which there is physical (as opposed to traditional) evidence for its occupation by the pre-European peoples of New Zealand, even though the occupation has been transient" (Daniels 1979).

to check for records in an area covered by a resource consent application. This may be the basis, or the full extent, of their archaeological assessment of such applications.

Much of DOC's historic resources work is closely tied to the File, especially at conservancy level. There was major involvement of conservancy staff in site survey in the past. Under the Historic Heritage Strategy (HHS) this will be a continuing role in the conservation estate although less so than in the past. A very limited involvement on a cooperative or supporting basis outside the conservation estate is still possible on occasion (J Daniels, DOC, pers. comm. 1996), although this is difficult to tie into annual business planning cycles, particularly when there is an urgent survey need because a site becomes threatened. Much other conservancy work, such as comments on resource consents, advice to field centre staff on estate management, and preparation of public information material, also involves consulting the File.

Issues regarding File use

There is no doubt that the File is the major basic source of information of archaeological sites in the country, particularly for DOC's work. Also it is an important reference for territorial authorities, the Trust, and anyone involved in applications for resource consents or HPA authority provisions. The File is also a starting point for much archaeological research. The computerisation of the File is a major achievement, and makes the file the most "user-friendly" historic and cultural heritage database in the country. As such it is possible that the File could serve as a basis for a complete historic and cultural heritage database (ie it would include built heritage). It is a database of major national significance.

However, despite its size, the File is still widely acknowledged to be far from complete. In Northland, there are 9,000 sites (ie nearly 20% of the total recorded nationally), and there have been a number of large area surveys; despite this, there are estimated to be twice as many unrecorded as recorded sites (J Maingay, DOC Northland, pers. comm. 1995). It is commonly held amongst archaeologists that this proportion holds nationally (NZHPT 1996). Some significant parts of the country have very few records because of their remoteness and the logistical difficulties of survey. Since the 1987 transfer of responsibility for the File to DOC there has been a marked slowdown of additions to the File, especially through systematic survey.

There is also widely acknowledged unevenness in quality especially for early records, many of which contain minimal information and/or have significant inaccuracies (Challis 1995). In this respect there are similarities to difficulties with the HPA Register discussed in Chapter 4.3. Archaeologists both in and outside DOC are carrying out some updating of records after resurvey or reinspection but much updated information is apparently not entered onto the central File. Challis (1995) estimated that at the rate of updating achieved in 1994-95, it would take 140 years to update the total current file. Thus a major injection of resources would be required to bring the File up to date and to realise its full potential.

The Trust have lost the immediate link to the File they had prior to 1987. Trust staff do not use the File routinely for their assessments of HPA authority provision applications. The File does not appear to have been used systematically for initiating formal registration: only 1,000 sites are registered out of approximately 49,000 recorded, and the registered sites are even less representatively located than the recorded ones. Almost all registered sites occur in only five districts: Otago, Tasman, Gisborne, Whakatane and Western Bay of Plenty; in the main they represent major Trust-supported surveys which have not been mounted for some time.

As the majority of local authorities still use the small number of sites on the HPA Register as the basis for their listing, the great majority of File sites have only the passive protection of s 10 of the HPA. Sites on the File have no legal description and the scheme and File have no legal status. By default existing uses thus escape the net of HPA protection. Even where known sites are afforded a degree of

protection by listing in protection plans, there is still no provision to check for effects on further unknown archaeological sites (Institute of NZ Archaeologists letter to PCE 16 February 1995). It could in fact be argued that the existence of the non-statutory NZAA File as the major source of information on archaeological sites has inhibited development of the statutory HPA Register of archaeological sites, but this is surely not the fault of the far sighted originators of the NZAA scheme.

DOC's new Historic Heritage Strategy has important implications for future use and development of the File. It can be strongly argued that the whole File should be kept together, and at present DOC is the only agency able to professionally service and maintain it. Yet if as a matter of policy DOC will not act on, or provide interpretation of, information on the File relating to all off-estate records, its justification for continuing to maintain the whole File must be less strong.

Use of the File by Maori is very uneven. Iwi authorities make infrequent although increasing use of the national File and apparently use of regional Files has been very variable, depending on personal relationships at the regional level. There is provision for a secret file but the number of records on this file is small. Some Maori have expressed concern about the security of these records while some professional archaeologists have expressed concern about the quality, in archaeological terms, of records on the secret file.

A6.2 Agencies undertaking archaeological research

Department of Conservation

Out of approximately 15 Historic Resources staff in DOC, 4 are archaeologists located in the Science and Research Division at Head Office, forming the Human Ecology Group. These staff are a general scientific resource for Historic Resources work throughout the Department; they also undertake specific research projects. One of the group is the national filekeeper of the NZAA File.

A recent statement on themes for research in 1995-96 (J Holloway, DOC, SAD 88, 24 November 1995) denotes one of the three themes as "improving the effectiveness of historic resources management by the Department". There are three sub-themes: understanding, assessing, and conserving and maintaining historic resources. Within these sub-themes are eight "research priorities". These are all so broad that they would occupy at least one staff member full time, so further prioritising is obviously required. Specific current research projects include various aspects of methodology for site surveying, archaeological site stratigraphy, archaeological site stabilisation, and vegetation management. Human Ecology Group members conduct training for Historic Resources staff in conservancies and assist in some conservancy Historic Resources projects. Conservancy staff may in turn be involved in projects with a strong research component.

Museums

Museum staff were amongst the first professional archaeological researchers in New Zealand and have carried out a considerable amount of field recording especially in the 1960s and 1970s. They have a continuing although variable and presently diminishing role in archaeological research. Auckland and Canterbury Museums have had archaeological staff continuously since 1966. Several regional museums also have archaeologically trained staff, although they are involved in many other tasks than archaeological projects. The Museum of New Zealand currently has no archaeological staff. It has been claimed that the study of archaeology is currently given a very low priority in New Zealand museums, and that curatorial and administration responsibilities leave very little time for research by the country's few museum archaeologists (C Jacomb, President NZAA letter to PCE April 1996).

Universities

Otago and Auckland Universities have a total of 8-10 archaeological teaching and research staff, in both cases within anthropology departments. Staff and research students undertake a variety of archaeological research in New Zealand and overseas.

A6.3 Agencies undertaking research in other aspects of historic and cultural heritage

Department of Internal Affairs

The Historical Branch of the Department undertakes considerable research on New Zealand historical themes, including a long-running project on land-based historical themes to be published in 1997 as *The New Zealand Historical Atlas*. In addition the *Dictionary of New Zealand Biography* provides significant information on heritage identification and assessment through its biographical investigations.

New Zealand Historic Places Trust

The Trust undertakes considerable research in the course of its activities, much of it directed towards its properties, registration or other heritage advocacy work. Much of this research is undertaken by local properties staff and local branches. The Trust also has a small central research unit, at present with three full-time staff: two historians and conservation adviser. This unit supports the above research, as well as undertaking additional projects, such as options for reorganising the Trust's registration process and the history of the Trust.

Universities

A variety of research is undertaken by small numbers of university staff in several departments of history, architecture, landscape architecture, property studies, museum studies and art history. No systematic survey of this research has been made for this investigation.

Other

Territorial authorities, Trust branches, historical societies, heritage non-governmental organisations, private consultants and individuals all undertake research into individual buildings and areas for registration and listings; some records of this research are held by the Trust and in territorial authorities' databases on registered or listed placings.

A6.4 Support for research

Public Good Science Fund (PGSF)

In the current financial year PGSF support for research on historic and cultural heritage falls within the research Strategy for Society and Culture. In this output there are two projects of an archaeological nature; a further five projects could be very broadly described as related to cultural heritage although not necessarily falling within the definition of historic and cultural heritage for this investigation.² The

² In the former category are projects on the archaeology and artefacts of Mt Camel site, Houhora (Auckland Institute and Museum), and dating our past: colonisation to AD 1850 (University of Auckland). In the latter category are projects on ethnobotany (general) and ethnobotany of ti trees (cabbage trees) (Landcare research); pre-European Maori and Moriori fishing behaviour (Museum of New Zealand); borderlands: early exchanges

money granted to the two archaeological projects is \$244,000, 4.7% of the total allocation for the Social Sciences Strategy, and the total allocation for all seven research projects is \$960,000, approximately 18% of the total.

Recently the PGSF priorities for the period 1996-97 to 2000-1 have been restated (Ministry of Research Science and Technology 1995). Research on historic and cultural heritage would almost certainly be included under the new Output 13, Society and Culture, defined as "Science and technology contributing to the social well-being, national identity, and security of New Zealanders, and to the development of international understanding". Topics included are New Zealand and Pacific history, and aspects of New Zealand culture and society. The output as a whole has received a very large increase in funding, compared to what it received in the previous five-year period. Even with this increase, funding of Output 13 will only represent 3% of total funding in the PGSF. Within the output, the topic area "New Zealand History, Politics and Culture" although receiving an increase of \$400,000, declines from 20% to 14.5% of funding for the total output. The theme of "history and how it informs and shapes future choice" is identified as a priority within this topic area, but there is no discussion of history and heritage as an element of national identity.

In both the initial report to the SPIR Panel (Shields and Durie 1995) and the final *Research Strategy* report for the output (Foundation for Research, Science and Technology 1995), there is very little specific mention of research relating to historic and cultural heritage, especially of archaeological research. There is no mention of the NZAA File or associated DOC database although the lack of databases in the social sciences is commented on. DOC expressed strong concerns on the draft Output Research Strategy and a number of archaeologists have expressed concern that archaeological research is a significant gap in the *Research Strategy*. The Foundation for Research, Science and Technology (FORST) comments that the essence of the PGSF is that it is output or goal-driven rather than discipline-driven, but it sees a continuing need for archaeological and other discipline-based work that supports social goals (which include cultural and national identity) and priority themes (E Speight, Programme Manager, pers. comm. May 1996). Recognising the indistinct boundary between public good and operational research, FORST looks to significant (but not necessarily financial) support and involvement from users of proposed research.

Lottery Grants Board

The Lottery Grants Board support research on various aspects of historic and cultural heritage. Most funding comes through the Environment & Heritage Distribution Committee, and supports much of the historic and cultural heritage research done at the local level. In the physical heritage section, three projects in 1995-96 were funded to a level of \$122 000. In the cultural heritage section, six projects were funded to a level of \$128,000. Funded projects ranged from rock art and Mainstreet surveys through site verification projects, to handbook writing and various databases. A number of other funded cultural heritage projects involve aspects of historical research, publication and archive maintenance relevant to historic and cultural heritage. Funding policies for physical heritage projects include a specific commitment to projects that seek to identify and conserve wahi tapu sites, including research costs. Lotteries Sciences fund a further two archaeological research projects to a level of \$20,000.

The other research described in this section is principally funded by the agency undertaking it. The diverse universities research portfolio is funded either from university internal research grants or is commissioned by clients. The Royal Society of New Zealand administers a small fund for anthropological research costs.

between Maori and Europeans 1773-1815 (University of Auckland); Maori prehistory: the genetic trail of plants and animals (University of Auckland); time-course of kiore rat invasion of New Zealand (Palaeocol Research).

Comment on research funding

A recent unsuccessful bid for PGSF funding for an archaeological survey project illustrates the difficulties of funding archaeological work generally. A proposal by private consultants for undertaking basic archaeological survey in areas of high priority, poorly covered by present File records, was submitted to the PGSF for funding for the 1996/97 year. It was considered by FORST to be ineligible for PGSF funding for two principal reasons: firstly that it was work which is mainly data collection or collation rather than scientific research, and secondly that it failed to demonstrate that it was the responsibility of the PGSF, rather than DOC to support the proposal. The applicants obtained confirmation from DOC that the Department would not undertake survey in the areas proposed as a matter of policy, as it contained little land administered by DOC (although DOC would consider supporting or cooperating in such research). The applicants also justified the survey nature of the proposed research on scientific grounds because of the limited scope for purely deductive work in archaeological research. They drew attention to a number of databases supported by the PGSF in natural sciences. However FORST subsequently confirmed its earlier decision, primarily for the first reason cited. It conceded that DOC might not fund the proposed research but suggested that other unnamed agencies may fund it.

Regardless of the Output 13 funding policy discussed above, this case and the treatment of Output 13 in the Science Priorities Review illustrate a **significant gap in the funding of archaeological research, especially that based on survey and maintenance of databases.** This is a concern because of the close connection between archaeological survey and research, and because interpretation of sites even for "routine" assessment for resource consents and the authority provisions is dependent on continual reinterpretation of the significance of sites through research.

The PGSF maintains a group of nationally significant databases which are supported on a more permanent basis than other competitively funded projects (FORST 1993). On most criteria the File would appear to qualify for inclusion in this group, except that it has never received PGSF funding in the past. It would also be regarded as part of DOC's "operational research", and hence ineligible for PGSF funding, yet as pointed out above, under the HHS much of it is no longer related to DOC's operations.

A6.5 Research and survey by consultants

Some archaeological survey has traditionally been undertaken by private consultants for some time, particularly in relation to the HPA authority provisions. Since the mid 1980s the scale of this work has increased significantly, partly in response to two periods of economic upturn and development, and partly in response to archaeologists formerly contracted by DOC turning to consultancy work after the Department's internal restructuring. In the period 1987-94 a large team of mainly temporary staff in DOC's Auckland Conservancy undertook many archaeological surveys on a contract basis.

A number of consultants are also active in built and landscape heritage survey and research, for both district heritage surveys (see A6.3) and in connection with research, restoration or redevelopment plans for individual buildings. Disciplines involved in this work include heritage studies, landscape architecture, history, architectural history and conservation architecture.

There have recently been concerns about the quality of some advice received from consultants hired by applicants for resource consents or HPA authority provisions, and occasionally from consultants working directly for agencies. These concerns were voiced on many occasions to the investigation team, usually in general terms, but a few complaints were made directly to the Commissioner. These have not been investigated in depth. The issue has also been discussed by the Trust Board (Board Paper No BD

1995/7/45). Most concerns relate to archaeological work and have existed for some time (Cordy 1982) but some relate to professional standards of some building restoration work, including some carried out for the Trust. The latter concern may reflect the small number of professionally trained architectural conservators working in New Zealand, and in turn the lack of training opportunities in New Zealand.

The Institute of New Zealand Archaeologists was formed to, among other things, maintain high ethical and practical standards in archaeology, and has formed an independent committee to consider applications for membership. ICOMOS New Zealand, the New Zealand Professional Conservators Group, the Professional Historians' Association of New Zealand/Aotearoa, and the New Zealand Institute of Landscape Architects are the other professional groups involved in historic and cultural heritage. Between them, with some overlaps they cover the scope of historic and cultural heritage fairly completely (see Appendix 4). Most consultants belong to one or more of these professional groups and if professional standards were established, maintained and monitored adequately it may be reasonable to expect that concerns about them would be far fewer than appear to exist at present.

Both archaeological groups recognise the issue of professional standards. The NZAA are currently liaising with the Australian Association of Consulting Archaeologists with a view to affiliation, while the Institute is considering cancelling its existing categories of membership and inviting expressions of interest pending revision of categories and procedures for application (C Jacomb letter to PCE April 1996).

Only one public agency has a policy concerning professional standards for their consultants involved in historic and cultural heritage work. The Lottery Grants Board requires that, to be eligible for Lotteries funding, restoration projects must have an approved conservation plan prepared by a member of the Professional Conservators' Group. The Trust has an informal list of practising archaeological consultants which it makes available to people seeking consultants to undertake work, but there are no specific criteria for inclusion on this list and the Trust makes no recommendations as to the suitability of people on this list.

Appendix 7

Protection mechanisms for historic and cultural heritage

This appendix examines the range of mechanisms available for implementing protection of historic and cultural heritage. A range of mechanisms is necessary to suit the different circumstances and issues which surround the protection of historic and cultural heritage and, in some instances, a combination of mechanisms may be required. The result of these protection processes is also highly variable, depending on the type of heritage, its condition, and the type of protection desired.

General protection methods include the protection of historic and cultural resources through the Resource Management Act 1991 (RMA), Historic Places Act 1993 (HPA), Te Ture Whenua Maori (Maori Land Act) 1993 and Public Works Act 1980 processes, and other legal procedures such as acquisition, reservation, and covenanting. Advocacy, expert advice and financial incentives can also be used to secure some degree of protection for historic and cultural heritage.

In this investigation and this appendix in particular, the emphasis is on tangible historic and cultural heritage objects such as buildings or land (see Chapter 1.3). This protection generally implies retention of those objects in some tangible way. As discussed in Chapter 1, all such objects also have intangible qualities which can be protected in other ways that are not necessarily dependent on the survival of the physical object (eg historical and photographic records, through the creative arts or cultural traditions).

A7.1 Resource Management Act 1991 processes

Regional council level

Regional councils have responsibilities for providing for regional heritage policy in a regional policy statement and for providing for the sustainable management of historic and cultural heritage in coastal plans. Regional councils could prepare a regional heritage plan and schedules of regionally significant heritage sites.

The coordination of historic and cultural heritage management at a regional level could be investigated by regional councils through the preparation of regional heritage inventories, the provision of information and partnerships with other heritage management agencies. Regional councils could help to protect significant sites through funding regional parks and supporting other agencies in their initiatives to protect such sites.

Territorial authority level

Territorial authorities can use a wide range of district plan mechanisms including:

- listing significant heritage items in schedules and making them subject to rules restricting various activities;
- identifying conservation overlay zones that protect the character of precincts and areas of archaeological sites, and making them subject to rules to enable management and protection;
- identifying heritage zones and general residential zones that recognise and protect particular heritage values, and making them subject to rules to enable management and protection;
- using designations to indicate a council's intention to purchase historic sites;

- developing design guidelines that may be included in district plans as statutory requirements or used as voluntary measures;
- developing registers to provide historic and cultural heritage information.

Rules that are used to protect historic and cultural heritage in district plans include:

- specifying that different types of resource consents are required for different activities that affect listed buildings, character areas or zones, depending on the effects of the proposed activity. In some cases, specific activities may be prevented (eg demolition of a significant heritage building may be a prohibited activity);
- specifying standards for development including alterations, additions or demolition (eg development controls, financial contributions, time delays for the demolition of historic buildings or the alteration of historic sites to enable the consideration of alternative uses);
- specifying matters to be addressed in assessments of environmental effects for heritage items (eg the preparation of conservation plans or management plans).

Consent notices (ss 221 and 224 RMA) are used for subdivisions where there is a condition to be complied with on an ongoing basis. They create an interest in the land and are registered on the certificate of title. While a consent notice is more commonly used to record conditions such as minimum building levels in flood plains, it could be used to protect historic places, especially archaeological sites. Since councils require a copy of the title to be included with a building consent application, the recognition of the historic place on the title could assist with its protection.

Section 108 of the RMA provides for financial contributions (money, land, works or services or any combination of these items) to be imposed as conditions on resource consents for purposes specified in the district plan. Local authorities could use such contributions for heritage protection.

Most councils list information requirements for resource consent and subdivision consent applications. In some cases, a historic and cultural heritage or an archaeological assessment is specified as part of the information council requires in order to assess the environmental effects of a resource consent application.

Designations

Local authorities can use designations under the RMA to identify requirements for public works and reserves. The designation would allow the requiring authority to control the use of the land affected by the designation.

Heritage orders

The RMA heritage order provisions extend the former protection notice provisions of the Town and Country Planning Act 1977 and the HPA 1980. The intent of the new provisions was to broaden the definition of "place" and the range of places that could be protected. The RMA has also provided for a body corporate to apply to the Minister for the Environment to become a heritage protection authority for the purpose of protecting any place. Four bodies corporate have been approved as heritage protection authorities.

Ministers of the Crown, local authorities, the Trust and bodies corporate approved as heritage protection authorities may give notice to the appropriate territorial authority of their requirements for a heritage order and the requirement should be publicly notified or included in the proposed district plan (s 189 & 192 RMA). Heritage orders may be made to protect–

- (a) Any place of special interest, character, intrinsic or amenity value or visual appeal, or of special significance to the tangata whenua for spiritual, cultural, or historical reasons; and

- (b) Such area of land (if any) surrounding that place as is reasonably necessary for the purpose of ensuring the protection and reasonable enjoyment of that place (s 189 RMA).

A place may be of special interest by having special cultural, architectural, historical, scientific, ecological, or other interest. To be the subject of an order the place must be of "special interest". This implies that a weighing of the values of different places may take place; however, ss 6(e) and 7(e) RMA do not apply only to values of special interest or significance. It could be argued, therefore, that heritage orders are intended as a means of protecting the more significant places or values, but that territorial authorities are still required to provide for less significant places or values by other means.

The notice of requirement is to include a statement of the effect of the heritage order and consultation with any person likely to be affected. A territorial authority may notify a requirement for a heritage order in its own district. Once a requirement has been notified there is an opportunity for any person to make a submission on the requirement and be heard (s 190 RMA). The territorial authority will consider the requirement and the submissions and make a recommendation to the heritage protection authority to either confirm the requirement, with or without modification, and recommend conditions or to withdraw the requirement. The heritage protection authority may accept or reject the territorial authority's recommendation.

The RMA amendment Bill proposes to give territorial authorities the power to decide on notices of heritage orders by any heritage protection authority which is not a public authority. The proposed amendment to the decision-making process on heritage orders has arisen in response to concerns by some parties about the ability of heritage protection authorities to make decisions over private property. The Bill provides that for a body corporate heritage protection authority, the territorial authority will make the final decision on the heritage order. The territorial authority's present recommendation role is retained for requirements by heritage protection authorities other than bodies corporate.

Once an order is included in the district plan, no person may do anything that would wholly or partly nullify the effect of the order, except with the permission of the heritage protection authority (s 190 RMA). The protection afforded by the heritage order commences from the date the requirement for the order is notified to the territorial authority. Any person who has been refused consent to undertake an otherwise lawful activity on the affected land may appeal the decision of the heritage protection authority to the Planning Tribunal (s 195 RMA). The Planning Tribunal has the authority to reverse a decision of a heritage protection authority.

The RMA envisages that there may be more than one heritage protection authority in respect of the same place and there may be more than one heritage order in existence at the same time in respect of the same place. Section 193A RMA sets out the relationship between orders made in respect of the same place. The second heritage protection authority can do anything that is in accordance with its heritage order only if it has first obtained the written consent of the first heritage protection authority. The first heritage protection authority is not constrained by the second order and does not require the consent of the second heritage protection authority. The first heritage protection authority may only withhold its consent if the second order would nullify the first order.

A landowner affected by a heritage order may apply to the Planning Tribunal at any time for an order requiring the heritage protection authority to acquire the affected land under the Public Works Act 1981 (ss 185 & 198). The Planning Tribunal may make an order if the applicant was the owner or the spouse of the owner at the time the requirement for an order was included in the district plan, as well as having been unable to enter an agreement for sale and the land being rendered incapable of reasonable use. The Planning Tribunal may give the heritage protection authority the option of withdrawing its requirement or taking the land under the Public Works Act. In this case, and also in the case of designations (see s 198(3) & 185(5) RMA), compensation is payable by the heritage protection authority.

Nelson City Council has recently used the heritage order provisions to protect the Stroud Building in its Central Business District. Concerned about the unresponsiveness of the building owners to negotiations, the council issued an order as an emergency measure to ensure that the building was not demolished. While the order was not appealed to the Planning Tribunal, it was eventually withdrawn following the decision by the council to purchase the building. The council has now sold the building with no extra costs. In this instance, the use of the heritage order provisions was effective as:

- the heritage order was able to be used at short notice and therefore was able to provide immediate legal protection for the building;
- the council was prepared to purchase the building;
- the building was an economically viable unit and could be onsold.

In other circumstances the use of this mechanism may not be so straight forward or appropriate. For example, the process which provides for a body corporate to apply to become a heritage protection authority and the length of time that may pass before approval is given could prevent any urgent action being taken. Where urgency is required, other measures may have to be taken, or an existing heritage protection authority (such as the relevant local authority, Minister of Conservation or Maori Affairs or the Trust) persuaded to issue a heritage order instead.

This raises questions about the nature of the places which a heritage order is designed to protect and who is best suited to protect them. The Waitangi Tribunal has made the following comments about the heritage order provisions in relation to Maori heritage:

- that the requirement for an heritage protection authority to be a body corporate is contrary to traditional Maori concepts;¹
- scrutiny of information relating to wahi tapu at a public hearing would be an indignity to a wahi tapu. The Tribunal notes here that any exposure takes the tapu out of wahi tapu and that privacy is an ingredient in the “undisturbed possession” of taonga and any intrusion is a trespass;
- the hearing of an application for compensation by the landowner would cause further offence to Maori (Waitangi Tribunal 1992 p 256).

The effectiveness of heritage orders will depend to some degree on the nature of the heritage intended to be protected, and the existence of other more suitable options for protection. heritage orders can be seen as a last resort option for protection rather than as a first choice protection measure. In general problems with the use of heritage orders by a body corporate include:

- the financial cost of making an application to become a heritage protection authority and providing a notice of a requirement for a heritage order;
- the time to become a heritage protection authority;
- the need to provide some undertaking for possible compensation;
- the lack of professional and legal advice on how to prepare an application and if a heritage order is the most appropriate mechanism;
- they are not commonly used because of the underlying risk of liability to purchase the property if the landowner is unduly restricted in the use of their land or building.

A review of the RMA heritage order provisions was performed for MFE in 1993 (Nugent Consultants Limited and Kensington Swan 1993).

¹ A place requiring protection for Maori is likely to relate to a community or hapu rather than an iwi. The cultural focus of such a community will be a marae or a number of marae which will be administered by trustees appointed by the Maori Land Court. Whilst the trustees have authority by way or an order of the court, they do not constitute a body corporate. See Waitangi Tribunal 1992 p 256.

The Trust has issued three requirements for heritage orders: the Hoffman Kilm, Balclutha, an archaeological site at Athenree, Bay of Plenty; and Ellisons Chambers, Auckland. Fifteen protection notices issued under the HPA 1980 have continued under the RMA as heritage orders. Several territorial authorities have placed heritage orders on historic buildings including:

- the Queenstown Lakes District Council on the Archer Cottage, Queenstown; and the Postmaster's House and Post Office, Arrowtown;
- the Gisborne District Council on the former Eastern Co-op Building, Gisborne.

Water conservation orders

A water conservation order could be used for historic and cultural heritage protection of any water body as an order may provide for the protection of characteristics which any water body has or contributes to, and which are considered to be outstanding, including "for recreational, historical, spiritual, or cultural purposes" (s 199(2)(b)(v) RMA). Any person may apply to the Minister for the Environment for the making of a water conservation order and the Minister may appoint a special tribunal to report on the application or reject the application. Following the report from the special tribunal and a Planning Tribunal inquiry, the Minister may recommend a water conservation order in respect of a water body.

A7.2 Historic Places Act processes

HPA Register

The HPA Register is primarily a source of information that can be used to identify heritage items and advocate for their protection. It is maintained by the Trust as part of their Output 1 (exercise of statutory instruments) Crown Purchase Agreement. The Trust or any person may propose the registration of any historic place or area and any person may apply to the MHC to have any wahi tapu or wahi tapu area entered on the Register (see Appendix A5.2 for information on the assessment and registration process).

The Trust exercises a discretion as to whether it follows the interim or final registration process depending on the degree of threat to a historic place or area. Interim registration of a historic place or area or a wahi tapu has the same effect as a notice of a requirement for a heritage order and no alteration or modification of the heritage item can occur without the approval of the Trust. In effect, interim registration protects an item for up to six months to allow a period of negotiation of appropriate protection measures and to allow for the research and assessment of significance of a place under potential threat while it is considered for final registration. Interim registration lapses when final registration is confirmed or six months after the date of interim registration. In contrast, final registration provides no protection for any place or area (eg between 1980 and 1994, 440 registered historic buildings were demolished) (NZHPT 1994b).

The Auckland Civic Trust believes that the action of the Trust to provide final registration of the Gluepot Hotel and the Westfield Chimney (see Background Report) before the expiry of the interim registration after six months, led directly to the destruction of these items rather than to their protection. It was alleged by the Civic Trust that the constructive use of the six months allowed under interim registration could have provided sufficient time to negotiate a solution that could have resulted in the conservation of the items (Auckland Civic Trust letter to PCE June 1995).

In terms of resource management, planning and consultation issues relating to heritage resources registered under the HPA, the Trust Board has allocated prime responsibility for items in Category I of

the historic places component of the Register to Head Office staff and regional officers, whilst items in Category II are the primary responsibility of Trust regional officers and the 22 branch committees. Items in the wahi tapu component of the Register are the responsibility of the Maori Heritage Unit (NZHPT 1994a).

Linkages between HPA, RMA and the Building Act 1991

The Trust is obliged to supply a territorial authority with a record of registered historic places in that district and of any relevant heritage covenants (s 34 HPA). The territorial authority will make those records available for public inspection. The Trust is able to make specific recommendations to territorial authorities as to appropriate measures that the territorial authority should take to assist in the conservation and protection of historic areas and wahi tapu areas (ss 31 & 32 HPA). The territorial authority must have particular regard to those recommendations but is not obliged to act on them. A consent authority under the RMA shall serve on the Trust any application that relates to land subject to a heritage order or otherwise identified in the plan as having heritage value or that affects any item on the HPA Register.

Section 27(2) of the Building Act 1991 requires a local authority to keep records including any information received from the Trust. A territorial authority must notify an applicant of the presence of any registered item when issuing a Project Information Memorandum (PIM) or a Land Information Memorandum (LIM), and inform the Trust within five working days of the receipt of any application for a PIM, LIM or building consent that affects any registered item on the HPA Register. Some councils interpret the provisions of the Building Act and the information that can be included in a PIM as only that relating to Building Act matters but other information such as heritage information could be included.

For LIM, some councils have online property databases on which the contents of the district plan schedules and HPA Register have been entered, enabling immediate access. Others rely on manually checking the district plan and records of archaeological sites. For the above system to work there is an assumption that firstly the Trust has sufficient information and has adequately notified local authorities of places on the HPA Register, and secondly that local authorities routinely provide the Trust with applications for PIMs, LIMs and consents that affect items on the Register.

A significant issue for built heritage is that some councils choose to have no rules and resource consent provisions for building alterations in a district plan. Instead they rely on Building Act provisions for informing the Trust on applications for PIMs, buildings consents, the issue of PIMs. However these provisions do not allow the Trust sufficient time to consider the implications of a proposal and address heritage conservation issues. It is more appropriate that any major alteration that will affect significant heritage features should be a discretionary activity under the RMA in order to allow for an application for a resource consent to be declined.

HPA authorities

The HPA provides that archaeological sites may not be destroyed, damaged or modified without the authority of the Trust (s 10 HPA). There is a common agency and public misconception that this provision protects archaeological sites but, in reality, the HPA authority provisions are a form of consent process with the ability to recover information, monitor the rate of loss and provide scope for negotiation towards compromise in some situations. Information recovery is more important for archaeological sites than for other forms of historic and cultural heritage in New Zealand. Section 10 HPA may provide some degree of passive protection for obvious sites where landowners decide not to disturb a site in order to avoid having to apply for an authority.

In 1995, the Trust processed 85 HPA authority applications. For most of these the Trust required further information from the applicant. Three decisions were appealed with one resolved through mediation with amendments to the HPA authority. The other two appeals went to the Planning Tribunal. Twelve site visits were made in relation to the setting of conditions of an authority (NZHPT 1995 p 20).

Landowners are often advised by a territorial authority or regional council that an application for an authority under the HPA may be required. A landowner then contacts the Trust directly and the Trust may then liaise with the council. Where the archaeological site is scheduled in a district plan or regional plan, an additional consent may be needed under the RMA. There is no guidance provided by either the RMA or HPA as to the sequence for obtaining a resource consent or an HPA authority.

An HPA authority issued under the HPA 1993 is deemed to lapse on the expiry of two years after the date of the granting of the authority. However there is no such provision for authorities issued under previous Acts. The Trust is not able to reassess the granting of these authorities which, when actioned, may have major effects on the heritage values, as was the case with authorities affecting the Auckland Stonefields (see Background Report). In part this issue has resulted from the lack of any sunset clause on authorities issued under former Acts.

Process

Any person who wishes to destroy, damage or modify an archaeological site must apply to the Trust for authority to do so (s 11 HPA). The information which an applicant has to include with their application includes an assessment of any archaeological, Maori, or other relevant values and the effect of the proposal on them, and details of consultation with tangata whenua (s 11 HPA). The Trust may also require further information if sufficient information has not been supplied. An application for a general authority may be made under s 12 HPA where a person wants to destroy, damage or modify all the sites in a particular area or all of a certain class of site within a particular area.

The Trust has prepared a set of guidelines for the provision of archaeological information and the assessment of applications for authorities under the HPA. The Trust requires a description of the site over which an authority is sought; an assessment of the archaeological and cultural values; and an assessment of the effects of the activity on those values (Gumbley 1995).

The Trust may grant an authority, in whole or in part; decline to grant an authority; or grant an authority on conditions. The Trust may review the conditions upon which it has issued an authority at any time. For any purposes consistent with the Act, the Trust may carry out an archaeological investigation of any site or authorise any other person to do so (s 18 HPA), although no investigation may be carried out without the consent of the owner or occupier, and, where the Maori Heritage Council considers appropriate, any iwi authority.

Consultation required under the HPA in the consideration of applications for authorities

Section 11 HPA requires an applicant to include in the information accompanying the application a statement as to whether consultation with tangata whenua and any other person affected has taken place, and if so, details of such consultation including the identity of the parties involved and the nature of the views expressed; if no consultation has taken place the applicant must provide reasons. The Trust (s 11(3) HPA) is able to require an applicant to supply further information.

Matters to be taken into account in considering an application

The HPA does not set out matters to be taken into account in considering an application; this is in contrast to resource consent provisions (s 104 RMA). It is not clear whether the Trust can have regard

to the values of the wider area surrounding an archaeological site. The breadth of the matters of the HPA (see Appendix 3) taken together with the recognition in the Act of the importance of areas surrounding historic places and wahi tapu, implies that consideration of the heritage values of a specific site can often not be made without reference to the values of the wider areas surrounding the site.

Appeal

Any person directly affected by a declaration or decision of the Trust may appeal to the Planning Tribunal (s 20 HPA). However a recent Planning Tribunal decision has held that a body corporate such as a Maori Trust Board is not a person directly affected, although its beneficiaries may be (*Ngatiwai Trust Board v NZHPT* [1996] NZRMA 222). The matters which the Planning Tribunal may consider on appeal from a decision of the Trust include:

- the historical and cultural heritage value of the site and any other factors justifying the protection of the site;
- the purpose and principles of the HPA;
- the extent to which protection of the site prevents or restricts the existing or reasonable future use of the site for any lawful purpose;
- the interests of any person directly affected by the decision.

HPA penalties

The penalty provisions of the HPA are contained in Part V of the HPA. Every person commits an offence who intentionally destroys, damages or modifies any historic place, area, property, or archaeological site under the control of the Trust or without an authority from the Trust. In the case of destruction of a site, the fine may be up to \$100,000 and in the case of damage or modification of a site, the fine may be up to \$40,000. Where the owner or occupier of any land or place subject to a requirement for a heritage order or a heritage order issued by the Trust or interim registration is convicted of an offence, then a court may make an order suspending for up to five years the exercise of any rights under a resource consent or the carrying out of any activity permitted under a district plan (s 105 HPA).

Non-compliance with HPA provisions continues to be reported although the Trust lacks staff to investigate offences and the Trust's Crown Purchase Agreement does not provide for the Trust to prosecute offenders. The Crown Law Office and DOC will no longer initiate prosecutions under the HPA (NZHPT 1995). The lack of adequate information and the inadequate examination of archaeological records has resulted in historic sites being lost through inappropriate development. For example:

- where subdivision consents are granted and the developer is not informed of the possibility of archaeological sites being located on the property;
- where sites are recorded on the NZAA File although they are not recognised in the district plan;
- where detailed planning and liaison had occurred between consultant planners, iwi authorities and heritage agencies but sites are still destroyed.

For large scale developments the maximum fine of \$100 000 under the HPA is low and they can be built into the cost of a development. Additional penalties for the illegal destruction of a historic place could include that a court order the suspension of the exercise of any rights under a resource consent or the carrying out of any activity permitted under a district plan for up to ten years. This provision would widen the existing HPA provision that only applies to sites protected by a heritage order or interim registration and would be similar to current New South Wales provisions.

Heritage covenants

The Trust may negotiate with the owner or occupier of any historic place, area or wahi tapu for the execution of a HPA heritage covenant to provide for the protection, conservation, and maintenance of that place, area or wahi tapu (s 6 HPA). The execution of a covenant does not prevent the Trust from exercising any powers under the RMA or the HPA in relation to that place, area or wahi tapu (s 7 HPA). Where a heritage covenant is registered against the title of any place it binds subsequent owners of the land (s 8 HPA). The Trust has negotiated 40 heritage covenants with the majority at the initiative of the private owner. A few have been placed on sites owned by public or commercial bodies as a result of public pressure or government decree. The Trust is currently unable to monitor compliance with the terms of HPA covenants.

Covenants may also be placed on private land under the Reserves Act 1977, the Conservation Act 1987, and the Queen Elizabeth II National Trust Act 1977. The covenant is recorded on the land title and Reserves Act covenants bind future landowners.

A7.3 Te Ture Whenua Maori (Maori Land Act) 1993 Maori reservations

Te Ture Whenua Maori (Maori Land Act) 1993 provides for Maori reservations to be set aside for a wide range of purposes, including places of cultural or historical interest (s 338). Landowners of Maori freehold land and general land and the Minister of Maori Affairs (in the case of Crown land) may apply to the Maori Land Court to have the land set aside. Maori reservations may also be held for the common use and benefit of people of New Zealand (s 340). Before issuing a recommendation that such a reservation should be made, the court must be satisfied that it is in accordance with the views of the owners and that the local authority consents to it. Implementation of the court's recommendation is through the Chief Executive of Te Puni Kokiri, by notice in the Gazette.

Once the land has been set aside, the Maori Land Court may vest it in trustees, who may be a body corporate or two or more people. The powers of trustees will be determined by the trust order. The rates on Maori reservations for natural, historic or cultural conservation purposes may be remitted or postponed under s 179 Rating Powers Act 1988.

As they applied under the former Maori Affairs Act 1953, these provisions were seen by the Waitangi Tribunal to be well suited to the administration of wahi tapu:

- the reservation can be achieved inexpensively and, for the purposes of the court, does not require survey;
- there are no specific requirements as to how a Maori reservation should be described;
- the gazette notice may be in Maori. The notice could set out, within the community's own traditions, where the wahi tapu is located by reference perhaps to a journey to the place, and traditional landmarks such as rocks and trees, which may be known to them by name. Should access be required, the court may grant an easement with equal informality;
- for owners of general land, compensation may be discussed during the court hearing;
- the whereabouts of wahi tapu may need only be a matter between the landowner and Maori.

The Tribunal adds that "in the relative privacy of the Maori Land Court, without fanfare to the public to whom the matter is of no particular interest, places of significance to Maori can be protected in accordance with their traditions and with a minimum of expense" (Waitangi Tribunal 1992 p 254-55). The only problem noted by the Tribunal is that some district land registrars require the deposit of a survey plan before registering the Gazette notice. The Tribunal saw no need of this requirement as a Maori reservation is not a subdivision. It considered that this "bureaucratic obstacle" should be removed.

A7.4 Specific legislation - Kerikeri National Trust Bill

The Kerikeri Basin, Northland, contains a unique combination of Maori and European historic places. The area contains the earthworks of Kororipo Pa and buildings from the mission station that was established in 1819. Kemp House (1822) and the Stone Store (1836) are the two oldest buildings in timber and stone respectively in New Zealand (Pickmere 1995). The historic and rural character of the basin is threatened by urban development and the stonework and masonry of the Stone Store is in a poor condition. The risks to the Stone Store include vibrations from nearby road traffic, and periodic flooding by the Kerikeri River; also a relatively mild earthquake could demolish the building (F Clunie, NZHPT, pers. comm. 1995).

The Kerikeri Community Board, the Stone Store Preservation Society, the Society for the Preservation of the Kerikeri Stone Store Area and the Stone Store Action Group have taken considerable interest in the area for many years. Longstanding concerns about the inability of existing heritage management authorities to coordinate administration and protection of the area resulted in a proposal to create a national trust for the Kerikeri Basin. John Carter, the local Member of Parliament, introduced the private member's Kerikeri National Trust Bill which is intended to establish the Kerikeri National Trust (KNT) to preserve, protect, administer, and promote the historical, cultural and natural heritage of the Kerikeri Basin. The Bill will also empower the KNT to develop heritage tourism in the basin.

A Board of Trustees includes representatives from key agencies and groups. The Bill establishes the KNT as a heritage protection authority under the RMA, and the KNT will have the power to make bylaws that are not inconsistent with the Act to provide for the control of the use, management and conservation of the area and any structure. The Trust and DOC will continue to have management responsibilities but the agencies will report to the KNT who will develop and administer heritage tourism activity. Potential funding for the KNT includes money appropriated by Parliament, public contributions, and money received from the provision of services.

Currently the Bill is at the Select Committee hearing stage. The development of the KNT Bill has been supported in principle by the Trust although there are other means of achieving the desired results. DOC support the objectives of coordinated management and integrated planning for the area but integrated management is not supported. Te Puni Kokiri considers that the Bill seeks to dilute very poignant wahi tapu and significant site issues. Whilst it is not opposed conceptually, the KNT needs to develop on an equal partnership basis (TPK letter to PCE April 1996).

In general, the appropriate agency to administer historic areas such as the Kerikeri Basin would be either the Trust or DOC and this could occur under existing legislation. However the Bill was proposed because the failure of key agencies to implement a coordinated management plan and provide for the future conservation of the area. There are also many local interest groups involved with the area. Where there is a contiguous area of significant historical and cultural importance with several regulatory bodies and interest groups, a discrete National Trust with specific legislation may be a better coordinating agency. The recognition of the need for a process for integrated planning and coordinated management by different heritage agencies and groups is highlighted by the Bill.

The Stone Store has been closed since August 1994 because of concerns about its structural safety. A conservation plan was prepared by the Trust and, after public comment, it was approved by the Trust Board in July 1995. The cost of repairs for the store has been estimated to be more than \$1 million. Funding for restoration work was sought by the Trust from the Lottery Grants Board, the ASB Charitable Trust and other agencies and in February 1996 the ASB Charitable Trust donated \$1 million to the Trust for the conservation of the Stone Store. This funding will allow for conservation work on the Store to be performed over the next 18 months.

A key issue involved with the longer term protection of the Stone Store is obtaining funding for the Kerikeri Basin road bypass. The bypass is required to allow the stabilisation of the Stone Store. The proposed bypass would be a local road and the responsibility of the Far North District Council (FNDC). For FNDC traffic management purposes, the road does not rate as a high priority as reflected in the benefit-cost ratio for the proposal which may not meet the required cutoff for a Transit New Zealand (TNZ) subsidy. The Regional Land Transport Committee in the Far North may recommend to TNZ that it give the project a higher priority than that based on the benefit-cost ratio because of the Stone Store. However this is not necessarily advantageous to the FNDC who will have difficulty in meeting the local share under an accelerated timetable. Engineering consultants are undertaking a detailed site inspection for the FNDC and are preparing a submission to be sent to TNZ at the end of the 1995/96 financial year (FNDC letter to PCE February 1996).

A7.5 Financial incentives

There are many different forms of financial incentives including tax incentives, rates relief, transferable development rights, subsidies, heritage grants, and the waiver of resource consent fees. Some of these approaches, such as tax incentives for heritage protection and management, have not yet been used in New Zealand but they have been overseas (see Background Report). There is potential to use these mechanisms to protect all types of historic and cultural heritage. The use of a financial incentive like rates relief to complement regulatory mechanisms would assist the overall protection of heritage.

In January 1994 the South Island branch of the Building Owners and Managers Association (BOMA) and the Trust jointly resolved to examine possible incentives for the preservation of heritage properties. A task force was formed to examine the issue and the aim was to propose ways of providing practical assistance to property owners in order to preserve and conserve historic places in terms of the HPA. The recommendations from the task force included:

- the need to improve market awareness of the value of heritage properties through research of alternative uses, the promotion of historic tourism, and the publication of specific guidelines and options for heritage properties to comply with the Building Act and earthquake regulations;
- the need for central government assistance for the preservation of heritage properties including a tax deductible building depreciation allowance, the Trust to coordinate the Mainstreet New Zealand programme, support for the Trust acquisition and maintenance of registered places, and encouragement of local authorities to support the preservation of heritage buildings;
- the need for local authorities to provide financial assistance for the preservation of historic buildings through heritage funds, rates relief, the waiver of fees and the encouragement of owners to preserve heritage properties (Historic Places Task Force 1995).

Tax incentives

Tax incentives, like tax rebates or investment tax credits, can provide a powerful mechanism to assist the protection of heritage and these approaches have been used in several countries such as Australia and the United States of America (see Background Report). The Trust has approached Government since 1984 about the use of a tax incentive for heritage protection but this has not been supported.

Rates relief

Section 180(G) of the Rating Powers Act 1988 provides that local authorities may develop policies to remit or postpone rates on land voluntarily protected for natural, historic or cultural purposes. Section 179 of the Act provides for remission or postponement of rates for land specified in the Second Schedule including land owned or occupied by a trust or society for conservation or preservation purposes, not used for private pecuniary profit and where the general public are allowed access. It also

applies to land subject to a heritage covenant under s 6 of the HPA, QE II open space covenants, and Reserves Act and Conservation Act conservation covenants.

In part, the provision of rates relief for heritage protection hinges on the interpretation of "land voluntarily protected". If the conservation is because of a district plan rule or condition of consent, then it can be argued that this is not "voluntary" protection. Further research into this issue is needed with a possible amendment of the Rating Powers Act.

Transferable development rights

The demolition of inner city buildings to enable the construction of new commercial tower blocks is a serious threat to the heritage of major cities. This is because many heritage buildings have limited development potential compared to the rentable commercial space of a new high rise.

To combat the above problem, Transferable Development Rights (TDRs) can allow for the owner of a heritage building to transfer the potential development space to another site. A district plan could establish various height limits on building development space and the amount of space that could be transferred could be set on the actual floor space or a percentage of the total site. The offering of incentives for the use of TDRs and the banking of TDRs for future development are also possibilities to encourage appropriate commercial development at a suitable time.

A problem with TDRs is that development can be transferred to another area or site and crowd out heritage buildings. Recipient sites have to be carefully identified. The preparation of an approved conservation plan and the negotiation of covenants on heritage sites before a TDR is granted can assist long term protection.

Heritage assistance funds

In contrast to the situation for historic and cultural heritage there are many different sources of funds for natural heritage conservation (eg Queen Elizabeth II National Trust, Forest Heritage Fund and Nga Whenua Rahui). However no dedicated national heritage fund for land acquisition and for the maintenance and protection of historic and cultural heritage values. The Trust Assistance Fund provided grants to owners of historic properties to assist the conservation, registration or protection of the property but the fund is being disestablished because of financial constraints (NZHPT 1995).

The Queen Elizabeth II National Trust (QE II NT) Act 1977 is to encourage and promote the provision, protection and enhancement of open space for the benefit and enjoyment of people in New Zealand. Open space is defined widely in the Act as "any area of land or body of water that serves to preserve or to facilitate the preservation of any landscape of aesthetic, cultural, recreational, scenic, scientific or social interest or value". The QE II NT negotiates open space covenants with landowners, and the covenants are registered on the land title. The QE II NT accepts gifts or bequests of land and money to enable it to purchase land or offer financial assistance towards survey and fencing of covenanted areas. Covenants on private land have been used to protect forests, tussock grasslands, wetlands, lakes, geological formations and archaeological sites. For example, covenants have been used to protect a remnant forest and pa site at Awakino.

The Forest Heritage Fund (FHF) funds the voluntary and permanent protection of representative, unique and threatened areas of indigenous forest and associated vegetation on private land. The FHF protects forest through management agreements or covenants on private land, assistance with fencing and survey costs, land purchase and the creation of reserves. The ecological and cultural values of a forest are evaluated against the costs of protection. Nga Whenua Rahui encourages Maori owners of indigenous forest to formally protect their tikanga, sustainably manage the forest and protect the spiritual

relationship of people with the forest. Each application is assessed taking into account spiritual, cultural and ecological values and a recommendation is then made to the Minister of Conservation.

Waiver of resource consent fees

A council is entitled to charge for performing its functions in relation to the receiving, processing and granting of resource consents (s 36(1)(b) RMA). However there is some concern about the ability of councils to provide specific relief from resource consent fees that apply where a building or site has been listed in a schedule in a district plan because of its heritage values. Because of the item having been listed in a schedule, a landowner is required to obtain a resource consent for certain activities that may be proposed for it. Section 36(5) RMA provides that "a local authority may, in any particular case and in its absolute discretion, remit the whole or any part of any charge of a kind referred to in this section which would otherwise be payable". Such a provision should allow a council to provide relief from charges for resource consents for listed items although it will largely depend on the attitude of the council towards "user pays" and cost recovery. To avoid any doubt about the legality of remitting a charge, s 36 RMA could be amended to explicitly recognise that where a community imposes an obligation on a landowner to seek a resource consent for a particular activity through the scheduling of a item in a district plan, there would be no charge for any resource consent application.

The issue of waivers of fees for building consents has arisen at Christchurch City Council. The Building Act requires that actual costs are charged and levies made on behalf of the Building Industry Association and Building Research Association of New Zealand (BRANZ). The council is investigating whether its current policy of waivers could be altered to allow the council's heritage fund to reimburse the charges required under the Building Act.

A7.6 Expert advice

The provision of expert heritage conservation advice by heritage agencies can assist the recognition and protection of heritage and increase public awareness of heritage issues. Some councils provide detailed information on heritage conservation approaches and heritage protection. The key role of the Trust can be in the provision of expert heritage advice on heritage protection approaches and methodologies provided from a national perspective although there is an inadequate regional presence by the Trust to offer full technical support for all local authorities. In some situations there have been partnerships between councils and the Trust or DOC, but these are informal and relate to heritage studies rather than major projects (see Appendix 6). In many of these studies, the Trust and/or DOC provided expertise and information, and the councils contributed money and staff time.

In 1994 the Trust prepared a Cultural Heritage Planning Manual for circulation to all local authorities. The manual reviewed various aspects of cultural heritage planning and provided advice on protection measures and potential district plan provisions. It has been an important and effective mechanism for the Trust's recent goal of providing comment and submissions on RMA policies and plans. It has been of assistance to local authorities and especially those which lack dedicated heritage staff.

Design guidelines

Council design guidelines that describe acceptable building designs and features can provide landowners, developers and architects with some indication and certainty of what is desired by a council. Through the provision of prescriptive standards and advice, guidelines can assist carefully controlled change of buildings while retaining some flexibility.

Design guides were first used as planning controls by a small number of local authorities in New Zealand in the early 1980s. A comprehensive design guide can provide a clear statement about appropriate urban design while allowing for a council to exercise some discretion and a flexible approach to assessing different designs (Mitchell & Brown 1995).

Conservation plans

A conservation plan is a two stage methodology to investigate the heritage values and significance of heritage places, and develop conservation policies to conserve the place in an appropriate manner to ensure that the heritage values are retained and enhanced (Bowman 1994). In most situations, heritage buildings are best preserved when they have a viable purpose and future use to fund on-going maintenance and protection. Protection must be financially viable and some modernisation will generally be required to enable an adaptive reuse of a building to conservation standards.

The preparation of conservation plans should be mandatory for significant places as they can be used for identification of a historic place, provide for the restoration of a place to its original character and ensure its long term protection and use. The ICOMOS New Zealand Charter promotes the development of conservation plans which meet the principles of the charter. The preparation of a conservation plan before redevelopment proposals are commissioned can ensure that the historic values of any place are given due recognition.

Most major city councils require the preparation of appropriate conservation plans for significant heritage buildings. The policies of the Environment and Heritage Distribution Committee of the Lottery Grants Board state that funding is only available for conservation work including restoration where an appropriate conservation plan has been prepared. The plan has to be prepared by a conservation architect who is a member of the New Zealand Professional Conservators Group or recommended by them or the Trust and in association with the applicant (NZLGB 1995a).

In October 1995, the Auckland City Council, ICOMOS New Zealand and the Auckland Civic Trust co-hosted an international conference on conservation planning with particular emphasis on the concept, preparation and use of conservation plans. The Trust has developed guidelines for preparing conservation plans (NZHPT 1994c).

A7.7 Lottery Grants Board Funding

The Lottery Environment and Heritage Distribution Committee (LE&HDC) of the New Zealand Lottery Grants Board is a source of discretionary funding for community-based natural, physical and cultural heritage projects. Funding is only available to non-profit making, charitable organisations. The mission of the LE&HDC is to promote, protect and conserve New Zealand's natural, physical and cultural heritage. The fund supports projects that have a charitable purpose and that will enhance the wellbeing of New Zealanders and their communities (NZLGB 1995a).

The LE&HDC accepts applications for the conservation and preservation of places associated with the physical heritage of New Zealand where the project is essential to the preservation of the place. Projects may include buildings, structures, marae, archaeological sites and wahi tapu. Any level of funding may be applied for, although priority is given to applications where at least one-third of the funding for a project is already obtained. Priority is given to places registered by the Trust and local authorities, and places identified by the community as having significant heritage value. Places may be of local, regional or national importance.

LE&HDC take into account whether or not a project will contribute to the LE&HDC mission, the level of compliance with conditions on previous grants, an assessment of the significance of the project, the extent of community support, an examination of alternative funding sources, local funding support, confirmation of existing funding and consultation with tangata whenua. The LE&HDC will not fund individual applicants, projects that have already been completed or administration costs and salaries. The LE&HDC liaises with other agencies to ensure the development of complementary policies and the efficient use of funding. In considering applications, account is taken of the requirements of the RMA, HPA and standards of good practice such as those in the ICOMOS New Zealand charter for the conservation of places of cultural and heritage value.

LE&HDC does not fund the purchase of land or buildings, except where applicants can demonstrate that the project is of exceptional conservation or historic merit. There are no criteria to define "exceptional conservation or historic merit". Funding will not generally be available for building historic replicas, amenities, historic gardens and maintenance that is not part of a restoration project.

All funded projects must have a conservation plan prepared by a conservation architect who is a member of the New Zealand Professional Conservators Group or recommended by them or the Trust in association with the applicant. Conservation plans for archaeological sites and wahi tapu sites need to be prepared by an archaeologist recognised by the Trust and in association with tangata whenua.

In 1994/95 the physical heritage fund received 70 applications totalling over \$9.4 million and the LE&HDC made 55 grants available for funding physical heritage projects totalling \$3.9 million including funding of the Trust for \$1.7 million (NZLGB 1995b). Significant funding included conservation of Saint Matthew's in-the-City, \$500,000; Canterbury Museum shelving, \$200,000; Sacred Heart Basilica Restoration Trust, Timaru, \$178,000; stabilisation and restoration of the Williams Cottage by the Queenstown Heritage Trust, \$100,000; Turnbull House restoration, Department of Conservation, \$97,000; survey of South Island rock art sites by the Ngai Tahu Maori Trust Board, \$90,000; restoration of a pipe organ by the Vestry of the Parish of Saint Matthew, Hastings, \$74,100; relocation and reinstatement of the Peacock fountain, Christchurch City Council, \$62,000; (NZLGB 1995b). Saint Matthew's in-the-City, the Williams Cottage and the Sacred Heart Basilica, Timaru, are all Category I places on the HPA Register.

Funding for cultural heritage projects associated with museums, galleries and heritage research included Auckland City Art Gallery, \$259,639; Auckland Institute and Museum, \$287,306; preservation of Clifton Firth photographic collection by the Auckland Library Heritage Trust, \$100,000; New Zealand Library and Information Service research of Maori attitudes and experiences to heritage, \$40,000; Kawerau A Maki Trust to establish a historic data base, \$15,000; Mainstreet Hastings Inc heritage study, \$10,000; Upper Hutt City Council heritage site verification \$9,000; (NZLGB 1995b).

In 1995/96 LE&HDC was allocated \$9.6 million by the Lottery Grants Board to distribute according to its policies and criteria. Of this total, \$3.4 million was available for funding physical heritage projects and \$3.4 million for cultural heritage projects (NZLGB 1995a).

The LE&HDC is reviewing its relationship with a number of key providers of cultural and historical heritage programmes that it funds, including the Trust (see Chapter 3.3). LE&HDC has established a comprehensive process for considering applications including, seeking advice on projects initiated by the community. The LE&HDC consults with experts outside the Trust because the Trust does not have any qualified conservation architects or Maori conservators on its staff.

Important issues associated with LE&HDC funding include:

- whether Lottery Grants Board funding should be used for the restoration of government-owned buildings (eg Turnbull House) when it is not prepared to fund the Trust for government-owned properties;

- whether Lottery Grants Board funding should be used for core activities of local authorities (eg the establishment of heritage databases and heritage surveys) when it is not prepared to fund the Trust;
- should Lottery funding be available for government and local government projects;
- which agency should maintain oversight of the establishment of databases at local levels that are funded by the Lottery Grants Board;
- the very limited review of grants and the achievement of objectives; because although recipients must complete a declaration outlining grant expenditure, in 1994/95 only two out of 224 grants were reviewed;
- whether a member of ICOMOS New Zealand should be appointed to the LE&HDC.

A7.8 Heritage acquisition and public ownership

The ownership of a historic place is generally seen to provide for the greatest control by a heritage agency. However acquisition costs, initial restoration costs and ongoing management costs limit the amount of heritage that can be protected in this way. The limited availability of national funding for acquisition and initial restoration of heritage resources by national agencies is a major impediment on the purchase and protection of heritage resources. A revolving fund, where a site or building is purchased by a heritage organisation and then resold with a protective covenant or leased, can provide a method of continually generating funds for heritage protection provided there is sufficient initial investment capital. Revolving funds could be established at the national and local level.

The Trust and property ownership

The Trust has a function “to manage, administer, and control all historic places, buildings, and other property owned or controlled by the Trust or vested in it, to ensure the protection, preservation and conservation of such historic places, buildings and other property” (s 39(e) HPA). The Trust has a custodial role for 58 properties nationwide which it owns, controls or manages sometimes in conjunction with other agencies. These properties have been acquired since 1959 with the majority of property acquisitions in the 1970s. In 1982 the Trust declared a moratorium on accepting further properties as bequests because of increasing management costs and falling visitor numbers. Many early acquisitions were in the north of the North Island and featured early contact-era properties although the mid-1970s saw a switch to acquisitions in the South Island, industrial buildings and structures to improve the balance of the portfolio. Three South Island properties were acquired for restoration and resale.

In 1969 the Auckland City Council purchased Ewelme Cottage and transferred control to the Trust and in 1977 the Trust and ACC purchased half shares in Highwic. Attempts by the Trust to replicate these types of partnerships with local authorities over the joint purchase and management of properties have had limited success.

The Trust recognises that its property portfolio is not representative of the different types of heritage in New Zealand. Since 1993 in response to this and to attempt to rationalise its holdings because it cannot provide for the continued management for all properties, the Trust has been conducting a property review. The Trust Property Division is largely funded by Lottery’s Environment and Heritage Distribution Committee with some funding from Government for the management of selected properties. Lottery funding is currently under review.

Department of Conservation

The Department of Conservation has a significant number of heritage properties on the conservation estate including 119 historic reserves and 68 places registered under the HPA. Among the HPA registered historic places are significant national heritage items such as Mansion House, Kawau Island;

Fort Jervois, Ripapa Island; and Kawarau suspension bridge, Otago. DOC also administers the Old Government Buildings and Turnbull House in Wellington. The Department of Internal Affairs also has a heritage property unit which administers significant heritage buildings including Premier House and Vogel House in Wellington.

Local authorities

Under s 601A Local Government Act, a council may take, purchase or otherwise acquire land or buildings within the district that in the opinion of the council are of national, regional, or local historic interest and furnish and equip any such buildings and maintain, improve and develop any such land or building.

Most councils own some historic buildings and these are often public buildings that are still in use for council chambers, museums and libraries. Often, the fact that the building is historic is incidental. Property and/or City or District Development departments are usually responsible for buildings owned by councils. Maintenance is carried out in the normal course of usage and generally in accordance with the provisions of the district plan. Bridges and other structures are usually the responsibility of works departments and are managed in accordance with the provisions of the district plan.

Many parks and reserves vested in councils contain buildings, archaeological sites, and Maori traditional sites. Often, these heritage items are incidental to the acquisition of the land for some other purpose. Responsibility for the management of these may be with a Community Development/Services department or a Parks department. In the case of reserves, a reserve management plan is prepared and this should deal with the protection measures needed to conserve the heritage items.

Many local historical societies and trusts own historic buildings, structures and land. In the Northland/Auckland area these societies include the Kaikohe & District Historical and Mechanical Society, Northland Regional Museum, Otamatea Kauri and Pioneer Museum, Wainui Historical Society Pioneer Village, Helensville & District Pioneer Museum, Onehunga Fencible Cottage, Howick Colonial Village, and the Oratia Folk Museum.

A7.9 Other protection approaches

The Mainstreet programme

The Mainstreet programme was developed in the United States of America in the early 1970s to counteract the effects of inner city decline and large scale suburban mall development. A key aspect of the programme is the participation of the community, the business sector and the local authority in a three-way partnership. The Mainstreet five-point plan focuses on:

- heritage: identifying historical and cultural sites and adopting them as a component of the identity of a town.
- business development: filling empty business sites, improving local business performance, and developing marketing strategies.
- landscape and design: physically enhancing the town by improving capital works.
- marketing and promotion: marketing the town and promotional events.
- operations and organisation: the management of all of the above (Remetis 1996).

The Mainstreet programme has been in New Zealand for approximately seven years and there are an estimated 100 projects nationwide. The Community Employment Group from the Department of Labour was originally responsible for providing advice and funding to Mainstreet projects although this involvement is ending. The National Board consists of members from various business interests and a

representative from the Trust. The primary focus has been on landscape, design and heritage buildings, with the business development aspects of the Mainstreet plan being largely ignored. Inhibiting factors have included:

- a building conservation focus and a lack of recognition for archaeological sites and cultural heritage;
- a lack of strategic reuse of buildings;
- inadequate community education on wider heritage issues;
- inadequate infrastructure to support or inform communities on heritage (Remetis 1996).

In New Zealand the results of the programme have been the revitalisation of areas and the conservation of older buildings and precincts. A notable success of the Mainstreet programme has been in Wanganui. The Wanganui City Council introduced the programme in 1991 to revitalise the central city, increase employment, improve the viability of existing businesses, encourage new business development, retain heritage buildings, and involve the community. The council supplied office space for Mainstreet organisers, undertook a public education programme, introduced a rating levy which is mainly used to promote the programme and provided financial incentives for restoration of buildings. The programme has received a high level of community support and is contributing to the city's economic development while saving heritage buildings (Mills 1993; Jones 1994).

Heritage Trails

Heritage trails are generally local initiatives. The response of councils to requests for assistance is variable. Participation is often linked to the council's role in tourism promotion and in supporting Mainstreet programmes, as the interpretation of historic places will assist their conservation.

A7.10 Comment on protection and compensation

The issue of adequate levels of compensation for regulatory protection of historic and cultural heritage can be a major source of conflict between landowners and heritage agencies. The provision of regulatory protection for historic and cultural heritage creates a direct conflict between private and public property rights, ie the rights of the individual and the rights of the community. Although there are both public and private benefits and costs from retaining or losing heritage resources. If it is accepted that compensation is required in certain situations where private rights are removed, the key issue is how to assess the public and private costs and benefits and who will pay the compensation.

There are many difficulties in attempting to value heritage resources with intrinsic and cultural values as the value cannot be determined solely by the market which reflects a more restricted set of "use" values (Piddington 1996). An objective assessment is required to take into account the scarcity value of the heritage resource and assess the relative importance of the heritage resource ie what has been retained or restored against that which has been lost or has deteriorated. As a concept for valuation purposes, the "highest and best use" of an asset is defined as "the most probable use of an asset which is physically possible, appropriately justified, legally permissible, and which results in the highest value of the asset being valued" (New Zealand Institute of Valuers Practice Valuation Standards 1995). However society modifies the highest and best use through legislation and the provision of financial incentives to enable the retention of a historic place (Nahkies 1995b).

Under the RMA, the availability of compensation is limited as s 85 provides that compensation is not payable in respect of controls on land. However, any person having an interest in land where any provision or proposed provision would render that interest in land incapable of reasonable use may challenge that provision. Where the Planning Tribunal determines that a provision or proposed provision renders any land incapable of reasonable use and places an unfair and unreasonable burden on any

person having an interest in the land the Tribunal may direct the local authority to modify, delete or replace the provision.

Section 85(6) RMA defines reasonable use only in relation to s 85 as: “the term “reasonable use” in relation to any land, includes the use or potential use of the land for any activity whose actual or potential effects on any aspect of the environment or on any person other than the applicant would not be significant”. The wording “reasonable use” continues the same wording as used in the Town and Country Planning Act 1977 and case law derived from the former legislation will continue to have relevance under the RMA. However there are no criteria in the RMA to guide what constitutes “reasonable use” or an “unfair and unreasonable burden”(s 85(3) RMA in terms of assessing the level of compensation that may be required.

In a similar tone, any person who has been refused consent to undertake an otherwise lawful activity on the affected land may appeal the decision of the heritage protection authority to the Planning Tribunal (s 195 RMA). In addition, a landowner affected by a heritage order may apply to the Planning Tribunal at any time for an order requiring the heritage protection authority to acquire the affected land under the Public Works Act 1981 (s 198 RMA). In considering an appeal of a heritage order the Tribunal shall have regard to “whether the decision has caused or is likely to cause serious hardship to the appellant” (s 195(3)(a)) and if the land is “incapable of reasonable use” (s 195(3)(b)). However no guidance is provided on what constitutes “hardship” or how this should be determined and this may limit the effectiveness of heritage orders.

If satisfied that the heritage order renders the land incapable of reasonable use, the Planning Tribunal may give the heritage protection authority the option of withdrawing its requirement or order the taking of land. If land is taken, compensation is payable by the heritage protection authority and the determination of compensation payable under s 198(5) is as if the heritage order had not been made, which would be in effect the current market value.

In *Shell Oil NZ v Wellington City Council* (W34/93), the Planning Tribunal noted that the structure of the Historic Places Act 1980 and the RMA heritage provisions indicated that an owner who is forced to spend money on a building it does not want to has redress by way of compensation under s 198 RMA when a heritage order is in effect. The Tribunal also commented that it was unacceptable for local authorities to seek to achieve preservation without compensation where a mechanism exists whereby the owner can be relieved of a building for the public good. However this comment was restricted to where land or buildings are rendered either useless or uneconomic by the actions of the authority concerned with resource management or building protection. In a recent decision on an application for the enforcement of a notice of a requirement for a heritage order on the Kaiapoi Woollen Mills building in Christchurch, Judge Skelton of the Planning Tribunal commented that councils may only be able to expect the Planning Tribunal to enforce heritage orders if they are prepared to give undertakings as to costs for damages that may subsequently arise. Here, although the Tribunal found there was no abuse of process, it expressed its dissatisfaction with the way that the council had dealt with the matter, as the building owners had entered into major financial commitments on the strength of a certificate of compliance and PIM issued by the council before it changed its mind and issued a requirement for a heritage order (*Chappell v Christchurch City Council* C11/96).

Compensation should be available in situations where all beneficial use of a resource has been deprived from an owner, and this will normally require public acquisition. However, in other situations where use is only restricted, compensation can take many forms including tax and rate relief, transferable development rights, and professional advice on maintenance and sympathetic development opportunities. Financial incentives could be used to provide compensation and balance the rights of the private owner with the good of the community.

The New York City Landmarks Law provides an interesting alternative approach to protection and compensation as an example of criteria that could be introduced. Under this legislation an owner has the right to present evidence to the Landmarks Preservation Commission that the 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 grant the relevant approvals (Vossler 1993).

Appendix 8

Protection approaches by selected agencies

A8.1 Introduction

In this appendix the heritage protection approaches taken by the New Zealand Historic Places Trust (the Trust), Department of Conservation (DOC), and a number of local authorities in the Northland and Auckland regions were examined, along with Wellington, Christchurch and Nelson City Councils and Tasman District Council (see Table A8.1).

The Trust has recently completed a major review of the provisions of new district plans under the RMA (Woodward 1996).

A8.2 Overview of selected agency protection approaches

Table A8.1 shows a range of agencies and the protection approach taken by each. The Trust and DOC have limited participation in providing for direct protection of heritage, especially on private land and rely more on indirect protection approaches such as:

- the making of submissions on proposed RMA policies and plans to provide for the recognition and protection of heritage;
- joint investigation and survey projects with other agencies;
- the provision of information to local authorities to enable them to supply some type of protection.

In 1994/95 the Trust provided advice on the conservation and protection of over 200 historic buildings (NZHPT 1995). In-house research and technical staff are involved in research in order to identify and maintain the HPA Register as well as in the conservation of the Trust's property portfolio. As part of the Trust's advocacy functions, its staff have an ongoing role in providing technical advice at all stages of statutory processes, conservation projects and archaeological investigations, both public and private. Staff also attend meetings, give lectures and talks and generally advocate heritage conservation values in public forums all over the country.

A8.3 Selected local authority protection approaches

Both regional councils and territorial authorities have responsibilities for managing and protecting historic and cultural heritage under the RMA, as discussed in Appendix 3. It is recognised that it is difficult to assess the effectiveness of heritage management approaches taken by different local authorities under the RMA given that policy and plan preparation is ongoing. However the provisions of proposed plans can be examined to assess if heritage is recognised as an issue and if there are appropriate provisions in annual and strategic plans.

In terms of the various councils examined for this report, participation in providing for heritage protection depends largely on their size and level of resourcing. For smaller less resourced councils, heritage is not seen as a primary resource management issue; limited attention is given to heritage protection and fewer protection mechanisms are used.

TABLE A8.1 Selected agency approaches to heritage protection

Schedule ¹	Conservation overlay zones	Heritage zones	Registers/ Inventory	Advice	Design guidelines	Heritage funds	Ownership and purchase policy	Financial incentives	Consideration of HCH during r/c applications
NZHT	Provide information for territorial authorities to do this.		HPA Register.	Yes. Cultural heritage planning manual. Submissions on plans.	Advice. Conservation plan guidelines.	Phasing out.	Yes. Reviewing holdings.	No.	Provide submissions.
DOC	NA.	NA.	Yes, for on estate.	Yes but limited.	NA.	No.	Yes.	No.	Provide submissions.
Northland R. Council prop. RPS	No.	No.	No. Proposed for coast.	No.	No.	No.	No policy.	No.	Yes.
Auckland Regional Council prop. RPS	Prepared for coast. In prep. for archaeological sites.	No.	Yes. For regional heritage and coast.	Yes, especially for archaeological sites. Assists territorial authorities to prepare CHIs.	No.	No.	Yes as part of parks network. No specific programme.	No. Auckland RPS supports development levies for heritage.	Yes.
Far North District	Yes.	Three cons. areas for Russell.	Yes.	Little.	Some DP provisions but not specific.	No.	No set policy.	Rates relief. Funding for Kerikeri Basin management plan.	Yes.
Whangarei District	Yes.	No.	No.	Little.	No.	No.	Policy to consider on request.	No.	Yes.
Rodney District	Yes.	No.	No.	Yes.	No.	No, would consider requests for funding.	No set policy.	Reserve contributions. Rates relief. Funding for Mainstreet projects.	Yes.
North Shore City (proposed DP)	Buildings & objects. Arch. sites. Maori traditional sites deleted after hearings.	Residential 3 zone for Devonport, Northcote, Birkenhead.	Regional CHI.	Design advice. Public information.	Voluntary guide for Residential 3 zone.	No.	Would consider requests for funding.	No rates relief but investigating. Consent fee rebates for listed heritage buildings. Council paid Mainstreet facilitator.	Yes.

Schedule ¹	Conservation overlay zones	Heritage zones	Registers/ Inventory	Advice	Design guidelines	Heritage funds	Ownership and purchase policy	Financial incentives	Consideration of HCH during r/c applications
Auckland City (proposed Isthmus DP)	Yes: 6 conservation areas: Grey Lynn, Mt Eden, Ponsonby.	3 special character residential zones.	Detailed inventory.	Architectural and heritage advice. Value management workshops.	Voluntary.	No but investigating	No set policy.	Free heritage advice. No rate rebates. Reduced r/c charges.	Yes. Conservation plans required for significant work to scheduled items.
Manukau City (proposed DP)	No.	3 residential heritage zones plus others.	Regional CHI. Register of Heritage.	Uses consultants for advice. Draft Cultural Heritage Strategy. Archaeological info. Advice notes on LIMs relating to heritage.	Voluntary. Investigating for residential and special character business areas.	Heritage Assistance Fund \$13,000 p.a.	Land acquisition strategy for public open space includes cultural heritage criteria.	Potential rate relief. Waiver of fees. Funding for Mainstreet projects.	Yes.
Wellington (proposed DP)	Yes. 6 character areas incl. inner city and residential suburbs.	Yes.	Yes. Detailed inventory.	Design guidance.	Statutory, in DP for precincts and areas.	Heritage fund and earthquake strengthening.	Yes.	Provision for fee waivers where consent is required for a recognised heritage building.	Yes.
Nelson (draft DP)	Yes. Inner city and residential heritage precincts.	Yes.	Yes. 1992 streetscape survey.	Public education, design guidance and heritage workshops.	Yes. For Inner city & residential precincts.	Yes. Heritage Fund.	Yes.	Investigating.	Yes.
Christchurch (proposed DP)	Central city zone, special amenity areas. Cultural zones.	Yes.	Yes. Detailed inventory.	Public advice. Education. Heritage week.	No.	Funding for maintenance. Revolving grant fund.	Yes.	Waiver of rates, levies and reserve contributions.	Yes.

NZ = not applicable DP = district plan.

HCH = historic and cultural heritage

CHI = Cultural Heritage Inventory.

r/c = resource consent

For more information on the content and protection offered by built heritage schedules, see Table A6.1.

Regional councils

The Northland Regional Council (NRC) focuses on the management of the physical environment. Apart from general heritage policies in the Northland Regional Policy Statement (RPS), the NRC has little involvement in heritage protection. In terms of its duties in the coastal marine area, the NRC is proposing to establish an inventory of historic wharves, structures and jetties in the coastal marine area in the medium term. The NRC has no systematic review process for resource consent applications to identify heritage items that may be affected by an application although the council does notify iwi (including hapu and marae committees) of all applications received which are within the rohe of the relevant body.

In contrast to the NRC, the Auckland Regional Council (ARC) identified historic and cultural heritage as a significant regional issue during the 1991 strategic plan process. The Auckland RPS takes an integrated approach to the management of heritage in the region and ARC intends to coordinate the management of regionally significant heritage sites. The ARC iwi planning team is arranging a series of hui to discuss with tangata whenua the preferred approach to managing Maori heritage in the region. The ARC has also been instrumental in sponsoring and arranging a series of regional heritage workshops for staff from all heritage agencies, tangata whenua and consultants. The workshops provide an opportunity to review current cultural heritage management and planning being undertaken in the region; to provide a forum to discuss issues and problems; and to identify key issues which need to be addressed and resolved. These meetings have been very successful and have increased interest in heritage protection and management issues.

The Auckland RPS proposed the development of a regional heritage plan to identify heritage resources and to provide a comprehensive strategy for the protection and enhancement of heritage resources but the need for this plan will be reviewed taking into consideration the suitability of policies in the RPS. The ARC is preparing a regional schedule of archaeological sites. The Auckland Regional Coastal Plan attempts to take a thematic approach to heritage through identification, evaluation and scheduling. The majority of applications for soil disturbance consents go directly to the regional archaeologist for comment. The ARC views heritage as a cross-boundary issue and lodges submissions with relevant local authorities.

Territorial authorities

Of the territorial authorities that were examined for this report, Auckland City has the largest heritage section with eight staff in the Urban Design and Conservation Division who can provide direct advice to the public and the council (see Background Report). Manukau City is currently restructuring and will have a multi-disciplinary heritage unit of approximately seven staff. North Shore, Wellington and Christchurch City Councils also have dedicated urban design sections that provide advice. Several councils noted that they considered that they could advocate effectively by modelling "best practice" in the management of their own heritage properties or heritage protection activities.

Small rural local authorities that were examined for this report do not have heritage specialists who could offer advice on heritage conservation and protection. These councils have a staff member, often a planner or policy analyst, who is responsible for heritage matters among other duties, and they provide some guidance to the public about heritage.

Strategic plans

For Manukau City Council (MCC), a draft Cultural Heritage Strategy provides an overview of heritage and sets out a comprehensive and integrated policy approach for Manukau City. The final status of the strategy has yet to be determined and it remains 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 (Manakau City Council 1995).

Strategic Heritage Planning will provide a mechanism whereby the total historic and cultural heritage that a community desires to protect can be assessed at regular five to ten year intervals. This would enable a coordinated approach to be taken for protection. A strategic perspective will take into account development trends and predictions of adverse effects on heritage including:

- deciding how much heritage to preserved;
- deciding what resources will be devoted to protection; and
- providing for the coordination of the size and location of protected heritage places.

Community partnerships

A community partnership approach has been proposed by Rosson (1996) to develop new pathways for partnerships between the Trust, Trust branches, local authorities, and the community to increase heritage conservation at a local level. A community heritage plan could be developed as each district's or city's vision of heritage conservation for the future. The plan would be similar to a annual or strategic plan or an iwi management plan. The plan would provide the opportunity to address problems where it is inappropriate to apply a regulatory approach or when regulatory methods cannot be used. The plan would provide a framework for positive heritage planning and a basis for addressing the issues within district plans.

Schedules

As discussed in A5.3, most councils have some involvement in the assessment and scheduling of historic buildings. For other types of heritage such as wahi tapu, sites of significance to Maori, and archaeological sites, the approach is very variable; some councils schedule significant archaeological sites and others do not.

Archaeological sites

Some councils choose not to schedule archaeological sites because they believe that the provisions of the HPA protect archaeological sites and that it is the responsibility of the Trust to administer the HPA. However the HPA cannot fully protect these sites (see A7.2) and decisions by councils to not include an archaeological schedule of significant sites will limit the sustainable management of these sites under the RMA.

The MCC have not scheduled any archaeological sites in their proposed district plan but 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 archaeological sites in the district is not documented.

The Far North District Council (FNDC) commissioned an archaeological consultant to review the NZAA File and attempt to locate the sites in district plan schedules although there was no attempt to systematically identify new items. The FNDC will add wahi tapu to the schedule subject to consultation with tangata whenua.

The Auckland City Council invited isthmus iwi to nominate wahi tapu sites for inclusion and protection in the district plan and one iwi, Ngati Paoa accepted this invitation. Spatially identified archaeological sites on the HPA Register were also included in the plan.

Designations

The Manukau City Proposed District Plan includes designations over land containing the Otuaataua and Matukuturua stonefields for public open space/heritage protection purposes in recognition of the areas significant historic and cultural heritage values. The stonefields have been jointly designated by the MCC, ARC and DOC (see Background Report).

Financial incentives

The use of heritage grants can encourage conservation incentives, increase the standard of conservation work, provide for the initiation of projects, and enable the undertaking of urgent repairs (Vines 1994). Most of the northern councils that were studied do not offer direct grants for heritage preservation although some, such as Auckland City Council, are currently considering the need for such a fund. Manukau City Council operates a grants scheme and \$13,000 is targeted in the planning budget as a heritage assistance fund. Work eligible for assistance includes fencing, upgrading earthquake risk buildings, and maintenance, with priority given to those items listed in the district plan.

The Wellington City Council administers two heritage protection funds with a combined value of \$300,000 funded through the annual plan process. The earthquake risk building fund is available to private owners of unstrengthened buildings which have heritage significance and it is intended as an incentive to promote decisions that lead to the strengthening of a building rather than demolition. A broader heritage fund provides assistance funding for specific projects ranging from the publishing of heritage information to the restoration of buildings. The council evaluates applications for funding from a list of criteria. These stipulate, for example, that the building must be listed in the district plan, that priority for protection is given to high risk buildings, and that a binding legal agreement requiring the retention of the building for not less than 18 years is entered on the certificate of title. The Wellington City Council is currently assessing overseas financial incentive programmes to see if they could be developed for use in Wellington City.

The Christchurch City Council assists owners of listed heritage buildings by, for example, waiving reserve or development contributions, remitting rates for buildings used for public non-profit making groups, and providing building and architectural guidance. The Christchurch City Council also sets aside a yearly allocation of money for grants to owners of listed buildings for maintenance, restoration or renovation. Applications for the fund are assessed according to the need for the work, the availability of funds, proof of workmanship, and the contribution the work will make to the retention of the building.

Few councils that were examined offered rates relief, although Far North District Council and Rodney District Council provide rates relief for specific purposes. Manukau City has a tentative statement in its strategic plan to the effect that rebates are a possibility but there is some uncertainty as to the ability of councils to offer rates relief for regulatory protection (see Appendix 8).

The practice of offering to waive fees is variable. Both Manukau City and North Shore City have policies in their district plans which offer waivers. Generally, this will represent a saving of \$300-\$500 to the applicant. Small and rural authorities do not offer fee rebates but indicated that they would consider a request if it were received. Auckland City imposes a small fee but provides expert advice to the applicant at no cost and at any time. Wellington City Council reduces and/or waives fees for resource consent applications that are required because the building is a recognised heritage building.

There is potential for innovative approaches to be taken with the development of financial contributions for heritage as part of resource consent conditions and particularly subdivision consents by all local authorities.

Acquisition

Few of the councils studied have policies in their strategic, annual or district plans which make a commitment to purchase historic places and support this commitment with funds and priorities. North Shore City its strategic plan specifically states that there is no money provided for "acquisition of threatened site". Most councils take the approach that they will respond on an ad hoc basis should a scheduled item be threatened. The proposed Manukau City district plan states that the council "will consider acquisition of wahi tapu", which is in accord with its view that tangata whenua should own their own taonga.

The Auckland City Council is one of a few councils which has acquired buildings expressly for conservation and protection, eg Princes St Merchant Houses. The Auckland City Council has a goal of "saving strategic sites and heritage buildings" (ACC 1993 p 19). This is demonstrated by two flagship conservation projects – the Town Hall and the Civic Theatre. Other properties managed by the ACC Property Department are subject to the rules of the district plan and the regulatory arm of the council responds to proposals accordingly.

Manukau City Council has a Shared Responsibility scheme, funded through its community a activities budget where the council provides any groups with loans at no interest for specified projects. This applies to council-owned properties which are leased to groups to run as historic places.

Advice

Some councils are in the process of setting up Geographic Information Systems (GIS) to record the existence of a registered or scheduled item or other heritage information. Auckland City, for example, has just installed its GIS in the Eden-Roskill Area Office. However, in some councils (eg Whangarei City) manual checking is required to access this information.

The provision of expert advice by the Auckland City Council's Conservation and Urban Design Division is a key part of the division's work. Early contact with landowners and developers before formal application for consents has been encouraged and this contact routinely takes place.

The use of value management workshops by the Auckland City Council to reconcile the use and adaptation of key city buildings while protecting their heritage values has also been very successful (see Auckland Case Study in Background Report). The workshops have involved all relevant parties and they have enabled various options to be discussed before final decisions are made.

Design guidelines

In general few councils have included design guidelines in their district plans although some have adopted rules which deal with quantitative and/or qualitative aspects of design in special character residential zones (eg Auckland City and North Shore City). The Wellington City Council proposed district plan makes extensive use of design guides for areas with important heritage values. In Wellington, design guides were preferred over rules on the basis that while rules could provide more certainty, they often result in a crude design that does not necessarily achieve the particular design objective (Mitchell & Brown 1995).

Heritage trails

District councils such as Far North, Whangarei and Rodney are not involved with heritage trails, whereas urban councils such as Manukau, North Shore and Auckland are more actively engaged. Assistance usually amounts to funding the trail brochures and providing information although Auckland City assists in the design of markers and the development of criteria for including places on the trail.

APPENDIX 9

Organisations and individuals consulted in the preparation of this report

w = written contact only

Adam, Mr John, Endangered Gardens, Auckland	
Allen, Dr Harry, Anthropology Dept, University of Auckland	
Auckland City Council (Conservation and Urban Design Unit)	
Auckland City Council (Property Department)	
Auckland Civic Trust	
Auckland Conservation Board	
Auckland Regional Council (Regional Policy Group)	
Battell, Ms Deborah, formerly KPMG Peat Marwick, Wellington	
Bowman, Mr Ian, heritage consultant, Wellington	
Broadway Developments Limited, Auckland	w
Canterbury Museum Trust	w
Carter Holt Harvey Ltd	w
Carter, Mr John, MP for Bay of Islands	
Christchurch City Council, Heritage Planning Unit	
Clough, Dr Rod, archaeological consultant, Auckland	
Clunie, Mr Fergus, building conservator, Kerikeri	
Cochrane, Mr Chris, heritage consultant, Wellington	
Craig Downer Limited, Auckland	w
Davidson, Dr Janet, Museum of New Zealand	
Department of Conservation (Heritage Policy Unit, Head Office)	
Department of Conservation (Kaupapa Atawhai Unit, Head Office)	
Department of Conservation (Science and Research Division, Head Office)	
Department of Conservation (Auckland Conservancy)	
Department of Conservation (Northland Conservancy)	
Department of Internal Affairs (Head Office)	
Department of Lands and Survey Information, Head Office	
Department of Lands and Survey Information, Auckland	
DML Resources Ltd, Auckland	w
Evans, Mr Boyden, Boffa Miskell, Wellington	
Fookes, Dr Tom, Department of Planning, Auckland University	
Forbes, Ms Susan, archaeological consultant, Paekakariki	
Foundation for Research, Science and Technology, Wellington	
Friends of Beaumont (Inc), Dunedin	w
Friends of Mount Street Cemetery (Inc), Wellington	w
Friends of Nelson City	
Green, Mr Bob, landowner, Ngunguru	

Holman, Ms Diana, heritage consultant, Auckland Huakina Development Trust, Pukekohe	w
Hucker, Dr Bruce, Department of Planning, University of Auckland Hutt City Council, Planning Department	
ICOMOS New Zealand	w
Institute of New Zealand Archaeologists (Inc)	w
Kirby, Dr Val, Department of Landscape Architecture, Lincoln University Klaricich, Mr John, Chair, Maori Heritage Council Klein, Mr Detlef, Manawatu Museum and Science Centre Kahotea, Mr Des, consultant, Tauranga	
Landowners of the Otuataua Stonefields, Manukau City Lucas, Ms Di, landscape consultant, Christchurch	
Maclean, Mr Chris, historical consultant, Wellington Manukau City Council, South Auckland Maori Heritage Council, Wellington Minister of Conservation Minister of Internal Affairs	w
Ministry for the Environment (Head Office) Ministry for the Environment (Maruwhenua) Ministry of Cultural Affairs Mitchell, Dr John, Nelson	
Nahkies, Mr Brent, Department of Property Studies, Lincoln University National Council of Women, Local Issues Group, Nelson Branch National Council of Women, National Office Nelson City Council Nelson Heritage Trust Nelson Historical Society New Zealand Archaeological Association New Zealand Business Roundtable	w
New Zealand Conservation Authority New Zealand Contractors Federation (Inc)	w
New Zealand Historic Places Trust Board New Zealand Historic Places Trust (Head Office) New Zealand Historic Places Trust (Maori Heritage Council) New Zealand Historic Places Trust (Nelson Branch) New Zealand Historic Places Trust (Auckland Regional Office) New Zealand Historic Places Trust (Auckland Branch Committee) New Zealand Historic Places Trust (Canterbury Branch Committee) New Zealand Historic Places Trust (Canterbury Regional Office) New Zealand Historic Places Trust (Gisborne Branch Committee)	w
New Zealand Historic Places Trust (Wellington Branch Committee) New Zealand Historic Places Trust (Wellington Regional Office) New Zealand Institute of Horticulture	w
New Zealand Institute of Landscape Architects	w
New Zealand Institute of Architects	w
New Zealand Institute of Surveyors	w

New Zealand Local Government Association	W
New Zealand Mainstreet Organisation	
Ngaati Te Ata, Waiuku	
Ngai Tai ki Tamaki Trust, Auckland	
Ngati Taka hapu, Ngunguru	
Ngati Wai Trust Board, Whangarei	
Ngunguru Residents Association	
Northland Conservation Board	
Northland Regional Council	
Nugent, Mr Dennis, heritage consultant, Auckland	
Officials Committee on wahi tapu protection	
Orgias, Mr Anthony, Orgias Cornthwaite Architects Ltd, Auckland	
Palmerston North City Council	
Park, Mr Pat, Museum of New Zealand	
PF Olsen and Co. Ltd, Rotorua	
Reeves, Mr Simon, solicitor, Auckland	
Regnault, Mr Bob, Rotorua	W
Rodney District Council	W
Royal Forest and Bird Protection Society, Northern Field Office (Auckland)	
Salmond, Mr Jeremy, heritage consultant, Auckland	
Smith, Mr Warwick, Auckland	
Society for the Preservation of the Kerikeri Stone Store Area	
Tasman District Council, Richmond	
Tasman Forestry Ltd, Rotorua	W
Te Iwi o te Roroa, Kaitaia	W
Te Puni Kokiri (Head Office)	
Te Runanga o Ngati Porou (Gisborne)	W
Te Runanga o Turanganui A Kiwa (Gisborne)	W
Te Waiariki hapu, Ngunguru	
Upper Hutt City Council, Planning Department	
Watercare Services Ltd, Auckland	W
Wellington City Council (Planning Division)	
Wellington City Council (Urban Design Unit)	
Wellington Regional Council (Recreation Department)	W
Whangarei District Council	
Whiting, Mr Dean, Museum of New Zealand	
Whiting, Mr Cliff, Museum of New Zealand	
Winstone Aggregates Limited	W

GLOSSARY

ACC	Auckland City Council
AEE	Assessment of Environmental Effects
ARC	Auckland Regional Council
Archaeological site	(defined in the HPA) “means any place in New Zealand that either was associated with human activity that occurred before 1900; or is the site of the wreck of any vessel where that wreck occurred before 1900; and is or maybe able through investigation by archaeological methods to provide evidence relating to the history of New Zealand”.
BOMA	Building Owners and Managers Association
BRANZ	Building Research Association of New Zealand
CBD	Central Business District
CHI	Cultural Heritage Inventory
CMP	Conservation Management Plan
CMS	Conservation Management Strategy
DIA	Department of Internal Affairs
DOC	Department of Conservation
DOSLI	Department of Survey and Land Information
DP	District Plan
FORST	Foundation for Science, Research and Technology
HCH	historic and cultural heritage
HHS	Historic Heritage Strategy (Department of Conservation)
Historic and cultural heritage	the full range of heritage values addressed by the Historic Places Act 1993 ie places and tangible objects which are fixed and non-living, but excluding aspects of cultural heritage such as “portable” museum collections, the creative arts or language.

Historic area	(defined in the HPA) “means an area of land that contains an inter-related group of historic places; and forms part of the historical and cultural heritage of New Zealand; and lies within the territorial limits of New Zealand”.
Historic place	(defined in the HPA) “means any land (including an archaeological site); or any building or structure (including part of a building or a structure); or any combination of land and a building or structure, that forms part of the historical and cultural heritage of New Zealand and lies within the territorial limits of New Zealand; and includes anything that is in or fixed to such land”.
HPA	Historic Places Act 1993
ICOMOS	International Council on Monuments and Sites
Kaitiakitanga	“the exercise of guardianship; and, in relation to a resource, includes the ethic of stewardship based on the nature of the resource itself” (s 2 RMA)
LE&HDC	Lottery Heritage and Environment Distribution Committee
LIM	Land Information Memorandum
MFE	Ministry for the Environment
MHC	Maori Heritage Council
MONZ	Museum of New Zealand
NGO	Non-governmental organisation
NRC	Northland Regional Council
NZAA	New Zealand Archaeological Association
NZAA File	The New Zealand Archaeological Association Site Recording Scheme which became known as the NZAA File. The file contains information on archaeological sites and since 1988 has been administered by the Department of Conservation.
NZHPT	New Zealand Historic Places Trust
NZLGB	New Zealand Lottery Grants Board
PCGNZ	Professional Conservators Group of New Zealand
PGSF	Public Good Science Fund, administered by Foundation for Research, Science and Technology

PIM	Project Information Memorandum
POBOC	Payment On Behalf Of the Crown
RMA	Resource Management Act 1991
RMLR	Resource Management Law Reform
RPS	Regional Policy Statement
tangata whenua	people of the land: the Maori iwi (tribe, people) or hapu (band, subtribe) which has mana whenua (customary authority) over a particular area.
the Trust	New Zealand Historic Places Trust/Pouhere Taonga
TPK	Te Puni Kokiri
wahi tapu	(defined in the HPA) “means a place sacred to Maori in the traditional, spiritual, religious, ritual, or mythological sense.
wahi tapu area	(defined in the HPA) “means an area of land that contains one or more wahi tapu”.

REFERENCES

- AGB McNair 1995. *Membership Survey for the New Zealand Historic Places Trust*. Wellington: AGB McNair.
- Allen H 1996. Heritage management in New Zealand and beyond: A submission to the Parliamentary Commissioner for the Environment's Investigation into the system of Historic and Cultural Heritage Management in New Zealand. Unpublished report. Auckland: Department of Anthropology, University of Auckland.
- Allen H 1994. Protection for archaeological sites and the HPT NZ register of historic places, historic areas, wahi tapu and wahi tapu areas. *Archaeology in New Zealand* 37(3): 205-27.
- Allen H, Phillips C, Skipper A, Te Moananui-Waikato J, Reidy C, and Cook B 1993. *Taskforce Green/University of Auckland Archaeological Project, Waihou River*. Auckland: Department of Anthropology, University of Auckland.
- Auckland Regional Council 1995. Manukau City cultural heritage inventory report. Unpublished report. Auckland: Auckland Regional Council.
- Auckland Regional Council 1994. *Auckland Regional Policy Statement*. Auckland: Auckland Regional Council.
- Awaroa ki Manuka 1991. *Nga Tikanga O Ngaati Te Ata - Tribal Policy Statement*. Waiuku: Awaroa ki Manuka.
- Berry A Q and Brown I W (Eds) 1995. *Managing ancient monuments: an integrated approach*. Clywd: Clywd County Council.
- Bowman I 1994. *The Nelson heritage and streetscape study - A review and discussion of issues*. Nelson: Report commissioned by the Nelson City Council and the New Zealand Historic Places Trust.
- Bowman I 1985. Conservation in a seismic zone. A dissertation presented for the degree of Master of Arts in Conservation Studies, the Institute of Advanced Architectural Studies, University of York.
- Bowman I and Reid 1995. Queenstown heritage inventory. Queenstown: Queenstown-Lakes District Council.
- Butts D J 1993. Institutional arrangements for cultural heritage management in New Zealand: legislation, management, and protection. In: Hall C M and McArthur S (Eds) *Heritage management in New Zealand and Australia: Visitor management, interpretation and marketing*. Auckland: Oxford University Press, 169-187.
- Challis A J 1995. *A review of archaeological site records for the Canterbury region*. Science and Research Series 45. Wellington: Department of Conservation.
- Challis A J 1994. Current directions and issues in archaeological site protection. *Archaeology in New Zealand* 38(3): 169-190.

Challis A J 1991a. *A archaeological research and management strategy: the Nelson-Marlborough region*. Science and Research Series no. 43. Wellington: Department of Conservation.

Challis A J 1991b. The Nelson-Marlborough region: an archaeological synthesis. *New Zealand Journal of Archaeology* 13: 101-42.

Cordy J 1982. The dangers of historic preservation and contract archaeology. *New Zealand Archaeological Association Newsletter* 25(4): 277-289.

Daniels J R S 1979. *New Zealand Archaeology: site recording handbook (2nd Edition)*. New Zealand Archaeological Association Monograph No 10.

Davison G 1991. The meanings of 'heritage'. In Davison G and McConville C (Eds). *A Heritage Handbook*. Sydney: Allen & Unwin, 113.

Department of Communications and the Arts 1995. *Tax incentive for heritage conservation. Australia*. Canberra: Department of Communications and the Arts.

Department of Conservation 1995a. *Historic heritage strategy, Atawhai Ruamano Conservation 2000*. Wellington: Department of Conservation.

Department of Conservation 1995b. *The Management and Protection of Waahi Tapu sites on Land Management by the Department of Conservation: A Discussion Document*. Wellington: Department of Conservation.

Department of Conservation 1994. *Atawhai Ruamano Conservation 2000 (updated summary)*. Wellington: Department of Conservation.

Department of Internal Affairs 1995. *Protection of movable cultural heritage bill - proposed content*. Wellington: Department of Internal Affairs.

Environmental Planning and Assessment 1995. A study of approaches to heritage protection taken by selected urban territorial authorities in the preparation of proposed district plans under the Resource Management Act. Unpublished paper. Prepared by I Craig. Wellington.

Fairclough G. The sum of all its parts: an overview of the politics of integrated management in England. In: Berry A Q and Brown I W (Eds) *Managing ancient monuments: an integrated approach*. Clywd: Clywd County Council, 17-28.

Flinkenberg C 1996. Danger & Opportunity. *Historic Places* 57:3-5.

Flook R (Ed) 1994. *An introduction to the Notable Trees of New Zealand*. Nelson: The Copy Press.

Foundation for Research, Science and Technology (FORST) 1995. *Research Strategy for the Public Good Science Fund 1996/7 to 2000/1: Society and Culture*. Wellington: Foundation for Research, Science and Technology.

Foundation for Research, Science and Technology (FORST) 1993. *Nationally significant Public Good Science Fund databases and collections*. Wellington: Foundation for Research, Science and Technology.

Green S 1994. Constraints and incentives in heritage protection. In: *Heritage Townscapes. A Symposium to explore the realities and practicalities of conserving and achieving best use of our living urban environments*. Proceedings. Dunedin: Heritage Townscapes Conference Committee.

Gumbley W 1995. Guidelines for provisions of archaeological information and assessment for authority applications under section 11 or section 12 of the Historic Places Act 1993. *New Zealand Journal of Archaeology*.

Hall C M and McArthur S 1993. Heritage management: an introductory framework. In: Hall C M and McArthur S (Eds) *Heritage management in New Zealand and Australia: Visitor management, interpretation and marketing*. Auckland: Oxford University Press, 1-17.

Heylen Research Centre 1987. *Attitudes to the Protection of Historic Places and the Image of the New Zealand Historic Places Trust*. Report for the New Zealand Historic Places Trust.

Historic Places Task Force 1995. Proposals in incentives/assistance for preservation of heritage properties. Unpublished paper. Christchurch.

ICOMOS New Zealand 1993. *Charter for the Conservation of Places of Conservation Heritage Value*. Auckland: ICOMOS New Zealand.

Johnston C 1994. *What is social value?* Canberra: Australian Government Publishing Service.

Jones B D 1994. *Saving our cultural heritage. Historic buildings: A critical interpretation of New Zealand Legislation, its usage, and policy recommendations for the future*. Auckland: University of Auckland.

Kai Tahu ki Otago 1995. *Natural Resource Management Plan*. Kai Tahu ki Otago.

Kalman H 1980. *The Evaluation of Historic Buildings*. Ottawa: Parks Canada, Ministry of the Environment.

Kawerau a Maki Trust 1995. *Resource Management Statement*. Auckland: Kawerau a Maki Trust.

Komiti Tuku Iho 1995. *Ngai Tahu Policy - Archaeological and Rock Art Sites*. Komiti Tuku Iho.

McLean G (in prep) 1996. Meanings to an End – A draft national thematic framework for historic places in New Zealand.

Manatu Maori 1991a. *Wahi Tapu, Protection of Maori Sacred Sites*. Wellington: Manatu Maori.

Manatu Maori 1991b. *He Kakano I Ruia Mai I Rangiatea – Maori Values and Environmental Management*. Wellington: Manatu Maori.

Manukau City Council (MCC) 1995. *Draft Cultural Heritage Strategy*. Manukau: Manukau City Council.

Mead H M 1990. The Nature of Taonga. In *Taonga Maori Conference – New Zealand 18-27 November 1990*. Wellington: Department of Internal Affairs, p164-169

Mills C 1993. On Main Street. *Historic Places* September 1993.

Minhinnick N K 1989. *Establishing Kaitiaki*. Auckland: Nganeko Kaihau Minhinnick.

Ministry for the Environment 1994a. *Environment 2010 Strategy*. Wellington: Ministry for the Environment.

Ministry for the Environment 1994b. *Summary of submissions on the draft Environment 2010 strategy*. Wellington: Ministry for the Environment.

Mitchell C and Brown S 1995. Design Guides – A Wellington Perspective. *Resource Management News* Aug/Sept 1995.

Ministry for Research, Science and Technology 1995. *Statement of Science Priorities 1996/7 to 2000/1*. Wellington: Ministry for Research, Science and Technology.

Nahkies B 1995a. Are investment incentives needed for the retention of historic buildings in New Zealand. Pacific Rim Real Estate Society Conference. Melbourne. Proceedings.

Nahkies B 1995b. Valuing Historic Properties. New Zealand Institute of Valuers Distance Teaching Seminar. Unpublished paper. Christchurch.

New Zealand Historic Places Trust/Pouhere Taonga 1996. *Application to the Ministry for the Environment Sustainable Management Fund*. Wellington: New Zealand Historic Places Trust.

New Zealand Historic Places Trust/Pouhere Taonga (NZHPT) 1995. *Report of the New Zealand Historic Places Trust/Pouhere Taonga for the year ended 30 June 1995*. Wellington: New Zealand Historic Places Trust.

New Zealand Historic Places Trust 1994a. *New Zealand Historic Places Trust cultural heritage planning manual, information and guidelines on historical and cultural heritage and district planning*. Wellington: New Zealand Historic Places Trust.

New Zealand Historic Places Trust/Pouhere Taonga (NZHPT) 1994b. *Report of the New Zealand Historic Places Trust/Pouhere Taonga for the year ended 30 June 1994*. Wellington: New Zealand Historic Places Trust.

New Zealand Historic Places Trust/Pouhere Taonga (NZHPT) 1994c. *Guidelines for the preparation of conservation plans*. Wellington: New Zealand Historic Places Trust.

New Zealand Lottery Grants Board (NZLGB) 1995a. *Lottery Environment and Heritage Distribution Committee Strategic Plan 1995-1996*. Wellington: New Zealand Lottery Grants Board.

New Zealand Lottery Grants Board (NZLGB) 1995b. *Report of the New Zealand Lottery Grants Board for the year ended 30 June 1995*. Wellington: New Zealand Lottery Grants Board.

New Zealand Tourism and Publicity Department 1990. *Domestic Travel Segmentation Study*. Wellington: New Zealand Tourism and Publicity Department.

New Zealand Tourism Board 1995. *The New Zealand International Visitors Survey 1992/3*. Wellington: New Zealand Tourism Board.

Ngatiwai Trust Board 1995. *Cultural Impact Assessment – Ngunguru Sandspit*. Unpublished paper. Whangarei.

Nugent Consultants Limited and Kensington Swan 1993. *Review of heritage provisions of the Resource Management Act 1991*. Wellington: Ministry for the Environment.

Nugent T D 1978. Archaeological conservation areas. Unpublished B. Town Planning research essay. Auckland: University of Auckland.

Parliamentary Commissioner for the Environment 1996. *Historic and cultural heritage management in New Zealand. Background report: case studies*. Wellington: Parliamentary Commissioner for the Environment.

Parliamentary Commissioner for the Environment 1994. *Environmental Information and the Adequacy of Treaty Settlement Procedures*. Wellington: Parliamentary Commissioner for the Environment.

Quirk C 1995. *So this is an historic place - what does it mean?* Unpublished paper for New Zealand Institute of Valuers Distance Teaching Seminar.

Quirk C 1994. *Summary of overseas legislation*. Unpublished paper prepared for May 1994 NZHPT Board meeting.

Pickmere N 1995. Vision for Kerikeri. *Historic Places*. November 1995.

Piddington K 1996. *Commentary of historic and cultural heritage management*. Unpublished paper for Parliamentary Commissioner for the Environment.

Remetis K 1996. *National Mainstreet Trust of New Zealand report on heritage issues*. Auckland: January 1996.

Review Group on the Resource Management Bill 1991. *Report of the Review Group on the Resource Management Bill*. Wellington: Ministry for the Environment.

Richardson P 1991. *Classification systems options*. Unpublished discussion paper prepared for March 1991 meeting of NZHPT Historic Buildings Committee.

Robinson L 1994. Structural engineering essentials. In *Heritage Townscapes. A Symposium to explore the realities and practicalities of conserving and achieving best use of our living urban environments*. Proceedings. Dunedin: Heritage Townscapes Conference Committee.

Rosson L 1996. *Towards new pathways NZ Historic Places Trust, HPT Branches, Local Government and the community*.

Russell J (in press). The cultural landscape: heritage as usual, or a social basis for landscape conservation? In Hay P and Eckersley R (Eds) *Ecopolitical theory: essays from Australia*.

Schapper J 1993. Criteria for the evaluation of landscape as heritage. *Landscape Australia* 4/93: 344-47.

Shields M and Durie M H 1995. *Output 13 - Society and Culture*. Report to the Science Priorities Review Panel. Wellington: Ministry for Research, Science and Technology.

Tasman District Council 1995. *Heritage Policy Paper No 2. Archaeological sites, and sites of significance to Maori, District Plan Review*. Nelson: Tasman District Council.

Tau T M, Goodall A, Palmer D and Tau R 1990. *Te Whakatau Kaupapa - Ngai Tahu Resource Management Strategy for the Canterbury Region*. Wellington: Aoraki Press.

Te Puni Kokiri 1993. *Mauriora ki Te Ao: An Introduction to Environmental and Resource Management Planning*. Wellington: Te Puni Kokiri.

Thames-Coromandel District Council 1995: *Heritage Register*. Thames: Thames-Coromandel District Council.

Vines E 1994: Feasibility. *In Heritage Townscapes. A symposium to explore the realities and practicalities of conserving and achieving best use of our living urban environments*. Proceedings. Dunedin.

Vossler G 1993. Standards set specific criteria for protection. *In Planning Quarterly* March 1993: 7-8.

Waitangi Tribunal 1995a. *Te Manutukutuku: Te Roopu Whakamana i te Tiriti o Waitangi*. Wellington: GP Publications.

Waitangi Tribunal 1995b. *Te Whanganui-A-Orotu Report*. Wellington: GP Publications.

Waitangi Tribunal 1993. *Ngawha Geothermal Resource Report*. Wellington: Brooker and Friend.

Waitangi Tribunal 1992. *Te Roroa Report*. Wellington: Brooker and Friend.

Working Group on Heritage Law Reform 1989: *Historic Places Legislation Review (Coad Report)*. Wellington: Ministry for the Environment.

Woodward J (Comp.) 1996. *New Zealand Historic Places Trust Review of Local Government Approaches to Heritage Protection*. Wellington: New Zealand Historic Places Trust.

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